

BARBARA H. KEY
Chief Judge
Winnebago County Courthouse
415 Jackson Street
Oshkosh, WI 54901
Telephone: (920) 236-4835
FAX: (920) 424-7795

JOHN A. JORGENSEN
Deputy Chief Judge
Winnebago County Courthouse
415 Jackson Street
Oshkosh, WI 54901
Telephone: (920) 236-4866
FAX: (920) 303-4784

JON J. BELLOWS
District Court Administrator
415 Jackson St., Room 510
Oshkosh, WI 54901
Email: jon.bellows@wicourts.gov
Telephone: (920) 424-0028
FAX: (920) 424-0096

STATE OF WISCONSIN
FOURTH JUDICIAL DISTRICT

415 JACKSON STREET
OSHKOSH, WISCONSIN 54901
(920) 424-0027



October 16, 2020

Wisconsin Supreme Court
110 E. Main Street, Suite 440
Madison, WI 53703

Re: Rule Petition 19-23

Honorable Justices of the Wisconsin Supreme Court:

On behalf of the Committee of Chief Judges, I submit this additional information to the Court in support of Rule Petition 19-23. Questions were raised at the October 6, 2020 hearing regarding the need for an anti-retaliation clause.

The proposed changes would create SCR 60.04 (10) and adopt the language of 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.”

Currently, the Wisconsin Code of Judicial Conduct does not contain an anti-retaliation provision. One of the biggest barriers to reporting harassment is the fear of retaliation. Policies and procedures, like the proposed rule, help remove or lower barriers to reporting harassment or other misconduct, as well as allow for meaningful discussions about the conduct at issue. The following instances have occurred for which this rule would benefit the judiciary as a whole:

- The perception that retaliation will occur gives the judicial officer allegedly causing offense no opportunity to address the complaint. Instead, complaints are made “anonymously” with an expectation that someone else, usually the Chief Judge or the District Court Administrator, will talk to the judicial officer. In those instances, the judicial officer is focused on “who” made the complaint, instead of the behavior that gave rise to the complaint. The failure of the judicial officer and the complainant to have a dialogue about the underlying issue makes any attempts to address such complaints largely ineffective.

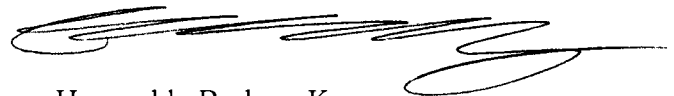
- District Court Administrators report issues brought to their attention that could have been submitted as judicial complaints. In one district, nine different individuals complained of various incidents, which involved five different judicial officers. The reason given in each instance as to why a complaint was not being filed was due to the perception that retaliation would occur against those filing the complaint.
- Management Services reports complaints over the years from clerks, court reporters, and court staff in regard to treatment by the judge in one-judge counties on issues that should be referred to the Judicial Commission. However, individuals state they are “afraid to report if there is any chance the judge would find out.”
- Court personnel have resigned due to alleged hostile work environments created by judicial officers.
- During an investigation into sexual harassment claims against a judge, Management Services reports the behavior had been going on for many years, but no one reported because “it’s the judge.”
- A municipal judge attempted to discipline and fire his clerk when he learned of a Judicial Commission complaint against him.

The impact of this rule, in addition to providing a clear rule for judges, is applicable to a judge’s conduct towards any person known or suspected to have assisted or cooperated with an investigation of a judge or lawyer.

Twenty-five states have adopted the identical language of ABA Model Rule 2.16, and four states have similar language.¹ The Judicial Commission director, Jeremiah Van Hecke, spoke to the committee and provided input to the committee concerning all of the proposed changes to the Code. Further, although Van Hecke is limited to providing more general information, given the confidentiality of many Commission proceedings (under Wis. Stat. § 757.93), he has indicated that fear of retaliation by judicial officials is regularly expressed by potential complainants, complainants, and witnesses speaking with Commission investigators and staff.²

Thank you for your consideration.

Respectfully,



Honorable Barbara Key
Chief Judge
Fourth Judicial Administrative District

¹ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2_16.pdf

² Van Hecke also noted that an explicit provision concerning retaliation would: (1) address those fears on behalf of individuals cooperating with the Commission or other discipline agencies; and (2) alert judicial officials that retaliation is specifically prohibited under the Code of Judicial Conduct.