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

Koepsell Farm, Old World Wisconsin

(Wisconsin Historical Society)

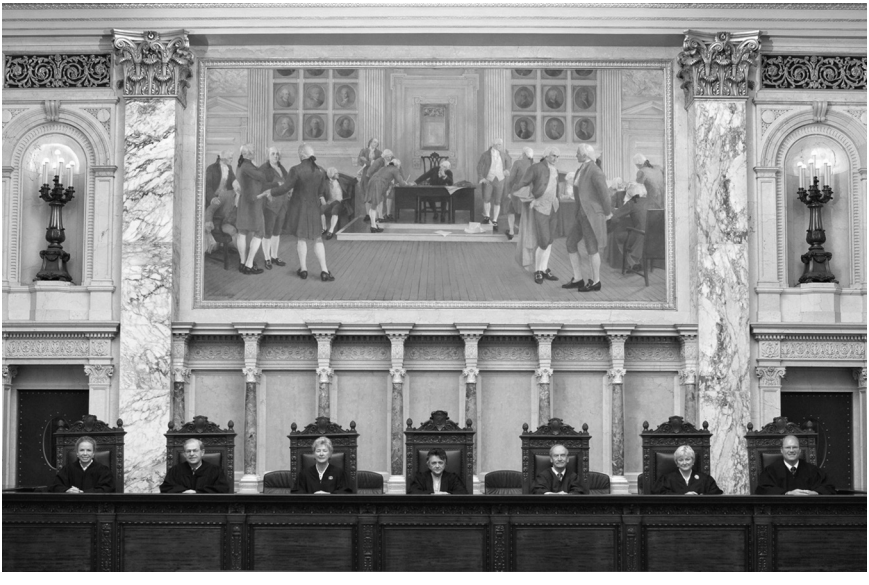
WISCONSIN SUPREME COURT

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	2021
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 Roggensack was reelected to a new term beginning August 1, 2013 and expiring July 31, 2023.

Source: Director of State Courts, departmental data, June 2013.



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, 2012, 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 $10,000 or less except for third party complaints, personal injury claims, and actions based in torts where the limit is $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.

The chief justice speaks to new legislators at the beginning of the 2013 legislative session. Justice Prosser is seen in the foreground. *(Supreme Court)*

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: DIANE FREMGEN, 266-1880, Fax: 267-0640.

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

Number of Positions: 38.50.

Total Budget 2011-13: $10,472,200.

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.

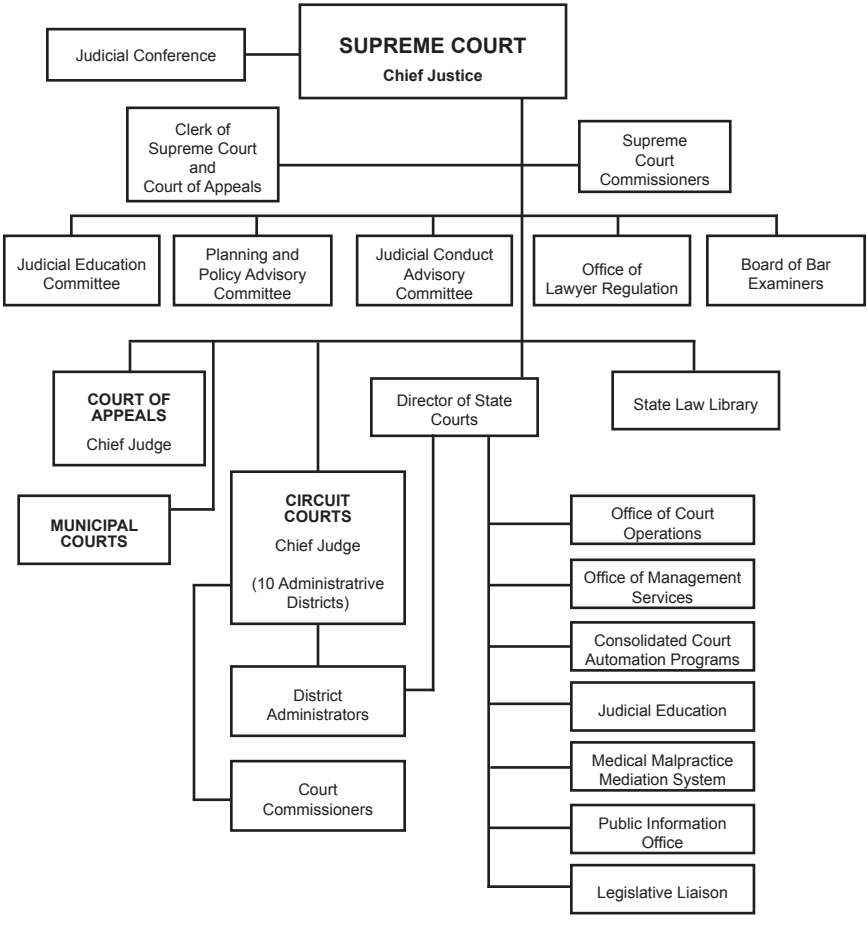
The supreme court sets procedural rules for all courts in the state, and the chief justice serves as administrative head of the state's judicial system. With the assistance of the director of state courts, the chief justice monitors the status of judicial business in Wisconsin's courts. When a calendar 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 2013 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 (2018)
JOAN F. KESSLER (2016)

District II: RICHARD S. BROWN** (2018)
MARK D. GUNDRUM (2019)
LISA S. NEUBAUER* (2014)
PAUL F. REILLY (2016)

District III: MICHAEL W. HOOVER* (2015)
MARK A. MANGERSON (2018)
LISA K. STARK (2019)

District IV: BRIAN W. BLANCHARD (2016)
PAUL B. HIGGINBOTHAM (2017)
JOANNE F. KLOPPENBURG (2018)
PAUL LUNDSTEN* (2013)
GARY E. SHERMAN (2014)

Note: *Indicates the presiding judge of the district. **Indicates chief judge of the court of appeals. The judges' current terms expire on July 31 of the year shown.

Court of Appeals Clerk: DIANE M. FREMGEN, 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/courts/appeals/index.htm

Number of Positions: 75.50.

Total Budget 2011-13: $20,954,000.

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 2013 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.

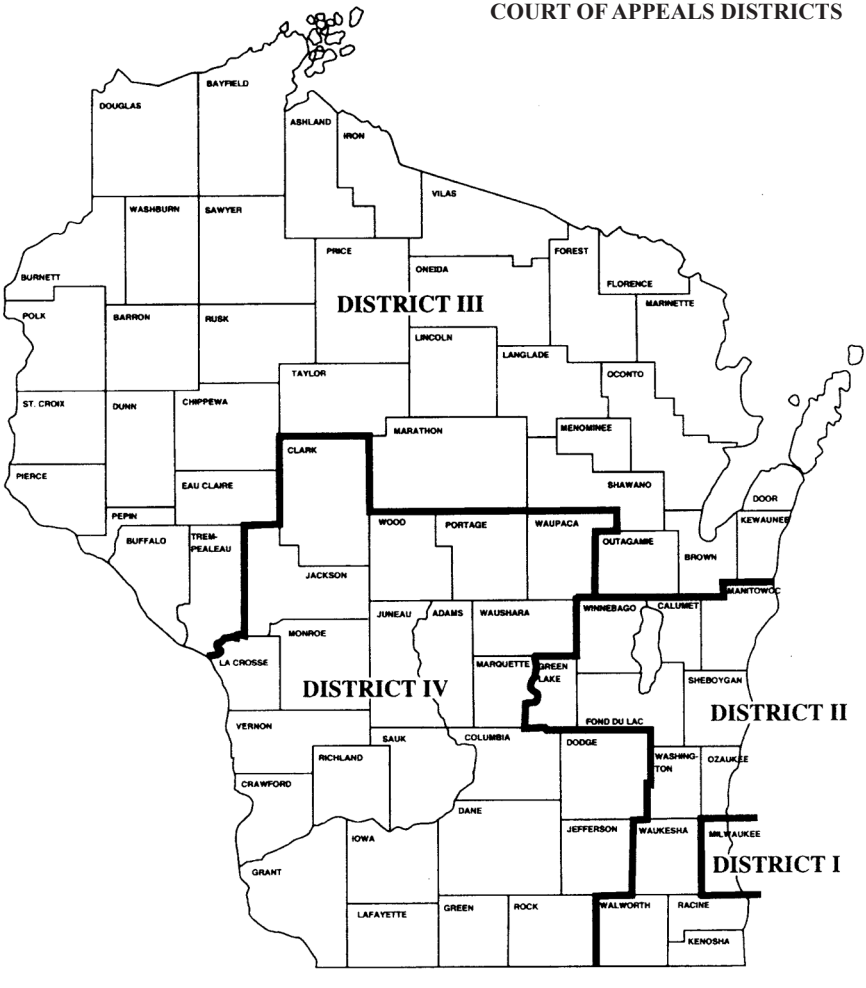
District I: 330 East Kilbourn Avenue, Suite 1020, Milwaukee 53203-3161. Telephone: (414) 227-4680.

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: RANDY KOSCHNICK.
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: JON BELLOWS.

District 5: Dane County Courthouse, 215 South Hamilton Street, Madison 53703-3290. Telephone: 267-8820; Fax: 267-4151.
Chief Judge: JAMES P. DALEY.
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: GREGORY POTTER.
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: JAMES J. DUVALL.
Administrator: PATRICK BRUMMOND.

District 8: 414 East Walnut Street, Suite 100, Green Bay 54301-5020. Telephone: (920) 448-4281; Fax: (920) 448-4336.
Chief Judge: DONALD ZUIDMULDER.
Administrator: JOHN POWELL.

District 9: 2100 Stewart Avenue, Suite 310, Wausau 54401. Telephone: (715) 842-3872; Fax: (715) 845-4523.
Chief Judge: NEAL NIELSEN.
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/courts/circuit/index.htm

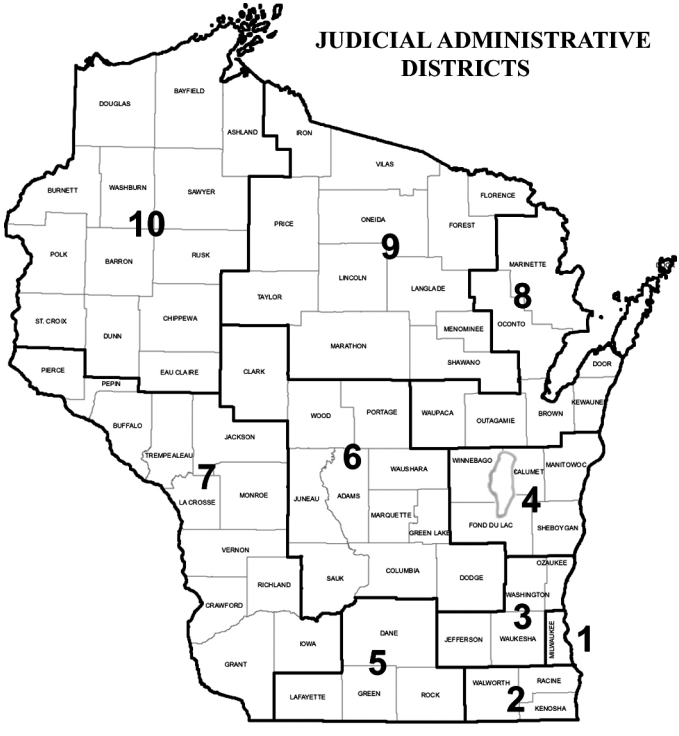
State-Funded Positions: 527.00.

Total Budget 2011-13: $193,063,700.

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, 2012, 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 2012 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.

In a collaborative effort between two branches of government, the Supreme Court and two legislative committees hold a joint meeting to discuss issues related to justice. Chief Justice Shirley Abrahamson is seated next to Senator Glenn Grothman, chairperson of the Senate Committee on Judiciary and Labor. *(Supreme Court)*

JUDGES OF CIRCUIT COURT
June 1, 2013

County Circuits	Court Location	Judges	Term Expires July 31
Adams	Friendship	Charles A. Pollex	2015
Ashland	Ashland	Robert E. Eaton	2018
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	Tom Walsh	2018
Branch 3	Green Bay	Tammy Jo Hock[1,2]	2013
Branch 4	Green Bay	Kendall M. Kelley	2015
Branch 5	Green Bay	Marc A. Hammer	2015
Branch 6	Green Bay	John P. Zakowski	2018
Branch 7	Green Bay	Timothy A. Hinkfuss[3]	2013
Branch 8	Green Bay	William M. Atkinson	2015
Buffalo-Pepin	Alma	James J. Duvall	2018
Burnett	Siren	Kenneth Kutz	2015
Calumet	Chilton	Jeffrey S. Froehlich	2018
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	2018
Columbia			
Branch 1	Portage	Daniel S. George	2015
Branch 2	Portage	W. Andrew Voigt	2017
Branch 3	Portage	Alan White[3]	2013
Crawford	Prairie du Chien	James P. Czajkowski	2016
Dane			
Branch 1	Madison	John Markson	2014
Branch 2	Madison	Maryann Sumi	2017
Branch 3	Madison	John C. Albert	2018
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	Frank D. Remington	2018
Branch 9	Madison	Richard Niess	2017
Branch 10	Madison	Juan B. Colas	2015
Branch 11	Madison	Ellen K. Berz	2018
Branch 12	Madison	David T. Flanagan	2018
Branch 13	Madison	Julie Genovese	2015
Branch 14	Madison	C. William Foust	2016
Branch 15	Madison	Stephen Ehlke	2016
Branch 16	Madison	Rebecca Rapp St. John[1,4]	2013
Branch 17	Madison	Peter C. Anderson	2016
Dodge			
Branch 1	Juneau	Brian A. Pfitzinger	2014
Branch 2	Juneau	John R. Storck[3]	2013
Branch 3	Juneau	Andrew P. Bissonnette[5]	2013
Branch 4	Juneau	Steven Bauer	2014
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2018
Branch 2	Sturgeon Bay	Peter C. Diltz	2018
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	2018
Branch 2	Eau Claire	Michael Schumacher	2014
Branch 3	Eau Claire	William M. Gabler, Sr.	2018
Branch 4	Eau Claire	Jon M. Theisen	2018
Branch 5	Eau Claire	Paul J. Lenz	2018
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	2017
Forest (see *Florence-Forest*)			
Grant			
Branch 1	Lancaster	Robert P. VanDeHey	2017
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	Mark Slate	2017
Iowa	Dodgeville	William D. Dyke	2016
Iron	Hurley	Patrick John Madden	2017

JUDGES OF CIRCUIT COURT
June 1, 2013–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[3]	2013
Branch 3	Jefferson	vacancy	—
Branch 4	Jefferson	Randy R. Koschnick	2017
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	Jason A. Rossell	2018
Branch 3	Kenosha	Bruce E. Schroeder	2014
Branch 4	Kenosha	Anthony Milisauskas	2017
Branch 5	Kenosha	Wilbur W. Warren III	2015
Branch 6	Kenosha	Mary K. Wagner	2015
Branch 7	Kenosha	S. Michael Wilk	2018
Branch 8	Kenosha	Chad G. Kerkman	2015
Kewaunee	Kewaunee	Dennis J. Mleziva	2016
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez[3]	2013
Branch 2	La Crosse	Elliott Levine[3]	2013
Branch 3	La Crosse	Todd Bjerke[3]	2013
Branch 4	La Crosse	Scott L. Horne[3]	2013
Branch 5	La Crosse	Dale T. Pasell	2017
Lafayette	Darlington	William D. Johnston	2015
Langlade	Antigo	Fred W. Kawalski	2017
Lincoln			
Branch 1	Merrill	Jay R. Tlusty	2016
Branch 2	Merrill	John Yackel[1,6]	2013
Manitowoc			
Branch 1	Manitowoc	vacancy[7]	—
Branch 2	Manitowoc	Gary Bendix	2018
Branch 3	Manitowoc	Jerome L. Fox	2017
Marathon			
Branch 1	Wausau	Jill N. Falstad	2015
Branch 2	Wausau	Gregory Huber	2016
Branch 3	Wausau	vacancy	—
Branch 4	Wausau	Gregory Grau[3]	2013
Branch 5	Wausau	Mike Moran	2017
Marinette			
Branch 1	Marinette	David G. Miron	2014
Branch 2	Marinette	James A. Morrison[1,2]	2013
Marquette	Montello	Richard O. Wright[8]	2013
Menominee-Shawano			
Branch 1	Shawano	James R. Habeck	2014
Branch 2	Shawano	William F. Kussel, Jr.	2018
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	2017
Branch 2	Wauwatosa	Joe Donald	2015
Branch 3	Milwaukee	Clare L. Fiorenza	2015
Branch 4	Milwaukee	Mel Flanagan	2018
Branch 5	Milwaukee	Mary Kuhnmuench	2016
Branch 6	Milwaukee	Ellen Brostrom	2015
Branch 7	Milwaukee	Jean W. DiMotto	2015
Branch 8	Milwaukee	William Sosnay	2018
Branch 9	Milwaukee	Paul R. Van Grunsven	2017
Branch 10	Milwaukee	Timothy G. Dugan	2017
Branch 11	Milwaukee	Dominic S. Amato[9]	2013
Branch 12	Milwaukee	David L. Borowski	2015
Branch 13	Milwaukee	Mary Triggiano	2017
Branch 14	Milwaukee	Christopher R. Foley	2016
Branch 15	Milwaukee	J.D. Watts	2015
Branch 16	Wauwatosa	Michael J. Dwyer	2015
Branch 17	Milwaukee	Carolina Maria Stark	2018
Branch 18	Wauwatosa	Pedro Colón	2017
Branch 19	Wauwatosa	Dennis R. Cimpl	2017
Branch 20	Milwaukee	Dennis P. Moroney	2018
Branch 21	Milwaukee	William Brash III	2014
Branch 22	Milwaukee	Timothy M. Witkowiak	2015
Branch 23	Milwaukee	Lindsey Grady	2018
Branch 24	Milwaukee	Charles F. Kahn, Jr.	2016
Branch 25	Milwaukee	Stephanie Rothstein	2016
Branch 26	Milwaukee	William Pocan[3]	2013
Branch 27	Milwaukee	Kevin E. Martens	2014
Branch 28	Wauwatosa	Mark A. Sanders	2018
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	2017
Branch 34	Milwaukee	Glenn H. Yamahiro	2016
Branch 35	Milwaukee	Frederick C. Rosa	2017
Branch 36	Milwaukee	Jeffrey A. Kremers	2017

JUDGES OF CIRCUIT COURT
June 1, 2013–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Branch 37	Wauwatosa	Karen Christenson	2016
Branch 38	Milwaukee	Jeffrey A. Wagner	2018
Branch 39	Milwaukee	Jane Carroll	2018
Branch 40	Milwaukee	Rebecca Dallett	2014
Branch 41	Wauwatosa	John J. DiMotto	2014
Branch 42	Milwaukee	David A. Hansher	2015
Branch 43	Milwaukee	Marshall B. Murray	2018
Branch 44	Milwaukee	Daniel L. Konkol	2016
Branch 45	Wauwatosa	Rebecca G. Bradley[1,2]	2013
Branch 46	Milwaukee	Bonnie L. Gordon	2018
Branch 47	Milwaukee	John Siefert	2017
Monroe			
Branch 1	Sparta	Todd L. Ziegler[3]	2013
Branch 2	Sparta	Mark L. Goodman	2016
Branch 3	Sparta	J. David Rice	2016
Oconto			
Branch 1	Oconto	Michael T. Judge	2017
Branch 2	Oconto	Jay N. Conley	2016
Oneida			
Branch 1	Rhinelander	Patrick F.O'Melia	2014
Branch 2	Rhinelander	Michael H. Bloom	2018
Outagamie			
Branch 1	Appleton	Mark McGinnis	2017
Branch 2	Appleton	Nancy J. Krueger	2014
Branch 3	Appleton	Mitchell J. Metropulos	2014
Branch 4	Appleton	Greg Gill, Jr.	2018
Branch 5	Appleton	Michael W. Gage	2015
Branch 6	Appleton	Dee R. Dyer	2018
Branch 7	Appleton	John A. Des Jardins	2018
Ozaukee			
Branch 1	Port Washington	Paul V. Malloy	2015
Branch 2	Port Washington	Thomas R. Wolfgram[10]	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	Jeff Anderson	2017
Portage			
Branch 1	Stevens Point	Thomas B. Eagon	2018
Branch 2	Stevens Point	John V. Finn[3]	2013
Branch 3	Stevens Point	Thomas T. Flugaur	2018
Price	Phillips	Douglas T. Fox	2014
Racine			
Branch 1	Racine	Gerald P. Ptacek[3]	2013
Branch 2	Racine	Eugene Gasiorkiewicz	2016
Branch 3	Racine	Emily S. Mueller	2017
Branch 4	Racine	John S. Jude	2016
Branch 5	Racine	Mike Piontek	2018
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	Timothy D. Boyle	2018
Richland	Richland Center	Andrew Sharp	2018
Rock			
Branch 1	Janesville	James P. Daley	2014
Branch 2	Janesville	Alan Bates	2016
Branch 3	Janesville	Michael Fitzpatrick	2015
Branch 4	Janesville	Daniel T. Dillon[3]	2013
Branch 5	Janesville	Kenneth Forbeck	2015
Branch 6	Janesville	Richard T. Werner	2015
Branch 7	Janesville	Barbara W. McCrory	2018
Rusk	Ladysmith	Steven P. Anderson	2016
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2014
Branch 2	Hudson	Edward F. Vlack III[3]	2013
Branch 3	Hudson	Scott R. Needham	2018
Branch 4	Hudson	Howard Cameron	2014
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2018
Branch 2	Baraboo	James Evenson	2016
Branch 3	Baraboo	Guy D. Reynolds	2018
Sawyer	Hayward	Jerry Wright	2015
Shawano (see *Menominee-Shawano*)			
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel	2015
Branch 2	Sheboygan	Timothy M. Van Akkeren[3]	2013
Branch 3	Sheboygan	Angela Sutkiewicz	2017
Branch 4	Sheboygan	Terence T. Bourke	2015
Branch 5	Sheboygan	James J. Bolgert	2018
Taylor	Medford	Ann Knox-Bauer	2015
Trempealeau	Whitehall	John A. Damon[3]	2013
Vernon	Viroqua	Michael J. Rosborough	2017

JUDGES OF CIRCUIT COURT
June 1, 2013–Continued

County Circuits	Court Location	Judges	Term Expires July 31
Vilas	Eagle River	Neal A. Nielsen	2016
Walworth			
Branch 1	Elkhorn	Phillip A. Koss	2018
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	2017
Branch 2	West Bend	James K. Muehlbauer	2014
Branch 3	West Bend	Todd Martens	2017
Branch 4	West Bend	Andrew T. Gonring	2018
Waukesha			
Branch 1	Waukesha	Michael O. Bohren[3]	2013
Branch 2	Waukesha	Jennifer Dorow	2018
Branch 3	Waukesha	Ralph M. Ramirez	2017
Branch 4	Waukesha	Lloyd V. Carter	2017
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.[3]	2013
Branch 10	Waukesha	Linda M. Van De Water	2015
Branch 11	Waukesha	William Domina	2017
Branch 12	Waukesha	Kathryn W. Foster	2018
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	2017
Branch 2	Waupaca	John P. Hoffmann	2016
Branch 3	Waupaca	Raymond S. Huber	2018
Waushara	Wautoma	Guy Dutcher	2017
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2018
Branch 2	Oshkosh	Scott C. Woldt	2017
Branch 3	Oshkosh	Barbara Hart Key	2016
Branch 4	Oshkosh	Karen L. Seifert	2018
Branch 5	Oshkosh	John Jorgensen	2016
Branch 6	Oshkosh	Daniel J. Bissett	2017
Wood			
Branch 1	Wisconsin Rapids	Gregory J. Potter	2014
Branch 2	Wisconsin Rapids	Nicholas J. Brazeau, Jr.	2018
Branch 3	Wisconsin Rapids	Todd P. Wolf	2015

[1]Appointed by the governor.

[2]Newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[3]Reelected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[4]Rhonda L. Lanford was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[5]Joseph G. Sciascia was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[6]Robert Russell was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[7]Mark R. Rohrer was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[8]Bernard Ben Bult was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[9]Dave Swanson was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

[10]Joe Voiland was newly elected on April 2, 2013, for a 6-year term to commence on August 1, 2013.

Sources: *2011-2012 Wisconsin Statutes;* Government Accountability Board, departmental data, April 2013; governor's appointment notices; *The Third Branch* newsletter, Winter 2013 and previous issues.

MUNICIPAL COURTS

Constitutional References: Article VII, Sections 2 and 14.

Statutory References: Chapters 755 and 800.

Internet Address: www.wicourts.gov/courts/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, 2013, there were 245 municipal courts with 243 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 2013.) Two or more municipalities may agree to form a joint court, and there are 61 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 $10,000. 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: SARA WARD-CASSADY, 266-3121, sara.ward-cassady@

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: 129.25.

Total Budget 2011-13: $40,335,300.

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: JULIE TESSMER, 261-2340, julie.tessmer@wicourts.gov

Deputy Law Librarian: AMY CROWDER, 267-2253, amy.crowder@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* (monthly e-newsletter), at: http://wilawlibrary.gov/newsletter/index.html

Number of Employees: 16.50.

Total Budget 2011-13: $6,022,600.

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 justices, judges, and staff of the entire Wisconsin court system. 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 140,000-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 collection circulates to judges and court staff, attorneys, legislators, and government personnel.

The library offers reference, basic legal research and document delivery services, and training in the use of legal research Web sites and databases.

OFFICE OF LAWYER REGULATION

Board of Administrative Oversight: ROD ROGAHN (lawyer), *chairperson;* MARK A. PETERSON (lawyer), *vice chairperson;* BARRETT J. CORNEILLE, MARGADETTE DEMET, CHARLES P. DYKMAN, JOHN MCNAMARA, JOSEPH E. REDDING, HARVEY WENDEL (lawyers); DEANNA M. HOSIN, CLAUDE GILMORE, SHARON SCHMELING, vacancy (nonlawyers). (All members are appointed by the supreme court.)

Preliminary Review Committee: EDWARD HANNAN (lawyer), *chairperson;* ROBERT J. ASTI (lawyer), *vice chairperson;* JOHN W. CAMPION, MARTIN W. HARRISON, FRANK LO COCO, WILLIAM MUNDT, TIMOTHY NIXON, JAMES R. SMITH, vacancy (lawyers); DENNIS BLASIUS, JOHN FLANNERY, CLAIRE FOWLER, MICHAEL KINDSCHI, MICHAEL D. NOVAK (nonlawyers). (All members are appointed by the supreme court.)

Special Preliminary Review Panel: THOMAS A. CABUSH, CATHERINE LA FLEUR, ROBERT A. MATHERS, vacancy (lawyers); DANIEL ADAMS, JOHN DRIESSEN, DEE KITTLESON (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, C. BENNETT PENWELL, CHRISTINE TOMAS (lawyers); JOHN G. BRAIG, WILLIAM J. BRYDGES, RANDALL J. HAMMETT, JEROME HONORE, JEROME K. LAURENT (nonlawyers).

District 2 Committee (serves Milwaukee County): JULIE A. O'HALLORAN (lawyer), *chairperson;* ROBERT C. MENARD (lawyer), *vice chairperson;* COLLEEN D. BALL, ELIOT BERNSTEIN, REBECCA BLEMBERG, SARAH FRY BRUCH, JACQUES C. CONDON, CEDRIC CORNWALL, ROBIN DORMAN, BRADLEY FOLEY, MICHELE FORD, HEATHER GATEWOOD, JAMES GEHRKE, DAVID B. KARP, LYNN LAUFENBERG, MICHAEL LAUFENBERG, BRETT LUDWIG, CHRISTOPHER J. MACGILLIS, THOMAS MERKLE, JAMES MOCZYDLOWSKI, ROBERT E. NAILEN, KEITH O'DONNELL, RAYMOND E.H. SCHRANK, DAVID W. SIMON, WILLIAM T. STUART, FRANK TERSCHAN, MONTE WEISS, JOSEPH WELCENBACH, THOMAS WHIPP (lawyers); ARLYN ADAMS, J. STEPHEN ANDERSON, FRANK VALENTINE BIALEK, RON BLAZEL, CARLOS A. BURITICA, NEILAND COHEN, RICHARD IPPOLITO, J. DAIN MADDOX, GARY NOSACEK, DANICA OLSON, HOLLY PATZER, KEITH J. ROBERTS, DEEDEE RONGSTAD, JOHN E. SUNDEEN, WILLIAM WARD, JAMES C. WENZLER (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, ELIZABETH J. NEVITT, BETH OSOWSKI, DAVID J. SCHULTZ, KATHERINE SEIFERT, TIMOTHY R. YOUNG, JOHN S. ZARBANO (lawyers); KRISTY BRADISH, JOHN FAIRHURST, MARY JO KEATING, THOMAS E. KELROY, 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, WILLIAM F. FALE, ROBERTA A. HECKES, ROBERT LANDRY (lawyers); DONALD A. SCHWOBE, JAMES STECKER, SUZANNE J. WEGNER, ALAN WHITE, RICHARD YORK (nonlawyers).

District 5 Committee (serves Buffalo, Clark, Crawford, Jackson, La Crosse, Monroe, Pepin, Richland, Trempealeau, and Vernon Counties): KARA M. BURGOS (lawyer), *chairperson;* MICHAEL C. ABLAN, DANIEL C. ARNDT, BRUCE J. BROVOLD, CHRISTOPHER DOERFLER, STEPHANIE HOPKINS, PAUL B. MILLIS, DAVID RUSSELL, JON D. SEIFERT (lawyers); DAVID CAMPBELL, JAMES W. GEISSNER, JAMES HANSON, RICHARD KYTE, PAUL R. LORENZ, RICHARD A. MERTIG, REED POMEROY, LARRY D. WYMAN (nonlawyers).

District 6 Committee (serves Waukesha County): GARY KUPHALL (lawyer), *chairperson;* LINDA S. COYLE, MARTIN DITKOF, ROSEMARY JUNE GORETA, MICHAEL JASSAK, RAMON A. KLITZKE, BRAD A. MARKVART, DANIEL MURRAY, PAUL E. SCHWEMER, NELSON E. SHAFER, MARGARET G. ZICKUHR (lawyers); RICHARD GASSO, ROBERT HAMILTON, THERESA M. PETERMAN, 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, JOHN KRUSE (lawyers); PHILIP BAEBLER, LAVINDA CARLSON, DAVID A. KORTH, SUSAN G. MARTIN, ALAN K. PETERSON (nonlawyers).

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

District 9 Committee (serves Dane County): THOMAS W. SHELLANDER (lawyer), *chairperson;* ANNE M. BLOOD, ANDREW CLARKOWSKI, JESUS G.Q. GARZA, AARON HALSTEAD, THOMAS S. HORNIG, ROBERT KASIETA, JENNIFER SLOAN LATTIS, DAVID MINKO, JENNIFER E. NASHOLD, BRIANE F. PAGEL, JR., MICHELE PERREAULT, LAWRENCE P. PETERSON, BRUCE AL. SCHULTZ, MEGAN A. SENATORI, DENNIS M. SULLIVAN, JAMES R. TROUPIS, JANICE K. WEXLER (lawyers); PATRICIA BASS, PATRICK DELMORE, NORMAN JENSEN, LYNN M. LEAZER, LARRY MCCRAY, BARBARA MORTENSEN, LARRY NESPER, ROBERT G. OWENS, THERON E. PARSONS, KATHLEEN M. RAAB, RICHARD C. SEAMAN, CONSUELO LOPEZ SPRINGFIELD, KENNETH YUSKA, JOHN ZERBE (nonlawyers).

District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties): GALE MATTISON (lawyer), *chairperson;* MICHAEL F. BROWN, TONY A. KORDUS, ROBERT SISSON, LAURA C. SMYTHE, GERALD WILSON (lawyers); GUY K. GOODING, TERRY HILGENBERG, 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, PARRISH J. JONES, TIMOTHY T. SEMPF, AMANDA L. WIECKOWIC (lawyers); GENE ANDERSON, JOHN BENNETT, ELIZABETH ESSER, DIANE FJELSTAD, ERNY HEIDEN, MARY ANN KING (nonlawyers).

District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties): JAMES A. CARNEY (lawyer), *chairperson;* JODY L. COOPER, DAN D. GARTZKE, THOMAS H. GEYER, ROBERT HOWARD, MELISSA B. JOOS, MARGARET M. KOEHLER, CAROLYN L. SMITH, JAMES D. WICKHEM (lawyers); LORI R. BIENEMA, DENNIS L. EVERSON, MICHAEL FURGAL, WILLIAM HUSTAD, MICHAEL F. METZ, ROBERT D. SPOODEN, LARRY WOLF (nonlawyers).

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

District 14 Committee (serves Brown County): BRUCE R. BACHHUBER (lawyer), *chairperson;* ROBERT GAGAN, TERRY GERBERS, MARK A. PENNOW, THOMAS V. ROHAN, EDWARD J. VOPAL (lawyers); RICHARD ALLCOX, DEBRA L. BURSIK, JIM MARSHALL, JOSEPH NEIDENBACH (nonlawyers).

District 15 Committee (serves Racine County): MARK F. NIELSEN (lawyer), *chairperson;* JOHN J. BUCHAKLIAM, KRISTIN CAFFERTY, PATRICIA J. HANSON, MARK R. HINKSTON, ROBERT W. KELLER, TIMOTHY J. PRUITT, ROBERT K. WEBER (lawyers); THOMAS CHRYST, 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;* LISA BROUILLETTE, LAURA K. FITZSIMMONS, DOUGLAS KLINGBERG, DAWN R. LEMKE, GINGER MURRAY (lawyers); JOHN P. COLEMAN, MONTY RASKIN, DIANNE M. WEILER, YVONNE H. WEILER (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 2011-13: $5,648,200.

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 7 members, 4 lawyers and 3 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: DANIEL D. BLINKA (Marquette University Law School faculty), *chairperson;* CHARLES P. DYKMAN (State Bar member), *vice chairperson;* KENNETH KUTZ (circuit court judge); KURT D. DYKSTRA, MARK R. FREMGEN, W. CRAIG OLAFSSON, vacancy (State Bar members); STEVEN M. BARKAN (UW Law School faculty); JAMES A. COTTER, PATRICIA EVANS, 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 2011-13: $1,586,400.

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: D. TODD EHLERS (circuit court or reserve judge serving in a rural area); DONALD ZUIDMULDER (judicial administrative district chief judge); LISA S. NEUBAUER (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); ANTON JAMIESON (circuit court commissioner); ROGER PETTIT (State Bar member); RANDY MORRISSETTE II (public member). (All members are selected by the supreme court.)

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

Internet Address: www.wicourts.gov/courts/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/courts/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); JEFFREY A. CONEN, MOLLY E. GALEWYRICK, TIMOTHY A. HINKFUSS, SCOTT L. HORNE, CHAD G. KERKMAN, 3 vacancies (circuit court judges appointed by supreme court); REBECCA PERSICK, ALICE A. RUDEBUSCH (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/courts/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, JAMES BOLGERT, DAVID BOROWSKI, WILLIAM BRASH, THOMAS FLUGAUR, EUGENE HARRINGTON, TIMOTHY HINKFUSS, ELLIOTT LEVINE, PAT MADDEN, WILLIAM POCAN, DAVID REDDY, LINDA VAN DE WATER (circuit court judges elected by judicial administrative districts); DANIEL KOVAL (municipal judge elected by

Wisconsin Municipal Judges Association); JAMES BOLL, MARY WOLVERTON (selected by State Bar Board of Governors); GREGG MOORE (nonlawyer, elected county official); LINDA HOSKINS, DIANE TREIS-RUSK (nonlawyers); KELLI THOMPSON (public defender); ANDREW GRAUBARD (court administrator); JEFFREY ALTENBURG (prosecutor); CARLO ESQUEDA (circuit court clerk); DOLORES BOMRAD (circuit court commissioner). (Unless indicated otherwise, members are appointed by the chief justice.) Nonvoting associates: MARY WAGNER (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, PAT MADDEN, MARY TRIGGIANO (circuit court judges); ANDREW GRAUBARD (court administrator); vacancy (circuit court clerk); DOLORES BOMRAD (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: BONNIE MACRITCHIE, bonnie.macritchie@wicourts.gov

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

Telephone: 261-7550.

Fax: 267-0911.

Internet Address: www.wicourts.gov/courts/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, FRANK J. DAILY (State Bar members); SAIED ASSEF, MARK BARRETTE, EILEEN BURNETT, WILLIAM E. CULLINAN, LYNN M. LEAZER (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 2011-13: $649,200.

Statutory References: Sections 757.001, 757.81-757.99.

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

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

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

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

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

JUDICIAL COUNCIL

Members: PATIENCE DRAKE ROGGENSACK (justice designated by supreme court); BRIAN W. BLANCHARD (judge designated by court of appeals); A. JOHN VOELKER (director of state courts); GERALD P. PTACEK, JEFFREY A. WAGNER, MARY K. WAGNER, MAXINE A. WHITE (circuit court judges designated by Judicial Conference); SENATOR GROTHMAN (chairperson, senate judicial committee); REPRESENTATIVE J. OTT (chairperson, assembly judicial committee); GREG M. WEBER (designated by attorney general); TRACY K. KUCZENSKI (designated by 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); CHRISTINE REW BARDEN (State Bar member, designated by president-elect); THOMAS W. BERTZ, WILLIAM GLEISNER, CATHERINE A. LA FLEUR (State Bar members selected by State Bar); BRAD SCHIMEL (district attorney appointed by governor); DENNIS MYERS, BENJAMIN J. PLISKIE (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 2011-13: $139,400.

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, 2013): *Officers:* PATRICK J. FIEDLER, *president;* ROBERT R. GAGAN, *president-elect;* KEVIN G. KLEIN, *past president;* JENNIFER A. STUBER, *secretary;* KEVIN J. LYONS, *treasurer;* SHERRY COLEY, *chair of the board. District members:* BRIAN L. ANDERSON, ROBERT G. BARRINGTON, ANDREW P. BEILFUSS, BRUCE J. BROVOLD, DOUGLAS S. BUCK, JOSEPH M. CARDAMONE, MICHAEL J. COHEN, RAYMOND M. DALL'OSTO, JOHN E. DANNER, WILLIAM F. FALE, MARTIN P. GAGNE, MARGARET W. HICKEY, DAVID E. JONES, JILL M. KASTNER, LISA M. LAWLESS, STEVEN A. LEVINE, BRETT H. LUDWIG, JOHN R. ORTON, NILESH P. PATEL, THOMAS J. PHILLIPS, GREGORY A. PITTS, SARAH A. PONATH, DEBORAH BROWN PRICE, CHRISTOPHER E. ROGERS, ANIQUE N. RUIZ, THOMAS P. SCHWABA, RONALD J. SONDERHOUSE, GEORGE K. STEIL, JR., RICHARD J. SUMMERFIELD, PAUL G. SWANSON, LAURA SKILTON VERHOFF, R. MICHAEL WATERMAN, NICHOLAS C. ZALES. *Young Lawyers Division:* LEE D. TURONIE. *Government Lawyers Division:* ANN MARIE MOLITOR. *Nonresident Lawyers Division:* ANTHONY J. GRAY, DEBRA E. KUPER, DANIEL F. RINZEL, TODD R. SEELMAN. *Senior Lawyers Division:* THOMAS J. DROUGHT. *Nonlawyer members:* SUSAN K. MILLER, LELAND WIGG-NINHAM. *Minority Bar Liaisons:* ROBIN DALTON, ADRIA D. MADDALENI (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: service@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.

Justice is not confined to the State Capitol. The Supreme Court travels to local courthouses for its Justice on Wheels program. *(Supreme Court)*

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

June 2011 – June 2013

Alexis Blanco, Michael Duchek, Peggy Hurley, Elisabeth Shea, Robert Nelson, Legislative Reference Bureau

CONSTITUTIONAL LAW

Validity of the Domestic Partnership Statutes

In *Appling v. Doyle,* 2013 WI App 3, 345 Wis. 2d 762, 826 N.W.2d 666 (2012), the court of appeals concluded that the legal status provided by Wisconsin's domestic partnership statutes is not substantially similar to the legal status of marriage. The domestic partnership law, found in Chapter 770, Wisconsin Statutes, allows couples, including same-sex couples, to enter into domestic partnerships and acquire certain rights and responsibilities. The court found that the domestic partnership law does not violate the state's constitution, which was recently amended to restrict same-sex marriage.

In 2006, Wisconsin voters ratified an amendment to the Wisconsin Constitution related to same-sex couples and marriage, under Article XIII, Section 13. One provision of the amendment provided that a legal status substantially similar to or identical to marriage would not be recognized in the state for unmarried couples. Another provision of the amendment provided that only a marriage between one man and one woman would be recognized in this state.

In 2009, the Wisconsin Legislature passed the domestic partnership statutes which provided a number of rights and responsibilities similar to those offered in marriage. Several plaintiffs, including Julaine Appling, filed suit the same year challenging the constitutionality of the domestic partnership law. Originally, the case was filed with the Wisconsin Supreme Court, but the supreme court declined to take on the case and it was instead filed with the circuit court. The plaintiffs argued that the domestic partnership law created a legal status "similar to that of marriage" that violated the constitutional amendment. Advocacy group Fair Wisconsin, along with a number of same-sex couples, filed a motion to intervene and defend against the suit after the attorney general declined to do so. The circuit court found that the domestic partnership law was not in violation of the marriage amendment. Appling appealed the circuit court's ruling and the court of appeals affirmed. The court of appeals, citing previous cases, wrote that the burden was on Appling to prove beyond a reasonable doubt that the intention of the marriage amendment was to forbid the particular type of domestic partnership created by the legislature. Appling failed to meet the burden, the court said.

The plaintiffs argued that the term "legal status" referred only to "the eligibility and formation requirements of marriages and domestic partnerships, not the rights and obligations that come with these relationships." The plaintiffs further reasoned that the eligibility and formation requirements for domestic partnerships were the same as, or similar to, those for marriage.

To determine the meaning of the constitutional amendment, the court said it was required to look at three sources: the plain meaning of the language, the constitutional debates regarding the amendment, and the earliest interpretations of the amendment's provisions by the legislature. The court, looking at the plain meaning of the language of the amendment, held that "legal status ... of marriage" encompasses the rights and obligations provided to couples who enter into domestic partnerships, as well as the eligibility, formation, and termination requirements in marriage. As a whole, the court wrote, the two rights afforded to the two groups "are not substantially similar" to one another. The rights and responsibilities provided to couples in domestic partnerships are limited and include the ability to take family medical leave to care for an injured or sick partner, and the right to inherit a partner's estate in the absence of a will, among others. Some rights and responsibilities not granted to couples in domestic partnerships include the "presumption that all property of married couples is marital property" and the right to "adopt children jointly."

The court, when looking at the debate regarding the proposed amendment, found that the proponents said that the amendment did not prohibit the legislature from giving certain benefits to

The East Wing of the State Capitol is home to the Supreme Court. Kenyon Cox's mosaic of Justice adorns the rotunda. *(Clarissa Pohlman)*

same-sex partners, rather it prohibited providing those partnerships with the same benefits and status as married couples. Memos provided to the proponents by legislative attorneys also supported this position, said the court. In addition, some plaintiffs in this case were quoted saying that the amendment was intended to prevent marriage by another name, said the court. Finally, looking at the only legislative interpretation of the amendment, the domestic partnership law, the court held that it would not look to it for guidance on the meaning of the amendment.

The court affirmed the domestic partnership law because it conferred a legal status that was considerably different than that conferred by marriage.

Warrantless Search

In *State of Wisconsin v. St. Martin,* 2011 WI 44, 334 Wis. 2d 290, 800 N.W.2d 858 (2011), the supreme court considered the constitutionality of a warrantless search of St. Martin's apartment, weighing St. Martin's refusal to give consent to the search against his co-tenant's approval of the search. The court had two United States Supreme Court decisions to guide them, each coming to a different conclusion depending on whether the person who refuses to grant consent is "physically present" at the residence when he or she makes the refusal.

The Supreme Court held, in *George v. Randolph,* 547 U.S. 103 (2006), that if the consenting and the nonconsenting residents are both present at the dwelling when consent is sought, a warrantless search may not be conducted. However, in *United States v. Matlock,* 415 U.S. 164 (1974), the Court held that the objection to a search by an absent, albeit nearby, resident could not trump the consent to a search given by a resident who is present at the residence when consent is sought by the police. Applying the case it felt most closely matched the facts of the instant case, the court held that the search of St. Martin's apartment was constitutional.

The case came before the supreme court on certification from the court of appeals. The certification question was stated as follows: whether the rule regarding consent to search a shared dwelling which states that a warrantless search cannot be justified when a physically present resident expressly refuses consent, applies where the physically present resident is taken forcibly from his residence by law enforcement officers but remains in close proximity to the residence such that the refusal is made directly to law enforcement on the scene? Looking carefully at the

specific facts in the instant case, the supreme court held that the *Randolph* case did not apply where, as here, the person objecting was not physically present at the residence when permission for the warrantless search was sought by law enforcement. Instead, the court felt that the facts more closely resembled those of *Matlock,* where the nonconsenting resident was nearby, but not physically present at, the dwelling, and therefore unable to trump the consent given by the resident who was at the dwelling.

The court noted that the Supreme Court, in reaching a different conclusion in *Randolph* from the one it had reached in *Matlock,* acknowledged that the distinction between the circumstances in the two cases was fine. The court noted that in order to establish a useful and pragmatic guideline, the law, in this case, is "unapologetically formalistic" and that admittedly small differences in the fact scenarios are dispositive.

The court found that under the facts of this case, St. Martin was not "physically present" when he refused consent. St. Martin lived in a residence with his girlfriend, LaToya. LaToya went to the police, stating that St. Martin had beaten her, and that she suspected he had cocaine in their home. The police accompanied LaToya back to her home, where they met St. Martin. The court noted that St. Martin stood at the door when the police arrived and gave no objection to their entry. St. Martin was arrested for the alleged battery and placed in a squad car at the scene. At that time, LaToya consented to search of the home; when an officer approached the squad car to ask St. Martin for his consent, he refused. The officers conducted the search and found cocaine and currency.

The court concluded that, while St. Martin was indisputedly near his residence, he was not "at the door and objecting" to the search, nor was he physically present in the home for the "threshold colloquy" seeking consent to search. The court noted that St. Martin had been properly arrested and taken into custody when he was questioned, and that there was nothing to suggest that St. Martin's removal from the home was merely a pretext to deny him a threshold colloquy.

The court found that, in order for the *Randolph* case to control, St. Martin would have had to be more than merely nearby: he would have had to have been physically present in the home, and that he would have had to refuse consent pursuant to a colloquy that took place while he was physically present. The court rejected the notion that the police officer's attempt to obtain consent while St. Martin was outside of the home constituted a "threshold colloquy", noting that other courts had applied the *Randolph* case in a similarly narrow manner. The court concluded, therefore, that the facts in the instant case more closely resembled those in the *Matlock* case, which held that the refusal to consent to a search by a physically absent resident who had been arrested and was in a squad car some distance from the home could not trump the consent to search given by another resident of the home.

Two justices writing to dissent looked at the same facts and concluded that St. Martin was physically present for the purposes of determining whether *Randolph* applied, and that the warrantless search was therefore unlawful. The dissent agreed that *Randolph* applies only if the person is physically present when he or she objects to a warrantless search, but rejected that notion that "physical presence" required the objecting person to be squarely within the home. Instead the dissent argued that a more reasonable interpretation is that a person may object to a search of his or her home when he or she is physically present "at the scene" and not necessarily inside the home.

CRIMINAL LAW

Constitutionality of Warrantless Searches as a Condition of Extended Supervision

In *State v. Rowan,* 2012 WI 60, 341 Wis. 2d 281, 814 N.W.2d 854 (2012), the supreme court was asked to consider whether the Fourth Amendment to the U.S. Constitution, or its counterpart in the Wisconsin Constitution, permitted a court to impose upon a defendant a condition of extended supervision allowing "any law enforcement officer to search the defendant's person, vehicle, or residence for firearms, at any time and without probable cause or reasonable suspicion." The court held that such a condition did not violate Rowan's constitutional rights because the court had made an individualized determination that the condition was necessary, based upon the facts of that particular case.

The case originated in March 2008, when Rowan was observed by a police officer driving erratically and running a stop sign. Rowan subsequently crashed into a pole. At the scene of the accident, Rowan appeared intoxicated and agitated. She also reached to the floor of her vehicle and asked where her gun was. Police subsequently located a semiautomatic handgun and a box of ammunition in the vehicle. Rowan was taken to a hospital for emergency treatment, where she acted aggressively toward hospital staff and a law enforcement officer and made additional threats. As a law enforcement officer attempted to restrain Rowan, Rowan injured the officer's hand. Rowan was charged with five counts and convicted on each count at a jury trial. For one of the counts, battery to a law enforcement officer, the court, acting under its statutory authority to impose conditions of extended supervision, imposed a condition that Rowan, her residence, and her vehicle would be subject to search for a firearm at any time by law enforcement without probable cause or reasonable suspicion. Rowan appealed, arguing that the condition violated her constitutional rights. The court of appeals certified the case to the supreme court, which voted unanimously to affirm the judgment of the circuit court.

Writing the court's opinion, Justice Crooks began with a statement of the test used to determine whether a condition of release is constitutionally permissible, which is that courts will uphold a condition as long as it is both: 1) not overly broad and 2) reasonably related to the person's rehabilitation. In addressing the first part of the test, the court noted the United States Supreme Court's holding in *Samson v. California*, which addressed a California law subjecting all parolees to suspicionless searches at any time, day or night. In contrast, the court wrote, the condition placed upon Rowan was specifically based upon evidence that Rowan had made numerous threats, including a subsequent threat against a judge, and had purchased several firearms subsequent to her arrest. Noting that the condition was limited to searches for firearms and that the searches had to be performed in a reasonable manner, the supreme court concluded that the condition was not overly broad. Addressing the second part of the test, the court wrote of the interconnection between encouraging lawful conduct and protecting the public. Again citing Rowan's history with firearms and making threats, the court wrote that providing Rowan with an incentive to refrain from possessing firearms was reasonably related to her rehabilitation, which would also serve the interest of public safety. For these reasons, the court held that the condition imposed by the court did not violate constitutional protections afforded to Rowan.

The court also rejected a separate argument made by Rowan that her conviction for battery to a law enforcement officer was invalidated by the fact that the officer was not acting in an official capacity at the time of the battery, which is an element of the offense. Rowan had argued that because the officer was assisting a nurse who was performing a blood draw on Rowan, the officer was not acting in an official capacity. The court rejected this argument, noting that there was ample evidence from which the jury could have concluded that the officer was acting in an official capacity at the time of the battery.

CIVIL LAW

Can an Unmodifiable Agreement for Child Support be Enforceable?

In *In re marriage of May*, 2012 WI 35, 339 Wis. 2d 626, 813 N.W.2d 179 (2012), the Wisconsin Supreme Court considered a stipulated agreement between two divorced parents that required the father to pay, for a period of 33 months, a fixed amount of child support that amounted to 72% of his income. After entering into the stipulation, the father sought to have it modified as being unfair to him and against public policy. The supreme court, looking at all of the circumstances surrounding the agreement, weighing public policy concerns, and considering the changed circumstances from the time the parties entered into the agreement, rejected the father's arguments and ruled that the agreement may be enforced.

The Mays were divorced in October 2005. After the divorce, the parties wrangled in court over the next couple of years on a variety of child-related issues, including payment of child support, visitation arrangements, scheduling conflicts, and payment of various child care costs. In January 2008, the court entered an order based on a stipulation entered into between the Mays. The stipulation required the father to pay a minimum of $1,203 a month for child support and prohibited the father from seeking a reduction of that amount for 33 months. In an apparent exchange for that arrangement, the mother assumed certain child care costs and agreed

that the father could make temporarily decreased payments on child support arrearages that had accumulated.

After approximately 18 months, the father sought to reduce the child support payments. The mother argued that, in light of the stipulation between the parties that child support would be "unmodifiable" for at least 33 months, the father was equitably estopped from seeking reduction in the payments until that period of time passed. The circuit court agreed with the mother; the father appealed, and the court of appeals certified the issue to the supreme court, which agreed to decide the matter.

The supreme court set forth the questions on review: does the stipulation and order establishing unmodifiable minimum child support payments for 33 months violate public policy, and did the circuit court err when it estopped the father from seeking a modification of the child support order? The supreme court turned first to the discussion of whether the stipulation and order violates public policy.

The court held that, while parties are generally free to enter into stipulations regarding the amounts paid for child support, certain agreements tend to undermine the paramount consideration, the best interests of the child, and may therefore be voided as against public policy. For example, an unmodifiable stipulation and order that set a maximum amount of child support for a particular period of time would violate public policy, as would a stipulation and order that set a minimum amount of child support with no durational limit. Looking at the stipulation and order in the instant case, however, the court found that it did not violate public policy.

The court declined to adopt a rule that unmodifiable floors that are limited in duration are invalid per se. The court noted that the parties are generally free to enter into a stipulation so long as the stipulation is made knowingly and intentionally, and was fair to the parties when they entered into it. The court found that those things were all true in the *May* case. The court noted that, although the percentage of the father's income due as child support appears high, the father's income was the same when he brought the challenge as it was when he freely entered into the stipulation. The court also observed that the father's income had fluctuated significantly over the years since the couple had divorced and the stipulation was limited in duration. All of these factors, coupled with the fact that the mother gave up certain things in exchange for the stipulation and relied upon the stipulation being unmodifiable, factored into the court's decision to uphold it. Further, the court stated that an unmodifiable stipulation can have the advantage of keeping parties out of court, at least for the duration of the stipulation; the court noted that the tension created by repetitive litigation tends to be against the best interests of the children involved.

However, the court held that even if a stipulation for child support was entered into freely and knowingly, was fair when it was entered into, and not against public policy, the court retained its equitable jurisdiction to consider whether the stipulation is in the best interests of the child. Reiterating that its primary purpose in litigation involving child support is to promote and protect the best interests of the children involved, the court observed that courts are obligated to ensure that every court order reflects this purpose and to consider all of the circumstances surrounding a stipulation, when it was entered into and when it is challenged, before deciding whether to uphold the stipulation. Looking at the *May* case, the court found that the father failed to demonstrate any changed circumstances or other equitable considerations that would justify a refusal to enforce the stipulation.

A Circuit Court Lacks Authority to Order a School District to Provide Educational Services to Expelled Students

In *Madison Metropolitan School District v. Circuit Court for Dane County,* 2011 WI 72, 336 Wis. 2d 95, 800 N.W.2d 442 (2011), the supreme court affirmed a court of appeals decision that a circuit court does not have authority to order a school district to provide alternative educational services to a juvenile who has been adjudicated delinquent and lawfully expelled from school. A circuit court may, however, order the juvenile to attend educational programs that a school district offers.

On June 5, 2009, a 15-year-old student (referred to as M.T.) was arrested for bringing nine bags of marijuana to school, and charged with possession of marijuana with the intent to deliver.

The Madison Metropolitan School District (MMSD) filed a complaint seeking the expulsion of M.T. from the district. After two hearings, the hearing officer ordered that M.T. be expelled for up to three semesters with the opportunity to return to school after one semester if specific conditions were met. The order of expulsion denied M.T. any educational programing from MMSD for at least one semester.

Due to the drug-related charges, M.T. was also subject to a delinquency proceeding in Dane County circuit court. Upon finding M.T. to be delinquent, the court ordered the Dane County Department of Human Services to prepare a pre-dispositional report under Section 938.33 (1), Wisconsin Statutes. The report included a plan for M.T. to attend school regularly without unexcused absences while under the jurisdiction of the juvenile court. The court adopted this provision in its dispositional order and notified the school district that it had a duty to provide educational programming. MMSD refused to provide any educational programming, including "home school materials."

In an order to show cause to MMSD, the circuit court stated that it could not fulfill its statutory duties if the school district refused to provide any educational programming, and that MMSD's actions were contributing to M.T.'s delinquency. The school district objected to the order to show cause by letter, stating that the order undermined its statutory authority to designate the terms of an expulsion. Following a hearing, the circuit court ordered MMSD to develop an educational program for M.T. MMSD complied, but, after its motion for reconsideration was denied, appealed the circuit court's decision. The court of appeals construed the appeal as a petition for a supervisory writ. The court of appeals agreed with MMSD that the circuit court had gone beyond its authority under the Juvenile Justice Code, granted a supervisory writ, and vacated the circuit court's order.

On review, the supreme court evaluated a circuit court's authority under the Juvenile Justice Code and a school district's statutory authority and duties in a situation where a juvenile has been expelled and adjudicated delinquent but not committed to an institution or program that is required to provide educational services. The supreme court held that MMSD had the authority to expel M.T. and encouraged it to provide alternative educational services, but held that a circuit court may not require a school district to do so. The court also held that Section 938.34, Wisconsin Statutes, allows a circuit court to order a delinquent juvenile to attend educational programs that a school district offers, but does not require the school district to create a particular program or enter into a contract for one.

Finally, the court addressed the circuit court's claim that, when a school district refuses to provide educational programming to a delinquent juvenile, this act contributes to the delinquency of the juvenile under Section 938.45, Wisconsin Statutes. The circuit court argued that this gave it the authority to order the school district to provide educational services. The supreme court disagreed with the circuit court's reasoning. Section 938.45, Wisconsin Statutes concerns "persons" who contribute to the delinquency of the juvenile, which, the court held, means natural persons, not entities such as school districts.

Justice Crooks, joined by Chief Justice Abrahamson and Justice Bradley, dissented, arguing that the 1996 Juvenile Justice Code expanded the circuit court's authority to develop a range of dispositions to address juvenile crime. The dissent concluded that this expanded authority includes the authority to order a district to provide educational services to an expelled juvenile that the circuit court has adjudged delinquent.

The Cost of Redacting Public Records

In *Milwaukee Journal Sentinel v. City of Milwaukee,* 2012 WI 65, 341 Wis. 2d 607, 815 N.W.2d 367 (2012), the supreme court was asked to address whether the public records law permitted authorities, such as cities, to charge for the cost of deleting or redacting nondisclosable information included within a public record. The supreme court held that charging for such costs was not permitted under the public records law.

The case originated with public records requests made by two reporters from the *Milwaukee Journal Sentinel* (the newspaper) for police dispatch and incident reports for crimes in the City of Milwaukee (the city). After complying with a number of requests, the city asked for prepayment of costs to comply with the requests, including costs to delete or redact nondisclosable

information from the records. The newspaper filed suit in response, conceding that the city was required by law to redact certain information from the records, but contending that the newspaper was not liable for payment for the costs of performing the redactions. The circuit court ruled that the newspaper was liable under the public records law for payment of all actual, necessary, and direct costs incurred by the city to comply with the requests, including the costs of deleting or redacting nondisclosable information. The newspaper filed a petition to bypass the court of appeals and have the supreme court directly review the ruling of the circuit court, and the supreme court granted the petition.

In her lead opinion, joined by two other justices, Chief Justice Abrahamson examined the text of various provisions of the public records law. She noted that the legislature in 1981 had specifically contemplated that information would need to be redacted from certain records, but had not provided that an authority could charge for time spent redacting the records. She wrote that while the public records law allowed authorities to charge for the actual, necessary, and direct costs of other specific tasks associated with complying with a public records request, deleting or redacting information did not fit neatly within any of those enumerated tasks. Specifically, she wrote that redacting information from a record was not part of "locating" or "reproducing" a record, both of which are tasks for which an authority may charge under the law.

Chief Justice Abrahamson also declined to read into the statute authority to charge for redacting, citing the declaration in the public records law of a policy in favor of access to records. She noted that increasing the costs of public records requests may inhibit access to public records or render them completely inaccessible, which would be inconsistent with that declaration of policy. Finally, the chief justice cited a 1983 Attorney General's opinion consistent with the court's opinion and noted that, in spite of the Attorney General's opinion, the legislature had not amended the law to allow authorities to charge for the costs of redaction or deletion.

Justice Prosser and Justice Roggensack both wrote opinions to concur with the result of the lead opinion, but declined to join it. They wrote separately to urge the legislature to revisit the issue presented by the case. Justice Roggensack, whose opinion was considered the majority opinion on the policy issue, wrote that the court's holding could result either in unfulfilled requests or high costs to taxpayers. Her opinion was joined by three other justices.

The Difference Between a Zoning Ordinance and a Nonzoning Police Power Ordinance

In *Zwiefelhofer v. Town of Cooks Valley,* 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362 (2012), the supreme court was asked to determine whether a town's nonmetallic mining ordinance was a zoning ordinance or a nonzoning police power ordinance. The court held that the ordinance was not a zoning ordinance because it did not share many of the fundamental characteristics of traditional zoning.

The Cooks Valley town board enacted an ordinance regulating nonmetallic mining (commercial sand and gravel pits) and associated activities. The town had adopted village powers under Section 60.22 (3), Wisconsin Statutes, and therefore had police power, including the power to enact a zoning ordinance. However, Chippewa County, in which the town was located, had enacted countywide zoning under Section 59.69, Wisconsin Statutes, and therefore the town could not adopt a zoning ordinance without county board approval. Town residents brought a declaratory action against the town seeking a declaration that the ordinance was invalid because, as a zoning ordinance, the town did not seek county board approval before enacting it.

The ordinance required a permit to operate a nonmetallic mine. An application for a permit would be considered by the town plan commission, which would make a recommendation to the town board. The town board would hold a public hearing on the application and grant the permit if it determined the application was complete, the mine was in the best interests of the citizens of the town and consistent with protection of public health, safety and welfare, and the applicant received federal, state, and county permits. The board could grant a permit with or without certain types of conditions. The ordinance exempted mines in existence prior to its enactment, but applied to any expansion of those mines.

Instead of creating a bright-line rule distinguishing a zoning ordinance from a nonzoning police power ordinance, the court used a functional approach, cataloguing the characteristics of traditional zoning and zoning's commonly accepted purposes and comparing these to the town's

ordinance. The court identified a list of six characteristics that typically exist in traditional zoning, though not always: 1) division of a geographic area into multiple zones or districts; 2) within a district, established permitted uses and prohibited uses; 3) the purpose of controlling the location of an activity, rather than the manner in which an activity takes place; 4) classification of uses and attempt to comprehensively regulate all possible uses; 5) fixed determination of permitted uses rather than case-by-case determination of conditionally permitted uses; and 6) allowance of nonconforming uses that existed at the time the zoning ordinance was adopted.

The court compared the characteristics of the town's ordinance to these six traditional zoning characteristics. It held that, unlike traditional zoning, the ordinance applied throughout the town, rather than creating districts or zones; that it included no permitted uses; that it was aimed at regulating nonmetallic mining regardless of its location; that it applied only to nonmetallic mining instead of regulating a comprehensive set of uses in the town; and that it applied only on a case-by-case basis. The court noted that, like traditional zoning, the ordinance "grandfathered" mines in existence at the time of the ordinance's adoption. However, the court held that a nonzoning police power ordinance can also exempt preexisting uses. Despite the fact that the ordinance was a significant regulation on the use of land, the court held this was not dispositive. Its overall lack of similarity to traditional zoning led the court to conclude that the ordinance was not a zoning ordinance.

While noting that there have been several formulations of the general purpose of zoning, the court identified the most appropriate one to be the separation of incompatible land uses. The court concluded that the ordinance did not share this purpose because it did not identify or separate incompatible land uses, and that its purpose was instead to simply regulate nonmetallic mines.

Hospital-Owned Offsite Outpatient Clinic Is Tax-Exempt

In *Covenant Healthcare System, Inc. v. City of Wauwatosa,* 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906 (2011), the supreme court held that an off-site outpatient clinic owned and operated by a hospital was exempt from property taxes.

Covenant Healthcare System, Inc. (Covenant) was the sole member of St. Joseph Regional Medical Center (St. Joseph), which owned and operated St. Joseph Hospital in Milwaukee. In 2003, Covenant built a 5-story building five miles away from the hospital and transferred ownership to St. Joseph. St. Joseph Outpatient Clinic (Outpatient Clinic) was operated on three of the five floors, and Covenant filed a tax exemption request for these three floors of the building for each year between 2003 and 2006. The City of Wauwatosa denied each request, Covenant paid the assessment, and brought an action to recover the amount it had been assessed. The circuit court found in favor of Covenant. The court of appeals reversed, holding the Outpatient Clinic was not tax-exempt. The supreme court reversed.

The supreme court addressed four issues relating to property tax exemption under Section 70.11 (4m) (a), Wisconsin Statutes. First, to qualify for the exemption the Outpatient Clinic must have been used exclusively for the purpose of a hospital. The court held that the Outpatient Clinic had been built in order to move and expand services currently provided at the hospital to a new space and free up space at the hospital. It also held that the Outpatient Clinic and the hospital's records and billing system were fully integrated, that they shared the same department heads, the same physicians, and operated under the same hospital license. Therefore, the court held that the Outpatient Clinic essentially served as a department of the hospital, and was used exclusively for the purpose of a hospital.

Second, if the Outpatient Clinic was determined to be a doctor's office, it would not qualify for the tax exemption. The city urged the court to consider whether the Outpatient Clinic resembled a doctor's office from the perspective of a patient. However, the court looked instead at factors such as how physicians were compensated, whether they had offices, whether they owned or leased the building or equipment, whether clinic billing software was separate from the hospital's, and the existence of a gift shop and cafeteria. Based on these factors the court concluded that the Outpatient Clinic was not a doctor's office.

Third, to be eligible for the property tax exemption, the Outpatient Clinic could not be "used for commercial purposes." The court rejected the city's proposal to focus on the generation of

profits, meaning revenues in excess of costs, as an oversimplification of "commercial purposes." It noted that this formula would require not-for-profits to operate at a loss or break-even in order to qualify for a property tax exemption. Instead, the court held that "commercial" means "having profit as the primary aim." The court said that the Outpatient Clinic's primary goal was diagnosing, treating, and caring for the sick, injured, and disabled, therefore it was not used for commercial purposes.

Finally, the Outpatient Clinic would be precluded from a property tax exemption if any part of its net earnings inured to the benefit of a "shareholder, *member*, director or officer…." Section 70.11 (4m) (a) (emphasis added by court). Therefore, the court had to determine if Covenant was a "member" as contemplated in the statute. The court reasoned that if a "member" included a not-for-profit corporation, a not-for-profit hospital would have to rewrite its bylaws to exclude a not-for-profit member from the distribution of its assets upon dissolution, or the hospital would never qualify for tax-exempt status. In the case of St. Joseph, this would mean it would have to assign its assets to go to an unrelated not-for-profit corporation upon dissolution, which would give the unrelated organization an interest in the hospital's failure. The court held that this is an unreasonable construction of the statute's language. It held that the term "member" does not include not-for-profit entities like Covenant.

Justice Abrahamson dissented, arguing that, given that property is presumed taxable and that exemptions are strictly construed, Covenant had not met its burden to prove that the Outpatient Clinic was not used as a doctor's office.

Local Regulation of Livestock Facility Siting Preempted

In *Adams v. State Livestock Facilities Siting Review Bd.,* 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404 (2012), the supreme court held that the livestock facility siting law, Section 93.90, Wisconsin Statutes, (Siting Law) preempts local government's authority to impose on a livestock siting permit any conditions outside of those the Siting Law allows.

In 1977, the Town of Magnolia (Town) adopted a zoning ordinance, including water quality protections prohibiting the discharge of pollutants exceeding the minimum standards set for navigable waters under the Wisconsin Administrative Code. In 2004, the legislature enacted the Siting Law, and in 2005 the Town adopted it as part of its zoning ordinance. On May 1, 2006, the Department of Agriculture, Trade and Consumer Protection (DATCP) promulgated Wisconsin Administrative Code Chapter ATCP 51 (ATCP 51), which provided more detailed guidelines for the permitting process, as required by the Siting Law. On May 2, 2006, Larson Acres, Inc. (Larson) filed with the Town an application for a conditional use permit (CUP) for a livestock facility to house 1,500 animal units. On May 24, 2006, the Town revised the water quality provision of its zoning ordinance to also apply the standards for groundwater and drinking water under the Wisconsin Administrative Code and applicable federal drinking water regulations.

On March 27, 2007 the Town granted Larson a CUP with seven conditions relating to informing the town of Larson's pollutant minimization and nutrient management plans, allowing the Town access for water quality testing, sharing information with the Town that was required to be provided to the Department of Natural Resources (DNR), and allowing the Town to annually review Larson's compliance with the CUP. Larson challenged five of the seven conditions in an appeal to the State Livestock Facilities Siting Review Board (Siting Board). The Siting Board affirmed the permit but found that the conditions that were not based on the standards incorporated into ATCP 51 to be beyond the Town's authority to impose. The Siting Board modified or struck those conditions accordingly.

The Town appealed to the circuit court, which found that the Siting Law only required a political subdivision to comply with certain procedures in order to impose standards more stringent than the states. Because the court found that the Town's conditions were all based upon the state's administrative code, it concluded that the Town had the authority to impose these conditions without following the Siting Law's procedures. The court also found that the Siting Board did not have the authority to modify a permit, but rather could only affirm or reverse a permit in its entirety.

Larson appealed, and the court of appeals reversed. It determined that the Siting Law preempted the Town from imposing the challenged conditions, and that the Town had not followed

the Siting Law procedures required to impose conditions more stringent than state's. It also held that the Siting Board had the authority to modify conditions to a permit.

The supreme court reviewed the Siting Board's decision de novo and affirmed the court of appeals' decision. First, the court reviewed Wisconsin's preemption doctrine to determine how to analyze the Siting Law's language. It concluded that livestock facility siting presented a mixed issue of statewide and local concern, and that the analysis was whether any of four factors was met: 1) whether the legislature has expressly withdrawn the power of a political subdivision to act; or whether the political subdivision's actions 2) logically conflict with the legislation; 3) defeat the purpose of the legislation; or 4) are contrary to the spirit of the legislation.

Second, the court determined that the plain language of the Siting Law expressly withdrew a political subdivision's power to regulate livestock facility siting. It came to this conclusion after noting that the Siting Law required DATCP to promulgate uniform statewide livestock siting standards, that it prohibited a political subdivision from disapproving a livestock facility siting permit, except in narrow circumstances, and that it limited the conditions a political subdivision may impose on livestock siting permits to those consistent with the statewide standards, except in narrow circumstances.

Third, the court determined that the conditions the Town imposed on Larson's CUP were not consistent with the Siting Law, and did not satisfy the narrow exception allowing more stringent conditions because the Town did not base them on an adopted "fact-finding". Finally, the court held that the authority to modify the conditions of a siting permit, while not expressly conferred, is necessarily implied by the statutes under which the Siting Board operates. It held that the purpose of the Siting Law and ATCP 51 was to facilitate timely approval of proper permit applications, and it would frustrate that purpose to invalidate a Siting Board decision to correct an error in an efficient manner.

Justice Abrahamson dissented for three reasons, the third of which Justice Bradley joined. First, she argued that the Siting Law limits but does not expressly withdraw the ability of a political subdivision to regulate livestock facility siting, and concluded that the majority therefore used the wrong preemption analysis. Second, she reasoned that the conditions imposed on the permit were not prohibited because the Town has the power, under a separate statute, to impose similar conditions to regulate the operations of a livestock facility. Finally, she concluded that the plain language of the Siting Law prohibited the Siting Board from modifying the Town's conditions and, even if it may lead to absurd results, it is the legislature's job to amend this language, not the court's.

Medical Malpractice; Providing Information to Patient

In *Jandre v. Injured Patients & Families Compensation Fund,* 2012 WI 39, 340 Wis. 2d 31, 813 N.W.2d 627 (2012), the court was asked to interpret the informed consent statute, Section 448.30, Wisconsin Statutes, that requires a doctor to inform a patient about the availability of alternative, viable medical treatments and the benefits and risks of those treatments. In this case, Jandre was taken to the emergency room after he began drooling, had slurred speech, and the left side of his face drooped. The emergency room doctor performed a physical examination and made a preliminary determination that Jandre may have had a mini-stroke, a stroke, a tumor, or suffered from Bell's palsy. She used a stethoscope to detect any sign of a blocked artery, but did not order a diagnostic, noninvasive test that was more reliable, and did not inform him of the availability of this other test. The doctor made a final diagnosis of Bell's palsy, prescribed medication, and sent Jandre home with instructions to see a neurologist. When admitted to the hospital 11 days later with the stroke, his right carotid artery was 95 percent blocked. Jandre brought an action for negligent misdiagnosis and for failure to inform the patient about available diagnostic tests not used. The circuit court jury found that the doctor was not negligent in her diagnosis of Bell's palsy, but was negligent for failure to inform the patient as required under Section 448.30, Wisconsin Statutes. The court of appeals affirmed the jury's decisions.

The supreme court affirmed the court of appeals while declining to establish a bright-line rule suggested by the defendants that as a matter of law a doctor has no duty to inform a patient about conditions unrelated to the one identified in the doctor's nonnegligent diagnosis. The court said the statutory requirement to disclose other available diagnostic tests is based on the facts and

circumstances of the particular case, so a bright-line rule is not appropriate. Instead, the doctor is required to give the patient information that a reasonable person under the circumstance confronting the patient would like to know. This duty is limited, said the court; the doctor has no duty to inform the patient unless the doctor has, or should have had, sufficient knowledge about the patient's condition to trigger an awareness that the information was reasonably necessary for the patient to make an informed decision regarding his or her care. In addition, the court said, the statute limits the doctor's duty, including having no duty to inform the patient of detailed technical information or of extremely remote possibilities that might falsely alarm the patient.

The court emphasized that this duty is not one of strict liability. Instead doctors are only liable if they fail to disclose information that is necessary for a reasonable person to make an intelligent decision about treatment or diagnosis choices. Under the statute and the case law, the scope of the duty of informed consent is shaped by objective, negligence-based standards. The court noted the strict liability argument appears to suggest that juries' hindsight sympathy for a patient would inhibit the jurors from applying the reasonable patient standard; but it rejected that suggestion, saying if juries cannot be trusted to apply the law in this situation, the role of the jury in all negligence cases would need to be reconsidered.

The court also rejected the position that the doctor's duty to inform the patient is determined by the generally accepted customs of the medical profession. Rather, based on earlier court decisions, it held that the doctor's disclosure must be measured by the patient's objective need for information to make an intelligent decision. The court went on to hold that "…negligence in failing to abide by the professional standard of care and negligence in failing to obtain informed consent are two separate and distinct forms of malpractice, with two different standards of care." Thus, there is no inconsistency in holding that a reasonable patient may want information about alternative diagnostic techniques when the doctor was not negligent in using one of a multitude of alternative nonnegligent diagnostic techniques. The standard of care for treatment, said the court, is a professional, reasonable doctor standard, while the standard for informed consent is the reasonable patient standard.

The court said that the duty to inform was needed in this case because the available procedure not used by the doctor was noninvasive, and more importantly, more conclusive than the diagnostic procedure used by the doctor, and could verify a condition that involved potentially serious risks. No tests for Bell's Palsy exist, said the court, and the symptoms exhibited by Jandre were atypical of the symptoms for Bell's Palsy. That diagnosis, said the court, can only be reached by excluding other conditions. These facts, said the court, "…led the jury to find that a reasonable person in the patient-plaintiff's position would have wanted to know about the alternate diagnostic procedures." The reasonable patient standard, emphasized the court, does not require the doctor to disclose all information, only what a reasonable patient would find necessary to make an intelligent, informed decision. "The point is that the physician's duty to inform the patient depends on the facts and circumstances of each case. The question of breach of the physician's duty to inform a patient is quintessentially a jury question."

Justice Prosser concurred in the lead decision saying that there was ample evidence to support the verdict; to reverse the court of appeals decision would require the court to overrule or withdraw language from earlier cases, and that action was not warranted on the facts presented in this case. He went on to suggest that since much has changed since Section 448.30, Wisconsin Statutes, was enacted, perhaps a committee should be created to review this issue.

Justice Roggensack, joined by Justices Ziegler and Gableman, wrote a dissent saying that the lead opinion, had it garnered the vote of four justices, would have imposed strict liability for missed diagnosis under a new concept that the legislature did not codify by "…expanding a patient's right of informed consent under Section 448.30 from a right to be informed about the risks and benefits of treatments and procedures that *were recommended* by the physician into a right to be informed about all treatments and procedures that *were not recommended* by the physician, but which may be relevant to whether the correct diagnosis was made."

Proper Placement of a Patient with Alzheimer's Disease

In the *Matter of Mental Commitment of Helen E.F.,* 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179 (2012), the supreme court addressed whether a patient with Alzheimer's disease was a prop-

er subject for involuntary commitment under Chapter 51 of the Wisconsin Statutes or whether she was a more proper subject for protective placement and services under Chapter 55 of the Wisconsin Statutes. The supreme court ruled that because the patient's Alzheimer's disease was likely to be a permanent, untreatable condition, protective placement under Chapter 55 was more appropriate.

The facts of the case were undisputed. Helen E.F. (Helen) was an 85-year-old nursing home resident who suffered from Alzheimer's disease with progressive dementia, memory loss, and a limited ability to communicate. After beginning to exhibit aggressive behavior at the nursing home where she lived, Helen was subsequently transported to an emergency room in Fond du Lac for treatment. A police officer placed Helen in the hospital's behavioral health unit pursuant to Chapter 51 and the county began a Chapter 51 proceeding to involuntarily commit Helen for treatment. The court commissioner, finding no probable cause to commit Helen under Chapter 51, converted the petition to an action under Chapter 55 for protective placement and issued a 30-day order for protective placement. Following the expiration of that 30-day period, the county again filed a Chapter 51 petition. Based on one physician's testimony that Helen's disturbances were controllable with medication, the court granted the Chapter 51 petition for a six-month involuntary commitment. Helen appealed to the court of appeals, which reversed the circuit court. The court of appeals determined that, because Alzheimer's was not a condition that could ultimately be treated, Helen was not a proper subject for commitment under Chapter 51. The county appealed and the supreme court granted review.

The supreme court began with a discussion of the differences between Chapter 51 and Chapter 55. The court noted that, in order to be eligible for protective services under Chapter 55, a circuit court had to find a number of elements. Among these are that the individual is so incapable of providing for her own care as to create a substantial risk of serious harm to herself because of a developmental disability, degenerative brain disorder, serious and persistent mental illness, or other incapacity and the individual must have a disability that is permanent or likely permanent. Chapter 55, the court observed, is intended to provide for long-term care of individuals with incurable disorders. In contrast, the court wrote, the purpose of Chapter 51 is to provide individuals with treatment and rehabilitation for mental illnesses, substance abuse problems, and other conditions on a temporary, not long-term, basis. The court noted that, unlike Chapter 51, Chapter 55 provides for placements with the least restrictions and specifically prohibits placements in units for the acutely mentally ill. The court also observed that Chapter 55 requires the appointment of a guardian ad litem, which would have provided Helen with an individualized, long-term advocate and would have advised the court about Helen's best interests regarding the administration of psychotropic medication.

The court wrote that "given the current state of medical science, Helen's Alzheimer's Disease is incurable and untreatable." Although some of Helen's symptoms might respond to treatment, the court wrote, the underlying condition, and most of the other associated symptoms, would not. Examining Alzheimer's disease in light of the differences between Chapter 51, which can be utilized for individuals who could ultimately be returned to society, and 55, which envisions long-term care for individuals who could not be so returned, the court affirmed the court of appeals in ruling that Helen's case was more appropriate for proceedings under Chapter 55.

Chief Justice Abrahamson wrote separately in concurrence, joined by Justice Bradley, to emphasize the tensions between examining individuals based upon their precise conditions and examining them based upon their behavior and symptoms. She wrote that it may be time for the legislature to revisit the goals and intended scopes of the two chapters at issue in the case.

Termination of Parental Rights-Default Judgment

The case, *Dane County Department of Human Services v. Mable K.*, 2013 WI 28, 346 Wis. 2d 396, 828 N.W.2d 198 (2013), concerned the use of default judgments in cases involving the termination of parental rights. In this case, Dane County petitioned the circuit court to terminate Mable K.'s parental rights for her two children, as well as the parental rights of the fathers of the two children. Ms. K. was ordered to appear at the hearing regarding the allegations leading to the petition for termination of her parental rights. Ms. K. was present for the first day of the hearing but failed to appear at the second day of the hearing. Her attorney asked the court to

delay the hearing, which it did, and called Ms. K., telling her to come to the hearing. Meanwhile, Dane County asked the court to grant a default judgment terminating Ms. K.'s parental rights. The court recessed the hearing to allow Ms. K. to appear, but when she did not arrive, the court granted Dane County's motion for the default judgment. Before granting that motion, Ms. K.'s attorney asked to present evidence on her client's behalf; the court denied that request but allowed the attorney to cross-examine the county's witnesses. Upon Ms. K.'s arrival, her attorney asked the court to reconsider its entry of a default judgment. The court allowed Ms. K. to testify as to why she failed to appear, but found her reasons insufficient to support vacating the default judgment.

Four months later, at the hearing to finalize the disposition of the matter, the court entered an order terminating Ms. K.'s parental rights. She appealed, and the appellate court ordered the circuit court to first decide the post-dispositional motions. At the hearing on those motions, the attorney for Ms. K. again asked to introduce evidence that contradicted the county's testimony. The court refused, but decided that it had deprived Ms. K. of her statutory right to an attorney when it barred her attorney from adding evidence that tended to refute the county's evidence. The circuit court said the way to remedy its error was to continue the case at the point where the county had provided its evidence and to allow Ms. K.'s attorney to present evidence to the court, not a jury, regarding the petition to terminate her parental rights.

The case went back to the court of appeals, where it was dismissed. The case was then appealed to the supreme court to determine if the circuit court's actions were correct. The supreme court, relying on previous decisions, held that the circuit court should have allowed Ms. K.'s attorney to present evidence on her client's behalf even if the client failed to appear. "A parent's attorney may act on behalf of a parent who does not appear in person." That statutory right to an attorney is preserved even after the entry of a default judgment, the court said. The court went on to say the circuit court should have heard the additional evidence offered by Ms. K.'s attorney before entering a default judgment terminating Ms. K.'s parental rights.

The supreme court said that the remedy suggested by the circuit court to correct its own errors, to continue the matter by letting Ms. K.'s attorney present evidence to the court, not the jury, was incorrect. Continuing the case half way through the proceedings, said the court, is fundamentally unfair because the jury is gone, a new one cannot hear only half of the testimony, and Ms. K. will be required to have another attorney appointed who would have to argue against a default judgment that the circuit court has twice entered. Rebutting evidence that is over two years old would put the burden on Ms. K. to prove she is not an unfit mother, which is in conflict with the requirement that the government has the burden to prove that the mother is unfit, the court held. The court also held that the circuit court was in error when it removed her statutory right to a jury trial. The supreme court remanded the case to the circuit court for a new fact-finding hearing before a jury

Justice Ziegler, joined by Justices Roggensack and Gableman, dissented, saying that the majority decision undercuts the authority of circuit courts to sanction a nonappearing parent by ordering the trying of the case before the court instead of a jury. In addition, this decision fails to consider the interest of the children, who have not lived with their biological mother for years, and now must wait even longer for a decision.

What is "Compensation"?

In *Cramer and Lokken v. Eau Claire County,* 2013 WI App 67 (to be published), the Court of Appeals, District III, was asked to determine what is meant by the term "compensation" in Section 59.22 (1) (a) 1., Wisconsin Statutes. The statute requires a county board to establish the total annual compensation to be paid to elected county officials before their term of office begins, and prohibits the county board from altering that compensation during the official's term in office.

The county board, in response to state legislation requiring local governmental employees to pay the employee share of contributions to their retirement program, deducted those amounts from the official's paychecks. The county also deducted money from their paycheck to pay for increased health insurance premiums. The officials sued, saying the deductions resulted in a reduction in their compensation, in violation of the state law.

The circuit court found for the officials, but the court of appeals reversed. The court of appeals relied on the wording of Section 59.22 (1) (a) 1., saying that the court must look to the common meaning of the words and the words must be interpreted in context, to avoid absurd results. The second sentence of the statute, said the court, provides that compensation is composed of sal-

The Supreme Court greets legislative committee members at a reception outside the hearing room. *(Supreme Court)*

ary, fees, or a combination of those two components. This definition of what compensation is composed of, said the court, is what must be used when interpreting the language of that statute.

The court, rejecting the official's attempt to look to other statutory sections to determine what is meant by "salary", said that the definition in one statute need not be the same as in another statute that is intended for a different purpose. The court said that the plain meaning of "salary" in this statute is fixed compensation for a set period of time, not take-home pay, which is an amount that, because of various deductions, is beyond the control of the county board. The statute, said the court, requires the board to set the compensation before the term of office begins, not the take-home pay.

The language of Section 59.22 (1) (a) 1., said the court, specifies that compensation is comprised of salary and fees, and because salary is fixed compensation for a set period of time, the official's only possible argument is that fringe benefits are within the category of "fees" mentioned in the statute, which the court noted was not argued by the officials, and would not be a reasonable interpretation of the statute.

The court went on to review the history of the statute, including a research document that discussed the revision of the statute in 1945, which the court said was consistent with the current version. That document supports the conclusion of the court that compensation is composed of salary and fees. Additionally, said the court, during the period when this statute was created, pensions and insurance contributions were excluded from the definition of compensation, and the terms "salary" and "compensation" had the same meaning. The court concluded that if fringe benefits, such as pension payments, are to be included in the compensation paid to county officials, the legislature can make that change, not the court.