

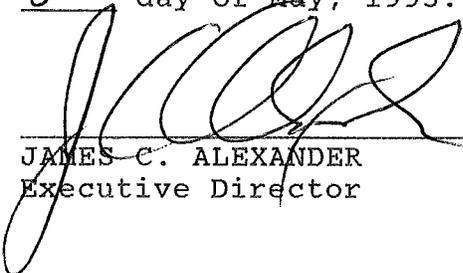
CR 93-2

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 August 7, 1992.

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, 110 East Main Street,
Madison, WI, 53703-3328, this
3rd day of May, 1993.



JAMES C. ALEXANDER
Executive Director

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01 **ORDER OF THE JUDICIAL COMMISSION AMENDING OR**
02 **REPEALING RULES**

03 **AN ORDER** to repeal JC 1.02 (4m) and to amend JC 1.02
04 (3), (6) and (8), 3.01, 3.04 (2), 3.06, 3.07, 4.01, 4.03
05 (1) and (2), 4.05, 4.06 (1) and (2), 4.07, 4.08 (1), (3),
06 (5) and (6), 4.09 (1), 5.02 (1) and (2), relating to the
07 addition of court commissioners to the jurisdiction of the
08 Judicial Commission.

09 **ANALYSIS PREPARED BY JUDICIAL COMMISSION**

10 These rules are adopted by the Judicial Commission
11 pursuant to s. 757.83(3), Stats.

12 The changes are necessary to conform the rules to
13 amendments to ss. 757.81 through 757.99, Stats., by 1991
14 Act 269 adding court commissioners to Judicial Commission
15 jurisdiction. All of the proposed rule amendments add
16 court commissioners to the text of the rule.

17 JC 1.02 (4m) is repealed because it is no longer a
18 correct statement of the law and is unnecessary. The
19 definitions of "judge" and "court commissioner" are in

01 s. 757.81, Stats.

02 **TEXT OF RULE**

03 SECTION 1. JC 1.02 (4m) is repealed.

04 SECTION 2. JC 1.02 is amended to read:

05 JC 1.02(3) "Concern" means a non-disciplinary
06 disposition of an allegation in which the commission
07 communicates its views and suggestions to the judge or
08 court commissioner regarding a matter that arose out of
09 proceedings on an allegation.

10 JC 1.02(6) "Petition" means a written document
11 filed by the commission with the supreme court after a
12 finding of probable cause, alleging that a judge or court
13 commissioner has a permanent disability.

14 JC 1.02(8) "Warning" means a non-disciplinary
15 disposition of an allegation in which the commission
16 cautions the judge or court commissioner not to engage in
17 specified proscribed behavior, and may advise the judge or
18 court commissioner to follow a specified corrective course
19 of action.

20 SECTION 3. JC 3.01 is amended to read:

21 JC 3.01 CONFIDENTIALITY. The proceedings of the
22 judicial commission prior to the filing of a formal
23 complaint concerning misconduct or a petition concerning
24 permanent disability are confidential, unless a written
25 waiver of confidentiality has been made by the judge or
26 court commissioner. If a person who makes an allegation
27 under s. JC 4.01 or 5.01, breaches the confidentiality of

01 the investigation, the commission may dismiss the
02 allegation, admonish the person or take other appropriate
03 action. Clarifying and other statements may be made by
04 the commission regarding an investigation as provided in
05 s. 757.93 (2), Stats.

06 SECTION 4. JC 3.04 (2) is amended to read:

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

17 SECTION 5. JC 3.06 is amended to read:

18 JC 3.06 COMMISSION NOT TO ACT AS APPELLATE COURT.

19 The commission shall not function as an appellate court to
20 review the decisions of a court or judge or court
21 commissioner or to exercise superintending or
22 administrative control over determinations of courts or
23 judges or court commissioners.

24 SECTION 6. JC 3.07 is amended to read:

25 JC 3.07 JURISDICTION. Allegations may be
26 considered only if they relate to actions or conduct
27 occurring while the judge or court commissioner holds

01 judicial office or is eligible to serve as a reserve judge
02 under s. 753.075, Stats., and applicable supreme court
03 rules. Actions or conduct of a person prior to assuming
04 judicial office or subsequent to leaving judicial office,
05 unless the person is eligible to serve as a reserve judge
06 under s. 753.075, Stats., and applicable supreme court
07 rules, are not within the jurisdiction of the commission.

08 SECTION 7. JC 4.01 is amended to read:

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

26 SECTION 8. JC 4.03 (1) and (2) are amended to read:

27 JC 4.03 INVESTIGATION. (1) If the commission or

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

24 (2) The commission, by its chairperson or executive
25 director, may issue subpoenas to compel the attendance and
26 testimony of witnesses, including the judge or court
27 commissioner, and to command the production of books,

01 papers, documents or tangible things designated in the
02 subpoena in connection with an investigation.

03 SECTION 9. JC 4.05 is amended to read:

04 JC 4.05 COMMISSION CONSIDERATION. After
05 considering the report of the investigation under s. JC
06 4.03, and the facts furnished to it, the commission shall
07 either dismiss the allegation, hold the matter open for
08 further investigation during which the commission may
09 request the judge or court commissioner to make an
10 informal appearance before the commission, or find that
11 there is cause to proceed further.

12 SECTION 10. JC 4.06 (1) and (2) are amended to read:

13 JC 4.06 INFORMAL APPEARANCE; DISPOSITION. (1) If
14 the judge or court commissioner is requested to make an
15 informal appearance before the commission under s. JC 4.05
16 the request shall include notice of the nature of the
17 allegation and the matters to be discussed at the
18 appearance.

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

26 SECTION 11. JC 4.07 is amended to read:

27 JC 4.07 CAUSE TO PROCEED FURTHER; FORMAL

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

18 SECTION 12. JC 4.08 (1) is amended to read:

19 (1) Refer the matter back to the executive director
20 for further investigation under s. JC 4.03. The judge or
21 court commissioner may respond under s. JC 4.07 if the
22 commission decides there is cause to proceed further on an
23 additional allegation.

24 SECTION 13. JC 4.08 (3) is amended to read:

25 (3) Find that by reason of the lapse of time or
26 other circumstances the conduct described in the
27 allegation is no longer relevant to his or her continued

01 conduct as a judge or court commissioner, and dismiss the
02 allegation.

03 SECTION 14. JC 4.08 (5) and (6) are amended to read:

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

14 (6) Find that probable cause exists that a judge or
15 court commissioner has engaged or is engaging in
16 misconduct, and file a formal complaint, or that the judge
17 or court commissioner has a permanent disability and file
18 a formal petition, with the supreme court under s.
19 757.85(5), Stats.

20 SECTION 15. JC 4.09 (1) is amended to read:

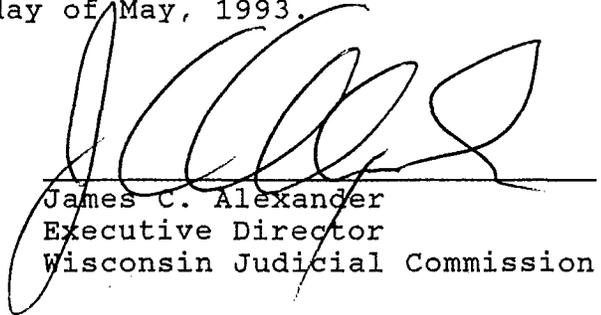
21 JC 4.09 DISMISSED ALLEGATIONS. (1) If the
22 allegation is dismissed, the commission shall notify the
23 person who made the allegation and the judge or court
24 commissioner, whether or not the judge or court
25 commissioner has previously been notified of the matter,
26 unless the commission determines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

01 JC 5.02 MEDICAL EXAMINATION AND REPORTS. (1) The
02 commission may require a judge or court commissioner who
03 is under investigation for a permanent disability to
04 submit to a medical examination arranged and paid for by
05 the commission. The report of the medical examiner shall
06 be provided to the commission and to the judge or the
07 court commissioner or the judge's or court commissioner's
08 attorney. For purposes of this provision, an
09 investigation of a permanent disability continues through
10 any period in which an allegation is held open for
11 treatment under s. JC 4.08 (5).

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

01 These rules shall take affect on the first day
02 of the month following publication in the Wisconsin
03 administrative register as provided in s. 227.22(2)
04 (intro.), Stats.

05 Dated this 3rd day of May, 1993.



James C. Alexander
Executive Director
Wisconsin Judicial Commission

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