

Testimony of David Prosser

Justice, Wisconsin Supreme Court (Retired)

In Support of 2019 Assembly Bill 359

December 5, 2019

Mr. Chairman and Members of the Assembly Judiciary Committee:

Thank you very much for permitting me to express support for this excellent bipartisan bill, whose principal author is Representative Tusler. I urge the Members to read the scholarly testimony of Supreme Court Commissioner Julie Rich. She makes a solid, serious case for the bill's enactment. My testimony will be a bit more lighthearted and anecdotal.

When I was appointed to the Wisconsin Supreme Court in 1998, I was surprised almost immediately that several couples wanted me to officiate at their weddings. This was a new experience for me. Because I had not been a judge before becoming a justice, I realized that I had better do some careful research on weddings to make sure that I did not embarrass myself at one of the most significant moments in people's lives. Officiating at weddings proved to be exceptionally satisfying.

Since 1998, I have officiated at 77 wedding ceremonies throughout Wisconsin and in three other states. One of my former law clerks asked me to come to Fort Wayne, Indiana, to perform his wedding. My judicial assistant's daughter, who I had known well as she was growing up, asked me to perform her wedding in Minneapolis, Minnesota. One of my relatives asked me to come down to northern Illinois to officiate at his wedding.

In each of these cases I called a local county clerk to inquire whether I was authorized to perform a wedding in that state. The immediate answer was: If you are a judge, yes. I was disappointed to learn later that Wisconsin law does not extend the same courtesy to judges who are not from Wisconsin.

No one should be concerned that out-of-state judges will be rushing up to Wisconsin to steal business away from Wisconsin judges. First, Wisconsin judges do not get paid for their wedding services. It's part of the job. Second, out-of-state judges are not likely to come to Wisconsin for a wedding unless they have a close tie to the bride or groom or one of their families. Third, no couple is going to bring in a judge from another state for a quickie wedding. They are going to bring in a judge from another state for a big wedding.

A wedding couple is quite unlikely to pay the visiting judge (because he or she is a friend) but they will probably insist on paying for the judge's lodging. If there is a practice session the day before the wedding, the couple may pay for two nights of lodging, and if there is a dinner that night for the wedding party, the judge will likely be invited to that dinner as well as the wedding banquet. These expenses, of course, will be paid to Wisconsin hotels or motels, Wisconsin restaurants, and Wisconsin catering services.

Consequently, this bill is not only respectful and accommodating to judges from other states and pleasing to Wisconsin families who want to hold important weddings in Wisconsin, it is a non-controversial economic development bill that all of you can run at the next election.

I respectfully urge you to pass the bill.



# WISCONSIN LEGISLATURE

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**Joint Testimony by  
Representative Ron Tusler & Senator Dale Kooyenga**

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**Assembly Committee on Judiciary  
Assembly Bill 359**

**December 5, 2019**

Mr. Chairman and members of the committee, thank you for the opportunity to provide testimony on Assembly Bill 359, relating to justices or judges authorized to officiate a marriage.

Under current law, a marriage may only be performed by certain people, including Wisconsin judicial officers, an ordained member of the clergy of any religious denomination, or a licensee or appointee of a religious society.<sup>1</sup> Unfortunately, the language in this statute (“[a]ny judge of a court of record...”) as interpreted precludes judicial officials from other states and the federal bench from presiding over marriages in Wisconsin.

This bill, developed with the assistance of Wisconsin Courts System officials, allows out-of-state and federal judges and justices to officiate weddings in Wisconsin. Thirty five other U.S. jurisdictions allow judges and justices from other U.S. states, territories, or the federal bench to perform marriages, including our regional sister states of Illinois, Indiana, Michigan, and Minnesota.<sup>2</sup> Adding Wisconsin to the list allowing out-of-state and federal judicial officials gestures good will toward our fellow states, members of the judiciary throughout the county, and will help make couples’ wedding day extra special by having a qualified officiant of their choice, be it a family member or friend, participate in their special day.

In 2007, a U.S. Supreme Court Justice could not officiate a Wisconsin wedding. While that ceremony had a happy ending thanks to some old-fashioned Wisconsin ingenuity and determination to ‘make it happen,’ this bill clears the way to make this aspect of wedding planning a bit less stressful.<sup>3</sup>

Thank you for your time and consideration of this bill. We respectfully urge your support.

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<sup>1</sup> See Wis. Stat. § 765.16 (2017-18).

<sup>2</sup> A list of U.S. jurisdictions with similar provisions is on file with the authors.

<sup>3</sup> The 2007 wedding is briefly mentioned in *People, The Third Branch*, Vol. 15 No. 2 (Spring 2007), at 22 (available at <https://www.wicourts.gov/news/thirdbranch/docs/spring07.pdf>).



# Supreme Court of Wisconsin

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Testimony of Julie Anne Rich, Supreme Court Commissioner

In Support of 2019 Assembly Bill 359  
Relating to Judges and Justices Authorized to Officiate at Marriages

Assembly Committee on Judiciary  
Representative Jim Ott, Chair  
December 5, 2019

My name is Julie Anne Rich and I am a Supreme Court Commissioner for the Wisconsin Supreme Court. I appreciate the opportunity to provide this written testimony in support of Assembly Bill 359. First, I would like to express my appreciation to Representative Tusler and his staff, and to the co-sponsors for all their work on this proposal.

In Wisconsin, a marriage may only be performed by certain Wisconsin judicial officers, an ordained member of the clergy of any religious denomination, or a licensee or appointee of a religious society. Wis. Stat. § 765.16 (1m)(d). The law has been interpreted so that judges or justices from other states are not permitted to officiate at a wedding conducted in Wisconsin based on the requirement that a judicial officiant be a "judge of a court of record." As this outcome is not clear from the text, each year the court system receives a number of inquiries from out of state judges or justices who are hoping to officiate at a Wisconsin wedding. They are surprised and disappointed to be told this is not possible. In 2007, a U.S. Supreme Court Justice was not permitted to officiate at a Wisconsin wedding because of how our statute is interpreted. The only solution we can offer is to suggest they become an ordained clergy member which can be done quite easily online. More recently, certain state agencies, namely the Department of Vital Statistics, have interpreted the statutory language to permit out-of-state judges to officiate, but this change has generated some anxiety about whether the interpretation might change. No one wants to learn that their officiant was not authorized to celebrate their wedding, so this is not the type of issue that is likely to come before a court.

This bill would permit out-of-state and federal judges and justices to officiate at weddings in Wisconsin, a policy consistent with some 35 other U.S. jurisdictions that allow judges and justices from other U.S. states, territories, or the federal bench to perform marriages. This bill represents a small change that will be very welcome by the handful of out-of-state judges and justices seeking to officiate at weddings in Wisconsin. It will have minimal, if any, fiscal impact. It will be a welcome gesture of good will toward our fellow states and members of the judiciary throughout the country.

Thank you for allowing me to submit this written testimony.