



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF SPOUSAL MAINTENANCE AWARDS IN DIVORCE PROCEEDINGS

Room 328 Northwest
State Capitol

August 24, 2010
10:00 a.m. – 12:15 p.m.

[The following is a summary of the August 24, 2010 meeting of the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings. 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>.]

Call to Order and Roll Call

Chair Staskunas called the committee to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Tony Staskunas, Chair; Rep. Amy Sue Vruwink, Vice-Chair; Sens. Luther Olsen and Jeff Plale; and Public Members Michael Bruch, Judith Budny, Tom Grogan, Korey Lundin, Andrew Matznick, Robert Mawdsley, Dan Pence, William Pocan, Jared Potter, and Kenneth Seubert.

COMMITTEE MEMBERS EXCUSED: Rep. Joel Kleefisch; and Public Members Malcolm Keith Hatfield and Marsha Mansfield.

COUNCIL STAFF PRESENT: Don Salm, Senior Staff Attorney; and Chadwick Brown and Margit Kelley, Staff Attorneys.

APPEARANCES: Sen. Fred A. Risser and Rep. Marlin D. Schneider, Co-Chairs, Joint Legislative Council; Terry C. Anderson, Director, Legislative Council; and Public Member Robert Mawdsley.

Opening Remarks

Senator Fred A. Risser, Representative Marlin D. Schneider, and Terry C. Anderson welcomed members of the Special Committee. Senator Risser explained how the committee was formed and the role of the committee. Mr. Anderson introduced the Legislative Council staff members assigned to work with the committee and explained general rules and guidelines for study committees, as well as the process for reimbursement of expenses for public members.

Chairperson's Remarks

Chair Staskunas welcomed the committee and expressed his recognition of the difficulty of the subject matter and the emotion involved in the topic. He encouraged cordiality as these difficult topics are addressed.

Introduction of Committee Members

Chair Staskunas introduced himself and asked committee members to introduce themselves.

Presentation by Invited Speaker

Hon. Robert Mawdsley, Circuit Court, Waukesha County (Retired)

Judge Mawdsley described his early experience on the bench with family law and explained the process involved in teaching maintenance issues to judges by: (1) using a computer program for making maintenance calculations developed by Judge Mac Davis of Waukesha County; and (2) using fact scenarios with groups of judges. He acknowledged the difficulty judges face in performing the maintenance calculus due to the effects of factual uncertainty and variation, and explained the process that litigants typically face in these cases.

Judge Mawdsley described the process by which decisions in appellate court cases get published and the bias that can appear in some of the maintenance cases due to unusual case facts. He described the Judicial Bench Book and the role it plays in judges' decision-making process.

Chair Staskunas asked committee members to focus on developing specific ideas for changes in the current maintenance statutes so that the committee can, if possible, develop draft legislation to present to the Joint Legislative Council.

Description of Materials Distributed

Chadwick Brown, Staff Attorney with the Wisconsin Legislative Council, reviewed Memo No. 1, which outlines current Wisconsin law as it relates to maintenance.

Don Salm, Senior Staff Attorney with the Wisconsin Legislative Council, then reviewed Memo No. 2, which describes treatment of maintenance issues in other states, and the attachments to Memo Nos. 1 and 2, relating to that topic.

Judge Pocan commented on the history of no-fault divorce in Wisconsin and suggested examination of that history in the context of any marital fault proposals.

Chair Staskunas expressed an interest in finding out the history of Wisconsin's change from fault to no-fault divorce and in any model legislation available. Chair Staskunas further suggested that judicial discretion is a recurring theme in divorce law, including the law relating to maintenance.

Discussion of Committee Assignment

Committee members expressed opinions as to resources and ideas to be examined for discussion at the next meeting, including analyzing different real-life maintenance scenarios. Judge Mawdsley indicated that he would provide these scenarios and lead the discussion of them.

Senator Plale commented that the current system encourages fighting, and that increased certainty in the statutory language would reduce this.

Some committee members expressed frustration at a perceived lack of consistency from one county to the next on the issue of whether maintenance was awarded or not, and the amount of maintenance awarded.

In response to a question by Chair Staskunas, Judge Mawdsley explained how the court considers standard of living in situations where the earning capacity and the cost of living of the parties change upon divorce.

Judge Pocan cautioned against taking discretion away from judges.

Senator Plale expressed concern at inconsistent results in maintenance cases. Mr. Lundin commented that inconsistency and unpredictability leads to a higher level of litigation.

Mr. Seubert characterized his own experience with the current maintenance law as an unjust result of judicial discretion. He noted that maintenance should focus more on rehabilitation. Judge Pocan said he preferred that guidelines rather than absolute requirements be placed upon judges.

Family Court Commissioner Bruch commented on the large number of pro se litigants in recent years and the need to make any law accessible, understandable, and predictable to laypeople.

Chair Staskunas asked all committee members to examine the law as it exists and formulate suggestions for changes if appropriate. These suggestions are to be communicated to Legislative Council staff for discussion at the next meeting.

Other Business

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

Adjournment

The meeting was adjourned at 12:15 p.m.

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