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**In re amendment of SCR 60.04,  
relating to performing the duties of  
judicial office impartially and diligently.**

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**SUPPORTING MEMORANDUM  
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The Judicial Conduct Advisory Committee (JCAC) respectfully petitions the court to amend Supreme Court Rule (SCR) 60.04 in order to improve the integrity of the judiciary and bring Wisconsin's Code of Judicial Conduct more in line with national standards. One of the duties of JCAC is to "[m]ake recommendations to the supreme court for amendment to the code of judicial conduct."<sup>1</sup>

**I. Procedural History**

In October 2018, the Committee of Chief Judges created a Municipal Court Subcommittee to conduct a review of the statutes and Supreme Court Rules related to municipal courts and the role of chief judges and district court administrators (DCAs) in the administration of municipal courts.<sup>2</sup> On August 14, 2019, the Committee of Chief Judges sent a letter to JCAC indicating that the Municipal Court Subcommittee had identified three areas of the Code of Judicial Conduct that could be improved to comply with national standards. Recognizing that changes to the Code of Judicial Conduct would impact not only municipal judges, but the entire judiciary, the Committee of Chief Judges requested that JCAC review the suggested changes to determine whether they would improve the integrity of the entire judiciary.<sup>3</sup> After reviewing the

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<sup>1</sup> Rule (2)(b), *Rules of the Judicial Conduct Advisory Committee*.

<sup>2</sup> Over the last several years, chief judges and DCAs have identified concerns related to municipal judges' behaviors both within their courtrooms and in the administration of their offices. Chief judges have administrative authority over municipal courts. SCR 70.19(4).

<sup>3</sup> The Committee of Chief Judges elected to keep changes to the Code of Judicial Conduct separate from other recommendations that the Municipal Court Subcommittee is considering.

suggested changes, JCAC voted to recommend the below changes to the Wisconsin Supreme Court for adoption.

**II. Modify SCR 60.04(1)(d) and create SCR 60.04(9) to require judges to act with courtesy in adjudicative and administrative capacities.**

Under current Supreme Court Rule, a Wisconsin judge is only required to act with patience, dignity, and courtesy as part of his/her “adjudicative responsibilities.” SCR 60.04(1)(d). A similar provision does not exist when a judge is acting under his/her administrative responsibilities. *See* SCR 60.04(2). In contrast, the American Bar Association’s (ABA) Model Code of Judicial Conduct, Rule 2.8, requires judges to act with patience, dignity, and courtesy in all capacities, including adjudicative and administrative.<sup>4</sup> A judge’s ability to be patient and courteous should not be limited to the time that the judge spends on the bench. As representatives of the justice system, judges should be acting with integrity regardless of whether they are on the bench, in their office, or at court-related committee meetings. JCAC recommends creating a stand-alone provision requiring judges to be patient, dignified, and courteous when judges are acting in all of their official capacities.

**SCR 60.04 (1)** In the performance of the duties under this section, the following apply to adjudicative responsibilities:

...

~~(d) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, staff, court officials and others subject to the judge’s direction and control. During trials and hearings, a judge shall act so that the judge’s attitude, manner, or tone toward counsel or witnesses does not prevent the proper presentation of the cause or the ascertainment of the truth. A judge may properly intervene if the judge considers it necessary to clarify a point or expedite the proceedings.~~

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<sup>4</sup> ABA Model Code of Judicial Conduct, Canon 2, Rule 2.8(B) *Decorum, Demeanor, and Communication with Jurors* states: “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.”

**SCR 60.04 (9)** A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, staff, court officials, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, staff, court officials and others subject to the judge’s direction and control.

**III. Modify SCR 60.04(2)(a) to require judges to cooperate with other judges.**

Under current Supreme Court Rule, a Wisconsin judge “*should* cooperate with other judges and court officials in the administration of court business” (emphasis added). SCR 60.04(2)(a). In contrast, ABA Model Rule 2.5 states that judges “shall” cooperate with other judges.<sup>5</sup> Cooperation with other members of the judiciary is a crucial part of court administration.<sup>6</sup> JCAC recommends changing “should” to “shall” to align the rules with national standards and promote collaboration among judges.

**SCR 60.04 (2) (a)** A judge shall diligently discharge the judge’s administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and ~~should~~ shall cooperate with other judges and court officials in the administration of court business.

**IV. Create SCR 60.04(10) regarding anti-retaliation.**

Wisconsin’s Code of Judicial Conduct does not currently include an anti-retaliation provision. Under ABA Model Rule 2.16, a “judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.” JCAC recommends creating an anti-retaliation clause prohibiting a judge from retaliating against any person who assists or cooperates with the Judicial Commission or the Office of Lawyer Regulation in an investigation.

**SCR 60.04 (10)** A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

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<sup>5</sup> ABA Model Code of Judicial Conduct, Canon 2, Rule 2.5(B) Competence, Diligence, and Cooperation states: “A judge shall cooperate with other judges and court officials in the administration of court business.”

<sup>6</sup> Although JCAC has not done a comprehensive 50-state review, the following states’ codes of judicial conduct require that judges shall cooperate with other judges in the administration of court business: Minnesota, Iowa, Arizona, Pennsylvania, New Hampshire, West Virginia, and Montana. This provides a wide body of authority for the Judicial Commission to draw upon to inform its decision-making.

**V. Conclusion**

The JCAC respectfully petitions the Court to adopt the above recommendations to improve the Code of Judicial Conduct and bring Wisconsin's rules in line with national standards.

Respectfully submitted this \_\_\_\_ day of November, 2019.

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Honorable D. Todd Ehlers  
Chair, Judicial Conduct Advisory Committee