

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 17-11

**In the matter to amend SCRs 32.001, 32.02,
and 32.04 (Continuing Education for Wisconsin
Judiciary)**

FILED**DEC 21, 2017**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

The court, on its own motion, has determined that it is appropriate to amend Supreme Court Rules (SCR) 32.001, 32.02, and 32.04 pertaining to continuing education for appellate court judges and justices.

In 1976, Supreme Court Rules set out requirements of continuing education for judges. At that time, the Supreme Court was the only appellate court in Wisconsin. In 1978, Wisconsin court reorganization created the Court of Appeals.

Supreme Court Rule ch. 32 addresses judicial education today. Supreme Court Rule 32.02 requires a judge to earn 60 credits over a term of six years from approved educational programs, approximately ten credits per year. Supreme Court Rule 32.05 requires that five of those credits each year come from in-state educational programs. Typically, a judge can obtain two judicial education credits for attending an entire day of programming.

The duties of a circuit court judge and those of a justice or a Court of Appeals judge differ considerably. In that regard, only the Supreme Court has "superintending and administrative authority over all courts." Wis. Const. Art. VII, Section 3(1). Accordingly, justices would benefit from education that informs justices in assessing the court's effectiveness in those tasks. The Supreme Court "has appellate jurisdiction over all courts," Wis. Const. Art. VII, Section 3(2), and the Court of Appeals has appellate jurisdiction. Wis. Const. Art. VII, Section 5(3). Justices and Court of Appeals judges would benefit from programs that increase appellate judging skills.

The duties mentioned above are just a few of the functions that a justice or Court of Appeals judge performs that circuit court judges do not. Those who serve the people of Wisconsin as appellate judges need judicial education that will assist them in completing the duties assigned to them by the Wisconsin Constitution. However, almost all of the judicial education programs offered by the Office of Judicial Education are focused on circuit court judging. This is understandable; there are 249 circuit court judges but only 23 appellate judges.

In addition, during our in-state judicial education programs, justices often have to leave the presentation because a case being discussed is pending before the Supreme Court, either as a petition for review or as the result of the court having granted review.

We value a skilled and knowledgeable judiciary, as do members of the State Bar of Wisconsin and the citizens whom we all serve. Our recent amendments set out below support, not undercut, that interest.

We amend SCR ch. 32 because taking time away from the tasks for which we justices and appellate judges were elected to perform in order to attend continuing educational programs that do not bear upon our judicial duties is neither a satisfactory approach to judicial education nor to judicial time management.

The amendment does not mean that justices and appellate judges are no longer required to meet benchmarks for maintaining professional competence. All justices and judges must "maintain professional competence in" the law, as required by the Code of Judicial Conduct, SCR 60.04(1)(b); see also SCR ch. 60, Preamble to the Code of Judicial Conduct. Accordingly,

IT IS ORDERED that, effective the date of this order,

SECTION 1. Supreme Court Rule 32.001 is amended to read:

32.001 In this chapter, "judge" means a ~~justice of the supreme court, judge of the court of appeals or~~ judge of a court of record but not a justice of the supreme court or a judge of the court of appeals.

SECTION 2. Supreme Court Rule 32.02 (3) is created to read:

(3) Justices and appellate judges are encouraged but not required to attend and participate in national and in-state educational activities.

SECTION 3. Supreme Court Rule 32.04 is amended to read:

32.04 During each 6-year period, a judge shall attend at least once the Wisconsin judicial college, the criminal law-sentencing institute and the prison tour. Credit earned for attendance at these programs is to be included as part of the required 60 credits. ~~This rule does not apply to appellate judges.~~

IT IS ORDERED that notice of these amendments of Supreme Court Rules 32.001, 32.02, and 32.04 be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 21st day of December, 2017.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

SHIRLEY S. ABRAHAMSON, J. (*dissenting*). Judicial education requirements for all state court judges were originally adopted by this court on June 29, 1976, effective January 1, 1977.¹ Why? Because all judges must "maintain professional competence in" the law. SCR 60.04(1)(b); see also SCR ch. 60, Preamble to the Code of Judicial Conduct.

Hereafter, Supreme Court justices and Court of Appeals judges no longer are required to meet this benchmark for maintaining professional competence. They are not subject to any judicial education requirements whatsoever.

All circuit court judges remain subject to the education requirements of SCR chapter 32, namely 60 credits per six-year period. See SCR 32.02. Commissioners of the Supreme Court and staff attorneys of the Court of Appeals remain subject to the

¹ See In the Matter of a Supreme Court Rule Requiring Continuing Education for Wisconsin's Judiciary, 73 Wis. 2d xxvii.

"Judge" as used in the 1976 Rule "means a justice of the Supreme Court, a judge of a court of record, and a commissioner of the Supreme Court." Rule 2.

In 1976, the state court system consisted of a Supreme Court, circuit courts, and county courts. There was no court of appeals.

For rules governing continuing judicial education for municipal court judges, see Supreme Court Rules (SCR) ch. 33, adopted on January 21, 1985, effective July 1, 1985, and amended thereafter.

The Supreme Court Rules (SCR) appear in volume 6 of the 2015-16 Wisconsin Statutes.

same education requirements of SCR chapter 32 as circuit court judges.

Justice requires that a judge keep pace with changes and developments in substantive and procedural law. That fact has not changed, yet today's court order does not explain why eliminating continuing judicial education requirements for justices of the Supreme Court and judges of the Court of Appeals is necessary or wise.

I have concerns about the process the Court used for adopting this order and the substance of the order.

The order to which this dissent is addressed was adopted by seven justices meeting in a closed conference room, talking and listening only to each other. Five justices voted in favor of the order—Chief Justice Patience D. Roggensack, Justice Annette K. Ziegler, Justice Michael Gableman, Justice Rebecca G. Bradley, and Justice Daniel Kelly. Two justices, Justice Ann Walsh Bradley and I, dissented.

Before adoption of the order, the court did not consult with those who would be affected by the order, those knowledgeable about the history of judicial education and the effect of the order, or those who may have had other suggestions for the continuing education of Wisconsin Supreme Court justices and Court of Appeals judges such as the Judicial Education Committee.²

² For composition of the Judicial Education Committee, see SCR 32.01.

The chances of enacting a wise order are, in my opinion, significantly decreased when the decision-making process rests on poor or inadequate information, and the court fails to consult with knowledgeable and concerned persons. I am not convinced that the seven justices have a monopoly on wisdom.

With regard to the substance of the order, the order is not well thought out. The court has not carefully considered this order in the larger context of judicial education for all persons included in SCR chapter 32³ and the financial implications of exempting justices and Court of Appeals judges.⁴

This court and the court of appeals review the work of circuit courts and should be aware of new issues Wisconsin courts are facing as well as new variations of old issues. The

³ If appellate judges, including appellate judges who have no prior trial or appellate judicial experience, cannot benefit from judicial education, why are staff to appellate judges required to comply with the same educational requirements as circuit judges?

If appellate judges are no longer required to participate in Wisconsin continuing judicial education, why should the chief justice of the Supreme Court (or his or her designee) and the chief judge of the Court of Appeals (or his or her designee) continue as members of the Judicial Education Committee? See SCR 32.01.

⁴ One wonders whether the five justices plan to fund out-of-state travel and course fees for out-of-state judicial education for justices and court of appeals judges with funds saved by the Court's elimination of per diem compensation to reserve judges for their required judicial education? See S. Ct. Order 17-08, 2017 WI 87 (issued Sept. 15, 2017, eff. Sept. 15, 2017) (Abrahamson, J., dissenting). At the recent judicial conference, the chief justice publicly stated that the saved funds could be used for the children's court improvement program, which is federally funded.

existing judicial education rule assists us in accomplishing this goal.

On the basis of my experience with Wisconsin and out-of-state sponsored judicial education, I conclude that the Wisconsin judicial education curriculum is important for all Wisconsin judges and justices and that the order errs in exempting Supreme Court justices and Court of Appeals judges from Wisconsin judicial education requirements.

I have attended Wisconsin judicial education programs since I joined the Wisconsin Supreme Court in September 1976. Wisconsin judicial education is excellent for all judges and compares favorably to other states' and national judicial education programs.

I am familiar with judicial education programs across the country. I favor the exposure of Wisconsin judges to education programs in other states, and I favor giving Wisconsin judges the opportunity to meet with judges from other states. We can learn from each other. But I note that programs for judges of trial and appellate courts sponsored by the National Judicial College and other educational institutions overlap with Wisconsin judicial education programs.

For many years I have taught at the New Appellate Judges Seminar sponsored by New York University Law School's Institute of Judicial Administration. This annual one-week program offered to state, federal, and military judges serving in appellate courts across the country includes sessions on opinion writing, ethics, statutory interpretation, review of recent case

law, and alerts to new issues in the law—subjects also examined in Wisconsin judicial education programs.

In sum, I do not consider myself or any member of the Supreme Court or Court of Appeals too smart or too experienced to stop learning. The court has seriously erred in adopting this order!

Unfortunately, this precipitous order quickly follows on the heels of two other precipitous court orders issued in the last two months. Since the five justices closed administrative and rule-making conferences to the circuit court judges, court staff, and the public, they have adopted three orders without even attempting to obtain relevant and available information, without consulting those affected by the order and those knowledgeable about likely consequences of the order, and without giving any reasoned explanation for the order:

(1) The order refusing to use funds appropriated to the court system to compensate staff of the Judicial Council, causing the termination of employment of the able staff.⁵

(2) The order immediately terminating per diem compensation for reserve judges fulfilling their judicial education requirement.⁶

⁵ See order dated Aug. 17, 2017 (Ann Walsh Bradley, J., dissenting).

⁶ See S. Ct. Order 17-08, 2017 WI 87 (issued Sept. 15, 2017, eff. Sept. 15, 2017) (Abrahamson, J., dissenting).

(3) This order immediately exempting Supreme Court justices and Court of Appeals judges from judicial education requirements.

I am dismayed that the flawed and secretive process used in adopting these three orders has become the preferred way this court performs its administrative functions. It does not bode well for the future of the Wisconsin judicial system.

For the foregoing reasons, I write separately.

I am authorized to state that Justice ANN WALSH BRADLEY joins this dissent.

