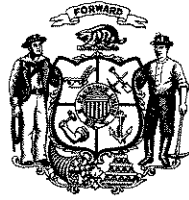


STATE OF WISCONSIN
JUDICIAL COMMISSION

A

Suite 606, Tenney Building
110 East Main Street
Madison, Wisconsin 53703-3328



James C. Alexander
Executive Director

Phone: (608) 266-7637
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March 13, 2001

Senator Brian Burke
Room 316 South, State Capitol
Madison, WI 53702

Dear Senator Burke:

The Judicial Commission's 2000 Annual Report has arrived from the printers and is enclosed for your review.

Very truly yours,

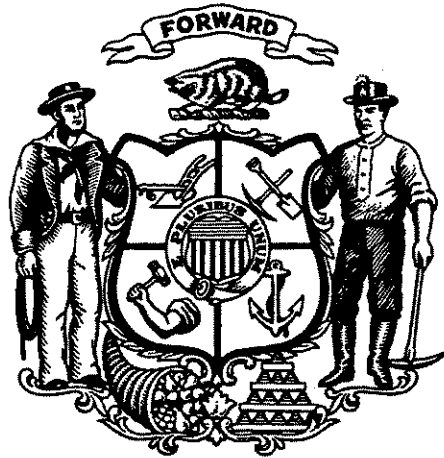
James C. Alexander

A large, stylized handwritten signature in black ink, which appears to be "JCA".

JCA/aib
Enclosure

ANNUAL REPORT

Calendar Year 2000



STATE OF WISCONSIN

JUDICIAL COMMISSION

**ANNUAL REPORT
OF THE
WISCONSIN JUDICIAL COMMISSION
FOR CALENDAR YEAR 2000**

COMMISSION MEMBERS

Philip R. Brehm, Chairperson
Spyro Condos
Charles P. Dykman
Hannah Dugan
Kathryn Foster
David R. Huebsch
Robert H. Papke
Ileen Sikowski
Bianca Tyler

EXECUTIVE DIRECTOR

James C. Alexander

Wisconsin Judicial Commission
110 E. Main Street, Suite 606
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I. INTRODUCTION

The Wisconsin Judicial Commission investigates and prosecutes allegations of misconduct or disability on the part of Wisconsin judges and court commissioners. The Commission's purpose is to protect the integrity of the judicial process and to preserve public confidence in the courts. The Commission's mission is to hold Wisconsin judges and court commissioners accountable for violations of the Wisconsin Code of Judicial Conduct while maintaining the independence of the judiciary so necessary to the proper functioning of a democracy. The Commission also strives to strengthen the Wisconsin judiciary and the public's confidence in it by creating a greater awareness, on the part of both the judiciary and the public, of what constitutes proper and improper judicial conduct.

II. BRIEF HISTORY OF THE JUDICIAL COMMISSION

A Code of Judicial Ethics was first adopted by the Wisconsin Supreme Court and was in effect from 1968-1996. In order to help enforce the Code's standards and rules, and to "discipline and correct judges who engage in conduct which has an adverse effect upon the judicial administration of justice and the confidence of the public in the judiciary and its process," the Court created the first Judicial Commission in 1972. That Commission performed both investigatory and adjudicatory functions. It also had authority to impose limited sanctions upon a judge, subject to review by the Supreme Court.

A 1977 constitutional amendment gave the Supreme Court the clear power to suspend or remove judges, as well as to reprimand or censure them. The amendment further provided that this power was to be exercised "pursuant to procedures established by the legislature by law." Effective August 1, 1978, the legislature created the present Judicial Commission as an independent agency within the judicial branch of government. In 1992, the legislature added court commissioners to the jurisdiction of the Commission.

Unlike the earlier system, the current disciplinary process is two-tiered. The Commission reviews and investigates allegations. If it finds probable cause of judicial misconduct or disability, it initiates and prosecutes an action in the Supreme Court against the judge or court commissioner. The Commission itself does not adjudicate the matter. It does not hold formal hearings and cannot impose discipline on judges or court commissioners.

The present Code of Judicial Conduct was adopted by the Wisconsin Supreme Court and went into effect on January 1, 1997.

III. JURISDICTION

The Commission's jurisdiction extends to over 500 judges, including the justices of the Supreme Court, the judges of the Court of Appeals, circuit courts, municipal courts, and those former judges who serve in a reserve or temporary capacity. Commission jurisdiction also extends to upwards of 350 full and part-time court commissioners in Wisconsin. Referees and administrative law judges do not come within the Commission's jurisdiction. The Commission has statutory authority to initiate an investigation upon receiving information from any reliable source that suggests that a judge or court commissioner has engaged in misconduct or has a permanent disability that greatly impairs performance.

The Commission has no authority to act as an appellate court. It cannot review, reverse, or vacate a decision of a judge or court commissioner, or interfere in ongoing litigation. For example, the Commission does not investigate claims that a judge or court commissioner wrongly excluded certain evidence, was too lenient in sentencing, failed to follow the child support guidelines, resolved a legal issue incorrectly, or believed perjured testimony. The Commission also lacks the authority to order a judge or court commissioner to step down from hearing a particular case; the mere filing of a request to investigate does not entitle a complainant to a different judge or court commissioner. Where appropriate, Commission staff will refer a matter to another agency or suggest that legal counsel be consulted.

Examples of allegations that may be investigated by the Commission include ex parte (one-sided) communications on the merits of a pending case, conflicts of interest, displays of injudicious temperament, persistent neglect of duties, racist or sexist remarks, prohibited political or campaign conduct, egregious abuse of power, acceptance of gifts from litigants or lawyers, and serious personal misconduct.

A judge's or court commissioner's conduct is measured primarily by the Code of Judicial Conduct (Supreme Court Rules, Chapter 60).

IV. PROCEDURE

An initial substantive contact with the Commission is referred to as an "initial inquiry." The Commission can consider information from any reliable source, including anonymous contacts, media reports or referrals from other agencies. Persons contacting the Commission with allegations of judicial misconduct or disability are encouraged to reduce their allegations to writing and a form is available from the Commission to assist people in so doing. Commission staff reviews all allegations against judges or court commissioners to determine whether they are within the jurisdiction of the Commission and are not patently frivolous or unfounded. Allegations that do not meet this criteria may be dismissed by the executive director with an appropriate referral when possible. All allegations disposed of by staff are subject to periodic review by the Commission's Screening Committee.

In all matters not administratively disposed of by staff, the Commission opens a request for investigation (RFI) file. If necessary, the executive director seeks additional information from the complainant, his or her attorney, or other person. On rare occasions, the judge or court commissioner will be asked at this early stage for an informal, preliminary response. The director then prepares an evaluation report for the Commission's review. The Commission evaluates the request for investigation to determine whether to authorize an investigation.

Many dismissals occur at this evaluation stage because the complaint: (1) is obviously frivolous or unfounded, or proves so after preliminary inquiry; (2) represents an effort by a disappointed litigant to secure review of the merits of a judge's or court commissioner's decision; or (3) is based on a misunderstanding of the judicial process, the proper role of the court, or the extent of a judge's or court commissioner's discretion. Other reasons for dismissing a complaint at this point in the process are that, in the judgment of the Commission: (1) there is little likelihood of obtaining credible evidence to support the allegation; (2) the allegation, even if true, would constitute a single and very minor standard violation; (3) the judge or court commissioner already took corrective action on

what was at most a minor violation; (4) the judge or court commissioner is no longer on the bench; or (5) the alleged conduct is not a violation of the Code of Judicial Conduct.

Judges or court commissioners are generally notified of complaints against them. However, the Commission may direct that the judge or court commissioner not be notified of a dismissed complaint where, for example, the identity of a complainant who requested confidentiality cannot be adequately protected by any meaningful disclosure; the complaint is so stale or patently frivolous as not to merit notifying the judge or court commissioner; or pending litigation may be affected by notifying the judge or court commissioner of the complaint.

An investigation typically involves interviewing the complainant, witnesses to the alleged conduct, lawyers who practice before the judge or court commissioner, and the judge or court commissioner, as well as examining relevant transcripts and other documents. Sometimes the judge's or court commissioner's courtroom is monitored or a sample of transcripts is obtained. Court reporters, court employees, and lawyers are all required by statute to comply with Commission requests for information and documents related to a matter under investigation. The Commission also has subpoena power. An investigation sometimes uncovers matters in addition to the initial allegation, and may be expanded accordingly.

State law mandates that all proceedings before the Commission are confidential unless the judge or court commissioner waives confidentiality or one of the narrow statutory exceptions applies. Complainants and others who provide information during an investigation may request that their identity not be disclosed to the judge or court commissioner.

Under the administrative rules, once the Commission concludes an investigation, it may dismiss the matter without further action or, after affording the judge or court commissioner an opportunity to respond, may dismiss with a communication of the Commission's concerns or a warning cautioning the judge or court commissioner not to engage in specified behavior. Dismissal with a communication of concern or warning is used when, for example, the alleged misconduct is not willful, persistent, or aggravated, is no longer relevant to continued judicial performance, or is minor and has already been corrected.

If the Commission finds cause to proceed further, the judge or court commissioner is notified in writing of the allegation and its factual basis, and is given a formal opportunity to respond both in writing and in person before the Commission.

After considering the response of the judge or court commissioner, the Commission may dismiss the matter, again with or without some type of private communication. However, if at this point the Commission finds that there is probable cause that the judge or court commissioner has engaged in misconduct warranting discipline, or that the judge or court commissioner has a disability substantially and permanently affecting judicial performance, then the Commission must initiate and prosecute a public action against the judge or court commissioner in the Supreme Court. The rules of civil procedure apply to the court action, and the judge or court commissioner is afforded full due process, including discovery and confrontation rights. A panel of three judges, at least two of whom sit on the Court of Appeals, acts as the Court's hearing examiner. The Commission must prove its allegations to a reasonable certainty by clear and convincing evidence. The panel reports its findings of fact, conclusions of law, and recommended disposition to the Supreme Court. The Court then receives briefs from the parties and often hears oral argument before making the final decision in the case.

Sanctions for misconduct include reprimand, censure, suspension, and removal from office. Article VII, Wisconsin Constitution, provides that a judge who is removed for misconduct is not eligible for reappointment to judicial office or for temporary judicial service.

V. MEMBERSHIP AND STAFF

The Judicial Commission has 9 members. The Supreme Court appoints 1 judge from the Court of Appeals, 1 circuit court judge, and 2 lawyers; the Governor, with the advice and consent of the Senate, appoints 5 nonlawyers. Each member may serve no more than 2 consecutive three-year terms.

The following persons served on the Commission during the period covered by this report: Attorney Philip R. Brehm, Spyro Condos, Attorney Hannah Dugan, Judge Charles P. Dykman, Judge Kathryn Foster, David R. Huebsch, Robert H. Papke, Ileen Sikowski, Attorney Thomas S. Sleik and Bianca Tyler.

The Commission annually elects a chairperson and vice chairperson, each of whom may serve no more than 2 one-year terms. Since August 2000, Philip R. Brehm has served as chairperson of the Commission. Since August 1999, Kathryn Foster has served as vice-chairperson of the Commission.

The Commission appoints a lawyer to serve as executive director. The director is responsible for hiring and supervising the administrative assistant and any special investigators, carrying out the Commission's directions and policies, and acting as chief administrator and legal counsel. James C. Alexander and Angela Buchholz served as executive director and administrative assistant, respectively.

VI. MEETINGS AND BUDGET

The Judicial Commission held 6 regularly scheduled meetings in 2000.

In the current fiscal year of July 2000 through June 2001, the Commission budget is \$226,300; \$18,200 of the budget is earmarked for contracting with outside investigators and special counsel as needed. The Judicial Council was allocated \$35,000 in the 2000-02 biennial budget.

VII. ALLEGATIONS AND DISPOSITION

A. Summary of Activity Related to Allegations

In 2000, the Judicial Commission received 373 initial inquiries from which it evaluated 50 new RFI files. During 2000, the Commission authorized 14 new investigations and completed 12 investigations. A total of 18 investigations remained pending at the end of 2000. (See Table A1, Appendix A, for a comparison with previous years.) While the number of initial inquiries and requests for investigation received by the Commission has remained relatively constant over the past five years, the Commission has noted an increase in the number of complex and serious allegations. This has resulted in investigations and in some instances prosecutions that take considerable time and expense to complete. This trend continued in the year 2000.

Tables 1 through 4, below, categorize the 50 RFI files reviewed in 2000 by type of judge, source of information, type of case, and nature of the allegations. Table 5 illustrates the results of the 12 investigations completed in 2000.

TABLE 1
Judges named by RFIs reviewed in 2000

<u>Type of Judge</u>	<u>Number</u>
Supreme Court	1
Court of Appeals	1
Circuit Court	28
Municipal Court	6
Reserve Judge	3
Court Commissioner	11
TOTAL	50

TABLE 2
Sources of RFIs reviewed in 2000

<u>Source</u>	<u>Number</u>
Litigant	33
Friend/relative of litigant	1
Citizen/court watcher	6
Witness in court	2
Attorney	2
Court personnel	5
Media	0
Referral	0
Anonymous	0
Commission	0
Other	1
TOTAL	50

TABLE 3
Cases giving rise to RFIs reviewed in 2000

<u>Type of Case</u>	<u>Number</u>
Criminal	13
Civil	13
Domestic relations	15
Probate	0
Juvenile	0
Small Claims	2
Non-case	4
Other	3
TOTAL	50

TABLE 4
Allegations in RFIs reviewed in 2000

<u>Nature of Allegation</u>	<u>Number</u>
Legal error/improper procedure	2
Partiality, bias, or prejudice	12
Demeanor/injudicious temperament	9
Abuse of power	2
Ex parte (one-sided) communication	6
Conflict of interest	15
Denial of fair hearing	3
Disability	2
Alcohol or drug abuse	1
Prejudgment of case	0
Comment on case	2
Failure to perform official duty	1
Delay	1
Misuse of prestige of office	2
Campaign activity	1
Corruption or fraud	1
Criminal conduct	0
Charitable Activity	0
Denied Transcript	0
Other	7
TOTAL	67

*Total exceeds number of RFIs because many RFIs contain multiple allegations.

TABLE 5
Investigation results in 2000

<u>Disposition</u>	<u>Number</u>
Dismissed, no action	8
Dismissed, letter of concern or warning	1
Complaint or petition filed with Supreme Court	1
Judge resigned	2
TOTAL	12

B. Subjects of Dismissal With Concern or Warning

Pursuant to the administrative rules, upon conclusion of an investigation the Commission may dismiss the matter with a communication of the Commission's concern or a warning, cautioning the judge or court commissioner not to engage in specified behavior. Such expressions of concern or warning are not discipline. In 2000, the Commission expressed concern or warning to judges or court commissioners about the following type of conduct:

- Ex parte communication with a staff person at a health organization in regards to a litigant
- Use of ex parte information received from the internet in a pending case without previously disclosing the information to the parties
- Publicizing non-public information
- Public comment on pending cases

C. Formal Disciplinary Proceedings

In re the Honorable Lawrence F. Waddick

Washington County Circuit Court Judge Lawrence F. Waddick was suspended from office for six months by the Wisconsin Supreme Court for recurring delay in deciding cases between 1991 and 1998, his filing of certifications of status of pending cases during that time that falsely represented that no cases were awaiting decision in his court beyond the prescribed period and stating falsely to the Judicial Commission during an informal appearance in June 1996 that he had no cases awaiting decision beyond the prescribed period. The Supreme Court found that Judge Waddick's conduct violated provisions of the former Code of Judicial Ethics as well as the present Code of Judicial Conduct, including SCR 60.02, 60.03(1) and SCR 60.04(1)(h). After oral argument but before the Supreme Court entered its decision, Judge Waddick announced his retirement from the bench. In re the Honorable Lawrence F. Waddick, 2000 WI11, 605 N.W.2d 861 (2000).

In re the Honorable Robert Crawford

On November 28, 2000, a Judicial Conduct Panel found that Milwaukee County Circuit Court Judge Robert Crawford engaged in judicial misconduct by making numerous unfounded public allegations suggesting that the chief judge, district court administrator and members of the district attorney's office were engaging in "influence peddling." Judge Crawford further made unfounded allegations accusing an assistant district attorney who was the daughter of the chief judge of engaging in professional misconduct. The Panel also found that Judge Crawford unlawfully threatened the chief judge to go public with his allegations which he knew or should have known were false if the chief judge did not rescind a lawfully entered administrative order regarding the hours of operation of Judge Crawford's court. Judge Crawford threatened to injure the professional reputation of the chief judge, district court administrator, assistant district attorneys and the district attorney in order to compel the chief judge to vacate administrative orders. The Panel found that Judge Crawford's threats were malicious and not based upon any truthful allegations. The Panel further found that Judge Crawford failed to maintain professional competence in matters of judicial administration and he failed to cooperate with the chief judge and other court officials in the administration of court business. The Panel concluded that Judge Crawford's conduct violated SCR 60.03(1) and SCR 60.04(2)(a) Wisconsin Code of Judicial Conduct. The Panel recommended to the Supreme Court that Judge Crawford be suspended for one year. The matter remained pending before the Supreme Court at the end of 2000.

VIII. ACTIVITY UNRELATED TO ALLEGATIONS

A. Educational Activities

The Commission, through its executive director, receives and responds to numerous inquiries from judges, attorneys, court commissioners, and other citizens on the issue of judicial conduct. The Commission does not issue advisory opinions but the executive director does respond to requests for guidance by judges and court commissioners on the propriety of contemplated conduct. In 2000, 184 requests for informal guidance were received and responded to by the executive director. The Commission encourages such communications between its staff and judges, court commissioners, and the public. (See Table A-5 in Appendix A for a comparison to other years.)

In 2000, the executive director continued to participate in and speak at educational programs throughout the state and nation concerning judicial ethics. He attended and participated in the Association of Judicial Disciplinary Council 2000 Annual Meeting and Conference in Las Vegas, NV. The executive director was a member of the faculty for the American Judicature Society 17th National College on judicial conduct and ethics held in Chicago, IL on October 26-28, 2000.

Memberships are maintained in the Association of Judicial Disciplinary Council and the Center for Judicial Conduct Organizations of the American Judicature Society. The executive director serves on the Center for Judicial Conduct Organizations' Advisory Committee and is president of the Board of Directors of the Association of Judicial Disciplinary Council.

B. Commissioner Changes

The Commission elected Philip R. Brehm as chairperson beginning August 1, 2000. Commissioner Brehm succeeds Thomas S. Sleik who served as chairperson from August 1, 1998, through July 31, 2000. The Commission re-elected Judge Kathryn Foster as vice-chairperson beginning August 1, 2000. Attorney Hannah Dugan of Milwaukee was appointed by the Supreme Court to replace Attorney Thomas S. Sleik on August 1, 2000.

C. Other

In 2000, the Judicial Commission continued to provide staff services to the Judicial Council, a 21-member board that advises the Supreme Court and Legislature on matters affecting the administration of justice in Wisconsin.

APPENDIX

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APPENDIX A

CUMULATIVE TABLES

TABLE A-1

Initial Inquiries, RFIs, Preliminary Evaluations
(1996-2000)

	1996	1997	1998	1999	2000	5-YEAR TOTAL
Initial Inquires	391	344	434	380	373	1,922
RFIs	62	67	60	50	50	289
RFIs dismissed on preliminary evaluation ¹	45	40	42	31	36	194
Investigations authorized ²	17	27	18	19	14	95

¹Includes RFIs carried over from the prior year and excludes those filed too late in the reporting year to be evaluated before December 31.

²More than one RFI may be included in one investigation.

TABLE A-2

Results of Commission Investigations
(1996-2000)

	1996	1997	1998	1999	2000	5-YEAR TOTAL
Dismissed, no action ¹	11	11	11	7	11	51
Dismissed with letter of concern, etc.	2	4	3	4	1	14
Complaint filed in Supreme Court	1	2	2	0	1	6
Total	14	17	16	11	13	71

¹Includes dismissals resulting from resignations.

TABLE A-3

Subjects of Informal Resolution*
(1985-2000)

1.	Intemperate courtroom conduct (e.g., yelling, rudeness, inappropriate language)	32
2.	Ex parte or other improper communication	26
3.	Delay in performing judicial duties (e.g., in administering or deciding case, issuing show cause order in dormant estates, signing final order)	26
4.	Abuse of or threat to abuse power (e.g., denied access to records or right to make record, retaliated against person who filed substitution request or cooperated with Judicial Commission, threatened to jail a person without legal authority to do so, abuse of summary contempt)	20
5.	Failure to disqualify or disclose facts relevant to appearance of partiality	10
6.	Public comments on a pending case or prejudgment	8
7.	Inappropriate off-the-bench conduct	6
8.	Active participation in criminal plea bargaining	2
9.	Interfering with a party's right to appeal	2
10.	Appointing close relative to court position	2
11.	Partisan political activity	2
12.	Obstruction of justice	2
13.	Misuse of prestige of office	2
14.	Charitable or political fund-raising	2
15.	Violation of gift rule	2
16.	Inaccurate or incomplete financial disclosure report	2
17.	Actively discouraging entry of not guilty pleas	2
18.	Accepting public official's plea in chambers	2
19.	Private use of public resources	2
20.	Name used to promote a private business	2

*Numbers in table do not correspond with number of informal resolutions or number of judges because many resolutions involved communication about more than one subject or type of conduct.

TABLE A-4

**Results of Public Disciplinary Cases
(1978-2000)**

Removal	3
Suspension	10
Censure	0
Reprimand	6
Complaint dismissed	3

TABLE A-5

Requests for Informal Guidance

1996	172
1997	224
1998	245
1999	174
2000	184

TABLE A-6

Reported Judicial Disciplinary Cases

In re Kading

70 Wis. 2d 508, 235 N.W.2d 409, 238 N.W.2d 63, 239 N.W.2d 297 (1975); 74 Wis. 2d 405, 246 N.W.2d 903 (1976)

Type of Case: Violation of financial disclosure rule; violation of court order.

Results: Order to comply with rule, reprimand, civil contempt finding.

In re VanSusteren

82 Wis. 2d 307, 262 N.W.2d 133 (1978)

Type of Case: Practice of law in violation of rule (other charges dismissed).

Results: Reprimand.

In re Seraphim

97 Wis. 2d 485, 294 N.W.2d 485, cert. denied, 449 U.S. 994 (1980)

Type of Case: Acceptance of gift from litigant; failure to report gift on financial disclosure forms; gross personal misconduct (offensive sexual conduct); comments on pending cases; intemperate courtroom conduct; retaliatory use of bail.

Results: 3 year suspension without pay.

In re Guay

101 Wis. 2d 171, 303 N.W.2d 669 (1981)

Type of Case: Violation of financial disclosure rule (other charges dismissed).

Results: Reprimand and order to comply.

In re Raineri

102 Wis. 2d 418, 306 N.W.2d 699 (1981)

Type of Case: Felony convictions (unnecessary to resolve other charges).

Results: Removal.

In re Grady

118 Wis. 2d 762, 348 N.W.2d 559 (1984)

Type of Case: Delay in deciding cases (charge based on § 757.025, Stats., dismissed; statute held unconstitutional).

Results: Reprimand.

In re VanSusteren

118 Wis. 2d 806, 348 N.W.2d 579 (1984)

Type of Case: Gross personal misconduct (misdemeanor convictions for failure to file timely state tax returns; also failure to comply with court order and perform duties as personal representative in estate); failure to issue show cause orders in dormant estates under § 863.35(1), Stats.; delay in deciding cases (charge based on § 757.025, Stats., dismissed under Grady).

Results: 2 year suspension without pay.

In re Sterlinske

123 Wis. 2d 245, 365 N.W.2d 876 (1985)

Type of Case: Falsified and back-dated court record with intent to mislead; exerted influence on behalf of daughter; retaliatory use of bail and other judicial powers; intemperate courtroom conduct.

Results: Removal.

In re Pressentin

139 Wis. 2d 150, 406 N.W.2d 779 (1987)

Type of Case: Failure to resign judicial office before becoming candidate for non-judicial office.

Results: 6 month suspension without pay.

In re Costello

142 Wis. 2d 926, 419 N.W.2d 706 (1988)

Type of Case: Use of influence held not to be a violation of the code.

Results: Complaint dismissed.

In re Aulik

146 Wis. 2d 57, 429 N.W.2d 759 (1988)

Type of Case: Oral and written ex parte communications on merits of pending matter.

Results: 90 day suspension without pay.

In re Gorenstein

147 Wis. 2d 861, 434 N.W.2d 603 (1989)

Type of Case: Intemperate and demeaning courtroom conduct (including racist and sexist remarks); prejudgment.

Results: 2 year suspension without pay.

In re Staege

165 Wis. 2d 21, 476 N.W.2d 876 (1991)

Type of Case: Violation of court order resulting in contempt held to be gross personal misconduct in violation of SCR 60.13.

Results: 3 year suspension from eligibility for office of municipal judge.

In re Breitenbach

167 Wis. 2d 102, 482 N.W.2d 52 (1992)

Type of Case: Intemperate, impatient and demeaning courtroom conduct during the course of 14 judicial proceedings; carrying a concealed and loaded weapon in court; leaving a loaded weapon in courtroom wastebasket.

Results: 2 year suspension from eligibility for office.

In re Dreyfus

182 Wis. 2d 121, 513 N.W.2d 604 (1994)

Type of Case: Delay, filing false pending case certificates, misleading Commission investigator and court officials.

Results: 15 day suspension without pay.

In re Carver

192 Wis. 2d 136, 531 N.W.2d 62 (1995)

Type of Case: Inappropriate comments on pending case, ex parte communication, appearance of partiality.

Results: 15 day suspension without pay.

In re Crivello

211 Wis. 2d 435, 564 N.W.2d 785 (1997)

Type of Case: Gross personal misconduct; spousal abuse.

Results: Public reprimand (judge defeated for re-election).

In re Tesmer

219 Wis. 2d 709, 589 N.W.2d 307 (1998).

Type of Case: Private interviews and communications designed to influence decisions.

Results: Public reprimand.

In re Stern

224 Wis. 2d 220, 589 N.W.2d 407 (1999).

Type of Case: Service in an office of public trust while also serving as a part-time municipal court judge.

Results: Public reprimand.

In re Michelson

225 Wis. 2d 221, 591 N.W.2d 843 (1999).

Type of Case: Inappropriate comment from the bench in a letter to a relative of a litigant and manifesting bias based upon socioeconomic status.

Results: Public reprimand.

In re Waddick

2000 WI 11, 605 N.W.2d 861 (2000).

Type of Case: Delay, filing false certifications of status of pending cases, lying to Judicial Commission.

Results: 6 month suspension without pay.

APPENDIX B

BIOGRAPHIES

Members who served during all or part of 2000

PHILIP R. BREHM is a shareholder in the Green Bay law firm of Everson, Whitney, Everson & Brehm, S.C., practicing with the law firm since 1961. He graduated from the University of Notre Dame in 1954 and from Marquette University Law School in 1961. He served in the U.S. Air Force as a Senior Navigator M.A.T.S. Atlantic from 1954-1957. He is a member of the American Bar Association, State Bar of Wisconsin and the Brown County Bar Association. Brehm was President of the Brown County Bar Association and was Treasurer of the State Bar and served as a member of and Chairman of the Board of Governors of the State Bar. He is a Fellow of the American College of Trusts and Estate Counsel and is a member of Civil Trial Counsel of Wisconsin and the Worker's Compensation Committees of the American Bar Association and the Defense Research Institute. Brehm was appointed to the Judicial Commission for a term beginning August 1, 1998. Brehm was elected chairperson in August 2000.

SPYRO G. CONDOS, owner and operator of Harbor Side Café in Lake Geneva for 18 years. Condos is a 1972 graduate of Badger High School and attended University of Wisconsin-Milwaukee with studies in criminal law and social welfare. He is presently Mayor of the City of Lake Geneva. Condos previously served two terms each as alderman and mayor for the City of Lake Geneva. He was formerly employed with the Lake Geneva Police Department and a member of Lake Geneva Fire and Rescue. Condos previously served on the Governor's Alcohol and Drug Abuse Council. He was appointed to the Judicial Commission in July 1996.

HANNAH C. DUGAN is an attorney at the Legal Aid Society of Milwaukee, Inc., representing low-income clients and serving as the law firm's development attorney. She is a native of Wisconsin who received her Bachelor of Arts degree from the University of Wisconsin-Madison (1981), Master of Arts degree from Boston College (1983) and Juris Doctor from University of Wisconsin-Madison (1987). She is a member of the State Bar of Wisconsin, the Milwaukee Bar Association, the Milwaukee Young Lawyers Association (Board of Directors 1992-1995) the Association of Women Lawyers and the League of Women Voters. She served on the State Bar's Board of Governors (1996-1998) and several other committees, including its Commission on Delivery of Legal Services (1994-1999); she currently serves on the State Bar's Professional Ethics Committee. She has been the Milwaukee Bar Association president (1999-2000) and has held several other officer and committee chair positions (1989-present) and serves on its board of directors (1991-2001). She also has served as an adjunct assistant professor at Marquette University Law School (1993-1997); and as a staff attorney and a pro bono program administrator at Legal Action of Wisconsin, Inc. (1987-1994). She also currently serves on the following boards: University of Wisconsin-Madison Law School, Board of Visitors, the Milwaukee Bar Foundation, City of Milwaukee Ethics Board, Catholic Charities Immigration Legal Services and the Benedict Center, Inc. Dugan was appointed to the Judicial Commission in July 2000.

CHARLES P. DYKMAN, Presiding Judge for District IV Wisconsin Court of Appeals, was first elected to the court in 1978. Judge Dykman received a Bachelor's of Science degree in 1961 from the University of Wisconsin Madison and a J.D. in 1965 from the University of Wisconsin Law School. From 1965 to 1970, Judge Dykman was an associate with the firm Oldenburg and Lent. He was a sole practitioner from 1970-1978. Judge Dykman has served on various educational panels at Wisconsin Judicial Conferences and has been a speaker for continuing legal education programs. He is a member of the State Bar of Wisconsin, Dane County Bar Association, James E. Doyle Inns of Court, National Association for Woman Judges, Legal Association for Women, Judicial Conference Executive Committee and Fairchild Commission on Judicial Elections and Ethics. Judge Dykman was appointed to the Judicial Commission for a term beginning August 1, 1998.

KATHRYN W. FOSTER has been a circuit court judge since August 1988. She is currently assigned to the Civil Division. Previously, Judge Foster was assigned to Children's Court from 1988-1990 and 1995-1997. From 1990-1995, she was assigned to criminal court with the last two years as presiding judge. Judge Foster graduated from University of Wisconsin, Oshkosh with a Bachelor's of Arts Degree in Political Science in 1974 and from Marquette University Law School in May 1977. Previously, Judge Foster worked as an assistant district attorney for approximately eleven years in Waukesha County. During this time, Judge Foster was a senior attorney and "Team Captain." Judge Foster serves on Governor Thompson's Juvenile Justice Commission State Advisory Group. She is a faculty member of the Wisconsin Judicial College and Associate Dean from 1993-1999. Judge Foster was the chairperson of the Wisconsin Judicial Education Committee for the Revision of the Criminal/Traffic Benchbook from 1992-1997. Judge Foster is currently the Deputy Chief Judge for the III Judicial District. Judge Foster was appointed to the Judicial Commission in August 1996.

DAVID R. HUEBSCH has been the city assessor for the City of Onalaska since 1973, and for the Village of West Salem since 1976. He has taught appraisal law and techniques at the annual conferences of the assessors organizations for cities, and towns and villages. Prior to this he had been working in civil engineering for several years, for the state of Wisconsin and a private engineering firm. He is certified as an assessor II and assessor III by the state of Wisconsin. He also is a certified/licensed real estate appraiser appraising H.U.D. and F.H.A. properties. He has served on the Onalaska School Board and on the board of directors of the Community Credit Union. He also served for over 9 years on the board of directors of the Winding Rivers Library system which includes and services 7 counties. Huebsch is presently serving as a governor's appointee on the Benevolent Retirement Home for the Aged Task Force. He was appointed to the Judicial Commission in 1993 and reappointed in August 1997.

ROBERT H. PAPKE is Director of Human Resources for Marine Travelift, Inc. of Sturgeon Bay. He is a past County Clerk of Door County and a former Sturgeon Bay police officer; was twice elected to the Door County Board of Supervisors; is a veteran of the U.S. Air Force; past president of Sturgeon Bay Rotary Club; past president of the Door County Manufacturers Association; former Chairman of the Door County Economic Development Corporation; and has been a developer of several new businesses in Door County. He is a graduate of Sturgeon Bay High School; a graduate of Northeast Wisconsin Technical College-Green Bay with degrees in Supervisory Management and Police Science; has certificates from University of Wisconsin-Milwaukee in Public Administration and Human Resource Management; Senior Professional in Human Resources (SPHR). He served on the Governor's Property Tax Commission in 1987 and the Governor's Snowmobile Recreation Council in 1982. Papke was appointed to the Judicial Commission in 1993, and was the chairperson from August 1995 to August 1997.

ILEEN SIKOWSKI of Crivitz is the owner and operator of Ileen's Emporium, a gift shop, in the Village of Crivitz. She was the village clerk for seven and a half years, being the first certified municipal clerk in northeastern, Wisconsin. Sikowski is currently the president of the Board of Directors for Crivitz Housing Authority, president of the Board of Directors of Wausaukee Housing Corp and secretary-treasurer on the Board of Directors of Crivitz Community, Inc. She served for twenty years as secretary of the Board of trustees for Bay Area Medical Center. The governor appointed Sikowski in 1987 to the State Council on Library and Network Development. She is a member of the Bay Area Medical Century Auxiliary and Crivitz Women's Club. Sikowski is the founder of the Crivitz Library. She is certified instructor for the N.W.T.C. Sikowski was appointed to the Judicial Commission in August 1997.

THOMAS S. SLEIK is a partner in the law firm of Hale, Skemp, Hanson, Skemp & Sleik in LaCrosse, beginning practice with the firm in 1971. He is a LaCrosse native who received a Bachelor's of Science degree from Marquette University in 1969 and a J.D. from Marquette University in 1971. He is a member of the State Bar of Wisconsin, American Bar Association, and LaCrosse County Bar Association. For the State Bar of Wisconsin, Sleik served as President 1992-1993, and was on the Board of Governors 1987-1994, serving on its Executive Committee 1990-1994. He also served from 1993-1996 on the Executive Council of the National Conference of Bar Presidents of the American Bar Association. He is a Fellow in the American Academy of Matrimonial Lawyers, serves as a Certified Matrimonial Arbitrator and is currently the President of the Wisconsin Chapter. He is listed in Who's Who in America and Best Lawyers in America. Sleik was appointed to the Judicial Commission for a term beginning August 1, 1994 and re-appointed in August 1997. He was the chairperson from August 1998 to August 2000.

BIANCA TYLER of Amery is a 1975 graduate of Louisiana State University with a B.S. in Business Marketing. She was formerly employed by Deloitte & Touche prior to moving to Wisconsin where she served as Director of Marketing/Marketing Coordinator for ten years. Ms. Tyler served three years with the Idaho State Legislature serving the House Education Committee and was Idaho's Governor's choice for appointment to the Idaho Legislature in 1995. Ms. Tyler was appointed to the Judicial Commission in August 1997.

Executive Director

JAMES C. ALEXANDER graduated from the University of Wisconsin-Madison in 1968 and received his J.D. from the University of Wisconsin Law School in 1974. He served in the U.S. Army 1969-1971. From 1974 to 1990 Alexander was engaged in the private practice of law in Madison with a primary emphasis in civil trial work. He was admitted to practice in Wisconsin in 1974 and is also admitted to practice in the U.S. District Courts for the Western (1974) and Eastern (1978) Districts of Wisconsin, as well as the United States Court of Appeals, 7th Circuit (1981) and United States Supreme Court (1984). Alexander has been executive director of the Judicial Commission since August 1990. He is president and a member of the Board of Directors of the Association of Judicial Disciplinary Counsel and serves on the Advisory Committee to the Center for Judicial Conduct Organizations of the American Judicature Society.

Administrative Assistant

ANGELA I. BUCHHOLZ graduated from the University of Wisconsin-Madison with a B.B.A. in Business Management and Human Resources. She was formerly employed by Bubba Gump Shrimp Company in Chicago as a manager. Ms. Buchholz was appointed to serve as the administrative assistant to the Commission in September of 1999.

APPENDIX C

SUCCESSION CHART OF COMMISSION MEMBERS
(1978-2000)

Court of Appeals Judge (appointed by Supreme Court)

1.	William R. Moser William Eich Thomas Cane Charles P. Dykman	Milwaukee Madison Wausau Madison	August 1978--July 1986 August 1986--July 1992 August 1992--July 1998 August 1998--present
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Circuit Court Judge (appointed by Supreme Court)

2.	Gordon Myse Earl D. Morton John G. Buchen Mark J. Farnum Frank T. Crivello Patricia S. Curley Kathryn Foster (vice-chairperson, 1999-present)	Appleton Kenosha Sheboygan Janesville Milwaukee Milwaukee Waukesha	August 1978--September 1980 September 1980--June 1983 June 1983--May 1984 June 1984--July 1988 August 1988--July 1994 August 1994--July 1996 August 1996--present
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Attorneys (appointed by Supreme Court)

3.	Gordon Sinykin Adrian P. Schoone (chairperson, 1989-1991) Daniel W. Hildebrand (chairperson 1997-1998) Philip R. Brehm (chairperson, 2000-present)	Madison Racine Madison Green Bay	August 1978--July 1986 August 1986--July 1992 August 1992--July 1998 August 1998--present
4.	Karen Mercer Richard C. Ninneman (chairperson, 1984-1985) Gerald M. O'Brien Thomas S. Sleik (chairperson, 1998-2000) Hannah Dugan	Baraboo Milwaukee Stevens Point LaCrosse Milwaukee	October 1978--July 1982 August 1982--July 1988 August 1988--July 1994 August 1994--July 2000 August 2000--present

Public Members (appointed by Governor with Senate confirmation)

5.	Fred L. Crouther	Milwaukee	August 1978--December 1980
	Shirley Crinion (chairperson, 1983-1984)	Eau Claire	April 1981--July 1984
	Bernetta Kilpatrick (Lingren) (Reade)	Menononee Falls	August 1984--July 1988
	Marilynn Chesbrough (Weiland)	Wautoma	August 1988--July 1997
	Bianca Tyler	Amery	August 1997--present
6.	Bruce Hagen	Superior	August 1978--March 1979
	Virginia Braun	Antigo	August 1981--July 1984
	Beatrice A. Ptacek	Marshfield	August 1984--May 1988
	Roger D. Biddick (chairperson, 1991-1993)	Livingston	May 1988--July 1993
	Robert H. Papke (chairperson, 1995-1997)	Sturgeon Bay	August 1993--present
7.	Frances W. Hurst (chairperson, 1978-1979)	Madison	August 1978--February 1982
	Robert A. Onkka	Baldwin	February 1982--July 1984
	Judith S. McCaslin	West Salem	August 1984--February 1988
	Frank Meyer	Shawano	February 1988--July 1993
	David R. Huebsch (vice-chairperson, 1998-1999)	Onalaska	August 1993--present
8.	Warren Carrier	Platteville	August 1978--February 1979
	Bjarne R. Ullsvik (chairperson, 1981-1983)	Platteville	June 1980--July 1983
	Elizabeth King (chairperson, 1987-1989)	Green Bay	July 1983--October 1989
	John M. Jarvis (chairperson, 1994--1995)	Milwaukee	October 1989--1995
	Spyro Condos	Lake Geneva	August 1996--present
9.	Kay W. Levin (chairperson, 1979-1981)	Cleveland	October 1978--July 1982
	Joel B. Grossman (chairperson, 1985-1987)	Madison	April 1983--March 1989
	Rockne G. Flowers (chairperson, 1993-1994)	Madison	March 1989--July 1994
	Lynda S. Culley	Superior	August 1994--August 1997
	Ileen Sikowski	Crivitz	August 1997--present

APPENDIX D

WISCONSIN JUDICIAL COMMISSION
110 East Main Street, Suite 606
Madison, WI 53703
(608) 266-7637

REQUEST FOR INVESTIGATION

Name: _____
(please type or print)

Address: _____

Phone: Daytime () _____ Evening () _____

I have information of possible misconduct or disability on the part of

_____, of the _____ Court in
(name of judge or court commissioner)

_____, Wisconsin.
(city) (county)

STATEMENT OF FACTS

1. When and where did this happen?

Date(s): _____ Time: _____ Location: _____

2. If your information arises out of a court case, please answer these questions:

a) What is the name and number of the case?

Case name: _____ Case no.: _____

b) What kind of case is it?
 criminal, domestic relations, small claims, probate,
 civil, juvenile, other (specify): _____

c) What is your relationship to the case?
 plaintiff/petitioner defendant/respondent
 attorney for _____
 witness for _____
 other (specify): _____

d) If you were represented by an attorney in this matter at the time of the conduct of the judge or court commissioner, please identify the attorney:
Name: _____
Address: _____

Phone: () _____

e) Identify any other attorney(s) who represented you or any person involved in the case:
Name of attorney: _____

Address: _____

Phone: () _____
Represented: _____

3. List documents that help support your information that the judge or court commissioner has engaged in misconduct or has a disability, noting which ones you have attached:

4. Identify, if you can, any other witnesses to the conduct of the judge or court commissioner:

Name(s): _____

Addresses: _____

Phone: () _____ () _____

5. Specify below the details of what the judge or court commissioner did that you think constitutes misconduct or indicates disability. (Please type or print legibly; attach additional paper if necessary.)

I UNDERSTAND THAT STATE LAW PROVIDES THAT THE JUDICIAL COMMISSION'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL AND THAT I MAY REQUEST THE COMMISSION NOT TO DISCLOSE MY IDENTITY TO THE JUDGE OR COURT COMMISSIONER PRIOR TO THE FILING OF A PETITION OR FORMAL COMPLAINT WITH THE SUPREME COURT.

I REQUEST THE COMMISSION NOT TO DISCLOSE MY IDENTITY TO THE JUDGE OR COURT COMMISSIONER.

Signature: _____

Date: _____

APPENDIX E

SCR CHAPTER 60 CODE OF JUDICIAL CONDUCT

Preamble.		SCR 60.05	A Judge Shall so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations
SCR 60.01	Definitions.		
SCR 60.02	A Judge Shall Uphold the Integrity and Independence of the Judiciary.		
SCR 60.03	A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.	SCR 60.06	A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity.
SCR 60.04	A Judge Shall Perform the Duties of the Judicial Office Impartially.	SCR 60.07	Applicability.

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The rules of the Code of Judicial Conduct are authoritative. The Commentary, has three varying functions: 1) to elaborate a standard in the rules; 2) to set forth policy bases for the rules; or 3) by explanation and example, to provide guidance with respect to the purpose and meaning of the rules. The Commentary is not intended as a statement of additional rules.

When the text of a rule uses "shall," "shall not" or "may not," it is intended to impose binding obligations the violation of which can result in disciplinary action. For a judge's conduct to constitute a violation of a rule, the judge must have known or reasonably should have known the facts giving rise to the violation.

The use of "should" or "should not" in the rules is intended to encourage or discourage specific conduct and as a statement of what is or is not appropriate conduct but not as a binding rule under

which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions. The provisions of the Code of Judicial Conduct are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers or litigants for mere tactical advantage in a proceeding.

The provisions of the Code are intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. See ABA Standards Relating to Judicial Discipline and Disability Retirement.

Because it is not possible to address every conceivable conduct of a judge that might erode public confidence in the integrity, independence and impartiality of the judiciary, some of the binding rules of the Code are cast in general terms setting forth the principles their specific provisions are intended to foster. See, for example, SCR 60.02, 60.03(1) and 60.05(1) and accompanying Comments. Those rules provide a touchstone against which judicial conduct, actual or contemplated, is to be measured. Care must be taken that the Code's necessarily general rules do not constitute a trap for the unwary judge or a weapon to be wielded unscrupulously against a judge.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

SCR 60.01 Definitions. In this chapter:

(1) "Appropriate authority" means the chief judge of an offending judge's district, the director of state courts, the judicial commission and the board of attorneys professional responsibility.

(2) "Candidate" means a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support.

(3) "Court personnel" means staff, court officials and others subject to the judge's direction and control, including judicial assistants, reporters, law clerks, and bailiffs. "Court personnel" does not include the lawyers in a judicial proceeding.

(4) "De minimis" means an insignificant interest that does not raise reasonable question as to a judge's impartiality or use of the prestige of the office.

(5) "Economic interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a

party, except that none of the following is an economic interest:

(a) Ownership of an interest in a mutual or common investment fund that holds securities, unless the judge participates in the management of the fund or unless a proceeding pending or impending before the judge could substantially affect the value of the interest. (b) Service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization.

(c) A deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, unless a proceeding pending or impending before the judge could substantially affect the value of the interest.

(d) Ownership of government securities, unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" means a personal representative, trustee, attorney-in-fact, conservator or guardian.

(7) "Gift" means the payment or receipt of anything of value without valuable consideration.

(8) "Judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the circuit court, a reserve judge, a municipal judge, a court commissioner, and anyone, whether or not a lawyer, who is an officer of the judicial system and who performs judicial functions.

(9) "Knowingly" or "knowledge" means actual knowledge of the fact in question, which may be inferred from the circumstances.

(10) "Law" means court rules, statutes, constitutional provisions and legal conclusions in published court decisions.

(11) "Member of the judge's family" means the judge's spouse, child, grandchild, parent, grandparent and any other relative or person with whom the judge maintains a close familial relationship.

(12) "Member of the judge's family residing in the judge's household" means a relative of the judge by blood or marriage or a person treated by the judge as a member of the judge's family who resides in the judge's household.

(13) "Nonpublic information" means information that, by law, is not available to the public, including information that is sealed by statute or court order, impounded or communicated in camera, offered in grand jury proceedings or contained in presentencing reports, dependency case reports or psychiatric reports.

(14) "Part-time municipal judge" or "part-time court commissioner" means a judge or court commissioner who serves repeatedly on a part-time basis by election or under a continuing appointment.

(15) "Require" means the exercise of reasonable direction and control over the conduct of those persons subject to the directions and control.

(16) "Third degree of kinship" means a person who is related as a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

SCR 60.02 A judge shall uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. This chapter applies to every aspect of judicial behavior except purely legal decisions. Legal decisions made in the course of judicial duty on the record are subject solely to judicial review.

COMMENT

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of the judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this chapter. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this chapter diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

The role of the judicial conduct organization like the Wisconsin Judicial Commission is not that of an appellate court. Wis. Admin. Code Sec. JC 3.06 (May 1979) states as follows: "Commission not to act as appellate court. The

commission may not function as an appellate court to review the decisions of a court or judge or to exercise superintending or administrative control over determinations of courts or judges." It is important to remember this concept as one interprets this chapter, particularly in light of the practice of some groups or individuals to encourage dissatisfied litigants to file simultaneous appeals and judicial conduct complaints.

SCR 60.03 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. (1) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENT

Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the chapter. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this chapter. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Restrictions on the personal conduct of judges cannot, however, be so onerous as to deprive them of fundamental freedoms enjoyed by other citizens. Care must be taken to achieve a balance between the need to maintain the integrity and dignity of the judiciary and the right of judges to conduct their personal lives in accordance with the dictates of their individual consciences.

In striking this balance the following factors should be considered:

(a) the degree to which the personal conduct is public or private;

(b) the degree to which the personal conduct is a protected individual right;

(c) the potential for the personal conduct to directly harm or offend others;

(d) the degree to which the personal conduct is indicative of bias or prejudice on the part of the judge;

(e) the degree to which the personal conduct is indicative of the judge's lack of respect for the public or the judicial/legal system.

See also Comment to sub. (3).

(2) A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may not testify voluntarily as a character witness.

COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.

As to the acceptance of awards, *see* SCR 60.05 (4) (e) 1. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Such a letter should not be written if the person who is the subject of the letter is or is likely to be a litigant engaged in a contested proceeding before the

court. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

This subsection does not reach the matter of judge's endorsement of a candidate for judicial or other nonpartisan elective office. That matter is left for consideration together with other issues involving a judge's political and campaign activity by the committee the court will appoint to study and to make recommendations to the court.

A judge must not testify voluntarily as a character witness because to do so may lend to the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

(3) A judge may not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

COMMENT

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired.

Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members or that it is in fact and effect an intimate, purely private organization

whose membership limitations could not be constitutionally prohibited.

Whether an organization, club or group is "private" depends on a review of the following factors: 1) size; 2) purpose; 3) policies; 4) selectivity in membership; 5) congeniality; and 6) whether others are excluded from critical aspects of the relationship. An organization that is not "private" is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See, New York State Club Ass'n, Inc. v. City of New York, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987), 95 L. Ed. 2d 474; Roberts v. United States Jaycees, 468 U.S. 609 (1984). Organizations dedicated to the preservation of religious, fraternal, sororal, spiritual, charitable, civic or cultural values which do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

Public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary.

When a judge has reason to believe that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under sub. (3) or under SCR 60.03, the judge may, in lieu of resigning, make immediate efforts to have the organization discontinue its invidiously discriminatory practices but must suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible, the judge must resign from the organization.

SCR 60.04 A judge shall perform the duties of judicial office impartially and diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.

(1) In the performance of the duties under this section, the following apply to adjudicative responsibilities:

(a) A judge shall hear and decide matters assigned to the judge, except those in which recusal is required under sub. (4) or disqualification is

required under section 757.19 of the statutes and except when judge substitution is requested and granted.

(b) A judge shall be faithful to the law and maintain professional competence in it. A judge may not be swayed by partisan interests, public clamor or fear of criticism.

(c) A judge shall require order and decorum in proceedings before the judge.

(d) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, staff, court officials and others subject to the judge's direction and control. During trials and hearings, a judge shall act so that the judge's attitude, manner or tone toward counsel or witnesses does not prevent the proper presentation of the cause or the ascertainment of the truth. A judge may properly intervene if the judge considers it necessary to clarify a point or expedite the proceedings.

COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

In respect to sub. (c), by order of June 4, 1996, the Supreme Court adopted Standards of Courtesy and Decorum for the Courts of Wisconsin, chapter 62 of the Supreme Court Rules.

(e) A judge shall perform judicial duties without bias or prejudice. A judge may not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and may not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

COMMENT

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias

on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceedings, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(f) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This subsection does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status or other similar factors are issues in the proceeding.

(g) A judge shall accord to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to law. A judge may not initiate, permit, engage in or consider ex parte communications concerning a pending or impending action or proceeding except that:

1. A judge may initiate, permit, engage in or consider ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if all of the following conditions are met:

a. The judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

b. When the ex parte communication may affect the substance of the action or proceeding, the judge promptly notifies all of the other parties of the substance of the ex parte communication and allows each party an opportunity to respond.

2. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

3. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

4. A judge may, with the consent of the parties, confer separately with the parties and their

lawyers in an effort settle matters pending before the judge.

5. A judge may initiate, permit, engage in or consider ex parte communications when expressly authorized by law.

COMMENT

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by SCR 60.04 (1) (g), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by SCR 60.04 (1) (g) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in SCR 60.04 (1) (g) are clearly met. A judge must disclose to all parties all ex parte communications described in SCR 60.04 (1) (g) 1 and 2 regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge should not accept trial briefs that are not exchanged with adversary parties unless all parties agree otherwise in advance of submission of the briefs.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that SCR 60.04 (1) (g) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

The prohibition of a lawyer's ex parte communication with a judge and others is set forth in SCR 20:3.5.

(h) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

COMMENT

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(j) A judge may not, while a proceeding is pending or impending in any court, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding. The judge shall require court personnel subject to the judge's direction and control to similarly abstain from comment. This subsection does not prohibit a judge from making public statements in the course of his or her official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

COMMENT

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process

and until final disposition. This paragraph does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

(k) A judge may not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding but may express appreciation to jurors for their service to the judicial system and the community.

COMMENT

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(m) A judge may not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(o) A judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice.

(2) In the performance of the duties under this section, the following apply to administrative responsibilities:

(a) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(b) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(c) A judge may not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge may not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

Appointees of a judge include assigned counsel, officials such as referees, commissioners,

special masters, receivers and guardians and personnel such as clerks, judicial assistants and bailiffs. Consent by the parties to an appointment or an award of compensations does not relieve the judge of the obligation prescribed by SCR 60.04 (2) (c).

(3) In the performance of the duties under this section the following apply to disciplinary responsibilities:

(a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this chapter should take appropriate action. A judge having personal knowledge that another judge has committed a violation of this chapter that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(b) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the rules of professional conduct for attorneys should take appropriate action.

A judge having personal knowledge that a lawyer has committed a violation of the rules of professional conduct for attorneys that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. This paragraph does not require a judge to report conduct disclosed through a judge's participation in a group to assist ill or disabled judges or lawyers when such information is acquired in the course of assisting an ill or disabled judge or lawyer.

(c) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted under par. (a) or (b) are part of a judge's judicial duties and shall be absolutely privileged and no civil action predicated on those acts may be instituted against the judge.

COMMENT

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to an appropriate authority or other agency or body.

(4) Except as provided in sub. (6) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know establish one of the following or when reasonable, well-

informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial:

COMMENT

Under this rule, a judge must recuse himself or herself whenever the facts and circumstances the judge knows or reasonably should know raise reasonable question of the judge's ability to act impartially, regardless of whether any of the specific rules in SCR 60.04 (4) applies. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be required to recuse himself or herself from any matters in which that law firm appeared, unless the recusal was waived by the parties after disclosure by the judge. Section 757.19 of the statutes sets forth the circumstances under which a judge is required by law to disqualify himself or herself from any civil or criminal action or proceeding and establishes the procedures for disqualification and waiver.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of recusal, even if the judge believes there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible recusal and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

COMMENT

As a general matter, for recusal to be required under this provision, the personal bias or prejudice for or against a party or the personal knowledge of disputed facts must come from an

extrajudicial source. A bias or prejudice requiring recusal most often arises from a prior personal relationship but may arise from strong personal feelings about the alleged conduct of a party. If a judge's personal bias or prejudice concerning a party's lawyer is of such a degree as to be likely to transfer to the party, the judge's recusal is required under this provision.

(b) The judge of an appellate court previously handled the action or proceeding as judge of another court.

(c) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning the matter.

COMMENT

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of SCR 60.04 (4) (d); a judge formerly employed by a government agency, however, should recuse himself or herself in a proceeding if the judge's impartiality reasonably may be questioned because of such association.

(d) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than *de minimis* interest that could be substantially affected by the proceeding.

COMMENT

A financial interest requiring recusal does not occur solely because the judge is a member of a political or taxing body that is a party or is a ratepayer to a party. The test then remains whether the judge's interest as a taxpayer or ratepayer could be substantially affected by the outcome.

(e) The judge or the judge's spouse, or a person within the third degree of kinship to either of them, or the spouse of such a person meets one of the following criteria:

1. Is a party to the proceeding or an officer, director or trustee of a party.
2. Is acting as a lawyer in the proceeding.
3. Is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding.
4. Is to the judge's knowledge likely to be a material witness in the proceeding.

COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself require the judge's recusal. Under appropriate circumstances, the fact that the judge's impartiality may reasonably be questioned or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" may require the judge's recusal.

Recusal is not required under this provision if the judge determines on the record that a subpoena purporting to make his or her relative a witness is false, sham or frivolous.

(5) A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse and minor children residing in the judge's household, having due regard for the confidentiality of the spouse's business.

(6) A judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

COMMENT

A waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive the recusal. To assure that consideration of the question of waiver is made independently of the judge, a judge must not solicit, seek or hear

comments on a possible waiver of the recusal unless the lawyers jointly propose a waiver after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the waiver agreement.

SCR 60.05 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations. (1)

Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.
- (b) Demean the judicial office.
- (c) Interfere with the proper performance of judicial duties.

COMMENT

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. See SCR 60.03 (1) and (3).

(2) **Avocational Activities.** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this chapter.

COMMENT

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal

profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other subsections of SCR 60.05, the phrase "subject to the requirements of this chapter" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various provisions of the chapter does not relieve a judge from the other requirements of the chapter that apply to the specific conduct.

(3) **Governmental, Civic or Charitable Activities.** (a) A judge may not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

COMMENT

See SCR 60.03 (2) regarding the obligation to avoid improper influence.

As provided in SCR 60.07(2), sub. (3)(a) does not apply to a judge serving on a part-time basis.

(b) A judge may not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities and may serve on a governmental or private committee, commission or board concerned with historical, educational or cultural activities. A judge may serve in any branch of military reserves and be called to duty in the active military.

COMMENT

A judge is prohibited from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by par. (c). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need

to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

This provision does not govern a judge's service in a non-governmental position. See par. (c) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited, but service on the board of a public law school or any private educational institution would generally be permitted under par. (c).

As provided in SCR 60.07(2), sub. (3)(b) does not apply to a judge serving on a part-time basis.

(c) A judge may serve as an officer, director, trustee or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of a nonprofit educational, religious, charitable, fraternal, sororal or civic organization, subject to the following limitations and the other requirements of this chapter:

COMMENT

This provision does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see par. (b).

See Comment to SCR 60.05 (2) regarding use of the phrase "subject to the following limitations and the other requirements of this chapter." As an example of the meaning of the phrase, a judge permitted by this provision to serve on the board of a fraternal institution may be prohibited from such service by SCR 60.03 (1) or (3) or 60.05 (1) if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of SCR 60.05 in addition to sub. (3). For example, a judge is prohibited by sub. (7) from

... serving as a legal advisor to a civic or charitable organization.

1. A judge may not serve as an officer, director, trustee or nonlegal advisor if it is likely that the organization will do any of the following:

a. Engage in proceedings that would ordinarily come before the judge.

b. Engage frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly re-examine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

As provided in SCR 60.07(2), par. (c) 1.b. does not apply to a judge serving on a part-time basis.

2. A judge, in any capacity:

a. May assist the organization in planning fund-raising activities and may participate in the management and investment of the organization's funds but may not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

COMMENT

As provided in SCR 60.07(2), par. (c) 2.a. does not apply to a judge serving on a part-time basis.

b. May make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

c. May not personally participate in membership solicitation if the solicitation reasonably may be perceived as coercive or, except as permitted in subd. 2 a, if the membership solicitation is essentially a fund-raising mechanism; and

COMMENT

As provided in SCR 60.07(2), par. (c) 2.c. does not apply to a judge serving on a part-time basis.

d. May not use or permit the use of the prestige of judicial office for fund raising or membership solicitation.

COMMENT

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves, and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

SCR 60.05 should not be read as proscribing participation in de minimis fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. Thus, e.g., a judge may pass the collection basket during services at church, may ask friends and neighbors to buy tickets to a pancake breakfast for a local neighborhood center and may cook the pancakes at

the event but may not personally ask attorneys and others who are likely to appear before the judge to buy tickets to it. Similarly, SCR 60.05 should not be read to prohibit judges from soliciting memberships for religious purposes, but judges must nevertheless avoid using the prestige of the office for the purpose of such solicitation.

Use of an organization letterhead for fund raising or membership solicitation does not violate subd. 2 provided the letterhead lists only the judge's name and office or other position in the organization and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge may be a speaker or guest of honor at an organization's fund-raising event provided there is no advertising of the judge as speaker or guest of honor in order to encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor. A judge's attendance at such event is permissible if otherwise consistent with this chapter.

(4) Financial Activities. (a) 1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

a. Reasonably be perceived to exploit the judge's judicial position.

b. Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

COMMENT

As provided in SCR 60.07(2), sub. (4)(a)1.b. does not apply to a judge serving on a part-time basis.

2. A judge shall comply with sub. (4)(a)1 as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

COMMENT

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally

known, the judge must not use the information for private gain. See SCR 60.03 (2) and 60.04 (1) (m).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for recusal or disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Comment to SCR 60.04 (4) relating to recusal.

Participation by a judge in financial and business dealings is subject to the general prohibitions in SCR 60.05 (1) against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in SCR 60.03 against activities involving impropriety or the appearance of impropriety and the prohibition in SCR 60.03 (2) against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in SCR 60.02. See Comment to SCR 60.05 (2) regarding use of the phrase "subject to the requirements of this chapter."

If engaged in a financial or business activity at the time this chapter becomes applicable to the judge, a judge may continue to do so for a reasonable period not to exceed one year.

(b) A judge may, subject to the requirements of this chapter, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

COMMENT

Subject to the requirements of this chapter, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

As provided in SCR 60.07(2), sub. (4)(b) does not apply to a judge serving on a part-time basis.

(c) 1. Except as provided in par. 2, a judge may serve as an officer, director, manager, general partner, advisor or employe of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety, or otherwise violate any provision of this chapter.

2. A judge may not serve as an officer, director, manager, general partner, advisor or employe of any business entity affected with a public interest, including a financial institution, insurance company, and public utility, and may not participate in or permit the judge's name to be used in connection with any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lends the power or prestige of office to promote a business or commercial venture.

COMMENT

A judge may participate in a business not affected with a public interest if that participation does not conflict with the judge's judicial duties, create the appearance of impropriety, or violate any other provision of this Code. For example, a judge may be prohibited from participation if the business entity frequently appears before a court in the jurisdiction in which the judge serves or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participation if the judge's participation would involve misuse of the prestige of office.

As provided in SCR 60.07(2), sub. (4)(c) does not apply to a judge serving on a part-time basis.

(d) A judge shall manage the judge's investments and other financial interests so as to minimize the number of cases in which the judge's recusal or disqualification is required. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

COMMENT

As provided in SCR 60.07(2), sub. (4)(d) does not apply to a judge serving on a part-time basis.

(e) A judge may not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, favor or loan from anyone except for the following:

COMMENT

Sub. (4) (e) does not apply to contributions to a judge's campaign for judicial office.

Because a gift, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

As provided in SCR 60.07(2), sub. (4)(e) does not apply to a judge serving on a part-time basis.

1. A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice.

COMMENT

Acceptance of an invitation to a law-related function is governed by sub. (4) (e) 1; acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by sub. (4) (e) 10.

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this chapter. See SCR 60.05 (1) (a) and 60.03 (2).

2. A gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and

benefits for the use of both the spouse or other family member and the judge, provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

3. Ordinary social hospitality.

4. A gift from a relative.

5. A gift from a friend for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship.

COMMENT

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require recusal or disqualification of the judge where recusal or disqualification would not otherwise be required. See, however, par. (e) 5.

6. Anything of value if the activity or occasion for which it is given is unrelated to the judge's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the judge can show by clear and convincing evidence that it was unrelated to and did not arise from the judge's holding or having held a public office.

7. A gift, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require recusal under SCR 60.04(4).

8. A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges.

9. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

10. Any other gift, favor or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

COMMENT

Unless authorized by other provisions of sub. (4) (e), sub. (4)(e) 10 prohibits judges from accepting gifts, favors or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors or loans from clients of lawyers or their firms when the clients'

interests have come or are likely to come before the judge. See sec. 19.43 et seq., Stats.

(5) Fiduciary Activities. (a) A judge may not serve as executor, administrator or other personal representative, trustee, guardian, attorney-in-fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of his or her judicial duties.

(b) A judge may not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(c) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(d) A judge shall comply with pars. (a) and (b) as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

COMMENT

A judge who is a fiduciary at the time this chapter becomes effective for the estate or person of one who is not a member of the judge's family may continue to act as such if the demands on his or her time and the possibility of a conflict of interest are not substantial and for the period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship but in no event longer than one year.

The restrictions imposed by SCR 60.05 may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of sub. (4) (d).

As provided in SCR 60.07(2), sub. (5) does not apply to a judge serving on a part-time basis.

(6) Service as Arbitrator or Mediator. A judge may not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

COMMENT

Paragraph (6) does not prohibit a judge from participating in arbitration, mediation or

settlement conference performed as part of judicial duties.

As provided in SCR 60.07(2), sub. (6) does not apply to a judge serving on a part-time basis.

(7) Practice of Law. A judge may not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family and represent without compensation the estate of a person with whom the judge maintains a close familial relationship so long as the estate remains uncontested.

COMMENT

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or judge's family. See SCR 60.03 (2).

The chapter allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate for a member of the judge's family in a legal matter.

The restraint against a judge giving advice to parties in matters before the judge does not prohibit a judge from advising such parties to obtain lawyers or medical treatment and from advising such parties on similar matters unrelated to the merits of the matter before the judge.

As provided in SCR 60.07(2), sub. (7) does not apply to a judge serving on a part-time basis.

(8) Compensation, Reimbursement and Reporting. (a) Compensation and Reimbursement.

A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this chapter if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

1. Compensation may not exceed a reasonable amount nor may the compensation

exceed what a person who is not a judge would receive for the same activity.

2. Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of that amount is compensation.

(b) Financial Reports. Except as provided in SCR 60.07, a judge shall file with the ethics board a timely financial report as required by section 19.43 of the statutes. The report shall also be filed by commissioners of the supreme court, staff attorneys of the court of appeals, the director of state courts, members of the board of attorneys professional responsibility and members of the board of bar examiners.

COMMENT

The chapter does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

See SCR 60.05 (4) (e) and sec. 19.56, Stats., regarding reporting of gifts and loans.

As provided in SCR 60.07(2), sub. (8) does not apply to a judge serving on a part-time basis.

SCR 60.06 A judge or judicial candidate shall refrain from inappropriate political activity.

NOTE: Because the Wisconsin judiciary is elective and nonpartisan, rules governing a judge's political and campaign activity that may be appropriate in other jurisdictions may not be responsive to the political and campaign realities in this state. Accordingly, in order that due consideration be given to the preparation and promulgation of such rules, the Supreme Court will appoint a committee composed of judges, lawyers, and public members to consult persons and entities experienced in the matter of judicial ethics as it pertains to political and campaign activity and draft

for the court's consideration a comprehensive set of ethical rules in this area. After the committee files its recommendations with the court, the court will invite comment and hold a public hearing on the proposal.

Pending submission of that committee's report, the public hearing and the court's action in the matter, the court promulgates the following provisions from the Supreme Court Rules -- 1994.

(1) **Candidate for office.** A judge shall not become a candidate for a federal, state or local nonjudicial elective office without first resigning his or her judgeship.

COMMENT

This provision derives from former SCR 60.05, which was considered necessary because of the possibility that a candidacy for an office to take effect after the expiration of the judicial term would not be barred by former SCR 60.04. It was felt that the appeal to the electorate by a sitting judge for a nonjudicial office was inherently in conflict with his or her duty to serve impartially all of the people.

This provision is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judge's political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

(2) **Party membership.** Except 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.

COMMENT

As an individual, a judge is entitled to his or her personal view on political questions and to rights and opinions as a citizen. However, as a member of Wisconsin's nonpartisan judiciary, a judge must avoid any conduct which associates him or her with any political party. This rule does not preclude a judge from attending a political meeting as a member of the public, but he or she shall not attend as a participant.

This provision derives from former SCR 60.14 and is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

(3) Promises. A judge who is a candidate for judicial office shall not make or permit others to make in his or her behalf promises or suggestions of conduct in office which appeal to the cupidity or partisanship of the electing or appointing power. A judge shall not do or permit others to do in his or her behalf anything which would commit the judge or appear to commit the judge in advance with respect to any particular case or controversy or which suggests that, if elected or chosen, the judge would administer his or her office with partiality, bias or favor.

COMMENT

This provision derives from former SCR 60.15 and is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, supra.

(4) Solicitation or acceptance of campaign contributions. A judge or candidate for judicial office shall not personally solicit or accept campaign contributions.

COMMENT

This provision does not prohibit reasonable financial contributions to a voluntary campaign committee on behalf of a judicial candidate. The nonpartisan elective process as now constituted is an expensive one, and until other means of conducting and financing judicial elections are devised, this provision should be so construed..

This provision and its Comment derive from former SCR 60.10 and 60.11 and is among the matters to be considered by the committee the court will appoint to conduct a study of judicial conduct relating to judges' political and campaign activity and submit for the court's consideration a comprehensive set of ethical rules in this area. See, Note, Supra.

SCR 60.07 Applicability. (1) Subject to sub. (2), all judges shall comply with this chapter.

(2) A judge who serves on a part-time basis, including a reserve judge, a part-time municipal judge and a part-time court commissioner, is not required to comply with the following: SCR 60.05(3)(a), (b), (c)1.b., 2.a. and c., (4)(a)1.b., (b), (c), (d) and (e), (5), (6), (7) and (8).

APPENDIX F

WISCONSIN CONSTITUTION

Article VII

Judiciary

...

Disciplinary proceedings. Section 11. [As created April 1977] Each justice or judge shall be subject to reprimand, censure, suspension, removal for cause or for disability, by the supreme court pursuant to procedures established by the legislature by law. No justice or judge removed for cause shall be eligible for reappointment or temporary service. This section is alternative to, and cumulative with, the methods of removal provided in sections 1 [impeachment] and 13 [address] of this article and section 12 of article XIII [recall]. [1975 J.R. 13, 1977 J.R. 7, vote April 1977]

APPENDIX G

Statutes Relating to the Judicial Commission

757.81 Definitions. In ss. 757.81 to 757.99:

(1) "Commission" means the judicial commission created by s. 757.83.

(2) "Court commissioner" means a court commissioner under s. 757.68, a family court commissioner under s. 767.13, a juvenile court commissioner under s. 48.065 and a probate court commissioner under s. 757.72.

(3) "Judge" means a judge of any court established by or pursuant to article VII, section 2 or 14, of the constitution, or a supreme court justice.

(4) "Misconduct" includes any of the following:

(a) Wilful violation of a rule of the code of judicial ethics.

(b) Wilful or persistent failure to perform official duties.

(c) Habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties.

(d) Conviction of a felony.

(5) "Panel" means a judicial conduct and disability panel constituted under s. 757.87.

(6) "Permanent disability" means a physical or mental incapacity which impairs the ability of a judge or court commissioner to substantially perform the duties of his or her judicial office and which is or is likely to be of a permanent or continuing nature.

History: 1977 c. 449; 1983 a. 378; 1991 a. 269.

Provisions for judicial disciplinary proceedings under 757.81 to 757.99 are constitutional. In *Matter of Complaint Against Seraphim*, 97 Wis. 2d 485, 294 N.W.2d 485 (1980).

757.83 Judicial commission. (1) Membership; appointment; terms. (a) There is created a judicial commission of 9 members: 5 nonlawyers nominated by the governor and appointed with the advice and consent of the senate; one trial judge of a court of record and one court of appeals judge appointed by the supreme court; and 2 members of the state bar of Wisconsin, who are not judges or court commissioners, appointed by the supreme court. The commission shall elect one of its members as chairperson.

(b) The term of a member is 3 years, but a member shall not serve more than 2 consecutive full terms. A vacancy is filled by the appointing authority for the unexpired term. Members of the commission shall receive compensation of \$25 per day for each day on which they were actually and necessarily engaged in the performance of their duties and shall be reimbursed for expenses necessarily incurred as members of the commission.

(2) Quorum; voting. A majority of the commission constitutes a quorum. The commission may issue a formal complaint or a petition only upon a finding of probable cause by a majority of the total membership not disqualified from voting. A member must be present to vote on the question of probable cause. A member shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

(3) Rules. The commission shall promulgate rules under ch. 227 for its proceedings.

(4) Staff. The judicial commission shall hire an executive director, and may hire one staff member, in the unclassified service. The executive director shall be a member of the state bar of Wisconsin.

History: 1977 c. 449; 1979 c. 34, 154; 1983 a. 27, 378; 1987 a. 27; 1991 a. 269.

757.85 Investigation; prosecution. (1) (a) The commission shall investigate any possible misconduct or permanent disability of a judge or court commissioner. Misconduct constitutes cause under article VII, section 11, of the constitution. Except as provided in par. (b), judges, court commissioners, clerks, court reporters, court employees and attorneys shall comply with requests by the commission for information, documents and other materials relating to an investigation under this section.

(b) The judge or court commissioner who is under investigation is not subject to the request procedure under par. (a) but is subject to the subpoena procedure under sub. (2).

(2) The commission may issue subpoenas to compel the attendance and testimony of witnesses and to command the production of books,

papers, documents or tangible things designated in the subpoena in connection with an investigation under this section.

(3) The commission may notify a judge or court commissioner that the commission is investigating possible misconduct by or permanent disability of the judge or court commissioner. Before finding probable cause, the commission shall notify the judge or court commissioner of the substance of the complaint or petition and afford the judge or court commissioner a reasonable opportunity to respond. If the judge or court commissioner responds, the commission shall consider the response before it finds probable cause.

(4) The commission may require a judge or court commissioner who is under investigation for permanent disability to submit to a medical examination arranged by the commission.

(5) The commission shall, upon a finding of probable cause that a judge or court commissioner has engaged or is engaging in misconduct, file a formal complaint with the supreme court. Upon a finding of probable cause that a judge or court commissioner has a permanent disability, the commission shall file a petition with the supreme court. If the commission requests a jury under s. 757.87 (1), the request shall be attached to the formal complaint or the petition.

(6) The commission shall prosecute any case of misconduct or permanent disability in which it files a formal complaint or a petition.

(7) Insofar as practicable, the procedures applicable to civil actions apply to proceedings under ss. 757.81 to 757.99 after the filing of a complaint or petition.

History: 1977 c. 449; 1983 a. 192; 1983 a. 378 s. 11m; 1985 a. 332; 1987 a. 72; 1991 a. 269.

757.87 Request for jury; panel. (1) After the commission has found probable cause that a judge or court commissioner has engaged in misconduct or has a permanent disability, and before the commission files a formal complaint or a petition under s. 757.85 (5), the commission may, by a majority of its total membership not disqualified from voting, request a jury hearing. If a jury is not requested, the matter shall be heard by a panel constituted under sub. (3). The vote of each member on the question of a jury request shall be

recorded and shall be available for public inspection under s. 19.35 after the formal complaint or the petition is filed.

(2) If a jury is requested under sub. (1), the hearing under s. 757.89 shall be before a jury selected under s. 805.08. A jury shall consist of 6 persons, unless the commission specifies a greater number, not to exceed 12. Five-sixths of the jurors must agree on all questions which must be answered to arrive at a verdict. A court of appeals judge shall be selected by the chief judge of the court of appeals to preside at the hearing, on the basis of experience as a trial judge and length of service on the court of appeals.

(3) A judicial conduct and permanent disability panel shall consist of either 3 court of appeals judges or 2 court of appeals judges and one reserve judge. Each judge may be selected from any court of appeals district including the potential selection of all judges from the same district. The chief judge of the court of appeals shall select the judges and designate which shall be presiding judge.

History: 1977 c. 449; 1981 c. 335 s. 26; 1983 a. 378 ss. 8g, 11m; 1991 a. 269.

757.89 Hearing. A record shall be kept of any hearing on a formal complaint or a petition. The allegations of the complaint or petition must be proven to a reasonable certainty by evidence that is clear, satisfactory and convincing. The hearing shall be held in the county where the judge or court commissioner resides unless the presiding judge changes venue for cause shown or unless the parties otherwise agree. If the hearing is by a panel, the panel shall make findings of fact, conclusions of law and recommendations regarding appropriate discipline for misconduct or appropriate action for permanent disability and file the findings, conclusions and recommendations with the supreme court. If a jury hearing is requested under s. 757.87 (1), the presiding judge shall instruct the jury regarding the law applicable to judicial misconduct or permanent disability, as appropriate. The presiding judge shall file the jury verdict and his or her recommendations regarding appropriate discipline for misconduct or appropriate action for permanent disability with the supreme court.

History: 1977 c. 449; 1983 a. 378 s. 11m; 1991 a. 269.

757.91 Supreme court; disposition. The supreme court shall review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability. The rules of the supreme court applicable to civil cases in the supreme court govern the review proceedings under this section.

History: 1977 c. 449; 1983 a. 378 s. 11m.

757.93 Confidentiality of proceedings. (1) (a) All proceedings under ss. 757.81 to 757.99 relating to misconduct or permanent disability prior to the filing of a petition or formal complaint by the commission are confidential unless a judge or court commissioner waives the right to confidentiality in writing to the commission. Any such waiver does not affect the confidentiality of the identity of a person providing information under par. (b).

(b) Any person who provides information to the commission concerning possible misconduct or permanent disability may request that the commission not disclose his or her identity to the judge or court commissioner prior to the filing of a petition or a formal complaint by the commission.

(2) If prior to the filing of a formal complaint or a petition an investigation of possible misconduct or permanent disability becomes known to the public, the commission may issue statements in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge or court commissioner to a fair hearing without prejudgment, to state that the judge or court commissioner denies the allegations, to state that an investigation has been completed and no probable cause was found or to correct public misinformation.

(3) The petition or formal complaint filed under s. 757.85 by the commission and all subsequent hearings thereon are public.

(4) This section does not preclude the commission, in its sole discretion, from:

(a) Referring to the director of state courts information relating to an alleged delay or an alleged temporary disability of a judge or court commissioner.

(b) Referring to an appropriate law enforcement authority information relating to

possible criminal conduct or otherwise cooperating with a law enforcement authority in matters of mutual interest.

(c) Referring to an attorney disciplinary agency information relating to the possible misconduct or incapacity of an attorney or otherwise cooperating with an attorney disciplinary agency in matters of mutual interest.

(d) Disclosing to the chief justice or director of state courts information relating to matters affecting the administration of the courts.

(e) Issuing an annual report under s. 757.97.

History: 1977 c. 449; 1983 a. 378 ss. 8r, 11m; 1987 a. 72; 1991 a. 269.

757.94 Privilege; immunity. (1) A complaint or communication alleging judicial misconduct or permanent disability with the commission, executive director, commission staff or panel and testimony in an investigation under this section is privileged.

(2) A presiding judge, executive director or a member of the commission, commission staff or panel is immune from civil liability for any conduct in the course of the person's official duties under ss. 757.81 to 757.99.

History: 1977 c. 449; 1983 a. 27, 378.

757.95 Temporary suspension by supreme court. The supreme court may, following the filing of a formal complaint or a petition by the commission, prohibit a judge or court commissioner from exercising the powers of a judge or court commissioner pending final determination of the proceedings.

History: 1977 c. 449; 1991 a. 269.

757.97 Annual report. The commission shall issue an annual report on or before April 1 of each year which provides information on the number and nature of complaints received and their disposition, and the nature of actions it has taken privately concerning the conduct of judges or court commissioners. Information contained in the annual report shall be presented in a manner consistent with the confidentiality requirements under s. 757.93. The report shall be filed with the chief justice of the supreme court, the governor and the presiding

officers of the senate and the assembly.

History: 1983 a. 378; 1987 a. 72; 1991 a. 269.

757.99 Attorney fees. A judge or court commissioner against whom a petition alleging permanent disability is filed by the commission shall be reimbursed for reasonable attorney fees if the judge or court commissioner is found not to have a permanent disability. A judge or court commissioner against whom a formal complaint alleging misconduct is filed by the commission and who is found not to have engaged in misconduct may be reimbursed for reasonable attorney fees. Any judge or court commissioner seeking recovery of attorney fees authorized or required under this section shall file a claim with the claims board under s. 16.53.

History: 1977 c. 449; 1981 c. 20; 1983 a. 378 s. 11m; 1991 a. 269.

APPENDIX H

**WISCONSIN
ADMINISTRATIVE CODE**

JUDICIAL COMMISSION

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JUDICIAL COMMISSION

Chapter JC 1

AUTHORIZATION AND DEFINITIONS

JC 1.01 Authorization

JC 1.02 Definitions

JC 1.01 Authorization. The rules in chs. JC 1 to 6 are adopted by the commission pursuant to s. 757.83 (3), Stats., and relate to ss. 757.81 to 757.99, Stats.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79.

JC 1.02 Definitions. The definitions in s. 757.81, Stats., apply in chs. JC 1 to 6. In addition, in chs. JC 1 to 6:

(1) "Allegation" means a charge of misconduct or disability directed to the commission.

(2) "Complaint" means a written document filed by the commission with the supreme court after a finding of probable cause, alleging misconduct.

(3) "Concern" means a non-disciplinary disposition of an allegation in which the commission communicates its views and suggestions to the judge or court commissioner regarding a matter that arose out of proceedings on an allegation.

(4) "Executive director" means the executive director of the commission.

(5) "Person" means any natural person, any partnership, corporation, group, association or organization or any political body. "Person" includes the executive director, the commission or any commissioner.

(6) "Petition" means a written document filed by the commission with the supreme court after a finding of probable cause, alleging that a judge or court commissioner has a permanent disability.

(7) "Probable cause" means that it is more probable than not that the allegation is true.

(8) "Warning" means a non-disciplinary disposition of an allegation in which the commission cautions the judge or court commissioner not to engage in specified proscribed behavior, and may advise the judge or court commissioner to follow a specified corrective course of action.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79, am. (2) and (6), Register, February, 1982, No. 314, eff. 3-1-82; renum. (4) to be (4m) under s. 13.93 (2m) (b) 1., Stats, renum. (3) to be (4), am. (6), cr. (7) and (8), Register, August, 1991, No. 428, eff. 9-1-91; am. (3), (6) and (8), r. (4m), Register, June, 1993, No. 450, eff. 7-1-93.

JUDICIAL COMMISSION

Chapter JC 2

COMMISSION ORGANIZATION

JC 2.01 Officers
JC 2.02 Meetings

JC 2.03 Screening committee
JC 2.04 Other committees

JC 2.01 Officers. The officers of the commission are a chairperson and vice chairperson. If the chairperson is absent, unavailable, or otherwise unable to act, or refuses to act, the vice chairperson shall perform the duties of the chairperson. If the chairperson resigns or dies, the vice chairperson succeeds to the office of chairperson until the next regularly scheduled election of officers. The term for each office is one year. An officer may serve no more than 2 consecutive terms in a particular office, but is eligible to serve in an office other than the one previously held. Officers shall be elected at the first meeting after August 1 of each year.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, August, 1991, No. 428, eff. 9-1-91.

JC 2.02 Meetings. (1) Regular meetings shall be held at least 6 times a year upon the call of and at a time and place fixed by the chairperson. Sufficient notice shall be given to enable the commissioners so notified to attend the meetings. Public notice of all meetings shall comply with s. 19.84, Stats.

(2) Special meetings shall be held at the request of the chairperson or at the request of any 3 commissioners. Commissioners shall be notified of the meeting not less than 72 hours in advance of the meeting, unless a majority of the commission agrees to meet on less than 72 hours' notice. A special meeting to consider the question of probable cause shall require at least 72 hours' notice to all commissioners not disqualified in the matter.

(3) Regular or special meetings may take place by telephone conference with the consent of a majority of the commission. Telephone conference meetings shall be accessible to the public.

(4) Any notice to commissioners required under this section may be given in person, in writing or by telephone, whichever is most practicable.

(5) All voting at commission meetings shall be by show of hands or roll call.

(6) The minutes of a commission meeting shall include all motions made and seconded, all voting, including abstentions, and all absences and disqualifications.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. (1), (2) and (4), r. and recr. (3), cr. (5) and (6), Register, August, 1991, No. 428, eff. 9-1-91.

JC 2.03 Screening committee. The chairperson shall appoint a screening committee consisting of at least 3 commissioners to review annually a sample of decisions to close initial inquiries made by staff without commission action, for appropriateness and consistency of those decisions, to do preliminary evaluations of allegations when requested by the chairperson and otherwise to serve at the pleasure of the chairperson.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, August, 1991, No. 428, eff. 9-1-91.

JC 2.04 Other committees. The chairperson shall appoint a personnel and a nominations committee and any additional committee that the commission establishes for a specified purpose, to serve at the pleasure of the chairperson or the commission.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91.

JUDICIAL COMMISSION

Chapter JC 3

GENERAL PROVISIONS

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JC 3.02 Independent investigators
JC 3.03 Revised allegation
JC 3.04 Disqualification

JC 3.05 Internal proceedings
JC 3.06 Commission not to act as appellate court
JC 3.07 Jurisdiction
JC 3.08 Access to files by commissioners

JC 3.01 Confidentiality. The proceedings of the judicial commission prior to the filing of a formal complaint concerning misconduct or a petition concerning permanent disability are confidential, unless a written waiver of confidentiality has been made by the judge or court commissioner. If a person who makes an allegation under s. JC 4.01 or 5.01, breaches the confidentiality of the investigation, the commission may dismiss the allegation, admonish the person or take other appropriate action. Clarifying and other statements may be made by the commission regarding an investigation as provided in s. 757.93 (2), Stats.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 3.02 Independent investigators. The commission may authorize the executive director to appoint independent persons to investigate allegations of misconduct or permanent disability, with authority and duties specified by the executive director or commission.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91.

JC 3.03 Revised allegation. The commission may decide after an investigation has started that a particular allegation of misconduct is properly an allegation of disability or that a particular allegation of disability is properly an allegation of misconduct. If an allegation is revised in this manner, a new allegation shall be made and

proceedings shall continue under ch. JC 4 or 5, whichever is applicable.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91.

JC 3.04 Disqualification. (1) A member shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding. In cases other than mandatory disqualification if the propriety of participation is challenged, the question shall be decided by a majority of the other commissioners present and voting.

(2) A member who while serving on the commission makes any financial or other public contribution supporting or opposing a candidate for election or appointment to judicial office shall not participate in any matter involving a judge or court commissioner who at the time of the contribution was a candidate for that office. Public contributions include signing or circulating nomination papers, soliciting campaign contributions, and openly endorsing or opposing the election or appointment of a particular candidate.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; renum. to be (1) and am., cr. (2), Register, August, 1991, No. 428, eff. 9-1-91; am. (2), Register, June, 1993, No. 450, eff. 7-1-93.

JC 3.05 Internal proceedings. The commission shall prescribe procedures for its internal proceedings as the commission deems appropriate.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82.

JC 3.06 Commission not to act as appellate court. The commission shall not function as an appellate court to review the decisions of a court, judge, or court commissioner or to exercise superintending or administrative control over determinations of courts, judges or court commissioners.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; renum. from JC 3.07, Register, February, 1982, No. 314, eff. 3-1-82; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 3.07 Jurisdiction. Allegations may be considered only if they relate to actions or conduct occurring while the judge or court commissioner holds judicial office or is eligible to serve as a reserve judge under s. 753.075, Stats., and applicable supreme court rules. Actions or conduct of a person prior to assuming judicial office or subsequent to leaving judicial office, unless the person is eligible to serve as a reserve judge under s. 753.075, Stats., and applicable supreme court rules, are not within the jurisdiction of the commission.

Note: "Applicable supreme court rules" include SCR 32.08, which requires a judge to earn annually 5 continuing education credits in order to be eligible for appointment as a reserve judge.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; renum. from JC 3.08 and am., Register, February, 1982, No. 314, eff. 3-1-82; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 3.08 Access to files by commissioners. A commissioner shall have access to all commission records, whether open to the public or confidential, except for those confidential records on a matter in which the commissioner is, was, or would have been disqualified.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91.

JUDICIAL COMMISSION

Chapter JC 4

MISCONDUCT

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JC 4.08 Commission finding
JC 4.09 Dismissed allegations

JC 4.01 Allegation. The commission shall consider any allegation of misconduct or permanent disability on the part of a judge or court commissioner from any source which reasonably indicates the existence of a cause justifying inquiry. Any person who submits a statement to the commission alleging misconduct or permanent disability by a judge or court commissioner may request that his or her identity be kept confidential, which request shall be complied with prior to the filing of a formal complaint or petition with the supreme court under s. 757.85 (5), Stats. The executive director may seek additional facts relative to the allegation. The executive director shall make an initial determination of whether the allegation indicates the existence of a cause justifying review by the commission. If there is cause for review, the allegation shall be reduced to writing and filed as a request for investigation.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 4.02 Preliminary evaluation. (1) The executive director, or at the chairperson's request, the screening committee, shall undertake an initial review of a request for investigation for preliminary analysis and clarification of the matters alleged.

(2) If the screening committee does the preliminary evaluation, the committee either shall recommend that the allegation be dismissed or shall authorize an investigation and refer the matter to the executive director for investigation under s. JC 4.03.

If the committee decides to recommend dismissal, the matter shall be referred to the commission. The commission may vote either to dismiss the allegation or to authorize an investigation under s. JC 4.03.

(3) If the executive director does the preliminary evaluation, he or she may engage in limited and discreet fact-finding intended to aid the commission in determining whether to authorize an investigation. The director shall report the preliminary evaluation to the commission, which may vote to dismiss the allegation or to authorize an investigation under s. JC 4.03.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. (1) and (2), cr. (3), Register, August, 1991, No. 428, eff. 9-1-91.

JC 4.03 Investigation. (1) If the commission or the screening committee determines that an investigation is warranted, the matter shall be referred to the executive director for investigation. The executive director shall notify the person who made the allegation of the investigation. The executive director shall also notify the judge or court commissioner of the investigation unless the commission determines otherwise for good cause. The executive director shall conduct a full, fair and prompt investigation. The investigation shall be conducted so as to avoid unnecessary embarrassment to and publicity for the judge or court commissioner. Persons contacted for information shall be requested not to disclose that an investigation is being conducted or the nature of any inquiries. Any person

providing information may request that his or her identity be kept confidential. The request shall be complied with prior to the filing of a formal complaint or petition with the supreme court under s. 757.85 (5), Stats. A judge or court commissioner, if notified under this subsection, may present such evidence to the executive director as the judge or court commissioner deems appropriate. The judge or court commissioner may be represented by counsel during all stages of the commission's proceedings.

(2) The commission, by its chairperson or executive director, may issue subpoenas to compel the attendance and testimony of witnesses, including the judge or court commissioner, and to command the production of books, papers, documents or tangible things designated in the subpoena in connection with an investigation.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 4.04 Report to commission. (1) The executive director shall report to the commission on the status of all pending requests for investigation at each regular meeting.

(2) The executive director shall prepare a report of each investigation made, which shall be given or mailed to each commission member participating in the matter.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91.

JC 4.05 Commission consideration. After considering the report of the investigation under s. JC 4.03, and the facts furnished to it, the commission shall either dismiss the allegation, hold the matter open for further investigation during which the commission may request the judge or court commissioner to make an informal appearance before the commission, or find that there is cause to proceed further.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 4.06 Informal appearance; disposition (1) If the judge or court commissioner is requested to make an informal appearance before the commission under s. JC 4.05 the request shall include notice of the nature of the allegation and the matters to be discussed at the appearance.

(2) Following the conclusion of an informal appearance, or if the judge or court commissioner fails to appear after reasonable notice of the request, the commission shall either dismiss the matter, hold the matter open for further investigation, find that there is cause to proceed further, or take any of the actions under s. JC 4.08 (3), (4), (5) or (7).

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; r. and recr. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 4.07 Cause to proceed further; formal appearance. If after investigation the commission determines that there is cause to proceed further, the judge or court commissioner shall be notified and be requested to respond. Notice shall include the substance of the allegation and its factual basis in writing. The judge or court commissioner may be given such further information concerning the allegation as the commission deems proper under the circumstances. The judge or court commissioner shall be requested to file a written response to the commission within 20 days of receipt of the notice unless the commission or its chairperson shortens or enlarges the time to respond for good cause. The judge or court commissioner shall also be requested to make a formal appearance in person before the commission. The formal appearance shall be recorded verbatim and a transcript shall be provided to the judge or court commissioner at commission expense.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JC 4.08 Commission finding. Following the conclusion of proceedings under s. JC 4.07, the commission shall do any of the following:

(1) Refer the matter back to the executive director for further investigation under s. JC 4.03. The judge or court commissioner may respond under s. JC 4.07 if the commission decides

there is cause to proceed further on an additional allegation.

(2) Find that probable cause of misconduct or permanent disability does not exist, and dismiss the allegation.

(3) Find that by reason of the lapse of time or other circumstances the conduct described in the allegation is no longer relevant to his or her continued conduct as a judge or court commissioner, and dismiss the allegation.

(4) Dismiss the matter with such expression of concern or warning as the commission deems appropriate upon finding that there is credible evidence that any of the following exists:

(a) A violation of one or more standards of the code of judicial ethics that is not aggravated or persistent.

(b) A violation of a rule of the code of judicial ethics that is not wilful.

(c) A failure to perform official duties that is not wilful or persistent.

(d) The allegation does not warrant prosecution because of its minor nature or other circumstances.

(5) Find that any misconduct or disability specified in the allegation is caused by a mental or physical condition for which treatment is appropriate and, with the agreement of the judge or court commissioner, hold open the allegation until the judge or court commissioner completes an appropriate treatment program. Upon successful completion of the program and demonstration that the conduct is unlikely to be repeated, the allegation shall be dismissed. Otherwise, a finding shall be made under sub. (6) or (7).

(6) Find that probable cause exists that a judge or court commissioner has engaged or is engaging in misconduct, and file a formal complaint, or that the judge or court commissioner has a permanent disability and file a formal petition, with the supreme court under s. 757.85 (5), Stats.

(7) Make such other disposition of the matter as is appropriate under the circumstances.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. (1) (d), r. (1) (f), renum. (1) (g) to be (1) (f) and am., cr. (1) (d) 1. to 4. and (1) (g), Register, February, 1982, No. 314, eff. 3-1-82; renum. from JC 4.07 and am., r. (2), Register, August, 1991, No. 428, eff. 9-1-91; am. (1), (3), (5) and (6), Register, June, 1993, No. 450, eff. 7-1-93.

JC 4.09 Dismissed allegations. (1) If the allegation is dismissed, the commission shall notify the person who made the allegation and the judge or court commissioner, whether or not the judge or court commissioner has previously been notified of the matter, unless the commission determines for good cause that the judge or court commissioner not be notified.

(2) The dismissal of an allegation by the commission does not preclude later consideration of any matter involved in it to the extent that it may evidence a pattern or practice or is otherwise relevant to the consideration of any other matter properly before the commission. A dismissed allegation may be reconsidered if new information is received upon the basis of which the commission determines that reconsideration is necessary to fulfill the purposes of the judicial conduct and disability system.

History: Cr. Register, August, 1991, No. 428, eff. 9-1-91; am. (1), Register, June, 1993, No. 450, eff. 7-1-93.

JUDICIAL COMMISSION

Chapter JC 5

DISABILITY

JC 5.01 Allegation

JC 5.01 Allegation. The provisions of ch. JC 4 apply to allegations of permanent disability except as provided in this chapter.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82.

JC 5.02 Medical examination and reports. (1) The commission may require a judge or court commissioner who is under investigation for a permanent disability to submit to a medical examination arranged and paid for by the commission. The report of the medical examiner shall be provided to the commission and to the judge or the court commissioner or the judge's or court commissioner's attorney. For purposes of this provision, an investigation of a permanent disability

JC 5.02 Medical examination and reports

continues through any period in which an allegation is held open for treatment under s. JC 4.08 (5).

(2) Medical records or reports obtained by the commission during an investigation of an allegation of permanent disability or as a result of the judge's or court commissioner's participation in a treatment program under s. JC 4.08 (5) may be considered by the commission at any stage of its proceedings.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; r. and recr. Register, August, 1991, No. 428, eff. 9-1-91; am. Register, June, 1993, No. 450, eff. 7-1-93.

JUDICIAL COMMISSION

Chapter JC 6

PROSECUTION

JC 6.01 Prosecution

JC 6.01 Prosecution. The commission may authorize the executive director, or may engage special counsel, to prosecute a case on behalf of the commission.

History: Cr. Register, May, 1979, No. 281, eff. 6-1-79; am. Register, February, 1982, No. 314, eff. 3-1-82; am. Register, August, 1991, No. 428, eff. 9-1-91.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 27, 2002

To: Secretary George Lightbourn, Department of Administration
Members, Joint Committee on Finance, Wisconsin Legislature

From: Burneatta L. Bridge, Deputy Attorney General

Re: Semi-Annual Report Pursuant to Wis. Stat. §165.25 (10)

Pursuant to Wis. Stat. §165.25 (10), the Department of Justice is to report semiannually to the Department of Administration and the Legislature about the "money received by the department of justice under a court order or a settlement agreement for providing restitution to victims". This is the first report prepared by the Department since this section was enacted. It covers the time period of July 1, 2001 through December 31, 2001. It is the Department's intention that the next report will cover the time period of January 1 through June 30, 2002.

To assist the reader, this report is organized according to the following format. First, a brief narrative description of how the Department of Justice obtains settlements and judgments in consumer protection and anti-trust cases is provided. Second, a financial summary of the transactions (receipts and payments) in the restitution account during the time period covered by the report is provided. Third, a short narrative about each case which resulted in a receipt or payment through the restitution account is provided so that the reader can understand the underlying legal basis for the settlement or judgment and the purpose of the litigation award.

Section 1: Narrative Description of Settlement Funds Process

The litigation of cases on behalf of the people of Wisconsin is a core function of the duties of Wisconsin's Attorney General. As a constitutional officer elected by the people, the Attorney General exercises broad discretion in the conduct, including the resolution, of litigation. The Attorney General's authority to do so is embodied in the State Constitution, Chapter 165, Wisconsin Statutes, and the inherent powers granted the Office of Attorney General by the state and federal court system.

The Department of Justice, through the authority granted to the Attorney General, obtains judgments and settlements on behalf of the State of Wisconsin through litigation. Cases arising from consumer protection or anti-trust violations result in the return of money to consumers, or to various entities through a number of different ways. In most cases, it is possible to identify specific persons to whom refunds or restitution can be made. In such cases, the money collected via the litigation is returned whenever possible to those directly injured. The funds are collected

and returned either through the Department of Justice, directly by the defendant company, or through a third party administrator. Often there is either a court order or a settlement document that outlines the specific method through which such restitution is made.

In other cases, the victims are not as easily identified, or the magnitude of the dollar amount or the type of violations involved make it impractical to attempt to identify and return a specific dollar amount to individual consumers. In such cases, the court provides a mechanism that authorizes the Attorney General to distribute the funds at his or her discretion for designated purposes consistent with the underlying nature of the violation. For example, a settlement against a drug manufacturer might indicate that the proceeds are to be used "for public health" purposes. It should be noted that these cases are the distinct minority---over the years the majority of the victories won for Wisconsin consumers have resulted in some restitution to individuals directly affected by the consumer violations. Finally, the terms of some litigation awards allow the Attorney General to apply settlement proceeds to costs, fees, consumer protection and education efforts, or other lawful purposes in his or her discretion. In all of these cases, the Attorney General exercises his or her discretion under the supervision of the court that retains the authority to approve or reject a proposed settlement.

Over the last several years, the Attorneys General throughout the country have increasingly banded together to bring multi-state litigation on behalf of their constituents. When this occurs, there is usually a lead "team" of Attorneys General and their staffs who manage each large multi-state case. When these cases are concluded, the court in which the case has been pending usually enters an order that governs the distribution of the proceeds of the settlement or litigation award. Because of the nature of the violations and/or the magnitude of the award, it is often more difficult to identify specific individuals to whom restitution can be made. Thus, the courts occasionally use the second method described above (the method by which the Attorneys General exercise more discretion) to distribute the proceeds. In each case, the distribution of the funds is subject to the terms of the settlement itself, and usually also to the direct supervision of the court or a third party the court appoints to oversee such distribution.

In summary, how and where settlement money flows into and out of the Department of Justice depends on the particular type of litigation and the terms of each separate settlement or court order. If the settlement funds come to the Department of Justice, the funds destined for restitution are put into designated sub-accounts in the Restitution Account. The funds remain in the Restitution Account until they are disbursed to the recipients. If funds remain after all reasonable attempts to identify recipients have been exhausted, the funds are used for any of the other designated purposes provided by the terms of the settlement or court order.

Over time, the Department of Justice has worked with both the Department of Administration and the Legislative Audit Bureau to refine the process for such transactions. The current process involves the Department of Justice notifying the Department of Administration of the receipt of such restitution funds, along with a request for the spending authority necessary to implement the settlement or court order. For example, recently the Department of Justice and Department of Administration worked together to disburse approximately \$1.3 million in funds to victims of the Publishers' Clearing House promotions in a record four days.¹

¹ Please note that the receipt of the first portion of funds from the Publishers' Clearing House settlement is itemized in this report. Detail about the first distribution of funds, including an itemization of persons who received the funds, will be covered in the next report, since that occurred after December 31, 2001.

A somewhat different procedure is utilized for the second type of case: those where the funds are not able to be returned to specific individual consumers as restitution for damages they sustained. In such cases, the court vests in the Attorneys General the discretion to propose an appropriate distribution method consistent with the terms of the settlement. If a third party administrator is used to distribute the funds, each Attorney General's office is then responsible for notifying the administrator of the names of recipients of the funds and the administrator is responsible for disbursing the funds and reporting to the court and the parties on that process. In such cases, the Department of Justice's restitution account process is not utilized because the funds do not come to the Department for distribution. The disbursement of settlement proceeds from the multi-state action against the Vitamins manufacturers is being handled in this manner.

Section 2: Financial Summary of Transactions in the Restitution Account between July 1, 2001 through December 31, 2001.

WI DEPARTMENT OF JUSTICE

**Restitution
Receipts
07/01/01 - 12/31/01**

Case Name	Document Number	Document Date	Amount
Sears	JR45502JR0000269	05/17/2002	(60,000.00)
Pepper Tree	CR455CK020000072	12/06/2001	322,272.75
Consumer Education	JR45502JR0000269	05/17/2002	60,000.00
Colorado Prime	CR455CK020000034	09/13/2001	14,174.63
Publishers Clearing House	CR455WR020000082	12/28/2001	750,000.00
		Total Receipts	1,086,447.38

WI DEPARTMENT OF JUSTICE
Restitution
Payments
07/01/01 - 12/31/01

<u>Case Name</u>	<u>Document Number</u>	<u>Document Date</u>	<u>Amount</u>	<u>Payee</u>
MCI World Communications	CR455CK010000187	07/18/2001	(134.50)	Refund
			<u>(134.50)</u>	
Consumer Education	P145502000001223	09/26/2001	2,334.00	Learfield Communications
	P145502000001226	09/26/2001	230.00	Milwaukee Times
	P145502000001227	09/26/2001	565.74	Milwaukee Community Journal
	P145502000001228	09/26/2001	565.74	Milwaukee Courier
			<u>3,695.48</u>	
Evergreen Cemetery	CR455CK020000049	10/12/2001	(1,595.74)	Redeposit
	P145502000000205	07/30/2001	1,450.00	AJR Industrial Lawn & Snow Maintenance
	P145502000000369	08/09/2001	3,700.00	AJR Industrial Lawn & Snow Maintenance
	P145502000000436	08/14/2001	1,360.00	Rodney Cubbie SC
	P145502000000703	08/28/2001	2,150.00	AJR Industrial Lawn & Snow Maintenance
	P145502000000788	09/04/2001	2,150.00	AJR Industrial Lawn & Snow Maintenance
	P145502000001057	09/17/2001	2,460.00	Rodney Cubbie SC
	P145502000001120	09/19/2001	3,000.00	AJR Industrial Lawn & Snow Maintenance
	P145502000001307	10/01/2001	1,595.74	Redeposit
	P145502000001435	10/05/2001	1,145.74	Lawrence Farrell
	P145502000001436	10/05/2001	450.00	Robert Frank
	P145502000001656	10/17/2001	8,700.00	Heiden Plumbing Co Inc
	P145502000001657	10/17/2001	240.00	Rodney Cubbie SC
	P145502000001817	10/25/2001	2,000.00	Roland Hoppe
	P145502000002286	11/27/2001	484.32	Lawrence Farrell
			<u>29,290.06</u>	
NAAG - DATCP	P145502000001918	10/30/2001	12,521.57	NAAG
			<u>12,521.57</u>	
American Cyanamid	P145502000002407	12/13/2001	51,147.34	Board of Regents UW Systems
			<u>51,147.34</u>	

Total Payments 96,519.95

Section 3: Narrative Summary of Receipts and Payments Between July 1, 2001 and December 31, 2001.

These descriptions correspond to the transactions reflected in the spreadsheets in Section 2.

Sears/Consumer Education (Receipts) and Consumer Education (Payment)

The Iowa County Circuit Court approved a consent judgment reached between the state and Sears as the result of a multistate action regarding Sears' alleged practice of attempting to induce Sears debtors involved in bankruptcy proceedings to reaffirm their Sears debt rather than having it discharged in bankruptcy. Sears paid direct restitution to consumers and also paid funds to the offices of the attorneys general of the states involved in the litigation to be used for consumer protection and education purposes. A portion of these funds was used to fund consumer protection public service announcements during this reporting period.

State of Wisconsin v. Peppertree Resort Villas, Inc. and Peppertree Resorts, Ltd. (Receipt)

Peppertree entered into a consent order as a result of allegedly improper offer and sale of timeshares contrary to Wis. Stat. ch. 707, and fraudulent marketing practices under Wis. Stat. §§ 100.171 and 100.18. Peppertree agreed to make restitution to consumers affected by its practices. The funds deposited in FY02 reflect restitution to be paid to consumers based on complaints filed with the Department of Agriculture, Trade and Consumer Protection (DATCP). A partial disbursement has been made and will be reported in the next reporting period. Disbursement of the remaining funds is stayed pending Peppertree's appeal of the circuit court's order enforcing the consent judgment.

State of Wisconsin v. Colorado Prime Corporation (Receipt)

The state reached a consent judgment with Colorado Prime as a result of Colorado Prime's allegedly fraudulent telemarketing and door to door sales practices. The funds received during this reporting period have been paid as restitution to individuals who filed complaints with DATCP and who signed releases and agreed to accept the restitution. These disbursements occurred after this reporting period and will be detailed in the next report.

State of Wisconsin v. Publishers Clearing House ("PCH") (Receipt)

The state reached a settlement with PCH following a trial on PCH's allegedly fraudulent activities regarding its sweepstakes. The state also joined a multistate settlement with PCH. Under the terms of these settlements, PCH will pay funds to Wisconsin for purposes of restitution to consumers who purchased subscriptions and merchandise from PCH. Restitution is being distributed in two phases, based on whether consumers filed complaints before the settlement was announced, or after. Detail on the first distribution will be provided in the next report.

MCI World Communications, Inc. (Payment)

MCI entered into a consent judgment with Wisconsin and twenty-three states as a result of MCI's allegedly illegal and misleading billing practices. Under the terms of the judgment, MCI made payments to the states to be used for various purposes at the discretion of the Attorney General, including consumer education. A portion of Wisconsin's share of this settlement was used to underwrite a conference sponsored by the Wisconsin Department of Justice. The transaction during this reporting period was a refund from a conference vendor based upon an erroneous bill.

State of Wisconsin v. Cemeteries, Inc., d/b/a/ Evergreen Cemetery, et al. (Payment)

The state brought an action against Evergreen Cemetery and its owners alleging that the cemetery was selling lots and arranging for burials contrary to Wis. Stat. §§ 157.07 and 157.08. In addition, the cemetery was not being maintained and had fallen into disrepair. Under the terms of the settlement, filed with the court in March, 2000, the defendants agreed to pay \$600,000 to restore the required care fund and to cover nuisance abatement costs. During this reporting period, a total of \$51,147.34 was paid to various vendors for necessary maintenance of the cemetery. The expenditures reflected were made pursuant to court order and were approved by the court.

NAAG-DATCP (Payment)

The Department of Justice received funds from the National Association of Attorneys General ("NAAG") to support certain investigative activities. Due to changes in investigative priorities, the specific project was discontinued and the funds were returned to NAAG for use in another initiative.

State of Missouri, et al., v. American Cyanamid Company (Payment)

This was an action brought by the Attorneys General of 28 states alleging that American Cyanamid had unlawfully conditioned payment of rebates and incentives on a fixed resale price of various crop protection chemicals. Under the terms of the consent decree and final judgment, American Cyanamid agreed to make payments to the states' Attorneys General to be used to benefit the agricultural community in the individual states, at the sole discretion of the Attorney General. Wisconsin received \$343,940.13 for this purpose through this litigation, and also received \$153,704.21 for the same purpose through *Texas, et al. v. Zeneca*. The Attorney General designated the Pesticide Use and Risk Reduction project of the University of Wisconsin Department of Agriculture to receive these funds to further its research into alternatives to chemical pesticides. The funds disbursed in FY02 represent the last payment to this project.