

**Open Administrative Conference—Thurs.
9/15/11: 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 this conference addresses the first two series of proposals. Later open administrative conferences will address additional proposals.

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.

I. Court Conferences:

This Court, like all appellate courts, conducts only a small part of its case-deciding function --oral argument and the final published decision -- in public view.

Several proposals attempt to allow the public to more clearly see how we work. Transparency will help assure the public that we are working in a collegial fashion and doing the job we were elected to do.

Other proposals are designed to promote better working relationships and conditions.

The goal of more oral arguments outside of Madison is to allow the public to see the court first hand and to allow the Justices to speak with and listen to people from around the state.

Here are a few proposals:

1. The presumption should be that all conferences are open.
 - a. The open conference could be held in the hearing room.
 - b. The open conference could be held in the closed conference room and streamed to the public.
2. As an alternative to #1, the presumption should be that all conferences at which the court considers petitions for review to determine which cases the court will take are open.
3. As an alternative to #1, all court conferences from August 1 through July 31 each year could be taped (video or audio). The tapes (or the transcriptions) would be released in the fall after the period for reconsideration of opinions has expired.
4. An expert on small group dynamics could be retained at no expense to the taxpayers to work with each Justice for ways in which the Justice can work in a more constructive manner. Or, each Justice could, at no expense to the taxpayers, obtain professional training in conflict resolution.
5. The Justices could issue a joint statement pledging to work together in a collegial atmosphere.
6. An internal operating procedure or rule could be adopted that 4 Justices not be considered a quorum or a binding majority that can direct action by the Chief Justice or Court staff unless all Justices have been advised of the "meeting/conference" and all Justices have had the

ability to participate in the "meeting/conference" and in the decision making.

7. Hold oral arguments 2-3 times a year outside Madison for Justices to meet with the public, lawyers and members of local and state government entities whose work affects the judicial system. (In recent years we have taken only one trip outside of Madison a year to keep taxpayer costs down).

II. Recusals:

Recent judicial elections and motions by litigants seeking a justice's recusal have raised numerous contentious recusal issues. The Court has divided significantly on the issue of recusals, in both rule making and deciding cases.

Here are some proposals:

8. Support a legislative amendment to Wis. Stat. § 757.19 to provide, as the vast majority of states do, that judges must disqualify themselves when a reasonable, disinterested person would conclude that an appearance of impropriety exists.

9. Support a constitutional amendment to establish a tribunal (not composed of Justices) to rule on a litigant's objection to a Justice's refusal to disqualify himself or herself so that the challenged Justice's decision on his or her own impartiality is not the final decision.

10. Support a constitutional amendment that a judge be selected at random to replace a Justice who recuses himself or herself from a case. Thus a Justice is less apt to feel that he or she must sit to avoid an evenly divided court and the possibility of an evenly divided court is avoided.

11. Require each Justice to attend at least 1 education session every 3 years devoted to recusal and disqualification.

12. Appoint a committee of lawyers, judges and non-lawyers to review and propose guidelines (for

Court adoption) on recusal, especially with regard to contributions, expenditures, and endorsements in judicial campaigns.

I have made some of these proposals previously, and I will continue to make specific proposals, as I hope others will. Change is needed.