

**In re amendment of SCR chs. 70 & 33,
relating to administration of municipal courts**

**SUPPORTING MEMORANDUM
PETITION 10-**

The Director of State Courts, on the recommendation of the Committee of Chief Judges, hereby petitions the court to amend SCR chapters 70 and 33, relating to the administration of municipal courts, in order to implement recent legislative changes to Wis. Stats. ch. 755 and 800.

In 2006, the Wisconsin Municipal Judges Association (WMJA) began a comprehensive rewrite of the laws governing municipal courts. At meetings with the Supreme Court in 2007, 2008 and 2009, the chief judges discussed concerns about the independence and professionalism of some municipal courts, the goals of the legislation, and the need for an increased oversight role for the chief judges. The Committee of Chief Judges carefully reviewed the draft bill and worked with the WMJA on revisions from 2007 to 2009. With the support of the Chief Judges and the Director of State Courts Office, the bill became 2009 Act 402, effective January 1, 2011.

The act includes a number of changes designed to strengthen the professionalism of the municipal courts and promote their independence from the other branches of municipal government and local law enforcement. It provides that municipalities must administer their courts as an independent branch of government, with separate computer systems, separate budget line items, appropriate work space for the judges, and judicial supervision of municipal court clerks. It seeks to convey a sense of independence to the public through dedicated court space, signage, phone lines, and separation from other municipal branches, in particular from the police department.

The act also includes a number of changes to increase administrative oversight of the municipal courts by the chief judge. The statute explicitly states that the municipal court is a co-equal branch of municipal government subject to the superintending authority of the Supreme Court, as exercised through the chief judge. The chief judge and the Director of State Courts must now be notified when a new municipal court is formed in a judicial district. A new municipal court cannot hear cases until the chief judge certifies that it meets the operational standards noted above.

Implementation of 2009 Act 402 may increase the costs of starting or maintaining a municipal court for some municipalities by setting minimum standards for physical space and court staffing. The chief judges and district court administrators have already begun to conduct visits and evaluations of the municipal courts in their districts and have found that most of the needed physical changes can be made without major expense to the municipality. Under this petition, some additional costs may be incurred for municipal judge time spent meeting with the chief judge and district court administrator or for travel to district meetings.

Improving the professionalism and independence of municipal court clerks is also an important goal of the act. While the Office of Judicial Education has long provided voluntary education programs for municipal court clerks, Act 402 makes education programs mandatory to the extent required by the Supreme Court. The rule change proposed by the Office of Judicial Education and the Municipal Judge Education Committee requires that each municipality send one clerk to training every other year. While this will result in increased costs for travel and staff time for some municipalities, it will greatly improve the knowledge, independence and access to statewide resources for those clerks who do not currently attend training.

Administratively, there will be additional work for chief judges and district court administrators from closer oversight of the municipal courts, through more routine communications, occasional visits, and district meetings or trainings. There may be some additional work for the Office of Court Operations in answering questions about municipal court operations. The Office of Judicial Education already provides a high level of training and guidance for municipal court judges and clerks. The proposed rule anticipates that municipal clerks will attend the programs already being given, but there may requests for online training or regional training to consider for future programming. The Office of Judicial Education will also need to track compliance with the mandatory education requirement for court clerks.

For these reasons, the Supreme Court Rules should be amended as follows:

1) SCR 70.19(1), duties of the chief judge, should be amended to add administrative supervision of municipal courts to the list of CJ duties consistent with new 755.001(1).

Act 402 explicitly recognizes that municipal courts are subject to the superintending authority of the Supreme Court as exercised through the chief judge. Likewise, SCR 70.19 should be amended to add:

SCR 70.19 Duties of the chief judge.

(1) The chief judge is the administrative chief of the judicial administrative district. The chief judge is responsible for the administration of judicial business in circuit courts within the district, including its personnel and fiscal management. The general responsibility of the chief judge is to supervise and direct the administration of the district, including the judicial business of elected, appointed and assigned circuit judges.

(2) In carrying out administrative duties, the chief judge shall cooperate with the director of state courts.

(3) In the exercise of his or her general responsibility, the chief judge has the following duties: ... [(a) – (k)]

(4) The chief judge exercises superintending authority over the administration of judicial business of the municipal courts of the judicial administrative district. The chief judge shall assign municipal judges as specified in SCR 70.24.

(5) The chief judge shall, subject to the approval of the director of state courts, adjust his or her caseload to reflect the amount of time needed for administrative duties.

2) SCR 70.20, authority of the chief judge, should be amended to explicitly state that the chief judge’s administrative power includes municipal courts, consistent with new 755.01(1).

Act 402 provides a more defined and active role for the chief judge in overseeing the work of the municipal courts of each district. Consistent with the legislation, SCR 70.20 should be amended to add:

SCR 70.20 Authority of the chief judge.

(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.

(2) The administrative authority of the chief judge extends to the municipal courts of the judicial administrative district.

3) SCR 70.20 should further be amended to clarify which chief judge has administrative authority over a municipal court that falls in two judicial districts, consistent with new 755.001(2) and 800.001(1).

Some municipal courts serve an area that falls in more than one judicial administrative district, such as where the municipality straddles two counties or where a joint court serves municipalities located in more than one county. To clarify which chief judge has authority for such a court, Act 402 applies the same standard used by Wis. Stat. 11.02(3)(e) to determine which municipal clerk supervises the election of that municipal judge. Consistent with the legislation, SCR 70.20 should be amended to add:

SCR 70.20 Authority of the chief judge.

(2) The administrative authority of the chief judge extends to the municipal courts of the judicial administrative district. If a municipal court is located in more than one judicial administrative district, the chief judge whose district includes the county having the largest portion of the population served by the municipal court shall have superintending authority over that court, consistent with Wis. Stats. 755.001(2).

4) SCR 70.21, additional authority of the chief judge, should be amended to add chief judge authority to review new courts, consistent with new 755.01(1).

Act 402 provides that the chief judge approve the operations of a new municipal court before it may begin operations. The chief judge is asked to certify that the court meets the requirements of 755.09 [appropriate judicial work space], 755.10 [each court must have a clerk, who is supervised by the judge], 755.11 [court records are kept separate from other records], and 755.17 [adequate courtroom space; separation from police department by design and signage; separate phone line; clerk staff who are also law enforcement officers should not wear their uniforms in court]. The chief judge is not expected to undertake the thorough review of facilities required by SCR 70.38-70.39, but enough to assure that the statutory standards have been met. No chief judge review is required for existing courts, but all municipal courts will be encouraged over time to meet the standards set by the new statutes. SCR 70.21 should be amended to add:

SCR 70.21 Additional authority of the chief judge.

The statutory responsibility and authority of the chief judge includes, but is not limited to, that specified in the following sections of the statutes:....

(15m) Section 755.01(1): certification that a new municipal court meets the operational standards set forth in chapter 755.

5) SCR 70.21 should further be amended to add chief judge authority to review municipal judge disqualifications, consistent with new 800.05(5).

Chief judge authority to assign municipal judges following motions for substitution was provided by former Wis. Stat. 800.05, but the statute was silent with respect to assignments following disqualification. New 800.05(5) now fills this gap. SCR 70.21(26) should likewise be amended to add:

SCR 70.21 Additional authority of the chief judge.

The statutory responsibility and authority of the chief judge includes, but is not limited to, that specified in the following sections of the statutes:....

(26) Sections 48.29(1m), 345.315(1m), 799.205(2), 800.05(3) [substitution], 800.05(5) [disqualification], 801.58(2), 938.29(1m) and 971.20(8): determination of substitution requests and reassignment of judges.

6) SCR 70.24 should be amended to allow assignment of municipal judges across district lines, consistent with 755.05 and 800.065(1).

Act 402 creates statewide jurisdiction for municipal court judges, to facilitate the appointment of another judge when needed. It can be difficult for part-time judges with other employment to cover each other's calendars, and often the nearest available judge or reserve judge lives in a different judicial district. To facilitate assignment of a new judge, SCR 70.24 should be amended to add:

SCR 70.24 Assignment of municipal judges.

(1) Where a municipal judge is requested or required to act under section 345.315, 757.19(5), 800.05, 800.06 or 800.065 of the statutes, the chief judge of the judicial administrative district in which the municipal court is located is authorized and directed to act as the designee of the chief justice under section 751.03 of the statutes for the purpose of assigning another municipal judge or, if none is available, transferring the case to circuit court. These assignments or transfers may be either general or specific as the circumstances warrant.

(2) The chief judge by order may assign a municipal judge from outside the judicial administrative district or a reserve municipal judge. The chief judge may assign a reserve municipal judge to serve in a district other than the judge's former district. Before making the assignment, the chief judge shall consult with the chief judge of the municipal judge's district or former district.

7) SCR 33.04 should be amended to provide for mandatory municipal court clerk education, consistent with new §755.18(1).

While the Office of Judicial Education has long provided voluntary education programs for municipal court clerks, Act 402 now requires that municipal court clerks attend education programs as required by the Supreme Court. The Office of Judicial Education and the Municipal Judge Education Committee recommend that each municipality be required to send one clerk to training every other year, in order to keep abreast of legislative and procedural changes. SCR 33.04 should be amended to add:

SCR 33.04 Mandatory education.

(1) Each newly-elected municipal judge shall attend the earliest municipal judge orientation institute offered following his or her election, unless a period of extension is granted by the committee upon prior application by the municipal judge.

(2) Each municipal judge shall earn at least 4 credits in each 365-day period after commencement of the term for which elected or appointed at a municipal judge orientation institute, review institute or graduate institute developed by the judicial education office. A municipal judge who holds office for less than 5 months during any calendar year is exempt from this subsection.

(3) Each municipal judge shall designate and require a minimum of one municipal court clerk to attend the annual clerk's training seminar, developed by the judicial education office, at least once every 2 years.

8) SCR 33.01(4) should be created to define "municipal court clerk."

A definition of "municipal court clerk" should be added in conjunction with the education requirement:

SCR 33.01 Definitions. In this chapter:

(1) "Committee" means municipal judge education committee.

(2) "Municipal judge" means a judge elected under section 8.50 or 755.01 of the statutes or appointed under section 800.065 of the statutes.

(3) "Newly elected municipal judge" means any municipal judge who has not served 12 full months in office.

(4) "Municipal Court Clerk" means a court clerk appointed by a municipal judge pursuant to sec. 755.10.

Respectfully submitted this ____ day of _____, 2010.

A. John Voelker
Director of State Courts