

Wisconsin Association of Criminal Defense Lawyers

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March 19, 2010

Chief Justice Patience D. Roggensack
Wisconsin Supreme Court
16 East State Capitol
PO Box 1688
Madison, WI 53701-1688

Hon. Randy Koshnick
Director of State Courts
16 East State Capitol
PO Box 1688
Madison, WI 53701-1688

Delivered by FAX to 608-267-0980

Re: Need for Uniform Circuit Procedures During COVID-19 Pandemic

Dear Chief Justice Roggensack and Director Koshnick.

Pursuant to Article VII, Section 4(3) of the Wisconsin Constitution, the Chief Justice of the Wisconsin Supreme Court is the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the Supreme Court. On March 17, 2020, the Wisconsin Supreme Court took action and announced that it was cancelling oral arguments which were to take place on March 18, 2020.

The announcement also contained a quote from Director of State Courts Randy R. Koschnick that, "[o]ur highest priorities at this time are to make sure courts are operational in order to maintain the rule of law and to protect the health of the public and court staff. <https://wicourts.gov/news/view.jsp?id=1206> - last visited on March 19, 2020.

The March 17th announcement further stated:

A number of circuit courts throughout the state have adjusted some calendars and procedures as a result of COVID-19 precautions. As a convenience, the court system is listing announcements of those changes by county on its website, www.wicourts.gov, under a tab labeled 'COVID-19.' However, attorneys or litigants with questions about a particular upcoming court activity or appearance should contact the clerk of circuit court in the appropriate county.

The emergency orders issued by the Governor, the President and the CDC are applicable to everyone. Attorneys, court staff and the public need more than website posted procedures – for the few counties that have taken some precautions during the COVID-19 crisis – we need uniform guidelines for all courts to follow to protect the health of everyone entering our courthouses, county jails and law enforcement facilities. Many circuit courts currently are adjourning cases out for several weeks, while some others are not, or announce a change in policy only after pressure is brought upon them by many of the stakeholders and components in the justice system, particularly criminal justice.

Louis Molepske, Portage County district attorney and president of the Wisconsin District Attorneys' Association, was recently quoted as saying “one of the biggest challenges facing prosecutors is the lack of a clear directive from the director of state courts.” (<https://www.wpr.org/wisconsin-courts-attorneys-take-steps-limit-contact-response-pandemic> - last visited March 19, 2020) Critically, Molepske stated “the lack of consistency statewide can create challenges when working on cases that involve neighboring counties with varying levels of response.”

The problems and dangers created by lack of consistency in court procedures is much more prevalent for criminal defense lawyers. For example, many, if not most, members of the Wisconsin Association of Criminal Defense Lawyers typically appear in multiple counties across the State every week. Some appear in multiple counties in a single day. The current situation with circuit courts in Wisconsin regarding COVID-19 is a patchwork that is confusing, inefficient and contrary to CDC warnings to avoid gatherings over ten people.

The present situation is unsustainable. Attorneys are in some cases being asked to drive miles to appear for routine hearings that could just as easily be handled on the telephone. Jail inmates are being brought to courtrooms in some situations, often needlessly, and not in others. Too often, the local procedures are changed at the last minute, causing additional upheaval in the justice system.

Too many in the criminal justice system are failing to take the COVID-19 threat seriously. In one very recent instance, a judge told a defense attorney and WACDL members that this was no worse than the flu and insisted on a personal appearance. In another, the judge refused to let an attorney appear on behalf of her ill partner, and ordered the attorney to appear, insisting that the hearing would proceed whether she was present or not.

The absence of a coherent, common statewide set of procedures is dangerous. The lack of such furthers the potential spread of the coronavirus, potentially and needlessly exposing judges, clerks, bailiffs, prosecutors, court reporters, defense attorneys, defendants, jurors and witnesses.

We respectfully but urgently request that the Wisconsin Supreme Court promptly issue orders establishing consistent statewide procedures applicable to all of the circuit courts.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Lanning", with a long horizontal flourish extending to the right.

Chad Lanning
President