

STATE OF WISCONSIN
SUPREME COURT

In the Matter of Amending the
Rules of Judicial Conduct

PETITION FOR SUPREME COURT RULE

To: Justices of the Wisconsin Supreme Court

The Wisconsin Realtors Association, Inc. (the “Realtors”) petition this Court to amend the Code of Judicial Conduct to provide that the receipt of a lawful campaign contribution by a judicial campaign committee or an endorsement of a candidate does not, by itself, warrant judicial recusal.

The grounds for this petition are set forth here and in the Realtors’ Motion to Determine Judicial Participation or, Alternatively, Petition to Amend the Code of Judicial Conduct and that Motion’s accompanying Memorandum of Law (filed as part of *Wisconsin Realtors Association, Inc. v. Town of West Point*, No. 2006-AP-2761 (April 8, 2008)).¹ The grounds are supplemented by the Realtors’ August 7, 2008 letter to this Court regarding recent developments relevant to the issues raised in the Realtors’ Motion. Those documents are all incorporated by reference.

The Realtors also request that this Court consolidate consideration of this petition with Petition No. 08-16, filed on June 20, 2008 by the League of Women Voters of Wisconsin Education Fund (the “League’s petition”) after the Realtors’ Motion. The League’s petition, entitled “In re creation of rules for recusal when a party or lawyer in a case made contribution effecting [sic] a judicial campaign,” does not refer to the Realtors’ alternative petition, filed almost three months earlier. However, the Realtors’ and the League’s petitions address the same

¹ On September 23, 2008, this Court denied the Realtors’ Petition for Review and the complementary Motion and Alternative Petition to Amend the Code of Judicial Conduct. This Court also directed the Realtors to “file a formal rules petition” “in the event the petitioners wish the court to consider amending the code of judicial conduct.” The petitioners do so wish.

matter: amending the Judicial Code's rules on recusal based on contributions to a judicial campaign committee. Considering the two petitions together serves the interests of time and this Court's resources.

The amended Code should reflect the overwhelming weight of authority providing that the receipt of a lawful contribution by a judicial campaign committee does not, by itself, warrant recusal. Although the Code today by no means expressly requires recusal due to a contributor's involvement in a case, or a campaign endorsement, the Code also does not make it explicit that recusal is unnecessary solely because a party or attorney contributed to the judge's campaign committee. Because it is not explicit, the Code has been and may continue to be applied inappropriately to, in effect, require recusal. This inevitably penalizes the parties, their counsel, and the judiciary.

To avoid the effect of a *de facto* rule that leads to recusal based on a campaign contribution, the Judicial Code should be amended as follows:

SCR 60.04 should be amended to add the following subsection:

(5) EFFECT OF CAMPAIGN CONTRIBUTIONS. A judge shall not be required to recuse himself or herself in a proceeding based solely on any endorsement or the judge's campaign committee's receipt of a lawful campaign contribution, including a campaign contribution from an individual or entity involved in the proceeding.

Similarly, SCR 60.06(4) should be amended by adding the highlighted language:

(4) SOLICITATION AND ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS. A judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions. A candidate may, however, establish a committee to solicit and accept lawful campaign contributions. The committee is not prohibited from soliciting and accepting lawful campaign contributions from lawyers, or parties or entities involved in a proceeding over which the candidate is presiding. 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. A judge or candidate for judicial office or judge-elect may appear at his or her own fundraising events. When the committee solicits or accepts a contribution, a judge or candidate for judicial office should also be mindful of the requirements of

SCR 60.03 and 60.04(4); provided, however, that the receipt of a lawful campaign contribution shall not, by itself, warrant judicial recusal.

The Realtors request a public hearing on this petition and its resolution before the 2009 state judicial elections.

Dated: September 30, 2008.

/s/ Hannah Renfro

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