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## WISCONSIN LEGISLATIVE COUNCIL

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### DISTRICT ATTORNEY FUNDING AND ADMINISTRATION

225 Northwest  
State Capitol, Madison

December 15, 2006  
9:00 a.m. - 10:55 a.m.

[The following is a summary of the December 15, 2006 meeting of the Special Committee on District Attorney Funding and Administration. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>. ]

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#### Call to Order and Roll Call

Chair Gundrum called the meeting to order and the committee recited the Pledge of Allegiance. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Mark Gundrum, Chair; Sens. Fred Risser and Carol Roessler; Rep. Louis Molepske; and Public Members Professor John Blakeman, Adam Gerol, Jeff Greipp, Craig Knutson, Larry Lasee, and Stuart Morse.

COMMITTEE MEMBER EXCUSED: Public Members Scott Horne and Judge David Resheske.

COUNCIL STAFF PRESENT: Don Dyke, Chief of Legal Services, and Larry Konopacki, Staff Attorney.

APPEARANCES: Nicholas L. Chiarkas, State Public Defender; and Krista Ginger, Executive Assistant/Legislative Liaison, Office of the State Public Defender.

#### Approval of the Special Committee's November 10, 2006 Minutes

*Representative Molepske moved, seconded by Mr. Morse, that the Summary of Proceedings of the Special Committee's November 10, 2006 meeting be approved. The motion was approved unanimously.*

## **Administration of Office of State Public Defender**

### **Nicholas L. Chiarkas, State Public Defender**

Mr. Chiarkas outlined the administration and functions of the Office of State Public Defender for the committee. He explained that the office is governed by a nine-member board, appointed by the Governor with the advice and consent of the Senate for staggered three-year terms. He characterized the board as nonpartisan and noted that five members must be members of the State Bar of Wisconsin. He explained as State Public Defender he serves at the pleasure of the board and has done so since 1988.

Generally, the office provides criminal representation for indigent persons at the trial and appellate levels and has other specified responsibilities as well. He said there are 300 plus attorneys in the trial and appellate divisions and all staff of the Public Defender Office are appointed by Mr. Chiarkas. He noted that public defenders are not unionized.

Mr. Chiarkas said that the agency is essentially administered by a 12-person team that meets monthly. The board meets quarterly. He said that the board is active and does a great job of lobbying for the office. He said that the office's legislative liaison, Krista Ginger, has substantially improved the office's relationship with the Legislature because of her credibility and respect.

In response to numerous questions and comments from the committee, among the information provided and comments made by Mr. Chiarkas in response were the following:

- There are approximately 39 employees in the public defender administrative office, including division heads, legal counsel, billing administration, payroll and collections, information technology, and human resources.
- Board appointments are made largely through the Governor's office with relatively little input from the State Public Defender's office. He discussed individual members of the board and noted that information on board members can be found on the Public Defender's web site.
- In formulating the office's budget, the office initially makes a recommendation to the board, a board subcommittee considers the recommendation, and the full board determines the budget that gets forwarded to the Department of Administration (DOA).
- It would be a benefit to the state if a nonpolitical entity were created to advocate for district attorneys, particularly if the entity could also advocate for related justice issues. In addition, it would benefit the criminal justice system if prosecutor's caseloads were reduced to permit prosecutors to deal with other issues such as diversion and prevention.
- 92% of the office's budget is for personnel within the office and for private bar representation. He said that new staff is generally always less expensive than the private bar; that for misdemeanors and simple felonies, the private bar is generally less expensive than using staff attorneys with 10 or more years of experience; and that for homicides and other serious or complex cases, it is always less expensive to use public defender staff.

- The number of persons not eligible for public defender representation is increasing and, consequently, the number of judicial appointments for indigent defendants for which the county is responsible are increasing.
- Turnover in the Public Defender Office is about 3% a year. It was noted that turnover among assistant district attorneys approached 50% for the last several years. Regarding the latter, Mr. Chiarkas noted: some turnover is always ok (one can usually count on these as future supporters); it is easier to move into other jobs from the position of prosecutor and more people go into prosecution with the idea of using that position as a ladder for another job; it is a difficult job and it will always have higher turnover; most public defenders would always rather be facing a seasoned, confident prosecutor; in general, good prosecutors result in better public defenders, which results in better judges.

**Krista Ginger, Executive Assistant/Legislative Liaison, Office of the State Public Defender**

Ms. Ginger assisted Mr. Chiarkas in his remarks and responses to committee questions and comments. She explained that her legislative liaison duties are substantial during the budget process in particular. She explained that the office is active in getting information to the Legislature and in commenting on the effects of the budget and individual bills before the Legislature. In addition, the liaison responds to certain constituent inquiries. Ms. Ginger also outlined the reduced caseloads for various supervisors in the office and discussed their other responsibilities.

**Discussion of Committee Assignment**

Chair Gundrum noted that he had discussed a possible transfer of state prosecutor office functions with DOA Secretary Steve Bablitch. He said that the department is open to the possibility of a transfer. Chair Gundrum said that if the committee desires more than a simple transfer of functions, then it is up to the district attorneys and assistant district attorneys to inform the committee regarding what other changes in the administrative structure are desired. Chair Gundrum also added that Attorney General-elect J.B. Van Hollen is agreeable to a transfer to the Department of Justice (DOJ), assuming adequate positions are provided.

Mr. Gerol said that the District Attorneys Association has been looking at other states' models to assist them in developing a proposal. He noted that there is some concern with a transfer of state prosecutor functions to the DOJ in connection with retaining the autonomy of district attorneys. He suggested a transfer might be acceptable if there is some sort of coordinating council as part of the transfer.

Mr. Greipp noted that there appears to be consensus between the district attorneys and assistant district attorneys concerning the desirability of some sort of prosecutors council or board to advance and coordinate the interest of prosecutors.

It was noted that both the Wisconsin District Attorneys Association and the Association of State Prosecutors will be having meetings in January at which proposals for revisions in the state administrative structure for prosecutors will be discussed. Mr. Morse noted that whatever structure is proposed, independence is the key. He suggested that some staffing issues could perhaps be resolved by

attaching an independent entity to an existing agency for limited administrative purposes. [See s. 15.03, Stats.]

Chair Gundrum indicated that once more specific direction is received from district attorneys and assistant district attorneys, he will schedule another meeting for the committee. Senator Risser indicated that he agreed with that approach.

### **Plans for Future Meetings**

The next meeting of the Special Committee will be held at the call of the chair.

### **Adjournment**

The meeting was adjourned at 10:55 a.m.

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