

Juneau County Circuit Court

Honorable Paul S. Curran - Branch II

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February 6, 2018

Chief Justice Patience D. Roggensack
Wisconsin Supreme Court
P. O. Box 1688
Madison, WI 53701-1688

Clerk of the Supreme Court
P. O. Box 1688
Madison, WI 53701

Re: Comment on Rule Petition 18-01

Chief Justice Roggensack and
Associate Justices of the Wisconsin Supreme Court:

I would like to begin my comments regarding Petition 18-01 eliminating Judicial Administrative District Six, by thanking the Court for providing this opportunity for discussion on this topic.

I am sure that you have heard judges comment at seminars and conferences that they believe that the judicial branch of government does not receive the level of respect and support that it should from the legislative and executive branches of government. I do not always share this attitude. However, it was extremely disheartening to learn of this proposal only after it had been fully developed. It gave the appearance that judges are not respected by their own branch of government.

You may recall that I wrote you on November 30th on this topic. As I told you in that letter, the judges in District Six first received notification of this proposal on November 8th, after the entire proposal had been completed and the realignment map completed. No judges in District Six were consulted about this proposal.

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It leaves one feeling like a pawn in a chess match to be moved about the board without consultation or even notification as seems advantageous to some unknown administrative official in Madison. This disappointment is significantly tempered by the Supreme Court providing me with this opportunity to voice my concerns and to analyze the proposal.

I took the bench in 2008. Since that time and to date, District Six has been a collegial, educational, and supportive body. I am friends with a number of the judges and I have a warm and friendly relationship even with those judges with whom I am not close friends. The District has quarterly meetings which are extremely helpful. I am aware of the District's policies on substitutions, recusals, out of county assignments, court reporter coverage, and all of the other administrative tasks that are performed by the District.

Under this plan, Juneau County would be assigned to District Seven. I know nothing of their procedures or policies. I do not know if they meet and, if so, when. I have heard stories that in some Districts the judges do not get along and do not meet. I do not know if this is true of District Seven.

The fact that I do not know anything about District Seven is another example of the disregard of the judges affected by this proposal. There have been opportunities to provide the judges affected by this proposal, with information about their proposed judicial administrative district destination.

The fact that no District Six judges were consulted on this topic, leads me to inescapable conclusion that they either did not care what we thought, or they did not wish to hear what we thought.

I have reviewed the supporting memorandum regarding Petition 18-01. Some its arguments are unsupported and some of its reasoning is flawed.

In Section B. 1., the Memorandum states:

“After analyzing the impact of technological innovations and other factors including geographical distance between circuit court branches, judicial need, and weighted case load, the Director of State Courts believes that the Court system can function as effectively with nine judicial administrative districts as it currently does with ten.”

Unfortunately, the Petition contains no listing of all of the factors, and no data upon which the analysis relies. It is therefore simply a conclusory statement unsupported by evidence.

This is akin to an expert witness providing ipse dixit testimony. Absent any of the underlying data, no one can confirm or refute this argument. Such evidence would be excluded at a Daubert hearing

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Paragraph B. 2., argues that an unusual confluence of events is a reason to realign the districts. These events are the expiration of Chief Judge Potter's term, the retirement of the District Court Administrator and the expiration of the lease on the Sixth District's office space. These are not reasons. These are just coincidences.

If one starts from the underlying premise that realignment is necessary, these events are a convenient coincidence. However, if one does not start from that underlying premise, these events merely call for the same thing that would happen in any other district. Namely, the appointment of a new chief judge, the hiring of a new district administrator and the renegotiation of the lease or relocation of the district office. It is only if one starts from the premise that elimination of an administrative district is necessary, can one reach the conclusion that this confluence of events will call for the elimination of the sixth judicial district.

In Section B. 2. of the memorandum in support of Petition 18-01, also makes note of the fact that the geographical location of District Six makes it "The most logical of the judicial administrative districts to be consolidated."

Once again, this is not a reason to consolidate districts. It merely is a convenience which presupposes that realignment is necessary and that District Six is the most convenient district to eliminate.

Another reason given for distributing the Sixth Judicial District courts among the adjoining districts is to make the number of judges more equal across the state. Of course, once again, no data is provided to support this assertion. However, even if true, it seems unimportant. As pointed out in the supporting memorandum, the districts were created in 1977 with some additional changes in 1981. No explanation was given as to why the number of judges created in 1977 and 1981 organizational alignments needs to be changed or the current number of judges in each district is improper or difficult to administer.

Section 2 of the Petition concludes with the summary statement "for these reasons, the Director of State Courts believes that the most efficient and effective way to consolidate the judicial administrative districts from ten to nine is to eliminate the sixth district and redistribute its counties."

As set forth above, no data is presented to support this and the reasoning behind it is flawed. As that summary statement implies, the petition starts from the conclusion that judicial administrative districts must be consolidated from 10 to 9. Of course, this starting presumption is assumed but not established.

Section 3, the final section in the supporting memorandum for Petition 18-01 argues that by eliminating the sixth judicial district "The Court system will realize substantial savings."

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Once again, this statement is unsupported by any data. It is unclear to me what constitutes “substantial savings.” Whether the savings amount to a substantial part of the judicial budget or the state budget is questionable.

It is often said that in order for the judiciary to be better funded in the legislature’s biennial budget, we must show that we have some “skin in the game.” I disagree with this premise. But, even if it were true, a change in the judiciary’s expenditures in 2018, will have no positive effect on the next biennial budget.

When the budget writers begin to work on the next biennial budget in mid-2019, they will start their analysis of the judiciary’s budget based on current expenditures. They will begin cuts from there. They will take little or no notice of the savings created in 2018 by eliminating the sixth judicial district.

Many of you may recall a sacrifice that was made several years ago. During the Doyle Administration, the State was in financial trouble. In an effort to assist with that problem, the judiciary agreed to forego its raises with the anticipation that that sacrifice would be recognized and compensated in the budget when the State’s financial position was better.

We all know how that turned out. We still have not made back the raises that we gave away years ago.

Similarly, a sacrifice that is made today will count for nothing in mid-2019 when the next biennial is established. Budget writers will do what budget writers do. They will look at current expenditures and try to cut from there.

Therefore, if this is an effort to try to show that the judicial branch has some “skin in the game” it is destined to fail.

In reviewing the memorandum in support of Petition 18-01, I find it short on data and long on conclusions. Its reasoning is flawed because it is all premised on the elimination of District Six without an analysis of the need to eliminate any districts.

Once again, thank you for the opportunity to write to you on this Petition.

Sincerely,

Paul S. Curran
Circuit Judge

PSC:caw

c: Justice Shirley Abrahamson
Justice Ann Walsh Bradley
Justice Annett Ziegler
Justice Michael Gableman
Justice Rebecca Bradley
Justice Daniel Kelly
Honorable Randy R. Koshnick
Chief Judge Gregory Potter
District Court Administrator Ron Ledford