

Susan (Susie) Stephens

From: Clerk of the Supreme Court and Court of Appeals
Sent: Thursday, February 4, 2021 4:42 PM
To: Susan (Susie) Stephens; Carrie Janto
Subject: FW: April 7, 2021, public hearing on Rule Petition 20-09

From: Daniel Wood <Daniel.Wood@WICOURTS.GOV>
Sent: Thursday, February 4, 2021 2:28 PM
To: Clerk of the Supreme Court and Court of Appeals <Clerk@Wlcourts.gov>
Subject: April 7, 2021, public hearing on Rule Petition 20-09

Here are my comments to the petition:

1. Section 5 calls for amendment of sec. 757.12 to authorize the judge, subject to chief judge approval, to move court to an alternate location, including another county, on a temporary basis in the event of war, pestilence or other public calamity. I respectfully suggest that it may be prudent to modify the amendment to add a more general basis, such as: Whenever it is deemed unsafe or inexpedient, by reason of war, pestilence, public calamity or other compelling factor, to hold court in the regular location, the judge may order... I make this suggestion based on our experience here in Adams County during the ongoing remodeling/expansion of the courthouse complex, which has required us to move court operations to the county board room. We explored holding jury trials in the nearby Juneau County Justice Center (still using an Adams County jury), as a better option than trying to accommodate a jury trial in a space not designed for that purpose. We realized, however, that we were without clear authority to do so unless a change of venue occurred. Since a remodeling project will not (hopefully) constitute a war, pestilence or other public calamity, the amendment as proposed in the petition will not address a similar situation for other counties in the future. I believe my suggested change would be consistent with the petition's proposal to amend SCR 70.19(3)(c) to allow the chief judge to, *where necessary*, establish the location of court operation.
2. Section 25 of the petition calls for sec. 885.60(2)(d) to be repealed outright. It appears from review of both section 25 and page 14 of the supporting memorandum that the first sentence of the paragraph (regarding the right of a defendant to make, and the requirement of the court to sustain, an objection to video testimony at a trial) is not only overlooked (the stricken-through language in both starts with the second sentence) but is ultimately repealed. On page 13 of the memo, it is explained that subsection (d) should be repealed to avoid confusion and because it is no longer necessary. However, the third paragraph of the comment from 2008 for sec. 885.60 explains the reason for the current language, including a defendant's rights under the confrontation clause: "This section is also intended to preserve constitutional and other rights to confront and effectively cross-examine witnesses. It provides the right to prevent the use of videoconferencing technology to present such adverse witnesses, but rather require that such witnesses be physically produced in the courtroom. In requiring a defendant's objection to the use of videoconferencing to be sustained, this section also preserves the defendant's speedy trial rights intact." It is unclear what has changed since 2008 to make the *existing* right of a defendant under sub. (2)(d) no longer necessary or why that right creates confusion and needs to be repealed. I understand that, under the proposed revision to sub. (2)(b), judges will consider objections under the criteria set forth in sec. 885.56 and that the criteria therein include consideration of, among other factors, whether the videoconference technology would allow for full and effective cross-examination and whether a liberty interest is at stake. I also want to stress that I trust my colleagues to exercise appropriate discretion when considering an objection. I am not necessarily advocating for retention of the current language, but I

submit that such a dramatic change should be highlighted and should be the subject of significant attention and deliberation.

Moreover, under the proposed amendment, an objection from the plaintiff/petitioner is still *specifically* addressed (see subsection (c)), but an objection from the defendant/respondent is not.

3. I have no comment to the other proposed changes, except to note that section 28 resolves the apparent conflict that currently exists between sec. 971.04((1)(a) and 967.08(2)(d) regarding arraignments. The interplay, generally, between the petition's proposed amendments and sec. 967.08 (which provides for conducting certain proceedings by telephone or "live audiovisual means") may be worthy of consideration. I note that secs. 885.60 and 967.08 overlap, but do not reference one another in spite of the fact that there is no apparent difference between the reference to "videoconference technology" in the former and "live audiovisual means" in the latter. The same is true for secs. 885.58 and 807.13.

I applaud the task force members for their efforts, and have great respect for their dedication and willingness to develop the petition and modernize procedures.

Thank you for the opportunity to be heard.

Respectfully submitted,

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