Feature Article

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The Wisconsin Court System: Demystifying the Judicial Branch

Vernon County Courthouse

L. Roger Turner

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The Wisconsin Court System: Demystifying the Judicial Branch

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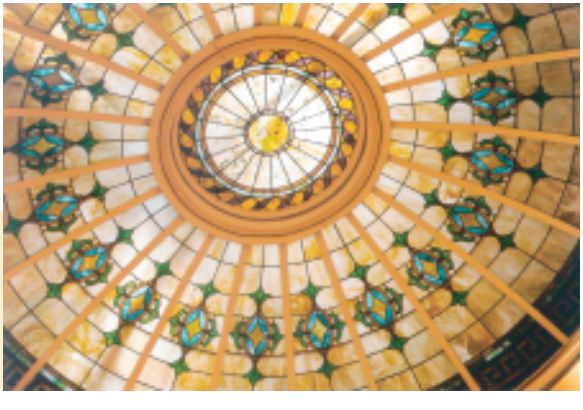
The court system has been called the least understood of the three branches of government. The executive branch, led by the governor, is highly visible and the work of its agencies is well-defined. The work of the legislative branch is similarly high profile. In contrast, the work of the third branch – the judicial branch, which is comprised of the state's 264 judges, 72 clerks of court, the Wisconsin State Law Library, and various agencies of the Supreme Court – is somewhat mysterious.

The differences between the judicial branch and the executive and legislative branches are apparent from the very beginning of the process: the selection of those who will serve. Wisconsin has elected its judges since statehood. Initially, these races were political affairs and the state's first Supreme Court justices ran on party tickets. But the state's founders sensed that the people would be best served by an independent judiciary, and took the first step by adding a directive to the 1848 constitution that judicial races not be held in conjunction with any general election for state or county officers or within 30 days either before or after such election. The 1878 election marked the first time that Wisconsin elected its judges on a nonpartisan basis, and that tradition continues today.

We elect our judges, but they do not carry out the wishes of the



Tiffany glass skylight in the Lafayette County Courthouse rotunda.
(Kathleen Sitter, LRB)

electorate or the electorate's representatives. In fact, judges sometimes make decisions that fly in the face of the majority sentiment on any given issue, for they do not – and must not – consider the wishes of the public in deciding individual cases. This independence is critical to preserving the democratic values that the people, and the people's elected representatives, hold dear. Chief Justice Shirley S. Abrahamson explains: "Most people who come to court would probably prefer a judge who would decide the case completely in their favor. But you can't guarantee that. So the next best thing is to get an impartial judge who's not in somebody's pocket."

Chief Justice Shirley S. Abrahamson was appointed to the Wisconsin Supreme Court on August 6, 1976. She was the first woman to serve on the state's highest court and the first woman to serve as chief justice. In 2006, "The Chief" will celebrate 30 years on the Supreme Court and 10 years as chief justice.

(Jay Salvo, Assembly Photographer)

Though they might work in relative obscurity, judges make decisions every day, in matters large and small, which affect many people. Most of us will come into contact with the judicial branch at some point in our lives. We might be serving on a jury, settling the estate of a deceased relative, adopting a child, divorcing, or disputing a traffic ticket. So there are practical reasons to understand the operation of the courts. But in a democracy there is a larger philosophical reason to improve public understanding of the judicial branch. Because the courts do not command armies or levy taxes, their authority depends upon the public's trust in them, and upon its willingness to abide by their decisions.

This article represents an effort to open the doors to the Wisconsin courts. Readers will learn about the function, structure, history, and funding of the three levels of state courts; the steps in a criminal and civil case; how judges are held accountable; how the practice of law is regulated; and initiatives to improve the justice system for people without lawyers. When she was sworn in as chief justice nearly a decade ago, Shirley Abrahamson vowed to make the "least-known" branch of government the "best-known." It is our hope that this article contributes in some small way to that lofty goal.

Circuit Courts

Circuit courts are the primary trial courts in Wisconsin. They hear and decide cases involving a wide variety of topics, including contracts, personal injury, family law, children in need of protection and/or services, juvenile delinquency, probate, traffic, small claims, landlord-tenant issues, and criminal law.

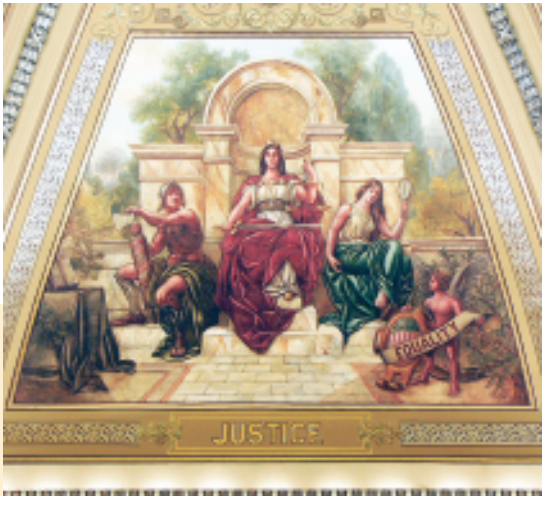
Power to decide cases

The circuit court may hear a case if the court has authority to decide the issues at stake in the case (subject matter jurisdiction) and if the court has authority to bring a defendant into court and enforce a judgment against the defendant (personal jurisdiction). The court's subject matter jurisdiction is conferred by the Wisconsin Constitution and is quite broad. The legislature may not by statute limit the nature or type of case that the courts may hear. In comparison, under the U.S. Constitution, Congress may limit the type of cases that federal trial courts may hear.

The court has personal jurisdiction in a civil case if the defendant is present in the state or has sufficient contacts with the state and if the pleadings are served on the defendant. State statutes spell out what constitutes sufficient contact, such as business dealings in the state, ownership of property in Wisconsin that is at issue in a case, and causing injury to another while in Wisconsin.

The determination of personal jurisdiction in a civil case is driven by several policy considerations. As a matter of fairness, a defendant should not have to defend him or herself against a suit in a state in which he or she has no associations and could not reasonably have anticipated the suit. In addition, a state court should not assert authority over matters that more appropriately belong in another state or in the federal courts.

The circuit court has personal jurisdiction over a defendant in a criminal case if the defendant violates a Wisconsin law while in Wisconsin. Wisconsin courts also have personal jurisdiction over a defendant who commits an act while out-of-state that contributes to a crime, the consequences of which occur in Wisconsin. The Wisconsin Supreme Court recently ruled that Wisconsin courts have personal jurisdiction over a



"Justice" as depicted in a mural decorating the Brown County Courthouse rotunda.

(Kathleen Sitter, LRB)

defendant who commits an act in Wisconsin manifesting an intent to kill, even though the murder takes place in another state (see *State v. Anderson,* published in May 2005 and described in the *Summary of Significant Decisions* section of this book).

Limits on exercise of power to decide cases

There are, however, limits on what cases the circuit courts will hear. They will not hear a case if the parties lack standing, or if the case is moot or is not ripe. Additionally, the circuit court will not hear a case in which it lacks competency. State law distinguishes between the court's jurisdiction (power to hear a case) and its competency (ability to arrive at a valid judgment in a case). A court lacks competency if certain statutory requirements are not satisfied, for example, time limits for filing suit, or requirements as to which circuit should decide a case.

Reasons a court will not decide a case

A court does not decide a case when the party bringing the case does not have **standing...**

A person must have a legal stake in a matter to bring the matter to court. In 2004, the U.S. Supreme Court declined to decide a case focusing on the Pledge of Allegiance upon finding that the plaintiff lacked standing. The plaintiff sued to prevent a school district in California from requiring his daughter to recite the Pledge of Allegiance, because it contains the words "under God." After hearing oral arguments in the case, *Elk Grove Unified School District v. Newdow,* the Supreme Court determined that the plaintiff did not have standing to assert his daughter's rights with respect to the Pledge because he did not have full custody of her. To find standing, courts generally require that a person suffered some actual or threatened injury and that the parties truly have adverse interests so that they may adequately represent the opposing sides of an issue.

When the issue is **moot...**

Courts only take cases in which a decision by the court will have an impact on the parties to the case. In other words, the court generally will not hear a case if the opportunity for the court to affect the outcome of the case has passed. However, the court may hear a case that is moot if: the issue in the case is of great public importance; the issue is likely to arise again and should be resolved to provide certainty; or if the question is capable and likely of repetition yet evades review because the judicial process (particularly the appellate court process) usually cannot be completed in time to have an effect on the parties. The U.S. Supreme Court took the landmark abortion case, *Roe v. Wade,* even though the plaintiff was no longer pregnant at the time of the appeal, finding that the question of whether a statutory ban on abortion is unconstitutional would reoccur, but could easily evade review because the time in which an abortion may be performed is shorter than the time it generally takes for a case to make it to the Supreme Court.

When the issue is not **ripe...**

Courts tend to dismiss a case for lack of ripeness if the facts of the case are not developed or if the action or events that the court is called upon to review

are not final. Courts do not like to take hypothetical cases in part because it is difficult to make sound decisions of law on the basis of presumed scenarios and in part because courts prefer to devote their resources to cases of actual rather than presumed harm.

In addition, the courts are constrained from taking action that will encroach on the powers of the legislative or executive branches. Under the separation of powers doctrine, no branch of government may exercise a power of government assigned exclusively to another branch. The purpose of separating powers among the branches of government is to avoid concentration of governmental power in the hands of a few and to give the various branches the ability to check actions by the other branches.

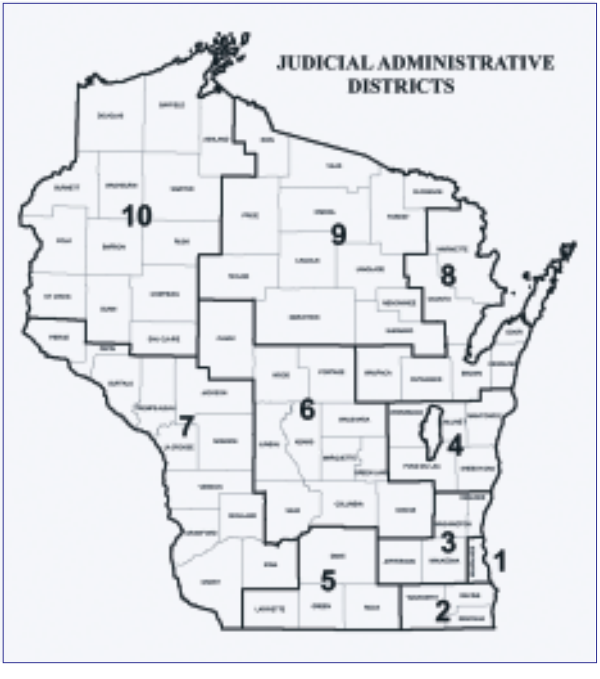
In reviewing the validity of state laws, the courts are limited to determining whether the law violates any provision of the constitution. The courts may invalidate a law that violates individual rights, such as the right to equal protection or due process, or a law that is not enacted according to the process established in the constitution, for example, a bill that was not passed by a majority of the members of each house of the legislature. However, a court may not invalidate a law because the court finds that the legislature's method for addressing a problem was not the most efficient. Nor may the court substitute its determination of what is in the public interest for the determination of the legislature.

While the separation of powers doctrine limits the ability of the courts to act, it also protects the courts from encroachment by the legislature or governor. The Wisconsin Supreme Court established its judicial power in the three-branch system soon after Wisconsin became a state by deciding *Bashford v. Barstow* (1856), an election case that resulted in the ouster of an incumbent governor.

Representatives of the legislative, judicial, and executive branches work together to improve the justice system. Chief Justice Shirley S. Abrahamson moderates a discussion between Representative Mark Gundrum, chairperson of the Assembly Committee on the Judiciary, and Attorney General Peggy A. Lautenschlager on strategies to prevent wrongful convictions. (Kathleen Sitter, LRB)

Structure of the circuit courts

The circuit court system is composed of 69 circuits. Sixty-six of the circuits serve a single county and three circuits each serve two counties (Buffalo/Pepin, Florence/Forest, and Shawano/Menominee). Thirty-nine of the 69 circuits consist of more than one branch, for a total of 241 circuit court branches, each with one judge. The Milwaukee County circuit has the greatest number of branches, 47.



The circuit courts are organized into 10 geographical administrative districts, each led by a management team that includes a chief judge, selected by the Supreme Court from all the circuit court judges in the district, a deputy chief judge (appointed by the chief judge), and a district court administrator, who is a full-time professional. With the exception of Milwaukee County, where the chief judge is a full-time administrator, chief judges and their deputies maintain caseloads in addition to the administrative work. The management teams administer an increasingly complex system requiring the uniform application of justice while accommodating and respecting appropriate local variance. They assign judges and court reporters; equalize the flow of cases; establish policies, plans, and rules; supervise finances; work closely with county boards on security, facility, and staffing issues, and more. The chief judges and district court administrators meet regularly with the director of state courts to discuss current issues and to advise the Supreme Court and the director on matters of statewide concern.

Trial Court History

Wisconsin has not always had a unified statewide system of trial courts. Until the latter half of the 20th century, Wisconsin had multiple types of trial courts, many with overlapping jurisdictions. Furthermore, the types and organization of trial courts differed across the counties.

The Wisconsin Constitution, as adopted in 1848, mandated creation of a supreme court, circuit courts, courts of probate, and justice of the peace courts. The constitution also authorized the legislature to create municipal courts and other "inferior" courts, so-called because they had lesser authority than the circuit courts. Although probate courts were constitutionally mandated, the constitution permitted the legislature to forgo creation of probate courts as long as the legislature assigned authority over probate matters to inferior courts established in each county.

The first legislature created five regional circuit courts, each with one judge. Each of the circuit courts had the same broad civil and criminal jurisdiction. The first elections for circuit court judges were held in August 1848. The circuit court judges held court in each county within their districts at least once a year. Until 1852, the five circuit court judges sitting together also served as the state's supreme court, meeting twice a year. An independent supreme court was created in 1852, but the circuit courts continued to have appellate jurisdiction over all inferior trial courts, such as the justice of the peace, county, and municipal courts.

The first legislature also authorized justice of the peace, county, and municipal courts. Justice of the peace courts were created in villages and towns to handle civil disputes involving less than $100. In 1849, the legislature created county courts and gave them authority over probate matters, thus fulfilling the


(State Historical Society, #WHi 26219)

Judge Roy H. Proctor presiding over Superior Court in the Dane County Courthouse, circa 1933. This Superior Court was one of many ad hoc trial courts created by the legislature prior to adoption of a uniform statewide system of trial courts.

constitutional requirement that a court in each county that was separate from the circuit courts handle probate matters. The legislature also granted county courts jurisdiction over civil matters involving less than $500. Initially, the county courts had uniform jurisdiction, but in 1854 the legislature began granting different authority to the various county courts.

The legislature increased the number of circuit courts as the population of the state, and hence caseloads, grew. However, the legislature was restricted in creating new circuit courts because the state constitution required that each circuit follow county borders and further permitted only one judge per circuit, so the legislature could not simply add a second circuit court branch in a county with a high caseload. (The one judge per circuit rule was modified by

constitutional amendment in 1924). However, there were no such restrictions on the legislature's authority to create inferior courts. The legislature created additional inferior courts on an ad hoc basis, and specified the powers of each of these courts by statute. Although the circuit courts continued to have uniform jurisdiction, the number and variety of other trial courts meant that the trial court structure was different in every county.

Organized efforts to reform the judicial structure to reduce the number of courts, equalize caseloads, and provide uniformity across the state began in the early 1900s. After several failed attempts at reform, the legislature in 1959 abolished all the special statutory courts, authorized a single county court in each county, and assigned uniform jurisdiction to the county courts. The county court jurisdiction was very similar to the circuit court jurisdiction. The 1959 legislation also curtailed the jurisdiction of justice of the peace courts, and a 1966 constitutional amendment eliminated the constitutional provision requiring justice of the peace courts. A 1977 constitutional amendment abolished the requirement that a court other than the circuit court handle probate cases. This amendment cleared the way for the legislature to abolish county courts. In the same year the legislature passed a bill eliminating the county courts, creating 69 circuit courts with uniform jurisdiction, and restricting the authority of municipal courts to hearing ordinance violations. The unified system of trial courts resulting from the 1977 legislative session remains in place today.

Commencing a Civil Case

Civil cases start the same way regardless of the issues or parties involved and regardless of whether the case ultimately goes to trial. A case begins with pleadings, in which the parties state basic claims and responses. The parties then have an opportunity to investigate the claims and gather evidence through a process called discovery. The court generally has little direct involvement in a case until shortly before trial, though the court is available to resolve preliminary matters and disputes.

Pleadings

The plaintiff starts a civil case by filing a summons, and generally a complaint, with the clerk of circuit court and paying a filing fee. A summons provides the defendant notice that a suit has been filed against him or her and notifies the defendant that he or she must answer the complaint. The complaint sets forth the plaintiff's allegations against the defendant. It must contain a short and plain statement of the plaintiff's claim, identify the events out of which the claim arises, and demand relief to satisfy the plaintiff's claim.

Garcia v. Mazda Motor of America

Adele Garcia bought a new car in February 2001. In the first eight months after her purchase, Garcia's car was in the repair shop four times for repairs to the transmission. The Wisconsin "Lemon Law" provides that if, within one year of purchase, a new vehicle requires repairs that are covered under warranty and if the vehicle is either out of service for at least 30 days or cannot be repaired after four attempts, the owner is entitled to a refund or a replacement vehicle.

On September 20, 2001, Garcia sent the car manufacturer a letter describing the history of the car's problems and repairs, stating her understanding that the Lemon Law entitled her to a refund or replacement.

The Lemon Law provides that a vehicle manufacturer must provide a refund or replacement within 30 days after a vehicle owner properly invokes the Lemon Law. As of November 21, 2001, Garcia did not have a replacement car and filed suit in the circuit court to enforce her rights under the Lemon Law.

The following pages contain sample documents from Garcia's case, which was eventually heard by the Wisconsin Supreme Court.

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

ADELE R. GARCIA,
[redacted]

Plaintiffs,

vs.

FILED
IN CIRCUIT COURT
NOV 21 2001
WAUKESHA CO. WIS.
CIVIL DIVISION

01CV2812

SUMMONS
Case No.
Code No. 30703
Unclassified

MAZDA MOTOR OF AMERICA, INC.,
a foreign corporation,
7755 Irvine Center Drive
Irvine, California 92618-2922,

and

HALL IMPORTS, INC.,
a Wisconsin corporation,
19809 West Bluemound Road
Brookfield, Wisconsin 53045,

Defendants.

The amount claimed is greater than the amount under sec. 799.01(1)(d), Wis. Stats.

THE STATE OF WISCONSIN, TO EACH PERSON NAMED ABOVE AS A DEFENDANT:

YOU ARE HEREBY NOTIFIED that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the require-

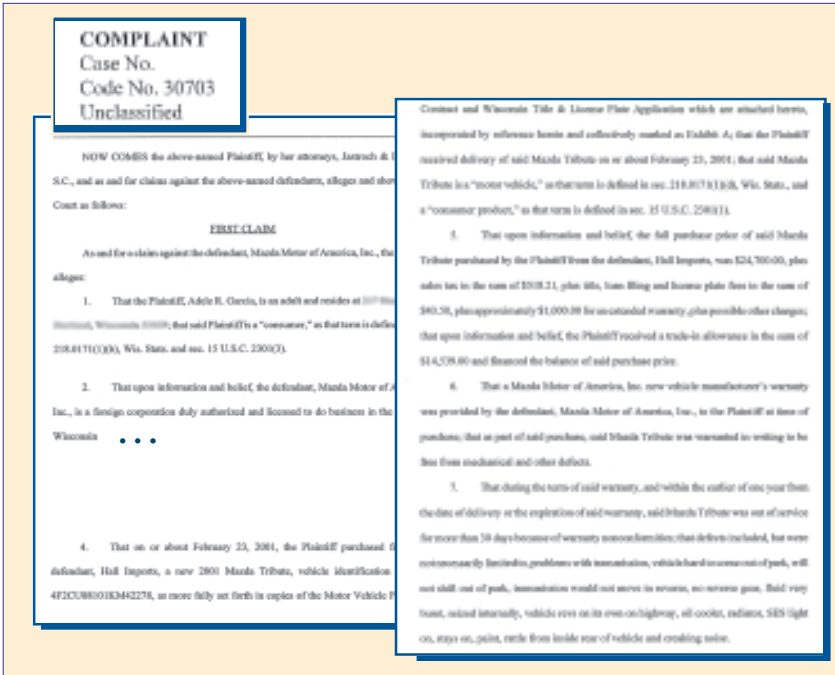
delivered to the Court, whose address
, 515 West Moreland Boulevard,
rge, S.C., Plaintiff's attorneys, whose
1487, Waukesha, Wisconsin 53187.

n forty-five (45) days, the Court may
or other legal actions requested in the
anything that is or may be incorrect in
vided by law. A judgment awarding
now or in the future, and may also be

STROCHE & LABARGE, S.C.,
orneys for Plaintiff

WILLIAM S. POCAN
State Bar No. 1007248
VINCENT P. MEGNA
State Bar No. 1013041

640 West Moreland Boulevard
P.O. Box 1487
Waukesha, WI 53187
(262) 547-2611



COMPLAINT
Case No.
Code No. 30703
Unclassified

NOW COMES the above-named Plaintiff, by her attorneys, Jastroch & L
S.C., and as and for claim against the above-named defendants, alleges and sho
Court as follows:

FIRST CLAIM

As and for a claim against the defendant, Mazda Motor of America, Inc., the
alleges:

1. That the Plaintiff, Adele R. Garcia, is an adult and resides at
; that said Plaintiff is a "consumer," as that term is define
218.0171(1)(b), Wis. Stats. and sec. 15 U.S.C. 2301(3).

2. That upon information and belief, the defendant, Mazda Motor of A
Inc., is a foreign corporation duly authorized and licensed to do business in the
Wisconsin . . .

4. That on or about February 23, 2001, the Plaintiff purchased f
defendant, Hall Imports, a new 2001 Mazda Tribute, vehicle identification
4F2CU08101KM42278, as more fully set forth in copies of the Motor Vehicle P

Contract and Wisconsin Title & License Plate Application which are attached hereto,
incorporated by reference herein and collectively marked as Exhibit A; that the Plaintiff
received delivery of said Mazda Tribute on or about February 23, 2001; that said Mazda
Tribute is a "motor vehicle," as that term is defined in sec. 218.0171(1)(d), Wis. Stats., and
a "consumer product," as that term is defined in sec. 15 U.S.C. 2301(1).

5. That upon information and belief, the full purchase price of said Mazda
Tribute purchased by the Plaintiff from the defendant, Hall Imports, was $24,700.00, plus
sales tax in the sum of $918.21, plus title, loan filing and license plate fees in the sum of
$40.50, plus approximately $1,000.00 for an extended warranty, plus possible other charges;
that upon information and belief, the Plaintiff received a trade-in allowance in the sum of
$14,578.00 and financed the balance of said purchase price.

6. That a Mazda Motor of America, Inc. new vehicle manufacturer's warranty
was provided by the defendant, Mazda Motor of America, Inc., to the Plaintiff at time of
purchase; that as part of said purchase, said Mazda Tribute was warranted in writing to be
free from mechanical and other defects.

7. That during the term of said warranty, and within the earlier of one year from
the date of delivery or the expiration of said warranty, said Mazda Tribute was out of service
for more than 30 days because of warranty nonconformities; that defects included, but were
not necessarily limited to, problems with transmission, vehicle hard to come out of park, will
not shift out of park, transmission would not move in reverse, no reverse gear, fluid very
burnt, noised internally, vehicle over on its own on highway, oil cooler, radiator, SRS light
on, stays on, paint, rattle from inside rear of vehicle and creaking noise.

The summons (previous page) and portions of the complaint filed in the Waukesha County Circuit Court on behalf of Adele Garcia asserting her right to a replacement car under the Wisconsin Lemon Law. In the complaint, Garcia alleges facts to show that her car is a "lemon".

WHEREFORE, the Plaintiff demands judgment against the defendants as follows:

(a) For a refund to the Plaintiff and any holder of a perfected security interest in said Mazda Tribute of the full purchase price of said Mazda Tribute, plus sales tax, title, loan filing and license plate fees, finance charges, all amounts paid at the point of sale, all collateral costs and all other amounts paid after sale for improvements/accessories, as applicable, less a reasonable allowance for use, and twice the amount of all pecuniary losses incurred heretofore or hereafter, as all these terms
Wis. Stats.;

(b) For a refund/damages pursuant to
(c) For rescission of the Purchase Agr

(d) For prejudgment interest on all liquidated sums as provided by law;
(e) For the Plaintiff's actual attorneys' fees;
(f) For the costs and disbursements incurred in this action; and
(g) For such other relief as the Court deems just and equitable.

Dated this 21st day of November, 2001.

JASTROCH & LaBARGE, S.C.
Attorneys for Plaintiff

By: WILLIAM S. POCAN

The plaintiff must serve an authenticated copy of the summons and complaint on the defendant. The favored method for serving the defendant is to personally hand a copy of the summons to him or her. Alternatively, the server may hand the summons to another responsible adult at the defendant's residence or, in some cases, it is sufficient for the plaintiff to publish the summons in a newspaper and send it to the defendant's address. Any adult who is not a party to the lawsuit may serve the summons. The person who serves the summons must sign the summons at the time of service and note the date, time, place, and manner of service and upon whom the summons is served. The plaintiff then files proof of service with the court.

A plaintiff must commence a suit by serving the defendant with a summons within a certain time period established by a statute of limitation, or lose the right to sue. Statutes of limitation differ according to the type of suit. For example, a suit for breach of a sales contract must be commenced within six years; a suit for medical malpractice must be commenced within three years of the injury or within one year of discovery of the injury; and a suit to collect child support must be commenced within 20 years after the youngest child for whom support is due turns 18.

The defendant responds to the plaintiff's allegations in a document called an answer, in which the defendant must admit or deny an allegation or state that he or she does not know if the allegation is true, in which case the allegation is taken as denied. The defendant may also raise affirmative defenses (defenses that defeat the plaintiff's claims even if the plaintiff's allegations are true), for example, that the time period for filing the suit has expired, that the service of the summons and complaint was invalid, or that the complaint has already been settled in previous litigation. The defendant may also file a counterclaim against the plaintiff, or a cross-claim against a fellow defendant.

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT
AND AFFIRMATIVE DEFENSES

Now comes the defendant, Hall Imports, Inc., by its attorneys, Hinshaw & Culbertson, and as and for its answer to the plaintiff's Complaint pleads as follows:

ANSWERING PLAINTIFF'S FIRST CLAIM

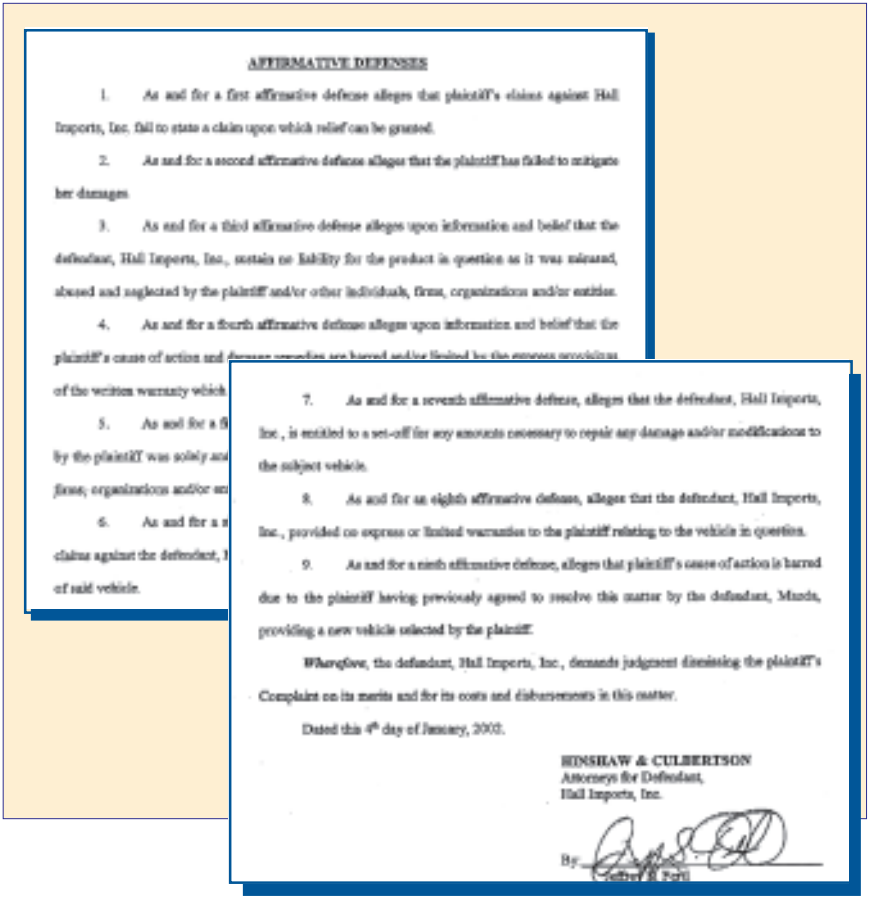
1. Answering paragraph 1, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

2. Answering paragraph 2, admits that Mazda Motor of America, Inc. is a foreign corporation; admits that it is involved in the distribution of motor vehicles;

as to the truth of the allegations contained therein.

6. Answering paragraph 6, admits that a limited express written warranty accompanied the sale of the subject vehicle, but that said limited warranty was, and is, subject to all of the terms and conditions contained therein; further answering said paragraph, denies the remaining allegations contained therein.

Portions of the answer (here and following page) filed by Mazda in *Garcia v. Mazda Motor of America*, denying sufficient knowledge to answer most of Garcia's claims, and alleging several defenses.



AFFIRMATIVE DEFENSES

1. As and for a first affirmative defense alleges that plaintiff's claims against Hall Imports, Inc. fail to state a claim upon which relief can be granted.

2. As and for a second affirmative defense alleges that the plaintiff has failed to mitigate her damages.

3. As and for a third affirmative defense alleges upon information and belief that the defendant, Hall Imports, Inc., sustain no liability for the product in question as it was misused, abused and neglected by the plaintiff and/or other individuals, firms, organizations and/or entities.

4. As and for a fourth affirmative defense alleges upon information and belief that the plaintiff's cause of action and damage remedies are barred and/or limited by the express provisions of the written warranty which

5. As and for a fi
by the plaintiff was solely ass
firms, organizations and/or en

6. As and for a s
claims against the defendant, H
of said vehicle.

7. As and for a seventh affirmative defense, alleges that the defendant, Hall Imports, Inc., is entitled to a set-off for any amounts necessary to repair any damage and/or modifications to the subject vehicle.

8. As and for an eighth affirmative defense, alleges that the defendant, Hall Imports, Inc., provided no express or limited warranties to the plaintiff relating to the vehicle in question.

9. As and for a ninth affirmative defense, alleges that plaintiff's cause of action is barred due to the plaintiff having previously agreed to resolve this matter by the defendant, Mazda, providing a new vehicle selected by the plaintiff.

Wherefore, the defendant, Hall Imports, Inc., demands judgment dismissing the plaintiff's Complaint on its merits and for its costs and disbursements in this matter.

Dated this 4th day of January, 2002.

HINSHAW & CULBERTSON
Attorneys for Defendant,
Hall Imports, Inc.

By: Gilbert B. Ford

The complaint and the answer together constitute the "pleadings" in a case. The purpose of the pleadings is to provide notice of the claims and defenses. The issues of the case generally are not narrowed until later in the proceedings.

What is venue?

Venue is the place where a case may be heard. In a civil case venue is generally in the county in which the claim arose, the county where property that is the subject of the claim is located, or the county in which the defendant lives or does substantial business. For example, a case arising out of an automobile accident may be heard in the county in which the accident occurred or the county in which the defendant lives. If none of these conditions applies, the plaintiff may choose the county of venue. In a criminal case, venue is in the county

where the crime, or part of the crime, was committed. There are exceptions to these general venue rules. For example, cases in which the state is the sole defendant must be filed in Dane County. The purpose of guidelines for venue is to make court proceedings convenient for the parties and witnesses and to allocate caseload among the circuit courts.

Discovery

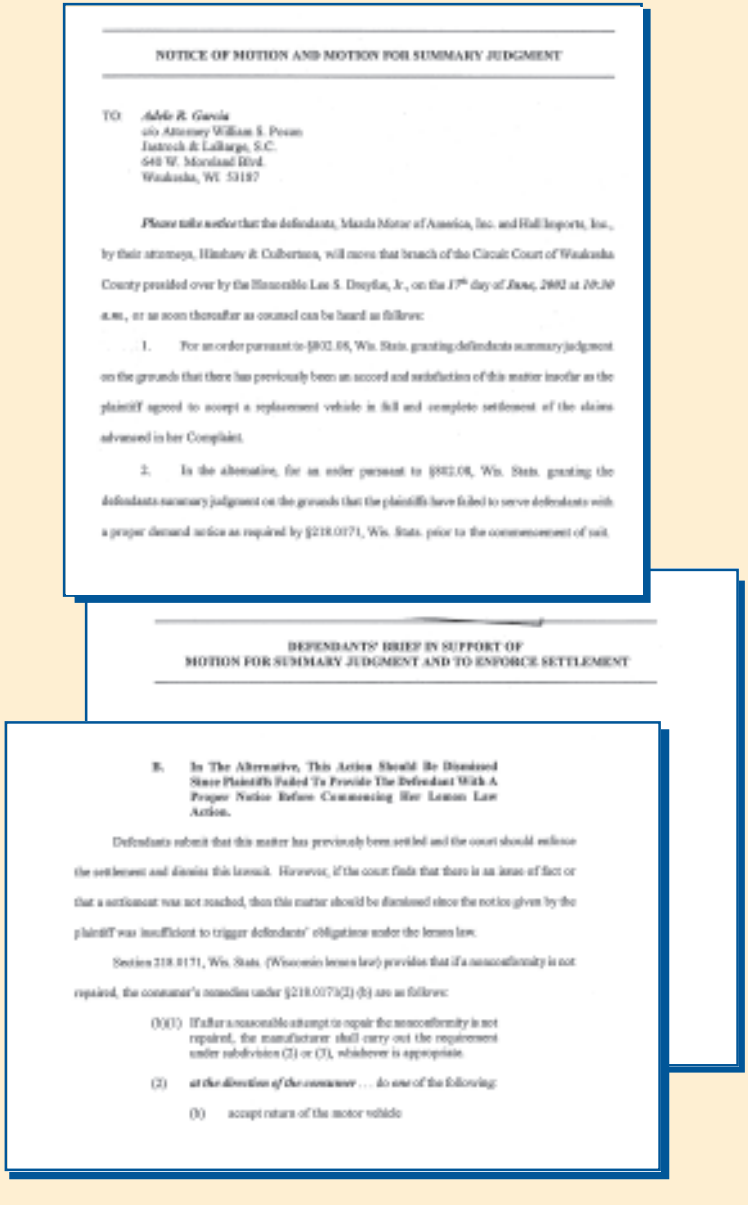
After an action is commenced, the parties begin discovery, which is intended to provide the parties mutual knowledge of facts relevant to a case before trial so that the trial is limited to resolving disputed facts and issues. Discovery also allows the parties to formulate and narrow the issues for trial and obtain and preserve evidence. A recipient of a discovery request generally must provide the information or material requested unless it is readily available from another source or is privileged. The scope of permitted discovery in a civil case is quite broad. A party may use discovery to obtain material that will be inadmissible as evidence at trial as long as the material is reasonably calculated to lead to admissible evidence. Methods of discovery include depositions (recorded interviews with witnesses under oath), interrogatories (written questions), requests for production of documents or things, medical examinations, and requests for admissions.

Ideally and usually, discovery takes place without direct involvement by the court. Except for medical examinations and inspection of medical records, discovery requests need not be authorized by the court. The recipient of a discovery request may seek a protective order denying certain discovery or limiting its scope if the discovery requested will cause annoyance, embarrassment, oppression, or undue burden or expense, or will inquire into privileged or irrelevant matters, and the party requesting discovery may request that the court intervene and order compliance.

Pretrial activities in court

After the pleadings are filed, the court may hold a scheduling conference with the parties and issue a scheduling order to manage the progress of the case. The scheduling order generally assigns dates for filing motions, amending pleadings, completing discovery, pretrial conferences between the judge and parties, and for trial. Some judges also use the scheduling conference to advise the parties to attempt to settle the case without going to trial.

In civil cases, parties often file a variety of pretrial motions with the court seeking court orders affecting the trial. For example, a defendant may seek dismissal of a whole case or certain issues in the case because the plaintiff has not stated a valid claim. Or, a party may seek an order compelling the opposing party to comply with a discovery request or a ruling on admissibility of certain pieces of evidence at trial. If the court requires additional information before ruling on a motion, the court may hold a hearing and may direct the parties to submit briefs, written materials that state the facts and present each side's position.



NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

TO: *Adele R. Garcia*
c/o Attorney William S. Pecan
Janovch & LaBarge, S.C.
640 W. Moreland Blvd.
Waukesha, WI 53187

Please take notice that the defendants, Mazda Motor of America, Inc. and Hall Imports, Inc., by their attorneys, Hinshaw & Culbertson, will move that branch of the Circuit Court of Waukesha County presided over by the Honorable Lee S. Dreyfus, Jr., on the *17th* day of *June, 2002* at *10:30* a.m., or as soon thereafter as counsel can be heard as follows:

1. For an order pursuant to §802.08, Wis. Stats. granting defendants summary judgment on the grounds that there has previously been an accord and satisfaction of this matter insofar as the plaintiff agreed to accept a replacement vehicle in full and complete settlement of the claims advanced in her Complaint.

2. In the alternative, for an order pursuant to §802.08, Wis. Stats. granting the defendants summary judgment on the grounds that the plaintiffs have failed to serve defendants with a proper demand notice as required by §218.0171, Wis. Stats. prior to the commencement of suit.

DEFENDANTS' BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AND TO ENFORCE SETTLEMENT

B. In The Alternative, This Action Should Be Dismissed Since Plaintiffs Failed To Provide The Defendant With A Proper Notice Before Commencing Her Lemon Law Action.

Defendants submit that this matter has previously been settled and the court should enforce the settlement and dismiss this lawsuit. However, if the court finds that there is an issue of fact or that a settlement was not reached, then this matter should be dismissed since the notice given by the plaintiff was insufficient to trigger defendants' obligations under the lemon law.

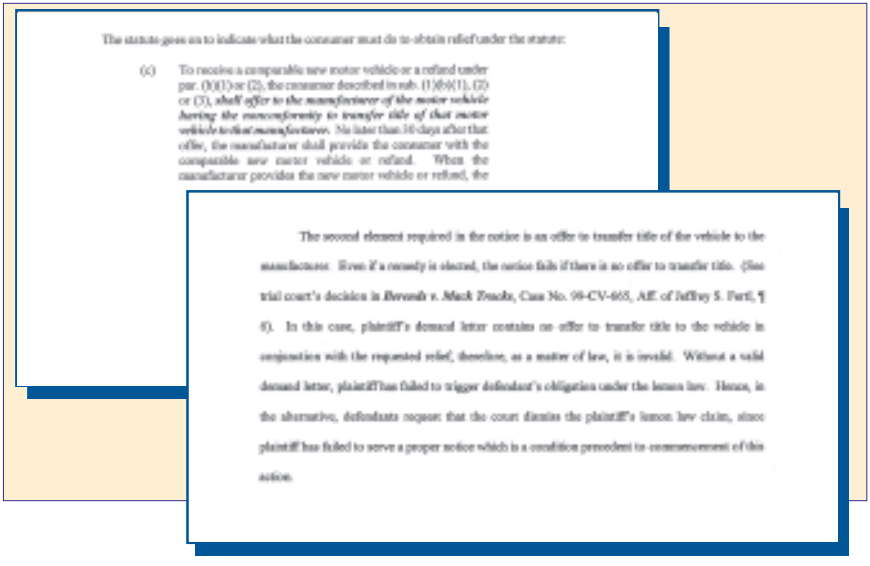
Section 218.0171, Wis. Stats. (Wisconsin lemon law) provides that if a nonconformity is not repaired, the consumer's remedies under §218.0171(2)-(3) are as follows:

(b)(1) If after a reasonable attempt to repair the nonconformity is not repaired, the manufacturer shall carry out the requirement under subdivision (2) or (3), whichever is appropriate.

(2) *at the direction of the consumer* . . . do *one* of the following:

(b) accept return of the motor vehicle

Portions of a motion for summary judgment and a brief in support of motion filed by Mazda in *Garcia v. Mazda Motor of America*. Mazda asserts that Garcia is not entitled to relief because she allegedly failed to provide Mazda proper notice of her request for a replacement vehicle.

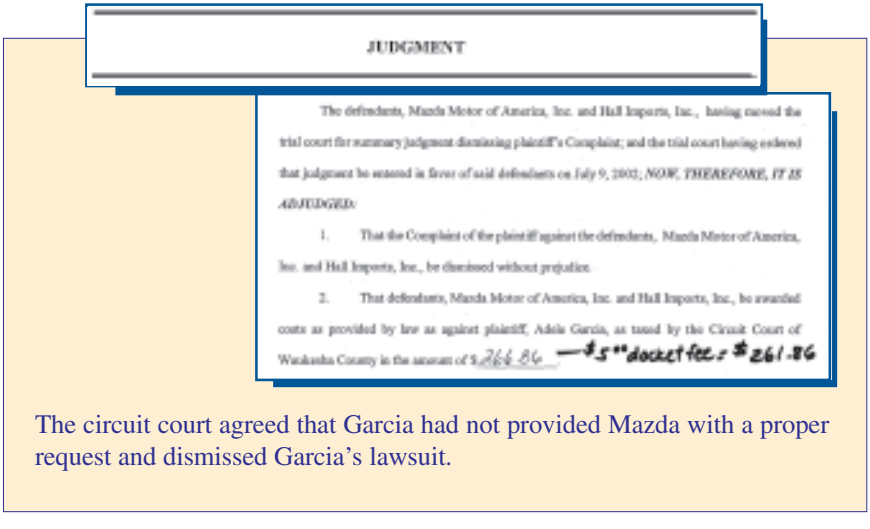


The statute goes on to indicate what the consumer must do to obtain relief under the statute:

(c) To receive a comparable new motor vehicle or a refund under par. (b)1. or (2), the consumer described in sub. (1)(b)(1), (2) or (3), *shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer.* No later than 10 days after that offer, the manufacturer shall provide the consumer with the comparable new motor vehicle or refund. When the manufacturer provides the new motor vehicle or refund, the

The second element required in the notice is an offer to transfer title of the vehicle to the manufacturer. Even if a remedy is elected, the notice fails if there is no offer to transfer title. (See trial court's decision in *Berendt v. Mack Trucks*, Case No. 99-CV-665, Aff. of Jeffrey S. Furtl, ¶ 8). In this case, plaintiff's demand letter contains no offer to transfer title to the vehicle in conjunction with the requested relief; therefore, as a matter of law, it is invalid. Without a valid demand letter, plaintiff has failed to trigger defendant's obligation under the lemon law. Hence, in the alternative, defendants request that the court dismiss the plaintiff's lemon law claim, since plaintiff has failed to serve a proper notice which is a condition precedent to commencement of this action.

The courts resolve motions by order, often directing the prevailing party to prepare the order and submit it to the judge for his or her signature. The resolution of pretrial motions often dictates the future of a case. If a party wins a pretrial motion for summary judgment, the case is dismissed. Sometimes a party who loses important pretrial motions is more likely to agree to a settlement. A settlement must be accepted by a judge. Judges usually accept settlement agreements in civil cases with minimal review, although they look more closely at settlement agreements in divorce cases. If the parties do not settle, the case proceeds to trial.



JUDGMENT

The defendants, Mazda Motor of America, Inc. and Hall Imports, Inc., having moved the trial court for summary judgment dismissing plaintiff's Complaint; and the trial court having ordered that judgment be entered in favor of said defendants on July 9, 2003; *NOW, THEREFORE, IT IS ADJUDGED:*

1. That the Complaint of the plaintiff against the defendants, Mazda Motor of America, Inc. and Hall Imports, Inc., be dismissed without prejudice.

2. That defendants, Mazda Motor of America, Inc. and Hall Imports, Inc., be awarded costs as provided by law as against plaintiff, Adela Garcia, as taxed by the Circuit Court of Waukesha County in the amount of $ 256.86 —$5 "docket fee" = $261.86

The circuit court agreed that Garcia had not provided Mazda with a proper request and dismissed Garcia's lawsuit.

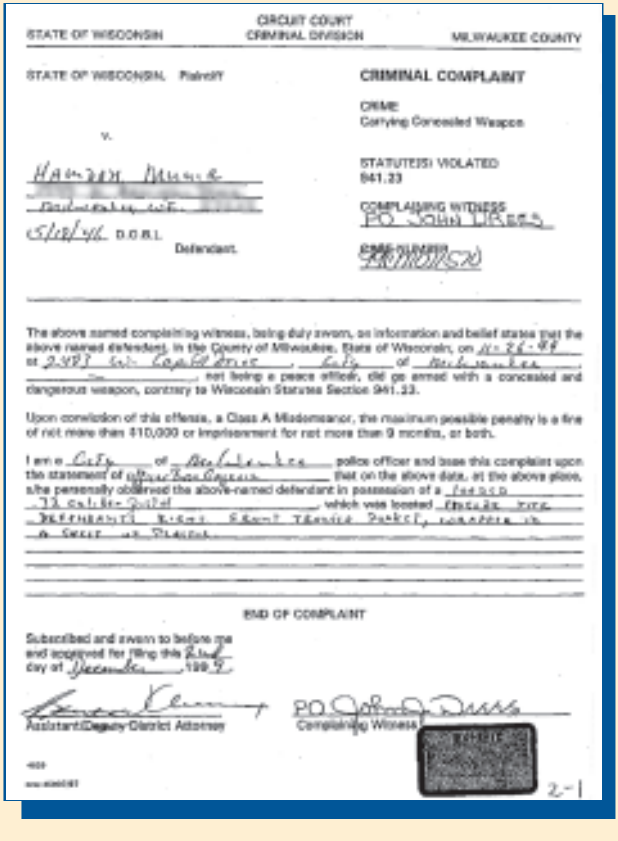
Commencing a Criminal Case

Only the state may bring a criminal case. Generally a prosecutor starts a criminal case by filing a complaint. The court is directly involved in a criminal case from the beginning to protect the rights of the defendant. Parties have a right to discovery in a criminal case, but discovery is not as extensive in a criminal case as in a civil case because the state must have completed most of its investigation before bringing criminal charges.

The criminal complaint

Most criminal cases are started when a prosecutor, either a district attorney (who represents a county) or the attorney general (who represents the state), files a complaint with the court. The complaint states the crime charged, names the defendant, and gives the date, approximate time, and location of the crime. In a

A very simple complaint charging Munir Hamdan with carrying a concealed weapon. Hamdan was convicted in circuit court, but the Wisconsin Supreme Court ultimately overturned the conviction upon finding that a 1998 amendment to the Wisconsin Constitution afforded Mr. Hamdan the right to carry a concealed weapon in his store for security purposes. (See a description of Hamdan's case in the *Summary of Significant Decisions* section of this book.)



CIRCUIT COURT
STATE OF WISCONSIN — CRIMINAL DIVISION — MILWAUKEE COUNTY

STATE OF WISCONSIN, Plaintiff

v.

Defendant.

CRIMINAL COMPLAINT

CRIME:
Carrying Concealed Weapon

STATUTE(S) VIOLATED
941.23

COMPLAINING WITNESS
PO JOHN DOE #5

The above named complaining witness, being duly sworn, on information and belief states that the above named defendant, in the County of Milwaukee, State of Wisconsin, on [illegible] at [illegible] not being a peace officer, did go armed with a concealed and dangerous weapon, contrary to Wisconsin Statutes Section 941.23.

Upon conviction of this offense, a Class A Misdemeanor, the maximum possible penalty is a fine of not more than $10,000 or imprisonment for not more than 9 months, or both.

I am a police officer and base this complaint upon the statement of that on the above date, at the above place, s/he personally observed the above-named defendant in possession of a which was located

END OF COMPLAINT

Subscribed and sworn to before me and approved for filing this day of

Assistant District Attorney

Complaining Witness

2-1

complaint, the district attorney also presents sufficient facts to show why the defendant is being charged, identifies the source of the information contained in the complaint, and provides reasons why the source should be believed.

Prosecution of most crimes must be commenced within a certain time period that is established by a statute of limitation. The state generally has six years to commence prosecution of a felony (a crime for which a person may be sentenced to one year or more in prison) and three years for a misdemeanor (a crime for which the maximum penalty is a year in jail). However, there is no time limit for the prosecution of homicide. The main purpose of time limits is to ensure that criminal cases are tried while the evidence is still available and witnesses' memories are fresh. A case is commenced when a warrant, summons, or indictment is issued or an information is filed.

Pretrial court appearances

The defendant's first court date is called the initial appearance. The court informs the defendant of the charges filed against him or her and gives the defendant a copy of the complaint. The court also informs the defendant of his or her right to have an attorney and that if the defendant is indigent and requests counsel, the court will appoint an attorney. If the defendant is in custody, the court determines whether to release the defendant on bail, and if the defendant is released, imposes conditions for bail. In a misdemeanor case, the court may set the trial date at the initial appearance. The next court action in a misdemeanor case is the arraignment. Further steps are required in a felony case. At the initial appearance, the court informs a felony defendant that he or she is entitled to a preliminary examination before the criminal case may go forward.

The purpose of a preliminary examination is to determine in a felony case whether the district attorney can show probable cause to believe that the defendant committed a felony. If not, the court must dismiss the felony complaint. At the preliminary examination the district attorney and defendant may call witnesses and present evidence. If the court determines that the district attorney has shown probable cause or if the defendant waives his or her right to a preliminary examination, the case goes forward. The prosecutor files a pleading called an "information," which informs the court of the crime with which the defendant is charged and states the date and place of the crime.

An arraignment is held in both misdemeanor and felony cases. At the arraignment, the complaint or information is read out loud unless the defendant waives reading, and in a felony case the district attorney gives the defendant a copy of the information. The court then asks the defendant to submit a plea. The defendant may plead "guilty", "no contest", "not guilty", or "not guilty by reason of mental disease or defect". A plea of no contest has the same effect in a criminal case as a guilty plea, except it cannot be used as an admission of criminal action in a civil case. The defendant may not enter a plea of no contest without approval from the court. If the defendant pleads guilty or no contest, the court sentences the defendant or places the defendant on probation. If the defendant pleads not guilty or not guilty by reason of mental disease or defect, the case proceeds to trial.

Grand jury and John Doe proceedings

Although the vast majority of criminal cases in Wisconsin are begun by a district attorney filing a criminal complaint, some cases are commenced as the result of a grand jury or John Doe investigation. Grand jury and John Doe investigations are secret proceedings for which witnesses may be subpoenaed. Grand jury and John Doe proceedings are generally used when investigators need to take testimony under oath or compel a witness to testify in order to gather sufficient evidence to issue a criminal complaint.

A judge, usually upon the request of a district attorney, may assemble a grand jury to investigate suspected criminal activity. A grand jury consists of 17 people selected for jury service. The grand jury may request that the prosecutor subpoena and examine witnesses. Upon completing an investigation, a grand jury may by the vote of at least 14 members return an indictment, which is a written accusation that a person committed a crime. If the grand jury returns an indictment, the court issues a summons or warrant for the defendant.

A judge initiates a John Doe proceeding upon receiving a complaint about criminal activity from any person, including the district attorney. The judge must question the person who makes the complaint under oath and may subpoena and examine other witnesses (usually with the assistance of the district attorney). If the judge finds probable cause to believe that a person has committed a crime, a written complaint is filed and the judge issues a warrant for the arrest of the defendant named in the complaint.

Discovery

Discovery in a criminal case is generally less extensive than in a civil case. Discovery allows the parties to obtain certain information known by the opposing party. Upon request, the prosecution and defense must provide a list of witnesses it intends to call at trial, as well as statements of the witnesses, reports of expert witnesses, and any known criminal record of a witness. The parties must also disclose any physical evidence they intend to introduce at trial. A party may obtain a court order allowing scientific testing of evidence held by the opposing party. The prosecution must disclose statements made by the defendant that pertain to the crime or that the prosecution intends to introduce at trial. The prosecution is obligated to disclose exculpatory evidence (evidence that might weigh in the defendant's favor) to the defendant even if the defendant does not specifically request the information or material.

Pretrial motions and plea bargains

Parties in a criminal case often file pretrial motions. Common motions include motions to exclude physical evidence, a defendant's confession, or an eyewitness identification of the defendant. The court may require the attorneys to submit briefs on the motions, but briefing is less common on pretrial motions in criminal cases than civil cases.

Most criminal cases do not go to trial. Instead the prosecution and defense negotiate a settlement. The parties may agree upon the crimes to which a defendant will plead guilty and a sentence recommendation, or may only agree on the plea. The judge must review the agreement on the plea before accepting it to ensure that there is sufficient reason to believe that the defendant is guilty of the crime. If the parties agree on a sentence recommendation, the judge must review it to determine if it is appropriate. The judge is not bound by the sentence agreement.

Trial of a Civil or Criminal Case

The proceedings in a trial of a civil or criminal case are similar. Both may be to a jury or judge. Both start with opening statements, proceed to presentation of evidence followed by closing statements, and culminate with a decision. Depending on the result of the trial, a civil case may end with the awarding of damages and a criminal trial may end with sentencing. During the trial, the role of the judge is similar – determining the admissibility of evidence, guiding the jury, if there is one, and refereeing the actions of the attorneys.

Judge Sue E. Bischel is shown presiding over a jury trial in a products liability case. She is the second woman (retired Judge Vivi Dilweg was the first) to serve as a judge for the Brown County Circuit Court in Green Bay, and is one of a group of judges in the state who handle administrative duties such as budgeting and personnel issues in addition to their caseloads. She is deputy chief judge of the Eighth Judicial District, which encompasses Brown, Door, Kewaunee, Marinette, Oconto, Outagamie, and Waupaca counties. *(Kathleen Sitter, LRB)*

Jury or bench trial

A trial may be either to a jury and judge together, or to a judge alone (called a bench trial). In a civil case either party may request a jury, which usually consists of six jurors. In a criminal case, the defendant has a right to a jury. The defendant may waive the right to a jury, but the state does not have to accept the defendant's waiver, so the state may require that the case be tried to a jury. In a felony case the jury usually consists of 12 jurors and in a misdemeanor case, six jurors.

In a jury trial, after the jury is selected, the judge advises the jury of its role and the ground rules for the jury's participation in the trial. Once preliminary jury matters are settled, or at the beginning of a trial in a bench trial, each attorney has an opportunity to make an opening statement describing the case and what the attorney intends to prove.

Presentation of evidence

The heart of a trial is the presentation of evidence. Each side has an opportunity to present evidence; the plaintiff or prosecution goes first and must present sufficient evidence to prove his or her claims. Presentation of evidence is governed by the

A clerk swears in a witness in one of the state's circuit courts.
(Kathleen Sitter, LRB)

rules of evidence. A party may only present evidence that is relevant to the case. Certain types of evidence are not admissible even if relevant. Evidence obtained in the course of a privileged communication, such as between a doctor and patient, lawyer and client, or between spouses, is generally not admissible. Further, hearsay evidence, which is a statement by a witness reporting what the witness or another person said on a prior occasion, is generally not admissible. The judge is responsible for resolving questions of admissibility of evidence.

A party's presentation of evidence often consists of witness testimony, presentation of documents and perhaps of other tangible objects. Witnesses must testify under oath. The party that presents a witness has the first opportunity to ask questions of the witness under direct examination. The opposing party may then

cross-examine the witness, asking questions on any matter that is relevant to any issue in the case. Any further questioning of a witness after the initial direct examination and cross-examination is generally limited to the issues raised on direct or cross-examination. Lay witnesses may only testify as to matters on which they have personal knowledge. However, an expert witness, a person who is demonstrated to have specialized knowledge, skill, experience, training, or education, may provide opinion testimony of a technical, scientific, or other specialized nature, if such expert testimony is useful.

Like witness testimony, documents and tangible objects must be relevant in order to be admissible as evidence at trial. To present tangible evidence such as written material, voice recordings, or other objects, the party presenting must first show that it is what it is purported to be; for example, a note written by a specified person, or a tape recording of the voice of a specified person, or a photograph of a particular place.

If a party believes that certain evidence should not be admitted, the party must object to admission of the evidence before it is admitted. The judge may give the parties an opportunity to argue for or against admission, generally out of the hearing range of the jurors, and then will rule on whether the evidence is admissible. If a party does not make a timely objection to admissibility of evidence, the party generally loses the right to contest admission of the evidence and to challenge any result that is based on the evidence.

How a judge makes decisions

In the course of a case, a judge will make decisions not just on evidence, but on many issues that arise. Some decisions he or she can make without delay by applying his or her knowledge of the law to the facts at hand. Other questions require research. A trial judge may read appellate court opinions dealing with questions similar to the one that he or she must answer. Even if no appellate court has written a decision dealing with exactly the same question, the opinions may cover similar scenarios or provide guidance. In addressing the broad range of questions that arise in the course of a case, judges often consult a reference manual called the *Wisconsin Benchbook*. There are *Benchbooks* for criminal, civil, family, juvenile, and probate cases – all revised on an annual basis by teams of judges and court commissioners. Judges use the *Benchbooks* to guide their research. If case law does not provide a clear answer to the questions, a judge may ask the parties to submit written arguments, called briefs, explaining why a question should be answered in their favor and citing case law to back up their arguments.

After the plaintiff or state finishes presenting evidence, the defendant may argue to the court that the case should be dismissed because the other side has not proven its case. If the court rejects the defendant's motion or delays ruling on it, the defense may present evidence in the case.

Jury instructions

In a jury trial, after both sides have presented their evidence, the judge confers with the attorneys and determines the wording of questions for the jury as well as the judge's instructions for the jury. The court may submit a single question to the jury, essentially asking which party should prevail, or may submit multiple questions, each addressing a determinative fact in the case. For example, in a civil negligence case, the judge may ask the jury whether the defendant used ordinary care; whether the defendant's actions caused the plaintiff's injury; and if the defendant did not use ordinary care and did cause the plaintiff's injury, what amount of damages the plaintiff should be awarded. In a criminal case, the judge asks the jury to determine whether the prosecution proved every element of a crime. For example, in a theft case, the judge asks the jury to determine whether the defendant intentionally took property of another; whether the owner of the property did not consent to this; whether the defendant knew that the owner did not consent; and whether the defendant intended to deprive the owner permanently of the property. The jury's answers to the series of questions determine in a civil case whether the plaintiff or defendant wins, and in a criminal case, whether the defendant is guilty or not guilty. A committee of legal experts in Wisconsin publishes guidebooks of suggested jury instructions for both civil and criminal cases. These model instructions, provided online to all judges, may be modified to fit a specific case.

The jury box in the Lafayette County Courthouse awaits 12 citizens to exercise their role in the judicial process. Opposite page: The "Sword of Justice" greets defendants and officers of the court. *(Kathleen Sitter, LRB)*

In spoken and written instructions the judge advises the jurors of their responsibility to answer the questions and may give guidance on matters such as the burden of proof and determining the credibility of witnesses. The burden of proof includes both a burden of production (producing sufficient evidence that a jury or judge may find in the party's favor) and a burden of persuasion (the duty to convince the jury or judge of the party's view of the facts). The burden of production

is generally on the plaintiff or state, except for certain defense claims, such as that a criminal defendant is not guilty by reason of mental disease or defect. The burden of persuasion in a civil case is generally by the preponderance of the evidence, and in a criminal case it is usually beyond a reasonable doubt.

The verdict and damages or sentencing

In a civil case, five-sixths of the jurors may return a verdict. In a criminal case, all the jurors must unanimously agree on the verdict in order to find the defendant guilty. In a trial before a judge without a jury, the judge determines which party prevails. Even in a trial to a jury, the judge may disregard the jury's finding (except a judge cannot disregard a jury's not guilty finding in a criminal case) and direct a verdict for one party, although this rarely occurs.

In a civil case, the jury or judge usually awards damages to a prevailing plaintiff. The judge may also direct the losing party to reimburse the prevailing party for costs incurred in connection with the trial.

In a criminal case, the judge determines the sentence for a defendant who has been convicted of a crime. The sentence may consist of a fine or imprisonment or both, or the judge may place a defendant on probation instead of imposing a sentence. If the defendant violates conditions of probation established by the judge, the judge may subsequently impose a sentence. Sentencing must accomplish several things. It must incapacitate the offender so that he or she cannot commit additional crimes, and also punish and rehabilitate the offender. Most judges believe that sentencing is the toughest part of the job because of the difficulty in structuring a sentence that will adequately serve these purposes. Without a crystal ball, it is impossible to know whether lengthy incarceration, probation, or something in between will best meet the needs of the defendant, the victim, and society.

Personnel in the courtroom

The court relies on a number of highly skilled assistants who perform a variety of jobs during trials. A clerk of court maintains a docket sheet recording the events in each case, is the custodian of the court's case file, and assists the judge in managing jurors and scheduling future court dates. The court reporter is a stenographer who makes a record of all the words spoken in open court. Wisconsin is currently facing a shortage of court reporters and the courts are working to increase the number of people entering this profession and exploring recording court proceedings by electronic means when court

reporters are unavailable. The bailiff is in charge of security and maintaining order in the courtroom. Some bailiffs are deputy sheriffs while others are civilians. In some cases an interpreter is needed to assist in communications with parties or witnesses who do not speak English well or who require sign-language interpretation.

Focus on the role of court interpreters

The increasing number of non-native-English speakers in Wisconsin has focused attention on the judicial system's need for a pool of qualified court interpreters. A good court interpreter must not only be fluent in English and the other language he or she is translating, but also must understand terminology used in court. In 1999, the director of state courts appointed a multidisciplinary committee to study the need for and use of interpreters in Wisconsin's courts and to recommend improvements.

When the Committee to Improve Interpreting in Wisconsin Courts commenced its work, the state's courts had no means of evaluating the skills of people providing language interpretation and no ability to hold these individuals to accepted professional standards. The interpreters' skills varied widely, and, in some cases, people who were providing interpretation had conflicts of interest. Consider the following stories – just a small sample – told to the committee:

- an interpreter confused "hat" and "gloves" until corrected by an observer in the gallery;
- a judge asked a woman to interpret for the woman's husband during their divorce trial;
- a judge asked an arresting officer to interpret for a prisoner;
- an interpreter asked the non-English-speaking person to pay him, even though he was already being paid by the county.

The Supreme Court has since implemented the committee's recommendations for improvement. The court adopted standards for interpreters, which were developed by the committee, in its Code of Ethics. The court has also engaged in an effort to educate judges, attorneys, and court staff on how to recognize when an interpreter is needed, how to properly use interpreters, and how to provide oversight of interpreter performance.

The most important change arising out of the committee's work is a rigorous testing and certification process for interpreters. Only those who speak English and another language at the level of a highly educated native speaker and can demonstrate a clear understanding of legal terminology will be certified. The process includes a two-day training program focusing on court process and ethics, a multipart written exam, and a lengthy oral exam. Of the first class of 34 Spanish language interpreters who reached the oral exam phase, eight passed. The 25 percent pass rate exceeds the average national rate of 12 percent. These interpreters – the first to be certified in Wisconsin – were sworn in at a ceremony in the Supreme Court Hearing Room in May 2004. Another class of Spanish interpreters was sworn in several months later, and the first class of Hmong interpreters is moving through the process. A roster of certified interpreters has been developed and distributed not only to judges and attorneys, but also to the law enforcement community to ensure accurate interpretation at every stage of the criminal justice process.

Dane County Court – Taking the Oath of Office for Court Interpreters: ". . . I will interpret truly, accurately, completely, and impartially, in accordance with the standards prescribed by law, the code of ethics for court interpreters, and Wisconsin guidelines for court interpreting . . ." *(Kathleen Sitter, LRB)*

Jury Service in Wisconsin

Managing the jury system is a delicate balancing act for a court. A successful system is attentive to both the efficiency of the process and the jurors' level of satisfaction. Those who manage the system must supply sufficient numbers of jurors to try all matters before the court without wasting court resources or the time and good will of the jurors.

Each year, across Wisconsin, about 70,000 people are summoned for jury duty. They are selected at random by the clerk of the circuit court for each county. Clerks primarily use lists provided by the state Department of Transportation (DOT) of individuals who hold driver's licenses or identification cards. Because the selection process must be random, no one may volunteer for jury duty. After the clerk determines how many jurors will be needed for a given period, a computer program randomly selects that number of names and juror questionnaires are sent out to those people. When the questionnaires are returned, they are reviewed to ensure that each potential juror is eligible under law to serve.

Jurors must be United States citizens, residents of Wisconsin, and residents of the circuit where they are summoned in order to serve. They must be at least 18 years of age and able to understand the English language.

When the people who have been summoned report to the local courthouse, they are checked in, provided with an orientation, and taken to the appropriate courtroom for the final selection process.

An American Sign Language interpreter signs for a juror at a jury orientation at the Milwaukee County Courthouse. People with disabilities regularly serve on Wisconsin juries and are accommodated in a variety of ways. At the podium is Jury Services Coordinator Lori Watson Schumann. *(Kathleen Sitter, LRB)*

The final step in the selection process is called *voir dire*, which is a French phrase meaning "to speak the truth." This involves the judge and attorneys questioning the jurors, both as a group and as individuals, to try to develop a jury panel that both sides believe will be fair and impartial. The judge may ask prospective jurors whether they know any of the parties, attorneys, or witnesses in a case, and will explore whether the prospective jurors have any prejudice with respect to anyone they may know. The judge also will ask the prospective jurors if there are any reasons they cannot serve. After the judge concludes his or her questioning, the attorneys have an opportunity to question the prospective jurors.

Attorneys winnow the jury panel through the use of "for cause" and "peremptory" challenges. If an attorney challenges a juror for cause, he or she must provide a reason. There is no limit to the number of challenges made for cause. If an attorney claims a peremptory challenge, the juror is excused and the reason need not be given. Peremptory challenges may not be based upon race. There are a limited number of peremptory challenges allowed. After the jurors have been selected, the judge will instruct the members of the jury regarding the case and the rules of conduct.

These rules of conduct are very specific and important to the fairness of the process. Generally, they include prohibitions on discussing the case with anyone, including family, the court staff or other jurors (until it's time for deliberation), watching or reading news accounts of the trial, and conducting one's own investigation by looking at the Internet or going to places involved in the case, or consulting maps or calendars. All these rules are designed to ensure that the jurors reach a decision based only upon the law and the evidence presented in court.

Jury Diversity

In June 1996, the *Kenosha News* ran a story on a drug trial in that county's circuit court. The story began as follows:

A black defendant glanced at the white crowd from which a jury would be selected to decide her fate on a drug charge. She then asked her attorney, "Why aren't there any black people here?" [The attorney] scanned the 135 potential jurors filling the Kenosha Circuit courtroom and found no African-Americans.

Following her conviction, the woman based an appeal on Kenosha's jury selection system, but lost.

Efforts to ensure that Wisconsin juries reflect the racial and ethnic make-up of each county's population are many and varied – as are opinions on whether this is necessary. In that same *Kenosha News* story, criminal defense lawyers differed on the importance of a racially mixed jury. One lawyer said: "Diversity gives a sense of fairness to litigants. You wouldn't want, for example, only members of one occupation, political party or religion on a jury." But others opined that jurors' ability to understand testimony and arrive at a verdict based upon the facts and the law is all that matters. Another lawyer told the newspaper that he prefers white juries for his black clients, based upon conversations with blacks who have served as jurors. "Black jurors hold black defendants to a higher standard," the lawyer said. "Black jurors usually are in the middle class and see a black defendant as the bad apple."

While it is unreasonable to expect any one jury to represent the racial mix of a county, it is reasonable to expect that, over time, a county's jurors will be representative of the county population. In an effort to improve jury diversity, the legislature has given the courts the ability to tap different source lists in addition to the Department of Transportation list. Utility company customer lists, phone books, voter registration lists, lists of people receiving public assistance, and lists of high school graduates are among those acceptable for use by clerks who find that their DOT sampling has not provided an adequate representation of minorities. However, few Wisconsin counties actually use the supplemental lists, because they have not proven useful.

Jurors file into the jury box ready to hear the evidence presented in court. This jury was hearing a medical malpractice case in Brown County Circuit Court and gave permission for these photographs to be taken. The media are not permitted to photograph jurors during a case.

(Kathleen Sitter, LRB)

Alternatives to Traditional Civil and Criminal Procedure

Not all proceedings under the jurisdiction of the circuit courts follow formal civil or criminal procedures. Courts have developed less formal procedures to handle certain prevalent social problems such as family dysfunction, juvenile delinquency, and drug abuse. The courts also use less formal procedures for efficiency.

Improving how courts respond to family crisis

In cases affecting the family or in cases in which it appears that legal custody or physical placement of a child will be at issue, the circuit courts must refer the parties to mediation unless mediation would cause undue hardship or endanger the health and safety of one of the parties. Counties are required to appoint a director of family counseling services to provide such mediation. Parties referred to mediation by the court must participate in at least one mediation session unless the director of mediation services finds that mediation is not appropriate. Mediation is limited to the issues of child custody and physical placement and does not involve issues beyond the immediate interest of the child, such as property division and child support allocations, unless they directly bear on custody or placement. If the parties reach an agreement on custody and placement in mediation, the agreement is submitted for review by the judge. The judge will incorporate the agreement as part of the final judgment unless he or she finds that it is not in the best interests of the child. Successful mediation removes determinations regarding custody and placement from the adversarial forum of the courtroom. Of course, when mediation is not successful, custody and placement must be argued and decided under regular court procedures.[1]

Beyond custody issues, there are a variety of family problems that require court intervention. These problems constitute a large and growing portion of the work of Wisconsin courts, and the growing involvement of the courts in the lives of dysfunctional families has raised concern among those who work with families in crisis. The Wisconsin Supreme Court has been involved since 1995 in an effort to address this concern. This effort has sparked a number of projects.

Initiatives of the Wisconsin court system are improving how the courts respond to families in crisis with a number of projects…

In **Kenosha**, **Racine,** and **Waukesha** counties, a program to move children with special needs from foster care to permanent homes by linking key decision makers in the permanency process.

In **La Crosse** County, the Unified Family Court Project, which improves the handling of the complicated problems that one family may present – divorce, child abuse, juvenile delinquency, and more – by grouping all the cases involving an individual family in front of one judge to bring the full picture into clearer focus.

In **Milwaukee** County, an initiative to link the District Attorney's Office, Guardian *ad Litem*'s Office (which provides attorneys to represent the best interests of children who are involved in court proceedings), Termination of Parental Rights (TPR)/Adoption Unit and the Children's Court to one database to improve communication among agencies and create a "fast track" to permanent homes.

Beyond punishment: problem-solving courts

In the last decade, a new type of court known as the problem-solving court has appeared in jurisdictions around the U.S. These courts grew out of public concern and frustration over recidivism, also known as revolving-door syndrome. Problem-solving courts vary considerably in structure and operation, but in general they attempt to address the root causes of each defendant's offenses and depend upon a close collaboration between the courts and social services. Nationally, the most prominent problem-solving courts are drug court, mental health court, domestic violence court, community court, and teen court.[2] In general, community courts are found in large cities. Wisconsin does not have any community courts or mental health courts at this writing.

Problem-solving courts are not to be confused with another type of court that also recently has appeared on the landscape, the specialty court. Specialty courts follow the traditional, adversarial court model but handle only a specific type of case. For example, Milwaukee County has three courts dedicated to homicide and sexual assault cases, one court dedicated to gun violations, and three courts that handle drug offenses. These courts do not provide special treatment to offenders, but they do ensure that these offenses are handled in a prompt and uniform manner.

In Wisconsin, as of June 2004, there were 37 courts in 36 counties that were identified as problem-solving courts, also known as treatment courts. The vast

Mediating family disputes

It was, at first glance, a tragically unremarkable story: A 10-year-old boy showed up at school with bruises, his teacher made a report, police investigated, and the father was arrested and charged with felony child abuse.

In the normal course of events, the case would take about seven months to resolve and the father probably would have little or no contact with his son during that time. But this incident occurred in La Crosse County, where the court has institutionalized mediated child protection conferencing as the preferred method for handling child abuse/neglect cases. And that changed everything. The mediation brought together the family, attorneys, and social workers. They reached an agreement on a variety of conditions, which was submitted to and approved by the court. The father is now reenrolled in Alcoholics Anonymous, the child has a new doctor and a different medication, and a county social worker plugged the family into new services. The family stayed together, and the felony charge was ultimately dropped.

The program was implemented in La Crosse in October 1998 and mediators now handle about 50 cases per year (but never cases that involve an allegation of sexual assault, where it would be harmful to bring the victim and the accused together). An agreement is reached in mediation in 86 percent of cases. The judge sees each family every 60 days, which keeps them strongly connected, and the monitoring by social workers is often more stringent than would be possible under probation in a criminal child abuse case.

majority of these – 27, were teen courts, also known as peer or youth courts, which provide an alternative to the traditional juvenile justice system for first-time, nonviolent offenders. Teen courts focus on children between the ages of 11 and 18 who have committed relatively minor offenses such as vandalism or truancy and may be causing problems at school. Teen courts use teenagers as jurors, and sometimes as judges, attorneys, and court officers.

Teen court gives youth offenders a chance to clear their records and provides them with guidance, learning opportunities, and positive peer influence. In general, the defendants must be willing to admit guilt and must agree to abide by a "sentence" set by a panel of their peers. Often, these panels are comprised of former teen court defendants. Teen court dispositions generally focus on community service and may include letters of apology and essays about the impact of their misdeeds. Teen courts also provide a forum for adults and adolescents to work together to address community problems.

Many communities have chosen to begin a teen court because they sense that the traditional justice system does not have the resources to focus on first-time offenders. By reducing the docket of the juvenile court, teen courts – which often convene in the evening and operate on a shoestring with the help of volunteers – free up the court system to handle the more serious cases. And by addressing first offenses in a way that may reduce subsequent offenses, teen courts aim to redirect kids who might otherwise become defendants in those serious cases.

Circuit Court Judge Stuart A. Schwartz presides over a session of the Dane County Drug Court. Judge Schwartz sees participants frequently to review their progress and give support or impose sanctions as necessary.

(Kathleen Sitter, LRB)

Problem-solving courts for drug abusers, which are often called drug-treatment courts, are increasingly being used in Wisconsin. As of January 2005, three Wisconsin counties (Dane, La Crosse, and Monroe) had established treatment courts for adult drug abusers and three additional counties (Eau Claire, Pierce, and Wood) were running pilot programs to test the concept with a small number of offenders. Several other counties were in the planning stages, including Waukesha County where an alcohol-treatment court was under consideration. One county (Ashland) has a drug treatment court for juvenile offenders. Other counties have drug courts that function to improve the processing of cases rather than to provide treatment.

Drug-treatment courts focus on nonviolent felony drug offenders who are referred by the district attorney and who agree to participate in the program and receive drug treatment services instead of a sentence. The offenders appear regularly before the judge as a group. The judge reviews each case with the treatment providers and district attorney, and discusses each offender's progress directly with the offender in front of the group. The judge may order the treatment modified or may order sanctions for violating treatment requirements, for example, several days in jail. If an offender successfully completes treatment by staying off drugs, the court may expunge any record of conviction. However, if the offender does not succeed in treatment, he or she is returned to the regular criminal process for adjudication and sentencing.

Small claims and probate

Circuit courts also use streamlined procedures in the interests of efficiently managing workload. For example, Wisconsin law establishes less formal civil procedures for trying small claims actions, in which the vast majority of litigants represent themselves. Small claims include evictions, forfeitures, and other civil actions in which the amount claimed is less than $5,000.

An increasing number of Wisconsin counties have established local rules mandating that parties to a small claims action try mediation before a judge will hear the case. Generally, when parties appear for court, volunteer mediators are on hand to try to help them resolve their dispute before the judge steps in.

A statement above the judge's bench in the Lafayette County Courthouse emphasizes the role of the people in their government. *(Kathleen Sitter, LRB)*

Probate is the legal process through which a court makes sure that a deceased person's property is distributed to his or her beneficiaries. Probate takes place in the court located in the county where the deceased person lived. Each county is required to appoint a register in probate. Parties to a probate action have the option of presenting the probate matter to the register to process under informal administration proceedings instead of filing the probate claim with the court. Determinations under informal administration are just as valid as probate actions taken into court.

Court of Appeals

The Court of Appeals hears appeals from the circuit court. The primary function of the court is to correct errors resulting from misapplication of well-settled law. However, the Court of Appeals also issues new rules of law.

Sixteen judges sit on the Court of Appeals, which is divided into four districts. District I serves Milwaukee County. District II is based in Waukesha, District III is based in Green Bay, and District IV is based in Madison. The 16 judges are apportioned unequally among the districts, reflecting differences in the caseload. Districts I and II each have 4 judges, District III has 3 judges, and District IV has 5 judges. Court of Appeals judges are elected in districtwide elections for 6-year terms and must reside in the district to be eligible for election. The Supreme Court appoints a chief judge from among the 16 judges to direct administrative matters for the Court of Appeals, and the chief judge appoints one judge in each district to serve as the presiding judge for the district.

Appeals in Wisconsin before 1978

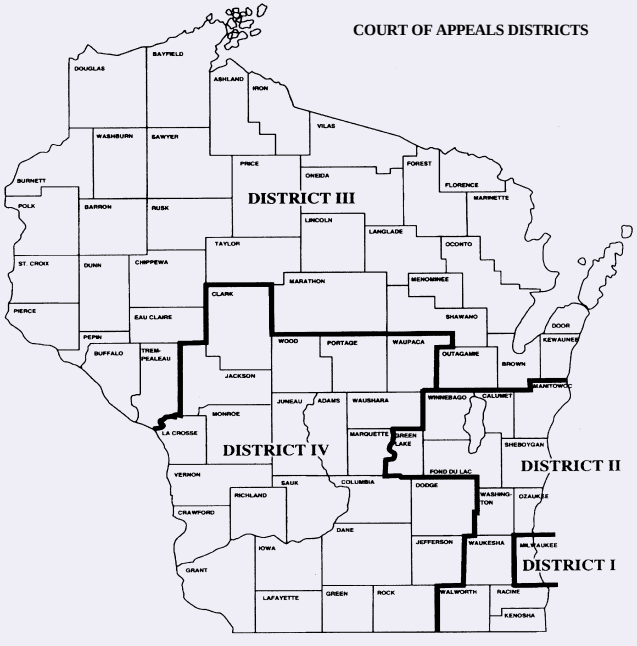
Before 1978, when the Court of Appeals was created, parties had a right to appeal almost any kind of circuit court decision directly to the Supreme Court, which had to accept the appeals. By the late 1960s, the Supreme Court had accrued a persistent and growing backlog of cases. Parties in some cases had to wait several years for a Supreme Court decision. In 1977, the state adopted a constitutional amendment authorizing creation of an intermediate court of appeals. Creation of the Court of Appeals allowed the Supreme Court to focus on deciding important questions of law, rather than correcting errors made in the circuit court. The Court of Appeals originally had 12 judges and was projected to handle 1,200 appeals a year. At this writing, the court receives about 3,500 requests for review a year.

Appeal of a circuit court decision

The parties to a circuit court case have a right to appeal the circuit court's decision once the circuit court has entered a final judgment. Such appeals are called appeals of right. A party initiates an appeal by filing notice of appeal with the circuit court and submitting a copy of the notice to the clerk for the Court of Appeals. The Court of Appeals receives about 2,300 appeals of right each year and must review all of them.

The Wisconsin Court of Appeals, 2005. Back row, left to right: Judges Ralph Adam Fine, Harry G. Snyder, Paul B. Higginbotham, Charles P. Dykman, Daniel P. Anderson, David G. Deininger, Michael W. Hoover, Paul Lundsten, Margaret J. Vergeront. Front row, left to right: Judges Patricia S. Curley, Ted E. Wedemeyer, Jr., Gregory A. Peterson, Thomas Cane (chief judge), Neal P. Nettesheim (deputy chief judge), Richard S. Brown, Joan F. Kessler.

(Wisconsin Supreme Court)



The four districts of the Court of Appeals are headquartered in Milwaukee, Waukesha, Wausau, and Madison.

The Court of Appeals may at its discretion also accept appeals from circuit court orders made in cases that are still pending in circuit court. The court generally does not accept such appeals for several reasons: a party's appeal may become unnecessary if the party wins the circuit court case; the circuit court is better equipped to gather the facts necessary to make initial decisions in a case; and it is more efficient for the Court of Appeals to allow the circuit court to conclude a case before getting involved. However, the Court of Appeals may accept an appeal in a pending circuit court case if reviewing the circuit court's order will provide significant assistance in deciding the circuit court case, clarify an issue of general importance, or protect a party from substantial or irreparable harm. For example, the Court of Appeals may accept an appeal of a decision that an insurance policy covers an injury, because if the Court of Appeals determines that the policy does not, the case may be concluded without addressing the issue of damages. A party seeking a discretionary appeal must petition the Court of Appeals. The court receives between 200 and 250 petitions for discretionary appeal a year and grants 40 to 50.

In an appeal, the petitioner (the party requesting review) submits specific questions for review. For example, the petitioner may ask the Court of Appeals to review the circuit court's interpretation of a particular statute or may ask for review of a circuit court decision to admit certain evidence. The appeals court generally

The Creation of the Court of Appeals: "It Was Tough Politics"

How did the District II Court of Appeals come to be headquartered in Waukesha, just down the road from District I in Milwaukee? In a word: politics.

After voters ratified a constitutional amendment on April 5, 1977, authorizing creation of the Wisconsin Court of Appeals, the legislature had to decide a key question: which four cities would be made headquarters for the appellate districts? Madison and Milwaukee, with their large populations and heavy caseloads were obvious choices. But Waukesha?

Frederick P. Kessler, who was a former state representative and a Milwaukee judge when the district lines were drawn (and who is now, again, a state representative) explained, "There was no logic. The logic should have been one (district) in Green Bay and Eau Claire, but…somebody said that to get Ed (Jackamonis, a Democrat and Speaker of the Assembly at the time) we have got to give him a building. And Ed represented the City of Waukesha. And so they said draw a district that makes Waukesha the logical place to put a Court of Appeals…and Ed went down from the floor of the speaker chambers and he pushed that bill through."

Kessler worked closely with then-Senate Majority Leader William A. Bablitch, to shepherd court reorganization through the legislature. Bablitch went on to serve as a justice of the Wisconsin Supreme Court from 1983-2003.

Kessler and Bablitch, along with Judges Thomas H. Barland of Eau Claire and James W. Rice of Monroe, provided a group interview on the subject of court reorganization for the Supreme Court's Oral History Project. In the interview, they recalled the art of the deal on both Waukesha and Wausau, which is home to the District III Court of Appeals.

"Stevens Point was my hometown, and I figured in any bill of this magnitude there must be something for Stevens Point," Bablitch recalled. "Now I didn't really want it in Stevens Point, but I just had that…instinct that someday that chip might be worth something…. I rounded up the votes (and) I had a majority to make Stevens Point – again, another relatively illogical choice – as the head of (District III).

"Well, Wausau just exploded because Wausau had been led to believe that this was theirs…. They had the building, they had everything there," he said.

Governor Martin J. Schreiber was facing an uphill battle (which he lost to Lee Sherman Dreyfus) for reelection at the time. Bablitch recalled that Schreiber called him into his office and there they laid the groundwork that gave Wausau the Court of Appeals headquarters and Stevens Point funds for the renovation of its downtown.

Everybody was happy, "except the western part of the state," Barland (also a former member of the state assembly) recalled.

does not review every facet of a circuit court decision, and rarely reviews a circuit court's determination of facts because the circuit court judge sees physical evidence and witnesses firsthand, and thus is in a better position to determine facts than an appellate judge, who only sees a written transcript of the trial.

Appellate briefs

Briefs are the heart of an appellate case. After filing a petition for appeal, the petitioner must submit a brief to the Court of Appeals and to the opposing party. The respondent (the party against whom an appeal is filed) must file a response brief, which may raise additional issues. The court may also direct the parties to address specific issues by brief. A brief must be clear and compelling because most Court of Appeals cases are decided on the basis of the briefs alone.

A brief contains certain standard sections. The brief starts with a statement of the issues presented. It contains a synopsis of the history of the case and of relevant facts. The most important part of the brief is the argument section, where a party lays out reasons for the court to rule in the party's favor and cites relevant statutes and prior court opinions that support the party's reasoning.

The Wisconsin State Law Library (WSSL) has copies of all briefs submitted in cases in which the Court of Appeals or Supreme Court issues a signed opinion. The briefs are posted on the WSSL Web site.

The Wisconsin State Law Library, the state's oldest public library, was established with the Wisconsin Territory in 1836 and funded with a $5,000 appropriation from Congress, which decided a frontier legislature would need law books. For many years, the State Law Library was housed in the State Capitol. Since 2002, it has occupied the second and third floors of the Risser Justice Center on the Capitol Square and continues to serve the needs of judges, lawyers, legislators, and members of the public. *(Kathleen Sitter, LRB)*

BRIEF OF PLAINTIFF-APPELLANT-CROSS-RESPONDENT, ADELE R. GARCIA

ON APPEAL FROM
CIRCUIT COURT FOR WAUKESHA COUNTY
THE HONORABLE LEE S. DREYFUS, JR. PRESIDING

ARGUMENT

THE WISCONSIN LEMON LAW DOES NOT REQUIRE A CONSUMER TO USE SPECIFIC STATUTORY TERMINOLOGY WHEN REQUESTING A COMPARABLE VEHICLE PURSUANT TO SEC. 218.0171(2)(c), WIS. STATS.

The Wisconsin Lemon Law was meant to be a self-enforcing consumer protection statute. In order to receive the remedies afforded by the Wisconsin Lemon Law, a consumer must comply with certain provisions, such as providing notice to the manufacturer and making a specific request for relief. A consumer is not, however, required to use specific statutory terminology or "magic words" in order to request a comparable new vehicle pursuant to sec. 218.0171(2)(c), Wis. Stats.

I. **A Consumer is not Required to Use "Magic Words" Regarding the Transfer of Title of the Lemon Vehicle to Trigger the Remedies of the Wisconsin Lemon Law.**

The effect of the decision of the trial court in this matter to impose a requirement upon a consumer to use specific "magic words" in order to receive relief under the Wisconsin Lemon Law. According to the trial court:

> Unless the vehicle is offered, meaning transfer of title is offered to the manufacturer, I'm satisfied it does not trigger the manufacturer's strict obligation under statute to provide the new vehicle or the refund in terms of whatever may be the selection of remedy. Now absent that occurring, as I said, it doesn't trigger the time period. (R. 33: 44; app. 163).

The trial court concluded that Ms. Garcia's notice to Mazda and Hall Imports, Inc. was insufficient merely because the specific words "offer to transfer title" did not appear in her written notice.

The trial court limited its determination to the first sentence of sec. 218.0171(2)(c), Wis. Stats., rather than reading the statute as a whole. The remaining language of the statute goes on to state that a consumer *shall* return the vehicle and provide the

The Wisconsin Lemon Law allows a consumer whose vehicle has a nonconformity that has been subject to a reasonable attempt to repair by a manufacturer to elect a comparable new vehicle or a refund in accordance with the provisions of the statute. In order to receive the elected remedy under the Wisconsin Lemon Law, a consumer must provide notice to the manufacturer of the lemon vehicle.

In relevant part, the Wisconsin Lemon Law states:

> To receive a comparable new motor vehicle or a refund due under par. (b)1. or 2., a consumer described under sub. (1)(b)1., 2. or 3. shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motor vehicle or refund. When the manufacturer provides the new motor vehicle or refund, the consumer shall return the motor vehicle having the nonconformity to the manufacturer and provide the manufacturer with the certificate of title and all endorsements necessary to transfer title to the manufacturer. Sec. 218.0171(2)(c), Wis. Stats.

A consumer is not required to do anything further to initiate a claim under the Wisconsin Lemon Law. The statute does not require that a consumer make an offer in a specific form, or even that it be in writing, nor does it require a consumer use specific language or "magic words".

Portions of the argument section from the petitioner's brief in *Garcia v. Mazda Motor of America* providing reasons why the court should find that Garcia properly invoked the Wisconsin Lemon Law in requesting a replacement vehicle.

Supervisory writs and no-merit reports

In addition to appeals, the Court of Appeals handles petitions for supervisory writs and no-merit reports. Petitions for supervisory writs are requests to the Court of Appeals to order the circuit court to fulfill its responsibilities. A supervisory writ is appropriate when the circuit court violates a clear duty to act or refrain from acting, causing grave or irreparable harm, and if an appeal will be an inadequate remedy. A supervisory writ may be requested to quash a subpoena or to require a judge to remove him or herself from a case. Many of the petitions for supervisory writ that the Court of Appeals receives are requests from prisoners to order the circuit court to hear pleas for postconviction relief. The court receives about 200 petitions for supervisory action a year and usually grants fewer than 10.

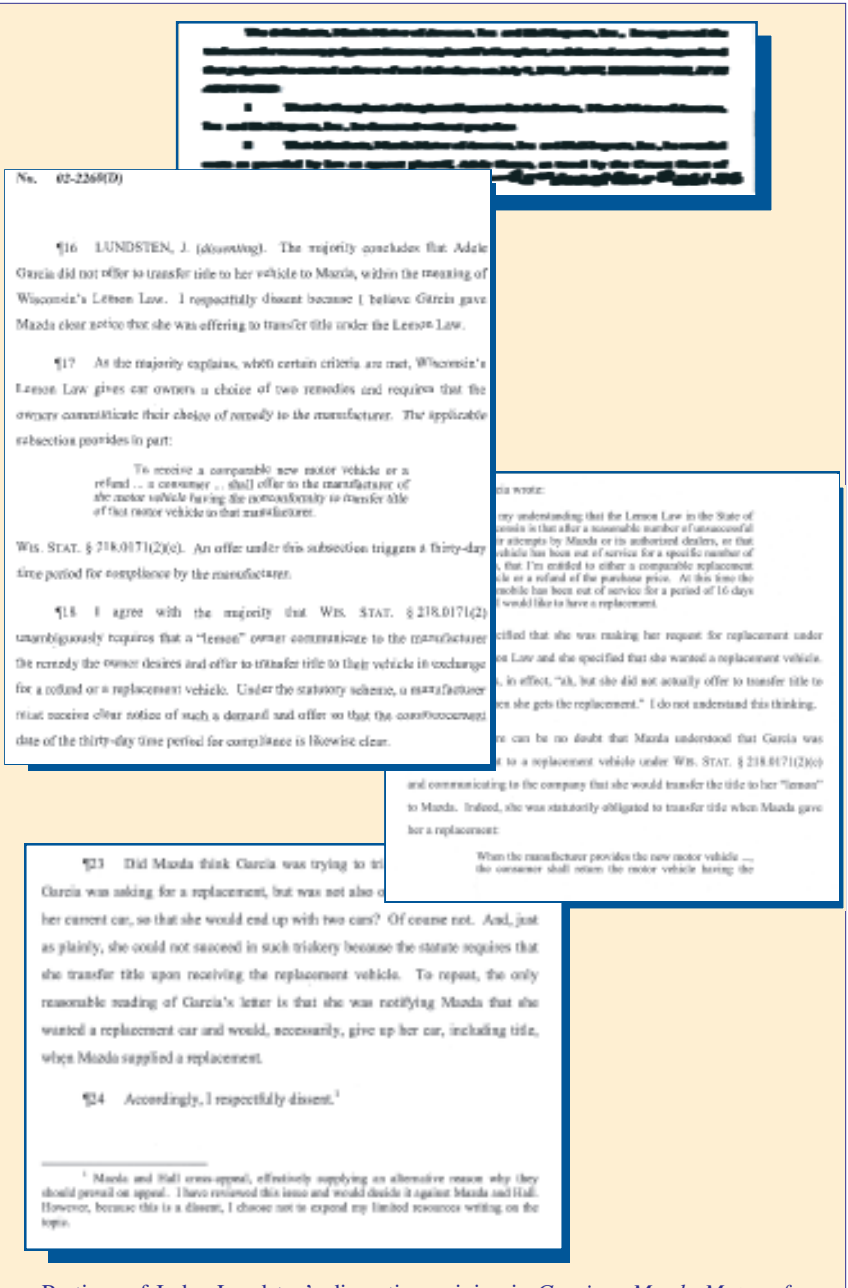
No-merit reports are reports by court-appointed attorneys explaining why pursuit of an appeal would be frivolous. (Court-appointed attorneys are generally representing indigent defendants.) If a court-appointed attorney finds that there are no substantive issues for appeal in a case, and the attorney cannot persuade the client to drop his or her appeal of right, the attorney must file a no-merit report, identifying any possible ground for appeal and discussing why an appeal would have no merit. The court then determines whether the appeal would be frivolous. The court receives about 600 no-merit reports a year.

Reviewing and deciding cases

Most Court of Appeals decisions are made by a 3-judge panel, which acts by majority vote. However, certain types of cases, including misdemeanors, child welfare, juvenile delinquency, and ordinance violations, are decided by a single judge unless a party requests otherwise and the court consents. In the districts with more than three judges, the judges form several 3-judge panels and the presiding judge distributes cases evenly among the panels without respect to the subject matter or the parties involved.

Panels meet several days a month. At their meetings, the judges generally reach a decision in the cases assigned, but they may decide to hear oral argument from the attorneys to gather further information or perspectives regarding issues presented in a case, or they may decide to certify a case to the Supreme Court. The Court of Appeals only hears oral argument in about 50 cases a year.

When making a decision in a case, the judges also determine the form in which they will issue their decision. The options are a judge-signed opinion, a per curiam opinion (an opinion that does not identify the author) for a case of lesser complexity or importance but still requiring an explanation, or summary disposition (a short order giving the decision and the reasons, but not engaging in analysis of the law). The court issues a judge-signed opinion for decisions that require significant explanation, develop new law, or if the judges do not all agree. A judge-signed opinion contains the facts of the case, the questions presented, and analysis of the relevant law, and identifies the author of the opinion as well as the other two judges who participated in the decision. Each judge on a panel is assigned an equal number



No. 02-2269(D)

¶16 LUNDSTEN, J. (*dissenting*). The majority concludes that Adele Garcia did not offer to transfer title to her vehicle to Mazda, within the meaning of Wisconsin's Lemon Law. I respectfully dissent because I believe Garcia gave Mazda clear notice that she was offering to transfer title under the Lemon Law.

¶17 As the majority explains, when certain criteria are met, Wisconsin's Lemon Law gives car owners a choice of two remedies and requires that the owners communicate their choice of remedy to the manufacturer. The applicable subsection provides in part:

> To receive a comparable new motor vehicle or a refund ... a consumer ... shall offer to the manufacturer of the motor vehicle having the nonconformity to transfer title of that motor vehicle to that manufacturer.

WIS. STAT. § 218.0171(2)(c). An offer under this subsection triggers a thirty-day time period for compliance by the manufacturer.

¶18 I agree with the majority that WIS. STAT. § 218.0171(2) unambiguously requires that a "lemon" owner communicate to the manufacturer the remedy the owner desires and offer to transfer title to their vehicle in exchange for a refund or a replacement vehicle. Under the statutory scheme, a manufacturer must receive clear notice of such a demand and offer so that the commencement date of the thirty-day time period for compliance is likewise clear.

¶23 Did Mazda think Garcia was trying to tr
Garcia was asking for a replacement, but was not also o
her current car, so that she would end up with two cars? Of course not. And, just as plainly, she could not succeed in such trickery because the statute requires that she transfer title upon receiving the replacement vehicle. To repeat, the only reasonable reading of Garcia's letter is that she was notifying Mazda that she wanted a replacement car and would, necessarily, give up her car, including title, when Mazda supplied a replacement.

¶24 Accordingly, I respectfully dissent.[1]

[1] Mazda and Hall cross-appeal, effectively supplying an alternative reason why they should prevail on appeal. I have reviewed this issue and would decide it against Mazda and Hall. However, because this is a dissent, I choose not to expend my limited resources writing on the topic.

Portions of Judge Lundsten's dissenting opinion in *Garcia v. Mazda Motor of America,* explaining that he reached a different conclusion than the other two judges deciding the case for the Court of Appeals.

Artwork and murals in the Brown County Courthouse in Green Bay capture the Beaux Arts style of architecture and design.

(Kathleen Sitter, LRB)

of opinions to write. The judges do not get to choose which opinions they write, although a judge who does not agree with a decision will not write the opinion. The author of the opinion circulates a draft opinion to the other judges on the panel. The other judges may sign off on the opinion or request changes. The author of the opinion may have to modify the opinion to arrive at a decision on which at least one of the two other judges agrees. The judge in the minority may file a dissenting opinion explaining why he or she disagrees. A judge may also file a concurring opinion explaining that he or she agrees with the outcome of the decision, but not with the reasoning. A decision is valid if the majority of judges on a panel agree on the outcome, even if they do not agree on the reasoning behind the decision. The court issues about 750 judge-signed opinions a year and about 450 to 500 per-curiam opinions a year.

Because the judges of the Court of Appeals work in separate districts, and on separate panels, they sometimes issue conflicting opinions, which are troublesome because the opinions issued in one district apply statewide. The court attempts to minimize conflicts by having a central staff attorney review all cases and alert judges of pending appeals that raise similar issues. The court may consolidate similar cases or review them together. Judges may also discuss pending cases with one another. If two panels or two judges do issue conflicting opinions, the Supreme Court may choose to review the cases to resolve the conflict.

Publication of opinions

The Court of Appeals publishes about one-quarter of its opinions to inform the public about important applications of the law and to serve as precedent, which means that attorneys and courts in future cases may cite the opinions as accurate descriptions of the law. Reasons for publishing an opinion include that the opinion states a new rule of law or modifies, clarifies, or criticizes an existing rule; the opinion applies an existing rule of law to a situation to which it had not been previously applied; the opinion resolves conflicts in prior decision; it provides a useful summary of existing law or lays out the legislative history for a law; or that the opinion covers a case that is of substantial interest to the public.

Opinions are published in bound volumes by two reporting services. *Callaghan's Wisconsin Reports* contains opinions of the Wisconsin Court of Appeals and the Wisconsin Supreme Court. The *North Western Reporter* also contains opinions

Wisconsin Supreme Court and Court of Appeals opinions are published in Callaghan's Wisconsin Reports *and in the* North Western Reporter. *(Kathleen Sitter, LRB)*

from the courts of several other Midwestern states. In addition, the text of the opinions may be found free of charge on several Web sites, including the Web sites of the Wisconsin Court System, the Wisconsin State Law Library, and the State Bar of Wisconsin.

After the appeal is decided

The Court of Appeals may affirm, reverse, or modify the lower-court order or judgment. Sometimes the lower court must take action in accordance with the Court of Appeals decision. For example, if the Court of Appeals finds error in a criminal sentence issued by a circuit court but does not determine a new sentence, the circuit court must impose a new sentence. Or the Court of Appeals may direct the circuit court to reconsider a prior decision in light of a new standard issued by the Court of Appeals.

The Court of Appeals affirms about 80 percent of the lower court rulings it reviews. The reversal rate differs between civil and criminal cases: about 75 percent of civil cases and 85 to 90 percent of criminal cases are affirmed.

Supreme Court

The Wisconsin Supreme Court has appellate jurisdiction to review cases decided by any of the lower courts. It has authority to hear original actions, which are cases that have not been decided by a lower court. The Supreme Court also has supervisory authority over the lower courts, general administrative responsibility for the court system, and regulatory authority over judges and lawyers. The Court is composed of seven justices, elected in statewide elections to 10-year terms. In the event of a vacancy on the Supreme Court, the governor appoints a justice until an election may be held. The justice who has served the longest continuous term becomes the chief justice, unless he or she chooses not to serve as chief.

The Supreme Court meets in open session to discuss the administration of the state court system. Frequently on the agenda at these meetings are budget matters, petitions for new or amended court rules, and policy issues. The justices convene at the attorney table in the Supreme Court Hearing Room for these conferences. They are shown here meeting with members of the court staff. *(Kathleen Sitter, LRB)*

Jurisdiction

Unlike the Court of Appeals and circuit courts, the Supreme Court determines which cases it will hear. The Supreme Court receives over 1,000 requests for review a year and generally agrees to hear about 100 of them.

Cases come to the Supreme Court in four ways. The most common is a petition for review by a party who loses a case in the Court of Appeals. Alternatively, a party who loses in the circuit court and wishes to appeal directly to the Supreme Court without going through the Court of Appeals may petition the Supreme Court to allow the party to bypass the Court of Appeals. The Court of Appeals may certify a case that has been appealed and request that the Supreme Court decide it. (Even if the Court of Appeals does not certify a case to the Supreme Court, the Supreme Court has authority to preempt the Court of Appeals and decide the case.) And, finally, the Supreme Court may take original jurisdiction in a case, hearing arguments on a matter that has not been considered in the lower courts. The Supreme Court receives anywhere from 800 to 1,000 petitions for review of Court of Appeals decisions a year, 20-30 petitions for bypass, and a similar number of certifications. In addition to the approximately 100 petitions for review that the court accepts, it takes most of the certifications, few of the petitions for bypass, and a small number of the 10 or so petitions for original action received each year.

The court also receives requests to exercise its supervisory authority, generally 50 to 100 a year. Under its supervisory authority, the court may direct the lower courts to take or refrain from taking certain actions, for example, to quash a subpoena, dismiss a complaint, or require substitution of a judge. Most requests to the Supreme Court to exercise its supervisory authority concern actions in the Court of Appeals. Finally, the court also hears cases relating to regulation of attorneys and judges, which are discussed later in this article.

Determining which cases to hear

The general standard that the Supreme Court applies in determining whether to review a case "is not whether the matter was correctly decided or justice done in the lower court, but whether the matter is one which should trigger the institutional responsibilities of the Supreme Court."[3] The court is more likely to hear a case that presents a significant question of constitutional law or calls for a change in policy. The court favors cases that will have statewide impact over those that affect only a private interest, as well as cases that present a novel question or present a question that is likely to recur. It also accepts cases to resolve conflicts between current precedent; for example, a case in which a Court of Appeals opinion is in conflict with a controlling opinion of the U.S. Supreme Court, or a matter on which Court of Appeals districts have reached different conclusions.

The court applies additional criteria in determining whether to accept a case on bypass or certification from the Court of Appeals. Reasons for the court to accept a case on bypass or certification include that little (or conflicting) precedent exists governing the issues raised in the case, the justices foresee that they will ultimately choose to take the case regardless of how the Court of Appeals rules, and there is a need to hasten the appeals process.

The standard for taking a case on original jurisdiction is less defined. Generally, a case must be of great importance to the people of the state, must require relief that cannot adequately be provided by a lower court, and must require a speedy and

How a case comes to the Wisconsin Supreme Court

Wisconsin Supreme Court: At oral argument, each side is allowed 30 minutes to present its case. Oral argument supplements and clarifies arguments the lawyers have already set forth in written submissions called briefs.

Following each day's oral arguments, the court meets in conference to discuss and take a preliminary vote on the cases argued that day. After the vote, a justice is assigned by lot to write the majority opinion. There are seven justices on the court.

The court usually releases opinions for all cases heard during its September through June term by June 30 of that year. Opinions are posted on the court system Web site on the morning of their release (*www.wicourts.state.wi.us*).

The losing party in the Court of Appeals case may ask the Wisconsin Supreme Court to hear the case. This is called **Petition for Review.** The Supreme Court receives about 1,000 petitions for review each term, and agrees to hear approximately 100 of these cases. It takes the vote of at least three justices to take a case on a Petition for Review.

The Court of Appeals is an error-correcting court. It is made up of four districts and 16 judges. The Court of Appeals considers all cases appealed to it and will either:

- review the case, using the transcripts of the circuit court proceedings, sometimes supplemented with oral argument. The Court of Appeals will rule in favor of one party.
- certify the question to the Wisconsin Supreme Court. **Certification** means the Court of Appeals, instead of issuing its own ruling, asks the Supreme Court to take the case directly because the Court of Appeals believes the case presents a question of law that belongs before the Supreme Court. It takes a vote of at least four justices to take a case on Certification.

The Wisconsin Supreme Court, on its own motion, can decide to review a matter appealed to the Court of Appeals, ultimately bypassing the Court of Appeals. This is called **Direct Review.** It takes a vote of at least four justices to take a case of Direct Review.

The losing party may **appeal** the decision to the Court of Appeals.

The losing party may file a **Petition to Bypass**, asking the Wisconsin Supreme Court to take the case directly, bypassing the Court of Appeals. It takes a vote of at least four justices to take a case on Petition to Bypass.

An individual, group, corporation, or government entity may bring a civil case, and the government may commence a criminal case, in the **Circuit Court.** After the proceedings, the circuit court will rule in favor of one party. There are 241 circuit courts in Wisconsin.

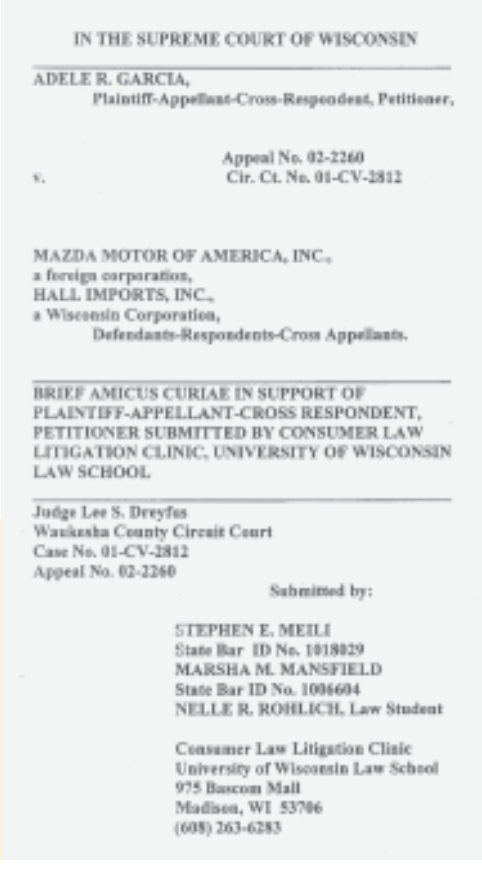
An individual or government entity may ask the Wisconsin Supreme Court to take **Original Action** in a case. This means that the case has not been heard by any other court. Because the Supreme Court is not a fact-finding tribunal, both parties in the case must agree on the facts.

authoritative determination. The court does not accept a case on original jurisdiction solely to expedite the judicial process, for the convenience of the parties, or to prevent multiple lawsuits. In recent years, the Supreme Court has exercised its original jurisdiction to determine whether the governor's use of the partial veto was constitutional, to determine whether changes to the Wisconsin Retirement System were constitutional, and whether Indian gaming agreements signed by the governor and Indian tribes were constitutional. (For the latter, see the description of *Panzer v. Doyle* in the *Summary of Significant Decisions* section of this book.)

Petitioning for review

A person seeking Supreme Court review must file a petition with the court stating the issues presented for review and providing reasons why the court should accept the case. The opposing party may file a response to the petition, but is generally not required to, except the court may require the opponent to respond to a petition for original jurisdiction. The court grants petitions to review a Court of Appeals decision by a vote of three justices. Four justices must consent for the court to accept a case on bypass or certification or to accept an original action.

Once the Supreme Court accepts a case, it generally establishes a schedule for parties to submit briefs. Like the Court of Appeals, the Supreme Court may limit the issues that it will decide. Parties write new briefs for the Supreme Court specific to the issues that the Supreme Court agrees to review. People who are not parties to the case may also request permission to file a brief, called an amicus curiae or "friend of the court" brief. In a case



IN THE SUPREME COURT OF WISCONSIN

ADELE R. GARCIA,
Plaintiff-Appellant-Cross-Respondent, Petitioner,

v.

Appeal No. 02-2260
Cir. Ct. No. 01-CV-2812

MAZDA MOTOR OF AMERICA, INC.,
a foreign corporation,
HALL IMPORTS, INC.,
a Wisconsin Corporation,
Defendants-Respondents-Cross Appellants.

BRIEF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT-CROSS RESPONDENT, PETITIONER SUBMITTED BY CONSUMER LAW LITIGATION CLINIC, UNIVERSITY OF WISCONSIN LAW SCHOOL

Judge Lee S. Dreyfus
Waukesha County Circuit Court
Case No. 01-CV-2812
Appeal No. 02-2260

Submitted by:

STEPHEN E. MEILI
State Bar ID No. 1018029
MARSHA M. MANSFIELD
State Bar ID No. 1006604
NELLE R. ROHLICH, Law Student

Consumer Law Litigation Clinic
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706
(608) 263-6283

The Consumer Law Litigation Clinic of the University of Wisconsin Law School filed an amicus curiae brief with the Supreme Court in *Garcia v. Mazda Motor of America*, supporting Garcia's argument that her request for a replacement vehicle adequately invoked the Wisconsin Lemon Law.

accepted on original jurisdiction, the court may also require the parties to submit stipulations of the relevant facts, because the Supreme Court does not decide facts. If necessary, the Supreme Court may refer a case to the circuit court for the limited purpose of determining the relevant facts.

The court generally hears oral arguments, but may choose to forgo oral argument if it appears that oral argument will not be sufficiently informative to justify expending the court's time and resources of the parties. If a party desires oral argument, the court will likely hear argument. Cases are assigned to a calendar for argument after the last brief is filed.

The Supreme Court seal embellishes the ceiling of the court's private conference room in the State Capitol.

(Kathleen Sitter, LRB)

The seal of the Supreme Court of Wisconsin is rich in symbolism. It shows a scale of justice, but it is not held by the blindfolded Greek goddess Themis, but by a human hand and arm. Thus, it recognizes that justice is in human hands. Above the scale is the ancient symbol of the all-seeing eye of deity. The seal was created sometime after August 12, 1848, when a joint resolution of the legislature provided that Edward H. Rudd be employed to engrave "a great seal for the state of Wisconsin and seals for the circuit courts and judges of probate of the several counties and supreme court of the state."

The Supreme Court in session

The court is in session from September through June. Before oral arguments, the justices meet in conference to discuss the cases to be heard. Each justice is randomly assigned to lead the discussion on several of the cases. In preargument conference, the justices identify issues that have not been adequately addressed in the briefs, determine what the attorneys should address during argument, and plan questions for the attorneys.

Oral arguments are a formal affair held once a month in the Supreme Court Chamber in the State Capitol. The petitioner and respondent are each given 30 minutes to speak (25 minutes for presentation and five minutes for rebuttal). The attorneys in the case speak from a podium facing the justices. Colored lights on the podium signal the attorney when to speak and stop. A green light signals an attorney

Attorneys arguing before the Wisconsin Supreme Court are held to stringent time limits that are tracked by the Supreme Court marshal (seated below). The attorney podium is equipped with red, yellow, and green lights to ensure that each side takes only its allotted 30 minutes. The yellow light is illuminated as a five-minute warning, and when the red light comes on, the attorney is expected to stop speaking.

(Kathleen Sitter, LRB)

to begin speaking. A yellow light is a five-minute warning. When the time expires, the marshal activates a red light, and the attorney must stop speaking. At any time during an attorney's presentation, the justices may, and usually do, interrupt with questions. All oral argument is open to the public and the schedules are posted on the court system Web site at *www.wicourts.gov*.

After an oral argument the justices meet again to take a preliminary vote. Once the justices make a decision in a case, one member of the majority is assigned at random to write the court's opinion. If the justice is not in the majority, another justice is chosen by lot. Law clerks for the justices generally write in-depth analyses of cases to prepare the justices to write and review opinions. The justice who writes the opinion circulates a draft to the other justices and then they meet to discuss it. Before meeting, other justices may submit comments on the draft opinion to the author. Any justice may also write a concurring or dissenting opinion. When the opinion and any concurring or dissenting opinions are completed, the court issues the decision. All Supreme Court opinions are published.

The seven justices convene in closed conference before and after oral argument to discuss the cases on the daily docket. The chief justice sits at the head of the table while justice number seven – the least senior justice – sits closest to the door. By tradition, the newest justice is the court's "gopher" during these conferences.

(Kathleen Sitter, LRB)

Administrative and regulatory authority

Under its administrative and supervisory authority, the Supreme Court makes rules governing pleading and practice, administration of the court system, and the practice of law.

Unlike the U.S. Supreme Court, where the chief justice handpicks the author for the majority opinion, the state Supreme Court chooses authors at random with the help of seven poker chips. The chips are blank on one side, and adorned with smiling faces and numbers one through seven on the other side. When the time comes to select an author for the majority opinion, the chief justice sets out the chips face-down and then the second most senior justice scrambles them and selects one. If the number corresponds to a justice in the majority, that justice will draft the opinion. If the number corresponds to a justice who plans to dissent, another chip is drawn.

(Kathleen Sitter, LRB)

The rules governing pleading, practice, and procedure in courts are incorporated in the state statutes. Generally, only the legislature may amend the statutes. However, because the state constitution grants the Supreme Court supervisory authority over the court system, the Supreme Court may by rule enact, amend, or repeal those portions of the statutes governing court practice. The

"Your job is to look at both sides and to listen to the advocacy on both sides, and then to come to a decision. A lot of times you can read the first set of briefs and you think, 'Well, boy, this certainly looks pretty simple. This case is going this way.' Then you read the second set of briefs, and you realize that, well, that isn't the way it ought to be going at all. And it's the same thing in oral argument. You have got to just be very careful that you are listening and reading both sides of every issue."
– Former Chief Justice Roland B. Day

legislature may also amend the pleading, practice, and procedure sections of the statutes, but should the legislature and court disagree on a provision concerning pleading, practice, or court procedure, the Supreme Court would have the final say.

Judicial Council

The Supreme Court receives advice on pleading, practice, and procedure from the Judicial Council. The Judicial Council is an independent body and can have significant influence on court activities. Its 21 members include a Supreme Court justice, a Court of Appeals judge, circuit and municipal court judges, the director of state courts, legislators, the attorney general, the deans of the University of Wisconsin and Marquette law schools, the state public defender, a district attorney, several representatives of the State Bar, and several citizen members. The council was created in part to give momentum to court reorganization efforts after reorganization legislation failed in the 1948 Legislature. The new council did in fact help usher through the court reorganization legislation of 1959.

The council's current charge is to advise the Supreme Court and the legislature on court jurisdiction, organization, and administration as well as pleading, practice, and procedure. The council studies issues at the request of the Supreme Court or the legislature, and also selects areas of study on its own. Examples of recent issues that the council has handled include clarification of the rules to be followed in small claims cases and standards for determining who may participate in an appellate case as an amicus curiae. The council may propose rule changes to the Supreme Court or bills to the legislature, and may also issue reports. The council has been less active in the last decade than in prior years, largely because its staff was eliminated in the 1995 biennial budget act. Since then, the council has been supported by the staff for the Judicial Commission, an agency primarily concerned with judicial discipline, which is discussed later in this article.

Attorney Marla J. Stephens of the State Public Defender's Office (left of the flag) chairs a meeting of the Judicial Council at the State Capitol.

(Kathleen Sitter, LRB)

The remainder of the Supreme Court rules are published as an appendix to the state statutes, but are solely a creation of the court and may not be affected by the legislature. The rules contain codes of professional conduct and ethics for attorneys and judges, provisions governing the use of jurors, requirements for training and education for attorneys and judges, and operating procedures for the courts. Recently, the Supreme Court has addressed several contentious issues by rule. In 2005, the court issued rules governing the conduct of judges and judge-candidates in judicial elections after several years of study, and also issued a rule imposing a $50 fee on attorneys to fund legal representation for low-income litigants in civil cases.

The Supreme Court is also responsible for activities that any head of an agency must perform. The Supreme Court justices must oversee a budget, develop long-term policy goals, and develop procedures for everyday activities. The director of state courts and his staff carry out these activities under the guidance of the Supreme Court.

Funding the Court System

The Wisconsin court system is funded through a combination of state and county tax revenues, user fees, and grants. The Supreme Court and Court of Appeals are funded exclusively with state tax dollars, while the circuit court is supported in part by counties. Wisconsin's 72 counties are responsible for the cost of circuit court services not covered by the state. The state pays the salaries, fringe benefits, and travel expenses of judges and reserve judges (retired judges who hear cases when the need arises) and their court reporters. The counties pick up the remaining costs associated with circuit court operation – maintaining the courthouse, operating the Office of the Clerk of Circuit Court, ensuring that the building is safe and secure, providing videoconferencing, legal research tools, office supplies and equipment, funding the costs of court-appointed attorneys (other than attorneys from the Office of the State Public Defender) and witnesses, court-ordered medical and psychological exams, court interpreters, jurors, and more.

Like other organizations, the Wisconsin court system's major expenditures are for personnel. Nearly 70 percent of the courts' expenses are related to salaries and fringe benefits for the seven Supreme Court justices, 16 Court of Appeals judges, and 241 circuit court judges whose salaries, as set by the legislature, were as follows for 2004-2005:

Supreme Court Chief Justice	$131,877
Supreme Court Justice	$123,877
Court of Appeals Judge	$116,865
Circuit Court Judge	$110,250

Currently, the state makes payments to counties to cover some of the counties' court operating costs. In 2003, counties reported a total of $156.7 million in court costs; $24.1 million of this was offset through the state's financial assistance programs to counties, which include the circuit court support payment program, the guardian *ad litem* payment program, which provides reimbursement to counties for the cost of lawyers who are court-appointed to represent the best interests of children involved in legal disputes, and the interpreter services reimbursement program.

In the 2003-2004 state fiscal year, the Wisconsin court system spent $111,060,974. The court system's expenditures by program area are illustrated in Figure 1.

Wisconsin Court System
Fiscal Year 2003-2004
State Expenditures By Program Area
State Law Library

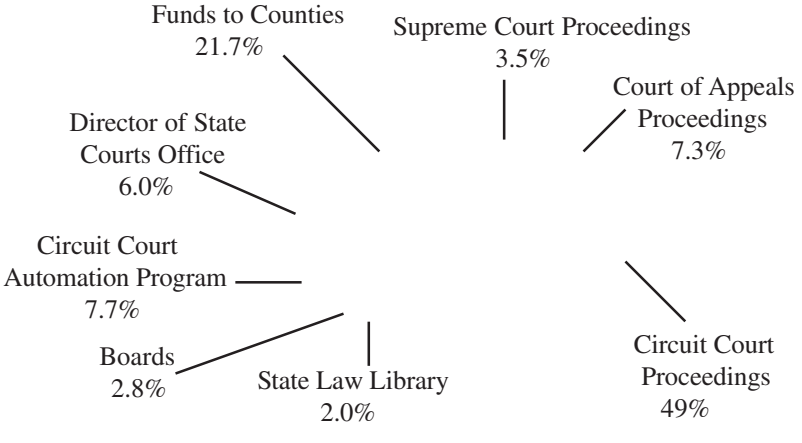


Figure 1

As shown in Figure 2 (opposite page), the court system receives money from a variety of sources:

- general purpose revenue (state tax dollars), 87.8 percent;
- program revenue (fees or assessments), 11.9 percent; and
- other sources, 0.3 percent.

State tax dollars account for $97.5 million of the court system's budget. This is less than one percent of the total state tax dollars expended for all of state government.

Wisconsin Court System
Fiscal Year 2003-2004
State Expenditures By Funding Source

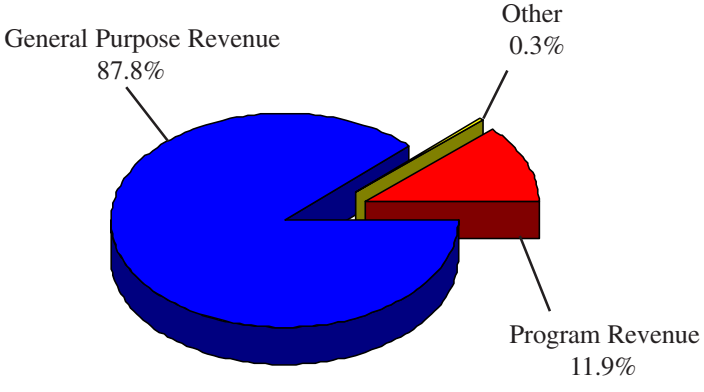


Figure 2

Several of the court system's programs use nontax funds to support their operations. For example, the Consolidated Court Automation Programs (CCAP) – the courts' computer system – is funded with fees that the courts collect each time a lawsuit is filed; the Office of Lawyer Regulation, the arm of the Supreme Court that regulates the practice of law and investigates and prosecutes complaints against attorneys, is funded with assessments on attorneys; the Board of Bar Examiners is funded with assessments on attorneys; and the Medical Mediation Panels, which provide mediation as a first step toward resolving medical malpractice claims, are funded from assessments on health care providers.

Other Courts Operating in Wisconsin

In addition to the state courts, several other courts have jurisdiction to operate in Wisconsin. Cities, towns, and villages may create municipal courts to hear ordinance violations. Although municipal courts are not state courts, they are connected to the state court system; all municipal court decisions may be appealed to the state courts, and the Wisconsin Supreme Court has supervisory jurisdiction over municipal judges. Unlike the municipal courts, federal courts and tribal courts are completely independent from the state court system. However, as described below, the federal, state, and tribal courts sometimes have overlapping jurisdiction.

Municipal courts

Wisconsin law allows municipalities (cities, towns, and villages) to establish trial courts to hear ordinance violations. If a municipality establishes a court, the court has exclusive jurisdiction over ordinance violations, which may include traffic, parking, first offense operating while intoxicated, truancy, minor drug possession, disorderly conduct, or animal control cases, among others. Ordinance violations are heard in circuit court if a municipality does not have a municipal court. At this writing, Wisconsin has 226 municipal courts, 13 of which serve more than one municipality. The state's only full-time municipal courts operate in Madison and Milwaukee. Municipal courts handle about 500,000 cases a year, which would otherwise flow through the circuit courts.

Most municipal court cases are begun with a citation, though they may also be initiated by summons and complaint as in circuit court. A defendant may simply pay the amount included on the citation and dispose of the case without appearing in court. Alternatively, the defendant may appear in court and either plead guilty or no contest or may plead not guilty and go to trial.

A trial in municipal court is before a judge. There is no right to a jury in municipal court. There is also no right to discovery. The rules of evidence do apply to municipal court trials. The standard of proof in a municipal court trial is by evidence that is clear, satisfactory, and convincing. Municipal courts may impose forfeitures (monetary fines) as penalties and order a defendant to pay restitution and court fees. If a defendant does not pay the forfeiture, restitution, or fees, the court may suspend the defendant's driving privileges. All municipal court judgments may be appealed to circuit court. Upon appeal, either party may request a jury trial. If neither party requests a new trial, the circuit court reviews the case on the basis of the written municipal court transcript.

Municipals judges are elected. Their terms may be two, three, or four years, as determined by the municipality. Unlike circuit and appeals court judges and Supreme Court justices, municipal court judges need not be licensed attorneys, although about half of them are. Municipal judges are governed by the Judicial Code of Conduct and are required to participate in continuing education programs. The salaries of municipal judges are set and paid by the municipality. Most municipal judgeships are not full-time positions.

Federal courts

The primary function of federal courts is to decide cases involving federal law, including the U.S. Constitution, federal statutes, and U.S. treaties. Federal courts also have jurisdiction over actions by a state against the citizens of another state, and the U.S. Supreme Court has exclusive jurisdiction over actions between states. Federal courts have authority to hear diversity of citizenship cases, which are cases involving citizens of different states, in which the amount in controversy is at least $75,000. Finally, the federal courts have jurisdiction over cases brought by an agency or officer of the U.S. government and cases affecting ambassadors or other public officials.

The grand atrium of the Milwaukee Federal Building and U.S. Courthouse, seat of the U.S. District Court for the Eastern District of Wisconsin, originally served as a post office workroom.

(Kathleen Sitter, LRB)

The federal courts are the final arbiters of federal law, and the state courts are the final arbiters of state law. However, cases frequently involve matters of both federal and state law, so federal courts routinely decide questions of state law and vice versa. When a federal court interprets state law, it follows state court readings of the law. Similarly, state courts follow federal court interpretations of federal law, and federal courts have authority to review state court interpretations of federal law. For example, in 1987, the Wisconsin Legislature adopted a hate crimes statute which increased the penalty for a crime if the defendant selected the victim in whole or in part because of the victim's race, religion, color, disability, sexual orientation, national origin, or ancestry. The Wisconsin Supreme Court found that the hate crimes statute violated the First Amendment to the U.S. Constitution. Because the Wisconsin decision was based on federal law, the U.S. Supreme Court had authority to review it. The U.S. Supreme Court in *State v. Mitchell* reversed the holding of the Wisconsin Supreme Court, allowing the Wisconsin hate crimes statute to stand.

The structure of the federal court system is similar to the structure of Wisconsin's state court system. The federal court system consists of trial courts, intermediate appellate courts, and a supreme court. The U.S. has 94 general trial courts, called district courts, two of which serve Wisconsin. The U.S. district court for the western district of Wisconsin is located in Madison. The U.S. district court for the eastern

district of Wisconsin sits in Milwaukee and Green Bay. There are 12 federal appellate court circuits. The 7th circuit of the U.S. Court of Appeals serves Wisconsin, Illinois, and Indiana and is located in Chicago. As under the state court system, cases are generally initiated in district court, may be appealed to the circuit court of appeals, and ultimately may be appealed to the U.S. Supreme Court.

The Milwaukee Federal Building and U.S. Courthouse was completed in 1899. The judges of the U.S. District Court for the Eastern District of Wisconsin chose to keep the court in this building rather than moving to the new Henry S. Reuss Federal Plaza in 1983.

(Kathleen Sitter, LRB)

Tribal courts

Federally recognized Indian tribes are sovereign entities that have authority to govern the activities of Indians on tribal lands. As sovereigns, tribes may establish courts. Eleven federally recognized Indian tribes have land in Wisconsin, and each has established a court system. Tribal court jurisdiction is limited to deciding cases involving Indians or activities that take place on tribal lands. Tribal courts do not necessarily handle all the types of cases for which they have jurisdiction. The areas of law that tribal courts in Wisconsin commonly handle include child protection, domestic abuse, conservation, and housing.

Each of the tribes also determines the structure of its court system. All the tribes have a trial court. Appeals are handled in a variety of ways. Several of the tribes have their own supreme courts, including the Ho-Chunk and the Menominee. Others allow appeals to 3-judge panels consisting of judges from other tribes or from the tribal judges association. The Lac Courte Oreilles tribe allows appeals to the Tribal Governing Board. Tribes also use alternative dispute resolution processes such as youth courts and the Stockbridge-Munsee peacemaker system, under which trained community members help people resolve differences without court action.

The state and federal courts share with the tribal courts jurisdiction to decide cases involving Indians and events that occur on tribal lands. In 1953, the U.S. Congress passed legislation (Public Law 280) that granted six states broad civil and criminal jurisdiction over tribal lands. Wisconsin is one of the six states.

However, Public Law 280 does not apply to the Menominee reservation, so jurisdiction over the Menominee reservation is different from other Indian reservations in Wisconsin.

On tribal lands other than the Menominee reservation, state courts have broad criminal and civil jurisdiction. State criminal law applies on these tribal lands and may be enforced in state courts. However, tribal courts also have authority to act on violations of tribal criminal codes that take place on tribal lands. Jurisdiction over many types of civil claims is shared by the state and tribal courts, allowing a party to bring a case in either state or tribal court.

Judge Charles Cloud, a retired state court judge who has been selected to chair the Tribal Courts Council, a new committee of the American Bar Association Judicial Division, addresses the first meeting of the organizers for the inaugural national symposium on federal-state-tribal court relations. The planning group includes judges, lawyers, and court administrators from the three court systems; experts from Fox Valley Technical College's Criminal Justice Center for Innovation; and representatives of the U.S. Department of Justice, the National Center for State Courts, the National Judicial College, and the National Conference of Chief Justices. *(Kathleen Sitter, LRB)*

Allocating jurisdiction between state and tribal courts

Disagreements over which court system has jurisdiction in a case are not uncommon, and may result in hearings held in both the state and tribal courts on the same issues, leading to confusion and inefficiency. Several years ago, one such case was appealed to the Wisconsin Supreme Court – twice – giving the court an opportunity to offer guidance to the lower courts on allocating jurisdiction. The case, called *Teague v. Lake Superior Tribe of Chippewa,* involved a man named Jerry Teague who, between 1993 and 1995, managed the Bad River Casino, a business located on the Bad River Indian Reservation owned and operated by the Chippewa tribe. In 1996, after being terminated from his employment, Teague sued the tribe in Ashland County Circuit Court (the state court) on the ground that the tribe had breached its contract with him. The tribe moved to dismiss the lawsuit, arguing that it was a government entity acting under its constitution when it employed Teague and therefore was immune from being sued in state court in this matter. The judge denied the motion.

The mural on the south wall of the Supreme Court depicts an early court proceeding in Wisconsin history: the 1830 murder trial of Menominee Chief Oshkosh. This early interaction of Indian law and courts established under the United States is increasingly relevant as today's courts deal with issues of tribal sovereignty.

(Kathleen Sitter, LRB)

Shortly after the state court denied the motion to dismiss, the tribe started a case against Teague in tribal court. Each court was aware of the proceeding in the other court, but the two did not communicate. They reached opposite results, with the tribal court finding in favor of the tribe and the state court (following a jury trial) finding for Teague. Both Teague and the tribe appealed, both seeking to enforce the judgment in their favor.

The Supreme Court heard this case twice. The first time, the Supreme Court criticized the "first-to-judgment" approach that the Court of Appeals had applied to determine which verdict would stand. The Supreme Court said a decision should not be based simply on which court issued a judgment first, but rather should be reached through application of the doctrine of comity, which emphasizes recognition, acceptance, and respect for differences in process. The court explained that the lower courts should have applied comity early in the process to aid cooperation, communication, and understanding between the two systems. The court then ordered, on a 5-2 vote, that the circuit court case be dismissed and that the tribal court judgment be given full faith and credit.

The spirit of cooperation, rather than competition, that the Supreme Court emphasized in its decision is at the center of two initiatives currently underway in Wisconsin. These initiatives both involve the development of protocols to guide the state and tribal courts in deciding which court should handle any given case. The first initiative was begun in the Tenth Judicial District, which is headquartered

in Eau Claire and covers 13 northwest Wisconsin counties. Representatives from the four Chippewa tribes in northern Wisconsin joined the chief judge of the Tenth Judicial District in December 2001 to sign and officially implement a new system – believed to be the first of its kind in the nation – for handling court cases in which the tribal and state courts share jurisdiction. The second initiative involves the implementation of similar protocols in the Ninth Judicial District, which is headquartered in Wausau and covers 12 counties in northcentral Wisconsin.

Under these protocols, state and tribal judges will temporarily stop actions that are filed in both courts and hold a joint hearing to determine which court should handle the case. If the judges cannot agree, a third judge will be summoned from a pool of state and tribal judges and the arguments will be reheard until a decision on jurisdiction is reached.

Judges

The judicial power of the courts rests in the hands of Wisconsin's 264 state judges and justices: 241 circuit court judges, 16 Court of Appeals judges, and seven Supreme Court justices. All are elected. In addition there are over 200 municipal judges in Wisconsin who generally serve in that capacity part-time. This section primarily pertains to state judges and justices.

Judicial selection

The legal requirements for becoming a judge or justice are few. A judge or justice must be a resident of the jurisdiction in which he or she serves and must have been licensed as an attorney in Wisconsin for the five years preceding election or appointment to judicial office. Once in judicial office, a judge or justice may not hold or campaign for any nonjudicial public office during the term for which he or she was elected or appointed, even if he or she resigns from judicial office.

Wisconsin used to have a mandatory retirement age for judges and justices. From 1955 to 1978, judges and justices had to retire at age 70. Since 1977, the Wisconsin Constitution has authorized the legislature to impose a maximum age of no less than 70, but the legislature has not done so.

Many of the requirements of state judges also apply to municipal judges, but others do not. Unlike state court judges, municipal judges need not be lawyers.

Judicial Selection Methods

A majority of states choose some or all of their judges by election. Thirteen of the states that elect their judges, including Wisconsin, hold nonpartisan elections. Others hold partisan elections for at least some of their judges. States that do not elect judges use systems that start with appointment and, with the exception of a handful, require the appointee to stand for a retention election in which there is no opponent. Appointive systems are often called "merit" systems. Most merit systems involve a permanent, nonpartisan commission that recruits, screens, and forwards prospective judges to the governor who fills vacancies

from the list. In some merit systems, the governor or legislature has exclusive authority to make appointments.

Proponents of merit systems argue that they result in a better qualified and more independent judiciary. They further argue that judicial campaigns provide voters insufficient information about the candidates and that the rigors of campaigning and the need to raise campaign funds deter qualified people from running for judge, and take too much time away from a judge's official duties. Proponents of electing judges, on the other hand, argue that an appointive system is just as political because the judges are beholden to the executive who appointed them. Further, appointive systems do not result in a judiciary that is representative of the people of the state. Finally, elections are seen as providing legitimacy to the courts, placing them on a equal footing with the executive and legislative branches, whose members are also elected.

Terms of office

Judges on the circuit court and Court of Appeals serve 6-year terms and Supreme Court justices enjoy the longest term of any state elected official – 10 years. The terms are long in order to shield judges and justices from the winds of politics, to ensure that decisions are based upon the facts and the law, and are not swayed by popular opinion or political pressures. To further separate the nonpartisan judiciary from the other branches of government, judicial elections are held in the spring, and judicial terms begin on August 1. If a judge or justice resigns during his or her term, the governor appoints a replacement to serve until a successor may be elected.

About half of the judges currently sitting in Wisconsin initially obtained judicial office by appointment. Since the terms of judges and justices are relatively long, it is not uncommon for incumbents to leave during a term, affording the governor the opportunity to appoint a replacement. Four of the justices sitting on the Supreme Court as of this writing, Chief Justice Shirley S. Abrahamson and Justices Jon P. Wilcox, David Prosser, Jr., and Louis B. Butler, Jr., were

Judge Gerald C. Nichol served as a circuit court judge in Dane County for 16 years. He is now a reserve judge who fills in for active judges in different counties, which is a critical part of the court system and is especially vital to the small, rural counties that have only one judge. *(Kathleen Sitter, LRB)*

Three of the seven Supreme Court Justices, Ann Walsh Bradley, David T. Prosser, and Louis B. Butler, Jr. hear oral argument in a case before the Court. The justices sit according to seniority, with the most senior seated at the center of the bench. Justice Butler, the most junior member of the Court, poses a question to counsel for one of the parties. (Kathleen Sitter, LRB)

initially appointed to their positions. (Chief Justice Abrahamson and Justices Wilcox and Prosser subsequently won election to the court; Justice Butler will stand for election in 2008, the first year in which no other justice is running.) All told, six of the 14 justices who most recently joined the Supreme Court were initially appointed. On the Court of Appeals, six of the 16 current judges initially obtained office by appointment.

The length of an appointee's term is largely determined by luck. One appointee may serve for only a few months before he or she must run for election, while another may serve for several years before facing an election. To minimize the disruption to a court's business that may occur when justices or judges are running campaigns, the state constitution provides that only one Supreme Court justice may be elected in a year and only one Court of Appeals judge may be elected per Court of Appeals district in a year. This means that if the terms of other judges or justices on a court expire in the years immediately following an appointment, the appointee may have the opportunity to serve for several years without an election. For example, Governor Jim Doyle appointed Justice Butler to the Supreme Court in 2004 to succeed Justice Diane S. Sykes. The election to a new 10-year term for the seat currently held by Justice Butler will not be held until 2008 because the

terms of three sitting justices are expiring, one each year, in 2005 (Justice Ann Walsh Bradley), 2006 (Justice N. Patrick Crooks), and 2007 (Justice Jon P. Wilcox). By contrast, Justice Sykes was appointed to the Supreme Court in 1999 and had to run for election in 2000.

Judicial campaigns

Judges and justices must be impartial. The impartiality requirement is difficult to reconcile with the demands of campaigning and persuading voters. To maintain impartiality, judges and candidates for judicial office are prohibited by the Code of Judicial Conduct from making a promise or commitment on any case, controversy, or issue that may come before the judge or judicial candidate if elected. Since the cases a court must decide may involve almost any political issue, such as sentencing of criminals or limitations on damages in personal injury cases, a judicial candidate may not take a public position on these issues. However, voters want to hear a candidate's views on these issues precisely because the courts do make decisions on them. How much a judicial candidate may say regarding political issues is an evolving discussion nationally. In 2002, the U.S. Supreme Court found in the case of *Republican Party of Minnesota v. White* that Minnesota's law prohibiting a judicial candidate from announcing his or her views on disputed legal or political issues violates the First Amendment right to free speech. While Wisconsin judges and judicial candidates are not subject to the same "announce" clause as Minnesota judges, they are prohibited from making promises. The U.S. Supreme Court did not address whether a rule barring candidates from promising how they would rule in specific cases violates the First Amendment.

What may a judge or judicial candidate discuss in a campaign? His or her experience, education, work ethic, and views on administrative and procedural issues concerning the judiciary are appropriate topics. A candidate also may obtain endorsements from interest groups. Given the limits on a candidate's discussion of political issues, the endorsements of interest groups may hold greater weight in judicial campaigns than in campaigns for other offices.

Judicial campaign activity is further restricted by the nonpartisan nature of the Wisconsin judiciary. Since statehood, Wisconsin has had an elected judiciary, but judges were not initially banned from participating in partisan activities. In fact, the political parties participated in nominating judicial candidates. Now, however, the Judicial Code of Conduct explicitly prohibits judges and candidates for judicial office from membership in a political party. Judges and candidates may not participate in party caucuses, writing party platforms, or other activities of a party. (The Judicial Code of Conduct does allow people who run for a judicial seat while holding a partisan office, such as legislators, to maintain party membership for the duration of the judicial campaign.)

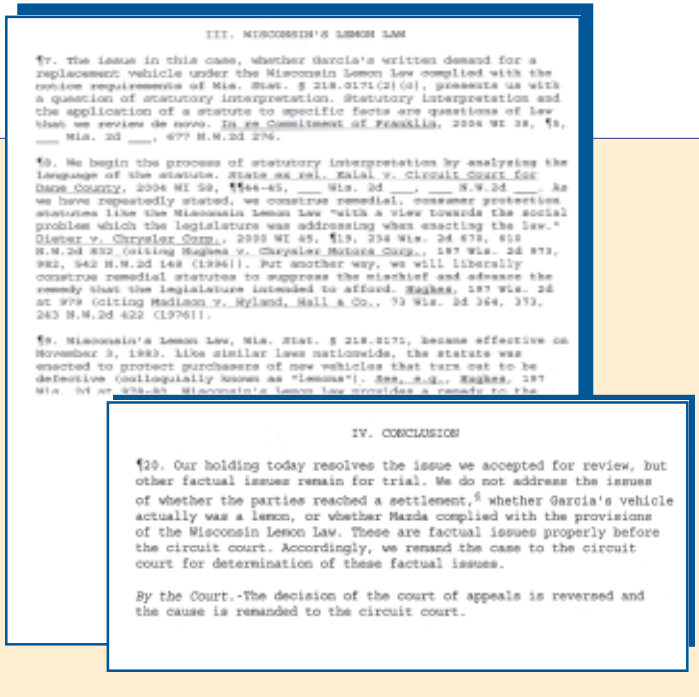
The requirement for judicial impartiality also affects fundraising by judicial candidates. A candidate for judicial office may not solicit or accept campaign contributions directly from any person. Instead, a judge or judicial candidate must establish a campaign committee for this purpose. This rule is intended to limit any

perceived pressure on people to contribute to a judicial campaign out of fear that a judge will rule against their interests if they do not make a contribution. Some have suggested that attorneys be banned from making political contributions since they arguably have much at stake in judicial selections. However, attorneys are also generally among those most informed about the qualifications of judicial candidates. Under current rules, lawyers may make contributions.

As is true for all elected offices, the reelection rate for incumbent judges and justices is high. An incumbent Supreme Court justice has not lost a race since 1967. Many judges, particularly on the Court of Appeals and in the circuit courts, run unopposed. Between 1990 and 1998, only 2 of the 26 elections for seats on the Court of Appeals were contested. During the same time, 296 of the 381 circuit court elections were uncontested. Of the 282 incumbent circuit court judges who ran for reelection, only 43 faced opposition.[4]

Interpreting statutes

Judges interpret several sources of law. They interpret statutes, the U.S. and Wisconsin Constitutions, and opinions written by higher courts. Wisconsin courts must follow the opinions of the Supreme Court when interpreting the U.S.



III. WISCONSIN'S LEMON LAW

¶7. The issue in this case, whether Garcia's written demand for a replacement vehicle under the Wisconsin Lemon Law complied with the notice requirements of Wis. Stat. § 218.0171(2)(a), presents us with a question of statutory interpretation. Statutory interpretation and the application of a statute to specific facts are questions of law that we review de novo. In re Commitment of Franklin, 2004 WI 38, ¶8, ___ Wis. 2d ___, 677 N.W.2d 276.

¶8. We begin the process of statutory interpretation by analyzing the language of the statute. State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶¶44-45, ___ Wis. 2d ___, ___ N.W.2d ___. As we have repeatedly stated, we construe remedial, consumer protection statutes like the Wisconsin Lemon Law "with a view towards the social problem which the legislature was addressing when enacting the law." Dieter v. Chrysler Corp., 2000 WI 65, ¶19, 236 Wis. 2d 678, 618 N.W.2d 832 (citing Hughes v. Chrysler Motors Corp., 197 Wis. 2d 973, 982, 542 N.W.2d 148 (1996)). Put another way, we will liberally construe remedial statutes to suppress the mischief and advance the remedy that the legislature intended to afford. Hughes, 197 Wis. 2d at 979 (citing Madison v. Hyland, Hall & Co., 73 Wis. 2d 364, 373, 243 N.W.2d 422 (1976)).

¶9. Wisconsin's Lemon Law, Wis. Stat. § 218.0171, became effective on November 3, 1983. Like similar laws nationwide, the statute was enacted to protect purchasers of new vehicles that turn out to be defective (colloquially known as "lemons"). See, e.g., Hughes, 197 Wis. 2d at 979-80. Wisconsin's Lemon Law provides a remedy to the

IV. CONCLUSION

¶20. Our holding today resolves the issue we accepted for review, but other factual issues remain for trial. We do not address the issues of whether the parties reached a settlement,[6] whether Garcia's vehicle actually was a lemon, or whether Mazda complied with the provisions of the Wisconsin Lemon Law. These are factual issues properly before the circuit court. Accordingly, we remand the case to the circuit court for determination of these factual issues.

By the Court.-The decision of the court of appeals is reversed and the cause is remanded to the circuit court.

Justice Prosser interprets the Wisconsin Lemon Law statute in the Supreme Court opinion in *Garcia v. Mazda Motor of America.*

Constitution and federal law. Wisconsin courts follow the Wisconsin Supreme Court in interpreting the Wisconsin Constitution and Wisconsin Statutes. Trial judges in Wisconsin must also follow the opinions of the Court of Appeals.

Although statutes are written to be clear, the legislature cannot always foresee all the different scenarios in which a statute will be applied or how a new law fits in context with other statutes. Further, parties deliberately search for ambiguity in a statute if it benefits their position. So judges are frequently called upon to resolve what a statute means and they apply a variety of historically developed techniques or rules to statutory interpretation.

The predominant method of statutory interpretation used by Wisconsin courts is the "plain meaning rule", under which judges look at the actual words of the statute to determine what it means. An alternative rule is the "mischief rule", under which judges look at what problem the statute was intended to solve and interpret the statute so as to solve the mischief. A third method is the "golden rule", under which judges aim to avoid absurd results. Judges disagree on whether, and to what extent, they should look beyond the text of the statute to determine its meaning, but the majority of the Wisconsin Supreme Court favors the plain meaning approach.

Agreeing on the proper method for interpreting a statute is only the first step. Two judges purporting to give a statute its plain meaning may say that the statute means two different things. There are numerous guides, called canons of interpretation, that judges apply in determining the plain meaning of a statute. Application of different canons often leads to different interpretations, though the canons do at least provide judges a common foundation. For example, one canon dictates that a judge should give effect to every word in a statute. Therefore if the statute calls for a "pattern of misconduct," the statute does not apply to one incident standing alone. A second canon provides that if the same word is used more than once in a statute, it has the same meaning each time it is used, but if a synonym is used, the synonym must have a different meaning. A third canon is that the specific overrides the general, so if there are two relevant statutes, the more specific prevails. Further, the canon *in pari material*, provides that the statutes must be interpreted as a whole and that judges should not interpret a sentence or phrase in isolation.

"Our decisions could not be result oriented, because we were establishing precedent to govern the citizens of this state for a substantial period of time. The rules of law had to be appropriate, not to change the result of any specific trial. No one wants to see a criminal who did a vicious act go free. That is not a desirable result. But when we are writing cases that are designed to protect citizens from unreasonable searches or to preserve the sanctity of the home from government invasion, you may be required to make decisions that have bad results in that case – but the principle of law, that is far more important."
– Former Court of Appeals Judge Gordon Myse

Group portrait of the Wisconsin Supreme Court in 1903, the year in which a constitutional amendment approved expansion of the court from five to seven justices. Seen here (left to right) are Justices Joshua E. Dodge, John B. Winslow, John B. Cassoday, Rouet D. Marshall, and Robert G. Siebecker. The portraits of former justices hang on the wall behind them. *(State Historial Society, #WHi-23436)*

Those judges who look beyond the text of a statute to interpret its meaning do so to different degrees. Some make this their starting point and others do so only to support an argument grounded in the plain meaning approach. Judges may look at several forms of legislative history to determine what the legislature was trying to accomplish in passing a bill or at least to support their interpretation of what the language of a statute means. In Wisconsin, the legislature maintains a file for each bill that is passed, which contains the instruction from the legislator who conceives the bill to the attorney who writes the text of the bill. The legislature also maintains the procedural history for every bill, which shows how the bill was altered by amendment as well as any failed amendments. Written testimony given at a hearing on the bill may be available, and the legislature's legal staff may have published memoranda describing what a bill does. If the governor partially vetoes a bill, the bill history includes a veto message explaining why, and perhaps explaining what the remaining text of the bill does. Sometimes the legislature passes legislation to change the law because legislators do not like the way the courts have interpreted the law. Court opinions then may become part of legislative history.

Interpreting the Constitution

In addition to interpreting statutes, the courts also interpret the U.S. and Wisconsin Constitutions. A constitution contains many broad principles and fewer specific requirements than statutes. A constitution is intended to stand for long periods of time without change. To amend the Wisconsin Constitution, the legislature must adopt the identical amendment in two successive biennial sessions of the legislature, and then the electorate must approve the amendment by a majority vote. Statutes, on the other hand may be changed as quickly as the two houses of the legislature can pass a bill and send it to the governor for approval. Given that a constitution cannot be frequently changed to adjust the law to societal changes, a constitution is designed to apply to a multitude of possible scenarios. The more general language of the constitutions often allows courts more latitude for interpretation than the statutes.

The Wisconsin Supreme Court has adopted a 3-part framework for interpreting the Wisconsin Constitution. First, the court looks at the plain meaning of the text of the constitution. Second, even if the text is arguably unambiguous, the court analyzes the debates between persons involved in writing the constitution as well as the practices in existence at the time it was written. Third, the court reviews the earliest legislative interpretations of the constitutional provision at issue. The court is much more willing to look at historical indicators of intent when interpreting the constitution than when interpreting the statutes.

Disqualification from a case

The very first decision a judge or justice must make is whether he or she can fairly and impartially hear the case. The Code of Judicial Conduct requires disqualification if presiding in the case presents a conflict of interest. Certain circumstances are presumed to create a conflict of interest, including that the judge or justice is related to a party or attorney, the judge is a party or witness in a case or has a significant financial or personal interest in the outcome of the case, or that the judge or justice previously served as counsel to a party in the same action or case. If a judge removes him or herself from a case, the judge need not give a reason. Judges often choose to remain silent in this regard, especially when disclosing the reason for disqualification could have an impact on the other justices' ability to be impartial. A judge or justice need not disqualify him or herself if the parties are aware of the conflict and agree that the judge or

Detail of Lafayette County Courthouse window. *(Kathleen Sitter, LRB)*

justice may preside. If a circuit court or appeals court judge is disqualified, another judge serves in his or her place. If a justice disqualifies him or herself, the remaining members of the Supreme Court decide the case. Of course, disqualification of a justice leaves an even number of justices to decide the case and sometimes this results in a tie vote. In this situation, the lower court ruling stands. If there is no lower court ruling, the status quo prevails.

Discipline

The Code of Judicial Conduct, which is written by the Supreme Court, establishes standards for judges. The code imposes broad requirements such as impartiality and diligence, and specific rules such as a prohibition on unnecessary communication with parties to a case outside the courtroom, and a prohibition on using information learned in one's capacity as a judge for nonjudicial purposes.

Architectural detail, Milwaukee Federal Courthouse. (Kathleen Sitter, LRB)

Judges and justices are subject to investigation and discipline for misconduct. Misconduct includes violation of the Code of Judicial Conduct, failure to perform official duties, habitual use of alcohol or drugs which interferes with performance of judicial duties, or conviction of a felony.

Allegations of misconduct are investigated by the Judicial Commission. The Judicial Commission is comprised of nine members (one trial judge and one Court of Appeals judge, both appointed by the Supreme Court; two lawyers; and five people who are not lawyers and who are nominated by the governor and appointed with the advice and consent of the senate). The Judicial Commission also investigates allegations that a judge or justice is impaired by a permanent disability from performing his or her official duties. After completing an investigation, the commission dismisses a complaint, resolves it informally, or files a formal action with the Supreme Court. The commission prosecutes complaints of misconduct or petitions of permanent disability before a panel of three Court of Appeals judges or before a jury. The panel or jury determines the facts of the case and makes recommendations for discipline. The Supreme Court reviews the findings and recommendations and determines the discipline. The Supreme Court may remove, reprimand, censure, or suspend a judge.

A judge or justice may also be removed by several other means. The legislature may remove a judge by a two-thirds vote of each house, or a judge or justice may be removed in a recall election.

Reserve judges and court commissioners

In addition to the full-time sitting judges, reserve judges and court commissioners may also perform judicial functions in Wisconsin. Any person who has served as a circuit court judge, Court of Appeals judge, or Supreme Court justice for at least six years may serve as a reserve judge. Reserve judges temporarily sit as circuit court or Court of Appeals judges as needed.

Circuit court judges may delegate a variety of judicial functions to court commissioners. Court commissioners must be attorneys licensed to practice in Wisconsin. Court commissioners may preside over various initial and uncontested proceedings, such as arraignments or preliminary hearings in a criminal case, uncontested probate matters, divorce proceedings, and paternity determinations. Court commissioners may not preside over a trial or jury selection. At the request of any party to an action, a circuit court judge reviews the decision of a court commissioner.

Attorneys

Most people are represented by an attorney when they go to court. Attorneys offer both substantive knowledge of the law and knowledge of court procedure. Attorneys work in a variety of settings. Some work as sole practitioners or as members of a firm. Firms range in size from just a few attorneys to dozens. Other private sector attorneys work as counsel to a business or organization. Attorneys also work in the public sector. Prosecutors are all government employees and include district attorneys, attorneys employed by the state Department of Justice, and some counsel for counties or municipalities. The Office of the State Public Defender employs attorneys to represent indigent defendants. State agencies and local governments also employ attorneys to provide legal counsel.

About 21,500 people are licensed to practice law in Wisconsin. Almost half work as sole practitioners or for one of Wisconsin's 3,500 firms. Fourteen hundred attorneys work as in-house counsel for a business or organization and about 2,350 work in the public sector. A large proportion, almost 7,000, do not currently practice law, either because they are retired or working in a different

Madison Attorney Janet Kelly performs research at the Wisconsin State Law Library. (Kathleen Sitter, LRB)

profession or in the home. However, attorneys tend to maintain their licenses even if they are not practicing law so that they may have the option of practicing in the future. Of the 21,500, over 6,000 are residents of other states.

Eligibility requirements

The licensing requirements for attorneys are established by the Wisconsin Supreme Court and the licensing process is administered by the Board of Bar Examiners. The board consists of 11 members, all of whom are appointed by the Supreme Court. To obtain a license, an attorney must satisfy a legal competency requirement as well as a character and fitness requirement, and take an oath administered by a Supreme Court justice. Generally, about 700 to 800 attorneys are admitted to the Wisconsin bar each year. Overall, the number of licensed attorneys grows by a couple hundred each year. Twenty-eight percent of bar members in Wisconsin are women; this percentage is expected to rise over the next several decades, because 50 percent of law school graduates are women.

There are three ways to satisfy the legal competency requirement for admission to the bar.

- **Diploma privilege.** Any person who earns a law degree from a law school in Wisconsin (the University of Wisconsin Law School or the Marquette University Law School) satisfies the legal competency requirement. Wisconsin is currently the only state that allows bar membership based on the diploma privilege.
- **Bar exam.** A person may satisfy the competency requirement by passing the bar examination administered by the Board of Bar Examiners. The examination consists of the Multistate Bar Examination, which is given in all states, and an essay examination developed by the lawyer members of the Board of Bar Examiners. In order to take the bar examination, a person must have graduated from an American Bar Association-approved law school. About 75 percent of examination takers pass the examination.
- **Reciprocity.** An attorney who has practiced in another state for three of the preceding five years satisfies the competency requirement if the state in which the attorney is licensed accepts Wisconsin credentials as proof of competency to practice in that state. Wisconsin does not grant reciprocity to states that do not accept the Wisconsin diploma privilege as proof of competency.

All applicants for the Wisconsin bar must also establish that they are of good moral character and are fit to practice law. Reasons for denial of bar membership based on character or fitness include unlawful conduct, disciplinary action related to the practice of law, dishonesty, academic misconduct, or failure to pay child support. Applicants must report information relevant to character and fitness and provide references willing to vouch for the applicant. Every year several applicants who satisfy the competency requirement are denied bar admission on the basis of character and fitness.

One of the duties of the Wisconsin Supreme Court is to swear in new attorneys. Graduates of the law schools at Marquette and the UW take the oath in group ceremonies, and other new lawyers are sworn in by individual justices in small groups throughout the year. *(Kathleen Sitter, LRB)*

Attorney Oath

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

So help me God.

State Bar of Wisconsin

Every licensed attorney in Wisconsin must be a dues-paying member of the State Bar of Wisconsin. The State Bar provides continuing legal education courses, hosts education programs for the public and schools, staffs an attorney referral and information service, and lobbies. Today, the Supreme Court is in charge of the organization and governance of the State Bar, but the State Bar was initially founded in 1878 as an independent association of attorneys.

The Supreme Court did not make State Bar membership a requirement for attorneys until 1956. Since then, Wisconsin attorneys have twice challenged the mandatory bar membership requirement as a violation of the First Amendment. The U.S. Supreme Court resolved the first challenge in favor of mandatory bar membership in 1961 (*Lathrop v. Donohue*). The second round went to Wisconsin attorney Steven Levine, who persuaded a federal district court in 1988 that mandatory bar memberships did violate the First Amendment (*Levine v. Supreme Court of Wisconsin*). The Wisconsin Supreme Court temporarily suspended mandatory bar membership in response to the district court ruling. However, the U.S. Supreme Court again upheld mandatory bar membership in 1990 in response to a challenge in California, but did find that a state may not require attorneys to pay dues to support a bar association's political activities (*Keller v. State Bar of California*). The Wisconsin Supreme Court reinstituted mandatory bar membership in 1992, but now attorneys may deduct from their dues the amount used to support political activities of the State Bar. Steven Levine, the Wisconsin attorney who successfully challenged mandatory bar membership in 1988, was elected in 2005 to serve as president-elect of the State Bar starting in July 2005, and then as president for a year starting in July of 2006.

Regulation of attorneys

The Supreme Court is in charge of regulating attorneys. The court may discipline an attorney for misconduct or prohibit an attorney who is medically incapacitated from practicing law. Misconduct includes a violation of the rules of professional conduct for attorneys, a criminal act, dishonesty, fraud, misrepresentation, violation of a Supreme Court rule, and violation of the attorney's oath.

The Supreme Court established the Office of Lawyer Regulation (OLR) to investigate and prosecute cases of attorney misconduct and medical incapacity. OLR may file complaints of misconduct or incapacity with the court. A court-appointed attorney or reserve judge called a referee conducts a hearing on the complaint and recommends a determination, and if applicable, sanctions to the court. The court determines whether and how to discipline the attorney. The court may revoke or suspend an attorney's license, publicly or privately reprimand an attorney, impose monetary sanctions, or impose conditions on the attorney's practice of law. At the attorney's request, the court holds a hearing on the referee's report. The Supreme Court reviews between 20 and 40 attorney misconduct or incapacity cases each year.

An attorney whose license is suspended for a lesser violation may obtain reinstatement at the end of the suspension after fulfilling any conditions imposed by the Supreme Court. An attorney whose license is revoked or suspended for more than six months must petition for reinstatement and prove to a referee and to the Supreme Court that he or she is fit to practice law.

OLR received 2,225 inquiries and grievances in fiscal year 2003-2004. The most common grievances were lack of diligence by an attorney, lack of communication with the client, and misrepresentation or dishonesty. Approximately 16 percent of cases were forwarded for formal investigation, 3 percent were resolved through diversion programs, 11 percent were withdrawn, and the remaining 70 percent were closed for lack of sufficient information to support an allegation of misconduct. The Supreme Court and referees imposed public discipline on 66 attorneys, including six license revocations. The remaining public disciplines include suspensions or reprimands. In addition, 33 attorneys received private reprimands.

Navigating the Legal System

Litigants are not required to be represented by an attorney in court and a growing number are not. Some people choose not to be represented and some cannot afford to pay for legal representation. The state provides legal assistance to indigent defendants in criminal cases. Indigent litigants in civil cases generally must turn to private groups for legal assistance. Courts can provide some assistance to litigants who proceed without representation, but cannot assert a litigant's rights or strategize for a litigant as an attorney is likely to do.

Self-represented parties

Courts are seeing an increasing number of self-represented or *pro se* litigants navigating a legal system that is not designed to serve individuals without attorneys. These litigants fall into two categories: those who truly can't afford an attorney but are otherwise ineligible for any type of low-income legal assistance, and those who can afford an attorney but choose not to hire one.

Confusing language and complicated rules and procedures can alienate litigants representing themselves in court. The frustration experienced by a litigant is often shared by court staff, attorneys, and judges who must balance conflicting obligations to assist litigants, prioritize workload demands, and adhere to legal and ethical constraints concerning the unauthorized practice of law. Judges find

> *"Well over half of my original divorce and small claim filings are* pro se *(neither side has an attorney). Other counties in this district are close – some are a little higher and some a little lower."*
> *– Judge Gary Carlson, Taylor County Circuit Court*

The Waukesha County Family Court Self-Help Center provides both in-person and online assistance to court users who do not have attorneys. Litigants are increasingly representing themselves in court, and the legal profession is responding to this trend by providing a variety of new services.

(Kathleen Sitter, LRB)

themselves placed in the uneasy position of providing useful explanations of law and procedures without violating the judicial code. They are concerned about the appearance of impropriety if they intervene too much or too little, and the balancing act becomes all the more challenging in cases where one litigant is represented and the other is not.

A 1999 survey of 13 northwestern Wisconsin counties showed that more than half of family court cases involved at least one person who was not represented by an attorney. In Milwaukee County, the number of family court cases involving a self-represented litigant was more than 70 percent in 1999. Since then, "snapshot" surveys of case filings show the numbers have increased. In Dane County, a two-month snapshot of family court filings in 1999 revealed that in 48 percent of the cases, both litigants were self-represented; by 2002, in a similar two-month snapshot, that had number increased to 60 percent.

In 1999, Chief Justice Shirley S. Abrahamson appointed a *Pro Se* Working Group, comprised of judges, attorneys, law professors, advocates, and court staff, to study the problem and recommend solutions. The group's report, issued in December 2000, recommended simplifying court documents, establishing better referral systems to link people with legal help, and facilitating accurate and complete filing of paperwork. Since the report was issued, various initiatives have been undertaken to help *pro se* litigants navigate the court system.

In 2002, the Wisconsin Supreme Court adopted guidelines to help court staff to provide quality customer service while steering clear of the unauthorized practice of law. In 2003, the courts unveiled a new Self-Help Center on their Web site. In addition, counties across the state have developed their own court self-help centers to assist litigants with information, and have developed low-cost packets of forms with plain-English instructions for some of the most common court procedures and directories of local attorneys who might be willing to offer low-cost or "unbundled"

legal services for those who need help only with specific items. In 2004, a statewide effort to provide understandable court forms that would be acceptable, but not mandatory, got underway. In 2005, this effort produced 34 plain-English forms and instructions for various actions related to divorce. Also in 2004, a group of central Wisconsin counties began work on a special plan to address the needs of self-represented litigants in rural areas where the small number of lawyers means more potential conflicts of interest for lawyers who volunteer their time to offer free legal advice. These lawyers, or their law firms, often discover that they represent the same banks and merchants whom the litigant is attempting to sue, meaning that they cannot ethically offer assistance to the *pro se* litigant. To address this conflict-of-interest problem, the rural counties are researching establishing a partnership with the University of Wisconsin-Extension that might allow videoconferencing to facilitate free legal advice from attorneys who practice in other parts of the state – essentially, virtual self-help centers.

The public defender system

The Sixth Amendment to the U.S. Constitution provides a criminal defendant the right to assistance of counsel. In the 1963 case *Gideon v. Wainwright*, the U.S. Supreme Court declared that if a criminal defendant cannot afford to pay for counsel, the state must provide counsel. It is up to the states to decide how counsel will be provided to indigent criminal defendants. In 1977, Wisconsin established a statewide public defender system, funded with state dollars, to provide legal representation to criminal defendants. Wisconsin's Office of the State Public Defender (SPD), provides legal representation to indigent adult defendants in criminal, commitment, and termination of parental rights cases. The SPD also provides legal representation to juveniles in delinquency cases and to children in certain child welfare cases, regardless of indigence.

The SPD represents indigent defendants at the trial level and also in appeals; it provided legal representation to 145,000 clients in 2004. The SPD employs attorneys to provide representation and also contracts with private attorneys to provide legal representation. In-house attorneys handle just over half of the cases. The SPD determines indigence according to statutory income and asset guidelines that were last modified in 1987.

Although Wisconsin's statewide public defender system is not unusual, it is also not typical of indigent defense across the 50 states. Some states leave it to the local government to provide counsel to indigent criminal defendants, allowing for inconsistency both in determinations as to who is indigent and in the quality of counsel provided. In jurisdictions without a public defender system, judges either appoint counsel from the private bar on a case-by-case basis, or the government contracts with private attorneys to take multiple indigent defense cases. The benefits to Wisconsin's statewide public defender system include that the attorneys assigned to provide indigent defense are generally experienced in criminal law and have been vetted, either through the hiring process for SPD employees or the certification

Howard B. Eisenberg (1946-2002), called "Wisconsin's Atticus Finch" (from Harper Lee's "To Kill a Mockingbird") by Chief Justice Shirley Abrahamson, wrote the statutes creating the state public defender system and was the first chief State Public Defender. Eisenberg, who later served as dean of Marquette Law School, continued to represent indigent defendants, free of charge, after leaving the Office of the State Public Defender.

(Andy Manis)

process for private bar attorneys. Wisconsin's system is uniform across the state. And, because the SPD makes indigence determinations, the intake process may start after defendants are charged, rather then waiting until the defendant makes his or her first appearance before a judge, avoiding the need to delay cases while counsel is appointed.

Representation for indigent litigants in civil cases

In civil cases, unlike criminal matters, litigants generally do not have a right to be provided counsel if they cannot afford to hire an attorney; however, the stakes in civil matters can be quite high. People faced with eviction from their homes, people who need restraining orders, people fighting for custody of their children are all involved in civil proceedings. Several legal aid organizations provide legal services to indigent clients in various parts of Wisconsin. They tend to represent clients in cases concerning eligibility for public benefits, family law (including divorce, custody, child support, and domestic violence), housing, education, employment, and consumer law.

Legal aid organizations are funded by a mix of public and private money. One source of funding is interest on lawyers' trust accounts (IOLTA). Wisconsin lawyers who receive funds that belong to a client must deposit the funds into a pooled interest-bearing account if the client's funds alone would not generate sufficient interest to cover the cost of maintaining a separate account. Interest on the pooled accounts is used to fund legal aid. Another source of funding is federal money distributed by the Legal Services Corporation (LSC), a private, nonprofit corporation created by the U.S. Congress. Organizations that receive LSC funding are subject to a number of restrictions, including that they may not provide representation in criminal cases, accept cases in which attorney's fees may be earned, challenge welfare reform laws, file class actions, lobby, litigate on behalf of prisoners, or represent clients in drug-related evictions from public housing.

In recent years, declining interest rates have taken a bite out of IOLTA, and a resulting toll on Wisconsin's ability to meet the civil legal service needs of low-income people. In 2004, the Wisconsin Trust Account Foundation (WisTAF), which operates the IOLTA program and distributes money to legal-services providers, took the unusual step of petitioning the Wisconsin Supreme Court to levy a $50 fee on all active members of the State Bar of Wisconsin in order to shore up the program. The court agreed that the situation was dire, and voted to impose the fee. In its order, the court made clear its concern that funding of legal services for the poor not fall exclusively on the shoulders of lawyers. "The legal profession, alone, cannot solve the problem of adequate civil legal representation for the poor, nor should it be expected to do so," the court wrote. "The very integrity of our justice system is compromised when legal representation for critical needs is available only to those with financial means. As such, this issue affects our entire community. Our entire community will need to participate if a long-term solution is to succeed."

Court Automation and Public Information

The Wisconsin court system's Consolidated Court Automation Programs, better known as CCAP, represents one of the nation's first – and, as measured by its users, most successful – efforts to develop, implement, and maintain automated information systems for the courts and give the public Internet access to court information. CCAP's custom-developed software is in use in the courts' administrative offices as well as in courtrooms throughout the state.

As the Wisconsin court system moves toward electronic filing, visits to the clerk's office to file paperwork could become a thing of the past. Court automation is making the court system more efficient, improving government by facilitating the sharing of information among agencies, and making court information more accessible to the public.

(Kathleen Sitter, LRB)

A Capitol tour guide gives visitors an explanation of the four murals on the walls of the Supreme Court hearing room. The murals, along with the rest of the room, were the subject of significant restoration efforts from 1999-2001, as part of the Capitol restoration project. *(Kathleen Sitter, LRB)*

CCAP operates under the direction of the Director of State Courts and with guidance from the CCAP Steering Committee, which is comprised of judges, clerks of court, and court administrators from around the state.

Public access to court records and information

Public access to a variety of court information is available through the Wisconsin court system Web site at (*www.wicourts.gov*). One of the most popular sources of information within this site is Wisconsin Circuit Court Access (WCCA), which provides up-to-date information on action in circuit court cases across the state. WCCA receives about 2.3 million hits every day. Because easy public access to court records raises privacy concerns, the Director of State Courts Office in 2005 appointed the WCCA Oversight Committee, which will meet periodically to review WCCA and address concerns with an eye on maintaining access without unduly compromising individual privacy. A committee of the same name and with similar membership was convened in 1999 to develop guidelines for the site and was disbanded when this task was completed.

Named one of the nation's top 10 justice-related Web sites, WCCA is searchable statewide or county-by-county using various criteria including an individual's name or a case number. WCCA displays circuit court information such as party names, criminal charges, sentences, civil judgments, case schedules, and case events and is updated hourly. In addition to free individual inquiries, bulk information can be extracted from WCCA by subscribing to a fee-based service.

Supreme Court and Court of Appeals case information is also available on the Wisconsin court system Web site, free of charge. The information includes party names, attorney names and addresses, and case events.

In addition to case information, the Wisconsin court system Web site contains a wide variety of court information. Published opinions and calendars of the Supreme Court and Court of Appeals; downloadable court forms; budget information; historical facts; educational materials for children; press releases; court system telephone directories; and much more is available on this site.

To ensure that access is available to all, CCAP provides free, public-access computer terminals in every county courthouse.

Records automation

Court case, financial, and jury management applications within CCAP include features such as in-court processing, which provides litigants with the papers they need before they leave the courtroom; automated court calendars, which streamline the process for scheduling hearings; and bar code scanners to track files. Document imaging is used to help alleviate the physical storage requirements of large quantities of paper files, and pilot projects to develop an electronic-filing system are underway in several counties.

With 64 employees and a 2003-2005 budget of $20.8 million, CCAP replaces labor-intensive, paper-based court processes with state-of-the-art computer technology, saving time and valuable staff resources and helping the courts to run smoothly and efficiently. CCAP supports about 3,000 computers in 85 locations throughout the state, providing computer hardware, software, and a variety of technology services to the Wisconsin Supreme Court, the four districts of the Court of Appeals, the 72-county Circuit Court, and seven administrative departments.

While the court system may never be a "paperless" operation, building an infrastructure that will allow for electronic filing (e-filing) of documents in the Wisconsin courts is an important goal, for e-filing can save money, increase efficiency, and improve access to the courts. An electronic filing system is expected to save money in the long term for the courts, lawyers, and litigants by reducing the costs of printing, copying, mailing, courier services, travel, and storage of paper documents. E-filing also is expected to save time, increasing the speed with which documents can be sent to the court and to opposing counsel and eliminating hurdles for litigants who live far away from the courthouse. Further, e-filing will give the parties, lawyers, judges, and court staff the ability to electronically access and search court files and dockets from remote locations, 24 hours a day.

Progress toward e-filing began in 2000, when the director of state courts appointed a 20-person Electronic Filing Committee to examine the current system and make recommendations for change in order to accommodate e-filing. The committee was comprised of judges, clerks of court, court administrators, technology experts, and representatives from the state Department of Justice, as well as district attorneys, public defenders, and attorneys in private practice. The group tackled its job by working to identify possible barriers to e-filing in the law, policies, and court operations. This work involved identifying current court processes and flow of information through the court system and determining where workflow should be reengineered to create a more efficient system and to accommodate/facilitate electronic filing. Big picture concerns such as an integrated case management system and protection of privacy were considered alongside details such as how to clock filing times, collect fees, and verify signatures.

Two recent projects are streamlining the court process for jurors and litigants. The **on-line juror qualification questionnaire**, which became available in 2004 at *www.wicourts.gov/services/juror/online.htm* allows potential jurors to provide their responses quickly and easily, and saves valuable court staff resources by reducing data entry. More than 13,000 people used the online jury questionnaire in the first eight months of this project.

Electronic filing of court forms, better known as **e-filing**, is in the works for small claims and family cases. Attorneys or parties representing themselves will be able to fill out and file new cases or actions, respond to actions filed by other parties, print or reprint forms to be filed, and obtain information about electronically filing case information with the courts.

Sharing information with state and local agencies

Extensive data is shared between the courts and other justice business partners to facilitate the accurate and efficient administration of justice in Wisconsin. The following data interfaces are in production:

- **District Attorney to Circuit Courts** – District attorneys send criminal complaint/charging information electronically to the clerks of circuit court in 59 counties in the state. This information includes the name and address of the

person being charged, the statutory citation, severity, and offense date of the violation.Plans are being made to expand this interface to remaining counties.

- **Circuit Courts with the Department of Transportation (DOT)** – Data are exchanged between the circuit courts and the Department of Transportation for the following initiatives: Citation filing (18 counties are now receiving citation filings electronically – 12 from weigh stations and 6 from the State Patrol); and Disposition Reporting (18 circuit courts are exporting forfeiture disposition data to the DOT for electronic citations). The electronic reporting of dispositions for nonelectronic citations is operating in two counties. Electronic reporting of suspensions and revocations to the DOT is currently in development.
- **Circuit Courts to the Crime Information Bureau (CIB)** – The dispositions and sentences for all circuit court criminal cases statewide are being reported to the Department of Justice's Crime Information Bureau. District attorneys, law enforcement, and others rely on this information when carrying out their duties.
- **Circuit Courts to the State Public Defender's Office** – The circuit court case, calendar, and disposition data for all circuit court criminal cases statewide are being reported to the State Public Defender's Office.
- **Circuit Courts to the Department of Revenue (DOR)** – 54 circuit courts are electronically intercepting the tax returns of people that have outstanding fines, fees, and forfeitures with the clerks of circuit court or registers in probate. In 2004, about $2.1 million was intercepted. Outstanding debt information is electronically sent to the DOR, which deducts the outstanding amounts from the specified tax returns. The funds are then sent to the clerks or registers to apply to the outstanding debts. Seventy-one counties are participating in the filing of electronic tax warrants from the DOR to the circuit courts. Satisfactions and releases are also electronically filed with the courts.
- **Future Interfaces with the Circuit Courts** – Numerous other data sharing projects are either being developed or planned in the upcoming year. The future interfaces with the circuit courts include Department of Workforce Development unemployment compensation warrant filings and judgment of conviction information exports to the Department of Corrections.

End notes

[1]See 1987 Wisconsin Act 355 for more explanation for creation of family counseling requirement (Judicial Council bill).

[2]Casey, Pamela and Rottman, David. *Problem-Solving Courts: Models and Trends.* National Center for State Courts, 2003.

[3]Supreme Court Internal Operating Procedures, II (intro.).

[4]Clausen, Charles D., "The Long and Winding Road: Political and Campaign Ethics Rules for Wisconsin Judges." *Marquette Law Review,* v.83, no.1, Fall 1999. See also "Wisconsin's Courts," *The Wisconsin Taxpayer.* The Wisconsin Taxpayer's Alliance, June 1999, v.67, no.6.

Court System Timeline

1836 Wisconsin territory created

The U.S. Congress established the territorial government of Wisconsin (covering present day Wisconsin, Iowa, and Minnesota) and created three judicial districts in the territory. The territorial Supreme Court, comprised of three district court judges appointed by President Andrew Jackson, convened for the first time on December 8, 1836, in Belmont. **Charles Dunn** was the first chief justice, and **David Irvin** and **William Frazer** were the two associate justices.

1848 Wisconsin became the nation's 30th state

The constitution of the new state granted the courts the power to hear and decide cases, and created five judicial circuits, allowing the voters of each district to choose a judge. The five circuit judges sat as the Supreme Court in Madison, reviewing their own cases. Chief Justice **Alexander Stow** of Fond du Lac and Associate Justices **Edward Whiton** of Janesville, **Levi Hubbell** of Milwaukee, **Mortimer Jackson** of Mineral Point, and **Charles Larrabee** of Horicon were elected to the court.

The 1848 Constitution gave the governor the authority to appoint a justice to the court when a vacancy occurs and provided that the appointee continue in the office until a successor is elected and qualified. This is still the system today.

1849 The Supreme Court expanded to six

The legislature created a sixth judicial circuit. Janesville lawyer **Wiram Knowlton** was elected judge, thus making six justices on the Supreme Court bench.

1850 County courts created

The legislature created county courts and gave them authority over probate matters and civil matters involving less than $500. Lawmakers also authorized justice of the peace and municipal courts to handle civil disputes involving less than $100.

1852

A new Supreme Court created

The constitution in 1848 had provided that the circuit court judges would sit as the Supreme Court for five years. The legislature took advantage of the five-year expiration to create a new, separate Supreme Court. For the first time, the members of the court provided an independent review of lower court rulings. The people of Wisconsin elected three men (in a September 1852 election) – Milwaukee lawyer **Abram D. Smith**, **Edward V. Whiton**, and Irish immigrant **Samuel Crawford** of Mineral Point – to serve as the first justices of the newly formed Wisconsin Supreme Court.

1853

The **first term** of the separate Wisconsin Supreme Court commenced on June 1, 1853. The justices' salary was $2,000 per year. The court's first case was *Winne v. Nickerson*, which involved a $10.40 debt and $14.36 in court costs. The dispute centered on a question of the reliability of an account book.

1858

Election day for judges set

The legislature enacted a law setting judicial elections for the first Tuesday in April, which continues to this day.

1870s

The **workload of the Supreme Court** greatly expanded. The court had no stenographers, typewriters, or even copyists, so each justice did his own clerical work. To keep up with the calendar, the justices voted to increase the number of cases on assignment to the court from 15 to 25. (Chief Justice **Edward Ryan** objected strenuously, accusing his fellow justices of attempting to kill him with labor.)

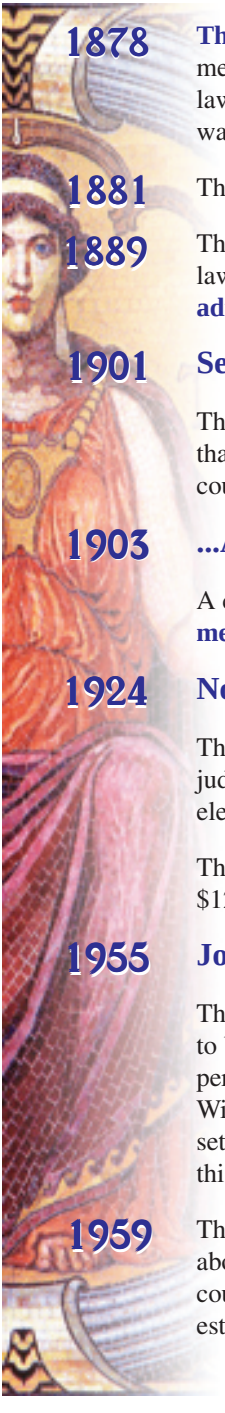
1874

After 15 years on the Supreme Court, Chief Justice **Luther Dixon**, a Portage resident who was saddled with financial problems, resigned and returned to private practice. The justices' annual salary was $2,500.

1877

More justices, longer terms

A constitutional amendment changed the number of justices from three to five and increased the term of service from six to 10 years to ensure that justices could issue rulings without constantly considering politics and reelection.



1878 **The Wisconsin Bar Association** was organized. The first membership roll was signed on January 9, 1878, by 265 state lawyers. **Moses M. Strong**, an attorney from Mineral Point, was elected as the bar's first president.

1881 The State Bar adopts its first **code of ethics**.

1889 The new State Bar surveyed the state and found 1,239 resident lawyers, many of whom were unqualified. **Reforming its admission standards** was one of the bar's first challenges.

1901

Selecting the chief justice

The people of Wisconsin amended the constitution to provide that the justice having the longest continuous service on the court shall be the chief justice; that is still the method today.

1903

...And still more justices

A constitutional amendment established a court of **seven members**. That structure continues today.

1924

Nonpartisan elections

The legislature passed a law mandating that candidates for judicial office be nonpartisan, though nonpartisan judicial elections apparently date back to 1878 in Wisconsin.

The **annual salary** for Wisconsin Supreme Court justices is $12,000 a year.

1955

Job qualifications set

The people amended the constitution to provide that in order to become a Supreme Court justice or trial court judge, a person must be a qualified voter and licensed to practice law in Wisconsin for at least five years. The 1955 amendment also set a mandatory retirement age of 70 for justices. By 1977, this provision was removed.

1959 The legislature enacted a **reorganization of the court system**, abolishing municipal, district, superior, civil, and small claims courts. A uniform system of jurisdiction and procedure was established for county courts.

1961 The legislature created the post of administrative **director of the courts**. This position has since been redefined by the Supreme Court and renamed the director of state courts.

1966 The legislature ratified two constitutional amendments that **abolished the justice of the peace** courts and **permitted municipal courts**. Thus, the court system consisted of a Supreme Court, circuit courts, county courts, and municipal courts.

1976 **Shirley S. Abrahamson**, a UW Law School professor and Madison attorney was appointed to the Wisconsin Supreme Court by Governor Patrick J. Lucey. She was the **first woman on the court**.

1977 Wisconsin voters approved a constitutional amendment to **reorganize the court system**. The legislature eliminated county courts and created a single-level trial court (the circuit court). Lawmakers also authorized municipal courts, created the Court of Appeals, and provided for permissive review by the Wisconsin Supreme Court.

1999 **The Supreme Court Hearing Room** was shut down for renovation; court moved to temporary quarters until the hearing room was reopened in 2001.

2003

Majority female Supreme Court

In 2003, Justice **Patience Drake Roggensack** was elected to the Supreme Court, creating the first majority female Supreme Court along with Chief Justice **Shirley S. Abrahamson** and fellow Justices **Ann Walsh Bradley** and **Diane S. Sykes**. The female majority was temporary, ending when Justice Sykes was appointed to a federal judgeship in 2004.

2004 **Louis B. Butler, Jr.**, the first African-American Supreme Court justice in Wisconsin history, was appointed to the bench by Governor Jim Doyle.