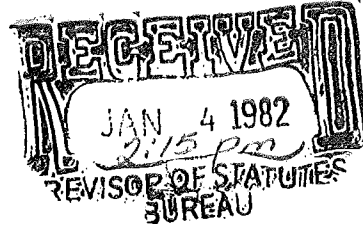


Jc 165



STATE OF WISCONSIN)
WISCONSIN JUDICIAL COMMISSION) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Natalie Smith, Executive Director of the Wisconsin Judicial Commission and custodian of the official records do hereby certify that the annexed amendments of rules relating to jurisdiction, confidentiality, procedure following a determination of cause to proceed further and commission findings, were duly approved and adopted by this commission on October 16, 1981.

I further certify that this copy has been compared by me with the original on file with this commission and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF,
I have hereunto set my hand
at 302 Tenney Building,
110 East Main, Madison, WI
53703, this 29th day of
December, 1981.

Natalie Smith
Natalie Smith
Executive Director

3-1-82

1 ORDER OF THE JUDICIAL COMMISSION ADOPTING, AMENDING OR REPEALING
2 RULES

3 AN ORDER to repeal JC 3.06 and 4.07 (1) (f); to renumber JC
4 3.07; to renumber and amend JC 3.08 and 4.07 (1) (g); to amend JC 1.02 (2)
5 and (6), 3.01, 3.02, 3.04, 4.01, 4.02 (1), 4.03, 4.04 (2), 4.05, 4.06,
6 4.07 (1) (d), 5.01, 5.02 (1), 5.03 (1) and (3), 5.04 (2), 5.05, 5.06 and
7 5.07 (1) (c) and (d); to repeal and recreate JC 5.07 (1) (e); and to
8 create JC 4.07 (1) (d) 1 to 4 and (g), relating to jurisdiction,
9 confidentiality, procedure following a determination of cause to proceed
10 further and commission findings.

11 The commission proposes by this order:

12 (1) To make nonsubstantive changes in the rules identified above.

13 (2) To clarify its jurisdiction over reserve judges under s. JC
14 3.08, as renumbered by this order.

15 (3) To limit confidentiality of the identity of a person alleging
16 misconduct under ss. JC 4.01 and 5.01.

17 (4) To limit the material provided to a judge for a response under
18 ss. JC 4.05 and 5.05.

1 (5) To broaden the findings which the commission may make when it
2 does not find probable cause under ss. JC 4.07 and 5.07.

3 (6) To eliminate the distinction between temporary and permanent
4 when finding probable cause of disability under s. JC 5.07.

5 Pursuant to authority vested in the judicial commission by sections
6 757.81 to 757.99, Wis. Stats., the commission hereby repeals, amends, and
7 adopts rules as follows:

8 SECTION 1. JC 1.02 (2) and (6) are amended to read:

9 JC 1.02 (2) "Complaint" means a written document ~~from~~ filed by the
10 ~~commission directed to~~ with the supreme court ~~charging--misconduct--and~~
11 ~~requesting--appropriate--discipline-or-a-formal-hearing~~ after a finding of
12 probable cause, alleging misconduct.

13 (6) "Petition" means a written document ~~from~~ filed by the commission
14 ~~directed to~~ with the supreme court after a finding of probable cause,
15 alleging that a judge has a ~~temporary--or--permanent~~ disability and
16 ~~requesting-appropriate-action-or-a-formal-hearing.~~

17 SECTION 2. JC 3.01 is amended to read:

18 JC 3.01 CONFIDENTIALITY. The proceedings of the judicial commission
19 prior to the filing of a formal complaint concerning misconduct or a
20 petition concerning disability are confidential, unless a ~~valid~~ written
21 waiver of confidentiality has been made by the judge. If a person who
22 makes an allegation under ~~section~~ s. JC 4.01 or 5.01, Wis. Adm. Code,
23 breaches the confidentiality of the investigation, the commission may
24 dismiss the allegation, admonish the person or take other appropriate
25 action. ~~If a--judge--requests--that--any--clarifying--statement--be--made~~
26 Clarifying and other statements may be made by the commission regarding an
27 investigation; ~~the commission may do so~~ as provided in s. 757.93 (2),
28 Stats.

1 SECTION 3. JC 3.02 is amended to read:

2 JC 3.02 (title) INDEPENDENT INVESTIGATORS. The commission may vote
3 ~~to have an independent person investigate a particular allegation of~~
4 ~~misconduct or disability. The person shall have the authority, duties and~~
5 ~~responsibilities of the executive director with respect to the~~
6 investigation authorize the executive director to hire independent persons
7 to investigate allegations of misconduct or disability, with authority and
8 duties specified by the executive director or commission.

9 SECTION 4. JC 3.04 is amended to read:

10 JC 3.04 DISQUALIFICATION. A member shall not participate in any
11 matter if a judge similarly situated would be disqualified in a court
12 proceeding. In cases other than mandatory disqualification if any
13 ~~question of~~ the propriety of participation is raised--it challenged, the
14 question shall be decided by a majority of the commissioners present and
15 voting.

16 SECTION 5. JC 3.06 is repealed.

17 SECTION 6. JC 3.07 is renumbered JC 3.06.

18 SECTION 7. JC 3.08 is renumbered JC 3.07 and amended to read:

19 JC 3.07 JURISDICTION. Allegations may be considered only if they
20 relate to actions ~~taken while the judge holds judicial office or acts as a~~
21 ~~reserve judge. Conduct by the person occurring as an attorney prior to~~
22 ~~assuming office or conduct subsequent to leaving judicial office, unless~~
23 ~~in the capacity of a reserve judge, is not within the jurisdiction of the~~
24 commission or conduct occurring while the judge holds judicial office or
25 is eligible to serve as a reserve judge under s. 753.075, Stats., and
26 applicable supreme court rules*. Actions or conduct of a person prior to
27 assuming judicial office or subsequent to leaving judicial office, unless
28 the person is eligible to serve as a reserve judge under s. 753.075,

1 Stats., and applicable supreme court rules, are not within the
2 jurisdiction of the commission.

* "Applicable supreme court rules" include SCR 32.08, which requires a judge to earn annually 5 continuing education credits in order to be eligible for appointment as a reserve judge.

3 SECTION 8. JC 4.01 is amended to read:

4 JC 4.01 ALLEGATION. The commission shall consider any allegation of
5 misconduct from any source which reasonably indicates the existence of a
6 cause justifying inquiry ~~and direct that the allegation be investigated~~
7 ~~under section JC-4-03-Wis.-Adm.-Code.~~ Any person may submit a statement
8 to the commission alleging misconduct by a judge. The person may request
9 that his or her identity ~~or information or both~~ be kept confidential. ~~The~~
10 ~~executive director and the commission shall comply with such requests,~~
11 which request shall be complied with prior to the filing of a formal
12 complaint with the supreme court under s. 757.85 (5), Stats. The
13 executive director may seek additional facts ~~from the person so that the~~
14 ~~allegation contains as much information as possible~~ to include in the
15 allegation. Allegations of misconduct shall be reduced to writing. The
16 executive director shall make preliminary evaluations of the allegations.

17 SECTION 9. JC 4.02 (1) is amended to read:

18 JC 4.02 (1) The If the chairperson requests, the screening committee
19 shall screen any allegation under section s. JC 4.01, Wis. Adm. Code,
20 which is not initiated by the commission. The committee shall either
21 recommend that the allegation be dismissed under sub. (2) or determine
22 that the allegation indicates possible misconduct warranting investigation
23 and refer the matter to the executive director for investigation under
24 section s. JC 4.03, Wis. Adm. Code.

25 SECTION 10. JC 4.03 is amended to read:

1 JC 4.03 INVESTIGATION. (1) If the commission or the screening
2 committee determines that an investigation is warranted, the matter shall
3 be referred to the executive director for investigation. The commission
4 executive director shall notify the person who made the allegation of the
5 investigation; ~~and the commission.~~ The executive director shall also
6 notify the judge of the investigation unless the commission determines
7 otherwise for good cause. The executive director shall conduct a full,
8 fair; and prompt ~~and complete~~ investigation. The investigation shall be
9 conducted inconspicuously so as to avoid unnecessary embarrassment to and
10 publicity for the judge. Persons contacted for information shall be
11 directed not to disclose that ~~the~~ an investigation is being conducted or
12 the nature of any inquiries ~~which may be made.~~ Any person giving
13 providing information may request that his or her identity ~~or information~~
14 ~~or both~~ be kept confidential. ~~The executive director and the commission~~
15 ~~shall comply with such requests.~~ The request shall be complied with prior
16 to the filing of a formal complaint with the supreme court under s. 757.85
17 (5), Stats. A judge, if notified under this subsection, may present such
18 evidence to the executive director as the judge deems appropriate.

19 (2) ~~Upon the request of any commissioner, the executive director,~~
20 ~~the person making the allegation or the judge, the commission~~ The
21 commission, by its chairperson or executive director, may issue subpoenas
22 to compel the attendance and testimony of witnesses and to command the
23 production of books, papers, documents or tangible things designated in
24 the subpoena in connection with an investigation.

25 SECTION 11. JC 4.04 (2) is amended to read:

26 JC 4.04 (2) ~~When an investigation is completed, the~~ The executive
27 director shall prepare a report of the each investigation made, which
28 shall be given or mailed to each commission member.

1 SECTION 12. JC 4.05 is amended to read:

2 JC 4.05 COMMISSION CONSIDERATION. ~~When the commission determines~~
3 ~~that~~ After considering the report of the investigation under section s. JC
4 4.03, Wis. Adm. Code is--complete, and the facts furnished to it, the
5 commission shall dismiss the allegation or find that there is cause to
6 proceed further. ~~In--making--this--decision;--the--commission--may--consider~~
7 ~~only--information--which--at--this--stage--of--the--proceedings--is--not--subject--to~~
8 ~~a--request--for--confidentiality.~~ If the allegation is dismissed, the
9 commission shall notify the person who made the allegation and shall
10 notify the judge if he or she has been notified of the investigation or
11 may notify the judge if he or she has not been previously notified of the
12 investigation. If the commission determines that there is a cause to
13 proceed further, the judge shall then be notified and be given an
14 opportunity to respond. The judge shall be ~~provided--a--copy--of--all~~
15 ~~information--considered--by--the--commission--in--making--its--decision--to--proceed~~
16 ~~further;----Material---received---from---a---person--with--a--request--for~~
17 ~~confidentiality--shall--not--be--considered--by--the--commission--or--be--given--to~~
18 ~~the--judge--unless--a--waiver--of--confidentiality--has--been--obtained--from--the~~
19 person given the substance of the allegation and may be given such further
20 information concerning the allegation as the commission deems proper under
21 the circumstances.

22 SECTION 13. JC 4.06 is amended to read:

23 JC 4.06 RESPONSE BY THE JUDGE. The judge may present a response to
24 the commission. The commission shall determine the method of presentation
25 of the response and so advise the judge. The judge may appear in person
26 and or by counsel, or both, before the commission.

27 SECTION 14. JC 4.07 (1) (d) is amended to read:

1 JC 4.07 (1) (d) Find that the judge-committed-a-minor-violation-of-a
2 rule-of-the-code-of-judicial-ethics-or--a--minor--failure--to--perform--an
3 official--duty--and-dismiss-the-allegation-with-an-admonition-to-the-judge
4 that-the-conduct-constituted-a-violation-or-a-failure-to-properly--perform
5 and--the--conduct--shall--be--corrected-in-the-future: alleged misconduct
6 involves any of the following and dismiss the allegation with such
7 admonition as the commission deems appropriate:

8 SECTION 15. JC 4.07 (1) (d) 1 to 4 of the statutes are created to
9 read:

10 JC 4.07 (1) (d) 1. The violation of only one standard of the code
11 of judicial ethics.

12 2. The violation of a rule of the code of judicial ethics which is
13 not wilful.

14 3. The failure to perform official duties which is not wilful or
15 persistent.

16 4. The alleged misconduct does not warrant prosecution because of
17 its minor nature or other circumstances.

18 SECTION 16. JC 4.07 (1) (f) is repealed.

19 SECTION 17. JC 4.07 (1) (g) is renumbered JC 4.07 (1) (f) and amended
20 to read:

21 JC 4.07 (1) (f) Find that probable cause exists that a judge has
22 engaged or is engaging in misconduct, ~~that--the--judge--does--dispute--the~~
23 ~~allegation--of--miscconduct~~ and file a formal complaint ~~for-a-hearing~~ with
24 the supreme court under s. ~~757:87~~ 757.85 (5), Stats., ~~with--the--supreme~~
25 ~~court:~~

26 SECTION 18. JC 4.07 (1) (g) is created to read:

27 JC 4.07 (1) (g) Make such other disposition of the matter as is
28 appropriate under the circumstances.

1 SECTION 19. JC 5.01 is amended to read:

2 JC 5.01 ALLEGATION. The commission shall consider any allegation
3 that a judge has a disability from any source which reasonably indicates
4 the existence of a cause justifying inquiry ~~and direct that the allegation~~
5 ~~be investigated under section JC-5-03-Wis. Adm. Code.~~ Any person may
6 submit a statement to the commission alleging that a judge has a
7 disability. The person may request that his or her identity or
8 ~~information or both~~ be kept confidential. ~~The executive director and the~~
9 ~~commission shall comply with such requests,~~ which request shall be
10 complied with prior to the filing of a petition with the supreme court
11 under s. 757.85 (5), Stats. The executive director may seek additional
12 ~~facts from the person so that the allegation contains as much information~~
13 ~~as possible~~ to include in the allegation. Allegations of disability shall
14 be reduced to writing. The executive director shall make preliminary
15 evaluations of the allegations.

16 SECTION 20. JC 5.02 (1) is amended to read:

17 JC 5.02 (1) The If the chairperson requests, the screening committee
18 shall screen any allegation under section s. JC 5.01, Wis. Adm. Code,
19 which is not initiated by the commission. The committee shall either
20 recommend that the allegation be dismissed under sub. (2) or determine
21 that the allegation indicates possible disability warranting investigation
22 and refer the matter to the executive director for investigation under
23 section s. JC 5.03, Wis. Adm. Code.

24 SECTION 21. JC 5.03 (1) and (3) are amended to read:

25 JC 5.03 (1) If the commission or the screening committee determines
26 that an investigation is warranted, the matter shall be referred to the
27 executive director for investigation. The commission executive director
28 shall notify the person who made the allegation of the investigation; ~~and~~

1 ~~the-commission.~~ The executive director shall also notify the judge of the
2 investigation unless the commission determines otherwise for good cause.
3 The executive director shall conduct a full, fair, and prompt ~~and-complete~~
4 investigation. The investigation shall be conducted ~~inconspicuously,~~ so
5 as to avoid unnecessary embarrassment to and publicity for the judge.
6 Persons contacted for information shall be directed not to disclose that
7 ~~the~~ an investigation is being conducted or the nature of any inquiries
8 ~~which-may-be-made.~~ Any person ~~giving~~ providing information may request
9 that his or her identity ~~or-information-or-both~~ be kept confidential. The
10 ~~executive-director-and-the-commission-shall--comply--with--such--requests.~~
11 The request shall be complied with prior to the filing of a petition with
12 the supreme court under s. 757.85 (5), Stats. A judge, if notified under
13 this subsection, may present such evidence to the executive director as
14 the judge deems appropriate.

15 (3) ~~Upon--the--request-of-any-commissioner,-the-executive-director,~~
16 ~~the-person--making--the--allegation--or--the--judge,-the--commission~~ The
17 commission, by its chairperson or executive director, may issue subpoenas
18 to compel the attendance and testimony of witnesses and to command the
19 production of books, papers, documents or tangible things designated in
20 the subpoena in connection with an investigation.

21 SECTION 22. JC 5.04 (2) is amended to read:

22 JC 5.04 (2) ~~When-an-investigation-is-completed,-the~~ The executive
23 director shall prepare a report of the each investigation made, which
24 shall be given or mailed to each commission member.

25 SECTION 23. JC 5.05 is amended to read:

26 JC 5.05 COMMISSION CONSIDERATION. ~~When-the-commission-determines~~
27 that After considering the report of the investigation under section s. JC
28 5.03, Wis. Adm. Code is--complete, and the facts furnished to it, the

1 commission shall dismiss the allegation or find that there is cause to
2 proceed further. ~~In--making--this--decision;--the--commission--may--consider~~
3 ~~only--information--which--at--this--stage--of--the--proceedings--is--not--subject--to~~
4 ~~a--request--for--confidentiality.~~ If the allegation is dismissed, the
5 commission shall notify the person who made the allegation and shall
6 notify the judge if he or she has been notified of the investigation or
7 may notify the judge if he or she has not been previously notified of the
8 investigation. If the commission determines that there is cause to
9 proceed further, the judge shall then be notified and be given an
10 opportunity to respond. The judge shall be provided--a-copy-of-all
11 ~~information--considered--by--the--commission--in--making--its--decision--to--proceed~~
12 ~~further;---Material---received---from---a---person---with---a---request---for~~
13 ~~confidentiality--shall--not--be--considered--by--the--commission--or--be--given--to~~
14 ~~the--judge--unless--a--waiver--of--confidentiality--has--been--obtained--from--the~~
15 person given the substance of the allegation and may be given such further
16 information concerning the allegation as the commission deems proper under
17 the circumstances.

18 SECTION 24. JC 5.06 is amended to read:

19 JC 5.06 RESPONSE BY THE JUDGE. The judge may present a response to
20 the commission. The commission shall determine the method of presentation
21 of the response and so advise the judge. The judge may appear in person
22 and or by counsel, or both, before the commission.

23 SECTION 25. JC 5.07 (1) (c) and (d) are amended to read:

24 JC 5.07 (1) (c) Find that any disability specified in the allegation
25 is caused by a mental or physical condition for which treatment is
26 appropriate and, with the agreement of the judge, hold open the allegation
27 for a reasonable time until the judge completes an appropriate treatment
28 program. Upon successful completion of the program and demonstration that

1 the disability is removed, the allegation shall be dismissed. Otherwise,
2 a finding shall be made under par. (d); ~~(e)~~; ~~(f)~~ or ~~(g)~~ (e).

3 (d) Find that probable cause exists that a judge has a temporary
4 disability, ~~that-the-judge-does-not-dispute-the-fact-that-he-or-she-has--a~~
5 ~~temporary--disability~~ and file a petition for appropriate action with the
6 supreme court under s. 757.85 (5), Stats.

7 SECTION 26. JC 5.07 (1) (e) is repealed and recreated to read:

8 JC 5.07 (1) (e) Make such other disposition of the matter as is
9 appropriate under the circumstances.

10 The rules contained herein take effect on the first day of the month
11 following publication of the rules in the Wisconsin Administrative
12 Register.

13 (End)

Dated: December 29, 1981

Natalie Smith
Executive Director

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: December 29, 1981

File Ref:

To: Gary Poulson, Assistant Revisor
Office of Revisor of Statutes
411 West Capitol

From: Natalie Smith, Executive Director
Judicial Commission

ngp

Subject: RE: Order Adopting Rules

Enclosed is a Certificate and two copies of rules ordered by the Judicial Commission.

Thirty days have elapsed, and neither standing committee has objected to these rules in whole or in part or directed the agency to attend a meeting.

Please have these rules published in the End-of-the-Month Register for January 1982, and make the necessary arrangements for printing.

If you need further information or documentation from this office, please contact me.

NS/nj

enc.

1 the disability is removed, the allegation shall be dismissed. Otherwise,
2 a finding shall be made under par. (d); ~~(e)~~; ~~(f)~~ or (g) (e).

3 (d) Find that probable cause exists that a judge has a temporary
4 disability, ~~that-the-judge-does-not-dispute-the-fact-that-he-or-she-has--a~~
5 ~~temporary--disability~~ and file a petition for appropriate action with the
6 supreme court under s. 757.85 (5), Stats.

7 SECTION 26. JC 5.07 (1) (e) is repealed and recreated to read:

8 JC 5.07 (1) (e) Make such other disposition of the matter as is
9 appropriate under the circumstances.

10 SECTION 27. JC 5.07 (1) (f) of the statutes is repealed.

11 SECTION 28. JC 5.07 (1) (g) of the statutes is repealed.

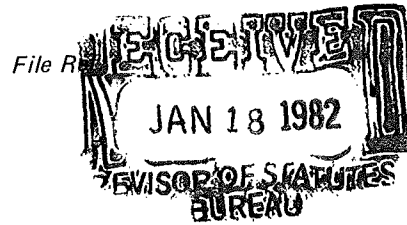
12 The rules contained herein take effect on the first day of the month
13 following publication of the rules in the Wisconsin Administrative
14 Register.

15 (End)

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: January 18, 1982



To: Gary Poulson
Assistant Revisor
Office of Revisor of Statutes

From: Natalie Smith *msj*
Executive Director
Judicial Commission

Subject: Re: Administrative Rules

Enclosed is a corrected page 11 to the Judicial Commission's proposed order to amend its rules. A correction page has also been sent to the Secretary of State's office.

The intent to eliminate the distinction between temporary and permanent disability is clearly stated on page 2 of the proposed order and partially implemented by the amendments on lines 2 - 6 on page 11. Sections 27 and 28 were inadvertently omitted on the 11th page previously submitted. Sections 27 and 28 are essential in order to complete the elimination of the distinction of temporary and permanent disability, and they are included on the corrected page enclosed.

NS/nj
enc.