

**STATE OF WISCONSIN  
JUDICIAL COMMISSION**

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January 10, 2024

CONFIDENTIAL  
AND SENT VIA EMAIL

Hon. Rebecca F. Dallet  
Supreme Court  
[rebecca.dallet@wicourts.gov](mailto:rebecca.dallet@wicourts.gov)

Dear Justice Dallet:

At its recent meeting, the Commission considered a complaint alleging that your administrative appointment of former Judge Audrey Skwierawski as Interim Director of State Courts, while on leave of her position as a Milwaukee County circuit court judge, amounted to violations of the Code of Judicial Conduct, including SCRs 60.02, 60.03(1), 60.04(1)(b), 60.04(1)(hm), and 60.04(2).<sup>1</sup>

The Commission's examination of this matter has resulted in a determination that there is no evidence of misconduct within the jurisdiction of the Commission to warrant further action or consideration by the Commission.

All Commission proceedings concerning this matter are confidential pursuant to state law. *See Wis. Stat. § 757.93.*

In making its decision, the Commission carefully considered: (1) the Preamble to the Code of Judicial Conduct, which asserts, with regard to the touchstone provisions of the Code (such as Supreme Court Rules 60.02 and 60.03(1)), that "[c]are must be taken that the Code's necessarily general rules do not constitute a trap for the unwary judge;" (2) that Supreme Court Rules 60.04(1)(b) and (1)(hm) apply solely to a judicial official's adjudicative (not administrative) responsibilities; (3) that Supreme Court Rule 60.04(2) does not address the alleged misconduct; and (4) there are no provisions of the Wisconsin Code of Judicial Conduct, judicial disciplinary

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<sup>1</sup> Commissioners Foley and Keppel did not participate in this matter.

It was alleged that the appointment was inappropriate, given that Wis. Const. Art. VII, § 10 states, "No justice of the supreme court or judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected [...]," and Wis. Stat. § 757.02(2) reads, "The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he or she was elected or appointed."

decisions in Wisconsin, or Wisconsin advisory opinions which explicitly prohibit making this particular type of appointment.<sup>2</sup>

The Commission also considered (5) the constitutional and statutory limitations at issue that prohibit a judge from obtaining another “office of public trust” (also known as “public office”) that is not a judicial office; and (6) relevant case law and advisory opinions, including: (6a) In re Appointment of Revisor, 141 Wis. 592, 124 N.W. 670, 675 (1910), which states, “There have been many attempts to accurately define [a public] office and differentiate it from a mere employment, but it is manifest that the line is not easy to draw” (a case in which it was found that a Supreme Court justice could also be a Trustee of the State Law Library, without running afoul of the same constitutional provision at issue in this matter); (6b) Martin v. Smith, 239 Wis. 314, 329, 1 N.W.2d 163 (1941), in which the Supreme Court outlined the criteria to consider in deciding whether public employment amounts to a “public office” (in holding that the president of the University of Wisconsin is not a “public office,” given that the university president was “subject in all things to the action of the Board of Regents,” and the powers conferred upon the university president could be withdrawn at will by the Board); (6c) Op. Att’y Gen. 4-08, 7 (2008) (which held that the phrase “judicial office,” as used in Wis. Const. Art. VII, § 10, should be construed as referring to an office that is located within the judicial branch of government created by that article”);<sup>3</sup> and (6d) Wagner v. Milwaukee County Election Commission, 263 Wis.2d 709, 666 N.W.2d 816 (2003).<sup>4</sup>

Finally, the Commission reviewed (7) the criteria outlined by the Supreme Court in Martin, in which the Court held that:

[T]o constitute a position of public employment a public office must be of a civil nature, it must be created by the Constitution or through legislative act; must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public; must have some permanency and continuity, and not be only temporary or occasional; and its powers and duties must be derived from legislative authority and be performed independently and without the control of a superior power, other than the law, except in case of inferior officers specifically placed under the control of a superior officer or body, and be entered upon by taking an oath and giving an official bond, **and** be held by virtue of a commission or other written authority. Id. at 332 (emphasis added).

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<sup>2</sup> The Commission also considered SCR 70.23(2), which permits judges to take leave (without limitation), if they obtain the approval of the chief judge of their judicial administrative district, and permits the assignment of another judge to serve in the judge’s absence. It is the Commission’s understanding that Judge Skwierawski took leave of her circuit court position to act as interim Director of State Courts, in accordance with this provision.

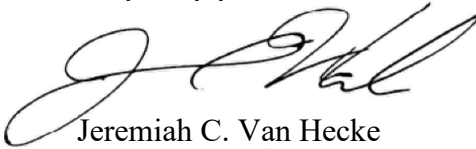
<sup>3</sup> It should be noted that, although courts are not bound by an Attorney General’s opinion, a well-reasoned opinion is of persuasive value concerning a state statute when a court later addresses the meaning of the same statute. Schill v. Wisconsin Rapids Sch. Dist., 327 Wis.2d 572, 786 N.W.2d 177, 201 (2010) (internal citations omitted).

<sup>4</sup> Although the Supreme Court in Wagner held that, during his term of judicial office, the circuit court judge could not also hold the elected position of County Executive, the County Executive position was considered another office of public trust by the Court and the parties to the litigation (and also appears to be such a public office, based upon the criteria outlined in Martin).

The position of Director of State Courts does not appear to meet several of these criteria (which are all required for a position to be considered an office of public trust). The Commission notes that, during the 1978 reorganization of the judicial branch, the position of Director of State Courts was created by Supreme Court Rule (not by the Constitution or legislative act), which specifically outlines and details the duties, responsibilities and obligations of the Director. *See* Supreme Court Rules 1 – 7, 10, and 13 (1978) (which were filed and effective as of October 30, 1978 and are virtually identical to Supreme Court Rules 70.01-70.07, 70.10, and 70.13 (2023)). The Director of State Courts position is at will, indefinite, and subject to the control of a superior power (the Supreme Court), not an independent position. *See* Supreme Court Rule 70.01(1). Additionally, to the extent that this matter relates to former Judge Skwierawski’s appointment as Interim Director of State Courts, the interim nature of the appointment (which was for several months) could be interpreted as “temporary or occasional” in nature. Finally, the position of Director of State Courts is not entered upon by taking an oath or giving an official bond.

Accordingly, the matter is now closed. Please be reminded that Commission proceedings relating to it remain strictly confidential, pursuant to state law. *See* Wis. Stat. § 757.93.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Van Hecke', written in a cursive style.

Jeremiah C. Van Hecke  
Executive Director