



Supreme Court of Wisconsin

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August 10, 2017

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Honorable Neal A. Nielsen, III
WI State-Tribal Chair Justice Forum
Vilas County Circuit Court
330 Court Street
Eagle River, WI 54521

Re: Rule Petition 16-09, In the Matter of the Petition to Amend SCR 40.05

Greetings:

On August 7, 2017, Jacquelynn Rothstein, Attorney Dennis Puzz, and Attorney Laura Vedder engaged in a telephone conference regarding this matter. I regret that I was unable to participate because of an unexpected conflict, but I was pleased to learn that we appear to have consensus on proposed language for an amendment to Supreme Court Rule (SCR) 40.05. BBE Director Rothstein shared a summary of the discussion with me and we agreed that I would write to you to memorialize my understanding of the current proposal, as revised, and set forth the next steps in this process.

As you all know, this petition was filed by Shannon Holsey, President of the Stockbridge-Munsee Community (SMC). The court requested input from the Board of Bar Examiners (BBE). On April 24, 2017, BBE Director Jacquelynn Rothstein filed an initial response to the petition. Following discussion in an open conference, the court asked SMC and BBE to consider certain questions posed by the court and solicited public comment. On April 13, 2017, the Honorable Neal A. Nielsen advised the court, on behalf of the Wisconsin State-Tribal Justice Forum, that the Forum supports the petition. On July 21, 2017, the Judge Nielsen recommended, on behalf of the Forum, the petition add language to SCR 40.05(3)(e) to address the fact that there are instances in which tribes employ attorneys to serve as tribal court judges and this should "count"

as the practice of law. The court also received statements in support of the petition from Governor Scott Walker, Attorney Michael S. Hines, and the State Bar of Wisconsin and its Indian Law Section.

BBE Director Jacquelynn Rothstein, Attorney Dennis Puz, and Attorney Laura Vedder discussed proposed language for the petition during their telephone conference. The petitioners and the BBE accept the Forum's recommended addition to the draft. They propose that the court amend SCR 40.05 as follows, with changes to the existing rule language marked as set forth below:

SCR 40.05 (1) An applicant shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has provided all of the following:

(a) Proof of admission to practice law by a court of last resort in any other state or territory or the District of Columbia.

(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.

(c) Repealed.

(1m) Repealed.

(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.

(2m) Legal service as corporate counsel in Wisconsin under SCR 10.03 (4) (f) is the practice of law for the purposes of sub. (1) (b). Provided a timely registration is filed, all such service conducted prior to filing the registration may be counted for purposes of sub. (1) (b).

(3) The following activities, whether or not conducted in a state or territory, the federal government or the District of Columbia where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. (1) (b):

(a) Service as a judge of a court of record of the United States, any state or territory or the District of Columbia.

(b) Legal service with any local or state government or with the federal government.

(c) Legal service in the armed forces of the United States.

(d) Teaching in any law school approved by the American bar association.

(e) Legal service or service as a judge with any federally recognized Indian tribe.

(4) An applicant who has failed the Wisconsin bar examination shall not be eligible for admission on proof of practice elsewhere.

(6) Repealed.

Briefly, the proposed change in (1)(b), requires that an applicant was "substantially engaged in the practice of law." This is an important component of the current proof of practice rule for all potential admittees. The proposed change in (2) is intended to address the court's concern that the earlier draft might not include lawyers who are not necessarily employed by a tribe but might practice before tribal courts. It encompasses persons practicing "lawfully before the courts" of a federally recognized Indian tribe. And, proposed (3)(e) adds to the list of activities that may be deemed the practice of law for purposes of proof of practice elsewhere, "Legal service or service as a judge with any federally recognized Indian tribe." This encompasses tribal corporate counsel, which was the original intent of this petition.

At present, I anticipate that the court will conduct a public hearing on this matter on September 25, 2017. A scheduling order will issue in late August. If you disagree with or have concerns about the revised proposal, please let me know by August 28, 2017. Once any needed changes are made, I will post a revised draft on the court's rules website with a notation indicating that this draft is acceptable to the BBE, the SMC, and the Forum, and I will submit it to the court for consideration in advance of the public hearing.

Please don't hesitate to let me know if you have questions or concerns.

Very truly yours,

Julie Anne Rich
Supreme Court Commissioner

cc: Ann Olson, Court Operations