

LEGISLATIVE REWRITE

This article will summarize the major changes to Chapters 755 and 800 which are being proposed by the Legislation Rewrite Committee of the WMJA and which are contained in LRB-2894/P2.

As you may know, this committee was created by the Association in the summer of 2006 and was charged with reviewing each line of these chapters to repeal old and unnecessary language and propose language which reflects how the courts do and should operate. A major goal was to reinforce the independence and professionalism of our courts. The committee met regularly, often by phone. It proceeded in a deliberate, inclusive manner, seeking input along the way from the Association membership and the Court Clerks Association. The committee's work was also reviewed by the Chief Judges' Municipal Court Subcommittee. An effort will be made to have the bill reviewed by the current legislature, but because the legislature will finish its work in the Spring of 2008, it may very well be the 2009-2010 legislature that will take the bill up for passage.

CHAPTER 755

In this chapter, the legislature has implemented the Wisconsin Constitution's grant of power to municipalities to create municipal courts. We have added a declaration that the municipal court "is a coequal branch of the municipal government." This is a strong announcement to municipalities that the court is not an adjunct of the police department or mayor, and it is bolstered by the further requirement that the court's operations are subject to the authority of the Supreme Court acting through the chief judge of the district. This will explicitly allow the chief judge to intervene if the independence or professionalism of the court is threatened. As a further safeguard, new courts will not be able to begin operations until the Director of State Courts is notified and the chief judge certifies that the court meets the standards set forth in Ch. 755.

We have set a requirement that all judges have 4-year terms; again, this is a necessity to protect the independence of the court. When vacancies are filled by a special election, the new judge will serve a new 4-year term rather than just complete the remainder of the old judge's term (this is actually an amendment to sec. 8.50(4)(fm) rather than Ch. 755). We are eliminating the requirement that the judge file a bond since our judges typically do not handle money and we thought it was an antiquated provision. Judges will have expanded authority to appoint social workers as well as attorneys as guardians ad litem, and we clarified that the GAL's role is to assist the court in determining competency, and that if the defendant is found to be incompetent the prosecution is to be suspended.

Significant new authority is given to the judge to:

- Set the court hours
- Have a budget separate from all other municipal departments
- Hire, terminate, and establish the work hours and responsibilities of all court personnel.

In addition, the municipality will be required to:

- Provide at least one court clerk and provide continuing education programs for the clerk as required by the Supreme Court
- Provide an office for the judge
- Establish work space for court personnel that is separate from the police department
- Provide a separate published telephone number for the court.

We addressed certain clothing issues. Consistent with an earlier rule adopted by the Supreme Court, the judge will have to wear a black robe unless exceptional circumstances exist, and the court clerk will be restricted from wearing apparel associated with the police department while performing courtroom duties.

Responding to issues recently dealt with by our courts, we have built in requirements that court records be kept in the clerk's office or another appropriate facility designated by the council or board, that access to the records be restricted to court personnel or as authorized by the judge or law, and that the municipality be prevented from beginning collection activity until the court refers the case to a collection agency. Finally, we eliminated the option of the court to order a contribution to a crime prevention organization. This was done in recognition of the strong admonition of the State Court's office to refrain from such orders.

CHAPTER 800

In our rewrite of this chapter, we have attempted to modernize Municipal Court procedures and address some of the recurring issues on the listserv.

To begin, we clarified that the date an action is commenced is the date the citation or summons and complaint is filed with the court. We expanded the methods by which the citation or summons and complaint can be served. Gone is the reference to sec. 986.04(3)(b)2. The municipality can use all the current methods and in addition can use first class mail. In all instances, the person performing service must document the method of service. A major change is that courts would be authorized to take default judgments on mailed service. This, of course, is not what the Supreme Court had in mind when it prohibited such judgments during rule-making in 1996. However, we believe the Court would accept this now because of 2 other provisions we added: no license suspensions or warrants could be ordered on such judgments, and defendants could reopen such judgments at any time without showing good cause. So, courts that used this authority would have to use other forms of collection like TRIP if judgments went unpaid. Also, the judge will be authorized to specify on the citation or summons and complaint that an appearance by the defendant is mandatory.

We addressed the amendment of citations and complaints. The municipality will still be able to amend once before the initial appearance, but where this occurs a copy of the amendment must be served personally on the defendant or sent by first class mail. After that, the court can amend at its discretion upon notice and an opportunity to be heard, or at trial to conform to the evidence (the judge would have to allow both parties to present evidence on the amended citation or complaint).

With regard to substitutions and recusals, the new judge will determine the court location at which the case will be heard, the prosecutor of the transferring court is responsible for prosecution in the new court, and the judgment, if any, is payable to the transferring court. The limitation of one substitution request only will be expanded where a new judge is assigned to hear the trial (for example, when the local judge is on vacation); the defendant is given a chance to file a request within specific time periods. In another area where the Association has tried for some time to secure a change, we have proposed that judges from anywhere in the state can sit for a judge who is temporarily absent, sick or disabled. And, the eligibility for reserve judge will be expanded – consistent with circuit court – to any judge who has served for 4 or more years.

In the area of discovery, the current restriction of filing a request within 30 days after the initial appearance will be changed to at least 20 days before trial unless the judge orders a different time for good cause. In addition, a new requirement is added to disclose information regarding any expert witness whom a party intends to call at trial; this must be done within the same time frame.

The municipality will be required to provide a prosecutor at trial. And, in an effort to clarify the court's prerogatives, telephonic or audiovisual testimony will be allowed at any proceeding if either the parties so stipulate or the court makes a finding that it is necessary applying the circuit court standards in sec. 807.13(2).

There is a considerable overhaul of the judgment and nonpayment of judgment sections. If community service is ordered, the defendant will no longer have to agree to it, the work site will not have to agree if the work is in lieu of restitution, and the defendant will receive credit at the rate of not less than \$10 per hour (the current rate is over 20 years old and many courts are currently using this amount). Restitution will be expanded to cover all nontraffic offenses, as well as drunk driving offenses, and the maximum amount recoverable is set at the limit for small claims court actions (currently \$5000). With respect to a driver's license suspension for nonpayment:

- Only one suspension will be allowed on a given judgment
- The suspensions can be ordered concurrent or consecutive
- The judgment can be collected by other means at the end of the suspension period
- Nonpayment of parking violations can result in a suspension
- The defendant will be able to request that the court reconsider the suspension based on an inability to pay.

With respect to incarceration for nonpayment:

- The period of imprisonment can be up to 90 days for each judgment
- The credit for each day of imprisonment is increased to \$50
- The court will receive an annual credit from the county against the costs of incarceration in the amount of the jail surcharges paid to the county by the court
- The judge will be authorized to order incarceration after making one of the following findings: 1) the defendant had the ability to pay; 2) the defendant failed without good cause to perform community service; 3) the defendant failed to attend an indigency hearing; 4) the defendant failed without good cause to complete an assessment or treatment program related to alcohol or drugs ordered in lieu of the forfeiture. The

defendant will be authorized to request a review on any finding at any time before imprisonment. It will be up to the judge to decide when to make a finding of ability to pay or when to schedule an indigency hearing. The critical thing will be to make one of the 4 findings based upon the facts presented to the judge.

The judge will be able to order a wage assignment.

On motions to reopen, either party will be able to file a motion and the court may do so on its own. No time limit is set, which is actually somewhat consistent with the current law. The standard for reopening is good cause.

The contempt of court procedures have been clarified to cover 2 situations: the failure of a witness to respond to a properly served subpoena, and misconduct in the presence of the court that interferes with the court proceeding or with the administration of justice or impairs the respect due the court. The forfeiture amount has been increased to \$200. Any ambiguity about whether the judge may jail immediately for the contempt is resolved in favor of eliminating the authority. Where a contempt is committed in court, the contemnor must be given an opportunity to address the court. A nonappearing witness can be arrested and brought before the court to testify and can be ordered to pay the costs of apprehension.

We are proposing what we believe are very good changes in the area of appeals. No appeals will be allowed from default judgments. They will be allowed from decisions on motions to reopen. Bonds will be at the discretion of the judge. Appeals where a trial was held can be heard on the record or in a new court or jury trial, at the parties' choice. Appeals on motions to reopen must be on the record. Where a transcript of the trial recording is requested, the requester must tender payment of the estimated cost of the transcript and will be liable for the ultimate actual cost. Any judgment ordered on appeal is to be payable to the municipality.

CONCLUSION

If you have read this far, you will see that this is a pretty exhaustive overhaul. It will take a great deal of effort to translate this effort into legislation. The committee has performed its mission and will now look to the Association for direction and support as we move into the legislative arena.

David Nispel, Dave Matyas, Todd Meurer, Dan Koval, Ron Wambach, Jerry Jaye, and Jim Gramling