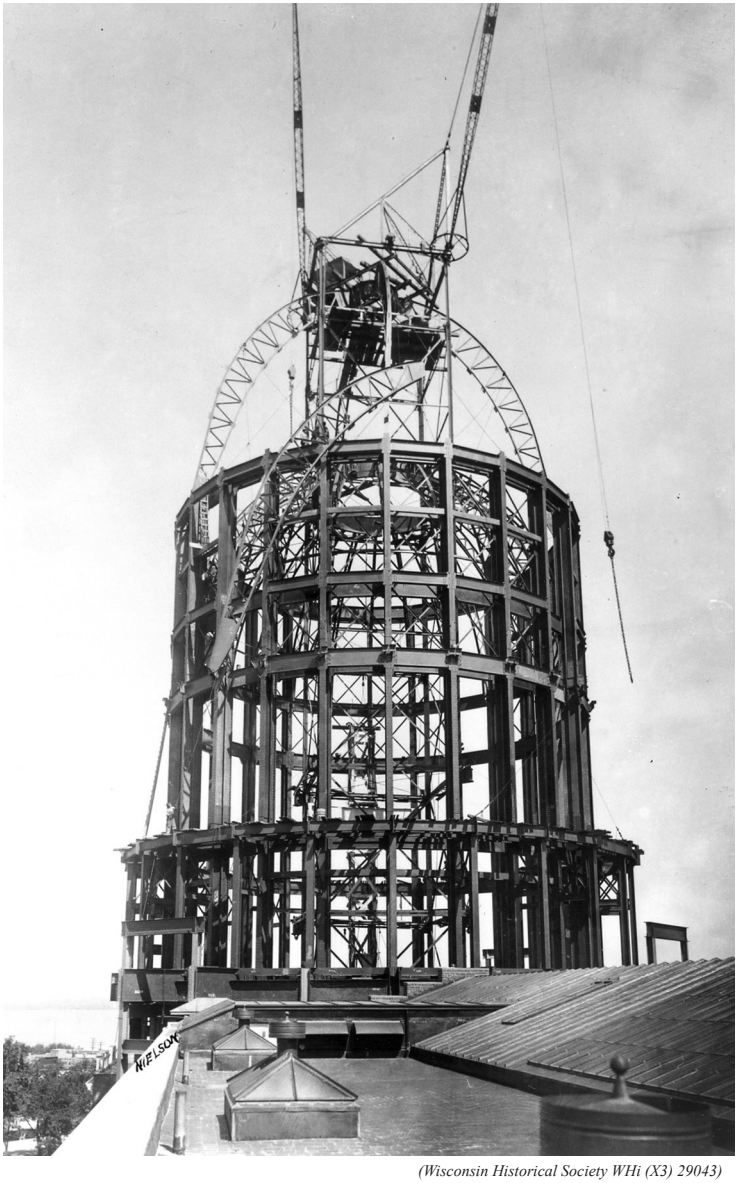
Judicial Branch

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

Dome of Fourth Capitol Under Construction, 1911



(Wisconsin Historical Society WHi (X3) 29043)

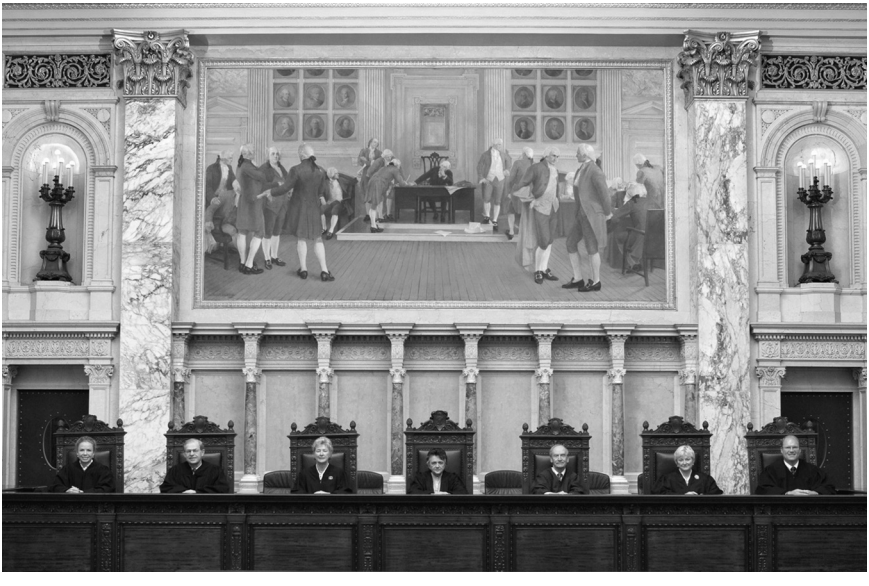
WISCONSIN SUPREME COURT

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	2019
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.

**Justice Prosser was reelected to a new term beginning August 1, 2011 and expiring July 31, 2021.

Source: Director of State Courts, departmental data, June 2011.



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, 2010, Wisconsin had a combined total of 249 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.

On January 6, 2011, the Supreme Court hosted new legislators participating in the Wisconsin Legislative Council's orientation program, which is held at the start of each new legislative session. Chief Justice Shirley S. Abrahamson and other members of the Supreme Court welcomed the legislators and discussed the interactions between the legislative and judicial branches. *(Tom Sheehan, Director of State 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: vacancy, 266-1880, Fax: 267-0640.

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

Number of Positions: 38.50.

Total Budget 2009-11: $10,067,000.

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.

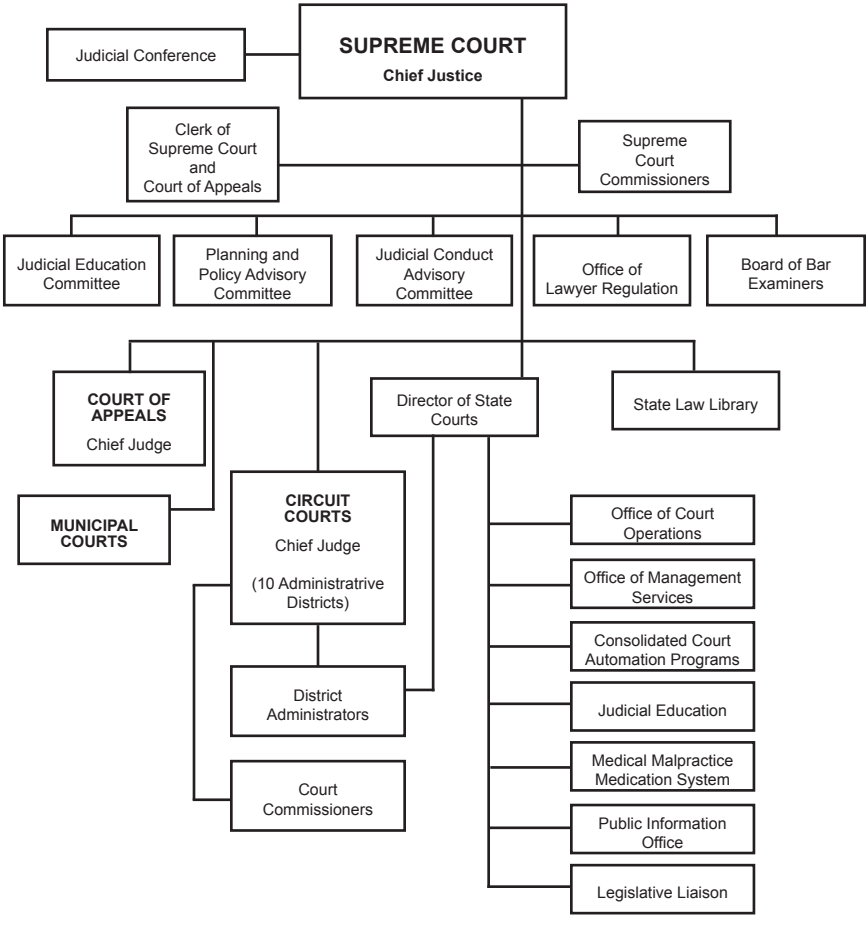
The supreme court sets procedural rules for all courts in the state, and the chief justice serves as administrative head of the state's judicial system. With the assistance of the director of state courts, the chief justice monitors the status of judicial business in Wisconsin's courts. When a calendar 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 2011 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.

WISCONSIN COURT SYSTEM – ADMINISTRATIVE STRUCTURE



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 (2016)

District II: DANIEL P. ANDERSON (2013)
RICHARD S. BROWN** (2012)
LISA S. NEUBAUER* (2014)
PAUL F. REILLY (2016)

District III: EDWARD R. BRUNNER (2013)
MICHAEL W. HOOVER* (2015)
GREGORY A. PETERSON (2017)

District IV: BRIAN W. BLANCHARD (2016)
PAUL B. HIGGINBOTHAM (2017)
PAUL LUNDSTEN (2013)
GARY E. SHERMAN (2014)
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.

Acting Court of Appeals Clerk: A. JOHN VOELKER, 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 2009-11: $20,324,000.

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 2011 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.

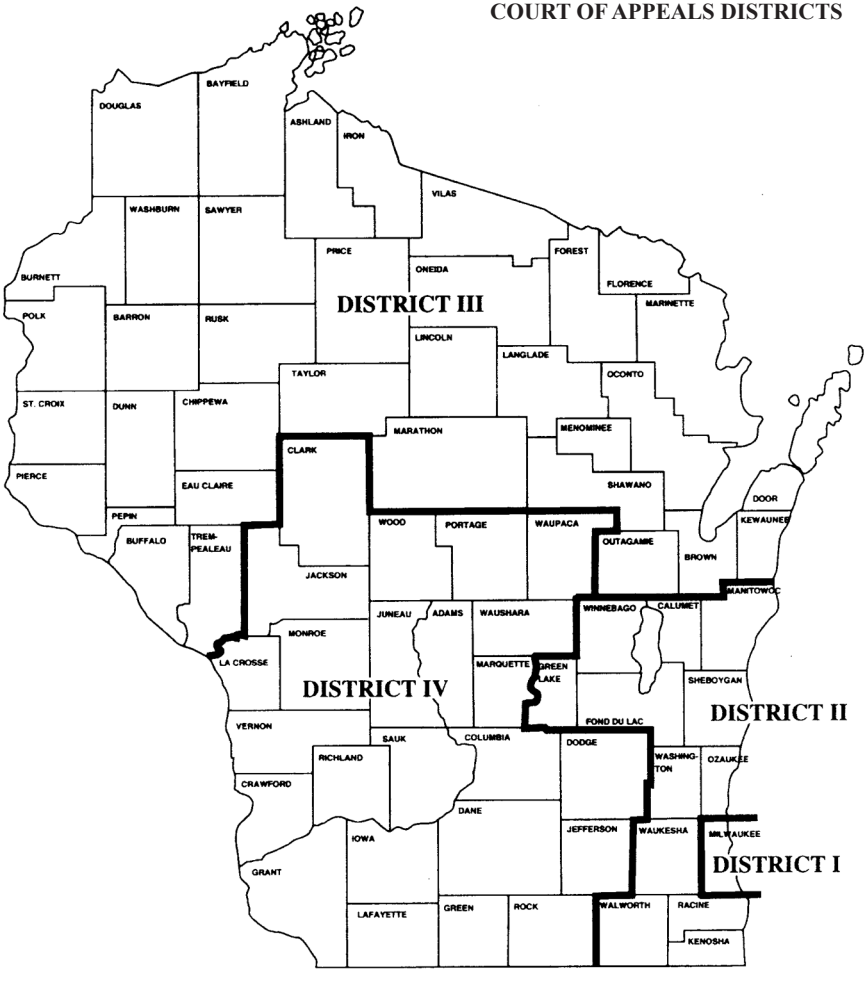
District I: 633 West Wisconsin Avenue, Suite 1400, Milwaukee 53203-1908. Telephone: (414) 227-4680.

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.

COURT OF APPEALS DISTRICTS



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: ANDREW GRAUBARD.

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: ROBERT WIRTZ.
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: JOHN POWELL.

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: SCOTT NEEDHAM.
Administrator: SCOTT JOHNSON.

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

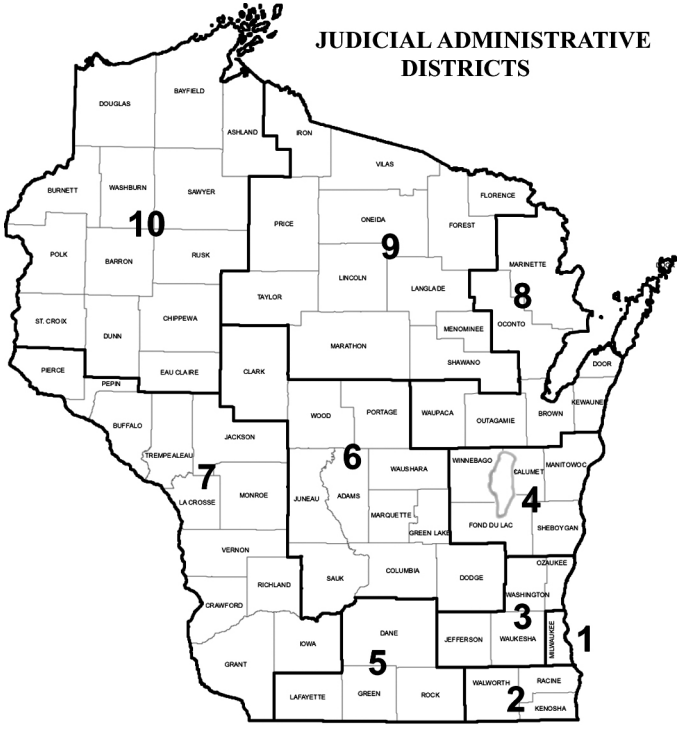
State-Funded Positions: 527.00.

Total Budget 2009-11: $190,944,200.

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, 40 of the state's 69 judicial circuits had multiple branches as of August 1, 2010, for a total of 249 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 2011 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.

Members of the Wisconsin Supreme Court laugh along with essayist Collin Meyer of West Bend's Jackson Elementary School during a visit to the Washington County Courthouse in 2010. Each year, the Wisconsin Supreme Court hears oral arguments outside Madison as part of its Justice on Wheels *program. (Kristine Deiss).*

JUDGES OF CIRCUIT COURT
June 1, 2011

County Circuits	Court Location	Judges	Term Expires July 31
Adams	Friendship	Charles A. Pollex	2015
Ashland	Ashland	Robert E. Eaton	2012
Barron			
Branch 1	Barron	James C. Babler	2016
Branch 2	Barron	Timothy M. Doyle	2014
Branch 3	Barron	James D. Babbitt	2014
Bayfield	Washburn	John P. Anderson	2015
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder	2015
Branch 2	Green Bay	Mark A. Warpinski	2012
Branch 3	Green Bay	Susan Bischel	2016
Branch 4	Green Bay	Kendall M. Kelley	2015
Branch 5	Green Bay	Marc A. Hammer	2015
Branch 6	Green Bay	John D. McKay	2015
Branch 7	Green Bay	Timothy A. Hinkfuss	2013
Branch 8	Green Bay	William M. Atkinson	2015
Buffalo-Pepin	Alma	James J. Duvall	2012
Burnett	Siren	Kenneth Kutz	2015
Calumet	Chilton	Donald A. Poppy	2016
Chippewa			
Branch 1	Chippewa Falls	Roderick A. Cameron	2014
Branch 2	Chippewa Falls	James Isaacson	2015
Branch 3	Chippewa Falls	Steven R. Cray	2014
Clark	Neillsville	Jon M. Counsell	2012
Columbia			
Branch 1	Portage	Daniel S. George	2015
Branch 2	Portage	James O. Miller[1]	2011
Branch 3	Portage	Alan White	2013
Crawford	Prairie du Chien	James P. Czajkowski	2016
Dane			
Branch 1	Madison	John Markson	2014
Branch 2	Madison	Maryann Sumi[2]	2011
Branch 3	Madison	John C. Albert	2012
Branch 4	Madison	Amy Smith	2016
Branch 5	Madison	Nicholas J. McNamara	2016
Branch 6	Madison	Shelley J. Gaylord	2015
Branch 7	Madison	William E. Hanrahan	2014
Branch 8	Madison	Patrick J. Fiedler	2012
Branch 9	Madison	Richard Niess[2]	2011
Branch 10	Madison	Juan B. Colas	2015
Branch 11	Madison	Daniel R. Moeser	2015
Branch 12	Madison	David T. Flanagan	2012
Branch 13	Madison	Julie Genovese	2015
Branch 14	Madison	C. William Foust	2016
Branch 15	Madison	Stephen Ehlke	2016
Branch 16	Madison	Sarah B. O'Brien	2016
Branch 17	Madison	Peter C. Anderson	2016
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	Kelly J. Thimm	2015
Branch 2	Superior	George L. Glonek	2015
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2016
Branch 2	Menomonie	Rod W. Smeltzer	2015
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	2016
Branch 3	Fond du Lac	Richard J. Nuss	2015
Branch 4	Fond du Lac	Gary R. Sharpe	2016
Branch 5	Fond du Lac	Robert J. Wirtz[2]	2011
Forest (see *Florence-Forest*)			
Grant			
Branch 1	Lancaster	Robert P. VanDeHey[2]	2011
Branch 2	Lancaster	Craig R. Day	2015
Green			
Branch 1	Monroe	Jim Beer	2015
Branch 2	Monroe	Thomas J. Vale	2015
Green Lake	Green Lake	William M. McMonigal[3]	2011
Iowa	Dodgeville	William D. Dyke	2016
Iron	Hurley	Patrick John Madden[2]	2011

JUDGES OF CIRCUIT COURT
June 1, 2011–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Jackson	Black River Falls	Thomas Lister	2015
Jefferson			
Branch 1	Jefferson	Jennifer L. Weston	2015
Branch 2	Jefferson	William F. Hue	2013
Branch 3	Jefferson	Jacqueline R. Erwin	2015
Branch 4	Jefferson	Randy R. Koschnick[2]	2011
Juneau			
Branch 1	Mauston	John Pier Roemer	2016
Branch 2	Mauston	Paul S. Curran	2014
Kenosha			
Branch 1	Kenosha	David Mark Bastianelli	2015
Branch 2	Kenosha	Barbara A. Kluka	2013
Branch 3	Kenosha	Bruce E. Schroeder	2014
Branch 4	Kenosha	Anthony Milisauskas[2]	2011
Branch 5	Kenosha	Wilbur W. Warren III	2015
Branch 6	Kenosha	Mary K. Wagner	2015
Branch 7	Kenosha	S. Michael Wilk	2012
Branch 8	Kenosha	Chad G. Kerkman	2015
Kewaunee	Kewaunee	Dennis J. Mleziva	2016
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[2]	2011
Lafayette	Darlington	William D. Johnston	2015
Langlade	Antigo	Fred W. Kawalski[2]	2011
Lincoln			
Branch 1	Merrill	Jay R. Tlusty	2016
Branch 2	Merrill	Glenn H. Hartley[2]	2011
Manitowoc			
Branch 1	Manitowoc	Patrick L. Willis	2016
Branch 2	Manitowoc	Darryl W. Deets	2013
Branch 3	Manitowoc	Jerome L. Fox[2]	2011
Marathon			
Branch 1	Wausau	Jill N. Falstad	2015
Branch 2	Wausau	Gregory Huber	2016
Branch 3	Wausau	Vincent K. Howard	2014
Branch 4	Wausau	Gregory Grau	2013
Branch 5	Wausau	Patrick Brady[4]	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[2]	2011
Branch 2	Milwaukee	Joe Donald	2015
Branch 3	Milwaukee	Clare L. Fiorenza	2015
Branch 4	Milwaukee	Mel Flanagan	2012
Branch 5	Milwaukee	Mary Kuhnmuench	2016
Branch 6	Milwaukee	Ellen Brostrom	2015
Branch 7	Milwaukee	Jean W. DiMotto	2015
Branch 8	Milwaukee	William Sosnay	2012
Branch 9	Milwaukee	Paul R. Van Grunsven[2]	2011
Branch 10	Milwaukee	Timothy G. Dugan[2]	2011
Branch 11	Milwaukee	Dominic S. Amato	2013
Branch 12	Milwaukee	David L. Borowski	2015
Branch 13	Milwaukee	Mary Triggiano[2]	2011
Branch 14	Milwaukee	Christopher R. Foley	2016
Branch 15	Milwaukee	J.D. Watts	2015
Branch 16	Milwaukee	Michael J. Dwyer	2015
Branch 17	Milwaukee	Francis Wasielewski	2014
Branch 18	Milwaukee	Pedro Colón[2,5]	2011
Branch 19	Milwaukee	Dennis R. Cimpl[2]	2011
Branch 20	Milwaukee	Dennis P. Moroney	2012
Branch 21	Milwaukee	William Brash III	2014
Branch 22	Milwaukee	Timothy M. Witkowiak	2015
Branch 23	Milwaukee	Elsa C. Lamelas	2012
Branch 24	Milwaukee	Charles F. Kahn, Jr.	2016
Branch 25	Milwaukee	Stephanie Rothstein	2016
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	2015
Branch 30	Milwaukee	Jeffrey A. Conen	2015
Branch 31	Milwaukee	Daniel A. Noonan	2014
Branch 32	Milwaukee	Michael D. Guolee	2014
Branch 33	Milwaukee	Carl Ashley[2]	2011
Branch 34	Milwaukee	Glenn H. Yamahiro	2016
Branch 35	Milwaukee	Frederick C. Rosa[2]	2011
Branch 36	Milwaukee	Jeffrey A. Kremers[2]	2011

JUDGES OF CIRCUIT COURT
June 1, 2011–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Branch 37	Milwaukee	Karen Christenson	2016
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	2015
Branch 43	Milwaukee	Marshall B. Murray	2012
Branch 44	Milwaukee	Daniel L. Konkol	2016
Branch 45	Milwaukee	Thomas P. Donegan	2016
Branch 46	Milwaukee	Bonnie L. Gordon	2012
Branch 47	Milwaukee	John Siefert[2]	2011
Monroe			
Branch 1	Sparta	Todd L. Ziegler	2013
Branch 2	Sparta	Mark L. Goodman	2016
Branch 3	Sparta	J. David Rice	2016
Oconto			
Branch 1	Oconto	Michael T. Judge[2]	2011
Branch 2	Oconto	Jay N. Conley	2016
Oneida			
Branch 1	Rhinelander	Patrick F.O'Melia	2014
Branch 2	Rhinelander	Mark A. Mangerson	2012
Outagamie			
Branch 1	Appleton	Mark McGinnis[2]	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	2015
Branch 6	Appleton	Dee R. Dyer	2012
Branch 7	Appleton	John A. Des Jardins	2012
Ozaukee			
Branch 1	Port Washington	Paul V. Malloy	2015
Branch 2	Port Washington	Thomas R. Wolfgram	2013
Branch 3	Port Washington	Sandy A. Williams	2015
Pepin (see *Buffalo-Pepin*)			
Pierce	Ellsworth	Joe Boles	2016
Polk			
Branch 1	Balsam Lake	Molly E. GaleWyrick	2014
Branch 2	Balsam Lake	vacancy[6]	—
Portage			
Branch 1	Stevens Point	Frederic W. Fleishauer[2]	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	Eugene Gasiorkiewicz	2016
Branch 3	Racine	Emily S. Mueller[2]	2011
Branch 4	Racine	John S. Jude	2016
Branch 5	Racine	Dennis J. Barry[2]	2011
Branch 6	Racine	Wayne J. Marik	2015
Branch 7	Racine	Charles H. Constantine	2014
Branch 8	Racine	Faye M. Flancher	2015
Branch 9	Racine	Allan B. Torhorst	2015
Branch 10	Racine	Richard J. Kreul	2012
Richland	Richland Center	Edward E. Leineweber	2015
Rock			
Branch 1	Janesville	James P. Daley	2014
Branch 2	Janesville	Alan Bates	2016
Branch 3	Janesville	Michael Fitzpatrick	2015
Branch 4	Beloit	Daniel T. Dillon	2013
Branch 5	Beloit	Kenneth Forbeck	2015
Branch 6	Janesville	Richard T. Werner	2015
Branch 7	Beloit	James E. Welker	2012
Rusk	Ladysmith	Steven P. Anderson	2016
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	2016
Branch 3	Baraboo	Guy D. Reynolds	2012
Sawyer	Hayward	Jerry Wright	2015
Shawano-Menominee (see *Menominee-Shawano*)			
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel	2015
Branch 2	Sheboygan	Timothy M. Van Akkeren	2013
Branch 3	Sheboygan	Angela Sutkiewicz[2,5]	2011
Branch 4	Sheboygan	Terence T. Bourke	2015
Branch 5	Sheboygan	James J. Bolgert	2012
Taylor	Medford	Ann Knox-Bauer	2015
Trempealeau	Whitehall	John A. Damon	2013
Vernon	Viroqua	Michael J. Rosborough[2]	2011

JUDGES OF CIRCUIT COURT
June 1, 2011–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Vilas	Eagle River	Neal A. Nielsen	2016
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2012
Branch 2	Elkhorn	James L. Carlson	2016
Branch 3	Elkhorn	John R. Race	2015
Branch 4	Elkhorn	David M. Reddy	2016
Washburn	Shell Lake	Eugene D. Harrington	2015
Washington			
Branch 1	West Bend	James Pouros[2,5]	2011
Branch 2	West Bend	James K. Muehlbauer	2014
Branch 3	West Bend	Todd Martens[2,5]	2011
Branch 4	West Bend	Andrew T. Gonring	2012
Waukesha			
Branch 1	Waukesha	Michael O. Bohren	2013
Branch 2	Waukesha	Mark Gundrum	2016
Branch 3	Waukesha	Ralph M. Ramirez[2]	2011
Branch 4	Waukesha	Kathleen Stilling[5,7]	2011
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2014
Branch 6	Waukesha	Patrick C. Haughney	2014
Branch 7	Waukesha	J. Mac Davis	2015
Branch 8	Waukesha	James R. Kieffer	2015
Branch 9	Waukesha	Donald J. Hassin, Jr.	2013
Branch 10	Waukesha	Linda M. Van De Water	2015
Branch 11	Waukesha	William Domina[2,5]	2011
Branch 12	Waukesha	Kathryn W. Foster	2012
Waupaca			
Branch 1	Waupaca	Philip M. Kirk[2]	2011
Branch 2	Waupaca	John P. Hoffmann	2016
Branch 3	Waupaca	Raymond S. Huber	2012
Waushara	Wautoma	Guy Dutcher[2]	2011
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2012
Branch 2	Oshkosh	Scott C. Woldt[2]	2011
Branch 3	Oshkosh	Barbara Hart Key	2016
Branch 4	Oshkosh	Karen L. Seifert	2012
Branch 5	Oshkosh	John Jorgensen	2016
Branch 6	Oshkosh	Robert Hawley[5,8]	2011
Wood			
Branch 1	Wisconsin Rapids	Gregory J. Potter	2014
Branch 2	Wisconsin Rapids	James M. Mason	2016
Branch 3	Wisconsin Rapids	Todd P. Wolf	2015

[1]W. Andrew Voigt was newly elected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

[2]Reelected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

[3]Mark Slate was newly elected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

[4]Mike Moran was newly elected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

[5]Appointed by the governor.

[6]Jeff Anderson was newly elected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

[7]Lloyd V. Carter was newly elected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

[8]Daniel J. Bissett was newly elected on April 5, 2011, for a 6-year term to commence on August 1, 2011.

Sources: *2009-2010 Wisconsin Statutes;* Government Accountability Board, departmental data, April 2011; Director of State Courts, departmental data, April 2011; 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, 2011, there were 243 municipal courts with 240 municipal judges. Courts may have multiple branches; the City of Milwaukee's municipal court, for example, has 3 branches. (Milwaukee County, which is the only county authorized to appoint municipal court commissioners, had 3 part-time commissioners as of May 2011.) Two or more municipalities may agree to form a joint court, and there are 56 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 term of office is 4 years and the governing body 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. 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: vacancy, 266-3121.

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: 130.25.

Total Budget 2009-11: $39,533,400.

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: vacancy.

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 2009-11: $5,889,600.

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

Responsibility: The State Law Library is a public library open to all citizens of Wisconsin. It serves as the primary legal resource center for the Wisconsin Supreme Court and Court of Appeals, the Department of Justice, the Wisconsin Legislature, the Office of the Governor, executive agencies, and members of the State Bar of Wisconsin. The library is administered by the supreme court, which appoints the library staff and determines the rules governing library use. The library acts as a consultant and resource for county law libraries throughout the state. Milwaukee County and Dane County contract with the State Law Library for management and operation of their courthouse libraries (the Milwaukee Legal Resource Center and the Dane County 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: ROD ROGAHN (lawyer), *chairperson;* MARK A. PETERSON (lawyer), *vice chairperson;* BARRETT J. CORNEILLE, JOHN MCNAMARA, JOSEPH E. REDDING, TERRY ROSE, ALICE A. RUDEBUSCH, HARVEY WENDEL (lawyers); DEANNA M. HOSIN, CLAUDE GILMORE, STEVEN J. KOSZAREK, SHARON SCHMELING (nonlawyers). (All members are appointed by the supreme court.)

Preliminary Review Committee: EDWARD HANNAN (lawyer), *chairperson;* ROBERT J. ASTI (lawyer), *vice chairperson;* TERENCE BOURESSA, JOHN W. CAMPION, DONALD CHRISTL, MARTIN W. HARRISON, TIMOTHY NIXON, JAMES R. SMITH (lawyers); PATRICIA EVANS, CLAIRE FOWLER, ROBERT HOSCH, MICHAEL KINDSCHI, JERRY SAUVE (nonlawyers). (All members are appointed by the supreme court.)

Special Preliminary Review Panel: THOMAS A. CABUSH, LORI S. KORNBLUM, CATHERINE LA FLEUR, MICHAEL S. WEIDEN (lawyers); JOHN DRIESSEN, JEROME S. MATYSIK, LAWRENCE J. QUAM (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): MARK BROMLEY (lawyer), *chairperson;* PATRICK ANDERSON, BRENDA J. DAHL, ROBERT I. DUMEZ, TIMOTHY GERAGHTY, RAYMOND KREK, C. BENNETT PENWELL (lawyers); JOHN G. BRAIG, WILLIAM J. BRYDGES, JEFFREY CASSITY, RANDALL J. HAMMETT, JEROME HONORE (nonlawyers).

District 2 Committee (serves Milwaukee County): JULIE A. O'HALLORAN (lawyer), *chairperson;* ROBERT C. MENARD (lawyer), *vice chairperson;* JAMES L. ADASHEK, COLLEEN D. BALL, ELIOT BERNSTEIN, REBECCA BLEMBERG, SARAH FRY BRUCH, ANNELIESE M. DICKMAN, ROBIN DORMAN, BRADLEY FOLEY, MICHELE FORD, IRVING D. GAINES, JAMES GEHRKE, JAMES GREER, LYNN LAUFENBERG, THOMAS MERKLE, KEITH O'DONNELL, RAYMOND E.H. SCHRANK, DAVID W. SIMON, WILLIAM T. STUART, FRANK TERSCHAN, MONTE WEISS (lawyers); J. STEPHEN ANDERSON, FRANK VALENTINE BIALEK, CARLOS A. BURITICA, NEILAND COHEN, JEFFREY HANEWALL, RICHARD IPPOLITO, BARBARA J. JANUSIAK, J. DAIN MADDOX, ERICA MILLS, GARY NOSACEK, DANICA OLSON, HOLLY PATZER, DEEDEE RONGSTAD, ANGELA WARD, 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); KRISTY BRADISH, MARY JO KEATING, THOMAS E. KELROY, GARY KNOKE, ELLEN C. SORENSEN, SUSAN T. VETTE (nonlawyers).

District 4 Committee (serves Calumet, Door, Kewaunee, Manitowoc, and Sheboygan Counties): NATASHA TORRY-MORGAN (lawyer), *chairperson;* BARRY S. COHEN, MARY LYNN DONOHUE, ROBERTA A. HECKES, MARK JINKINS, ROBERT LANDRY, SUSAN H. SCHLEISNER (lawyers); SUSAN M. MCANINCH, DONALD A. SCHWOBE, JAMES STECKER, 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, DANIEL C. ARNDT, BRUCE J. BROVOLD, KARA M. BURGOS, MARVIN H. DAVIS, CHRISTOPHER DOERFLER, STEPHANIE HOPKINS, PAUL B. MILLIS, JON D. SEIFERT (lawyers); TAM K. BURGAU, JAMES W. GEISSNER, JAMES HANSON, RICHARD KYTE, PAUL R. LORENZ, RICHARD A. MERTIG, REED POMEROY, RICHARD RASMUSSEN, LINDA LEE SONDREAL, LARRY D. WYMAN (nonlawyers).

District 6 Committee (serves Waukesha County): GARY KUPHALL (lawyer), *chairperson;* LINDA S. COYLE, MARTIN DITKOF, ROSEMARY JUNE GORETA, LANCE S. GRADY, MICHAEL JASSAK, BRAD A. MARKVART, DANIEL MURRAY, PAUL E. SCHWEMER, NELSON E. SHAFER, MARGARET G. ZICKUHR (lawyers); MICHAEL BRANKS, RICHARD GASSO, ROBERT HAMILTON, RAYMOND KLITZKE, BRUCE 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, STEPHEN D. CHIQUOINE, LEO L. GRILL, CYNTHIA KIEPER, JOHN KRUSE, LEON SCHMIDT (lawyers); LAVINDA CARLSON, ELLEN M. DAHL, DAVID A. KORTH, DOROTHY E. MANSAVAGE, SUSAN G. MARTIN, ALAN K. PETERSON, LINDA L. REDFIELD (nonlawyers).

District 8 Committee (serves Dunn, Eau Claire, Pierce, and St. Croix Counties): ROBERT L. LOBERG (lawyer), *chairperson;* JAY E. HEIT, PATRICIA J. MILLER, GREGORY S. NICASTRO, CAROL N. SKINNER, PHILLIP M. STEANS, TRACY N. TOOL, MICHAEL P. WAGNER, R. MICHAEL WATERMAN (lawyers); DAVID CRONK, JOHN DEROSIER, EDWARD HASS, WILLIAM O'GARA, PAUL W. SCHOMMER (nonlawyers).

District 9 Committee (serves Dane County): THOMAS W. SHELLANDER (lawyer), *chairperson;* LEE ATTERBURY, ANNE M. BLOOD, JAMES BOLT, ANDREW CLARKOWSKI, JESUS G.Q. GARZA, AARON HALSTEAD, PETER E. HANS, THOMAS HORNIG, ROBERT KASIETA, JENNIFER SLOAN LATTIS, WILLIAM F. MUNDT, JENNIFER E. NASHOLD, JUDITH OLINGY, LAWRENCE P. PETERSON, MEREDITH J. ROSS, BRUCE AL. SCHULTZ, MEGAN A. SENATORI, JANICE K. WEXLER (lawyers); PATRICK DELMORE, DAVID CHARLES DIES, ROBERT C. HODGE, NORMAN JENSEN, LARRY MCCRAY, LARRY NESPER, ROBERT G. OWENS, THERON E. PARSONS, KATHLEEN M. RAAB, CONSUELO LOPEZ SPRINGFIELD, TIMOTHY STRAIT, RODNEY TAPP, DAVID G. UTLEY, KENNETH YUSKA (nonlawyers).

District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties): GALE MATTISON (lawyer), *chairperson;* MICHAEL F. BROWN, LAURA C. SMYTHE, GERALD WILSON (lawyers); GUY T. GOODING, JOHN W. HILL, CONNIE M. SEEFELDT, STEPHEN C. WARE (nonlawyer).

District 11 Committee (serves Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Polk, Price, Rusk, Sawyer, Taylor, and Washburn Counties): CRAIG HAUKAAS (lawyer), *chairperson;* DEBORAH ASHER, ANNETTE M. BARNA, JOHN R. CARLSON, GERALD SAZAMA, TIMOTHY T. SEMPF, AMANDA L. WIECKOWIC (lawyers); GENE ANDERSON, ELIZABETH ESSER, DIANE FJELSTAD, ERNY HEIDEN, MARY ANN KING, MARGARET KOLBEK (nonlawyers).

District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties): JAMES A. CARNEY (lawyer), *chairperson;* JODY L. COOPER, THOMAS H. GEYER, CHARLOTTE L. DOHERTY, ROBERT HOWARD, MELISSA B. JOOS, MARGARET M. KOEHLER, CAROLYN L. SMITH, JAMES D. WICKHEM (lawyers); DENNIS L. EVERSON, MICHAEL FURGAL, WILLIAM HUSTAD,

LAURA MCBAIN, MICHAEL F. METZ, ROBERT D. SPOODEN (nonlawyers).

District 13 Committee (serves Dodge, Ozaukee, and Washington Counties): GERALD H. ANTOINE (lawyer), *chairperson;* JOHN A. BEST, JOSEPH G. DOHERTY, MICHAEL P. HERBRAND, CHRISTINE EISENMANN KNUDTSON, DANIEL L. VANDE ZANDE (lawyers); ROBERT BLAZICH, MARK L. BORN, RAMONA LARSON, BONNIE L. SCHWID (nonlawyers).

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

District 15 Committee (serves Racine County): MARK F. NIELSEN (lawyer), *chairperson;* JOHN J. BUCHAKLIAM, JAMES DRUMMOND, PATRICIA J. HANSON, MARK R. HINKSTON, ROBERT W. KELLER, TIMOTHY J. PRUITT, ROBERT K. WEBER (lawyers); THOMAS CHRYST, RAYMOND G. FEEST, MARK GLEASON, PATRICIA HOFFMAN, FRANK KONIESKA, 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); EDWARD E. BLUTHARDT, JR., ARNO WM. HAERING, DIANNE M. WEILER, YVONNE H. WEILER, GALE WOLF (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; BILL WEIGEL, *litigation counsel,* bill.weigel@wicourts.gov; MARY HOEFT SMITH, *trust account program administrator,* mary.hoeftsmith@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 2009-11: $5,552,800.

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 L. HUSTON (State Bar member), *chairperson;* DANIEL D. BLINKA (Marquette University Law School faculty), *vice chairperson;* KENNETH KUTZ (circuit court judge); THOMAS M. BOYKOFF, CHARLES P. DYKMAN, KURT D. DYKSTRA, W. CRAIG OLAFSSON (State Bar members); JOHN A. PRAY (UW Law School faculty); JAMES A. COTTER, LINDA HOSKINS, BONNIE L. SCHWID (public members). (All members are appointed by the supreme court.)

Director: JACQUELYNN B. ROTHSTEIN, 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 2009-11: $1,497,800.

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: MICHAEL T. JUDGE (circuit court or reserve judge serving in a rural area)*;* J. MAC DAVIS (judicial administrative district chief judge); KITTY BRENNAN (court of appeals judge); WAYNE MARIK (circuit court or reserve judge serving in an urban area); BRUCE GOODNOUGH (municipal court judge); MORIA KRUEGER (reserve judge); SANDRA J. MARCUS (circuit court commissioner); ROGER PETTIT (State Bar member); BRIAN LEONHARDT (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, REBECCA F. DALLET, LEE S. DREYFUS, JR., MICHAEL R. FITZPATRICK, JEROME L. FOX, TIMOTHY A. HINKFUSS, NANCY J. KRUEGER, SARAH B. O'BRIEN (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: LISA K. STARK (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;* JUAN COLÁS (circuit court judge), *vice chairperson;* BRIAN BLANCHARD (appeals court judge selected by court); RICHARD BATES, DAVID BOROWSKI, WILLIAM BRASH, EUGENE HARRINGTON, PAT MADDEN, WAYNE MARIK, J.D. MCKAY, RICHARD NUSS, GREGORY POTTER, LINDA VAN DE WATER, 2 vacancies (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); LINDA HOSKINS, DIANE TREIS-RUSK (nonlawyers); KELLI THOMPSON (public defender); GAIL RICHARDSON (court administrator); ADAM GEROL (prosecutor); vacancy (circuit court clerk); DARCY MCMANUS (circuit court commissioner). (Unless indicated otherwise, members are appointed by the chief justice.) Nonvoting associates: DARRYL DEETS (chief judge liaison), A. JOHN VOELKER (director of state courts).

Planning Subcommittee: MICHAEL ROSBOROUGH (circuit court judge), *chairperson;* LISA NEUBAUER (appeals court judge); KATHRYN FOSTER, JEFFREY KREMERS, PAT MADDEN (circuit court judges); GAIL RICHARDSON (court administrator); SHEILA REIFF (circuit court clerk); DARCY MCMANUS (circuit court commissioner); JOSEPH HEIM (public member). *Ex officio* members: SHIRLEY S. ABRAHAMSON (supreme court chief justice), JUAN COLÁS (circuit court judge, vice chairperson of Planning and Policy Advisory Committee), A. JOHN VOELKER (director of state courts).

Staff Policy Analyst: MICHELLE CERN, michelle.cern@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: MICHAEL J. APRAHAMIAN, JOHN R. DAWSON (State Bar members); GINGER ALDEN, JAMES M. HANEY, CYNTHIA HERBER, MICHAEL R. MILLER, vacancy (nonlawyers); EMILY S. MUELLER (circuit court judge); PAUL F. REILLY (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 2009-11: $491,600.

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: Patience Drake Roggensack (justice designated by supreme court); Patricia S. Curley (judge designated by court of appeals); A. John Voelker (director of state courts); Edward E. Leineweber, Gerald P. Ptacek, Mary K. Wagner, Maxine A. White (circuit court judges designated by Judicial Conference); Senator Zipperer (chairperson, senate judicial committee); Representative J. Ott (chairperson, assembly judicial committee); Rebecca R. St. John (designated by attorney general); Stephen R. Miller (Legislative Reference Bureau Chief); David E. Schultz (faculty member, UW Law School, designated by dean); Thomas L. Shriner, Jr. (adjunct professor, Marquette University Law School, designated by dean); Marla J. Stephens (designated by state public defender); Nicholas C. Zales (State Bar member, designated by president-elect); Thomas W. Bertz, Beth E. Hanan, Catherine A. La Fleur (State Bar members selected by State Bar); vacancy (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 2009-11: $255,200.

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.

WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT

STATE BAR OF WISCONSIN

Board of Governors (effective July 1, 2011): *Officers:* JAMES M. BRENNAN, *president;* KEVIN G. KLEIN, *president-elect;* JAMES C. BOLL, JR., *past president;* MICHAEL J. REMINGTON, *secretary;* KELLY C. NICKEL, *treasurer;* PATRICIA D. STRUCK, *chair of the board. District members:* BRIAN L. ANDERSON, COLLEEN D. BALL, ANDREW P. BEILFUSS, SAMUEL W. BENEDICT, NATHANIEL CADE, JR., JOSEPH M. CARDAMONE, SUSAN L. COLLINS, WILLIAM T. CURRAN, RAYMOND M. DALL'OSTO, WILLIAM F. FALE, ROBERT R. GAGAN, ROBERT R. GOEPEL, KIMBERLY K. HAINES, CHARLES E. HANSON, ARTHUR J. HARRINGTON, MARGARET W. HICKEY, FREDERICK B. KAFTAN, JESSICA J. KING, LISA M. LAWLESS, STEVEN A. LEVINE, ATHENEÉ P. LUCAS, KEVIN J. LYONS, THEODORE MOLINARI, W. CRAIG OLAFSSON, THOMAS J. PHILLIPS, FRANK D. REMINGTON, JOHN T. SCHOMISCH, JR., GEORGE K. STEIL, JR., RICHARD J. SUMMERFIELD, JAMES S. THIEL, KELLI S. THOMPSON, R. MICHAEL WATERMAN, AMY E. WOCHOS, JEFFREY R. ZIRGIBEL. *Young Lawyers Division:* JILL M. KASTNER. *Government Lawyers Division:* MELANIE R. SWANK. *Nonresident Lawyers Division:* THOMAS P. GEHL, GORDON G. KIRSTEN, STEVEN H. SCHUSTER, TODD R. SEELMAN. *Senior Lawyers Division:* JOSEPH A. MELLI. *Nonlawyer members:* JANE BURNS, CATHERINE ZIMMERMAN. *Minority Bar Liaisons:* ROBIN DALTON, MICABIL DIAZ, NICOLE M. STANDBACK, REBECCA M. WEBSTER (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; www.facebook.com/statebarofwi; www.twitter.com/statebarofwi

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; Rotunda Report;* 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 Supreme Court ruled in *Keller v. State Bar of California,* 496 U.S. 1 (1990) that it is permissible to mandate membership provided certain restrictions are placed on the political activities of the mandatory State Bar. Effective July 1, 1992, the Wisconsin Supreme Court reinstated the mandatory membership rule upon petition from the State Bar Board of Governors.

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

July 2009 – June 2011

Michael Duchek, Peggy Hurley, Robert Nelson, Katie Schumacher
Legislative Reference Bureau

CONSTITUTIONAL LAW

Legislative Transfer of Funds and Unconstitutional Takings

In *Wisconsin Medical Society, Inc. v. Morgan,* 2010 WI 94, 328 Wis. 2d 469, 787 N.W.2d 22 (2010), health care providers challenged the constitutionality of the legislature's transfer of $200 million from the Injured Patients and Family Compensation Fund (the fund) to the state's Medical Assistance Fund. The fund was established by the Legislature in 1975 to address the rising cost of medical malpractice insurance for health care providers. It covers the excess portion of a medical malpractice claim as long as the health care provider maintains a designated amount of insurance coverage. The supreme court determined that the legislature's transfer was an unconstitutional taking because the health care providers had a protected property interest in the fund.

In the 2007-2009 state budget act (2007 Wisconsin Act 20, Section 9225), the legislature transferred $200 million from the fund to the Medical Assistance Fund. The Wisconsin Medical Society, representing health care providers, filed suit against the secretary of administration, who had the responsibility to implement the transfer. The circuit court ruled against the Medical Society, finding it did not have a protected property interest in the fund. The supreme court accepted certification from the court of appeals.

The court concluded that health care providers have a constitutionally protected property interest in the fund and, therefore that Section 9225 of Act 20 was unconstitutional as taking private property without just compensation. Article I, Section 13 of the Wisconsin Constitution states: "The property of no person shall be taken for public use without just compensation therefor." The takings analysis under Wisconsin's Constitution is generally the same as the takings analysis under the Fifth Amendment of the United States Constitution. Under *Wisconsin Retired Teachers Assn. v. Employee Trust Funds Board,* 207 Wis. 2d 1, 558 N.W.2d 83 (1997), a taking is unconstitutional when 1) a property interest exists; 2) the property interest has been taken; 3) the taking was for public use; and 4) the taking was without just compensation. In this case, the parties disputed whether health care providers had a property interest in the fund.

The court determined that health care providers have a property interest in the fund based on the language in Section 655.27(6), Wisconsin Statutes. The statute provides that the fund "is held in irrevocable trust for the sole benefit of health care providers participating in the fund and proper claimants" and that the financial assets of the fund "may not be used for any other purpose of the state." Moreover, the court noted that the fund met all of the elements necessary to establish a formal trust: 1) trustees who hold property and have the responsibility to deal with the property for the benefit of others; 2) beneficiaries for whom the trustees are responsible; and 3) trust property that the beneficiaries hold for the trustees. Since health care providers were specifically named as beneficiaries of the fund, the court reasoned that they have equitable title

to the fund's assets which grants them: 1) the right to the security and integrity of the whole fund; 2) the right to realize the fund's investment earnings; and 3) the right to have excess judgments paid. The court found that any transfer of money from the fund infringes on these rights unless it is for "proper trust purposes." Legislative actions cannot "deviate from trust objectives or cause injury to the trust."

The court remanded the case to the circuit court to issue an order requiring the secretary to replace the transferred money as well as lost earnings and interest, and to issue a permanent injunction preventing the transfer of money out of the fund under the authority of Section 9225 of Act 20.

Two dissenting justices criticized the majority opinion for erroneously granting health care providers a property interest in the fund. They viewed the fund as a "government trust account" where the money in the trust must be managed in a particular way but "future legislatures may change the applicable statutes." The two justices emphasized that the court's role is not to pass on the fairness of legislative actions.

Marriage Amendment and the Separate Amendment Clause

In *McConkey v. Van Hollen,* 2010 WI 57, 326 Wis. 2d 1, 783 N.W.2d 855 (2010), McConkey, a voter and taxpayer, challenged the constitutionality of an amendment to Wisconsin's Constitution that defined marriage as "between one man and one woman" and that prohibited "a legal status identical or substantially similar to that of marriage for unmarried individuals" (marriage amendment). McConkey argued that the marriage amendment was submitted to the Wisconsin voters in violation of Article XII, Section 1 of the Wisconsin Constitution, which provides "that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately" (separate amendment rule). The supreme court held that the marriage amendment did not violate the separate amendment rule.

Article XII, Section 1 of the Wisconsin Constitution allows for the constitution to be amended if an amendment is approved by joint resolutions in two successive legislatures and then by a majority of people voting on the question. On November 7, 2006, Wisconsin voters approved, 59 percent to 41 percent, the creation of Section 13 of Article XIII of the constitution, which provided that 1) marriage between "one man and one woman" is the only recognized form of marriage in Wisconsin and 2) an identical or similar legal status is not recognized in Wisconsin. McConkey filed suit, contending that the marriage amendment was invalid because the two ballot provisions were different amendments that should have been put to two separate votes. The circuit court ruled in favor of the state, holding that the two sentences constituted one amendment. The court of appeals certified the case to the supreme court.

After rejecting the argument that McConkey lacked standing, the supreme court held that the marriage amendment did not violate the separate amendment rule. The court observed that both sentences of the amendment relate to marriage and carry out the same general purpose of preserving the legal status of marriage as between only one man and one woman. McConkey argued that in order not to violate the separate amendment rule, the propositions of an amendment must strive for a single purpose and be so interconnected that if the propositions had been submitted as separate questions, the defeat of one proposition would destroy the overall purpose of the amendment proposal. The court disagreed, holding that the constitution grants the legislature considerable discretion in drafting amendments. The court wrote that "it is within the discretion of the legislature to submit several distinct propositions as one amendment if they relate to the same subject matter and are designed to accomplish one general purpose." The marriage amendment contained two propositions: one defining a recognized marriage in Wisconsin and the other ensuring that a legal status similar or identical to marriage is not recognized. Since the two propositions relate to the same subject (marriage) and had the same general purpose (to preserve the legal status of marriage in Wisconsin as between only one man and woman), the marriage amendment did not violate the separate amendment rule.

The Milwaukee Sick Leave Ordinance and Direct Legislation

In *Metropolitan Milwaukee Association of Commerce, Inc. v. City of Milwaukee and 9to5 National Association of Working Women, Milwaukee Chapter,* 2011 WI App 45, 332 Wis. 2d 459, the circuit court was asked to determine if an ordinance created by an elector's petition

under the direct legislation statute, Section 9.20, Wisconsin Statutes, was effective. The circuit court issued an injunction in favor of Metropolitan Milwaukee Association of Commerce, Inc. (MMAC), concluding that the ballot statement did not comply with the statute and that certain provisions of the ordinance were unconstitutional. The court of appeals, in this decision, reversed the circuit court, and submitted the case to the supreme court for review. The supreme court split 3 to 3, one justice not participating, on whether to uphold or reverse the circuit court, so the court of appeals decision controls.

Section 9.20 of the Wisconsin Statutes permits city and village electors to initiate legislation by submitting a petition requesting the governing body to either adopt a proposal ordinance or submit the proposal to the local electors for a vote. In this case, the City of Milwaukee placed an ordinance on the ballot that required paid sick leave for employees within the city The ballot question read: "Shall the City of Milwaukee adopt Common Council File 080420, being a substitute ordinance requiring employers within the City to provide paid sick leave to employees?" The electors voted in favor of the proposal and MMAC filed a challenge to the proposal on a number of statutory and constitutional grounds.

The circuit court found that the ballot question did not contain enough information about the ordinance, found that two provisions of the proposed ordinance were not related to the police powers of the city, determined that the ordinance was unconstitutional, and enjoined its implementation. The court of appeals found that the ordinance was valid and ordered the circuit court to vacate the injunction.

MMAC argued that the ballot question did not contain "a concise statement" of the nature of the ordinance as required by Section 9.20 (6). They argued that this provision required the ballot question to contain every essential element of the proposed ordinance, while 9to5 National Association of Working Women, Milwaukee Chapter (9to5), argued that the ballot question need only include a concise statement of the general purpose of the proposed ordinance. After determining that the common meaning of a "concise statement" and "nature", as found in a standard dictionary, supported both arguments, the court referred to cases that have discussed these terms. In the only case that involved the validity of a ballot question that erroneously named the office being established under the ordinance, *State ex rel. Elliott v. Kelly,* 154 Wis. 482, 143 N.W. 153 (1913), the ballot question error was not considered fatal to the ordinance. In *Elliot,* the court held that any brief collection of words that will fairly accomplish the requirement that the ballot contains a concise statement of the nature of the ordinance is sufficient.

The court also reviewed cases involving statutes governing elections on referenda because they also required that "a concise statement of the nature" of the referenda be included on the ballot. The court found that the decisions that supported MMAC's "essential element" standard were cases concerning constitutional amendments. In a case involving a referendum on town consolidation decided after those cases, *City of Milwaukee v. Sewerage Commission,* 268 Wis. 342, 67 N.W. 624 (1954), the supreme court did not use the "essential element" standard to determine what a "concise statement" meant. Because in *City of Milwaukee* the ballot simply identified the proposed ordinance by number and stated its general purpose, without any mention of the "essential element" standard, the court concluded that only when constitutional amendments are involved is there a requirement that the ballot question include every essential item of the proposal; in all others the *Elliot* standard, "any brief collection of word which will fairly accomplish [a concise statement of the ordinance's nature] is sufficient" applies.

Occasionally, said the court, proposed ordinances initiated by the electorate may be lengthy and complex, and requiring the ballot to state "every essential" element would require a lengthy ballot statement, while deciding what are all of the essential elements would be difficult and cause more uncertainty about the ballot statement's correctness. It noted that the entire ordinance must be published and posted at each polling place on election day, giving the elector ample opportunity to read the entire ordinance. The court concluded that "the more reasonable construction of Section 9.20 (6) is that it requires a brief statement of the general purpose of the proposed ordinance." After reviewing the contents of the statement in the ballot question in this case, the court concluded that the statement meets this requirement.

The court of appeals then considered the argument that the ordinance was not a valid exercise of the city's police powers, which it said was a question of substantive due process when the

challenge is to legislative means employed. In such cases, said the court, the issue is not whether the challenged provisions in the ordinance are rationally related to the stated purpose of the ordinance, as argued by MMAC, but rather to any legitimate municipal objective. After reviewing the ordinance's provisions, the court concluded that the ordinance has a rational relationship to the health, safety, and welfare of the people of Milwaukee, a legitimate municipal objective. The court added that although there may be information that contradicts the reason for the ordinance, or there may be other methods that can produce the same result, they do not make the ordinance invalid. "The correct standard is whether the legislative means chosen has a rational relationship to the permissible object," the court said, citing *State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee,* 105 Wis. 2d 203, 313 N.W. 2d 805 (1982).

The court then reviewed the arguments that the ordinance was preempted by certain state and federal statutes. Cities have the right to determine their local affairs and government, subject only to the constitution and enactments of the legislature of statewide concern, said the court, citing the Wisconsin Constitution. Legislation preempts a city ordinance, said the court, if the legislature enacts a statute of statewide concern and the legislature has withdrawn local authority to act or if the ordinance conflicts with, defeats the purpose of, or violates the spirit of, the state legislation. The court reviewed the three statutes suggested to preempt the ordinance by MMAC and held that none preempted the ordinance. The state minimum wage law was not preempted because the ordinance does not affect the hourly rate paid to employees. The ordinance was not preempted by the state family and medical leave act because the state statute specifically allows employers to provide family or medical leave that is more generous than those provided under the state statute. The ordinance was not preempted by the state worker's compensation act because that act allows employers to provide sick benefits in addition to the compensation provided by the state statute.

The court made similar findings regarding possible preemption by the National Labor Relations Act (NLRA) and the federal Labor Management Relations Act (LMRA), saying that federal preemption only occurs if congress explicitly states its intention to preempt state law, the statutory scheme shows an intent to occupy the field to the exclusion of state law, or the state law and federal law conflict, making it impossible for a person to comply with both. The court held that the ordinance does not effect the NLRA, which regulates the right of employees to self organize, or the LMRA, which preempts state law that applies to suits by or against labor organizations if that application requires the interpretation of collective bargaining agreements.

The court then considered the argument of MMAC that the ordinance impairs the collective bargaining agreements that some of its members have, in violation of the contracts clause of the state and federal constitutions. Those clauses, said the court, do not prohibit all impairments of contracts. Citing state and federal court cases, the court found that a contract may be impaired by legislation even if the law substantially impairs the operation of a preexisting contract if the legislation has a significant and legitimate purpose and the impairment is reasonable and necessary to achieve that purpose. The court assumed that the ordinance could substantially impair some collective bargaining agreements, but found that the ordinance does have a legitimate purpose of protecting the safety, health, and welfare of the people of Milwaukee and is reasonable and necessary to meet that purpose, referring back to the discussion of the police powers arguments made earlier in the opinion.

Finally, the court found that the ordinance applied only to employees who take sick leave when they are scheduled to work in Milwaukee, not to employees who are out sick when they are not scheduled to work in Milwaukee, as argued by MMAC. The MMAC position was that this ordinance applied outside the city, which is not permitted by the state constitution, because the definition of "employer" in the ordinance does not have any geographic limit. But, said the court, the definition of "employee" is a person employed within the boundaries of the city by an employer, thus limiting the ordinance to work scheduled in the city.

The court reversed the circuit court decision and remanded the case back to the circuit court to lift the injunction, and held that the two-year period in Section 9.20 (8) that prevents a mayor from vetoing the ordinance and the city council from amending or repealing the ordinance within two years after its adoption does not run while the circuit court injunction was in effect.

Open Meetings Law and the State Legislature

In *Ozanne v. Fitzgerald,* 2011 WI 43, the court was asked to determine whether the state legislature violated the Open Meetings Law when it adopted a conference amendment in a joint committee that ultimately became 2011 Wisconsin Act 10. In February 2011, January 2011 Special Session Assembly Bill 11 was introduced. Dubbed the "budget repair bill," AB-11 was intended to address fiscal matters facing the state in the current fiscal biennium and the next. The bill made appropriations and included provisions that made significant changes to collective bargaining rights for members of public unions and required certain contributions by public employees toward health insurance and retirement benefits. The bill was passed by the assembly and sent to the senate for consideration. There the bill stalled for lack of a quorum which, under the Wisconsin Constitution, is required for fiscal bills.

On March 9, 2011, a joint committee representing the assembly and the senate met to consider an amended version of AB-11 that did not include fiscal elements. The joint committee adopted the amendment as a conference committee report and forwarded the report to the senate. The senate adopted the conference committee report on March 9; the assembly adopted the report on March 10; on March 11, the governor signed AB-11 into law, and it became 2011 Wisconsin Act 10. The Secretary of State announced that he would publish Act 10 on March 25, 2011, the last of the 10 working days his office is granted by statute to publish acts before they become effective.

On March 16, the underlying action was filed in circuit court. The petitioner Ozanne asked the circuit court to void the actions taken by the joint committee on the grounds that the committee met in violation of Wisconsin's Open Meetings Law. He also moved for a temporary restraining order that would prevent the Secretary of State from publishing Act 10. The circuit court granted the temporary restraining order and, after a full hearing, found that when the joint committee met to consider the amended AB-11, it did so with inadequate public notice and in a room that did not allow for adequate public access. The court found that the Wisconsin Open Meetings Law is based on a constitutional requirement and cannot be ignored by the legislature. Accordingly, the circuit court voided Act 10 as violating the Wisconsin Open Meetings Law.

After the temporary restraining order was issued, the respondents (including Assembly Speaker Jeff Fitzgerald) asked the supreme court to take up the case and vacate the restraining order. Before the supreme court could decide that issue, the circuit court entered its final order voiding Act 10. The supreme court heard arguments on whether it should take original jurisdiction over the matter and on the merits of the circuit court's final decision.

In its decision, the majority of the supreme court held that it should take original jurisdiction in the matter and declared all orders and judgments issued by the circuit court void. The majority of the court saw the case as a fundamental question of the separation of powers between the executive, legislative, and judicial branches. The court found that the circuit court, in enjoining an act and preventing its publication, wrongfully usurped the legislature's power. The court pointed out that there was no such thing as an unconstitutional bill, and that by seeking to prevent Act 10 from being published, the circuit court prematurely and inappropriately interfered with the legislative process.

The court decided, however, that to require the petitioners to begin a new challenge to Act 10 after it was published into law would unnecessarily prolong its ultimate decision and would serve no public purpose. The court considered, then, whether the alleged violations by the joint committee of Wisconsin's Open Meetings Law could invalidate Act 10. The court first rejected the circuit court's finding that the joint committee met in a room that provided inadequate public access to the hearing, noting that the room was packed with reporters and television cameras. Next, the court rejected the circuit court's finding that the joint committee's failure to give notice required under the Open Meetings Law was sufficient to render Act 10 unconstitutional. The court noted that notice requirements were statutory, not constitutional, requirements. Squarely rejecting the circuit court's ruling that the Open Meetings Law requirements were based in constitutional principles, the court found that the legislature created the notice requirements and could, at its discretion, ignore them. Accordingly, the court found that Act 10 was passed appropriately and stated that the act should be published forthwith.

Chief Justice Abrahamson and Justice Crooks wrote separate opinions, each joined by the other and by Justice Walsh Bradley. The minority view was that the Open Meetings Law was not merely a set of statutory requirements, but a codification of the constitutional guarantee of open government and, as such, cannot be ignored at the will of the legislature. The dissent stated that it is the duty of the judicial branch to ensure that the legislature acts within constitutional bounds. Accordingly, the dissent stated that a law passed in violation of the Open Meetings Law could be declared unconstitutional and voided on that ground without violating the separation of powers doctrine.

Open Records Collective Bargaining and Publication of Laws

In *Milwaukee Journal Sentinel v. DOA,* 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700 (2009), the supreme court was asked to resolve a conflict between the open records law and a provision in a collective bargaining agreement entered into between the state and a union that was ratified by the legislature. The court ruled that because the provision in the collective bargaining law was not enacted as part of a bill and was not "published" under the Wisconsin Constitution, it was not an enforceable exception to the open records law.

Two newspapers each made open records requests with state agencies for certain records relating to state employees. The records were provided, but some union employees' names were omitted or redacted pursuant to a provision in their collective bargaining agreement with the state that prohibited the release of the names to the press. The newspapers filed court actions to compel the release of the names, and the cases were consolidated. The circuit court concluded that the provision was unenforceable, and also concluded that the public interest in disclosure outweighed interests precluding disclosure. The unions appealed to the court of appeals, which certified the case to the supreme court.

The newspapers argued that the provision was unenforceable because it contradicted the text and strong policy of the open records law. To create an exception to the open records law, the newspapers argued, the legislature would need to pass legislation to amend the statutes. Section 111.92 (1) (a), Wisconsin Statutes, provides that the legislature shall introduce a bill for any matter that "requires legislative action for implementation, such as … proposed amendments, deletions or additions to existing law." Article IV, Section 17 (2) of the Wisconsin Constitution provides: "No law shall be enacted except by bill." The newspapers argued that under these provisions, the legislature was required to enact a bill amending the open records law in order to make the provision enforceable. The unions countered that the open records law statutes apply "except as otherwise provided by law," and because the agreement itself was ratified in a bill by the legislature, it had the force of law and satisfied both provisions. The unions alternatively argued that Section 111.92 (1) (a) was a "rule of proceeding" under Wisconsin constitutional law, and that courts cannot review whether the legislature complied with its own rules.

The supreme court affirmed the ruling of the circuit court. The court ruled that under Section 111.92 (1) (a), the legislature was required to introduce legislation explicitly amending the open records law to create an exception to the open records law. It declined to decide whether the statute was a "rule of proceeding" and instead read the statute as complying with Article IV, Section 17 (2) of the Wisconsin Constitution, which requires enactment by bill. Although the legislature ratified the collective bargaining agreement with a bill, the bill contained no indication of an intent to amend the open records law. Likewise, the court also rejected the argument that the provision should be considered "incorporated by reference" into Wisconsin law because there was no indication of a change to the open records law in the bill. In addition, the court said that because the legislation ratifying the agreement only referred to the agreement, the provision also failed to meet the publication requirement in Article IV, Section 17 (2), which provides that "[n]o law shall be in force until published." The court emphasized the importance of notice to the public about laws, and noted that nothing in the ratifying legislation put the public on notice about a change to the public records law.

The court then rejected an argument that the provision superseded the open records law under Section 111.93 (3), Wisconsin Statutes, which provides that contract provisions related to "conditions of employment" supersede other statutes. The unions argued that release of their names and personal information was a condition of employment because the release of their names

could subject them to work-related retaliation or harassment. The court responded that the open records law did not relate to wages, benefits, and other matters which are considered "conditions of employment." Finally, the court declined to rule that names should not be disclosed under the open records law balancing test, but acknowledged that individuals could seek to have their names withheld individually.

Chief Justice Abrahamson dissented. She agreed that the case was close, but after balancing the competing interests involved would have ruled the legislature's action sufficient to make the provision enforceable.

Opt-Out by Municipality of Property Tax Assessment de novo Review

The case of *Metropolitan Associates v. City of Milwaukee,* 2011 WI 20, 332 Wis. 2d 85, 796 N.W.2d 717 (2011), required the court to determine the constitutionality of 2007 Wisconsin Act 86. That act allows a local municipality to opt-out of a circuit court de novo review of a Board of Review property tax assessment, which is available in municipalities that do not adopt an opt-out ordinance. A municipality that opted out of a de novo review had to provide an "enhanced" certiorari review. Prior to Act 86, if a taxpayer did not agree with a property tax assessment, the taxpayer could appeal the assessment to the Board of Review, and if unsatisfied with that decision, could either ask the circuit court for a de novo review, or certiorari review. A de novo review gives the parties more discovery powers and more time to prepare for proceedings, and allows the court to hear evidence, including evidence not presented at the Board of Review; create its own record; and independently decide if the assessment is correct. A certiorari review requires the court to base its decision on a review of the record created by the Board of Review.

The plaintiff argued successfully in circuit court that Act 86 was unconstitutional because it deprived taxpayers residing in an opt-out municipality of equal protection of the law without any rational basis. The court of appeals reversed, saying that the enhanced certiorari review provided to taxpayers in opt-out municipalities gave those taxpayers protection that was not significantly different from the protections afforded in other municipalities.

The supreme court relied extensively on *Nankin v. Village of Shorewood,* 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141, in reversing the court of appeals. In that case, the court held that legislation that eliminated de novo review of tax assessment decisions in counties with populations of 500,000 or more was unconstitutional. In *Nankin,* the court provided a three-step analysis to determine if a person's equal protection claim had merit. Under that case, the court must determine if there is a distinct classification of citizens affected by the act, if the act treats that class of citizens in a significantly different manner from all other taxpayers, and finally, if there is a rational basis for the differential treatment of those citizens.

Using that analysis, the court, after noting that the parties agreed that a separate distinct classification of citizens is created by the act, held that the classification of citizens who lived in an opt-out municipality was a distinct classification of citizens. The court reviewed the procedures that were provided to citizens in opt-out communities and determined that the enhanced certiorari review was significantly different from the de novo review afforded citizens in other municipalities. The court said that citizens in the municipalities that did not opt-out had broader discovery rights and more time to prepare for the proceeding, while the court had broader authority to make an independent decision regarding the assessment decision. The court then attempted to construct a rationale for the differential treatment because the legislation did not include any rationale. The court, citing earlier cases that established five criteria to determine if legislation has a rational basis, found that there was not a substantial distinction between taxpayers who live in or outside of opt-out municipalities, the classification was not germane to the purpose of the law, and, because there were no differences in the characteristics of taxpayers who live in or outside of opt-out municipalities, the characteristics of the citizens did not suggest the propriety of substantially different legislative treatment.

The court went on to determine that the only way to provide all taxpayers with the same equal access to review of assessment decisions was to find all the modifications in Act 86 unconstitutional.

Chief Justice Abrahamson, joined by justices Bradley and Crooks, dissented, saying the rights afforded to taxpayers in opt-out municipalities are not substantially different than in other mu-

nicipalities, there existed a rational basis for enabling taxing districts to opt-out, and the court should have severed only parts of Act 86, leaving the remainder as law.

CRIMINAL LAW

Life Without Parole for a Juvenile

In *State v. Ninham,* 2011 WI 33, 797 N.W.2d 326, 2011 (to be published), the supreme court addressed whether a sentence of life imprisonment without the opportunity for parole of a 14-year-old convicted of first degree intentional homicide violated U.S. and state constitutional prohibitions against cruel and unusual punishment. The court held that the sentence was constitutionally permissible and also rejected other arguments advanced by the defendant.

In 1998, a group of juveniles, including 14-year-old Omer Ninham, were walking in Green Bay and encountered 13-year old Zong Vang, who was out buying groceries for his family. By all accounts, no one in the group knew Vang and Vang did nothing to provoke anyone in the group. Ninham and the four others began taunting Vang, which then escalated into physical attacks. The group chased Vang to the fourth floor of a parking structure where Ninham and another of the juveniles grabbed Vang and began to swing him over the structure wall before ultimately dropping him 45 feet to the ground below. Vang died soon after as a result of the fall. Ninham was charged with first degree intentional homicide. In varying accounts to police, Ninham denied being present at the parking structure that day. At trial, his attorney conceded Ninham's involvement in the attack, but argued that Ninham lacked the intent to cause Vang's death. The jury convicted Ninham of first degree intentional homicide.

The court ordered a pre-sentence investigation (PSI), which showed that Ninham heavily abused cocaine and alcohol and lived in a dysfunctional family environment with substance abuse and domestic violence. At sentencing, Vang's brother asked the court to impose a life sentence, describing Hmong spiritual beliefs about justice. Ninham continued to deny at sentencing that he was present for the killing. The court sentenced Ninham to life in prison without the chance for parole. On October 17, 2007, Ninham filed a motion for sentencing relief with the circuit court in light of *Roper v. Simmons,* 543 U.S. 551 (2005), in which the U.S. Supreme Court held that the death penalty was unconstitutional as applied to persons under 18 years of age at the time of the crime. Ninham also cited purportedly new scientific evidence related to adolescent brain development; he also claimed the judge had improperly considered the religious beliefs of Vang's family at sentencing. The circuit court denied the motion, and the court of appeals affirmed. The supreme court accepted review.

The court concluded that Ninham's sentence was permissible under the Eighth Amendment to the U.S. Constitution's prohibition against cruel and unusual punishment, and its analog in Article I, Section 6 of the state constitution. Using the same analysis for the state and federal constitutional provisions, the court first concluded that imposing such a penalty was not considered cruel or unusual at the time the Eighth Amendment was adopted. The court then addressed whether such a punishment was consistent with evolving standards of decency. The court noted that most states permit 14-year-olds to be sentenced to life imprisonment without parole, and found no national consensus in sentencing practices against such sentences. To the extent such sentences are rare, the majority wrote, it may be because such homicides are rarely committed by juveniles.

The court then addressed whether, in its own judgment, the punishment was excessive. In doing so, the court contrasted Ninham's crime with the facts of *Graham v. Florida,* 130 S. Ct. 2011 (2010), in which the U.S. Supreme Court held that a life sentence without possibility of parole was unconstitutional as applied to a juvenile. Rejecting arguments that 14-year-olds have diminished culpability and that the punishment does not serve legitimate goals, the Wisconsin Supreme Court distinguished nonhomicide crimes and concluded that such a punishment was not inappropriate for homicide crimes. The court also rejected Ninham's arguments that new scientific evidence warranted a sentence modification, and that the judge had improperly considered Vang's family's religious views at sentencing.

Chief Justice Abrahamson dissented, joined by Justice Bradley. She disagreed with the majority that a presumption of constitutionality applied to Ninham's sentence. She then concluded that

an emerging national consensus did exist against sentencing juveniles to life imprisonment for nonhomicide crimes, and also cited the lower culpability of juveniles.

GPS Monitoring by Police and Valid Warrants

In *State v. Sveum,* 2010 WI 92, 328 Wis. 2d 369, 787 N.W.2d 317 (2010), the court considered whether a circuit court order permitting police to install a GPS tracking device on Sveum's car to monitor the car's location was a valid warrant and whether law enforcement reasonably executed the warrant. The court concluded that the order represented a valid warrant and the warrant was reasonably executed.

Sveum was released from prison in 2002 after serving a nine-year sentence for stalking his former girlfriend. In 2003, the former girlfriend began to suspect Sveum was stalking her again, and complained to the police. A detective with the Madison Police Department requested authorization from the circuit court to install and monitor a GPS tracking device on Sveum's vehicle. Based on an affidavit from the detective, the court concluded that probable cause existed that the car was being used to commit the crime of stalking, and issued the authorization. The police placed the device on the exterior of Sveum's car and monitored it for 35 days, replacing it twice during that time when the batteries had ran out. The data from the GPS device incriminated Sveum and led police to seek additional warrants that yielded further evidence. The state charged Sveum with aggravated stalking as a party to a crime, and Sveum filed a motion to suppress evidence resulting from the GPS tracking. The court denied the motion on the grounds that installing and monitoring the GPS device was not a search, and Sveum was convicted following a jury trial. The court of appeals agreed that the GPS monitoring did not constitute a search, and upheld Sveum's conviction. Sveum appealed to the supreme court, which accepted the case.

Unlike the lower courts, the supreme court assumed that a search or seizure under the Fourth Amendment had occurred, and instead addressed whether the search or seizure had been properly authorized through a warrant. The court concluded that the circuit court's order constituted a valid warrant and that the officers' execution of the warrant was reasonable. The court first determined that the warrant was validly issued under a three part U.S. Supreme Court test. First, the order was signed by a neutral and detached judge. Second, the detective's affidavit provided probable cause for the use of the GPS tracking device since the device had a fair probability of producing evidence of Sveum's stalking. Third, the order provided a particularized description indicating where the device would be placed, the circumstances that justified the use of the device, and that the device would be used for no more than 60 days. The court then determined that the search was reasonably conducted. The court observed that law enforcement had acted within the scope of the order in installing and monitoring the device. The court rejected Sveum's arguments that he should have been notified of the search and that law enforcement should have obtained a new warrant for each day that the device was used. The court concluded that the complex, ongoing nature of stalking justified 35 days of surveillance on a single warrant. The court also rejected arguments that the search was unreasonable because the officers failed to follow statutory requirements providing for time limits for executing warrants and an inventory of seized property. The court explained that the return requirements are "ministerial," and that a failure to follow them would not result in suppression absent a demonstration of prejudice to Sveum's substantial rights, which he could not provide.

Justice Crooks concurred, expressing his belief that the court's holding should be limited to the facts similar to those in the case. Justice Ziegler also concurred, writing that she did not believe that installing a GPS device on a vehicle in a public area would violate the Fourth Amendment. Chief Justice Abrahamson dissented. She noted that no statute authorized the issuance of such an order, and would have deemed it void in light of law enforcement's failure to observe statutory warrant return requirements. Both concurring opinions and the dissent encouraged the legislature to address use of GPS tracking devices by law enforcement.

Incriminating Cell Phone Evidence and the Basis for Warrants

In *State v. Carroll,* 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1 (2010), the supreme court addressed a police officer's seizure of a defendant's cell phone, the viewing of incriminating photos on the phone, and the officer's answering of a call on the phone that turned out to be an order to purchase drugs. The officers subsequently obtained a warrant to search the phone. The court

ruled that although the officer had unlawfully browsed the image gallery, the initial seizure of the phone and answering of the call were lawful and served to independently justify the warrant.

The defendant, Carroll, was stopped by an officer after speeding away from a residence where officers were conducting surveillance for a robbery investigation. The officer confronted Carroll after he had exited his vehicle and ordered him to drop an object he was holding. The object was Carroll's cell phone, which was open when Carroll dropped it. Upon picking up the open phone, the officer observed the display screen, which showed Carroll smoking what the officer perceived to be a marijuana blunt. The officer retained the phone and scrolled through its image gallery, which featured additional photos of Carroll with drugs, firearms, and large amounts of U.S. currency. The officer also answered an incoming call on the phone during which the caller requested to purchase cocaine. The officer subsequently obtained a warrant to search the phone, and Carroll was charged with possession of a firearm by a felon on the basis of a photo in the phone.

Carroll moved to suppress evidence obtained under the warrant. The circuit court granted Carroll's motion, ruling that the evidence was tainted by the officer's warrantless viewing of the image gallery. The court of appeals reversed the circuit court, concluding that the officer's answering of the phone call provided untainted evidence that served as an independent basis for the warrant.

The supreme court affirmed the ruling of the court of appeals. The court first ruled that the officer was justified in ordering Carroll to drop the unknown object, likening the order to drop the phone to a pat-down search. The court ruled that the order to drop the phone and subsequent confiscation of the phone were reasonable under the Fourth Amendment because Carroll had led the officers on a high-speed chase and exited his car quickly while holding an unknown object. The court further ruled that the officer legally viewed the marijuana image because it was in plain view when the officer picked up the open phone. Finally, because the officer knew that drug traffickers often personalize their phones with incriminating images, the officer had probable cause to seize and retain the phone. The court then addressed the officer's viewing of the image gallery and answering of the phone call. The court ruled that the officer should not have browsed through the image gallery because the images were not in immediate danger of being destroyed before a warrant could be obtained. The officer was, however, justified in answering the incoming phone under exigent circumstances, namely that an incoming call could contain evidence of illegal activity that would be lost if the call was not answered. Finally, the court ruled that although the officer's initial viewing of the cell phone image gallery was unlawful, the phone call the officer answered provided an independent basis for the warrant to search the phone.

Chief Justice Abrahamson dissented. Although she agreed with much of the majority's analysis, she would have remanded the case to the circuit court to determine whether the officer's initial viewing of the image gallery affected the officer's decision to seek a search warrant and the court's decision to issue the warrant. Justice Prosser also dissented, believing that the facts and chain of reasoning used to justify the warrant did not support the issuance of the warrant. He would have ruled in favor of suppressing evidence obtained with the warrant or, like the Chief Justice, remanded the case to the circuit court.

Preliminary Breath Tests and Expert Evidence

In *State v. Fischer,* 2010 WI 6, 322 Wis. 2d 265, 778 N.W.2d 629 (2010), a defendant in an OWI case sought to offer an expert opinion based in part on the results of a preliminary breath test (PBT). The circuit court and court of appeals both ruled that such an expert opinion based on PBT results should not be admitted, citing the unreliability of PBT evidence. The supreme court agreed, but instead cited the state's compelling interest in effectively prosecuting drunk drivers as the basis for its ruling.

The defendant, Fischer, was stopped by police for possible drunk driving after the officer observed a lane deviation. The officer administered a PBT, which indicated that Fischer had a blood alcohol concentration (BAC) of 0.11 percent. Fisher was arrested and later given a chemical blood test that showed a BAC of 0.147 percent. At trial, the defense sought to admit the result of the PBT for so-called "absorption curve evidence" so that an expert could opine that Fischer's BAC was likely below the legal limit at the time the officer stopped Fischer. Section 343.303,

Wisconsin Statutes, prohibits the use of PBT results in OWI cases except to show probable cause for arrest or to show that officers had cause to request a blood test. Fischer argued that Section 907.03, Wisconsin Statutes, which allows an expert to give an opinion based on otherwise inadmissible evidence, constitutes an exception to Section 343.303. Additionally, Fischer argued that those statutes must be read in light of his constitutional right to present a defense. The state moved to exclude such evidence, and the circuit court granted the state's motion. Following a conviction by jury trial, the court of appeals affirmed on similar grounds.

The supreme court affirmed. The court ruled notwithstanding Section 907.03, that the legislature had intended with Section 343.303 to prohibit the introduction of PBT evidence. Allowing an expert opinion based on PBT results, the court said, would be an end-run around Section 343.303. The court also ruled that the exclusion of the expert opinion did not violate Fischer's constitutional right to present a defense. The court assumed, without deciding, that Fischer could show that presenting the evidence was necessary to his defense. The court nonetheless concluded that the state's compelling interest in prosecuting drunk drivers outweighed any right Fischer may have to present his defense. In its analysis, the court explicitly declined to cite the unreliability of PBT test results as the reason for its decision, noting that PBT results had been ruled admissible in other contexts. Also, notwithstanding its ruling on the use of expert opinions based on PBT results, the court did not adopt a blanket rule against absorption curve opinion evidence.

Justice Ziegler concurred in the result only, joined by two other justices. She would have instead adopted the reasoning of the lower courts, namely that PBT results are unreliable and, therefore, should not be used by either party for the purpose of showing a specific alcohol concentration.

A Claim of Self-Defense and Other Acts Evidence

In *State v. Payano,* 2009 WI 86, 320 Wis. 2d 348, 768 N.W.2d 832 (2009), the court ruled on whether a lower court had properly admitted "other acts" evidence to provide context for why police were at a defendant's residence to execute a warrant and to rebut a defendant's claim of self-defense. The evidence consisted of testimony from an informant that the defendant's apartment contained drugs and a gun the day before. The court ruled that the lower court had properly exercised its discretion in finding that the "other acts" evidence was submitted for a proper purpose, the evidence was relevant, and the probative value of the evidence was not substantially outweighed by its prejudicial effect.

A report that an apartment inhabited by Payano contained drugs and a gun led police to seek and execute a "no-knock search warrant" on the apartment. As officers were executing the warrant, Payano, fired at the door, severely wounding one of them. Payano claimed that he fired because he did not know it was the police at his door. The officers testified that they had identified themselves in both English and Spanish. After Payano shot the officer, he and his other family members retreated to the bathroom, where Payano hid his gun and called 911. Payano was charged with first-degree reckless injury while armed and first-degree recklessly endangering safety while armed. Payano contended that he was acting in self-defense and in the defense of others in the apartment, and did not know that it was the police at his door. At Payano's first trial, the informant's testimony was not included and the jury failed to reach a unanimous verdict. At the second trial, the State successfully moved to admit the informant's testimony that Payano's apartment had contained drugs and a gun as "other acts" evidence. The State suggested that Payano fired the gun so that he would have more time to flush the drugs in his apartment. The jury found Payano guilty, and Payano appealed. The court of appeals ruled that the circuit court had erroneously exercised its discretion, and that the "other acts" evidence was not relevant and that its prejudicial effect outweighed its probative value. The supreme court reversed the court of appeals.

Under *State v. Sullivan,* 216 Wis. 2d 768, 576 N.W.2d 30 (1998), other acts evidence is admissible if the evidence is offered for an acceptable purpose; is relevant based on whether the evidence relates to a fact that is of consequence to reaching the result and whether the evidence is probative; and has a probative value that is not substantially outweighed by its prejudicial effect. The court concluded that the circuit court properly exercised its discretion in admitting

the evidence using the test in *Sullivan*. First, the evidence was offered for two proper purposes: to provide the jury with context for why the police were at Payano's apartment and to provide a plausible rebuttal for Payano's self-defense claim. Second, the evidence was related to what Payano knew or reasonably believed at the time of the shooting and was therefore relevant to his self-defense claim. Third, the evidence's probative value was not substantially outweighed by unfair prejudice. The evidence was highly probative because it provided an alternative motive for the shooting and the danger of unfair prejudice was lower than in other situations. Therefore, the court wrote, the circuit court did not erroneously exercise its discretion in admitting the "other acts" evidence.

Justice Bradley dissented, joined by Chief Justice Abrahamson. She concluded that the probative value of the evidence was very low and that its danger of unfair prejudice was high. She emphasized that evidence about the drugs and guns would not make it more reasonable for Payano to know that it was the police at his door. Furthermore, she criticized the absence of a 911 call from the appellate record and suggested that the majority should have supplemented the record with the 911 call to make its determination.

CIVIL LAW

Insurance Benefit to Family in Wrongful Death Suit

Day v. Allstate Indemnity Company, 2011 WI 24, involved a wrongful death action in the drowning death of a child. The child was in the custody of her father and stepmother at the time of the death, and the mother brought a wrongful death action against the stepmother, arguing that the stepmother failed to properly supervise the child. The stepmother was covered by an Allstate homeowner's insurance policy, which provided coverage for injuries to an insured person. The policy included a provision that excluded coverage to an injured insured person if any benefit of the coverage would accrue directly or indirectly to an insured person.

The circuit court denied Allstate's motion for summary judgment, while the court of appeals reversed that decision, saying that the father, an insured person, would benefit from the coverage by virtue of his entitlement to half of any recovery the mother received from the wrongful death action. The supreme court reversed the court of appeals, remanding to the circuit court to dismiss Allstate's summary judgment motion.

The court first reviewed the insurance policy to determine whether Allstate may deny coverage for the mother's wrongful death claim. In these types of cases, said the court, the insurer is required to show that an exclusion precludes coverage once the insured shows an initial grant of coverage. Ambiguity in the language of the insurance contract is construed in favor of the insured seeking coverage, said the court, while exclusions are narrowly construed against the insurer, so if the effect of the exclusion is ambiguous, it will be construed in favor of coverage. The court went on to say that family exclusions are not against public policy because family ties are apt to result in collusion between the family members when liability issues arise. However, said the court, a family exclusion provision does not protect an insurer from all plaintiffs to whom the defendant insured may be partial.

Instead, said the court, the question of whether the mother's wrongful death claim is precluded under the family exclusion is a matter of contract interpretation. The court, reviewing the policy, determined that the language that prohibited any benefit accruing to an insured requires the court to interpret the meaning of the term "benefit". The court, after reviewing relevant cases and the use of "benefit" in other sections of the contract, determined that the term was limited to money damages. In this case, the question then became whether the insurance proceeds will accrue to an insured person as a result of the wrongful death claim.

The court considered Allstate's argument that any wrongful death recovery in a claim made by the mother must be split between the father and the mother, so the father, an insured, would receive direct benefits, in violation of the family exclusion clause. But, held the court, although the statutes require the claims of both the father and mother be consolidated in a wrongful death action, the right to ownership and allocation of the recovery in such an action does not have to be split between the father and mother. The court, citing cases, said that each wrongful death beneficiary's recovery is based on his or her actual loss as a result of the wrongful death. In conclusion, held the court, "... no insurance proceeds will accrue to Clinton (the father) by virtue

of Allstate's coverage of Wendy's (the mother) wrongful death claim". Other claims, that the mother will indirectly give part of the wrongful death benefits to the other children because of having the additional money, and that the father would benefit because he would have to provide less to those children, were dismissed by the court.

Justice Ziegler, joined by Justices Prosser and Gableman, dissented on the grounds that the family exclusion language in the insurance contract has been found by the court in a previous case to be unambiguous. In this case, said the dissent, the father may have a direct benefit as a result of the wrongful death action, and as such, violates the family exclusion clause in the contract. In addition, if the mother does succeed in her claim, the other children will indirectly benefit, again in violation of the contract language, said the dissent.

Maternity Insurance Coverage for Surrogate Mothers

In *MercyCare v. Wisconsin Commissioner of Insurance,* 2010 WI 87, 328 Wis. 2d 110, 786 N.W.2d 785 (2010), two women who were insured by MercyCare under a 2002 contract agreed to act as surrogate mothers by being a gestational carrier of a child for other parents. Neither child was genetically related to the women. Both women received health care services related to their pregnancies, but the insurer denied coverage for those services, saying the 2002 contract identified surrogate mother services as a noncovered service. The women complained to the Office of the Commissioner of Insurance (OCI), and as a result the agency reviewed the insurer's denial. While the review was ongoing, the insurer filed its newest insurance policy, the 2005 contract. The newer contract was similar to the 2002 contract, but did include a definition of "surrogate mother" and expanded the noncovered service to include "...any pregnancy resulting from your service as a surrogate mother". OCI disapproved of the 2005 contract, finding that the definition of "surrogate mother" was too broad, and saying a policy that provides maternity coverage may not limit the coverage based on the method of becoming pregnant.

OCI held a hearing regarding the insurer's denial of coverage for the women's surrogate mother health services. The Commissioner of Insurance concluded that Section 632.895 (7), Wisconsin Statutes, did not permit an insurer to exclude generally-covered maternity benefits for surrogate mothers. The circuit court reversed the commissioner's decision. The court of appeals certified the case to the supreme court, asking if that statute permits the surrogate mother exclusion, and what deference the court should give to the commissioner's decision in this case.

Noting that the first issue before the court was the deference to be accorded to the commissioner's decision, the court discussed the deference to be provided in this case. No deference is given to an agency decision when the issue is one of first impression, when the agency has no expertise in deciding the issue, or when the agency's decisions have been inconsistent, the court said. The court went on to say that due weight deference is accorded when the agency has some experience but has not developed expertise, while great weight deference is accorded when the agency is charged by the legislature with a duty to administering the statute, the agency's interpretation is long standing, the agency made its decision based on its expertise, and the interpretation provides consistency in the application of the statute. In this case, the court held that due weight deference should be accorded to OCI's decision because the agency has a long history of interpreting mandatory coverage statutes, even though it has not interpreted the particular statute in this case.

The court went on to examine the language of the statute, finding that the first sentence of that statute prohibits an insurer from selectively offering maternity coverage to some insurers but not to others. The second sentence, which provided that maternity coverage under the policy may not be subject to exclusions that are not applied to other maternity coverage, was the disputed language. The court reviewed the commissioner's interpretation of the statute; that the insurer may exclude specific services, such as in vitro fertilization, but could not exclude services that are generally covered by the policy, such as inpatient hospital care, solely based on the method to achieve pregnancy. The court also reviewed the legislative history of the statute. Giving due weight deference to the OCI decision, and finding that the OCI interpretation is reasonable and not contrary to the meaning of the statute, the court held that the statute permits an insurer to exclude some services and procedures, but cannot make routine maternity services that are gen-

erally covered under the policy unavailable to a specific group of insured based on the reason for becoming pregnant.

The court then reviewed the OCI disapproval of the 2005 contract, agreeing with the agency that the same reasoning for prohibiting the 2002 policy language applied to the 2005 policy. In addition, the court upheld the OCI decision that the definition of "surrogate mother" in the 2005 policy was overly broad and misleading. The exclusionary language in the definition of who is a surrogate mother, "...an insured who through in vitro or any other means of fertilization..." appears to exclude all pregnancies, the court said. This language, said the court, is too restrictive to achieve the purposes for which the policy was sold.

Reinstatement as an Arbitration Award

In *Sands v. Menard, Inc.,* 2010 WI 96, 328 Wis. 2d 647, 787 N.W.2d 384 (2010), the supreme court was asked to determine if an arbitration panel's reinstatement of Sands to her position as general counsel for Menard, Inc., was proper. Sands was employed at Menard as executive general counsel, in charge of the in-house legal counsel and spokesperson for the company. Shortly after beginning her employment, the general counsel under her supervision was fired and she assumed his duties. She was paid about $56,000 per year, while the terminated general counsel had received $105,000 annually. After two years, Menard raised her annual salary to about $64,000, but did not raise it again in the following years in response to her numerous requests for a raise. In early 2006, in response to her demands for a pay raise to avoid a law suit, Menard asked her to sign an employment contract without a wage increase but with a promise of a bonus in 2007. She failed to sign the contract, and was later confronted by John Menard, who removed her from her office after an argument. She sought remedies for defamation and gender-based discrimination through the arbitration process agreed to by both parties.

During the arbitration process, Sands did not request to be reinstated to her position, instead asking for damages and front pay for two years (pay she would have received if she continued in Menard's employment for two years). The arbitration panel determined that Sands had been subject to pay discrimination and awarded her back wages, liquidated damages, lost wages, compensatory damages for emotional distress, and punitive damages, totally $1.78 million. The panel ordered Menard to reinstate Sands as executive general counsel with a large increase in her annual salary. Menard agreed to pay the damages but refused to reinstate Sands, so she brought action in circuit court to confirm the arbitration award. The circuit court and court of appeals affirmed the arbitration award, saying the arbitration panel's order rested on substantial authority and did not manifestly disregard the law, the standard used to affirm an arbitration decision.

Menard argued that reinstatement was improper because the arbitration panel lacked authority to order reinstatement, arbitration was not feasible under governing employment law, removed Menard's right to choose its own legal counsel in violation of the Wisconsin Constitution, and violated the Rules of Professional Conduct for attorneys.

The supreme court reviewed current law related to gender-based discrimination and agreed that an order of reinstatement is the preferred remedy because it makes the victim of discrimination whole. However, the court, citing federal cases, said that reinstatement has been found to be inappropriate in certain situations, when the employer-employee relationship is pervaded by antagonism and hostility, or when the employee terminated served in a managerial or unusually high-level or sensitive role.

Generally, said the court, the review of an arbitration award is limited to ensuring that the parties settled their dispute through an arbitration process in which the panel did not exceed its powers by misconduct or by manifestly disregarding the law, or when the award is illegal or violates strong public policy. In this case, the court held that there is a strong public policy in support of an attorney's ethical obligations to his client and to the Rules of Professional Conduct. An attorney's obligation of absolute loyalty to the client means the attorney is required to act solely for the benefit of his or her client, which the court said is not possible in this situation when there is a complete disintegration of mutual goodwill, trust, and loyalty. "In this case, it is clear that Sands cannot in good faith represent Menard without violating her ethical obligations as an attorney." The court also found that the extreme hostility between the parties, as evidenced

by their testimony during the arbitration hearings and in the court records, coupled with the high-level and sensitive role Sands had at Menard, supported replacing the reinstatement order with a remand to the circuit court to order the payment of front money to Sands instead of reinstatement. The court refused Menard's request to remove the reinstatement order without any front pay, holding that where reinstatement is inappropriate, the award of front pay will effectuate the arbitration panel's intent to make Sand's whole.

Chief Justice Abrahamson, joined by Justices Bradley and Crooks, dissented from the majority opinion, saying the court violated the limitations on the court's standard of review of arbitration awards to reach a result it favored.

Excess Umbrella Insurance Policy and Duty to Defend

In *Johnson Controls, Inc., v. London Market,* 2010 WI 52, 325 Wis. 2d 176, 784 N.W.2d 579 (2010), the supreme court concluded that, under the terms of its insurance policy, an excess liability insurer had a duty to defend an insured that was triggered when the primary insurer denied liability.

In the 1970s, Johnson Controls, Inc., contracted with a number of insurers to create a layered program of general liability insurance with primary, umbrella, and umbrella excess commercial policies. In the mid 1980s, Johnson Controls received notice that it had been identified as a potentially responsible party in connection with environmental contamination in locations across the country. Johnson Controls notified its insurers, who denied liability and refused to provide Johnson Controls with a defense, prompting Johnson Controls to file suit against the insurers. Coming after years of litigation between Johnson Controls and its various insurers, the case before the court involved an excess liability policy issued by London Market Insurance that sat on top of umbrella policies issued by Travelers Insurance. At issue was whether London Market had a duty under its policy to defend Johnson Controls against claims and, if so, when that duty was triggered.

The circuit court ruled that London Market had a duty to defend based upon a follow-form provision in London Market's policy, which incorporated terms from the Travelers policy. London Market appealed to the court of appeals, which certified two questions to the supreme court. First, should a duty to defend be imported from an underlying umbrella policy into an excess umbrella policy if the excess policy states that it is subject to the same terms and conditions as the underlying policy? Second, is the excess insurer's duty to defend triggered before the underlying policy limits are exhausted?

Reading the language in the London Market policy and the Travelers policy, the court concluded that London Market had a duty to defend that was imported from the Travelers Policy. Although London Market's excess umbrella policy did not include an explicit duty to defend, it did contain a follow-form provision providing that its policy would be "subject to the same terms, definitions, exclusions and conditions [as the underlying policy]." The Travelers policy contained a provision providing that, if an underlying insurer denied liability, the insurer (Travelers) would step in and provide a defense. The court, reading an ambiguous policy in a light favoring a finding of coverage, ruled that this follow-form provision incorporated the duty to defend provision from the Travelers policy into the London Market policy, creating a duty to defend for London Market as well.

The court also ruled that London Market's duty to defend was triggered when the underlying insurer denied primary liability under its policy, and did not require an exhaustion of underlying policy coverage limits, as London Market had argued. Under an "other insurance" provision in the Travelers policy, Travelers was required to "respond under [its] policy as though such other insurance were not available" when an underlying insurer denied liability. The court ruled that this provision was also incorporated into London Market's policy under the follow-form provision, notwithstanding the fact that the limits of the underlying policies had not been exhausted.

The dissent, citing the nature of excess liability policies, argued that no reasonable insured would believe that such a policy would include a duty to defend, and that even if there were such a duty to defend, the primary policy must be exhausted first. The dissent accused the majority of weaving together language from different policies to achieve a desired result, and suggested that the majority's decision would increase the costs of excess liability policies.

Private Teacher Emails and the Public Records Law

In *Schill v. Wisconsin Rapids School District,* 2010 WI 86, 327 Wis. 2d. 572, 786 N.W.2d 177 (2010), Karen Schill and four other teachers from the Wisconsin Rapids School District challenged whether the district could provide their private emails in response to a public records request. The public records law, Sections 19.31-19.39, Wisconsin Statutes, subjects all documents deemed "records" under Section 19.32(2), Wisconsin Statutes, to disclosure, subject to a balancing test. The supreme court ruled that purely personal emails of public sector employees that contain no indication of a violation of law or policy are not "records" under the statute and are therefore not subject to disclosure under the public records law.

The Wisconsin Rapids School District's Internet use policy permitted employees to use their school email accounts for occasional personal use when it did not interfere with their job responsibilities. Don Bubolz filed a request with the district for emails from March 1, 2007 through April 13, 2007 "from the computers the teachers use during their school work day." The teachers objected to the release of emails of a personal nature, which included emails regarding childcare responsibilities and social plans. There was no allegation in the case that the teachers had used their email accounts improperly and both sides agreed that the content of the emails was of a purely personal nature, with no connection to a government function.

Five of the seven justices concluded that "purely personal" emails that do not violate law or policy should not be released. However, there was disagreement among those five justices about the basis for this result. The lead opinion, written by Chief Justice Abrahamson and joined by two other justices, concluded that the contents of the teachers' personal emails were not "records" under the public records law. Justice Abrahamson first found that it was unclear based on the text of the statute whether the teachers' emails were "records." Thus, she proceeded to examine the legislative intent, policy, and purpose behind the public records law, and concluded that documents such as email messages must have a connection to a government function to be "records" under the public records law. Because the teachers' personal emails had no connection to a government function, she reasoned they were not "records." She did not, however, foreclose the possibility that some personal emails could be considered "records" under the statute. In the context of an investigation into the misuse of government resources, for example, personal emails would be "records" because a connection would exist between the content of the emails and the government function of investigating the misuse.

Two concurring opinions concluded that the teachers' personal emails were "records" under the Public Records Law but that the public interest always favored nondisclosure when the emails were personal and evinced no violation of law or policy. In his concurring opinion, Justice Gableman expressed concern that the lead opinion would permit a records custodian to withhold nonrecords without notifying the record requestor, and thus the requester would not know to seek review. In her concurrence, Justice Bradley responded that requestors could still seek judicial review if custodians determined that a document was not a "record."

The two dissenting justices argued that the plain meaning of "record" clearly included the personal emails of the teachers and that there was no public interest in protecting these personal emails because the teachers' privacy concerns could be addressed by redacting personally identifying information from the emails.