

FILED

In re: Petition for Amendments to
Campaign-Related Recusal
Rules SCR 60.04 (4), (5), (6), (7), and (8)

PETITION

JAN 30 2026

CLERK OF SUPREME COURT
OF WISCONSIN

Petitioners are retired members of the State of Wisconsin judiciary who petition the Wisconsin Supreme Court to adopt the following amendments to SCR 60.04 (4), (5), (6), (7), and (8) pursuant to the Court's supervisory authority over the Wisconsin unified court system under Article VII of the Wisconsin Constitution. Petitioners request that this Court provide public notice of this petition to attorneys and the people of Wisconsin, allow written comments from all interested parties in response to the petition together with a reasonable opportunity for petitioners to reply to such comments, and a public hearing on the proposed petition to be held on due notice and in open court.

Below is a "redline version" of our proposed changes followed by a "clean version" to demonstrate how the proposed rules would read if adopted.

**REDLINE OF PROPOSED REVISIONS TO
WISCONSIN SUPREME COURT RULES 60.04(4), (5), (6), (7) AND (8)**

REDLINE OF PROPOSED REVISION OF WISCONSIN SUPREME COURT RULE 60.04(4), (5)¹

(4) Mandatory recusal. Except as provided in sub. (5) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know ~~establish one of the following or when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of~~ would raise a reasonable question concerning the judge's ability to be impartial, or when the facts and circumstances the judge knows or reasonably should know ~~would reasonably question the judge's ability to be impartial~~ establish one of the following:

(a) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

(b) The judge of an appellate court previously handled the action or proceeding as judge of another court.

(c) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning the matter.

¹ The redline shows only the proposed changes to the rule. The Comments to SCR 60.04(4) and (5) are omitted for clarity.

(d) The judge ~~knows that he or she~~, individually or as a fiduciary, or the judge's spouse or minor child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding. A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse, domestic partner, children and any other family member residing in the judge's household, having due regard for the confidentiality of the spouse's, child(ren)'s and other family member's business.

(e) The judge or the judge's spouse, domestic partner, or a person within the third degree of kinship to either of them, or the spouse of such a person meets one of the following criteria:

1. Is a party to the proceeding or an officer, director or trustee of a party.
2. Is acting as a lawyer in the proceeding.
3. Is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding.
4. Is, to the judge's knowledge, likely to be a material witness in the proceeding.

A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse, domestic partner, and any person within the third degree of kinship to either of them, or the spouse of such a person, having due regard for the confidentiality of their business.

(f) Throughout SCR 60.04 (4), "family member" shall include unmarried domestic partners as otherwise defined in Wisconsin law.

(fg) The judge, while a judge or a candidate for judicial office, has made a public statement that expressly and specifically commits, ~~or appears to commit~~, the judge ~~with respect to any of the following to decide an issue before the court, or likely to come before the court, in a certain way.~~

(h) A judge shall recuse himself or herself in a proceeding if, based on the facts and circumstances the judge knows or reasonably should know, any support of the judge's candidacy for judicial office or a contribution to the judge's campaign committee by any individual or entity raises a reasonable question concerning the judge's ability to be impartial. In determining impartiality with respect to campaign contributions or support, the following should be considered:

- _____ 1. The amount of the contribution or support;
- _____ 2. The timing of the contribution or support;
- _____ 3. The relationship of the contributor or supporter to the parties;
- _____ 4. The impact of the contribution or support relative to all contributions and support received;
- _____ 5. The degree of the contributor's or supporter's involvement in the judge's campaign.;

6. The nature of the contributor's prior political activities or support and prior relationship with the judge;

7. The nature of the pending proceeding or impending matter and its importance to the parties;

8. Whether the contribution or support was likely intended to trigger the recusal question;

9. Any other factor relevant to the issue of campaign contributions or support that causes the judge's impartiality to be questioned.

(l) Effect of Independent Communications. A judge shall recuse himself or herself in a proceeding if, based on the facts and circumstances a judge knows or reasonably should know, the sponsorship of an independent expenditure or issue advocacy communication (collectively, an "independent communication") by an individual or entity raises a reasonable question concerning the judge's ability to be impartial. In determining impartiality with respect to campaign sponsorship, the following should be considered:

1. The amount of the sponsorship;

2. The timing of the sponsorship;

3. The relationship of the sponsor to the parties;

4. The impact of the sponsorship relative to all other sponsorship received;

5. The degree of the sponsor's involvement in the judge's campaign;

6. The nature of the sponsor's prior political activities, contributions and support and prior relationship with the judge;

7. The nature of and the issues in the pending proceeding or impending matter and their importance to the parties;

8. Any other factor relevant to the issue of independent communication sponsorship that causes the judge's impartiality to be questioned.

~~(5) A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse and minor children residing in the judge's household, having due regard for the confidentiality of the spouse's business. [incorporated into (4)(d) as amended]~~

(65) Procedure.

(a) The judge who believes recusal is required may promptly recuse in the proceeding by written order disclosing the general reason for the recusal. A citation to the applicable provision of these rules is a sufficient reason.

(b) Alternatively, A judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of

the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate and believes he or she can be fair and impartial in the proceeding, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(c) If the judge believes recusal is not required, but knows any facts or circumstances that the judge believes present a possible basis for recusal, or that the parties or their lawyers might consider relevant to the question of recusal, the judge shall disclose the facts and circumstances on the record to the parties.

(d) If a party requests the judge to recuse in a proceeding, or if the judge discloses a possible basis for recusal to the parties under (c), the judge shall promptly:

1. Provide an opportunity to the parties or their lawyers to present any additional facts and circumstances or legal argument relevant to the question of recusal.

2. Rule either orally on the record or in writing on the question of recusal, stating the reasons for recusing or declining to recuse in the proceeding taking into account any additional facts and circumstances or argument presented by any party.

(e) Any question of recusal shall be resolved as soon as practicable and, except in matters requiring immediate judicial action, before the judge makes any ruling affecting the rights of the parties.

~~(7) 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. [incorporated into(4)(h) as amended]~~

~~(8) Effect of Independent Communications. A judge shall not be required to recuse himself or herself in a proceeding where such recusal would be based solely on the sponsorship of an independent expenditure or issue advocacy communication (collectively, an "independent communication") by an individual or entity involved in the proceeding or a donation to an organization that sponsors an independent communication by an individual or entity involved in the proceeding. [incorporated into (4) (i) as amended]~~

PROPOSED RULE REVISIONS WITHOUT REDLINING

(4) Mandatory recusal. Except as provided in sub. (5) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know would raise a reasonable question concerning the judge's ability to be impartial, or when the facts and circumstances the judge knows or reasonably should know establish one of the following:

(a) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

(b) The judge of an appellate court previously handled the action or proceeding as judge of another court.

(c) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning the matter.

(d) The judge, individually or as a fiduciary, or the judge's spouse or minor child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding. A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse, domestic partner, children and any other family member residing in the judge's household, having due regard for the confidentiality of the spouse's, child(ren)'s and other family member's business.

(e) The judge or the judge's spouse, domestic partner, or a person within the third degree of kinship to either of them, or the spouse of such a person meets one of the following criteria:

1. Is a party to the proceeding or an officer, director or trustee of a party.
2. Is acting as a lawyer in the proceeding.
3. Is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding.
4. Is, to the judge's knowledge, likely to be a material witness in the proceeding.

A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse, domestic partner, and any person within the third degree of kinship to either of them, or the spouse of such a person, having due regard for the confidentiality of their business.

(f) Throughout SCR 60.04 (4), "family member" shall include unmarried domestic partners as otherwise defined in Wisconsin law.

(g) The judge, while a judge or a candidate for judicial office, has made a public statement that expressly and specifically commits the judge to decide an issue before the court, or likely to come before the court, in a certain way.

(h) A judge shall recuse himself or herself in a proceeding if, based on the facts and circumstances the judge knows or reasonably should know, any support of the judge's candidacy for judicial office or a contribution to the judge's campaign committee by any individual or entity raises a reasonable question concerning the judge's ability to be impartial. In determining impartiality with respect to campaign contributions or support, the following should be considered:

1. The amount of the contribution or support;

2. The timing of the contribution or support;
 3. The relationship of the contributor or supporter to the parties;
 4. The impact of the contribution or support relative to all contributions and support received;
 5. The degree of the contributor's or supporter's involvement in the judge's campaign.;
 6. The nature of the contributor's prior political activities or support and prior relationship with the judge;
7. The nature of the pending proceeding or impending matter and its importance to the parties;
 8. Whether the contribution or support was likely intended to trigger the recusal question;
 9. Any other factor relevant to the issue of campaign contributions or support that causes the judge's impartiality to be questioned.

(I) Effect of Independent Communications. A judge shall recuse himself or herself in a proceeding if, based on the facts and circumstances a judge knows or reasonably should know, the sponsorship of an independent expenditure or issue advocacy communication (collectively, an "independent communication") by an individual or entity raises a reasonable question concerning the judge's ability to be impartial. In determining impartiality with respect to campaign sponsorship, the following should be considered:

1. The amount of the sponsorship;
2. The timing of the sponsorship;
3. The relationship of the sponsor to the parties;
4. The impact of the sponsorship relative to all other sponsorship received;
5. The degree of the sponsor's involvement in the judge's campaign;
6. The nature of the sponsor's prior political activities, contributions and support and prior relationship with the judge;
7. The nature of and the issues in the pending proceeding or impending matter and their importance to the parties;
8. Any other factor relevant to the issue of independent communication sponsorship that causes the judge's impartiality to be questioned.

(5) Procedure.

(a) The judge who believes recusal is required may promptly recuse in the proceeding by written order disclosing the general reason for the recusal. A citation to the applicable provision of these rules is a sufficient reason.

(b) Alternatively, a judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate and believes he or she can be fair and impartial in the proceeding, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

(c) If the judge believes recusal is not required, but knows any facts or circumstances that the judge believes present a possible basis for recusal, or that the parties or their lawyers might consider relevant to the question of recusal, the judge shall disclose the facts and circumstances on the record to the parties.

(d) If a party requests the judge to recuse in a proceeding, or if the judge discloses a possible basis for recusal to the parties under (c), the judge shall promptly:

1. Provide an opportunity to the parties or their lawyers to present any additional facts and circumstances or legal argument relevant to the question of recusal.
2. Rule either orally on the record or in writing on the question of recusal, stating the reasons for recusing or declining to recuse in the proceeding taking into account any additional facts and circumstances or argument presented by any party.

(e) Any question of recusal shall be resolved as soon as practicable and, except in matters requiring immediate judicial action, before the judge makes any ruling affecting the rights of the parties.

Respectfully submitted this 30 day of January, 2026.

Sarah B. O'Brien
Circuit Court Judge (ret.)
State Bar # 1017023

John W. Markson
Circuit Court Judge (ret.)
State Bar # 1018620.

Richard G. Niess
Circuit Court Judge (ret.)
State Bar # 1005460

J. David Rice
Circuit Court Judge (ret.)
State Bar # 1005332

Richard J. Sankovitz

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Circuit Court Judge (ret.)
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8. Any other factor relevant to the issue of independent communication sponsorship that causes the judge's impartiality to be questioned.

(5) Procedure.

(a) The judge who believes recusal is required may promptly recuse in the proceeding by written order disclosing the general reason for the recusal. A citation to the applicable provision of these rules is a sufficient reason.

(b) Alternatively, a judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate and believes he or she can be fair and impartial in the proceeding, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

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(d) If a party requests the judge to recuse in a proceeding, or if the judge discloses a possible basis for recusal to the parties under (c), the judge shall promptly:

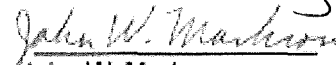
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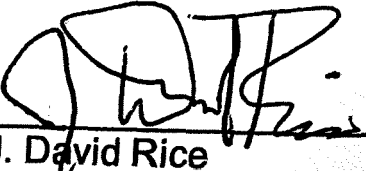
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