

MEMORANDUM

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**CLERK OF SUPREME COURT
OF WISCONSIN**

TO: Honorable Justices of the Wisconsin Supreme Court

FROM: David Callender, Legislative Associate *DC*

DATE: January 11, 2012

SUBJECT: Rule 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 (WCA) thanks the Court for the opportunity to present testimony on the proposed revisions to Supreme Court Rules governing court security.

Wisconsin's counties are committed to the safety of the public, as well as those who work in and those who use all county facilities -- including the court system. However, because security needs and conditions vary widely among counties, as do their fiscal capacity to undertake security measures, WCA has long opposed a one-size-fits-all approach or a statewide mandate.

The Director of State Courts and co-chairs have indicated that the proposed revisions are intended primarily to update the rules and to outline what may be considered the latest best practices for court facilities. WCA agrees that the goal of this chapter, 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.

Further, 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

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recognizing the wide range of needs and circumstances which exist in counties across the state.

WCA's principal concerns regarding the proposed revisions were outlined in the Association's Oct. 26, 2011 memorandum to the Court. WCA noted the significant changes the rules propose to court access, court size, security staffing, and security screening. All of these would result in significant costs to counties if they were mandated. Therefore, WCA reiterated its longstanding position that the chapter should remain advisory in nature, and that the security recommendations contained in the chapter should be considered best practices -- not mandates.

In their November 4, 2011 memorandum to the Court, the co-chairs of the PPAC Subcommittee on Court Security addressed the issues raised by WCA. The co-chairs stated that the chapter is intended to identify best practices and acknowledged that, "because of the unique funding structure of the Wisconsin court system, the PPAC Subcommittee on Court Security recognizes that a mandate of court security and facility standards would be inappropriate." WCA appreciates the co-chairs' comments and believes that the language in Sections 68.01(1) and 68.01(2) makes it clear that the rule is intended to be advisory in nature.

In its October 26, 2011 memorandum, WCA recommended replacing the word "shall" with "should" in Sections 68.06(2)(a) and 68.03(3) to reflect the advisory nature of the chapter. The co-chairs responded that they support WCA's position that the language in the two sections cited by WCA should be changed from "shall" to "should" in order to avoid the appearance that these sections constitute a mandate. This appears to address WCA's concerns.

WCA has also reviewed the subsequent correspondence between the Court and the co-chairs of the Subcommittee relating to Act 35. The co-chairs' e-mail dated January 4, 2012 proposes new comment language to Section 68.05(1)(i), but does not alter the underlying language in the rule. On that basis, WCA has no objections to this clarification.

WCA views with some concern the co-chairs' proposed modification to the comment section regarding 68.07(2) relating to public entrances. Section 68.07(2) is extremely prescriptive in recommending not only the type of personnel staffing the entrance (sworn, as opposed to non-sworn) but the type of holster and communications equipment as well. If the Court were to mandate implementation of these provisions, it would result in significant law enforcement staffing costs for counties.

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Given the level of specificity in this section and the potential anxiety it may raise among county officials reviewing it, WCA supports retaining the comment language that, "[t]hese standards, like this chapter, are advisory in nature and intended to encourage implementation of best practices." While this may appear redundant given the statements already set out in sections 68.01(1) and (2), the additional language would help underscore that these provisions are not intended as a mandate.

As WCA indicated previously, Wisconsin counties would vehemently oppose any attempt by the Court to impose a single standard on all counties with respect to such measures as weapons screening or court security staffing.

However, as long as the proposed rules are to be taken as a guide, WCA acknowledges that they represent the most current best practices in court security. WCA believes that the proposed rules will facilitate the decision-making process for both counties and the courts. WCA thanks the Court and the Subcommittee for their willingness to consider and incorporate WCA's suggestions on these matters. We look forward to continued cooperation and collaboration with the Court on these and other issues.

If you have any questions, please contact me.