

SUPREME COURT OF WISCONSIN

In the Matter of the Amendment of
the Supreme Court Rules: SCR
Chapter 60 - Code of Judicial Conduct

ORDER
No. 95-05

In its July 1, 1996 opinion repealing and recreating the Code of Judicial Ethics, chapter 60 of the Supreme Court Rules, effective January 1, 1997, the court invited members of the judiciary and other judicial officers governed by the Code, as well as the public, to file comments with the court by November 1, 1996 expressing their concerns with the effectiveness of the new Code and potential problems in its enforcement. The court has received and carefully considered the comments that have been filed and has determined that some modification of the Code is warranted prior to its effective date. The court has determined that additional modification of the Code may be warranted after further consideration and, in some cases, following notice and the holding of a public hearing.

The court does not address those comments that question the applicability of certain provisions of the Code to specified conduct, as they present questions or concerns that properly are the subject of a request for an opinion, with a full exposition of pertinent facts, from the Judicial Ethics Advisory Committee the court will appoint shortly.

IT IS ORDERED that, effective the date of this order, chapter 60 of the Supreme Court Rules, as repealed and recreated by the July 1, 1996 order of the court, is amended as follows:

1. The title of SCR chapter 60 is amended to read: CODE OF JUDICIAL CONDUCT and Code of Judicial Ethics, wherever it appears in SCR chapter 60, is amended to read Code of Judicial Conduct.

2. SCR 60.01(3) is amended to read:

(3) "Court personnel" means ~~the clerk of court and sheriff department employes providing staff services to the court~~ staff, court officials and others subject to the judge's direction and control, including judicial assistants, reporters, law clerks, and bailiffs. "Court personnel" does not include the lawyers in a judicial proceeding.

3. The Comment to SCR 60.03(2) is amended to read:

COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. As to the acceptance of awards, see SCR 60.05(4)(e)1.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Such a letter should not be written if the person who is the subject of the letter is or is likely to be a litigant engaged in a contested proceeding before the court. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

This subsection does not reach the matter of a judge's endorsement of a candidate for judicial or other nonpartisan elective office. That matter is left for consideration together with other issues involving a judge's political and campaign activity by the committee the court will appoint to study and to make recommendations to the court.

A judge must not testify voluntarily as a character witness because to do so may lend ~~to~~ the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

4. SCR 60.04(1)(g)4. is amended to read:

4. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to ~~mediate or~~ settle matters pending before the judge.

5. SCR 60.04(1)(n) is repealed.

6. The Comment to SCR 60.04(2) is amended to read:

COMMENT

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians, and personnel such as clerks, ~~secretaries~~ judicial assistants and bailiffs. Consent by the parties to an appointment or an award of compensation~~s~~ does

not relieve the judge of the obligation prescribed by SCR 60.04(2)(c).

7. SCR 60.05(4)(c) is repealed and recreated to read:

(c) 1. Except as provided in par. 2, a judge may serve as an officer, director, manager, general partner, advisor or employe of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety, or otherwise violate any provision of this chapter.

2. A judge may not serve as an officer, director, manager, general partner, advisor or employe of any business entity affected with a public interest, including a financial institution, insurance company, and public utility, and may not participate in or permit the judge's name to be used in connection with any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lends the power or prestige of office to promote a business or commercial venture.

COMMENT

A judge may participate in a business not affected with a public interest if that participation does not conflict with the judge's judicial duties, create the appearance of impropriety, or violate any other provision of this Code. For example, a judge may be prohibited from participation if the business entity frequently appears before a court in the jurisdiction in which the judge serves or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participation if the judge's participation would involve misuse of the prestige of office.

As provided in SCR 60.07(2), sub. (4)(c) does not apply to a judge serving on a part-time basis.

8. SCR 60.05(4)(d) is amended to read:

(d) A judge shall manage the judge's investments and other financial interests so as to minimize the number of cases in which the judge's recusal or disqualification is required. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

9. The Comment to SCR 60.06(1) is amended to read:

COMMENT

This rule provision derives from former SCR 60.05, which was considered necessary because of the possibility that a candidacy for an office to take effect after the expiration of the judicial term would not be barred by former SCR 60.04. It was felt that the appeal to the electorate by a sitting judge for a nonjudicial office was inherently in conflict with his or her duty to serve impartially all of the people.

This provision is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

10. The Comment to SCR 60.06(2) is amended to read:

COMMENT

As an individual, a judge is entitled to his or her personal view on political questions and to rights and opinions as a citizen. However, as a member of Wisconsin's nonpartisan judiciary, a judge must avoid any conduct which associates him or her with any political party. This rule does not preclude a judge from attending a political meeting as a member of the public, but he or she shall not attend as a participant.

This provision derives from former SCR 60.14 and is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

11. The Comment to SCR 60.06(3) is amended to read:

COMMENT

As provided in SCR 60.07(2), SCR 60.06 does not apply to a judge serving on a part time basis. This provision derives from former SCR 60.15 and is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

12. SCR 60.06 (4) is created to read:

(4) Solicitation or acceptance of campaign contributions. A judge or candidate for judicial office shall not personally solicit or accept campaign contributions.

COMMENT

This provision does not prohibit reasonable financial contributions to a voluntary campaign committee in behalf of a judicial candidate. The nonpartisan elective process as now constituted is an expensive one, and until other means of conducting and financing judicial elections are devised, this provision should be so construed.

This provision and its Comment derive from former SCR 60.10 and 60.11 and is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

13. SCR 60.07(2) is amended to read:

(2) A judge who serves on a part-time basis, including a reserve judge, a part-time municipal judge and a part-time court commissioner, is not required to comply with the following: SCR 60.05(3)(a), (b), (c)1.b., 2.a. and c.,

(4)(a)1.b., (b), (c), (d) and (e), (5), (6), (7) and (8) ~~and~~
~~SCR 60.06.~~

IT IS FURTHER ORDERED that notice of these amendments of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 20th day of December, 1996.

BY THE COURT:

Marilyn L. Graves, Clerk