

FILED

APR 26, 2000

SUPREME COURT OF WISCONSIN

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

In the Matter of the Creation of a
Body to Determine Discipline and
Disability of a Supreme Court
Justice

ORDER
No. 00-04

The court has considered the advisability of establishing a body to perform its statutory duty to review the findings of fact, conclusions of law and recommendations of a judicial conduct or permanent disability panel and to determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability under Wis. Stat. § 757.89 when the judge against whom allegations of misconduct or disability are filed is a justice of the Supreme Court. The Wisconsin Constitution, Article VII, Section 11, provides that "[e]ach justice or judge shall be subject to reprimand, censure, suspension, removal for cause or for disability, by the supreme court pursuant to procedures established by the legislature by law," but it makes no distinction between a justice and a judge in respect to the procedures pursuant to which appropriate discipline in a case of misconduct or appropriate action in a case of permanent disability is to be imposed. The statutory procedure set forth in Wis. Stat. secs. 757.81 to 757.99 also does not make that distinction, as "judge" is defined in Wis.

Stat. § 757.81(3) as a judge of any court established by or pursuant to Article VII, Section 2 or 14, of the Wisconsin Constitution or a Supreme Court justice. Consequently, Wis. Stat. § 757.91 requires the Supreme Court to review the findings of fact, conclusions of law and recommendations of a judicial conduct or permanent disability panel and determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability of a justice.

In order to avoid conflicts and the appearance of conflicts and the potential for the recusal or disqualification of Supreme Court justices from proceedings under Wis. Stat. § 757.91 in which a justice of the Supreme Court is the subject, with the possibility that there will be an insufficient number of justices to proceed in the matter, the court is considering the establishment by court rule of a body to perform the duties of the Supreme Court under Wis. Stat. § 757.91 when the subject of the proceeding is a member of the court. The court is considering, but is not proposing, the following and solicits public comment.

1. Wisconsin Stat. § 757.91 be amended to read:

757.91 (title) **Supreme court,** **special tribunal;**
disposition.

(1) The Except as provided in sub. (2), the supreme court shall review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in

~~cases of permanent disability. The rules of the supreme court applicable to civil cases in the supreme court govern the review proceedings under this section.~~

(2) When the judge against whom a formal complaint alleging misconduct or a petition alleging permanent disability is filed by the commission is a supreme court justice, the special tribunal provided in s. 757.92 shall review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability.

(3) The rules of the supreme court applicable to civil cases in the supreme court govern the review proceedings under this section.

2. Wisconsin Stat. § 757.92 be created to read:

757.92 Special tribunal.

(1) As soon as practicable following the filing with the supreme court of a formal complaint alleging misconduct or a petition alleging permanent disability of a supreme court justice, a special tribunal consisting of seven members shall be selected as provided in sub. (2) to review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in cases of permanent disability.

(2) The clerk of the supreme court shall select by lot the following to serve on a special tribunal under sub. (1):

(a) Three judges from among those current and former judges of the Court of Appeals and the circuit court who have served but are not currently serving as supreme court appointees to the judicial commission or who have served or are serving as supreme court appointees to the judicial conduct advisory committee.

(b) Two judges from among those who have served on the supreme court at a time when the justice against whom the complaint or petition has been filed was not serving and those who have served or are serving on the court of appeals.

(c) Two active or reserve judges who have served or are serving as chief judge of a judicial administrative district.

(3) Disqualification and recusal of a member of the special tribunal shall be governed by law and by the code of judicial conduct, SCR ch. 60. Selection of a member to replace a member who recuses or is disqualified shall be pursuant to sub. (2).

(4) The chief judge of the court of appeals shall assign a staff attorney of the court of appeals to provide assistance to the special tribunal.

(5) The determination of the special tribunal under s. 757.91 shall not be subject to review by the supreme court. Appropriate discipline in a case of misconduct or appropriate action in a case of permanent disability determined by the special tribunal shall be imposed by per curiam order of the supreme court. The findings, conclusions and recommendations of the special tribunal shall be published with the per curiam

order of the supreme court in the official publications of the opinions of the supreme court.

3. Wisconsin stat. § 757.95 be amended to read:

757.95 Temporary suspension by supreme court, special tribunal.

(1) The supreme court may, following the filing of a formal complaint or a petition by the commission, prohibit a judge or court commissioner from exercising the powers of a judge or court commissioner pending final determination of the proceedings.

(2) If the judge against whom a formal complaint or a petition filed by the commission is a justice of the supreme court, the special tribunal provided in s. 757.92 may, upon motion of the commission, prohibit the justice from exercising the powers of a justice pending final determination of the proceedings.

In addition to the foregoing, the court is soliciting public comment on the issue of the constitutionality of a court rule establishing a body to carry out its statutory responsibilities in a judicial conduct or disability proceeding involving one of its members.

IT IS ORDERED that a public hearing on this matter shall be held in the Supreme Court Hearing Room, 119 Martin Luther King

Jr. Blvd., Madison, Wisconsin, on September 20, 2000, at 10:30 a.m.

IT IS FURTHER ORDERED that the court's conference in the matter shall be held promptly following the public hearing.

IT IS FURTHER ORDERED that notice of the hearing be given by publication of a copy of this order in the official state newspaper once each week for three consecutive weeks and in an official publication of the State Bar of Wisconsin not more than 60 days nor less than 30 days before the date of the hearing.

Dated at Madison, Wisconsin, this 26th day of April, 2000.

BY THE COURT:

Cornelia G. Clark
Clerk of Court