

RECEIVED

OCT 24 2008

CLERK OF SUPREME COURT
OF WISCONSIN

SUPREME COURT
STATE OF WISCONSIN

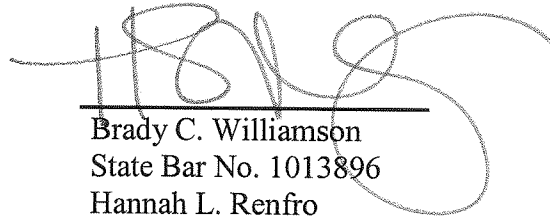
In the Matter of Amending the
Rules of Judicial Conduct

PETITION FOR SUPREME COURT RULE

RULE PETITION NO. 08-25

At the request of the Court, the Wisconsin Realtors Association, Inc. (the "Realtors") re-files the accompanying August 7, 2008 letter to the Court regarding legal developments related to the Realtors' April 8, 2008 motion and memorandum of law, and in support of the Realtors' Petition for Supreme Court, Rule Petition No. 08-25. The Realtors originally filed this letter as part of *Wisconsin Realtors Association, Inc. v. Town of West Point* (No. 06-2761).

Dated: October 24, 2008.



Brady C. Williamson
State Bar No. 1013896
Hannah L. Renfro
State Bar No. 1038324
GODFREY & KAHN, S.C.
One E. Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
(608) 257-3911

Attorneys for Wisconsin Realtors Association, Inc.

AUG 07 2008

CLERK OF SUPREME COURT
OF WISCONSIN

ONE EAST MAIN STREET
POST OFFICE BOX 2719
MADISON, WI 53701-2719
TEL 608-257-3911
FAX 608-257-0609
www.gklaw.com

August 7, 2008

HAND-DELIVERED

David Schanker
Clerk of Court
Supreme Court of Wisconsin
110 East Main Street, Suite 215
Madison, WI 53703

Wisconsin Realtors Association, Inc. et al. v. Town of West Point
Appeal No. 2006AP002761 / Petition for Review pending

Dear Mr. Schanker:

This matter remains pending before the Supreme Court on the petition for review, filed on March 31, 2008, by the Wisconsin Realtors Association. For the petitioner, we are writing pursuant to Wis. Stat. § 809.19(10) to bring to the Court's attention several recent developments:

- On July 30, 2008, the Supreme Court entered a *per curiam* decision in *Donohoo v. Action Wisconsin, Inc.* (Case No. 2006AP396) in which it rejected an effort to disqualify Justice Louis Butler retroactively from his participation in the case based on, among other things, contributions to his campaign committee. The recusal issue, and the Supreme Court's discussion of it, are directly relevant to the issues raised in the Realtors Association's pending "Motion to Determine Judicial Participation or, Alternatively, Petition to Amend the Code of Judicial Conduct" filed in conjunction with the petition for review. Quoting the Judicial Commission with approval, which had dismissed a related request to investigate Justice Butler, the Court in *Donohoo* stated:

There is no case in Wisconsin or elsewhere that requires recusal of a judge or justice based solely on a contribution to a judicial campaign. The amounts of the contributions ... are relatively insignificant. They were legal and well within the maximum for individual contributions in Supreme Court races as established by state law.

Slip op. at 14. That is precisely the point made in the Realtors Association's pending pleading.

- Earlier last month, the petitioners in *Caperton v. A.T. Massey Coal Company, Inc.*, No. 08-22 (U.S., filed July 2, 2008), filed a *writ of certiorari* with the United States Supreme Court. The petitioners argue that a West Virginia Supreme Court Justice, Brent

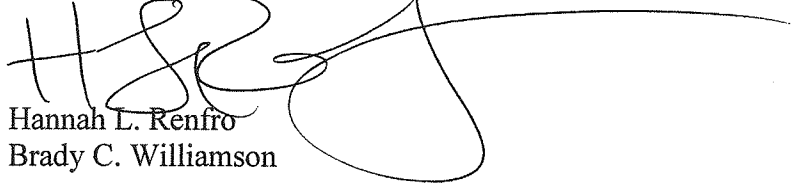
David Schanker, Clerk
August 7, 2008
Page 2

Benjamin, violated their right to due process by refusing to recuse himself in a case before that court because the CEO of one of the opposing (and successful) litigants contributed a substantial amount of money to a Section 527 political organization that expressed its point of view on judicial issues. Last week, Justice Benjamin filed a concurring opinion in which he defended his decision not to recuse. *Caperton v. A.T. Massey Coal Co., Inc.*, No. 33350 (W. Va. July 28, 2008), <http://www.state.wv.us/wvsca/docs/spring08/33350c4.htm>. He raised many of the same points discussed by the Realtors Association in its pleading. In addition, four organizations now have filed *amicus* briefs with the U.S. Supreme Court, asking the Court to take the case to determine the circumstances (if any) under which recusal is constitutionally required based on campaign contributions to a judicial election campaign. Justice Benjamin's underlying decision not to recuse addresses—and any substantive decision by the U.S. Supreme Court case will address—the issues at stake in the Realtors Association's motion.

- On June 20, 2008, the League of Women Voters of Wisconsin Education Fund filed a petition to amend the Supreme Court rules, entitled "In re creation of rules for recusal when a party or lawyer in a case made contribution effecting [sic] a judicial campaign." The petition requests that this Court adopt a rule that, in effect, would prohibit a judge from participating in a matter if his or her campaign committee had accepted a contribution in excess of \$1,000 from anyone associated with the case as a party or as counsel to a party. The Realtors Association's alternative petition, filed almost three months prior to the League's petition, asks that the Court adopt a rule precluding the disqualification of a judge based on a campaign contribution. The League's petition advances a position—without referring to the Realtors' petition—in direct contradiction to the Realtors' motion and its proposed rule. The two petitions to amend the Judicial Code should be consolidated, and we so request with this letter.

We are enclosing seven additional copies of this letter for distribution to the individual members of the Court. Please let us know if you have any questions about this letter or the Wisconsin Realtors Association's matters pending before the Court.

GODFREY & KAHN, S.C.



Hannah L. Renfro
Brady C. Williamson

BCW:aeg
Enclosures

cc: Richard K. Nordeng (HAND-DELIVERED)
Melanie G. Ramey

3132470_1