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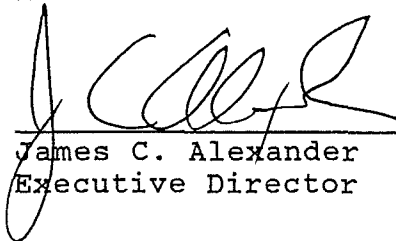
JUN 14 1991
9:45 am.
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
WISCONSIN JUDICIAL COMMISSION) ss.

I, James C. Alexander, Executive Director of the Wisconsin Judicial Commission and custodian of the official records, certify that the annexed rules, relating to Judicial Commission procedure were duly approved and adopted by this Commission on April 5, 1991.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF,
I have hereunto set my hand at
Suite 606, Tenney Building, 110
East Main Street, Madison, WI
53703, this 13th day of June,
1991.



James C. Alexander
Executive Director

9-1-91

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01 ORDER OF THE JUDICIAL COMMISSION ADOPTING, AMENDING OR REPEALING
02 RULES

03 AN ORDER to repeal JC 4.07(2) and 5.03 to 5.07; to renumber JC
04 1.02(3); to renumber and amend JC 4.07(1) (a), (b), (c), (d) 1, 2, 3,
05 4, (e), (f) and (g); to amend JC 1.02(6), 2.01 to 2.03, 3.01 to 3.04,
06 4.01 to 4.05, 5.01 and 6.01; to repeal and recreate JC 2.02(3), 4.06
07 and 5.02(1) and (2); to create JC 1.02(3), 1.02(7) and (8), 2.02(5) and
08 (6), 2.04, 3.04(2), 3.08, 4.02(3), 4.07 and 4.09(1) and (2), relating
09 to the revision of the rules of the Judicial Commission.

10 ANALYSIS PREPARED BY JUDICIAL COMMISSION

11 These rules are adopted by the Judicial Commission pursuant to
12 section 757.83, Statutes.

13 The recodification is primarily intended to strike rules that were
14 duplicative, to update and improve language and to incorporate some
15 existing Commission internal policies and procedures into the rules.
16 Substantial changes in the rules involve reduction of Chapter 5 and a
17 change in the categories available to the Commission for action after
18 an investigation of alleged judicial misconduct.

19 The revised rules greatly reduce Chapter 5 so that it now includes

01 only provisions unique to disability cases. Chapter 4 now pertains to
02 both disability and misconduct cases. Before, much of Chapter 5
03 duplicated the language in Chapter 4.

04 The revised rules in JC 4.08 set forth the categories available to
05 the Commission for action after an investigation of alleged misconduct
06 as dismissed, dismissed with expression of concern, dismissed with
07 warning, find probable cause and file a complaint with the Supreme
08 Court seeking discipline. Concern and warning are now defined in JC
09 1.02(3) and (8) respectively. In the previous rules, the categories
10 included a dismissal with admonition. Admonition has been eliminated
11 to avoid confusion with the use of an admonition as the least severe
12 form of discipline by many other states. In Wisconsin, dismissal with
13 an admonition was not discipline at all. To avoid this confusion, the
14 terms warning or concern are now used and are defined.

15 The remaining changes in the rules are updating language or
16 codification of Commission practices and procedures already in use.

17 **Text of rule**

18 SECTION 1. JC 1.02(3) is renumbered as 1.02(4).

19 SECTION 2. JC 1.02(3) is created to read as follows:

20 JC 1.02(3) "Concern" means a non-disciplinary disposition of
21 an allegation in which the commission communicates its views and
22 suggestions to the judge regarding a matter that arose out of
23 proceedings on an allegation.

24 SECTION 3. JC 1.02(6) is amended to read as follows:

25 JC 1.02(6) "Petition" means a written document filed by the
26 commission with the supreme court after a finding of probable cause,
27 alleging that a judge has a permanent disability.

01 SECTION 4. JC 1.02(7) and (8) are created to read as follows:

02 JC 1.02(7) "Probable cause" means that it is more probable than
03 not that the allegation is true.

04 JC 1.02(8) "Warning" means a non-disciplinary disposition of an
05 allegation in which the commission cautions the judge not to engage in
06 specified proscribed behavior, and may advise the judge to follow a
07 specified corrective course of action.

08 SECTION 5. JC 2.01 is amended to read as follows:

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

20 SECTION 6. JC 2.02(1) and (2) are amended to read as follows:

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

26 (2) Special meetings shall be held at the request of the
27 chairperson or at the request of any 3 commissioners. Commissioners

01 shall be notified of the meeting not less than 72 hours in advance of
02 the meeting, unless a majority of the commission agrees to meet on less
03 than 72 hours' notice. A special meeting to consider the question of
04 probable cause shall require at least 72 hours' notice to all
05 commissioners not disqualified in the matter.

06 SECTION 7. JC 2.02(3) is repealed and recreated to read as follows:

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

10 SECTION 8. JC 2.02(4) is amended to read as follows:

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

14 SECTION 9. JC 2.02(5) and (6) are created to read as follows:

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

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

20 SECTION 10. JC 2.03 is amended to read as follows:

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

01 SECTION 11. JC 2.04 is created to read as follows:

02 JC 2.04 OTHER COMMITTEES. The chairperson shall appoint a
03 personnel and a nominations committee and any additional committee that
04 the commission establishes for a specified purpose, to serve at the
05 pleasure of the chairperson or the commission.

06 SECTION 12. JC 3.01, 3.02 and 3.03 are amended to read as follows:

07 JC 3.01 CONFIDENTIALITY. The proceedings of the judicial
08 commission prior to the filing of a formal complaint concerning
09 misconduct or a petition concerning permanent disability are
10 confidential, unless a written waiver of confidentiality has been made
11 by the judge. If a person who makes an allegation under s. JC 4.01 or
12 5.01, breaches the confidentiality of the investigation, the commission
13 may dismiss the allegation, admonish the person or take other
14 appropriate action. Clarifying and other statements may be made by the
15 commission regarding an investigation as provided in s. 757.93 (2),
16 Stats.

17 JC 3.02 INDEPENDENT INVESTIGATORS. The commission may authorize
18 the executive director to hire appoint independent persons to
19 investigate allegations of misconduct or permanent disability, with
20 authority and duties specified by the executive director or commission.

21 JC 3.03 REVISED ALLEGATION. The commission may decide after an
22 investigation has started that a particular allegation of misconduct is
23 properly an allegation of disability or that a particular allegation of
24 disability is properly an allegation of misconduct. If an allegation
25 is revised in this manner, ~~all proceedings shall cease~~ and a new
26 allegation shall be made and proceedings shall continue under ~~s. 3E~~
27 ~~4-01 chapter JC 4~~ or ~~5-01 5,~~ whichever is applicable.

01 SECTION 13. JC 3.04 is amended to read as follows:

02 3.04 DISQUALIFICATION. (1) A member shall not participate in any
03 matter if a judge similarly situated would be disqualified in a court
04 proceeding. In cases other than mandatory disqualification if the
05 propriety of participation is challenged, the question shall be decided
06 by a majority of the other commissioners present and voting.

07 SECTION 14. JC 3.04(2) is created to read as follows:

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

16 SECTION 15. JC 3.08 is created to read as follows:

17 JC 3.08 ACCESS TO FILES BY COMMISSIONERS. A commissioner shall
18 have access to all commission records, whether open to the public or
19 confidential, except for those confidential records on a matter in
20 which the commissioner is, was, or would have been disqualified.

21 SECTION 16. JC 4.01 is amended to read as follows:

22 JC 4.01 ALLEGATION. The commission shall consider any allegation
23 of misconduct or permanent disability on the part of a judge from any
24 source which reasonably indicates the existence of a cause justifying
25 inquiry. Any person may submit who submits a statement to the
26 commission alleging misconduct or permanent disability by a judge-- The
27 person may request that his or her identity be kept confidential, which

01 request shall be complied with prior to the filing of a formal
02 complaint or petition with the supreme court under s. 757.85 (5),
03 Stats. The executive director may seek additional facts ~~to include in~~
04 relative to the allegation. The executive director shall make an
05 initial determination of whether the allegation indicates the existence
06 of a cause justifying review by the commission. ~~Allegations of~~
07 ~~misconduct~~ If there is cause for review, the allegation shall be
08 reduced to writing and filed as a request for investigation. The
09 executive director shall make preliminary evaluations of the
10 allegations.

11 SECTION 17. JC 4.02(1) and (2) are amended to read as follows:

12 JC 4.02 Screening- PRELIMINARY EVALUATION. (1) If The executive
13 director, or at the chairperson's requests, the screening committee,
14 shall screen any allegation under s. JC 4-01, which is not initiated by
15 the commission; undertake an initial review of a request for
16 investigation for preliminary analysis and clarification of the matters
17 alleged.

18 (2) If the screening committee does the preliminary evaluation,
19 The the committee either shall either recommend that the allegation be
20 dismissed under sub- (2) or determine that the allegation indicates
21 possible misconduct warranting or shall authorize an investigation and
22 refer the matter to the executive director for investigation under s.
23 JC 4.03. ~~(2)~~ If the committee votes to dismiss the allegation, decides
24 to recommend dismissal, the matter shall be referred to the commission.
25 The commission may vote either to dismiss the allegation or that the
26 allegation indicates possible misconduct warranting to authorize an
27 investigation under s. JC 4.03. If an allegation is dismissed the

01 commission shall notify the person who made the allegation and may
02 notify the judge:

03 SECTION 18. JC 4.02(3) is created to read as follows:

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

10 SECTION 19. JC 4.03, 4.04 and 4.05 are amended to read as follows:

11 JC 4.03 INVESTIGATION. (1) If the commission or the screening
12 committee determines that an investigation is warranted, the matter
13 shall be referred to the executive director for investigation. The
14 executive director shall notify the person who made the allegation of
15 the investigation. The executive director shall also notify the judge
16 of the investigation unless the commission determines otherwise for
17 good cause. The executive director shall conduct a full, fair and
18 prompt investigation. The investigation shall be conducted so as to
19 avoid unnecessary embarrassment to and publicity for the judge.
20 Persons contacted for information shall be ~~directed~~ requested not to
21 disclose that an investigation is being conducted or the nature of any
22 inquiries. Any person providing information may request that his or
23 her identity be kept confidential. The request shall be complied with
24 prior to the filing of a formal complaint or petition with the supreme
25 court under s. 757.85 (5), Stats. A judge, if notified under this
26 subsection, may present such evidence to the executive director as the
27 judge deems appropriate. The judge may be represented by counsel

01 during all stages of the commission's proceedings.

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

07 JC 4.04 REPORT TO COMMISSION. (1) The executive director shall
08 report to the commission on the status of all cases pending requests
09 for investigation at each regular meeting.

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

13 JC 4.05 COMMISSION CONSIDERATION. After considering the report
14 of the investigation under s. JC 4.03, and the facts furnished to it,
15 the commission shall either dismiss the allegation, hold the matter
16 open for further investigation during which the commission may request
17 the judge to make an informal appearance before the commission, or find
18 that there is cause to proceed further. If the allegation is
19 dismissed, the commission shall notify the person who made the
20 allegation and shall notify the judge if he or she has been notified of
21 the investigation or may notify the judge if he or she has not been
22 previously notified of the investigation. If the commission determines
23 that there is a cause to proceed further, the judge shall then be
24 notified and be given an opportunity to respond. The judge shall be
25 given the substance of the allegation and may be given such further
26 information concerning the allegation as the commission deems proper
27 under the circumstances.

01 SECTION 20. JC 4.06 is repealed and recreated to read as follows:

02 JC 4.06 INFORMAL APPEARANCE; DISPOSITION. (1) If the judge is
03 requested to make an informal appearance before the commission under s.
04 JC 4.05 the request shall include notice of the nature of the
05 allegation and the matters to be discussed at the appearance.

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

11 SECTION 21. JC 4.07(1), (a), (b), (c), (d) 1, 2, 3, 4, (e), (f) and
12 (g) are renumbered JC 4.08, JC 4.08(1), (2), (3), (4) (a), (b), (c),
13 (d), (5), (6) and (7) and are amended as follows:

14 ~~JC 4-07~~ 4.08 COMMISSION FINDING. (~~1~~) Following the conclusion of
15 proceedings under s. JC ~~4-05~~ or ~~4-06~~ 4.07, the commission may vote to
16 shall do any of the following:

17 ~~(a)~~ (1) Refer the matter back to the executive director for
18 further investigation under s. JC 4.03. ~~In such a case, the~~ The judge
19 ~~has an additional~~ may right to respond under s. JC ~~4-06~~ 4.07 if the
20 commission ~~again~~ decides there is cause to proceed further under s. ~~JC~~
21 ~~4-05~~ on an additional allegation.

22 ~~(b)~~ (2) Find that probable cause of misconduct or permanent
23 disability does not exist, that a judge has engaged or is engaging in
24 misconduct, and dismiss the allegation.

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

01 allegation.

02 {d} (4) Find that the alleged misconduct involves any of the
03 following and dismiss Dismiss the allegation matter with such
04 admonition expression of concern or warning as the commission deems
05 appropriate: upon finding that there is credible evidence that any of
06 the following exists:

07 1- (a) The A violation of only one or more standard standards of
08 the code of judicial ethics that is not aggravated or persistent.

09 2- (b) The A violation of a rule of the code of judicial ethics
10 ~~which~~ that is not wilful.

11 3- (c) The A failure to perform official duties which that is not
12 wilful or persistent.

13 4- (d) The alleged misconduct allegation does not warrant
14 prosecution because of its minor nature or other circumstances.

15 {e} (5) Find that any misconduct or disability specified in the
16 allegation is caused by a mental or physical condition for which
17 treatment is appropriate and, with the agreement of the judge, hold
18 open the allegation until the judge completes an appropriate treatment
19 program. Upon successful completion of the program and demonstration
20 that the conduct is unlikely to be repeated, the allegation shall be
21 dismissed. Otherwise, a finding shall be made under par. {f} (6) or
22 {g} (7).

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

27 {g} (7) Make such other disposition of the matter as is

01 appropriate under the circumstances.

02 SECTION 22. JC 4.07(2) is repealed.

03 SECTION 23. JC 4.07 is created and reads as follows:

04 JC 4.07 CAUSE TO PROCEED FURTHER; FORMAL APPEARANCE. If after
05 investigation the commission determines that there is cause to proceed
06 further, the judge shall be notified and be requested to respond.
07 Notice shall include the substance of the allegation and its factual
08 basis in writing. The judge may be given such further information
09 concerning the allegation as the commission deems proper under the
10 circumstances. The judge shall be requested to file a written response
11 to the commission within 20 days of receipt of the notice unless the
12 commission or its chairperson shortens or enlarges the time to respond
13 for good cause. The judge shall also be requested to make a formal
14 appearance in person before the commission. The formal appearance
15 shall be recorded verbatim and a transcript shall be provided to the
16 judge at commission expense.

17 SECTION 24. JC 4.09(1) and (2) are created to read as follows:

18 JC 4.09 DISMISSED ALLEGATIONS. (1) If the allegation is
19 dismissed, the commission shall notify the person who made the
20 allegation and the judge, whether or not the judge has previously been
21 notified of the matter, unless the commission determines for good cause
22 that the judge not be notified.

23 (2) The dismissal of an allegation by the commission does not
24 preclude later consideration of any matter involved in it to the extent
25 that it may evidence a pattern or practice or is otherwise relevant to
26 the consideration of any other matter properly before the commission.
27 A dismissed allegation may be reconsidered if new information is

01 received upon the basis of which the commission determines that
02 reconsideration is necessary to fulfill the purposes of the judicial
03 conduct and disability system.

04 SECTION 25. JC 5.01 is amended to read as follows:

05 JC 5.01 ALLEGATION. The commission shall consider any allegation
06 that a judge has a disability from any source which reasonably
07 indicates the existence of a cause justifying inquiry. Any person may
08 submit a statement to the commission alleging that a judge has a
09 disability. The person may request that his or her identity be kept
10 confidential, which request shall be complied with prior to the filing
11 of a petition with the supreme court under s. 757-85 (5), Stats. The
12 executive director may seek additional facts to include in the
13 allegation. Allegations of disability shall be reduced to writing.
14 The executive director shall make preliminary evaluations of the
15 allegations. The provisions of JC chapter 4 apply to allegations of
16 permanent disability except as provided in this chapter.

17 SECTION 26. JC 5.02(1) and (2) are repealed and recreated to read:

18 JC 5.02 MEDICAL EXAMINATION AND REPORTS. (1) The commission may
19 require a judge who is under investigation for a permanent disability
20 to submit to a medical examination arranged and paid for by the
21 commission. The report of the medical examiner shall be provided to
22 the commission and to the judge or the judge's attorney. For purposes
23 of this provision, an investigation of a permanent disability continues
24 through any period in which an allegation is held open for treatment
25 under s. JC 4.08(5).

26 (2) Medical records or reports obtained by the commission during
27 an investigation of an allegation of permanent disability or as a

01 result of the judge's participation in a treatment program under s. JC
02 4.08(5) may be considered by the commission at any stage of its
03 proceedings.

04 SECTION 27. JC 5.03, 5.04, 5.05, 5.06 and 5.07 are repealed.

05 SECTION 28. JC 6.01 is amended to read as follows:

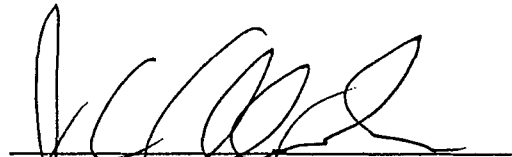
06 JC 6.01 PROSECUTION. The commission may authorize the executive
07 director, or may ~~hire~~ engage special counsel, to prosecute a case on
08 behalf of the commission.

09

10

11 These rules shall take effect on the first day of the month
12 following publication in the Wisconsin administrative register as
13 provided in s. 227.22(2) (intro.), Stats.

14 Dated this 13th day of June, 1991..


James C. Alexander
Executive Director
Wisconsin Judicial Commission

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**State of Wisconsin
JUDICIAL COMMISSION**

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

James C. Alexander
Executive Director
Phone: 608-266-7637

June 13, 1991

MEMORANDUM

TO: Revisor of Statutes Bureau
Wisconsin Administrative Register
119 Martin Luther King, Jr. Boulevard, 2nd floor
Madison, WI 53703

FROM: James C. Alexander *JCA*

RE: Order Adopting Rules

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Enclosed herewith is a certificate and two copies of rules ordered by the Judicial Commission. Thirty days have elapsed from the time the rules were submitted to committees in each house of the Legislature and neither standing committee has objected to these rules in whole or in part or directed the agency to attend a meeting.

Please have these rules published as soon as possible and make the necessary arrangements for printing. If you need further information please contact me.

Thank you.

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