

**ISSUE**

May a judge appoint his or her father as a supplemental court commissioner in the same county in which the judge presides?

**ANSWER**

No.

**FACTS**

The judge serves in a rural county which has a very limited number of practicing attorneys. The judge wishes to appoint the judge's father as a supplemental court commissioner under Wis. Stat. Sec. 757.675(1). The father is a licensed attorney and practices law and maintains his office in the same county.

**DISCUSSION**

The Committee concludes that the issue presented is governed by the provisions of SCR 60.03(2).

*SCR 60.03* states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Subsection (1) of this Rule provides:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Subsection (2) of this Rule provides:

A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey the impression that they are in a special position to influence

the judge. A judge may not testify voluntarily as a character witness.

Supplemental court commissioners may, on their own authority, exercise a variety of powers specified in the statute, as well as other ministerial duties required by the court. They serve at the will of the appointing judge and may be removed by the judge with or without cause.

Attorneys who serve as supplemental court commissioners commonly note on their letterheads that they hold that appointment. This serves to advertise their availability to perform the services which are authorized by statute. It may also be inferred that it is to benefit from the prestige which accompanies the appointment to a quasi-judicial office.

Supplemental court commissioners customarily collect compensation for performing services such as officiating at marriage ceremonies under Wis. Stat. Sec. 757.675(2)(a) and conducting supplementary hearings under Sec. 757.675(2)(h). In addition, Sec. 757.675(6) provides that they “shall collect fees prescribed in s. 814.68(1).” Sec. 814.68(1) (b) provides that for various specified duties they shall collect “reasonable compensation as fixed by the court but not more than the hourly equivalent of the salary of a judge of the court.”

SCR 60.03(1) sets the standard for dealing with the public’s perception of the integrity and impartiality of the judiciary. The test for the appearance of impropriety is the perception which the conduct would create in reasonable minds. These appearances are viewed from the perspective of the public which expects a high standard of conduct on the part of judges.

The requesting judge emphasizes that the proposed appointment is not of any significant benefit to the appointee, but is primarily for the convenience of the county’s citizens and attorneys. As noted, however, the appointment must be examined from the perspective of the public. Reasonable people could easily believe that the judge’s decision to appoint the judge’s father was influenced by the family relationship. They could also believe that the judge’s ability to objectively evaluate the commissioner’s performance to determine whether the appointment should continue would be impaired by that relationship.

The requesting judge suggests that this issue is controlled by SCR 60.04(2).

**SCR 60.04(2)(c)** states:

(2) In the performance of the duties under this section, the following apply to administrative responsibilities:

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(c) A judge may not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge may not approve compensation of appointees beyond the fair value of services rendered.

The comment to this section notes that the appointees to which it applies include commissioners. The requesting judge suggests that the three conditions of the section are satisfied. He states that the appointment of a commissioner is necessary to meet the needs of the county's citizens and attorneys, that the judge's father is well qualified for the position, and that any compensation which would be earned would not be paid by the court. But the requesting judge overlooks the clear admonition in SCR 60.04(2)(c) that "[A] judge shall avoid nepotism and favoritism."

The Committee concludes that even if an appointing judge may conclude that grounds exist to make the appointment and the appointee would be qualified to hold the position, the provisions of SCR 60.03(2) would trump the provisions of SCR 60.04(2)(c) where the relationship of parent and child exists between the appointee and the judge. The risk that the public would perceive that the family relationship influenced the appointment is great. It might be said that the likelihood of such a perception is almost inescapable. That perception would undermine public confidence in the integrity and impartiality of the judiciary and, thus, create the appearance of impropriety.

### **CONCLUSION**

The Committee concludes that a judge may not appoint the judge's father as a supplemental court commissioner in the same county in which the judge presides.

### **APPLICABILITY**

This opinion is advisory only. It is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee and is limited to the questions arising under the Supreme Court Rules, Chapter 60, *Code of Judicial Conduct*. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 12-1 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 12<sup>th</sup> day of April, 2012.

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The Honorable J. Mac Davis  
Chair