

**In the matter of amending Supreme Court Rules 32.002, 32.01, 32.04, 32.05, 32.06, 32.07, 32.08 (1), 60.05 (8), 60.07 (2), 75.01, and 75.05 (3) pertaining to continuing education for the Wisconsin judiciary and circuit court commissioners**

**SUPPORTING  
MEMORANDUM  
PETITION 19-\_\_\_\_\_**

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The Chief Judges’ Subcommittee on Judicial Education, the Honorable Jason Rossell, Chair, respectfully petitions the Supreme Court to amend Supreme Court Rules 32.002, 32.01, 32.04, 32.05, 32.06, 32.07, 32.08 (1), 60.05 (8), 60.07 (2), 75.01, and 75.05 (3) pertaining to continuing education for the Wisconsin judiciary and circuit court commissioners.

**SUPREME COURT SUPERINTENDING AUTHORITY**

The subject matter of the proposed rule changes falls within the power of the Wisconsin Supreme Court to regulate the judiciary and circuit court commissioners. Wis. Const. art. VII, § 3; Wis. Stat. § 751.12. The recommended changes do not abridge the substantive rights of any person.

**INTRODUCTION AND BRIEF HISTORY**

In September 2018, the Committee of Chief Judges authorized the formation of a Subcommittee on Judicial Education (the Committee) in order to re-examine best practices for judicial education. The Committee consists of three Chief Judges, a judge from the Court of Appeals, two District Court Administrators, a liaison from the Office of Judicial Education, and a liaison from the Office of Court Operations.

In October 2018, the Committee established the following sentence as its mission statement: “[t]o assess rules, processes, and procedures regarding Judicial Education in order to maximize opportunities, efficiencies, and talents to continue to provide outstanding education to circuit court judges, reserve judges, municipal court judges, and court commissioners.”

The Committee chose three primary topics of focus: credit rules for education for judges and court commissioners, regional and online training opportunities, and mandatory education programs. After thorough discussions on each topic, the Committee resolved to petition the Supreme Court to amend its rules regarding the applicability of the education credit rules, membership on the judicial education committee, attendance at certain education programs, education credits for activities undertaken as chief judges, education requirements for reserve judges, and education requirements for certain court commissioners.

## DISCUSSION

Under current Supreme Court Rules, each circuit court judge must earn 60 educational credits during each 6-year reporting period by participating in educational programs approved for credit by the judicial education committee. Generally, a judge may earn one credit for each half-day of attendance at an approved in-state educational program and credits in the amount determined by the judicial education committee for attendance at a national program or for other educational activities undertaken by a judge, such as writing, teaching, or service on certain committees.

The Committee determined that the current rules regarding how the credit hours are approved, calculated, and reported are not in need of substantial amendment. The Committee appreciates the work of the judicial education committee and its intent is not to interfere with the charge of that committee. Instead, this Committee aims to focus on proposals that enhance opportunities to obtain important and relevant judicial education and to tailor the education credit requirements to each sector of the judiciary.<sup>1</sup>

To that end, the Committee proposes amendments to the rules that would clarify the rules, ensure participation by a chief judge in the judicial education approval process, require every circuit court judge to receive education on matters concerning child welfare, acknowledge the research and education undertaken by chief judges, modify education credit requirements for reserve judges, and modify education credit requirements for part-time circuit court commissioners. The Committee appreciates the Court's consideration of its proposals.

## DISCUSSION OF EACH PROPOSED RULE CHANGE IN THE PETITION

### Section 1. SCR 32.002 is amended to read:

**SCR 32.002 Applicability.** The commissioners of the supreme court and staff attorneys of the court of appeals are subject to the educational requirements of this chapter in the same manner as judges, as defined in SCR 32.001, are.

**Discussion.** Under current rule, supreme court commissioners and staff attorneys of the court of appeals must acquire the same number of judicial education credits, in the same manner, as judges. Current rule defines a judge as “a judge of a court of record but not a justice of the supreme court or a judge of the court of appeals.” SCR 32.001.

The proposed amendment seeks to cross-reference, in the rule applying SCR chapter 32 to supreme court commissioners and attorneys of the court of appeals, the definition of a judge. The proposed amendment is not meant to be a substantive change, but one that eliminates any ambiguity in SCR 32.002. The Committee believes that cross-referencing the definition of a judge will clarify the applicability provision to ensure that it is understood that, while SCR chapter 32 does not apply to justices of the supreme court and judges of the court of appeals, the chapter does apply to supreme court commissioners and attorneys of the court of appeals.

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<sup>1</sup> The Honorable Jason Rossell attended the October 2019 meeting of the judicial education committee and presented a draft rule petition for their review and approval. The judicial education committee approved the rule petition with a few modifications, which have been incorporated into this petition.

**Section 2. SCR 32.01 is amended to read:**

**SCR 32.01 Judicial education committee.** A judicial education committee is created consisting of the chief justice of the supreme court or his or her designee, the chief judge of the court of appeals or his or her designee, the chair of the committee of chief judges or his or her designee, the director of state courts, 2 circuit court commissioners appointed by the supreme court, 8 circuit court judges appointed by the supreme court, and the deans of the university of Wisconsin and Marquette law schools or their designees. The circuit court judge and circuit court commissioner members shall serve staggered 2-year terms and may serve not more than two successive 2-year terms. The dean of the Wisconsin Judicial College is a member ex officio of the committee and has voting privileges.

**Discussion.** Under current rule, the judicial education committee is made up of the chief justice of the supreme court or his or her designee, the chief judge of the court of appeals or his or her designee, the director of state courts, 2 circuit court commissioners appointed by the supreme court, 8 circuit court judges appointed by the supreme court, and the deans of the university of Wisconsin and Marquette law schools or their designees.

Under the proposal, the chair of the committee of chief judges or his or her designee is an additional member of the judicial education committee. The Committee believes that, by virtue of his or her experience administering circuit and municipal courts across a judicial district, a chief judge brings unique insight into the judicial education committee. By that same token, the Committee believes that a chief judge will bring the expertise and knowledge he or she gains by virtue of serving on the judicial education committee back to his or her judicial district and to the Committee of Chief Judges, for further dissemination. The Committee acknowledges that membership on the judicial education committee has often included a chief judge and urges the Court to amend the rule so as to codify the traditional inclusion of a chief judge.

**Sections 3. and 4.**

**SCR 32.04 is amended to read:**

**SCR 32.04 Required programs.** During each 6-year period, a judge shall attend at least once the Wisconsin judicial college, the child welfare law orientation, the criminal law-sentencing institute and the prison tour. The requirement to attend the child welfare law orientation only applies to judges whose most recent term of office begins on or after August 1, 2020. Credit earned for attendance at these programs is to be included as part of the required 60 credits.

**SCR 32.05 is amended to read:**

**SCR 32.05 Minimum and maximum.** A judge shall during each year earn no less than 5 nor more than 15 credits at an in-state educational activity. The 15 credit maximum may be waived upon prior approval granted by the judicial education committee or its designee upon application of an individual judge. The 15 credit maximum does not apply to the year the judge attends the Wisconsin judicial college, the child welfare law orientation, and/or the criminal law-sentencing institute and prison tour. A trial judge may not earn more than 24 credits for attendance at

national educational activities in any 6-year period. A judge is not required to attend any national educational activity.

**Discussion.** Under current rule, judges are required to attend, during each 6-year reporting period, certain core educational programs. Currently, these core programs are the judicial college, the criminal law-sentencing institute, and the prison tour.

Under the proposed rule, judges will be additionally required to attend, at least once during each 6-year reporting period, the child welfare law orientation. The Committee agrees that the core educational programs are highly valuable to judges and supports the current mandate for judges to attend these programs.

In considering whether to propose an additional core educational mandate, the Committee was mindful of logistical and other challenges involved in attending mandatory educational courses. The Committee acknowledges that the Court must be cautious in creating an additional requirement for judges, but believes that the recommended addition of the child welfare law orientation is a worthy and necessary change.

The Committee discussed at length the increasing number and complexity of cases involving child welfare, particularly in light of increasing use of opiates and other substances across the state. Committee members who have attended the child welfare law orientation have found it exceptionally informative and helpful and believe that it should be a part of the core educational curriculum for all judges.

Committee members note that child welfare issues can affect virtually every other case type, and believe that educating judges on the complex issues surrounding child welfare will enable judges to make their most informed, effective, and just decisions. For these reasons, the Committee urges the Court to require, as part of the core judicial educational curriculum, attendance at the child welfare law orientation.

**Section 5. SCR 32.06 is amended to read:**

**SCR 32.06 Programs receiving credit.** Credit shall be granted for attendance at all programs for judges sponsored or approved by the judicial education committee. In addition, credit for other programs shall be given for that portion of the program addressed to judicial education and approved by the judicial education committee.

**Discussion.** Under current rule, judges receive credit for all programs sponsored by the judicial education subcommittee. In addition, judges can also receive credit for other programs if the program addresses judicial education and is approved by the judicial education committee.

The proposed rule clarifies SCR 32.06 to indicate the judges can receive credit for attendance at programs that are either sponsored by the judicial education committee or approved by the judicial education committee. This change is consistent with the use of the phrase “sponsored or approved” in SCR 32.03 and SCR 32.08 (1).

**Section 6. SCR 32.07 is amended to read:**

**SCR 32.07 Credit for other educational activities.** Credit may be granted by the judicial education committee for other educational activities undertaken by a judge such as writing or teaching. A judge may receive credit for teaching for which he or she is compensated if the teaching does not interfere with the judge's performance of his or her judicial duties and is performed outside of regular court hours or while the judge is on vacation. A judge shall receive 3 credits for each 12-month period he or she serves as chief judge for his or her judicial administrative district.

**Discussion.** Under current rule, judges generally earn educational credit for attending approved educational programs. However, a judge may earn educational credit, as granted by the judicial education committee, for activities such as writing or teaching. Additionally, the judicial education committee grants educational credit for activities such as serving on committees, recognizing that judges expend considerable resources on these activities for the betterment of the judiciary and the justice system as a whole.

Under the proposal, a judge earns 3 educational credits for each 12 months he or she serves as chief judge for his or her judicial administrative district. The Committee believes that this proposal is an appropriate acknowledgement of the substantial amount of time and effort chief judges expend in their administrative duties.

Committee members note that, in order to be effective, a chief judge necessarily seeks out additional educational opportunities and conducts extensive personal legal research on the wide variety of legal issues being considered within his or her district. The Committee believes that adopting this rule would encourage circuit court judges to accept the role of chief judge more readily, because the rule would ease the requirement for the chief judge to attend other educational programs and because the rule would demonstrate the Court's appreciation and acknowledgement of the unique role chief judges serve in the judiciary.

**Section 7. SCR 32.08 (1) is amended to read:**

**SCR 32.08 Reserve judges. (1)** To be eligible for appointment or reappointment as a reserve judge to perform judicial assignments, a person otherwise entitled to appointment shall earn ~~5~~ 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 ~~5~~ 4 credits. One credit is awarded for each half-day of attendance at programs sponsored or approved by the judicial education committee. Reserve judges are not required to comply with SCR 32.04.

**Discussion.** Under current rule, a person who wishes to be appointed or reappointed as a reserve judge must earn, during the calendar year immediately preceding the appointment or reappointment, 5 judicial education credits. The Director of State Courts determines which judicial education programs may be attended in order to earn the required 5 credits.

A reserve judge or person who wishes to be appointed as a reserve judge may earn education credits at the annual Wisconsin Judicial Conference, described in SCR 70.15, and at other in-state educational programs. Currently, educational programming is offered at the Judicial Conference for 2.5 days, enabling a reserve judge to acquire the requisite number of approved credits at the conference.

Under the proposal, a reserve judge or a person who wishes to be a reserve judge needs to earn 4 education credits the year preceding his or her appointment or reappointment. The Committee notes that, commencing in 2020, the Judicial Conference will offer educational programming for 2 days.

The Committee believes that commensurately reducing the number of required credits for reserve judges will not make a substantive change over current rule. The proposal is in no way meant to diminish the importance of educational programming for reserve judges, but it seeks to preserve the status quo regarding the opportunity for reserve judges to earn the minimal required number of credits by attending programming at the Judicial Conference.

### **Sections 8. through 11.**

#### **Comment to SCR 60.05 (8) is amended to read:**

#### **COMMENT**

The chapter does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

*See SCR 60.05 (4) (e) and sec. 19.56, Stats., regarding reporting of gifts and loans.*

As provided in SCR 60.07 (2), sub. (8) does not apply to a judge serving on a part-time basis. Sub. (8) does not apply to a supplemental court commissioner authorized under SCR 75.02 (3) who has performed fewer than ~~40~~ 160 hours of circuit court commissioner duties in the preceding calendar year.

#### **SCR 60.07 (2) is amended to read:**

**SCR 60.07 (2) Part-time Judicial Service.** A judge who serves on a part-time basis, including a reserve judge, a part-time municipal judge, or a part-time court commissioner, is not required to comply with the following: SCR 60.05 (3) (a), (b) and (c) 1. b., 2. a. and c., (4) (a) 1. b., (b), (c), (d) and (e), (5), (6), (7) and (8). All circuit court commissioners appointed under SCR 75.02 (1) and those supplemental court commissioners authorized under SCR 75.02 (3) who have

performed ~~40~~ 160 hours or more of circuit court commissioner duties during the preceding calendar year shall comply with SCR 60.05 (8).

**Comment to SCR 75.01 is amended to read:**

**COMMENT**

This chapter applies to persons appointed under SCR 75.02 (1) and to persons appointed under s. 757.68 (2), stats., and authorized by a chief judge under SCR 75.02 (3) to perform on a temporary or occasional basis specified duties other than those duties they are authorized by statute to perform on their own authority. A person appointed under s. 757.68 (2), stats., may perform duties specified in s. 757.69 (1), stats., only on authority delegated by a judge and with the approval of the chief judge of the judicial administrative district.

The performance evaluation and complaint procedures in SCR 75.04 and 75.06 apply to a circuit court commissioner's performance of the duties authorized by the chief judge, however limited. Continuing education requirements set forth in SCR 75.05 apply to circuit court commissioners appointed under SCR 75.02 (1) and to circuit court commissioners authorized under SCR 75.02 (3) who spend ~~40~~ 160 or more hours per year on duties authorized by a chief judge. This chapter does not apply to persons appointed by one or more circuit judges under s. 757.68 (2), stats., who are not authorized to perform activities other than those specified in s. 757.69 (3), stats., or to registers in probate authorized by a chief judge under SCR 75.02 (4) to perform the duties of a circuit court commissioner in probate matters.

**SCR 75.05 (3) is amended to read:**

**SCR 75.05 (3)** A person authorized under SCR 75.02 (3) to perform specified duties of a circuit court commissioner on a temporary or occasional basis shall earn not less than 3 education credits in programs approved by the judicial education committee in any year in which the performance of those duties requires ~~40~~ 160 or more hours.

**Discussion.** Under current rule, a person who works as a circuit court commissioner in a temporary or occasional capacity must earn at least 3 judicial education credits for any year in which his or her duties require at least 40 hours. Additionally, under current rule, a person who performs duties as a temporary or occasional circuit court commissioner for at least 40 hours per year must file a timely financial report with the ethics board. Although circuit court commissioners are not statutorily required to file a statement of economic interest, the Wisconsin Supreme Court requires them to file under SCR 60.05(8)(b).

Under the proposal, a circuit court commissioner must earn 3 education credits for each year in which his or her duties require at least 160 hours; the same 160 hour threshold would apply to the requirement for filing a financial report with the ethics board. The Committee believes that these amendments reflect the manner in which circuit court commissioners are employed by the courts and tailors the education requirement to the needs of circuit court commissioners who are most actively engaged. The Committee proposes the same threshold for filing a financial report in the interests of consistency in the rules and administrative efficiency.

The Committee notes that a 160 hour requirement per year is the equivalent of 4 full time weeks, which, although considerably larger than the 40 hours required under current rule, still represents a rather small portion of a work year. The Committee further notes that to earn 3 education credits, a circuit court commissioner generally must attend one full day and one half day of educational programming.

The Committee believes that the requirement to obtain 3 education credits is absolutely appropriate for circuit court commissioners who spend the equivalent of 4 full time weeks on the bench, but excessive for those who only spend the equivalent of one week per year. Accordingly the Committee believes that amending the rule in the proposed manner tailors the education requirement more appropriately to the needs of the circuit court commissioners.

## **CONCLUSION**

For the reasons set forth in this Memorandum, the Chief Judges' Subcommittee on Judicial Education asks the Court to amend its rules as proposed in order to promote best practices regarding judicial education.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Honorable Jason Rossell  
Chair, Chief Judges' Subcommittee on Judicial Education