

## **DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION CREATING RULES**

The Wisconsin Elections Commission adopts the following permanent rule to create EL 19, relating to confidentiality of judicial officer information on certain election materials.

The statement of scope for this rule, SS 096-24, was approved by the Office of Wisconsin Governor Tony Evers on August 1, 2024, published in Register No. 824B, on August 26, 2024, and approved by the Wisconsin Elections Commission on September 11, 2024.

### **RULE ANALYSIS**

#### **1. Statutes Interpreted:**

Section 8.10(8), Stats.

#### **2. Statutory Authority:**

Sections 5.05(1)(f), 8.10(8)(a), and 227.11(2)(a), Stats.

#### **3. Explanation of Agency Authority:**

Section 5.05(1)(f), Stats., allows the Commission to “Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Section 8.10(8)(a) explains the ability of judicial officers and candidates to withhold residency information on nomination papers and declarations of candidacy and requires the Commission to “promulgate rules for the administration of this subsection and prescribe a certification of residence for a candidate or circulating judicial officer for use under this subsection.”

Section 227.11(2)(a), Stats., authorizes an agency to promulgate rules interpreting the statutes administered by the agency.

#### **4. Related Statutes:**

Sections 8.10(2)&(4), 8.21(4)(b), 19.36(15), and 757.07 Stats. Section 8.10(8), Stats., modifies the process of completing nomination papers and declaration of candidacy documents by judicial officers and judicial candidates under Sections 8.10(2)&(4) and 8.21(4)(b). Section 19.36(15), Stats., clarifies that when a judicial officer or judicial candidate submits a certification of residence with the Commission, that document is not subject to public records requests. Section 757.07, Stats., contains the other privacy provisions for judicial officers created by 2023 WI Act 235.

#### **5. Plain Language Analysis:**

The proposed administrative rule carries out the legislative directive in Wis. Stat. § 8.10(8) for the Wisconsin Elections Commission to promulgate rules to allow judicial candidates and judicial officers to withhold their residential address information on nomination papers and declarations of candidacy. The rule prescribes what must be included on the certificate of residence that must be submitted to the Commission and how the Commission will process a form once received. The rule details the specific instances in which a judicial candidate and judicial officer may withhold residential information and instead add "Residence Certified with WEC" in the spaces on the forms asking for residence information. The rule also details how the Commission will communicate this information to the municipal or county clerks who may be processing nomination papers and declarations of candidacy signed by such officers and candidates. The rule also details that a new form must be submitted when any information on the form changes, such as running for election to a new office or for reelection, or if an address changes.

Section EL 19.01 defines terms relevant to the process for judicial officers and judicial candidates to submit certification of residence forms.

Section EL 19.02 details the information that must be included in order for a certification of residency form to be sufficient.

Section EL 19.03 provides what may be submitted as a proof of residency document, and how the document may be submitted.

Section EL 19.04 provides how the Commission will verify the address provided and how the Commission.

Section EL 19.05 provides how the Commission will maintain the information provided on certificates of residency.

Section EL 19.06 provides the procedures that must be followed by judicial officers and candidates, and by the Commission, county clerks, and municipal clerks following the proper filing of a certificate of residency with the Commission.

#### **6. Summary of, and Comparison With, Existing or Proposed Federal Regulations:**

Wis. Stat. § 8.10(8) was created by 2023 WI Act 235, which is closely related to recent federal legislation protecting the information of federal judicial officers. The federal law is the Daniel Anderl Judicial Security and Privacy Act of 2021, which passed as a part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, 117 P.L. 263; 2022 Enacted H.R. 7776; 117 Enacted H.R. 7776; 136 Stat. 2395. It is Section 5931-39 of the legislation. The federal law aimed to prohibit the public posting of certain personal identifying information of federal judges or their immediate family members and includes any home address of the officer. This rule relates more narrowly to residence information on declarations of candidacy and nomination papers but is otherwise in keeping with the federal law. However, it should be noted that the state law does not apply to federal judicial officers and only applies to Wisconsin judicial officers under the state system. The Commission has requested that the legislature amend the legislation to include federal officers.

#### **7. Summary of Comments Received During Preliminary Comment Period and at Public Hearing on Statement of Scope**

The Commission did not receive a directive from the Joint Committee for the Review of Administrative Rules to hold a preliminary public hearing and did not hold a preliminary hearing, and it has not yet held the public hearing for the rule.

#### **8. Comparison with Similar Rules in Illinois, Iowa, Michigan, and Minnesota**

Illinois enacted their own Judicial Privacy Act effective September 22, 2012. The Judicial Privacy Act covers Federal as well as State judges and their immediate families. Any judge in the district or circuit, appellate, or the highest court in the state is covered by the act. Bankruptcy judges are also included in the act. The act includes any blood relative of the judge or their spouses who live in the same residence as the judge. 705 ILCS § 90/1-10. The act protects information about a home address, home phone number, cellphone number, pager number, personal email address, social security number, federal tax identification number, checking and savings account numbers, credit card numbers, marital status, and the identity of a child under the age of 18. 705 ILCS § 90/1-10 Like the federal act, the Illinois act prohibits a government agency from posting this information or displaying it publicly. 705 ILCS § 90/2-1(a). If such protected information is displayed a covered individual may make a written request that the information be removed.

Iowa also has a law like the federal Judicial Security and Privacy Act. The legislature, in a 2017 amendment, added judges into their address confidentiality program that functions to protect the identity of individuals

who seek to avoid domestic abuse and their abusers. Under § 9E.2(2), active or retired state and local judges, federal judges, and the spouse or children of the judge may participate in the program. A state judge includes a supreme court justice, an appellate judge, a district court judge, magistrate judge, associate juvenile judge, associate probate judge, or a magistrate. If an individual is only temporarily serving in that role they are also included in the program. An individual must apply for the protection program. They must include identifying information like their name and address as well as why they fear for their safety or the safety of another person in their household. Iowa Code § 9E.3(1). If any of the identifying information changes the applicant must also inform the secretary of state of those changes. The act provides that program participants' name, address, and phone number are confidential information and may not be disclosed unless ordered by a court or pursuant to state or federal law. Iowa Code § 9E.7.

Minnesota has an equivalent to the Judicial Security and Privacy Act, which took effect on August 1, 2024. The act protects current, senior, and retired judges, as well as judicial referees and magistrate judges, of the state courts of Minnesota. The act also protects current and retired employees of the Minnesota judicial branch, and current employees of the Office of Administrative Hearing, Workers' Compensation Court of Appeals, and the Tax Court. Minn. Code § 480.40(1)(b). The act protects against release the residential address of the judge, their spouse, domestic partner, or child, a personal phone number or email address, the names of their children, the name of any child care facility or school the judges children attend, however, the information can still be accessed through a federal, state, or local record request. A judicial official may also waive protection by disclosing that information themselves or to another person if they do not restrict that other person from further disclosure. Minn. Code § 480.40(1)(c), (d). The act prohibits people, businesses, associations, or government entities from knowingly posting, displaying, publishing, selling, or making available protected information. Minn. Code § 480.40(2).

It does not appear that Michigan has enacted legislation or rules on the topic of judicial officer privacy.

## **9. Summary of Factual Data and Analytical Methodologies**

The Commission met on March 7 and 12, 2025, to discuss the draft rule. The Commission may make changes to the rule in response to feedback on the EIA and after the public hearing. Commission staff examined the current nomination paper and declaration of candidacy procedures and statues during the drafting of the rule.

## **10. Analysis and Supporting Documents used to Determine Effect on Small Business**

There is no anticipated effect on small business. No specific analysis was performed for the fiscal estimate, nor were any supporting documents generated, because there is no anticipated effect on any fiscal liabilities and revenue, and no anticipated costs to be incurred by the private sector.

## **11. Effect on Small Business (initial regulatory flexibility analysis):**

N/A

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## RULE TEXT

EL 19 Judicial Privacy Protections

19.01 DEFINITIONS

19.01(a) “Certification of Residence” means a document authorized by s. 8.10(8)(a) and applied for pursuant to this chapter.

19.01(b) “Judicial candidate” means a candidate for filling the office of a judicial officer, as defined in s. 757.07(1)(e).

19.01(c) “Judicial officer” has the meaning given in s. 757.07(1)(e).

19.01(d) “Proof of residence” has the meaning given in s. 6.34(3).

19.01(e) “Residential address” means street name and number, apartment or unit number, municipality, state, and ZIP code that identifies the individual’s residence under s. 6.10. Residential address as used in this chapter may also include a mailing address if the mailing address identifies the same residence.

19.01(f) “WEC” means the Wisconsin Elections Commission

19.02 APPLICATION

19.02(a) In order to file a lawful certification of residence with the commission, a judicial officer or judicial candidate must complete a certification of residence form prescribed by the commission pursuant to this chapter. A request for protection of personal information made pursuant to s. 757.07(4)(b)1. is not sufficient by itself to file a certification of residence pursuant to s. 8.10(8)(a).

19.02(b) A judicial officer or judicial candidate who wishes to be properly exempt from providing their residential address pursuant to s. 8.10(8) must file a certification of residence before circulating or signing nomination papers or submitting a declaration of candidacy.

19.02(c) A judicial officer seeking to maintain a private address under s. 8.10(8)(a), Stats., shall file the certification of residence form currently prescribed by the commission for that purpose. A sufficient form must contain all of the following:

19.02(c)(1) Full legal name of judicial officer or judicial candidate.

19.02(c)(2) Name that will appear on a judicial candidate’s declaration of candidacy and nomination papers.

19.02(c)(3) Judicial officer designation category under s. 757.07(1)(e).

19.02(c)(4) A judicial candidate must indicate the title; jurisdiction; branch, district, or jurisdiction; and date of election for the office sought.

- 19.02(c)(5) The address of the judicial officer or judicial candidate's residence for voting purposes, as defined by s. 6.10(1) Stats., which must include the street name and number, apartment/unit number, municipality, state, and ZIP code.
- 19.02(c)(6) Mailing address if different from the residential address.
- 19.02(c)(7) Email address.
- 19.02(c)(8) The following certification language: "I hereby certify that I am currently or formerly a judicial officer, or that I intend to be a candidate for filling the office of a judicial officer, as defined by Wis. Stat. § 757.07(1)(e). This form constitutes my written request to the Wisconsin Elections Commission to confidentially maintain my address unless I consent to disclosure under Wis. Stat. § 757.07(4)(e).

I certify that the residential address that I provided is the place where my habitation is fixed, without any present intent to move, and to which, when absent, I intend to return. I certify that the accompanying proof of residence submitted with this application accurately reflects my current legal name and residential address.

I certify that the information I provided in this application is true and correct. I understand that falsifying any portion of this application could result in prosecution and penalties, including, but not limited to, Wis. Stat. §§ 12.13(1)(b) and 12.13(3)(a).

I understand that I will need to submit a new request for certification of residence if there is any material change in the information presented on this application, including a change in address or election date.

I understand on what date I am required to be a resident of the jurisdiction for the office sought and that I may be required to move to qualify for the office.

I understand that if I am a judicial officer, I may place "Residence Certified with WEC" on my own nomination papers and Declaration of Candidacy for the office of a judicial officer in lieu of providing my residential address and, as a signatory or circulator, on the nomination papers of other nonpartisan candidates.

I understand that if I am only a candidate for filling the office of a judicial officer, I may place "Residence Certified with WEC" on my own nomination papers and Declaration of Candidacy for that office in lieu of providing my residential address.

I understand that a filing officer may contact me in writing to confirm that my residential address is still accurate or to request an updated form, and that I must confirm the accuracy of my residence or provide an updated form if requested.

I understand that the Wisconsin Elections Commission will maintain the confidentiality of my certification of residence and share it only with my filing officer unless compelled to release the information by a court or other lawful authority, or unless I consent to its release."

- 19.02(c)(9) A notarization or an unsworn declaration.

## 19.03 VERIFICATION OF ADDRESS

19.03(a) At the time of filing, a judicial officer or judicial candidate shall submit proof of residence, as defined by s. 6.34(3), so that the commission can verify the judicial officer or judicial candidate's residential address. The proof of residence document may be submitted electronically.

19.03(b) The proof of residence submitted under sec. (a) is considered part of the certification of residence under this chapter and shall be kept confidential by the commission

#### 19.04 CERTIFICATION OF RESIDENCE, PROCEDURE

19.04(a) Upon receipt of a certification of residence form under sec. 19.02, the commission shall first examine it for sufficiency. If the application is insufficient or does not include acceptable proof of residence under sec. 19.03, the commission should contact the judicial officer within three (3) business days to notify them of the deficiency and provide instructions for how it can be corrected.

19.04(b) If the application is sufficient, the commission shall then examine the provided proof of residence document to ensure that it meets the requirements of s. 6.34(3)(a). If it does, the commission shall conclude that the judicial officer or judicial candidate's residential address is verified.

19.04(c) Nothing in this section exempts a judicial candidate from a ballot access challenge, or guarantees placement on the ballot.

19.04(d) If both the certification of residence form and proof of residence are sufficient, the commission shall issue an acknowledgement of the filing of the certification of residence.

19.04(e) The acknowledgement of the certification of residence shall be issued on commission letterhead and shall state substantially the following: "The Wisconsin Elections Commission has verified the residential address of (Name of Judicial Officer or judicial candidate) pursuant to Wis. Stat. § 8.10(8) and EL Chapter 19. (Name of Judicial Officer or judicial candidate) is exempt from providing his or her residential address on his or her own nomination papers and declarations of candidacy." If the individual is judicial officer, the acknowledgement shall also state that the judicial officer is exempt from providing his or her residential address as a circulator or as signatory on the nomination papers of a nonpartisan candidate.

#### 19.05 MAINTENANCE OF CERTIFICATION OF RESIDENCE, PROCEDURE

19.05(a) The commission shall create and confidentially maintain a database for sufficient certifications of residence.

19.05(b) The commission shall record that the judicial officer or judicial candidate's address was verified, the date of filing, along with the judicial officer or judicial candidate's name.

19.05(c) If the certification of residence is received by the commission, the commission shall notify the judicial officer within three (3) business days of the determination of sufficiency.

#### 19.06 PROCEDURE FOR NOMINATION PAPERS AND DECLARATIONS OF CANDIDACY

- 19.06(a) A judicial officer who properly files a certification of residence and has been issued an acknowledgement by the commission may, in lieu of providing their residential address on nomination papers or a declaration of candidacy, include the words “Residence Certified with WEC.” If “Residence Certified with WEC” has been included at least once on an appropriate form for an individual with a certificate on file, subsequent spaces requiring residence information may use an abbreviated version.
- 19.06(a)(1) If a judicial officer or judicial candidate does not include the words in sec. 19.06(a), that omission shall not invalidate the nomination paper, signature, line, circulator statement, or declaration of candidacy if the commission or filing officer can determine that the judicial officer or judicial candidate properly filed a certification of residence.
- 19.06(a)(2) If the space for a mailing address on a nomination paper is left blank for a judicial candidate that has filed a certificate of residence with the commission, the filing officer shall conclude that the mailing address is the same as the residential address for voting purposes that has been certified. If the mailing address is different than the residential address for voting purposes but still identifies the same residence, the candidate may leave the space blank or write “Residence Certified with WEC” in that space. Candidates may include a mailing address that is separate from the residence, and, if included, that information shall not be confidential.
- 19.06(b) If a judicial candidate indicates on the application that he or she intends to run as a candidate for an office for which the commission is not the filing officer, the commission shall provide the appropriate filing officer with the information provided on the certification of residence, as well as the county clerks covering the applicable district(s).
- 19.06(c) Filing officers may also contact the commission directly to determine whether a certification of residence has been filed.
- 19.06(d) A Judicial officer or a judicial candidate to fill the office of a judicial officer may only place “Residence Certified with WEC” on a nomination paper or declaration of candidacy if the information on file is accurate. If the information is inaccurate, including residence address, office sought, or election date, the judicial officer or judicial candidate must resubmit the form with updated information to qualify for the provisions of this chapter.
- 19.06 (e) If in receipt of nomination papers or a declaration of candidacy containing “Residence Certified with WEC,” and the filing officer has reason to believe that the address certified is no longer the correct address, a filing officer may request that a candidate confirm in writing that the address that was certified by the Commission is still the residential address or that a an updated certification be filed.