

Circuit Court



Branch 29
Courthouse
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RICHARD J. SANKOVITZ
JUDGE

February 11, 2014

Diane Fremgen
Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

Re: Supreme Court Rule Petition 13-14
Petition to Amend SCR 60.04

Dear Honorable Justices:

I write in support of the Access to Justice Commission's petition to improve the judicial conduct code by clarifying the role of judges in accommodating all parties who appear before the court.

I join the excellent and supportive comments of the many others who have written in support of the amendments. I am unaware of anyone who has offered any comment in opposition to them. These rules and comments promise to help trial judges, like me, in dealing with the challenge of managing the courtroom when an ever-burgeoning share of those who appear before us are not trained in our usual procedures or our standard expectations.

So many of our usual procedures and standard expectations were conceived with lawyers in mind, not novices. If we cannot supply our constituents with lawyers who understand the usual procedures and standard expectations, then we should try to simplify the rules to make it possible for the self-represented to understand – and comply – with them. I believe the proposed rules and commentary will give us good, neutral guidance in how to make these accommodations.

Two particular points deserve some consideration. First, some might construe these amendments as an effort to bend the rules in favor of one group of litigants over another. I don't think such a reaction is warranted. Rules that guide the judge to manage courtroom procedure to get to the merits of a dispute and discern the truth are rules that favor all litigants, not just some. Rules that reduce the potential confusion and expense of a proceeding favor all litigants, not just some. Rules that guide judges to ensure that no matter the outcome all parties believe the court truly afforded them their day in court are rules that ensure finality, and boost the trust and confidence in the court of all litigants, not just some. And we should not forget that in this day and age there is no group of litigants whose members always have lawyers, who never need accommodations like those proposed here.

Second, while the guidance offered by the proposed rules is nontraditional, it nevertheless comports with common sense, particularly the common sense of those looking into our system from the outside, especially those who aren't accustomed to all the legal traditions around which our rules are framed.

However, if the guidance of these new rules is based on common sense, one might question whether new rules are needed in the first place. Instead of rules and commentary that specify how a judge might accommodate untutored litigants, can't the judge rely on his or her common sense instead?

Here are two reasons: First, while many judges already put these practices to work in the way we exercise our discretion (and with good results, and for parties on both sides of the v.), we are aware of judges who feel uncomfortable wielding their discretion in such nontraditional ways. This guidance will help them.

Second, these amendments are an embodiment of the commitment of courts to access to justice. They tell the public as a whole that even though our rules look like they were written for lawyers, they are intended for the benefit of everyone, and we will do everything we can to make sure litigants don't forfeit those benefits merely because they can't afford a lawyer.

Thank you for your consideration, and for tackling this important issue.

Sincerely,



Richard J. Sankovitz
Circuit Court Judge