

Open Administrative Conference
9/15/11, 9/28/11, 10/17/11, 11/7/11
Chief Justice's Proposals for Change

This has been a difficult year – for the country, for the state, and for this Court. The bitter divisions in the legislature, state and federal, have affected public confidence, and we have had our own problems. They certainly have not been hidden.

No one of us is blameless. This is a new term, however, and each term is a new beginning. Each of us, individually, will decide the best way forward –in part, to repair damage but, equally to improve this institution to serve the people of this State. We should be, above all, a place where disputes are resolved – openly, civilly, professionally – not where they are created.

I am proposing a series of suggestions for the conference's consideration. At the next open administrative conference and the next, I will offer other ideas. I invite ideas as well from my colleagues and others.

The suggestions I propose and will propose are varied, addressing issues large and small, including the selection of justices and the chief justice. Many are not original, but they have a common theme: The open and candid discussion of ways to make the Court and the judicial system better places to work and to meet our constitutional responsibilities.

I am sure each Justice is committed to promoting civility and safety in our workplace; to maintaining personal control in our language, demeanor, temperament, and conduct on and off the bench; to bolstering public trust and confidence in the Court and our judicial system; and to upholding the Court's long-standing reputation for excellence.

We have work to do.

My purpose in presenting these suggestions is, and I hope each Justice's purpose in considering them is, not to rehash or measure past concerns or tensions, not to point

fingers, and not to assess fault. My purpose is, and I hope it is each Justice's purpose, to look to the future, having learned from the past and resolved to do better, much better.

I have at this time grouped proposals into four subject areas:

- I. Court Conferences
- II. Recusals
- III. Release of Opinions
- IV. Selection of Justices

The agenda for the conferences addressed the first two series of proposals. At the November 7 open administrative conferences we will continue with items I and II and address additional proposals relating to the release of opinions.

Some suggestions seem simple to put into effect; the details of others have to be worked out if the concept is adopted. Some may require each of us to alter ingrained work habits; others do not. Some, the court alone can adopt; others require legislation or even constitutional amendment. I do not necessarily favor all the proposals, but I think each merits discussion.

Change is always difficult, but present circumstances demand change.

III. Release of Opinions

The Supreme Court releases each opinion within at least 10 months of oral argument. Nationally this is considered a very good record. Many opinions are, however, not released until June or July. Justices and lawyers have called for earlier release of opinions throughout the year, rather than the "bunching." It is perceived by some that opinions released in June and July are hurriedly done in the last hours of the term. Here are some proposals (again several relying on transparency) to accomplish the dual goals of prompt release of opinions while retaining careful consideration of each opinion by the court.

3. Establish, as a general rule, a 6-week-from-oral-argument rule for circulating the first draft of an opinion.

4. Provide incentives for compliance with present rule that first draft of opinions in cases heard in September, October, and November must be circulated on or before January 31. Adopt rule that the first draft of opinions in cases heard in December, January and February must be circulated on or before April 15.

5. Shorten time allowed for circulating a dissent from 45 days to 30 days.

6. Shorten time allowed for circulating a revision of an opinion from 21 days to 14 days.

7. Adopt a reasonable time limit that any matter (including petition for review, rules petition, order, or opinion) can be held.

8. Increase the number of conferences the court holds each month.

9. Each month release the names of justices who have opinions circulating or release closed conference agenda in advance of each conference redacting confidential information.

10. On August 31 of each year release the court's "opinion chart" that shows for each case the month of oral argument, the date the Justice circulated the first draft opinion; and the date the opinion was mandated.