

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. 16-09

In the matter of the petition to amend
SCR 40.05

FILED**SEP 27, 2017**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On November 25, 2016, the Stockbridge-Munsee Community (SMC) by President Shannon Holsey, filed a rule petition asking the court to amend Supreme Court Rule (SCR) 40.05 to allow any legal services with any federally recognized Indian tribe be "counted" for purposes of SCR 40.05, the supreme court rule governing admission to practice law in Wisconsin based on an applicant's admission to practice law and active practice of law in a qualifying jurisdiction.

The issue, essentially, is that the plain language of the existing rule refers to the practice of law "in a state or territory, the federal government or the District of Columbia." It does not explicitly encompass federally recognized Indian tribes. See also In re Admission of Helgemo, 2002 WI 57, 253 Wis. 2d 82, 644 N.W.2d 912.

The court discussed the petition at open rules conference on January 12, 2017, and voted to seek additional information from the petitioner and written comment from the Board of Bar Examiners (BBE),

the agency that administers SCR 40.05. Those responses were filed on March 10, 2017 and April 24, 2017. The BBE supported the petition in concept, but suggested different language. The court sent letters soliciting public comment on March 21, 2017. The court discussed the matter in open administrative conference on May 18, 2017, raised some additional questions, and voted to extend the period for written comment and schedule a public hearing. Another letter seeking additional comment was sent July 18, 2017.

The court has received letters in support of the petition: from Wisconsin Governor Scott Walker; Francis Deisinger, then President of the State Bar of Wisconsin, and the State Bar's Indian Law Section; Attorney Michael S. Hines; and the Honorable Eugene Whitefish, President of the Wisconsin Tribal Judges Association. In addition, on April 13, 2017, the Honorable Neal A. Nielsen III, Chair of the Wisconsin State-Tribal Justice Forum (Forum), filed a response expressing support for the petition and on July 21, 2017, sent a letter proposing an amendment to the petition to include service as a tribal judge.

The BBE and the SMC considered the court's questions, accepted the Forum's suggestion, and reached agreement on revised language for the proposal. This agreement was memorialized in a letter dated August 10, 2017, which was placed on the court's rules website. The court conducted a public hearing on the petition on September 25, 2017. Attorney Dennis Puzs, Jr., General Counsel, SMC, presented the petition to the court. BBE Director Jacquelynn Rothstein and Attorney Nicole M. Homer, Chair, Indian Law Section, State Bar of Wisconsin, also appeared in support of the petition. Following the

public hearing the court discussed the matter in closed conference and voted to grant the petition, subject to the revisions agreed upon by the SMC and the BBE, and some additional changes approved by the court.

IT IS ORDERED that:

SECTION 1. Supreme Court Rule 40.05(1)(b) is amended to read:

(b) Proof that the applicant has been substantially engaged in the practice of law in a state or territory, the federal government, ~~or~~ the District of Columbia, or a federally recognized Indian tribe for 3 years within the last 5 years prior to filing application for admission. A lawyer may satisfy this requirement by proof of practice in more than a single jurisdiction and under more than one provision of this rule.

SECTION 2. Supreme Court Rule 40.05(2) is amended to read:

(2) Legal service as corporate counsel or legal service as a trust officer, or lawfully before the courts or administrative agencies of a state or territory, the federal government, ~~or~~ the District of Columbia, or a federally recognized Indian tribe, if conducted in compliance with the rules where the applicant was admitted to practice law, is the practice of law for the purposes of this section.

SECTION 3. Supreme Court Rule 40.05(3)(e) is created to read:

(e) Legal service in any federally recognized Indian tribe.

SECTION 4. Supreme Court Rule 40.05(3)(f) is created to read:

(f) Service as a judge for any federally recognized Indian tribe.

SECTION 5. A Comment to Supreme Court Rule 40.05 is created to read:

COMMENT

Supreme Court Rule 40.05 was amended by S. Ct. Order 16-09, 2017 WI 88 (issued Sep. 27, 2017, eff. Sep. 27, 2017) to broadly include, for purposes of this rule, legal practice associated with federally recognized Indian tribes. The amendment encompasses and is not limited to: counsel employed by a federally recognized Indian tribe; and counsel who are not necessarily employed by a tribe but represent tribal members, practice lawfully before tribal courts, or serve as a judge for a federally recognized Indian tribe.

IT IS FURTHER ORDERED that these amendments to SCR 40.05 are effective the date of this order and shall apply, to the extent practicable, to bar applications pending on this date.

IT IS FURTHER ORDERED that the Comment above is not adopted, but will be published and may be consulted for guidance in interpreting and applying this rule.

IT IS FURTHER ORDERED that notice of the above amendments 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 27th day of September, 2017.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

