APPENDIX A

PROPOSED RULES

SCR 60.06. A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

(1) Candidate for Office. A judge shall not become a candidate for a federal, state, or local nonjudicial elective office without first resigning his or her judgeship.

Reporter's Note

No change from the current rule is proposed.

(2) Party membership and activities. A judge or candidate for judicial office or judge-elect shall not

(a) be a member of any political party; or

(b) participate in the affairs, caucuses, promotions, platforms, endorsements, conventions or activities of a political party or of a candidate for partisan office; or

(c) make or solicit financial or other contributions in support of a political party's causes or candidates; or

(d) publicly endorse or speak on behalf of its candidates or platforms.

Nothing herein shall be deemed to prohibit a judge or candidate for judicial office or judge-elect from attending, as a member of the public, a public event sponsored by a political party or candidate for partisan office, or by the campaign committee for such a candidate. If attendance at such an event requires the purchase of a ticket or otherwise requires the payment of money, the amount paid by a judge or candidate for judicial office or judge-elect shall not exceed an amount necessary to defray the sponsor's cost of the event reasonably allocable to such attendance.

Reporter's Note

The rule prohibits political party membership and activities by judges, nonincumbent candidates for judicial office, and judges-elect. When one becomes a candidate for judicial office is determined by the terms of SCR 60.01(2) which defines "candidate" as "a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions." The rule prohibits judicial candidates and judges-elect as well as judges

from making or soliciting contributions to the party or its candidates and from publicly endorsing or speaking on behalf of partisan candidates or platforms. Although the rule contemplates the continuance of nonpartisanship on the part of Wisconsin judges and those seeking judicial office, judges are not expected to lead lives of seclusion. As members of the public and as public officeholders, judges should be encouraged to attend public events, even those sponsored by political parties or candidates, so long as the attendance does not constitute the kind of partisan activity prohibited by this rule. The last two sentences of this rule are designed to make this clear. The judge, judicial candidate or judge-elect is responsible for so conducting herself or himself that her or his presence at the sponsored event is not made to appear as an endorsement or other prohibited political activity. The judge, judicial candidate, or judge-elect should also exercise care that the price of his or her ticket to any such event does not include a prohibited political contribution.

(3) Campaign Rhetoric. (a) In General. While holding the office of judge or while a candidate for judicial office or a judge-elect, every judge, candidate for judicial office and judge-elect shall maintain, in campaign conduct and otherwise, the dignity appropriate to judicial office.

Reporter's Note

This subsection is new. It states a rule generally applicable to judges, candidates for judicial office, and judges-elect.

(b) Promises and commitments. A judge or judicial candidate shall not do or authorize others to do in his or her behalf anything which would commit or appear to commit the judge or judicial candidate in advance with respect to any particular case, or controversy, or legal issue likely to come before the court to which election or appointment is sought, or which suggests that, if elected or chosen, the judge or judicial candidate would administer his or her office with partiality, bias or favor. Nothing herein shall restrict a judge or judicial candidate from making statements of position concerning court rules or administrative practices or policies.

Reporter's Note

The rule modifies SCR 60.06(3) by eliminating the reference to appeals to cupidity or partisanship and, with respect to acts by actors other than the judge or candidate, by substituting the word "authorize" for "permit" to make it clearer that a judge or candidate cannot be held responsible for

unauthorized statements of third parties not subject to the control of the judge or candidate. The last sentence, coupled with the earlier reference to "*legal* issues", makes it clear that candidates are free to take campaign positions concerning court rules, policies and practices not related to legal issues before the court or likely to come before the court. Furthermore, the rule is not intended to nor does it prohibit judicial candidates from commenting on a particular "controversy, or legal issue likely to come before the court", but rather from committing or appearing to commit in advance with respect to outcomes or decisions.

It is most difficult to codify a line between a challenger's criticism of a judge's past decision or opinions (or a candidate's demonstration of position on legal issues) which is relevant to that judge's (or candidate's) judicial philosophy and such criticism which is an attempt to exploit emotional public response to such decisions or opinions (or positions). Because of that difficulty and the need to preserve the protections of the First Amendment to the Constitution of the United States, we do not attempt to draw that line. Transforming an election into an electoral review of a judge's opinion, conscientiously arrived at, is an attack on the independence of all our judges. Moreover, an attack on a past decision or opinion almost always implies a promise that the challenger would decide or vote differently on similar issues in future cases and thus violates SCR 60.06(3)(b).

c) **Misrepresentations.** A candidate for judicial office should restrict his or her comments concerning an opposing candidate to matters which are relevant to the opponent's integrity, impartiality, judicial philosophy and temperament, legal ability and industry. A candidate for judicial office shall not knowingly make representations that, although true, are misleading, or knowingly make statements that are likely to confuse the public with respect to the proper role of judges and lawyers in the American adversary system. A candidate for judicial office shall not knowingly or with reckless disregard for the truth misrepresent the identity, qualifications, present position or any other fact concerning the judge or candidate or his or her opponent. Such a candidate shall not:

1. use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate does currently hold that office,

2. use the term "judge" when a judge is a candidate for another judicial office and does not indicate the court on which the judge currently serves,

3. use the term "re-elect" when the judicial candidate has never been elected to the office for which he or she is a judicial candidate,

4. make a false statement concerning the formal schooling or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize or honor received, earned or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, college, program or institution,
5. make a false statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or concerning any position a judicial candidate held for which he or she received compensation,
6. make a false statement that a candidate for judicial office has been arrested, indicted, charged with or convicted of a crime or accused of by a legally competent authority or found by a legally competent authority to have violated professional, ethical, or other standards applicable to the candidate,
7. make a statement that a candidate for judicial office has been arrested, indicted, charged with or convicted of a crime or accused by a legally competent authority or found by a legally competent authority to have violated professional, ethical, or other standards applicable to the candidate, without disclosing the outcome of all pending or concluded legal proceedings resulting from the arrest, indictment, charge, conviction, accusation, or finding,
8. make a false statement that a candidate for judicial office has a record of treatment or confinement for mental disorder,
9. make a false statement that a candidate for judicial office has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services,
10. falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate for judicial office by a person, organization, political party, or publication.

A candidate for judicial office is under no duty to monitor statements made by others not subject to his or her control, but a candidate who knows of material misrepresentations or material misleading statements by third parties concerning himself or herself or his or her opponent, which statements are likely to confuse or mislead the electorate, should publicly disclaim such statements.

Reporter's Note

This subsection is new. It has no counterpart either in the present Code of Judicial Conduct or its predecessor. The 1967 Code contained sec. 60.01 ("Standards") which included sub. (10): "A judge should always bear in mind the need for scrupulous adherence to the rules of fair play." It is not clear, however, that the subsection was drafted with election conduct

in mind. The language in the proposed rule is derived in large measure from the Ohio Code of Judicial Conduct.

The first and last sentences are hortatory and aspirational. Thus, "should" is used rather than "shall." The remaining standards are mandatory. Intentional and reckless misrepresentations are prohibited, as are statements that are knowingly misleading, though true, and statements that are likely to confuse the electorate about the proper role of judges and lawyers in the American adversary system. Examples of the latter kinds of statements may include campaign rhetoric which suggests that voting for a particular candidate will effect law reform or other results which are constitutionally committed to the political and nonjudicial branches of government. Candidates are not responsible for misrepresentations or misleading statements made by third parties not subject to the control of the candidate, e.g., through independent expenditures by interest groups. However, when a candidate knows of such statements which are likely to confuse or mislead the electorate, the candidate is called upon to disclaim them.

(4) Solicitation and Acceptance of Campaign Contributions. A judge or candidate for judicial office or judge-elect shall not personally solicit or accept campaign contributions. A candidate may, however, establish a committee to conduct a campaign for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. The committee may solicit and accept lawful campaign contributions and manage the expenditure of funds for the candidate's campaign. The committee is not prohibited from soliciting and accepting lawful campaign contributions from lawyers and other contributors, provided, however, that the committee shall not knowingly solicit or accept contributions from any litigant with a case before the court to which election is sought. A judge or candidate for judicial office or judge-elect may serve on the committee but should avoid direct involvement with the committee's fundraising efforts.

Reporter's Note

This subsection reflects long-standing practice in Wisconsin. Committees are prohibited from knowingly soliciting or accepting contributions from litigants with a case before the court to which election is sought. The rule does not impose an obligation on candidates or committees to cull campaign mailing lists for names of current litigants or to search the court's calendar or docket to identify all litigants throughout the campaign. Especially in courts with heavy case volume and dockets that change daily through new filings and dismissals,

imposing a duty to search and identify all current litigants and to cross-check against mailing lists would be onerous. Only knowing solicitation and acceptance of contributions from litigants are prohibited.

(5) Solicitation and Acceptance of Endorsements. A judge or candidate for judicial office may solicit or accept endorsements supporting his or her election or appointment personally or through his or her committee. The committee is not prohibited from soliciting and accepting endorsements from lawyers and others, provided, however, that no judge, candidate for judicial office, or committee shall knowingly solicit or accept an endorsement from any litigant with a case before the court to which election or appointment is sought. In soliciting or accepting an endorsement, a judge or candidate for judicial office should be mindful of the values underlying SCR 60.03.

Reporter's Note

This subsection is new. In light of the restrictions on campaign rhetoric under SCR 60.06(3), the receiving of endorsements is an important method of informing the electorate of broad-based and presumably informed support for a particular candidacy. As with the solicitation and acceptance of campaign contributions, knowing solicitation and acceptance of endorsements from current litigants are prohibited. Neither culling nor cross-checking of names on mailing lists or dockets is required.

SCR 60.07 Applicability.

(1) General. Subject to sub. (2), all judges shall comply with this chapter. Candidates for judicial office and judges-elect shall comply with SCR 60.06.

(2) Part-time Judicial Service. A judge who serves on a part-time basis, including a reserve judge, a part-time municipal judge and a part-time court commissioner, is not required to comply with the following: SCR 60.05(3)(a), (b), [c]1.b., 2.a, and c., (4)(a)1.b., (b), [c], (d) and (e), (5), (6), (7) and (8).

Reporter's Note

Candidates for judicial office and judges-elect are subject to the requirements of SCR 60.06.