

STATE OF WISCONSIN

SUPREME COURT

In re:

PROPOSED CREATION OF
WISCONSIN STATUTE § (RULE) 809.86

**PETITION OF WISCONSIN JUDICIAL COUNCIL
FOR AN ORDER CREATING WIS. STAT. § (RULE) 809.86**

April M. Southwick
WI State Bar No. 1070506
110 East Main Street
Madison, WI 53703
(608) 261-8290
(608) 261-8289 (facsimile)
april.southwick@wicourts.gov

ON BEHALF OF THE WISCONSIN JUDICIAL COUNCIL

January 21, 2014

The Wisconsin Judicial Council respectfully petitions the Wisconsin Supreme Court to create Rule 809.86. This petition is directed to the Supreme Court's rule-making authority under Wis. STAT. § 751.12.

PETITION

The Judicial Council respectfully requests that the Supreme Court adopt the following rule:

SECTION 1. 809.86 is created as follows:

809.86. Identification of victims and others in briefing and decisions. (1)

APPLICABILITY. This section applies to appeals in the following types of cases:

- (a) Section 971.17 proceedings.
- (b) Criminal cases.
- (c) Ch. 938 cases.
- (d) Ch. 980 cases.
- (e) Certiorari review of decisions or orders entered by the department of corrections, the department of health services or the parole commission in a proceeding or case specified in pars. (a)-(d) of this subsection.
- (f) Collateral challenges to judgments or orders entered in a proceeding or case specified in pars. (a)-(e) of this subsection.

(2) DEFINITION. In this section, "victim" means a natural person against whom a crime, other than a homicide, has been committed or alleged to have been committed in the appeal or proceeding. "Victim" does not include the person convicted of or alleged to have committed a crime at issue in the appeal or proceeding.

(3) OPINION AND BRIEFS. In an appeal specified under sub. (1), the opinion or decision of the supreme court and court of appeals and the briefs of the parties shall not identify a victim by any part of his or her name but may identify a victim by one or more initials or other appropriate pseudonym.

(4) PROTECTIVE ORDER. For good cause, the court may make any order necessary to protect the identity of a victim or other person, or to excuse compliance with this section.

JUDICIAL COUNCIL NOTE:

Proposed s. 809.86 addresses victim privacy concerns that result from public access to searchable documents posted on the Wisconsin Supreme Court and Court of Appeals access website. The proposed rule is intended to protect victims'

constitutional and statutory rights to be treated with fairness, dignity, courtesy, sensitivity, and respect for their privacy. *See* Wisconsin Constitution Art. I, § 9m; Wis. Stat. § 950.01. Specifically, the rule protects the identity of victims in appellate briefs and in appellate judicial opinions that the courts make available online. The rule does not extend to other appellate filings, including appendices, because these documents are not currently posted electronically.

The proposed rule is not a rule of confidentiality or privilege. It is not intended to limit a defendant's right to a public trial, to limit the availability of any potential appellate argument or remedy, or to affect laws regarding public records or open court records that are available in the clerks of courts offices.

The rule is intended to address only matters in which the state has alleged or proved that a party in the appeal or proceeding has committed criminal conduct against one or more victims in the matter. Accordingly, sub. (1) is limited to matters in which victims of crime are most frequently referenced and identified as victims or alleged victims.

Subsection (2) provides a definition of a "victim" that includes an alleged victim. In some appeals, a party's position will be that there was in fact no victimization, and nothing in this proposed rule is intended to limit arguments to that effect.

The privacy issues addressed by the rule do not extend to a deceased victim in the same manner. Therefore, subsection (2) permits the victim of a homicide to be recognized in an appellate opinion or brief.

Subsection (3) prohibits the use of any part of a victim or alleged victim's name except initials. Subsection (3) does not prescribe or limit the use of other pseudonyms for victims, as long as they maintain sensitivity and respect for victims.

Subsection (4) allows an appellate court to make any necessary order to further protect the identity of victims or to protect the identity of other persons not otherwise covered by the rule. It also allows the court to excuse compliance with this section.

CONCLUSION

For the reasons set forth in the supporting memorandum accompanying this petition, the Wisconsin Judicial Council respectfully urges this Court to create WIS. STAT. § (RULE) 809.86.

Dated January 21, 2014

RESPECTFULLY SUBMITTED,

WISCONSIN JUDICIAL COUNCIL

April M. Southwick, Attorney
WI State Bar #1070506
110 E. Main Street
Madison, Wisconsin 53703
(608) 261-8290
Facsimile: (608) 261-8289
april.southwick@wicourts.gov