2007 AB 248

WISCONSIN STATE REPRESENTATIVE
Louis J. Molepske, Jr.
71ST ASSEMBLY DISTRICT

Assembly Bill 248

Increased Duties of Part-Time Court Commissioners

1. **Current Law**

   A. Wis. Stat. § 757.69: Powers and Duties of Circuit Court Commissioners (see attached)

      i. A court commissioner is a court official appointed by a judge to assist in findings of fact, hearing testimony and resolving issues.

      ii. In a number of cases court commissioners are granted many of the same powers and duties as judges. Specific duties of court commissioners vary depending on the particular judicial needs of the counties in which they serve.

         a. However, unlike judges (who are state employees), court commissioners are county employees.

      iii. Court commissioners tend to specialize in particular types of cases, but their primary responsibilities generally include issuing arrest warrants; bail reviews; presiding over initial appearances in small claims court; misdemeanor and felony initial appearances and pre-trials; CHIPS petitions and initial hearings; paternity initial appearances; probable cause hearings in mental illness or temporary guardianship cases; intake for default divorces; traffic intake; issuing domestic violence and harassment temporary restraining orders and injunctions; divorce temporary hearings and post-judgment motions and hearings; stipulated divorces; domestic abuse and harassment restraining orders; dependency detention hearings and contested small claims court trials.

         a. Court commissioners work primarily on preliminary and post-judgment activities.

DISTRICT:
1557 Church Street
Stevens Point, WI 54481
(715) 342-8985
Rep.Molepske@legis.state.wi.us

STATE CAPITOL:
P.O. Box 8953
Madison, WI 53708-8953
Toll-free: 888-534-0071 or (608)267-9649
FAX: (608) 282-3671

iv. Depending on the county, court commissioners can function on either a full-time or a part-time basis.

a. A majority of counties in the State of Wisconsin have less than one full-time court commissioner.

2. Problem: Limited State and County Resources

A. According to a recent study completed by the National Center for State Courts (see attached), Wisconsin is in need of an additional **18 circuit court judges** and **12 circuit court commissioners** to simply *keep up* with the increased demand on our court system.

i. Due to cost considerations, this is not an economically viable option at the current time.

B. One short term solution to this growing problem has been the creation and expansion of both full and part-time court commissioner positions.

i. According to the Wisconsin State Law Library, there are currently **74** full-time court commissioners and **70** part-time court commissioners in the State of Wisconsin. However, not all counties have court commissioners.

C. Unfortunately, under current law, part-time court commissioners lack many of the powers that full-time court commissioners possess.

i. As it pertains to criminal cases, full-time court commissioners can conduct preliminary examinations, arraignments, and with the consent of both the state and the defendant, accept guilty pleas. However, part-time court commissioners lack these powers.

D. This can create a number of administrative difficulties for counties and stands as a major impediment to our legal system's goal of providing "judicial economy."

i. For example, in Portage County, the part-time court commissioner can conduct "intake," but in the event that a preliminary hearing becomes necessary, participants must wait for a judge to preside over the matter.

ii. This requirement unnecessarily increases the workloads of our circuit court judges and can contribute to the general public's dissatisfaction with the court system.

a. Due to the fact that courts only operate during regular business hours, parties must take time off from work for court hearings, which can create an economic hardship for a number of people.

iii. This problem becomes particularly pronounced in counties that only have one judge.

E. Part-time court commissioners receive essentially the same training as other judicial officials and have comparable expertise.

i. Under Wisconsin's Supreme Court Rules, judges, full-time court commissioner and part-time court commissioners all must all earn at least 60 education credits every six years.

ii. One education credit is awarded for each half-day of attendance at an in-state education program or at a continuing legal education program approved by the board of bar examiners.

3. Assembly Bill 248

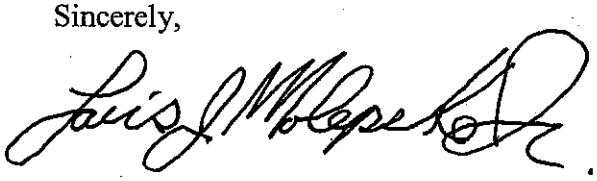
A. This bill would provide a limited amendment to Wis. Stat. § 757.69(1)(b) that would allow part-time court commissioners to conduct preliminary examinations, arraignments and accept guilty pleas in criminal cases provided that both parties consent.

B. This minor change should be a tremendous benefit to counties by enabling them to save time, money and judicial resources.

C. This bill provides procedural safeguards to ensure that due process is afforded to all involved parties.

Thank you very much for your consideration of this proposal.

Sincerely,



Louis J. Molepske, Jr.
State Representative
71st Assembly District

office of family court commissioner is in addition to the maximum number of circuit court commissioners permitted by sub. (1). The circuit court commissioner supervising the office of family court commissioner, or any circuit court commissioner assisting in family matters, may be placed under a county civil service system by resolution of the county board.

(b) *Milwaukee County.* In counties having a population of 500,000 or more, there is created in the classified civil service a circuit court commissioner position to supervise the office of family court commissioner and such additional circuit court commissioner positions as the county board shall determine and authorize. Circuit court commissioners shall be appointed to these positions by the chief judge of the judicial administrative district under SCR 75.02 (1).

(3m) The board of supervisors of any county may establish one or more circuit court commissioner positions on a part–time or full–time basis to assist in matters affecting juveniles. A circuit court commissioner under this subsection shall serve at the discretion of the chief judge.

(4m) In counties having a population of 500,000 or more, there is created in the classified civil service a circuit court commissioner position to supervise the office of probate court commissioner and to assist the court in probate matters. In counties having a population of at least 100,000 but not more than 500,000, the county board may create a circuit court commissioner position to supervise the office of probate court commissioner and to assist in probate matters. That position may be in the classified civil service. If the chief judge delegates that authority to a judge assigned to probate jurisdiction, that judge may assign to the circuit court commissioner any matters over which the judge has jurisdiction, and the circuit court commissioner may determine such matters and may sign any order or certificate required by that determination.

(5m) In counties having a population of 500,000 or more, the county board shall establish at least one circuit court commissioner position on a full–time basis to assist in small claims matters under ch. 799. In counties having a population of less than 500,000, the county board may establish one or more circuit court commissioner positions on a part–time or full–time basis to assist in small claims matters under ch. 799.

(6) The county board shall set the salary of persons appointed as circuit court commissioners. The county board shall furnish circuit court commissioners with necessary office space, furnishings, supplies, and services.

(7) The chief judge of the judicial administrative district may assign law clerks, bailiffs, and deputies to a circuit court commissioner. The chief judge shall supervise those law clerks, bailiffs, and deputies assigned to the court, except that the chief judge may delegate that authority.

(8) Each circuit court commissioner shall participate in programs of continuing circuit court commissioner education required by the supreme court. The supreme court shall charge a fee for the costs of the continuing education programs required under this subsection. All moneys collected under this subsection shall be credited to the appropriation account under s. 20.680 (2) (ga).

History: 1973 c. 278; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 199; 1975 c. 430 s. 80; 1977 c. 187 s. 96; 1977 c. 323 ss. 7, 11; 1977 c. 345; 1977 c. 418 ss. 751, 752; 1977 c. 447 ss. 192 to 195; 1977 c. 449; Stats. 1977 s. 757.68; 1979 c. 32 s. 92 (16); 1981 c. 317 ss. 85pg, 2202; 1987 a. 151, 208; 2001 a. 61 ss. 10, 84 to 92, 113, 168, 170; 2001 a. 105 s. 73.

757.69 Powers and duties of circuit court commissioners. (1) A circuit court commissioner may:

(a) Direct a case to the proper court if the defendant wishes to enter a plea after intelligent waiver of rights.

(b) In criminal matters issue summonses, arrest warrants or search warrants, determine probable cause to support a warrantless arrest, conduct initial appearances of persons arrested, set bail, inform the defendant in accordance with s. 970.02 (1), and refer the person to the authority for indigency determinations specified under s. 977.07 (1). A circuit court commissioner employed on a full–time basis may conduct the preliminary examination and arraignment and, with the consent of both the state and the defendant, accept a guilty plea. If a court refers a disputed restitution issue under s. 973.20 (13) (c) 4., the circuit court commissioner shall conduct the hearing on the matter in accordance with s. 973.20 (13) (c) 4.

(c) Conduct initial appearances in traffic cases and county ordinance cases, in traffic regulation cases and county ordinance cases receive noncontested forfeiture pleas, order the revocation or suspension of operating privileges and impose monetary penalties according to a schedule adopted by a majority of the judges of the courts of record within the county, and refer applicable cases to court for enforcement for nonpayment.

(d) In small claims actions, conduct initial return appearance and conciliation conferences.

(e) Conduct noncontested probate proceedings.

(f) Issue warrants and capiases for those who do not appear as summoned.

(g) When assigned to assist a court in juvenile matters:

1. Issue summonses and warrants.

2. Order the release or detention of children or expectant mothers of unborn children taken into custody.

3. Conduct detention and shelter care hearings.

4. Conduct preliminary appearances.

5. Conduct uncontested proceedings under s. 48.13, 48.133, 938.12, 938.13, or 938.18.

6. Enter into consent decrees.

7. Exercise the powers and perform the duties specified in par. (j) or (m), whichever is applicable, in proceedings under s. 813.122 or 813.125 in which the respondent is a child.

8. Conduct hearings under s. 48.21 or 938.21 and thereafter order a child or juvenile held in or released from custody.

9. Conduct hearings under s. 48.213 and thereafter order an adult expectant mother of an unborn child to be held in or released from custody.

10. Conduct plea hearings.

11. Conduct prehearing conferences.

12. Issue orders requiring compliance with deferred prosecution agreements.

13. Conduct all proceedings on petitions or citations under s. 938.125.

(h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20, 51.45, 55.13, and 55.135, conduct reviews of guardianships under ch. 54 and reviews of protective placements and protective services under ch. 55, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions, and, if the person claims or appears to be unable to afford counsel, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

NOTE: Par. (h) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(i) Conduct inquests under ch. 979.

(j) Hold hearings, make findings and issue temporary restraining orders under s. 813.122 or 813.123.

(k) Administer oaths, take, certify, and report depositions and testimony, take and certify acknowledgments, allow accounts, and fix the amount and approve the sufficiency of bonds.

(m) Hold hearings, make findings, and issue temporary restraining orders and injunctions under s. 813.12 or 813.125.

(n) Hold hearings, make findings and issue orders under s. 49.856 (4).

(o) Hold hearings and issue orders on petitions under s. 173.23 (3).

(p) When assigned to assist in matters affecting the family:

1. Preside at any hearing held to determine whether a judgment of divorce shall be granted, if both parties state that the marriage is irretrievably broken and that all material issues, including but not limited to division of property or estate, legal custody, physical placement, child support, spousal maintenance and family support, are resolved or if one party does not participate in the action for divorce. A circuit court commissioner may grant and enter judgment in any action over which he or she presides under this subdivision unless the judgment modifies an agreement between the parties on material issues. If the circuit court commissioner does not approve an agreement between the parties on material issues, the action shall be certified to the court for trial.

2. Conduct hearings and enter judgments in actions for enforcement of, or revision of judgment for, maintenance, custody, physical placement or visitation.

3. Except when prohibited by the chief judge of the judicial administrative district, conduct hearings and enter orders and judgments in actions to establish paternity, in actions to establish or enforce a child support or a family support obligation and in actions to revise orders or judgments for child support or family support.

(1m) Circuit court commissioners assigned to assist a court in juvenile matters shall sit at the children's court center, the usual court facility for juvenile matters, or such other facility designated by the chief judge of the judicial administrative district. Those commissioners may not do any of the following:

(a) Conduct fact–finding or dispositional hearings except on petitions or citations under s. 938.125 and except as provided in sub. (1) (g) 5.

(b) Make dispositions other than approving consent decrees, ordering compliance with deferred prosecution agreements and ordering dispositions in uncontested proceedings under s. 48.13, 48.133, 938.12, or 938.13.

(c) Conduct hearings for the termination of parental rights or for adoptions.

(d) Make changes in placements of children, of juveniles, or of the expectant mothers of unborn children, or revisions or extensions of dispositional orders, except pursuant to petitions or citations under s. 938.125 and in uncontested proceedings under s. 48.13, 48.133, 938.12, or 938.13.

(e) Conduct hearings, make findings, or issue orders in proceedings under s. 48.977 or 48.978.

(f) Conduct waiver hearings under s. 938.18, except as provided in sub. (1) (g) 5.

(g) Make any dispositional order under s. 938.34 (4d), (4h), or (4m).

(2) A judge may refer to a circuit court commissioner cases in which:

(a) The trial of an issue of fact requires the examination of an account, in which case the circuit court commissioner may be directed to report upon any specific question of fact involved therein.

(b) The taking of an account is necessary for the information of the court before judgment or for carrying a judgment or order into effect.

(c) A question of fact other than upon the pleadings arises.

(d) Proposed findings of fact and conclusions of law are to be prepared pertaining to default mortgage and land contract foreclosures and mechanics liens.

(2m) Circuit court commissioners may exercise, under their own authority, all of the powers listed under s. 757.675 (2) to (5).

(2t) A circuit court commissioner shall cooperate with the county and the department to ensure that all dependent children receive reasonable and necessary child support.

(8) Any decision of a circuit court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing de novo.

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 Wis. 2d xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; 1999 a. 32; 2001 a. 16; 2001 a. 61 ss. 93 to 109, 173, 175, 177, 180; 2001 a. 105; 2005 a. 264, 387; s. 13.93 (2) (c).

Section 970.04 specifically limits the availability of a second preliminary examination in a criminal matter and precludes a request for a de novo hearing under the more general sub. (8). State v. Gillespie, 2005 WI App 35, 278 Wis. 2d 630, 693 N.W.2d 320, 04–1758.

757.70 Hearings before court commissioners. (1) All proceedings and hearings before a court commissioner shall be public and open to every citizen, except juvenile proceedings or when it is necessary for the court in which the action or proceeding is pending to impose by order restrictions under its inherent power to conduct proceedings in camera.

(2) All hearings before a circuit or supplemental court commissioner shall be held in the county courthouse or other court facilities provided by law. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.675 (2) (h) or depositions taken before a circuit or supplemental court commissioner.

History: 1977 c. 323; 2001 a. 61.

757.81 Definitions. In ss. 757.81 to 757.99:

(1) "Commission" means the judicial commission created by s. 757.83.

(3) "Judge" means a judge of any court established by or pursuant to article VII, section 2 or 14, of the constitution, or a supreme court justice.

(4) "Misconduct" includes any of the following:

(a) Willful violation of a rule of the code of judicial ethics.

(b) Willful or persistent failure to perform official duties.

(c) Habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties.

(d) Conviction of a felony.

(5) "Panel" means a judicial conduct and disability panel constituted under s. 757.87.

(6) "Permanent disability" means a physical or mental incapacity which impairs the ability of a judge or circuit or supplemental court commissioner to substantially perform the duties of his or her judicial office and which is or is likely to be of a permanent or continuing nature.

History: 1977 c. 449; 1983 a. 378; 1991 a. 269; 1995 a. 77; 2001 a. 61.

The provisions for judicial disciplinary proceedings under ss. 757.81 to 757.99 are constitutional. In Matter of Complaint Against Seraphim, 97 Wis. 2d 485, 294 N.W.2d 485 (1980).

757.83 Judicial commission. (1) MEMBERSHIP; APPOINTMENT; TERMS. (a) There is created a judicial commission of 9 members: 5 nonlawyers nominated by the governor and appointed with the advice and consent of the senate; one trial judge of a court of record and one court of appeals judge appointed by the supreme court; and 2 members of the State Bar of Wisconsin, who are not judges or court commissioners, appointed by the supreme court. The commission shall elect one of its members as chairperson.

(b) The term of a member is 3 years, but a member shall not serve more than 2 consecutive full terms. A vacancy is filled by the appointing authority for the unexpired term. Members of the commission shall receive compensation of $25 per day for each day on which they were actually and necessarily engaged in the performance of their duties and shall be reimbursed for expenses necessarily incurred as members of the commission.

(2) QUORUM; VOTING. A majority of the commission constitutes a quorum. The commission may issue a formal complaint or a petition only upon a finding of probable cause by a majority of

Written Testimony of David J. Worzalla

Assembly Bill 248

May 3, 2007

Dear Committee Members,

I am writing this letter in support of Representative Molepske's 2007 bill to amend Section 757.69 (1)(b) of the Wisconsin Statutes relating to the powers and duties of part-time court commissioners. This bill would expand the duties of part-time court commissioners to include conducting preliminary hearings, arraignments and accepting guilty pleas when both the state and defendant consent. Currently, only full-time court commissioners have these duties.

Most of the counties in this state have only part time court-commissioners. I handle intake for the judges in Portage County when they are unable to do so. When there is an arraignment, preliminary hearing or guilty plea the matter must be rescheduled for a judge to preside over. This requires the defendants and their attorneys to come back at another date and time and the judges have to end up hearing the cases anyway. This is not judicial economy. The judges are overworked and need relief. Adding judges would work, but is not going to happen. As such, court commissioners are a solution.

Any part-time court commissioner who works more than 40 hours per year must complete the same judicial education as full time court commissioners and judges. I work a minimum of 25 hours per week.

I urge you to support this bill. I'm happy to answer any questions you have or provide whatever information you need.

Respectfully submitted,

David J. Worzalla
Part-Time Court Commissioner for Portage County