Judicial Branch

7

The judicial branch: profile of the judicial branch, summary of recent significant supreme court decisions, and descriptions of the supreme court, court system, and judicial service agencies

Brown County Courthouse

Kathleen Sitter, LRB

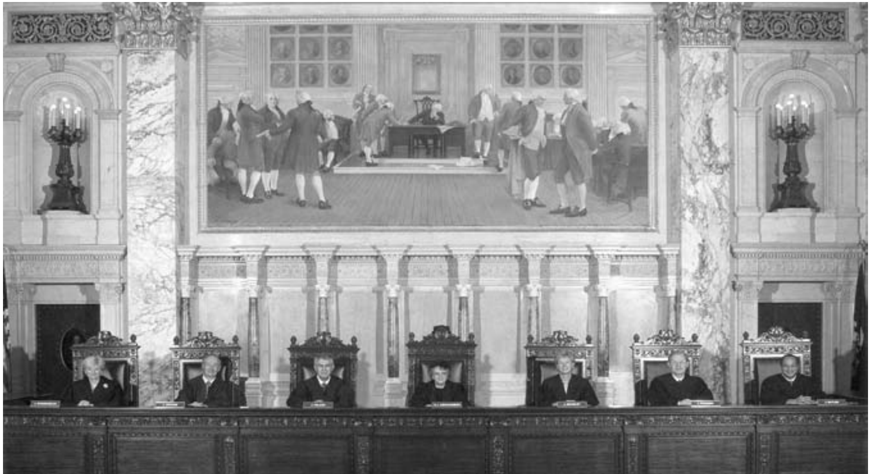
WISCONSIN SUPREME COURT

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	2009
Jon P. Wilcox	1992*	August 1997	2007
Ann Walsh Bradley	1995	August 1995	2005
N. Patrick Crooks	1996	August 1996	2006
David T. Prosser, Jr.	1998*	August 2001	2011
Patience D. Roggensack	2003	August 2003	2013
Louis B. Butler, Jr.**	2004*	–––	2008

*Initially appointed by the governor.

**Appointed to Supreme Court on August 25, 2004, to fill a vacancy created by the resignation of Justice Diane S. Sykes.

Sources: *2003-2004 Wisconsin Statutes;* Director of State Courts, departmental data, March 2005.



The Supreme Court's chamber in the East Wing of the State Capitol provides the setting for the court's formal portrait. Pictured from left to right are Justice Patience D. Roggensack, Justice N. Patrick Crooks, Justice Jon P. Wilcox, Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, Justice David T. Prosser, Jr., and Justice Louis B. Butler, Jr. *(Wisconsin Supreme Court)*

JUDICIAL BRANCH

A PROFILE OF THE JUDICIAL BRANCH

Introducing the Court System. The judicial branch and its system of various courts may appear very complex to the nonlawyer. It is well-known that the courts are required to try persons accused of violating criminal law and that conviction in the trial court may result in punishment by fine or imprisonment or both. The courts also decide civil matters between private citizens, ranging from landlord-tenant disputes to adjudication of corporate liability involving many millions of dollars and months of costly litigation. In addition, the courts act as referees between citizens and their government by determining the permissible limits of governmental power and the extent of an individual's rights and responsibilities.

A court system that strives for fairness and justice must settle disputes on the basis of appropriate rules of law. These rules are derived from a variety of sources, including the state and federal constitutions, legislative acts and administrative rules, as well as the "common law", which reflects society's customs and experience as expressed in previous court decisions. This body of law is constantly changing to meet the needs of an increasingly complex world. The courts have the task of seeking the delicate balance between the flexibility and the stability needed to protect the fundamental principles of the constitutional system of the United States.

The Supreme Court. The judicial branch is headed by the Wisconsin Supreme Court of 7 justices, each elected statewide to a 10-year term. The supreme court is primarily an appellate court and serves as Wisconsin's "court of last resort". It also exercises original jurisdiction in a small number of cases of statewide concern. There are no appeals to the supreme court as a matter of right. Instead, the court has discretion to determine which appeals it will hear.

In addition to hearing cases on appeal from the court of appeals, there also are three instances in which the supreme court, at its discretion, may decide to bypass the appeals court. First, the supreme court may review a case on its own initiative. Second, it may decide to review a matter without an appellate decision based on a petition by one of the parties. Finally, the supreme court may take jurisdiction in a case if the appeals court finds it needs guidance on a legal question and requests supreme court review under a procedure known as "certification".

The Court of Appeals. The Court of Appeals, created August 1, 1978, is divided into 4 appellate districts covering the state, and there are 16 appellate judges, each elected to a 6-year term. The "court chambers", or principal offices for the districts, are located in Madison (5 judges), Milwaukee (4 judges), Waukesha (4 judges), and Wausau (3 judges).

In the appeals court, 3-judge panels hear all cases, except small claims actions, municipal ordinance violations, traffic violations, and mental health, juvenile, and misdemeanor cases. These exceptions may be heard by a single judge unless a panel is requested.

Circuit Courts. Following a 1977-78 reorganization of the Wisconsin court system, the circuit court became the "single level" trial court for the state. Circuit court boundaries were revised so that, except for 3 combined-county circuits (Buffalo-Pepin, Forest-Florence, and Shawano-Menominee), each county became a circuit, resulting in a total of 69 circuits.

In the more populous counties, a circuit may have several branches with one judge assigned to each branch. As of June 30, 2005, Wisconsin had a combined total of 241 circuits or circuit branches and the same number of circuit judgeships, with each judge elected to a 6-year term. For administrative purposes, the circuit court system is divided into 10 judicial administrative districts, each headed by a chief judge appointed by the supreme court. The circuit courts are funded with a combination of state and county money. For example, state funds are used to pay the salaries of judges, and counties are responsible for most court operating costs.

A final judgment by the circuit court can be appealed to the Wisconsin Court of Appeals, but a decision by the appeals court can be reviewed only if the Wisconsin Supreme Court grants a petition for review.

Municipal Courts. Individually or jointly, cities, villages, and towns may create municipal courts with jurisdiction over municipal ordinance violations that have monetary penalties. Over 200 municipalities have done so. These courts are not courts of record, and they have limited jurisdiction. Usually, municipal judgeships are not full-time positions.

Selection and Qualification of Judges. In Wisconsin, all justices and judges are elected on a nonpartisan ballot in April. The Wisconsin Constitution provides that supreme court justices and appellate and circuit judges must have been licensed to practice law in Wisconsin for at least 5 years prior to election or appointment. While state law does not require that municipal judges be attorneys, municipalities may impose such a qualification in their jurisdictions.

Supreme court justices are elected on a statewide basis; appeals court and circuit court judges are elected in their respective districts. The governor may make an appointment to fill a vacancy in the office of justice or judge to serve until a successor is elected. When the election is held, the candidate elected assumes the office for a full term.

Since 1955, Wisconsin has permitted retired justices and judges to serve as "reserve" judges. At the request of the chief justice of the supreme court, reserve judges fill vacancies temporarily or help to relieve congested calendars. They exercise all the powers of the court to which they are assigned.

Judicial Agencies Assisting the Courts. Numerous state agencies assist the courts. The Wisconsin Supreme Court appoints the Director of State Courts, the State Law Librarian and staff, the Board of Bar Examiners, the director of the Office of Lawyer Regulation, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Council, and the State Bar of Wisconsin.

The shared concern of these agencies is to improve the organization, operation, administration, and procedures of the state judicial system. They also function to promote professional standards, judicial ethics, and legal research and reform.

Court Process in Wisconsin. Both state and federal courts have jurisdiction over Wisconsin citizens. State courts generally adjudicate cases pertaining to state laws, but the federal government may give state courts jurisdiction over specified federal questions. Courts handle two types of cases – civil and criminal.

Civil Cases. Generally, civil actions involve individual claims in which a person seeks a remedy for some wrong done by another. For example, if a person has been injured in an automobile accident, the complaining party (plaintiff) may sue the offending party (defendant) to compel payment for the injuries.

In a typical civil case, the plaintiff brings an action by filing a summons and a complaint with the circuit court. The defendant is served with copies of these documents, and the summons directs the defendant to respond to the plaintiff's attorney. Various pretrial proceedings, such as pleadings, motions, pretrial conferences, and discovery, may be required. If no settlement is reached, the matter goes to trial. The U.S. and Wisconsin Constitutions guarantee trial by jury, but if both parties consent, the trial may be conducted by the court without a jury. The jury in a civil case consists of 6 persons unless a greater number, not to exceed 12, is requested. Five-sixths of the jurors must agree on the verdict. Based on the verdict, the court enters a judgment for the plaintiff or defendant.

Wisconsin law provides for small claims actions that are streamlined and informal. These actions typically involve the collection of small personal or commercial debts and are limited to questions of $5,000 or less. Small claims cases are decided by the circuit court judge, unless a jury trial is requested. Attorneys commonly are not used.

Criminal Cases. Under Wisconsin law, criminal conduct is an act prohibited by state law and punishable by a fine or imprisonment or both. There are two types of crime – felonies and misdemeanors. A felony is punishable by confinement in a state prison for one year or more; all other crimes are misdemeanors punishable by imprisonment in a county jail. Misdemeanors have a maximum sentence of 12 months unless the violator is a "repeater" as defined in the statutes.

Because a crime is an offense against the state, the state, rather than the crime victim, brings action against the defendant. A typical criminal action begins when the district attorney, an elected county official who acts as an agent of the state in prosecuting the case, files a criminal

complaint in the circuit court stating the essential facts concerning the offense charged. The defendant may or may not be arrested at that time. If the defendant has not yet been arrested, the judge or a court commissioner then issues an "arrest warrant" in the case of a felony or a "summons" in the case of a misdemeanor. A law enforcement officer then must serve a copy of the warrant or summons on an individual and make an arrest.

Once in custody, the defendant is taken before a circuit judge or court commissioner, informed of the charges, and given the opportunity to be represented by a lawyer at public expense if he or she cannot afford to hire one. Bail may be set at this time or later. In the case of a misdemeanor, a trial date is set. In felony cases, the defendant has a right to a preliminary examination, which is a hearing before the court to determine whether the state has probable cause to charge the individual. If the defendant does not waive the preliminary examination, the judge or court commissioner transfers the action to a circuit court for a formal hearing, called an "arraignment". If probable cause is found, the person is bound over for trial.

If the preliminary examination is waived, or if it is held and probable cause found, the district attorney files an information (a sworn accusation on which the indictment is based) with the court. The arraignment is then held before the circuit court judge, and the defendant enters a plea ("guilty", "not guilty", "no contest subject to the approval of the court", or "not guilty by reason of mental disease or defect").

The case next proceeds to trial in circuit court. Criminal cases are tried by a jury of 12, unless the defendant waives a jury trial or there is agreement for fewer jurors. The jury considers the evidence presented at the trial, determines the facts and renders a verdict of guilty or not guilty based on instructions given by the circuit judge. If the jury issues a verdict of guilty, a judgment of conviction is entered and the court determines the sentence. The court may order a presentence investigation before pronouncing sentence.

In a criminal case, the jury's verdict must be unanimous. If not, the defendant is acquitted (cleared of the charge). Once acquitted, a person cannot be tried again in criminal court for the same charge, based on provisions in both the federal and state constitutions that prevent double jeopardy. Aggrieved parties may, however, bring a civil action against the individual for damages, based on the incident.

History of the Court System. The basic powers and framework of the court system in Wisconsin were established by Article VII of the Wisconsin Constitution when Wisconsin became a state in 1848. At that time, judicial power was vested in a supreme court, circuit courts, courts of probate, and justices of the peace. Subject to certain limitations, the legislature was granted power to establish inferior courts and municipal courts and determine their jurisdiction.

The constitution originally divided the state into five judicial circuit districts. The five judges who presided over those circuit courts were to meet at least once a year at Madison as a "Supreme Court" until the legislature established a separate court. The Wisconsin Supreme Court was instituted in 1853 with 3 members chosen in statewide elections – one was elected as chief justice and the other 2 as associate justices. In 1877, a constitutional amendment increased the number of associate justices to 4. An 1889 amendment prescribed the current practice under which all court members are elected as justices. The justice with the longest continuous service presides as chief justice, unless that person declines, in which case the office passes to the next justice in terms of seniority. Since 1903, the constitution has required a court of 7 members.

Over the years, the legislature created a large number of courts with varying types of jurisdiction. As a result of numerous special laws, there was no uniformity among the counties. Different types of courts in a single county had overlapping jurisdiction, and procedure in the various courts was not the same. A number of special courts sprang up in heavily urbanized areas, such as Milwaukee County, where the judicial burden was the greatest. In addition, many municipalities established police justice courts for enforcement of local ordinances, and there were some 1,800 justices of the peace.

The 1959 Legislature enacted Chapter 315, effective January 1, 1962, which provided for the initial reorganization of the court system. The most significant feature of the reorganization was the abolition of special statutory courts (municipal, district, superior, civil, and small claims). In addition, a uniform system of jurisdiction and procedure was established for all county courts.

The 1959 law also created the machinery for smoother administration of the court system. One problem under the old system was the imbalance of caseloads from one jurisdiction to another. In some cases, the workload was not evenly distributed among the judges within the same jurisdiction. To correct this, the chief justice of the supreme court was authorized to assign circuit and county judges to serve temporarily as needed in either type of court. The 1961 Legislature took another step to assist the chief justice in these assignments by creating the post of Administrative Director of Courts. This position has since been redefined by the supreme court and renamed the Director of State Courts. In recent years, the director has been given added administrative duties and increased staff to perform them.

The last step in the 1959 reorganization effort was the April 1966 ratification of two constitutional amendments that abolished the justices of the peace and permitted municipal courts. At this point the Wisconsin system of courts consisted of the supreme court, circuit courts, county courts, and municipal courts.

In April 1977, the court of appeals was authorized when the voters ratified an amendment to Article VII, Section 2, of the Wisconsin Constitution, which outlined the current structure of the state courts:

> The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform statewide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature under section 14.

In June 1978, the legislature implemented the constitutional amendment by enacting Chapter 449, Laws of 1977, which added the court of appeals to the system and eliminated county courts.

General Douglas MacArthur began his military career with an appointment to West Point by Milwaukee Congressman Theobald Otjen in 1899. His Milwaukee connection is commemorated by this statue in MacArthur Square at the entrance to the Milwaukee County Courthouse. (Kathleen Sitter, LRB)

SUPREME COURT

Chief Justice: **SHIRLEY S. ABRAHAMSON**
Justices: JON P. WILCOX
ANN WALSH BRADLEY
N. PATRICK CROOKS
DAVID T. PROSSER, JR.
PATIENCE D. ROGGENSACK
LOUIS B. BUTLER, JR.

Mailing Address: Supreme Court and Clerk: P.O. Box 1688, Madison 53701-1688.

Locations: Supreme Court: Room 16 East, State Capitol, Madison; Clerk: 110 East Main Street, Madison.

Telephone: 266-1298.

Fax: 261-8299.

Internet Address: http://www.wicourts.gov

Clerk of Supreme Court: CORNELIA G. CLARK, 266-1880, Fax: 267-0640.

Court Commissioners: COLEEN KENNEDY, NANCY KOPP, JULIE RICH, DAVID RUNKE; 266-7442.

Number of Positions: 38.50.

Total Budget 2003-05: $8,522,400.

Constitutional References: Article VII, Sections 2-4, 9-11, and 13.

Statutory Reference: Chapter 751.

Responsibility: The Wisconsin Supreme Court is the final authority on matters pertaining to the Wisconsin Constitution and the highest tribunal for all actions begun in the state, except those involving federal issues appealable to the U.S. Supreme Court. The court decides which cases it will hear, usually on the basis of whether the questions raised are of statewide importance. It exercises "appellate jurisdiction" if 3 or more justices grant a petition to review a decision of a lower court. It exercises "original jurisdiction" as the first court to hear a case if 4 or more justices approve a petition requesting it to do so. Although the majority of cases advance from the circuit court to the court of appeals before reaching the supreme court, the high court may decide to bypass the court of appeals. The supreme court can do this on its own motion or at the request of the parties; in addition, the court of appeals may certify a case to the supreme court, asking the high court to take the case directly from the circuit court.

The supreme court does not take testimony. Instead, it decides cases on the basis of written briefs and oral argument. It is required by statute to deliver its decisions in writing, and it may publish them in the *Wisconsin Reports* as it deems appropriate.

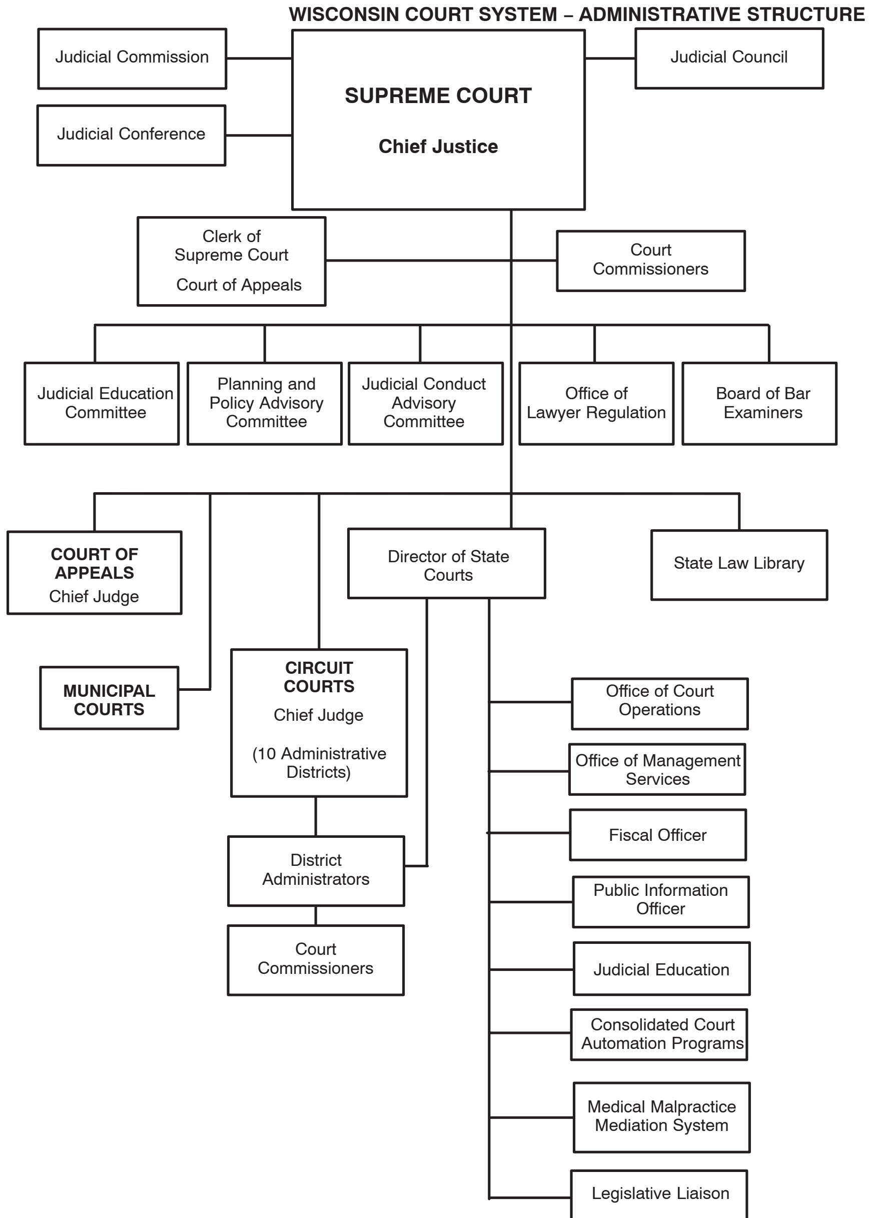
The supreme court sets procedural rules for all courts in the state, and the chief justice serves as administrative head of the state's judicial system. With the assistance of the director of state courts, the chief justice monitors the status of judicial business in Wisconsin's courts. When a calendar is congested or a vacancy occurs in a circuit or appellate court, the chief justice may assign an active judge or reserve judge to serve temporarily as a judge of either type of court.

Organization: The supreme court consists of 7 justices elected to 10-year terms. They are chosen in statewide elections on the nonpartisan April ballot and take office on the following August 1. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are sometimes filled by gubernatorial appointees who serve until a successor can be elected. The authorized salary for supreme court justices for fiscal year 2004-05 is $123,876. The chief justice receives $131,876.

The justice with the most seniority on the court serves as chief justice unless he or she declines the position. In that event, the justice with the next longest seniority serves as chief justice. Any 4 justices constitute a quorum for conducting court business.

The court staff is appointed from outside the classified service. It includes the director of state courts who assists the court in its administrative functions; 4 commissioners who are attorneys

and assist the court in its judicial functions; a clerk who keeps the court's records; and a marshal who performs a variety of duties. Each justice has a secretary and one law clerk.



COURT OF APPEALS

Judges: District I: PATRICIA S. CURLEY (2008)
RALPH ADAM FINE (2006)
JOAN F. KESSLER (2010)
TED E. WEDEMEYER, JR.* (2009)

District II: DANIEL P. ANDERSON* (2007)
RICHARD S. BROWN (2006)
NEAL P. NETTESHEIM (2008)
HARRY G. SNYDER (2010)

District III: R. THOMAS CANE** (2007)
MICHAEL W. HOOVER* (2009)
GREGORY PETERSON (2011)

District IV: DAVID G. DEININGER* (2009)
CHARLES P. DYKMAN (2010)
PAUL B. HIGGINBOTHAM (2011)
PAUL LUNDSTEN (2007)
MARGARET J. VERGERONT (2006)

Note: *indicates the presiding judge of the district. **indicates chief judge of the Court of Appeals. The judges' current terms expire on July 31 of the year shown.

Court of Appeals Clerk: CORNELIA G. CLARK, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Suite 215, Madison, 266-1880, Fax: 267-0640.

Staff Attorneys: 10 East Doty Street, 7th Floor, Madison 53703, 266-9320.

Internet Address: http://www.wicourts.gov/appeals

Number of Positions: 75.50.

Total Budget 2003-05: $16,434,200.

Constitutional Reference: Article VII, Section 5.

Statutory Reference: Chapter 752.

Organization: A constitutional amendment ratified on April 5, 1977, mandated the Court of Appeals, and Chapter 187, Laws of 1977, implemented the amendment. The court consists of 16 judges serving in 4 districts (4 judges each in Districts I and II, 3 judges in District III, and 5 judges in District IV). The Wisconsin Supreme Court appoints a chief judge of the Court of Appeals to serve as administrative head of the court for a 3-year term, and the clerk of the supreme court serves as the clerk for the court.

Appellate judges are elected for 6-year terms in the nonpartisan April election and begin their terms of office on the following August 1. They must reside in the district from which they are chosen. Only one Court of Appeals judge may be elected in a district in any one year. The authorized salary for appeals court judges for fiscal year 2004-05 is $116,865.

Functions: The Court of Appeals has both appellate and supervisory jurisdiction, as well as original jurisdiction to issue prerogative writs. The final judgments and orders of a circuit court may be appealed to the Court of Appeals as a matter of right. Other judgments or orders may be appealed upon leave of the appellate court.

The court usually sits as a 3-judge panel to dispose of cases on their merits. However, a single judge may decide certain categories of cases, including juvenile cases; small claims; municipal ordinance and traffic violations; and mental health and misdemeanor cases. No testimony is taken in the appellate court. The court relies on the trial court record and written briefs in deciding a case, and it prescreens all cases to determine whether oral argument is needed. Both oral argument and "briefs only" cases are placed on a regularly issued calendar. The court gives criminal cases preference on the calendar when it is possible to do so without undue delay of civil cases. Staff attorneys, secretaries, and law clerks assist the judges.

Decisions of the appellate court are delivered in writing, and the court's publication committee determines which decisions will be published in the *Wisconsin Reports*. Only published opinions have precedential value and may be cited as controlling law in Wisconsin.

District I: 633 West Wisconsin Avenue, Suite 1400, Milwaukee 53203-1908. Telephone: (414) 227-4680.

District II: 2727 North Grandview Boulevard, Suite 300, Waukesha 53188-1672. Telephone: (262) 521-5230.

District III: 2100 Stewart Avenue, Suite 310, Wausau 54401. Telephone: (715) 848-1421.

District IV: 10 East Doty Street, Suite 700, Madison 53703-3397. Telephone: (608) 266-9250.

CIRCUIT COURTS

District 1: Milwaukee County Courthouse, 901 North 9th Street, Room 609, Milwaukee 53233-1425. Telephone: (414) 278-5113; Fax: (414) 223-1264.

Chief Judge: MICHAEL P. SULLIVAN[1].

Administrator: BRUCE HARVEY.

District 2: Racine County Courthouse, 730 Wisconsin Avenue, Racine 53403-1274. Telephone: (262) 636-3133; Fax: (262) 636-3437.

Chief Judge: GERALD P. PTACEK.

Administrator: KERRY CONNELLY.

District 3: Waukesha County Courthouse, 515 West Moreland Boulevard, Room 359, Waukesha 53188-2428. Telephone: (262) 548-7209; Fax: (262) 548-7815.

Chief Judge: KATHRYN W. FOSTER.

Administrator: MICHAEL NEIMON.

District 4: 315 Algoma Boulevard, Suite 102, Oshkosh 54901-4773. Telephone: (920) 424-0028; Fax: (920) 424-0096.

Chief Judge: L. EDWARD STENGEL.

Administrator: JERRY LANG.

District 5: City-County Building, Room 319, Madison 53709-0001. Telephone: 267-8820; Fax: 267-4151.

Chief Judge: MICHAEL N. NOWAKOWSKI.

Administrator: GAIL RICHARDSON.

District 6: 2957 Church Street, Suite B, Stevens Point 54481-5210. Telephone: (715) 345-5295; Fax: (715) 345-5297.

Chief Judge: JAMES EVENSON.

Administrator: STEVE SEMMANN.

District 7: La Crosse County Law Enforcement Center, 333 Vine Street, Room 3504, La Crosse 54601-3296. Telephone: (608) 785-9546; Fax: (608) 785-5530.

Chief Judge: MICHAEL J. ROSBOROUGH.

Administrator: PATRICK BRUMMOND.

District 8: 414 East Walnut Street, Suite 221, Green Bay 54301-5020. Telephone: (920) 448-4281; Fax: (920) 448-4336.

Chief Judge: JOSEPH M. TROY.

Administrator: KATHLEEN MURPHY.

District 9: 2100 Stewart Avenue, Suite 310, Wausau 54401. Telephone: (715) 842-3872; Fax: (715) 845-4523.

Chief Judge: DOROTHY BAIN.

Administrator: SCOTT JOHNSON.

District 10: 405 South Barstow Street, Suite C, Eau Claire 54701-3606.
Telephone: (715) 839-4826; Fax: (715) 839-4891.

Chief Judge: EDWARD BRUNNER[2].

Administrator: GREGG MOORE.

Internet Address: http://www.wicourts.gov/circuit

State-Funded Positions: 511.00.

Total Budget 2003-05: $156,955,500.

Constitutional References: Article VII, Sections 2, 6-11, and 13.

Statutory Reference: Chapter 753.

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[1]Kitty Brennan designated by the supreme court to become chief judge on August 1, 2005.
[2]Benjamin Proctor designated by the supreme court to become chief judge on August 1, 2005.

Responsibility: The circuit court is the trial court of general jurisdiction in Wisconsin. It has original jurisdiction in both civil and criminal matters unless exclusive jurisdiction is given to another court. It also reviews state agency decisions and hears appeals from municipal courts. Jury trials are conducted only in circuit courts.

The constitution requires that a circuit be bounded by county lines. As a result, each circuit consists of a single county, except for 3 two-county circuits (Buffalo-Pepin, Florence-Forest, and Menominee-Shawano). Where judicial caseloads are heavy, a circuit may have several branches, each with an elected judge. Statewide, 38 of the state's 69 judicial circuits had multiple branches as of June 30, 2005, for a total of 241 circuit judgeships.

Organization: Circuit judges, who serve 6-year terms, are elected on a nonpartisan basis in the county in which they serve in the April election and take office the following August 1. The governor may fill circuit court vacancies by appointment, and the appointees serve until a successor is elected. The authorized salary for circuit court judges for fiscal year 2004-05 is $110,250. The state pays the salaries of circuit judges and court reporters. It also covers some of the expenses for interpreters, guardians ad litem, judicial assistants, court-appointed witnesses, and jury per diems. Counties bear the remaining expenses for operating the circuit courts.

Administrative Districts. Circuit courts are divided into 10 administrative districts, each supervised by a chief judge, appointed by the supreme court from the district's circuit judges. A judge usually cannot serve more than 3 successive 2-year terms as chief judge. The chief judge has authority to assign judges, manage caseflow, supervise personnel, and conduct financial planning.

The chief judge in each district appoints a district court administrator from a list of candidates supplied by the director of state courts. The administrator manages the nonjudicial business of the district at the direction of the chief judge.

Circuit Court Commissioners are appointed by the circuit court to assist the court, and they must be attorneys licensed to practice law in Wisconsin. They may be authorized by the court to conduct various civil, criminal, family, small claims, juvenile, and probate court proceedings. Their duties include issuing summonses, arrest warrants, or search warrants; conducting initial appearances; setting bail; conducting preliminary examinations and arraignments; imposing monetary penalties in certain traffic cases; conducting certain family, juvenile, and small claims court proceedings; hearing petitions for mental commitments; and conducting uncontested probate proceedings. On their own authority, court commissioners may perform marriages, administer oaths, take depositions, and issue subpoenas and certain writs.

The statutes require Milwaukee County to have full-time family, small claims, and probate court commissioners. All other counties must have a family court commissioner, and they may employ other full- or part-time court commissioners as deemed necessary.

JUDGES OF CIRCUIT COURT
June 30, 2005

Circuits[1]	Court Location	Judges	Term Expires July 31
Adams	Friendship	Charles A. Pollex	2009
Ashland	Ashland	Robert E. Eaton	2006
Barron			
Branch 1	Barron	James C. Babler	2010
Branch 2	Barron	Edward R. Brunner	2006
Bayfield	Washburn	John P. Anderson	2009
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder	2009
Branch 2	Green Bay	Mark Warpinski	2006
Branch 3	Green Bay	Susan Bischel	2010
Branch 4	Green Bay	Kendall M. Kelley	2008
Branch 5	Green Bay	Peter J. Naze[2]	2005
Branch 6	Green Bay	John D. McKay	2009
Branch 7	Green Bay	Richard J. Dietz	2007
Branch 8	Green Bay	William M. Atkinson	2009
Buffalo-Pepin	Alma	James Duvall[9]	2006
Burnett	Siren	Michael J. Gableman	2009
Calumet	Chilton	Donald A. Poppy	2010
Chippewa			
Branch 1	Chippewa Falls	Roderick A. Cameron	2008
Branch 2	Chippewa Falls	Thomas J. Sazama	2007
Clark	Neillsville	Jon M. Counsell	2006
Columbia			
Branch 1	Portage	Daniel S. George	2009
Branch 2	Portage	James O. Miller[2]	2005
Branch 3	Portage	Richard L. Rehm	2009
Crawford	Prairie du Chien	Michael T. Kirchman	2007
Dane			
Branch 1	Madison	Robert A. DeChambeau[2]	2005
Branch 2	Madison	Maryann Sumi[2]	2005
Branch 3	Madison	John C. Albert	2006
Branch 4	Madison	Steven D. Ebert	2010
Branch 5	Madison	Diane M. Nicks	2007
Branch 6	Madison	Shelley J. Gaylord	2009
Branch 7	Madison	Moria G. Krueger	2009
Branch 8	Madison	Patrick J. Fiedler	2006
Branch 9	Madison	Richard Niess[2]	2005
Branch 10	Madison	Angela B. Bartell	2009
Branch 11	Madison	Daniel R. Moeser	2009
Branch 12	Madison	David T. Flanagan	2006
Branch 13	Madison	Michael W. Nowakowski	2009
Branch 14	Madison	C. William Foust	2010
Branch 15	Madison	Stuart A. Schwartz	2010
Branch 16	Madison	Sarah B. O'Brien	2010
Branch 17	Madison	James L. Martin	2010
Dodge			
Branch 1	Juneau	Daniel W. Klossner	2008
Branch 2	Juneau	John R. Storck	2007
Branch 3	Juneau	Andrew P. Bissonnette	2007
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2006
Branch 2	Sturgeon Bay	Peter C. Diltz	2006
Douglas			
Branch 1	Superior	Michael T. Lucci	2009
Branch 2	Superior	George L. Glonek	2007
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2010
Branch 2	Menomonie	Rod Smeltzer	2009
Eau Claire			
Branch 1	Eau Claire	Lisa Stark	2006
Branch 2	Eau Claire	Eric J. Wahl[2]	2005
Branch 3	Eau Claire	William M. Gabler	2006
Branch 4	Eau Claire	Benjamin D. Proctor	2006
Branch 5	Eau Claire	Paul J. Lenz	2006
Florence (see *Forest-Florence*)			
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2008
Branch 2	Fond du Lac	Peter L. Grimm	2010
Branch 3	Fond du Lac	Richard J. Nuss	2009
Branch 4	Fond du Lac	Steven W. Weinke	2010
Branch 5	Fond du Lac	Robert J. Wirtz[2]	2005
Forest-Florence	Crandon	Robert A. Kennedy, Jr.	2008
Grant			
Branch 1	Lancaster	Robert P. VandeHey[2]	2005
Branch 2	Lancaster	George S. Curry	2009
Green	Monroe	James R. Beer	2009
Green Lake	Green Lake	William M. McMonigal[2]	2005
Iowa	Dodgeville	William D. Dyke	2010
Iron	Hurley	Patrick John Madden[2]	2005
Jackson	Black River Falls	Gerald W. Laabs	2008

JUDGES OF CIRCUIT COURT
June 30, 2005–Continued

Circuits[1]	Court Location	Judges	Term Expires July 31
Jefferson			
Branch 1	Jefferson	John M. Ullsvik	2009
Branch 2	Jefferson	William F. Hue	2007
Branch 3	Jefferson	Jacqueline R. Erwin	2009
Branch 4	Jefferson	Randy R. Koschnick[2]	2005
Juneau	Mauston	John Pier Roemer	2010
Kenosha			
Branch 1	Kenosha	David Mark Bastianelli	2009
Branch 2	Kenosha	Barbara A. Kluka	2007
Branch 3	Kenosha	Bruce E. Schroeder	2008
Branch 4	Kenosha	Michael S. Fisher[3]	2005
Branch 5	Kenosha	Wilbur W. Warren III	2009
Branch 6	Kenosha	Mary K. Wagner	2009
Branch 7	Kenosha	S. Michael Wilk	2006
Kewaunee	Kewaunee	Dennis J. Mleziva	2010
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez	2007
Branch 2	La Crosse	Michael J. Mulroy	2007
Branch 3	La Crosse	Dennis G. Montabon	2009
Branch 4	La Crosse	John J. Perlich	2009
Branch 5	La Crosse	Dale T. Pasell[2]	2005
Lafayette	Darlington	William D. Johnston	2009
Langlade	Antigo	James P. Jansen[4]	2005
Lincoln			
Branch 1	Merrill	Jay R. Tlusty	2010
Branch 2	Merrill	Glenn H. Hartley[2]	2005
Manitowoc			
Branch 1	Manitowoc	Patrick L. Willis	2010
Branch 2	Manitowoc	Darryl W. Deets	2007
Branch 3	Manitowoc	Fred H. Hazlewood[5]	2005
Marathon			
Branch 1	Wausau	Dorothy L. Bain	2010
Branch 2	Wausau	Gregory Huber	2010
Branch 3	Wausau	Vincent K. Howard	2008
Branch 4	Wausau	Gregory Grau	2007
Branch 5	Wausau	Patrick Brady[2]	2005
Marinette			
Branch 1	Marinette	DavidG. Miron	2008
Branch 2	Marinette	Tim A. Duket	2008
Marquette	Montello	Richard O. Wright	2007
Menominee (see *Shawano-Menominee*)			
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White[2]	2005
Branch 2	Milwaukee	M. Joseph Donald	2009
Branch 3	Milwaukee	Clare L. Fiorenza	2009
Branch 4	Milwaukee	Mel Flanagan	2006
Branch 5	Milwaukee	Mary Kuhnmuench	2010
Branch 6	Milwaukee	Kitty K. Brennan	2006
Branch 7	Milwaukee	Jean W. DiMotto	2009
Branch 8	Milwaukee	William Sosnay	2006
Branch 9	Milwaukee	Paul R. Van Grunsven[2]	2005
Branch 10	Milwaukee	Timothy G. Dugan[2]	2005
Branch 11	Milwaukee	Dominic S. Amato	2007
Branch 12	Milwaukee	David L. Borowski	2009
Branch 13	Milwaukee	Mary Triggiano[2]	2005
Branch 14	Milwaukee	Christopher R. Foley	2010
Branch 15	Milwaukee	Michael B. Brennan	2007
Branch 16	Milwaukee	Michael J. Dwyer	2009
Branch 17	Milwaukee	Francis Wasielewski	2008
Branch 18	Milwaukee	Patricia D. McMahon[2]	2005
Branch 19	Milwaukee	John E. McCormick[6]	2005
Branch 20	Milwaukee	Dennis P. Moroney	2006
Branch 21	Milwaukee	William Brash	2008
Branch 22	Milwaukee	Timothy M. Witkowiak	2009
Branch 23	Milwaukee	Elsa C. Lamelas	2006
Branch 24	Milwaukee	Charles F. Kahn	2010
Branch 25	Milwaukee	John A. Franke[2]	2005
Branch 26	Milwaukee	Michael P. Sullivan	2008
Branch 27	Milwaukee	Kevin E. Martens	2008
Branch 28	Milwaukee	Thomas R. Cooper	2006
Branch 29	Milwaukee	Richard J. Sankovitz	2009
Branch 30	Milwaukee	Jeffrey A. Conen	2009
Branch 31	Milwaukee	Daniel A. Noonan	2008
Branch 32	Milwaukee	Michael D. Guolee	2008
Branch 33	Milwaukee	Carl Ashley[2]	2005
Branch 34	Milwaukee	Glen H. Yamahiro	2010
Branch 35	Milwaukee	Frederick C. Rosa[2]	2005
Branch 36	Milwaukee	Jeffrey A. Kremers[2]	2005
Branch 37	Milwaukee	Karen Christenson	2010
Branch 38	Milwaukee	Jeffrey A. Wagner	2006
Branch 39	Milwaukee	Michael G. Malmstadt	2006
Branch 40	Milwaukee	Joseph R. Wall	2007

JUDGES OF CIRCUIT COURT
June 30, 2005–Continued

Circuits[1]	Court Location	Judges	Term Expires July 31
Milwaukee (continued)			
Branch 41	Milwaukee	John J. DiMotto	2008
Branch 42	Milwaukee	David A. Hansher	2009
Branch 43	Milwaukee	Marshall Murray	2006
Branch 44	Milwaukee	Daniel L. Konkol	2010
Branch 45	Milwaukee	Thomas P. Donegan	2010
Branch 46	Milwaukee	Bonnie L. Gordon	2006
Branch 47	Milwaukee	John Siefert[2]	2005
Monroe			
Branch 1	Sparta	Steven L. Abbott	2007
Branch 2	Sparta	Michael J. McAlpine	2010
Oconto			
Branch 1	Oconto	Larry L. Jeske[7]	2005
Branch 2	Oconto	Richard D. Delforge	2010
Oneida			
Branch 1	Rhinelander	Robert E. Kinney	2008
Branch 2	Rhinelander	Mark A. Mangerson	2006
Outagamie			
Branch 1	Appleton	Brad Priebe[8,9]	2005
Branch 2	Appleton	Dennis C. Luebke	2009
Branch 3	Appleton	Joseph M. Troy[2]	2005
Branch 4	Appleton	Harold V. Froehlich	2006
Branch 5	Appleton	Michael W. Gage	2009
Branch 6	Appleton	Dee R. Dyer	2006
Branch 7	Appleton	John A. Des Jardins	2006
Ozaukee			
Branch 1	Port Washington	Paul V. Malloy	2009
Branch 2	Port Washington	Thomas R. Wolfgram	2007
Branch 3	Port Washington	Joseph D. McCormack	2009
Pepin (see *Buffalo-Pepin*)			
Pierce	Ellsworth	Robert W. Wing	2010
Polk			
Branch 1	Balsam Lake	Molly E. GaleWyrick	2008
Branch 2	Balsam Lake	Robert H. Rasmussen	2009
Portage			
Branch 1	Stevens Point	Frederic W. Fleishauer[2]	2005
Branch 2	Stevens Point	John V. Finn	2007
Branch 3	Stevens Point	Thomas T. Flugaur	2006
Price	Phillips	Douglas T. Fox	2008
Racine			
Branch 1	Racine	Gerald P. Ptacek	2007
Branch 2	Racine	Stephen A. Simanek	2010
Branch 3	Racine	Emily S. Mueller[2]	2005
Branch 4	Racine	John S. Jude	2010
Branch 5	Racine	Dennis J. Barry[2]	2005
Branch 6	Racine	Wayne J. Marik	2009
Branch 7	Racine	Charles H. Constantine	2008
Branch 8	Racine	Faye M. Flancher	2009
Branch 9	Racine	Allan “Pat” B. Torhorst	2009
Branch 10	Racine	Richard J. Kreul	2006
Richland	Richland Center	Edward E. Leineweber	2009
Rock			
Branch 1	Janesville	James P. Daley	2008
Branch 2	Janesville	R. Alan Bates	2010
Branch 3	Janesville	Michael J. Byron	2010
Branch 4	Beloit	Daniel Dillon	2007
Branch 5	Beloit	John W. Roethe	2009
Branch 6	Janesville	Richard T. Werner	2009
Branch 7	Beloit	James E. Welker	2006
Rusk	Ladysmith	Frederick A. Henderson	2010
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2008
Branch 2	Hudson	Edward F. Vlack	2007
Branch 3	Hudson	Scott R. Needham	2006
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2006
Branch 2	Baraboo	James Evenson	2010
Branch 3	Baraboo	Guy Reynolds	2006
Sawyer	Hayward	Norman L. Yackel	2009
Shawano-Menominee			
Branch 1	Shawano	James R. Habeck	2008
Branch 2	Shawano	Thomas G. Grover	2007
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel	2009
Branch 2	Sheboygan	Timothy M. Van Akkeren	2007
Branch 3	Sheboygan	Gary J. Langhoff[2]	2005
Branch 4	Sheboygan	Terence T. Bourke	2009
Branch 5	Sheboygan	James J. Bolgert	2006
Taylor	Medford	Gary Lee Carlson	2010
Trempealeau	Whitehall	John A. Damon	2007
Vernon	Viroqua	Michael J. Rosborough[2]	2005
Vilas	Eagle River	Neal A. Nielsen	2010

JUDGES OF CIRCUIT COURT
June 30, 2005–Continued

Circuits[1]	Court Location	Judges	Term Expires July 31
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2006
Branch 2	Elkhorn	James L. Carlson	2010
Branch 3	Elkhorn	John R. Race	2009
Branch 4	Elkhorn	Michael S. Gibbs	2010
Washburn	Shell Lake	Eugene D. Harrington	2009
Washington			
Branch 1	West Bend	Patrick J. Faragher	2007
Branch 2	West Bend	Annette Kingsland Ziegler	2010
Branch 3	West Bend	David C. Resheske	2006
Branch 4	West Bend	Andrew Gonring	2006
Waukesha			
Branch 1	Waukesha	Michael D. Bohren	2007
Branch 2	Waukesha	Mark S. Gempeler	2008
Branch 3	Waukesha	Ralph M. Ramirez[2]	2005
Branch 4	Waukesha	Paul F. Reilly	2009
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2008
Branch 6	Waukesha	Patrick C. Haughney	2008
Branch 7	Waukesha	J. Mac Davis	2009
Branch 8	Waukesha	James R. Kieffer	2009
Branch 9	Waukesha	Donald J. Hassin, Jr.	2009
Branch 10	Waukesha	Linda Van De Water	2009
Branch 11	Waukesha	Robert G. Mawdsley	2006
Branch 12	Waukesha	Kathryn W. Foster	2006
Waupaca			
Branch 1	Waupaca	Philip M. Kirk[2]	2005
Branch 2	Waupaca	John P. Hoffmann	2010
Branch 3	Waupaca	Raymond Huber	2006
Waushara	Wautoma	Lewis R. Murach[10]	2005
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2006
Branch 2	Oshkosh	Scott C. Woldt[2,9]	2005
Branch 3	Oshkosh	Barbara Hart Key	2010
Branch 4	Oshkosh	Robert A. Hawley	2006
Branch 5	Oshkosh	William H. Carver	2010
Branch 6	Oshkosh	Bruce K. Schmidt	2009
Wood			
Branch 1	Wisconsin Rapids	Gregory J. Potter	2008
Branch 2	Wisconsin Rapids	James M. Mason	2010
Branch 3	Wisconsin Rapids	Edward F. Zappen, Jr.	2009

[1]Circuits are comprised of one county each, except for Buffalo-Pepin, Forest-Florence, and Shawano-Menominee. The current annual salary for all circuit court judges is $110,040. Salaries could change as of August 1, 2005, when the circuit court judges commence new terms.

[2]Reelected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[3]Anthony Milisauskas was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[4]Fred W. Kawalski was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[5]Jerome L. Fox was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[6]Dennis R. Cimpl was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[7]Michael T. Judge was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[8]Mark McGinnis was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

[9]Appointed by governor.

[10]Guy Dutcher was newly elected on April 1, 2005, for a 6-year term to commence on August 1, 2005.

Sources: *2003-2004 Wisconsin Statutes;* State Elections Board, departmental data, May 2005; Director of State Courts, departmental data, April 2005; governor's appointment notices.

MUNICIPAL COURTS

Constitutional References: Article VII, Sections 2 and 14.

Statutory References: Chapters 755 and 800.

Internet Address: http://www.wicourts.gov/municipal

Responsibility: The Wisconsin Legislature authorizes cities, villages, and towns to establish municipal courts to exercise jurisdiction over municipal ordinance violations that have monetary penalties. In addition, the Wisconsin Supreme Court ruled in 1991 (*City of Milwaukee v. Wroten,* 160 Wis. 2d 107) that municipal courts have authority to rule on the constitutionality of municipal ordinances.

As of May 1, 2005, there were 238 municipal courts with 240 municipal judges. Courts may have multiple branches; the City of Milwaukee's municipal court, for example, has 3 branches. (Milwaukee County, which is the only county authorized to appoint municipal court commissioners, had 4 part-time commissioners as of May 2005.) Two or more municipalities may agree to form a joint court, and there are 30 joint courts, serving up to 10 municipalities each. Besides Milwaukee, Madison is the only city with a full-time municipal court.

Upon convicting a defendant, the municipal court may order payment of a forfeiture plus costs and assessments, or, if the defendant agrees, it may require community service in lieu of a forfeiture. In general, municipal courts may also order restitution up to $4,000. Where local ordinances conform to state drunk driving laws, a municipal judge may suspend or revoke a driver's license.

If a defendant fails to pay a forfeiture or make restitution, the municipal court may suspend the driver's license or commit the defendant to jail. Municipal court decisions may be appealed to the circuit court of the county where the offense occurred.

Organization: Municipal judges are elected at the nonpartisan April election and take office May 1. The local governing body fixes the term of office at 2 to 4 years and determines the position's salary. There is no state requirement that the office be filled by an attorney, but a municipality may enact such a qualification by ordinance.

If a municipal judge is ill, disqualified, or unavailable, the chief judge of the judicial administrative district containing the municipality may transfer the case to another municipal judge in the district. If none is available, the case will be heard in circuit court.

History: Chapter 276, Laws of 1967, authorized cities, villages, and towns to establish municipal courts after the forerunner of municipal courts (the office of the justice of the peace) was eliminated by a constitutional amendment, ratified in April 1966. A constitutional amendment ratified in April 1977, which reorganized the state's court system, officially granted the legislature the power to authorize municipal courts.

STATEWIDE JUDICIAL AGENCIES

A number of statewide administrative and support agencies have been created by supreme court order or legislative enactment to assist the Wisconsin Supreme Court in its supervision of the Wisconsin judicial system.

DIRECTOR OF STATE COURTS

Director of State Courts: A. JOHN VOELKER, 266-6828, john.voelker@

Deputy Director for Court Operations: SHERYL GERVASI, 266-3121, sheryl.gervasi@

Deputy Director for Management Services: PAM RADLOFF, 266-8914, pam.radloff@

Consolidated Court Automation Programs: JEAN BOUSQUET, *director,* 267-0678, jean.bousquet@

Fiscal Officer: BRIAN LAMPRECH, 266-6865, brian.lamprech@

Judicial Education: DAVID H. HASS, *director,* 266-7807, david.hass@

Medical Malpractice Mediation System: RANDY SPROULE, *director,* 266-7711, randy.sproule@

Public Information Officer: AMANDA TODD, 264-6256, amanda.todd@

Legislative Liaison: NANCY ROTTIER, 267-9733, nancy.rottier@

Address e-mail by combining the user ID and the state extender: userid@**wicourts.gov**

Mailing Address: Director of State Courts: P.O. Box 1688, Madison 53701-1688; Staff: 110 East Main Street, Madison 53703.

Location: Director of State Courts: Room 16 East, State Capitol, Madison; Staff: 110 East Main Street, Madison.

Fax: 267-0980.

Internet Address: http://www.wicourts.gov

Number of Employees: 124.25.

Total Budget 2003-05: $30,572,800.

References: Wisconsin Statutes, Chapter 655, Subchapter VI, and Section 758.19; Supreme Court Rules 70.01-70.08.

Responsibility: The Director of State Courts administers the nonjudicial business of the Wisconsin court system and informs the chief justice and the supreme court about the status of judicial business. The director is responsible for supervising state-level court personnel; developing the court system's budget; and directing the courts' work on legislation, public information, and information systems. This office also controls expenditures; allocates space and equipment; supervises judicial education, interdistrict assignment of active and reserve judges, and planning and research; and administers the medical malpractice mediation system.

The director is appointed by the supreme court from outside the classified service. The position was created by the supreme court in orders, dated October 30, 1978, and February 19, 1979. It replaced the administrative director of courts, which had been created by Chapter 261, Laws of 1961.

STATE LAW LIBRARY

State Law Librarian: JANE COLWIN, 261-2340, jane.colwin@wicourts.gov

Deputy Law Librarian: JULIE TESSMER, 261-7557, julie.tessmer@wicourts.gov

Mailing Address: P.O. Box 7881, Madison 53707-7881.

Location: 120 Martin Luther King, Jr. Blvd., 2nd Floor, Madison 53703.

Telephones: General Information and Circulation: 266-1600; Reference Assistance: 267-9696; Toll-free: (800) 322-9755.

Fax: 267-2319.

Internet Address: http://wsll.state.wi.us

Reference E-mail Address: wsll.ref@wicourts.gov

Publications: *WSLL @ Your Service* (e-newsletter) at http://wsll.state.wi.us/news.html

Number of Employees: 16.50.

Total Budget 2003-05: $5,172,600.

References: Wisconsin Statutes, Section 758.01; Supreme Court Rule 82.01.

Responsibility: The State Law Library is a public library open to all citizens of Wisconsin. It serves as the primary legal resource center for the Wisconsin Supreme Court and Court of Appeals, the Department of Justice, the Wisconsin Legislature, the Office of the Governor, executive agencies, and members of the State Bar of Wisconsin. The library is administered by the supreme court, which appoints the library staff and determines the rules governing library use. The library acts as a consultant and resource for county law libraries throughout the state. Milwaukee County and Dane County contract with the State Law Library for management and operation of their courthouse libraries (the Milwaukee Legal Resource Center and the Dane County Law Library).

The library's 150,000-volume collection features session laws, statutory codes, court reports, administrative rules, legal indexes, and case law digests of the U.S. government, all 50 states and U.S. territories. It also includes selected documents of the federal government, legal and bar periodicals, legal treatises, and legal encyclopedias. The library also offers reference, basic legal research, and document delivery services. The collection circulates to judges, attorneys, legislators, and government personnel.

OFFICE OF LAWYER REGULATION

Board of Administrative Oversight: W.H. LEVIT, JR. (lawyer), *chairperson;* ANN USTAD SMITH (lawyer), *vice chairperson;* JAMES W. MOHR, JR., SCOTT ROBERTS, THOMAS S. SLEIK, DEBORAH M. SMITH, TERRY ROSE, vacancy (lawyers); CLAIRE FOWLER, KRISTA L. GINGER, T. JAMES KENNEDY, MICHAEL J. O'NEILL (nonlawyers). (All members are appointed by the supreme court.)

Preliminary Review Committee: JAMES D. WICKHEM (lawyer), *chairperson;* JAMES D. FRIEDMAN (lawyer), *vice chairperson;* MICHAEL ANDERSON, WAYNE A. ARNOLD, THOMAS W. BERTZ, JOHN R. DAWSON, KARRI L. FRITZ-KLAUS, BERNARD T. MCCARTAN, FRANK D. REMINGTON (lawyers); MICHAEL S. ARIENS, STEVEN K. GJERDE, JOAN GREENDEER-LEE, M. TAMBURA OMOIELE, THOMAS RADMER (nonlawyers). (All members are appointed by the supreme court.)

Special Preliminary Review Panel: KARA M. BURGOS, LORI S. KORNBLUM, JAMES G. POUROS, JANE C. SCHLICHT (lawyers); DENNIS B. GORDER, DEAN HELSTAD, DARLO WENTZ (nonlawyers). (All members are appointed by the supreme court.)

Sixteen District Committees (all members are appointed by the supreme court):

District 1 Committee (serves Jefferson, Kenosha, and Walworth Counties): FREDERICK ZIEVERS (lawyer), *chairperson;* MICHAEL D. BRENNAN, ROBERT I. DUMEZ, PAUL GAGLIARDI, JOHN P. HIGGINS, CHRISTOPHER W. ROSE, MATTHEW S. VIGNALI (lawyers); PAUL G. ALDIGE, JOHN G. BRAIG, CHERYL FRIEDL, GAIL GENTZ (nonlawyers).

District 2 Committee (serves Milwaukee County): NANCY M. KENNEDY (lawyer), *chairperson;* MICHAEL STEINLE (lawyer), *vice chairperson;* KATHRYN BACH, PATRICIA KLING BALLMAN, EMILE BANKS, THOMAS A. CABUSH, DAN CONLEY, MARGARDETTE M. DEMET, JOHN DESTEFANIS, ROBIN DORMAN, IRVING D. GAINES, LORI GENDELMAN, JOHN GERMANOTTA, MARIO GONZALES, JAMES W. GREER, EDWARD A. HANNAN, THEODORE HODAN, LAWRENCE P. KAHN, KENAN J. KERSTEN, R. JEFFREY KRILL, CATHERINE LAFLEUR, ANN LAMPIRIS, CLAYTON L. RIDDLE, SHERYL A. ST. ORES, JO SWAMP, TIMOTHY S. TRECEK, KATHERINE WILLIAMS (lawyers); J. STEPHEN ANDERSON, NEILAND COHEN, DONALD G. DORO, PATRICK DOYLE, SHEL GENDELMAN, JEFFREY HANEWALL, JOHN HANLON, BARBARA J.

JANUSIAK, PETER J. MARIK, JOAN PRINCE, RICHARD SILBERMAN, VICTORIA L. TOLIVER, WILLIAM WARD (nonlawyers).

District 3 Committee (serves Fond du Lac, Green Lake, and Winnebago Counties): ALYSON ZIERDT (lawyer), *chairperson;* F. DAVID KRIZENESKY, DAVID J. SCHULTZ, JOHN B. SELSING, MARK T. SLATE, WILLIAM R. SLATE, STEVEN R. SORENSON, ALEXANDER L. ULLENBERG, JOHN S. ZARBANO (lawyers); RONALD A. DETJEN, JOHN FAIRHURST, SHARON MIKKELSEN, KAREN SCHNEIDER, ELLEN C. SORENSEN (nonlawyers).

District 4 Committee (serves Calumet, Door, Kewaunee, Manitowoc, and Sheboygan Counties): GARY BENDIX (lawyer), *chairperson;* THOMAS S. BURKE, RICHARD R. CRAMER, DAVID GASS, RALPH F. HERLACHE, MARK JINKINS, RANDALL J. NESBITT, JAMES UNGRODT (lawyers); ROBERT A. DOBBS, SUSAN M. MCANINCH, DENNIS MCINTOSH (nonlawyers).

District 5 Committee (serves Buffalo, Clark, Crawford, Jackson, La Crosse, Monroe, Pepin, Richland, Trempealeau, and Vernon Counties): JAMES G. CURTIS (lawyer), *chairperson;* MICHAEL C. ABLAN, JAMES P. CZAJKOWSKI, MARVIN H. DAVID, GLORIA L. DOYLE, RALPH OSBORNE, JR., GEORGE PARKE III, RICHARD A. RADCLIFFE, J. DAVID RICE, JON D. SEIFERT, FRANK R. VAZQUEZ (lawyers); KEITH A. JOHNSON, JACQUELINE A. JOHNSRUD, PAUL R. LORENZ, JOHN PARKYN, LINDA LEE SONDREAL (nonlawyers).

District 6 Committee (serves Waukesha County): GARY KUPHALL (lawyer), *chairperson;* MARK P. ANDRINGA, CHERYL A. GEMIGNANI, LANCE S. GRADY, ANTHONY J. MENTING, ROD W. ROGAHN, ROBYN A. SCHUCHARDT, WILLIAM A. SWENDSON (lawyers); DENNIS R. BLASIUS, JULIE DEYOUNG, CARLA FRIEDRICH, ROBERT V. PURTOCK, DENNIS M. WALLER (nonlawyers).

District 7 Committee (serves Adams, Columbia, Juneau, Marquette, Portage, Sauk, Waupaca, Waushara, and Wood Counties): MARC A. BICKFORD (lawyer), *chairperson;* GARY KRYSHAK, JEROME P. MERCER, JAMES J. NATWICK, LEON SCHMIDT, JR., JOHN E. SHANNON, JR. (lawyers); ELLEN M. DAHL, DOROTHY E. MANSAVAGE, DONALD STEIN, JAMES E. STRASSER (nonlawyers).

District 8 Committee (serves Dunn, Eau Claire, Pierce, and St. Croix Counties): DOUGLAS M. JOHNSON (lawyer), *chairperson;* TERRENCE GHERTY (lawyer), *vice chairperson;* ROBERT L. LOBERG, JANE E. LOKKEN, KEITH RODLI, JAMES D. RYBERG, BEVERLY WICKSTROM (lawyers); VIRGINIA COOMBS, DAVID CRONK, JOHN H. SCHULTE, KURT W. WOOD, JANE SMANDA ZELLER (nonlawyers).

District 9 Committee (serves Dane County): AMY R. SMITH (lawyer), *chairperson;* LEE R. ATTERBURY, WILLIAM F. BAUER, JANICE N. BENSKY, MARK F. BORNS, ANDREW CLARKOWSKI, BRUCE F. EHLKE, MAUREEN MCGLYNN FLANAGAN, PETER E. HANS, RICHARD B. JACOBSON, JAMES R. JANSEN, KAREN JULIAN, MARSHA MANSFIELD, RICH J. MUNDT, WILLIAM F. MUNDT, LAURI ROMAN, MEREDITH J. ROSS, BRUCE AL. SCHULTZ, THOMAS W. SHELLANDER, TODD G. SMITH, ALISON TENBRUGGENCATE (lawyers); NINA PETROVICH BARTELL, CHARLES A. BUNGE, DAVID CHARLES DIES, PAUL M. DOWNEY, R.C. HECHT, ROBERT C. HODGE, JUDITH A. MILLER, ELLEN PRITZKOW, RODNEY TAPP, DAVID G. UTLEY (nonlawyers).

District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties): JAMES N. MIRON (lawyer), *chairperson;* RICHARD THOMAS ELROD, GALE MATTISON, LAURA C. SMYTHE (lawyers); RAYMOND ZAGORASKI (nonlawyer).

District 11 Committee (serves Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Polk, Price, Rusk, Sawyer, Taylor, and Washburn Counties): JOHN C. GRINDELL (lawyer), *chairperson;* JOSEPH CRAWFORD, GUY T. LUDVIGSON, FORREST O. MAKI, DANIEL F. SNYDER, KATHERINE M. STEWART (lawyers); JAMES CRANDELL, DIANE FJELSTAD, MARY ANN KING, MARGARET KOLBEK (nonlawyers).

District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties): MARGERY MEBANE TIBBETTS (lawyer), *chairperson;* CRAIG DAY, DAVID B. FEINGOLD, THOMAS H. GEYER, DERRICK A. GRUBB, WILLIAM T. HENDERSON, RAY JABLONSKI, GAYLE BRANAUGH JEBBIA, PETER KELLY, PATRICK K. MCDONALD, ERIC D. REINICKE (lawyers); DALE E. ANDERSON, RHONDA L. HARTWIG, DONALD C. HOLLOWAY, MICHAEL F. METZ, THERON E. PARSONS IV, GERALD PELISHEK, KATHLEEN J. ROELLI, JOHN SIMONSON, CLINTON A. WRUCK (nonlawyers).

District 13 Committee (serves Dodge, Ozaukee, and Washington Counties): GARY R. SCHMAUS (lawyer), *chairperson;* WILLIAM BUCHHOLZ (lawyer), *vice chairperson;* GERALD H. ANTOINE, PAUL DIMICK (lawyers); DEBORAH L. LUKOVICH, ALAN MARTENS, JOHN C. RALSTON (nonlawyers).

District 14 Committee (serves Brown County): SANDRA L. HUPFER (lawyer), *chairperson;* CYNTHIA CAINE TRELEVEN (lawyer), *vice chairperson;* LAURA J. BECK, TERRY GERBERS, MARK A. PENNOW, BETH RAHMIG PLESS, SUSAN J. REIGEL, FRANK S. WOCHOS (lawyers); GREGORY L. GRAF, GEORGE KREMPIN, GERALD C. LORITZ, KIM E. NIELSEN (nonlawyers).

District 15 Committee (serves Racine County): JOSEPH J. MURATORE, JR. (lawyer), *chairperson;* JOHN BARRY STUTT (lawyer), *vice chairperson;* TIMOTHY D. BOYLE, THOMAS M. DEVINE, SCOTT W. FRENCH, SALLY HOELZEL, MICHAEL J. KELLY, MARK LUKOFF, MARK F. NIELSEN (lawyers); GILBERT G. BAUMANN, JOHN P. CRIMMINGS, CONNIE CROWDER, RAYMOND G. FEEST (nonlawyers).

District 16 Committee (serves Forest, Florence, Langlade, Lincoln, Marathon, Oneida, and Vilas Counties): JOHN DANNER (lawyer), *chairperson;* SARAH L. RUFFI (lawyer), *vice chairperson;* DAVID J. CONDON, DAWN R. LEMKE, WILLIAM D. MANSELL, CHRISTINE R.H. OLSEN, JEROME TLUSTY, ROBERT W. ZIMMERMAN (lawyers); THOMAS E. BURG, JUDY A. FRYMARK, GERALD GIBSON, ARNO WM. HAERING, MICHAEL LAMBRECHT, TOM LONSDORF (nonlawyers).

Office of Lawyer Regulation: KEITH L. SELLEN, *director*, Keith.Sellen@wicourts.gov; JOHN O'CONNELL, *deputy director,* John.O'Connell@wicourts.gov; ELIZABETH ESTES, *deputy director,* Elizabeth.Estes@wicourts.gov

Telephone: 267-7274; Central Intake toll-free (877) 315-6941.

Fax: 267-1959.

Mailing Address: 110 East Main Street, Suite 315, Madison 53703-3383.

Number of Employees: 26.50.

Total Budget 2003-05: $4,024,600.

References: Supreme Court Rules, Chapters 21 and 22.

Responsibility: The Office of Lawyer Regulation was created by order of the supreme court, effective October 1, 2000, to assist the court in fulfilling its constitutional responsibility to supervise the practice of law and protect the public from professional misconduct by members of the State Bar of Wisconsin. This agency assumed the attorney disciplinary functions that had previously been performed by the Board of Attorneys Professional Responsibility and, prior to January 1, 1978, by the Board of State Bar Commissioners.

The director of the Office of Lawyer Regulation is appointed by the supreme court and must be admitted to the practice of law in Wisconsin no later than six months following appointment. The Board of Administrative Oversight and the Preliminary Review Committee perform oversight and adjudicative responsibilities under the supervision of the supreme court.

The Board of Administrative Oversight consists of 12 members, eight lawyers and four public members. Board members are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms. The board monitors the overall system for regulating lawyers but does not handle actions regarding individual complaints or grievances. It reviews the "fairness, productivity, effectiveness and efficiency" of the system and reports its findings to the supreme court. After consultation with the director, it proposes the annual budget for the agency to the supreme court.

The Office of Lawyer Regulation receives and evaluates all complaints, inquiries, and grievances related to attorney misconduct or medical incapacity. The director is required to investigate any grievance that appears to support an allegation of possible attorney misconduct, and the attorney in question must cooperate with the investigation. District investigative committees are appointed in the 16 State Bar districts by the supreme court to aid the director in disciplinary investigations, forward matters to the director for review, and provide assistance when grievances can be settled at the district level.

After investigation, the director decides whether the matter should be forwarded to a panel of the Preliminary Review Committee, be dismissed, or be diverted for alternative action. This

14-member committee consists of nine lawyers and five public members, who are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms.

If a panel of the Preliminary Review Committee determines there is cause to proceed, the director may seek disciplinary action, ranging from private reprimand to filing a formal complaint with the supreme court that requests public reprimand, license suspension or revocation, monetary payment, or imposing conditions on the continued practice of law. An attorney may be offered alternatives to formal disciplinary action, including mediation, fee arbitration, law office management assistance, evaluation and treatment for alcohol and other substance abuse, psychological evaluation and treatment, monitoring of the attorney's practice or trust account procedures, continuing legal education, ethics school, or the multistate professional responsibility examination.

Formal disciplinary actions for attorney misconduct are filed by the director with the supreme court, which appoints a referee from a permanent panel of attorneys and reserve judges to hear discipline cases, make disciplinary recommendations to the court, and to approve the issuance of certain private and public reprimands. Referees conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity, and petitions for reinstatement. They make findings, conclusions, and recommendations and submit them to the supreme court for review and appropriate action. Only the supreme court has the authority to suspend or revoke a lawyer's license to practice law in the State of Wisconsin.

BOARD OF BAR EXAMINERS

Board of Bar Examiners: JOHN O. OLSON (State Bar member), *chairperson;* JOSEPH D. KEARNEY (Marquette University Law School faculty), *vice chairperson;* GLENN E. CARR, MARY BETH KEPPEL, JAMES A. MORRISON, CATHERINE M. ROTTIER (State Bar members); CHARLES H. CONSTANTINE (circuit court judge); KEVIN M. KELLY (UW Law School faculty); MARK J. BAKER, DENNIS DANNER, CAROLYN MILANES DEJOIE (public members). (All members are appointed by the supreme court.)

Director: GENE R. RANKIN, 266-9760; Fax: 266-1196.

Mailing Address: 110 East Main Street, Room 715, Madison 53703.

E-mail Address: bbe@wicourts.gov

Internet Address: http://www.wicourts.gov/bbe

Number of Employees: 8.00.

Total Budget 2003-05: $1,243,800.

References: Supreme Court Rules, Chapters 30, 31, and 40.

Responsibility: The 11-member Board of Bar Examiners manages all bar admissions by examination or by reciprocity; conducts character and fitness investigations of all candidates for admission to the bar, including diploma privilege graduates; and administers the Wisconsin mandatory continuing legal education requirement for attorneys.

The board originated as the Board of Continuing Legal Education, created in 1975 by rule of the Wisconsin Supreme Court. It became the Board of Attorneys Professional Competence in 1978 and was renamed the Board of Bar Examiners, effective January 1, 1991. Members are appointed for staggered 3-year terms, but no member may serve more than two consecutive full terms. The number of public members was increased from one to 3 by a supreme court order, effective January 1, 2001.

JUDICIAL COMMISSION

Members: HANNAH C. DUGAN (State Bar member), *chairperson;* JAMES M. HANEY, MICHAEL R. MILLER, DALLAS S. NEVILLE, ILEEN SIKOWSKI, WILLIAM VANDER LOOP (nonlawyers); DAVID HANSHER (circuit court judge); GREGORY S. PETERSON (appeals court judge); DONALD LEO BACH (State Bar member). (Judges and State Bar members appointed by supreme court. Nonlawyers are appointed by governor with senate consent.)

Executive Director: JAMES C. ALEXANDER.

Administrative Assistant: LAURY BUSSAN.

Mailing Address: 110 East Main Street, Suite 606, Madison 53703-3328.

Telephone: 266-7637.

Fax: 266-8647.

Agency E-mail: judcmm@wicourts.gov

Publication: Annual Report.

Number of Employees: 2.00.

Total Budget 2003-05: $434,600.

Statutory References: Sections 757.001, 757.81-757.99.

Responsibility: The 9-member Judicial Commission conducts investigations for review and action by the supreme court regarding allegations of misconduct or permanent disability of a judge or court commissioner. Members are appointed for 3-year terms but cannot serve more than two consecutive full terms.

The commission's investigations are confidential. If an investigation results in a finding of probable cause that a judge or court commissioner has engaged in misconduct or is disabled, the commission must file a formal complaint of misconduct or a petition regarding disability with the supreme court. Prior to filing a complaint or petition, the commission may request a jury hearing of its findings before a single appellate judge. If it does not request a jury hearing, the chief judge of the court of appeals selects a 3-judge panel to hear the complaint or petition.

The commission is responsible for prosecution of a case. After the case is heard by a jury or panel, the supreme court reviews the findings of fact, conclusions of law, and recommended disposition. It has ultimate responsibility for determining appropriate discipline in cases of misconduct or appropriate action in cases of permanent disability.

History: In 1972, the Wisconsin Supreme Court created a 9-member commission to implement the Code of Judicial Ethics it had adopted. The code enumerated standards of personal and official conduct and identified conduct that would result in disciplinary action. Subject to supreme court review, the commission had authority to reprimand or censure a judge.

A constitutional amendment approved by the voters in 1977 empowered the supreme court, using procedures developed by the legislature, to reprimand, censure, suspend, or remove any judge for misconduct or disability. With enactment of Chapter 449, Laws of 1977, the legislature created the Judicial Commission and prescribed its procedures. The supreme court abolished its own commission in 1978.

JUDICIAL CONDUCT ADVISORY COMMITTEE

Judicial Conduct Advisory Committee: GEORGE S. CURRY (circuit court or reserve judge serving in a rural area), *chairperson*; JAMES EVENSON (judicial administrative district chief judge); PAUL LUNDSTEN (court of appeals judge); DENNIS P. MORONEY (circuit court or reserve judge serving in an urban area); BRUCE GOODNOUGH (municipal court judge); ROBERT RADCLIFFE (reserve judge); DAVID FLESCH (circuit court commissioner); FRANK R. TERSCHAN (State Bar member); LAURA P. DEGOLIER (public member). (All members are selected by the supreme court.)

Mailing Address: P.O. Box 1688, Madison 53701-1688.

Internet Address: http://www.wicourts.gov/supreme/sc_judcond.asp

Telephone: 266-6828.

Fax: 267-0980.

Reference: Supreme Court Rules, Chapter 60, Appendix.

Responsibility: The Wisconsin Supreme Court established the Judicial Conduct Advisory Committee as part of its 1997 update to the Code of Judicial Conduct. The 9-member committee gives formal advisory opinions and informal advice regarding whether actions judges are contemplating comply with the code. It also makes recommendations to the supreme court for amendment to the Code of Judicial Conduct or the rules governing the committee.

JUDICIAL CONFERENCE

Members: All supreme court justices, court of appeals judges, circuit court judges, reserve judges, 3 municipal court judges (designated by the Wisconsin Municipal Judges Association), 3 judicial representatives of tribal courts (designated by the Wisconsin Tribal Judges Association), one circuit court commissioner designated by the Family Court Commissioner Association, and one circuit court commissioner designated by the Judicial Court Commissioner Association.

References: Section 758.171, Wisconsin Statutes; Supreme Court Rule 70.15.

Responsibility: The Judicial Conference, which was created by the Wisconsin Supreme Court, meets at least once a year to recommend improvements in administration of the justice system, conduct educational programs for its members, and adopt forms necessary for the administration of certain court proceedings. Since its initial meeting in January 1979, the conference has devoted sessions to family and children's law, probate, mental health, appellate practice and procedures, civil law, criminal law, and traffic law. It also maintains a standing committee on legislation.

JUDICIAL COUNCIL

Members: DAVID T. PROSSER, JR. (justice designated by supreme court); TED E. WEDEMEYER (judge designated by court of appeals); A. JOHN VOELKER (director of state courts); MARK S. GEMPELER, EDWARD E. LEINEWEBER, JAMES MASON, EARL W. SCHMIDT (circuit court judges designated by Judicial Conference); SENATOR ZIEN (chairperson, senate judicial committee); REPRESENTATIVE GUNDRUM (chairperson, assembly judicial committee); PEG LAUTENSCHLAGER (attorney general); BRUCE MUNSON (revisor of statutes); DAVID E. SCHULTZ (faculty member, UW Law School, designated by dean); JAY GRENIG (dean, Marquette University Law School); MARLA L. STEPHENS (designated by state public defender); SUSAN L. COLLINS (member of the Board of Governors, State Bar, designated by president-elect); BETH E. HANAN, JAMES L. MARTIN, D.J. WEIS (State Bar members selected by State Bar); KENNETH E. KRATZ(district attorney appointed by governor); 2 vacancies (public members appointed by governor).

Mailing Address: 110 East Main Street, Suite 606, Madison 53703.

Telephone: 266-7637.

Fax: 266-8647.

Statutory References: Sections 757.83 (4) and 758.13.

Responsibility: The Judicial Council, created by Chapter 392, Laws of 1951, assumed the functions of the Advisory Committee on Rules of Pleading, Practice and Procedure, created by the 1929 Legislature. The 21-member council is authorized to advise the supreme court and the legislature on any matter affecting the administration of justice in Wisconsin, and it may recommend legislation to change the procedure, jurisdiction, or organization of the courts. The council studies the rules of pleading, practice, and procedure and advises the supreme court about changes that will simplify procedure and promote a speedy disposition of litigation.

Several council members serve at the pleasure of their appointing authorities. The 4 circuit judges selected by the Judicial Conference serve 4-year terms. The 3 members selected by the

State Bar and the 2 citizen members appointed by the governor serve 3-year terms. The executive director of the Judicial Commission provides staff services to the council.

JUDICIAL EDUCATION COMMITTEE

Judicial Education Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice); MARGARET J. VERGERONT (designated by appeals court chief judge); A. JOHN VOELKER (director of state courts); JAMES J. BOLGERT, DARRYL W. DEETS, FAYE M. FLANCHER, MOLLY E. GALEWYRICK, MICHAEL S. GIBBS, WILLIAM F. HUE, DAVID G. MIRON, FREDERICK C. ROSA (circuit court judges appointed by supreme court); EDWARD REISNER (designated by dean, UW Law School); THOMAS HAMMER (designated by dean, Marquette University Law School); ROBERT G. MAWDSLEY (dean, Wisconsin Judicial College).

Office of Judicial Education: DAVID H. HASS, *director,* david.hass@wicourts.gov

Mailing Address: Office of Judicial Education, 110 East Main Street, Room 200, Madison 53703.

Telephone: 266-7807.

Fax: 261-6650.

E-mail Address: JED@wicourts.gov

Internet Address: http://www.wicourts.gov/education

Reference: Supreme Court Rules 32-33, 75.05.

Responsibility: The 14-member Judicial Education Committee approves educational programs for judges and court personnel. The 8 circuit court judges on the committee serve staggered 2-year terms and may not serve more than two consecutive terms. The dean of the Wisconsin Judicial College is an *ex officio* member of the committee and has voting privileges.

In 1976, the supreme court issued Chapter 32 of the Supreme Court Rules, which established a mandatory program of continuing education for the Wisconsin judiciary, effective January 1, 1977. This program applies to all supreme court justices and commissioners, appeals court judges and staff attorneys, circuit court judges, and reserve judges. Each person subject to the rule must obtain a specified number of credit hours of continuing education within a 6-year period. The Office of Judicial Education, which the supreme court established in 1971, administers the program. It also sponsors initial and continuing educational programs for municipal judges and circuit court clerks.

PLANNING AND POLICY ADVISORY COMMITTEE

Planning and Policy Advisory Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson;* WILLIAM M. MCMONIGAL, *vice chairperson;* RICHARD BROWN (appeals court judge selected by court); CARL ASHLEY, JEFFREY CONEN, BONNIE GORDON, ALLAN TORHORST, MICHAEL BOHREN, RICHARD NUSS, DAVID FLANAGAN, DIANE NICKS, EDWARD LEINEWEBER, PAT MADDEN, J.D. MCKAY, WILLIAM STEWART (circuit court judges elected by judicial administrative districts); DAVID NISPEL (municipal judge elected by Wisconsin Municipal Judges Association); HANNAH DUGAN, JOHN WALSH (selected by State Bar Board of Governors); JAMES DWYER (nonlawyer, elected county official); OSCAR BOLDT, JOHN KAMINSKI (nonlawyers); MICHAEL TOBIN (public defender); SCOTT JOHNSON (court administrator); JOHN ZAKOWSKI (prosecutor); KRIS DEISS (circuit court clerk); DARCY MCMANUS (circuit court commissioner). (Unless indicated otherwise, members are appointed by the chief justice.)

Planning Subcommittee: MARGARET VERGERONT (appeals court judge); RODERICK CAMERON, BARBARA KLUKA, MICHAEL NOWAKOWSKI, RICHARD J. SANKOVITZ (circuit court judges); SCOTT JOHNSON (court administrator); CAROLYN OLSON (circuit court clerk); DARCY MCMANUS (cir-

cuit court commissioner). *Ex-officio* members: SHIRLEY S. ABRAHAMSON (supreme court chief justice), WILLIAM M. MCMONIGAL (circuit court judge, vice chairperson of Planning and Policy Advisory Committee), A. JOHN VOELKER (director of state courts).

Staff Policy Analyst: ERIN SLATTENGREN, erin.slattengren@wicourts.gov

Mailing Address: 110 East Main Street, Room 410, Madison 53703.

Telephone: 266-8861.

Fax: 267-0911.

Internet Address: http://www.wicourts.gov/about/committees/ppac.htm

Reference: Supreme Court Rule 70.14.

Responsibility: The 26-member Planning and Policy Advisory Committee advises the Wisconsin Supreme Court and the Director of State Courts on planning and policy and assists in a continuing evaluation of the administrative structure of the court system. It participates in the budget process of the Wisconsin judiciary and appoints a subcommittee to review the budget of the court system. The committee meets at least quarterly, and the supreme court meets with the committee annually. The Director of State Courts participates in committee deliberations, with full floor and advocacy privileges, but is not a member of the committee and does not have a vote.

This committee was created in 1978 as the Administrative Committee of the Courts and renamed the Planning and Policy Advisory Committee in December 1990.

WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT

STATE BAR OF WISCONSIN

Board of Governors (effective July 1, 2005): *Officers:* D. MICHAEL GUERIN, *president;* STEVEN A. LEVINE, *president-elect;* MICHELLE A. BEHNKE, *past president;* GRETCHEN G. VINEY, *secretary;* MARK A. PENNOW, *treasurer;* KENT I. CARNELL, *chair of the board. District members:* LISA M. ARENT, ROBERT J. ASTI, DANIEL P. BACH, THOMAS W. BERTZ, GRANT E. BIRTCH, JAMES C. BOLL, JR., BARBARA L. BURBACH, JOSEPH M. CARDAMONE III, JOHN L. CATES, ANDREW J. CHEVREZ, JAMES E. COLLIS, GWENDOLYN G. CONNOLLY, WILLIAM J. DOMINA, REX A. EWALD, THOMAS L. FRENN, EUGENE A. GASIORKIEWICZ, C. MICHAEL HAUSMAN, JOHN W. HEIN, GREGG M. HERMAN, MARGARET WRENN HICKEY, KENNETH A. KNUDSON, CATHERINE A. LA FLEUR, GRANT F. LANGLEY, ROBERT JOHN LIGHTFOOT II, JOHN P. MACY, PEGGY L. MILLER, PAUL R. NORMAN, JOHN F. O'MELIA, JR., J. DAVID RICE, ELIZABETH G. RICH, DANIEL L. SHNEIDMAN, DEBORAH M. SMITH, R. MICHAEL WATERMAN, vacancy. *Young Lawyers Division:* LYNNE SOLOMON. *Government Lawyers Division:* JAMES G. GODLEWSKI. *Nonresident Lawyers Division:* JOEL HIRSCHHORN, DANIEL F. RINZEL, ALBERT E. WEHDE. *Senior Lawyers Division:* MYRON E. LAROWE. *Nonlawyer members:* YVONNE D. FEAVEL, CORWIN VANDER ARK, vacancy.

Executive Director: GEORGE C. BROWN.

Mailing Address: P.O. Box 7158, Madison 53708-7158.

Location: 5302 Eastpark Boulevard, Madison.

Internet Address: http://www.wisbar.org; Consumer site: http://www.legalexplorer.com

Telephones: General: 257-3838; Lawyer Referral and Information Service: (800) 362-9082.

Agency E-mail: drossmiller@wisbar.org

Publications: *A Gift to Your Family: Planning Ahead for Future Health Care Needs; Wisconsin Lawyer Directory; Wisconsin Lawyer Magazine;Wisconsin News Reporter's Legal Handbook;* Consumer Pamphlet Series (19 titles); various brochures, pamphlets, videotapes, and DVDs.

References: Supreme Court Rules, Chapters 10 and 11.

Responsibility: The State Bar of Wisconsin is an association of persons authorized to practice law in Wisconsin. It works to raise professional standards, improve the administration of justice and the delivery of legal services, and provide continuing legal education to lawyers. The State Bar conducts legal research in substantive law, practice, and procedure and develops related

reports and recommendations. It also maintains the roll of attorneys, collects mandatory assessments imposed by the supreme court for supreme court boards and to fund civil legal services for the poor, and performs other administrative services for the judicial system.

Attorneys may be admitted to the State Bar by the full Wisconsin Supreme Court or by a single justice. Members are subject to the rules of ethical conduct prescribed by the supreme court, whether they practice before a court, an administrative body, or in consultation with clients whose interests do not require court appearances.

Organization: Subject to rules prescribed by the Wisconsin Supreme Court, the State Bar is governed by a board of governors, of not fewer than 49 members, consisting of the board's 6 officers, not fewer than 34 members selected by State Bar members from the association's 16 districts, 6 selected by divisions of the State Bar, and 3 nonlawyers appointed by the supreme court. The board of governors selects the executive director and the president of the board.

History: In 1956, the Wisconsin Supreme Court ordered the organization of the State Bar of Wisconsin, effective January 1, 1957, to replace the formerly voluntary Wisconsin Bar Association, organized in 1877. All judges and attorneys entitled to practice before Wisconsin courts were required to join the State Bar. Beginning July 1, 1988, the Wisconsin Supreme Court suspended its mandatory membership rule, and the State Bar temporarily became a voluntary membership association, pending the disposition of a lawsuit in the U.S. Supreme Court. The Supreme Court ruled in *Keller v. State Bar of California,* 496 U.S. 1 (1990) that it is permissible to mandate membership provided certain restrictions are placed on the political activities of the mandatory State Bar. Effective July 1, 1992, the Wisconsin Supreme Court reinstated the mandatory membership rule upon petition from the State Bar Board of Governors.

Detail from the Martin Luther King Jr. Boulevard entrance to the Risser Justice Center in Madison, the home of the State Law Library. (Kathleen Sitter, LRB)

SUMMARY OF SIGNIFICANT DECISIONS OF THE WISCONSIN SUPREME COURT AND COURT OF APPEALS

October 2002 – June 2005

Robert Nelson and Mike Dsida
Legislative Reference Bureau

CONSTITUTIONAL LAW

Governor's Power Regarding Indian Gaming Compacts

In *Panzer v. Doyle*, 2004 WI 52, 271 Wis. 2d 295, 680 N.W. 2d 666 (2004), the supreme court took original jurisdiction at the request of legislative leaders to determine the limit on the governor's power to negotiate Indian gaming compacts. The court discussed the long and complicated history of legalized gambling in Wisconsin, involving state and federal statutes and constitutions, and tribal sovereignty. The court concluded that if a state regulates, rather than prohibits, gambling, then the state may not restrict gambling on tribal reservations if such activities are permitted for any purpose by any person.

In 1992, based on a state law that allowed the governor to negotiate compacts, the governor signed agreements with all 11 federally recognized tribes and bands in the state regarding the operation of slot machines, blackjack, and pull-tabs. In 1993, an amendment to the state constitution was approved by the voters that clarified what was meant by a lottery and prohibited the state from conducting casino-style games. In 2003, the newly elected governor and the tribes agreed to new compacts that allowed casino-style games such as roulette. The compacts would be in effect until terminated by mutual agreement of both parties. The compacts also waived state and tribal sovereign immunity.

The court held that the governor did not violate the separation of powers by negotiating these contracts because the power delegated to the governor by state statute, although quite broad, is "...an expedient solution to the quandary of who should act on behalf of the state in gaming negotiations." (p. 339) The court said, however, that upholding the constitutionality of the statutory delegation does not automatically validate every compact term. The court held that the governor did not have the authority to commit the state to a compact that runs until both parties agree to terminate it because that agreement gave away power delegated to the governor that the legislature cannot take back, circumventing the procedural safeguards that ensure that the delegated power could be reclaimed by future legislatures.

The court then discussed the expansion in the types of games allowed by the compact and held that the constitutional amendment limiting the types of games that were allowed precluded the governor and the legislature from agreeing to any games other than those allowed under the original gaming compacts. Finally, the court reviewed the arguments regarding the waiver of state sovereign immunity and determined that it violated the legislature's fundamental authority to waive sovereign immunity.

Chief Justice Shirley Abrahamson issued a long and detailed dissent, saying that the majority was right about the constitutionality of the statute granting the governor authority to negotiate the gaming compacts, but was wrong on all of the other issues in the case.

CRIMINAL LAW

The Right To Bear (Concealed) Arms

In two separate cases, the supreme court considered whether the state's statutory prohibition on the carrying of concealed weapons became unconstitutional with the adoption of an amendment to the Wisconsin Constitution establishing the "right to keep and bear arms" (Article I, Section 25). In *State v. Cole*, 2003 WI 112, 264 Wis. 2d 520, the court ruled that the statute is not unconstitutional in all cases; however, in *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, the court ruled that the statute was unconstitutional under the circumstances of that case.

In the former case, the defendant, Phillip Cole, was a passenger in an automobile that the police pulled over. The police searched Cole and the vehicle and found marijuana in Cole's pocket and loaded pistols in the glove compartment and under the driver's seat. Cole acknowledged that he carried the pistol in the glove compartment for protection. He was ultimately charged with, and pled guilty to, carrying a concealed weapon. Cole then requested that the conviction be vacated, arguing that the concealed weapons statute was, on its face, an unconstitutional infringement of the right to bear arms. The trial court rejected Cole's argument, and the case was ultimately appealed to the supreme court.

In a unanimous decision, the supreme court upheld Cole's conviction. The court began by determining that the statute should be presumed constitutional. The court then found that the right to bear arms was a fundamental constitutional right and that the applicable test for determining the constitutionality of the concealed weapons statute was whether it was a reasonable exercise of the state's police power – thereby rejecting Cole's argument that the statute should be subject to greater scrutiny.

Next, the court turned to Cole's substantive arguments that the statute, which predated the amendment, was effectively repealed by it and that the statute was too broad to constitute a reasonable exercise of the state's power. First, the court examined the language of the amendment. The court began by rejecting the argument that the statute and the amendment are incompatible, supporting its conclusion with similar rulings from courts in other states. It also used out-of-state cases to support its conclusion that the concealed weapons statute was narrow enough to constitute a reasonable exercise of the state's power. The court then examined the history of the amendment, which indicated that the amendment's proponents intended to preserve existing gun control regulations. The court also noted that the legislature, after the amendment was ratified, unsuccessfully attempted to modify the concealed weapons statute. The court indicated that the legislature would not have undertaken such efforts unless it believed that the concealed weapons statute was still valid. Finally, the court noted that public opinion polls taken at the time the amendment was ratified indicated that 80% of Wisconsinites opposed legalizing the carrying of concealed weapons. According to the court, that information supported its conclusion that the amendment and the statute are compatible.

The court also rejected Cole's argument that the concealed weapons statute was unconstitutional when applied to him. First, the court determined that Cole had waived that argument by pleading guilty. Second, the court stated that Cole had not presented any evidence of an imminent threat which might have justified his carrying of a concealed weapon. The court also indicated that the constitutional right to bear arms "is clearly not rendered illusory by prohibiting an individual from keeping a loaded weapon hidden either in the glove compartment or under the front seat in a vehicle."

Chief Justice Abrahamson concurred but argued: 1) that a statute that predates a constitutional amendment with which it may conflict should not be presumed constitutional; and 2) that the test used by the majority opinion (whether the statute was a reasonable exercise of police power) did not differ from the "rational basis" test that the majority rejected. Justice N. Patrick Crooks wrote a separate concurring opinion. He asserted that the statute is unconstitutional but that Cole's conviction should stand because he did not make his constitutional argument on time. Justice David Prosser also wrote a concurring opinion, in which he contended that the majority opinion did not adequately address the history of the amendment. Justice Prosser argued that the history indicated that the right to bear arms is not a "fundamental right" and is subject to reasonable regulation.

In *State v. Hamdan*, the court came to a very different conclusion. Munir Hamdan, the defendant, owned and operated a grocery and liquor store that was located in a high-crime neighborhood in Milwaukee and had been the target of four armed robberies and the site of two fatal shootings in the 1990s. With the knowledge of local law enforcement officers, Hamdan kept a handgun under the store's front counter, in an area that was not accessible to the public. One night, as the time came to close the store, Hamdan brought the handgun, which was wrapped in a plastic bag, to the back room for storage. Two police officers then entered the store to conduct a license check. When summoned by his son, Hamdan placed the wrapped gun in his pants pocket and returned to the main part of the store. When asked by one of the officers if he kept a gun in the store, Hamdan pulled the wrapped gun out of his pocket. The officers confiscated the gun but did not charge

him with any offense. Six days later, however, he was charged with unlawfully carrying a concealed weapon.

Hamdan filed a motion to dismiss the charge, arguing that the concealed weapons statute is unconstitutional. The trial court denied the motion. Hamdan was convicted and fined $1.

On appeal, the supreme court reversed Hamdan's conviction. First, the court rejected Hamdan's argument that the "going armed" requirement of the concealed weapons statute should be reconstrued so that it would not apply in his case. Among other things, the court noted that it "would certainly have no problem finding that a customer was 'going armed' if the *customer* moved around Hamdan's store with a pistol concealed in his trousers." It also explained that the statute provided no way to distinguish "going armed" within a person's own home or business from "going armed" elsewhere. Second, the court rejected Hamdan's claim that he acted out of necessity or self-defense (either of which would have been a defense to prosecution). With respect to Hamdan's necessity claim, the court stated that there was no "natural physical force" that necessitated his carrying a concealed weapon. The court then explained that, notwithstanding the neighborhood's crime rate or Hamdan's own victimization, there was no specific or imminent threat to Hamdan, to others, or to anyone's property.

Turning to Hamdan's constitutional argument, the court stated that the constitutional right to bear arms was subject to reasonable regulations on weapons and that the general prohibition on the carrying of concealed weapons is constitutional. But the court also noted that the state may not apply such regulations in a way that nullifies the constitutional right. To determine whether the right remains meaningful in the face of the regulation, the court must assess whether the individual's need for carrying a concealed weapon substantially outweighs the public benefit associated with the regulation.

In conducting that analysis, the court first explained that Wisconsin law is "anomalous" in that it completely bans the carrying of concealed weapons "while simultaneously recognizing the right of individuals to own, possess, and carry firearms for lawful purposes." It then explained that the concealed weapons law "serves many valuable purposes in promoting public safety," including discouraging people from acting violently on impulse, and helping people know when a dangerous weapon is present. The court, however, stated that these rationales are not particularly compelling when applied to a person operating his or her own business. At the same time, "a citizen's desire to exercise the right to keep and bear arms for purposes of security is at its apex when undertaken to secure one's home or privately owned business." Moreover, according to the court, Wisconsin law provides no other reasonable way for a person to exercise his or her constitutional right in his or her own home or business; requiring the person to carry the weapon openly is "simply not reasonable." The court added, however, that a person who carries a concealed weapon may do so only for a lawful purpose.

Applying those principles to the case before it, the court acknowledged that Hamdan's conduct was prohibited under the concealed weapons statute. Nevertheless, under the particular circumstances of his case, "Hamdan's interests in maintaining a concealed weapon in his store and carrying it personally during an unexpected encounter with visitors substantially outweighed the State's interest in enforcing the concealed weapons statute." In addition, "Hamdan had no reasonable means of keeping and handling the weapon in his store except to conceal it." Therefore, the court found that the concealed weapons statute was unconstitutional as applied to Hamdan and reversed his conviction. The court concluded by: 1) urging the legislature to clarify the concealed weapons law and consider the possibility of developing a licensing or permit system for concealed weapons; and 2) specifying the method by which courts are to consider a right-to-bear-arms defense in future cases.

Justice William Bablitch, in a concurring opinion, stressed what he perceived to be the reasonableness of the majority opinion (in comparison to the chief justice's dissent) and asserted that courts will handle future concealed weapons cases, under the framework outlined by the majority, in much the same way that they handle search and seizure cases. Justice Ann Walsh Bradley also concurred, but specified that she did not join in the majority opinion on how courts should consider right-to-bear-arms defenses in future cases. Justice Crooks concurred in part and dissented in part. He agreed that Hamdan's conviction was improper, but he argued that the majority opinion was creating an exception to the concealed weapons prohibition that was not justified by the

language of the statute. Instead, he argued, the court should have struck down the statute as a whole. Chief Justice Abrahamson dissented. She stated that the majority opinion improperly based its decision on its own determination about what appropriate policy is with respect to concealed weapons in a private business. She also challenged the majority opinion's division of responsibility between the judge and jury for certain issues that will arise in future concealed weapons cases, and questioned whether a valid prohibition on the carrying of concealed weapons was possible under the majority opinion.

Truth-in-Sentencing and Sentence Modification

In a series of cases, the supreme court considered the circumstances under which a court can modify the sentence of a person convicted of a crime under the "truth-in-sentencing" (TIS) law. TIS was enacted in two stages. First, with TIS-I, the legislature eliminated parole, required that all prison sentences be served in their entirety, and significantly increased the maximum sentence length for all felonies (other than those punishable by life imprisonment). Three years later, TIS-II took effect. TIS-II reduced the maximum sentence length for most crimes and classified nearly all felonies using a Class A to I classification scheme. (Previously, many felonies were unclassified, while others were classified as Class A, B, BC, C, D, or E felonies.) TIS-II also provided a new procedure, set forth in section 973.195 of the statutes, for a prisoner who has served a specified percentage of the confinement that was ordered by the court and who is not a Class A or B felon to petition the court to convert the rest of the confinement into community supervision.

State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, provided the supreme court its first opportunity to address how sentences can be modified in light of these changes. Most of the court's opinion was an effort to reinvigorate long-standing rules for judges to follow when initially imposing a sentence. But along the way, the court also rejected Gallion's argument that his 21-year term of confinement, imposed under TIS-I for homicide by intoxicated use of a motor vehicle, was "harsh and excessive," in light of the fact that the maximum term of confinement for that crime under TIS-II dropped to 15 years. The court stated that TIS-II simply did not apply to him. It also suggested that the legislature, by barring Class B felons from proceeding under section 973.195, did not intend for TIS-II changes to be used in the manner proposed by Gallion, whose offense was a Class B felony.

Justice Jon Wilcox concurred, but noted his concerns that the majority opinion's discussion of sentencing rules invited excessive scrutiny of sentences by appellate courts.

In *State v. Crochiere*, 2004 WI 78, 273 Wis. 2d 57, the court considered other long-standing rules relating to criminal sentences in the context of TIS: those allowing for a sentence to be modified based on a "new factor." Under the "new factor" cases, a court can modify a sentence only if there are facts that are highly relevant to sentencing that were not known to the trial judge at sentencing, either because they were not then in existence or because they were unknowingly overlooked by all of the parties. Crochiere sought to invoke this rule with respect to his sentence for reckless endangerment. After serving about half of that sentence, Crochiere asked the court to modify it, arguing that his rehabilitation (which was not considered a "new factor" before TIS but could have been considered in parole decisions) must now be a "new factor" under the TIS sentencing system, given that that system has no place for parole. The court rejected Crochiere's argument and reaffirmed the "new factor" line of cases. It stated that to do otherwise would result in prisoners serving less than their full sentences and would "undercut the clear intent of the legislature in enacting TIS."

The court's third case on this topic was *State v. Trujillo*, 2005 WI 45, __ Wis. 2d __ (to be published). In that case the defendant was convicted of burglary under TIS-I and was sentenced to eight years of confinement – six months more than the maximum for burglary under TIS-II. Trujillo brought a motion to modify his sentence, contending that the changes made by TIS-II were a "new factor". The supreme court rejected Trujillo's argument, relying on *State v. Hegwood*, 113 Wis. 2d 544 (1983), which had rebuffed a similar sentence modification motion. The court also justified its conclusion by noting that the legislature did not make any of the TIS-II penalties apply retroactively, even though it could have done so. It also indicated that the sentence modification procedure in section 973.195 of the statutes (which Trujillo could not yet use because he had not served the requisite of his sentence) provided a prisoner an adequate opportunity to argue for modifying a sentence based on a change in the law. Moreover, the court asserted that Trujillo's argu-

ment was inconsistent with the legislature's goal in enacting TIS – certainty in sentencing – and that, if adopted, it would open the floodgates to sentence modification motions by prisoners sentenced under TIS-I.

Chief Justice Abrahamson dissented. She argued that the legislature had never intended for the higher TIS-I penalties to take effect and that the elimination of parole – which, before TIS, could effectively reduce the amount of time spent in prison by an inmate – made *Hegwood* irrelevant. Justice Louis Butler, Jr. also dissented, asserting that *Hegwood* should be overruled and that trial courts should be free to decide, on a case-by-case basis, whether a change in the law justified modifying a sentence.

On the same day that it decided *Trujillo*, the court issued its opinion in *State v. Tucker*, 2005 WI 46, __ Wis. 2d __ (to be published). Relying on its opinion in *Trujillo*, the court rejected Tucker's request to modify his two sentences, a request based on the fact that the terms of confinement imposed for his TIS-I crimes were longer than they could have been had he committed them after TIS-II took effect. But with both the state and Tucker arguing that section 973.195 applies only to a person sentenced under TIS-II, the court went on to examine that issue and concluded that the statute applies to TIS-I cases as well. Initially, the court noted that the language of the statute could be construed either as consistent or inconsistent with the parties' arguments about the reach of section 973.195. Thus, the court turned to other sources of information to interpret the statute. First, the court noted that the legislature provided that other procedures established when TIS-II was enacted apply only to TIS-II sentences. The court stated that this supported the conclusion that section 973.195 applies to TIS-I sentences, since the legislature clearly could have specified otherwise. A Legislative Reference Bureau analysis of the bill and other commentary also supported that conclusion. The court also stressed that one of the four grounds on which a petition can be filed under section 973.195 is that the law has changed in a way that would have decreased the petitioner's time in prison if the change had applied to him or her. Since the legislative act that created section 973.195 made those kinds of changes in the law, the court reasoned that the legislature intended for section 973.195 to cover a person sentenced under TIS-I.

After reaching its conclusion that section 973.195 applies to TIS-I sentences, the court also discussed *how* it would apply in those cases. The court stated that, if a person was sentenced to a state prison for a crime under TIS-I, the amount of prison time that the person would need to serve before filing a petition under section 973.195 would be the same as the amount of time that a person convicted of the same crime under TIS-II would need to serve.

Chief Justice Abrahamson and Justice Butler wrote brief dissenting opinions, with each of them simply referring to their respective dissenting opinions in *Trujillo*.

In its last sentence modification case of the term, *State v. Stenklyft*, 2005 WI 71, __ Wis. 2d __ (to be published), the supreme court considered the constitutionality of section 973.195. In that case Stenklyft was convicted in November 2000 of causing great bodily harm by operating a motor vehicle while under the influence of an intoxicant. In March 2003, after serving more than 75% of his 30-month term of confinement, Stenklyft asked the trial court to modify his sentence, based on his conduct in prison. The district attorney objected to Stenklyft's request and asserted that, under the statute, the court could not grant the petition over the state's objection. The trial court disagreed and granted the petition.

On appeal, the supreme court, in two majority opinions, one authored by Chief Justice Abrahamson and one by Justice Crooks, agreed with the trial court that the district attorney cannot prevent a trial court from considering a petition filed under section 973.195. The two opinions focused on the relevant language of the statute, which states that "the court shall deny the inmate's petition" if the district attorney objects to it. Both opinions stated that the statute would be unconstitutional if the word "shall" gave the district attorney the absolute right to prevent the court from modifying a sentence. As the chief justice stated, it would authorize the district attorney to invade the "exclusive core constitutional power of the judiciary to impose a penalty", which includes the power to modify a previously imposed penalty. The chief justice also asserted that section 973.195 "interferes with the impartial administration of justice by delegating judicial power to one of the parties in the litigation." Justice Crooks added that the statute can be interpreted in a way that avoids the constitutional problem. Specifically, the word "shall" can be construed so that

it provides direction to the court without imposing a mandatory requirement. Thus, the court would have the "discretion to accept or reject the objection of the district attorney."

Nevertheless, Justice Crooks concluded that the trial court's decision must be reversed. Justice Crooks stated that, based on the record of the case, the court did not adequately consider all of the factors, including the "nature of the crime, character of the defendant, protection of the public, positions of the State and of the victim, and other relevant factors such as the inmate's conduct", that it needed to examine in deciding whether to modify the sentence. Thus, the case was returned to the circuit court for a full consideration of those factors.

Justice Wilcox dissented. He argued that section 973.195 does not relate to the court's inherent power to modify sentences. Instead, it created a new power, shared among all three branches, that is subject to reasonable regulations imposed by the legislature.

Where Does the State's Jurisdiction End?

In *State v. Anderson*, 2005 WI 54, __ Wis. 2d __ (to be published), a first-degree intentional homicide case, the supreme court considered the question of where a criminal prosecution can take place, if at all, when there is no definitive evidence regarding where the relevant criminal acts occurred. In that case the court ruled that the trial could proceed based on evidence that the defendant, Derek Anderson, probably formed the intent to kill his father, Allen Krnak, while Anderson was in Wisconsin. The court also determined that the case could be tried in Jefferson County.

Allen and Donna Krnak and their younger son Thomas disappeared in July 1998. The Krnaks, who lived in Jefferson County, had planned a trip to their cabin in Waushara County for the Independence Day weekend. Apparently, they never made it there. A year and a half later, ten miles from the North Carolina college that Anderson once attended, a hunter found the skeletal remains of a man who was ultimately identified as Allen Krnak. Medical examiners determined that Krnak died as a result of blows to the head and face. Donna and Thomas Krnak were never found.

Anderson was indicted in North Carolina in 2001 for murdering his father. Two years later, however, the local district attorney concluded that there was not enough evidence to prove that the crime occurred there. Thus, in August 2003, the district attorney for Jefferson County filed a criminal complaint against Anderson, charging him with first-degree intentional homicide.

At the preliminary hearing, the court heard evidence regarding the events leading up to the Krnaks' disappearance and the investigation that followed. According to the testimony, Allen Krnak received a phone call at work on the afternoon of Thursday, July 2, 1998, that greatly upset him. After the call, Krnak told a co-worker, "I have to fly out of here" and "we may have to go to a funeral." Anderson initially told police that he did not remember calling his father that day. He later told his aunt, however, that he had called his father from the family home that afternoon but that he was only asking about where to find a tool.

Anderson also told investigators that his parents and brother left the house Thursday afternoon but did not return as scheduled on Sunday. Anderson waited until Monday evening to contact the sheriff. Four days later, Anderson called a conservation warden in Sauk County and informed him that his parents may have been in the area. Within 90 minutes, the warden was able to find the family's empty pickup truck in the Dell Creek Wildlife Area. Eleven days later, a detective learned that the truck's odometer indicated that it had been driven 2,600 miles more than what was indicated on detailed mileage logs Krnak had kept. (The site in North Carolina where Krnak's body was found was 780 miles from the family's home.) Anderson attempted to explain the discrepancy by saying that he had been driving the vehicle. Additional testimony at the preliminary hearing indicated that Anderson had been nonchalant about his family's disappearance. Finally, a map that had been drawn for Krnak by a co-worker was found, with Anderson's fingerprint on it, in the glove compartment of Donna Krnak's sedan – a car that Anderson was using after his parents and brother disappeared.

At the end of the hearing, the circuit court concluded that there was evidence that Anderson formed the intent to kill his father in Jefferson County and that, as a result, the state had jurisdiction over the case. The court also ruled that the case could be tried in Jefferson County. Anderson then appealed.

The supreme court upheld the circuit court's decision. In looking at whether the state had jurisdiction over the case, the court first determined that the intent to kill is a separate element of first-

degree intentional homicide. It then rejected Anderson's argument that, for the purpose of the state's jurisdiction statute, the intent to kill element cannot take place apart from the act causing the victim's death. In doing so, the court relied extensively on its conclusion that the legislature had intended to expand parts of the state's jurisdictional statute in 1955. The court added that the jurisdictional requirement can be met when the defendant acts in a way that manifests the intent to kill. The court then stated that the evidence from the preliminary hearing created a reasonable inference that Anderson probably called Krnak at work to lure him home early in order to kill him – which the court stated manifested an intent, formed in Wisconsin, to commit the crime.

The court then stated that testimony that had been improperly excluded at the preliminary hearing, when combined with other evidence, created a reasonable inference that Krnak was killed in Jefferson County, thus providing the basis for venue (that is, for trying the case) in that county. The excluded testimony, relating Krnak's story about how Anderson had once threatened him and had tried to "club him", was hearsay; but according to the court it was admissible under one of the exceptions to the ban on hearsay.

In a footnote, the court stated that its decisions regarding jurisdiction and venue applied only to the preliminary hearing. The court noted that, at the trial, the state would need to meet the "beyond a reasonable doubt" standard when trying to establish jurisdiction and venue.

In a concurring opinion, Justice Bradley stated that she agreed with the majority opinion regarding territorial jurisdiction and venue but not regarding the admissibility of the excluded testimony, which she argued was not needed to resolve those issues. In a separate concurrence, Justice Butler joined the majority opinion regarding jurisdiction and the excluded testimony, but not regarding venue. He argued that there was no evidence indicating that Anderson was any more likely to have committed the crime in Jefferson County than in other possible locations. In such a case, he stated, the case may be heard in the county in which the defendant was last seen alive.

You Have the Right to Remain Silent... But Not the Right To Lie

A person who commits a crime may not lie about it to a law enforcement officer. If a person does so, that constitutes a new crime: obstructing an officer. That was the conclusion of the supreme court in *State v. Reed*, 2005 WI 53, __ Wis. 2d __ (to be published).

Brent Reed's criminal case began when a highway patrol officer saw a person sitting in the driver's seat of a car that was parked alongside the highway. The officer turned back to investigate and found the same person, Reed, sitting in the passenger's seat. After approaching the car, the officer smelled alcohol. Reed identified himself and immediately stated that he was not driving because he knew that he had had too much to drink. Reed stated that a "Mr. Triller" was driving but that, after an argument, Triller pulled the car over and walked away. Reed, however, could not tell the officer which way Triller walked or provide Triller's phone number. After refusing to perform sobriety tests, Reed was arrested.

After Reed's arrest, a backup officer drove five miles up the highway in an unsuccessful effort to find Triller. Eventually, an officer was able to contact Triller by phone. Triller told the officer that he had not been with Reed. As a result, the state charged Reed with obstructing an officer, in addition to drunk driving.

Reed asked the trial court to dismiss the obstruction charge, arguing that he could not be prosecuted for making an "exculpatory denial" – a statement denying involvement in a crime by a person who committed it. When the court denied his motion, Reed appealed. Like the trial court, the court of appeals concluded that Reed had done more than simply deny committing the crime. He had also provided false information relating to the crime, "frustrating the police function." Therefore, the court concluded that he could be charged with obstruction.

The supreme court agreed that Reed's conduct, as described in the complaint, constituted obstruction. But the court took a different route to reach that conclusion. It broadened the circumstances under which a person can be prosecuted, so that even the simplest of false denials can be treated as obstruction.

The court began by rejecting three arguments made by Reed in support of allowing exculpatory denials. First, the court stated that it did not matter what affect saying "I didn't do it" had on the police. What mattered, according to the court, was the person's intent. Specifically, did the person intend to mislead or deceive a law enforcement officer? If the answer is "yes," the person is guilty

of obstruction. Second, the court rejected Reed's arguments that, without an exculpatory denial exception, a person who commits a crime, when asked about it by an officer, will be forced to: 1) admit guilt; 2) deny guilt and thereby commit obstruction; or 3) remain silent and have that pre–arrest silence used against the person. The court stated that the problems a defendant faces by remaining silent cannot justify a lie. Third, the court rejected Reed's claims that, without an exculpatory denial exception, police and prosecutors would use the obstruction statute to "pile on" offenses. Among other things, the court stated that Reed's argument was "entirely speculative." The court concluded its opinion by explicitly overruling *State v. Espinoza*, 2002 WI App 51, 250 Wis. 2d 804, the court of appeals case that had established the exculpatory denial exception.

Chief Justice Abrahamson concurred with the result but disagreed with the majority's reasoning. She explained that overruling *State v. Espinoza* was unnecessary, since Reed's statement, which contained false information, was not merely an exculpatory denial. She also argued that overruling *Espinoza* is unwise, because doing so conflicts with other court opinions and the intent of the legislature and because, without *Espinoza*, the obstruction statute can be used improperly to manufacture crimes by inducing false denials. Justice Prosser also concurred, but criticized the majority for its "literal, inflexible interpretation of the statute" and the chief justice for "authorizing deception."

The Criminal Consequences of Legislative Misconduct

In two separate cases, the Wisconsin Supreme Court permitted state legislators to be criminally prosecuted for misconduct in public office. Affirming the decisions of the court of appeals, the court paved the way for criminal trials of former Senate Majority Leader Chuck Chvala (in *State v. Chvala*, 2005 WI 30, __ Wis. 2d __) (to be published) and former Speaker of the Assembly Scott Jensen, former Assembly Majority Leader Steve Foti, and Sherry Schultz, a member of Foti's staff (in *State v. Jensen*, 2005 WI 31, __ Wis. 2d __) (to be published).

The criminal case against Chvala and the criminal case against Jensen, Foti, and Schultz (which also involved misdemeanor charges against former Assistant Majority Leader Bonnie Ladwig) proceeded on separate but similar tracks. Both arose out of secret "John Doe" investigations. In the former case, prosecutors charged Chvala with seven felony counts of misconduct in public office. The charges were based on his alleged use of state employees of the Senate Democratic Caucus (SDC) for various Democratic political campaigns while those employees were on state time or using state resources. Prosecutors also charged Chvala with 13 additional felony counts of extortion and campaign finance law violations. In the other case, prosecutors charged Jensen with three felony counts of misconduct in public office and one misdemeanor count of intentional misuse of a public position for private benefit. Foti was charged with one felony count of misconduct in public office. Schultz was charged with one felony count of misconduct in public office. The felony counts against Foti and Schultz and one of the felony counts against Jensen were based on the same alleged conduct: Schultz's work, at the direction of Jensen and Foti, on political campaigns while she was on state time or while she was using state resources. The other felony counts against Jensen were based on his alleged use of two state employees, while they were on state time or using state resources, to recruit and assist Republican candidates for political office, and on his alleged use of state employees to work for Taxpayers for Jensen, a political campaign committee.

In both cases, the defendants asked the trial court to dismiss the complaint. When the trial court denied their motions, they asked for, and received, permission to appeal. Chvala's petition, however, was granted only with respect to four of the misconduct charges. The court denied the petition with respect to the other counts of the complaint.

The court of appeals issued its opinion in Chvala's case first (*State v. Chvala*, 2004, WI App 53, 271 Wis. 2d 115). The court began its analysis by rejecting Chvala's claims that the misconduct in public office statute is unconstitutionally vague. Relying on the Senate Policy Manual, guidelines issued by the Senate Chief Clerk, and other statutes, the court explained that Chvala's duties as a legislator were clear enough for a reasonable person to know that using SDC staff to work on political campaigns with state resources conflicted with those duties. The court added that the misconduct statute may be applied to those duties without reliance on any person's standards. The court then determined that the statute is not unconstitutionally overbroad, since it does not interfere with legitimate political activity. Next, the court rejected Chvala's argument that he

was immune from prosecution under the constitution's Speech and Debate Clause. According to the court, the use of state employees for political campaigns is not integral to the legislative process. Therefore, the Speech and Debate Clause does not apply. Finally, the court considered Chvala's argument that the State's prosecution violated the separation of powers doctrine. According to Chvala, the legislature alone has the authority to regulate the conduct of its members. Chvala also argued that deciding whether an activity is "legislative" or "political" is not a proper subject for the judiciary to resolve. The court, however, concluded that using senate documents to determine the scope of Chvala's duties did not improperly intrude upon the legislature's powers. The court also stated that, with limited exceptions, the allegations in the complaint relating to the misconduct counts described "political campaign activity of the most basic type" and that the court would not need to speculate about whether it constituted legitimate legislative activity. Therefore, those counts could be properly resolved by the courts.

Two months later, the court of appeals issued a similar ruling in the case against Jensen, Foti, and Schultz (*State v. Jensen*, 2004 WI App 89, 272 Wis. 2d 707). Relying in part on its opinion in *State v. Chvala*, the court ruled again that the misconduct in public office statute was not unconstitutionally vague or overbroad and that, given the allegations in the complaint, the case did not require the court to address a "political question." The court of appeals also rejected the *Jensen* defendants' argument that the allegations of the complaint did not describe a violation of the misconduct statute. The court stated that the complaint provided sufficient information to describe the offenses involved.

Chvala and the *Jensen* defendants appealed, but in abbreviated opinions issued on the same day, the Wisconsin Supreme Court upheld the court of appeals' decisions. Only four justices participated in the case (three had excused themselves), but those justices were unanimous in ruling that the misconduct statute is not unconstitutionally overbroad, that prosecution of the case would not involve a violation of the separation of powers doctrine, and that the charges were proper matters for courts to consider. In the *Chvala* case, the court also unanimously ruled that the criminal charges did not conflict with the Speech and Debate Clause. However, the court split on the vagueness issue in both cases; two justices voted to uphold the court of appeals' decision, and two voted to reverse it. Given that split, the court of appeals' decisions remained in force in both cases. The cases were then returned to the circuit court for trial.

What Are the Rights of Crime Victims Under the Constitution?

In *State v. Schilling*, 2005 WI 17, 278 Wis. 2d 216, the supreme court decided that crime victims do not have enforceable rights under the first sentence of Article I, Section 9m of the Wisconsin Constitution which states: "This state should treat crime victims ... with fairness, dignity and respect for their privacy". Instead, the court ruled that the sentence merely articulates the state's policies regarding the treatment of crime victims.

Daniel Marinko murdered his ex-wife, Jennifer Hansen Marinko, in Price County in October 1999. He was ultimately convicted of first-degree intentional homicide and armed burglary. At the sentencing hearing in April 2001, Patrick Schilling, the prosecuting attorney, played part of the tape of the 911 telephone call that the victim's son had made to the police after discovering his mother's body. Schilling had made sure that the victim's children would not be present at the sentencing hearing, but he did not inform other family members that he was going to play the tape or give them an opportunity to leave the courtroom before he played it. Schilling turned off the tape when he realized the effect that it was having on them.

In July 2001, five of the victim's family members filed a complaint against Schilling with the Crime Victims Rights Board. After conducting a hearing, the board found that Schilling had violated the rights of those family members "to be treated with fairness, dignity, respect, courtesy and sensitivity" when he played the 911 tape. As a remedy, the board ordered a private reprimand of Schilling. Schilling then asked the Dane County Circuit Court to review the board's decision. When that court reversed the decision, the board appealed.

In a unanimous opinion, the supreme court upheld the circuit court's decision and ruled that the first sentence of Article I, Section 9m does not create independent, enforceable rights. In reaching that conclusion, the court explained that the broad language of that sentence provides only a statement of policy or a general guide to the more specific rights contained in the rest of that section. The court also relied on the legislature's rejection of other versions of the amendment that would

have listed fairness, dignity, and privacy in the same way as other rights. In addition, it noted that the amendment's structure is parallel to the structure of statutes relating to victims' rights that were in effect when the amendment was adopted: a general provision (described in the statutes as "Legislative intent") was followed by a more specific list of rights. Finally, the court stated that legislative activity occurring after the adoption of the amendment confirms that the legislature did not intend for the first sentence of Article I, Section 9m to create enforceable rights. First, the legislature enacted a new statutory provision entitled "Rights of Victims" but did not include a right to fairness, dignity, or respect for privacy in that provision. Second, in summarizing that legislation, the Legislative Reference Bureau did not list the right to fairness, dignity, or respect for privacy as among the rights conferred by the Constitution. Thus, the court concluded that Article I, Section 9m does not create an enforceable right to fairness, dignity, or respect for privacy.

CIVIL LAW

Easement from Landlocked Property

In *McCormick v. Schubring*, 2003 WI 149, 267 WI 2d 122, 672 N.W. 2d 63 (2003), the supreme court was asked if an easement granted by the circuit court to an owner of landlocked property should be approved. The county took 40 acres from the original owner of three 40-acre parcels of land for failure to pay taxes, with the result that the remaining 80 acres did not have access to a public road. The 40-acre parcel owned by the county included a gravel road that was used by the landlocked owner of the 80-acre parcel. The county 40-acre parcel was sold to a person who was unaware of the existence of the gravel road or of any possible easement. Later, the original owner of the 120 acres sold the remaining 80 acres to a person who used the gravel road to access the property. The owner of the 40-acre parcel eventually denied that use. The owner of the 80 landlocked acres brought this action to obtain an easement of necessity over the 40-acre parcel.

An easement of necessity, said the court, may be provided when property is landlocked and the owner needs access to that property from a public highway. To obtain an easement of necessity, the court said the petitioner must prove that there was common ownership of the properties at the time of the severance that created the landlocked condition and that the landlocked property did not have access to a public road after it was severed from the original property. The court held that finding these two requirements does not create an easement of necessity as a matter of law. Rather, the court must look at the conditions that gave rise to the severance and the equities involved in creating an easement of necessity.

In the present case, the original property was not landlocked and when severed the landlocked parcel came into existence, thus meeting the minimum requirements for the creation of an easement of necessity. The court noted that the current owner of the landlocked parcel purchased the property with the knowledge that a private road existed to gain access to the public road. The landlocked owner did not produce the severance that resulted in the landlocked condition, and because of the wild condition of the property, there would be limited use of the landlocked property without access. But the owner of the landlocked property knew there was no easement when they purchased that property. The other property owner tried diligently to find out if there was any easement on the property before purchasing the property, and the creation of the easement would reduce the value of the property and make the building of a home less desirable.

The supreme court determined that the circuit court balanced the benefits and burdens resulting from creating an easement of necessity and upheld the circuit court decision because it was not an erroneous exercise of discretion.

Limits on Medical Malpractice Wrongful Death Actions

This case, *Maurin v. Hall*, 2004 WI 100, 274 Wis. 2d 28, 682 N.W. 2d 866 (2004), resulted from the misdiagnosis of a five-year old girl's diabetic condition. The child became ill, was misdiagnosed by a physician's assistant as having an ear infection, was misdiagnosed the next day by a doctor, and the next day was correctly diagnosed as diabetic by another doctor. Nevertheless, the child died. The jury awarded the girl's estate damages for her predeath pain and suffering in excess of the statutory medical malpractice maximum and her parents damages for the loss of society and companionship as the result of the wrongful death in excess of the wrongful death

statute maximum. The circuit court reduced the pain and suffering award but found that the statutory cap on damages in wrongful death actions was unconstitutional because it deprived the plaintiffs of the right to a jury trial, violated the due process and equal protection clauses of the constitution, and usurped judicial power. While this case was on appeal, the supreme court decided in another case that the statutory maximum damage award in medical malpractice cases was constitutional.

The doctor argued that the total recovery by the estate and parents for all pain and suffering and wrongful death was limited to the maximum amount set forth in the medical malpractice statute. The parents argued that the child's estate may recover the maximum allowed in the medical malpractice statute while they could recover the maximum amount allowed under the wrongful death statute. The supreme court reviewed the current statutes and legislative history and held that the language that set a cap on the total noneconomic damages for bodily injury or death for each occurrence of medical malpractice created a single cap for the damages in this case. The court said that since this case involved the death of a child as the result of medical malpractice, the cap on noneconomic damages in the wrongful death statute applies. This cap, said the court, applies to each person who suffers the noneconomic damages as a result of the wrongful death, so in this case each parent may be awarded an amount up to the statutory limit.

The supreme court then reviewed the constitutionality of the wrongful death damage limit and determined that the because right to a jury was not directly infringed by the legislature's limit on damages, the limit was constitutional.

Chief Justice Abrahamson concurred in the reversal and remand to the circuit court, but argued that the decision should not have been based on an interpretation not briefed or discussed by any of the parties. She also argued that the majority failed to recognize the difference between an action by the estate for the pain and suffering incurred by the child before her death and an action brought by the parents for the loss of society and companionship of their child. These are two separate actions and should not have been lumped together, said the concurrence.

Justice Wilcox concurred in the majority opinion but wrote to disagree with the Abrahamson discussion of the issue of remitter, while Justice Bradley wrote a concurring opinion saying that the discussion in the majority opinion of the constitutionality of the statute was premature and should not have proceeded until the arguments were fully developed and briefed.

Necessary Elements for a Waiver of Liability Provision to be Effective

Many recreational facilities, including ski resorts, horse riding stables, and exercise clubs, require a person who wants to use the facility to sign a form that purports to waive any liability of the owner of the facility for any injury to the person while using the facility (an exculpatory provision). This case, *Atkins v. Swimwest*, 2005 WI 4, _______, 690 N.W. 2d 835 (2005), required the supreme court to review such a provision to determine if it should be enforced. The case involved a wrongful death action by the son of a woman who died while swimming in a pool. When the woman came to the pool to swim, she was required to pay a fee and fill out a card with her name and address. The card included a provision stating that she agreed to assume all liability for herself without regard to fault and to hold harmless Swimwest and its employees for any conditions or injury while at the facility. A few minutes after she entered the pool she was found motionless near the bottom of the four-foot deep lap pool.

The supreme court noted that, generally, exculpatory provisions are analyzed on principals of contract law and that the court strictly construes them against the party seeking to rely on them. The court said that such provisions are subject to a review on public policy grounds because of the tension between allowing parties to contract freely and ensuring that tort law is considered, which requires persons to be responsible for their negligent acts. The court noted that recent cases required the waiver of liability to be clear and unambiguous and alert the signer to the nature and significance of what is being signed. Those cases, said the court, require that the waiver provision be separate and distinct, and prohibit a waiver of liability for intentional or reckless conduct. In addition, one of the cases suggested that there must be an opportunity for the person to negotiate or bargain about the provision.

The court held that the liability waiver used by Swimwest violated public policy for a number of reasons. The waiver, said the court, was overly broad and one-sided because it used the phrase "...without regard to fault...," which is not clear and could be interpreted to include intentional or

reckless conduct, not just negligence. The waiver, said the court, did not provide the signer with adequate notice of the waiver's nature and significance, in part because the waiver provision was on a form that served two purposes, to register as a guest and to waive liability. The waiver itself, said the court, was not a conspicuous part of the form; rather, the entire form was of the same color and in capital letters, with only one signature for both purposes. Finally, the court said the waiver is against public policy because the signer was not given an opportunity to bargain over the contents of the waiver.

Justice Patience Roggensack concurred with the opinion but believed that the court put too much emphasis on the inability to negotiate the terms of the waiver, saying that factor should not be a separate reason for finding that an exculpatory provision violated public policy.

Justice Wilcox dissented, saying that the form was very short and clear on its face. To add additional legal language to the form, or to separate it from the registration form, would only cause confusion on the part of the signer. He also disagreed with the requirement that the signer have the ability to bargain,saying that requirement impractical, especially since the court set no standards.

The Application of the "Odd-Lot" Doctrine in Employment Cases

The facts in this case, *Beecher v. LIRC*, 2004 WI 88, 273 Wis 2d. 136, 682 N.W. 2d 29 (2004), are fairly simple. The plaintiff, after working 29 years in a strenuous metal-working job and after two back surgeries, sought a determination that he was permanently disabled. Expert testimony was presented for both sides and the administrative law judge found that the employee was permanently disabled. The Labor and Industry Review Commission (LIRC) reversed the decision, in part because the employee had failed to make enough of an effort to find other work, and this failure meant that the employee did not meet the criteria for being covered under the odd-lot doctrine. That doctrine provides that if an employee shows that he or she is unable to obtain gainful employment because of the work-related impairment and other factors, such as age, training, and education, then the employee has made a prima facie case of permanent and total disability and the burden shifts to the employer to show that the employee could obtain gainful employment. The doctrine says that the prima facie case applies even if the employee can find occasional, part-time employment (an odd-lot job) even with the impairment. The circuit court upheld LIRC and the court of appeals reversed the circuit court decision, saying LIRC improperly applied the odd-lot doctrine.

The supreme court first had to decide what standard it would use to review the LIRC decision. The court held that the court of appeals incorrectly gave LIRC's decision great weight because the odd-lot doctrine is not based on a statute, but rather was created by the courts, and the court retains the power to explain and modify its own precedents without deferring to an agency interpretation of those precedents. The court found that the numerous factors cited by LIRC in its decision should have been considered only in evaluating loss of earnings; they were not part of an evidentiary rule and did not impose a burden of proof on the employee. The odd-lot doctrine, in contrast, was created by the court as an exception to the general rule that permanent total disability awards are based on proof of total disability. Under that doctrine, the court held, the burden of proof shifts to the employer to show employability if the injured employee can show that because of the injury, age, education, and capacity, he or she is unable to secure gainful employment, even if the employee has some residual, insignificant earning capacity. Because LIRC incorrectly interpreted the odd-lot doctrine, the court returned the case to LIRC to redetermine if the employee was permanently and totally disabled.

Chief Justice Abrahamson concurred, but disagreed with the majority opinion that the odd-lot doctrine was created by the court; she argued that the court had been interpreting a statute, not making its own policy.

Justice Bradley concurred, but said the majority should not have decided that the courts created the odd-lot doctrine as judge-made common law without the benefit of briefs and oral argument.

Reasonable Accommodation for Employment of a Person with a Disability

The supreme court was asked in two cases to decide the type of accommodation that an employer must provide for a disabled employee. In *Crystal Lake Cheese Factory v. LIRC*, 2003 WI 106, 264 Wis. 2d 200, 664 N.W. 2d 651 (2003), an employee was severely injured in an auto

accident that was unrelated to her employment and required the use of a wheelchair. The employee wanted to return to her position as head of a department that weighted, cut, packed, labeled, and prepared cheese for shipment. All four of the people in the department were trained to assist the other department employees. The employer's consultant determined that the employer could not create reasonable accommodations that would allow the employee to do the job she had before the accident. The employee's consultant disagreed and the employee filed a charge of discrimination on the basis of disability when the employer refused to reinstate her. The administrative law judge determined that no reasonable accommodations could be made without imposing a hardship on the employer. The Labor and Industry Review Commission (LIRC) reversed the hearing decision, requiring the employer to modify the duties of the employee as part of the accommodation for the employee's disability, and its decision was upheld by the circuit court and court of appeals.

The supreme court gave great weight to LIRC's decision and said that it should be set aside only if LIRC's action depended on findings of fact that were not supported by substantial evidence. The court noted that once a disability is proved, the burden shifts to the employer to show that even if reasonable accommodations were provided, the employee would not be able to perform the duties of the job, or that the necessary accommodations to allow the employee to perform the duties of the job would create a hardship on the employer.

The court upheld LIRC's decision, finding that the employer discriminated by not modifying the duties of the employee as part of the accommodation for her disability. The court also found that the employer could have accommodated the employee without hardship, because there was credible testimony that coworkers could do the duties the employee could not and because the employee infrequently performed the duties which she was now unable to perform.

Justice Prosser dissented, saying that the majority misinterpreted the statute and used the wrong standard of review because LIRC had been inconsistent regarding its interpretation of this issue.

The second case, *Hutchinson Technology, Inc. v. LIRC*, 2004 WI 90, 273 Wis 2d 394, 682 N.W. 2d 717 (2004), expanded on the discussion of the type of accommodation that an employer must make for a person with a disability. The employee in this case had lower back pain that allowed her to work only eight of the full 12-hour shifts that the employer required. The employer terminated her when she could not return to 12-hour shifts that all other employees worked. The administrative law judge, LIRC, the circuit court and the court of appeals found for the employee.

As in the Crystal Lake case, the court had to decide if the employer could accommodate the employee's disability so that the injured employee could continue at the job without creating a hardship for the employer. Again, the court found that the employer did not meet its burden of proving that no reasonable accommodation could be made since the employee was willing and able to work eight-hour shifts and the employer did not present any evidence as to how this would create a hardship.

Justice Diane Sykes concurred, saying this case was controlled by the earlier court decision, which she argued was incorrect.

Justice Roggensack dissented, saying that the employer had the right to use 12-hour shifts as an efficient method of manufacturing and the employee in this case cannot be accommodated because she cannot work the required 12 hours. Requiring an employer to adjust its work shifts to accommodate an employee with a disability is a sea change in the law, said Roggensack.

Standard for Board of Adjustment Zoning Variance Decision

The supreme court, in *State ex rel Ziervogel v. Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 546, 676 N.W. 2d 401 (2004), overturned an earlier supreme court case that held that all requests for zoning variances must meet the burden of proving that without the variance, the property owner would have no reasonable use of the property. In this case, the owners of lake property requested a variance from the county zoning ordinance to expand their home with a vertical addition. The variance was denied because they had a home on the property, so they could not meet the no reasonable use burden.

The supreme court noted that state law authorizes boards of adjustment to grant variances to allow some flexibility, avoid the taking of a person's property, balance the public interest of zoning compliance with the private interest of individuals, and allow relief from the strict enforce-

ment of zoning where individual injustice may otherwise occur. The statute gives boards discretion to consider the conditions that are unique to the property, not to the property owner.

After reviewing the difference between an area variance and a use variance, where the property owner wants to use the property in a way that is inconsistent with the type of zoning allowed, the court overruled its previous decision as it applied to an area variance. The court said,"Application of the 'no reasonable use' standard to area variances overwhelms all other considerations in the analysis, rendering irrelevant any inquiry into the uniqueness of the property, the purpose of the ordinance, and the effect of the variance on the public interest." (p. 567)

The court held that in area variance cases, the standard is unnecessary hardship, which depends on the purpose of the zoning ordinance in question, the effect of the zoning ordinance on the particular property involved, and the effect of the variance on the neighborhood and public interest. The court said that the hardship must be unique to the property and not created by the owner, and that the burden of proving the hardship rests with the property owner.

In *State v. Waushara County Board of Adjustment,* 2004 WI 56, 271 Wis. 2d 530, 679 N.W. 2d 514 (2004), another variance case involving an addition to lake property, the supreme court clarified the standard that the board of adjustment must use to determine whether to grant a variance. The court held that the board must focus on the purpose of the ordinance that established the zoning and grant a variance if enforcement would unreasonably prevent an owner from using the property for a permitted purpose. The court concluded that the facts of each case should be analyzed in light of the ordinance's purpose and the board should have flexibility to determine if strict compliance with the ordinance would create unnecessary hardship.

Justice Bradley dissented, saying that the *Waushara* decision sacrifices the constitutionally protected public trust rights that all citizens have in the navigable waters of the state.

Subpoena of Legislative Electronic Data

This case discusses the extent to which a John Doe criminal investigation can gain access to the electronic records of the legislature. This is one of those rare cases where a state agency, the Legislative Technology Services Bureau (LTSB), petitioned the supreme court for a supervisory writ against a John Doe judge. The case, *In the matter of a John Doe Proceeding v. Wisconsin*, 2004 WI 65, 272 Wis. 2d 208, 680 N.W. 2d 792 (2004), involved a subpoena issued by the judge in the John Doe proceeding seeking access to all of the electronic data of the legislature in the custody of LTSB as part of an investigation into alleged criminal conduct involving the legislative political caucuses. The court first reviewed the powers and duties of a judge in a John Doe proceeding, noting that the judge has the power to issue subpoenas but does not have the power to grant immunity or to "...ferret out crime wherever he or she thinks it might exist." (p.)

The court was presented with a number of arguments on behalf of LTSB for refusing to provide the data. The court held that merely because LTSB is required to maintain the confidential nature of the data does not create a privilege and does not excuse it from complying with a valid subpoena for documents to investigate a crime. The court was also urged to deny the subpoena because to allow it would violate the constitutional provision prohibiting liability in any civil or criminal action for words spoken by legislators in debate. The court stated that it could not determine from the record if the allegations involved the duties that legislators were elected to perform. Even if the allegations did involve those duties, said the court, that immunity applies only to the use of the information for prosecution, not to maintaining the secrecy of the communication. The court recognized that this constitutional immunity applies to all of the duties of a legislator, not just speech on the floor of the house, but stated that it does not provide a "...safe haven for a legislator who has committed a criminal or an unconstitutional act...". (p.)

In response to the argument that the data should not be disclosed because to do so would violate the separation of powers, the court noted that the subpoena did not attempt to change the way the legislature functioned, only to determine if a crime had been committed. The employees of the legislature are not immune from criminal prosecution; to do so would usurp the role of the executive branch in executing the law and prosecuting crime. The court also held that the courts will not decide whether the legislature adhered to its internal rules of governance because the legislature is free to repeal any of its rules at any time, and failure to obey one of its own rules is an ad hoc repeal of that rule. But the court held that the provision giving LTSB authority to maintain the confidential nature of legislative electronic data has nothing to do with the process of legisla-

tion or how it determines the qualifications of its members. In addition, said the court, the confidential nature of the communication will be maintained until the legislator or staff member is heard by the judge on the merits of any claim regarding the nature of a specific communication.

The court ultimately denied the subpoena because it was overbroad and in violation of the Fourth Amendment to the U.S. Constitution, which prohibits unreasonable searches. The court noted that the subpoena was much like the general warrant that is prohibited by the Fourth Amendment, because it asked for all data in the custody of LTSB without any limit as to time or nature. This could amount, said the court, to the equivalent of millions of pages of documents. Based on these findings, the court held that the request for all electronic data of an entire branch of government for an unlimited period, without specifying the topics or types of documents in which evidence of a crime could be found, was overly broad.

Chief Justice Abrahamson concurred in the opinion but was concerned that the majority opinion failed to give significant guidance to litigants and the John Doe judge. In addition, the chief justice said that the discussion of the Fourth Amendment was unnecessary and was not based on any arguments briefed by the parties.

What is a Trial?

This case, *City of Pewaukee v. Carter*, 2004 WI 136, 271 Wis 2d 108 (2004), required the supreme court to determine when a trial occurs. As the court said, "Defining the word 'trial' would not seem to present a particularly difficult task, and in the abstract, it is not difficult." But this case ended up in the Wisconsin Supreme Court because there was no agreed-upon definition of its meaning.

The case involved a traffic accident resulting from the defendant operating a motor vehicle while intoxicated. In municipal court, the city presented three witnesses and documentary evidence regarding the violation but was not able to use the defendant's blood test because the officer who had taken the blood was not available to testify. The city rested its case and the defendant, instead of presenting any evidence, moved to dismiss the action on the ground that the city had failed to meet its burden of proof. The motion was granted and the city requested a new trial in circuit court under a statute that allows either party to request a new trial.

Both the circuit court and the court of appeals denied the city's request, saying that there could not be a new trial because there had not been a trial at the municipal court. The supreme court reviewed extrinsic sources, including Black's Law Dictionary and cases from other states, to determine if a trial had been held, and concluded that the court of appeals had incorrectly decided that a trial had not been held. The court held that to determine if there has been a trial, the courts should focus on the substance of the proceeding and on indicators of a trial, including whether the proceeding began with pleadings, whether it took place in court before a judge, whether the parties were present, whether evidence was introduced, and whether a decision was rendered on the evidence.

An earlier case relied upon by the defendant, said the court, did not involve a trial at the municipal court because a motion to dismiss the case was made before the introduction of any evidence or the swearing in of any witnesses. This case, in contrast, included the presentation of witnesses, cross examination, and the introduction of documentary evidence. The defendant, said the court, had the opportunity to present evidence, rest his case, or move for dismissal. Based on the evidence presented, the municipal court issued a dismissal.

The supreme court specifically withdrew the language in the earlier-cited decision that required that a case be "fully litigated" or that there be a "full trial" at the municipal court before allowing another trial at the circuit court. The legislative history, said the court, does not support the position that "...allowing a new trial in circuit court when a municipality fails to meet its burden of proof in municipal court defeats the legislative objective of limiting new trials in circuit court." (p.) The court concluded that there was a trial at the municipal court so the city had the right to a new trial at the circuit court.

When is an Agent Really an Agent for the Service of a Summons

This case presents a dilemma for those persons who attempt to serve a person in a civil action by serving the agent of that person. In *Mared v. Mansfield*, 2005 WI 5,_________, 690 N.W. 2d 835 (2005), a process server attempted to serve a summons on Mansfield at his place of business.

The receptionist referred the process server to another employee, who said he was authorized to accept the service of the summons. Upon asking again to serve Mansfield, the employee insisted that he was authorized to accept service, so the process server left the summons with that employee. Later, when attempting to reopen the default judgment in the action, Mansfield stated that his employee did not have authority to accept service. The circuit court reopened the default judgment, and after finding that the service was not made on Mansfield or on a competent person at his abode, dismissed the action for lack of personal jurisdiction on Mansfield because of ineffective service. The court of appeals reversed.

The supreme court reviewed the statute, which said that service may be effective by serving the summons upon the defendant or upon an agent authorized by appointment or by law to accept service. Thus, the question was whether the service was on an agent authorized to accept service. The service of the summons is a condition necessary to obtain personal jurisdiction and must be done correctly to ensure that the person is aware that an action is being started.

The court of appeals determined that only the apparent authority of the agent to accept service is necessary, not actual authority; otherwise, a process server could never be sure that service was effective if a person said he or she was a person's agent. The supreme court rejected this argument, citing other statutes that allow service on a person who is "apparently in charge." If the legislature wanted to allow an apparent agent to accept service, the court said, the legislature would have included that language.

The court went on to conclude that in this case, although the process server had a reasonable belief that the person was an agent, that belief was insufficient. Service of process creates personal jurisdiction and subjects a person to the decision of a court, so actual authority to accept service is necessary. The principal, said the court, must have established an explicit agency agreement, which was not true in this case. The court noted that this case illustrated how risky it is to attempt to serve a defendant's agent.