
ISSUE

Does the Wisconsin Code of Judicial Conduct prohibit a Wisconsin Circuit Court Judge from carrying a concealed weapon in the courthouse and courtroom?

ANSWER

No

FACTS

As the requestor notes, WIS. STAT. §§ 941.23 and 941.235 currently prohibit the carrying of a concealed weapon generally, and in a public building, in particular. In 1992, the Wisconsin Supreme Court disciplined a judge who carried a concealed weapon into the courtroom. *In the Matter of Judicial Disciplinary Proceedings Against the Honorable Jerold W. Breitenbach*, 167 Wis. 2d 102, 482 N.W.2d 52 (1992).

In *Breitenbach*, the Court approved a stipulation entered into between Judge Breitenbach and the Judicial Commission in which the judge admitted that:

On at least two occasions, he went armed in court with a concealed and loaded revolver and on two occasions placed that revolver in the wastebasket near the bench in his courtroom and forgot he had done so, with the result that on each occasion the revolver was discovered by maintenance staff. Further, during the course of 14 proceedings between 1985 and 1990, Judge Breitenbach engaged in courtroom behavior that was loud, angry, impatient, discourteous, intemperate or lacking in dignity or decorum.

Id. at 105-06. The Court reviewed the findings of the judicial conduct panel, which had concluded that Judge Breitenbach's conduct violated SCR 60.01(1), (3), (6), (9), (11), (12) and 60.17 and WIS. STAT. § 757.81(4)(a), and recommended a two-year suspension of his judicial powers. *Id.* at 113-15. In its holding approving of the recommended discipline, the Court stated:

Judge Breitenbach has demonstrated that he lacks the necessary judicial temperament to serve as a member of the judiciary. His treatment of litigants and their counsel evinces a failure to understand or accept the duty of a judge to afford every person fair and impartial treatment.

Id. at 115.

Recently, the Wisconsin legislature created WIS. STAT. § 175.60, **License to carry a concealed weapon**, which permits properly licensed individuals to carry concealed weapons, *see* 2011 Wis. Act 35, § 38 (effective November 1, 2011), and amended WIS. STAT. §§ 941.23 and 941.235 accordingly, *see* 2011 Wis. Act 35, §§ 51-60. Although § 175.60 generally permits concealed carry, WIS. STAT. § 175.60(16)(a)6. prohibits individuals from carrying a concealed weapon in a county, state or federal courthouse. However, the statute provides an exception to that prohibition in WIS. STAT. § 175.60(16)(b)2., permitting a properly licensed judge to carry a concealed weapon in a courthouse and courtroom. The new statute does not define judge, but WIS. STAT. § 757.81(3) defines judge as a judge of any court established by or pursuant to Wisconsin Constitution, article VII, sections 2 or 14, or a supreme court justice. That definition differs somewhat from the broader definition of judge in the Code of Judicial Conduct, SCR 60.01(8).

DISCUSSION

Because the requestor is a circuit court judge and has posed his question by referencing his desire to carry a concealed weapon in his courthouse and courtroom, we confine our opinion to circuit court judges in Wisconsin. There is nothing within the Wisconsin Code of Judicial Conduct which directly addresses whether a Wisconsin circuit court judge may carry a concealed weapon. There are Code provisions that require a judge to obey the law and promote public confidence in the integrity of the judiciary. For example, SCR 60.03(1) requires a judge to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. SCR 60.02 requires a judge to maintain and enforce high standards of conduct and personally observe those standards so that the integrity and independence of the judiciary will be preserved. And SCR 60.04(1)(b) requires a judge to be faithful to the law. We note also that the question presented here involves none of the judicial intemperance found in the *Breitenbach* case.

We therefore conclude that a Wisconsin circuit court judge, who is a proper licensee under the new law and who is in full compliance with all other laws, is not prohibited by the Code of Judicial Conduct from carrying a concealed weapon in the courthouse and the courtroom. We note that this opinion does not address the effect of displaying the weapon or discussing its presence in the courtroom. Any other legal and administrative aspects of the requestor's question are beyond this Committee's authority.

APPLICABILITY

This opinion is advisory only. It is based on the specific facts and a question submitted by the petitioner to the Judicial Conduct Advisory Committee and is limited to questions arising under the Supreme Court Rules, Chapter 60, Code of Judicial Conduct. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for public officials and employees, Subchapter III of Chapter 19 of the statutes.

I hereby certify that this is a formal opinion No. 11-1 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 13th day of September, 2011.

Hon. Kitty K. Brennan
Chair

