



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON JUDICIAL DISCIPLINE AND
RECUSAL

FROM: Jessica Karls-Ruplinger, Staff Attorney

RE: Discipline and Removal of Justices and Judges under Wisconsin Law

DATE: July 28, 2010

Under Wisconsin law, justices and judges are subject to discipline or removal for misconduct or permanent disability. This Memo describes the procedures under Wisconsin law by which a justice or judge may be disciplined.

Article VII, Section 11 of the Wisconsin Constitution provides that justices and judges are subject to reprimand, censure, suspension, 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 cumulative with 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. [Wis. Const., art. VII, s. 11.]

The Legislature 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 use of dangerous drugs or consumption of intoxicating beverages, that interferes with the proper performance of judicial duties; and (d) felony conviction. In addition, “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 or court commissioner 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 or court commissioner. Clerks, court employees, court reporters, attorneys, and judges and court commissioners, except the judge or court commissioner 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. [ss. 757.83 (1) and 757.85 (1) and (2), Stats.]

During an investigation, the Judicial Commission may notify a judge or court commissioner who is being investigated of its investigation. Before it finds probable cause, the Judicial Commission must notify the judge or court commissioner of the substance of the complaint or petition and allow the judge or court commissioner an opportunity to respond. If the judge or court commissioner responds, the Judicial Commission must consider the response before finding probable cause. [s. 757.85 (3), Stats.]

If the Judicial Commission finds probable cause that a judge or court commissioner 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 or court commissioner 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. [s. 757.85 (5) and (6), 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 is not disqualified from voting. A jury is selected under s. 805.08, Stats., 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. [s. 757.87 (1) and (2), 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 or court commissioner 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.] After a complaint or petition is filed, the Supreme Court may prohibit a judge or court commissioner from exercising his or her judicial powers pending final determination of the proceedings. [s. 757.95, Stats.]

Confidentiality of Proceedings

Prior to the filing of a complaint or petition with the Supreme Court, proceedings are confidential unless the judge or court commissioner 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 or court commissioner 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 or court commissioner to a fair hearing; confirm the pendency of an investigation; state that the judge or court commissioner 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.]

Judicial Commission Annual Report

On or before April 1 of each year, the Judicial Commission is required to issue an annual report that provides information on the nature and number of complaints received and their disposition and the nature of actions the Judicial Commission has taken privately regarding the conduct of judges or court commissioners. [s. 757.97, Stats.]

According to the 2009 Judicial Commission Annual Report, 453 initial inquiries were made to the Judicial Commission in 2009. Of the 453 initial inquiries, 52 request for investigation (RFI) files were opened; 40 RFIs were dismissed on preliminary evaluation, and investigations were authorized in 12 RFIs. Of the 12 investigations authorized, six were dismissed and no action was taken, five were dismissed with a letter of concern or other similar action, and one resulted in a complaint filed in the Supreme Court.

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