
From: Shirley Abrahamson
To: Supreme Court Justices
Date: 1/24/2014 5:33 PM
Subject: Response-- Rules Petition 12-07-- Finance Committee
Attachments: Document1.docx

Dear Colleagues:

First, emails from MJG and PDR, requesting written comments about 12-07 and AWB's and PDR's written comments (as well as this e-mail) about the finance committee should be open and filed as part of the rules petition. We should not be having full court discussions behind closed doors.

Second, PDR does not respond to questions asked at open conference and repeated in AWB's response about the proposed IOP. THE proposed IOP is part of the rule petition 12-07 as a result of PDR's filings and my filings.

The proposed IOP has to be discussed at the 12-07 open rules petition conference and voted upon by the court.

On Sept. 18, 2012 PDR made the IOP part of the rules proposal by filing an amendment to an IOP in the rules petition file explaining: "Enclosed please find a modification to Supreme Court Internal Operating Procedure 1.A. Please file it as a comment to Rule Petition 12-07. I file it at this time, although we do not always publicly discuss changes to our Internal Operating Procedures, because the pendency of Rule Petition 12-07 brings it forward." See attachment.

Indeed the chief judges commented negatively on the IOP in response to the court's request for comments on the 12-07 rules petition.

Julie Rich's January 17, 2013 staff memo to the court views the proposed IOP as before the court as part of the rules petition and critiqued it at length calling it "daunting for the court."

Third, in a straw vote, DTP advised the court at open conference that he would vote in favor of the petition to preserve his right to offer "refinements." If written comments are viewed as helpful, DTP might offer his refinements in writing.

shirley s. abrahamson

September 18, 2012

Ms. Diane M. Fremgen
Clerk of Supreme Court
110 East Main Street, Suite 215
Madison, WI 53703

RE: Rule Petition 12-07

Dear Ms. Fremgen:

Enclosed please find a modification to Supreme Court Internal Operating Procedure 1.A. Please file it as a comment to Rule Petition 12-07. I file it at this time, although we do not always publicly discuss changes to our Internal Operating Procedures, because the pendency of Rule Petition 12-07 brings it forward.

I am also sending this letter and IOP modification by electronic transmission.

Thank you for your assistance.

Sincerely,

Patience Drake Roggensack
Justice, Wisconsin Supreme Court

PDR:pkg
Enclosure

cc: Supreme Court Justices

Amendment to IOP.I.

A. *Administrative.* 1. Director of State Courts. The director of state courts, who is appointed by and serves at the pleasure of the court, administers the nonjudicial business of the court system at the direction of the court and the chief justice, who exercises administrative authority pursuant to procedures adopted by the and the court. The authority and responsibilities of the director are set forth in the Supreme Court Rules (SCRs), chapter 70. Those responsibilities include development of the biennial budget for the court system. See SCR 70.01 and 70.03. In development of the biennial budget and review of the court's operating budgets, the director of state courts shall work with the supreme court finance committee. The supreme court finance committee shall be comprised of the chief justice, two additional justices elected by the supreme court, the chief judge of the court of appeals and the chief of the chief judges of the circuit courts or his or her designee. The director of state courts shall be an advisor to the supreme court finance committee. The court's chief budget and policy officer and the deputy director of state courts for management services shall staff the committee. All anticipated expenditures for court staff, programs and periodic events shall be presented to the supreme court finance committee, and when approved by the supreme court, become part of the court's biennial budget submission to the department of administration. Unanticipated expenditures of court funds not approved as part of the court's biennial budget, regardless of the source of the court funds, shall be: (1) subject to the usual expense reimbursement procedure for expenses incurred in the normal course of employment; (2) subject to prior approval of the court when an expense exceeds \$3,000.

From: Patience Roggensack
To: Ann Bradley; Supreme Court Justices
Date: 1/23/2014 5:10 PM
Subject: Re: Response

My proposal is simple and clearly stated in Amended Rule Petition 12-07, which provides for a finance committee of specified members with generally stated duties by which the committee will gather and share financial information with the court.

PDR

>>> Ann Bradley 1/23/2014 4:57 PM >>>
Attached is my response to MJG and PDR's emails.

From: Ann Bradley
To: Supreme Court Justices
Date: 1/23/2014 4:57 PM
Subject: Response
Attachments: Finance Committee Response to 1-21 conference.doc

Attached is my response to MJG and PDR's emails.

Thank you, Mike, for your email of January 21, and, Pat Roggensack, for yours of January 22. Mike and PDR suggest I write out my concerns. I have three concerns about your request for writing.

1. The matter is before us on an open rules conference, and any writing should be part of the open rules conference. We should not be having full court debates behind closed doors in violation of our own rules.
2. A justice should not have to write a comment or file a comment on any rules petition. As I mentioned before at conference, I think each justice has the right to comment at the open conference. Justices may write, if they wish, but written comments are not necessarily part of the court procedure, and any written comments should be filed as part of the open conference.
3. A third and major difficulty is that I don't know what I should be writing to.

PDR is the proposer and Mike is the seconder. It remains unclear just what the proposal is. Pat Roggensack, this is your proposal. Tell us what it is. Mike, you seconded the motion. What did you second?

If a finance committee is merely informational, then I have no constitutional problem with it. More information and earlier for the court, who can be against that? But Julie characterizes the role of the finance committee as set forth to be much more than merely an informational role: "As you are all fully aware, this is a debate about the appropriate role of the supreme court in development, approval, and oversight of the court budgets." (Julie Rich memo to the court, 1-17-2014 at p. 13)

If it is as Julie describes, then it raises several issues that I have previously asked to be addressed and which remain unaddressed.

At the January 15, 2013 conference, I again discussed some of my concerns and it was decided that Justice Roggensack should be given an opportunity to respond in writing to these concerns. Justice Roggensack wanted to write because it was important for her to say exactly what the proposal is and to comment on the concerns expressed. She filed her writing on August 28, 2013, but it is not fully responsive, so I still await a response.

Again, if the finance committee is merely informational, then I have very little to say about the constitution. As I stated before, the devil is in the detail of how the finance committee operates.

If the finance committee is more than informational, then there are problems.

So what is the role of the finance committee?

- PPAC, which opposed this petition, asked what its role would be if the petition were passed. I raised that question several times and it remains unanswered.
- The ambiguous and conflicting statements about the role of the finance committee are illustrated clearly in the continuing references in PDR's filings to the IOP. What's the role of the filed modification to Supreme Court Internal Operating Procedure I. A.? The IOP proposal was abandoned at the first meeting when the court discussed the finance committee. Is the IOP being revived?
- PDR's comment filed on 8/28/12 states that the IOP "may be affected as we proceed with Rule Petition 12-07." See also PDR's reference to and enclosure of the IOP in her communication of 9/18/12.
- The IOP states: "Unanticipated expenditures of court funds not approved as part of the court's biennial budget, regardless of the source of the court funds, shall be: (1) subject to the usual expense reimbursement procedure for expenses incurred in the normal course of employment; (2) subject to prior approval of the court when an expense exceeds \$3,000.
 - As the Chief Judges' filed comment states: the proposal seems unworkable because the \$3,000 is not practical. At a prior conference it was suggested that the \$3,000 proposal was stricken. Does it yet remain?
 - The IOP proposal also is unworkable because it conflates the operational budget with the biennial budget.
- Below are some of the issues that I previously raised which have not been answered.

1. The express language of the Wisconsin constitution describes the administrative authority of the entire court differently from the administrative authority of the chief justice. The administrative authority of the entire court is: "The supreme court shall have superintending and administrative authority over all courts."

The administrative authority of the Chief Justice is: "The chief justice of the supreme court shall be the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the supreme court."

What's the import of these different grants of authority? (See p. 7 of PDR's August 28, 2013 response where in the conclusion of the analysis the two expressed powers are conflated.)

2. Is the administrative grant of authority to the Chief Justice a core constitutional function, as core constitutional functions are explained in Thompson v. Craney?

3. The debates and history tell us that initially the proposal called for the chief justice to be the “executive head of the judicial system and shall exercise such authority under rules adopted by the supreme court.” As finally adopted “executive head” was replaced with “administrative head” and “under rules” was replaced with “pursuant to procedures.” What is the significance of this change in language?

4. During the February 4, 2011 conference it was referenced that the finance committee would be akin to the Joint Finance Committee of the Wisconsin Legislature. Is this petition making the members of the finance committee more powerful than the other justices not elected to the committee? Can a justice's constitutional powers be delegated to other justices? Can a grant of constitutional authority be trumped by an Internal Operating Procedure?

From: Patience Roggensack
To: Annette Ziegler; Supreme Court Assistants; Supreme Court Justices
Date: 1/22/2014 12:03 PM
Subject: Re: Open conference continuation of today
CC: Julie Rich

I agree with AKZ's suggestions. She requested that at the next open rules conference we continue the discussion of Rule Petition 12-07 and that AWB submit her concerns in writing to all the justices to assure discussion of her concerns. I too request that at the next possible date for the court's meeting that we finish our discussion on Petition 12-07.

PDR

From: Michael Gableman
To: Annette Ziegler; Patience Roggensack
Date: 1/21/2014 10:46 PM
Subject: Re: Open conference continuation of today
CC: Ann Bradley; Nancy Kopp; Shirley Abrahamson; Sonja Schade; Supreme Court...

I agree with Annette's recommendation and would add only that it would be very helpful for the rest of us if Ann would distribute to the rest of us the written objections which she referenced as having had at conference today. This would obviously help facilitate everyone's ability to be prepared for a comprehensive dialogue in regard to the concerns she has. Thanks.
Mike