



**REMARKS BY SHIRLEY S. ABRAHAMSON
CHIEF JUSTICE, WISCONSIN SUPREME COURT
BEFORE THE JOINT COMMITTEE ON FINANCE
MARCH 2, 2015**

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**REMARKS BY CHIEF JUSTICE SHIRLEY S. ABRAHAMSON BEFORE
THE JOINT COMMITTEE ON FINANCE**

MARCH 2, 2015

Good afternoon Co-Chair Darling, Co-Chair Nygren, and members of the Joint Committee on Finance. Two years have gone by quickly since my last appearance.

Thank you for the opportunity to speak with you today to discuss the work and funding of the judicial branch of government in Wisconsin. I appreciate your work in evaluating the state budget and helping ensure that many voices are heard about ways to improve government for the people of Wisconsin.

The justice system, as you are well aware, is a core state function and must be appropriately funded. Although the judicial branch is a co-equal branch of government, our budget is less than one percent of the overall state budget. In other words, less than one penny of every state tax dollar supports the judicial branch of government. State funding of the court system is, as you know, augmented by county funding.

The court system has long been frugal and efficient in its use of its resources. Our administrative structure is lean but effective because our staff is supported by a strong network of committees composed of volunteer judges, clerks of court, lawyers, academicians, members of the public and others. We continue our commitment to being responsible stewards of resources.

The investment that the State and counties make in the judicial system contributes directly to our quality of life and the economic health of our communities. The mission of the Wisconsin court system is to protect individuals' rights, privileges and liberties; to maintain the rule of law; and to provide a forum for the resolution of disputes that is fair, accessible, independent, and effective.

To carry out our important work, the court system needs resources. It is within this context that I appear before you today to testify about Assembly Bill 21.

I am pleased to say that the Governor's proposals honor the judiciary's role as a separate branch of government. Flexibility is a key concept in the Governor's proposal for the court system, and we appreciate this approach.

COURT BUDGET REQUESTS GRANTED

I begin with the budget items that the court requested and that were incorporated in the Governor's budget bill.

The bill authorizes the Director of State Courts to plan for budgeting over the full two-year cycle of the state budget, instead of just one year at a time. This proposal costs nothing, yet allows better management of resources.

The bill includes a Judicial Compensation Commission that the court requested. It will study judicial compensation and make recommendations to the Joint Committee on Employment Relations. Judicial salaries are lagging behind. The Governor's office has advised us that there likely will be no funding available for pay increases to state officers or employees in this coming biennium. Although the Commission and State will not, under these circumstances, immediately address our concern in attracting well-qualified lawyers to the bench and retaining them, the creation of a Commission is an important step to address erosion of judicial compensation.

Let me turn to Governor's proposals that we did not request but that we favor in concept.

CIRCUIT COURT COSTS APPROPRIATION: THE BLOCK GRANT APPROACH

Flexibility

The budget bill significantly changes the funding structure for the circuit courts.

The bill combines three separate appropriations—the circuit court support payments, guardian ad litem payments, and court interpreter fees—into a single circuit court costs appropriation.

In creating the new block grant structure, the bill repeals nearly three pages of statutes governing circuit court funding, including a definition of circuit court costs and rules for payments for services of guardians ad litem and court interpreters. These three pages are replaced with two sentences that direct the Director of State Courts to define “circuit court costs” for the purpose of making payments to the counties from the new block grant. Formulae for determining each county's share of state support are no longer established by statute.

The bill removes certain statutory provisions requiring counties to issue financial reports and removes the court system's authority to audit county financial reports, practices that help ensure accountability and transparency. The court system will in all probability impose these reporting and auditing requirements on the counties to receive funding from the block grant.

The block grant thus provides the court system with flexibility in the use of resources to fund circuit court operations.

Court Reporters

In addition to combining the three separate appropriations into a single block grant, the funding and the position authority for circuit court reporters are transferred to this new block grant from the circuit court sum sufficient appropriation.

Unintended consequences. Applying this new block grant funding structure to compensation of circuit court reporters unfortunately creates some unforeseen and unintended consequences. Fortunately, the Governor's staff and state budget office have agreed to submit to you an errata list of corrections relating to court reporters. I am here to tell you that we support corrections to avoid these unintended consequences.

The first unintended consequence is that the bill omits enabling language necessary for the state to pay court reporters' salaries and related expenses. I anticipate a correction will be included in the errata list to be submitted by the Governor's Office. I urge you to include appropriate enabling language.

The second unintended consequence is that the appropriation for court reporters is \$2.2 million short over the biennium. This shortfall is noted in the Legislative Fiscal Bureau's summary on page 114, which states: "It should be noted that the transferred funding associated with the court reporter positions does not include the full funding increases and related costs provided under standard budget adjustments associated with these positions." I anticipate a correction will be included in the errata list to be submitted by the Governor's office. I urge you to add \$2.2 million to the new appropriation.

Unfavorable intended consequence. As the bill is written, any shortfall in funding for court reporters would reduce payments to the counties. This unfavorable consequence follows from paying state-employed court reporters from the same sum certain block grant appropriation that provides financial assistance to counties.

Counties have faced reduced state support for circuit courts in the last two biennia. We should not ask counties to shoulder the burden of shortfalls in an appropriation to compensate state court reporters. Indeed we requested additional funding for counties in this biennium, which unfortunately is not provided in the bill.

Changes for court reporters need to be made in the proposed structure of this block grant to ensure flexibility and ensure that the essential functions of the court system are met without increasing costs and without decreasing funding to the counties.

Correcting the problem. Two options are available. One option is to return funding and position authority for court reporters to the same circuit court sum sufficient appropriation as judges. This option makes good sense for several reasons.

A circuit court judge and a court reporter work together to keep a court running. The statutes recognize the vital role of court reporters by providing that "the supreme court may authorize employees it considers necessary for the execution of . . . the court reporting functions of the circuit courts." Each circuit court judge is authorized by statute to appoint a court reporter. [Wis. Stat. § 751.02]

The appropriation for court reporters has been sum sufficient since 1965. [1965 Act 163]. A sum sufficient appropriation is needed because court reporting costs depend on a number of

factors; difficult trials during the biennium may result in increased court reporting expenses involving overtime or additional freelance court reporting services. Since 1965, the court system has responsibly exercised its authority to manage funding for court reporters through the sum sufficient appropriation.

Another option is to transfer the funding for circuit court reporters and the position authority to the director of state courts and law library sum certain appropriation (the supreme court block grant). This option poses its own set of significant problems. Any shortfall in the appropriation for court reporters will come from the operations of the director's office and the law library, both of which are underfunded.

I strongly urge that funding for court reporters remain in its current form, combined with funding for circuit court judges, in a sum sufficient appropriation. This type of funding would promote the court system's flexibility and ensure that the essential functions of the court system are met with no harm to county funding or court system operations.

COURT BUDGET REQUESTS DENIED

The bill does not include several funding requests the court proposed in its October budget submission.

Coordinator for Problem-Solving Courts

The bill does not grant our request for a statewide coordinator position for problem-solving courts. I cannot stress enough the State's need for this position. The coordinator has performed a multitude of functions. As a measure of its value to the State, in August 2014, the Legislative Council's Study Committee on Problem Solving Courts voted to recommend that permanent state funding be provided for this statewide coordinator position. I strongly concur with the Committee's recommendation.

The coordinator is one of the most important jobs in continuing to expand and improve both the quantity and quality of local problem-solving courts, such as drug courts, across Wisconsin. On a daily basis the coordinator provides technical assistance to circuit courts around the state.

The coordinator is a crucial part of the Department of Justice's Treatment Alternatives and Diversion grants, referred to as TAD grants. The coordinator serves as one of the TAD partners, assisting in implementing the many programs supported by the \$3.5 million of TAD funding the Legislature authorized last biennium.

The coordinator is a member of the Problem-Solving Courts Subcommittee of the State Criminal Justice Coordinating Council and gives staff support to the Effective Justice Strategies subcommittee of the Supreme Court's Planning and Policy Advisory Committee.

The coordinator is needed to keep Wisconsin a national leader in evidence-based approaches. The court system is relying more and more on proven methods to improve public safety and reduce recidivism.

I am proud to tell you that we were notified last week that Wisconsin was selected by the National Institute of Corrections to move into the advanced stages of a technical assistance grant to expand effective justice strategies statewide. This grant is a result of the combined efforts of the three branches of government: the court system's work on problem-solving courts and evidence-based approaches, legislative funding for TAD, and the executive branch's creation of a statewide criminal justice coordinating council.

Unfortunately, federal funding for the statewide problem-solving court coordinator working in the Director's office will end June 2015. I urge you to include position authority and funding in the budget for a statewide problem-solving court coordinator so all three branches of government can continue to work together to make our justice system more effective.

Electronic Filing

The budget bill does not include the one-time \$2.1 million request during the biennium to help implement electronic filing for all case types statewide. E-filing is dramatically more efficient than paper records and expands access to justice by making information easier to provide and retrieve for judges, lawyers, and litigants.

The Governor's proposal does, however, provide an estimated \$750,000 per year in new revenue for court automation, by removing various exemptions from fees and from surcharges in current law. Although we are concerned about any new surcharges, increased funding for technology is essential especially because the circuit court automation program (CCAP) has seen a decline of its revenue by over 24 percent since 2009. The additional funds proposed by the Governor will in all likelihood be needed to help ensure CCAP's funding stability. Unfortunately, the additional revenue will probably not be sufficient to allow us to expand e-filing in the circuit courts.

We must advance the court system's use of electronic filing. We are already somewhat behind other states.

UNSOLICITED CHANGES

I want to address three items in the bill that affect the court system: The Judicial Commission, the Judicial Council, and the Crime Prevention Funding Board.

Judicial Commission

The bill moves the Judicial Commission from its present, independent place in government, under the administrative wing of the Department of Administration, to administrative control of the Supreme Court. The Commission's two authorized positions and

funding would move to the Court. The transfer would yield virtually no savings. No increased efficiencies to the Commission or the court system are apparent.

The legislature created the Judicial Commission in 1978 as an agency independent of the Supreme Court after the state constitution was amended in 1977 to provide that “each justice or judge shall be subject to reprimand, censure, suspension or removal for cause or for disability, by the supreme court, pursuant to procedures established by the legislature by law.”

The proposed transfer raises serious concerns over the actual and perceived independence of the Commission.

I agree with Justice Annette Ziegler, who has been quoted in the media as saying: “I’m not convinced the Supreme Court budget is the best place for the commission, with all due respect to the governor. It looks like the commission is under our authority and control when frankly it shouldn’t be.”

The Judicial Commission wants to continue in its current form. See Jeremiah C. Van Hecke letter dated February 24, 2015, attached hereto.

The public must be assured of a fair, impartial, neutral and non-partisan judiciary. An independent Judicial Commission helps foster public confidence in the integrity of the Commission’s review of the conduct of judicial officials.

Judicial Council

The bill eliminates funding and position authority for the Judicial Council. The bill repeals Wis. Stat. § 758.13 governing the membership, duties, and powers of the Council.

The Judicial Council was created by the Legislature in 1951 as a nonpartisan, independent body. It is a diverse group of 21 experienced professionals who are statutorily tasked with making recommendations to the Supreme Court, the Legislature, and the Governor on the operation and administration of the courts in Wisconsin.

The Judicial Council wants to continue in its current form, serving the needs of all three branches. I agree. The Judicial Council is doing valuable work. It should not be eliminated.

Crime Prevention Funding Board

The bill creates a new crime prevention surcharge, earmarked for crime prevention organizations at the county level. The proposal appears to be modeled on 2013 Assembly Bill 74. The Committee of Chief Circuit Court Judges and the Judicial Conference’s Legislative Committee opposed the 2013 bill. [See memorandum dated January 29, 2014 RE: 2013 Assembly 74; John Voelker letter dated March 28, 2014; attached hereto.]

The perception—whether real or not—is that the surcharge and the board may somehow influence criminal charging decisions or court decisions in criminal cases.

As the Legislative Fiscal Bureau explains in its General Provisions at pages 188 and 189, this new surcharge would be paid before many other surcharges, including the surcharges that support the state crime laboratory and the DNA database.

* * * *

I close—at last—by saying that I appreciate the opportunity to address you today. I will be visiting with each of you and you should feel free to communicate with me about the budget. I look forward to working with each of you so that the legislative, executive and judicial branches can work together to address the challenges of maintaining a court system that is open, understandable, affordable and fair for all the people of our great state.

STATE OF WISCONSIN
JUDICIAL COMMISSION

Suite 700, Tenney Building
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Madison, Wisconsin 53703



Jeremiah C. Van Hecke
Executive Director

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Fax: (608) 266-8647

February 24, 2015

Senator Alberta Darling, Co-Chair
Representative John Nygren, Co-Chair
Joint Committee on Finance
State Capitol
Madison, WI

Dear Senator Darling, Representative Nygren,
and Members of the Joint Committee on Finance:

The Commission has received your February 18, 2015, correspondence in which you invite the Commission to contact your offices if we would like to discuss the impact of the Governor's budget bill on our agency with the Committee. Please consider this letter an outline of the Commission's position as to the relevant portions of the Governor's FY 2015–017 Proposed Budget.¹

The Governor's FY 2015–2017 Proposed Budget contains several provisions which would significantly alter the manner in which the Judicial Commission interacts with the court system and the judiciary. Specifically, the proposed budget recommends the elimination of the Judicial Commission as an independent agency and the transfer of both funding and position authority to the Supreme Court.

The Commission respectfully requests that the proposal regarding the modification to Commission's funding and position authority be removed because the proposed changes do not merely reflect an administrative change. Instead, the proposed changes entail a fundamental policy shift which eliminates the independence of the Judicial Commission while providing virtually no financial benefit to the State. The changes will negatively impact the state court system and impede the Judicial Commission in the performance of its duties.

¹ The Commission's position was adopted by the unanimous vote of the Commissioners during a special meeting of the Commission on February 12, 2015.

Removal of the Commission's independence will obviously erode public confidence in the integrity of the Commission's review of the conduct of judicial officials in Wisconsin. The Judicial Commission has operated as an independent state agency for the past 38 years and is dedicated to protecting the integrity of the judicial process and to preserving public confidence in the courts. It has jurisdiction over ethics complaints against more than 850 judicial officials in Wisconsin, including the justices of the Supreme Court, the judges of the Court of Appeals, circuit courts, municipal courts, court commissioners and former judges who serve in a reserve or temporary capacity.

The Commission originally operated under the authority of the Supreme Court. However, in 1978, it was designated as an independent agency in order to minimize the potential for conflicts of interest with members of the judiciary. The proposed budget calls for a return to that old system; the Commission would be responsible for reviewing, investigating and prosecuting complaints involving allegations of misconduct by some of the same judicial officials who will have control over the Commission's budget. Concerns over the placement of the Commission's budget under the control of the Supreme Court have already been publically expressed by at least one Supreme Court Justice²

Under the current system, the Commission is still subject to the oversight of the legislature through the budgetary process. At the same time, there is no appearance of impropriety with regards to the legislative approval of Commission's budget because the Commission does not investigate complaints regarding members of the legislature or their staff.

While creating these difficulties for the Commission and the Supreme Court, the proposed changes do not appear to offer any benefit to the State of Wisconsin. They do not save the taxpayers of the State of Wisconsin any significant amount of money nor do they create any increased efficiencies in the administration of the Commission.³

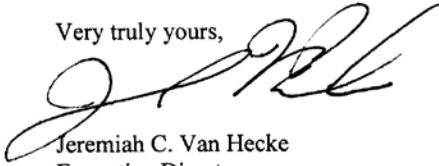
For the foregoing reasons, the Commission respectfully requests a motion to amend the Governor's proposed budget to remove the changes granting the Supreme Court authority over the Commission's funding and positions which would result in keeping the Commission a truly independent agency.

²Justice Annette Ziegler indicated that she was "not convinced that the Supreme Court budget is the best place for the commission, with all due respect to the governor" and "[i]t looks like the commission is under our authority and control when frankly it shouldn't be." Patrick Marley, Scott Walker's budget would reshape how Wisconsin courts are funded, Milw. Journal Sentinel (Feb. 11, 2015).

³ The Commission does not object to the proposed budget for its financial impact on the Commission. Regardless, in its Fiscal Year 2015 – 2017 Budget Request, the Commission requested \$302,400 for Fiscal Year 2015-2016, and \$303,000 for fiscal year 2016-2017 and indicated that the Commission had two full-time employees for whom continued funding was sought. The proposed budget recommends no funding to the Commission while it increases the funding to the Supreme Court by \$301,300 for Fiscal Year 2015-2016, and \$301,900 for fiscal year 2016-2017 (as funds intended to address the Commission's transfer to the Supreme Court). The proposed budget also recommends the increase of two positions for the Supreme Court for the transfer of the two positions from Judicial Commission (thus under either proposal the staffing of the Commission remains the same).

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Van Hecke', written in a cursive style.

Jeremiah C. Van Hecke
Executive Director

c: Chris Carmichael, LFB
Andrew Potts, DOA

Memorandum

STATE OF WISCONSIN
DIRECTOR OF STATE COURTS



Via Electronic Mail

DATE: January 29, 2014
TO: Members, Assembly Committee on Judiciary
FROM: Nancy Rottier, Legislative Liaison
SUBJECT: 2013 Assembly Bill 74

On behalf of the Legislative Committee of the Judicial Conference and the Committee of Chief Judges, I urge you vote against passage of Assembly Bill 74 relating to the funding of crime prevention organizations through the creation of a new surcharge. Our reasons for opposition were detailed more fully in a letter from Director of State Courts John Voelker dated March 28, 2013.

The Committee of Chief Judges has a long history, going back to the mid-1990s, of attempting to properly implement the previous crime prevention organization (CPO) statute. After extensive study of the previous CPO process and because of the inherent ethical conflict it created for judges (being lobbied by organizations for a favorable funding decision), the committee concluded the most appropriate public policy was to eliminate the CPO surcharge. This was done in 2007 Wisconsin Act 84.

Besides the inherent ethical conflict for judges, AB 74 presents some of the same practical difficulties that were present in the old CPO statutory scheme, including lack of clarity in the definition of a CPO, the potential for abuse of the funding process and straining the already-burdened county collection process. The statutes already contain 35 different court-imposed surcharges, 24 of which are applicable in criminal cases. The CPO surcharge created in AB 74 would be added to every criminal case.

We agree with Governor Walker's reason for vetoing this provision from the budget bill:

I am vetoing these sections because I object to the creation of an additional surcharge and an additional board, which may have no demonstrated effectiveness. There are already numerous surcharges on felony and misdemeanor convictions, and adding an additional surcharge will detract surcharge revenue from many other proven and worthwhile crime victim services and law enforcement programs.

Again, we urge you to vote against this bill.



Shirley S. Abrahamson
Chief Justice

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

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A. John Voelker
Director of State Courts

March 28, 2013

The Honorable Jim Ott
Chair, Assembly Committee on Judiciary
Room 317 North, State Capitol
Madison, Wisconsin 53702

RE: Assembly Bill 74, Relating to Increasing the Crime Victim and Witness
Assistance Surcharge to Fund Crime Prevention Organizations

Dear Representative Ott:

I regret that I will be unavailable to testify at today's public hearing on Assembly Bill 74 relating to the funding of crime prevention organizations through the increase in the crime victim and witness assistance surcharge. Please accept this testimony on behalf of the court system.

The Committee of Chief Judges, made up of the ten circuit court judges appointed by the Supreme Court to handle the administrative details of the circuit courts, has a long history, going back to the mid-1990s, of attempting to properly implement the previous crime prevention organization (CPO) statute. Due to continuing administrative problems and the inherent ethical conflict that the previous statute posed for judges, the Chief Judges sought to repeal it. That was successfully done in 2007 Wisconsin Act 84.

Our efforts to pass 2007 Act 84 should not be seen as a judgment about the worthiness of CPOs in general or any organization in particular. Most of the non-profit organizations that received funding were extremely worthwhile organizations. But after extensive study of the previous CPO process, the Committee of Chief Judges concluded the most appropriate public policy was to eliminate the CPO surcharge.

Last session, Representative Jacque introduced a bill that would have reinstated the exact provisions that were repealed by 2007 Act 84. We strongly opposed reinstatement of the CPO legislation. We urge you to reject the alternative approach that is before you today.

Assembly Bill 74, while taking a different approach to funding crime prevention organizations, comes with its own difficulties. We want to commend Rep. Jacque for addressing and eliminating one of our main objections to the previous CPO legislative scheme: the discretion it gave judges to impose the CPO surcharge. Our objection then was that it was inappropriate to have the court system serve as a "fund-raising mechanism" for nonprofit organizations. Judges had found themselves being lobbied by various groups that were seeking funds, asking the

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judges to impose the CPO surcharge in order to help the groups raise money. Judges are strictly forbidden from fundraising for any organization on their own time under the Code of Judicial Conduct, and it certainly appeared questionable that they could use their role as judicial officers to be involved in fundraising for CPOs. In addition, it created the perception that those with the ability to pay the contribution were treated differently.

AB 74 provides a seat for the presiding judge of the circuit court or his or her designee on the new Crime Prevention Funding Board (CPFEB). We are concerned that this participation creates the same kind of ethical conflict for the presiding judge that existed under the old CPO statutory scheme. The judge is placed in the situation of being lobbied by organizations and others for a favorable funding decision.

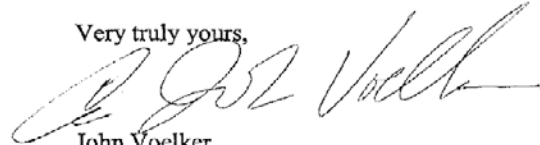
Besides the inherent ethical conflict for judges, AB 74 presents some of the same practical difficulties that were present in the old CPO statutory scheme. These include the following:

- The definition of a crime prevention organization has never been fully clarified. It has always been difficult to clearly identify what constitutes a “crime prevention organization.” The lack of clarity in the statute led to litigation challenging some CPO contributions. In 2005 we requested an opinion from the Attorney General about this and other issues. I would be happy to supply committee members with a copy of the opinion. The opinion outlines some of the definitional and practical problems of CPOs.
- The collection process in most counties is already strained from efforts to collect the statutorily-mandated restitution, fines, forfeitures and surcharges. As the Chief Justice has noted in past budget presentations, the continued proliferation of surcharges jeopardizes access to the court system and significantly increases the amount of money a violator must pay.
- The Legislative Audit Bureau (LAB) recently completed an audit of the crime victim and witness assistance surcharge revenue because questions were raised regarding the reasons surcharge revenue has declined despite a \$7.00 increase to the surcharge. The LAB report noted that trends in the number of convictions, the extent of unpaid surcharges, and statewide economic trends help explain the decline. An additional \$20.00 would make it more difficult for individuals to pay.
- The potential for abuse or questionable practices involving CPOs can be avoided. We have been fortunate that no major abuses of the previous CPO process were uncovered, but we did find questionable expenditures as we studied that system. These problematic situations were enough to convince the Committee of Chief Judges that the CPO process was seriously flawed.

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For these reasons, we would urge you to reject AB 74. In addition, AB 40 makes changes to the crime victim and witness assistance surcharge that may be inconsistent with the language of this bill. We would be happy to discuss more of the history of our experience with the previous CPO statutory scheme, and our reasons for questioning the new approach taken by this bill. If you have any questions, please feel free to contact my office or our legislative liaison, Nancy Rottier.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Voelker", written in a cursive style.

John Voelker
Director of State Courts

cc: Members, Assembly Committee on Judiciary