
**In re amendment of SCR 70.20,
relating to authority of the chief judge.**

**SUPPORTING MEMORANDUM
19-**

The Committee of Chief Judges respectfully petitions the court to amend Supreme Court Rule 70.20 relating to authority of the chief judge. This petition is made pursuant to the court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

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 in the administration of municipal courts. The subcommittee's membership represented a cross-section of chief judges, district court administrators, municipal judges, judicial education staff, and the court system's legislative liaison. Over the course of 12 months, the subcommittee met several times to discuss various issues related to municipal courts, including the role of the chief judge in addressing misconduct by municipal judges.¹

II. Chief Judge Authority over Municipal and Circuit Court Judges

Chief judges have administrative authority over municipal courts. SCR 70.19(4) and 70.20(2).² In their administrative role, chief judges often work with municipal judges to establish procedures in municipal court, ensure compliance with state statutes and Supreme Court Rules, and address problems that arise.

¹ The subcommittee also discussed improvements to the Code of Judicial Conduct, which the Committee of Chief Judges referred to the Judicial Conduct Advisory Committee for review. *See* Wisconsin Supreme Court Rule Petition 19-23.

² *See also* Wis. Stat. § 755.01(1) which states in part "A municipal court... is a coequal branch of the municipal government, subject to the superintending authority of the supreme court, through the chief judge of the judicial administrative district."

In addition to having authority over municipal judges, chief judges also have administrative authority over circuit court judges. SCR 70.20(1). Chief judges are responsible for the administration of judicial business in circuit courts, including supervising the judicial business of elected, appointed, and assigned circuit court judges. SCR 70.19(1). Chief judges establish rotation plans for judicial assignments in circuit courts, adjust circuit court judges' workload as appropriate, and allocate cases as necessary. *See* SCR 70.23(3), 70.23(3)(a), and 70.19(3)(a).

III. Chief Judge Response to Judicial Misconduct

Chief judges refer judges for discipline by the Judicial Commission when judges are engaging in misconduct. *See* SCR 60.04(3)(a). In addition, the chief judge can intervene by issuing an order for the judge to comply with the chief judge's policies, rules, or directives. SCR 70.20(1). "Failure to comply with an order of the chief judge may be grounds for discipline under sections 757.81 to 757.99 of the statutes." *Id.*

A chief judge can also reassign a judge's cases in specific situations such as substitution, disqualification, or recusal. SCR 70.23 and SCR 70.24. As it relates to municipal judges, under Wis. Stat. § 751.03(2)(b), a chief judge (through the power delegated under SCR 70.24) can reassign cases in municipal court when "a municipal judge is incompetent, unable or fails to act." The statute does not define what is meant by "unable or fails to act." The Municipal Court Subcommittee discussed whether a municipal judge's failure to follow a chief judge's order may constitute a failure to act under Wis. Stat. § 751.03(2)(b).³ However, the subcommittee agreed that the language was unclear in either statutes or Supreme Court Rules.

³ The term "fails to act" remains undefined in Wisconsin statutes and case law. However, courts of other jurisdictions have explored the meaning of the term "failure to act" in various contexts. *See for example Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001), regarding Americans with Disabilities Act violations, where the court stated "a failure to act must be a result of conduct that is more than negligent, and involves an element of

IV. Request to Modify SCR 70.20(1)

The Committee of Chief Judges is requesting that the court modify SCR 70.20(1) to clarify that failure to follow a chief judge's order can result in reassignment of cases for both circuit court judges and municipal court judges under Wis. Stat. § 751.03.

SCR 70.20 (1) is amended to read:

70.20 (1) The chief judge shall exercise within the judicial administrative district the full administrative power of the judicial branch of government subject to the administrative control of the supreme court. The chief judge may order that his or her directives, policies and rules be carried out. Failure to comply with an order of the chief judge may be grounds for discipline under sections 757.81 to 757.99 of the statutes, reassignment of cases under section 751.03, or both.

Allowing the reassignment of cases for failure to follow the order of a chief judge would allow for a chief judge to address misconduct as it arises rather than waiting on action by the Judicial Commission.⁴ With this change to the rule, when a judge engages in such conduct, the chief judge can submit a written order to the judge to take remedial efforts to correct his/her behavior. If a judge fails to follow the chief judge's order, the chief judge can immediately reassign cases, as appropriate, to address the specific situation or concern.

V. Conclusion

Misconduct in judicial office threatens the integrity of the judicial system as a whole. Timely addressing misconduct is critical to mitigating these situations and providing avenues for the court process to continue for parties and court staff. Allowing for chief judges to

deliberateness." *See also Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir. 2004) where the court stated that in determining whether "failure to act" conduct is actionable under the Telecommunications Act of 1996, the phrase "failure to act" must be read in conjunction with other provisions that require entities to act in a certain way.

⁴ In anecdotal examples raised during the committee process, several members of the Municipal Court Subcommittee expressed that Judicial Commission investigations sometimes take several months to over a year to be completed, often because the complainant will share additional facts that require further investigation. The ability for a chief judge to address ethics violations while the Judicial Commission process is pending is critical to ensure that day-to-day court operations can continue.

reassign court cases in these situations will improve the court system's response to judicial complaints and give chief judges the ability to quickly address situations while the Judicial Commission process is pending.

The Committee of Chief Judges respectfully petitions the court to adopt the above recommendation.

Respectfully submitted this ____ day of December, 2019.

Honorable James Morrison
Chair, Committee of Chief Judges