

**In re Matter of the creation of SCR 74.02,  
Appointment of the  
Judicial Commission Members****PETITION  
12-08**

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This rule proposal comes before the Wisconsin Supreme Court upon the petition of Chief Justice Shirley S. Abrahamson of the Wisconsin Supreme Court. Petitioner proposes that the Supreme Court adopt Supreme Court Rule 74.02 to provide that the Supreme Court’s appointment of members to the Wisconsin Judicial Commission be discussed and made in open administrative conference. This petition and supporting memorandum are filed pursuant to the court’s rulemaking and administrative authority pursuant to Article VII, § 3 of the Wisconsin Constitution.

Pursuant to Article VII, § 11 of the Wisconsin Constitution, the legislature adopted Wisconsin Statute § 757.83 establishing a nine-member Judicial Commission. The Judicial Commission plays a critical part to help ensure that our courts remain fair, neutral, impartial and non-partisan. Pursuant to the statute, the Wisconsin Supreme Court appoints four members of the Judicial Commission: one trial judge of a court of record, one court of appeals judge, and two members of the State Bar of Wisconsin, who are not judges or court commissioners. Wis. Stat. § 757.83(1)(a).

The Wisconsin Supreme Court’s appointment process begins with the Appointment Selection Committee which the Supreme Court created twelve years ago to ensure the integrity of the appointment process and avoid any perception that individual members of the Supreme Court are interested or involved in the selection of specific individuals. The Supreme Court’s concern for the integrity of the appointment process was so strong that the Appointment Selection Committee was set up as completely independent of the Supreme Court to ensure that no member of the court would be “in a position to exert influence over any member of the Appointment Selection Committee or any of its decisions . . . .The appointment procedure established by the court is designed to produce appointments based

solely on the qualities of integrity, intelligence, experience and commitment.” See Section IV of the Wisconsin Supreme Court’s Internal Operating Procedures creating an Appointment Selection Committee.

The special circumstances surrounding appointments to the Judicial Commission require the Supreme Court to do more to safeguard the integrity of the appointments. The procedure proposed in the petition is needed in light of the fact that in 2008, 2009, and 2012 formal disciplinary complaints were filed against three justices of the Supreme Court. News stories indicate that additional complaints against justices may be pending.

Considering these factors, the petitioner proposes that beginning immediately the Supreme Court’s appointment and reappointment of members to the Wisconsin Judicial Commission be discussed and made in open administrative conference so that the public can be assured that the selection process is based solely on an applicant’s “qualities of integrity, intelligence, experience and commitment.” Public appointment of Judicial Commission members by the Supreme Court should help dispel any perception that justices of the Supreme Court may choose their own prosecutors or influence the Judicial Commission’s work.

Petitioner proposes that SCR 74.02 is created to read as follows:

**SCR 74.02** Appointment of Judicial Commission members.

(1) *Judicial Commission.* Wisconsin Statute § 757.83 establishes the Wisconsin Judicial Commission. Pursuant to the statute, the Wisconsin Supreme Court appoints four members of the Judicial Commission.

(2) *Process.* Section IV of the Supreme Court Internal Operating Procedures sets forth the Appointment Selection Committee’s nomination procedures for the boards, committees, and other entities, including the Wisconsin Judicial Commission, to which the Wisconsin Supreme Court makes appointments.

(3) *Notice by Appointment Selection Committee.* The Appointment Selection Committee shall submit its nominees and résumés to the Wisconsin Supreme Court for the Wisconsin Judicial Commission and shall circulate the list of nominees for the Wisconsin Judicial Commission as widely as feasible, including circulation to the list of persons and entities used in soliciting comments on rules petitions. Members of the public are

