

DEC 14 1999

DANE COUNTY
PROBATE COURT

CITY-COUNTY BLDG RM 305
MADISON WI 53709

608-266-4331
FAX 608-267-4152

DAVID A. FLESCH
CIRCUIT COURT COMMISSIONER
The Official Court Commissioner
of the New Millennium

December 13, 1999

SENATOR ROBERT WIRCH
P O BOX 7882
MADISON WI 53707-7882

Re: Commissioner Retirement

Dear Senator Wirch:

First, thank you for your support to include court commissioners in the category of "executive participating employees" under the retirement system.

Enclosed is a copy of a separate bill Senator Erpenbach will be introducing in the next session. The Wisconsin Association of Judicial Court Commissioners has received a strong commitment of support from Senator Chvala, Senator Risser and Speaker Jensen.

I hope you can continue to support our efforts by contacting Senator Erpenbach and agreeing to co-sponsor the bill.

If you have any questions, please call me.

Sincerely,



DAVID A. FLESCH
CIRCUIT COURT COMMISSIONER

Jim Fitzgerald

f

Carl Greco

Support

Cost Commission

Change

AUG 13 1999

8-12-99

Dear Co-Chair, Sen. Wirch,

I am writing to each of you members of the Joint Survey Committee on Retirement Systems as a non-constituent, so I apologize if I am repeating what other constituent court commissioners have said. I also hope you can forgive my primitive long-hand + copying; thank you for your attention.

As you know, we court commissioners have hired a lobbyist in our efforts to have the Wisconsin Retirement System creditable service multiplier raised to 2% to reflect our quasi-judicial status. In my talks with Sen. Judy Robson + Rep. Dan Schooff, I found that they had no idea how similar our situations are to the elected judges.

We have always been subject to the same Judicial Code of Ethics as all judges + been required to file financial disclosure forms, however, on January 1, 1999 all circuit court commissioners came under new rules adopted by the Supreme Court. We commissioners are now appointed by the chief judge in our district + must meet exactly the same educational requirements specific to judicial functions.

I believe you as politicians can understand best some of the sacrifices entailed. All the restrictions are designed to assure both a lack of bias and appearance of bias to promote the

public's confidence in an independent judiciary. We sacrifice privacy in the disclosing of personal finances, we sacrifice our right to do any outside legal work, we sacrifice our rights to be involved in even charitable fundraising + accept many restrictions on our political involvement. In addition, we place ourselves in politically vulnerable situations. Commissioners have lost their jobs this year. I serve all the Rock County judges under the supervision of one + by the authority of a Dane County Chief Judge while actually employed by the county - a lot of elected officials + agendas, especially when one's political rights are restricted. I believe there have been more actual assaults + damage to property to Commissioners than to judges.

Every single task we perform is one judges must perform themselves except where court Commissioners are available; we are part of the judiciary. We are the only key players in the courtroom not state employees, unlike judges, prosecutors, public defenders + court reporters. Even though we are mandated to get judicial training we are not able to get it through the judicial education office because of its funding. For all of these reasons, we believe it is only fair that we be treated the same as judges in the WRS.

The only difference is that we are not elected. However, as you know, there are a large number of executive participating employees

in the 2% category who are also not elected officials. We believe that none of them have greater job-related restrictions, are more politically vulnerable, or face as great a risk of even danger for decision-making. We also serve a state function despite our being County-employed. For all these reasons, we believe we logically belong in the 2% category.

We understand that you probably want to make any adjustments as part of a comprehensive, rational plan. Accordingly, I would very much appreciate a call about your first impressions + concerning any hearing where I could give any further input. Of course, I welcome any questions you may have at this time. Again, thank you for your attention.

Sincerely,

Stephen Meyer
Rock County Circuit
Court Commissioner
250 Garden Lane,
Beloit, WI
W (608) 364-2003
H (608) 365-3986

JUL 29 1999



Fond du Lac County

FAMILY COURT COMMISSIONER
(414) 929-3075

City/County Government Center
160 South Macy Street, Fond du Lac, WI 54935

July 28, 1999

Senator Robert Wirch
P. O. Box 7882
Madison, WI 53707

Dear Senator Wirch:

I am the Family Court Commissioner for Fond du Lac County. This letter is being forwarded to you on my own behalf and not as a representative of the county.

My duties as Family Court Commissioner are similar to those performed by the Circuit Judges and include, but are not limited, to the following: presiding over all pre-judgment and post-judgment family law and paternity proceedings (i.e., custody, placement, maintenance, child support, family support, property division and related matters); presiding over all support enforcement proceedings; conducting initial appearance and pre-trial paternity proceedings; issuing temporary restraining orders and presiding over all civil domestic abuse and civil harassment proceedings and conducting injunction hearings; coordinating placement mediation referrals with Family Court Services and issuing appropriate orders; conducting uncontested divorces; presiding over all hearings in pending divorce proceedings; and related matters. In addition to the majority of my time being consumed in the Courtroom, I am further challenged to insure that all of my cases are prepared, researched and briefed in advance of any hearing. To say that the duties of my office are extremely demanding given the time constraints and responsibilities would be a gross understatement. Nevertheless, my work ethic accepts nothing less than total commitment to my office, the Court, the litigants, the attorneys and the Judges to whom I serve.

On January 1, 1999, all Circuit Court Commissioners in Wisconsin came under new rules adopted by the Supreme Court. Commissioners are now appointed by the Chief Judge in their district, are required to file an annual financial disclosure statement with the Ethics Board, are required to meet the same educational requirements as Judges, and are subject to the same Judicial Code of Ethics as Judges. Unfortunately, we do not enjoy the same credible service multiplier in calculating retirement benefits under the Wisconsin Retirement System that Judges, other elected officials and executive participating employees receive.

I am respectfully requesting for your consideration supporting a legislative effort to change the credible service multiplier used to calculate retirement benefits for Commissioners. Commissioners have traditionally been in the general category and the multiplier has been 1.6%. With the new requirements that went into effect on January 1, Commissioners maintain that they should now have the benefit of the same 2% credible service multiplier as Judges.

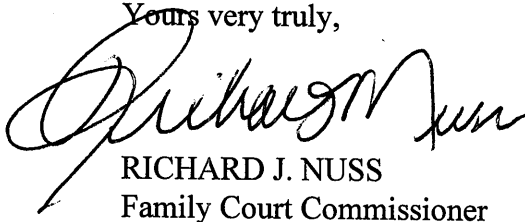
First on the Lake

Senator Robert Wirch
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The 2% category also applies to executives participating employees. This category includes many positions in the upper and middle levels of the State and University bureaucracies. However, Circuit Court Commissioners have as many if not more employment related restrictions and responsibilities as those currently listed in the executive participating employee category.

Thank you in advance for your cooperation and courtesies in giving this critical issue your preferred attention. Should you have any questions or I can be of further assistance regarding this matter, please do not hesitate to contact me. My office number is (920) 929-3075 and my FAX number is (920) 929-7058.

Yours very truly,



RICHARD J. NUSS
Family Court Commissioner

RJN:pl



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MEMORANDUM

TO: Senator Wirch

FROM: Ron Kuehn, 252-9325

DATE: July 9, 1999

RE: **Court Commissioners' Benefits Under the State Retirement Plan**

The Problem:

Under current law, court commissioners qualify for a monthly annuity payment computed by multiplying the commissioner's final average earnings by his creditable service and **1.6%**. Judges, defined in the statutes as "elected officials," currently qualify for a monthly annuity payment computed by multiplying the judge's final average earnings by his creditable service and **2%**. (See statute referenced below.) Despite the fact that the duties of court commissioners and judges are extraordinarily similar, commissioners' retirement benefits are calculated with a lower percentage, which results in a significantly lower monthly retirement benefit.

Section 40.23 (2m)(e) A monthly annuity in the normal form computed on the basis of the participant's final average earnings and creditable service, if the annuity becomes effective on or after the normal retirement date of the participant, determined by multiplying the participant's final average earnings by the participant's creditable service and the following applicable percentage:


1. For each participant for creditable service of a type not otherwise specified in this paragraph, 1.6%. [Court Commissioners]
2. For each participant for creditable service as an elected official or as an executive participating employe, 2%. [Judges]

The Solution:

For the purposes of Chapter 40, Wisconsin Statutes (the section of statutes that describes the calculation for benefits under the state's retirement plan) "executive participating employes" also receive the 2% annuity calculation. These employees are currently defined to include the following persons:

TO: Senator Wirch
FROM: Ron Kuehn
DATE: July 9, 1999
RE: Court Commissioners' Benefits Under the State Retirement Plan
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- s. 19.42(10)L The executive director, executive assistant to the executive director, internal auditor, chief investment officer, chief financial officer, chief legal counsel, chief risk officer and investment directors of the investment board.
- s. 20.923(4) STATE AGENCY POSITIONS. (See attached statute.)
- s. 20.923(4g) UNIVERSITY OF WISCONSIN SYSTEM SENIOR EXECUTIVE POSITIONS. (See attached statute.)
- s. 20.923(8) DEPUTIES. (Includes the deputy state auditor (s. 13.94(3)(b)), deputies appointed by the secretaries of a department or the heads of an individual agency (s. 15.04(2)) (See attached statute.)
- s. 20.923(9) EXECUTIVE ASSISTANTS. (See attached statute.)
- s. 230.08(2)(e) UNCLASSIFIED SERVICE. (A number of division administrator positions for boards, departments or commissions are specified under this statute. See attached statute.)

 In order to raise court commissioners' annuity payments to a level equal to that of judges and other executive participating employees (2%), one could make the following statutory amendment to the definition of "executive participating employe" under section 40.02(30):

s. 40.02(30) "Executive participating employe" means a participating employe in a position designated under s. 19.42(10)(L) or 20.923(4), (4g), (8) or (9), **a participating court commissioner under s. 48.065, 757.68, 757.72, 767.13, 938.065, or a participating employe** authorized under 230.08(2)(e) during the time of employment. All service credited prior to May 17, 1988, as executive service as defined under s. 40.02(31), 1985 stats., shall continue to be treated as executive service as defined under s. 40.02(31), 1985 stats., but no other service rendered prior to May 17, 1988, may be changed to executive service under s. 40.02(31) 1985 stats.

Question: Which of the court commissioners classifications should be eligible for the enhanced retirement percentage?

By adding the above statutory references that are in bold and underlined, we include the following sections of statutes that define court commissioners to the Chapter 40 definition of "executive participating employe," and therefore raise the court commissioners' annuity calculation from 1.6% to 2%. (The following statutes are also attached for further reference.)

- s. 48.065 Juvenile court commissioners.
- s. 757.68 Court Commissioners.
- s. 757.72 Office of probate court commissioner.

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s. 767.13 Family court commissioner; appointment; powers; oaths; assistants.
s. 938.065 Juvenile court commissioners.

Why an Amendment is Needed:

Court commissioners perform many of the same duties that judges perform. They are subject to the same educational requirements as judges. Furthermore, there are a number of public employee classifications who enjoy the 2% whose duties are relatively more or less comparable to those of court commissioners.

This is an issue of fairness of treatment. It is not fair to separate court commissioners from other public employees who are allowed to participate at the 2% annuity calculation.



STATE OF WISCONSIN

Department of Employee Trust Funds

Eric O. Stanchfield
Secretary
801 West Badger Road
P.O. Box 7931
Madison, WI 53707-7931

May 12, 1999

Brian Pleva
Office of State Representative Daniel P. Vrakas
Room 119 West
State Capitol
P.O. Box 8953
Madison 53708-8953

Dear Brian:

You recently sent me a memo requesting a preliminary fiscal estimate on the cost to the Wisconsin Retirement System (WRS) of reclassifying court commissioners as elected/state executive participants under the WRS. If this were to happen, their WRS retirement benefits would increase, as the formula factor used to generate court commissioners' retirement annuities would change from 1.6% to 2%.

In developing the fiscal estimate for this proposal, I assumed that the reclassification proposal would be prospective only, and not retroactive. Generally, all costs associated with a retroactive benefit improvement become an obligation of the employer in the form of unfunded liability. In this case, a retroactive increase could result in substantial cost increases for counties. Because many counties would be unable to fund the increased costs for a retroactive benefit improvement out of current operating revenues, the cost would become another component of the counties' unfunded accrued actuarial liability (UAAL).

I also made the following assumptions:

Number of court commissioners:	65
Average court commissioner salary:	\$42/hr * 40 hrs * 52 wks = \$87,360
Percent of payroll increase for employers*:	3.6
Estimated annual increased cost to employers	$65 * \$87,360 * 3.6\% = \$204,442$

*The percent of payroll increase for employers is the difference between the 1999 WRS average total cost to employers for employes in the executive/elected officials category (15.1%) and the cost to employers for employes in the general category (11.5%).

The estimated cost to employers (e.g., counties) for reclassifying court commissioners as elected/state executive participants under the WRS, based on these assumptions, is an additional \$204,442 per year.

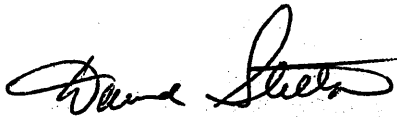
In his memo, Jordan Lamb made the statement to Ron Kuehn that the WRS is "sufficiently overfunded" to absorb the cost of the proposed benefit increase for court commissioners. This is not true. The WRS cannot simply absorb the cost of this proposed classification change. The WRS is obligated to have the funds to pay the benefits being paid to current annuitants plus the present value of benefits to be paid in the future to current employes. The sum of the funds from employe contributions, employer contributions, and investment earnings must cover WRS obligations. As of 1997, the WRS had 94.7% of the assets needed to pay current obligations.

Brian Pleva
May 12, 1999
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If individual county employer costs do not increase to fund the proposed court commissioner benefit improvement, the cost burden would be shifted to other WRS employers and employes. An increase in the benefit structure for one group of participants (e.g. an increase in benefits for court commissioners) that requires contribution rate increases will either be paid by the employer of those employes or all active employes and employers participating in the WRS. The WRS does not have excess funds. Taking funds from all participants to fund a benefit improvement for one group not only raises legal and constitutional issues, but it also creates equity issues that lead to other groups demanding the same treatment.

I hope the cost estimate and the explanation of how the WRS is funded are helpful to you. Please contact me if you have any further questions you would like to discuss.

Sincerely,



Dave Stella
Administrator, Division of Retirement Services
(608) 267-9038
FAX (608) 267-0633
Dave.Stella@etf.state.wi.us