



**REMARKS BY SHIRLEY S. ABRAHAMSON
CHIEF JUSTICE, WISCONSIN SUPREME COURT**

BEFORE THE JOINT COMMITTEE ON FINANCE

MARCH 29, 2011

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Good morning Co-Chair Darling, Co-Chair Vos, and members of the Joint Committee on Finance. Thank you for the opportunity to appear before you today to speak about how the recommendations in Senate Bill 27/Assembly Bill 40 will affect the operation of the courts and the judicial system in Wisconsin.

Our state faces a wide disparity between available resources and the people's needs for government services. This committee and the legislature face difficult challenges in crafting a balanced state budget.

The judicial branch has in place numerous cost containment measures. These measures have not been accomplished without stresses and strains. And I assure you that the judicial branch shall continue to find ways to become more frugal and cost-effective whenever possible in keeping with our constitutional responsibilities.

We must not, however, let these fiscal challenges weaken our government's core functions or impair our ability to meet our constitutional obligations. The justice system is a core state function and must be appropriately funded. As it was at the founding of the state, the judicial branch has a constitutional responsibility to provide a judicial system that can settle disputes in a fair, impartial, neutral and non-partisan way according to the law and that can protect the constitutional rights guaranteed to all the people of Wisconsin.

Court Budget Items We Support

We appreciate that the Governor's bill includes several of the court system's budget proposals. Provisions relating to court interpreters, uniform county reporting of revenue and expenditures relating to the courts, and the law library's purchase of digital appellate decisions are included in SB 27/AB 40.

We continue to support these as they will enable us to better serve the people who come through the courthouse doors. They are modest fiscally but are nevertheless important. We ask this committee for legislative support for these provisions.

We are pleased that the bill neither increases existing court-imposed and collected surcharges nor creates new surcharges. As I discussed when I came before this Committee two years ago, the proliferation of surcharges jeopardizes access to justice and raises questions of fairness. The money a violator pays may no longer fit the offense. Moreover, the ability to pay has not increased along with increased surcharges. As a

result, funding for existing criminal justice programs that depend on surcharges, assessments and fees may be in jeopardy. We urge you to resist well-meaning efforts to create or increase court surcharges.

A major concern we have with the budget bill is with provisions that adversely affect the judicial branch as an independent, separate, and co-equal branch of government. From this perspective, we raise the following four concerns, none of which requires additional resources.

1. Long-term Stability of Funding for CCAP—Consolidated Courts Automation Programs—Is Threatened

The proposed change in CCAP's funding structure threatens the long-term stability of CCAP funding. CCAP's revenue sources need to remain stable and under the court's authority. Without a strong, stable CCAP, the court system, indeed the entire justice system, cannot function in an effective and efficient manner.

The Governor's recommendation would delete CCAP's dedicated revenue source from the surcharge. Instead of CCAP receiving Justice Information System Surcharge (JISS) revenues through an appropriation, JISS revenues would be deposited to a new program appropriation under the control of the Department of Administration (DOA) to be further distributed and not necessarily to CCAP. Thus, CCAP is treated as an executive branch program, instead of a judicial branch program integral to the operation of the courts.

SB 27/AB 40 removes 28 percent of the Justice Information System Surcharge (JISS) revenues and \$4.2 million in supplies and services funding from the current CCAP appropriation. Under the bill, CCAP receives \$3,780,000 (90% of current funding) to a new sum certain CCAP appropriation, and the DOA Secretary would lapse the remaining 10% to the General Fund.

CCAP began in 1988 with GPR funds to help circuit courts modernize caseload management. CCAP has expanded to also provide e-filing, scheduling, and financial and jury management for circuit courts. Through the Wisconsin Circuit Court Access (WCCA), CCAP provides public website access to circuit court case information. WCCA handles between two and three million requests for information daily.

CCAP also supports data interfaces to share information with other justice partners, including district attorney offices, the Office of the Public Defender, and the Departments of Transportation, Justice, Workforce Development, and Revenue. Thus, CCAP is integral not only to the operations of the courts but also to other government entities that protect public safety and work in the public interest.

The Justice Information System Surcharge was originally created to fund CCAP. CCAP's last revenue increase was in 1999-2000 when the surcharge was raised by \$2 to give CCAP \$6 of surcharge revenues. But more recently the surcharge has been

increased to fund programs not related to justice information systems, and SB27/AB 40 would expand the use of the surcharge beyond justice information systems even further.

CCAP's dedicated funding source should be maintained and should be maintained under the judiciary's authority, not the Department of Administration's authority. We urge the committee to retain the current law under which \$6 of every \$21.50 of the surcharge revenues is deposited to CCAP's existing appropriation. The \$420,000 annual lapse to the General Fund would remain except that this lapse would come from a court appropriation rather than the DOA appropriation.

The change we request to the proposed budget bill does not require additional resources or funding and will help ensure the stability of CCAP funding.

2. Lapses from Court Program Revenue Appropriations Should Be Under the Court's Authority, Not the Department of Administration's Authority

SB27/AB 40 requires the Secretary of Administration to lapse to the general fund, from the unencumbered balances of court program revenue appropriations, \$638,400 annually. The amounts and procedures for assigning lapses to specific court appropriations are not specified. Under previous budget bills, the Chief Justice, as the administrative head of the judicial branch, was given the authority to identify the best way to make these reductions. The flexibility we have had in the past is crucial to our efforts to balance difficult cuts with our constitutional responsibilities.

We urge you to provide the judicial branch the flexibility which you have previously afforded us. We have an excellent track record of using budgetary flexibility and discretion to meet past lapse requirements as well as the operational needs of the court system.

3. Free Counties from the Mandates Relating to Self-Help Centers

For well over a decade, Wisconsin courts have been challenged with an ever-increasing number of people who cannot afford to hire an attorney or who, for whatever reason, choose to handle their cases themselves. For example, across the state about 60% of litigants represent themselves in family law matters. In response to increasing numbers of self-represented litigants, the state court system has been working on a number of strategies to assist self-represented litigants. Some counties have already developed self-help centers to provide information and services. The scope of services offered varies by county depending on the availability of staff, space and volunteers.

The budget proposal authorizes county boards to direct clerks of circuit court to operate self-help centers in the county courthouse, to charge a fee for services, and to provide certain information that is prescribed in the bill. The Governor's well-intentioned proposal threatens the expansion of individual county efforts in several ways.

First, the state prescribing services is unnecessary. Each county can and should be able to decide for itself what services it is willing and able to provide.

Second, the fees may limit access to the services, and the fees collected are not required to be used to support the self-help centers.

Third and most troubling, the bill prohibits volunteer and staff attorneys from giving legal advice at these centers. This restriction is counter-productive. One of the most valuable services a self-help center can provide is a clinic or workshop conducted by either a court staff attorney or volunteer attorney. The State Bar of Wisconsin strongly encourages attorneys to provide volunteer services, and several existing self-help centers currently use these free legal services.

We have found the present approach of providing guidance at the state level while allowing counties to initiate their own self-help programs without state mandates to be very effective.

We urge you to delete these operational mandates on the counties and the courts.

These changes require no additional resources or funding yet help maintain access to the court system for those who may not be able to afford a lawyer.

4. A Wisconsin Judicial Compensation Commission Should be Included in the Budget Bill

The court proposed a Wisconsin Judicial Compensation Commission to study and make recommendations on judicial compensation. This proposal was not included in the Governor's bill.

Under the proposal, every two years the Commission would make written recommendations to the Governor and the Joint Committee on Employment Relations (JCOER) on judicial salaries—in effect, replacing the executive branch's Office of State Employment Relations in the development of recommendations concerning judicial compensation.

Judicial compensation has been a long-standing concern, and Wisconsin has no systematic way for salary adjustments to be made based on analyses specifically intended for the judiciary. A judicial compensation commission will help ensure that judicial salaries are equitable and adequate to attract qualified lawyers to the bench and to retain experienced judges; that judicial compensation is set regularly and objectively; and that judicial compensation is considered in a nonpolitical atmosphere.

We ask you to include the court budget request to create a Wisconsin Judicial Compensation Commission in the budget bill.

No additional resources are requested or would be needed for the creation of a Judicial Compensation Commission. Commission members would serve without

compensation, and the Director of State Courts Office would provide staffing and support.

Other Justice Partners and SB27/AB40

We recognize that the court system is one part of a larger justice system.

As I travel the state, I learn firsthand how important our justice partners are. Component parts of the criminal justice system cooperate in circuit court initiatives, such as drug court, veterans court, and mental health court programs. These initiatives are proving successful for enhancing public safety and for reducing recidivism. Unfortunately, under the bill, Milwaukee County is losing its successful Treatment Alternatives and Diversion (TAD) funding, which saves costly jail and prison bed days.

The counties play an essential role in the justice system. As you know, circuit courts are funded by both the state and the county. The budget bill does not include our proposal seeking additional funds to go directly to the counties to help counties meet court-related expenses. The proposal was probably omitted because it has a significant fiscal impact.

Nevertheless, we are very concerned with the extensive cuts to counties contained in SB 27/AB 40, namely the 10 percent cut to court payment programs and the other non-court cuts. According to a recent Legislative Fiscal Bureau memorandum, payments to counties under the county and municipal aid program would be reduced by 24.1%. Cuts of this magnitude may reduce resources for the operation of the circuit courts and affect the ability of the circuit courts to fulfill their constitutional responsibilities.

Counties are only one of our important partners. Properly staffed district attorney offices, public defender offices, and clerk of court offices are necessary for the timely operation of our courts. Our courts become backlogged when these justice partners lack resources.

Criminal cases cannot be prosecuted well without experienced assistant district attorneys. The justice system cannot properly meet the constitutional requirement that competent counsel be provided for indigent criminal defendants without experienced assistant state public defenders and appointed counsel.

The court system supports the Legislature's updating the State Public Defender indigency guidelines last session. The Governor's budget provides funds to support the implementation of the new guidelines. These steps will help assure that the constitutional requirement of providing counsel to indigent defendants is met. Also, we applaud the Governor's efforts to increase salaries for assistant district attorneys. The Legislature may want to consider a similar approach to the salaries of state public defenders.

The Governor's proposal eliminates the \$4.5 million dollars provided in the last budget for civil legal assistance to indigents. This is a topic of great concern to the bench, the bar, and the public. We hope you reconsider this matter.

The public has a right to access the court system in a timely manner, and we must assure that the administration of justice is not compromised during these difficult fiscal times.

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Again, I appreciate the opportunity to address you today. We in the judicial branch recognize that we are only one part of a justice system that includes thousands of men and women who work in state and county government, in law enforcement and corrections, in social services, in treatment programs, and as attorneys.

I look forward to working with the public, our partners in government, and all of you in the months ahead in resolving the concerns we have about the proposed budget. We will work together to have a court system that is open, affordable and fair for the people of our great state.