

# Judicial Branch

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**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

**1870 Senate**

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## WISCONSIN SUPREME COURT

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson, Chief Justice .....	1976*	August 1979	2009
Jon P. Wilcox** .....	1992*	August 1997	2007
Ann Walsh Bradley .....	1995	August 1995	2015
N. Patrick Crooks .....	1996	August 1996	2016
David T. Prosser, Jr. ....	1998*	August 2001	2011
Patience Drake Roggensack .....	2003	August 2003	2013
Louis B. Butler, Jr. ....	2004*	---	2008
Annette K. Ziegler** .....	2007	August 2007	2017

\*Initially appointed by the governor.

\*\*Annette K. Ziegler was elected to the Supreme Court on April 3, 2007, to fill a seat held by Justice Jon P. Wilcox, who did not seek reelection.

Sources: 2005-2006 *Wisconsin Statutes*; Director of State Courts, departmental data, April 2007; Wisconsin Court System, Supreme Court Justices, at: <http://www.wicourts.gov/about/judges/supreme/index.htm>



*The Chamber of the Supreme Court is located in the East Wing of the State Capitol. The mural above the justices, one of four in the chamber, depicts the signing of the U.S. Constitution, painted by Albert Herter. Pictured from left to right are Justice Patience D. Roggensack, Justice N. Patrick Crooks, retired Justice Jon P. Wilcox, Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, Justice David T. Prosser, Jr., and Justice Louis B. Butler, Jr. Not pictured is Justice Annette K. Ziegler, who began her term on the court August 1, 2007. She was elected in the spring of 2007 to fill the vacant seat of retired Justice Wilcox. (Wisconsin Supreme Court)*

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## JUDICIAL BRANCH

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### A PROFILE OF THE JUDICIAL BRANCH

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

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

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

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

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

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

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

In the more populous counties, a circuit may have several branches with one judge assigned to each branch. As of June 30, 2007, Wisconsin had a combined total of 241 circuits or circuit branches and the same number of circuit judgeships, with each judge elected to a 6-year term. For administrative purposes, the circuit court system is divided into 10 judicial administrative districts, each headed by a chief judge appointed by the supreme court. The circuit courts are funded with a combination of state and county money. For example, state funds are used to pay the salaries of judges, and counties are responsible for most court operating costs.

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

**Municipal Courts.** Individually or jointly, cities, villages, and towns may create municipal courts with jurisdiction over municipal ordinance violations that have monetary penalties. 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, but if both parties consent, the trial may be conducted by the court without a jury. The jury in a civil case consists of 6 persons unless a greater number, not to exceed 12, is requested. Five-sixths of the jurors must agree on the verdict. Based on the verdict, the court enters a judgment for the plaintiff or defendant.

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

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

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

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

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

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

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

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

**History of the Court System.** The basic powers and framework of the court system 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 state-wide 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.



*Chief Justice Shirley Abrahamson speaks with Supreme Court Marshal Tina Nodolf during the court's April 2007 visit to Wautoma. The marshal maintains the security and decorum of the court's proceedings. (Kathleen Sitter, LRB)*

**SUPREME COURT****Chief Justice:** SHIRLEY S. ABRAHAMSON**Justices:** JON P. WILCOX (term ended 7/31/07)  
ANN WALSH BRADLEY  
N. PATRICK CROOKS  
DAVID T. PROSSER, JR.  
PATIENCE DRAKE ROGGENSACK  
LOUIS B. BUTLER, JR.  
ANNETTE K. ZIEGLER (effective 8/1/07)**Mailing Address:** Supreme Court and Clerk: P.O. Box 1688, Madison 53701-1688.**Locations:** Supreme Court: Room 16 East, State Capitol, Madison; Clerk: 110 East Main Street, Madison.**Telephone:** 266-1298.**Fax:** 261-8299.**Internet Address:** <http://www.wicourts.gov>*Clerk of Supreme Court:* DAVID R. SCHANKER, 266-1880, Fax: 267-0640.*Court Commissioners:* COLEEN KENNEDY, NANCY KOPP, JULIE RICH, DAVID RUNKE; 266-7442.**Number of Positions:** 38.50.**Total Budget 2005-07:** \$8,725,000.**Constitutional References:** Article VII, Sections 2-4, 9-13, and 24.**Statutory Reference:** Chapter 751.

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

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

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

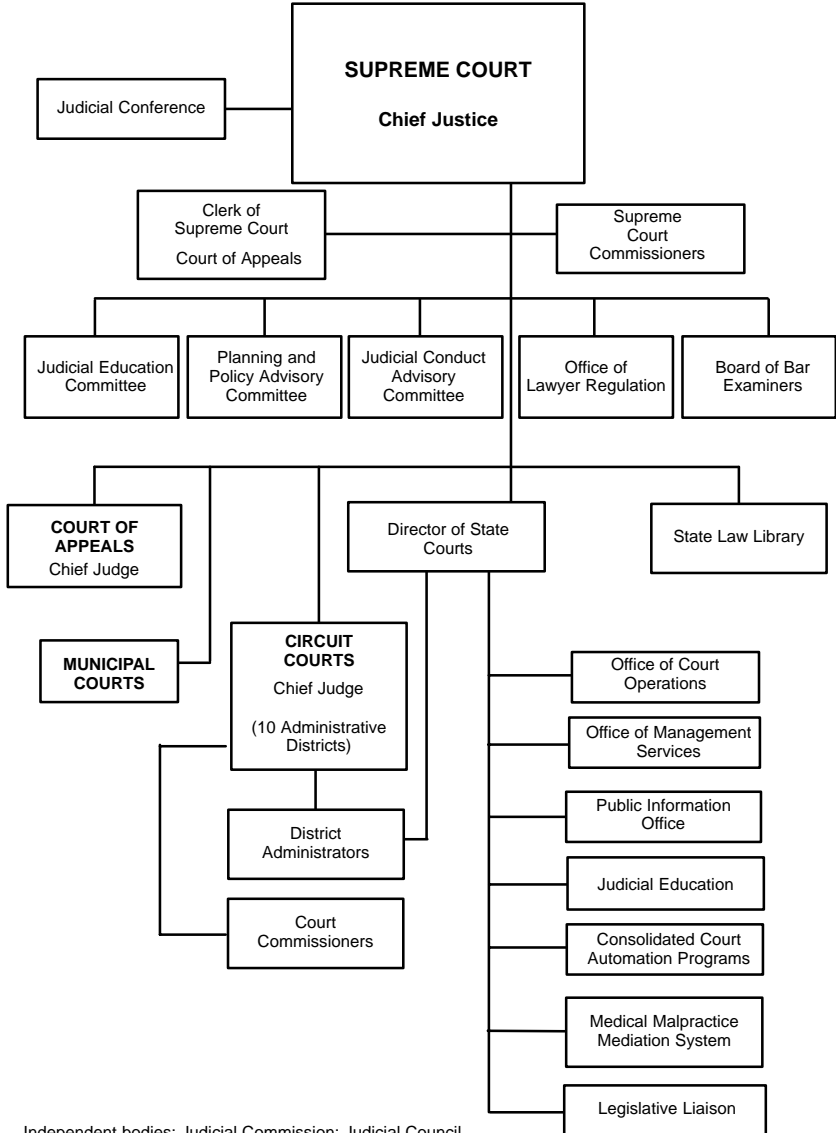
**Organization:** The supreme court consists of 7 justices elected to 10-year terms. They are chosen in statewide elections on the nonpartisan April ballot and take office on the following August 1. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are sometimes filled by gubernatorial appointees who serve until a successor can be elected. The authorized salary for supreme court justices for 2007 is \$137,414. The chief justice receives \$145,414.

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

<i>Judges: District I:</i>	PATRICIA S. CURLEY* (2008) RALPH ADAM FINE (2012) JOAN F. KESSLER (2010) TED E. WEDEMEYER, JR. (2009)
<i>District II:</i>	DANIEL P. ANDERSON* (2013) RICHARD S. BROWN** (2012) NEAL P. NETTESHEIM (2008) HARRY G. SNYDER (2010)
<i>District III:</i>	EDWARD R. BRUNNER (2013) MICHAEL W. HOOVER* (2009) GREGORY PETERSON (2011)
<i>District IV:</i>	BURNIE BRIDGE (2008) CHARLES P. DYKMAN (2010) PAUL B. HIGGINBOTHAM* (2011) PAUL LUNDSTEN (2013) MARGARET J. VERGERONT (2012)

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

*Court of Appeals Clerk:* DAVID R. SCHANKER, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Suite 215, Madison, 266-1880, Fax: 267-0640.

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

**Internet Address:** <http://www.wicourts.gov/about/organization/appeals/index.htm>

**Number of Positions:** 75.50.

**Total Budget 2005-07:** \$16,653,800.

**Constitutional Reference:** Article VII, Section 5.

**Statutory Reference:** Chapter 752.

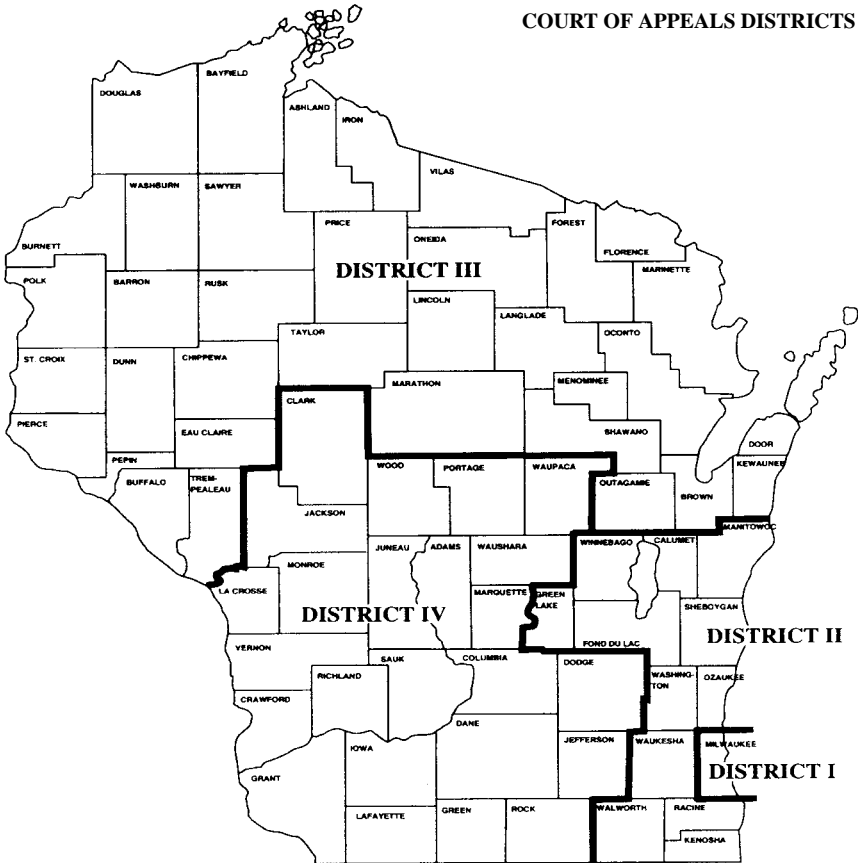
**Organization:** A constitutional amendment ratified on April 5, 1977, mandated the Court of Appeals, and Chapter 187, Laws of 1977, implemented the amendment. The court consists of 16 judges serving in 4 districts (4 judges each in Districts I and II, 3 judges in District III, and 5 judges in District 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 2007 is \$129,635.

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

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

COURT OF APPEALS DISTRICTS



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

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

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

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

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



**CIRCUIT COURTS**

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

*Chief Judge:* KITTY BRENNAN.

*Administrator:* BRUCE HARVEY.

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

*Chief Judge:* GERALD P. PTACEK.

*Administrator:* KERRY CONNELLY.

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

*Chief Judge:* J. MAC DAVIS.

*Administrator:* MICHAEL NEIMON.

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

*Chief Judge:* L. EDWARD STENGEL<sup>1</sup>.

*Administrator:* JERRY LANG.

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

*Chief Judge:* MICHAEL N. NOWAKOWSKI<sup>2</sup>.

*Administrator:* GAIL RICHARDSON.

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

*Chief Judge:* JOHN STORCK.

*Administrator:* SUSAN BYRNES.

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

*Chief Judge:* MICHAEL J. ROSBOROUGH<sup>3</sup>.

*Administrator:* PATRICK BRUMMOND.

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

*Chief Judge:* SUE BISCHEL.

*Administrator:* KATHLEEN MURPHY.

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

*Chief Judge:* DOROTHY BAIN.

*Administrator:* vacancy.

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

*Chief Judge:* BENJAMIN PROCTOR.

*Administrator:* GREGG MOORE.

**Internet Address:** <http://www.wicourts.gov/about/organization/circuit/index.htm>

**State-Funded Positions:** 511.00.

**Total Budget 2005-07:** \$159,913,300.

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

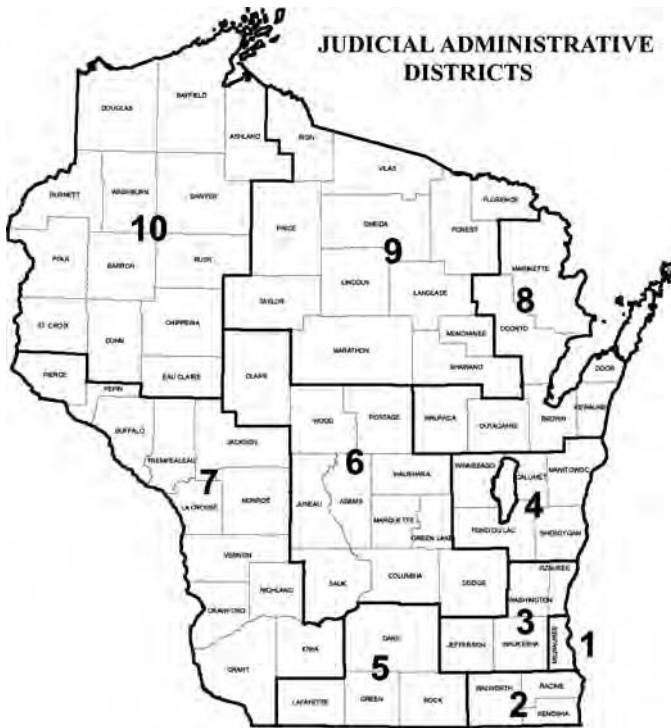
**Statutory Reference:** Chapter 753.

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<sup>1</sup>Darryl W. Deets designated by the supreme court to become chief judge on August 1, 2007.

<sup>2</sup>C. William Foust designated by the supreme court to become chief judge on August 1, 2007.

<sup>3</sup>William Dyke designated by the supreme court to become chief judge on August 1, 2007.



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

The constitution requires that a circuit be bounded by county lines. As a result, each circuit consists of a single county, except for 3 two-county circuits (Buffalo-Pepin, Florence-Forest, and Menominee-Shawano). Where judicial caseloads are heavy, a circuit may have several branches, each with an elected judge. Statewide, 39 of the state's 69 judicial circuits had multiple branches as of June 30, 2007, for a total of 241 circuit judgeships.

**Organization:** Circuit judges, who serve 6-year terms, are elected on a nonpartisan basis in the county in which they serve in the April election and take office the following August 1. The governor may fill circuit court vacancies by appointment, and the appointees serve until a successor is elected. The authorized salary for circuit court judges for 2007 is \$122,297. 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 caseload, supervise personnel, and conduct financial planning.

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

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

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

**JUDGES OF CIRCUIT COURT**  
**June 1, 2007**

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Adams	Friendship	Charles A. Pollex	2009
Ashland	Ashland	Robert E. Eaton	2012
Barron			
Branch 1	Barron	James C. Babler	2010
Branch 2	Barron	Edward R. Brunner	2012
Bayfield	Washburn	John P. Anderson	2009
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder	2009
Branch 2	Green Bay	Mark A. Warpinski	2012
Branch 3	Green Bay	Susan Bischel	2010
Branch 4	Green Bay	Kendall M. Kelley	2008
Branch 5	Green Bay	Peter J. Naze	2011
Branch 6	Green Bay	John D. McKay	2009
Branch 7	Green Bay	Richard J. Dietz <sup>2</sup>	2007
Branch 8	Green Bay	William M. Atkinson	2009
Buffalo-Pepin	Alma	James J. Duvall	2012
Burnett	Siren	Michael J. Gableman	2009
Calumet	Chilton	Donald A. Poppy	2010
Chippewa			
Branch 1	Chippewa Falls	Roderick A. Cameron	2008
Branch 2	Chippewa Falls	Thomas J. Szazama <sup>3</sup>	2007
Clark	Neillsville	Jon M. Counsell	2012
Columbia			
Branch 1	Portage	Daniel S. George	2009
Branch 2	Portage	James O. Miller	2011
Branch 3	Portage	Alan White <sup>3,4</sup>	2007
Crawford	Prairie du Chien	Michael T. Kirchman <sup>3</sup>	2007
Dane			
Branch 1	Madison	Robert A. DeChambeau	2011
Branch 2	Madison	Maryann Sumi	2011
Branch 3	Madison	John C. Albert	2012
Branch 4	Madison	Steven D. Ebert	2010
Branch 5	Madison	Diane M. Nicks <sup>5</sup>	2007
Branch 6	Madison	Shelley J. Gaylord	2009
Branch 7	Madison	Moria G. Krueger	2009
Branch 8	Madison	Patrick J. Fiedler	2012
Branch 9	Madison	Richard Niess	2011
Branch 10	Madison	Angela B. Bartell	2009
Branch 11	Madison	Daniel R. Moeser	2009
Branch 12	Madison	David T. Flanagan	2012
Branch 13	Madison	Michael Nowakowski	2009
Branch 14	Madison	C. William Foust	2010
Branch 15	Madison	Stuart A. Schwartz	2010
Branch 16	Madison	Sarah B. O'Brien	2010
Branch 17	Madison	James L. Martin	2010
Dodge			
Branch 1	Juneau	Daniel W. Klossner	2008
Branch 2	Juneau	John R. Storck <sup>3</sup>	2007
Branch 3	Juneau	Andrew P. Bissonnette <sup>3</sup>	2007
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2012
Branch 2	Sturgeon Bay	Peter C. Diltz	2012
Douglas			
Branch 1	Superior	Michael T. Lucci	2009
Branch 2	Superior	George L. Glonek	2009
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2010

## JUDGES OF CIRCUIT COURT

### June 1, 2007–Continued

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Branch 2	Menomonie	Rod Smeltzer	2009
Eau Claire			
Branch 1	Eau Claire	Lisa K. Stark	2012
Branch 2	Eau Claire	vacancy	
Branch 3	Eau Claire	William M. Gabler	2012
Branch 4	Eau Claire	Benjamin D. Proctor	2012
Branch 5	Eau Claire	Paul J. Lenz	2012
Florence (see <i>Forest-Florence</i> )			
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2008
Branch 2	Fond du Lac	Peter L. Grimm	2010
Branch 3	Fond du Lac	Richard J. Nuss	2009
Branch 4	Fond du Lac	Steven W. Weinke	2010
Branch 5	Fond du Lac	Robert J. Wirtz	2011
Forest-Florence	Crandon	Robert A. Kennedy, Jr.	2008
Grant			
Branch 1	Lancaster	Robert P. VanDeHey	2011
Branch 2	Lancaster	George S. Curry	2009
Green	Monroe	James R. Beer	2009
Green Lake	Green Lake	William M. McMonigal	2011
Iowa	Dodgeville	William D. Dyke	2010
Iron	Hurley	Patrick John Madden	2011
Jackson	Black River Falls	Gerald W. Laabs	2008
Jefferson			
Branch 1	Jefferson	John M. Ullsvik	2009
Branch 2	Jefferson	William F. Hue <sup>3</sup>	2007
Branch 3	Jefferson	Jacqueline R. Erwin	2009
Branch 4	Jefferson	Randy R. Koschnick	2011
Juneau	Mauston	John Pier Roemer	2010
Kenosha			
Branch 1	Kenosha	David Mark Bastianelli	2009
Branch 2	Kenosha	Barbara A. Kluka <sup>3</sup>	2007
Branch 3	Kenosha	Bruce E. Schroeder	2008
Branch 4	Kenosha	Anthony Milisauskas	2011
Branch 5	Kenosha	Wilbur W. Warren III	2009
Branch 6	Kenosha	Mary K. Wagner	2009
Branch 7	Kenosha	S. Michael Wilk	2012
Kewaunee	Kewaunee	Dennis J. Mleziva	2010
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez <sup>3</sup>	2007
Branch 2	La Crosse	Michael J. Mulroy <sup>3</sup>	2007
Branch 3	La Crosse	Roger LeGrand <sup>4, 6</sup>	2007
Branch 4	La Crosse	vacancy <sup>7</sup>	
Branch 5	La Crosse	Dale T. Pasell	2011
Lafayette	Darlington	William D. Johnston	2009
Langlade	Antigo	Fred W. Kawalski	2011
Lincoln			
Branch 1	Merrill	Jay R. Tlusty	2010
Branch 2	Merrill	Glenn H. Hartley	2011
Manitowoc			
Branch 1	Manitowoc	Patrick L. Willis	2010
Branch 2	Manitowoc	Darryl W. Deets <sup>3</sup>	2007
Branch 3	Manitowoc	Jerome L. Fox	2011
Marathon			
Branch 1	Wausau	Dorothy L. Bain	2010
Branch 2	Wausau	Gregory Huber	2010
Branch 3	Wausau	Vincent K. Howard	2008
Branch 4	Wausau	Gregory Grau <sup>3</sup>	2007
Branch 5	Wausau	Patrick Brady	2011
Marinette			
Branch 1	Marinette	David G. Miron	2008
Branch 2	Marinette	Tim A. Duket	2008
Marquette	Montello	Richard O. Wright <sup>3</sup>	2007
Menominee (see <i>Shawano-Menominee</i> )			
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	2011
Branch 2	Milwaukee	M. Joseph Donald	2009
Branch 3	Milwaukee	Clare L. Fiorenza	2009
Branch 4	Milwaukee	Mel Flanagan	2012
Branch 5	Milwaukee	Mary Kuhnmuensch	2010
Branch 6	Milwaukee	Kitty K. Brennan	2012
Branch 7	Milwaukee	Jean W. DiMotto	2009
Branch 8	Milwaukee	William Sosnay	2012
Branch 9	Milwaukee	Paul R. Van Grunsven	2011
Branch 10	Milwaukee	Timothy G. Dugan	2011
Branch 11	Milwaukee	Dominic S. Amato <sup>3</sup>	2007
Branch 12	Milwaukee	David L. Borowski	2009
Branch 13	Milwaukee	Mary Triggiano	2011
Branch 14	Milwaukee	Christopher R. Foley	2010
Branch 15	Milwaukee	Michael B. Brennan <sup>3</sup>	2007
Branch 16	Milwaukee	Michael J. Dwyer	2009
Branch 17	Milwaukee	Francis Wasielewski	2008

**JUDGES OF CIRCUIT COURT  
June 1, 2007–Continued**

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Branch 18	Milwaukee	Patricia D. McMahon	2011
Branch 19	Milwaukee	Dennis R. Cimpl	2011
Branch 20	Milwaukee	Dennis P. Moroney	2012
Branch 21	Milwaukee	William Brash III	2008
Branch 22	Milwaukee	Timothy M. Witkowiak	2009
Branch 23	Milwaukee	Elsa C. Lamelas	2012
Branch 24	Milwaukee	Charles F. Kahn, Jr.	2010
Branch 25	Milwaukee	John A. Franke	2011
Branch 26	Milwaukee	William Pocan <sup>3, 4</sup>	2007
Branch 27	Milwaukee	Kevin E. Martens	2008
Branch 28	Milwaukee	Thomas R. Cooper	2012
Branch 29	Milwaukee	Richard J. Sankovitz	2009
Branch 30	Milwaukee	Jeffrey A. Conen	2009
Branch 31	Milwaukee	Daniel A. Noonan	2008
Branch 32	Milwaukee	Michael D. Guolee	2008
Branch 33	Milwaukee	Carl Ashley	2011
Branch 34	Milwaukee	Glen H. Yamahiro	2010
Branch 35	Milwaukee	Frederick C. Rosa	2011
Branch 36	Milwaukee	Jeffrey A. Kremers	2011
Branch 37	Milwaukee	Karen Christenson	2010
Branch 38	Milwaukee	Jeffrey A. Wagner	2012
Branch 39	Milwaukee	Jane Carroll	2012
Branch 40	Milwaukee	Joseph R. Wall <sup>3</sup>	2007
Milwaukee (continued)			
Branch 41	Milwaukee	John J. DiMotto	2008
Branch 42	Milwaukee	David A. Hansher	2009
Branch 43	Milwaukee	Marshall B. Murray	2012
Branch 44	Milwaukee	Daniel L. Konkol	2010
Branch 45	Milwaukee	Thomas P. Donegan	2010
Branch 46	Milwaukee	Bonnie L. Gordon	2012
Branch 47	Milwaukee	John Siefert	2011
Monroe			
Branch 1	Sparta	Steven L. Abbott <sup>8</sup>	2007
Branch 2	Sparta	Michael J. McAlpine	2010
Oconto			
Branch 1	Oconto	Michael T. Judge	2011
Branch 2	Oconto	Richard D. Delforge	2010
Oneida			
Branch 1	Rhineland	vacancy	
Branch 2	Rhineland	Mark A. Mangerson	2012
Outagamie			
Branch 1	Appleton	Mark McGinnis	2011
Branch 2	Appleton	vacancy	
Branch 3	Appleton	Joseph M. Troy	2011
Branch 4	Appleton	Harold V. Froehlich	2012
Branch 5	Appleton	Michael W. Gage	2009
Branch 6	Appleton	Dee R. Dyer	2012
Branch 7	Appleton	John A. Des Jardins	2012
Ozaukee			
Branch 1	Port Washington	Paul V. Malloy	2009
Branch 2	Port Washington	Thomas R. Wolfgram <sup>3</sup>	2007
Branch 3	Port Washington	Joseph D. McCormack	2009
Pepin (see <i>Buffalo-Pepin</i> )			
Pierce	Ellsworth	Robert W. Wing	2010
Polk			
Branch 1	Balsam Lake	Molly E. GaleWyrick	2008
Branch 2	Balsam Lake	Robert H. Rasmussen	2009
Portage			
Branch 1	Stevens Point	Frederic W. Fleishauer	2011
Branch 2	Stevens Point	John V. Finn <sup>3</sup>	2007
Branch 3	Stevens Point	Thomas T. Flugaur	2012
Price	Phillips	Douglas T. Fox	2008
Racine			
Branch 1	Racine	Gerald P. Ptacek <sup>3</sup>	2007
Branch 2	Racine	Stephen A. Simanek	2010
Branch 3	Racine	Emily S. Mueller	2011
Branch 4	Racine	John S. Jude	2010
Branch 5	Racine	Dennis J. Barry	2011
Branch 6	Racine	Wayne J. Marik	2009
Branch 7	Racine	Charles H. Constantine	2008
Branch 8	Racine	Faye M. Flancher	2009
Branch 9	Racine	Allan "Pat" B. Torhorst	2009
Branch 10	Racine	Richard J. Kreul	2012
Richland	Richland Center	Edward E. Leineweber	2009
Rock			
Branch 1	Janesville	James P. Daley	2008
Branch 2	Janesville	Alan Bates	2010
Branch 3	Janesville	Michael J. Byron	2010
Branch 4	Beloit	Daniel T. Dillon <sup>3</sup>	2007
Branch 5	Beloit	John W. Roethe	2009
Branch 6	Janesville	Richard T. Werner	2009
Branch 7	Beloit	James E. Welker	2012

## JUDGES OF CIRCUIT COURT

### June 1, 2007–Continued

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Rusk	Ladysmith	Frederick A. Henderson	2010
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2008
Branch 2	Hudson	Edward F. Vlack III <sup>3</sup>	2007
Branch 3	Hudson	Scott R. Needham	2012
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2012
Branch 2	Baraboo	James Evenson	2010
Branch 3	Baraboo	Guy D. Reynolds	2012
Sawyer	Hayward	Norman L. Yackel	2009
Shawano-Menominee			
Branch 1	Shawano	James R. Habeck	2008
Branch 2	Shawano	Thomas G. Grover <sup>3</sup>	2007
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel	2009
Branch 2	Sheboygan	Timothy M. Van Akkeren <sup>3</sup>	2007
Branch 3	Sheboygan	Gary J. Langhoff	2011
Branch 4	Sheboygan	Terence T. Bourke	2009
Branch 5	Sheboygan	James J. Bolger	2012
Taylor	Medford	Gary Lee Carlson	2010
Trempealeau	Whitehall	John A. Damon <sup>3</sup>	2007
Vernon	Viroqua	Michael J. Rosborough	2011
Vilas	Eagle River	Neal A. Nielsen	2010
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2012
Branch 2	Elkhorn	James L. Carlson	2010
Branch 3	Elkhorn	John R. Race	2009
Branch 4	Elkhorn	Michael S. Gibbs	2010
Washburn	Shell Lake	Eugene D. Harrington	2009
Washington			
Branch 1	West Bend	Patrick J. Faragher <sup>3</sup>	2007
Branch 2	West Bend	Annette Kingsland Ziegler	2010
Branch 3	West Bend	David C. Resheske	2012
Branch 4	West Bend	Andrew T. Goning	2012
Waukesha			
Branch 1	Waukesha	Michael O. Bohren <sup>3</sup>	2007
Branch 2	Waukesha	Mark S. Gempeler	2008
Branch 3	Waukesha	Ralph M. Ramirez	2011
Branch 4	Waukesha	Paul F. Reilly	2009
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2008
Branch 6	Waukesha	Patrick C. Haughney	2008
Branch 7	Waukesha	J. Mac Davis	2009
Branch 8	Waukesha	James R. Kieffer	2009
Branch 9	Waukesha	Donald J. Hassin, Jr. <sup>3</sup>	2007
Branch 10	Waukesha	Linda Van De Water	2009
Branch 11	Waukesha	Robert G. Mawdsley	2012
Branch 12	Waukesha	Kathryn W. Foster	2012
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	2011
Branch 2	Waupaca	John P. Hoffmann	2010
Branch 3	Waupaca	Raymond S. Huber	2012
Waushara	Wautoma	Guy Dutcher	2011
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2012
Branch 2	Oshkosh	Scott C. Woldt	2011
Branch 3	Oshkosh	Barbara Hart Key	2010
Branch 4	Oshkosh	Karen L. Seifert	2012
Branch 5	Oshkosh	William H. Carver	2010
Branch 6	Oshkosh	Bruce K. Schmidt	2009
Wood			
Branch 1	Wisconsin Rapids	Gregory J. Potter	2008
Branch 2	Wisconsin Rapids	James M. Mason	2010
Branch 3	Wisconsin Rapids	Edward F. Zappen, Jr.	2009

<sup>1</sup>Circuits are comprised of one county each, except for Buffalo-Pepin, Forest-Florence, and Shawano-Menominee. The current annual salary for all circuit court judges is \$119,605. Salaries could change as of August 1, 2007, when the circuit court judges commence new terms.

<sup>2</sup>Timothy A. Hinkfuss was newly elected on April 3, 2007, for a 6-year term to commence on August 1, 2007.

<sup>3</sup>Reelected on April 3, 2007, for a 6-year term to commence on August 1, 2007.

<sup>4</sup>Appointed by governor.

<sup>5</sup>Elliott Levine was newly elected on April 3, 2007, for a 6-year term to commence on August 1, 2007.

<sup>6</sup>Todd Bjerke was newly elected on April 3, 2007, for a 6-year term to commence on August 1, 2007.

<sup>7</sup>Scott L. Horne was newly elected on April 3, 2007, for a 6-year term to commence on August 1, 2007.

<sup>8</sup>Todd L. Ziegler was newly elected on April 3, 2007, for a 6-year term to commence on August 1, 2007.

Sources: 2005-2006 *Wisconsin Statutes*; State Elections Board, departmental data, May 2007; Director of State Courts, departmental data, April 2007; governor's appointment notices.

## MUNICIPAL COURTS

**Constitutional References:** Article VII, Sections 2 and 14.

**Statutory References:** Chapters 755 and 800.

**Internet Address:** <http://www.wicourts.gov/about/organization/municipal/index.htm>

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

As of May 1, 2007, there were 249 municipal courts with 252 municipal judges. Courts may have multiple branches; the City of Milwaukee's municipal court, for example, has 3 branches. (Milwaukee County, which is the only county authorized to appoint municipal court commissioners, had 4 part-time commissioners as of May 2007.) Two or more municipalities may agree to form a joint court, and there are 43 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 assessments, or, if the defendant agrees, it may require community service in lieu of a forfeiture. In general, municipal courts may also order restitution up to \$4,000. Where local ordinances conform to state drunk driving laws, a municipal judge may suspend or revoke a driver's license.

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

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

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

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

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## STATEWIDE JUDICIAL AGENCIES

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

## DIRECTOR OF STATE COURTS

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

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

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

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

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

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

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

*Public Information Officers:* AMANDA TODD, 264-6256, amanda.todd@; TOM SHEEHAN, 261-6640, tom.sheehan@

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

Address e-mail by combining the user ID and the state extender: <a href="mailto:user@wicourts.gov">user@wicourts.gov</a>
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**Mailing Address:** Director of State Courts: P.O. Box 1688, Madison 53701-1688; Staff: 110 East Main Street, Madison 53703.

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

**Fax:** 267-0980.

**Internet Address:** <http://www.wicourts.gov>

**Number of Employees:** 126.25.

**Total Budget 2005-07:** \$31,542,000.

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

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

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

## STATE LAW LIBRARY

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

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

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

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

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

**Fax:** 267-2319.

**Internet Address:** <http://wsll.state.wi.us>

**Reference E-mail Address:** [wsll.ref@wicourts.gov](mailto:wsll.ref@wicourts.gov)

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

**Number of Employees:** 16.50.

**Total Budget 2005-07:** \$5,248,600.

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

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

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

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## OFFICE OF LAWYER REGULATION

*Board of Administrative Oversight:* ANN USTAD SMITH (lawyer), *vice chairperson*; BARRETT J. CORNELLIE, SCOTT ROBERTS, TERRY ROSE, ALICE A. RUDEBUSCH, THOMAS S. SLEIK, HARVEY WENDEL, vacancy (lawyers); CLAIRE FOWLER, KRISTA L. GINGER, STEVE KOSZAREK, vacancy (nonlawyers). (All members are appointed by the supreme court.)

*Preliminary Review Committee:* MICHAEL ANDERSON (lawyer), *chairperson*; STEVEN K. GJERDE (nonlawyer), *vice chairperson*; TERENCE BOURESSA, DONALD CHRISTL, MICHAEL COHEN, JAMES D. FRIEDMAN, BERNARD T. MCCARTAN, FRANK D. REMINGTON, GREGORY STACKER, JAMES D. WICKHEM (lawyers); PATRICIA EVANS, JOAN GREENDEER-LEE, THOMAS RADMER, MAJID SARMADE (nonlawyers). (All members are appointed by the supreme court.)

*Special Preliminary Review Panel:* KARA M. BURGOS, LORI S. KORNBUM, JAMES G. POURIOS, MICHAEL S. WEIDEN (lawyers); DENNIS B. GORDER, DEAN HELSTAD, LAWRENCE J. QUAM (nonlawyers). (All members are appointed by the supreme court.)

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

*District 1 Committee (serves Jefferson, Kenosha, and Walworth Counties):* JOHN HIGGINS (lawyer), *chairperson*; F. MARK BROMLEY, WILLIAM BRYDGES, ROBERT I. DUMEZ, CHRISTINE A. GABRON, PAUL GAGLIARDI, TIMOTHY GERAGHTY, CHRISTOPHER W. ROSE, MATTHEW S. VIGNALI (lawyers); JOHN G. BRAIG, JEFFREY CASSITY, RANDALL HAMMETT, GERALD PELISHEK (nonlawyers).

*District 2 Committee (serves Milwaukee County):* EDWARD A. HANNAN (lawyer), *chairperson*; JAMES W. GREER (lawyer), *vice chairperson*; JAMES L. ADASHEK, PATRICIA KLING BALLMAN, ELIOT BERNSTEIN, REBECCA BLEMBERG, THOMAS A. CABUSH, DAN CONLEY, MARGARDETTE M. DEMET, ANNELIESE M. DICKMAN, ROBIN DORMAN, JOHN FERNANDES, BRADLEY FOLEY, MICHELE FORD, IRVING D. GAINES, LAWRENCE P. KAHN, KENAN J. KERSTEN, R. JEFFREY KRILL, ROBERT C. MENARD, THOMAS MERKLE, JULIE O'HALLORAN, SHERYL A. ST. ORES, RAYMOND E.H. SCHRANK, DAVID W. SIMON, TIMOTHY S. TRECEK, KATHERINE WILLIAMS (lawyers); ARLYN ADAMS, J. STEPHEN ANDERSON, DONALD G. DORO, PATRICK

DOYLE, SHEL GENDELMAN, JEFFREY HANEWALL, BARBARA J. JANUSIAK, ERICA MILLS, RICHARD SILBERMAN, VICTORIA L. TOLIVER, WILLIAM WARD (nonlawyers).

*District 3 Committee (serves Fond du Lac, Green Lake, and Winnebago Counties):* STEVEN R. SORENSON (lawyer), *chairperson*; KRISTI L. FRY, SAM KAUFMAN, CHRISTOPHER R. KINDT, ELIZABETH J. NEVITT, BETH OSOWSKI, JAMES SAMUELSEN, DAVID J. SCHULTZ, JOHN S. ZARBANO (lawyers); SUSAN J. ANDREWS, KRISTY BRADISH, JOHN FAIRHURST, GARY KNOKE, SHARON MIKKELSEN, ELLEN C. SORENSON (nonlawyers).

*District 4 Committee (serves Calumet, Door, Kewaunee, Manitowoc, and Sheboygan Counties):* MARK JINKINS (lawyer), *chairperson*; MARY LYNN DONOHUE, ROBERTA A. HECKES, ROBERT LANDRY, RANDALL J. NESBITT, SUSAN H. SCHLEISNER, NATASHA TORRY-ABATE (lawyers); ROBERT A. DOBBS, SUSAN M. MCANINCH, DENNIS MCINTOSH (nonlawyers).

*District 5 Committee (serves Buffalo, Clark, Crawford, Jackson, La Crosse, Monroe, Pepin, Richland, Trempealeau, and Vernon Counties):* RICHARD A. RADCLIFFE (lawyer), *chairperson*; MICHAEL C. ABLAN, BRUCE J. BROVOLD, JAMES P. CZAJKOWSKI, MARVIN H. DAVIS, GLORIA L. DOYLE, PAUL B. MILLIS, GEORGE PARKE III, J. DAVID RICE, JON D. SEIFERT, FRANK R. VAZQUEZ (lawyers); PAUL R. LORENZ, DIANE MORRISON, JOHN PARKYN, REED POMEROY, LINDA LEE SONDRAL (nonlawyers).

*District 6 Committee (serves Waukesha County):* GARY KUPHALL (lawyer), *chairperson*; MARK P. ANDRINGA, COLLEEN MERRILL BROWN, ROSEMARY JUNE GORETA, LANCE S. GRADY, ANTHONY J. MENTING, ROD W. ROGAHN, ROBYN A. SCHUCHARDT, WILLIAM A. SWENDSON (lawyers); CARLA FRIEDRICH, BRUCE S. KRUEGER, ROBERT V. PURTOCK (nonlawyers).

*District 7 Committee (serves Adams, Columbia, Juneau, Marquette, Portage, Sauk, Waupaca, Waushara, and Wood Counties):* THOMAS M. KUBASTA (lawyer), *chairperson*; KENNETH W. GORSKI, GARY KRYSHAK, JEROME P. MERCER, LEON SCHMIDT, JR., JOHN E. SHANNON, JR. (lawyers); LAVINDA CARLSON, ELLEN M. DAHL, DAVID A. KORTH, DOROTHY E. MANSAVAGE, LINDA L. REDFIELD, JAMES E. STRASSER (nonlawyers).

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

*District 9 Committee (serves Dane County):* ALISON TENBRUGGENCATE (lawyer), *chairperson*; LEE ATTERBURY, WILLIAM F. BAUER, JANICE N. BENSKY, ANNE M. BLOOD, ANDREW CLARKOWSKI, BRUCE F. EHLKE, MAUREEN MCGLYNN FLANAGAN, PETER E. HANS, JENNIFER E. HASHOLD, RICHARD B. JACOBSON, JAMES R. JANSEN, WILLIAM F. MUNDT, LAWRENCE P. PETERSON, LAURI ROMAN, MEREDITH J. ROSS, BRUCE AL. SCHULTZ, THOMAS W. SHELLANDER, TODD G. SMITH (lawyers); PETER ANDERSON, NINA PETROVICH BARTELL, CHARLES A. BUNGE, PATRICK DELMORE, DAVID CHARLES DIES, R.C. HECHT, ROBERT C. HODGE, JUDITH A. MILLER, THERON E. PARSONS, ELLEN PRITZKOW, CONSUELO LOPEZ SPRINGFIELD, RODNEY TAPP, DAVID G. UTLEY (nonlawyers).

*District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties):* JAMES N. MIRON (lawyer), *chairperson*; JANE L. KIRKEIDE, GALE MATTISON, LAURA C. SMYTHE (lawyers); RAYMOND ZAGORSKI (nonlawyer).

*District 11 Committee (serves Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Polk, Price, Rusk, Sawyer, Taylor, and Washburn Counties):* JOHN C. GRINDELL (lawyer), *chairperson*; MICHAEL O. ERSPAMER, CRAIG HAUKAAS, H.G. NORDLINE, KATHLEEN A. PAKES, TIMOTHY T. SEMPFF, KATHERINE M. STEWART (lawyers); DANIEL ADAMS, GENE ANDERSON, DIANE FJELSTAD, MARY ANN KING, MARGARET KOLBEK (nonlawyers).

*District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties):* MARGERY MEBANE TIBBETTS (lawyer), *chairperson*; JAMES A. CARNEY, JODY L. COOPER, CRAIG DAY, THOMAS H. GEYER, DERRICK A. GRUBB, WILLIAM T. HENDERSON, GAYLE BRANAUGH JEBBIA, PATRICK K. McDONALD, WILLIAM E. MORGAN, ERIC D. REINICKE (lawyers); DALE E. ANDERSON, DENNIS L. EVERSON, DONALD C. HOLLOWAY, LAURA MCBAIN, MICHAEL F. METZ, KATHLEEN J. ROELLI, JOHN SIMONSON, CLINTON A. WRUCK (nonlawyers).

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

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

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

*District 16 Committee (serves Forest, Florence, Langlade, Lincoln, Marathon, Oneida, and Vilas Counties):* CHRISTINE R.H. OLSON (lawyer), *chairperson*; DAVID J. CONDON, JOHN DANNER, DOUGLAS KINGBERG, DAWN R. LEMKE, WILLIAM D. MANSELL, JESSICA TLUSTY, ROBERT W. ZIMMERMAN (lawyers); THOMAS E. BURG, JUDY A. FRYMARK, GERALD GIBSON, ARNO WM. HAERING, BERNICE WISNEWSKI (nonlawyers).

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

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

**Fax:** 267-1959.

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

**Number of Employees:** 27.50.

**Total Budget 2005-07:** \$4,324,200.

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

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

After investigation, the director decides whether the matter should be forwarded to a panel of the Preliminary Review Committee, be dismissed, or be diverted for alternative action. This 14-member committee consists of nine lawyers and five public members, who are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms.

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

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

Allegations of misconduct against the director, a lawyer member of staff, retained counsel, a lawyer member of a district committee, a lawyer member of the preliminary review committee, a lawyer member of the board of administrative oversight, or a referee are assigned by the director for investigation by a special investigator. The special investigator may close a matter if there is not enough information to support an allegation of possible misconduct. If there is enough information to support an allegation of possible misconduct an investigation is commenced. The investigator can then dismiss the matter after investigation or submit an investigative report to the special preliminary review panel which will ultimately decide whether or not there is cause to proceed. The special preliminary review panel consists of seven members, four lawyers and three public members appointed by the supreme court who serve staggered 3-year terms and may not serve more than 2 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.

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## BOARD OF BAR EXAMINERS

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

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

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

**E-mail Address:** bbe@wicourts.gov

**Internet Address:** <http://www.wicourts.gov/about/organization/offices/bbe.htm>

**Number of Employees:** 8.00.

**Total Budget 2005-07:** \$1,292,800.

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

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

The board originated as the Board of Continuing Legal Education, created in 1975 by rule of the Wisconsin Supreme Court. It became the Board of Attorneys Professional Competence in 1978 and was renamed the Board of Bar Examiners, effective January 1, 1991. Members are

appointed for staggered 3-year terms, but no member may serve more than two consecutive full terms. The number of public members was increased from one to 3 by a supreme court order, effective January 1, 2001.

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### JUDICIAL CONDUCT ADVISORY COMMITTEE

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

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

**Internet Address:** <http://www.wicourts.gov/about/committees/judicialconduct.htm>

**Telephone:** 266-6828.

**Fax:** 267-0980.

**Reference:** Supreme Court Rules, Chapter 60 Appendix.

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

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### 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:** <http://www.wicourts.gov/about/committees/judicialconf.htm>

**References:** Sections 758.171-758.18, Wisconsin Statutes; Supreme Court Rule 70.15.

**Responsibility:** The Judicial Conference, which was created by the Wisconsin Supreme Court, meets at least once a year to recommend improvements in administration of the justice system, conduct educational programs for its members, adopt the revised uniform traffic deposit and misdemeanor bail schedules, and adopt forms necessary for the administration of certain court proceedings. Since its initial meeting in January 1979, the conference has devoted sessions to family and children's law, probate, mental health, appellate practice and procedures, civil law, criminal law, truth-in-sentencing, and traffic law.

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

The Judicial Conference may create study committees to examine particular topics. These study committees must report their findings and recommendations to the next annual meeting of

the Judicial Conference. Study committees usually work for one year, unless extended by the Judicial Conference.

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### JUDICIAL EDUCATION COMMITTEE

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

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

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

**Telephone:** 266-7807.

**Fax:** 261-6650.

**E-mail Address:** JED@wicourts.gov

**Internet Address:** <http://www.wicourts.gov/about/committees/judicaled.htm>

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

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

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

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### PLANNING AND POLICY ADVISORY COMMITTEE

*Planning and Policy Advisory Committee:* SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson*; WILLIAM M. McMONIGAL (circuit court judge), *vice chairperson*; RICHARD BROWN (appeals court judge selected by court); CARL ASHLEY, RICHARD BATES, MICHAEL BOHREN, TIMOTHY DUGAN, BONNIE GORDON, EDWARD LEINWEBER, PAT MADDEN, WAYNE MARIK, J.D. MCKAY, DIANE NICKS, RICHARD NUSS, BILL STEWART (circuit court judges elected by judicial administrative districts); DAVID NISPEL (municipal judge elected by Wisconsin Municipal Judges Association); HANNAH DUGAN, JOHN WALSH (selected by State Bar Board of Governors); JAMES DWYER (nonlawyer, elected county official); OSCAR BOLDT, LINDA HOSKINS (nonlawyers); MICHAEL TOBIN (public defender); SCOTT JOHNSON (court administrator); JOHN ZAKOWSKI (prosecutor); KRIS DEISS (circuit court clerk); DARCY MCMANUS (circuit court commissioner). (Unless indicated otherwise, members are appointed by the chief justice.) Nonvoting associates: DOROTHY BAIN (chief judge liaison), A. JOHN VOELKER (director of state courts).

*Planning Subcommittee:* BARBARA KLUKA (circuit court judge), *chairperson*; MARGARET VERGERONT (appeals court judge); JAMES EVENSON, JEFFREY KREMERS, J.D. MCKAY (circuit

court judges); SCOTT JOHNSON (court administrator); SHEILA REIFF (circuit court clerk); DARCY McMANUS (circuit court commissioner); DIANE TREIS-RUSK (public member). *Ex officio* members: SHIRLEY S. ABRAHAMSON (supreme court chief justice), WILLIAM M. MCMONIGAL (circuit court judge, vice chairperson of Planning and Policy Advisory Committee), A. JOHN VOELKER (director of state courts).

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

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

**Telephone:** 266-8861.

**Fax:** 267-0911.

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

**Reference:** Supreme Court Rule 70.14.

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

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

## WISCONSIN JUDICIAL SYSTEM — INDEPENDENT BODIES

### JUDICIAL COMMISSION

*Members:* MICHAEL R. MILLER (nonlawyer), *chairperson*; DONALD LEO BACH, JOHN R. DAWSON (State Bar members); GINGER ALDEN, JAMES M. HANEY, JENNIFER MORALES, WILLIAM VANDER LOOP (nonlawyers); DAVID HANSHER (circuit court judge); GREGORY PETERSON (appeals court judge). (Judges and State Bar members appointed by supreme court. Nonlawyers are appointed by governor with senate consent.)

*Executive Director:* JAMES C. ALEXANDER.

*Administrative Assistant:* LAURY BUSSAN.

**Mailing Address:** 110 East Main Street, Suite 700, Madison 53703-3328.

**Telephone:** 266-7637.

**Fax:** 266-8647.

**Agency E-mail:** judcmm@wicourts.gov

**Internet Address:** [www.wicourts.gov/judcom](http://www.wicourts.gov/judcom)

**Publication:** Annual Report.

**Number of Employees:** 2.00.

**Total Budget 2005-07:** \$465,100.

**Statutory References:** Sections 757.81-757.99.

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

The commission's investigations are confidential. If an investigation results in a finding of probable cause that a judge or court commissioner has engaged in misconduct or is disabled, the commission must file a formal complaint of misconduct or a petition regarding disability with the supreme court. Prior to filing a complaint or petition, the commission may request a jury hearing

of its findings before a single appellate judge. If it does not request a jury hearing, the chief judge of the court of appeals selects a 3-judge panel to hear the complaint or petition.

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

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

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

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## JUDICIAL COUNCIL

**Members:** ANN WALSH BRADLEY (justice designated by supreme court); TED E. WEDEMEYER (judge designated by court of appeals); A. JOHN VOELKER (director of state courts); EDWARD E. LEINWEBER, JAMES MASON, MARY K. WAGNER, MAXINE A. WHITE (circuit court judges designated by Judicial Conference); SENATOR TAYLOR (chairperson, senate judicial committee); REPRESENTATIVE KRAMER (designee, assembly judicial committee); GREG M. WEBER (designated by attorney general); BRUCE MUNSON (revisor of statutes); DAVID E. SCHULTZ (faculty member, UW Law School, designated by dean); JAY GREINIG (dean, Marquette University Law School); MARLA J. STEPHENS (designated by state public defender); SUSAN L. COLLINS (member of the Board of Governors, State Bar, designated by president-elect); KATHLEEN E. GRANT, BETH E. HANAN, ROBERT L. MCCrackEN (State Bar members selected by State Bar); KATHLEEN ANNE PAKES (district attorney appointed by governor); MICHAEL R. CHRISTOPHER, ALLAN M. FOECKLER (public members appointed by governor).

**Mailing Address:** 110 East Main Street, Suite 700, Madison 53703.

**Telephone:** 266-7637.

**Fax:** 266-8647.

**Statutory References:** Sections 757.83 (4) and 758.13.

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

Several council members serve at the pleasure of their appointing authorities. The 4 circuit judges selected by the Judicial Conference serve 4-year terms. The 3 members selected by the State Bar and the 2 citizen members appointed by the governor serve 3-year terms. The executive director of the Judicial Commission provides staff services to the council.

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WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT  
**STATE BAR OF WISCONSIN**

*Board of Governors* (effective July 1, 2007): *Officers*: THOMAS J. BASTING, SR., *president*; DIANE S. DIEL, *president-elect*; STEVEN A. LEVINE, *past president*; GRETCHEN G. VINEY, *secretary*; GWENDOLYN G. CONNOLLY, *treasurer*; PAUL R. NORMAN, *chair of the board*. *District members*: LISA M. ARENT, ROBERT J. ASTI, DANIEL P. BACH, THOMAS W. BERTZ, HOWARD J. BICHLER, JAMES C. BOLL, JR., JAMES M. BRENNAN, JAMES A. CARNEY, JAMES E. COLLIS, MICABIL DIAZ-MARTINEZ, JAMES R. DUCHEMIN, EUGENE A. GASIORKIEWICZ, C. MICHAEL HAUSMAN, MARGARET WRENN HICKEY, CATHERINE A. LA FLEUR, GRANT F. LANGLEY, LYNN R. LAUFENBERG, KEVIN J. LYONS, JOHN P. MACY, MARSHA M. MANSFIELD, MICHAEL J. MORSE, KELLY C. NICKEL, JOHN F. O'MELIA, JR., CARMEN M. ORTIZ-BABILONIA, KEVIN J. PALMERSHEIM, J. DAVID RICE, ELIZABETH G. RICH, THOMAS L. SCHOBER, DANIEL L. SHNEIDMAN, MARLA J. STEPHENS, ROBERT W. SWAIN, PAUL G. SWANSON, JAMES R. TROUPIS, NICHOLAS C. ZALES. *Young Lawyers Division*: AMY S. WOCHOS. *Government Lawyers Division*: WILLIAM J. DOMINA. *Nonresident Lawyers Division*: DONNA M. JONES, DANIEL F. RINZEL, STEVEN H. SCHUSTER. *Senior Lawyers Division*: HARRY G. HOLZ. *Nonlawyer members*: TOM HEINE, EDWARD KONDRACKI, CORWIN VANDER ARK. *Minority Bar Liaisons*: JO DEEN B. LOWE, CORAL DAWN PLEAS, ARMAN S. ROUF (nonvoting members).

*Executive Director*: GEORGE C. BROWN.

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

**Location**: 5302 Eastpark Boulevard, Madison.

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

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

**Agency E-mail**: [lroys@wisbar.org](mailto:lroys@wisbar.org)

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

**References**: Supreme Court Rules, Chapters 10 and 11.

**Responsibility**: The State Bar of Wisconsin is an association of persons authorized to practice law in Wisconsin. It works to raise professional standards, improve the administration of justice and the delivery of legal services, and provide continuing legal education to lawyers. The State Bar conducts legal research in substantive law, practice, and procedure and develops related reports and recommendations. It also maintains the roll of attorneys, collects mandatory assessments imposed by the supreme court for supreme court boards and to fund civil legal services for the poor, and performs other administrative services for the judicial system.

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

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

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

Bar. Effective July 1, 1992, the Wisconsin Supreme Court reinstated the mandatory membership rule upon petition from the State Bar Board of Governors.

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*As part of its Justice on Wheels outreach program, the Supreme Court heard two cases at the Waushara County Courthouse in Wautoma during April 2007. The location was chosen in honor of Justice Jon P. Wilcox (top, third from left) who served as a Waushara County Circuit Court Judge for many years and recently retired from the Supreme Court. (Kathleen Sinter, LRB)*



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

October 2006 – June 2007

Peggy J. Hurley and Robert Nelson  
Legislative Reference Bureau

### CONSTITUTIONAL LAW

#### Maximum Limit for Medical Malpractice Noneconomic Damages

*Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125, 284 Wis. 2d 573, 701 N.W. 2d 440 (2005), involved a child who was injured as the result of negligence at birth by a doctor. The negligent act resulted in the plaintiff having a right arm that was permanently deformed and partially paralyzed. The facts of the case were not in dispute; the issue was the constitutionality of the statutory limit on the amount of money the plaintiff could recover for his noneconomic damages, including damages resulting from pain and suffering, loss of enjoyment of normal activities, and mental distress. The jury had awarded the plaintiff \$700,000 for his noneconomic damages, but the trial court reduced the award to the statutory maximum of \$410,322. The court held that to find the statutory limit unconstitutional, the court would have to decide that the statute does not rationally advance the legislative objective. In this case, said the court, the main legislative objectives were to reduce the costs of professional liability insurance, the amount of increases in health care costs, the incentive for health care professionals to practice defensive medicine, and the number of insurers that leave the medical malpractice area of insurance. After reviewing the relationship between medical malpractice claims and medical practice in the state, the desire to compensate injured patients fairly, and the effects of the medical malpractice noneconomic damage limit on the injured patients, the court found that the limit resulted in those patients who are most seriously injured being treated less fairly than those patients with lesser injuries. The court held that there was not a rational relationship between the limit and the objective of compensating the injured party fairly. The court reviewed the other objectives of the medical malpractice limit and held that there was no rational relationship between those objectives and a limit that adversely affected the injured patient, so the court held that the limit was unconstitutional.

#### Extent of State Authority to Contract with Indian Tribes Regarding Casino Gambling

The case of *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, 295 Wis. 2d 1, 719 N.W. 2d 408 (2006), involved the power of the governor to permit Wisconsin Indian tribes to continue to conduct casino-style gambling after a change in the Wisconsin Constitution. Former governor Tommy Thompson negotiated gaming compacts with the 11 tribes located in the state. The compacts lasted for 7-year terms, with automatic extensions for 5-year terms. These compacts permitted the tribes to engage in certain Class III casino gaming on tribal land, including blackjack tables, electronic gaming machines, and pull-tab machines. In April 1993, Wisconsin voters ratified an amendment to the Wisconsin Constitution to prohibit the legislature from authorizing gambling in any form except for specific games provided for in the amendment to narrowly define the nature of the state-operated lottery. The plaintiff said it had begun to lose revenue due to the Class III games allowed on tribal land, and filed the action claiming that the governor was not authorized to extend the gaming compacts with the tribes in light of the 1993 amendment. Dairyland sought an injunction preventing the governor from entering into any future compacts and directing the governor to serve a timely notice of nonrenewal to the tribes for the existing compacts. The amendment, said the court, clearly states that the legislature may not authorize gambling in any form, and therefore the Class III games on tribal land could be unconstitutional. The court found that the intent of the legislature was to have the amendment apply to future compacts, not existing ones. It further held that the amendment could not abrogate existing contracts between the tribes and the state, because that would be in violation of the constitutional provision barring the retroactive effect on existing contracts. The court held that the constitutional amendment did not affect the existing compacts.

## CRIMINAL LAW

### **Voluntariness of Plea in a Package Plea Agreement**

The case of *State v. Goyette*, 2006 WI App 178, 296 Wis. 2d 359, 722 N.W. 2d 731 (2006), involved a “package plea agreement,” wherein the defendant-appellant entered into a plea agreement that was contingent upon two or more codefendants all entering pleas according to the terms of the agreement. If one of the codefendants refused to accept the plea agreement, the state was not bound by the terms of the agreement with respect to any of the other codefendants. After rejecting an earlier deal offered by the state, Goyette and his three codefendants agreed to accept a plea agreement that reduced a homicide charge to a lesser offense. The trial court held a joint plea conference with all of the codefendants the day after the deal was brokered, and in its colloquy, sought to ascertain whether Goyette had been “pressured ... coerced ... or forced in any way to [accept the plea agreement].” The court did not ask specifically whether Goyette felt pressured or coerced because of the package nature of the agreement. Goyette argued that, although he told the court he was not pressured, coerced, or forced in any way to accept the agreement, he had indeed felt coerced to “help” his friends and codefendants by accepting a plea agreement that would last only so long as all the codefendants accepted it. Goyette argued that, therefore, the trial court had a special duty to determine whether, in light of the package nature of the plea agreement, Goyette had felt coerced or pressured to accept it. The court of appeals rejected this argument, holding that the usual colloquy regarding coercion or pressure was sufficient, and that any social pressure or loyalty to his friends that Goyette may have experienced did not render his plea involuntary.

### **Review of a Sentencing Court’s Failure to Consider Sentencing Guidelines**

Vincent Grady sought to be resentenced because his sentencing court failed to consider applicable sentencing guidelines, as mandated by Section 973.017 (2) (a), Wisconsin Statutes. The court of appeals, in *State v. Grady*, 2006 WI App 188, 296 Wis. 2d 295, 722 N.W. 2d 760 (2006), noted that while the trial court did err in failing to consider the guidelines, the defendant-appellant was not entitled to a new sentence because another part of the statute, Section 973.017 (10), precludes appellate review. The court of appeals noted that it and the supreme court had interpreted an earlier version of Section 973.017 (10), which stated that “there shall be no right to appeal on the basis of the trial court’s decision to render a sentence that does not fall within the sentencing guidelines,” to mean that there could be no review of a sentence on the basis that the sentencing court failed to consider the sentencing guidelines. Subsequent to those decisions, the legislature reworded Section 973.017 (10) to read, “there is no right to appeal a court’s sentencing decision based on the court’s decision to depart in any way from any guideline.” The court of appeals did not discern any different intent between this version of the statute and the prior version, and ruled that Grady could not appeal his sentence based on the trial court’s failure to consider the sentencing guidelines.

### **Resisting Arrest After an Unlawful Police Entry into a Home**

The court of appeals, in *State v. Annina*, 2006 WI App 202, 296 Wis. 2d 599, 723 N.W. 2d 708 (2006), agreed with the defendant-appellant that police had entered her home pursuant to an invalid warrant. However, the court rejected Annina’s argument that her subsequent arrest and conviction for resisting an officer should be reversed. Police officers suspected that Annina was providing alcohol to minors at her home and attempted to talk with Annina. When she refused to speak with them, the officers obtained a search warrant and returned to Annina’s home. Annina attempted to shut the door on officers, but an officer was able to force the door open enough to enter and place a handcuff on Annina’s wrist. An officer instructed Annina to put her hands behind her back while the police searched her home; she refused to do so, continued to resist, and was ultimately carried, kicking and screaming, to a police car. Annina was subsequently charged with disorderly conduct and resisting arrest. The trial court ruled that the search warrant had been improperly issued, but refused to throw out the disorderly conduct and resisting arrest charges because those charges were not based on anything discovered pursuant to the unlawful warrant, but instead were the consequences of Annina’s conduct when the officers were at her door and inside her home. The court of appeals agreed, noting that the proper remedies for an illegal search

pursuant to an unlawfully issued warrant include suppression of evidence found and civil remedies. The fact that the officers entered Annina's home pursuant to a faulty warrant did not render their presence or conduct there "unlawful," and so Annina had no right to resist their authority.

### **The Right to Participate in Alternatives to Incarceration Programs**

Gerald Lynch was found guilty of homicide by intoxicated use of a vehicle and fleeing from an officer resulting in bodily harm. At sentencing, the trial court determined that Lynch was ineligible to participate in an earned release program. Inmates who participate in an earned release program receive an early release from the confinement portion of their sentences if they complete a substance abuse program operated by the Department of Corrections. However, people who are convicted of certain crimes, including homicide by intoxicated use of a vehicle, may be precluded from participating in the earned release program. Lynch argued that because people who are convicted of operating a vehicle while intoxicated, but whose conduct did not result in harm to another, may be eligible for the earned release program, the statutes that preclude his participation violate his rights to due process and equal protection. The court of appeals, in *State v. Lynch*, 2006 WI App 231, 297 Wis. 2d 51, 724 N.W. 2d 656 (2006), rejected these claims. The court of appeals noted that the legislature has the right to determine criminal penalties for different, although similar, crimes and the court may only invalidate those penalties if there is no rational basis for the different penalties. The court of appeals held that the legislature may constitutionally punish people whose crimes result in serious harm to another more severely than people whose underlying conduct may have been similar but whose actions did not cause serious harm to another.

### **Conflict of Interest in a Presentencing Report**

In *State v. Thexton*, 2007 WI App 11, 727 N.W. 2d 560 (Wis. Ct. App. 2006), the court of appeals revisited the question of what constitutes unacceptable bias for the purpose of determining whether a person is entitled to a new sentence. In an earlier case, the court of appeals held that a presentencing report that was prepared by an investigator who was married to the district attorney who prosecuted the defendant was tainted by, at the very least, the appearance of bias, and that the defendant was entitled to a new presentencing report and a new sentencing hearing. In this case, however, the defendant-appellant asked the court to issue a similar finding of bias because the probation officer who prepared his presentence report was married to another probation officer, and the two probation officers together were responsible for his supervision. The court of appeals rejected this request, holding that while there is an inherent tension between the roles of the district attorney, who is an adversary to the defendant, and the probation agent, who is to be neutral when preparing a defendant's presentence report, that tension did not exist in this case. The court of appeals noted that it is customary for a supervising probation officer to prepare an unbiased presentence report and found no reason why two supervising probation officers could not prepare an unbiased presentence report, as well. Given that there is no inherent tension between the roles of the probation officers as they relate to the defendant-appellant, the court could find no reason to believe that the fact that the probation officers were married to each other would influence the preparation of the presentence report.

### **Chain of Custody in "Cold Match" DNA Cases**

The court of appeals considered, in *State v. McCoy*, 2007 WI App 15, 728 N.W. 2d 54 (Wis. Ct. App. 2006), what constitutes a sufficiently reliable chain of custody in a case involving a DNA match that linked the defendant to a crime committed almost nine years earlier. In 1995, a woman was sexually assaulted; samples were taken from her body and items of her clothing were kept as evidence, but no one was arrested for her assault. Nine years later, a routine search of the Wisconsin DNA databank revealed that the DNA retrieved from the victim's body and clothing matched that of the defendant-appellant. His DNA had been retrieved earlier, following an unrelated conviction for a felony. McCoy argued that the state had failed to prove that the DNA retrieved from the 1995 victim had been safeguarded from possible tampering, contamination, or exchange, and that the trial court should have excluded the evidence. The court of appeals noted that a "perfect chain of custody is not required," and that while alleged gaps in the chain of custody may be considered, that consideration applies to the weight given to the evidence, not its admissibility. The court of appeals further noted that the state proffered testimony by the nurse who gathered the evidence, the police officer who retrieved the evidence packaged by the nurse,

the crime lab analyst who examined the items for the first time in 1997, and another crime lab analyst who examined the evidence in 2001. Each person testified that he or she properly packaged, sealed, and stored the evidence in accordance with guidelines, and that it was possible for each person to determine who had handled the evidence before. McCoy argued that the 2-year lag between the time the evidence had been gathered and the first time it was examined by a lab analyst, and the lack of testimony regarding where the evidence had been stored between examinations by the first and second lab analysts, rendered the evidence inadmissible. The court of appeals disagreed, referring again to its holding that the chain of custody need not be perfect in order for the evidence to be admissible, but that McCoy had been free to argue as to its evidentiary value at trial.

### **Factual Basis for Identifying a Habitual Offender**

When the state charged Jamale A. Bonds with battery, it alleged that he was a habitual offender subject to a sentence enhancer if convicted. The state alleged that the defendant-appellant had three prior misdemeanor convictions, and attached a certified copy of the convictions to its criminal complaint. After Bonds was convicted, the state argued at sentencing that he was subject to a sentence enhancer as a habitual offender, but offered as proof a report from the Consolidated Court Automation Programs (CCAP) that showed Bonds had been convicted of a felony forgery charge. The trial court accepted the state's arguments and Bonds was sentenced to an enhanced penalty as a habitual offender. Bonds argued that the state violated his right to due process by changing the basis of its contention that he was a habitual offender from the three misdemeanor convictions to the felony forgery conviction, and by offering insufficient proof of his felony conviction. The supreme court, in *State v. Bonds*, 2006 WI 83, 292 Wis. 2d 344, 717 N.W. 2d 133 (2006), held that the state did not violate the defendant-appellant's due process rights by switching the basis of its habitual offender contention, but that the proof offered by a CCAP report was insufficient to prove the underlying conviction. The court held that Bonds was not prejudiced by the fact that the state switched its basis for arguing that he was a habitual offender because the sentence enhancement that would have resulted had the state proved the three misdemeanor convictions was the same as the result he received with the state's proof of the felony conviction. However, the court vacated the enhanced sentence because it held that the state failed to prove the conviction on the felony charge when its only proof of the conviction was a CCAP report. The court noted that the CCAP system requires users to affirm that they understand that the information provided by the system "should not be relied upon as accurately representing the information provided," and that the records maintained by the CCAP program cannot be considered an official report for the purposes of determining prior convictions. The court noted that, while the state need not produce a certified copy of a conviction to prove a previous conviction, it must provide more than the information gleaned from a CCAP report.

### **Standards of Proof that a Plea Is Made Voluntarily, Knowingly, and Intelligently**

In *State v. Brown*, 2006 WI 100, 293 Wis. 2d 594, 716 N.W. 2d 906 (2006), the supreme court revisited the question of what constitutes an adequate colloquy to determine whether a person is making a voluntary, knowing, and intelligent plea to the charges against him. James E. Brown pleaded guilty to three felony charges, then sought to withdraw his plea on the grounds that he did not understand the nature of the charges and that his trial court judge had failed to make an adequate inquiry into his understanding of the charges. The court reviewed the trial transcript and agreed that, given the circumstances of this case, the defendant-appellant was entitled to a new hearing to determine whether his plea was given voluntarily, knowingly, and intelligently. The court noted that Brown was 17 years old at the time of his crimes, illiterate, and had been diagnosed with reading and mathematics disorders. At a plea hearing, despite being apprised of Brown's limitations, the trial court did not address any of the elements of the crimes with which Brown was charged. Instead, the trial court asked Brown's attorney whether he had gone through each of the provisions contained in the plea agreement form and whether the attorney believed Brown understood the elements of the charges against him, the rights he gave up by pleading guilty, and the penalties he faced. The court noted that a defendant may not withdraw a guilty plea after sentencing without demonstrating, clearly and convincingly, that a "manifest injustice" would result if the guilty plea stands. The court held that this high burden was met, however, under the circumstances of this case, and that the statutory and common law demanded that each trial

court take special pains to ensure that a plea is taken only after a defendant understands and agrees to each provision of the plea agreement. Trial courts must engage in a personal colloquy with the defendant, not merely with the defendant's attorney, and must verify that the defendant understands each element of the crime he pleads to, each constitutional right he waives by pleading, and every penalty he faces for the crime. If there is a question as to a defendant's ability to understand any of these, the trial court must make a personal effort to explain and may not accept a guilty plea until it is satisfied that the defendant understands completely.

### **When a Person Is "Seized" by Law Enforcement**

Over recent years, the U.S. Supreme Court has articulated two separate tests for determining when a person is "seized" by law enforcement. Under *United States v. Mendenhall*, 466 U.S. 544 (1980), a person is seized only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Under *California v. Hodari D.*, 499 U.S. 621 (1991), a person is seized when an officer applies physical force, no matter how slight, to restrain the person's movement, or when the person submits to a show of police authority. The Wisconsin Supreme Court adopted the *Hodari D.* test in a 2001 decision, but reconsidered its adoption in *State v. Young*, 2006 WI 98, 294 Wis. 2d 1, 717 N.W. 2d 729 (2006). Young argued that the Wisconsin Constitution offers greater protection against unlawful searches and seizure than the U.S. Constitution and that the state need not adopt the *Hodari D.* test but should, instead, follow other states in adopting the *Mendenhall* standard. When a police cruiser pulled up to a car occupied by Young and four others, the officer activated his flashing emergency lights and illuminated Young's vehicle with a spotlight. Young got out of his car and, ignoring the officer's demand to get back in the car, ran away. After a brief struggle with the officer, Young discarded a jacket he was wearing and ran away again. Police ultimately arrested Young and discovered marijuana in the jacket's pocket. In a hearing to determine whether the seized marijuana should be suppressed, Young argued that he had been "seized" by the police when the police car pulled up and the officer illuminated his car with a spotlight. No reasonable person would have felt free to leave under those circumstances, he argued, and the police officer's "seizure" of him was improper because the officer did not have reasonable suspicion for an investigatory stop. The state argued that Young was not "seized" until he had fled the vehicle, ignored the officer's call to stop, and was restrained by the officer. By that time, the state contended, the officer had at least a reasonable suspicion, if not probable cause to believe, that Young had committed a crime. The court acknowledged that the question of when seizure occurred was crucial because it determines when constitutional protections against unreasonable searches become applicable and because it determines the level of "suspicion" or "probable cause" needed to arrest Young. The court ultimately held that it needn't decide between the *Hodari D.* and *Mendenhall* standards because the two can co-exist. The court decided that, in cases where a defendant submits to police authority, either voluntarily or by force, the *Mendenhall* test applies. In cases where a defendant flees in response to a show of authority, the *Hodari D.* applies. Applying that standard to the present case, the court held that because Young fled after a show of police authority, the *Hodari D.* standard applies and Young was not seized until the officer physically apprehended him. By that time, the court concluded, the officer had sufficient reason to believe that Young was committing a crime and a search of Young's jacket would have been justified. The marijuana found, therefore, was properly admitted into evidence and Young's conviction was upheld.

## **CIVIL LAW**

### **When Punitive Damages Are Awarded Under New State Statute**

In two related decisions that the supreme court decided on the same day, *Wischer v. Mitsubishi Heavy Industries of America, Inc.*, 2005 WI 26, 279 Wis. 2d 4, 694 N.W. 2d 320 (2005), and *Strenke v. Hogner*, 2005 WI 25, 279 Wis. 2d 52, 694 N.W. 2d 296 (2005), the court was required to interpret a recent change in state law that establishes the conditions under which punitive damages may be awarded. In *Wischer*, the crane lifting a portion of the new roof for Miller Park collapsed, killing three workers. In *Strenke*, the defendant injured the plaintiff as the result of driving with a blood alcohol concentration well above the legal limit, his fifth drunk driving offense. In both cases, the court held that Section 895.85 (3), Wisconsin Statutes, which allows punitive dam-

ages if the defendant acted “in an intentional disregard of the rights of the plaintiff,” applied and the plaintiffs could recover punitive damages. The court held that this language applied when a defendant had a general intent to perform an act and a specific intent to cause the injury, or knowledge that the act is practically certain to result in injury. The court held that the conduct must be sufficiently aggravated to warrant punishment, but there is no need to prove that the defendant intended to injure the specific plaintiff, only that the defendant is aware that another person’s rights would be disregarded.

### **Statutory Immunity from Liability for Good Samaritans**

In this case, *Mueller v. McMillian Warner Ins. Co.*, 2006 WI 54, 290 Wis. 2d 571, 714 N.W. 2d 183 (2006), the girlfriend of the defendants’ son was injured while riding on an all-terrain vehicle. When the girlfriend returned to the defendants’ home, bleeding and injured, the defendants treated her, put her in bed, and checked her every hour during the night. In the morning, when the plaintiff was still disoriented, the defendants called an ambulance. The plaintiff suffered serious injuries. The question before the court was if Section 895.48 (1), Wisconsin Statutes, the Good Samaritan Law, provided immunity for the action of the defendants. That statute gives immunity to “Any person who renders emergency care at the scene of any emergency or accident in good faith.” The court determined that the provision of care does not have to happen at the place of the accident, but can occur wherever the care is needed. In this case, said the court, the defendants did provide emergency care when the plaintiff first returned to their home after the accident, and so are immune from liability under the statute for that care provided in good faith. However, the court concluded that the statute provided immunity for immediate evaluation, assistance, and treatment, not for the defendants’ delayed referral of the plaintiff to professional care. The defendants were not immune from liability for any care that was provided after the initial assistance, so the court returned the case to the trial court to determine if the defendants were negligent for not obtaining professional help in a more timely fashion.

### **An Insurance Company’s Right to Proceeds of an Injured-Party Settlement**

The plaintiff in *Drinkwater v. American Family Mutual Ins.*, 2006 WI 56, 290 Wis. 2d 642, 714 N.W. 2d 568 (2006), was injured in Wisconsin while riding his motorcycle. As a result of his injury, his employer’s health insurer, an Iowa company, paid about \$89,000 in medical bills. The insurer of the person that caused the injury agreed to pay the plaintiff \$250,000 in damages, and the Iowa health insurance company asked the court to require the plaintiff to pay them the \$89,000 they paid for his medical care. The court had to decide whether the Iowa law applied because the insurer was in Iowa and the plaintiff worked in Iowa, or whether Wisconsin law applied because the accident happened in Wisconsin between two resident drivers. In this case, the court reviewed the “made whole” doctrine of law, which prohibits an insurer from receiving payment for medical care provided (subrogation) if the plaintiff does not recover the total amount of his or her damages. The court agreed that the theory behind subrogation is to prevent the injured party from double recovery, i.e., both the provision of the medical care and the money paid for that medical care. However, the court said that a double recovery only occurs when an injured party is fully paid for his or her damages. If, said the court, the insurer or the insured must to some extent go unpaid, the loss should be borne by the insurer because that is the risk that the insured paid for as premiums. In this case, the court said that the trial court’s finding that the plaintiff’s damages exceeded the settlement amount means that he was not made whole, so the insurer cannot recover its medical care payments. The court went on to determine that Wisconsin’s law applies in this case and refused to grant the insurer’s request for payment for the medical care.

### **Responsibility for Lead Poisoning of Children**

In *Thomas v. Mallett*, 2005 WI 129, 285 Wis. 2d 236, 701 N.W. 2d 523 (2005), a young child became ill as the result of living in homes that had lead-based paint. The child’s physical disorders eventually became permanent and his guardian sued both the landlords of the rental properties and the manufacturers of the lead pigment used in the paint. Being unable to identify the specific manufacturer of the lead pigment that caused the damages, the guardian sued all of the companies that manufactured the lead pigment between when the buildings were built and the time the plaintiff occupied the buildings. In an earlier case, a woman whose mother had used a drug (DES) to prevent a miscarriage later developed major medical problems and sued all of the DES manufac-

turers. The court held that although the plaintiff could not identify the specific manufacturer of the DES that her mother had used, each manufacturer who contributed to the risk of injury to the public should be liable for the injury to the plaintiff. Otherwise, said the court, the plaintiff would be responsible for the cost of her injuries, rather than the manufacturers who were responsible for creating the injury. In *Thomas*, the supreme court agreed that the previous case should be followed, although the plaintiff in this case could recover some damages from the landlords. The court said that because the particular lead pigment manufacturer could not be identified, all of the manufacturers that had produced essentially the same lead pigment and knew of its possible harm to the public may be responsible for the plaintiff's injuries.

### **Authority of the Supreme Court**

In *State v. Jerrell C. J.*, 2005 WI 105, 283 Wis. 2d 145, 699 N.W. 2d 110 (2005), the supreme court was asked to determine whether a confession by a minor should be used at his trial, and whether the court had the power to require the police to record the minor's interrogation if the police wanted to use any resulting confession in court. In this case, the police arrested the 14-year-old defendant early in the morning and handcuffed him to a wall in a jail cell for two hours before questioning him for another four hours. The defendant was given his *Miranda* rights, but the police refused his requests to talk to his parents. He was found guilty at trial and asked for a new trial, saying the confession should not have been admitted into evidence. The supreme court decided that a six-plus hour interrogation of a 14-year-old boy who had little police experience and that included handcuffing, police raising their voice, and denial of his request to talk to his parents resulted in a confession that was coerced and not voluntary. The court held that the minor's confession should not have been used in the trial. The court was also troubled by police testimony that indicated that this was a typical way to interrogate minors, and decided that denial of parental involvement will weigh against allowing a minor's confession to be admitted. Finally, based on the facts of this case, the court determined that its power to exercise administrative authority to promote the effective operation of the state's courts gave it the power to require police to electronically record all juvenile interrogations. This requirement, said the court, will allow the court to review interrogations to determine the accuracy of the record of the interrogation and the voluntariness of any confession, while protecting the police from being wrongfully accused of improper tactics and providing a tool for the police to better determine the truthfulness of the person being questioned.

### **The Right to a 12-Member Jury**

In *Dane County v. McGrew*, 2005 WI 130, 285 Wis. 2d 519, 699 N.W. 2d 890 (2005), the defendant was given a traffic citation for speeding. The defendant requested a 12-member jury for the forfeiture action; that request was denied, and the defendant appealed to the supreme court. The supreme court had to review the laws in existence at the time of the enactment of the state constitution (1848) to determine if the right to a jury of 12 persons applied to the action for a forfeiture resulting from a speeding ticket. Although there were some provisions in the law at the time of that enactment regarding nuisances and annoyances on highways and bridges, there was no law that was in any way similar to a law prohibiting speeding. For that reason, the court held that the legislature's decision to provide only a six-member jury for persons accused of a speeding violation was constitutional.

### **The Right to Bring an Action Regarding Negligent Improvements After the 10-year Limitation Period**

In *Kohn v. Darlington Community Schools*, 2005 WI 99, 283 Wis. 2d 1, 698 N.W. 2d 794 (2005), a child fell 15 feet through the school's stadium bleachers and was injured. The child's parents sued the school and the bleachers' manufacturer, saying the bleachers were negligently constructed. The trial court denied their claim, holding that the bleachers were an improvement to real property. The court said that the statute, which provides that no action could be brought for negligence regarding an improvement to property more than 10 years after the improvement was constructed, applied in this case. The supreme court had to decide whether the bleachers were an improvement to real property and, if so, whether the statute that granted immunity was constitutional even though it prevented the plaintiffs from recovering from an injury that only recently occurred. The court held that the bleachers were an improvement, but said that although the plain-

tiffs are without a remedy, the policy of the statute is to limit the long-term liability of those involved in construction. The court held that the legislature has the power and responsibility to make such choices, so long as there is a rational basis for their decision. In this case, the court held, there is a rational basis to protect those involved in improvements to real property from long-term liability, so the statute was held constitutional.

### **Regulation of Piers by the Department of Natural Resources**

In *Hilton v. Department of Natural Resources*, 2006 WI 84, 293 Wis. 2d 1, 717 N.W. 2d 166 (2006), the supreme court was asked to review the authority of the Department of Natural Resources to regulate the use of piers in state waters. Since 1966, the association that the plaintiff represented had an unpermitted pier, with various numbers of boat slips, extending from the riparian lot into Green Lake. When the action was brought, the pier was 249 feet long, 3 feet wide, and contained 22 boat slips. The association first contacted the DNR regarding its pier in 1993, and was told that although the pier's size and density were both excessive under DNR "reasonable use" guidelines, the DNR would not commence an enforcement action unless a complaint was received. In 1997, a conservation warden inspected the site in response to a complaint and was told that the association wanted to expand the pier. He told them that they would need a permit, and that the DNR would consider reasonable use, cumulative impact, and other public interest factors in deciding whether to issue one. A permit was never applied for and the DNR began an abatement action, saying the pier was not a reasonable use. After a hearing, the hearing officer held that the existing pier violated public rights in exceeding the reasonable use threshold, negatively impacted the aquatic habitat, and created a safety hazard. The officer limited the size of the pier and the number of allowed boat slips. The court looked at the current law regarding the use of piers and the regulation of those piers by the DNR, and held that the decision of the DNR was reasonable, supported by substantial evidence in the record, and consistent with applicable law. The court said that the decision of the DNR was neither arbitrary nor capricious.

### **Grounds for Termination of Parental Rights**

In *Kenosha County D.H.S. v. Jodie W.*, 2006 WI 93, 293 Wis. 2d 530, 716 N.W. 2d 845 (2006), a child was removed from the home when the mother was incarcerated, and was placed in foster care by the county. The county established conditions that the mother needed to meet to have the child returned to her, but because the mother was incarcerated, she was unable to meet those conditions and her parental rights to her child were terminated. The supreme court was asked whether it was constitutional to make the conditions for return of the child dependent on the mother being able to provide the child a home, a condition that was impossible to meet because of the mother's incarceration. The record of the termination proceedings indicated that the mother did not agree to the termination of her parental rights, although the mother did agree that she could not meet the conditions necessary to return the child to her home. The court found that the mother's parental rights were a fundamental liberty; therefore, strict scrutiny of the relevant statute must be used to determine whether the statute is constitutional. The court held that a parent's failure to fulfill a condition due to incarceration is not a constitutional ground for finding a parent unfit, which is necessary to terminate his or her parental rights. The court went on to say that when the parent is incarcerated, the court-ordered conditions for return of the child must be tailored to the particular needs of the parent and child. If incarceration were the only reason for termination, the statute would be unconstitutional, so the court reviewed the record and determined that, except for the incarceration, the mother was not unfit to care for the child, and so reinstated her parental rights.

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