

ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on Housing and Real Estate
January 7, 2020

Chairman Jagler and members of the Assembly Committee on Housing and Real Estate, thank you for affording me with the opportunity to testify on behalf of Assembly Bill 705, relating to: attorney assistance in the preparation of certain court documents.

A major change beginning in 2017 was the implementation of the Eviction Defense Project of Milwaukee County. Initially, tenants in court for an eviction case would consult with a pro bono volunteer attorney and would be given a “check-the-box” prom form a “Answer” which contained about thirty possible defenses to the eviction complaint. The tenant would sign that “Answers” and check various boxes—presumably upon the advice of a voluntary attorney—but landlord plaintiffs or their attorneys considered some of the alleged defenses specious and doubt arose as to whether a particular defense had actually been recommended by the pro bono attorney or whether the tenant had merely checked additional boxes to “make the answer look good.”

It was that practice, employed by several organizations, which led property owners to seek the legislative change requiring pro bono attorneys to disclose their names on documents drafted for defendants in eviction actions. Fortunately, this check-the-box defense method was soon abandoned by these organizations.

Assembly Bill 705 would require a pro bono attorney to provide his or her name and state bar number only in contested cases. Doing so preserves the legislature’s intention to have attorneys reveal their involvement in the small percentage of serious, non-routine cases, without requiring disclosure in the majority of pro bono cases. This is a common-sense legislative fix and one that I hope of all you will support.

I am happy to answer any questions you might have regarding Assembly Bill 705.



Luther S. Olsen
State Senator
14th District

TO: Assembly Committee on Housing & Real Estate
FROM: Senator Luther Olsen
DATE: January 7, 2020
SUBJECT: Testimony in favor of Assembly Bill 705.

Thank you Chairman Jagler and the Assembly Committee on Housing and Real Estate for holding a hearing and allowing me to testify in favor of Assembly Bill 705.

Under current law, an attorney who drafts or assists in drafting a pleading, motion, or document for an otherwise self-represented person in a legal action is not required to sign those documents. However, the document must contain a statement immediately adjacent to the self-represented person's signature that "this document was prepared with the assistance of a lawyer," followed by the attorneys name and state bar number.

Under Assembly Bill 705, the attorney has to provide their name and state bar number only if it is requested by an opposing party in a contested matter. If requested, the clerk of court must then enter the name and state bar number on the document and enter it in the clerk's minutes. The required recording does not make the attorney the official attorney of record for the otherwise self-represented person.

Many volunteer legal clinics allow self-represented litigants to visit with a volunteer lawyer to obtain help in drafting a court filing. This allows lawyers to do pro bono work on a limited scope. This legislation would require the pro bono attorney to provide their name and state bar number only in contested cases. This preserves the legislature's intention to have attorneys reveal their involvement in the small percentage of serious and non-routine cases without requiring disclosure in the majority of pro bono matters.

Thank you, members. I ask for your support and would be more than happy to answer any questions.

Testimony of Julie Anne Rich, Supreme Court Commissioner
Regarding 2019 Assembly Bill 705
Relating to "Ghostwriting"
Assembly Committee on Housing and Real Estate
Representative John Jagler, Chair
Representative Scott Allen, Vice-Chair
January 7, 2020

Good morning Representatives Jagler and Allen and members of the Committee. My name is Julie Anne Rich and I work for the Wisconsin Supreme Court. I assist the Court with its administrative rulemaking process. I appreciate this opportunity to provide written testimony relating to AB705, which proposes amendments to Wis. Stat. (Rule) s. 802.05(2m) relating to the practice called "Ghostwriting."

I am not here to take a position on the bill. I am here today because the Supreme Court and this Committee are simultaneously considering proposals to change the language of the very same rule. AB705 recommends you amend Wis. Stat. (Rule) s. 802.05(2m). The Court has a public administrative rule hearing scheduled on January 17, 2020 to consider a request that the Court amend s. 802.05(2m). Given how close in time these parallel proceedings are being held, I come here today to share information about the court's ongoing administrative rules process in the hope that information might be helpful to this Committee.

The request before the Court was filed as an administrative rule petition on May 15, 2019, by Attorney James E. Goldschmidt of Quarles & Brady LLP.¹ Consistent

¹ Rule Petition 19-16, In the Matter of Amending Wis. Stat. § 802.05(2m) relating to Ghostwriting, a Form of Limited Scope Representation, filed May 15, 2019, by Attorney James Goldschmidt.

with its usual practice, the Court requested public written comment from a long list of interested persons. The Court has received 29 letters commenting on the rule petition. These are available on the court's website at <https://www.wicourts.gov/scrules/1916.htm>. On December 2, 2019, the court issued a public hearing notice and scheduled the public hearing on the rule petition.

As you know, Wis. Stat. (Rule) 802.05(2m) is a rule of civil procedure that provides guidance to lawyers who help an otherwise unrepresented person fill out documents the person will present in court.² The rules of civil procedure have been amended over time by both the Court and the Legislature. The specific rule at issue here, s. 802.05(2m), was created by the Court in 2014. See S. Ct. Order 13-10, 2014 WI 45 (issued June 27, 2014, eff. Jan. 1, 2015). It was created as one part of a fairly large administrative rule petition regarding limited scope representation ("LSR"). Limited Scope Representation is a form of legal representation that allows an arrangement where a lawyer does some work for a client on a particular case, but does not take on the entire case. It is generally viewed as a way of limiting the costs of legal representation for consumers and making legal services more accessible and affordable to the public. The rule petition was brought by a subcommittee, appointed by the Supreme Court and charged with researching LSR programs both nationally and locally and recommending changes for Wisconsin. The subcommittee issued its report and petition after about two

² Examples of these types of documents might include a small claims complaint for damages for sale of a defective used car, a request to change or enforce a child support award, a petition for a domestic abuse injunction, an appeal from denial of an unemployment compensation claim, helping spouses draft a child custody arrangement in a collaborative divorce, or drafting an application for administration in a probate matter.

years of work. The Court unanimously adopted the LSR rule petition after extensive public proceedings. Again, s. 802.05(2m) was one part of those changes.

In April 2018, the Legislature passed an omnibus bill, 2017 Wis. Act 317, which contained a number of provisions regarding regulation of rental properties, landlord/tenant matters, and municipal fees and regulations in the area of housing. Some language was added to s. 802.05(2m), requiring lawyers who assists otherwise unrepresented persons in the preparation of documents to include their name and State Bar number. Although this change was part of an act affecting landlord/tenant issues, all areas of legal practice are affected by the change to s. 802.05(2m). For instance, LSR is used frequently in family law matters, probate cases and other types of small claims actions.

This change prompted the rule petition that is now before the Court. The rule petition states that the legislative change has had significant consequences for the court system, specifically a lessening of lawyers' participation in limited scope legal work across the State. Most of the comments received agree with this statement and offer examples.

While the Court has not yet evaluated the pending rule petition, 19-16, there is also a separate issue that has arisen. The 2018 legislative change to s. 802.05(2m) caused some textual inconsistencies with other court rules, which do not require disclosure of a lawyer's name and State Bar number. See Rule Prof. Cond. Att'ys, SCR 20:1.2(cm) and R. App. Pro. Wis. Stat. s. 809.19(1)(h).

The petition that is pending before the Supreme Court proposes the following change, which would reinstate the language of the rule as it was originally created by the Court in 2014:

802.05(2m). Additional Representations to Court as to Preparation of Pleadings or Other Documents.

An attorney may draft or assist in drafting a pleading, motion, or document filed by an otherwise self-represented person. The attorney is not required to sign the pleading, motion, or document. Any such document must contain a statement immediately adjacent to the person's signature that "This document was prepared with the assistance of a lawyer," followed by the name of the attorney and the attorney's state bar number. The attorney providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false, or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

The comments the court received include a letter from Attorney Heiner Giese, who opposes the rule petition. Attorney Giese attached a copy of draft LRB-4010/P1 to his comments and suggested the Court could adopt that language (which is identical to AB705) instead of the language offered by the petition. Attorney Goldschmidt, who filed the rule petition in the Court, has filed a written response which includes an evaluation of the proposed legislation and identifies some concerns about how it would be interpreted or enforced.

The Court is currently in the process of thoroughly reviewing all of the materials that were submitted in connection with the rule petition filed in the Court. The Court's typical practice in rules matters is to: (a) Adopt the rule proposed, or a modified version, without further comment, (b) Reject the proposed rule without further comment, (c) Refer the rule petition to another entity for further review and recommendation, or (d) Request

further information or analysis from the petitioner, staff, or interested persons or entities. If the Court opts to amend a court rule relating to pleading, practice or procedure, the effective date will be January 1 or July 1.

Again, I appreciate the opportunity to share this information about the Court's ongoing consideration of a proposed amendment to Wis. Stat. s. 802.05(2m), and hope it is of assistance to this Committee. If you have questions, please do not hesitate to contact our Legislative Liaison, Nancy Rottier. Thank you.

STATE OF WISCONSIN
IN SUPREME COURT

**In the Matter of Amending Wis. Stat.
§ 802.05(2m) relating to Ghostwriting,
a Form of Limited Scope Representation**

Rule Petition 19-16

PETITIONER'S RESPONSIVE COMMENTS

Petitioner Quarles & Brady LLP hereby responds to the comments submitted on Rule Petition 19-16 up through and including December 12, 2019. Since the petition was filed on May 15, 2019, it has received overwhelming support from commenting parties, including the following:

- ⌘ Board of Governors, State Bar of Wisconsin
- ⌘ Wisconsin Access to Justice Commission
- ⌘ Wisconsin Justice Initiative
- ⌘ Legal Action of Wisconsin
- ⌘ Milwaukee Justice Center
- ⌘ Pro Bono Institute
- ⌘ Numerous individual attorneys practicing in Wisconsin.
- ⌘ Private law firms Borgelt, Powell, Peterson & Frauen, S.C.; Gimbel, Reilly, Guerin & Brown LLP; Godfrey & Kahn, S.C.; and Husch Blackwell LLP; representing (with Petitioner) over 580 Wisconsin attorneys in private practice

The support for Petition 19-16 is *almost* as unanimous as this Court's 2014 decision on Petition 13-10, approving limited scope representation—including ghostwriting—after careful study and significant discussion.

Those commenting in support of Petition 19-16 confirm the following key points, already recognized by this Court in granting Petition 13-10:

First, the former rule permitting ghostwriting encouraged and enhanced the quality and availability of pro bono legal services to the public, benefitting parties and the courts by focusing factual and legal issues and thereby promoting the effective administration of justice.

Second, ghostwriting is integral to limited scope representation, the underlying mechanism for providing brief, pro bono legal advice in clinics around the State. Ghostwriting enabled lawyers to serve clients in need without concerns about potential current conflicts or future complications arising from their brief interaction.

Third, eliminating ghostwriting causes real problems: (1) facial conflicts between the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Rules of Professional Conduct for Attorneys; (2) confusion in the courts when attorneys are identified on limited scope papers but do not actually represent the *pro se* party; (3) concerns among volunteer attorneys that their pro bono work will trigger conflicts, their names will be associated with court filings that they do not control, and their temporary clients will be misled about the scope of their representation—and (4) as the result of all of this, a chilling effect on pro bono participation in limited scope legal work across the State.

This chilling effect is not merely theoretical; numerous individual attorneys commenting in support of the Petition candidly disclosed that their pro bono work has become unnecessarily complicated by the new disclosure requirement; that they are worried about losing control of documents and potential unknown conflicts of interest; and that they have actually been deterred from continuing their pro bono work after the 2018 amendment of Wis. Stat. § 802.05(2m). At the Family Law Clinic of the Marquette Volunteer Legal Clinic, former volunteer attorneys left after the 2018 rule change and have not returned.¹ At the Milwaukee Justice Center, “[s]ome lawyers stopped drafting anything for clients. Others, more than we anticipated, stopped volunteering altogether.”²

In short, the ghostwriting rule was well studied. It was working as intended. And its removal has jeopardized the availability of free legal services for those who need them most. All of this can be easily corrected by the Court, and the correction requested by Petition 19-16 has garnered overwhelming support. So: what is on the other side of the balance? Until after the eleventh hour, the answer was *nothing*. Then, at 11:37 p.m. on December 2, the final day to submit comments on the Petition, a lobbyist for Milwaukee landlords appeared to oppose it. The opposition lacks any merit.

¹ Comments from Attorney Kent Tess-Mattner (May 21, 2019).

² Comments from Attorney Mary Ferwerda (May 21, 2019).

I. The 2018 amendment solved no problems, but created several.

Mr. Giese's comments in opposition fail to explain why the 2018 amendment was necessary or a good idea. Mr. Giese confirms that the 2018 amendment was sought by the landlords he represents, who apparently were having too much trouble evicting their unrepresented tenants in and around Milwaukee. Never mind that these individuals are already facing a hardship in losing their homes; never mind that they have a hard enough time finding legal assistance in the first place; Mr. Giese's landlord clients were irritated by the brief legal advice being provided to their tenants by volunteer lawyers with the Eviction Defense Project, so ghostwriting had to go.

And what was the particular problem with ghostwriting that so motivated the Milwaukee landlords to eliminate this service for otherwise unrepresented persons throughout Wisconsin? The use of a "check the box" answer form in small claims court. (Giese Comments at 2). But this presentation of the issue utterly fails to justify the new rule.

The "problem" described by Mr. Giese is not one of attorney identification, but of *control over the document*: "landlord plaintiffs or their attorneys considered some of the alleged defenses specious and doubt arose as to whether a particular defense had actually been recommended by the pro bono attorney or whether the tenant had merely checked some additional boxes 'to make the Answer look good.'" (*Id.*, emphasis added).

To the extent *pro se* tenants are misusing certain self-help forms after they leave attorneys' hands, requiring attorneys to list their name and state bar number on those documents does nothing to solve that problem. Today, just as before, a *pro se* party can leave the clinic and check additional boxes on the walk to the courtroom, after the document leaves the pro bono attorney's control. And when that happens, the 2018 amendment provides no answer to Mr. Giese's question (who checked this box?) because the attorney, having provided brief legal advice, does not accompany the party to court.

But now, unlike before, the attorney's name will be associated with that document, making her accountable for whatever choices her non-client may make after the document leaves her hands. That is a problem *created by* the 2018 amendment, not a pre-existing problem it somehow solves. And this only creates additional complications for everyone involved: the court, which may mistakenly believe the identified attorney is responsible for the pleading or the representation more generally; the pro bono attorney, as already noted; and *pro se* clients, who may be misperceived as represented by counsel when instead, as *pro se* litigants, they should be given every benefit of the doubt.

If Mr. Giese's comments are intended to suggest that volunteer attorneys are advising their temporary clients to claim "specious" defenses, there is no evidence of that in the record. No wonder: volunteer attorneys in a limited scope representation are bound by the same professional and ethical

rules regardless of whether they are identified on the *pro se* pleading. And most often, they are working under the supervision of a program director who knows who they are and which clients they advise. There is no legitimate suggestion that since 2014, a rash of well-intentioned pro bono attorneys, accountable to no one, have begun offering improper legal advice. No judges have submitted comments complaining about abuse of the ghostwriting option in their courts. So again, the 2018 amendment is not targeted to any actual problem in the “market” for pro bono legal services.

Finally, even if it were truly a problem, the issue raised in Mr. Giese’s comments is extraordinarily parochial as compared to the stakes of the ghostwriting rule. That the interests of a small group of landlords in one legal aid clinic in Milwaukee should limit access to justice throughout Wisconsin is simply not a tenable argument. In fact, it is astonishingly myopic.

II. The 2018 amendment received no meaningful study.

The Petition pointed out that unlike the Court, the Legislature barely considered these issues in adopting the 2018 amendment that eliminated ghostwriting. Mr. Giese notes ghostwriting *was* specifically discussed (Giese Comments at 2). But identifying exactly 42 seconds of relevant testimony by one witness at one committee hearing³ only proves Petitioner’s point.

³ Testimony of Atty. Kuettel at Assembly Committee Hearing (6:02:36-6:03:18), cited in Giese Comments at 2. Mr. Giese also cites his own Assembly Committee testimony, but that did not discuss ghostwriting, and the Senate Committee testimony he cites was on a

And in any case, Petitioner’s point was not that ghostwriting was never discussed at the Legislature. It was that the 2018 amendment was adopted “without concern for the Judiciary’s careful studies on ghostwriting, the potential effects that revising this statute would have, or the fact that its revision would bring Wis. Stat. § 802.05(2m) into conflict with Wisconsin’s Rules of Appellate Procedure and Rules of Professional Conduct for Attorneys.” (Pet. Mem. at 16). That is manifestly true.

III. This Court shares co-equal authority to grant the Petition.

Turning to this Court’s authority to act, Mr. Giese suggests the Petition cannot be granted because it would cause a “verbatim repeal” of the 2018 amendment, and the Court can only “modify,” not “nullify,” a rule of civil procedure enacted by the Legislature. That is incorrect.

First, there is no basis for the distinction between “modifying” and “nullifying” the rule. Either this Court can change the rule or it can’t. And it can, as Petitioner has already explained. *See* Pet. Mem. at 11–13.

Section 751.12(4), cited by Mr. Giese, is not to the contrary. That provision simply confirms the Legislature’s co-equal right to act in this area. The provision specifically states, “*This section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to*

parallel Senate bill that failed to pass. Mr. Giese has not identified any testimony in favor of eliminating ghostwriting or explaining why this change was needed.

pleading, practice, or procedure.” Wis. Stat. § 751.12(4). This is a clarification of the statute’s effect; not a limitation on the Court’s power to act. It confirms that the Court’s authority to “regulate” these matters “in all courts” under Wis. Stat. § 751.12(1) does not preclude the Legislature from doing the same thing via statute. But restoring Wis. Stat. § 802.05(2m) to its former iteration does not “abridge” that legislative “right”; it simply exercises co-equal authority *after* the Legislature has done so. And notably, in all the comments submitted on the Petition, neither the Legislature nor any of its members has appeared to defend the 2018 amendment or ask the Court not to act.

Second, Mr. Giese’s comments to the Court on this point conflict with his comments to the Assembly Committee on Housing and Real Estate in connection with another provision of the same bill, concerning how long eviction records should remain on CCAP. On that point, Mr. Giese opined: “I think the Legislature can always tell the Court—or make legal rules that are enforceable, *unless it’s something very, very intrinsic to the operation of the Court.*”⁴ The rule at issue here, governing how Wisconsin attorneys in limited scope representation are to identify themselves in court papers, *is* very, very intrinsic to the operation of the Court—precisely the sort of thing Mr. Giese previously suggested the Legislature should leave to the Court’s purview. Mr.

⁴ Testimony of Mr. Giese at Assembly Committee Hearing (7:21:25-7:21:57), cited in Giese Comments at 2 (emphasis added).

Giese was right then, and wrong now: in this area of coequal authority, the Court is best situated to decide how to regulate and monitor the members of the Bar as they provide pro bono legal services within Wisconsin's courts.

IV. Mr. Giese's proposal compounds the problems created in 2018.

As an alternative to the Petition, Mr. Giese proposes a "legislative solution," as if the solution to the issues created by the 2018 amendment is *more* legislation. But the "fix" Mr. Giese now proposes is, if possible, even worse than the 2018 amendment.

First, any suggestion that Mr. Giese's proposal was developed in collaboration with Judges Dwyer and Gramling is inaccurate. Mr. Giese developed his proposal alone, apparently in recognition of the flaws inherent in the 2018 amendment. He was not successful in gaining support for his proposal from anyone in the working group behind the Petition because of the multiple problems described below.

Second, any characterization of Mr. Giese's proposal as pending legislation is also inaccurate. It appears Mr. Giese has prevailed on a state senator to ask the Legislative Reference Bureau to place a "preliminary draft" of his proposal on paper. But the paper is clearly marked "Not Ready for Introduction," and indeed it isn't. It is not even clear whether Senator Olsen himself supports Mr. Giese's proposal, having merely requested the LRB draft that is enclosed with Mr. Giese's materials.

Beyond this, Mr. Giese's proposal is ambiguous, one-sided, and internally inconsistent. It would apply the attorney identification requirement only in "contested cases," but "contested" is not defined. All cases filed in court are "contested" until they are resolved, so by its terms this addition does not restrict the scope of the current rule at all. In his comments, Mr. Giese suggests that by "contested" he means "serious, non-routine cases," but that it is a judicially unenforceable standard and it is entirely unclear what it would mean outside of the eviction cases that are the focus of Mr. Giese's comments.

Worse, Mr. Giese's proposed amendment would leave whether to seek a pro bono attorney's identity in the hands of the opposing party, fashioning the statute into a tool of inquisition to be wielded by the party already holding all the cards. This would only exacerbate the existing disparity between *pro se* parties and (say) adequately represented landlords, again with no apparent benefit for Wisconsin's justice system as a whole.

Moreover, as a practical matter, Mr. Giese's proposed approach is unworkable. Pro bono attorneys offer limited scope advice (including potential drafting assistance) at Time A, then the *pro se* party takes any prepared documents to court at Time B. It is only at that point that the opposing party could demand that the pro bono attorney be identified, but by then the document is already drafted and the limited scope representation is

completed. The pro bono attorney is not present to add the language now requested by the opposing party, which shifts the onus to the *pro se* party (now alone in court) to do so. *Pro se* parties may or may not be able to identify the attorney who provided assistance, potentially (and unfairly) placing them in breach of the rule. And over time, placing this burden on *pro se* parties will not just chill *attorney* participation, it will actually discourage *clients* from seeking brief legal advice they are entitled to obtain.

Next, Mr. Giese's proposed amendment *adds* a requirement that the attorney's name and bar number be entered in the clerk's minutes. This only heightens the potential for judicial confusion. At least under the current rule, the disclosure is limited to the face of the document, so any misperceptions regarding the attorney's ongoing involvement are limited to that pleading or other paper. Under Mr. Giese's proposed amendment, pro bono attorneys *who do not represent any party* would be added to the minutes that judges consult to recall who represents parties—again for no apparent purpose.

Finally, and most problematically of all, Mr. Giese's proposed amendment would add the following statement: "The recording of the attorney's name and state bar number does not make the attorney the attorney of record for the otherwise self-represented person." At a minimum, this apparent attempt at clarification would do nothing to dispel the chilling effect of the 2018 amendment. With or without this clarification, confusion

about the absent attorney's role will persist, and pro bono participation will continue to be deterred. By the time an attorney in a particular case can clear up that confusion by pointing to this language, the damage already will have been done.

But more fundamentally, Mr. Giese's proposed clarification reveals the utter pointlessness of the 2018 amendment in the first place: if it is conceded that requiring attorney self-identification has nothing to do with ongoing representation, then what, pray tell, is the purpose of requiring such identification in the first place? There is no good answer to that question.

Again, the lone example highlighted by Mr. Giese illustrates this point. He appends an answer and counterclaim drafted by an Eviction Defense Project volunteer in a commercial eviction in Milwaukee County. He says the plaintiff "was entitled to know the name of counsel who drafted a counterclaim against him." But why? What purpose would it serve? The pro bono counsel did not represent the defendant, and did not file the document with the court. If the defendant had received drafting assistance from her sister or daughter, would the landlord be entitled to know that, too?

Following the hypothetical further, what would Mr. Giese and his colleagues propose to do with this information? He does not contend that any of the defenses or counterclaims in the referenced pleading were without a good faith basis in law or fact. But if they were, again, the volunteer attorney

did not undertake any representations to the contrary because he did not sign the document or file it with the court. Would Mr. Giese nevertheless report the volunteer attorney to the State Bar or the Office of Lawyer Regulation for *drafting* the document poorly? It is difficult to see a legitimate end in any of this. Instead, the 2018 amendment appears to be a barely-concealed effort to dissuade private attorneys from providing brief, pro bono legal advice to *pro se* litigants. No member of this Court should stand behind that.

V. Wisconsin's open records policy is irrelevant to the Petition.

Mr. Giese closes by suggesting that Wis. Stat. § 19.31, Wisconsin's open records policy, has some bearing on the Petition. It does not. By its terms, that statute applies to information regarding the official acts of elected officers and employees in a representative government. Providing undisclosed drafting assistance for court papers has never violated open records law.

CONCLUSION

For the reasons stated in Petitioners' submissions and all of the comments supporting the Petition, the Court should exercise its coequal authority to restore Wis. Stat. § 802.05(2m) to its pre-2018 iteration. Specifically, the Court should strike the mandate that an attorney disclose her name and bar number on documents prepared with limited legal assistance. This will alleviate the problems caused by the Legislature's recent amendment and restore the thoughtful balance struck by this Court.

Dated this 16th day of December, 2019.

Respectfully submitted by:

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STATE OF WISCONSIN
IN SUPREME COURT

In the Matter of Amending Wis. Stat.
§ 802.05(2m) relating to Ghostwriting,
a Form of Limited Scope Representation

Rule Petition 19-____

Quarles & Brady LLP hereby petitions the Court to amend the Rules of Civil Procedure to restore Wis. Stat. § 802.05(2m) to its 2014 iteration, whereby this Court—after extensive study—permitted attorneys in limited-scope representations to assist otherwise self-represented persons in drafting a pleading, motion, or other filed document without disclosing their name or state bar number (a form of legal assistance often referred to as “ghostwriting”).

More specifically, the petition asks the Court to remove the words “followed by the name of the attorney and the attorney’s state bar number” from § 802.05(2m), which the Legislature amended in 2018 to include this requirement. As explained in the accompanying memorandum, this change was not precipitated by any apparent problem with ghostwriting in the context of limited scope representation, and leaves the Rules of Civil Procedure in conflict with the Rules of Appellate Procedure and this Court’s Rules of Professional Conduct for attorneys practicing in Wisconsin.

This rule petition is made pursuant to the Court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, Section 3 of the Wisconsin Constitution.

Proposed Statutory Amendment:

SECTION 1. 802.05(2m) of the Wisconsin Statutes is amended to read:

802.05(2m). Additional Representations to Court as to Preparation of Pleadings or Other Documents. An attorney may draft or assist in drafting a pleading, motion, or document filed by an otherwise self-represented person. The attorney is not required to sign the pleading, motion, or document. Any such document must contain a statement immediately adjacent to the person's signature that "This document was prepared with the assistance of a lawyer," followed by the name of the attorney and the attorney's state bar number. The attorney providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false, or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

Dated this 15th day of May, 2019.

Respectfully submitted by:

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STATE OF WISCONSIN

IN SUPREME COURT

In the Matter of Amending Wis. Stat.
§ 802.05(2m) relating to Ghostwriting,
a Form of Limited Scope Representation

Rule Petition 19-____

MEMORANDUM IN SUPPORT

Quarles & Brady LLP hereby petitions the Court to amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

BRIEF BACKGROUND

In June 2014, the Wisconsin Supreme Court adopted Rule Petition 13-10, amending the Rules of Civil Procedure, Rules of Appellate Procedure, and Rules of Professional Conduct for Attorneys to expand limited scope representation and allow attorneys to assist in drafting legal documents without identifying themselves by their names or state bar numbers (a practice known as “ghostwriting”).¹ This Court adopted the 2013 Petition via its formal rulemaking process, soliciting public comment and holding a public hearing. This process lasted about one year and included substantive discussions on the benefits of allowing attorneys to provide limited scope services.

¹ *Order No. 13-10*, 2014 WI 45 (2014) (the “2014 Order”) (eff. Jan. 1, 2015).

Although the 2013 Petition focused more broadly on the important role that limited scope services fulfill within our legal system, it recognized that ghostwriting is an essential component of limited scope representation, and a unanimous Court authorized the practice as part of the suite of amendments promulgated by its 2014 Order. As a result of that order, ghostwriting was permitted under the Rules of Civil Procedure, Rules of Appellate Procedure, and Rules of Professional Conduct for Attorneys.

Unfortunately, a more recent suite of statutory amendments—this time by the Legislature—added a prohibition on ghostwriting, but only to the Rules of Civil Procedure. Specifically, in April 2018, one provision of an omnibus bill aimed at increasing landlords’ rights amended Wis. Stat. § 802.05(2m) to require attorneys assisting an otherwise self-represented litigant in drafting a legal document to *disclose* their name and state bar number following the statement that the document “was prepared with the assistance of a lawyer.”²

Although the Judiciary and Legislature share authority to regulate legal practice and procedure in Wisconsin,³ the Legislature passed the omnibus bill and amended Wis. Stat. § 802.05(2m) with no judicial involvement and no consideration of this Court’s careful study of the benefits

² Wis. Stat. § 802.05(2m) (2018).

³ Wis. Stat. § 751.12 (2015).

of ghostwriting just four years earlier.⁴ It made no findings contravening the numerous public comments offered in favor of the previous rule, and demonstrated no awareness that the amendment conflicts with an existing rule of appellate procedure and this Court's ethical rules for Wisconsin attorneys.⁵

This oversight has already had negative consequences for Wisconsin's judicial system. The new prohibition on ghostwriting has made many lawyers hesitant about providing assistance to otherwise self-represented parties. This risks leaving such parties wholly unrepresented throughout the legal process, which in turn creates delay and inefficiency in the court system as court officials sort through legal documents drafted by *pro se* litigants.⁶ Indeed, the 2013 petitioners warned of these very consequences,⁷ and this Court heeded that warning in *permitting* ghostwriting in 2014.

Because the Legislature and the Judiciary share authority to adopt and amend rules of civil procedure in Wisconsin, this Court should exercise its coequal authority to restore Wis. Stat. § 802.05(2m) to its previous iteration. Specifically, the Court should strike the mandate that an attorney disclose her name and bar number on documents prepared with limited legal

⁴ Wis. Stat. § 802.05(2m) (2018); 2017 WI Act 317.

⁵ See Wis. Stat. § 809.19(1)(h) (2018) and S.C.R. 20:1.2(cm) (2015) (allowing ghostwriting).

⁶ Cf. Conference of State Court Administrators, Position Paper on Self-Represented Litigation, 1 (Gov't Rel. Office ed. 2000).

⁷ 2013 Petition at 10.

assistance. This change will alleviate the problems caused by the Legislature's recent amendment and restore the thoughtful balance struck by this Court.

ARGUMENT

The Court should restore Wis. Stat. § 802.05(2m) to its previous iteration because ghostwriting promotes greater access to justice and judicial efficiency, and because the Court's previous study of the issue places it in a better position than the Legislature to exercise their shared power with respect to this rule.

- I. **Ghostwriting, a form of limited scope representation, promotes greater access to justice.**
 - A. A client who may only be able to afford limited legal services can decide where her resources are best allocated.

Indigent self-represented parties cannot afford to hire attorneys for all (if any) of their legal matters. And while some of these parties may be comfortable in navigating the majority of a proceeding on their own, they may seek discrete, limited legal services from attorneys to maneuver the most challenging aspects of the legal process. Allowing attorneys to provide limited scope representation gives these indigent litigants the ability to focus on and direct their resources to the tasks they need the most assistance completing.

In 2007, the State Bar of Wisconsin's Access to Justice Committee stated: "Limited representation is a key aspect of an efficient program of improving access to justice for the poor by enabling clients with some ability to pay to purchase only those services they need or can afford."⁸ It follows, then, that a client should be empowered to work with an attorney on a limited basis to help her prepare legal documents that she is otherwise unable to complete. This is especially true given that preparing legal documents, such as pleadings and motions, is a particularly challenging aspect of the legal process. Thus, allowing attorneys to ghostwrite documents supplies a much-needed legal service in high demand for indigent clients.

The need for limited scope representation fueled Rule Petition 13-10. The Court's Planning and Policy Advisory Committee ("PPAC") published research recommending limited scope representation, and highlighting the advantages of ghostwriting in particular.⁹ Notably, PPAC's research found that legal professionals thought ghostwriting was the best kind of limited scope representation for the kinds of cases most often brought by self-represented parties: civil, family, small claims, and probate.¹⁰ As discussed

⁸ State Bar of Wisconsin Access to Justice Committee, Bridging the Justice Gap: Wisconsin's Unmet Legal Needs, 16 (Mar. 2007), available at <http://www.wisbar.org/formembers/probono/documents/bridgingthegap.pdf>.

⁹ PPAC Subcommittee on Limited Scope Representation, Feasibility Study and Recommendations (Aug. 2011), available at <http://wicourts.gov/courts/committees/docs/ppalimitedscopereport.pdf>.

¹⁰ *Id.*

below, this research is substantiated by studies performed by the American Bar Association. So it is critical that self-represented parties continue to have access to this kind of legal representation and attorneys continue to feel comfortable providing it.

- B. A lawyer who can ghostwrite documents without disclosing her name and state bar number will be more likely to take on pro bono matters.

Ghostwriting is the most common form of limited-scope representation in Wisconsin,¹¹ so the rule at issue affects legal services that are in high demand and widely necessary to serve those who most need access to justice. And the prevalence of this service makes clear that there is a relationship between anonymity and willingness to serve. A lawyer who can ghostwrite documents without disclosing her name and state bar number will be more likely to take on pro bono or reduced-fee matters. Most lawyers do not have an abundance of time they can donate to these kinds of projects. Ghostwriting, a discrete and context-bound task, provides attorneys with a manageable way to provide legal services for the needy. It also allows attorneys to provide the kind of assistance that unsophisticated legal parties most need: the knowledge and skills to decode the legal process and present arguments in a manner that is legally cognizable.

¹¹ *Id.*

By contrast, prohibiting ghostwriting deters lawyers from providing this kind of limited scope representation.¹² First, when lawyers are required to affirmatively identify themselves on documents they've ghostwritten, they perceive implications for conflicts and their current clients. Whether or not these rise to the level of actual conflicts, the mere perception of or potential for a conflict will cause many attorneys to refrain from pro bono work. This chilling effect is particularly pronounced at Wisconsin's large law firms—aside from public interest law firms, perhaps the very institutions best suited to offer pro bono legal services of significant scale.

Second, when attorneys turn signed legal documents over to their clients, both the court and the clients may be given the mistaken impression of ongoing representation. Again, attorneys have limited time and resources to devote to pro bono or reduced-fee practice. The risk of confusion and potential for being caught up in ongoing representation beyond the original, limited scope of the engagement is enough to turn some attorneys away. But even if not, the risk extends to legally unsophisticated clients, who may not understand how to answer the court's questions about the scope of the attorney's representation and why the lawyer identified on legal documents is not present in court.

¹² Limited Representation Committee of the California Commission on Access to Justice, Report on Limited Scope Legal Assistance with Initial Recommendations, 2 (Oct. 2001).

Third, lawyers lose control over the form and substance of ghostwritten documents upon termination of their limited scope representation, which is often before those documents are submitted to the court. When clients can modify documents that are identified as the work-product of a certain attorney, lawyers bear the risk of having arguments changed, facts falsified, and copies of their work product made, all in their own name. This potential for serious ethical dilemmas may be enough to deter lawyers from ghostwriting.

Some opponents to ghostwriting argue that it allows lawyers to evade responsibility for frivolous litigation. But ghostwriting attorneys are still bound by their duties of competence, diligence, and candor under Wisconsin Supreme Court Rules 20:1.1, 20:1.3, and 20:3.3, respectively. Ghostwriting is also consistent with the ABA's position that Model Rule 1.2(c) permits ghostwriting as long as a lawyer "does not do so in a manner that violates rules that otherwise would apply to the lawyer's conduct."¹³

Attorneys who engage in unethical practice are no more drawn to pro bono endeavors than those who engage in candor and good faith. There is no evidence that lawyers will be more likely to engage in bad practices simply because they are not required to affirmatively identify themselves on documents they have prepared. The client still knows who represented them

¹³ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 446 (2007).

and can report any unethical behavior to the Office of Lawyer Regulation. After all, lawyers who ghostwrite documents are still subject to Wisconsin Supreme Court Rule 20:8.4, which governs attorney misconduct in these settings.

Overall, given the growing population of individuals who need unbundled, limited-scope representation and the ease and convenience offered by ghostwriting as a way for attorneys to provide free or reduced-fee service, Wis. Stat. § 802.05(2m) should be amended to once again permit ghostwriting.

II. Ghostwriting promotes judicial efficiency.

Ghostwritten documents are more likely than documents written by self-represented parties to conform to local and state rules and to present facts and legal issues more clearly. Wholly unrepresented parties have a tangible effect on the administration of justice. In a position paper published in 2000, the Conference of State Court Administrators found that self-represented litigants affect staffing and resources, case management, court efficiency and public confidence in the courts.¹⁴ It comes as no surprise that unsophisticated legal parties struggle to navigate the judicial system efficiently and effectively. Attorneys assisting self-represented parties

¹⁴ Conference of State Court Administrators, Position Paper on Self-Represented Litigation, 1 (Gov't Rel. Office ed. 2000).

through ghostwriting have the ability to provide the court with concise, correct, and cognizable legal arguments that conform to typical court practice.

Given this, self-represented litigants with ghostwritten documents come to court more prepared to address their issues, and rely less on court staff to walk them through their litigation. These parties can focus their efforts on presenting their arguments and explaining the facts of their cases, instead of struggling through legal terminology and opaque judicial procedures. They can appear in court with a cogent argument in hand, resulting in fewer continuances and less congestion for the court system.

Some opponents to ghostwriting argue that self-represented parties may receive an unfair advantage when they present ghostwritten documents that do not identify an attorney. However, regardless of whether attorney identification is mandated, clients who receive the benefit of ghostwritten documents are required to inform the courts that they received legal assistance. Specifically, just as before, Wis. Stat. § 802.05(2m) requires litigants to affirmatively tell the court that their documents were prepared with the assistance of an attorney. This rule petition does not seek to change that requirement, which this Court unanimously found sufficient for disclosure purposes as recently as 2014. Furthermore, even without this requirement, the fact that documents were prepared by a lawyer would likely

be evident to the court, so it is unlikely that any special treatment would be afforded to the self-represented party submitting ghostwritten documents.¹⁵

Ghostwriting is helping the courts and promoting access to justice—or was, until 2018. Petitioner urges the Court to restore Wis. Stat. § 802.05(2m) to its pre-2018 form permitting ghostwriting.

III. This Court and the Legislature share authority over Wis. Stat. § 802.05(2m), and this Court is in the best position to amend it because it has studied the topic more thoroughly and is impacted by it more directly than the Legislature.

A. The Court has authority to amend Wis. Stat. § 802.05(2m).

The Court and the Legislature share authority over rules of court practice and procedure. The Court's authority derives from Article VII, section 3, clause 1 of the Wisconsin Constitution and Wis. Stat. § 751.12, which states:

- (1) The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice, and procedure in judicial proceedings in all courts, for the purposes of simplifying the same and of promoting the speedy determination of litigation upon its merits. The rules shall not abridge, enlarge, or modify the substantive rights of any litigant.
- (2) All statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section.
- (4) This section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to pleading, practice, or procedure.¹⁶

¹⁵ See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 446 (2007).

Because Wis. Stat. § 805.02 governs attorneys' obligations to sign pleadings, motions, and other representations made to a Wisconsin court, it is a rule of pleading, practice, and procedure that falls under Wis. Stat. § 751.12(1) and (2). The Court may therefore modify this rule and the Legislature may do the same.

Court precedent confirms its co-equal authority with the Legislature over procedural court rules and shows that a rule promulgated by one branch may be modified by the other. In considering the constitutionality of Wis. Stat. § 251.18 (the predecessor to Wis. Stat. § 751.12), the Court determined that the Judiciary is often in a better position than the Legislature to promulgate "rules of court" given that such rules inherently affect the "everyday routine" of the Judiciary.¹⁷ In *Matter of E.B.*, the Court explained its inherent constitutional authority in this area of the law: the Judiciary "has equal power with the legislature to improve practice and procedure" and "should not hesitate to do so in the interest of justice."¹⁸ And in *In re Grady*,

¹⁶ Wis. Stat. § 751.12 (2015).

¹⁷ *In re Constitutionality of Section 251.18*, 204 Wis. 501, 236 N.W. 717, 721 (1931) (the "Rules of Court Case").

¹⁸ 111 Wis. 2d 175, 330 N.W.2d 584, 588–89 (1983), citing *Spoos v. State*, 219 Wis. 285, 290, 262 N.W. 696 (1935) (overruled on other grounds, *State v. Lampe*, 26 Wis. 2d 646, 648, 133 N.W.2d 349 (1965)). The Court in *E.B.* noted that it may lack this authority where there is "conflicting legislation," *i.e.*, legislation expressly restricting the Court's otherwise co-equal authority in a particular procedural sphere. *Id.* at 589. There is no such conflicting legislation here.

the Court cited the Legislature's mandate not to "unduly burden" or "substantially interfere with" the judicial branch in areas of shared power.¹⁹

These principles support the Petition. The Judiciary is more familiar with ghostwriting than the Legislature, and restrictions on the practice burden the "everyday routine" of the Judiciary. The Court is therefore in a better position to regulate it than the Legislature.

B. The Judiciary has studied ghostwriting more thoroughly than the Legislature.

Numerous committees in the legal profession had reported on the effects of limited scope representation and ghostwriting before this Court adopted the 2014 iteration of Wis. Stat. § 802.05(2m). This meant the Court was able to consider statistics, empirical evidence, legal analyses, and policy arguments on the potential benefits and drawbacks of ghostwriting before determining that ghostwriting would benefit Wisconsin's judicial system.

PPAC published a study on the feasibility of, and its recommendation for, limited scope representation in 2011.²⁰ PPAC based its report on the findings of a subcommittee focused on establishing limited scope

¹⁹ 118 Wis. 2d 762, 348 N.W.2d 559 (1984).

²⁰ *Phase I: Feasibility Study and Recommendations*, PPAC SUBCOMM. ON LIMITED SCOPE REPRESENTATION (Aug. 2011), available at <http://wicourts.gov/courts/committees/docs/ppaclimitedscopereport.pdf>.

representation in Wisconsin in collaboration with the Judicial Council.²¹ This research was the driving factor behind Rule Petition 13-10, and PPAC brought its research directly to this Court's and the public's attention through the formal rulemaking process for Petition 13-10.²² Through surveys of circuit court judges, administrative law judges, and court commissioners, the study found that the majority believed ghostwriting to be "the form of limited scope representation that works best for civil, family, small claims, and probate cases."²³

The American Bar Association ("ABA") had also published multiple studies on ghostwriting before 2014. In 2003, the ABA's Modest Means Task Force published a Handbook on Limited Scope Representation Legal Assistance.²⁴ In this study, the task force considered how various forms of limited scope representation affected the legal system and specifically recommended ghostwriting.²⁵ The task force stated that it favored limited scope representation rules that did not require *any* disclosure of an attorney's

²¹ *Id.* at 4–5; *In re amendment of Supreme Court Rule Chapter 20 and Wisconsin Statute Chapters 800, 801, 802, and 809 relating to Limited Scope Representation*, Memorandum in Support of Rule Petition No. 13-10 (July 2013).

²² *In re amendment of Supreme Court Rule Chapter 20 and Wisconsin Statute Chapters 800, 801, 802, and 809 relating to Limited Scope Representation*, Memorandum in Support of Rule Petition No. 13-10 (July 2013); *Order No. 13-10*, 2014 WI 45 (2014).

²³ *Phase I: Feasibility Study and Recommendations*, PPAC SUBCOMM. ON LIMITED SCOPE REPRESENTATION (Aug. 2011), <http://wicourts.gov/courts/committees/docs/ppaclimitedscopereport.pdf>.

²⁴ *Handbook on LSR Legal Assistance*, A Report of the Modest Means Task Force, ABA SEC. OF LITIG. (2003).

²⁵ *Id.*

assistance to a pro se litigant. It further opined that if a disclosure must be made, it should simply be that the litigant received limited scope assistance.²⁶ In other words, the statement that the document “was prepared with the assistance of a lawyer” was sufficient and ghostwriting should be permitted.

By 2007, another ABA committee had studied the impacts of ghostwriting and non-disclosure in limited scope representation agreements. The ABA Standing Committee on Ethics & Professional Responsibility issued a Formal Opinion in 2007 finding immaterial to the merits of litigation “the fact that a litigant submitting papers to a tribunal on a pro se basis has received legal assistance behind the scenes.”²⁷ This ABA committee also interpreted the Model Rules of Professional Conduct to permit ghostwriting.²⁸

In unanimously adopting Rule Petition 13-10 in 2014, this Court showed how persuaded it was that both limited scope representation and ghostwriting would benefit public access to justice.²⁹ The Court’s order also acknowledged that the majority of the public comments it received favored

²⁶ *Id.* at 144–45.

²⁷ *Undisclosed Legal Assistance to Pro Se Litigants*, ABA STANDING COMM. ON ETHICS & PROF’L RESP., Formal Op. 07-446 (2007), https://www.americanbar.org/content/dam/aba/migrated/media/youraba/200707/07_446_2007.authcheckdam.pdf.

²⁸ *Id.* at 4.

²⁹ *Order No. 13-10*, 2014 WI 45 (2014).

the petition.³⁰ Unfortunately, the Legislature did not consider any of these studies or any public comments before it amended Wis. Stat. § 802.05(2m).

Instead, the amendment to Wis. Stat. § 802.05(2m) was part of Assembly Bill 771, a bill that revised landlord-tenant laws by limiting housing inspections, renumbering zoning laws, amending the regulation of property owner licenses, and setting forth rules for emotional support animals in rental units.³¹ The Legislature did not provide any commentary to its reasoning for amending Wis. Stat. § 802.05(2m), but its intent in adopting Assembly Bill 771 is clear. It was focused on revising landlord-tenant laws and not on changing the pro bono legal landscape. The amendment to Wis. Stat. § 802.05(2m) simply slipped into an omnibus bill without concern for the Judiciary's careful studies on ghostwriting, the potential effects that revising this statute would have, or the fact that its revision would bring Wis. Stat. § 802.05(2m) into conflict with Wisconsin's Rules of Appellate Procedure and Rules of Professional Conduct for Attorneys, both of which still allow ghostwriting. The consequences of the Legislature's action are necessarily unintended because it does not appear the Legislature considered them at all.

- C. The “everyday routine” of the Judiciary is directly and negatively impacted by the current prohibition on ghostwriting.

³⁰ *Id.*

³¹ 2017 WI Act 317.

The consequences of the current iteration of Wis. Stat. § 802.05(2m) are negatively affecting the judicial system, most severely for indigent litigants who cannot afford to pay for legal services. As explained above, mandating that lawyers identify themselves on documents they assisted a pro se litigant in drafting makes lawyers hesitant to provide such assistance.³² They worry that tribunals will mistakenly presume they more broadly represent litigants who received their limited scope assistance. This, in turn, causes more self-represented parties to litigate their cases without any legal assistance whatsoever. Judges, court commissioners, and court clerks are then forced to spend time trying to interpret documents drafted by pro se litigants and sort through the accompanying errors.³³ All of this was avoided by the former rule permitting ghostwriting, whereas Wis. Stat. § 802.05(2m)'s current prohibition on ghostwriting wastes tribunals' time and brings about detrimental outcomes for indigent pro se litigants.

CONCLUSION

Since 2014, nothing in the judicial system has changed that would have warranted the Legislature's 2018 amendment to Wis. Stat. § 802.05. Indigent litigants still fail to receive adequate legal assistance and tribunals continue to be plagued with the resulting inefficiencies of directing self-represented

³² Limited Representation Committee of the California Commission on Access to Justice, Report on Limited Scope Legal Assistance with Initial Recommendations, 2 (Oct. 2001).

³³ Conference of State Court Administrators, Position Paper on Self-Represented Litigation, 1 (Gov't Rel. Office ed. 2000).

parties through the legal process. The Court found these consequences persuasive in 2014 when it unanimously adopted Rule Petition 13-10, allowing attorneys to ghostwrite documents and provide otherwise self-represented parties with limited scope representation. The Legislature failed to consider these deleterious effects when it amended Wis. Stat. § 802.05 to prohibit ghostwriting, and it identified no abuse of this tool justifying the change. The Court should exercise its shared power to restore the statute to its previous iteration and allow ghostwriting once again.

Dated this 15th day of May, 2019.

Respectfully submitted by:

QUARLES & BRADY LLP

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STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

December 12, 2019

Sent Via Electronic Mail and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Written Comments Regarding Rule Petition 19-16 - In the Matter of Amending Wis. Stat. § 802.05(2m) relating to Ghostwriting, A Form of Limited Scope Representation

Dear Clerk of Supreme Court:

We are writing on behalf of the Board of Governors of the State Bar of Wisconsin to provide comments regarding Rule Petition 19-16. We have previously communicated with the Court indicating that the Board of Governors of the State Bar of Wisconsin would be reviewing this matter at its meeting on December 6, 2019 (see attached correspondence).

This Rule Petition asks the Court to restore Wis. Stat. § 802.05(2m) to its previous iteration to permit attorneys in limited-scope representations to assist otherwise self-represented persons in drafting a pleading, motion, or other filed document without disclosing the attorney's name or state bar number.

The Board of Governors, at its recent meeting, adopted the following Policy Statement regarding limited scope representation by Wisconsin lawyers. The Board of Governors believes that the prior Rule changes, that were the result of lengthy study, should be considered the appropriate and reasoned manner to address limited scope representation and the involvement of an attorney in helping a pro se individual providing documents to the presiding Court.

Thank you for considering this matter. We respectfully request the opportunity to present this information and answer any questions that the Court may have at the Hearing on January 17, 2020.

Respectfully Submitted,

A handwritten signature in black ink that reads "Dean R. Dietrich".

Dean R. Dietrich
State Bar of Wisconsin
Board of Governors

Attachments

cc: Lisa Roys (via e-mail only)

STATE BAR OF WISCONSIN

POLICY STATEMENT

The State Bar of Wisconsin supports policies which encourage or enhance the quality and availability of legal services to the public. This includes the use of "ghostwriting" that provides for the vital participation of legal counsel, without disclosure of the attorney's name or bar number, in assisting pro se individuals in preparing documents for use within the legal system. This limited legal assistance can benefit parties and the court by focusing the legal issues and more clearly stating the facts and therefore promoting the effective administration of justice. Lawyers, as an essential component of the state's justice system, have a responsibility to work for an efficient and effective justice system.



STATE BAR OF WISCONSIN
Leaders in the Law. Advocates for Justice.®

November 13, 2019

Sent Via Electronic Mail and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Written Comments Regarding Rule Petition 19-16 - In the Matter of Amending Wis. Stat. § 802.05(2m) relating to Ghostwriting. A Form of Limited Scope Representation

Dear Clerk of Supreme Court:

We are writing on behalf of the Board of Governors of the State Bar of Wisconsin to provide comments regarding Rule Petition 19-16. This Rule Petition asks the Court to restore Wis. Stat. § 802.05(2m) to its previous iteration to permit attorneys in limited-scope representations to assist otherwise self-represented persons in drafting a pleading, motion, or other filed document without disclosing the attorney's name or state bar number.

The Board of Governors of the State Bar of Wisconsin is meeting on Friday, December 6 for a discussion regarding the content of this Rule Petition. We respectfully request the opportunity to supplement this letter with further information after the Board of Governors has had an opportunity to fully discuss and deliberate regarding the content of this Rule Petition.

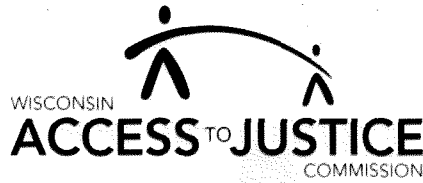
We also respectfully request the opportunity to present further information to the Court at the time that this matter is scheduled for hearing before the Court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dean R. Dietrich".

Dean R. Dietrich
State Bar of Wisconsin
Board of Governors

cc: Lisa Roys (via e-mail only)



November 14, 2019

Wisconsin Supreme Court
16 East State Capitol
PO Box 1688
Madison, WI 53701-1688

**Re: Petition 19-16 In the Matter of Amending Wis. Stat. § 802.05(2m)
relating to Ghostwriting, a Form of Limited Scope Representation**

Members of the Court:

I write on behalf of the Wisconsin Access to Justice Commission to urge you to approve Petition 19-16 filed by Quarles & Brady LLP on May 15, 2019. As you know, our mission is to “develop and encourage means of expanding access to the civil justice system for unrepresented low-income Wisconsin residents.” We received this mission from the Court and we take it very seriously. Thus, we believe it important to inform you that the changes requested in this petition are critical to providing that very access.

Wisconsin residents, your neighbors and mine, appear at advice clinics all over the state. The clinics are sponsored by law schools, local bar associations, and legal aid programs. They rely on volunteer attorneys from the private bar to provide the needed advice because there simply are not enough legal aid attorneys in Wisconsin to fill the seats across the table from people with a handful, or envelope full, of documents.

As is true in any such endeavor, there is a range of legal help that will be provided. Some need to be told where to take a claim, others that they have no claim. But a significant percentage need help filling out documents that will be presented to an administrative body or court. It may be a small claims complaint for damages for sale of a defective used car, a request to change or enforce a child support award, an answer to a large claims complaint for an auto accident so that a defense can be properly presented to the judge to protect a driver’s license, a counterclaim based on a violation of consumer protection standards, or an appeal from denial of an unemployment compensation claim. And this, as you know, is where our pro bono attorneys enter the stage to craft the appropriate and needed language. They do this as a

service to the client, of course, but also to the judges in our circuit courts who benefit from a clear statement of the claims and issues they need to adjudicate.

This Court should not accept the significant change to sec. 802.05(2m), because it discourages pro bono counsel from providing the types of services described above. You will have read in the numerous written filings supporting this petition the ways in which members of the bar are being deterred from offering their services because of the change. And this is not speculative. Some attorneys have in fact stopped participating in clinics or helping clients with documents because of the change. We as a state are fortunate every time an attorney offers pro bono services at an advice clinic. We need every pro bono hour we can get from these exceptional volunteers. This will not be accomplished without the change requested in Petition 19-16.

Thank you for considering our comments.

Daniel J. Hoff
President



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August 29, 2019

By Email and U.S. Mail

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am the President and Chief Executive Officer of Pro Bono Institute (PBI) and we support Petition 19-16 and respectfully request that the Court amend the Rules of Civil Procedure to eliminate the new requirement that attorneys disclose their names and bar numbers and restore ghostwriting in limited-scope representation.

PBI is a nonprofit organization that explores and identifies new approaches to and resources for the provision of legal services to the poor, disadvantaged, and other individuals or groups unable to secure legal assistance to address critical problems. We do so by supporting, enhancing, and transforming the pro bono efforts of major law firms, in-house legal departments, and public interest and legal services organizations in the U.S. and around the world. Since our founding in 1996, we have provided research, consultative services, analysis and assessment, publications, and training to a broad range of legal audiences.

We are concerned that Wisconsin may have taken a step backwards in our collective march towards access to justice for all. Ghostwriting has been an effective tool for recruiting and enabling pro bono attorneys to assist low-income individuals and communities and bringing efficiencies to the judicial system. Eliminating that option will have a depressing impact on the pool of eligible pro bono lawyers, be they emeritus lawyers, in-house lawyers, government lawyers, large law firm lawyers, or solo and small firm practitioners, who will no longer be willing to be of assistance. See, e.g., ABA Standing Committee on Pro Bono and Public Service, Supporting Justice: A Report on the Pro Bono Work of America's Lawyers, Apr. 2018 (reporting that 54.6% of attorneys surveyed in 24 states provided limited-scope representation when doing pro bono in 2017).

It is challenging to see how the elimination of ghostwriting is an advancement for the efficient administration of justice. There is no

suggestion that the move here was the product of consideration and study or designed to promote high standards for the legal profession and to protect clients and the public from lawyer misconduct. To the contrary, we must be vigilant that ethics standards and practice rules do not have unintended chilling effects on pro bono representation. See Esther Lardent, *Do Our Ethical Rules Impair Access to Justice?*, Nat'l L.J. (May 30, 2013) (outlining ways the judicial and lawyer ethics codes can inhibit representation due to conflict of interest concerns, multi-state practice limitations, student limitations, and other reasons).

The profession's challenge is to ensure equal justice under law in every courtroom and to address the special needs of low-income individuals who are directly harmed by the nation's justice gap. To make meaningful progress, we must undertake important innovations in the manner and places in which we provide legal help to the poor. This means expanding limited-scope representation, including ghostwriting, and studying and adopting new, effective measures to assist unrepresented individuals. Low-income individuals without the resources to obtain full representation are turning to other forms of assistance. Constraints that restrict the provision of pro bono legal services to the poor in these settings must be reexamined and unnecessary restrictions should be lifted to provide greater flexibility to lawyers who want to provide some measure of legal help in such demanding circumstances.

As we struggle to expand access to justice, our rules should do more to reflect the realities of our civil legal assistance delivery systems and to remove obstacles that needlessly hinder the availability of legal services for the poor. Rules and procedures may not solve the justice gap, but they should not be part of the problem.

In sum, legal assistance and resources to boost civil justice should not be allowed to evaporate when and where they are needed most. I would be glad to provide any further information to the extent that it would be helpful in reaching a decision.

Respectfully submitted,



Eve L. Runyon
erunyon@probonoinst.org

Wisconsin Justice Initiative



P.O. Box 100705
Milwaukee, WI 53210

August 8, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

Lawyers who accept pro bono cases legitimately fear that having their names and bar numbers on documents drafted when they give quick advice in a clinic setting can potentially raise future appearances of conflicts of interest in their practices. They are concerned by the unanticipated burden of being erroneously associated with a case long after their involvement should have ended.

A prohibition on ghostwriting essentially deprives clients of legal services by those willing to provide pro bono representation but wary of the new disclosure requirements; in short, it denies indigent clients adequate access to justice. From an efficiency standpoint, discouraging representation and forcing clients to fully represent themselves will cause delays and confusion.

Ghostwriting allows lawyers to provide pro bono help without managing a pro bono caseload outside of the clinic setting. Restoring the rule is essential to ensuring that low-income clients get the limited representation they need.

I hope the rule will be restored to allow volunteer lawyers maximum incentive to fully engage in this type of pro bono work. Our low-income community members need it, and our entire community benefits from it.

Respectfully,

A handwritten signature in black ink, appearing to read 'C Johnson', written in a cursive style.

Craig Johnson, President
Wisconsin Justice Initiative

Attorney James R. Cauley
5020 N. Woodruff Ave.
Whitefish Bay, WI 53217
June 28, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I support Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore ghostwriting in limited scope legal representation.

I am retired from paid legal practice, but still do pro bono legal work through volunteer legal clinics sponsored by Marquette University Law School, including the Veterans Service Office, United Community Center, House of Peace, and Mobile Legal Clinic at various locations. Since retiring, I have no office and do not have any malpractice insurance beyond that provided by the Marquette Law School clinics. I only engage in limited scope legal representation now.

The 2018 amendment of Wis. State. Sec. 802.05(2m) deters me from certain pro bono work. I am concerned that disclosing my name and bar number on documents drafted in a brief legal advice clinic would entangle me in legal proceedings beyond the scope of the limited scope representation and that a client might edit a document after I drafted it but before it is filed with the court. My name could be on a pleading filed in a case in which I never appear and for which I have no files. Instead of drafting a concise, legally relevant pleading for a case, I can only provide general advice on what the client could write. I expect that what the client writes is not as concise or legally relevant as what a lawyer would write. This results in confusion and a waste of judicial resources.

Legal services are expensive. The clients at pro bono clinics rely on limited scope representation to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system. Justice is not served.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again.

Respectfully,

James R. Cauley

State Bar No. 1003400



ATTORNEYS AT LAW

100 E. Wisconsin Avenue
Suite 2600
Milwaukee, WI 53202

414-276-6464
414-276-9220 (fax)

www.hinshawlaw.com

Michael P. Malone
414-225-4848
mmalone@hinshawlaw.com

June 25, 2019

Clerk of the Supreme Court
P. O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

Re: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have engaged in pro bono legal work throughout my career. I have been inhibited from fully engaging in my pro bono work after 2018 amendment of Wis. Stat. §802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and expense for the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Malone', with a long horizontal flourish extending to the right.

Michael P. Malone

:MPM

Michael J. Gonring
621 E. Beaumont Ave.
Whitefish Bay, WI 53217
414-378-5813

June 25, 2019

Clerk
Supreme Court of Wisconsin
P.O. Box 1688
Madison, WI 53701

Dear Justices:

I write in support of Petition 19-16, submitted by Quarles & Brady LLP on May 15, 2019.

When the Court amended the Rules of Professional Responsibility in 2007 to create Section 20:6.5, allowing an attorney to represent clients in a brief legal advice setting unless the attorney was aware of a conflict of interest, the practical result was to allow large firm attorneys to participate in clinics such as those directed by Marquette University's law school. Prior to that rule, participation by large firm attorneys in such clinics would require conflicts checks by the firm for every person sitting on the other side of the table, unworkable for a walk-in, short term clinic.

When Section 20:6.5 was created, I was the pro bono coordinator at Quarles & Brady. We immediately reached out to Marquette and partnered to establish another Marquette Volunteer Legal Clinic, which currently operates one night a week at the United Community Center on Milwaukee's south side. For most of its 12-year existence, this highly successful clinic has been almost entirely staffed by Quarles & Brady attorneys, many of whom became involved because of the nature of brief legal advice. In other words, they were able to help poor people who could not afford to pay for legal services, yet the attorneys did not have to undertake full representation, which often involves litigation and major commitment.

Section 20:6.5 allowed that to happen.

Nearly every Quarles & Brady practice group has been represented at the south side clinic, including Intellectual Property, Corporate, Financial Services, Health Care and Employee Benefits. Pro bono opportunities typically are elusive for attorneys in these groups. Brief legal advice, Section 20:6.5, led to these attorneys becoming pro bono lawyers.

The effect of Section 20:6.5 went far beyond Quarles & Brady, of course. It created a multitude of pro bono lawyers throughout Wisconsin and led to the opening of many brief legal advice clinics, including the Milwaukee Justice Center. One could argue that it was the singular, most important development in pro bono representation in our state.

This Court made that happen.

The shortsighted, anti-Ghostwriting legislation enacted in 2018 severely undermines Section 20:6.5. Real and positional conflicts of interest, unknown to the attorney helping to prepare a document at the brief legal advice clinic, now have the potential of exposure by the disclosure of the attorney's name. Law firm client relations are jeopardized. Some large firm partners understandably are reluctant to allow associates to put themselves in a position where a client might realize that its law firm is in opposition to the client's interests. Attorneys, especially non-litigators, who were so willing to volunteer at brief legal advice clinics, are less likely to become pro bono lawyers.

And the marginalized, desperately needing free legal advice, go unrepresented again.

I know that others who have written in support of this petition have been more cogent and thorough in their submissions. My argument is more basic, and rooted in my experience as someone who spent several decades recruiting lawyers to help poor people and attempting to come up with projects that would encourage them to do so. I continue in retirement to work at the south side clinic that this Court helped establish with Section 20:6.5, and I am keenly aware of the effect of Section 802.05(2m) on the ability of that clinic to serve the poor.

I urge the Court to grant Petition 19-16.

Sincerely,



Mike Gonring

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Respectfully,

/s/ Cassidy Sandoval

Attorney Cassidy Sandoval

SB: 1113848

June 6, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

We write to express Legal Action of Wisconsin's strong support of Petition 19-16, filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore ghostwriting in limited scope legal representation.

Our firm and our attorneys are committed to the ideals of the profession. We have consistently provided *pro bono* legal services – including limited scope representation – at Marquette Law School's Volunteer Legal Clinics at the Milwaukee Justice Center, our own Eviction Defense Projects, and other similar projects. We have relied on the Supreme Court Rules of Professional Conduct to provide that limited scope representation including the ghostwriting provision which allowed attorneys to not disclose their name or bar number. This provision allowed our lawyers to give their time and talents free from the worry that they could later be called upon by an opposing party to communicate with a client who received brief legal advice in a clinic setting. When clients leave brief legal advice clinics with a work product that was prepared by volunteer attorneys, the volunteer attorneys have no guarantee that the client will file the work product without altering it. Our lawyers are, understandably, not keen on losing sight of their work, with their name attached to it, before it reaches the court.

The ghostwriting provision was a tool that enabled volunteer lawyers to serve low-income clients without fear of being involved in future matters which may arise from their short-term, limited volunteer legal service. In the limited service volunteer setting, the lawyer and the client do not expect the lawyer to provide continuing representation in the matter. This essential component of limited scope representation should be restored.

Respectfully submitted,

Deedee Peterson
Executive Director

Jeff Myer
Director of Litigation and Advocacy

June 3, 2019

Clerk of the Supreme Court
P.O Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I write to convey the support of Godfrey & Kahn, S.C. of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

This Firm's attorneys are committed to the best ideals of the profession and have consistently provided pro bono legal advice at the Marquette Volunteer Legal Clinic's several locations (including the Milwaukee Justice Center, the Mobile Legal Clinic, and others), Legal Action of Wisconsin's Eviction Defense Project, and other brief legal services clinics, in reliance on the Supreme Court Rules of Professional Conduct for limited scope representation, including the provision allowing ghostwriting without disclosing one's name or bar number. This provision allowed our lawyers to give their time and talents free from worry that they could later be called upon by an opposing party to communicate with a client from a brief legal advice clinic setting. When clients leave brief legal advice clinics with work prepared by volunteer attorneys, the attorney has no guarantee the work will be filed with the court without alteration by the client. Our lawyers are, understandably, not keen on losing sight of their work, with their name attached to it, before it reaches the court.

The ghostwriting provision was a tool enabling lawyers to serve clients unable to afford private representation without concern about unintended future involvement in matters arising from short-term limited legal services, which were provided without expectation by either the lawyer or the client that the lawyer would provide continuing representation in the matter. We believe that the services our attorneys provide in brief legal advice settings are an important public contribution, and therefore these services should be encouraged through common sense rules. Accordingly, we believe that this essential component of limited scope representation should be restored.

Respectfully,
GODFREY & KAHN, S.C.

Daniel C.W. Narvey

Sean D. Bosack

HUSCH BLACKWELL

Margaret Richards
Director of Pro Bono Services

555 East Wells Street, Suite 1900
Milwaukee, WI 53202-3819
Direct: 816.983.8781
Fax: 816.983.8080
margaret.richards@huschblackwell.com

May 31, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

The purpose of this letter is to indicate the support of Husch Blackwell LLP of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

Our firm's attorneys are committed to the best ideals of the profession and have consistently provided pro bono legal advice at the Marquette Volunteer Legal Clinics at the Milwaukee Justice Center and Legal Action's Eviction Defense Project in reliance on the Supreme Court Rules of Professional Conduct for limited scope representation, including the provision allowing ghostwriting without disclosing one's name or bar number. This provision allowed our lawyers to give their time and talents free from worry that they could later be called upon by an opposing party to communicate with a client from a brief legal advice clinic setting. When clients leave brief legal advice clinics with work prepared by volunteer attorneys, the attorney has no guarantee the work will be filed with the court without alteration by the client. Our lawyers are, understandably, not keen on losing sight of their work, with their name attached to it, before it reaches the court.

The ghostwriting provision was a tool enabling lawyers to serve clients unable to afford private representation without fearing future involvement in matters arising from short-term limited legal services without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter. This essential component of limited scope representation should be restored.

HUSCH BLACKWELL

May 31, 2019
Page 2

Respectfully,

Margaret Richards

M Kner

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Respectfully,

Julie Yeado
Member No. 1090552
julieyeado@gmail.com
(414) 899-0321

May 31, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Respectfully,

Jeremy Shapiro-Barr

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

May 31, 2019

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Respectfully,

Electronically signed Alexander E. Foundos
Alexander E. Foundos
Attorney

Ann Comer Law, LLC
799 Weilers Way
Port Washington, Wisconsin 53074

comer.ann@gmail.com
(414) 916-3039

May 29, 2019

Honorable Justices of the Wisconsin
Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

Re: Petition No 19-16 to Amend Wis. Stat. Chap. 802

Dear Justices:

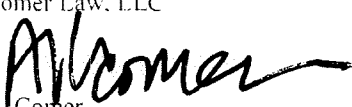
I am writing in support of Petition No. 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of "ghostwriting" in limited scope legal representation.

I am one of the many volunteer attorneys providing limited scope legal representation at a Marquette Volunteer Legal Clinic. One of the services offered is drafting of generally simple legal documents based solely on information provided by a clinic client. The client is given the documents with instructions on how and where to file the documents, what to attach to the documents, and the like. But the documents are outside my control once they leave the clinic. I don't know whether they are ever actually filed or whether they are changed after I have helped draft them. I don't know whether exhibits added after the fact are contradictory to facts stated in the documents. In spite of instructions to the contrary, I don't know whether my name on a document creates a perception in the client that there is an on-going attorney-client relationship with me. I don't know whether my name on a document creates a false expectation in an opposing party's counsel or a court about my representation of a client. As a result, because I have no control over the documents or the impression they give to others after those documents leave the clinic, I am unwilling to draft the documents at all. Having my name on the documents serves no purpose consistent with limited scope legal representation. And the effect is to deny pro bono clients their best chance to present their cases in the proper legal form and forums. Ghostwriting helps everyone in the legal system: the attorney representing the clinic client can provide his/her best legal advice and work in the limited setting; the client gets better access to justice; the courts can operate more efficiently; and opposing counsel gets better notice of the issues to be determined.

As a result, I urge the Court to amend the Rules of Civil Procedure as outlined in Petition No. 19-16 "to restore Wis. Stat. § 802.05(2m) to its 2014 iteration, whereby the Court—after extensive study—permitted attorneys in limited scope representations to assist otherwise self-represented persons in drafting a pleading, motion, or other filed document without disclosing their name or state bar."

Respectfully,

Ann Comer Law, LLC


Ann K. Comer
State Bar No. 1006831

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition For Rule-Making to Amend Wis. Stat. Chapter 802.05(2m)

Dear Honorable Justices:

I am writing in support of Petition For Rule-Making to Amend Wis. Stat. Chapter 802.05(2m) filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career, including at the Milwaukee Justice Center which provides quality assistance to low income individuals. I specifically assist with family law cases for which a large majority of litigants are pro se. For the last several months I have considered whether I should continue this pro bono work after the 2018 amendment of Wis. State. Sec. 802.05(2m).

I am concerned that judges or other lawyers on the case would view my name and firm on the document and pass judgment on myself and/or my firm. Since I will not be in court when the motion is heard, I cannot defend myself.

I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system. To just tell a low-income individual what to put on a form, and then send them home to do it is not realistic. The reality is many of these individuals do not have the capacity to complete this task and justice suffers as a result.

Since the rule change, I am discouraged to assist individuals draft any sort of documents, even some motions that are mostly boilerplate. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again.

Respectfully,

Eric Hart
Hart Law Office

B
BORGELT POWELL
PETERSON & FRAUEN S.C.

Barbara O'Brien
Direct Dial: 414-287-9135
Email: bobrien@borgelt.com
Website: www.borgelt.com

1243 North 10th Street, Suite 300
Milwaukee, WI 53205
(414) 276-3600
(414) 276-0172 (fax)

May 28, 2019

VIA EMAIL & U.S. MAIL – clerk@wicourts.gov

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

Re: Petition 19-16 to amend Wis. Stat. Chapter 802

Dear Honorable Justices:

The purpose of this letter is to indicate the support of Borgelt, Powell, Peterson & Frauen, S.C. of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

Our firm's attorneys are committed to the best ideals of the profession and have consistently provided pro bono legal advice at the Marquette Volunteer Legal Clinics in the Milwaukee Justice Center in reliance on the Supreme Court Rules of Professional Conduct for limited scope representation, including the provision allowing ghostwriting without disclosing one's name or bar number. This provision allows our lawyers to give their time and talents free from worry that they could later be called upon by an opposing party to communicate with a client from a brief legal advice clinic setting. When clients leave brief legal advice clinics with work prepared by volunteer attorneys, the attorney has no guarantee the work will be filed with the court without alteration by the client. Our lawyers are, understandably, not keen on losing sight of their work, with their name attached to it, before it reaches the court.

The ghostwriting provision was a tool enabling lawyers to serve clients unable to afford private representation without fearing future involvement arising from short-term limited legal services without expectation by either the lawyer or the client that the lawyer will provide

Clerk of the Supreme Court

May 28, 2019

Page 2

continuing representation in the matter. This essential component of limited scope representation should be restored.

Respectfully,

BORGELT, POWELL, PETERSON & FRAUEN, S.C.

A handwritten signature in black ink, appearing to be 'BAO', written over the firm name.

Barbara A. O'Brien on behalf of Borgelt, Powell, Peterson & Frauen, S.C.

BAO/ss

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition ___ to Amend Wis. Stat. Chapter 802

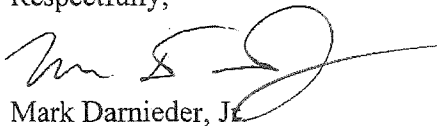
Dear Honorable Justices:

I am writing in support of the Petition filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Respectfully,



Mark Darnieder, Jr.

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I was specifically concerned about client confusion in the realm of limited scope representation. In one breath either I or a law school are explaining the limited scope of representation and that this is not an ongoing attorney-client relationship, while in the next, I am signing and writing my bar number all over their papers. This seems logically inconsistent and likely to cause client confusion. Furthermore, I fundamentally disagree with the blatantly legislative and partisan nature of the 2018 change to Wis. Stat. § 802.05(2m). Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation, like ghostwriting, to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Respectfully,

A handwritten signature in black ink, appearing to be "J. D. I." with a horizontal line extending from the end.

May 21, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices of the Wisconsin Supreme Court:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of "ghostwriting" in *pro bono* limited scope legal representation.

I engage in *pro bono* limited scope representation of clients of the Family Law Clinic of the Marquette Volunteer Legal Clinic, and provide that brief legal advice and drafting of documents at the Milwaukee Justice Center located in the Milwaukee County Courthouse. I do this through the Leander J. Foley, Jr., Matrimonial Chapter of the American Inns of Court, and have done so for many years. In 2015, the Leander J. Foley, Jr., Matrimonial Chapter of the American Inns of Court received the Pro Bono Publico award from the Milwaukee Bar Association for the amount of members we have had volunteer at the Family Law Clinic.

Many members of the Leander J. Foley, Jr., Matrimonial Chapter of the American Inns of Court, including me, discontinued or reduced their participation in that *pro bono* work after the 2018 amendment of Wis. State. Sec. 802.05(2m). One of the hallmarks of giving brief legal advice and drafting documents is that the volunteer attorney will not be going to court with the client or providing further legal work beyond that provided in the Clinic during Clinic hours.

Clerk of the Supreme Court
May 21, 2019
Page 2

I became--and remain--worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would give the Clinic client the impression that I was now their attorney, and that they would be able to look me up on the Internet or otherwise and contact me further about their case outside of the clinic setting.

In addition, although I certainly would never ghostwrite a frivolous pleading, I have concerns that if a Clinic client later was not successful at her or his court appearance arising from the documents I drafted, the judge might hold it against me that I drafted the pleadings in the first place, even though I have no control over how the Clinic client presented his or her case in court. This could harm my reputation with that judge to the detriment of paying clients I represent through my law firm.

I also am concerned that Clinic clients might make edits/additions to documents after I draft them but before those clients file them with the court, including perhaps adding a frivolous claim for relief. Again, with my name and bar number on such a pleading, I am concerned that a judge might hold it against me because she or he does not know who drafted what portion of a pleading that now has my name and bar number on it.

Although my commitment to providing our most disadvantaged with access to justice has caused me to return to working in the Family Law Clinic after a period of time in which I avoided it because of the 2018 amendment, such has not been the case with other members of the Leander J. Foley, Jr., Matrimonial Chapter of the American Inns of Court, who have not returned to staffing the Family Law Clinic. I personally remain concerned and upset when I have to sign and put my bar number on documents I prepare at the Family Law Clinic.

Legal services are expensive and the clients I serve at *pro bono* clinics rely on limited scope representation like ghostwriting to access justice. I urge you to restore the important role of ghostwriting in limited scope legal representation to avoid the very real reluctance of lawyers to provide *pro bono* services to the low-income community members who need *pro bono* assistance the most.

Thank you for your consideration of this letter. I am enclosing nine copies of this letter and will also send it via email to your office.

Yours very truly,

SCHMIDT, RUPKE, TESS-MATTNER & FOX, S.C.

Kent A. Tess-Mattner
kat@srtf-law.com



MILWAUKEE JUSTICE CENTER

Milwaukee County Courthouse - Room G9
901 N 9th St. Milwaukee, WI 53233
www.MilwaukeeJusticeCenter.org

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

As Executive Director of the Milwaukee Justice Center, I have firsthand experience with the role this rule plays in sustaining the cadre of over 150 volunteer attorneys doing pro bono work with our self-help center every year.

The vast majority of our clients at the Milwaukee Justice Center are living at or below 125% of the federal poverty level. These are people who cannot afford to hire a private attorney to help with their legal matters. Every year, nearly 2,500 of our clients visit the Marquette Volunteer Legal Clinics operating in the Milwaukee Justice Center. When Supreme Court Rule 20:1.2(cm) (allowing ghostwriting without disclosing one's name or bar number) became in conflict with Wis. Stat. § 802.05(2m) (requiring the lawyer to disclose his or her name and bar number on documents prepared for a client to file with the court), many of our volunteers wondered if the court or opposing party would mistake the brief legal advice attorney for the client's ongoing counsel. Others wondered if the client, who is representing themselves *pro se*, would leave the legal clinic with documents containing the lawyer's name and bar number, only to later edit or amend the lawyer's work without their knowledge. Some lawyers stopped drafting anything for clients. Others, more than we anticipated, stopped volunteering all together.

With lawyers generously giving their time, it is incumbent upon our courts to acknowledge those engaging in the best attributes of our profession—often to the benefits of the courts (fewer claims are filed in courts when parties receive legal advice, and pro se litigants are better prepared when they do proceed with a claim), and restore the role of ghostwriting in limited scope representation.

Respectfully,

s/ Mary L. Ferwerda

Mary L. Ferwerda, M.S., J.D.
Executive Director

Gimbel • Reilly • Guerin • Brown

LLP

May 20, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, Wisconsin 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

The purpose of this letter is to indicate the support of Gimbel, Reilly, Guerin & Brown LLP of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

Our firm's attorneys are committed to the best ideals of the profession and have consistently provided pro bono legal advice at the Marquette Volunteer Legal Clinics at the Milwaukee Justice Center in reliance on the Supreme Court Rules of Professional Conduct for limited scope representation, including the provision allowing ghostwriting without disclosing one's name or bar number. This provision allowed our lawyers to give their time and talents free from worry that they could later be called upon by an opposing party to communicate with a client from a brief legal advice clinic setting. When clients leave brief legal advice clinics with work prepared by volunteer attorneys, the attorney has no guarantee the work will be filed with the court without alteration by the client. Our lawyers are, understandably, not keen on losing sight of their work, with their name attached to it, before it reaches the court.

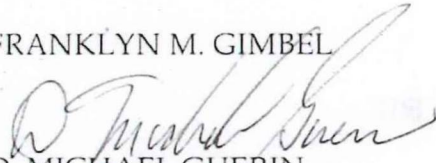
The ghostwriting provision was a tool enabling lawyers to serve clients unable to afford private representation without fearing future involvement in matters arising from

short-term limited legal services without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter. This essential component of limited scope representation should be restored.

Respectfully,



FRANKLYN M. GIMBEL



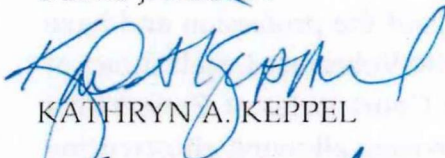
D. MICHAEL GUERIN



RAYMOND D. DALL'OSTO



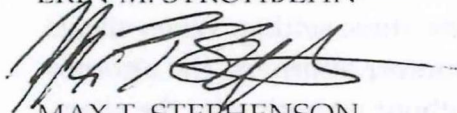
DENIS J. REGAN



KATHRYN A. KEPPEL



ERIN M. STROHBEHN



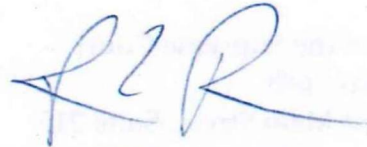
MAX T. STEPHENSON



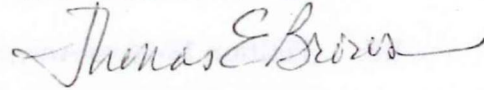
BRIANNA C. MEYER



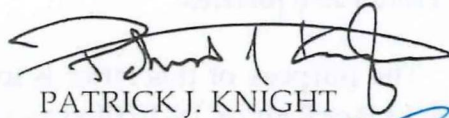
JACLYN C. KALLIE



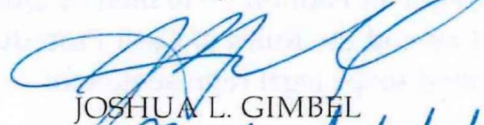
RICHARD E. REILLY



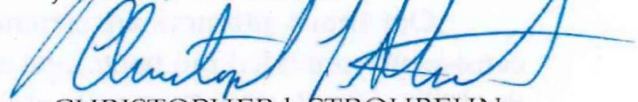
THOMAS E. BROWN



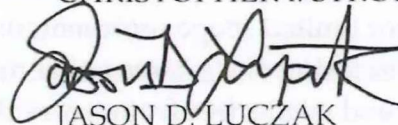
PATRICK J. KNIGHT



JOSHUA L. GIMBEL



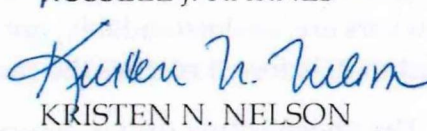
CHRISTOPHER I. STROHBEHN



JASON D. LUCZAK



RUSSELL J. KARNES



KRISTEN N. NELSON

IVANOVIC LAW OFFICES

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May 20, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

I have chosen to engage in pro bono legal work throughout much of my career. I was deterred from continuing my pro bono work after 2018 amendment of Wis. State. Sec. 802.05(2m). I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I hope the rule will be restored to allow me to fully engage in this type of pro bono work again. Our low-income community members need it.

Sincerely,

IVANOVIC LAW OFFICES

Ksenija Kokanovic
Attorney at Law

KK/aw



May 20, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to eliminate the requirement, imposed by a 2018 amendment to Wis. Stat. § 802.05(2m), that an attorney drafting a pleading, motion or document to be filed by an otherwise unrepresented person disclose his or her name and bar number on the document. This requirement impairs the goal of providing *pro bono* limited scope legal representation to indigent litigants in a legal clinic setting.

The 2018 amendment is problematic in several respects. Attorneys providing *pro bono* services are concerned that disclosing their names and bar numbers on documents drafted in a brief legal advice clinic setting will create future appearances of conflicts of interest in their private practices. Such attorneys are also concerned that clients might make edits to documents after they are drafted and before they are filed with the court.

Because I have engaged in *pro bono* work throughout my career, and much of that work has been in brief legal advice clinic settings, I know these concerns are real, and that they deter attorneys from providing *pro bono* services in such settings. Legal services are expensive and the clients I have served at *pro bono* clinics rely on limited scope representation to access justice. Without it, parties often go wholly unrepresented through the legal process, causing delay, confusion, and inefficiency in the court system.

The version of the rule in effect prior to the 2018 amendment gave attorneys the freedom to provide *pro bono* assistance in brief legal advice clinics without managing a *pro bono* caseload outside of the clinic setting. I hope the rule will be restored to eliminate impediments to attorneys who wish to perform this valuable public service. Our low-income community members need it.

Respectfully,

A handwritten signature in black ink, appearing to read "Charles H. Barr", is written in a cursive style.

Charles H. Barr
SBW # 1004802

9474 N. Broadmoor Road
Bayside, WI 53217

414-351-0057 phone

www.healthscienceslawgroup.com

May 20, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

Throughout my career of 40 years – which began in Idaho as a civil rights lawyer, I have always engaged in pro bono legal work. Though the surprising 2018 amendment of Wis. State. Sec. 802.05(2m) has had a chilling effect on that type of work. I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially raise future appearances of conflicts of interest in my private practice. I was also concerned that clients might make edits to documents after I drafted them but before they were filed with the court. While the edits might seem innocent enough to the client, they might not understand the associated ethical issues. Legal services are expensive; the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system.

The ghostwriting tool gave me the freedom to provide pro bono help in brief legal advice clinics without managing a pro bono caseload outside of the clinic setting. I urge that the rule be restored to allow me to continue to fully engage in this type of pro bono work. Our low-income community members - as well as our court system - need it.

Respectfully,

Electronically signed by Dennis H. Milbrath

Dennis H. Milbrath

WSB #1016342



LAW & CONSULTING, S.C.

May 20, 2019

Samantha Huddleston
samantha@ovblaw.com

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am writing in support of Petition 19-16 filed by Quarles & Brady LLP. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghostwriting in limited scope legal representation.

Pro bono legal services have been a constant part of my practice since being sworn in last May and prior to then throughout my three years of law school. While attending the Marquette Volunteer Legal Clinic's seminar for pro bono volunteer attorneys, I learned of the 2018 amendment of Wis. Stat. § 802.05(2m). I truly believe that pro bono services are vital to our communities given the complexity and expense associated with legal representation. That said, these services are limited in scope and do not carry the same effect from an attorney's perspective as representing an individual through the normal course of representation.

With the added disclosure requirements under 802.05(2m), I became worried that disclosing my name and bar number on documents drafted in a brief legal advice clinic setting would potentially create future conflicts of interest in my private practice. I am also concerned that the documents I assist in preparing will not be produced to the court in the same manner as drafted because I have no control over what happens with those documents after leaving them in the hands of the client. Legal services are expensive and the clients I have served at pro bono clinics rely on limited scope representation like ghostwriting to access justice. Without it, parties often go wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system. Requiring attorneys to disclose their names and bar numbers on documents drafted in a pro

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414. 255. 3031 (fax)

bono capacity deters them from providing limited scope services and further harms the low-income community.

I hope the rule will be restored to allow me to fully engage in this type of pro bono work without the limitations currently in place. Our low-income community members need it.

Respectfully,

Samantha Huddleston
Attorney

SCH

May 17, 2019

Clerk of the Supreme Court
P.O. Box 1688
Madison, WI 53701

Re: In the Matter of Amendment of Wis. Stat. Sec. 802.05(2m), Filed
May 15, 2019

Dear Honorable Justices:

I am writing in support of the Petition For Rule Making filed by Quarles & Brady, LLP, on May 15, 2019. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of ghost writing in limited scope legal representation. I have engaged in pro bono legal work throughout my 36 year career, primarily by staffing the Milwaukee Justice Center (MJC), and providing brief legal advice to a portion of the nearly 10,000 clients MJC served during 2018.

My pro bono work at MJC after the 2018 amendment of Wis. Stat. Sec. 802.05(2m), became unnecessarily complicated by the requirement that I disclose my name and State Bar number on the documents I drafted in the MJC brief legal advice clinic. I am concerned that MJC clients for whom I drafted documents could make edits to documents after I draft them, and before they file them with the court. I also understand the concerns of other pro bono lawyers have caused them not to be willing to draft any documents for low income clients because of the fear that the exposure of their name and State Bar number on the documents could potentially raise future appearances of conflicts of interest in their private practice.

As you well know, legal services are unaffordable for a significant portion of the population of the State of Wisconsin, particularly in Southeastern Wisconsin. The clients I have served at MJC rely upon limited scope representation like ghost writing to gain access to justice. Without it, parties often go wholly unrepresented through the legal process, causing delay, confusion and inefficiency in the court system.

The ghost writing tool gave me, and others who provide pro bono services, the freedom to provide *pro bono* help in brief legal advice clinics without the above-described worries and

Clerk of the Supreme Court
May 17, 2019
Page Two

impediments. I hope the rule will be restored to allow me and others who engage in this type of pro bono work, to do so again without the constraints of Wis. Stat. Sec. 802.05(2m). Our low income community members who need legal services need this change.

Thank you.

Very truly yours,

HAWKS QUINDEL, S.C.

(Original Signed by Sender)
Katherine L. Charlton

KLC:aeY

The Law Office of
Shepard A. Davis

P: 414-224-8000
F: 414-224-7511
E: shep@sheplaw.com

342 North Water Street,
Suite 600
Milwaukee, WI 53202

FROM:

Michael R. Burton, Of Counsel
1101 N. Old World Third St. - Suite 101
Milwaukee, WI 53203
414.477.3066
mike@burtonanddavis.com

May 17, 2019

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19 -16 (to Amend Wis. Stat. Chapter 802)

Dear Honorable Justices:

I write in support of the above-referenced Petition. The Petition requests that the Court amend the Rules of Civil Procedure to restore the important role of "ghostwriting," a practice in limited scope legal representation of *pro bono* clients.


I have engaged in *pro bono* legal work throughout my 30-year legal career. In the past five years, I have provided about 250 hours of such work per year, through organizations that include the Marquette Volunteer Legal Clinic, Wisconsin Women's Business Initiative Corporation and several others.

I know attorneys who are willing to do limited representation *pro bono* work but will not draft documents if they are required to provide their name and bar number on said documents. I sometimes do provide my name and bar number on documents I draft for *pro bono* clients. However, there are times that I do not wish to do so for various reasons, including: avoiding future appearances of conflicts of interest in my private practice; concerns that clients may believe my representation is ongoing; and the possibility of someone other than me making changes to the document after I drafted it.

From my perspective, the 2018 amendment of Wis. State. Sec. 802.05(2m) creates a significant disservice to an underserved group of legal consumers, especially those who utilize brief legal advice clinics. These clinics provide very important services to parties who otherwise would be wholly unrepresented through the legal process causing delay, confusion, and inefficiency in the court system. I can say this from experience and with conviction, having volunteered in such clinics dozens of times over the past five years.

I urge you to restore Sec. 802.05(2m) to its prior (pre-2018) iteration, so as to allow ghostwriting, which enables volunteer attorneys to provide a greater level of *pro bono* services to low-income and disadvantaged community members, who desperately need those services. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Burton". The signature is written in a cursive style with a large initial "M" and "B".

Atty. Michael R. Burton

State Bar. No 1001388



GIESE LAW OFFICES

ATTORNEYS AT LAW

Heiner Giese
Attorney & Counselor

1230 N. Prospect Avenue
Milwaukee, WI 53202-3014
Phone: (414) 276-7988
Fax: (414) 276-8342
Email: hgiese@ameritech.net

December 2, 2019

Sent Via Electronic Mail and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Written Comments Regarding Rule Petition 19-16 - In the Matter of Amending Wis.
Stat. § 802.05(2m) relating to Ghostwriting, A Form of Limited Scope Representation

Dear Clerk of Supreme Court:

I am legal counsel and a registered lobbyist for the Apartment Association of Southeastern Wisconsin, Inc. I am writing to express opposition to granting of the above Rule Petition 19-16 relating to ghostwriting.

I. Introduction

The petition asks the Supreme Court to repeal and undo a change to s. 802.05(2m), Wis. Stats., which was enacted by the Wisconsin Legislature and the Governor as part of 2017 Wisconsin Act 317 on April 16, 2018. That change, contained in section 53 of Act 317, added a requirement that attorneys providing legal advice to otherwise self-represented persons must add their name and state bar number to any pleading, motion or other document being filed.

Act 317 was an omnibus bill which made many changes to areas of law relating to regulation of rental properties, landlord/tenant matters, and municipal fees and regulations in the area of housing. Lengthy public hearings were held in both the Assembly and the Senate on the precursor bills, 2017 AB 771 and 2017 SB 639. I and many other witnesses presented testimony on these bills, both supportive and in opposition, *including specifically on the proposed change to the ghostwriting statute*, as will be explained below.

II. The Legislature Did Consider Public Comments before Amending § 802.05

In the first sentence of its Conclusion on p. 17 Petitioner claims

Since 2014, nothing in the judicial system has changed that would have warranted the Legislature's 2018 amendment to Wis. Stat. § 802.05.

However, a big change starting in early 2017 was the implementation of the Eviction Defense Project in Milwaukee County run by Legal Action of Wisconsin. Initially, tenants in court for an eviction case would consult with a pro bono volunteer attorney and would be given a "check-the-box" pro forma "Answer" which contained about 30 possible defenses to the eviction complaint. The tenant would sign that Answer and check various boxes - presumably upon the advice of the volunteer attorney - but landlord plaintiffs or their attorneys considered some of the alleged defenses specious and doubt arose as to whether a particular defense had actually been recommended by the pro bono attorney or whether the tenant had merely checked some additional boxes "to make the Answer look good." It was that practice by the Eviction Defense Project which led property owners to seek the legislative change to require pro bono attorneys to disclose their names on documents drafted for a defendant in an eviction action. Fortunately, this check-the-box defense method was soon abandoned by the Eviction Defense Project.

On p. 16 Petitioner opines that the change to the statute was "simply slipped into an omnibus bill." Petitioner perhaps does not intend to be derisive of how our Wisconsin legislators do their work - after all, one does hear stories that a particular legislative provision somehow got into a bill and later no one can explain its genesis. However, the WisconsinEye coverage of both the Assembly and Senate bills shows there was testimony in opposition and in favor of the amendment to § 802.05(2m) and the legislature's right to regulate court practices.

<https://wiseye.org/2018/01/03/assembly-committee-on-housing-and-real-estate-3/> [testimony of Vanessa Kuettel at 6:02] , [testimony of Heiner Giese at 7:21] and <https://wiseye.org/2017/12/13/senate-committee-on-insurance-housing-and-trade/> [question by Sen. Lasee at 3:21].

III. The Petition Cannot be Granted in its Present Form

The *Proposed Statutory Amendment* advocated by Petitioner calls for a verbatim repeal by the Court of the action taken by the legislature. At page 3 of its Memorandum in Support Petitioner asks that the statute be restored "to its previous iteration." This runs directly afoul of Wis. Stats. § 751.12(4): "This section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to pleading, practice, or procedure." If the Court now takes the exact language of the legislative change, throws it out and replaces it with the exact language of the statute *before* the legislative change, then the Court is nullifying - not just modifying - a legislative act. That should only be permitted if the legislation is unconstitutional or if the legislature has infringed on an exclusive and essential power of the judiciary. However, the ghostwriting rule can be modified, as discussed in the next section.

IV. A Legislative Solution to Concerns of Petitioner and the Many Supporters of the Petition Is Preferable

After the passage of Act 317 I was approached by Milwaukee Circuit Judge Michael J. Dwyer later in 2018. He had heard that I had been involved in the lobbying efforts on behalf of landlords leading to the change in the ghostwriting statute. That change was prompted only by experiences with eviction cases and did not reflect any wish to hamper the work of pro bono attorneys. I met with Judge Dwyer and retired Judge James Gramling a number of times in succeeding months to craft a change to the ghostwriting rule which would not require attorneys to affix their names to legal documents in *uncontested* cases (for example, helping spouses draft a child custody arrangement in a collaborative divorce or drafting an application for administration in a probate matter). It was my opinion that such a change could easily garner bipartisan approval in the legislature.

My suggested changes were apparently not acceptable to other attorneys working on this issue with Judge Dwyer and the instant Petition was filed by Quarles & Brady LLP. Nevertheless I secured the assistance of State Sen. Luther Olsen and he had the Legislative Reference Bureau prepare a draft to amend § 802.05(2m). LRB-4010/P1 is attached. The relevant paragraph of the LRB analysis is as follows:

Under this bill, the attorney has to provide his or her name and state bar number only if it is requested by an opposing party in a contested matter, and the clerk of the court must then enter the name and state bar number on the document and enter it in the clerk's minutes. The recording of the attorney's name and state bar number does not make the attorney the attorney of record for the otherwise self-represented person.

It is uncertain if such proposed legislation will be taken up in the current session or if it would be easily adopted. As an alternative, I respectfully suggest that the Court could adopt said proposed legislative draft as a Rule amendment to § 802.05(2m). This would preserve the legislature's intention to have attorneys reveal their involvement in the small percentage of *serious, non-routine cases* (by which I mean *contested* cases) without requiring disclosure in the great majority of pro-bono matters.

I am very familiar with the work of the Eviction Defense Project in Milwaukee County and in a large number of cases the volunteer's legal services to a tenant consists of negotiating a stipulation with a landlord since over 90% of eviction actions are based on nonpayment of rent. For stipulated dismissals there should be no requirement to put the volunteer attorney's name on the document or in the court record unless specifically requested by the opposing party.

As an example of where a pro bono attorney's name *should be and was* disclosed I am attaching an answer and counterclaim filed by an Eviction Defense Project volunteer in Milwaukee County, *Wisniewski vs. Gray, 19-SC-30729*. This was a commercial eviction and the plaintiff, who was initially unrepresented, was entitled to know the name of counsel who drafted a counterclaim against him. [The tenant ultimately failed to comply with a stipulation, a writ was issued and a money judgment for \$3,053 was entered in favor of the landlord].

V. Wisconsin's Open Records Policy Should be Considered.

As the Court considers the Petition it should be mindful of Wis. Stats § 19.31:

“Declaration of policy. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”

Attorneys are “officers of the court” and when they perform a function in the public sphere, especially in contested matters, not just a litigation opponent but also the media and the general public should be entitled to know their name.

Respectfully submitted,

Heiner Giese

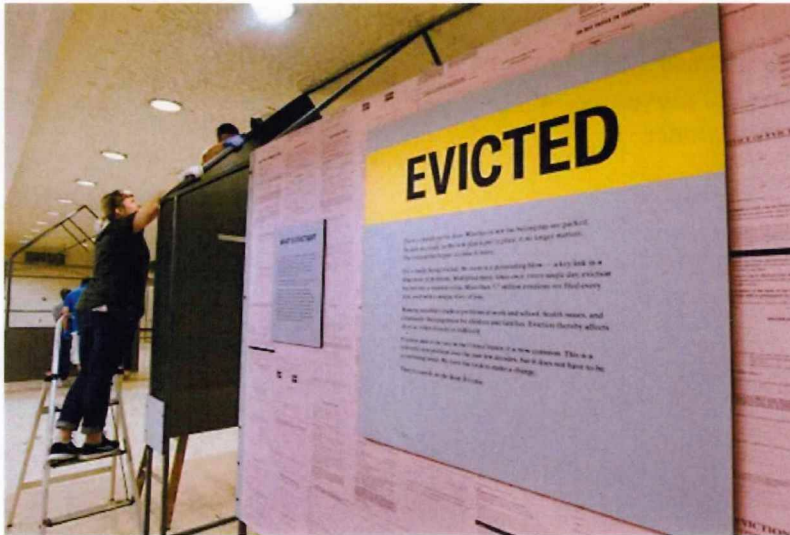
cc: (via email only)

Atty James E. Goldschmidt, Quarles & Brady LLP
Atty Dean R. Dietrich, State Bar Board of Governors
Julie Ann Rich, Supreme Court Commissioner
Lisa Roys, State Bar

FOR SUBSCRIBERS

Lawyers urge justices to strike landlord-tenant law, saying it has chilling effect on representing poor

Cary Spivak and Mary Spicuzza, Milwaukee Journal Sentinel | Published 5:00 a.m. CT June 24, 2019 | Updated 4:54 p.m. CT June 24, 2019



Melissa Muller, left, gallery director for the "Evicted" exhibit, and Sean Barbe, designer, set up the show June 11, 2019, at Mobile Design Box, 753 N. 27th St. Milwaukee will be the first stop on the exhibit's national tour, a visualization of Matthew Desmond's Pulitzer Prize-winning book about how the effects of eviction can destabilize entire communities. The exhibit will be on view through Sept. 30. (Photo: Angela Peterson, Milwaukee Journal Sentinel)

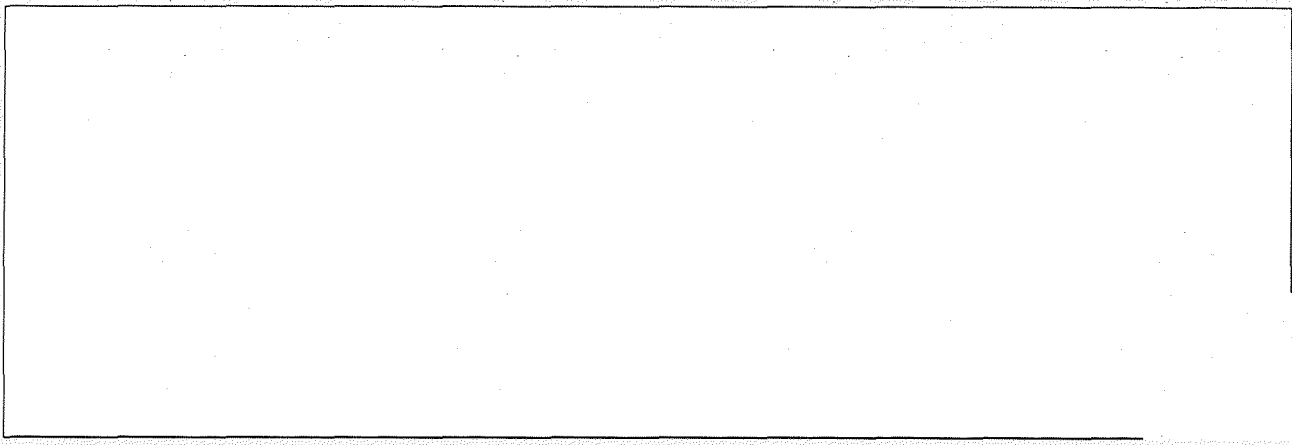
A group of prominent lawyers is urging the state Supreme Court to strike down a portion of landlord-tenant law they say prevents attorneys from volunteering to help low-income renters and others.

The [new law](https://www.jsonline.com/story/news/local/milwaukee/2018/05/25/lawyers-want-help-poor-tenants-facing-eviction-could-stop-them/588480002/) ([/story/news/local/milwaukee/2018/05/25/lawyers-want-help-poor-tenants-facing-eviction-could-stop-them/588480002/](https://www.jsonline.com/story/news/local/milwaukee/2018/05/25/lawyers-want-help-poor-tenants-facing-eviction-could-stop-them/588480002/)) requires attorneys who volunteer at legal clinics to list their names and bar numbers on documents they help prepare for indigent people seeking free legal services.

The 2018 law reversed a 2014 state Supreme Court rule that allowed what is known as ghostwriting — that is, anonymously helping prepare documents at free legal clinics such as the Eviction Defense Project.

The measure is one of more than [100 changes in landlord-tenant law enacted](https://www.jsonline.com/story/news/investigations/2019/06/14/wisconsin-lawmaker-landlords-change-rental-laws-not-favor-tenants-renters-rights/1210327001/) ([/story/news/investigations/2019/06/14/wisconsin-lawmaker-landlords-change-rental-laws-not-favor-tenants-renters-rights/1210327001/](https://www.jsonline.com/story/news/investigations/2019/06/14/wisconsin-lawmaker-landlords-change-rental-laws-not-favor-tenants-renters-rights/1210327001/)) since 2011 by the Republican-controlled Legislature and signed into law by then-Gov. Scott Walker. A Milwaukee Journal Sentinel investigation found the bills — which favored landlords — were championed by a group of lawmakers that double as landlords, including Assembly Speaker Robin Vos, R-Rochester.

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The provision was buried in a bill dealing with an array of housing issues including rules governing emotional support animals, changes in eviction procedures and limits on how cities can conduct inspections.

Lawyers who volunteer at the clinics are concerned that if their names appear on the documents a variety of problems could arise, such as inadvertently hitting a conflict with a client at their firms or being mistaken for the attorney of record on the case.

"This oversight has already had negative consequences for Wisconsin's judicial system," Quarles & Brady attorney Jeffrey Davis wrote last month in a memorandum to the Supreme Court. "The new prohibition on ghostwriting has made many lawyers hesitant about providing assistance" to low-income people representing themselves in court.

The petition (<https://www.wicourts.gov/scrules/1916.htm>) to reinstate the court rule has already generated letters of support from 20 attorneys, nonprofits and well-known law firms, including Godfrey & Kahn, Husch Blackwell and Gimbel Reilly Guerin & Brown.

The Eviction Defense Project (</story/news/blogs/proof-and-hearsay/2017/03/20/milwaukeees-wave-eviction-lawsuits-these-volunteer-lawyers-give-tenants-unexpected-help/98950798/>) was the apparent target of the new law.

The project, created in 2016, provides low-income people facing eviction with free legal services. So far the law has had little effect on the approximately 100 lawyers who volunteer for the group, said project director Raphael Ramos.

Other legal clinics were not so lucky.

"They were trying to address something on the eviction side but then, yes, there was collateral damage," Davis said, explaining that since the law was enacted some attorneys have shied away from volunteering at other legal clinics that deal with more general matters.

Attorneys point to several problems with the new law.

Much of the work at the clinics is simply helping indigent people prepare legal documents or arguments. Ramos, Davis and others expressed fear that if volunteer lawyers sign documents, court officials and recipients of this one-time legal help will view them as their personal attorneys and contact them in the future.

"Ghostwriting, a discrete and context-bound task, provides attorneys with a manageable way to provide legal services for the needy," Davis wrote in the memo to the court.

Lawyers also point out that they lose control of documents they help prepare at a volunteer clinic.

"You're putting your name and bar number on a document that could be modified, could be changed after the fact," Ramos said.

There is also a concern of unintentionally walking into a conflict of interest involving a client of their law firm.

"Some lawyers stopped drafting anything for clients," Mary Ferwerda, executive director of the Milwaukee Justice Center, wrote in a letter to the Supreme Court. "Others, more than we anticipated, stopped volunteering altogether."

The Justice Center is part of the [Marquette Volunteer Legal Clinics \(https://law.marquette.edu/mvlc/services-hours-locations\)](https://law.marquette.edu/mvlc/services-hours-locations), which serves nearly 2,500 clients annually, the vast majority of whom are living in poverty.

Milwaukee Mayor Tom Barrett said he's not surprised the law has had a chilling effect. "To me, that's another example of an overreach," said Barrett, who has been sharply critical of many of the changes in landlord-tenant law.

A recent Journal Sentinel [investigation \(/story/news/investigations/2019/06/14/wisconsin-lawmaker-landlords-change-rental-laws-not-favor-tenants-renters-rights/1210327001/\)](/story/news/investigations/2019/06/14/wisconsin-lawmaker-landlords-change-rental-laws-not-favor-tenants-renters-rights/1210327001/) noted that about one out of five lawmakers who voted on the five major bills passed since 2011 are landlords or property managers.

[Vos owns \(/story/news/investigations/2019/06/14/robin-vos-says-hes-good-landlord-some-tenants-renters-dispute-that/1275356001/\)](/story/news/investigations/2019/06/14/robin-vos-says-hes-good-landlord-some-tenants-renters-dispute-that/1275356001/) about two dozen rental properties worth nearly \$4 million in Whitewater. Vos sponsored one of the bills and as the Assembly's gatekeeper decides which bills advance to the floor for a vote.

Heiner Giese, lobbyist for the Apartment Association of Southeastern Wisconsin, takes credit for proposing the change in the law related to disclosures on legal work.

"If an attorney is going to give advice, and possibly give wrong advice, they should stand behind that advice," said Giese, who is also an attorney.

Giese added the public has a right to know the names of lawyers involved in the cases.

As a compromise, Giese suggested only requiring the disclosures in contested cases, such as those that end up in court or other proceedings.

Ramos said the suggestion would accomplish little since all attorneys already have to disclose their identities when appearing in court. Also, he said, lawyers helping prepare documents early in the process may not know which legal actions will end up being contested later on.

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Nakedly partisan, rhetorically vicious': Trump impeachment is echo of Clinton's from two decades ago (<https://www.jsonline.com/story/news/politics/wisconsin-voter/2019/12/23/clinton-and-trump-impeachments-rhetoric-and-divisions-sound-familiar/2713733001/>)

Bice: Supreme Court candidate Karofsky says in video she will pursue social justice. Conservatives are outraged.

(<https://www.jsonline.com/story/news/investigations/daniel-bice/2019/12/23/supreme-court-candidate-promotes-social-justice-agenda-video/2700595001/>)

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TO: Wisconsin Assembly Committee on Housing and Real Estate
FROM: Raphael Ramos, Director of Eviction Defense Project, Legal Action of Wisconsin, and Abby Bar-Lev Wiley, Legislative & Compliance Director, Legal Action of Wisconsin
DATE: January 7, 2020
RE: Impact of AB 705 on Legal Action of Wisconsin's Pro Bono Services

Thank you for the opportunity to provide comments on AB 705.

Legal Action of Wisconsin ("LAW"), in operation since 1968, is the largest provider of free, high-quality, civil legal aid to low-income individuals in Wisconsin. Legal Action aims to deliver top-quality, personalized legal service to every client it serves. With offices in six cities, Legal Action represents low-income individuals and families, the elderly, persons with disabilities, veterans, and survivors of violence in 39 southern Wisconsin counties. We represent clients across five priority areas: housing, employment, family law, public benefits, and consumer protection. In each of these areas, we seek to secure and protect our clients' rights, help them achieve economic stability and self-sufficiency, and ensure equal justice under the law. We represent clients facing uninhabitable living conditions, domestic abuse survivors seeking orders for protection, families barely scraping by who in need of state assistance, consumers whose lives are torn apart by predatory lenders, workers who seek simply to work in a safe environment free of discrimination. We run pro bono legal clinics where individuals facing eviction from their homes can receive brief legal service or guidance from volunteer attorneys.

AB 705 would harm the indigent individuals seeking legal help through Legal Action's pro bono clinics. By furthering the existing barriers for private attorneys seeking to volunteer their time and creating additional confusion to the process, AB 705 would mean that more individuals and families would face homelessness and the prospect of sleeping in the streets.

Legal Representation is Critical for Individuals Facing Dire Circumstances

At Legal Action, we see every day how critical legal representation is in the lives of our clients and the low-income individuals and families seeking our volunteer legal services through our clinics. We see individuals who are facing impending eviction and homelessness because, for one reason or another, they cannot afford a full rent payment that month. Someone gets sick and require medical attention that results in bills that suck up the monthly budget, an employer downsizes and a mother loses her job, the car that a father relies on to get to his job breaks down and he has to pay for repairs or risk losing his job. When living paycheck to paycheck, even one unexpected expense can easily spiral into serious

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consequences—losing a job, or facing eviction, can lead to homelessness that can cause or deepen poverty.

Often, these individuals are able to pay back their rent, but they need a payment schedule that they can stick to. Sometimes, individuals are living in squalid, completely neglected conditions from landlords who refuse to repair the gaping hole in the roof, fix the plumbing so the toilet can flush, or fix the heat so families aren't freezing in their homes. Sometimes, there is no legal basis for an eviction at all, and a landlord is discriminating against a tenant for reporting a violation to the city, or simply has a bad relationship with the tenant. The pro bono attorneys volunteering through our Eviction Defense Project help individuals facing eviction by creating a realistic payment plan, negotiating conditions, or identifying legal defenses to illegal evictions and representing our clients at hearing and at trial. These services are critical—the Constitution guarantees an attorney for indigent criminal defendants, but there is no such promise for individuals in civil court fighting to stay in their homes.

AB 705 will negatively impact the Eviction Defense Project and the individuals seeking legal help through the clinic. The bill would create unnecessary barriers to attorneys looking to provide pro bono services, further limiting indigent individuals' access to justice who already face a dramatic power imbalance with few resources. Being evicted not only leads to homelessness, it also creates a public record of eviction that makes it almost impossible to find new housing.

Wis. Stat. § 802.05(2m) is Fundamentally Flawed and Has Had a Chilling Effect on Pro Bono Representation

As a starting point, it is important to note that Wis. Stat. § 802.05 has its origins in a Wisconsin Supreme Court rule that was adopted by the court as part of a thorough and deliberate analysis of limited scope representation. The Court adopted the rule petition in 2014 and authorized attorneys to represent clients in a limited scope capacity and draft documents for them with the notation that the document was prepared with the assistance of a lawyer (a practice referred to hereinafter as “ghostwriting”).

In 2018, 2017 WI Act 317 was passed which modified the ghostwriting provision and imposed an obligation on attorneys to include their name and bar number. However, in stark contrast to the years of analysis undertaken by the Court in evaluating the 2014 ghostwriting petition, there is no indication that the identification obligations imposed in Act 317 were prefaced with the same level of consideration and research. As a result, we have seen a number of problems arise in the aftermath of Act 317's passage that negatively impact the ability of pro se individuals to obtain legal representation.

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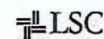
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The identification of an attorney's name and bar number on a document that they draft for a client that they are not representing long term creates myriad issues. As echoed by many other organizations speaking out in opposition to AB 705, the elimination of ghostwriting has had a chilling effect on pro bono participation and volunteering. Since Act 317 took effect, Legal Action and similar organizations have witnessed previous volunteers refusing to provide pro bono representation entirely—reducing participation in clinical programs—or refusing to draft documents due to the changes in law. The reason for that is manifold: the identification of an attorney's name and bar number on a document they draft during brief service creates confusion for the court, the client, and the opposing party by raising the specter of possibility that the attorney identified on the document is representing long term. This discourages volunteer participation in clinics due to the potential for complications that would arise long after the brief service has come to an end.

Wis. Stat. § 802.05(2m) has raised a multitude of questions from those volunteers concerning their obligation to identify name and bar number on documents created in a limited scope context for otherwise self-represented clients. Some identified substantive concerns tied to the work product itself, as they are required to identify their name and bar number on a document that could be modified after leaving their control. Others raised professional concerns tied to misidentification as ongoing counsel, requiring communication and efforts beyond their initial pro bono commitment and creating ethical dilemmas tied to responsibilities to update former clients that they may be unable to contact. Yet others identified the inconsistencies between the Statute and the Rules of Appellate Procedure and Rules of Professional Conduct, which, consistent with the ghostwriting provision as originally authorized by the Wisconsin Supreme Court, do not require identification.

These, and other, complications discourage volunteer attorneys from providing pro bono services and, in so doing, decreases the availability of free legal resources to those who are otherwise unable to access them. Furthermore, the identification obligations seem to serve little to no purpose. Attorney accountability can be, as it always has been, addressed through complaints to the courts and Office of Lawyer Regulation. It is important to note that we are unaware of a single instance where anyone has filed an ethical complaint regarding one of our volunteers or clinics in connection with the abuse of ghostwriting and other clinics told us the same with respect to their programs.

Given the vast number of people who cannot afford an attorney, the chilling effect of the identification obligations has been profound and hampers the ability of Legal Action and other pro bono service providers to provide legal representation to the poor and under-represented.

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AB 705 Does Not Improve Current Law—It Creates More Confusion and Further Chills Representation

AB 705 does not remedy any of the issues identified above and further complicates the issue for little to no benefit.

AB 705 removes the default obligation for identifying the name and bar number of the drafting attorney on the pleading, but requires that the clerk add that information at the request of the opposing party in “contested matter[s]” and that the name and bar number be entered into the clerk’s minutes. These amendments do not provide any meaningful changes to the current law. Neither the bill nor any relevant statute defines “contested matter.” Therefore, any case could be considered “contested,” and as a result, the name and bar number of every pro bono attorney providing brief service could be required on case documents. Essentially then, this bill does little to change the scope of the current law; it only makes its scope of application more confusing.

In addition to being confusing, the proposed amendment is, as a practical matter, unworkable and has the potential to discourage unrepresented parties from seeking out counsel. Pro bono attorneys are volunteers helping in a limited capacity, and do not take on the individuals they help as clients. The relationship ends after the brief service has been provided. However, under AB 705, an opposing party can request the attorney’s name and bar number *after* the service has been provided, even though the individual would not have a client relationship with the volunteer lawyer. Thus, the clerk of courts could bear the responsibility of trying to identify the name and bar number of the drafting attorney. The only viable source of that information would then be the pro se litigant. Because most limited scope representation is fleeting in nature, there is a high likelihood that a pro se litigant may not recall the name, and would almost certainly not know the bar number, of the attorney that drafted their documents. The information would be difficult for the clerk and/or pro se litigant to obtain. Depending on what the ramifications are for failing to provide this information, it is conceivable that a pro se litigant would view themselves as better off drafting documents themselves rather than having to shoulder this informational burden. Discouraging people from obtaining representation would undercut the rights of the poor and undermine the goals of the Supreme Court when it authorized limited scope representation and ghost writing in 2014.

Finally, AB705 does little to address the substantive concerns of potential pro bono volunteers and the chilling effect on pro bono participation. It is also important to remember that while these concerns have arisen already, the long-term chilling effect on pro bono associated with Wis. Stat. § 802.05(2m), both in its current form and if modified in accordance with AB 705, should not be forgotten. The

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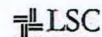
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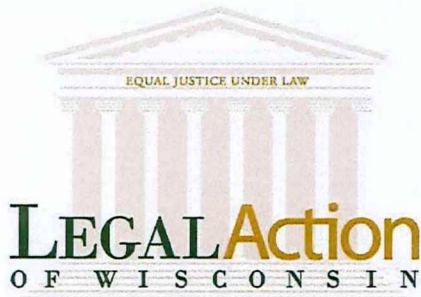
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totality of the harmful impacts associated with the identification obligations may not yet be realized as future volunteers could opt not to provide pro bono representation due to the current language in the statute; the language in AB 705 would not make this problem better—it would make it worse.

Conclusion

AB 705 provides no necessary changes to the law, and only adds to the confusion that already exists. Indigent individuals in Wisconsin deserve legal representation, especially when the consequences are as drastic as homelessness. Through our pro bono legal clinics, Legal Action works with volunteer attorneys to provide brief service to individuals facing evictions. The changes that AB 705 would make to that process would create new confusion, therefore creating additional barriers for individuals seeking access to justice.

Sincerely,

Raphael Ramos
Eviction Defense Project Director
Legal Action of Wisconsin

Abby Bar-Lev Wiley
Legislative & Compliance Director
Legal Action of Wisconsin

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