

Wisconsin Judicial Commission

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Introduction

Judicial conduct organizations, like the Wisconsin Judicial Commission, exist in all 50 states and the District of Columbia. Their task is to enforce high standards of judicial behavior, both on and off the bench, without compromising judicial independence. They strive to maintain public confidence in the judiciary by providing a forum for the expeditious and fair disposition of complaints of judicial misconduct and disability.

Brief history

Wisconsin's first judicial conduct organization was created in 1971 by the Supreme Court to "discipline and correct judges who engage in conduct which has an adverse effect upon the judicial administration of justice and the confidence of the public and the judiciary and its process." In 1977, the state constitution was amended to provide that "each justice or judge shall be subject to reprimand, censure, suspension, or removal for cause or for disability, by the supreme court, pursuant to procedures established by the legislature by law." The legislature implemented this provision in 1978 by creating the present Judicial Commission as an agency independent of the Supreme Court. The Court then abolished its prior commission.

Commission structure

The Commission has nine [members](#), including one court of appeals judge, one circuit court judge, and two attorneys, all appointed by the Supreme Court; and five non-lawyer members appointed by the governor with Senate confirmation. The term of a member is three years, but a member shall not serve more than two consecutive full terms. Its staff consists of a full-time executive director, who must be a member of the state bar, and a full-time administrative assistant. The Commission also retains other investigators and attorneys, when necessary, to assist in the conduct of investigations and the prosecution of formal actions.

The [statutes](#) governing the Commission are found at secs. 757.81-757.99 of the Wisconsin Statutes. The Commission's administrative rules appear in [Chapters JC 1-6 of the Wisconsin Administrative Code](#). In addition, the Commission has adopted guidelines, or internal policies and procedures, which, while not published, are public and available upon request.

Commission jurisdiction

The Commission's jurisdiction extends to all state judges of courts of record, and reserve and municipal judges. In May of 1992, all court commissioners were added to the Commission's jurisdiction.

The Code of Judicial Conduct, the substantive document to which judges and the Judicial Commission look for guidelines on what is acceptable judicial conduct, is contained in Chapter 60 of the Supreme Court Rules.

The Code contains rules which are authoritative and commentary which serves to elaborate a standard in the

rules, set forth policy basis for the rules or by explanation and example provide guidance with respect to the purpose and meaning of the rules. A willful violation of any rule of the Code constitutes misconduct and is subject to sanction.

Besides a willful violation of a rule of the Code of Judicial Conduct, judicial misconduct, as defined by statute, is one of the following: a willful or persistent failure to perform official duties; habitual intemperance due to the consumption of intoxicating beverages or use of dangerous drugs that interferes with the proper performance of judicial duties; and conviction of a felony. In addition to its jurisdiction to investigate alleged misconduct, as so defined, the Commission is authorized to investigate an allegation that a judge has a disability that substantially impairs his or her judicial performance and that is likely to be of a permanent or continuing nature.

The Commission does not have the power to review or in any way affect the decision of a judge or to intervene in litigation. Good faith errors in legal or factual determinations or in the court's processing of a case do not constitute grounds for judicial discipline, even though they may constitute reversible error. A majority of the complaints filed with the Commission usually come from dissatisfied litigants who do not understand that a misconduct complaint is not an alternative to an appeal or a means for obtaining a substitution of judge. While the Commission is committed to prompt action in response to non-frivolous allegations of judicial misconduct, the majority of complaints it receives do not in fact warrant investigation.

Two-tier system

Wisconsin's judicial disciplinary system is two-tiered, which means that the investigative and adjudicative functions are divided between separate agencies. The Judicial Commission investigates possible misconduct and disability and determines whether there is probable cause of either. If so, the Commission initiates and prosecutes a proceeding against the judge in the Wisconsin Supreme Court. A panel of three court of appeals judges is named to hear the matter, and file with the court findings of fact, conclusions of law, and a recommendation regarding disposition. The Supreme Court reviews the panel's report, adopts findings and conclusions, and determines the appropriate sanction or other disposition.

Stages of Commission review of complaints

If a complaint against a judge is dismissed by the Commission upon preliminary evaluation, the judge may be informed of the complaint. The Commission may, under certain circumstances, determine that the judge should not be informed of a dismissed complaint, such as when the complaint is stale or utterly frivolous, when it is an obvious attempt at forum-shopping, or when it would be difficult to make any meaningful disclosure to the judge without revealing the identity of a complainant who has requested confidentiality. The majority of complaints are dismissed at the preliminary review stage.

If at its initial review the Commission decides to authorize an investigation of the complaint, the judge will be notified of this fact, though notice may be delayed, for example, to permit monitoring of a judge's courtroom when the investigation concerns his or her temperament on the bench. During an investigation, a judge may present whatever evidence he or she deems appropriate to the Commission's executive director or investigator. The judge may be asked to participate in an investigative interview as well. The Commission has statutory power to subpoena the testimony of witnesses and the production of documents and other tangible evidence during an investigation. The judge may be represented by counsel at all stages of Commission proceedings, including the investigative stage.

After reviewing the results of an investigation, the Commission determines whether there is cause to proceed further. If so, the judge is notified in writing of the substance of the allegations and provided a reasonable opportunity to respond, both in writing and at a formal appearance at a closed Commission meeting.

After considering the judge's response, the Commission may vote to do one of the following: refer the matter back for additional investigation; find that probable cause does not exist and dismiss the complaint; find that by reason of lapse of time or other circumstances the alleged conduct is no longer relevant to the judge's continued conduct on the bench, and thus dismiss the allegation; dismiss the allegation with whatever concern or warning the Commission deems appropriate; or find probable cause and file a formal complaint or petition in the Supreme Court.

Sometimes, instead of taking the more formal "cause to proceed" route, the Commission will simply invite the judge to a meeting to discuss specified concerns arising out of an investigation. These informal appearances will usually conclude with a private letter to the judge expressing the Commission's concern or warning. Of course, this type of informal resolution often follows a cause to proceed formal appearance as well.

Public proceedings

Once the Commission files a formal complaint against a judge, the ordinary rules of civil procedure apply as far as practicable to the public proceedings. The Commission's burden is to prove its allegations to a reasonable certainty by evidence that is clear, satisfactory, and convincing. The judge has full discovery and confrontation rights.

The constitutionally authorized sanctions for misconduct are reprimand, censure, suspension, and removal. A judge who is removed for cause is not eligible for reappointment to judicial office or service as a reserve judge. A judge may be temporarily suspended by the Supreme Court following the Commission's filing of a formal complaint or petition, pending final determination of the proceedings.

A word about confidentiality, privilege, and immunity

All proceedings before the Commission prior to its filing of a formal action in the Supreme Court are confidential, unless the judge waives confidentiality. Should a complaint or investigation become known to the public, the Commission may issue a brief statement to confirm its pendency, clarify the procedural aspects of the proceedings, state that the judge denies the allegations, explain the right of the judge to a fair hearing, or state that an investigation has been completed and probable cause was not found.

The statutes also provide that communications to the Commission alleging judicial misconduct or disability are privileged and thus may not be the subject of a defamation claim. The Commission members, its staff, and the judges who hear a Commission matter for the Supreme Court are immune from civil liability for conduct occurring in the course of their official duties.

Advising judges

Formal advisory opinions on questions of judicial conduct and the Code of Judicial Ethics are not rendered by the Commission. Formal and informal advisory opinions are given by the Judicial Conduct Advisory Committee as outlined in the appendix to SCR Chapter 60.

Guidance is also available to judges through the published judicial discipline and disability decisions of the Supreme Court and the Judicial Commission's annual report, which has been published and distributed to judges since 1984. The report describes, to the extent it can without disclosing identities that must remain confidential, the nature of the Commission's public and private actions, and its interpretations of the Code. In addition, the Commission invites judges who seek informal guidance on contemplated conduct or an opportunity to discuss questions of concern, to contact its executive director.

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