



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Discipline or Removal of Justices and Judges for Misconduct or Permanent Disability

Under Wisconsin law, justices and judges are subject to discipline or removal for misconduct or permanent disability. The procedure by which justices and judges may be disciplined or removed for misconduct or permanent disability begins with an investigation by the Wisconsin Judicial Commission, followed by a hearing. The Wisconsin Supreme Court makes the final determination regarding the discipline or removal of a justice or judge.

It should be noted that Wisconsin law also provides for the removal of justices and judges by impeachment, address of the Legislature, or recall. This memorandum describes the procedure by which a justice or judge may be disciplined or removed for misconduct or permanent disability and does not address removal by impeachment, address of the Legislature, or recall.

Article VII, Section 11 of the Wisconsin Constitution provides that justices and judges are subject to reprimand, censure, suspension, and removal for cause or for disability by the Wisconsin Supreme Court pursuant to procedures established by the Legislature. A justice or judge who is removed for cause is ineligible for temporary service or reappointment. The proceedings in this section are in addition to and an alternative to impeachment, removal by address of the Legislature, and recall as provided in Wis. Const., art. VII, ss. 1 and 13 and art. XIII, s. 12, respectively.

The Legislature has established procedures for judicial discipline or removal in ss. 757.81 to 757.99, Stats., for misconduct or permanent disability. The procedures apply to Supreme Court justices, court of appeals judges, circuit court judges, municipal court judges, and circuit or supplemental court commissioners. For purposes of ss. 757.81 to 757.99, Stats., “misconduct” includes: (a) willful violation of the code of judicial ethics; (b) willful or persistent failure to perform official duties; (c) habitual intemperance, due to the use of dangerous drugs or consumption of intoxicating beverages, that interferes with the proper performance of judicial duties; and (d) felony conviction. “Permanent disability” is defined as a mental or physical incapacity that is or is likely to be continuing or permanent and that impairs the ability of a judge to substantially perform judicial duties. [s. 757.81 (4) and (6), Stats.]

INVESTIGATION BY THE WISCONSIN JUDICIAL COMMISSION

The Judicial Commission, composed of one circuit court judge, one court of appeals judge, two attorneys, and five nonattorneys, is charged with investigating the alleged misconduct or permanent disability of a judge. The Judicial Commission is required to consider any allegation of misconduct or permanent disability of a judge from any source that reasonably indicates the existence of a cause justifying inquiry. If the executive director determines that an allegation should be reviewed by the Judicial Commission, the allegation is reduced to writing and filed as a request for investigation (RFI). [s. 757.83 (1), Stats; s. JC 4.01, Wis. Adm. Code.]

The executive director or the screening committee, composed of at least three members of the Judicial Commission, undertakes an initial review of a RFI for preliminary evaluation. If the executor director conducts the preliminary evaluation, he or she reports the preliminary evaluation to the Judicial Commission, which may dismiss the allegation or authorize an investigation. If the screening committee conducts the preliminary evaluation, the committee either recommends dismissal of the allegation or authorizes an investigation. If the screening committee recommends dismissal, the matter is referred to the Judicial Commission, which may dismiss the allegation or authorize an investigation. If an investigation is authorized, the executive director conducts the investigation. [ss. JC 2.03, 4.02, and 4.03 (1), Wis. Adm. Code.]

During an investigation, the Judicial Commission may notify a judge who is being investigated of its investigation. Before it finds probable cause, the Judicial Commission must notify the judge of the substance of the complaint or petition and allow the judge an opportunity to respond. If the judge responds, the Judicial Commission must consider the response before finding probable cause. Clerks, court employees, court reporters, attorneys, and judges, except the judge being investigated, must comply with requests by the Judicial Commission for documents, information, and other materials that relate to an investigation. The Judicial Commission also has subpoena authority for the testimony and attendance of witnesses and for the production of documents, papers, books, or other tangible things that relate to an investigation. [s. 757.85 (1), (2), and (3), Stats.]

The executive director must prepare a report of each investigation. After it considers the report of an investigation, and the facts provided to it, the Judicial Commission must dismiss the allegation, hold the matter open for further investigation during which the Judicial Commission may request an informal appearance by the judge before the Judicial Commission, or find that there is cause to proceed further. If the Judicial Commission finds cause to proceed further, the judge is notified and requested to respond, in writing, and make a formal appearance in person before the Judicial Commission. After the written response and formal appearance, the Judicial Commission takes one of the following actions: (1) refers the matter to the executive director for further investigation; (2) finds that probable cause of misconduct or permanent disability does not exist and dismisses the allegation; (3) finds that the conduct described in the allegation is no longer relevant to the judge's continued conduct as a judge and dismisses the allegation; (4) dismisses the matter with an expression of concern or warning upon finding that there is credible evidence that a certain violation exists; (5) finds that any misconduct or permanent disability in the allegation is caused by a mental or physical condition for which treatment is appropriate and holds open the allegation until the judge completes an appropriate treatment program; (6) finds that probable cause exists that a judge

has engaged or is engaging in misconduct or that the judge has a permanent disability; or (7) makes such other disposition of the matter as is appropriate under the circumstances. [ss. JC 4.04, 4.05, 4.07, and 4.08, Wis. Adm. Code.]

If the Judicial Commission finds probable cause that a judge is engaging or has engaged in misconduct, it files a formal *complaint* with the Supreme Court. If the Judicial Commission finds probable cause that a judge has a permanent disability, it files a *petition* with the Supreme Court. The Judicial Commission prosecutes any cases of misconduct or permanent disability in which it files a complaint or petition. After a complaint or petition is filed, the Supreme Court may prohibit a judge from exercising his or her judicial powers pending final determination of the proceedings. [ss. 757.85 (5) and (6) and 757.95, Stats.]

JURY OR PANEL HEARING

After the Judicial Commission finds probable cause of misconduct or permanent disability and before it files a complaint or petition, the Judicial Commission may request a jury hearing, by a vote of a majority of its membership who are not disqualified from voting. A jury is selected under current law relating to selection of jurors for trials, and consists of six persons, unless the Judicial Commission specifies a greater number, up to 12 persons total. To arrive at a verdict, five-sixths of the jurors must agree. A court of appeals judge presides at the hearing. [ss. 757.87 (1) and (2) and 805.08, Stats.]

If the Judicial Commission does not request a jury hearing, the matter is heard by a panel consisting of either three court of appeals judges or two court of appeals judges and one reserve judge. [s. 757.87 (1) and (3), Stats.]

The hearing is held in the county where the judge resides unless the venue is changed for cause or unless the parties agree otherwise. A record is kept of the hearing. At the hearing, the allegations of the complaint or petition must be proven to a reasonable certainty by clear, convincing, and satisfactory evidence. [s. 757.89, Stats.]

If the hearing is by panel, the panel makes findings of fact, conclusions of law, and recommendations for appropriate discipline for misconduct or appropriate action for permanent disability. The findings, conclusions, and recommendations are filed with the Supreme Court. [s. 757.89, Stats.]

If the hearing is by jury, the presiding judge instructs the jury regarding the law relating to judicial misconduct or permanent disability. The presiding judge files the jury verdict and his or her recommendations for appropriate discipline or action with the Supreme Court. [s. 757.89, Stats.]

SUPREME COURT DETERMINATION

The Supreme Court reviews the findings of fact, conclusions of law, and recommendations submitted following the hearing and determines appropriate discipline or action. [s. 757.91, Stats.] The Supreme Court may impose reprimand, censure, suspension, or removal as discipline for judicial misconduct. [Wis. Const. art. VII, s. 11.]

CONFIDENTIALITY OF PROCEEDINGS

Prior to the filing of a complaint or petition with the Supreme Court, proceedings are confidential unless the judge being investigated waives the right to confidentiality, in writing, to the Judicial Commission. A person who provides information to the Judicial Commission relating to alleged misconduct or permanent disability may request that the Judicial Commission not disclose his or her identity to the judge prior to filing a complaint or petition. [s. 757.93 (1), Stats.]

However, prior to filing a complaint or petition, if an investigation becomes known to the public, the Judicial Commission may issue statements to correct public misinformation; clarify procedural aspects of the proceedings; explain the right of the judge to a fair hearing; confirm the pendency of an investigation; state that the judge denies the allegations; or state that an investigation is completed and that no probable cause was found. The complaint or petition filed with the Supreme Court and all subsequent hearings are public. [s. 757.93 (2) and (3), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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