

C. WILLIAM FOUST
Chief Judge
Room 7107, Dane Co Courthouse
Fax (608) 266-4079
Telephone (608) 266-4200

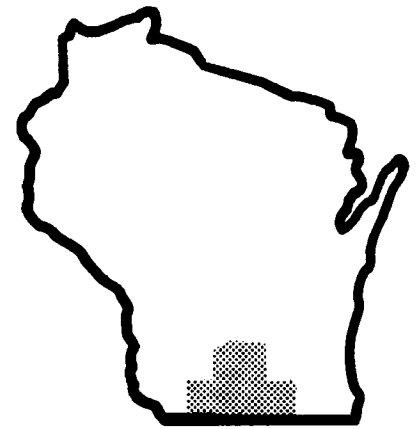
JAMES P. DALEY
Deputy Chief Judge, Rock County
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545
Fax: (608) 743-2226
Telephone: (608) 743-2261

GAIL RICHARDSON, DCA
Pat Kroetz, DAA
District Court Administrator
Room 6111, Dane Co Courthouse
Telephone: (608) 267-8820

STATE OF WISCONSIN

FIFTH JUDICIAL DISTRICT

215 S. HAMILTON STREET
MADISON, WISCONSIN 53703-3295
FAX (608) 283-4940



RECEIVED

DEC 14 2011

CLERK OF SUPREME COURT
OF WISCONSIN

December 12, 2011

Supreme Court of Wisconsin
c/o Clerk of the Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

**Re: Petition 11-03, repeal and recreation of SCR 70.38 - 70.39,
relating to court security and facilities**

To the Honorable Justices of the Supreme Court:

The Committee of Chief Judges would like to offer comments on the PPAC petition to update the court security and facilities rules. These comments address the appropriate role of the chief judge in the construction and remodeling of court buildings and offer our collective experience with how this provision has worked in practice.

We agree with PPAC that the current wording of SCR 70.38 should be carried through in identical form to new SCR 68.03. In particular, we strongly support continued use of the word "shall" with respect to chief judge review of any proposed construction and to chief judge approval of the facility before it may be used by the circuit court.

We would like to speak to the underlined portions of the rule:

SCR 68.03 Remodeling, construction, or relocation of court facilities or personnel.

(1) The circuit judges shall promptly notify the chief judge of the judicial district, in writing, of the county's intent to remodel, construct or relocate any court facility or to relocate any court personnel.

(2) The circuit judges and the chief judge, in cooperation with appropriate county officials, shall review any proposals under sub. (1), together with any drawings or plans. The circuit judges and the chief judge shall participate in the planning process to ensure that the proposals under sub. (1) are consistent with current court facility standards, including those relating to functional design, audio-visual and acoustical adequacy and security of the courts and the public, and that they conform to the requirements of the Americans With Disabilities Act and other federal, state and local laws.

(3) The director of state courts shall provide technical assistance and advice on any proposals under sub. (1), within the resources available to the director's office.

(4) The chief judge shall review every new, remodeled or relocated court facility and grant or deny approval for its use, subject to review by the supreme court.

(5) No circuit judge or court staff may occupy a new, remodeled or relocated court facility until the court facility is approved under sub. (4).

The proposed rule is identical to current SCR 70.38(3) – (7). It has been effective for all remodeling, construction or relocation commenced after September 1, 1992.

Our experience is that this rule is the chief judge's ticket to be at the table and to engage in discourse with the county board. The chief judge and district court administrator are familiar with legal requirements, trends in courthouse design, new technologies, and the experiences of other counties. They often serve as a buffer for circuit court judges who need to work with the county board on multiple issues in addition to the construction. Involvement by the chief judge is useful for promoting constructive dialog and getting court facilities to be the way they should be.

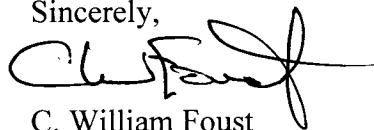
Wisconsin circuit court operations depend on a delicate balance of state and county funding. Courthouse construction is a major commitment of county money with significant consequences to the daily operations of the circuit court from that point forward. It is essential that the state court system have a voice in the county's planning. Downgrading the chief judge's role to merely advisory would hamper needed coordination between the two funding mechanisms. The rule provides that review of the plans shall be "in cooperation with appropriate county officials", and respectful cooperation is indeed what has occurred.

The court's letter of December 9 notes a tension in the rule between statements that are advisory or collaborative and those that vest significant authority in the chief judge to review and approve facilities, and asks "How will these competing tensions improve the rule?" We believe the rule is a realistic mirror of the tensions that are present in real life, and that language which ensures a role for the chief judge is both appropriate and necessary. We urge the court not to dilute the rule by removing the word "shall" where it appears in SCR 68.03(2) and (4).

This rule has worked well for 20 years. We are not aware of any significant pushback from counties unwilling to accept the authority of the chief judge to review plans and to approve facilities before they can be used. We note that the comments from the Wisconsin Counties Association do not ask that the word "shall" be removed with respect to the role of the chief judge and the chief judge's ultimate responsibility to approve the construction.

Please feel free to let me know if you have any questions.

Sincerely,



C. William Foust
Chief, Committee of Chief Judges

cc: Judge Sarah O'Brien
Judge Michael Bohren