

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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THE HONORABLE JOHN SIEFERT,

Plaintiff,

v.

Case No. 08-C-126-BBC

JAMES C. ALEXANDER,  
LARRY BUSSAN,  
GINGER ALDEN,  
DONALD LEO BACH,  
JENNIFER MORALES,  
JOHN R. DAWSON,  
DAVID A. HANSHER,  
GREGORY A. PETERSON,  
WILLIAM VANDER LOOP,  
MICHAEL MILLER, AND  
JAMES M. HANEY,

Defendants.

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DEFENDANTS' RESPONSE TO PLAINTIFF'S PROPOSED  
FINDINGS OF FACT

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Defendants, by their attorneys, submit their response to plaintiff's proposed findings of fact in opposition to plaintiff's motion for summary judgment.

**Plaintiff's PFOF 1:** This is a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the Constitution of the United States. It concerns the constitutionality of portions of Wisconsin's Code of Judicial Conduct, found in Wisconsin Supreme Court Rules 60.06(2)(b)(1), 60.06(2)(b)(4), and 60.06(4). *Complaint* ¶ 1.

**Defendant's response to PFOF 1:** No dispute as to what plaintiff complaints.

**Plaintiff's PFOF 2:** Plaintiff complains that SCR 60.06(2)(b)(1), which prohibits a judge or judicial candidate from being a member of a political party, is unconstitutional both on its face and as applied to Plaintiff in violation of the First and Fourteenth Amendments. Plaintiff further complains that SCR 60.06(2)(b)(4), which prohibits judges and judicial candidates from endorsing or speaking on behalf of other candidates or political party platforms, is unconstitutional both on its face and as applied to Plaintiff. Finally, Plaintiff complains that SCR 60.06(4), which prohibits judges and judicial candidates from personally soliciting contributions for their own campaigns, is unconstitutional both on its face and as applied to Plaintiff. *Complaint* ¶ 2.

**Defendants' response to PFOF 2:** No dispute as to what plaintiff complaints.

**Plaintiff's PFOF 3:** This action arises under Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the Constitution of the United States. *Complaint* ¶ 3.

**Defendants' response to PFOF 3:** No dispute.

**Plaintiff's PFOF 4:** The jurisdiction of this Court over the claims arising under 42 U.S.C. § 1983 is founded upon 28 U.S.C. § 1343(a). The jurisdiction over the claims arising under the First and Fourteenth Amendments is founded upon 28 U.S.C. §§ 1331 and 1343(a). *Complaint* ¶ 4.

**Defendants' response to PFOF 4:** No dispute.

**Plaintiff's PFOF 5:** Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). *Complaint* ¶ 5.

**Defendants' response to PFOF 5:** No dispute.

**Plaintiff's PFOF 6:** Plaintiff Honorable John Siefert is an individual and resident of Wisconsin. He lives in Milwaukee, Wisconsin, in Milwaukee county. *Complaint* ¶ 6.

**Defendants' response to PFOF 6:** No dispute.

**Plaintiff's PPFOf 7:** The Defendants are the members of the Wisconsin Judicial Commission ("Commission"), sued in their official capacities: James C. Alexander (Executive Director), Larry Bussan (Administrative Assistant), Ginger Alden, Donald Leo Bach, John R. Dawson, James M. Haney, David A. Hansher, Michael R. Miller, Jennifer Morales, Gregory A. Peterson, and William Vander Loop. *Complaint* ¶ 7.

**Defendants' response to PPFOf 7:** No dispute.

**Plaintiff's PPFOf 8:** The Commission was created pursuant to Article 7, Section 11 of the Wisconsin Constitution and with the inherent power of the Wisconsin Supreme Court, codified by the Wisconsin legislature in §§ 757.81-757.99 of the Wisconsin Statutes. Wis. Stat. §§ 757.81-757.99.

**Defendants' response to PPFOf 8:** No dispute.

**Plaintiff's PPFOf 9:** The executive director of the Commission investigates any allegation of misconduct by a judicial official and makes an initial determination of whether it warrants review by the Commission. Wis. Admin. Code § JC 4.01.

**Defendants' response to PPFOf 9:** No dispute.

**Plaintiff's PPFOf 10:** The Commission may then authorize the executive director to conduct a full, fair, and prompt investigation of any violation of the Code of Judicial Conduct and presents the findings to the Commission. Wis. Admin. Code § JC 4.03.

**Defendants' response to PPFOf 10:** No dispute.

**Plaintiff's PPFOf 11:** The Commission is then empowered to determine whether to file formal charges against a judicial officer in the Wisconsin Supreme Court. Wis. Stat. § 757.85(5).

**Defendants' response to PPFOf 11:** No dispute.

**Plaintiff's PPFOf 12:** If formal charges are filed, the Commission may authorize the executive director or other counsel to prosecute the case on behalf of the Commission. Wis. Admin. Code § JC 4.08(6), § JC 6.01.

**Defendants' response to PPFOf 12:** No dispute.

**Plaintiff's PPFOf 13:** Wisconsin state court judges are selected through a process of non-partisan judicial elections. Regulation of judicial

conduct, as well as the conduct of candidates for judicial office, is governed by the Wisconsin Code of Judicial Conduct (“the Canons”), found in Chapter 60 of the Supreme Court Rules. SCR 60.01 et seq. *Complaint* ¶ 8.

**Defendants’ response to PFFOF 13:** No dispute.

**Plaintiff’s PFFOF 14:** On October 29, 2004, the Wisconsin Supreme Court issued Order 00-07, amending the Canons. This Order added several provisions to existing Canons, and significantly altered the scope and language of several others. Wisconsin Supreme Court Order 00-07, attached as Exhibit 1.

**Defendants’ response to PFFOF 14:** No dispute.

**Plaintiff’s PFFOF 15:** Order 00-07 added a definition of “Impartiality” in SCR 60.01(7m), which provides that impartiality “means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before a judge.” *Complaint*, Exhibit 1, at 3.

**Defendants’ response to PFFOF 15:** No dispute.

**Plaintiff’s PFFOF 16:** SCR 60.06(2)(b)(1) (“the political affiliation clause”) provides that no judge or judicial candidate may “[b]e a member of any political party.” SCR 60.06(2)(b)(1)

**Defendants’ response to PFFOF 16:** No dispute.

**Plaintiff’s PFFOF 17:** SCR 60.06(2)(b)(4) (“the endorsement clause”) provides that no judge or judicial candidate may “[p]ublicly endorse or speak on behalf of [a political party’s] candidates or platforms.” SCR 60.06(2)(b)(4).

**Defendants’ response to PFFOF 17:** No dispute.

**Plaintiff’s PFFOF 18:** An exception to the political affiliation clause and endorsement clause is provided by SCR 60.06(2)(c), added by Order 00-07, which states that “[a] partisan political office holder who is seeking election or appointment to judicial office or who is a judge-elect may continue to engage in partisan political activities required by his or her present position.” SCR 60.06(2)(c).

**Defendants’ response to PFFOF 18:** No dispute.

**Plaintiff's PFFOF 19:** Prior to Order 00-07, SCR 60.06(2) had applied only to judges, not judicial candidates, and had stated that “[e]xcept for activities concerning his or her own election, a judge shall not be a member of any political party or participate in its affairs, caucuses, promotions, platforms, endorsements, conventions or activities. A judge shall not make or solicit financial or other contributions in support of its causes or publicly endorse or speak on behalf of its candidates or platforms.” *Complaint*, Exhibit 1, at 5.

**Defendants' response to PFFOF 19:** No dispute.

**Plaintiff's PFFOF 20:** SCR 60.06(4) (“the solicitation clause”) provides that a “judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions.” This provision underwent only minor modification from Order 00-07. SCR 60.06(4).

**Defendants' response to PFFOF 20:** No dispute.

**Plaintiff's PFFOF 21:** Three of the Wisconsin Supreme Court's seven judges dissented from Order 00-07 on constitutional grounds. In an opinion joined by fellow judges Prosser and Butler, Judge Roggensack cited *Republican Part [sic] of Minnesota v. White*, 536 U.S. 765 (2002) and *Buckley v. Valeo*, 424 U.S. 1 (1976) for the conclusion that the restriction on political activity found SCR 60.06(2)(b) violated the First Amendment. According to the judges, SCR 60.06(2)(b)'s political affiliation clause and endorsement clause were under-inclusive, both because of the exception provided for current office-holders, and because the provision only applied to political parties and not to other overtly partisan political groups. *Complaint*, Exhibit 1, at 12-26.

**Defendants' response to PFFOF 21: Objection.** The proposal inaccurately and incompletely summarizes the objections of the justices and is the form of argument rather than a proposed fact. The justices objections speak for themselves.

**Plaintiff's PFFOF 22:** Judges Prosser and Butler also objected to SCR 60.06(4)'s solicitation clause. Judge Prosser noted that, read literally, the clause would prohibit candidates from personally accepting contributions from good friends and co-workers, or even a spouse. The rule was also “inconsistent because it allowed judges and candidates to establish fundraising committees but pretended that the fundraisers thus recruited

were not also being invited to give money” and “so unrealistic that inadvertent or unavoidable violations were commonplace.” *Complaint*, Exhibit 1, at 13.

**Defendants’ response to PPFOf 22: Objection.** The proposal inaccurately and incompletely summarizes the objections of the justices and is the form of argument rather than a proposed fact. The justices’ objections speak for themselves.

**Plaintiff’s PPFOf 23:** Plaintiff Honorable John Siefert is a circuit court judge in Milwaukee County. *Siefert Affidavit* ¶ 2.

**Defendants’ response to Plaintiff’s PPFOf 23:** No dispute.

**Plaintiff’s PPFOf 24:** John Siefert was elected to this office in 1999, and re-elected in 2005. He is currently a candidate for re-election in 2011. *Siefert Affidavit* ¶ 3.

**Defendants’ response to PPFOf 24:** No dispute.

**Plaintiff’s PPFOf 25:** Prior to holding elective office as a judge, Judge Siefert was a member of the Democratic Party. Upon assuming office as judge, he was forced to resign his membership in the Democratic Party by SCR 60.06(2)(b)(1), which prohibited sitting judges from belonging to political parties. *Siefert Affidavit* ¶ 4.

**Defendants’ response to PPFOf 25:** No dispute.

**Plaintiff’s PPFOf 26:** In 1972, Judge Siefert was a delegate to the Democratic National Convention. *Siefert Affidavit* ¶ 5.

**Defendants’ response to PPFOf 26:** No dispute.

**Plaintiff’s PPFOf 27:** In 1972, and 1974, Judge Siefert was a Democratic candidate for the 63rd District of the Wisconsin State Assembly. *Siefert Affidavit* ¶ 6.

**Defendants’ response to PPFOf 27:** No dispute.

**Plaintiff's PFFOF 28:** In 1975, Judge Siefert was a non-partisan candidate for the office of County Executive, in Racine County, Wisconsin. *Siefert Affidavit* ¶ 7.

**Defendants' response to PFFOF 28:** No dispute.

**Plaintiff's PFFOF 29:** In 1979, 1983, 1986, 1993 and 1997, Judge Siefert was a candidate for the office of Municipal Judge in Milwaukee County, Wisconsin. He held this office from 1979 to 1983, and again from 1993 to 1999. *Siefert Affidavit* ¶ 8.

**Defendants' response to PFFOF 29:** No dispute.

**Plaintiff's PFFOF 30:** In 1990 and 1992, Judge Siefert was a Democratic candidate for County Treasurer in Milwaukee County, Wisconsin. He held this office from 1990 to 1993. *Siefert Affidavit* ¶ 9.

**Defendants' response to PFFOF 30:** No dispute.

**Plaintiff's PFFOF 31:** In 1992, Judge Siefert was an alternate presidential elector for Clinton/Gore. *Siefert Affidavit* ¶ 10.

**Defendants' response to PFFOF 31:** No dispute.

**Plaintiff's PFFOF 32:** Apart from his duties as judge, Judge Siefert would like to again become a member of the Democratic Party. *Siefert Affidavit* ¶ 11.

**Defendants' response to PFFOF 32:** No dispute.

**Plaintiff's PFFOF 33:** Judge Siefert does not intend to run a partisan re-election campaign, nor does he intend to appeal to partisanship either as a candidate or as a judge. *Siefert Affidavit* ¶ 12.

**Defendants' response to PFFOF 33:** No dispute.

**Plaintiff's PFFOF 34:** While Judge Siefert wishes to be a member of the Democratic Party, he does not necessarily agree with every element of the Democratic Party platform, and as a judge would decide each case before him strictly in accordance with the law, regardless of whether such a decision would conflict with provisions in the Democratic Party platform, or the views of various Democratic Party officials or candidates. Joining the Democratic Party, however, may be taken as a shorthand for announcing many of his views. *Siefert Affidavit* ¶ 13.

**Defendants' response to PFFOF 34:** No dispute as to the first sentence regarding Judge Siefert's beliefs and intentions. There is a dispute as to the second sentence. In his deposition, Judge Siefert stated:

I think—to be more specific, I think the affidavit indicates that it is a shorthand for your views. It's not necessarily my desire to use it that way, but it is a shorthand way for some people to describe their political viewpoint. I'm not necessarily sure I would use it that way.

Siefert Deposition, 9/19/2008, p. 13, ll. 8-13.

**Plaintiff's PFFOF 35:** In joining the Democratic Party, Judge Siefert does not intend to pledge or promise certain results in particular cases or classes of cases. *Siefert Affidavit* ¶ 14.

**Defendants' response to PFFOF 35:** No dispute as to Siefert's intentions.

**Plaintiff's PFFOF 36:** Being a member of the Democratic Party would not bias Judge Siefert for or against any particular party or class of parties, nor would it impair his ability to be open-minded in any particular case or class of cases. *Siefert Affidavit* ¶ 15.

**Defendants' response to PFFOF 36:** There is no dispute as to what Judge Siefert believes regarding his own bias.

**Plaintiff's PFFOF 37:** Judge Siefert is chilled from joining the Democratic party because he fears discipline under the political affiliation clause. *Complaint* ¶ 19.

**Defendants' response to PFFOF 37:** No dispute.

**Plaintiff's PFFOF 38:** Apart from his duties as judge, Judge Siefert has in the past endorsed candidates for non-partisan office, as allowed by the Wisconsin Code of Judicial Conduct. In making these endorsements, Judge Siefert has not be [sic] pledged or promised certain results in particular cases or classes of cases. Making these endorsements has not biased Judge Siefert for or against any particular party or class of parties, nor has it impaired his



ability to be openminded in any particular case or class of cases. *Siefert Affidavit* ¶ 16.

**Defendants' response to PFFOF 38:** No dispute as to Judge Siefert's beliefs regarding his bias or open mindedness.

**Plaintiff's PFFOF 39:** Apart from his duties as judge, Judge Siefert would also like to exercise his constitutional rights under the First Amendment to endorse candidates for partisan public office. *Siefert Affidavit* ¶ 17.

**Defendants' response to PFFOF 39:** No dispute as to what Judge Siefert would like to do. Defendants object to the assertion, presented as fact, that such an endorsement is a constitutional right.

**Plaintiff's PFFOF 40:** Specifically, Judge Siefert would like to publicly support Senator Barack Obama for President in the upcoming Presidential election, and would like to be able to publicly support other candidates in other races as desired. *Siefert Affidavit* ¶ 17.

**Defendants' response to PFFOF 40:** No dispute.

**Plaintiff's PFFOF 41:** Judge Siefert is, however, prohibited from doing so by SCR 60.06(2)(b)(4). *Siefert Affidavit* ¶ 17.

**Defendants' response to PFFOF 41:** No dispute.

**Plaintiff's PFFOF 42:** The fact that Judge Siefert wishes to publicly support Senator Obama does not mean that he necessarily agrees with him on every disputed legal or political issue, and as a judge he would decide each case before him strictly in accordance with the law, regardless of whether such a decision would conflict with a position taken by Senator Obama. Such public support, however, may be taken as a shorthand for announcing many of his views. *Siefert Affidavit* ¶ 18.

**Defendants' response to PFFOF 42:** No dispute as to plaintiff's beliefs.

**Plaintiff's PFFOF 43:** By publicly supporting Senator Obama for President, Judge Siefert would not be pledging or promising certain results in particular cases or classes of cases. *Siefert Affidavit* ¶ 19.

**Defendants' response to PFFOF 43:** No dispute as to plaintiff's intentions.

**Plaintiff's PFFOF 44:** Judge Siefert's publicly supporting Senator Obama would not bias him for or against any particular party or class of parties, nor would it impair his ability to be openminded in any particular case or class of cases. *Siefert Affidavit* ¶ 20.

**Defendants' response to PFFOF 44:** No dispute as to plaintiff's beliefs.

**Plaintiff's PFFOF 45:** In the unlikely event that Senator Obama appeared before Judge Siefert as a litigant in a case, he would recuse himself from hearing that case. *Siefert Affidavit* ¶ 21.

**Defendants' response to PFFOF 45:** No dispute.

**Plaintiff's PFFOF 46:** Based on his experience as a candidate for political office, Judge Siefert believes that endorsing another candidate is often politically dangerous, as by doing so one may alienate potential supporters who are opponents of the endorsed candidate, and may run the risk of being held responsible by the voters for the positions, statements, and actions of the endorsed candidate which would be beyond my control [sic]. He would therefore only make such endorsements in partisan races judiciously, as he currently does in non-partisan races. *Siefert Affidavit* ¶ 22.

**Defendants' response to PFFOF 46:** No dispute as to plaintiff's beliefs.

**Plaintiff's PFFOF 47:** In is the endorsee, not the endorser, who is the primary beneficiary of an endorsement. *Siefert Affidavit* ¶ 23.

**Defendants' response to PFFOF 47:** Defendants object to this statement, which is a legal conclusion, presented here as fact. There is no

dispute that Judge Siefert may hold this opinion, but he has not been qualified as an expert witness to offer such opinion as fact.

**Plaintiff's PFFOF 48:** An endorsement is more likely to bias a judge for or against a particular party or class of parties, or impair his ability to be openminded in any particular case or class of cases, if the judge is being endorsed than if the judge is making the endorsement. *Siefert Affidavit* ¶ 23.

**Defendants' response to PFFOF 48:** Defendants object to this statement, which is a legal conclusion, being presented here as fact. There is no dispute that Judge Siefert may hold this opinion, but he has not been qualified as an expert witness to offer such opinion as fact.

**Plaintiff's PFFOF 49:** A judge who is appointed to the bench by a partisan political official such as a governor is more likely to feel gratitude and be biased in favor of or lack openmindedness in cases involving that governor than if the judge had simply endorsed a particular gubernatorial candidate. *Siefert Affidavit* ¶ 23.

**Defendants' response to PFFOF 49:** Defendants object to this statement, which is a legal conclusion, being presented here as fact. There is no dispute that Judge Siefert may hold this opinion, but he has not been qualified as an expert witness to offer such opinion as fact.

**Plaintiff's PFFOF 50:** Judge Siefert is chilled from making any endorsements because he fears discipline under the endorsement clause. *Complaint* ¶ 20.

**Defendants' response to PFFOF 50:** No dispute.

**Plaintiff's PFFOF 51:** As a candidate for judicial office, Judge Siefert would like to personally solicit campaign contributions for his 2011 re-election campaign. *Siefert Affidavit* ¶ 24.

**Defendants' response to PFFOF 51:** No dispute.

**Plaintiff's PFFOF 52:** Specifically, Judge Siefert would like to personally solicit contributions from potential donors both by making personal phone calls, by signing his name to fund-raising letters, and by personally inviting people to his fundraising events *Siefert Affidavit* ¶ 24.

**Defendants' response to PFFOF 52:** No dispute.

**Plaintiff's PFFOF 53:** Because of the prohibition on personal solicitation in SCR 60.06(4), Judge Siefert's 1999 campaign for Circuit Judge was primarily self-financed. *Siefert Affidavit* ¶ 25.

**Defendants' response to PFFOF 53:** No dispute.

**Plaintiff's PFFOF 54:** Judge Siefert would also like to personally solicit contributions to retire campaign debt from his 1999 campaign for judicial office. *Siefert Affidavit* ¶ 25.

**Defendants' response to PFFOF 54:** No dispute.

**Plaintiff's PFFOF 55:** Judge Siefert is, however, prohibited from doing so by SCR 60.06(4). *Siefert Affidavit* ¶ 24, 25.

**Defendants' response to PFFOF 55:** No dispute.

**Plaintiff's PFFOF 56:** In making such solicitations, Judge Siefert does not intend to pledge or promise certain results in particular cases or classes of cases, either as a *quid pro quo* or for any other reason. *Siefert Affidavit* ¶ 26.

**Defendants' response to PFFOF 56:** No dispute as to plaintiff's intentions.

**Plaintiff's PFFOF 57:** Personally soliciting campaign contributions, either via personal phone calls or by means of signing fund-raising letters, would not bias Judge Siefert for or against any particular party or class of parties, nor would it impair his ability to be open-minded in any particular case or class of cases. *Siefert Affidavit* ¶ 27.

**Defendants' response to PFFOF 57:** No dispute as to Judge Siefert's beliefs regarding his bias and open mindedness.

**Plaintiff's PFFOF 58:** Campaign contributions are an essential part of any election campaign. *Siefert Affidavit* ¶ 28.

**Defendants' response to PFFOF 58:** Objection and disputed. Judge Siefert is qualified to make this assertion only on behalf of himself and his election campaigns. There are Wisconsin judges who do not expend any funds on re-election campaigns. (See DPFOF ¶ 63-67).

**Plaintiff's PFFOF 59:** While Judge Siefert is not up for re-election until 2011, it is common practice for candidates to solicit campaign contributions throughout their term in office, and Judge Siefert would like to begin personally soliciting campaign contributions as soon as possible to ensure that he has adequate campaign funds come 2011. *Siefert Affidavit* ¶ 29.

**Defendants' response to PFFOF 59:** No dispute as to plaintiff's intentions. Defendants OBJECT to the assertion as to "common practice" for judicial candidates as Judge Siefert lacks any foundation to establish the assertion as fact. The proposal is also disputed because there are counter-examples. Ten judges in Milwaukee County are up for re-election in April 2009 and none of them have commenced any fundraising (DPFOF ¶ 66).

**Plaintiff's PFFOF 60:** Being unable to personally solicit campaign contributions limits Judge Siefert's ability to raise campaign funds, potentially harming his ability to mount an effective election campaign. *Siefert Affidavit* ¶ 30.

**Defendants' response to PFFOF 60:** No dispute as to plaintiff's opinion regarding personal solicitation and its potential effect on his election campaign.

**Plaintiff's PFFOF 61:** Bans on personally soliciting campaign contributions often benefit incumbents, who often have a higher name recognition than their challenger opponents. *Siefert Affidavit* ¶ 31.

**Defendants' response to PPFOf 61: Objection.** Judge Siefert has not established the foundation for his expertise to assert this opinion as fact.

**Plaintiff's PPFOf 62:** Receiving campaign contributions has a greater risk of biasing a judge for or against a particular party or class of parties, or of impairing his ability to be openminded in any particular case or class of cases, rather than does solicitation of such contribution. *Siefert Affidavit* ¶ 32.

**Defendants' response to PPFOf 62: Objection.** Judge Siefert has not established the foundation for his expertise to assert his opinion as fact.

**Plaintiff's PPFOf 63:** Under current law, judicial candidates are required to know who has donated to their campaigns and in what amounts, even though they cannot personally solicit such contributions. *Siefert Affidavit* ¶ 33.

**Defendants' response to PPFOf 63:** No dispute.

**Plaintiff's PPFOf 64:** Based on his experience as a candidate, Judge Siefert is aware of certain methods, such as having committee members make solicitations while the solicited party is in the presence of the candidate, which are allowed by the Code but which undercut its rational. Judge Siefert has not engaged in such practices, and his refusal to do so has limited his ability to raise adequate campaign funds. *Siefert Affidavit* ¶ 64.

**Defendants' response to PPFOf 64:** No dispute.

**Plaintiff's PPFOf 65:** As a judicial candidate, Judge Siefert will instruct anyone soliciting funds on his behalf not to approach anyone who either has or is likely to have a case in front of his court, and it is his policy to disqualify himself if he sees a litigant before him whom he knows to have contributed to any of his past campaigns, whether for partisan or non-partisan office. *Siefert Affidavit* ¶ 35.

**Defendants' response to PPFOf 65:** No dispute.

**Plaintiff's PPFOf 66:** Absent the solicitation clause, Judge Siefert would follow the same policy regarding any contributions made as a result of personal solicitation. *Siefert Affidavit* ¶ 36.

**Defendants' response to PFFOF 66:** No dispute as to what plaintiff intends to do.

**Plaintiff's PFFOF 67:** Judge Siefert is chilled from making such personal solicitations because he fears discipline under the solicitation clause. *Complaint* ¶ 21.

**Defendants' response to PFFOF 67:** No dispute.

**Plaintiff's PFFOF 68:** Judge Siefert has exhausted all extra-judicial means at his disposal to resolve this matter before proceeding to file this Complaint. *Complaint* ¶ 22.

**Defendants' response to PFFOF 68:** Dispute. Defendant Alexander is not aware that Judge Siefert spoke against or filed any objection to Order 00-07 at the time it was debated. As with all supreme court rules petitions there is public notice and a time for filing written comments or objections. Wis. Stat. § 751.12. Anyone can file a petition with the court for a rule change at any time. *See* Wisconsin Supreme Court Internal Operating Procedures, III (DPFFOF ¶ 12, citing Alexander affidavit, 5/15/08, ¶ 10). There is no evidence in the record suggesting that Judge Siefert has petitioned the court for a rule change.

**Plaintiff's PPOF 69:** Judge Siefert has no adequate remedy at law.  
*Complaint* ¶ 23.

**Defendants' response to PPOF 69: Objection.** The proposal presents a conclusion of law as fact.

Dated this 15th day of October, 2008.

J.B. VAN HOLLEN  
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