

**STATE OF WISCONSIN  
IN THE SUPREME COURT**

**In the Matter of the Petition to Amend  
Supreme Court Rules (SCR)  
60.05(8)(b) and SCR 60.07(2)**

**Memorandum in Support of  
Petition**

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Diane Fremgen, Deputy Director for Court Operations, submits this memorandum in support of an administrative rule petition asking the Wisconsin Supreme Court to amend Supreme Court Rule (SCR) 60.05(8)(b) and 60.07(2) to modify the requirements for certain court staff to file an annual Statement of Economic Interests (SEI).

Some recent administrative changes to the manner in which the Wisconsin Ethics Commission manages SEIs filed by court staff has prompted this office to review its rules, policies, and procedures for the filing of SEIs. We have concluded that some revisions to the rules are appropriate in the interests of administrative efficiency and to facilitate coordination with the Ethics Commission. This petition requests the amendment of supreme court rules in SCR Ch. 60, which the court has authority to amend. The proposed changes do not implicate substantive rights or pleading, practice or procedure in judicial proceedings, so a public hearing is not required by Wis. Stat. s. 751.12.

Some background is necessary to explain the reason for this petition. State officials and candidates file annual Statements of Economic Interests, as required by Wis. Stat. s. 19.43. The term "official required to file" is defined in Wis. Stat. s. 19.42(10). The statute appears carefully crafted to avoid separation of powers concerns; it does not purport to explicitly direct the judiciary to file SEIs. It does require Constitutional officers to file and, as justices and judges are Constitutional officers, their compliance is anticipated. Municipal judges are also explicitly identified as required to file SEIs. Wis. Stat. s. 19.12(10)(i).

This court, in turn, has its own supreme court rules that require judges, justices, and candidates for judicial office to file SEIs. See SCR 60.05(8)(b). The court's rules also require certain court staff to file SEIs, namely the director of state courts, supreme court commissioners, and court of appeals staff attorneys, as well as circuit court commissioners appointed under SCR 75.02(1), see SCR 60.07(2), and authorized supplemental court commissioners. See SCR 60.07(2).<sup>1</sup>

So, for purposes of this petition, there are two categories of SEI filers: (1) those that the Ethics Commission recognizes as required filers under ch. 19 Wis. Stats., namely, justices, judges, municipal judges, and candidates for judicial office; and (2) those it does not recognize as required filers under the statutes, but who are required to file by court rule: the director, circuit

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<sup>1</sup> SCR 60.07(2) applies to "those supplemental court commissioners" authorized under SCR 75.02(3) to perform on a temporary or occasional basis one or more specific duties allowed court commissioners by statute and approved by the supreme court and whose performance of those duties in the preceding calendar year required 40 or more hours.

court commissioners, supplemental court commissioners, supreme court commissioners, and court of appeals staff attorneys.

This distinction made by the Ethics Commission staff is not new. For years, since well before 2000, Ethics Commission staff have provided the annual reminder notices and SEI forms to those individuals it recognizes as required filers, i.e., municipal judges, judges and justices. It then accepts and maintains the completed forms returned to its office.

However, Ethics Commission staff indicates that is not statutorily authorized to administer the distribution, filing, and maintenance of forms filed by the court staff under Ch. 60. Since well before 2000, a supreme court commissioner has handled this ministerial, administrative task. Until this year, this task entailed obtaining an updated list of circuit court and supplemental court commissioners from the Office of Court Operations, as well as an updated staff attorney list from the court of appeals, then sending paper mailings to the persons identified in the rule, basically providing a paper copy of the form and filing instructions. Court staff would go to the Ethics Commission's office once a year and physically file the forms.

Approximately two years ago, the Ethics Commission commenced an initiative to convert to electronic filing of the SEI form. With the commencement of e-filing of the SEIs, the Ethics Commission has reaffirmed its concerns about administering this task for the "court filers", i.e., those required to file the SEI form by court rule and not by statute. This issue came to the attention of Court Operations, as it has been asked to assume administrative oversight for this process. The electronic database as designed by the Ethics Commission will afford the administrator significant access to confidential and sensitive personal financial information of circuit and supplemental court commissioners and other court filers.

In consultation with the Director's Office, this petition proposes simply eliminating the SEI filing requirement for these court staff.

### **What Changes are Requested?**

The relevant supreme court rules would be amended as follows:

**SCR 60.05(8)(b)** Financial reports. Except as provided in SCR 60.07, a judge shall file with the ethics board a timely financial report as required by section 19.43 of the statutes. ~~The report shall also be filed by commissioners of the supreme court, staff attorneys of the court of appeals, and the director of state courts.~~

**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., 2.(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 hours or more of circuit court commissioner duties during the preceding calendar year shall comply with SCR 60.05 (8).~~

We have included some minor technical corrections in the (new) last sentence that were in the original order, see S. Ct. Order 00-12, 2001 WI 34, (issued Apr. 6, 2001, eff. Apr. 6, 2001) but were erroneously not added in the printed version.

Part-time judges are not required to file a SEI. See SCR 60.07(2). No change to this provision is sought.

The existing Comment to SCR 60.05 would also be amended to reflect the rule change, as follows:

#### 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 hours of circuit court commissioner duties in the preceding calendar year.~~

#### **What is the Origin of the Requirement for Court Staff Filing?**

There appears to be little information in the original court files regarding the court's decision to add court staff to SCR 60.05(8)(b).

Effective January 1997, this court repealed and recreated its Code of Judicial Conduct. See S. Ct. Order 95-05, (issued July 1, 1996, eff. Jan. 1, 1997.) The "New" Judicial Code provided that judges and justices would comply with Wis. Stat. s. 19.43. See SCR 60.05(8)(b). This rule also included members of the Office of Lawyer Regulation's predecessor, the Board of Attorneys Professional Responsibility (BAPR), the Board of Bar Examiners (BBE), supreme court commissioners, the director of state courts, and court of appeals staff attorneys. Id.

By order dated April 6, 2001, the court amended SCR 60.05(8)(b) to add to the list of positions required to file SEI: members of the board of administrative oversight (BAO) and members of the preliminary review committees (PRC). See S. Ct. Order 00-12, 2001 WI 34, (issued Apr. 6, 2001, eff. Apr. 6, 2001).

Apparently, members of the BAO and PRC threatened to resign over the new SEI filing requirement imposed on them. Many are practicing attorneys and perceived the SEI disclosure requirements as creating a conflict with their duty of confidentiality to clients under SCR 20:1.6. This is a legitimate concern that is shared by other lawyers who are obligated to file the SEI. See

DeBardleben v. Ethics Board, 112 Wis. 2d 324, 332 N.W.2d 826 (Ct. App. 1983) (ruling that Ethics Board cannot enforce s. 19.44(1)(f) – requiring disclosure of client names - against attorneys ); see also 68 Atty. Gen. 411 (Dec. 20, 1979).

By order dated January 23, 2002, the court revised the rule and removed members of the BAO and PRCs, as well as members of the BBE from the SEI filing requirements. See S. Ct. Order 01-12A, 2002 WI 8, (issued Jan. 23, 2002, eff. Apr. 1, 2002). Other than the purely technical correction made in 2006,<sup>2</sup> it does not appear the court has revisited this rule since 2002.

**Alternatively, Reduce the Filing Threshold Applicable to Supplemental Court Commissioners.**

In the alternative, if the court is not inclined to eliminate the filing requirement for court staff, the petition, at a minimum asks the court to amend the filing threshold for *supplemental* court commissioners in SCR 60.07(2). The current 40-hour per year threshold set in the rule is very low. This requirement raises a number of questions and concerns each year from supplemental court commissioners. We request the court increase this threshold to a number that reflects a more significant allocation of time, such as 500 hours, which would be comparable to a 0.25 FTE. If the court elects this option, the Comment to SCR 60.05(8) should also be amended accordingly.

Therefore, the Office of Court Operations respectfully requests the Wisconsin Supreme Court grant its request and amend SCRs 60.05 and 60.07 as provided in the attached petition.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2018.

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<sup>2</sup> By order dated December 13, 2006, the court, on its own motion, amended SCR 60.07(2) to add: "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 hours or more of circuit court commissioner duties during the preceding calendar year are required to comply with SCR 60.05(8)." See S. Ct. Order 06-10, 2006 WI 130 (issued Dec. 13, 2006, eff. Jan. 1, 2007). However, this was not a new addition. Rather, the order indicates that this language had been inadvertently omitted during a 2004 repeal and recreation of SCR 60.07.

