



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 8

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

FROM: Jessica Karls-Ruplinger, Staff Attorney

RE: Jurisdiction of the Office of Lawyer Regulation and the Judicial Commission

DATE: November 8, 2010

This Memo provides a brief overview of the systems under which a judge may be subject to discipline. A judge may be subject to discipline as an attorney under the lawyer regulation system, enforced by the Office of Lawyer Regulation (OLR), and as a judge under the judicial discipline system, enforced by the Judicial Commission. [It should also be noted that a judge is subject to the Code of Ethics for Public Officials and Employees, subch. III of ch. 19, Stats., which is enforced by the Government Accountability Board.]

Office of Lawyer Regulation

The OLR receives and responds to inquiries and grievances relating to the conduct of attorneys licensed to practice law or practicing law in the state and investigates allegations of attorney misconduct. In addition, the OLR prosecutes disciplinary proceedings alleging attorney misconduct and investigates license reinstatement petitions. [SCR 21.02 (1).]

“Misconduct” is defined as any of the following:

- Violating or attempting to violate ch. SCR 20 (Rules of Professional Conduct for Attorneys), knowingly inducing or assisting another to do so, or doing so through the acts of another.
- Failing to cooperate in a grievance investigation.
- Engaging in prohibited conduct in respect to an attorney whose law license is revoked or suspended.
- Committing a criminal act that reflects adversely on an attorney’s trustworthiness, honesty, or fitness as an attorney in other respects.

- Engaging in conduct involving misrepresentation, deceit, fraud, or dishonesty.
- Stating or implying an ability to improperly influence a government official or agency.
- Knowingly assisting a judge or judicial officer in conduct that violates applicable rules of judicial conduct or other law.
- Violating a statute or Supreme Court rule, order, or decision regulating the conduct of attorneys.
- Violating the attorney's oath. [SCR 22.001 (9).]

After the OLR completes an investigation of alleged attorney misconduct, it may dismiss the matter, divert the matter to an alternatives to discipline program, obtain the consent of the attorney subject to disciplinary proceedings to impose a public or private reprimand, or present the matter to the Preliminary Review Committee. If the matter is presented to the Preliminary Review Committee, the chairperson of the committee assigns the matter to a panel for consideration. If the panel determines that there is cause for the OLR to proceed in the matter, the OLR may file a complaint alleging attorney misconduct with the Supreme Court. [SCR 22.05, 22.06, 22.07, and 22.11.]

Once a complaint is filed, a referee conducts a hearing and files with the Supreme Court his or her findings of fact, conclusions of law regarding the attorney's misconduct, and recommendation for dismissal of the matter or imposition of specific discipline. If the OLR or attorney subject to disciplinary proceedings does not file an appeal of the referee's report, the Supreme Court reviews the referee's report; adopts, rejects, or modifies the referee's finding and conclusions or remands the matter to the referee for additional findings; and determines and imposes appropriate discipline. If the referee's report is appealed, the appeal is conducted under the rules governing civil appeals to the Supreme Court. The OLR or attorney subject to disciplinary proceedings may seek reconsideration of the Supreme Court's opinion or judgment. [SCR 22.16, 22.17, and 22.18.]

The following discipline may be imposed on an attorney for misconduct: (1) revocation of the attorney's law license; (2) suspension of the attorney's law license; (3) public or private reprimand; (4) conditions on the continued practice of law; (5) monetary payment; (6) restitution; or (7) conditions on seeking reinstatement of a law license. [SCR 21.16 (1m).] A judge whose law license is suspended or revoked may be ineligible to remain a Supreme Court justice or judge of any court of record, thereby creating a vacancy, because Article VII, Section 24 (1) of the Wisconsin Constitution requires that a Supreme Court justice or judge of any court of record be an attorney licensed to practice law in the state. [*In the Matter of the Complaint Against Raineri*, 102 Wis.2d 418, 306 N.W.2d 699 (1981).]

Judicial Commission

The Judicial Commission investigates any alleged misconduct of a Supreme Court justice, court of appeals judge, circuit court judge, municipal court judge, or court commissioner. In addition, the Judicial Commission prosecutes cases of misconduct in which it files a complaint with the Supreme Court. [s. 757.85, Stats.]

"Misconduct" includes the following: (a) a willful violation of the code of judicial ethics; (b) a 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) a felony conviction. [s. 757.81 (4), Stats.]

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. After the Judicial Commission finds probable cause of misconduct and before it files a complaint, 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 or by a jury. If the hearing is by panel, the panel makes findings of fact, conclusions of law, and recommendations for appropriate discipline, and the findings, conclusions, and recommendations are filed with the Supreme Court. If the hearing is by jury, the presiding judge instructs the jury regarding the law relating to judicial misconduct, and the presiding judge files the jury verdict and his or her recommendations for appropriate discipline with the Supreme Court. [ss. 757.85, 757.87, and 757.89, Stats.]

The Supreme Court reviews the findings of fact, conclusions of law, and recommendations submitted following the hearing and determines appropriate discipline. [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.]

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

JKR:ty