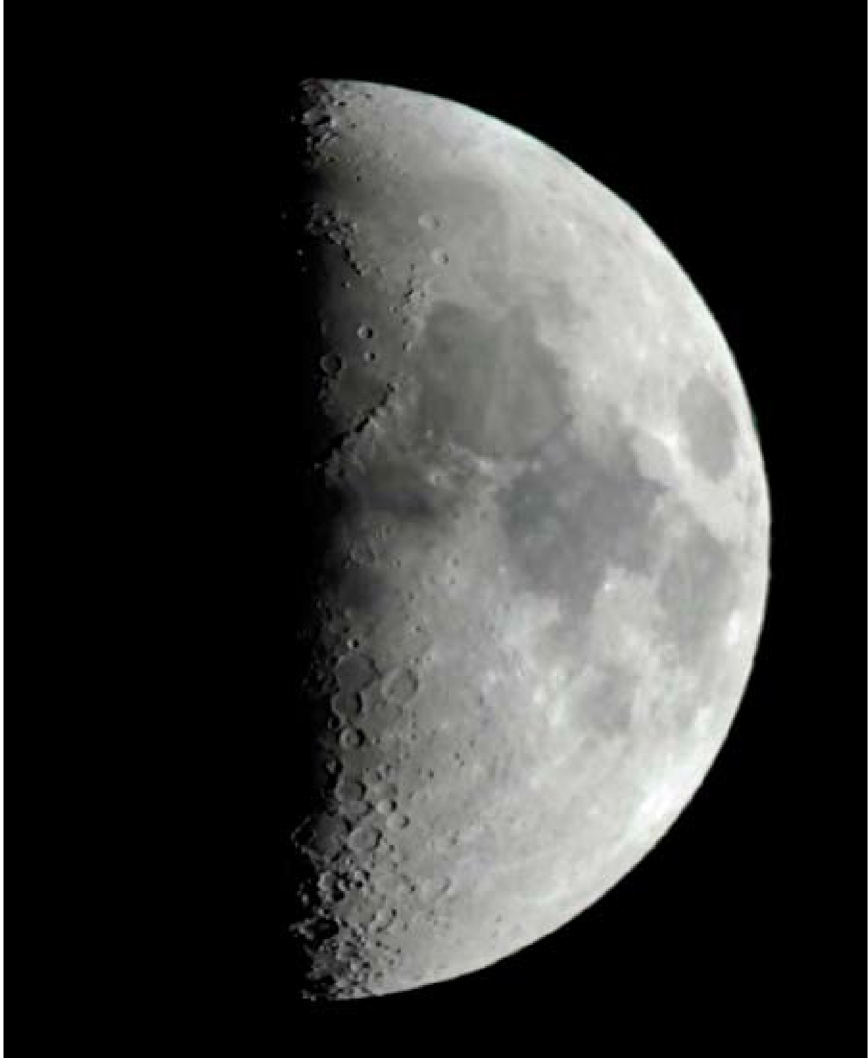
Judicial Branch

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

First Quarter Moon



(Brian Lockett, Goleta Air & Space Museum)

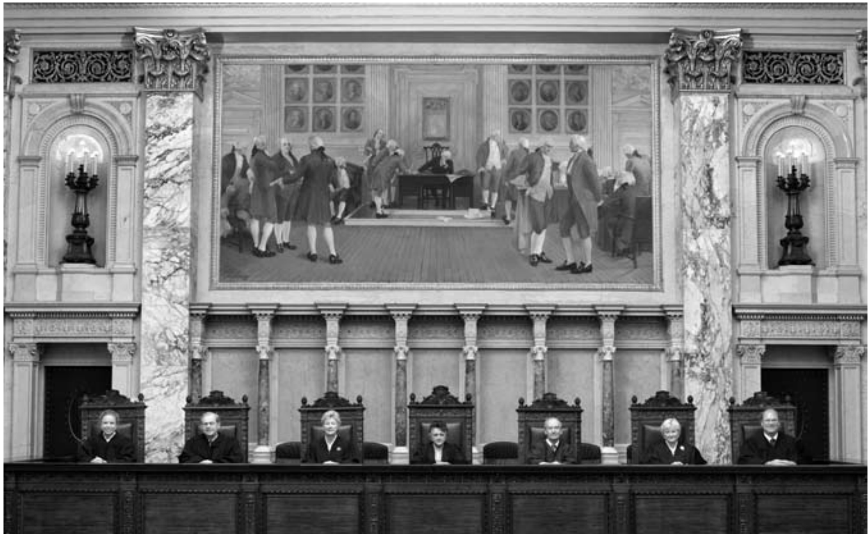
WISCONSIN SUPREME COURT

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	2009**
Ann Walsh Bradley	1995	August 1995	2015
N. Patrick Crooks	1996	August 1996	2016
David T. Prosser, Jr.	1998*	August 2001	2011
Patience Drake Roggensack	2003	August 2003	2013
Annette K. Ziegler	2007	August 2007	2017
Michael J. Gableman	2008	August 2008	2018

*Initially appointed by the governor.

**Chief Justice Abrahamson was reelected to a new term beginning August 1, 2009 and expiring July 31, 2019.

Source: Director of State Courts, departmental data, April 2009.



The justices of the Supreme Court typically hear cases in the East Wing of the State Capitol. The room is decorated with four murals depicting the evolution of Wisconsin law. Above the justices is Albert Herter's depiction of the signing of the U.S. Constitution. Seated, from left to right, are Justice Annette K. Ziegler, Justice David T. Prosser, Jr., Justice Ann Walsh Bradley, Chief Justice Shirley S. Abrahamson, Justice N. Patrick Crooks, Justice Patience D. Roggensack, and Justice Michael J. Gableman. *(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, Florence-Forest, and Menominee-Shawano), 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 August 1, 2009, Wisconsin had a combined total of 248 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. There are more than 200 municipal courts in Wisconsin. 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, except in cases involving an equitable action, such as a divorce action. In civil actions, unless a party demands a jury trial and pays the required fee, 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 official, 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, generally 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, in the case of a warrant, 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 is usually set at this time. 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 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").

Following further pretrial proceedings, if a plea agreement is not reached, the case goes 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. In a felony case the court may order a presentence investigation before pronouncing sentence.

In a criminal case, the jury's verdict to convict the defendant must be unanimous. If not, the defendant is acquitted (cleared of the charge) or, if the jury is unable to reach a unanimous verdict, the court may declare a mistrial and the prosecutor may seek a new trial. 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 were established by Article VII of the state constitution when Wisconsin gained statehood 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.

SUPREME COURT

Chief Justice: SHIRLEY S. ABRAHAMSON
Justices: ANN WALSH BRADLEY
N. PATRICK CROOKS
DAVID T. PROSSER, JR.
PATIENCE DRAKE ROGGENSACK
ANNETTE K. ZIEGLER
MICHAEL J. GABLEMAN

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: www.wicourts.gov

Clerk of Supreme Court: DAVID R. SCHANKER, 266-1880, Fax: 267-0640.

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

Number of Positions: 38.50.

Total Budget 2007-09: $9,731,800.

Constitutional References: Article VII, Sections 2-4, 9-13, and 24.

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.

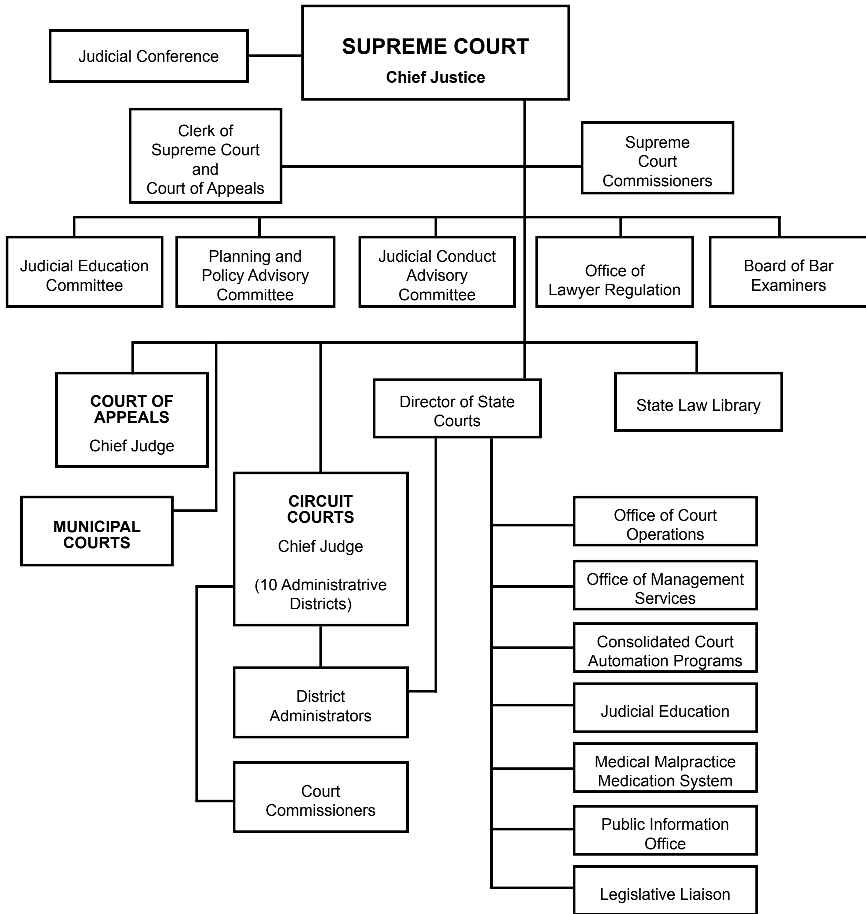
The supreme court does not take testimony. Instead, it decides cases on the basis of written briefs and oral argument. It is required by statute to deliver its decisions in writing, and it may publish them in the *Wisconsin Reports* as it deems appropriate.

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 2009 is $144,495. The chief justice receives $152,495.

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.



Independent Bodies: Judicial Commission; Judicial Council
Associated unit: State Bar of Wisconsin

COURT OF APPEALS

Judges: *District I:* KITTY B. BRENNAN (2015)
PATRICIA S. CURLEY* (2014)
RALPH ADAM FINE (2012)
JOAN F. KESSLER (2010)
District II: DANIEL P. ANDERSON* (2013)
RICHARD S. BROWN** (2012)
LISA S. NEUBAUER (2014)
HARRY G. SNYDER (2010)
District III: EDWARD R. BRUNNER (2013)
MICHAEL W. HOOVER* (2015)
GREGORY PETERSON (2011)
District IV: BURNIE BRIDGE (2014)
CHARLES P. DYKMAN (2010)
PAUL B. HIGGINBOTHAM* (2011)
PAUL LUNDSTEN (2013)
MARGARET J. VERGERONT (2012)

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: DAVID R. SCHANKER, 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: www.wicourts.gov/about/organization/appeals/index.htm

Number of Positions: 75.50.

Total Budget 2007-09: $19,264,000.

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 2009 is $136,316.

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, judicial assistants, 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

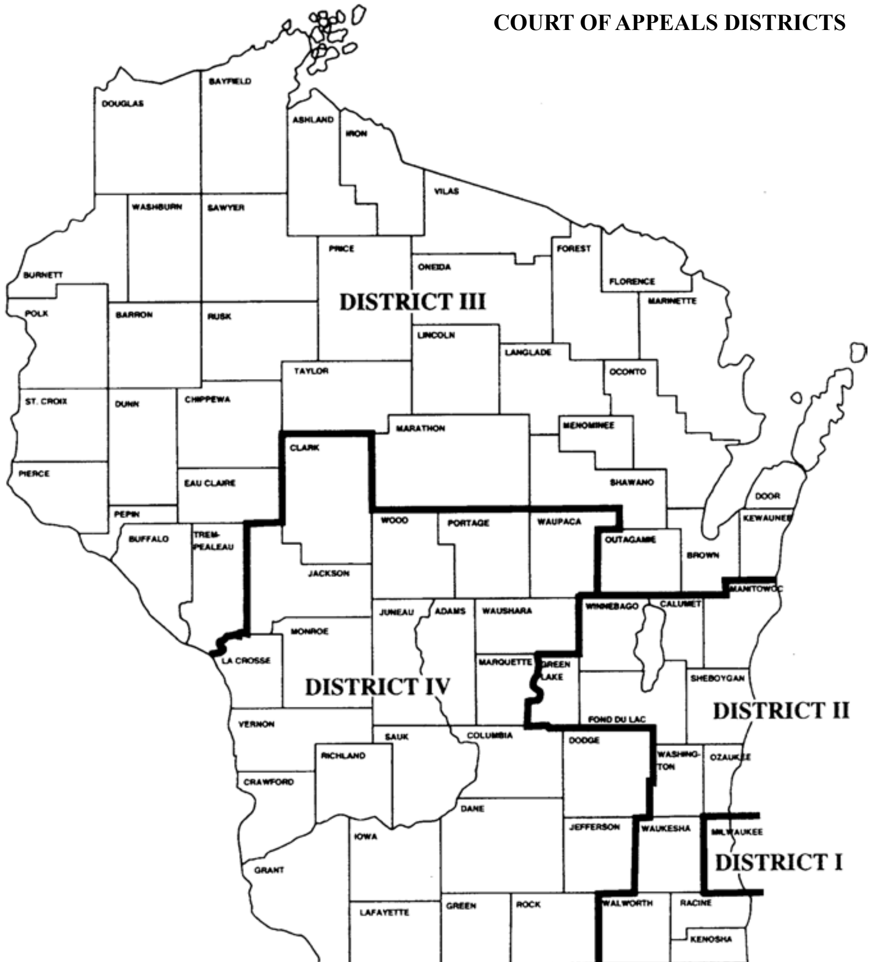
opinions have precedential value and may be cited as controlling law in Wisconsin. Unpublished opinions that are authored by a judge and issued after July 1, 2009, may be cited for their persuasive value.

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: JEFFREY KREMERS.

Administrator: BRUCE HARVEY.

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

Chief Judge: MARY K. WAGNER.

Administrator: vacancy.

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

Chief Judge: J. MAC DAVIS.

Administrator: MICHAEL NEIMON.

District 4: 404 North Main Street, Suite 105, Oshkosh 54901-4901. Telephone: (920) 424-0028; Fax: (920) 424-0096.

Chief Judge: DARRYL W. DEETS.

Administrator: JERRY LANG.

District 5: Dane County Courthouse, 215 South Hamilton Street, Madison 53703-3290. Telephone: 267-8820; Fax: 267-4151.

Chief Judge: C. WILLIAM FOUST.

Administrator: GAIL RICHARDSON.

District 6: 3317 Business Park Drive, Suite A, Stevens Point 54481-8834. Telephone: (715) 345-5295; Fax: (715) 345-5297.

Chief Judge: JOHN STORCK.

Administrator: RON LEDFORD.

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: WILLIAM DYKE.

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: SUE BISCHEL.

Administrator: H. BRITT BEASLEY.

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

Chief Judge: GREGORY GRAU.

Administrator: SUSAN BYRNES.

District 10: 4410 Golf Terrace, Suite 150, Eau Claire 54701-3606. Telephone: (715) 839-4826; Fax: (715) 839-4891.

Chief Judge: BENJAMIN PROCTOR.

Administrator: SCOTT JOHNSON.

Internet Address: www.wicourts.gov/about/organization/circuit/index.htm

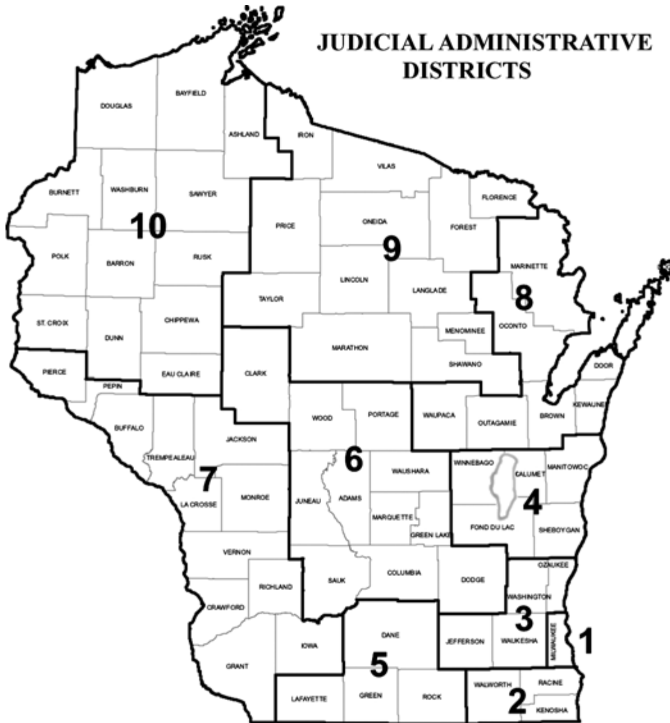
State-Funded Positions: 521.00.

Total Budget 2007-09: $178,758,300.

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

Statutory Reference: Chapter 753.

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, 39 of the state's 69 judicial circuits had multiple branches as of August 1, 2008, for a total of 246 circuit judgeships, and effective August 1, 2009, 40 of the circuits have multiple branches for a total of 248 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 2009 is $128,600. 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.

Dodge County Circuit Court Judge John R. Storck, right, discusses appellate court procedure with District IV Court of Appeals Judges Margaret J. Vergeront and Paul Lundsten. Storck, chief judge of the Sixth Judicial Administrative District, temporarily sat on the District IV bench as part of the Supreme Court's Judicial Exchange Program. Established by Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson in 1996, the Judicial Exchange offers judges the opportunity to better understand each others' roles. *(Tom Sheehan, Court Information Officer)*

JUDGES OF CIRCUIT COURT
June 1, 2009

County Circuits	Court Location	Judges	Term Expires July 31
Adams	Friendship	Charles A. Pollex[1]	2009
Ashland	Ashland	Robert E. Eaton	2012
Barron			
Branch 1	Barron	James C. Babler	2010
Branch 2	Barron	Timothy M. Doyle	2014
Branch 3	Barron	James D. Babbitt	2014
Bayfield	Washburn	John P. Anderson[1]	2009
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder[1]	2009
Branch 2	Green Bay	Mark A. Warpinski	2012
Branch 3	Green Bay	Susan Bischel	2010
Branch 4	Green Bay	Kendall M. Kelley[1]	2009
Branch 5	Green Bay	Marc A. Hammer[1,2]	2009
Branch 6	Green Bay	John D. McKay[1]	2009
Branch 7	Green Bay	Timothy A. Hinkfuss	2013
Branch 8	Green Bay	William M. Atkinson[1]	2009
Buffalo-Pepin	Alma	James J. Duvall	2012
Burnett	Siren	Kenneth Kutz[1,2]	2009
Calumet	Chilton	Donald A. Poppy	2010
Chippewa			
Branch 1	Chippewa Falls	Roderick A. Cameron	2014
Branch 2	Chippewa Falls	vacancy[3]	—
Branch 3	Chippewa Falls	Steven R. Cray	2014
Clark	Neillsville	Jon M. Counsell	2012
Columbia			
Branch 1	Portage	Daniel S. George[1]	2009
Branch 2	Portage	James O. Miller	2011
Branch 3	Portage	Alan White	2013
Crawford	Prairie du Chien	Michael T. Kirchman	2013
Dane			
Branch 1	Madison	John Markson	2014
Branch 2	Madison	Maryann Sumi	2011
Branch 3	Madison	John C. Albert	2012
Branch 4	Madison	Steven D. Ebert	2010
Branch 5	Madison	Diane M. Nicks	2013
Branch 6	Madison	Shelley J. Gaylord[1]	2009
Branch 7	Madison	William E. Hanrahan	2014
Branch 8	Madison	Patrick J. Fiedler	2012
Branch 9	Madison	Richard Niess	2011
Branch 10	Madison	Juan B. Colas[1,2]	2009
Branch 11	Madison	Daniel R. Moeser[1]	2009
Branch 12	Madison	David T. Flanagan	2012
Branch 13	Madison	Michael Nowakowski[4]	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	Brian A. Pfitzinger	2014
Branch 2	Juneau	John R. Storck	2013
Branch 3	Juneau	Andrew P. Bissonnette	2013
Branch 4	Juneau	Steven Bauer	2014
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2012
Branch 2	Sturgeon Bay	Peter C. Diltz	2012
Douglas			
Branch 1	Superior	Michael T. Lucci[5]	2009
Branch 2	Superior	George L. Glonek[1]	2009
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2010
Branch 2	Menomonie	Rod W. Smeltzer[1]	2009
Eau Claire			
Branch 1	Eau Claire	Lisa K. Stark	2012
Branch 2	Eau Claire	Michael Schumacher	2014
Branch 3	Eau Claire	William M. Gabler	2012
Branch 4	Eau Claire	Benjamin D. Proctor	2012
Branch 5	Eau Claire	Paul J. Lenz	2012
Florence-Forest	Crandon	Leon D. Stenz	2014
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2014
Branch 2	Fond du Lac	Peter L. Grimm	2010
Branch 3	Fond du Lac	Richard J. Nuss[1]	2009
Branch 4	Fond du Lac	Steven W. Weinke	2010
Branch 5	Fond du Lac	Robert J. Wirtz	2011
Forest (see *Florence-Forest*)			
Grant			
Branch 1	Lancaster	Robert P. VanDeHey	2011
Branch 2	Lancaster	George S. Curry[6]	2009
Green			
Branch 1	Monroe	Jim Beer[1]	2009
Branch 2	Monroe	newly created branch[7]	—
Green Lake	Green Lake	William M. McMonigal	2011
Iowa	Dodgeville	William D. Dyke	2010

JUDGES OF CIRCUIT COURT
June 1, 2009–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Iron	Hurley	Patrick John Madden	2011
Jackson	Black River Falls	Thomas Lister[1,2]	2009
Jefferson			
Branch 1	Jefferson	John M. Ullsvik[8]	2009
Branch 2	Jefferson	William F. Hue	2013
Branch 3	Jefferson	Jacqueline R. Erwin[1]	2009
Branch 4	Jefferson	Randy R. Koschnick	2011
Juneau			
Branch 1	Mauston	John Pier Roemer	2010
Branch 2	Mauston	Paul S. Curran	2014
Kenosha			
Branch 1	Kenosha	David Mark Bastianelli[1]	2009
Branch 2	Kenosha	Barbara A. Kluka	2013
Branch 3	Kenosha	Bruce E. Schroeder	2014
Branch 4	Kenosha	Anthony Milisauskas	2011
Branch 5	Kenosha	Wilbur W. Warren III[1]	2009
Branch 6	Kenosha	Mary K. Wagner[1]	2009
Branch 7	Kenosha	S. Michael Wilk	2012
Branch 8	Kenosha	newly created branch[9]	—
Kewaunee	Kewaunee	Dennis J. Mleziva	2010
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez	2013
Branch 2	La Crosse	Elliott Levine	2013
Branch 3	La Crosse	Todd Bjerke	2013
Branch 4	La Crosse	Scott L. Horne	2013
Branch 5	La Crosse	Dale T. Pasell	2011
Lafayette	Darlington	William D. Johnston[1]	2009
Langlade	Antigo	Fred W. Kawalski	2011
Lincoln			
Branch 1	Merrill	Jay R. Tlusty	2010
Branch 2	Merrill	Glenn H. Hartley	2011
Manitowoc			
Branch 1	Manitowoc	Patrick L. Willis	2010
Branch 2	Manitowoc	Darryl W. Deets	2013
Branch 3	Manitowoc	Jerome L. Fox	2011
Marathon			
Branch 1	Wausau	vacancy[10]	—
Branch 2	Wausau	Gregory Huber	2010
Branch 3	Wausau	Vincent K. Howard	2014
Branch 4	Wausau	Gregory Grau	2013
Branch 5	Wausau	Patrick Brady	2011
Marinette			
Branch 1	Marinette	David G. Miron	2014
Branch 2	Marinette	Tim A. Duket	2014
Marquette	Montello	Richard O. Wright	2013
Menominee-Shawano			
Branch 1	Shawano	James R. Habeck	2014
Branch 2	Shawano	Thomas G. Grover	2013
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	2011
Branch 2	Milwaukee	Joe Donald[1]	2009
Branch 3	Milwaukee	Clare L. Fiorenza[1]	2009
Branch 4	Milwaukee	Mel Flanagan	2012
Branch 5	Milwaukee	Mary Kuhnmuench	2010
Branch 6	Milwaukee	Ellen Brostrom[11]	2009
Branch 7	Milwaukee	Jean W. DiMotto[1]	2009
Branch 8	Milwaukee	William Sosnay	2012
Branch 9	Milwaukee	Paul R. Van Grunsven	2011
Branch 10	Milwaukee	Timothy G. Dugan	2011
Branch 11	Milwaukee	Dominic S. Amato	2013
Branch 12	Milwaukee	David L. Borowski[1]	2009
Branch 13	Milwaukee	Mary Triggiano	2011
Branch 14	Milwaukee	Christopher R. Foley	2010
Branch 15	Milwaukee	J.D. Watts[11]	2009
Branch 16	Milwaukee	Michael J. Dwyer[1]	2009
Branch 17	Milwaukee	Francis Wasielewski	2014
Branch 18	Milwaukee	Patricia D. McMahon	2011
Branch 19	Milwaukee	Dennis R. Cimpl	2011
Branch 20	Milwaukee	Dennis P. Moroney	2012
Branch 21	Milwaukee	William Brash III	2014
Branch 22	Milwaukee	Timothy M. Witkowiak[1]	2009
Branch 23	Milwaukee	Elsa C. Lamelas	2012
Branch 24	Milwaukee	Charles F. Kahn, Jr.	2010
Branch 25	Milwaukee	Stephanie Rothstein[2]	2010
Branch 26	Milwaukee	William Pocan	2013
Branch 27	Milwaukee	Kevin E. Martens	2014
Branch 28	Milwaukee	Thomas R. Cooper	2012
Branch 29	Milwaukee	Richard J. Sankovitz[1]	2009
Branch 30	Milwaukee	Jeffrey A. Conen[1]	2009
Branch 31	Milwaukee	Daniel A. Noonan	2014
Branch 32	Milwaukee	Michael D. Guolee	2014
Branch 33	Milwaukee	Carl Ashley	2011
Branch 34	Milwaukee	Glen H. Yamahiro	2010

JUDGES OF CIRCUIT COURT
June 1, 2009–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Branch 35	Milwaukee	Frederick C. Rosa	2011
Branch 36	Milwaukee	Jeffrey A. Kremers	2011
Branch 37	Milwaukee	Karen Christenson	2010
Branch 38	Milwaukee	Jeffrey A. Wagner	2012
Branch 39	Milwaukee	Jane Carroll	2012
Branch 40	Milwaukee	Rebecca Dallett	2014
Branch 41	Milwaukee	John J. DiMotto	2014
Branch 42	Milwaukee	David A. Hansher[1]	2009
Branch 43	Milwaukee	Marshall B. Murray	2012
Branch 44	Milwaukee	Daniel L. Konkol	2010
Branch 45	Milwaukee	Thomas P. Donegan	2010
Branch 46	Milwaukee	Bonnie L. Gordon	2012
Branch 47	Milwaukee	John Siefert	2011
Monroe			
Branch 1	Sparta	Todd L. Ziegler	2013
Branch 2	Sparta	Michael J. McAlpine	2010
Oconto			
Branch 1	Oconto	Michael T. Judge	2011
Branch 2	Oconto	Richard D. Delforge	2010
Oneida			
Branch 1	Rhinelander	Patrick F.O'Melia	2014
Branch 2	Rhinelander	Mark A. Mangerson	2012
Outagamie			
Branch 1	Appleton	Mark McGinnis	2011
Branch 2	Appleton	Nancy J. Krueger	2014
Branch 3	Appleton	Mitchell J. Metropulos	2014
Branch 4	Appleton	Harold V. Froehlich	2012
Branch 5	Appleton	Michael W. Gage[1]	2009
Branch 6	Appleton	Dee R. Dyer	2012
Branch 7	Appleton	John A. Des Jardins	2012
Ozaukee			
Branch 1	Port Washington	Paul V. Malloy[1]	2009
Branch 2	Port Washington	Thomas R. Wolfgram	2013
Branch 3	Port Washington	Sandy A. Williams[11]	2009
Pepin (see *Buffalo-Pepin*)			
Pierce	Ellsworth	Robert W. Wing	2010
Polk			
Branch 1	Balsam Lake	Molly E. GaleWyrick	2014
Branch 2	Balsam Lake	Robert H. Rasmussen[1]	2009
Portage			
Branch 1	Stevens Point	Frederic W. Fleishauer	2011
Branch 2	Stevens Point	John V. Finn	2013
Branch 3	Stevens Point	Thomas T. Flugaur	2012
Price	Phillips	Douglas T. Fox	2014
Racine			
Branch 1	Racine	Gerald P. Ptacek	2013
Branch 2	Racine	Stephen A. Simanek	2010
Branch 3	Racine	Emily S. Mueller	2011
Branch 4	Racine	John S. Jude	2010
Branch 5	Racine	Dennis J. Barry	2011
Branch 6	Racine	Wayne J. Marik[1]	2009
Branch 7	Racine	Charles H. Constantine	2014
Branch 8	Racine	Faye M. Flancher[1]	2009
Branch 9	Racine	Allan B. Torhorst[1]	2009
Branch 10	Racine	Richard J. Kreul	2012
Richland	Richland Center	Edward E. Leineweber[1]	2009
Rock			
Branch 1	Janesville	James P. Daley	2014
Branch 2	Janesville	Alan Bates	2010
Branch 3	Janesville	Michael Fitzpatrick[1,2]	2009
Branch 4	Beloit	Daniel T. Dillon	2013
Branch 5	Beloit	Kenneth Forbeck[1,2]	2009
Branch 6	Janesville	Richard T. Werner[1]	2009
Branch 7	Beloit	James E. Welker	2012
Rusk	Ladysmith	Frederick A. Henderson	2010
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2014
Branch 2	Hudson	Edward F. Vlack III	2013
Branch 3	Hudson	Scott R. Needham	2012
Branch 4	Hudson	Howard Cameron	2014
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2012
Branch 2	Baraboo	James Evenson	2010
Branch 3	Baraboo	Guy D. Reynolds	2012
Sawyer	Hayward	Norman L. Yackel[12]	2009
Shawano-Menominee (see *Menominee-Shawano*)			
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel[1]	2009
Branch 2	Sheboygan	Timothy M. Van Akkeren	2013
Branch 3	Sheboygan	Gary J. Langhoff	2011
Branch 4	Sheboygan	Terence T. Bourke[1]	2009
Branch 5	Sheboygan	James J. Bolgert	2012
Taylor	Medford	Ann Knox-Bauer[1,2]	2009

JUDGES OF CIRCUIT COURT
June 1, 2009–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Trempealeau	Whitehall	John A. Damon	2013
Vernon	Viroqua	Michael J. Rosborough	2011
Vilas	Eagle River	Neal A. Nielsen	2010
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2012
Branch 2	Elkhorn	James L. Carlson	2010
Branch 3	Elkhorn	John R. Race[1]	2009
Branch 4	Elkhorn	Michael S. Gibbs	2010
Washburn	Shell Lake	Eugene D. Harrington[1]	2009
Washington			
Branch 1	West Bend	Patrick J. Faragher	2013
Branch 2	West Bend	James K. Muehlbauer	2014
Branch 3	West Bend	David C. Resheske	2012
Branch 4	West Bend	Andrew T. Gonring	2012
Waukesha			
Branch 1	Waukesha	Michael O. Bohren	2013
Branch 2	Waukesha	Richard Congdon[2]	2010
Branch 3	Waukesha	Ralph M. Ramirez	2011
Branch 4	Waukesha	Paul F. Reilly[1]	2009
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2014
Branch 6	Waukesha	Patrick C. Haughney	2014
Branch 7	Waukesha	J. Mac Davis[1]	2009
Branch 8	Waukesha	James R. Kieffer[1]	2009
Branch 9	Waukesha	Donald J. Hassin, Jr.	2013
Branch 10	Waukesha	Linda M. Van De Water[1]	2009
Branch 11	Waukesha	Robert G. Mawdsley	2012
Branch 12	Waukesha	Kathryn W. Foster	2012
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	2011
Branch 2	Waupaca	John P. Hoffmann	2010
Branch 3	Waupaca	Raymond S. Huber	2012
Waushara	Wautoma	Guy Dutcher	2011
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2012
Branch 2	Oshkosh	Scott C. Woldt	2011
Branch 3	Oshkosh	Barbara Hart Key	2010
Branch 4	Oshkosh	Karen L. Seifert	2012
Branch 5	Oshkosh	William H. Carver	2010
Branch 6	Oshkosh	Bruce K. Schmidt[1]	2009
Wood			
Branch 1	Wisconsin Rapids	Gregory J. Potter	2014
Branch 2	Wisconsin Rapids	James M. Mason	2010
Branch 3	Wisconsin Rapids	Edward F. Zappen, Jr.[13]	2009

[1]Reelected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[2]Appointed by the governor.
[3]James Isaacson was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[4]Julie Genovese was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[5]Kelly J. Thimm was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[6]Craig R. Day was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[7]Thomas J. Vale was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[8]Jennifer L. Weston was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[9]Chad G. Kerkman was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[10]Jill N. Falstad was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009, then appointed by governor to begin term early.
[11]Newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009, then appointed by governor to begin term early.
[12]Jerry Wright was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.
[13]Todd P. Wolf was newly elected on April 7, 2009, for a 6-year term to commence on August 1, 2009.

Sources: *2007-2008 Wisconsin Statutes*; Government Accountability Board, departmental data, May 2009; Director of State Courts, departmental data, April 2009; governor's appointment notices.

MUNICIPAL COURTS

Constitutional References: Article VII, Sections 2 and 14.

Statutory References: Chapters 755 and 800.

Internet Address: www.wicourts.gov/about/organization/municipal/index.htm

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, 2009, there were 253 municipal courts with 255 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 3 part-time commissioners as of May 2009.) Two or more municipalities may agree to form a joint court, and there are 46 joint courts, serving up to 15 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 surcharges, 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 Officers: AMANDA TODD, 264-6256, amanda.todd@; TOM SHEEHAN, 261-6640, tom.sheehan@

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: www.wicourts.gov

Number of Employees: 132.25.

Total Budget 2007-09: $37,242,400.

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.

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

Fax: 267-2319.

Internet Address: http://wilawlibrary.gov

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

Publications: *WSLL @ Your Service* (e-newsletter), at: http://wilawlibrary.gov/newsletter/index.html

Number of Employees: 16.50.

Total Budget 2007-09: $5,508,000.

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 Legal Resource Center).

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: TERRY ROSE (lawyer), *chairperson;* STEVE KOSZAREK (nonlaywer), *vice chairperson;* BARRETT J. CORNEILLE, MARK A. PETERSON, SCOTT ROBERTS, ALICE A. RUDEBUSCH, THOMAS S. SLEIK, HARVEY WENDEL, vacancy (lawyers); DEANNA M. HOSIN, CLAUDE GILMORE, vacancy (nonlawyers). (All members are appointed by the supreme court.)

Preliminary Review Committee: MICHAEL ANDERSON (lawyer), *chairperson;* GREGORY STACKER (lawyer), *vice chairperson;* ROBERT J. ASTI, TERENCE BOURESSA, JOHN W. CAMPION, DONALD CHRISTL, MICHAEL COHEN, EDWARD HANNAN, JAMES R. SMITH (lawyers); PATRICIA EVANS, CLAIRE FOWLER, MAJID SARMADI, JERRY SAUVE, vacancy (nonlawyers). (All members are appointed by the supreme court.)

Special Preliminary Review Panel: LORI S. KORNBLUM, RUDOLPH L. OLDESCHULTE, MICHAEL S. WEIDEN, JOSEPH J. WELCENBACH (lawyers); JOHN DRIESSEN, LAWRENCE J. QUAM, vacancy (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): JOHN HIGGENS (lawyer), *chairperson;* PATRICK ANDERSON, F. MARK BROMLEY, WILLIAM BRYDGES, ROBERT I. DUMEZ, TIMOTHY GERAGHTY, RAYMOND KREK, MATTHEW S. VIGNALI (lawyers); JOHN G. BRAIG, JEFFREY CASSITY, RANDALL HAMMETT, JEROME HONORE, GERALD PELISHEK (nonlawyers).

District 2 Committee (serves Milwaukee County): THOMAS CABUSH (lawyer), *chairperson;* JULIE A. O'HALLORAN (lawyer), *vice chairperson;* JAMES L. ADASHEK, COLLEEN D. BALL, PATRICIA KLING BALLMAN, ELIOT BERNSTEIN, REBECCA BLEMBERG, MARGARDETTE M. DEMET, ANNELIESE M. DICKMAN, ROBIN DORMAN, JOHN FERNANDES, BRADLEY FOLEY, MICHELE FORD, IRVING D. GAINES, JAMES GEHRKE, JAMES GREER, KENAN J. KERSTEN, R. JEFFREY KRILL, ROBERT C. MENARD, THOMAS MERKLE, ELLEN NOWAK, KEITH O'DONNELL, RAYMOND E.H. SCHRANK, DAVID W. SIMON, FRANK TERSCHAN, KATHERINE WILLIAMS (lawyers); J. STEPHEN ANDERSON, NEILAND COHEN, DONALD G. DORO, PATRICK DOYLE, SHEL GENDELMAN, JEFFREY HANEWALL, BARBARA J. JANUSIAK, ERICA MILLS, HOLLY PAZER, DEEDEE RONGSTAD, WILLIAM WARD (nonlawyers).

District 3 Committee (serves Fond du Lac, Green Lake, and Winnebago Counties): STEVEN R. SORENSON (lawyer), *chairperson;* PETER CULP, KENNARD N. FRIEDMAN, KRISTI L. FRY, SAM KAUFMAN, ELIZABETH J. NEVITT, BETH OSOWSKI, DAVID J. SCHULTZ, TIMOTHY R. YOUNG, JOHN S. ZARBANO (lawyers); SUSAN J. ANDREWS, KRISTY BRADISH, JOHN FAIRHURST, MARY JO KEATING, GARY KNOKE, ELLEN C. SORENSEN, SUSAN T. VETTE (nonlawyers).

District 4 Committee (serves Calumet, Door, Kewaunee, Manitowoc, and Sheboygan Counties): MARK JINKINS (lawyer), *chairperson;* MARY LYNN DONOHUE, ROBERTA A. HECKES, ROBERT LANDRY, SUSAN H. SCHLEISNER, NATASHA TORRY-ABATE (lawyers); ROBERT A. DOBBS, SUSAN M. MCANINCH, DONALD A. SCHWOBE, ALAN WHITE, RICHARD YORK (nonlawyers).

District 5 Committee (serves Buffalo, Clark, Crawford, Jackson, La Crosse, Monroe, Pepin, Richland, Trempealeau, and Vernon Counties): RICHARD A. RADCLIFFE (lawyer), *chairperson;* MICHAEL C. ABLAN, BRUCE J. BROVOLD, JAMES P. CZAJKOWSKI, MARVIN H. DAVIS, STEPHANIE HOPKINS, PAUL B. MILLIS, GEORGE PARKE III, J. DAVID RICE, JON D. SEIFERT (lawyers); ELVIN E. FLEMING, JAMES W. GEISSNER, RICHARD KYTE, PAUL R. LORENZ, DIANE MORRISON, JOHN PARKYN, REED POMEROY, LINDA LEE SONDREAL, LARRY D. WYMAN (nonlawyers).

District 6 Committee (serves Waukesha County): GARY KUPHALL (lawyer), *chairperson;* MARK P. ANDRINGA, COLLEEN MERRILL BROWN, MARTIN DITKOF, JAMES GENDE, ROSEMARY JUNE GORETA, LANCE S. GRADY, MICHAEL JASSAK, ANTHONY J. MENTING, DANIEL MURRAY, ROBYN A. SCHUCHARDT (lawyers); MICHAEL BRANKS, CARLA FRIEDRICH, ROBERT HAMILTON, RAYMOND KLITZKE, SARAH KRUEGER, JOHN SCHATZMAN (nonlawyers).

District 7 Committee (serves Adams, Columbia, Juneau, Marquette, Portage, Sauk, Waupaca, Waushara, and Wood Counties): THOMAS M. KUBASTA (lawyer), *chairperson;* KAYE ANDERSON, KENNETH W. GORSKI, CYNTHIA KIEPER, JOHN KRUSE, LEON SCHMIDT (lawyers); LAVINDA CARLSON, ELLEN M. DAHL, LEO J. GRILL, DAVID A. KORTH, DOROTHY E. MANSAVAGE, LINDA L. REDFIELD, JAMES E. STRASSER (nonlawyers).

District 8 Committee (serves Dunn, Eau Claire, Pierce, and St. Croix Counties): DOUGLAS M. JOHNSON (lawyer), *chairperson;* JAY E. HEIT, ROBERT L. LOBERG, CAROL N. SKINNER, PHILLIP M. STEANS, DENNIS M. SULLIVAN, TRACY N. TOOL, MICHAEL P. WAGNER, R. MICHAEL WATERMAN (lawyers); DAVID CRONK, JOHN DEROSIER, EDWARD HASS, SHARON NORTON-BAUMAN, WILLIAM O'GARA, PAUL W. SCHOMMER (nonlawyers).

District 9 Committee (serves Dane County): MEREDITH J. ROSS (lawyer), *chairperson;* LEE ATTERBURY, WILLIAM F. BAUER, ANNE M. BLOOD, ANDREW CLARKOWSKI, BRUCE F. EHLKE, MAUREEN MCGLYNN FLANAGAN, JESUS G.Q. GARZA, AARON HALSTEAD, PETER E. HANS, THOMAS HORNIG, JAMES R. JANSEN, ROBERT KASIETA, WILLIAM F. MUNDT, JENNIFER E. NASHOLD, JUDITH OLINGY, LAWRENCE P. PETERSON, BRUCE AL. SCHULTZ, THOMAS W. SHELLANDER (lawyers); PETER ANDERSON, NINA PETROVICH BARTELL, CHARLES A. BUNGE, PATRICK DELMORE, DAVID CHARLES DIES, R.C. HECHT, ROBERT C. HODGE, JUDITH A. MILLER, LARRY NESPER, THERON E. PARSONS, CONSUELO LOPEZ SPRINGFIELD, RODNEY TAPP, DAVID G. UTLEY, KENNETH YUSKA (nonlawyers).

District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties): JANE KIRKEIDE (lawyer), *chairperson;* GALE MATTISON, GERALD WILSON (lawyers); GUY T. GOODING, JOHN W. HILL, STEPHEN C. WARE (nonlawyer).

District 11 Committee (serves Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Polk, Price, Rusk, Sawyer, Taylor, and Washburn Counties): KATHLEEN PAKES (lawyer), *chairperson;* MICHAEL O. ERSPAMER, CRAIG HAUKAAS, TIMOTHY T. SEMPF (lawyers); GENE ANDERSON, ELIZABETH ESSER, DIANE FJELSTAD, MARY ANN KING, MARGARET KOLBEK, JOHN M. MIZERKA (nonlawyers).

District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties): PATRICK K. MCDONALD (lawyer), *chairperson;* JAMES A. CARNEY, JODY L. COOPER, THOMAS H. GEYER, DERRICK A. GRUBB, WILLIAM T. HENDERSON, GAYLE BRANAUGH JEBBIA, ERIC D. REINICKE (lawyers); DENNIS L. EVERSON, MICHAEL FURGAL, LAURA MCBAIN, MICHAEL F. METZ, KATHLEEN J. ROELLI, JOHN SIMONSON, CLINTON A. WRUCK (nonlawyers).

District 13 Committee (serves Dodge, Ozaukee, and Washington Counties): WILLIAM BUCHHOLZ (lawyer), *chairperson;* GERALD H. ANTOINE, JOSEPH G. DOHERTY, CHRISTINE EISENMANN KNUDTSON (lawyers); MARK L. BORN, DEBORAH L. LUKOVICH, ALAN MARTENS, BONNIE L. SCHWID, DANIEL L. VANDE SANDE (nonlawyers).

District 14 Committee (serves Brown County): SANDRA L. HUPFER (lawyer), *chairperson;* BRUCE R. BACHHUBER, LAURA J. BECK, TERRY GERBERS, MARK A. PENNOW, BETH RAHMIG PLESS, THOMAS V. ROHAN (lawyers); RICHARD ALLCOX, DEBRA L. BURSIK, GREGORY L. GRAF, GERALD C. LORITZ, KIM E. NIELSEN, FAYE WILSON-GORRING (nonlawyers).

District 15 Committee (serves Racine County): MARK F. NIELSEN (lawyer), *chairperson;* JOHN J. BUCHAKLIAM, JAMES DRUMMOND, STEVEN G. GABRIEL, MARK R. HINKSTON, SALLY HOELZEL, ROBERT W. KELLER, MARK LUKOFF (lawyers); JOHN P. CRIMMINGS, THOMAS CHRYST, RAYMOND G. FEEST, MARK GLEASON, PATRICIA HOFFMAN, PETER SMET (nonlawyers).

District 16 Committee (serves Forest, Florence, Langlade, Lincoln, Marathon, Oneida, and Vilas Counties): WILLIAM D. MANSELL (lawyer), *chairperson;* DAVID J. CONDON, DOUGLAS KLINGBERG, DAWN R. LEMKE, GINGER MURRAY, BRENDA K. SUNBY, JESSICA TLUSTY (lawyers); THOMAS E. BURG, JUDY A. FRYMARK, ARNO WM. HAERING, TOM LONSDORF, DIANNE M. WEILER, BERNICE WISNEWSKI (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: 27.50.

Total Budget 2007-09: $5,049,400.

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, 8 lawyers and 4 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 9 lawyers and 5 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.

Allegations of misconduct against the director, a lawyer member of staff, retained counsel, a lawyer member of a district committee, a lawyer member of the preliminary review committee, a lawyer member of the board of administrative oversight, or a referee are assigned by the director for investigation by a special investigator. The special investigator may close a matter if there is not enough information to support an allegation of possible misconduct. If there is enough information to support an allegation of possible misconduct an investigation is commenced. The investigator can then dismiss the matter after investigation or submit an investigative report to the special preliminary review panel which will ultimately decide whether or not there is cause to proceed. The special preliminary review panel consists of seven members, four lawyers and three public members appointed by the supreme court who serve staggered 3-year terms and may not serve more than two consecutive terms. If cause is found, the special investigator can proceed to file a complaint with the supreme court and prosecute the matter personally or may assign that responsibility to counsel retained by the director for such purposes.

BOARD OF BAR EXAMINERS

Board of Bar Examiners: JAMES A. MORRISON (State Bar member), *chairperson;* JAMES L. HUSTON (State Bar member), *vice chairperson;* CHARLES H. CONSTANTINE (circuit court judge); THOMAS M. BOYKOFF, KURT D. DYKSTRA, MARY BETH KEPPEL (State Bar members); DANIEL D. BLINKA (Marquette University Law School faculty); JOHN A. PRAY (UW Law School faculty); MARK J. BAKER, JAMES A. COTTER, LINDA HOSKINS (public members). (All members are appointed by the supreme court.)

Director: JOHN E. KOSOBUCKI, 266-9760; Fax: 266-1196.

Mailing Address: 110 East Main Street, Suite 715, P.O. Box 2748, Madison 53701-2748.

E-mail Address: bbe@wicourts.gov

Internet Address: www.wicourts.gov/about/organization/offices/bbe.htm

Number of Employees: 8.00.

Total Budget 2007-09: $1,409,800.

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 motion on proof of practice; 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 was formed from two Supreme Court Boards: the Board of Continuing Legal Education and the Board of Bar Commissioners. The Board of Continuing Legal Education was created effective January 1, 1976, to administer the Wisconsin Supreme Court's mandatory continuing legal education requirements for lawyers. Effective January 1, 1978, the Board of Continuing Legal Education was renamed the Board of Attorneys Professional Competence and continued to be charged with administering mandatory continuing legal education.

The Board of Bar Commissioners was charged with administering bar admission and compliance with the Code of Professional Responsibility. Effective January 1, 1978, the Board of Bar Commissioners' duties with respect to bar admission were transferred to the Board of Attorneys Professional Competence. Effective January 1, 1991, the Board of Attorneys Professional Competence was renamed the Board of Bar Examiners.

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 CONDUCT ADVISORY COMMITTEE

Judicial Conduct Advisory Committee: vacancy (circuit court or reserve judge serving in a rural area); J. Mac Davis (judicial administrative district chief judge); vacancy (court of appeals judge); vacancy (circuit court or reserve judge serving in an urban area); Bruce Goodnough (municipal court judge); vacancy (reserve judge); Sandra J. Marcus (circuit court commissioner); Frank R. Terschan (State Bar member); vacancy (public member). (All members are selected by the supreme court.)

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

Internet Address: www.wicourts.gov/about/committees/judicialconduct.htm

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.

Internet Address: www.wicourts.gov/about/committees/judicialconf.htm

References: Sections 758.171-758.18, 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, adopt the revised uniform traffic deposit and misdemeanor bail schedules, 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, truth-in-sentencing, and traffic law.

Judicial Conference bylaws have created a Nominating Committee and five standing committees. Committee members are elected by the Judicial Conference. The standing committees

include: the Civil Jury Instructions Committee, the Criminal Jury Instructions Committee, the Juvenile Jury Instructions Committee, the Legislative Committee, and the Uniform Bond Committee. Chairpersons of each standing committee are selected annually by the committee members. The Nominating Committee is made up of the judges who chair the standing committees and the secretary of the Judicial Conference.

The Judicial Conference may create study committees to examine particular topics. These study committees must report their findings and recommendations to the next annual meeting of the Judicial Conference. Study committees usually work for one year, unless extended by the Judicial Conference.

JUDICIAL EDUCATION COMMITTEE

Judicial Education Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice); MICHAEL W. HOOVER (designated by appeals court chief judge); A. JOHN VOELKER (director of state courts); JUAN B. COLAS, JEROME L. FOX, NANCY J. KRUEGER, PAUL LENZ, 4 vacancies (circuit court judges appointed by supreme court); JASON J. HANSON, WILLIAM H. HONRATH (circuit court commissioners appointed by supreme court); JINI M. RABAS (designated by dean, UW Law School); THOMAS HAMMER (designated by dean, Marquette University Law School). *Ex officio* member: 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: www.wicourts.gov/about/committees/judicialed.htm

Reference: Supreme Court Rules, Chapters 32, 33, and 75.05.

Responsibility: The 16-member Judicial Education Committee approves educational programs for judges and court personnel. The 8 circuit court judges and 2 circuit court commissioners 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;* CARL ASHLEY (circuit court judge), *vice chairperson;* JOAN KESSLER (appeals court judge selected by court); RICHARD BATES, TIMOTHY DUGAN, BONNIE GORDON, WILLIAM JOHNSTON, EDWARD LEINEWEBER, PAT MADDEN, WAYNE MARIK, J.D. MCKAY, RICHARD NUSS, GREGORY POTTER, BILL STEWART, LINDA VAN DE WATER (circuit court judges elected by judicial administrative districts); DANIEL KOVAL (municipal judge elected by Wisconsin Municipal Judges Association); JOHN WALSH, MARY WOLVERTON (selected by State Bar Board of Governors); JAMES DWYER (nonlawyer, elected county official); OSCAR BOLDT, LINDA HOSKINS (nonlawyers); MICHAEL TOBIN (public defender); GAIL RICHARDSON (court administrator);

ADAM GEROL (prosecutor); KRIS DEISS (circuit court clerk); DARCY MCMANUS (circuit court commissioner). (Unless indicated otherwise, members are appointed by the chief justice.) Nonvoting associates: WILLIAM FOUST (chief judge liaison), A. JOHN VOELKER (director of state courts).

Planning Subcommittee: BARBARA KLUKA (circuit court judge), *chairperson;* LISA NEUBAUER (appeals court judge); JEFFREY KREMERS, J.D. MCKAY, MICHAEL ROSBOROUGH (circuit court judges); GAIL RICHARDSON (court administrator); SHEILA REIFF (circuit court clerk); DARCY MCMANUS (circuit court commissioner); DIANE TREIS-RUSK (public member). *Ex officio* members: SHIRLEY S. ABRAHAMSON (supreme court chief justice), CARL ASHLEY (circuit court judge, vice chairperson of Planning and Policy Advisory Committee), A. JOHN VOELKER (director of state courts).

Staff Policy Analyst: MICHELLE CYRULIK, michelle.cyrulik@wicourts.gov

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

Telephone: 266-8861.

Fax: 267-0911.

Internet Address: 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 — INDEPENDENT BODIES

JUDICIAL COMMISSION

Members: DONALD LEO BACH, JOHN R. DAWSON (State Bar members); GINGER ALDEN, JAMES M. HANEY, CYNTHIA HERBER, MICHAEL R. MILLER, WILLIAM VANDER LOOP (nonlawyers); DAVID HANSHER (circuit court judge); GREGORY PETERSON (appeals court judge). (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 700, Madison 53703-3328.

Telephone: 266-7637.

Fax: 266-8647.

Agency E-mail: judcmm@wicourts.gov

Internet Address: www.wicourts.gov/judcom

Publication: Annual Report.

Number of Employees: 2.00.

Total Budget 2007-09: $478,200.

Statutory References: Sections 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 COUNCIL

Members: ANN WALSH BRADLEY (justice designated by supreme court); PATRICIA S. CURLEY (judge designated by court of appeals); A. JOHN VOELKER (director of state courts); GEORGE S. CURRY, EDWARD E. LEINEWEBER, MARY K. WAGNER, MAXINE A. WHITE (circuit court judges designated by Judicial Conference); SENATOR TAYLOR (chairperson, senate judicial committee); REPRESENTATIVE HEBL (chairperson, assembly judicial committee); GREG M. WEBER (designated by attorney general); STEPHEN R. MILLER (Legislative Reference Bureau Chief); DAVID E. SCHULTZ (faculty member, UW Law School, designated by dean); JAY GRENIG (faculty member, Marquette University Law School, designated by dean); MARLA J. STEPHENS (designated by state public defender); WILLIAM C. GLEISNER (State Bar member, designated by president-elect); BETH E. HANAN, CATHERINE A. LA FLEUR, ROBERT L. MCCRACKEN (State Bar members selected by State Bar); KATHLEEN ANNE PAKES (district attorney appointed by governor); MICHAEL R. CHRISTOPHER, ALLAN M. FOECKLER (public members appointed by governor).

Mailing Address: 110 East Main Street, Suite 822, Madison 53703.

Telephone: 261-8290.

Fax: 261-8289.

Number of Employees: 1.00.

Total Budget 2007-09: $201,200.

Statutory References: Section 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, the governor, 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 efficiency.

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 council is supported by one staff attorney.

Fifth Grader Holden Bradfield reads his winning essay to Supreme Court justices before oral arguments during a Justice on Wheels visit during October 2008 in Oshkosh. As part of the Justice on Wheels outreach program, the Supreme Court holds oral arguments outside Madison. The Oshkosh visit marked the 20th Justice on Wheels visit. (*Joe Sienkiewicz/*Oshkosh Northwestern)

WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT

STATE BAR OF WISCONSIN

Board of Governors (effective July 1, 2009): *Officers:* DOUGLAS W. KAMMER, *president;* JAMES C. BOLL, JR., *president-elect;* DIANE S. DIEL, *past president;* MARK A. PENNOW, *secretary;* MARGARET W. HICKEY, *treasurer;* JAMES M. BRENNAN, *chair of the board. District members:* SAMUEL W. BENEDICT, JAMES A. CARNEY, DONALD J. CHEWNING, SUSAN L. COLLINS, WILLIAM T. CURRAN, WILLIAM J. DOMINA, JAMES R. DUCHEMIN, ROBERT R. GOEPEL, CATHERINE R. GROGAN, KIMBERLY K. HAINES, CHARLES E. HANSON, ARTHUR J. HARRINGTON, DAVID A. HART III, FREDERICK B. KAFTAN, KEVIN G. KLEIN, LYNN R. LAUFENBERG, ATHENEÉ P. LUCAS, MARSHA M. MANSFIELD, KELLY C. NICKEL, CARMEN M. ORTIZ-BABILONIA, KEVIN J. PALMERSHEIM, THEODORE PERLICK-MOLINARI, FRANK D. REMINGTON, THOMAS L. SCHOBER, JOHN T. SCHOMISCH, JR., MARLA J. STEPHENS, ROBERT H. STORM, PATRICIA D. STRUCK, PAUL G. SWANSON, JAMES S. THIEL, JESSICA J. TLUSTY, AMY E. WOCHOS, NICHOLAS C. ZALES, JEFFREY R. ZIRGIBEL. *Young Lawyers Division:* JESSICA J. KING. *Government Lawyers Division:* CHARLES M. KERNATS. *Nonresident Lawyers Division:* W.D. CALVERT, DONNA M. JONES, GORDON G. KIRSTEN, STEVEN H. SCHUSTER, ALBERT E. WEHDE. *Senior Lawyers Division:* MARGADETTE DEMET. *Nonlawyer members:* TOM HEINE, EDWARD KONDRACKI, CATHERINE ZIMMERMAN. *Minority Bar Liaisons:* STEVEN M. DEVOUGAS, JO DEEN B. LOWE, CARLOS A. PABELLON, ARMAN S. ROUF (nonvoting members).

Executive Director: GEORGE C. BROWN.

Mailing Address: P.O. Box 7158, Madison 53707-7158.

Location: 5302 Eastpark Boulevard, Madison.

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

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

Agency E-mail: lroys@wisbar.org

Publications: *WisBar InsideTrack; Wisconsin Lawyer Directory; Wisconsin Lawyer Magazine; Wisconsin News Reporter's Legal Handbook;* various legal practice handbooks and resources; various consumer pamphlets and videotapes, including *A Gift to Your Family: Planning Ahead for Future Health Care Needs*.

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 52 members, consisting of the board's 6 officers, not fewer than 35 members selected by State Bar members from the association's 16 districts, 8 members selected by divisions of the State Bar, and 3 nonlawyers appointed by the supreme court. The board of governors selects the executive director, the executive committee, and the chairperson 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 Su-

preme 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.

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

July 2007 – June 2009

Robin Ryan, Mary Gibson-Glass, and Robert Nelson
Legislative Reference Bureau

CONSTITUTIONAL LAW

Free Speech and Identify Theft

A city employee logged onto his supervisor's e-mail account without the supervisor's consent and forwarded to community members e-mail messages regarding the supervisor's extramarital affair, with the result that it appeared that the supervisor had sent the forwarded messages. In *Wisconsin v. Baron,* 2009 WI 58 (2009) (to be published), the employee was charged with the crime of identity theft. The law prohibits using an individual's personal identifying information without the individual's consent or authorization, by representing that one is the individual, for any of several specified purposes. One of the specified purposes is harming the reputation of the individual.

The employee argued that applying the criminal prohibition to his actions violated his First Amendment free speech right to defame a public official. The threshold question for the supreme court was whether charging the employee with identity theft implicated the First Amendment. The First Amendment is implicated if a statute regulates speech or expressive conduct as opposed to regulating only conduct. Five of the 6 justices who decided the case concluded that the statute, as applied in this case, regulated speech because the content of the e-mails was critical to the issue of harming the supervisor's reputation. The court concluded that the statute prohibited "the combination of the use of the individual's personal identifying information with the intent to harm the reputation of the individual."

The court next addressed whether the regulation of speech was content based or content neutral. A regulation that is content based is subject to greater scrutiny. A statute that distinguishes favored speech from disfavored speech on the basis of the ideas or views expressed is content based. A statute that confers benefits or imposes burdens on speech without reference to the ideas or views expressed is content neutral. The court determined that the identify theft statute as applied to the employee's actions was content based because whether the employee's conduct was prohibited depended entirely on whether the content of the e-mail messages was intended to harm the supervisor's reputation.

A regulation that is content based is constitutional if it serves a compelling state interest and is narrowly tailored to achieve that interest. The parties did not disagree that the state has a compelling interest in preventing identity theft; however, the employee argued that the identify theft statute was not narrowly tailored because it eliminates his First Amendment right to defame a public official with true information. The court determined that the statute is narrowly tailored because it only applies when a person steals another's personal identifying information. Further, the statute did not prevent the employee from revealing information that harmed the supervisor's reputation, it just prevented the employee from doing so while pretending to be the supervisor.

CRIMINAL LAW

Admission of Secret Tape Recording Made on School Bus

In *State v. Duchow,* 2008 WI 57, 310 Wis. 2d 1, 749 N.W.2d 913 (2008), the court determined that Wisconsin's Electronic Surveillance Control Law does not prohibit the trial court from ad-

mitting into evidence a surreptitiously made tape recording of a bus driver abusing a child on a public school bus. The parents of a nine-year old boy who suffers from Downs Syndrome and Attention Deficit Disorder became concerned that their son's school bus driver was abusing the boy. The concern stemmed from the boy's behavioral changes: he resisted boarding the bus in the morning, cried at school as the time to get on the bus neared, punched toys, began to kick at the family dog, and allegedly spit at the bus driver.

The boy was the first student picked up in the morning. The parents placed a voice-activated tape recorder in the boy's backpack. Upon his return home from school, the parents listened to the tape which revealed abusive statements by the driver, including: "Stop before I beat the living hell out of you"; "Do I have to tape your mouth shut because you know I will"; and "Do you want me to come back there and smack you?" The recording also included a sound that the parents believed was a slap.

At criminal trial for physical abuse of a child, the driver asked the trial court to suppress the tape, arguing that the tape was made in violation of the Electronic Surveillance Control Law. The Electronic Surveillance Control Law prohibits recording oral communications without consent, provides some exceptions to the prohibitions, and establishes a process by which law enforcement agencies may obtain court permission to record communications. The trial court determined that the Electronic Surveillance Control Law does not prohibit admitting the recording of the bus driver at trial because the driver's communication is not "oral communication" that is protected by the Electronic Surveillance Control Law.

The law defines "oral communication," in part, as "any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation." The supreme court determined that the appropriate test of whether a statement is protected by the Electronic Surveillance Control Law is whether it is spoken under circumstances in which the speaker has a reasonable expectation of privacy. A person has a reasonable expectation of privacy if he or she has both 1) an actual subjective expectation of privacy in the communication, and 2) the expectation is one that society is willing to recognize as reasonable. There was no question that the bus driver had an expectation of privacy, so the court focused on whether the driver's expectation was reasonable. In determining reasonableness the court reviewed a variety of factors including the volume of the driver's statements, the proximity of other individuals to the driver and the potential for others to overhear the driver, the potential for the driver's communications to be reported, the actions taken by the driver to ensure privacy, the place where the communication was made, and whether there was a need to employ technological enhancements to hear the statements. In determining that the driver did not have a reasonable expectation of privacy, the court focused on the fact that the driver was speaking on a public school bus used to transport public school students, and that the driver's statements were likely to be reported because they were threats to injure the person to whom they were spoken.

Suppression of Evidence as an Appropriate Remedy

In *State v. Popenhagen,* 2008 WI 55, 309 Wis. 2d 601, 749 N.W.2d 611 (2008), the court determined that when an invalid subpoena is used to obtain documents, suppression of the documents, as well as incriminating statements made by the defendant when confronted with the documents, was an appropriate remedy. A store owner suspected that one of his employees was stealing money from the store and reported his suspicion to the police. In the course of the police investigation, the district attorney obtained subpoenas, signed by the circuit court judge, requiring the bank to produce the defendant's bank records. However, the district attorney used the wrong form of subpoena. And, even though the police had completed two affidavits supplying probable cause for the subpoenas, the district attorney did not attach them to the subpoenas, and the circuit court did not make findings of probable cause for the subpoenas. The bank complied with the invalid subpoenas by supplying the defendant's bank records to the police. Those records showed deposits to the defendant's bank account equal to the amounts stolen from the store. When confronted with the bank records, the defendant made incriminating statements.

The court was asked to determine whether suppression of evidence obtained with an invalid subpoena is an appropriate remedy when the statute does not specify suppression as a remedy.

The applicable statute concerning subpoenas for documents provides that, upon the request of the attorney general or a district attorney, and upon a showing of probable cause, a court shall issue a subpoena requiring the production of documents. The only reference in the statute to a remedy for a violation of the statute is as follows: "Motions to the court, including, but not limited to motions to quash or limit the subpoena, shall be addressed to the court which issued the subpoena." The court read this sentence as an incomplete list of remedies, which contemplates additional remedies, including suppression. In addition, the court found the remedy of suppression consistent with the strict requirements for issuing a subpoena for documents, namely that only the attorney general or district attorney may request a subpoena; it must be signed by a judge; the judge must find probable cause; and that the subpoena may be quashed or limited. The court determined that denying suppression as a remedy would emasculate the clear directives of the statute and render the safeguards of the statute meaningless.

The court rejected the state's argument that prior court opinions allow suppression of evidence only when the evidence is obtained in violation of a defendants constitutional rights or when a statute expressly provides for suppression as a remedy. Instead, the court states that the proper reading of prior opinions is that, "Suppression of evidence obtained in violation of the requirements of a statute is permissible at the discretion of the circuit court when a statute does not specifically require suppression."

The Mayhem Statute

In *State v. Quintana,* 2008 WI 33, 308 Wis. 2d 615, 748 N.W.2d 447 (2008), the court was asked to determine whether intentionally disabling or disfiguring another person's forehead may constitute the crime of mayhem. The court found that it may. The mayhem statutes provides that, "Whoever, with intent to disable or disfigure another, cuts or mutilates the tongue, eye, ear, nose, lip, limb or other bodily member of another is guilty of a Class C felony."

The defendant hit his ex-wife in the head with a hammer, lacerating her forehead, fracturing her skull, and causing intracranial injury. The prosecutor charged the defendant with first-degree reckless injury and aggravated battery, in addition to mayhem, but neither of those crimes has as great a penalty as mayhem.

In reviewing the history of the mayhem statute, the court explained that under early English common law, mayhem prohibited disabling a part of the body important for fighting. After Sir John Coventry was slit on the nose for uttering obnoxious words in Parliament, the English adopted the Coventry Act, which prohibited cutting out or disabling the tongue, putting out an eye, slitting the nose, cutting off a nose or lip, or cutting off or disabling any limb or member of another person with intent to maim or disfigure the person. From before statehood through 1955, Wisconsin had a crime of "maiming and disfiguring" that was similar to the Coventry Act. The court explained that the legislature nearly consolidated mayhem with assault as part of the 1955 revision of the criminal code that produced the current mayhem statute. Ultimately, the legislature retained mayhem as a separate crime to distinguish, and punish more severely, incidents in which a person has specific intent to disable or disfigure.

In determining what "other bodily member" covers in the mayhem statute, the court attempted to apply a rule of statutory interpretation providing that when general words follow specific words, the general word encompasses only things of the same type as the specific words. However, the court determined that the specific body parts listed in the mayhem statute do not form a class. The court rejected the defendant's argument that they constitute a class of parts of the body that have function in and of themselves, and without which a person may survive. Instead the court determined that "other bodily member" encompasses all bodily parts.

Subpoenas, Discovery, and the Right to View Police Records

In *State v. Schaefer,* 2008 WI 25, 308 Wis. 2d 279, 746 N.W.2d 457 (2008), the court determined that a defendant does not have a right to subpoena police records of an investigation before a preliminary examination. The defendant was charged with sexual assault of a child for events that had occurred 16 years earlier. The defendant issued a subpoena to the chief of police, or his designee, to appear before the court and bring all records related to the police investigation of the defendant in connection with the sexual assault charge. The defendant issued the subpoena before his preliminary examination. A preliminary examination is a pre-trial hear-

ing at which the court determines whether there is probable cause to believe that the defendant committed a felony.

The defendant argued that the statutes authorizing subpoenas provide a basis for subpoenaing the police chief and the police investigation records. The defendant further argued that the rights to compulsory process for obtaining witnesses and to effective assistance of counsel under the U.S. and Wisconsin Constitutions authorize the subpoena. The majority of justices treated the defendant's subpoena as a request for discovery. Discovery is a statutory process under which the parties in a case are required to provide various information to the opposing party upon request. The majority concluded that discovery does not apply before a preliminary examination. Three justices concurred in the decision of the court but rejected the majority's treatment of the subpoena as a discovery request. Instead, the concurring justices simply found that the subpoena statutes do not provide a right to obtain police investigation report before the preliminary examination. All the justices determined that the constitutional rights to compulsory process and effective assistance of counsel do not support the subpoena.

The Office of the State Public Defender and the Wisconsin Innocence Project filed amicus briefs requesting that court exercise its superintending power over the courts to adopt a rule granting criminal defendants access to police records before the preliminary hearing. They argued, among other points, that such a rule would lead to fewer wrongful prosecutions and make preliminary hearings more fair. They also noted that several district attorneys in Wisconsin already permit defendants access to police records before the preliminary examination. The court declined to use this case to make such a rule.

Removal of Judge's Relative from Jury

State v. Tody, 2009 WI 31 (2009) (to be published), addresses whether a judge's mother may serve as a juror in a criminal trial over which the judge presides. The defendant was tried for taking and driving a car without the owner's consent. During questioning of potential jurors for the trial, it became apparent that the judge's mother was among the potential jurors. When questioned by the district attorney and the defense attorney regarding her ability to be fair and impartial, she said she could be. The defense requested that the judge strike his mother from the pool of potential jurors for cause, arguing that the close relationship between the judge and the potential juror was *per se* a prejudicial matter. The district attorney opposed the request. The judge reluctantly denied the request to strike for cause, stating that he had no legal basis for removing his mother from the pool of potential jurors. Neither the district attorney nor the defense attorney used a peremptory challenge to remove the judge's mother. The jury convicted the defendant.

Six of the seven supreme court justices participated in this case. The six agreed that the trial judge should not have presided over a trial in which his mother was a juror, and that the defendant is entitled to a new trial. They also agreed that a trial judge should err on the side of dismissing a potential juror when the juror's presence may create bias or an appearance of bias, because dismissal saves judicial time and resources over the long run.

Three of the justices determined that the judge's mother was "objectively biased." A juror is objectively biased when a reasonable person in the juror's position could not be impartial. As these three justices further explained, a juror is objectively biased if he or she could not avoid basing his or her verdict upon considerations extraneous to evidence put before the jury at trial.

The other three justices determined that this is not a case of juror bias. They described the situation of the mother serving as a trial juror as "problem waiting to happen" and a "recipe for disaster" and concluded that the trial judge should have exercised his inherent authority to administer justice to either remove his mother for cause or recuse himself from the trial.

Sexual Assault of a Corpse

In *State v. Grunke,* 2008 WI 82, 311 Wis. 2d 439, 752 N.W.2d 769 (2008), the court determined that the crime of third-degree sexual assault may apply if the victim is already dead and the defendant did not cause the death of the victim. In this case, the three defendants attempted to remove a corpse from a grave for the purpose of having sexual intercourse. After the preliminary hearing, the circuit court determined that the crime of third-degree sexual assault did not apply to the facts. The state appealed the circuit court's decision.

The statutes prohibit four degrees of sexual assault. First-degree sexual assault applies to cases of sexual intercourse without consent of the victim that are committed by threat or use of a weapon, committed by more than one person by threat of force, or that result in pregnancy or great bodily harm. A person who has who has sexual intercourse with a person without the consent of that person is guilty of third-degree sexual assault. Consent is defined as words or overt actions indicating a freely given agreement to have sexual intercourse. The statutes expressly provide that consent is not an issue for certain types of sexual assault, including if the victim is unconscious or intoxicated, or if the perpetrator is an employee of certain types of facilities and the victim is a ward of the facility. In addition, the statutes provide that the prohibition against sexual assault, which includes all degrees of sexual assault, applies whether the victim is dead or alive.

The defense argued that the statute on sexual assault is ambiguous, with respect to whether it applies when the victim is already dead, and therefore the court should look to the legislative intent in enacting the provision stating that sexual assault applies whether the victim is dead or alive. The defense argued ambiguity for two reasons. First, the requirement for lack of consent is superfluous when applied in a case where the victim is dead. As applied to sexual intercourse with a victim who is dead, the sexual assault statute becomes a general prohibition against necrophilia. Second, it is absurd to apply the graduated penalties for first- to fourth-degree sexual assault in cases where the victim is dead, because the differences in the elements are irrelevant. The defense argued that the legislature enacted the provision that sexual assault applies whether the victim is dead or alive to address the difficulty of proving that the victim was alive when a sexual assault occurs in cases where a defendant sexually assaults and murders the victim. It is not meant to apply, they argued, in cases where the defendant does not cause the death of the victim.

The court concluded that the statute is not ambiguous and that third-degree sexual assault may apply to a case where the victim is dead and the defendant did not cause the death. It found that even though it may be simple for the prosecution to prove lack of consent, it is still an element of the crime. The court further acknowledged that first- and second-degree sexual assault cannot apply when the victim is dead because the facts cannot correspond with the elements of first or second degree sexual assault. Therefore the statute does not provide an absurd result of penalizing necrophilia under a graduated penalty scheme. Although the court found that the sexual assault statute was clear on its face, it also addressed the legislative history of the statute. The court said that even if one accepts that the legislative intent was to apply the crime of sexual assault of a dead victim only in cases where the defendant caused the victim's death, the applicability of the statute is not limited to the legislature's intent.

CIVIL LAW

The Designation of Indian Trust Land

The Wisconsin Statutes provide that the state shall refund to an Indian tribe 70% of taxes collected on cigarettes sold on the tribe's reservation or trust land provided that certain conditions are met, including that the land was designated as reservation or trust land on or before January 1, 1983. In *Ho-Chunk Nation v. Wisconsin Department of Revenue,* 2009 WI 48 (2009) (to be published), the supreme court determined that the Ho-Chunk Nation is not entitled to a refund of taxes collected on sales of cigarettes sold on the DeJope land in Dane County.

There is no question that the DeJope land is currently trust land. The critical issue in this case was whether the DeJope land was "designated" as trust land before January 1, 1983. The Ho-Chunk Nation argued that an August 1982 memo from the Bureau of Indian Affairs (BIA) office in Washington, D.C., that authorized the BIA regional office in Minneapolis to accept conveyance of the DeJope land to the United States in trust, shows that the land was designated as trust land in 1982. The Department of Revenue argued that the land was not designated as trust land until the Secretary of the U.S. Department of the Interior signed the deed of conveyance on January 31, 1983.

The majority determined that even though there are two plausible readings of the word "designate" the statute is not ambiguous, and the meaning of the tax refund statute may be interpreted from the context in which the word is used. The majority noted that the first sentence of the

cigarette refund provision refers to taxes collected on sales of cigarettes on "reservations or trust lands of an Indian tribe." The majority reasoned that the subsequent use of the words "reservation or trust land" in the condition establishing the January 1, 1983 cut-off date, must refer to the same lands – lands that are already reservation or trust land, not lands in the process of becoming reservation or trust land. The majority further noted that the word "designated" applies to both reservation and trust land. The majority reasoned that since there is no indication that federal law recognizes an official status for land preliminarily approved as reservation land, there is no basis for reading the tax refund statute to apply to land that has received only preliminary informal approval. The majority concluded that "designated" is used to refer to the variety of ways in which land may become reservation or trust land.

The dissenting justices concluded that the statute is ambiguous. They argued that the majority's interpretation of the statute renders the word "designated" superfluous. One dissenting justice examined the legislative history of the tax refund statute and concluded that it was impossible that parties involved in crafting the legislation intended to exclude the DeJope trust land from the cigarette tax refund.

Reasonable Accommodation of an Employee's Disability

In *Stoughton Trailers, Inc. v. LIRC,* 2007 WI 105, 303 Wis. 2d 514, 735 N.W.2d 477 (2007), Geen, an employee of Stoughton Trailers, developed severe headaches in December 1996, and was absent from work for 3 weeks. Geen's physician prescribed medicine for migraine headaches and depression. That period of absence was counted as one occurrence under Stoughton Trailers' no-fault attendance policy because Geen did not complete the state and federal family and medical leave act (FMLA) form. Under the policy, an employee would be fired if he or she had 6 occurrences of unapproved absences. Geen also missed work on January 24, 27, and 28, 1997, for the same reason. He never submitted the FMLA form. Geen was told to complete the FMLA form and obtain a note from his physician saying he was unable to work but that he could return to work without any restrictions. He obtained a note regarding the absences of the 27th and 28th, and stating that he could continue to work, but did not obtain a note for the January 24 absence. On January 31 Geen was told he was being discharged because he had accrued an "occurrence" on January 24, which brought his total to 6.5 occurrences.

Geen filed a disability discrimination complaint with the Department of Workforce Development. A hearing examiner ruled in Geen's favor, saying that Stoughton Trailers terminated Geen's employment in part because of the disability, and that it had failed to reasonably accommodate Geen's disability. Stoughton Trailers appealed to the Labor and Industry Review Commission (LIRC), which reversed the examiner's decision. The circuit court reversed the LIRC decision and, on appeal, the court of appeals remanded the case back to LIRC. LIRC then held that Geen was terminated because of his disability and that Stoughton Trailers did not reasonably accommodate his disability.

The supreme court opinion, written by Justice Louis Butler, determined that the primary disputed issues before the court were whether Stoughton Trailers terminated Geen because of his disability and whether it took adequate steps to accommodate Geen's disability.

The court reviewed the LIRC holding that because two of Geen's "occurrences" were related to his migraines, the termination was because of Geen's disability, in violation of state law. Instead of adopting that holding, the court concluded that Stoughton Trailers gave Geen only two days from the date it provided him with the FMLA form to submit the completed form, in violation of their own policy, which provided for a 15-day period to submit the form. By not waiting the full 15 days, the court said Stoughton Trailers terminated Geen after only 5.5 occurrences, and such a termination was invalid under Stoughton Trailers' policy. This fact, said the court, supported LIRC's conclusion that Stoughton Trailers terminated Geen because of his disability.

The court agreed with LIRC that Stoughton Trailers' provision of the FMLA form to Geen to complete and submit in order to avoid being assessed an "occurrence" for the second migraine-related absence was not a reasonable accommodation because Geen was not allowed sufficient time to submit the form. The supreme court also agreed that Stoughton Trailers failed to temporarily accommodate Geen's disability while Geen was seeking medical intervention to resolve his problem, citing an earlier LIRC interpretation that "reasonable accommodation" includes

forbearing from enforcing a rule while an employee is undergoing treatment for the disability-related medical problem. The court held:

> LIRC's conclusion was consistent with [Wisconsin Statute Section] 111.34 (1) (b), and is in harmony with both the express purpose of the WFEA [Wisconsin Fair Employment Act] to "encourage and foster to the fullest extent practicable the employment of all qualified individuals" regardless of disability or other protective status, and its directive that its provisions "be liberally construed for the accomplishment of this purpose." (p. 550)

The supreme court then discussed the disputed issue of the remedy provided by LIRC, the reinstatement of Geen and back pay, and concluded that LIRC properly exercised it discretion in determining the award.

Justice David Prosser dissented, saying the court failed to answer the specific questions raised by this extensively litigated case, including whether an employer may apply a neutral no-fault attendance policy to terminate an employee when some of the employee's absences are caused by a disability, and whether an employer has not reasonably accommodated an employee's disability when that employer has promised to disregard disability-related absences if the employee submits the appropriate FMLA form, but the employee fails to submit that form.

The Economic Loss Doctrine and Property Representations

Below v. Norton, 2008 WI 77, 310 Wis. 2d 713, 751 N.W.2d 351 (2008), involved the sale of a home by sellers who represented that they were not aware of any defect in the house's plumbing system. However, the buyer learned after moving into the house that the sewer line between the house and the street was broken. The buyer sued, alleging a number of claims, including intentional misrepresentation, negligent misrepresentation, misrepresentation in violation of the false advertising law, and misrepresentation in violation of the criminal statute prohibiting the taking of a title to property by intentional false representation and its related civil statute. The buyer later attempted to amend the complaint to add a breach of contract claim, but because of a procedural error, that claim was not before the court. The circuit court dismissed the case, saying the economic loss doctrine barred the common law misrepresentation claims and that the false advertising and criminal misrepresentation claims did not apply.

The court of appeals reversed the circuit court ruling, saying the economic loss doctrine does not bar the plaintiff's action under the false advertising misrepresentation claim, and ordered that the case be returned to the circuit court for further action. The supreme court was asked to decide if the economic loss doctrine bars common law intentional misrepresentation claims arising from a residential real estate transaction.

The supreme court decision, written by Justice N. Patrick Crooks, discussed previous decisions concerning the economic loss doctrine. That court-created doctrine prevents a person from recovering in an action based on a tort claim if there was a claim for the same damages under contract law. The policy reason for the economic loss doctrine, said the court, is to preserve the distinction between tort and contract law by protecting the parties' freedom to allocate economic risk by contract and by encouraging the party best situated to assess the risk of economic loss to assume, allocate or insure against that risk. The court noted that previous decisions applied the economic loss doctrine to bar negligence and strict liability claims in the context of consumer goods. In other cited cases, the court barred tort claims against subcontractors who had helped construct the plaintiff's home and the court held that if the tort claim was extraneous to, rather than interwoven with, a contract regarding land, the economic loss doctrine would not bar recovery for that tort claim. The latter case, said the court, held that the economic loss doctrine is applicable to real estate transactions.

In this case, said the court, the plaintiffs may have a breach of contract claim if the defendants knew of the defect in the sewer line and failed to disclose that fact in the property condition report that the defendants were required by law to provide to the plaintiffs. Based on the previous cases and the facts of this case, the court held that the economic loss doctrine does bar the plaintiff's claim based on the tort of intentional misrepresentation arising out of the purchase of residential real estate.

The dissent, written by Justice Ann Walsh Bradley, said that this state is the only state that has expanded the economic loss doctrine, which originally was narrowly applied to commercial transactions involving products under warranty, to prevent homeowners from recovering damages in tort based on misrepresentations by fraudulent sellers. The dissent argued that the court's interpretation of the early cases was in error because none of those cases involved residential real estate transactions.

Liability of the Catholic Diocese for Sexual Abuse by Priests

In *Doe v. Archdiocese of Milwaukee,* 2007 WI 95, 303 Wis. 2d 34, 734 N.W.2d 827 (2007), the plaintiffs alleged that when they were minors they were sexually molested by a priest of the Milwaukee Archdiocese. The plaintiffs brought an action against the archdiocese for negligent supervision of the priest and for fraud. The last alleged molestation occurred about 23 years before the plaintiffs commenced this action. The priest involved had been convicted of sexually molesting another child and the archdiocese, knowing of that conviction, moved the priest to the parish where the plaintiffs were molested. The trial court and court of appeals dismissed the case because the action was barred by the statute of limitations, which is generally 3 years from the act that resulted in the injury.

The supreme court decision, written by Justice Patience Drake Roggensack, considered the two separate claims made by the plaintiffs, one for negligent supervision of the priest and one for fraud for not informing the parishioners of the priest's former behavior and conviction. Each claim involved a separate statute of limitations, said the court, but both involved the "discovery rule", which requires a plaintiff to bring an action within the statutory time limit after the plaintiff knew of, or in the exercise of reasonable diligence, should have discovered the injury and the cause of the injury. In this case, the time limit was within one year after becoming 18 years of age.

To prove the claim of negligent supervision, the court said that the plaintiffs must prove that the employer had a duty of care toward the plaintiffs, that the employer breached that duty, that a wrongful act of the employee caused the injury, and that the employer's wrongful act caused the wrongful act of the employee. The court reviewed the policy behind the statute of limitations, which is to allow plaintiffs a fair opportunity to enforce legitimate claims while protecting defendants from defending against a claim after so much time has passed that witnesses and evidence may be unavailable. The court concluded that the plaintiffs should have discovered their injury by the time of the last incident of assault. The court dismissed the plaintiffs' argument that they repressed the memory of the assaults and therefore did not know of their injury until recently. Citing previous decisions, the court held that the claim of negligent supervision was derived directly from the claim against the priest for sexual molestation, so the claim of negligent supervision was also barred because this action was not commenced until long after the statutory time limit.

The court went on to review the claim of fraud made against the archdiocese. To prove fraud, said the court, the plaintiffs must prove that the defendant made an untrue factual representation knowing the representation was untrue and with intent to defraud the plaintiffs and induce them to act on that representation; and that the plaintiffs believed the representation to be true and relied on it to their detriment. The court discussed the issue of the archdiocese making an untrue factual representation and held that a representation may be in the form of speech or acts. In this case, said the court, the complaint alleges that the archdiocese placed the priest in the parish where he had unsupervised access to children and their families, and this placement represented to those children and families that the archdiocese did not know that the priest had a history of molesting children or that the priest was a danger to the children. Because this case was before the court on a motion to dismiss the action, the court said it could not conclude that the acts described in the complaint were not sufficient to maintain the action, and therefore the question of whether the statute of limitations barred the action had to be considered.

In discussing the statute of limitations, in contrast to the claim of negligent supervision, which the court said was derivative of the action of molestation by the priest, the court held that the claim of fraud was independent of the priest's behavior. Therefore, said the court, the issue becomes when the plaintiffs discovered the injury and the cause of the injury. The court noted

that, unlike other cases, the plaintiffs had no way of knowing or suspecting that the archdiocese knew that the priest had a prior history of sexual molestation of children. Nothing in the pleadings suggests that the plaintiffs should have, before the end of the year after they became 18 years old, investigated whether the archdiocese knew of the priest's former behavior. The court held that the date of accrual of the fraud claim cannot be resolved by a motion to dismiss, and remanded the case back to the circuit court for that determination.

Chief Justice Shirley Abrahamson, dissenting in part, argued that the claim of negligent supervision, which the court said was derivative of the action of molestation by the priest, was not derived from that action but was independent of the priest's behavior.

In *Hornback v. Archdiocese of Milwaukee,* 2008 WI 98, 313 Wis. 2d 294, 752 N.W.2d 862 (2008), a priest had been involved in a pattern of sexual abuse of children while a member of the Archdiocese of Milwaukee and the Diocese of Madison, then left the area and became a parish priest in Louisville, Kentucky, where the sexual abuse continued. The plaintiffs alleged that they were sexually abused by the priest in Kentucky, and that the archdiocese and diocese were negligent for failing to take steps to prevent his future sexual abuse and for failing to warn of the priest's propensity for sexual abuse. Allegedly, the archdiocese knew of the priest's behavior, promised affected parents in Milwaukee that the priest would receive treatment, then told the priest to leave the Milwaukee Archdiocese quietly, without receiving any treatment. The circuit court and court of appeals granted the defendant's motions to dismiss on the grounds that the 32-year-old claims were barred by the statute of limitations.

The supreme court decision, written by Justice Butler, discusses the issue of whether the archdiocese is negligent and whether, based on public policy grounds, the negligence results in a finding that the plaintiffs have the right to receive damages for their injuries. The court said that negligence and liability are two distinct concepts, and even if negligence is found, liability may be restricted based on public policy concerns. To reach the issues presented in the case, the court first discussed the sufficiency of the negligence claim. The plaintiff's claim, said the court, was that the archdiocese failed to warn unforeseeable third parties of the priest's propensity for sexual abuse of children. Reviewing cases regarding employer's duties to disclose information regarding their former employees, the court concluded that the "failure to warn" claims recognized in this state do not include the type of "failure to warn" claimed by the plaintiffs. In this case there was no direct contact between the past employer and the injured party, and the specific victims are unforeseeable, said the court. The plaintiffs had virtually no relationship with the defendants, being separated both in distance and time, so the court held that the plaintiffs did not state a claim for negligence.

The court went on to address the public policy concerns generated by the case. Even if negligence was proved, the court said, creating liability in a case like this one would allow recovery where there is no sensible or just stopping point, because it would create a precedent requiring employers to search out and disclose all potential employers, individuals who may be subject to the priest's behavior, as well as a broad and undefined category of parents of unforeseen victims.

The court was equally divided on whether to affirm or reverse the decision of the court of appeals dismissing the plaintiff's complaint, with Justice Prosser recusing himself, so the court affirmed the court of appeals ruling.

Liability and Immunity in School Sports Injuries

Noffke v. Bakke, 2009 WI 10, ___ Wis. 2d, ___, 760 N.W.2d 156 (2009) (to be published), concerns the liability or immunity resulting from a cheerleading stunt. The cheerleaders were performing a stunt that involved one girl standing on the shoulders of other cheerleaders. In this case, a cheerleader was assigned to assist with the stunt (called a spotter), which included standing behind the cheerleaders doing the stunt. There were no mats in use during the stunt, and the cheerleading coach was instructing another group of cheerleaders nearby at the time. The spotter-cheerleader, by mistake, stood in front of the cheerleaders involved in the stunt, so when the cheerleader fell backwards, the spotter was not there to catch plaintiff and as a result she was injured. She brought an action against the spotter-cheerleader and the school district for negligence. The circuit court granted summary judgment for the defendants, saying they

were immune from liability. The court of appeals upheld the circuit court decision regarding the school district but said the spotter-cheerleader was not immune from liability.

The supreme court decision, written by Justice Annette Ziegler, interprets the recreational immunity statute, Section 895.525, which provides immunity to certain parties who provide or are involved in recreational activities, and Section 895.80, which provides immunity to certain public agencies and employees. The recreational immunity statute, said the court, provides immunity to participants in a recreation activity that involves physical contact between persons in a sport involving amateur teams. Based on the dictionary definition of "physical contact," and the manual describing rules related to cheerleading, the court found that cheerleading involves a significant amount of physical contact between the participants.

The court discussed the plaintiff's assertion that there must be more than incidental physical contact to be immune from liability because the title of the subsection involved, "Liability of contact sports participants," means there must aggressive sports involving teams, such as football, hockey, or boxing. But, said the court, the title is not determinate and the statute does not restrict its application to aggressive sports. In addition, applying an "incidental" contact exception to that statute would be difficult to apply and would create uncertainty in the law. The plaintiff's argument that the immunity should only apply to competitive sports was not persuasive, said the court, because no competitive requirement exists in the language of the statute and in some circumstances cheerleaders are involved in competitions and at other times they are not, and football players during practices are not involved in competition.

Discussing the spotter-cheerleader's immunity, the court said that immunity applies if he was not acting in a reckless manner. Recklessness, said the court, involves a reckless disregard for the safety of another, when the person knows that his or her behavior creates a high risk of physical harm to another and proceeds in conscious disregard to that risk. From the facts of the case, the spotter-cheerleader was told to take the appropriate position behind the cheerleaders, but he failed to do so fast enough to prevent the injury. The behavior in this case, said the court, was inadvertence and simple negligence, not recklessness. Therefore, the court held that he was immune from liability.

The court reviewed the issues regarding the immunity of the school district, which was based on statutory language providing immunity to public agencies and employees for acts done in the exercise of a legislative, quasi-legislative, judicial, or quasi-judicial function. The court held that to be liable for acts in performance of ministerial duties the actor must have no discretion. The court said a ministerial duty must be imposed by law; there must be a known and compelling danger that gave rise to a ministerial duty; the act must involved medical discretion; or the act must involve malicious, willful, or intentional behavior. In this case, said the court, the written procedures for practicing cheerleading stunts did not impose a ministerial duty because the coach had discretion as to how to practice the skills necessary to learn the stunt. The written procedures themselves, said the court, noted that they were guidelines that had been developed to serve as a useful reminder of basic procedures. The court also found that the cheerleaders were performing a stunt that was less difficult than those they had performed in the past, and they had a spotter assigned to the stunt who had been instructed on how to act, so the court concluded that the danger was not so known and compelling that it gave rise to a ministerial duty.

Power of Attorney and Violation of Fiduciary Relationship

In *Russ v. Russ,* 2007 WI 83, 302 Wis. 2d 264, 734 N.W.2d 874 (2007), an elderly woman with some health problems lived with her son and daughter-in-law. The woman received a social security check, a pension, and some oil royalties, which she agreed to deposit in a joint checking account with her son. The son provided his mother with a place to stay and treated her as part of his family. A few years after opening the joint checking account, the woman, without the assistance of an attorney, executed a durable power of attorney (POA) for finances and property, naming her son as her agent. The POA authorized the son to pay her bills and manage her bank accounts, but did not authorize him to make gifts or be compensated for his services. The son did not deposit any of his own money into the joint checking account, but withdrew most of the money for his own use. The elderly mother became ill, was admitted to a hospital and then transferred to a nursing home. The circuit court declared her incompetent and

appointed a guardian for her, and terminated the POA. The appointed guardian sued, saying the son had violated his fiduciary relationship under the POA by using money in the joint account for his own use. The circuit court determined that the son had assumed the fiduciary duty to care for his mother and had not breached that duty. The court of appeals certified the case to the supreme court.

The supreme court decision, written by Justice Crooks, discusses the relationship between the POA and the agreement of the son and mother to have a joint checking account. The POA, said the court, does produce a fiduciary duty upon the son, including the duty to not engage in actions that help the agent son (self-dealing) and are to the detriment of the principal, his mother. The POA, as written, did not provide the son with any authority to make gifts or to engage in self-dealing. However, the court noted, the establishment of the joint checking account, which predated the POA, gave each joint owner authority to use all of the account's money for his or her own use. This conflict between the presumptions under the joint checking account and the POA had to be resolved in this case, the court said, and mentioned that it would have preferred that the POA had clarified the intentions between the parties regarding this conflict.

The court discussed cases that involved agents who used POA authority to benefit themselves and cited the rule that an attorney-in-fact may not make a gift to himself or herself unless there is specific intent in writing from the principal allowing the gift. The court rejected the plaintiff's argument that the POA is clear and convincing evidence that it overrides the presumption of the son's use of the joint checking account unless the POA specifically addresses that issue, and decided that the establishment of joint checking account before the signing of the POA creates a presumption of intent to allow any member of the joint account to use the funds in the account for his or her own use. The court also decided that an agent under a POA who transfers funds deposited by a principal into a joint checking account for the agent's use is presumed to be committing fraud. In this case, said the court, the circuit court did make a number of findings that support the dismissal of the guardian's suit, including findings regarding the care, housing, clothing, and food provided to the mother, the provision of a paid caretaker for the mother while in the son's home, and the mother's wishes that there not be a dispute or litigation over the expenditure of her money. Based on these findings, the court dismissed the action.

Arbitrary and Capricious Termination of Insurance Coverage

Summers v. Touchpoint Health Plan, Inc., 2008 WI 45, 309 Wis. 2d 78, 749 N.W.2d 182 (2008), involves a decision by Touchpoint, a health care maintenance organization (HMO), to refuse to provide benefits to a child who had a cancerous brain tumor removed and needed additional health care services. After removal of the tumor, which Touchpoint paid for, the child was referred to a pediatric oncologist, who decided on a treatment plan that involved high-dose chemotherapy with stem cell rescue because it had a higher success rate than other treatments. The doctor attempted to enroll the child in a clinical trial providing that treatment, but Touchpoint refused to provide coverage because their medical director determined the treatment was the subject of an on-going Phase I or II clinical trial and was therefore experimental. Upon appeal, an independent review organization upheld the denial, although it determined that the treatment was medically necessary. In response, the child was removed from the clinical trial and the doctor proposed providing the same treatment outside of the clinical trial, but Touchpoint rejected that request. The family continued the treatment but appealed Touchpoint's decision, and the circuit court granted summary judgment to Touchpoint, saying the HMO's decision was reasonable and based on language that unambiguously excluded coverage that was the subject of Phase II clinical trials. The court of appeals reversed, saying Touchpoint's letter rejecting the request for coverage was arbitrary and capricious, in violation of federal law and regulations regarding claims under the Employee Retirement Income Security Act (ERISA).

The supreme court decision, written by Justice Crooks, had to determine if Touchpoint's decision violated federal law by being arbitrary and capricious, and if so, what the remedy was. The court decided that the decision of Touchpoint was a termination of benefits, not a denial of benefits, because the child had undergone surgery for the removal of the cancerous tumor and was seeking additional treatment that was necessary to cure the child of the cancer. The distinction was important, because the court said that standard for review of a termination of benefits depends on the insurance plan's language regarding terminations; if the plan reserves the discre-

tion to terminate benefits to the plan administrator as in this case, the termination of benefits is reversed only if it was arbitrary and capricious.

The court discussed the Touchpoint letter stating that it would not provide coverage even though the child was no longer being treated as part of a clinical trial. The court said that the letter, in order to satisfy ERISA requirements and not be arbitrary and capricious, must provide adequate reasoning to explain the decision so that the beneficiary has a clear and precise understanding of the decision. The decision, said the court, must provide adequate notice in writing to the beneficiary setting forth the specific reasons for the denial, must be written in way that the beneficiary could understand, and must provide references to the specific plan provisions on which the denial is based. The court found that the letter of denial did not meet these requirements but merely made reference to an exclusion of coverage and referenced a broad, nonspecific segment of the policy. In addition, the court held that the termination letter did not contain the required explanation of the scientific or clinical judgment for the determination.

The court also found that Touchpoint was arbitrary and capricious in its position on what it would cover under the terms of the plan, citing testimony of an attorney and the medical director's statements that were inconsistent with their decision. The court noted that the external review agency upheld the termination while finding that the treatment was the standard of care and medically necessary for that cancer, again showing that Touchpoint was arbitrary and capricious in its position.

The court, when discussing the appropriate remedy for Touchpoint's decision, restated that because surgery had occurred and some follow-up care had been provided and paid for by Touchpoint, this was a termination case and two remedies were available. If the beneficiary had not yet undergone the treatments, the court said the appropriate remedy was for the beneficiary to be provided with a benefit application process that was not arbitrary and capricious. However, if the beneficiary has undergone treatments and then coverage is terminated, the appropriate remedy was retroactive reinstatement of benefits. This case involved a failure on the part of Touchpoint to communicate specific reasons for its termination, thus, held the court, the appropriate remedy is retroactive reinstatement of benefits.

The dissent, written by Justice Roggensack, stated that the majority failed to follow federal court precedents interpreting ERISA that have concluded that covered plans must state the basis for the payment of benefits and that the administrator must administer the plan in accord with the plan's terms, which the administrator did in this case by denying benefits for a treatment that was the subject of an ongoing Phase I or II clinical trial. The dissent also stated that this was a denial of benefits, not a termination, and that the correct standard of review is whether the administrator's interpretation of the plan was reasonable.

Liability of Property Owners for a Minor's Actions

Nichols v. Progressive Northern Insurance Company, 2008 WI 20, 308 Wis. 2d 17, 746 N.W.2d 220 (2008), concerns the liability of property owners for the injury caused by a minor operating a vehicle while under the influence of alcohol consumed on that property. The property owners did not purchase the alcohol, provide the alcohol to the minor, or encourage the consumption of the alcohol on their property although they were aware of the alcohol consumption. Shortly after leaving the property, the minor struck the vehicle in which Nichols was riding, causing severe injuries. The circuit court dismissed the claim for common-law negligence and the court of appeals reversed the circuit court ruling.

The supreme court decision, written by Justice Crooks, first discussed the elements of negligence and how those elements apply to the facts of this case. The court said that the plaintiff must establish negligence on the part of the defendants, and to establish that, they must show that there was a duty of care on the part of the defendants, that the defendants breached that duty, that there is a causal connection between the duty of care and the plaintiff's injury, and finally that the plaintiff suffered actual damages that resulted from the breach of that duty. If negligence was determined, the court said the final decision as to imposing liability would be based on policy factors that the court must consider.

In this case, because the action was decided on a motion to dismiss, the court accepted the alleged facts and inferences in the complaint as true, and would dismiss the action only if it was

clear that there were no conditions under which the plaintiffs could recover. The court reviewed the four factors of negligence and assumed, without deciding, that the court of appeals was correct in holding that the plaintiffs had established the four factors in their complaint. The court mentioned and rejected the following public policy factors for precluding liability: the injury being too remote from the negligence, the injury being too wholly out of proportion to the defendants' culpability, it being too highly extraordinary that the negligence should have brought about the harm, the allowance of recovery would place too unreasonable a burden on the defendants, and the allowance of recovery would be too likely to open the way to fraudulent claims.

However, the court did determine that the defendants were not liable in this case based on the public policy factor that allowing recovery would have no sensible or just stopping point. If the claim was allowed, said the court, liability might also apply to parents who allegedly should have known that drinking would occur on their property while they were absent, knowing the behavior of teenagers. In addition, the court said it would only be a short step away from imposing strict liability upon property owners for any underage drinking that occurs on property under their control. The court went on to say that the expansion of liability to this type of case should be made by the legislature, not by the court.

Constitutionality of Permitted Use Ordinance

In *Town of Rhine v. Bizzell,* 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780 (2008), the supreme court found a zoning ordinance enacted by the Town of Bizzell (Town) to be unconstitutional. Land subject to the ordinance was owned by the Manitowoc Area Off Highway Vehicle Club (Club). At the time the Club took ownership the land was zoned for "B-2 Commercial, Manufacturing or Processing". Under this classification, no permitted use for the land existed, that is, the ordinance did not automatically permit the land to be used for any purpose. In order to use the land, a conditional-use permit had to be issued by the Town.

A second issue before the court was whether the activities being conducted on the land by the Club were a public nuisance. After purchasing the property, the Club used the property for all-terrain vehicle riding and hunting. Upon becoming aware that the Town required a conditional-use permit in order to use the land, the Club applied for a permit. The permit was denied because the conditional use would not be one of the manufacturing or commercial purposes for which such a permit could be issued under the ordinance. The Club also applied for the land to be rezoned and was denied. Subsequently the local police issued citations to six club members for violating the Town's public nuisance ordinance. The municipal court dismissed the citations for insufficient evidence.

The Town then filed a civil complaint in circuit court on both the zoning and the public nuisance issues. The circuit court invalidated the zoning ordinance because it prohibited all uses. The circuit court found this prohibition "unreasonable" and "confiscatory in nature," resulting in the ordinance being unconstitutional. As to the public nuisance claim, the circuit court found that for the activities on the land to be a public nuisance, the land had to be a "public place" and the nuisance had to affect the entire community.

On the zoning issue, the supreme court affirmed the lower court ruling. (The court of appeals, instead of hearing the case, certified it directly to the supreme court.) The supreme court agreed with the circuit court, dismissing the arguments made by the Town. The Town had argued that the B-2 classification did allow some uses, albeit only conditional ones for which Town approval must be sought, and that other municipalities have similar ordinances.

In finding the ordinance unconstitutional, the supreme court noted that an ordinance permitting no automatic uses of land could be constitutionally valid if the restriction bears a substantial relation to the public health, safety, morals or general welfare. The court stated that an example of a valid ordinance would be one that banned any permitted uses in a floodplain.

As to the nuisance claim, the supreme court reversed the circuit court's decision, stating that it erred in not applying the definition of "public nuisance" found in the Town's ordinance. The court therefore sent this issue back to the circuit court for a new hearing.

Jail Confinement for Tubercular Patient

In *City of Milwaukee v. Washington,* 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111 (2007), the supreme court held the City of Milwaukee (City) could confine to jail a person with noninfectious tuberculosis who is at a high risk of developing the infectious version of the disease and who fails to comply with the prescribed treatment. The Wisconsin statute establishing public health procedures to prevent the spread of tuberculosis allows a person with noninfectious tuberculosis to be "confined" if there is no other alternative that is less restrictive. The statute does not specifically authorize or prohibit the use of a jail or other correctional facility for the purpose of confining the person.

At the time Washington was diagnosed with noninfectious tuberculosis she was living in a shelter. The staff of a city tuberculosis clinic at which she was diagnosed gave Washington bus tickets so that she would come to the clinic as prescribed to receive her medication under the observation of clinic staff. She failed to make two of these medication appointments, so the City health department issued treatment and isolation orders to be served on Washington as soon as she was found. The department found her in a hospital where she had been admitted to give birth to a baby. The department served her with the orders and asked that she remain in the hospital. When Washington threatened to leave the hospital, the City petitioned the circuit court for enforcement of its orders. An agreement was made between Washington and the City that Washington would remain in the hospital for approximately a month until there could be a hearing on the City's petition. At that hearing, the City noted that Washington's condition had progressed to the point that the department believed Washington no longer needed to be confined. She was released but was required to report to the tuberculosis clinic at regular intervals to receive her medication under observation, and to stay with her sister. Washington failed to comply with these requirements and was reported missing by her sister two days after being released. She was discovered that day in a store parking lot, was detained by police, was taken to the hospitable for a medical assessment, and was then transported to the county jail. The City then filed a motion requesting that Washington be confined in jail for violation of the treatment and isolation orders.

Two days before the scheduled hearing on the motion, Washington was mistakenly released from jail. She was found a few days later, detained by the police, and appeared in court that afternoon. At the hearing, the circuit court confined Washington to jail with a review in six months; the court noted, however, that if an alternative place of confinement could be found then it would entertain that proposal. The court of appeals unanimously affirmed the circuit court's decision.

In her appeal to the supreme court, Washington did not challenge the fact that she should be confined but argued that the circuit court could have confined her to a hospital with surveillance as opposed to a jail. She first argued that a jail was not a facility within the meaning of the statute. She also argued that the statute would have to specifically authorize a jail as a possible place of confinement because the purpose of the statute was to protect public health and not to impose punitive measures. The supreme court rejected these arguments reasoning that a facility, by its dictionary definition, may include a jail; that the use of the word confine, instead of quarantine or isolate, suggests a jail setting; and that confinement is the last resort since it is allowed only when there is no less restrictive place available.

Washington also argued that the lower courts erred in saying that relative costs of confinement could be a factor in determining the place of confinement. The supreme court rejected this argument, saying that costs could be a factor if there were two or more places, such as a hospital and a jail, where treatment could be provided and the spread of the disease could be prevented. In conclusion, the court held that the applicable statute authorizes confinement to a jail for a person with noninfectious tuberculosis with a high risk of developing the infectious version. The court, in a footnote, noted that this decision was limited to only the noninfectious version of the disease. The court stated it would be doubtful that the jail would be an appropriate place for a person with infectious tuberculosis to be confined because such a placement would almost certainly increase the chances of the disease being transmitted to other inmates.

Assessing Property at Fair Market Value

Walgreen Co. v. City of Madison, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687 (2008), involves a dispute between the Walgreen Corporation (Walgreens) and the City of Madison (City) as to the proper way to assess the value of two buildings which house Walgreens stores on the east side of the City. Walgreens has a business model which it uses in operating its stores. Instead of owning a store outright or simply leasing space, Walgreens works with developers who find prime store sites and who buy out the existing businesses on the site. The developer then rebuilds or remodels the property especially to suit Walgreens' needs. Walgreens then leases the property from the developer and pays back the developer for the development of the site by entering into a lease under which the rental payments are higher than what they would be at the regular market rate. The lease requires Walgreens to pay the property taxes. The lease has a term of 60 years, but may be ended after 20 years.

For the years 2003 and 2004, the City assessed these properties for property tax purposes basing the assessment on the fair market value of the property, but enhanced by the fact that the developer was receiving rental payments at above fair market value. This resulted in the amount of property tax being higher than it would have been if there had not been rental payment above market value. Walgreens tried to appeal these assessments to the Madison Board of Review but was unsuccessful. Walgreens then filed suit in circuit court, seeking a refund in the amount that, according to Walgreens, was paid in excess. Walgreens lost both in circuit court and in the court of appeals. Throughout the litigation, Walgreens argued that the City could not use the fact that the rental payments were above market value as a factor in determining value for property tax purposes.

In this decision, the supreme court found that the legislature had the power to determine the appropriate way to assess municipal property taxes, and that it had done so by requiring the use of a property assessment manual (manual) prepared by the state Department of Revenue. Statutory law requires that the manual "discuss and illustrate accepted assessment methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level" and requires that the manual be amended to reflect advances in these methods and any court decisions concerning assessment issues. The supreme court goes on to describe the three methods presented in the manual for assessing real property: the sales comparison approach, the cost approach, and the income approach. The manual states that for leased properties, the income approach is often the most reliable. The court accepts the income approach as the appropriate one, but states that the Madison Board of Review and the lower courts did not apply it properly. The court noted that under the manual, the rent that could be received on the open market (market rent), as opposed to the actual amount of rent in the lease (lease rent), must be used, unless the market rent would be lower than the lease rent. With the Walgreens leases, however, the lease rent was higher, so the exception presented in the manual was inapplicable. The City argued, and the lower courts agreed, that the approach specified by the manual should be disregarded, taking the position that using the manual's approach does not result in assessing the "full value" at sale, which is what is required by statute. The City argued that previous court decisions supported their position. The supreme court rejected this, finding that the use of the manual was required under statutory law, and that prior case law and the manual were not in conflict. The court stated that the City was in effect taxing a business effort as opposed to the actual real property and that artificially increased sales or rental prices caused by unusual financing arrangements may not be used to determine property assessments. If such an arrangement is used, the court stated that the City would be assessing financial arrangements entered into a lease agreement as opposed to the value of the actual property that is being leased.