

FILED

STATE OF WISCONSIN

MAY 15 2024

IN THE SUPREME COURT

CLERK OF SUPREME COURT
OF WISCONSIN

In the Matter of the
Amendment of SCR 32.08,
Reserve Judges

Memorandum in Support of Petition
to Amend SCR 32.08,
Reserve Judges

The Association of Reserve Judges, by its Executive Committee, has filed a petition asking that the Supreme Court amend Supreme Court Rule (SCR) 32.08 to provide that reserve judges are entitled to payment of a per diem (as well as expenses) for attending required judicial education. Reserve judges are required to earn four judicial education credits each year in order to continue to serve as a reserve judge. In relevant part, SCR 32.08(1) reads:

To be eligible for appointment or reappointment as a reserve judge to perform judicial assignments, a person otherwise entitled to appointment shall earn 4 credits during the calendar year immediately preceding appointment or reappointment. The director of state courts shall determine which judicial education programs may be attended to earn the required 4 credits. One credit is awarded for each half-day of attendance at programs sponsored or approved by the judicial education committee.

Further, SCR 60.04(1)(b) requires that "A judge shall be faithful to the law and maintain professional competence in it." Thus, it is mandatory that reserve judges attend judicial education.

Reserve judges serve a vital role in the court system. Inevitably full-time judges will at times find themselves unable to fulfill their duties for various reasons, including injury or illness of themselves or family members, parental leave, judicial education, vacation, fulfillment of the duties of the district chief judge and others.

Some of these absences are unanticipated, and without the assistance of reserve judges would result in rescheduling cases at the last minute, perhaps even after litigants, lawyers, victims and other witnesses have arrived at the courthouse. Generally, judges' calendars are such that if

cases have to be postponed in the absence of the assigned judge, the delay can be very lengthy. Consequently, Wisconsin has made use of retired judges as reserve judges, to fill the role of absent judges and prevent delay of court proceedings.

Reserve judges serve additional roles. They are often called upon to mentor new judges, sitting on the bench with them as they preside over their first judicial calendars, first jury trial, or other novel experiences for a new judge. In addition, reserve judges are assigned to ease congestion in the court system, or to take on a special assignment when all of the local judges have a conflict of interest. Finally, reserve judges preside over proceedings in a court branch when the assigned judge has retired and a new judge has not yet taken the bench, a gap that may last many months.

Reserve judges served an essential role when the Covid pandemic virtually shut down the court system and resulted in unprecedented backlogs. Some reserve judges were authorized to use CCAP on their home computers so they could conduct proceedings from home. Many counties called on reserve judges to provide jury trials as quickly as possible for long-delayed felony cases. In at least one case, a reserve judge took on a full-time felony calendar in an effort to ease congestion. Clearly, reserve judges are valuable partners in the court system.

Wis. Stat. sec. 753.075 defines temporary and permanent (on assignment for 6 months) reserve judges and requires that temporary reserve judges be paid a per diem equal to 90 percent of the daily salary of a judge of the court to which the reserve judge is assigned. Reserve judges are also paid mileage and other expenses when they serve in a county other than the one where they reside. Payment for attending mandatory judicial education is not addressed by that statute, it is covered by SCR 32.08.

SCR 32.08 has undergone changes over time. On January 1, 1981, the rule first required payment of expenses, but not per diems, for reserve judges to attend judicial education. In 1992, the Director of State Courts petitioned the Supreme Court to amend SCR 32.08 to provide for the payment of per diems for reserve judges attending judicial education. There was a growing shortage of reserve judges at that time, and the per diems were seen as essential to maintaining the necessary numbers of reserve judges. The petition was granted, and for the next 25 years reserve judges were paid a per diem for attending judicial education.

In 2017, the Supreme Court on its own motion amended the rule again, this time to delete the requirement that reserve judges receive per diems when they attend judicial education. There is no public record of why this change was made as it occurred on the vote of five justices in closed conference. See In the Matter of the Amendment to SCR 32.08 (Reserve Judges), 2017 WI 87, September 15, 2017.

The concept that employees must be paid when required to attend job training or education is well-established. Most employees are protected by federal and state laws which require employees to be paid for training and education required for them to perform their jobs. See Title 29 USC sec. 785.27-785.28 and Wisconsin Administrative Code DWD sec. 272.12(2)(f). These provisions may or may not be directly applicable to reserve judges, but surely the Supreme Court of Wisconsin would want to provide the same level of benefit to reserve judges that it provides to other employees of the Wisconsin court system. Because reserve judges are required to devote two days of their time each year to judicial education, or face removal from the reserve judge rolls, it is a matter of basic fairness that they be paid for their time in completing this requirement.

The cost of changing the rule would be modest. As of March 8, 2024, there were 91 reserve judges in Wisconsin. It is unlikely all of them actually receive assignments and attend necessary

judicial education. The Office of State Courts would have that data. The reserve judge per diem is \$592.20. One credit is awarded for attendance at a half-day of judicial education, so two full days of attendance are required to earn the 4 mandatory credits. If all 91 reserve judges attend two days of education the per diem cost would be \$107,780.40 annually. In addition, the State's share of FICA and Medicare might be 10% of that sum. The proposed rule limits reserve judges to receiving compensation for just two days of attendance at approved programs. Thus, if a judge receives the required credits by attending, for example, Criminal Law and Sentencing, he or she will receive a per diem for two days of attendance. If the same judge chooses thereafter to attend the Judicial Conference, expenses will be paid but not a per diem. This limited sum is a small price to pay for fully compensating reserve judges who do so much to keep the wheels of justice rolling smoothly.

The undersigned respectfully request that the court grant this petition.

Respectfully submitted this 15th day of May, 2024,

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Gary Carlson, Reserve Judge

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