

MEMORANDUM

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OCT 27 2011

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TO: Honorable Justices of the Wisconsin Supreme Court

FROM: David Callender, Legislative Associate 

DATE: October 27, 2011

SUBJECT: Rules Petition 11-03: In the Matter of Repeal and Recreation of SCR 70.38-70.39, Relating to Court Security and Facilities

The Wisconsin Counties Association thanks the Supreme Court for the opportunity to review and provide input regarding Rules Petition 11-03. As the Court may recall, WCA was instrumental in working with the court to develop the original rules more than a decade ago, and we welcome the Court's interest in bringing these standards up to date.

WCA agrees that the purpose of this chapter of the rules, as set forth in 68.01 (1) is to:

Promote communication among circuit courts, county officials, court planners, architects, and contractors concerning court facilities and security issues. It recognizes the constitutionally appropriate participation of circuit courts in addressing their facilities needs and priorities within the constraints established by funding limitations and budget priorities.

It is critical in preserving the cooperative relationship between counties and the courts that the Court recognizes that a one-size-fits-all approach simply will not work in Wisconsin's counties. Therefore, WCA supports the statement in 68.01(2) that:

This chapter does not create a fixed standard. It is intended to be a statement of general purpose and procedure which establishes a flexible framework for courts' participation in decision making regarding court facilities while recognizing the wide range of needs and circumstances which exist in counties across the state.

Unlike the courts, which have a single mission, counties are obliged to balance numerous competing, often mandated, demands with limited resources. It is therefore important for the Court to understand that court security is only one element in each county's budgetary equation. Thus, WCA views the Court's rules

as best practices and not an attempt to impose additional mandates on county governments. The Court's definition of "should" in the rule is instructive:

"Should" is directory only, not mandatory, and connotes a duty or obligation to pursue a goal or objective.

In this context, then, WCA accepts that the security measures outlined in the rule are to be considered best practices and given strong consideration as each county determines what is most appropriate for its courts -- but they are not mandates.

It is important to note, however, that portions of the rule would have significant and potentially prohibitive cost implications for counties if the Court were to attempt to mandate any of the following items:

68.06(2)(a) Public Entrance. A court facility should have a single entrance with appropriate screening mechanisms in place to screen persons, carry-in items, and packages. Screening stations shall be equipped with a magnetometer, x-ray for packages and carry-in items, duress alarms, and video surveillance.

(2)(b) Restricted Access entrance. All judicial officers and designated personnel should enter through a secure and separate entrance equipped with screening the same as the public entrance in sub (1).

(2)(c) Entrances other than the public entrance should be secured and access limited.

(3)(d) A courtroom should be constructed to include ... a judge's bench that is of a size and height to deter physical attacks; that has a built-in bullet-resistant barrier of the highest threat level, and provides a direct sight line to the public entrance.

(3)(e) Court reporter and clerk stations shall be equipped with a built-in bullet-resistant barrier of the highest available threat level.

68.07(1) Courtroom: There should be no fewer than two sworn officers in each courtroom and each court commissioner hearing room when court is in session. The judge or court commissioner may expressly direct otherwise.

68.07(2) Public Entrance Staffing. The public entrance should be staffed by at least one sworn officer, armed with a triple retention holster and access to law enforcement band radio and other qualified court security officers as necessary. At least one sworn officer should be available to patrol the public areas and assist with public entrance staffing as needed.

68.10(3) The size of a jury courtroom should be a minimum of 2,000 square feet, including the litigation well (back wall to the rail) of at least two-thirds of the total square footage, and public seating for at least 40 people at 24 inches per seat.

68.11(2) Each judge should have a private chambers of at least 500 square feet in size, with a private restroom (50 sq. ft.) and located directly adjacent to clerical support staff.

With respect to the installation and staffing of weapons screening stations and the replacement of non-sworn court security personnel with sworn officers, as well as assigning sworn officers to patrol public areas, such changes would potentially cost each county hundreds of thousands of dollars a year in personnel costs. While this may be a best practice, it is simply not practicable for many counties. The Court's acknowledgement that some counties rely instead on civilian court aides, and that they and other staff should receive proper training in courtroom security, recognizes the diversity of security practices.

Similarly, it may be physically impossible or cost-prohibitive to provide the types of barriers prescribed for judges, clerks, and other court personnel, as well as to provide courtrooms and judges' chambers of the recommended size. As long as these rules represent ideal conditions, and not requirements, counties have the flexibility they need to make decisions about space use.

There are several items in the proposed rule where the word "shall," rather than "should," appears. The Court has indicated elsewhere in its rules that "shall" is to be interpreted as mandatory. In response to inquiries from WCA, the Court's staff has indicated that the intent of these provisions remains advisory in nature. Therefore, WCA recommends that those "shalls" be changed to "shoulds" to conform to the rest of the language in the rule. Specifically, the phrases include 68.06(2)(a), "Screening stations **shall** be equipped with a magnetometer..," and 68.06(3), "Court reporter and clerk stations **shall** be equipped with a built-in bullet-resistant barrier..."

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WCA would vehemently oppose any attempt by the Court to impose a single standard on all counties because such measures as weapons screening, sworn officers in the courtroom, or other similar measures would be devastating to local budgets. However, as long as the proposed rules are to be taken as a guide -- and not a mandate -- WCA acknowledges that they represent the most current and best practices in court security and will facilitate the decision-making process for both counties and court. WCA appreciates the Court's efforts to create a consultative and cooperative process.

Please feel free to contact WCA if you have any questions.