
In the Matter of the Petition to Create
Supreme Court Rule SCR 40.065 Relating to
Immunity for Persons Who Supply Information
Relating to Applicants

PETITION

To: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David Prosser, Jr.
Justice Patience D. Roggensack
Justice Louis B. Butler
Justice Annette Kingsland Ziegler

Filed with the Clerk of Court David R. Schanker
Clerk of Supreme Court Office
110 East Main Street, Suite #215
Madison, WI 53703

The Board of Bar Examiners, by its director John E. Kosobucki, hereby petitions the Supreme Court of Wisconsin for an order creating Supreme Court Rule 40.065, relating to immunity for persons who supply the board with information about applicants for admission to the bar, and for the board itself and for members of the board's staff. If the Court issues this order, SCR 40.065 will read as follows:

PROPOSED AMENDMENT:

SCR 40.065 Immunity

(1) Any person or entity providing to the Board or its members, employees or agents, any information, statements of opinion, or documents regarding an applicant or potential applicant is absolutely immune from civil liability for such communications.

(2) The Board and its members, employees, and agents are absolutely immune from civil liability for conduct and communications relating to their duties under these Rules or the Board's policies and procedures.

JUSTIFICATION:

In evaluating the character and fitness of applicants for admission to the Wisconsin bar, the board and its staff rely in part on persons with knowledge of the applicant, including former employers and persons identified as references. These witnesses' responses to board questionnaires are useful only when they are truthful, candid and complete.

However, witnesses are often reluctant to make truthful answers because they fear the applicant may bring legal action against them for disclosures that are unflattering, or worse.

Therefore, the board believes a rule like the proposed SCR 40.065 can usefully quiet these witnesses' fears of civil liability. The rule would accord those who supply information to the board with the same absolute immunity that attaches to witnesses in court proceedings. See, *e.g.*, *State v. Cardenas-Hernandez*, 219 Wis. 2d 516, 537, 579 N.W.2d 678 (1998); *Spoehr v. Mittelstadt*, 34 Wis. 2d 653, 661, 150 N.W.2d 502 (1967).

Of lesser importance is section (2) of the proposed rule which would accord the same immunity to the board and its staff in considering applicants' character and fitness. This level of immunity is also similar to the immunity accorded to judges, lawyers and other participants in litigation.

The proposed rule is adapted from Rule 12 of the Minnesota rules for admission to the bar.

Dated this 31st day of January, 2008.

Respectfully submitted,

// Original Signed //

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