

## Chapter JC 4

### MISCONDUCT

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**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 re-

quested 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.