

# Judicial Branch

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

## **Local Government in Wisconsin: Brown County Board on Road Inspection Tour, 1915**

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State Historical Society, #WHi (X3) 17306



**WISCONSIN SUPREME COURT**

Justice	Supreme Court Justice Since	1st 10-year Elected Term Began	Term Expires July 31	Annual Salary <sup>1</sup>
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	1999	\$108,690
Donald W. Steinmetz	1980	August 1980	2000	100,690
William A. Bablitch	1983	August 1983	2003	100,690
Jon P. Wilcox	1992*	August 1997	2007	100,690
Janine P. Geske	1993*	August 1994	2004	100,690
Ann Walsh Bradley	1995	August 1995	2005	100,690
N. Patrick Crooks <sup>2</sup>	1996	August 1996	2006	100,690

\*Initially appointed by the governor.

<sup>1</sup>Pursuant to Article IV, Section 26, *Wisconsin Constitution* and Section 20.923 (2) (b), *1995-1996 Wisconsin Statutes*. The salaries for all justices may change when Justice Wilcox assumes his new term of office on August 1, 1997, based on the 1997 biennial budget.

<sup>2</sup>Elected to Supreme Court on April 2, 1996, to fill an opening created by the retirement of Chief Justice Roland B. Day on July 31, 1996.

Sources: *1995-96 Wisconsin Statutes*; State Elections Board, departmental data, April 1997; Director of State Courts, departmental data, April 1997; governor’s appointment notices.



*The Wisconsin Supreme Court in session. From left to right are Justices Ann Walsh Bradley, Jon P. Wilcox, Donald W. Steinmetz; Chief Justice Shirley S. Abrahamson; and Justices William A. Bablitch, Janine P. Geske and N. Patrick Crooks. (Wisconsin Supreme Court).*



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## JUDICIAL BRANCH

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### A PROFILE OF THE JUDICIAL BRANCH

**Introducing the Court System.** The court system is probably the least understood branch of government. Although courts attract attention through news accounts of controversial cases and dramatic portrayals of judicial proceedings on television, an individual's personal involvement with the courts is likely to be limited to brief exposures, such as jury duty, a traffic violation, a divorce proceeding or the settlement of a deceased relative's estate. From these experiences, it may appear that the judicial system is a complicated maze. Actually a tremendous variety and volume of business is transacted daily in the court system. At one time or another, almost every aspect of life is touched by the courts.

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 must also decide civil disputes between private citizens, ranging from the routine collection of an overdue charge account to the complex adjudication of an antitrust case involving many millions of dollars and months, even years, 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 Court System Today.** 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 is 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.

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.

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, 1997, Wisconsin had a combined total of 223 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.

Cities, villages and towns may create municipal courts, and over 200 have done so. These courts are not courts of record, and they have limited jurisdiction. Usually, municipal judgeships are not full-time positions.

**Selection and Qualification of Judges.** In Wisconsin, all justices and judges are elected on a nonpartisan ballot in April. The Wisconsin Constitution provides that supreme court justices



and appellate and circuit judges must have been licensed to practice law in Wisconsin for at least 5 years prior to election or appointment. While state law does not require that municipal judges be attorneys, municipalities may impose such a qualification in their jurisdictions.

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

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

**Judicial Agencies Assisting the Courts.** Numerous state agencies assist the courts. The Wisconsin Supreme Court appoints the Director of State Courts, the State Law Librarian and staff, the Board of Bar Examiners, the Board of Attorneys Professional Responsibility, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Conference, 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 2 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 in which procedures are streamlined and informal. The judge decides the outcome, unless a jury trial is requested, and attorneys commonly are not used. The circuit court (or a specified branch of the court) can sit as a small claims court at the request of the plaintiff if the amount in question is \$5,000 or less. Small claims actions typically involve landlord-tenant cases and collection of small debts.

A final judgment by the circuit court can be appealed to the appellate court, but a decision by the Wisconsin Court of Appeals can be reviewed only if the Wisconsin Supreme Court grants a petition for review. There are also 3 instances in which the supreme court, at its discretion, may decide to bypass the appeals court. The supreme court may review a case on its own initiative. It may also decide to review a matter prior to an appellate decision upon 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 review by the highest court under a procedure known as “certification”.

*Criminal Cases.* Under Wisconsin law, criminal conduct is an act prohibited by state law and punishable by fine or imprisonment or both. There are 2 types of crime – felonies and misdemeanors. A felony is punishable by imprisonment in the state prison; all other crimes are misdemeanors. Misdemeanors have a maximum sentence of 9 months unless the violator is a “repeat-offender” 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 constituting 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 a warrant in the case of a felony or a summons in the case of a misdemeanor. A law enforcement officer must then serve a copy of the warrant or summons on an individual and make an arrest.

Once the defendant is in custody, he or she is taken before a circuit judge or court commissioner and informed of the charges and the right to be represented by a lawyer. 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. When the defendant does not waive the preliminary examination, the judge or court commissioner transfers the action to a circuit court for the hearing. 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. A formal hearing, called an arraignment, is then held before the circuit court judge at which time 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 exonerated and 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.

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

The constitution originally divided the state into 5 judicial circuit districts. The 5 judges who presided over these 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 service. 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 2 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 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.

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*Manitowoc Circuit Court Judge Alan Deehr hosts students from Mishicot High School as part of Law Day activity on May 1, 1997. Courthouses throughout the state were involved in various activities to observe the day and heighten public understanding of the courts. (Office of the Director of State Courts)*



## SUPREME COURT

**Chief Justice:** SHIRLEY S. ABRAHAMSON

**Justices:** DONALD W. STEINMETZ  
WILLIAM A. BABLITCH  
JON P. WILCOX  
JANINE P. GESKE  
ANN WALSH BRADLEY  
N. PATRICK CROOKS

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

**Locations:** Room 231 East, State Capitol (Court); 110 East Main Street (Clerk).

**Telephone:** (608) 266-1298.

**Fax:** (608) 261-8299.

*Clerk of Supreme Court:* MARILYN L. GRAVES, 266-1880, Fax: 267-0640.

*Court Commissioners:* NANCY KOPP, GREGORY POKRASS, JOSEPH M. WILSON, 266-7442; WILLIAM MANN, 266-6708.

**Number of Positions:** 36.00.

**Total Budget 1995-96:** \$3,239,200.

**Total Budget 1996-97:** \$3,339,500.

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

**Statutory Reference:** Chapter 751.

**Responsibility:** The Wisconsin Supreme Court is the final authority on matters pertaining to the Wisconsin Constitution and the highest tribunal for all actions begun in the state, except those involving federal issues appealable to the U.S. Supreme Court. The court hears only those cases it selects. 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. It exercises "appellate" jurisdiction if 3 or more justices grant a petition to review a decision of a lower court. The supreme court may grant petitions from the parties to a case to bypass the court of appeals. It may also accept cases certified to it by the court of appeals or decide on its own motion to review matters appealed to the court of appeals. The court's principal criterion for exercising either original or appellate jurisdiction is whether the case involves questions of statewide importance that the court should address.

The court does not take testimony. Instead, it decides cases on the basis of written briefs and, occasionally, oral arguments. 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. Assisted by 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 a circuit judge or a reserve judge to serve temporarily.

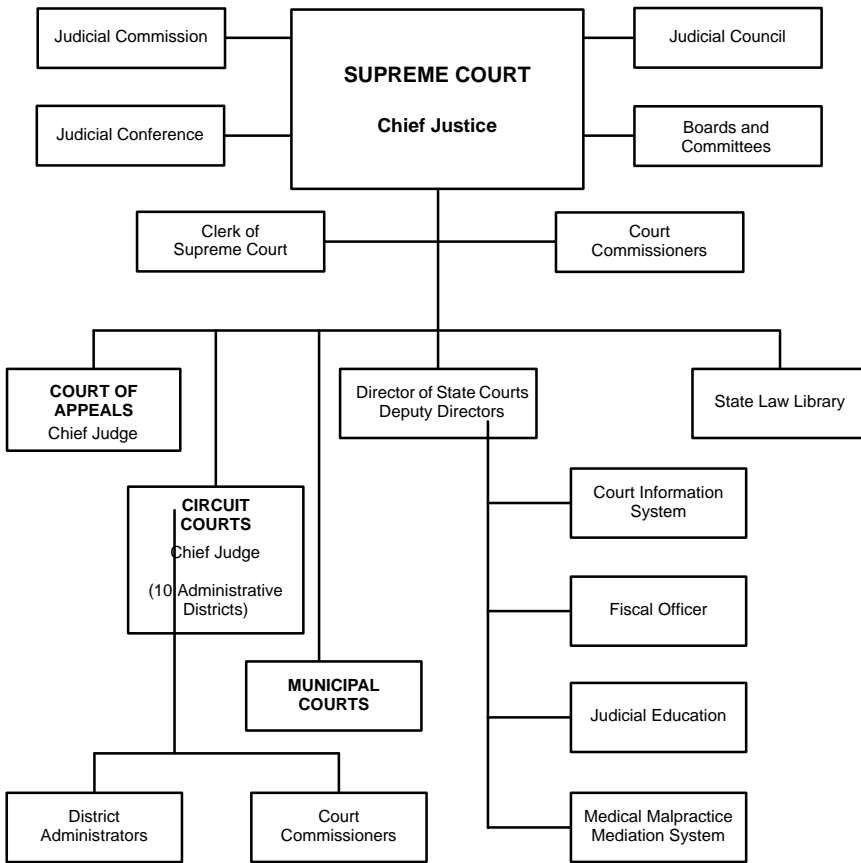
**Organization:** The supreme court consists of 7 justices elected to 10-year terms on the nonpartisan spring ballot. They take office on August 1 after the April election. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are often filled by gubernatorial appointees who serve until a successor can be elected.

The justice with the longest 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 the court's 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 private secretary and a law clerk.



**WISCONSIN COURT SYSTEM – ADMINISTRATIVE STRUCTURE**



Associated Unit: State Bar of Wisconsin



## COURT OF APPEALS

<i>Judges: District I:</i>	PATRICIA S. CURLEY (2002) RALPH ADAM FINE (2000) CHARLES B. SCHUDSON (1998) TED E. WEDEMEYER, JR.* (1997)
<i>District II:</i>	DANIEL P. ANDERSON* (2001) RICHARD S. BROWN (2000) NEAL P. NETTESHEIM (2002) HARRY G. SNYDER (1998)
<i>District III:</i>	R. THOMAS CANE* (2001) DANIEL L. LAROCQUE (1997) GORDON MYSE (1999)
<i>District IV:</i>	DAVID G. DEININGER (1997) CHARLES P. DYKMAN* (1998) WILLIAM F. EICH** (1999) PATIENCE D. ROGGENSACK (2002) MARGARET J. VERGERONT (2000)

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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.

*Clerk of Appeals Court:* MARILYN L. GRAVES, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Madison, 266-1880, Fax: 267-0640.

*Chief Staff Attorney:* MARGARET CARLSON, 7th Floor, 119 Martin Luther King Jr. Boulevard, Madison 53703, 266-9323.

**Telephones:** (608) 266-1880; Bulletin Board: (608) 266-7866.

**Fax:** (608) 267-0640.

**Number of Positions:** 73.00.

**Total Budget 1995-96:** \$6,208,800.

**Total Budget 1996-97:** \$6,170,800.

**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.

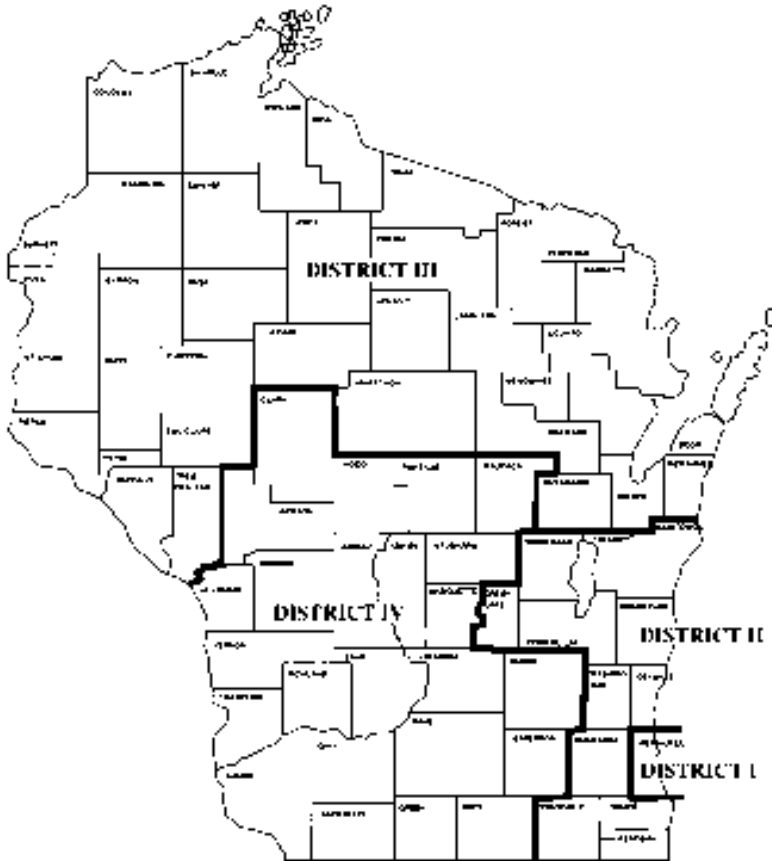
Appellate judges are elected for 6-year terms at the nonpartisan April election and must reside in the district from which they are chosen. Judges begin their terms of office on August 1 following election. Only one judge may be elected in a district in any one year.

The judges on the Court of Appeals are assisted by staff attorneys, private secretaries and law examiners. The current annual salary for appellate judges is \$94,804, as set by statute. (This figure could change on August 1, 1997, or later, depending on passage of the 1997-1999 state budget.)

**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.



COURT OF APPEALS DISTRICTS



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 uses 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 to civil cases.

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*.

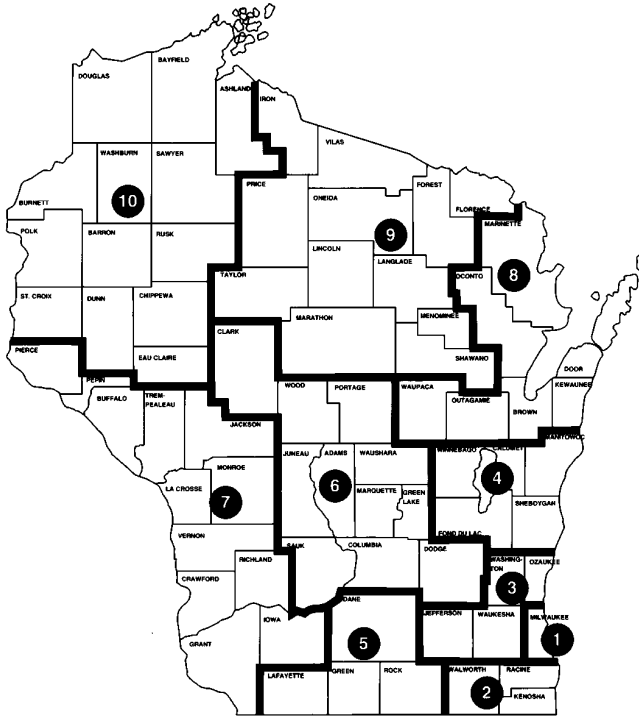


**CIRCUIT COURTS**

- District 1:** Room 609, Milwaukee County Courthouse, 901 North 9th Street, Milwaukee 53233-1425. Telephone: (414) 278-5113; Fax: (414) 223-1264.  
*Chief Judge:* PATRICK T. SHEEDY.  
*Administrator:* vacancy.  
*Assistant Administrator:* MICHAEL NEIMON.
- District 2:** Racine County Courthouse, 730 Wisconsin Avenue, Racine 53403-1274. Telephone: (414) 636-3133; Fax: (414) 636-3437.  
*Chief Judge:* BARBARA A. KLUKA.  
*Administrator:* KERRY CONNELLY.
- District 3:** Room 359, Waukesha County Courthouse, 515 West Moreland Boulevard, Waukesha 53188-2428. Telephone: (414) 548-7209; Fax: (414) 548-7815.  
*Chief Judge:* MARK S. GEMPELER.  
*Administrator:* PATRICK BRUMMOND.
- District 4:** Suite 102, 315 Algoma Boulevard, Oshkosh 54901-4773. Telephone: (414) 424-0028; Fax: (414) 424-0096.  
*Chief Judge:* ROBERT A. HAASE.  
*Administrator:* JERRY LANG.
- District 5:** Room 319, City-County Building, Madison 53709-0001. Telephone: (608) 267-8820; Fax: (608) 267-4151.  
*Chief Judge:* DANIEL R. MOESER.  
*Administrator:* GAIL RICHARDSON.
- District 6:** Suite 9, 101 Division, North, Stevens Point 54481-1150. Telephone: (715) 345-5295; Fax: (715) 345-5297.  
*Chief Judge:* DENNIS D. CONWAY.  
*Administrator:* SAMUEL SHELTON.
- District 7:** La Crosse County Courthouse, 400 North 4th Street, La Crosse 54601-4017. Telephone: (608) 785-9546; Fax: (608) 785-5530.  
*Chief Judge:* ROBERT W. RADCLIFFE.  
*Administrator:* STEVEN STEADMAN.
- District 8:** Suite 221, 414 East Walnut Street, Green Bay 54301-5020. Telephone: (414) 448-4281; Fax: (414) 448-4336.  
*Chief Judge:* PHILIP M. KIRK.  
*Administrator:* JANE SCHETTER.
- District 9:** 740 Third Street, Wausau 54401-4706. Telephone: (715) 842-3872; Fax: (715) 845-4523.  
*Chief Judge:* EARL W. SCHMIDT.  
*Administrator:* JAMES SEIDEL.
- District 10:** Suite C, 405 South Barstow Street, Eau Claire 54701-3606. Telephone: (715) 839-4826; Fax: (715) 839-4891.  
*Chief Judge:* GREGORY A. PETERSON.  
*Administrator:* GREGG MOORE.
- State-Funded Positions:** 494.00.  
**Total Budget 1995-96:** \$60,188,600.  
**Total Budget 1996-97:** \$65,540,300.
- Constitutional References:** Article VII, Sections 2, 6-11, and 13.  
**Statutory Reference:** Chapter 753.

**Responsibility:** The circuit court is the trial court of general jurisdiction in Wisconsin. It has original jurisdiction in both civil and criminal matters unless exclusive jurisdiction is given to





another court. It also reviews state agency decisions and hears appeals from municipal courts. Jury trials are conducted only in circuit courts.

The constitution requires that a circuit must 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. At present, 37 of the state’s 69 judicial circuits have multiple branches for a total of 233 circuit judgeships.

**Organization:** Circuit judges, who serve 6-year terms, are elected on a nonpartisan basis at 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 state pays the salaries of circuit judges (\$90,661 in the 1995-97 biennium) 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.

*Court Commissioners.* Court commissioners serve the circuit court and must be attorneys licensed to practice law in Wisconsin. On their own authority, court commissioners can perform



marriages, administer oaths, take depositions, issue subpoenas and certain writs, and transfer any matter to a court if it appears that justice would be better served by transfer. With approval of the respective chief judges, circuit court judges may authorize court commissioners to conduct uncontested probate proceedings, hear petitions for mental health commitment, issue arrest warrants, set bail in criminal cases, impose monetary penalties in traffic cases, conduct small claims court actions and perform various other duties.

The statutes require Milwaukee County to have full-time court commissioners to handle small claims, probate and family court matters. Counties with smaller populations may have such commissioners if they meet statutory criteria. In any county, a circuit court judge may appoint one or more part-time court commissioners to conduct court business, and the county board may authorize the chief judge to appoint juvenile court commissioners.

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## MUNICIPAL COURTS

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

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

**Responsibility:** The Wisconsin Legislature authorizes cities, villages and towns to establish municipal courts to exercise jurisdiction over municipal ordinance violations that have monetary penalties. Other types of cases must be brought in circuit court. 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. Municipal court decisions may be appealed by either side to the circuit court of the county where the offense occurred. If a defendant fails to pay the forfeiture or restitution, the municipal court may suspend the driver's license or commit the defendant to jail.

Two or more municipalities may agree to form a joint court, and courts may have multiple branches. As of May 1, 1997, there were 214 municipal courts, with 13 being joint courts serving from 2 to 10 municipalities. There were a total of 216 judges with the City of Milwaukee's municipal court having 3 branches.

Upon convicting a defendant, the municipal court may order payment of a forfeiture plus costs and assessments, or, if the defendant agrees, it may order community service in lieu of a forfeiture. Municipal courts also may 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.

**Organization:** Municipal judges are elected at the nonpartisan spring 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 in which the municipality lies may transfer the case to another municipal judge in the district. If none is available, the case will be heard in circuit court.

**History:** The office of justice of the peace was abolished by a constitutional amendment ratified in April 1966, which repealed Article VII, Section 15, of the Wisconsin Constitution. Chapter 276, Laws of 1967, statutorily implemented the elimination of the office of justice of the peace and also authorized cities, villages and towns to establish municipal courts. A constitutional amendment ratified in April 1977, amending Article VII, Section 14, of the Wisconsin Constitution, specifically empowered the legislature to authorize municipal courts.

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**JUDGES OF CIRCUIT COURT**  
**May 1, 1997**

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Adams	Friendship	Duane H. Polivka <sup>2</sup>	1997
Ashland	Ashland	Robert E. Eaton	2000
Barron			
Branch 1	Barron	James C. Eaton	1998
Branch 2	Barron	Edward R. Brunner	2000
Bayfield	Washburn	Thomas J. Gallagher	2001
Brown			
Branch 1	Green Bay	Richard G. Greenwood <sup>3</sup>	1997
Branch 2	Green Bay	Vivi Dilweg	2001
Branch 3	Green Bay	Susan Bischel	1998
Branch 4	Green Bay	William Griesbach	2002
Branch 5	Green Bay	Peter Naze	1999
Branch 6	Green Bay	John D. McKay <sup>2</sup>	1997
Branch 7	Green Bay	Richard J. Dietz	2001
Branch 8	Green Bay	William M. Atkinson <sup>2</sup>	1997
Buffalo-Pepin	Alma	Dane Morey	2002
Burnett	Siren	James H. Taylor <sup>2</sup>	1997
Calumet	Chilton	Donald A. Poppy	1998
Chippewa			
Branch 1	Chippewa Falls	Roderick Cameron	2002
Branch 2	Chippewa Falls	Thomas J. Szama	2001
Clark	Neillsville	Michael W. Brennan <sup>2</sup>	1997
Columbia			
Branch 1	Portage	Daniel S. George <sup>2</sup>	1997
Branch 2	Portage	Lewis W. Charles	1999
Branch 3	Portage	Richard L. Rehm <sup>2</sup>	1997
Crawford	Prairie du Chien	Michael T. Kirchman	2001
Dane			
Branch 1	Madison	Robert DeChambeau	1999
Branch 2	Madison	Michael B. Torphy, Jr.	1999
Branch 3	Madison	P. Charles Jones	2001
Branch 4	Madison	John Aulik	1998
Branch 5	Madison	Robert R. Pekowsky	2002
Branch 6	Madison	Richard J. Callaway <sup>2</sup>	1997
Branch 7	Madison	Moria Krueger <sup>2</sup>	1997
Branch 8	Madison	Patrick J. Fiedler	2000
Branch 9	Madison	Gerald C. Nichol	2000
Branch 10	Madison	Angela B. Bartell <sup>2</sup>	1997
Branch 11	Madison	Daniel R. Moeser <sup>2</sup>	1997
Branch 12	Madison	Mark A. Frankel <sup>2</sup>	1997
Branch 13	Madison	Michael N. Nowakowski <sup>2</sup>	1997
Branch 14	Madison	George Northrup <sup>2</sup>	1997
Branch 15	Madison	Stuart Schwartz	1998
Branch 16	Madison	Sarah O'Brien	1998
Branch 17	Madison	Paul Higginbotham	2000
Dodge			
Branch 1	Juneau	Daniel Klossner	2002
Branch 2	Juneau	John R. Storck	2001
Branch 3	Juneau	Andrew P. Bissonnette	2001
Door			
Branch 1	Sturgeon Bay	John D. Koehn	2000
Branch 2	Sturgeon Bay	Peter C. Diltz	2000
Douglas			
Branch 1	Superior	Michael T. Lucci <sup>2</sup>	1997
Branch 2	Superior	Joseph A. McDonald	2001
Dunn			
Branch 1	Menomonie	Donna J. Muza	1998
Branch 2	Menomonie	James A. Wendland <sup>4</sup>	1997
Eau Claire			
Branch 1	Eau Claire	Thomas H. Barland	2000
Branch 2	Eau Claire	Eric Wahl	1999
Branch 3	Eau Claire	Gregory Peterson	2002
Branch 4	Eau Claire	Benjamin Proctor	2000
Branch 5	Eau Claire	Paul J. Lenz	2000
Florence (see <i>Forest-Florence</i> )			
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2002
Branch 2	Fond du Lac	Peter L. Grimm	1998
Branch 3	Fond du Lac	Henry B. Buslee	1998
Branch 4	Fond du Lac	Steven W. Weinke	1998
Forest-Florence	Crandon	Robert A. Kennedy	2002
Grant			
Branch 1	Lancaster	John R. Wagner <sup>2</sup>	1997

**JUDGES OF CIRCUIT COURT—Continued**  
**May 1, 1997**

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Grant (continued)			
Branch 2	Lancaster	George S. Curry <sup>2</sup>	1997
Green	Monroe	James R. Beer <sup>2</sup>	1997
Green Lake	Green Lake	William M. McMonigal	1999
Iowa	Dodgeville	William D. Dyke <sup>5</sup>	1998
Iron	Hurley	Patrick John Madden	1999
Jackson	Black River Falls	Robert Radcliffe	2002
Jefferson			
Branch 1	Jefferson	John M. Ullsvik <sup>2</sup>	1997
Branch 2	Jefferson	William F. Hue	2001
Branch 3	Jefferson	Jacqueline R. Erwin <sup>2</sup>	1997
Juneau	Mauston	John W. Brady	1998
Kenosha			
Branch 1	Kenosha	David M. Bastianelli <sup>2</sup>	1997
Branch 2	Kenosha	Barbara A. Kluka	2001
Branch 3	Kenosha	Bruce Schroeder	2002
Branch 4	Kenosha	Michael S. Fisher	1999
Branch 5	Kenosha	Wilbur W. Warren III <sup>2</sup>	1997
Branch 6	Kenosha	Mary K. Wagner-Malloy <sup>2</sup>	1997
Branch 7	Kenosha	S. Michael Wilk	2000
Kewaunee	Kewaunee	Dennis J. Mleziva	1998
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez	2001
Branch 2	La Crosse	Michael Mulroy	2001
Branch 3	La Crosse	Dennis G. Montabon <sup>2</sup>	1997
Branch 4	La Crosse	John J. Perlich <sup>2</sup>	1997
Lafayette	Darlington	William D. Johnston <sup>2</sup>	1997
Langlade	Antigo	James P. Jansen	1999
Lincoln	Merrill	John Michael Nolan	1998
Manitowoc			
Branch 1	Manitowoc	Allan J. Deehr	1999
Branch 2	Manitowoc	Darryl W. Deets	2001
Branch 3	Manitowoc	Fred H. Hazlewood	1999
Marathon			
Branch 1	Wausau	Michael W. Hoover <sup>6</sup>	2000
Branch 2	Wausau	Raymond F. Thums	2001
Branch 3	Wausau	Vincent K. Howard	2002
Branch 4	Wausau	Gregory Grau	2001
Marinette			
Branch 1	Marinette	Charles D. Heath	2002
Branch 2	Marinette	Tim A. Duket	2002
Marquette	Montello	Richard O. Wright	2001
Menominee (see <i>Shawano-Menominee</i> )			
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	1999
Branch 2	Milwaukee	M. Joseph Donald <sup>2</sup>	1997
Branch 3	Milwaukee	Clare L. Fiorenza <sup>2</sup>	1997
Branch 4	Milwaukee	Mel Flanagan	2000
Branch 5	Milwaukee	Patrick T. Sheedy	1998
Branch 6	Milwaukee	Kitty K. Brennan	2000
Branch 7	Milwaukee	John F. Foley <sup>7</sup>	1997
Branch 8	Milwaukee	Michael J. Barron	1998
Branch 9	Milwaukee	Robert W. Crawford	2002
Branch 10	Milwaukee	Timothy G. Dugan	1999
Branch 11	Milwaukee	Dominic S. Amato	2001
Branch 12	Milwaukee	Michael J. Skwierawski <sup>2</sup>	1997
Branch 13	Milwaukee	Victor Manian	2000
Branch 14	Milwaukee	Christopher R. Foley	1998
Branch 15	Milwaukee	Ronald S. Goldberg	2001
Branch 16	Milwaukee	William D. Gardner <sup>8</sup>	1997
Branch 17	Milwaukee	Francis Wasielewski	2002
Branch 18	Milwaukee	Patricia McMahon	1999
Branch 19	Milwaukee	John E. McCormick	1999
Branch 20	Milwaukee	Dennis P. Moroney	2000
Branch 21	Milwaukee	Stanley A. Miller	1999
Branch 22	Milwaukee	William J. Haese	1999
Branch 23	Milwaukee	Elsa C. Lamelas	2000
Branch 24	Milwaukee	Charles F. Kahn	1998
Branch 25	Milwaukee	John A. Franke	1999
Branch 26	Milwaukee	Michael P. Sullivan	2002
Branch 27	Milwaukee	Thomas P. Doherty	1999
Branch 28	Milwaukee	Thomas R. Cooper	2000
Branch 29	Milwaukee	Richard J. Sankovitz <sup>2</sup>	1997
Branch 30	Milwaukee	Frank T. Crivello <sup>9</sup>	1997



**JUDGES OF CIRCUIT COURT—Continued**  
**May 1, 1997**

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
<b>Milwaukee (continued)</b>			
Branch 31	Milwaukee	Daniel A. Noonan	2002
Branch 32	Milwaukee	Michael D. Guolee	2002
Branch 33	Milwaukee	Laurence C. Gram, Jr.	1999
Branch 34	Milwaukee	Jacqueline D. Schellinger	1999
Branch 35	Milwaukee	Lee E. Wells	2000
Branch 36	Milwaukee	Jeffrey A. Kremers	1999
Branch 37	Milwaukee	Arlene D. Connors	1998
Branch 38	Milwaukee	Jeffrey A. Wagner	2000
Branch 39	Milwaukee	Michael Malmstadt	2000
Branch 40	Milwaukee	Louise M. Tesmer	2001
Branch 41	Milwaukee	John J. DiMotto	2002
Branch 42	Milwaukee	David A. Hansher <sup>2</sup>	1997
Branch 43	Milwaukee	Diane S. Sykes	1998
Branch 44	Milwaukee	Daniel L. Konkol	1998
Branch 45	Milwaukee	Thomas P. Donegan	1998
Branch 46	Milwaukee	Bonnie L. Gordon	2000
<b>Monroe</b>			
Branch 1	Sparta	Steven L. Abbott	2001
Branch 2	Sparta	Michael J. McAlpine	1998
Oconto	Oconto	Larry L. Jeske	1999
<b>Oneida</b>			
Branch 1	Rhineland	Robert E. Kinney	2002
Branch 2	Rhineland	Mark A. Mangerson	2000
<b>Outagamie</b>			
Branch 1	Appleton	James T. Bayorgeon	2002
Branch 2	Appleton	Dennis C. Luebke <sup>2</sup>	1997
Branch 3	Appleton	Joseph M. Troy	1999
Branch 4	Appleton	Harold Froehlich	2000
Branch 5	Appleton	Michael W. Gage <sup>2</sup>	1997
Branch 6	Appleton	Dee R. Dyer	2000
Branch 7	Appleton	John A. Des Jardins	2000
<b>Ozaukee</b>			
Branch 1	Port Washington	Walter J. Swietlik <sup>2</sup>	1997
Branch 2	Port Washington	Tom R. Wolfgram	2001
Branch 3	Port Washington	Joseph D. McCormack <sup>2</sup>	1997
<b>Pepin (see <i>Buffalo-Pepin</i>)</b>			
Pierce	Ellsworth	Robert W. Wing	1998
<b>Polk</b>			
Branch 1	Balsam Lake	James Erickson	2002
Branch 2	Balsam Lake	Robert H. Rasmussen <sup>2</sup>	1997
<b>Portage</b>			
Branch 1	Stevens Point	Frederic W. Fleishauer	1999
Branch 2	Stevens Point	John V. Finn	2001
Branch 3	Stevens Point	Thomas T. Flugaur	2000
Price	Phillips	Douglas Fox	2002
<b>Racine</b>			
Branch 1	Racine	Gerald P. Ptacek	2001
Branch 2	Racine	Stephen A. Simanek	1998
Branch 3	Racine	Emily S. Mueller	1999
Branch 4	Racine	Emmanuel J. Vuvunas	1998
Branch 5	Racine	Dennis J. Barry	1999
Branch 6	Racine	Wayne J. Marik <sup>2</sup>	1997
Branch 7	Racine	Charles H. Constantine	2002
Branch 8	Racine	Dennis J. Flynn	2000
Branch 9	Racine	Allan B. Torhorst <sup>2</sup>	1997
Branch 10	Racine	Richard J. Kreul	2000
Richland	Richland Center	Kent C. Houck <sup>10</sup>	1997
<b>Rock</b>			
Branch 1	Janesville	James P. Daley	2002
Branch 2	Janesville	John H. Lussow	1998
Branch 3	Janesville	Michael J. Byron	1998
Branch 4	Beloit	Edwin C. Dahlberg	2002
Branch 5	Beloit	John W. Roethe <sup>2</sup>	1997
Branch 6	Janesville	Richard T. Werner <sup>2</sup>	1997
Branch 7	Beloit	James E. Welker	2000
Rusk	Ladysmith	Frederick Henderson	1998
<b>St. Croix</b>			
Branch 1	Hudson	Eric J. Lundell	2002
Branch 2	Hudson	Conrad A. Richards	2001
Branch 3	Hudson	Scott R. Needham	2000
<b>Sauk</b>			
Branch 1	Baraboo	Patrick J. Taggart	2000
Branch 2	Baraboo	James Evenson	1998

**JUDGES OF CIRCUIT COURT—Continued**  
**May 1, 1997**

Circuits <sup>1</sup>	Court Location	Judges	Term Expires July 31
Sauk (continued)			
Branch 3	Baraboo	Virginia Wolfe	2000
Sawyer	Hayward	Norman L. Yackel <sup>2</sup>	1997
Shawano-Menominee			
Branch 1	Shawano	Earl Schmidt	2002
Branch 2	Shawano	Thomas G. Grover	2001
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel <sup>2</sup>	1997
Branch 2	Sheboygan	Timothy M. Van Akkeren	2001
Branch 3	Sheboygan	Gary Langhoff	1999
Branch 4	Sheboygan	John B. Murphy <sup>2</sup>	1997
Branch 5	Sheboygan	James J. Bolgert	2000
Taylor	Medford	Gary Lee Carlson	1998
Trempealeau	Whitehall	John A. Damon	2001
Vernon	Viroqua	Michael J. Rosborough	1999
Vilas	Eagle River	James Mohr	2002
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2000
Branch 2	Elkhorn	James L. Carlson	1998
Branch 3	Elkhorn	John R. Race <sup>2</sup>	1997
Branch 4	Elkhorn	Michael S. Gibbs	1998
Washburn	Shell Lake	Warren E. Winton <sup>11</sup>	1997
Washington			
Branch 1	West Bend	Lawrence F. Waddick	2002
Branch 2	West Bend	Annette K. Ziegler <sup>12</sup>	1998
Branch 3	West Bend	Richard T. Becker	2002
Branch 4	West Bend	Leo F. Schlaefer	2000
Waukesha			
Branch 1	Waukesha	Joseph Wimmer	1998
Branch 2	Waukesha	Mark Gempeler	2002
Branch 3	Waukesha	Roger P. Murphy	1999
Branch 4	Waukesha	Patrick L. Snyder <sup>4</sup>	1997
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2002
Branch 6	Waukesha	Patrick C. Haughney	2002
Branch 7	Waukesha	Clair H. Voss <sup>13</sup>	1997
Branch 8	Waukesha	James R. Kieffer <sup>2</sup>	1997
Branch 9	Waukesha	Donald J. Hassin, Jr.	2001
Branch 10	Waukesha	Marianne E. Becker <sup>2</sup>	1997
Branch 11	Waukesha	Robert G. Mawdsley	2000
Branch 12	Waukesha	Kathryn W. Foster	2000
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	1999
Branch 2	Waupaca	John P. Hoffmann	1998
Wausara	Wautoma	Lewis R. Murach	1999
Winnebago			
Branch 1	Oshkosh	William E. Crane	2000
Branch 2	Oshkosh	Robert Haase	2000
Branch 3	Oshkosh	Thomas S. Williams	1998
Branch 4	Oshkosh	Robert Hawley	2000
Branch 5	Oshkosh	William H. Carver	1998
Branch 6	Oshkosh	Bruce K. Schmidt <sup>2</sup>	1997
Wood			
Branch 1	Wisconsin Rapids	Dennis D. Conway <sup>2</sup>	1997
Branch 2	Wisconsin Rapids	James M. Mason	1998
Branch 3	Wisconsin Rapids	Edward F. Zappen, Jr. <sup>2</sup>	1997

<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 \$90,661. Salaries could change as of August 1, 1997, when any one of the circuit court judges is inaugurated for a new term, but the amount will be determined upon passage of the 1997-99 state budget.

<sup>2</sup>Reelected on April 1, 1997, for a 6-year term to commence August 1, 1997.

<sup>3</sup>Donald R. Zuidmulder elected for a 6-year term to commence August 1, 1997.

<sup>4</sup>Rod W. Smeltzer elected for a 6-year term to commence August 1, 1997.

<sup>5</sup>William D. Dyke appointed by governor, effective January 1, 1997.

<sup>6</sup>Elected to the court of appeals for a 6-year term to commence August 1, 1997.

<sup>7</sup>Jean W. DiMotto elected for a 6-year term to commence August 1, 1997.

<sup>8</sup>Michael J. Dwyer elected for a 6-year term to commence August 1, 1997.

<sup>9</sup>Jeffrey Conen elected for a 6-year term to commence August 1, 1997.

<sup>10</sup>Edward E. Leineweber elected for a 6-year term to commence August 1, 1997.

<sup>11</sup>Eugene D. Harrington elected for a 6-year term to commence August 1, 1997.

<sup>12</sup>Annette K. Ziegler appointed by governor, effective April 21, 1997.

<sup>13</sup>J. Mac Davis elected for a 6-year term to commence August 1, 1997.

Sources: 1995-96 Wisconsin Statutes; State Elections Board, departmental data, April 1997; Director of State Courts, departmental data, May 1997; governor's appointment notices.

## 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:** J. DENIS MORAN, 266-6828.

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

**Location:** Room 213 Northeast, State Capitol, Madison.

**Fax:** (608) 267-0980.

*Deputy Director for Court Operations:* KATHLEEN MURPHY, Room 315, 110 East Main Street, Madison 53703, 266-3121, Fax: 267-0911.

*Deputy Director for Management Services:* MARY RIDER, Room 430, 110 East Main Street, Madison 53703, 266-8914, Fax: 261-8293.

*Court Information System:* vacancy, Room 303, 110 East Main Street, Madison 53703, 266-5750, Fax: 267-0911.

*Fiscal Officer:* PAM RADLOFF, Room 430, 110 East Main Street, Madison 53703, 266-6865, Fax: 261-8293.

*Judicial Education:* DAVID H. HASS, Room 200, 110 East Main Street, Madison 53703, 266-7807, Fax: 261-6650.

*Medical Malpractice Mediation System:* RANDY SPROULE, Room 320, 110 East Main Street, Madison 53703, 266-7711, Fax: 267-0911.

**Number of Employees:** 109.75.

**Total Budget 1995-96:** \$10,102,800.

**Total Budget 1996-97:** \$9,847,200.

**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 legislative liaison, public information, and the court information system. This officer 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 described in Chapter 655 of the statutes.

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:** MARCIA J. KOSLOV, 266-1424.

*Collection Support Services:* JULIE TESSMER.

*Public Services* (reference, circulation, government documents): JANE COLWIN.

*Technical Services:* ELAINE SHARP.

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

**Location:** Room 310 East, State Capitol, Madison.



**Telephones:** General Information: (608) 266-1600; Circulation: (608) 266-1600; Reference Assistance: (608) 267-9696; Toll-free: (800) 322-9755.

**Fax:** (608) 267-2319.

**Computer Bulletin Board:** Wisconsin State Online Law Library, 267-2055.

**Publications:** *A User's Guide to the Wisconsin State Law Library*; WSLI Newsletter; miscellaneous bibliographies of titles.

**Number of Employees:** 10.50.

**Total Budget 1995-96:** \$983,200.

**Total Budget 1996-97:** \$983,200.

**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. Since 1996, Milwaukee County has contracted with the library to administer the Milwaukee Legal Resource Center, an automated law library with electronic access to the State Law Library.

The collection features the 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. General reference materials include selected documents of the federal government, legal and bar periodicals, legal treatises and legal encyclopedias. The library also provides reference and basic legal research services. Through a circulation policy instituted in 1976, much of the collection is now available on short-term loan to judges, attorneys, legislators and state agency personnel.

#### BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY

*Board of Attorneys Professional Responsibility:* ADRIAN SCHOONE (State Bar member), *chairperson*; SHARREN ROSE (State Bar member), *vice chairperson*; JON P. AXELROD, WILLIAM FALE, WILLIAM KOSLO, JAMES MARTIN, GERALD O'BRIEN, TRINETTE PITTS (State Bar members); LAURA DEGOLIER, ARTHUR EGBERT, BONNIE SCHWID, WALTER L. WASHBURN (nonlawyers). (All members are appointed by supreme court.)

*Administrator:* GERALD C. STERNBERG.

*Deputy Administrator:* ELSA P. GREENE.

*Deputy Administrator, Milwaukee Office:* JEANANNE L. DANNER.

**Mailing Addresses:** Room 410, 110 East Main Street, Madison 53703; Room 102, 611 North Broadway, Milwaukee 53202.

**Telephones:** Madison: (608) 267-7274; Milwaukee: (414) 227-4623.

**Fax:** Madison: (608) 267-1959; Milwaukee: (414) 227-4414.

**Number of Employees:** 18.00.

**Total Budget 1995-96:** \$1,252,900.

**Total Budget 1996-97:** \$1,252,900.

**References:** Supreme Court Rules, Chapters 21 and 22.

**Responsibility:** The Board of Attorneys Professional Responsibility is the agency of the supreme court that assists 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. It investigates complaints of attorney misconduct and takes disciplinary action ranging from private reprimand to the filing of a formal complaint with the supreme court asking public reprimand, license suspension or revocation, monetary payment or conditions on the continued practice of law. Upon request of the supreme court or the Board of Bar Examiners, the board investigates the moral character of persons seeking admission to the State Bar. It also reports its findings and recommendations to the supreme court when an attorney petitions for reinstatement.



ment of a license to practice, and it investigates and files petitions with the court regarding an attorney's medical incapacity.

The 12-member board was created on January 1, 1977, by order of the Wisconsin Supreme Court. It assumed the attorney disciplinary function of the former Board of State Bar Commissioners on January 1, 1978. Members serve staggered 3-year terms, but none may serve more than 2 consecutive terms. The board appoints an administrator who must be eligible to practice law in Wisconsin to investigate and report to the board regarding any possible misconduct or medical incapacity.

### BOARD OF BAR EXAMINERS

*Board of Bar Examiners:* DANIEL W. KLOSSNER (circuit court judge), *chairperson*; CELIA M. JACKSON (State Bar member), *vice chairperson*; JAMES P. O'BRIEN, THEODORE J. POULOS, MARY L. STAUDENMAIER, CHARLOTTE F. WESTERHAUS (State Bar members); GERALD J. THAIN (UW Law School faculty); HOWARD B. EISENBERG (Marquette University Law School faculty); MARY E. WICKHEM (public member). (All members are appointed by the supreme court.)

*Director:* GENE R. RANKIN, 266-9760; Fax: (608) 266-1196.

**Mailing Address:** Room 405, 119 Martin Luther King Jr. Boulevard, Madison 53703-3355.

**Number of Employees:** 7.50.

**Total Budget 1995-96:** \$404,000.

**Total Budget 1996-97:** \$404,000.

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

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

The 9-member 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 2 consecutive full terms.

### JUDICIAL COMMISSION

*Members:* ROBERT H. PAPKE (nonlawyer), *chairperson*; R. THOMAS CANE (appeals court judge), KATHRYN FOSTER (circuit court judge), DANIEL W. HILDEBRAND, THOMAS S. SLEIK (State Bar members); MARILYNN J. CHESBROUGH, SPYRO CONDOS, LYNDIA S. CULLEY, DAVID R. HUEBSCH (nonlawyers). (Judges and State Bar members appointed by supreme court. Nonlawyers are appointed by governor with senate consent.)

*Executive Director:* JAMES C. ALEXANDER.

*Administrative Assistant:* GINNY L. PICKHARDT.

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

**Telephone:** (608) 266-7637.

**Fax:** (608) 266-8647.

**Publication:** Annual Report.

**Number of Employees:** 2.00.

**Total Budget 1995-96:** \$178,800.

**Total Budget 1996-97:** \$178,800.

**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 2 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 will select a 3-judge panel to hear the complaint or petition.

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

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

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

### JUDICIAL CONFERENCE

*Members:* All supreme court justices, court of appeals judges, circuit court judges and reserve judges.

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

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

### JUDICIAL COUNCIL

*Members:* STEPHEN D. WILLETT (public member appointed by governor), *chairperson*; WAYNE J. MARIK (circuit judge designated by Judicial Conference), *vice chairperson*; JON P. WILCOX (justice designated by supreme court); TED E. WEDENMEYER, JR. (judge designated by appeals court); J. DENIS MORAN (director of state courts); MICHAEL W. BRENNAN, VIVI L. DILWEG, LEE WELLS (circuit judges designated by Judicial Conference); SENATOR ADELMAN (chairperson, Senate Committee on Judiciary, Campaign Finance Reform and Consumer Affairs), REPRESENTATIVE GREEN (chairperson, Assembly Judiciary Committee); JAMES A. DRILL, SUSAN R. STEINGASS, GRETCHEN VINEY (designated by State Bar); ERIC JOHNSON (district attorney appointed by governor); MATTHEW J. FRANK (designated by attorney general); BRUCE MUNSON (revisor of statutes); DAVID E. SCHULTZ (designated by dean, UW law school), DANIEL D. BLINKA (designated by dean, Marquette University Law School); STEVE SORENSON (president-elect, State Bar); MARLA J. STEPHENS (designated by state public defender); SHERRI MCNAMARA (public member appointed by governor).

*Executive Secretary:* JAMES C. ALEXANDER.

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



**Telephone:** (608) 266-7637.

**Fax:** (608) 266-8657.

**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. It helps prepare the supreme court rules for biennial publication. The council studies the rules of pleading, practice, and procedure and advises the supreme court about changes that will simplify procedure and promote a speedy disposition of litigation.

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

### JUDICIAL EDUCATION COMMITTEE

*Judicial Education Committee:* SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson*; R. THOMAS CANE (designated by appeals court chief judge); DANIEL O. BERNSTINE (dean, UW Law School); JOHN J. DiMOTTO, MARK FRANKEL, RAMONA A. GONZALEZ, ELSA C. LAMELAS, LEWIS R. MURACH, SCOTT R. NEEDHAM, GERALD C. NICHOL, JOHN R. STOREK (circuit court judges appointed by supreme court); J. DENIS MORAN (director of state courts); HOWARD B. EISENBERG (dean, Marquette University Law School); JANINE P. GESKE (dean, Wisconsin Judicial College).

*Director of Judicial Education:* DAVID H. HASS.

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

**Telephone:** (608) 266-7807.

**Fax:** (608) 261-6650.

**Reference:** Supreme Court Rules 31-33.

**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 2 consecutive terms.

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 programs are developed and conducted by the Office of Judicial Education, which was established in 1971 by the supreme court. That office also sponsors initial and continuing educational programs for municipal judges and circuit court clerks.

### PLANNING AND POLICY ADVISORY COMMITTEE

*Planning and Policy Advisory Committee:* SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson*; GORDON MYSE (appeals court judge selected by court); RODERICK CAMERON, WILLIAM CRANE, ROBERT DECHAMBEAU, DOUGLAS T. FOX, HAROLD V. FROELICH, DAVID HANSHER, JEFFREY A. KREMERS, WILLIAM McMONIGAL, MICHAEL NOWAKOWSKI, JOHN J. PERLICH, LEO SCHLAEFER, LOUISE TESMER, ALLAN TORHORST (circuit court judges elected by judicial administrative districts); MICHAEL C. HURT (municipal judge elected by Wisconsin Municipal Judges Association); PAM BARKER, MICHELLE BEHNKE (State Bar members selected by

board of governors); JEAN JACOBSON (nonlawyer, elected county official); JOHN KAMINSKI, MARY WILLIAMS (nonlawyers); NICHOLAS CHIARKAS (public defender); STEVEN STEADMAN (court administrator); JAMES C. BABLER (prosecutor); SALLY AYERS (circuit court clerk). (Unless indicated otherwise, members are appointed by the chief justice.)

*Staff Policy Analyst:* A. JOHN VOELKER.

**Mailing Address:** Room 318, 110 East Main Street, Madison 53703.

**Telephone:** (608) 266-8861.

**Fax:** (608) 267-0911.

**Reference:** Supreme Court Rule 70.14.

**Responsibility:** The 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 25-member committee meets at least quarterly, and the supreme court meets with the committee annually.

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

## WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT

### STATE BAR OF WISCONSIN

*Board of Governors: Officers:* DAVID A. SAICHEK, *president*; STEVEN R. SORENSON, *president-elect*; JOHN S. SKILTON, *past president*; ROBERT R. GOEPEL, *chairperson of the board*; KATHLEEN E. GRANT, *secretary*; MICHELLE A. BEHNKE, *treasurer*. *District members:* MARY E. BURKE, DENNIS R. CIMPL, JOHN DAVID CLAYPOOL, JOSEPH C. CRAWFORD, CHERYL FURSTACE DANIELS, JOHN L. DESTAFANIS, DEAN R. DIETRICH, HANNAH C. DUGAN, ERICA M. EISINGER, NATHAN A. FISHBACH, MILO G. FLATEN, JR., JAMES D. FRIEDMAN, HOWARD GOLDBERG, ROBERT HAGNESS, THEODORE J. HODAN, THOMAS S. HORNIG, JAMES E. KENNY, TIMOTHY S. KNURR, MARIA S. LAZAR, PAUL V. MALLOY, DONALD E. MAYEW, MARK A. PENNOW, FRANCIS J. PODVIN, PAUL F. REILLY, KARMA S. RODGERS, ROBERT A. ROSS, DANIEL L. SHNEIDMAN, THOMAS L. SHRINER, JR., MARNA M. TESS-MATTNER, J. STEVEN TIKALSKY, JOHN W. WELTER, HARVEY L. WENDEL, GARY R. YAKES, NICHOLAS C. ZALES. *Young Lawyers Division:* CLAIRE J. HOLTZ. *Government Lawyers Division:* SHERWOOD K. ZINK. *Nonresident Lawyers Division:* ROBERT W. HANSEN, MARK M. PIERCE, DAVID J. ZUBKE. *Nonlawyer members:* PAUL E. HASSETT, MARCIA MENTKOWSKI, WILLIAM A. NEILL.

*Executive Director:* STEPHEN L. SMAY.

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

**Location:** 402 West Wilson Street, Madison.

**Telephones:** (608) 257-3838; Lawyer Referral and Information Service: (800) 362-9082.

**Publications:** *Consumer's Guide to Wisconsin Law*; *A Handbook for Personal Representatives*; *Wisconsin Lawyer*; *Wisconsin News Reporter's Legal Handbook*; various brochures, pamphlets and videotapes.

**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 that works to raise professional standards, improve the administration of justice 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 for supreme court boards 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 48-member board of governors consisting of the board's 6 officers, 34 members selected by State Bar members from the association's 16 districts, 5 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 organization of the State Bar of Wisconsin, effective January 1, 1957. This organization acquired the facilities, records, property, and staff of the former Wisconsin Bar Association, a voluntary 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 pending the disposition of a lawsuit in the U.S. Supreme Court, temporarily making the State Bar a voluntary membership association. The U.S. Supreme Court ruled in *Keller v. State Bar of California*, 496 U.S. 1 (1990), 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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## SUMMARY OF SIGNIFICANT DECISIONS OF THE WISCONSIN SUPREME COURT AND COURT OF APPEALS

October 1994 – September 1996

Robert Nelson and Jefren Olsen  
Legislative Reference Bureau

### CONSTITUTIONAL LAW

#### Powers and Duties of Superintendent of Public Instruction

Article X, Section 1, of the Wisconsin Constitution provides, in part: “The supervision of public instruction shall be vested in a state superintendent and such other officers the legislature shall direct; and their qualifications, powers, duties and compensation shall be prescribed by law.”

1995 Wisconsin Act 27 (the biennial budget) initiated a major change in state supervision of education by creating a state Education Commission and a Department of Education, under the direction of a Secretary of Education. The secretary was to be appointed by the governor and serve at the pleasure of the governor. The act made the existing State Superintendent of Public Instruction the chairperson of the Education Commission and transferred many of the functions of the superintendent to the secretary.

Governor Tommy G. Thompson sought a declaratory judgment in the Wisconsin Supreme Court, asking the court to uphold the constitutionality of the law, and the court decided the matter in *Thompson v. Craney*, 199 Wis. 2d 674 (1996).

The court said legislative acts are presumed constitutional, and any person challenging an act has to prove it is unconstitutional beyond a reasonable doubt. The court set forth the method it uses to interpret a provision of the constitution:

In interpreting a constitutional provision, the court turns to three sources in determining the provision’s meaning: the plain meaning of the words in the context used; the constitutional debates and the practices in existence at the time of the writing of the constitution; and the earliest interpretation of the provision by the legislature as manifested in the first law passed following adoption. (680)

The court examined the plain meaning of Article X, Section 1, and held that it was ambiguous because it could be read to require the superintendent to be the ultimate supervisor of public instruction or grant the power of supervision to both the superintendent and the other officers referred to in the section. It noted that amendments to the section’s original wording had increased, not lessened, its ambiguity.

The court next looked at the constitutional debates and practices in existence at the time of enactment of the section. It concluded the debates at the “constitutional conventions show that the drafters of the Wisconsin Constitution intended the public schools to be under the supervision of the [State Superintendent of Public Instruction]” and the superintendent was intended to have a more direct role in advancing education than the advocacy role proposed in the 1995 budget act. The court noted that the debates discussed the superintendent, not the other officers of public instruction, which the court interpreted as supporting the position that the other officers were subordinate to the superintendent.

The court also reviewed the 1902 amendments and determined, based on notes and letters written by the author of that amendment, that the “other officers” mentioned in the amendment did not refer to officers with powers equal to that of the superintendent, but rather to local officials subordinate to the superintendent.

The court then examined the first legislative act interpreting Article X, Section 1, and found that under that act the superintendent was given general supervision over public instruction in the state, including administrative responsibilities, such as the apportionment of school funds, the adjudication of controversies arising about school lands, and authority over school libraries. In addition, the court said, the first law did not provide for “other officers”. Laws related to those officers were enacted later when the legislature created the elected office of town superintendent



of common schools, which was subordinate to the superintendent. Regarding these legislative acts that interpret Article X, Section 1, the court said:

It is clear that the “other officers” were intended by the framers of the constitution as subordinate officials, and that the power of supervision of public instruction was not vested equally in the SPI and the “other officers.” (696)

Using the three recognized sources of constitutional interpretation, the court concluded:

Our review of these sources demonstrates beyond a reasonable doubt that the office of state Superintendent of Public Instruction was intended by the framers of the constitution to be a supervisory position, and that the “other officers” mentioned in the provision were intended to be subordinate to the state Superintendent of Public Instruction. Because the education provisions of 1995 Wis. Act 27 give the former powers of the elected Superintendent of Public Instruction to appointed “other officers” at the state level who are not subordinate to the superintendent, they are unconstitutional beyond a reasonable doubt. (698-699)

The court held that those provisions of 1995 Wisconsin Act 27 were void.

### School Choice

In *Thompson v. Jackson*, 199 Wis. 2d 715 (1996), the Wisconsin Supreme Court was evenly divided on the question of whether the Milwaukee Parental Choice Program, as amended to include sectarian schools, violated the state or federal constitution. (Justice Bradley did not participate). Because the case was before the court as an original action pursuant to a petition for removal from the circuit court, the supreme court lifted the stay of proceedings pending in the circuit court and, thereby, continued the preliminary injunction enjoining all portions of the amended program until further order of the circuit court.

### The 1995 Stadium Act

1995 Wisconsin Act 56 authorizes the creation of local professional baseball park districts that are empowered to impose taxes to finance the construction and maintenance of professional baseball park facilities. The act authorizes a district to issue revenue bonds for a portion of the costs of building a professional baseball park stadium and to impose a district-wide sales and use tax to repay the bonds. Although the state is not obligated under the act to repay the bonds, it does have a nonbinding “moral obligation” to repay them under certain circumstances.

The Libertarian Party sought a declaratory judgment and injunctive relief from the Wisconsin Supreme Court in *Libertarian Party of Wisconsin v. State of Wisconsin*, 199 Wis. 2d 791 (1996). It argued that the law violated provisions of the Wisconsin Constitution that prohibit the state from: 1) enacting special or private tax laws; 2) contracting state debt without a public purpose; 3) participating in a work of “internal improvement”; and 4) pledging the credit of the state. The party also argued that the law violated constitutional provisions limiting the amount of debt that may be contracted by municipalities.

In its declaratory judgment, the court upheld the constitutionality of the act and denied injunctive relief. The opinion discussed each of the constitutional issues, but its analysis of the internal improvements clause appears to be particularly significant. Article VIII, Section 10, of the Wisconsin Constitution generally provides that the state may not “contract any debt for works of internal improvement, or be a party in carrying on such works.” A number of constitutional amendments have been passed over the years creating exceptions to this clause, including an exception to permit the acquisition, improvement and construction of veterans’ housing, following a supreme court judgment in *State ex rel. Martin v. Giessel*, 252 Wis. 363 (1948) that construction of veterans’ housing was a prohibited internal improvement, even though a public purpose was served. The supreme court held almost a half century before in *State ex rel. Jones v. Froehlich*, 115 Wis. 32, 41-42 (1902) that the construction of levees was a prohibited internal improvement even though the projects would save lives and property, were within the police power of the state and would serve a public purpose.

In deciding the stadium case the court did not expressly overrule the *Froehlich* and *Giessel* cases. However, it did seem to apply a different test in analyzing the internal improvement issue:



... If this court concludes that the stadium is not an internal improvement, our analysis of this clause is at an end.

We begin with the recognition that not all construction projects are works of internal improvement. The state may directly engage in construction or other activities if those activities are incident to a predominantly governmental purpose.

... The reduction of unemployment, the promotion of tourism, and the encouragement of industry are all predominantly governmental purposes sufficient to avoid a violation of the internal improvements clause. ... Therefore, we conclude that the Stadium Act does not violate Wis. Const. art. VIII, § 10, barring state participation in works of internal improvement. (815-817)

Thus, the court found that the construction of a baseball park stadium was not an internal improvement because it was "incident to a predominantly governmental purpose".

#### **"Three-Strikes" Law**

In an attempt to deal with perceived leniency shown to repeat offenders and the apparent frequency with which certain serious felons commit new offenses, a number of states and the federal government have recently passed so-called "three strikes and you're out" laws. While the laws vary as to the crimes specified, they all provide that a defendant must be sentenced to life in prison upon a third conviction for any of the crimes covered by the law. The 1993 Wisconsin Legislature passed a persistent repeater law (a three-strikes law) that covered serious felonies, such as homicide, certain types of battery, sexual assault, mayhem, kidnapping, arson, armed burglary, armed robbery, carjacking, certain crimes against children and certain drug violations. A defendant who is convicted for a third serious felony after two prior convictions for any of these same felonies must be sentenced to life in prison without the possibility of parole.

In *State v. Lindsey*, 203 Wis. 2d 423 (Ct. App. 1996), the Wisconsin Court of Appeals upheld the persistent repeater law against a constitutional challenge by James Lindsey. Lindsey was convicted in 1995 of sexual assault of a mildly retarded 15-year-old girl. He had previously been convicted of armed robbery in 1981 and of sexual assault of a child in 1987. Lindsey did not challenge the status of his two prior felony convictions as serious felonies that were covered by the persistent repeater law, and the trial court sentenced him to life in prison without parole. Lindsey appealed his sentence, arguing that the persistent repeater law violates federal and state constitutional prohibitions against cruel and unusual punishment, as well as the constitutional requirements of separation of powers and equal protection of the laws.

The court of appeals decided that the persistent repeater law does not constitute cruel and unusual punishment in violation of the U.S. Constitution because the sentence of life in prison without parole is not grossly disproportionate to the gravity of the crime. It held that the crime for which Lindsey was being sentenced and the crimes for which he was previously sentenced were all inherently serious, thereby demonstrating criminal propensities that are appropriate to consider when reviewing the sentence for Lindsey's third conviction. The court of appeals also concluded that the sentence was not excessive and unusual under the Wisconsin Constitution because it does not "shock public sentiment" nor violate the judgment of reasonable people concerning what is a proper sentence under the circumstances.

The court further stated that the persistent repeater law does not violate the doctrine of the separation of powers. Lindsey argued that the law took away the trial judge's sentencing discretion and gave it to a prosecutor who, by deciding to charge a person as a persistent repeater, effectively decides that the person will be sentenced to life without parole. However, the court of appeals said, the prosecutor has always had great discretion concerning what, how and even whether to charge a person with a crime. In addition, a court has no inherent power to determine the punishment for a crime, while the legislature has the authority to specify sentences and parole eligibility and to direct a judge to impose a certain sentence. The appellate court said that the persistent repeater law was a proper exercise of the legislature's power to restrict a judge's sentencing discretion and did not intrude on the power of the courts.

Finally, the court of appeals concluded that the persistent repeater law does not violate the constitutional requirement that all people be treated equally under the law. Lindsey had argued that the law creates two classes of criminal defendants because prosecutors can charge one person as a persistent repeater while deciding not to bring the same charge against another person



with an identical or worse record. The court held that the simple fact that a prosecutor has discretion to charge people differently does not by itself violate a defendant's right to equal protection of the laws. It has long been law in Wisconsin, the court said, that defendants may be treated differently based on prior convictions. The court acknowledged that prosecutors could abuse their charging discretion or could engage in discriminatory prosecution, but Lindsey had made no allegation of such abuse or discrimination.

### **Traffic Regulations and Religious Freedom**

In *State v. Miller, et al.*, 202 Wis. 2d 56 (1996), the Wisconsin Supreme Court decided that the state could not force Amish men to attach a state traffic emblem to their buggies in violation of their religious beliefs if, in fact, less restrictive methods would provide for public safety on the highways.

Each Amish community fashions an *Ordnung*, a collection of rules for both individuals and the religious community. The *Ordnung* for the Old Order Amish community in Clark County prohibited members from attaching to their horse-drawn buggies the fluorescent orange and red slow moving vehicle (SMV) emblems required by state traffic laws. The Old Order Amish believe the emblem is prohibited by their faith's requirement to practice separation from the rest of the world because it is too "loud and bright" and is a "worldly symbol". Its use also requires them to place their faith in a human symbol above their faith in God, which the Amish cannot do. Instead of using the SMV emblem, the *Ordnung* of the community required that the buggies be equipped with white reflective tape outlining the perimeter of the rear of the buggy and a red lantern in darkness or bad weather.

Eight Amish men from the community, whose buggies complied with the *Ordnung*, were given traffic citations for failing to display the SMV emblem. The Amish had asked the trial court to dismiss the traffic citations issued against them on the grounds that the statute violated their right under the Wisconsin Constitution to worship according to the dictates of conscience. Although the trial court found that the statute did burden the defendants in free exercise of their beliefs, it did not dismiss the citations because it found that the state's interest in traffic safety was not satisfied by the alternative warning method used by the Amish. The Wisconsin Court of Appeals reversed the trial court, finding that enforcing the statute against the Amish violated their right to free exercise of religion. The appellate court based its decision on the First Amendment to the U.S. Constitution and on the federal Religious Freedom Restoration Act.

The supreme court agreed with the conclusion of the court of appeals, but, instead of using federal law, it based its decision on the religious freedom guarantee found in the Wisconsin Constitution. The court of appeals believed that a previous Wisconsin Supreme Court case, *King v. Village of Waunakee*, 185 Wis. 2d 25 (1994), required Wisconsin courts to construe the Wisconsin guarantee of religious freedom in the same manner as the guarantee in the U.S. Constitution. The supreme court said the court of appeals was mistaken on this point. It stated the *King* case did not abandon the long-standing recognition that the language of the two religious freedom guarantees is not the same. Therefore, the supreme court said, its interpretation of the state constitution's religious freedom guarantee is not constrained by how the federal courts interpreted the federal guarantee of religious freedom.

There was no question in *Miller* that the Amish men had a sincerely held religious belief and that requiring them to comply with the statute would burden those beliefs. Thus, the state had to show that the statute served a compelling state interest and that that interest could not be served by a less restrictive method or regulation. While this stringent test has been repudiated by the U.S. Supreme Court in cases involving the U.S. Constitution, the Wisconsin Supreme Court decided that it was appropriate for deciding claims that Wisconsin's religious freedom guarantee has been violated. Because the Amish agreed that the state has a compelling interest in public safety on the highways, the issue the supreme court had to decide was whether that interest could be served by a less restrictive method of regulation. Based on the testimony of safety experts, the court held that the reflective tape serves the public safety concerns addressed by the statute, perhaps even more effectively than the SMV emblem.

Therefore, the court concluded the Amish cannot be required to display the SMV emblem because the state's interest in traffic safety can be served by a less restrictive method that does not violate the dictates of the Amish faith.



### Wisconsin's "Sexual Predator" Law

In 1994, the Wisconsin Legislature passed the "sexually violent person commitments law", popularly known as the "sexual predator law". The act was also called the "Gerald Turner law" after the convicted murderer and rapist whose release under the state's mandatory release laws sparked controversy. The law provides for the involuntary civil commitment of any person who has been convicted of certain sex crimes and who is found to be a sexually violent person because of a mental disorder that makes it substantially probable that he or she will commit acts of sexual violence in the future.

Under the law, a petition alleging that an individual is a sexually violent person is filed shortly before the individual's scheduled release from custody. If a judge finds probable cause to believe the petition, a trial is held before a judge or jury to decide whether the individual is a sexually violent person. If so, the individual is committed to the Department of Health and Family Services (DHFS) for control, care and treatment until he or she no longer has a mental disorder or is no longer likely to commit acts of sexual violence. The individual may be committed to a secure mental health facility or may be released to the community under the supervision of DHFS depending on what is the least restrictive setting consistent with the need for treatment and community protection.

Soon after the law was passed, two trial courts in which petitions were filed were asked to decide whether the law was constitutional. They reached different conclusions. In 1995, the Wisconsin Supreme Court resolved the question by deciding in two companion cases, *State v. Carpenter*, 197 Wis. 2d 252 and *State v. Post*, 197 Wis. 2d 279, that the law is constitutional.

William Carpenter and Samuel E. Post, the respondents in the two cases, were subject to the sexually violent person commitments law, and both raised a number of constitutional challenges to it. Carpenter argued that the law violated the constitutional guarantee against double jeopardy because it subjected sexually violent persons to multiple punishments for the same crime. He also asserted it violated the constitutional prohibition against *ex post facto* laws because the law made the punishment for a crime committed before its enactment more burdensome. Both of these arguments assumed the law was intended to punish. To address these challenges, the supreme court had to determine whether the sexually violent person commitments law was designed to punish or whether it had some purpose other than punishment, such as treatment.

The court concluded that the principal purpose of the law was not punishment but treatment and public protection. Among other things, the court based its conclusion on the fact the law requires commitment to institutional care in special facilities staffed for psychiatric and psychological care and treatment, and that it mandates release under supervision, when appropriate, rather than requiring indefinite secure custody. The court concluded that those facets of the law that respondents claimed showed punitive intent – such as the indefinite period of commitment, its application only to persons already convicted of a crime and the use of certain procedures usually reserved for criminal proceedings – did not turn a commitment under the law into punishment.

In *Post*, the supreme court addressed the rights of due process and equal protection under the laws, as guaranteed by the U.S. and Wisconsin Constitutions. It rejected arguments that the law involves arbitrary, wrongful government action in violation of the constitutional guarantee of due process. It concluded that the act was narrowly tailored to meet the goals of: 1) protecting the community from the dangerously mentally disordered and 2) providing care and treatment to people who have mental disorders that predispose them to sexual violence. In reaching this conclusion, the court noted that the law's definition of "mental disorder" required a connection between the disorder and a predisposition to sexual violence and that commitment under the law may be terminated when the committed person no longer has a mental disorder or is no longer dangerous.

The court also concluded that the law does not violate the right to equal protection because people committed under the law are treated differently from persons committed for treatment under the standard civil commitment statute. The differences in the standards of commitment and the length of confinement under the sexually violent person commitments law are justified, the court said, because of the heightened danger a sexually violent person poses to the public and because of the unique treatment needs of such a person.



Justice Shirley Abrahamson dissented from the court's opinion. She argued that the primary purpose of the law was punishment, not treatment. She based her argument on a number of factors, including the fact that the law applies only to convicted offenders nearing release. She asserted that there are other constitutionally valid methods available to control violent criminals, including more stringent supervision of those on parole or conditional release, use of civil commitment, more intensive prison treatment programs, and longer sentences for crimes of sexual violence. "Such responses to the dangers posed by sex offenders," she said, "can protect the community from the dangers of sex offenders without eroding constitutional guarantees that protect all of us."

#### **"Cruising" Ordinances and the Right to Travel**

The right to travel is a freedom engrained in our history; it has been called "a basic right of citizens under our form of government, in fact, under any system of ordered liberty worth the name." In *Brandmiller v. Arreola*, 199 Wis. 2d 528 (1996), the Wisconsin Supreme Court had to address the issue of whether a municipal ordinance that bans "cruising" violates that right to travel.

The municipalities of West Allis, Milwaukee, Greenfield and Hales Corners enacted ordinances banning "cruising", which the ordinances defined as driving a motor vehicle past a specific reference point on a highway or designated street more than twice in any two-hour period during a designated time span, such as 8 p.m. to 5 a.m. The municipalities said that the ordinances were necessary to curb certain problems caused by cruising – namely, excessive noise; increased air pollution; and traffic congestion that caused accidents, impeded emergency vehicles and restricted normal traffic flow. Diane Brandmiller and other individuals who were ticketed for cruising challenged the ordinances on the grounds that they violated the right to travel, as guaranteed in the U.S. and Wisconsin Constitutions, and were overbroad. They claimed the ordinances were so sweeping in their coverage that their sanctions might be applied to constitutionally protected conduct the state is not allowed to regulate.

While the U.S. Supreme Court has recognized that a person has a fundamental right to travel between states, it has not explicitly decided whether the right applies to travel within a state. The Wisconsin Supreme Court, however, has explicitly recognized that the Wisconsin Constitution guarantees the right to travel within this state. In *Brandmiller*, the Wisconsin Supreme Court reaffirmed this state constitutional right. It held that the right includes moving freely about one's neighborhood, even in an automobile, but it recognized municipal ordinances might restrict that right if such restrictions are narrowly tailored to meet a significant government interest and they leave open ample alternative channels that preserve a citizen's right to travel.

The court concluded that the cruising ordinances in question contained reasonable time, place and manner restrictions on the right of local travel. The court said that the municipalities have a significant interest in reducing the congestion caused by cruising and ensuring public safety. It also concluded the cruising ordinances are narrowly tailored because they apply only to specified streets affected by cruising problems and they prohibit only certain repetitive driving on those highways. Finally, the supreme court noted that, by not regulating driving on highways other than those specified in the ordinance, the ordinances leave open ample alternative routes to get about town without difficulty.

Using the same tests it had applied to the challenge based on the right to travel, the supreme court concluded that the cruising ordinances were not unconstitutionally overbroad. They were limited to those places where and times when cruising is a problem, and they set forth clear standards for determining whether the ordinance was being violated.

### **CRIMINAL LAW**

#### **Search and Seizure – Conducting a "Stop and Frisk" in a High-Crime Area**

Generally, for a search or seizure to be "reasonable", it must be based on probable cause to believe either that the person to be seized, i.e., arrested, has committed a crime or that the property to be searched for and seized is evidence of a crime. However, in the case of *Terry v. Ohio*, 392 U.S. 1 (1968), the U.S. Supreme Court decided that a police officer may stop a person on the street, inquire into the person's activities and conduct a limited protective search of the person



for weapons (often called a “frisk”), even though the police officer does not have probable cause to believe that the person is committing a crime. The court held that the stop and frisk may be conducted if there are “specific and articulable facts” which, taken together with reasonable inferences from those facts, reasonably warrant the belief that the person may be armed. This standard requires careful consideration by a court of all the circumstances of the case.

Recently, courts have addressed the question of whether the fact that a person is in a “high-crime area” is a “specific and articulable fact” that may be used, in conjunction with other facts, to justify a stop and frisk. The Wisconsin Supreme Court, in *State v. Morgan*, 197 Wis. 2d 200 (1995), decided that a police officer’s perception of an area as a high-crime area may be a justifying factor. In *Morgan*, police officers stopped a car with three occupants at 4 a.m. in what one officer described as a “fairly high-crime-rate area”. While the driver had violated no traffic laws, the officers noticed suspicious driving in and out of alleys and that the car’s license plates were expired, and so they made the stop. Michael T. Morgan, the car’s driver, was unable to find his driver’s license. (It was found in his wallet after his arrest.) The officer thought Morgan appeared more nervous than the usual person involved in a traffic stop. He told Morgan to get out of the car and then frisked him. During the frisk the officer found a loaded .22 caliber pistol in Morgan’s coat pocket. Morgan was arrested and charged with carrying a concealed weapon and possession of cocaine while armed, based on traces of cocaine on a pipe found during a search of Morgan after he was arrested.

The issue in the case was whether the frisking was justified. Morgan asked the trial court to suppress the evidence, arguing that the frisk was not based on specific and articulable facts that gave rise to a reasonable belief that Morgan might be armed. The trial court agreed, saying that, while it is reasonable for an officer to consider the place in which the frisk occurs, it could not rely on the officer’s description that an area is a “high-crime area” without clear and specific information to support that description. The trial court said that, even when considered together, the remaining factors (the time of night, the number of people in the car and Morgan’s nervousness) pointed to “nothing more than a routine traffic stop” and did not justify the officer in believing that Morgan was armed.

The Wisconsin Court of Appeals reversed the trial court’s decision, and the Wisconsin Supreme Court upheld the appellate court. According to the supreme court, the trial court did not find that the area was not a high-crime area, but it had simply decided that the high-crime nature of an area could not be a factor justifying a stop and frisk. The supreme court disagreed. It said an officer’s perception that an area is a high-crime area can be a factor.

Morgan also argued that mere presence in a supposedly high-crime area should not be sufficient in itself to justify a frisk because all residents of high-crime areas would then be denied the constitutional protection against unreasonable searches. The supreme court noted, however, it was not upholding the frisk of Morgan solely because Morgan was in a supposed high-crime area but based on a combination of all of the circumstances, including the time of night, the number of people in the car and Morgan’s nervousness. Taken together, the circumstances justified the stop and frisk, and therefore the trial court should not have suppressed the evidence.

Justice Abrahamson dissented. She agreed with the trial court that it was wrong to rely on the officer’s description of the area as a high-crime area when the officer provided no factual basis for that description and did not even define the geographical locality about which he was speaking. Justice Abrahamson also thought that, even if there was a basis for believing the area was a high-crime area, all of the factors in the case considered together did not justify the frisk of Morgan, especially given the trial court’s finding that the case involved a routine traffic stop (a finding of fact that she thought was due more deference than the court’s majority gave it).

### **Search and Seizure – Rule of Announcement in Execution of Certain Search Warrants**

To satisfy the U.S. Constitution, a search conducted under a search warrant must be conducted reasonably and be appropriately limited to the scope permitted by the warrant. Over a series of cases dealing with whether searches pursuant to warrants were conducted in a reasonable way, the Wisconsin Supreme Court has developed a rule of “announcement” for police officers executing a search warrant for a home. Before forcibly entering the home to be searched under the warrant, the police officers must: 1) announce their identity; 2) announce their purpose; and 3) wait for the occupants to refuse to admit them or, in the absence of an express refusal, allow



the occupants time to open the door. However, in *State v. Stevens*, 181 Wis. 2d 410 (1994), the court said the rule of announcement did not apply to the execution of a warrant to search for evidence of drug dealing because, given “today’s drug culture”, in which substantial narcotics dealers possess firearms, announcement might increase the likelihood of violence. Thus, the court held, the police may use a no-knock forcible entry whenever they execute a warrant to search for evidence of drug dealing.

About a year after *Stevens*, the U.S. Supreme Court explicitly held for the first time, in *Wilson v. Arkansas*, 115 S. Ct. 1914 (1995), that the rule of announcement is an element in the reasonableness of a search conducted under a search warrant and there are circumstances under which an unannounced entry is reasonable. It left to lower courts the task of determining the circumstances under which an unannounced entry is reasonable.

In *State v. Richards*, 201 Wis. 2d 839 (1996), the Wisconsin Supreme Court dealt with the question of whether the *Wilson* decision invalidated the blanket exception to the announcement rule for all cases involving evidence of drug dealing. In *Richards*, police executed a search warrant for the motel room of the defendant to seek evidence of drug dealing. They did not knock and announce before entering the motel room, and they seized drugs during the search. Relying on *Stevens*, the trial court denied Steiney Richards’ motion to suppress the drugs found.

Richards argued to the Wisconsin Supreme Court that, based on *Wilson*, the state’s blanket exception violated the reasonableness requirement because announcement must be decided on a case-by-case basis. The Wisconsin court disagreed, concluding that *Wilson* did not forbid a blanket exception to the rule of announcement in a certain category of cases if the rule is reasonable.

Richards appealed his case to the U.S. Supreme Court, arguing that the Wisconsin Supreme Court decision is inconsistent with *Wilson*. The U.S. Supreme Court held that the U.S. Constitution does not permit a blanket exception to the rule of announcement in drug dealing cases, because such an exception would allow an unannounced entry even when there is little danger to police or it is unlikely evidence will be destroyed. In these cases, the individual’s privacy interests may outweigh the public interest in police safety and preserving evidence. A blanket exception would insulate the case from judicial scrutiny. The federal high court also noted that the rationale for permitting a blanket exception for one category of crime could apply to other crime categories as well, making the rule of announcement meaningless. It concluded that in each case involving an unannounced entry the court must determine whether the entry was justified by the facts and circumstances of the case. The Supreme Court chose to uphold Richards’ particular-conviction because, it said, the facts and circumstances justified the no-knock entry into his motel room.

### **Search and Seizure – Searches of Persons in a Place Being Searched**

In *State v. Andrews*, 201 Wis. 2d 383 (1996), the Wisconsin Supreme Court addressed the question of whether the police, while executing a search warrant for private premises, may search the belongings of a visitor who happens to be on those premises.

Michael Andrews was a guest in a friend’s apartment when police executed a search warrant for the apartment. Andrews told a police officer that he did not live at the apartment and that he owned a duffel bag that was in the master bedroom. After a drug-sniffing dog reacted to the duffel bag, the police searched it and found marijuana and drug paraphernalia. Andrews moved to suppress the evidence found in the duffel bag on the grounds that the search of his duffel bag was unreasonable because it was not authorized under the search warrant. The trial court denied the motion, and the Wisconsin Supreme Court agreed with the trial court’s decision.

The supreme court noted that while a search warrant for a premises authorizes the search of all items on the premises, so long as those items are plausible receptacles of the objects of the search, the search of items belonging to nonresidents or visitors to the premises raises special concerns. Other courts have taken different, though sometimes overlapping, approaches to the issue, developing tests based on such things as the relationship between the owner of the belongings and the place named in the warrant (the relationship test); whether the police have notice that the items belong to a visitor (the notice test); or whether the item to be searched is being worn by or is in the physical possession of a person whose search is not authorized by the search warrant (the physical proximity test).



Both the prosecution and Andrews urged the supreme court to adopt a hybrid test that combined the relationship and notice tests, but the court noted that such a hybrid test has not been consistently applied by courts and that it is susceptible to abuse. Thus, the court instead decided to adopt the physical proximity test, concluding that it has the strongest legal basis and that it is the most practical and easiest to apply for both the police officers who execute the warrant and the judge who must review the reasonableness of the search.

Under the physical proximity test adopted by the court, the police can search all items found on the premises that are “plausible repositories” for objects named in the search warrant, unless the item is being worn by or is in the physical possession of a person whose search is not authorized by the warrant, regardless of the person’s relationship to the premises. Because Andrews’ duffel bag was neither being worn by him nor within his physical possession, the supreme court concluded that the trial court properly denied Andrews’ motion to suppress.

### **Anonymous Juries and the Right to a Fair and Impartial Jury**

In *State v. Britt*, 203 Wis. 2d 25 (Ct. App. 1996), the Wisconsin Court of Appeals had to decide whether Wisconsin should permit anonymous juries – juries made up of citizens who are not publicly identified in order to protect them from intimidation or harassment – or whether an anonymous jury violates a defendant’s right to a fair and impartial jury.

Under both the U.S. and Wisconsin Constitutions, a person accused of a crime has a right to be tried before a fair and impartial jury. When a jury is selected, the trial judge and the attorneys for the state and the defendant are provided with information about the potential jurors, including who they are, where they live and what they do for a living. In addition to questionnaires filled out by potential jurors when they are called for service, jury selection includes a process called *voir dire*, during which the attorneys ask questions of the potential jurors in open court. The judge and attorneys use this information to help assure that the jury is fair and impartial.

Britt was charged with attempted homicide and aggravated battery with a dangerous weapon after he and others, said to be fellow gang members, allegedly assaulted a person who had allegedly shot Britt during a previous incident. Before jury selection began, the state requested the protection of anonymity for the jury on the grounds that the charges stemmed from gang-related activity and that the assault victim and other prospective witnesses had been intimidated by Britt’s alleged gang associates. The trial court granted the state’s request and ordered that the names, addresses and places of employment of potential jurors could not be publicly revealed in open court or on the record. The trial court did, however, permit both sides to review the written questionnaires supplied by potential jurors, provided that, after jury selection, the questionnaires would be returned to the court and kept confidential. The trial court also allowed questioning the jurors during *voir dire* about their general area of residence, whether they were employed and, if so, what type of job they held.

The Wisconsin Court of Appeals noted that the use of anonymous juries is rare. When they are used, it is in cases where it is necessary to protect potential jurors and their families from harassment, intimidation, bribery, publicity and other potential interferences. The appellate court agreed that, in the appropriate case, a trial court should have the power to take reasonable steps to protect jurors so they are not apprehensive about serving on a jury and can perform their role without distraction, interference or concern.

The court of appeals decided that, before selecting an anonymous jury, a trial court must first conclude that there is strong reason to believe that the jury needs protection. In addition, the trial court must take reasonable precautions to minimize any unfairness to the defendant and to make sure that the defendant’s fundamental right to a fair and impartial jury is protected.

The court concluded that the trial court in Britt’s case had sufficient evidence of the need to protect the jury, even though it was Britt’s alleged gang associates, not Britt himself, who were accused of intimidating witnesses. In addition, it found the trial court took reasonable steps to minimize any unfairness to Britt by allowing the parties to review the jurors’ questionnaires, which did provide identifying information, and by permitting questions during *voir dire* about residence and employment. The court concluded Britt’s right to a fair and impartial jury had not been violated.



## CIVIL LAW

**Negligence; Parents' Duty to Control a Minor Child**

A parent has the duty to exercise reasonable care to prevent his or her minor child from intentionally harming others if the parent knows, or has reason to know, that he or she has the ability to control the child and that there is a necessity and opportunity for exercising such control. In *Nieuwendorp v. American Family Ins. Co.*, 191 Wis. 2d 462 (1995), the Wisconsin Supreme Court was asked to apply that legal obligation in the context of a school setting.

In this case, a fourth-grade student pulled the hair of a teacher with such force that the teacher fell to the ground and suffered a herniated disc in her neck that necessitated surgery and curtailment of her physical activities. The student had been diagnosed as having attention deficit hyperactivity disorder (ADHD) after exhibiting disruptive behavior in first and second grades.

The doctor that diagnosed ADHD recommended that the child be given medication to increase his ability to concentrate and to reduce his impulsive and disruptive behavior. The parents agreed to medicate the student and informed the school of the use of the medication. Shortly before the child started fourth grade, the parents became concerned about the side effects of the medication and discontinued its use without informing the doctor or the school.

The teacher was injured while responding to the student's disruptive behavior in a classroom. She sued the student and parents for her injuries, claiming that the parents were negligent for failing to exercise reasonable care over their child by not maintaining the medication or by not notifying the school that the student was no longer on medication. The trial court granted judgment to the teacher. The Wisconsin Court of Appeals reversed, saying that the jury's finding as to the parents' actions was based on speculation and not supported by any credible evidence.

The Wisconsin Supreme Court addressed the questions of whether there was credible evidence to establish the parents' negligence, whether that negligence caused the teacher's injuries and whether public policy precluded liability in this specific case. The court said that the jury's apportionment of negligence would be sustained if, viewing the evidence in a light most favorable to the verdict, there was any credible evidence supporting the verdict. It found that the parents' decision to stop the medication did not constitute negligence, but that the parents did have to take reasonable steps to control their child's behavior. The court noted that each individual is held to a standard of ordinary care in all activities, and it further stated:

Applying this standard to the instant case, it was reasonable for the jury to conclude from the evidence that the Heins were negligent when they failed to inform themselves either about the consequences of discontinuing Dexedrine or about alternative forms of treatment. That negligence encompassed the Heins' decision not to notify Jason's school that the medication was discontinued so that, in conjunction with the Heins, a plan to manage Jason's behavior could have been developed. (475)

Reviewing the evidence submitted to the jury, the court concluded that the parents' failure to inform the school of the discontinuance of medication so that a plan could be developed to manage the student's behavior was a substantial factor in causing injury to the teacher. Medical testimony indicated that alternative methods to medication were available and the parents should have told their doctor and the school of the decision to discontinue the medication. The court concluded from this evidence that the jury could reasonably conclude that the parents were causally negligent.

In response to public policy considerations raised by the parent's insurer, the supreme court emphasized that this decision does not stand for the proposition that parents should be required to medicate their children or that patient's medical treatment decisions may result in a lawsuit:

On the contrary, this opinion merely stands for the proposition that when there is any credible evidence to support a jury's verdict, sufficient to remove the question from the realm of conjecture, the verdict will be sustained. (479)

The court went on to hold that there are no public policy considerations that require overturning the jury's verdict. The injury is not too remote from the negligence because the parents knew that the discontinuance of the medication would likely result in symptoms of ADHD reappearing, including uncooperativeness and striking out. Imposing liability in this case would not place too unreasonable a burden on the parents because they should have considered the ramifications of



their failure to notify the school about the decision to cease medication. The court asserted that this case would not open the flood gates to new litigation regarding every tort committed by every child because the case is very fact-specific.

### **Medical Malpractice; Duty to Inform**

Wisconsin law requires a doctor to inform each patient of the availability of all alternative, viable medical treatments and the benefits and risks of those treatments. In *Martin v. Richards*, 192 Wis. 2d 156 (1995), the Wisconsin Supreme Court was asked if this included the duty to tell the patient about possible diagnostic tools and of the unavailability of appropriate medical specialists.

The case involved a 12-year-old girl who rode her bicycle into the back of a truck. The girl was taken to the local hospital where she was diagnosed as having a concussion, contusion and possible intracranial bleeding (bleeding inside the skull). After performing several tests, the doctor concluded that the girl only had a concussion. He informed the father of this conclusion and kept the girl in the hospital overnight. During the night the nurse on duty became aware that the child was showing symptoms of intracranial bleeding and informed the doctor. The girl was taken via helicopter to a hospital in Madison, where a CT scan revealed the existence of an area of blood clotting on the girl's brain. Surgery was performed that saved the child's life, but she was permanently disabled.

The issue before the court was whether the doctor was negligent in failing to tell the girl's father that the local hospital had a CT scanner that could detect intracranial bleeding but that if intracranial bleeding was diagnosed the girl would need treatment that was not available at that particular hospital. The jury had found that the doctor was not negligent as to his diagnosis and treatment but was negligent in failing to inform the father of the availability of the CT scanner and of the possible need to move the girl to another hospital. The circuit court dismissed the latter part of the jury verdict, finding that the doctor did not have a duty to inform the father of diagnosis or treatment alternatives related to the extremely remote possibility that the child had intracranial bleeding. The Wisconsin Court of Appeals reversed the circuit court on this aspect of the case and its action was, in turn, upheld by the supreme court.

The supreme court found that, in light of the potentially serious consequences of intracranial bleeding, including death, a 1%-3% chance of the girl having such an injury was not remote enough to remove the doctor's requirement to inform the father of that possibility. The court noted that informed consent originally arose from the doctrine that consent to treatment is only meaningful if the patient understands the risks and alternatives to treatment. The concept of informed consent stems from the fundamental notion of the right to bodily integrity. In Wisconsin, said the court:

... the standard for informed consent cannot be defined by the medical profession. The decision is not a medical decision. The decision must be made by the patient, and a patient cannot make an informed, intelligent decision to consent to a physician's suggested treatment unless the physician discloses what is material to the patient's decision, i.e., all of the viable alternatives and risks of the treatment proposed. The extent of the physician's disclosures is driven then, by what a reasonable person under the circumstance then existing would want to know, i.e., what is reasonably necessary for a reasonable person to make an intelligent decision with respect to the choices of treatment or diagnosis. (174)

The court also found that the doctor was aware that the girl had many of the symptoms of intracranial bleeding, that a CT scan could show if such bleeding was occurring, and that such bleeding would necessitate immediate surgery, but the hospital had no neurosurgeon on staff. Expert medical testimony substantiated the symptoms indicated intracranial bleeding and the need for immediate action. The court also found that, while the decision of whether to provide the CT scan was a medical decision, the father had the right to be informed of the availability of that diagnostic tool and of hospitalization in a facility with a neurosurgeon on staff. It stated, "When a reasonable person would want to know, the decision is not the doctor's alone to make." The court concluded that the jury did receive creditable evidence to support their finding that a reasonable person under the circumstances confronting the father would have wanted to know of the availability of the CT scanner and of the lack of a specialist on staff.



### Indians; Personal Jurisdiction and Sovereign Immunity

In *Landreman v. Martin*, 191 Wis. 2d 787 (1995), the Wisconsin Court of Appeals had to decide how tribal sovereign immunity effects the service of process and jurisdiction of the state courts. The parties to the suit entered into agreements to construct a bingo hall in Trinidad, California. Pet Martin, a member of the Menominee Indian Tribe, was to act as general contractor and manager of the hall for its first five years. Earl Landreman was a principal investor in the operation. Landreman and other investors (“the investors”) sued Martin, along with Joy Sundberg and Carol Ervin, tribal officers of Trinidad Rancheria in California, alleging tortious interference with contract, breach of contract, and fraud.

The trial court found that the two California tribal officers lacked the minimum contact with the State of Wisconsin necessary to establish personal jurisdiction and they were also immune under the doctrine of sovereign immunity. The court also decided that service of the Menominee Indian Tribal member was defective because it violated tribal law. As a result, the trial court dismissed the action.

The Wisconsin Court of Appeals first addressed the defective service question. The Menominee Indian Tribal member was served on the Menominee Indian Reservation by an officer of the Menominee County Sheriff’s Department. The court of appeals noted that there are two prongs in assessing a state’s jurisdiction on Indian reservations: whether federal law preempts state jurisdiction and whether state jurisdiction may infringe on tribal rights.

The court first found that the federal government has not acted in the area of personal service, so there was no preemption. Secondly, it held that the relevant Menominee Indian Tribal ordinance prohibited the entrance of any law enforcement officer on any tribal business premises on Menominee Tribal lands for the purpose of enforcing any law of the State of Wisconsin, unless his or her presence was requested by an appropriate tribal official. The court found that the ordinance on its face did not address the issue of the service of process. In addition, the court noted, law enforcement officers are not required to serve process in this state, so if the ordinance was intended to prevent the service of process, it would not accomplish that goal. “Additionally,” the court said, “there is nothing else in the record suggesting that the Menominee tribe had its own service of process procedures in cases where the state has subject matter jurisdiction.” (797) The court concluded that because the state’s service of process procedure does not infringe on tribal sovereignty and the state has a compelling interest in maintaining personal jurisdiction over a Menominee Indian who has violated a law off the reservation, the service of process in this case was not defective.

To determine if the State of Wisconsin has jurisdiction over a nonresident defendant, the court had to determine if the Wisconsin long-arm statute applied. That statute requires that services must be performed within the state by either party for the other. The court found that no services were provided to Ervin, and Ervin never came to Wisconsin. Because she had no contact with Wisconsin, the long-arm statute was inapplicable to her, and the Wisconsin court did not obtain jurisdiction over her. Sundberg did visit the state and met with parties interested in constructing the bingo hall. The appellate court said that factual questions needed to be resolved before it could determine if she had sufficient contact with the state to have the long-arm statute apply. Rather than remanding the matter to the trial court, the court of appeals decided that the case could be resolved instead on the basis of sovereign immunity of the tribal officers.

The court said Indian tribes generally enjoy sovereign immunity from lawsuits similar to the immunity of the United States government, and this immunity applies to tribal officers acting within the scope of their representative capacity. The court, after reviewing the evidence, found that both Sundberg and Ervin were chairpersons of the Trinidad Rancheria and were acting for the tribal purposes. In addition, the court said that there were no claims made that the officers benefitted personally from the contracts. Although the court recognized that unfairness may result from the sovereign immunity of Indian tribes and tribal officials acting within the scope of their authority, it also recognized:

... that tribal sovereign immunity may very well be a barrier to economic development of tribal interests, due to the unavailability of redress in potential contractual disputes. However, long-standing policy dictates the promotion of tribal self-government and, consequently, sovereign immunity. (803-804)



### Immunity of Public Officials

In *Barillari v. City of Milwaukee*, 194 Wis. 2d 247 (1995), the Wisconsin Supreme Court was asked to decide if a promise made by law enforcement officers can result in liability for the law enforcement agency when that promise is not kept and a death results.

When Shannon Barillari tried to end a two-year relationship, her boyfriend, Charles Estergard, sexually assaulted her at knife point and threatened to kill her and himself. While at a hospital for treatment, she was interviewed by two Milwaukee police detectives. Barillari's mother told the police that she was afraid Estergard would harm her daughter again, and the police promised to obtain a warrant and arrest him that day.

Estergard came to Barillari's mother's home that afternoon, but the police did not arrive until after he had left. Barillari met with an assistant district attorney the next day and was told that the attorney had decided to delay obtaining an arrest warrant to give Estergard time to turn himself in to the police. A few days later, Estergard shot and killed Barillari and himself. Barillari's parents sued the Milwaukee Police Department for negligence in failing to make an arrest and failing to protect their daughter.

The circuit court granted the city's motion for summary judgment, holding, among other things, that the police conduct involved discretionary acts that were immune from liability under state statute. The circuit court also held that absent compelling and immediate danger with evidence that the police had an opportunity to respond the police are immune from liability for acts done during the investigation of a case. The Wisconsin Court of Appeals reversed the circuit court, saying that the alleged promise to protect Barillari established a sufficient claim to go forward to a jury to decide if the police, in fact, made the promise and whether or not the promise was fulfilled.

The majority opinion of the supreme court held that, as a general rule, a public officer is statutorily immune from liability for injuries resulting from discretionary acts within the scope of his or her public office. However, it noted immunity does not apply if the officer or employee: 1) engages in conduct that is malicious, willful and intentional, 2) negligently performs a ministerial duty or 3) is aware of a danger that is of "such quality that the officer's or employee's duty to act becomes absolute and imperative."

In this case, the majority held, the police did not engage in any malicious, willful and intentional behavior that resulted in Barillari's death. It also said that the police were not acting in a ministerial role, but rather "retained discretion regarding the manner of investigation into the alleged sexual assault, including their implementation of assurances given Shannon". (260) The majority concluded that the third exception, a known danger, did not apply because the police could not predict that Estergard would kill Barillari.

In a dissenting opinion, Justice Shirley Abrahamson, agreed that police cannot guarantee either full protection or an arrest in any given situation, but, she argued, the police made a specific promise to be at the victim's home at a specific time to make an arrest. This specific promise, she said, is an absolute, certain and imperative commitment that meets the definition of a ministerial task. The dissent concluded that the facts regarding the specific promise to appear and arrest were at issue. Thus, summary judgment was inappropriate because, if a jury found that the officers failed to perform a specific promise that was a ministerial task those officers would be liable for injuries resulting from their negligence.

The majority opinion rejected the dissent's argument that once the promise was made to make an arrest, the police activity became ministerial, saying:

... the nature of law enforcement requires moment-to-moment decision making and crisis management which, in turn, requires that the police department have the latitude to decide how best to utilize law enforcement resources. (260)

### Mental Disability; Effect on Liability in Tort Actions

Two 1996 cases required the Wisconsin Supreme Court to review and reconsider the rule that mentally disabled persons are held responsible for the torts they commit regardless of their capacity to comprehend their acts.

In both cases, the injured party had sued the insurance company of the mentally disabled person. In *Gould v. American Family Mutual Ins. Co.*, 198 Wis. 2d 450 (1996), a man diagnosed



with Alzheimer's disease was admitted to a health care center because the family was unable to cope with his difficult behavior. While in the center, he was often disoriented, resistant to care and occasionally combative. He often went into other patients' rooms and resisted being removed by the staff. During one occasion, when the head nurse of the unit attempted to remove him from a room, he knocked her to the floor and injured her.

In *Gould*, the court quoted *German Mut. Fire Ins. Soc'y v. Meyer*, 218 Wis. 381, 385 (1935):

It is the well settled rule that a person *non compos mentis* is liable in damages to one injured by reason of a tort committed by him unless evil intent or express malice constitutes an essential element in the plaintiff's recovery. This rule is usually considered to be based on the principle that where a loss must be borne by one of two innocent persons, it shall be borne by him who occasioned it, and it has also been held that public policy requires the enforcement of the liability in order that those interested in the estate of the insane person, as relatives or otherwise, may be under inducement to restrain him and that tortfeasors may not simulate or pretend insanity to defend their wrongful acts causing damage to others. (457)

The court held that public policy precluded liability in the *Gould* case, even though the jury determined that Gould was negligent and that his negligence caused the plaintiff's injury. The court considered each of the three principles set forth in *Meyer* for imposing liability and held that they did not apply to this case. The court noted that the plaintiff, as head nurse of the dementia unit of the health care center, knew of the defendant's condition and potential for violence. Because she had knowledge of the potential danger inherent in dealing with Alzheimer's patients and because she was paid to care for such patients and was trained specifically to respond to the patient's violent behavior, the court held that the nurse was not an innocent party in need of protection. The court held that the patient should not be held liable in this case because to do so placed too great a burden on a person whose disorientation and potential for violence was the reason for institutionalization.

The court held that the second rationale for holding the mentally disabled person liable, i.e., to induce the relatives to restrain him or her, did not apply in this case because the relatives had done all they could to restrain him by admitting him to a secure dementia unit in a restricted health care center. Finally, the court held that the rationale for holding a mentally disabled person liable, to prevent tortfeasors from simulating or pretending insanity to defend their wrongful acts, did not apply in this case. It said, "To suggest that Mr. Monicken would 'simulate or pretend' the symptoms of Alzheimer's disease over a period of years in order to avoid a future tort liability is incredible."

In *Burch v. American Family Mutual Ins. Co.*, 198 Wis. 2d 465 (1996), a 15-year-old girl with cerebral palsy and mental retardation turned the ignition key in her father's truck while he was standing behind the truck, causing the truck to lurch and pinning him against the building.

In *Burch*, the jury found that the mentally retarded child was not negligent, but the father was negligent for leaving the keys in the ignition of the vehicle. The trial court judge granted the father a new trial in the interest of justice because the judge believed that the jury did not understand the instructions or was sidetracked by the closing argument. The supreme court affirmed the general rule of holding a mentally disabled person subject to the reasonable person standard, as discussed in *Gould*, then reviewed the record to determine if the jury verdict should be upheld. In this case, the court said, the father knew his daughter liked to listen to music while in the truck and that on previous occasions he had left her in the truck with the key turned to the accessory position. On the day of the accident, he left the key in the ignition and the gearshift in reverse when he exited the truck without setting the parking brake. He then stood directly behind the truck next to a building.

Based on the standard of reviewing the jury's verdict in the light most favorable to the prevailing party, the supreme court concluded that the father's negligence exceeded any negligence that could be attributed to the daughter. Therefore, the verdict of the jury should be upheld. The court determined that the trial court reasons for granting the new trial were legally insufficient because the trial court failed to specify legal grounds for granting the new trial.



**Custody and Visitation; Nontraditional Families**

*In re Custody of H.S.H.-K.*, 193 Wis. 2d 649 (1995), involved the rights of persons in a non-traditional family setting. Under state statute, when rendering a judgment for annulment, divorce or legal separation, the court is required to make provision for the legal custody and physical placement of any minor child of the parties. State statutes also allow a court, upon the petition of certain persons, including a person who has maintained a parent-child relationship with the child, to grant reasonable visitation rights to the person.

In this case, the woman plaintiff had shared a close, committed relationship with the defendant, another woman, for over 10 years. They agreed to have the defendant artificially inseminated with sperm from an anonymous donor, attended childbirth classes together, and the plaintiff was present at the delivery of the child. The parties acted as parents to the child until they separated. The plaintiff attempted to see the child after the separation, but the defendant refused to allow her to visit the child. The plaintiff petitioned the circuit court for custody of the child and for visitation rights. The court appointed a guardian ad litem for the child, who reported to the court that the child wanted to spend time with the plaintiff, who the boy believed was his parent. The circuit court denied the plaintiff's requests and granted the defendant's motion for summary judgment, saying that current visitation law "ignores the welfare of children reared by adults in nontraditional relationships when those relationships terminate".

The Wisconsin Court of Appeals was bypassed, and the Wisconsin Supreme Court was asked to determine if the plaintiff had any right to custody or visitation of the child. Speaking to the custody question, the majority opinion held that a person who is not a biological or adoptive parent may not bring an action to obtain custody unless the biological or adoptive parent is unfit or unable to care for the child or unless there are compelling circumstances for awarding custody to a nonparent, such as parental abandonment or persistent neglect. The majority affirmed the circuit court decision that the plaintiff did not produce facts to show that the mother of the child was unfit or that compelling circumstances existed to award custody to the plaintiff.

The majority opinion held that, while the statute allowing visitation for persons other than family members does not explicitly require the commencement of an underlying action affecting the marriage, the court's interpretation of the legislative intent of that statute is that the dissolution of marriage is required. The majority found that, based on that interpretation, the plaintiff could not rely on the statute to obtain visitation because the case did not involve the dissolution of a marriage.

The majority also held that this finding did not end its inquiry:

Our analysis of the ch. 767 visitation statute and the cases also demonstrates, as we explain below, that the legislature did not intend sec. 767.245 to be the exclusive provision on visitation. Nor did the legislature intend the ch. 767 visitation statute to supplant or preempt the courts' long standing equitable power to protect the best interest of a child by ordering visitation in circumstances not included in the statute. (667)

The majority opinion, after reviewing the history of the current Chapter 767 visitation law, found that, prior to 1975, the courts determined visitation rights of noncustodial parents and others without statutory authorization. In 1975, statutes were enacted providing grandparents visitation rights following the death of the parents or when a court rendered decision involving annulment, divorce or legal separation. These statutes were later expanded to include a person who has maintained a parent-child relationship with the child, but the majority said the legislative history showed that the law was directed to actions when the marriage of the parents was dissolving. An additional section was enacted in Chapter 48 to allow certain relatives to seek visitation rights at the time that a child is adopted by a stepparent or relative. If the legislature had intended the Chapter 767 visitation statute to apply to cases other than the dissolution of a marriage, said the majority, it could have amended Chapter 767, instead of creating the new statute in Chapter 48.

The majority reviewed earlier cases supporting their finding that the Chapter 767 visitation statute only applied to families facing dissolution, and it held that state intervention in a parent's determination of how to rear a child, a constitutionally protected liberty interest, has to be justified by some triggering event that must be more than a claim that a third party's visitation is in the child's best interest. Although the court concluded that Chapter 767 does not apply to the facts in this case, it held:



... the legislature intended the courts to use their equitable powers to continue the policy direction of the visitation statutes, that is, to exercise their powers for the best interest of the child when a triggering event justifies state intervention. (689)

The majority went on to hold that the law does not support the biological parent's absolute rights in their children, but rather requires the court to respect parental autonomy and at the same time serve the best interest of the child. It concluded that the case should be remanded to the trial court where the plaintiff would have the burden of proof regarding four elements: her relationship with the child; the defendant's consent to that relationship; the plaintiff's assumption of obligations regarding the development of the child; and the length of time the child and plaintiff were involved in a bonding, dependent relationship. In addition, the majority said the plaintiff must prove that a significant triggering event had occurred that justified state intervention, in this case that the parent interfered substantially with the plaintiff's parent-like relationship with the child and that the plaintiff sought court-ordered visitation within a reasonable time after the parent's interference.

In concurring and dissenting opinions, Justice Roland Day, Justice Donald Steinmetz and Justice Jon Wilcox concurred with the majority that the plaintiff had no cause of action for custody, but dissented regarding the right to visitation, arguing that Chapter 767 is the only vehicle for a nonparent to obtain visitation rights. They said that the courts have consistently held that parents have the right to decide who may visit their children and compelling circumstances must exist before a court will interfere with a parent's decision. Their dissents said that Chapter 767 only applies if there is an action affecting the family or if the family is dissolving. In this case, neither of these criteria were met, so, they concluded, the courts have no right to interfere with the parental decision regarding visitation.

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