



CHAMBERS OF
N. PATRICK CROOKS, JUSTICE

STATE OF WISCONSIN
SUPREME COURT
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SONYA K. BICE
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January 27, 2010

Sen. Fred Risser, Co-chair
Joint Legislative Council
Room 220 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Rep. Marlin Schneider, Co-chair
Joint Legislative Council
Room 204 North
State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Sen. Risser and Rep. Schneider:

As you are likely aware, the United States Supreme Court recently established a new constitutional standard regarding when due process requires that a judge not participate in a case. The principle articulated by the Court in the case, Caperton et al. v. A.T. Massey Coal Co., Inc., et al., is that an objective standard must be used because due process guarantees are sometimes violated where the judge has made a subjective determination that he or she can rule fairly.

I am writing to urge that the Joint Legislative Council consider the addition of a subsection to § 757.19(2) that appropriately reflects that principle. I suggest that the new subsection be patterned after 28 U.S.C. § 455(a), which sets forth an objective standard in regard to a judge's recusal.

Justice Ann Walsh Bradley plans to make a similar request to the Judicial Council, on which she serves as this court's representative.

Sen. Risser, Rep. Schneider
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Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink that reads "N. Patrick Crooks". The signature is written in a cursive, flowing style.

N. Patrick Crooks
Justice
Wisconsin Supreme Court

cc: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice David T. Prosser, Jr.
Justice Patience Drake Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Atty. Marla J. Stephens
Chair, Wisconsin Judicial Council

Atty. April M. Southwick
Judicial Council Attorney

Attachment: 28 U.S.C. § 455(a)

**Effective:[See Text Amendments]**

United States Code Annotated Currentness

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

▣ Part I. Organization of Courts (Refs & Annos)

▣ Chapter 21. General Provisions Applicable to Courts and Judges

→ § 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the pro-