

FILED

OCT 15, 1998

SUPREME COURT OF WISCONSIN

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

In the Matter of the Amendment of
Supreme Court Rules: SCR 70.36(5);
SCR Chapter 75 -- Appointment,
Performance Evaluation, Continuing
Education, Discipline and
Decisions of Circuit Court
Commissioners

ORDER
No. 97-10

The court held a public hearing December 16, 1997 on the petition of the Supreme Court's Planning and Policy Advisory Committee requesting the adoption of rules to provide for the appointment, performance evaluation, continuing education, and discipline of court commissioners. The petition also requested the adoption of a rule establishing time periods for decisions of court commissioners, a procedure for extending the time for those decisions, and the monthly reporting of matters pending decision and sanctions for violations of those provisions. The court then held a public conference on the rule proposal January 20, 1998.

Following consideration of the presentations at the public hearing and the materials filed with the court in the matter, the court, by order of March 9, 1998, amended Wis. Stat. § 70.36 and created SCR chapter 75, effective July 1, 1998. Prior to that effective date, the court was advised of concerns with

those rules, and the court issued an order June 29, 1998, withdrawing the July 1, 1998 effective date of that order and holding the matter in abeyance pending further order of the court. The court has considered the concerns communicated to the court June 22, 1998 by the Committee of Chief Judges and the Wisconsin Records Management Committee and additional matters brought to its attention.

IT IS ORDERED that the order of March 9, 1998 in this matter is vacated.

IT IS FURTHER ORDERED that, effective January 1, 1999, the Supreme Court Rules are amended as follows.

SECTION 1. 70.36 (title) of the supreme court rules is amended to read:

70.36 (title) Judges' and circuit court commissioners' certification of status of pending cases.

SECTION 2. 70.36 (5) of the supreme court rules is created to read:

70.36 (5) (a) In this subsection,

1. "Chief judge" means the judge appointed under SCR 70.18 for the judicial administrative district in which the matter is pending.

2. "Circuit court commissioner" means a person appointed under SCR 75.02 (1) and a person authorized under SCR 75.02 (3) to the limited extent of that authorization.

(b) A circuit court commissioner may not routinely take matters under advisement. Every circuit court commissioner shall decide any matter within 30 days after the matter is submitted

to him or her for decision. If the circuit court commissioner is unable to decide a matter within 30 days, he or she shall notify the chief judge not later than 5 days before the end of the 30-day period. The chief judge may extend the period to decide the matter for an additional 30 days or may require the circuit court commissioner to suspend all other assigned activities until the decision is filed in the court.

(c) Within the first 10 days of each month, each circuit court commissioner shall certify in writing to the chief judge and to the commissioner's supervising judge that there are no matters awaiting decision beyond the 30-day or, if extended by the chief judge, the 60-day period specified in par. (b). If there are matters so pending, the certificate shall set forth the case number and caption of each matter and the date on which it was submitted for decision.

(d) The chief judge may withdraw temporarily or permanently the circuit court commissioner's appointment or authority to act if the commissioner fails to comply with pars. (b) or (c).

SECTION 3. Chapter 75 of the supreme court rules is created to read:

SCR CHAPTER 75

CIRCUIT COURT COMMISSIONERS

SCR 75.01 Definitions. In this chapter,

(1) "Chief judge" means the judge appointed under SCR 70.18 for the judicial administrative district.

(2) "Circuit court commissioner" means a person appointed

under SCR 75.02 (1) and a person authorized under SCR 75.02 (3) to the limited extent of that authorization.

(3) "Supplemental court commissioner" means a person appointed under s. 757.68 (2), stats.

COMMENT

This chapter applies to persons appointed under SCR 75.02 (1) and to persons appointed under s. 757.68 (2), stats., and authorized by a chief judge under SCR 75.02 (3) to perform on a temporary or occasional basis specified duties other than those duties they are authorized by statute to perform on their own authority. A person appointed under s. 757.68 (2), stats., may perform duties specified in s. 757.69 (1), stats., only on authority delegated by a judge and with the approval of the chief judge of the judicial administrative district.

The performance evaluation and complaint procedures in SCR 75.04 and 75.06 apply to a circuit court commissioner's performance of the duties authorized by the chief judge, however limited. Continuing education requirements set forth in SCR 75.05 apply to circuit court commissioners appointed under SCR 75.02 (1) and to circuit court commissioners authorized under SCR 75.02 (3) who spend 40 or more hours per year on duties authorized by a chief judge. This chapter does not apply to persons appointed by one or more circuit judges under s. 757.68 (2), stats., who are not authorized to perform activities other than those specified in s. 757.69 (3), stats., or to registers in probate authorized by a chief judge under SCR 75.02 (4) to perform the duties of a circuit court commissioner in probate matters.

SCR 75.02 Appointment; authorization. (1) The chief judge of a judicial administrative district shall appoint within the district, as authorized by law, officers of the court to perform limited judicial and quasi-judicial functions under the direction and authority of the chief judge and the judges of the circuit. These officers of the court shall be selected on the

basis of merit through a process approved by the chief judge and the circuit court judges of the counties in which the officers will serve. The chief judge may only appoint persons under this subsection who are licensed to practice law in this state and in good standing with at least 3 years of legal experience.

(2) The chief judge shall, by order, authorize each person appointed under sub. (1) to perform one or more specific duties allowed court commissioners by statute and approved by the supreme court.

(3) The chief judge may, by order, authorize a supplemental court commissioner to perform on a temporary or occasional basis one or more specific duties allowed court commissioners by statute and approved by the supreme court.

(4) Upon application of a judge within the judicial administrative district exercising probate jurisdiction, the chief judge may, by order, authorize a register in probate to perform the duties of a circuit court commissioner in probate matters.

COMMENT

Based on s. 757.69, stats., sub. (2) requires that the order of appointment enumerate specific duties to be performed. It is not expected that every circuit court commissioner will be authorized to perform all of the duties allowed court commissioners by statute and approved by the supreme court.

Subsection (4) is based on s. 757.72 (5), stats.

SCR 75.03 Oath. Each circuit court commissioner and supplemental court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.

COMMENT

This rule reiterates the language of s. 757.68 (1) and (2), stats.

SCR 75.04 Performance evaluation. (1) The director of state courts shall establish a standard procedure for the regular evaluation of the job performance of circuit court commissioners, which shall include minimum performance standards that a circuit court commissioner must meet to be certified as qualified.

(2) The chief judge shall appoint annually one or more supervising judges for each circuit court commissioner. The supervising judge or judges shall communicate responsibilities and performance objectives to the commissioner and shall evaluate annually, pursuant to the procedures and performance standards established under sub. (1), the performance of each circuit court commissioner under his, her or their supervision. The supervising judge or judges shall recommend to the chief judge whether the circuit court commissioner should be certified as qualified to continue in that capacity in the succeeding

year. The recommendation of the supervising judge or judges shall be in writing and supported by reasons and shall include findings regarding all of the following:

(a) Whether the circuit court commissioner has met or exceeded the minimum performance standards established under sub. (1).

(b) Whether the circuit court commissioner is subject to any disciplinary order which forbids him or her to act in a quasi-judicial capacity or is currently suspended or removed from office.

(c) Whether the circuit court commissioner, if required to do so, has complied with SCR 70.36 (5) and 75.05 and has attended specific educational programs recommended by the chief judge.

(3) The chief judge, upon considering the recommendation of the supervising judge or judges, shall certify annually each circuit court commissioner as qualified to act in that capacity or deny that certification. The chief judge may not certify any circuit court commissioner as qualified unless affirmative findings have been made under sub. (2) (a) and (c) and a negative finding has been made under sub. (2) (b).

COMMENT

Unless the circuit court commissioner has met minimum performance standards, complied with rules relating to education and prompt decision making and is not under ethical sanctions,

he or she cannot be certified as qualified to discharge the functions of the office. Local jurisdictions may use members of the bar and civic and consumer groups to assist the supervising judge in the evaluation process. Under SCR 75.01, this section applies to supplemental court commissioners authorized by a chief judge under SCR 75.02 (3) to perform specified duties on a temporary or occasional basis.

SCR 75.05 Continuing education. (1) A circuit court commissioner shall maintain and improve professional competence by participating in programs of continuing education designed for circuit court commissioners and by participating in local orientation programs, which may include mentoring by circuit court judges.

(2) A person appointed as a circuit court commissioner under SCR 75.02(1) shall comply with all of the following:

(a) Earn at least 60 education credits each period of 6 years by participating in continuing education programs.

(b) Earn not less than 10 nor more than 30 education credits every 2 years.

(c) If employed full-time in that capacity, earn credits only by participating in continuing education programs approved by the judicial education committee.

(d) If not employed full-time in that capacity, earn not more than 40 of the required 60 credits in any 6-year period by participating in continuing legal education programs approved by the board of bar examiners.

(3) A person authorized under SCR 75.02 (3) to perform specified duties of a circuit court commissioner on a temporary or occasional basis shall earn not less than 3 education credits in programs approved by the judicial education committee in any year in which the performance of those duties requires 40 or more hours.

(4) In this section, one credit is awarded for each half-day of attendance at an in-state education program or at a continuing legal education program approved by the board of bar examiners. The judicial education committee shall determine the amount of credit awarded for attendance at a national program.

COMMENT

SCR 31.05 (4) requires that the board of bar examiners allow participation in activities approved by the judicial education committee to be used to satisfy CLE requirements for attorneys.

SCR 75.06 Complaints; discipline. (1) A person may file a complaint regarding the conduct of a circuit court commissioner with the chief judge or with the judicial commission. The chief judge or a designee of the chief judge shall advise any complainant of the right to file a complaint with the judicial commission. Notwithstanding the jurisdiction of the judicial commission, the chief judge may discipline a circuit court commissioner as provided in sub. (2).

(2) The chief judge is responsible for disciplining circuit

court commissioners within the judicial administrative district with respect to their quasi-judicial activities and for determining the severity of the discipline, including removal. The determinations of the chief judge shall be in writing and set forth the reasons for them. The chief judge shall consider information and recommendations from the supervising judge or judges when making those determinations.

SCR 75.07 Local court rules. (1) The circuit court judges of any county may establish any of the following as local court rules:

(a) Rules and standards clarifying the authority of circuit court commissioners in particular types of cases.

(b) Guidelines for decision making by circuit court commissioners.

(2) All local court rules established under sub. (1) shall be adopted under s. 753.35 (2), stats., shall be consistent with statutes and supreme court rules, and shall be approved by the chief judge.

COMMENT

The guidelines established under sub. (1) (b) may not interfere with the decision-making discretion of circuit court commissioners in individual cases.

IT IS FURTHER ORDERED that the Comments to the rules are not adopted but shall be published with the rules for

information purposes.

IT IS FURTHER ORDERED that notice of these amendments of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 15th day of October, 1998.

BY THE COURT:

Marilyn L. Graves
Clerk of Court