

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 17-08

In the matter of the amendment to
SCR 32.08 (Reserve Judges)

FILED

SEP 15, 2017

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

The court, on its own motion, has determined that it is appropriate to amend Supreme Court Rule (SCR) 32.08(2) pertaining to reserve judges. Accordingly,

IT IS ORDERED that, effective the date of this order, Supreme Court Rule 32.08(2) is amended to read as follows:

(2) A reserve judge is entitled to ~~the payment of a per diem and~~ reimbursement of expenses incurred in attending judicial education programs as required or permitted by sub. (1) or approved under sub. (3), as well as in attending the annual meeting of the Wisconsin Judicial Conference during the calendar year of actual service, whether or not judicial education credits for attending the annual meeting are claimed.

IT IS FURTHER ORDERED that notice of this amendment be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official

publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 15th day of September, 2017.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*dissenting*). Hereafter, retired judges are not to be compensated for attending judicial education courses that this court requires them to attend to be eligible for appointment as a reserve judge. See order amending SCR 32.08(1).¹ Retired judges are assigned as reserve judges when additional judges are needed to serve as circuit court judges.²

¶2 The rule change stated in the order was adopted in a closed conference without consultation with those currently affected by the order and those currently knowledgeable about the likely consequences of the order.

¶3 The court requires judicial education for retired judges who will be assigned to judicial functions because our legal system is based on the principle of a competent judiciary. The Code of Judicial Conduct explicitly requires that a judge shall "maintain professional competence in" the law. SCR 60.04(1)(b); see also SCR ch. 60, Preamble to the Code of Judicial Conduct. Indeed, justice requires that a judge keep pace with changes and developments in substantive and procedural law.

¹ The Supreme Court Rules (SCR) appear in volume 6 of the 2015-16 Wisconsin Statutes.

² Reserve judges also may take part in the court of appeals.

¶4 Thus, this court requires a retired judge to earn a minimum of 5 credits of judicial education per year, that is, to attend 15 hours of judicial education programs per year, to be eligible to perform judicial assignments as a reserve judge. This court requires active judges to earn 10 judicial education credits each year.

¶5 As a result of this order, a retired judge will not be compensated with per diem payments for time spent attending judicial education programs required to qualify for judicial assignment as a reserve judge.

¶6 It appears these per diem payments were adopted by the court in the early 1990s on the recommendation of a reserve judge committee. When the legislature reduced appropriations to the court system (and imposed an \$11 million lapse), the then-chief judges and the then-Director of State Courts apparently favored in 2014 the elimination of the per diem payments.

¶7 And how did the supreme court's elimination of the per diem payments come about in late 2017 when no lapse exists? In a closed conference room, with the seven justices talking and

listening only to themselves, five justices adopted this amendment reducing the compensation of retired judges.³

¶8 In adopting this order, the justices have not consulted with others in the judicial system who by nature of their positions have currently useful information or are currently explicitly charged with participating with the court in fiscal matters. These include:

- The Director of State Courts.⁴
- The Deputy Director of Management Services.
- District Court Administrators.
- Chief Judges.⁵
- The Committee of Chief Judges.
- The presiding judge in each county.
- Circuit Court Judges.
- The Planning and Policy Advisory Committee (PPAC).⁶
- The Supreme Court Finance Committee.⁷

³ Indeed, these five justices (over my dissent and that of Justice Ann Walsh Bradley) changed court procedure to avoid public input on administrative matters and to bar the public from court decision-making on judicial administrative matters. See IOP IV. B. (revised June 21, 2017).

⁴ See SCR 70.01(2)(a), (b), (e), (f).

⁵ See SCR 70.193(a).

⁶ See SCR 70.14(4)(6),

⁷ See SCR 70.12(5)(6), SCR 70.125.

- The Trial Judges' Association.
- The Reserve Judges' Association.

¶9 The justices could easily have waited to discuss this matter of per diem reserve judge compensation with reserve and active judges at the judicial conference meeting to be held in November 2017, a few weeks from now.⁸

¶10 As I have explained above, my primary concern is with the process used in adopting this order. The chances of making a wise order are, in my opinion, significantly decreased when the decision making process rests on poor or inadequate information.

¶11 Unfortunately, this order quickly follows on the heels of a court order issued on August 17, 2017, barring court funds to support the Judicial Council. That August 17, 2017 order was "precipitous," "made on impulse and without full knowledge of the facts," and made without "consultation with the Judicial Council."⁹ Two orders issued within a month of each other based on poor or inadequate information!

¶12 In addition to process, I am concerned about the substance of the order, that is, I am concerned about the

⁸ See SCR 70.15.

⁹ See Supreme Court Order addressed to Secretary Scott Neitzel, Secretary Department of Administration, dated August 17, 2017, Justice Ann Walsh Bradley dissenting.

beneficial and deleterious effects of this order on the litigants seeking justice in our courts. I would think the best course of action would be a court study and analysis first and action thereafter.

¶13 All existing judicial programs should be evaluated for continued usefulness, and expenditures of taxpayer funds should be decreased to the extent possible. To this end, the court should determine whether the money saved by eliminating the per diem compensation of reserve judges will be used to accomplish a better public purpose than is accomplished by the payment of a per diem.

¶14 Adopting this order with the benefit of adequate facts and after consultation with knowledgeable, concerned persons would avoid any perception that the order is a retaliatory measure taken by the five justices against reserve judges for their bringing Rule Petition 17-01 to this court seeking a change in the rules governing recusal of justices and judges in adjudicating matters.¹⁰

¶15 It appears that monies saved by not funding existing programs may be used to increase the compensation of justices

¹⁰ Recusal is a very controversial topic in this court. The rule petition on recusal was rejected without a public hearing, contrary to the court's usual procedure.

and judges.¹¹ For example, the legislature has been requested to allow funds allotted for salary increases for court staff to be used instead for judicial salary increases.¹²

¶16 In sum, in a one-month period the court has adopted two orders without getting available information and without consulting with those affected by the order and those knowledgeable about the likely consequences of the order.

¶17 The process used in adopting these two orders is not a sign of good things to come! I am dismayed to think that this flawed process might become the way this court will perform its administrative functions in the future.

¶18 For the foregoing reasons, I write separately.

¶19 I am authorized to state that Justice ANN WALSH BRADLEY joins this dissent.

¹¹ To be clear, the court system over the years has made a good case for increased judicial compensation.

¹² The chief justice requested the legislature "to use any general wage adjustment funding calculated for non-judicial court staff [to be used] instead for judicial salary increase." See Legislative Fiscal Bureau Paper #590 to Joint Committee on Finance at 13-14 (May 1, 2017).

