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February 14, 2020

Wisconsin Supreme Court
110 East Main Street
P.O. Box 1688
Madison, WI 53701-1688

RE: Letter in Support of Petition 19-23

Honorable Justices of the Wisconsin Supreme Court,

I am writing to express my support of Petition 19-23, which would change the Code of Judicial Conduct in order to align Wisconsin judicial ethics with national standards.

From 2018-2019, I served as Chair of the Municipal Court Subcommittee, a subcommittee of the Committee of Chief Judges. This subcommittee was just one of several historical subcommittees that had been convened to address concerns regarding municipal courts. The subcommittee was comprised of a cross-section of municipal judges, circuit court judges, district court administrators, Court Operations staff, and Judicial Education staff. Our goal was to thoughtfully review state statutes and Supreme Court Rules to determine how to address ongoing concerns regarding municipal courts.

Over the course of 12 months, the subcommittee explored concerns related to location of municipal court hearings, chief judge oversight of municipal courts, municipal judge qualifications, municipal court certification, judicial ethics, and more. At the end of our review, the subcommittee came up with eight recommendations designed to improve the integrity of municipal courts and provide clarity in municipal court procedure.

Among our recommendations was a recommendation to bring Wisconsin's Code of Judicial Conduct more in line with national standards. Recognizing that any changes to the Code of Judicial Conduct would impact not only municipal and circuit court judges, but judges as a whole, the subcommittee asked the Committee of Chief Judges to refer our concerns to the Judicial Conduct Advisory Committee (JCAC) for review.

In September, JCAC agreed with our changes and drafted Rule Petition 19-23, which proposes three changes to the Code of Judicial Conduct:

- Requiring judges to act with courtesy in adjudicative and administrative capacities
- Requiring judges to cooperate with other judges
- Creating an anti-retaliation provision

Acting with Courtesy in Adjudicative and Administrative Capacities

While the existing Code of Judicial Conduct requires a judge to act with courtesy in adjudicative proceedings, it does not require a judge to act with the same courtesy in his/her administrative capacity. *See* SCR 60.04(1)(d). Chief judges regularly receive complaints related to the conduct of judges in the administration of the judge's office. Whether the judge is acting inappropriately towards his/her clerk or the judge is purposefully withholding financial information from the treasurer, day-to-day complaints regarding judges often happen outside of the adjudicative proceedings. Amending the Code of Conduct to require that judges act with integrity regardless of whether they are in the middle of a court proceeding ensures that these concerns can be appropriately addressed by the Judicial Commission.

Judges Cooperating with Other Judges

Currently, the Code of Judicial Conduct indicates that a judge should cooperate with other judges and court officials in the administration of court business. SCR 60.04(2)(a). In contrast, national standards recommend that judges "shall" cooperate with other judges in the administration of court business. ABA Model Code of Judicial Conduct, Canon 2, Rule 2.5. Changing the word "should" to "shall" is integral to the role of the chief judge in the administration of courts. Chief judges regularly review court procedures and day-to-day court operations in response to complaints that arise. Having the cooperation of circuit court and municipal judges in addressing these day-to-day issues is fundamental to the success of any chief judge intervention.

Anti-Retaliation Clause

Wisconsin's Code of Judicial Conduct does not contain any anti-retaliation provision. *See* SCR Chapter 60 generally. The Municipal Court Subcommittee expressed concerns that this could have a chilling effect on individuals filing Judicial Commission complaints for fear of retribution. Often a court reporter (in circuit court) or clerk (in municipal clerk) is the individual with the clearest understanding of a judge's behavior. However, these individuals may not wish to report misconduct to the Judicial Commission for fear of the impact on their employment. Creating an anti-retaliation provision protects these employees so that they do not have to fear retaliation for filing a complaint.

I fully support Rule Petition 19-23 as it is drafted. Thank you for your consideration of my comments.

Respectfully,

Honorable Barbara Key
Chief Judge
Fourth Judicial Administrative District