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Guest column: State high court's new timeline should honor openness tradition

By Andrea Kaminski □

The Wisconsin Supreme Court was the first state high court in the country to hold open meetings in which the justices discuss the rules by which they operate. In Wisconsin, unlike many other states, citizens can petition the court to change its administrative rules. In the Wisconsin tradition, the process here is open, although it is not always efficient.

Wisconsin Supreme Court Justice Patience Roggensack has proposed a new procedure, which certainly would be more efficient. However, the high court's discussion in an open meeting last week demonstrated how a process and a timeline can either welcome or stifle public participation.

Under Justice Roggensack's proposal, petitions must be submitted by Jan. 10 to be considered by the court the following September. The petitions would be posted on the Internet, and comments may be filed until April 30. The petitioner would then have until June 15 to reply. All petitions and comments would be available for anyone to see on the court's website.

By Aug. 1, court staff would review each petition, along with its comments, and prepare a memo with recommendations to the court. In mid-September the court would consider all of the petitions in one administrative conference. The justices would decide which should have a public hearing, and the hearings would be held in time for the court to make final decisions by Jan. 15.

Unfortunately, the timeline is based on what is done in Arizona, a state that does not have the open process we have in Wisconsin. Justice Ann Walsh Bradley asserted that the proposal would "hamper interaction with the public" by allowing for fewer public hearings, some of which would be held by court commissioners rather than by the justices themselves.

In Wisconsin, notice of hearings by the Supreme Court must be published in the State Bar's official publication at least 30 days ahead of time. This means that under Justice Roggensack's proposal, hearings would have to take place in mid-December to mid-January — not a time that is welcoming of public input. Justice Bradley said that in Arizona there are no publication requirements for rule petitions, and the court has not held a public hearing on rules in years. That state's high court simply decides on the petitions in closed session, sometimes ruling on more than 40 matters in one day. Justice David Prosser added that he did not want to model our system on that of a state that does not even have elected Supreme Court justices.

Process matters. It can make the difference between doing things with public input or without. Public participation, through election of justices and the ability to influence the rules by which they operate, is what gives Wisconsin a court system that is for the people and by the people.

Justice Roggensack is to be commended for seeking to improve efficiency and increase transparency through use of the Internet. The website work should be implemented as soon as possible. Meanwhile, the justices have wisely referred the rest of the matter to a study committee. The proposal should not come back for consideration without a timeline that honors the Wisconsin tradition of openness and public participation.
