



JUDGE NICHOLAS J. McNAMARA
DANE COUNTY CIRCUIT COURT, BRANCH 5

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Madison, Wisconsin 53703

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February 2, 2016

District Attorney Ismael Ozanne
Dane County District Attorney's Office
215 S. Hamilton, Third Floor
Madison, WI 53703

Via email: Ismael.ozanne@da.wi.gov

Dear District Attorney Ozanne:

Earlier this afternoon I had a lengthy, candid conversation with Deputy DA Corey Stephen about the changes in ADA branch assignments your office implemented last week. I understand that he has held similar meetings with the other criminal division judges. Corey was very generous with his time and very patient with my questions and comments.

Although I am sharing this letter with my colleagues because I believe we all share a common interest in matters that affect our courts, these are my own thoughts; no one else was even warned that I would send this letter; I suspect some will wish I had not. I am no longer the presiding judge of the criminal division and certainly do not speak for any group or individual Dane County judge, except myself.

I am very glad you continue to search for procedures and policies that are intended to help your office fulfill your heavy responsibilities as you cope with chronic, woeful inadequacies of assistant attorney positions, compounded by significant losses of experienced senior attorneys through retirements or transfers. I sincerely hope that your creation of a Felony Team of ADAs and reduction of branch-assigned ADAs is successful for your office and everyone involved.

I was surprised, however, that it appears there has been no consideration of how these changes will impact court scheduling and the timely resolution of felony cases. It seems rather obvious that if each branch continues to calendar felony cases as we have for the past three years, based on collaboration and cooperation with you and your staff, we all will very quickly realize extreme systemic congestion when your entire team of felony attorneys find themselves scheduled for trials and hearings in multiple branches at the same time. On the other hand, if you assume or expect we will change how we calendar felony cases, it's very surprising you would keep such assumptions and expectations to yourself; Corey had no proposals for changes in our calendaring and in fact recommended changing nothing.

On a personal level, when I reflect on the past three years of our collective efforts to improve the criminal justice system in Dane County, as someone who personally spent hundreds of hours and many weeks communicating with you and Deputy DAs Viste and Fallon, along with open discussions with clerks, defense attorneys and my fellow judges, I feel sincere disappointment in the lack of effort to collaborate in your making such significant changes.

Please don't interpret these comments as a challenge to your authority to make staff or policy changes in your office as you see fit. My personal disappointment is not based on a confused and incorrect opinion that you should in any sense obtain permission from the judiciary or any person or entity in performing your Constitutional duties as you choose. Last Spring, when the judges announced our intention to return to random assignment of criminal cases, contrary to your request, I drafted a public statement that included the following:

By design, the People of Wisconsin and Dane County have entrusted the substantial responsibilities of criminal justice to independent institutions and agencies. Separate, equal branches of government create natural and necessary checks and balances. Fragmented at times, interdependent always, when our criminal justice system works properly our citizens and communities all enjoy the benefits of safety and order without sacrificing liberty and freedom.

I still believe in these core principles and realities.

Moreover, I readily admit that I am not a time management or human resources expert. I also have never worked in a prosecutor's office. The changes you implemented last week may be the very best way to maximize criminal justice in Dane County; you not only have the authority to make these changes, you might also be absolutely correct in doing so.

And I acknowledge my personal disappointment is generally irrelevant. While it's true that a few judges, retired judges, law professors, and more than a few defense attorneys personally criticized me for appearing to have abandoned neutrality in my leading efforts to coordinate and collaborate with your office as we experimented with a non-random, Intake-Week case assignment system, there is nothing personal in these matters. Then, as now, we are professionals performing our professional responsibilities to the best of our abilities given the resources available to us.

My disappointment is based entirely on the complete lack of communication and effort to cooperate *prior* to making these very significant changes that will now affect everyone who works in or appears as a party in our courts.

We as judges and I as the drafter were sincere when we concluded our public statement and explanation last Spring with the following thoughts:

Finally, just as we did when we considered and ultimately adopted the changes in our practices, we want to continue open, collaborative dialogue with the District Attorney and his staff, as well as with defense counsel and all those in court services. [. . .] Messy as it has been, we hope this process has helped us all become a little better at working together to create a fair and efficient criminal justice system. Above everything else, we strongly recommend that we continue our discussions, cooperation and collaboration. Whether you agree with our recommendations now or not, we hope you all join us in our continuing efforts to provide the best possible justice system for all of the people of Dane County.

The manner in which you made these changes last week, the process, shows me you have clearly and completely abandoned any effort toward open, collaborative dialogue.

This is regrettable not only in marking a return to closed, silo-like practices and policies with no regard for systemic consequences, but also because I predict you will very soon need the courts to change our calendaring practices for felony cases. Your Felony Team structure as explained to me cannot work without substantial court calendaring changes. But how will we be able to even consider reasonable, effective changes if we don't communicate with each other? Even if we are completely willing to make reasonable changes, you have to at least talk with us to let us know what might help, and what might make things more difficult, *before* we make any changes.

In the end, when you are ready to return to open, collaborative dialogue about making helpful changes in our criminal justice system, including the imminent changes that will be necessary if your newly adopted structure is to be successful, please know I will still be ready to listen and to consider your proposals. And if we happen to respectfully disagree, I hope we can still continue to share honest communication with each other, as I have tried to share with you in this letter.

Very Truly Yours,

Judge Nicholas J. McNamara
Dane County Circuit Court, Branch 5

cc: Dane County Judge, via email
Dane County Deputy DA Corey Stephan, via email