



---

# RON TUSLER

STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

**Testimony for Assembly Bill 723  
Public Hearing  
Assembly Committee on Family Law  
December 1, 2021**

Chair Magnafici and fellow members of the Assembly Committee on Family Law: thank you for hearing this bill today. The bill before you is Assembly Bill 723 (AB 723) relating to procedures for *de novo* review in actions affecting the family. This bill establishes specific procedures and parameters for seeking *de novo* review of a court commissioner's determination, order, or ruling in an action affecting the family.

Our Court Commissioners are appointed by our judges, not elected. As a result, a Court Commissioner's order can be appealed to an elected judge, no questions asked. This appeal is called a *de novo* appeal. "De novo" is Latin for "like new." The appeal is not just on the contested issue, it is a total redo. This appeal, or threat of appeal, is how we maintain accountability in our system.

Current law grants either party the right to request a *de novo* review, however, there is no language in statute defining the parameters of the review, the timing of the request, the timely scheduling of the review, or the standing to request review. In response to the lack of statutory guidance, most counties have adopted local court rules to address these issues which vary as there are over 27 different versions of local court *de novo* rules in the state.

The *de novo* hearing should be used only when the aggrieved party believes a mistake has been made. So as to prevent abuse of the process, this bill requires the aggrieved party to attend the *de novo* hearing. If party cannot make the effort to attend, then they are probably abusing the system.

Further, the bill allows the Court Commissioner's decision to be binding law until the *de novo* hearing can occur. This gives the party who did not request the *de novo* some relief until an elected judge can review.

Finally, the bill gives deadlines that will help the non-requesting party know when the Court Commissioner's decision is final. It requires the party seeking *de novo* to ask within 20 days and it requires an elected judge to hear the *de novo* within 60 days of the demand.

Our Court Commissioners do a great job trying to reduce our judicial caseloads. While *de novo* hearings are an important check to our system, this bill protects the nonmovants from *de novo* abuse and sets uniform timelines, and sets clear expectations.



STATE SENATOR

**Eric Wimberger**

DISTRICT 30

## **Testimony on Assembly Bill 723**

*Assembly Committee on Family Law*

*Wednesday, December 1, 2021*

Chairperson Magnafici and Committee Members,

Thank you for taking the time to hear testimony on Assembly Bill 723 which will establish specific and uniform procedures and parameters for seeking “de novo” review of a court commissioner’s order.

A “de novo” hearing takes place when a party of a divorce procedure requests a new hearing before a family court judge when the original hearing was held in front of a family court commissioner. Currently, there is not language in state statute defining many of the parameters which has resulted in different rules depending on which county the proceedings take place.

To address the lack of uniformity in “de novo” hearings, we have worked with the State Bar of Wisconsin to standardize the process statewide.

Under the bill, a party must file a motion for a hearing de novo within 20 calendar days of the court commissioner's oral ruling or, if there was no oral ruling, within 20 calendar days of the mailing of the commissioner's written decision or order. With the exception of certain rulings involving relocating a child's residence, the court must hold a hearing de novo no later than 60 days from the date the motion for a hearing de novo is filed.

The bill also requires a party that requests a “de novo” review to actually attend the hearing, and that the a notice of requesting the hearing does not automatically stay the commissioner’s order.

Thank you for taking the time to hear our testimony this morning.

State Capitol • PO Box 7882  
Madison, WI 53707-7882  
(608) 266-5670 • (800) 385-3385  
Sen.Wimberger@legis.wi.gov

## FAMILY LAW SECTION

---

To: Members, Assembly Family Law Committee  
From: Family Law Section, State Bar of Wisconsin  
Date: December 1, 2021  
Re: Support for AB 723 – standardize de novo process in family court

---

The State Bar of Wisconsin's Family Law Section Board requests your support of AB 723, bringing uniformity to the family court *de novo* process throughout Wisconsin.

*De novo* hearings occur when one of the parties to a divorce files a request for a new hearing before a family court judge, typically seeking a “do over” from the original hearing that was held in front of a family court commissioner. In a *de novo* matter, the judge hears arguments and receives evidence as if the original hearing never took place.

Current law grants either party the right to request a *de novo* review of the family court commissioner's order or ruling. However, there is no language in statute defining the parameters of the review, the timing of the request, the timely scheduling of the review, or standing to request review.

In response to the lack of statutory guidance, most counties have adopted local court rules to address these issues. However, these local rules vary, sometimes significantly, and as a result, the inconsistency from county-to-county creates difficulties for the parties, and in particular pro se litigants, which make up a majority of family court litigants, when proceeding with a *de novo* review. In fact, there are over 27 different versions of local court *de novo* rules in the 72 counties in the state. In addition, this confusion leads to challenges for attorneys who practice in multiple counties and need to comply with multiple versions of the process, a lack of clarity as to when a request must be made, and the need for a timely resolution of the review before the presiding judge.

To resolve these issues, the Family Law section is proposing to standardize the *de novo* process statewide. First, this proposal reaffirms either party's right to a *de novo* review, while outlining the requirements that a party must meet in order to exercise that right, and clarifies that a pending *de novo* request does not prevent the court commissioner's ruling from taking effect in the interim unless a stay is granted.

AB 723 also establishes a timeframe in which a *de novo* must be filed, no more than 20 calendar days after the court commissioner's decision, as well as instructs the court to hold the *de novo* hearing within 60 days of the motion being filed. Establishing these timeframes ensures that the matter is diligently pursued, recognizes the need, especially in family cases, of swift and firm resolutions of matters affecting the families, and allows the family court action to progress in an efficient and effective manner.

The ambiguity of current statute is problematic. Of all the areas of law, family law, in particular, needs clearly established procedures to avoid undue confusion during the difficulties of a familial dispute. These modifications will provide the clarity needed to allow the action to continue smoothly and without undue delay. The Family Law Section Board respectfully requests your support of AB 723 to standardize the *de novo* process throughout the state to ensure the aforementioned problems are resolved and there is consistent application of the law for Wisconsin families.

For more information, please contact our Government Relations Coordinator, Lynne Davis, [ldavis@wisbar.org](mailto:ldavis@wisbar.org) or 608.852.3603.

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*



STATE BAR OF WISCONSIN