



RESERVE JUDGES IN WISCONSIN

A Report Submitted to the Governor and Legislature

Under S. 9146 1999 Wisconsin Act 9

**Director of State Courts Office
September 29, 2000**

INTRODUCTION

A high priority for the Court System for more than a decade has been to obtain a more equitable per diem for reserve judges who serve on a temporary basis for elected judges who are unavailable. To achieve this, the courts have proposed various initiatives in their biennial budget requests to increase the per diem from 70% of the daily rate for a sitting judge to a more appropriate level.

During the executive session held by the Joint Finance Committee on the Courts' FY 99-01 biennial budget request, the following provision was approved, and later signed by the Governor as part of 1999 Wisconsin Act 9:

Section 9146. Nonstatutory provisions; supreme court.

(1w) REPORT TO THE LEGISLATURE REGARDING RESERVE JUDGES. The director of state courts shall, by October 1, 2000, submit a report to the governor, to the members of the joint committee on finance, and to the appropriate standing committees of the legislature in the manner provided under section 13.172(3) of the statutes, regarding the recruitment, retention and compensation of reserve judges.

This report, in response to the above provision, contains the following information:

- Definitions, statutory, constitutional and Supreme Court rule reference, and other background information
- Availability and use of reserve judges in Wisconsin
- Compensation of reserve judges in Wisconsin
- National comparisons
- American Bar Association standards for judicial retirement
- Discussion

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BACKGROUND

The basis for the eligibility and use of reserve judges in Wisconsin can be found in the Wisconsin Constitution, statutes and Supreme Court rules:

Article VII Section 24(3) of the Wisconsin Constitution states "A person who has served as a supreme court justice or judge of a court of record may, as provided by law, serve as a judge of any court of record except the supreme court on a temporary basis if assigned by the chief justice of the supreme court."

S. 753.075 (1), Wis., Stats. defines two types of reserve judge:

- Permanent reserve judge – a judge appointed by the Chief Justice to serve an assignment for a period of 6 months. Permanent reserve judges shall perform the same duties as other judges and may be reappointed for subsequent periods. Note: We have not used permanent reserve judges for over 15 years.
- Temporary reserve judge - a judge appointed by the Chief Justice to serve such specified duties on a day-by-day basis as the Chief Justice may direct.

In addition s. 753.075(2) states that the following are eligible to serve as a reserve judge:

- Any person who has served a total of 6 or more years as a Supreme Court Justice, a court of appeals judge or a circuit judge.
- Any person who was eligible to serve as a reserve judge before May 1, 1992.

The statutes contain a separate sum certain appropriation under the Circuit Courts to fund permanent reserve judges; currently there is no funding associated with this appropriation. Temporary reserve judges are paid a per diem and funded from the Circuit Court sum sufficient appropriation; in FY 2000, \$777,400 was expended on reserve judge per diems. Because permanent reserve judges have not been used in Wisconsin for the past 15 years, this report deals only with temporary reserve judges.

Supreme Court rules place additional requirements on those serving as reserve judges:

- They shall earn 5 judicial education credits during the calendar year immediately preceding appointment or reappointment.
- They shall not appear as an attorney nor act as counsel in any contested matter in any court in the county in which they have served as a reserve judge for a period of one year after the service.

Annually, any former judge who wants to be eligible to be appointed as a reserve judge must apply to, and be appointed by, the Chief Justice. In the application, the potential reserve judge indicates the types of assignments preferred, those which he/she has a strong objection to, preference for general/specific

assignments, length of assignments, whether he/she is engaged in the practice of law and in which counties, geographical preferences, potential earnings limitations due to social security and times of the year that he/she cannot serve.

After qualification as a reserve judge, but prior to each annual appointment, the reserve judge confers with the Chief Judge of the reserve judge's home district. Items that are discussed may include those described above, as well as whether he or she intends to provide private resolution services, judicial education which may be appropriate, nature of staff support and resources desired, and other matters which might affect assignments. The Chief Judge then establishes an assignment plan that is consistent with the skills and availability of the reserve judge and the needs of the Court System.

The Director of State Courts office supervises and coordinates reserve judge assignments. There are two types of judicial assignments. If a circuit judge in a district is unavailable, a reserve judge may be assigned for any of the following reasons:

General Assignments: This is an assignment for a period of time due to the unavailability of a sitting judge for any of the following reasons:

- On Assignment – when assistance is needed for a judge who is on assignment to another sitting judge's calendar.
- Congestion – assistance is needed to avoid backlog or delay.
- Vacation – when possible, calendars are scheduled around vacation.
- Family Medical Leave – for the judge or immediate family.
- Judicial Education – a judge is assigned to training related to the fulfillment of judicial education requirements. When possible, calendars are scheduled around judicial education programs.
- Expedite Litigation – assistance needed to respond to speedy trial demands or statutory time limits or when an assignment will significantly reduce the time necessary to reach a judicial determination.
- Chief Judge Duties – assistance needed to free the Chief Judge to handle administrative duties.
- Vacancy
- Military Service
- Jury Duty

When a judge has a general assignment, he/she has the authority to hear any matters that appear before him/her on the day(s), and in the circuit court branch cited on the assignment order. The use of reserve judges to cover courts during a foreseeable absence of a circuit judge for reasons such as vacation and judicial education is, by policy, kept to a minimum. Wherever possible, other sitting judges are used to fill in for short-term needs. In general, reserve judges are called only after this option has been exhausted.

Specific Assignments: A specific assignment is used when assignment of a judge to a particular case is needed for any of the following reasons:

- Substitution – a written request is received for the substitution of a judge, and it is impossible to assign the case to another circuit court judge.
- On Assignment – when assistance is needed for a judge who is on assignment to another judge's calendar.
- Congestion – assistance is needed to avoid backlog or delay.
- Expedite Litigation – assistance needed to respond to speedy trial demands or statutory time limits or when an assignment will significantly reduce the time necessary to reach a judicial determination.
- Chief Judge Duties – assistance needed to free the Chief Judge to handle administrative duties.
- Vacancy
- Military Service
- Jury Duty
- Family Medical Leave – for the judge or immediate family.
- Disqualification – when a judge determines that, for any reason, he or she cannot, or it appears that he or she cannot, act in an impartial manner. Reserve judges are assigned only in those instances in which it is not practical to assign another circuit court judge.

When a judge has a specific assignment, he/she has the authority to hear all matters pertaining to the specific case through disposition. Specific assignments may last from a day to many weeks, depending on the case.

RESERVE JUDGE USE IN WISCONSIN

There are three primary factors that enter into the total statewide availability of reserve judges:

First, unlike many states, Wisconsin does not have a mandatory retirement provision for judges. Therefore, no mechanism exists to ensure that there is a dependable pool of potential reserve judges. On January 1, 2000, Wisconsin had 240 circuit court judges ranging in age from 36 to 76. 76 of the judges were under 50; 122 were between 50 and 59; 35 were between 60 and 69; and seven were over 70. Two of those over 70 have since retired. While in some states the lack of a mandatory retirement age may be a factor in the size of the pool of potential reserve judges, currently, this does not appear to be the case in Wisconsin since relatively few judges are older than 70.

The second factor is the rate of compensation. All former judges are not eligible to receive retirement annuities, as they may not have reached the state retirement age (55) or social security eligibility age (62) when leaving service. Therefore, the reserve judge pool may be limited because the reduced level of compensation offered to reserve judges is not always supplemented by retirement income. This lack of an adequate per diem may consequently force potential reserve judges to seek more well-paid job opportunities. In 1999, there were ten reserve judges who did not receive retirement annuities; most of these were either active attorneys or active in mediation/arbitration. It should be noted that the Director of State Courts office does not collect information on the number of former judges who choose not to apply to be certified, or the reason they are not interested in serving as reserve judges.

A third factor that impacts the available pool of reserve judges is the cap on total compensation that may be received by a reserve judge. According to s. 753.075(3)(a), the total of the per diem paid to reserve judges, other judicial compensation and all Wisconsin governmental retirement annuities (state and local) received during a calendar year may not exceed the yearly compensation of a circuit judge. This limits the number of days that reserve judges who receive retirement annuities are eligible to work. The specific impact of this provision will be discussed later.

As of January 1, 2000, there were 70 former judges who were certified as reserve judges during calendar year 2000. Most of these imposed limitations on when and where they would or could serve and/or the types of cases they would hear. For example, 14 are not available to serve for at least two months during the year due to out-of-state vacation plans and three have restrictions on the day of the week they are able to work. Twelve are practicing attorneys, thus limiting the counties in which they are eligible. Fifty of the judges indicated that they would be willing to work only in a limited geographical area. Finally, while 32 reserve judges are willing

to preside over most case types, 24 put significant restrictions on the types of cases they would be willing to hear.

In calendar year 1999, there were a total of 2499 general assignment days worked by reserve judges as well as 172 specific assignments (there is no data maintained on the number of days worked for specific assignments). The use of reserve judges peaks during the summer months when elected judges tend to take vacations, and is lowest in mid-winter when many reserve judges are out-of-state. While varying somewhat from year to year, the number of general assignment days has remained stable at about 2500 for the past ten calendar years. On the other hand, there has been a slow but steady decrease in the number of specific assignments during that period.

In calendar year 1999, of the 77 judges certified as reserve judges, seven worked 100 general assignment days or more, while eleven worked between 50 and 99 days. These 18 accounted for two-thirds of the reserve judge general assignments. On the other hand, 26 worked five or fewer general assignment days. In addition, eight reserve judges presided over two-thirds of the specific assignments.

Table 1 contains detailed information on calendar year 1999 reserve judge assignments as well as the number of days eligible to serve according to the cap on total earnings. The "days eligible" was calculated by the Director of State Courts Office using annuity information supplied by the reserve judges. Since this information is not audited, it should be used only as a guide. There are several reserve judges whose availability to work is impacted by the cap on total compensation.

Table 2 breaks out reserve judge general assignments in 1999 by judicial administrative district. It also contains, by district, the number of judges, judicial need as determined by the weighted caseload methodology, the number of resident reserve judges, and the days worked by judge. One obvious problem, as shown by this table, is that reserve judge residence is not uniform across the state. For example District 2 (Racine) has two resident reserve judges (one who practices law in Racine and the other is the Walworth County Corporation Counsel), and District 9 (Wausau) has one resident reserve judge (who is an active attorney and is unavailable to work in half the counties in the district). On the other end of the spectrum is District 3 (Waukesha) with almost one resident reserve judge for every two elected judges. Obviously, as long as reserve judge service is at the option of the reserve judge, and since most reserve judges are not interested in traveling long distances, this geographical imbalance will continue to be a problem.

It would be logical to assume that there would be some relationship between unmet judicial need and a greater use/need of reserve judges. This relationship, however, does not appear to be that straightforward: the district with the greatest relative unmet need (District 5 – Madison) has the second highest number of general assignment days, but District 4 (Oshkosh) with the second highest need had the

third fewest general assignment days. The statistics for District 3, with low unmet need were skewed in 1999 due to the extended illness of a judge in that district.

The use of reserve judges in Milwaukee (District 1) is primarily the result of the way reserve judges are used there. In most parts of the state, reserve judges are used on an ad hoc basis, filling in for emergency situations when other district judges cannot be used. Milwaukee, however, tends to use reserve judges more like additional judges, booking them months in advance to avoid a backlog in their caseload. The use of judges for workload relief is also found in Dane County, primarily for small claims, evictions and contempt cases.

TABLE 1. RESERVE JUDGE ASSIGNMENTS: 1999

Judge ID	Days Eligible	Gen. Days Worked	Specific Assign.
57	261	233.0	-
55	NR	136.5	2.0
24	261	132.0	-
41	261	119.5	1.0
19	238	109.0	1.0
7	261	108.0	3.0
35	NR	100.5	71.0
53	106	93.5	-
16	234	76.0	-
26	234	72.5	4.0
51	261	67.5	-
28	261	63.0	7.0
21	261	58.0	-
39	234	58.0	5.0
65	NR	57.0	3.0
12	261	56.5	12.0
50	247	54.0	3.0
22	261	51.5	2.0
42	NR	49.0	-
71*	NR	49.0	-
32	NR	47.5	-
38	224	46.0	-
54	261	42.0	1.0
62	261	41.5	2.0
45	NR	39.5	1.0
13	261	37.5	3.0
9	46	37.0	2.0
49	261	33.5	1.0
1	261	32.0	5.0
63	NR	31.0	2.0
30	NR	31.0	-
66	NR	28.5	-
56	261	28.0	1.0
58	261	25.0	-
61	NR	22.0	3.0
25	NR	18.0	3.0
44	NR	15.5	2.0
72*	NR	15.0	-
20	261	14.0	1.0

Judge ID	Days Eligible	Gen. Days Worked	Specific Assign.
15	224	14.0	-
67	174	13.5	7.0
43	261	13.0	5.0
14	261	12.5	-
3	228	12.0	-
29	NR	11.0	-
64	261	10.0	-
6	223	10.0	-
73*	NR	10.0	-
33	261	8.0	-
27	236	6.0	4.0
70	204	6.0	-
4	NR	5.0	4.0
36	261	5.0	1.0
52	211	5.0	2.0
74*	NR	5.0	-
75*	NR	5.0	-
68	NR	4.5	-
60	133	3.0	1.0
31	NR	2.5	4.0
2	NR	2.0	-
18	261	2.0	1.0
5	NR	1.5	-
76*	NR	1.5	-
17	261	1.0	-
77*	NR	1.0	-
47	NR	0.5	-
34	NR	0.0	-
10	NR	0.0	-
23	NR	0.0	1.0
11	261	0.0	-
40	261	0.0	-
48	261	0.0	-
59	261	0.0	-
8	209	0.0	-
69	190	0.0	-
37	NR	0.0	-
46	NR	0.0	1.0

- Not re-certified as of January 1, 2000.
- NR: Not reported

TABLE 2. RESERVE JUDGE GENERAL ASSIGNMENTS: 1999

<u>District</u>	<u>Judges</u>	<u>Judicial Need</u>	<u>Resident Reserve Judges*</u>	<u>Total Days Worked</u>	<u>Days Worked by Judge*</u>			
					<u><5.0</u>	<u>5 - 49</u>	<u>50 - 99</u>	<u>>100</u>
1	47	52.29	15	972.0	5	5	1	4
2	21	23.21	2	49.0	1	1		
3	23	22.60	11	261.5	5	5		1
4	20	23.71	5	89.0	1	2	1	1
5	26	31.54	9	402.5	2	3	3	1
6	21	23.68	8	197.5	3	3	2	
7	17	16.31	5	46.5	3	1	1	
8	24	24.45	6	203.5	1	2	3	
9	17	16.25	1	154.5		1		
10	<u>24</u>	<u>26.42</u>	<u>8</u>	<u>123.0</u>	<u>2</u>	<u>6</u>		
	240	260.46	70	2499.0	23	29	11	7

* Certified as of January 1, 2000

RESERVE JUDGE COMPENSATION IN WISCONSIN

Table 3 contains a chronological history of reserve judge compensation since court reorganization as well as a comparison to circuit judge salary. As a companion to this information, Table 4 shows the Court System's biennial budget requests for increases in the reserve judge per diem during this period, as well as the Governor's recommendations and the final action taken by the Legislature.

By statute, reserve judges receive per diem rates that are equivalent to approximately 70% of the daily salary paid a sitting judge. The per diem increases by the same percentage as the total percentage increase in Circuit Court judges' salaries. If serving outside of their county of residence, reserve judges are also eligible to be reimbursed for actual and necessary expenses. There are no explicit provisions for space or support staff.

At the time of court reorganization, reserve judge per diem was set at a rate that was equivalent to approximately 90% of a circuit judge's salary. Since that time, the Legislature has set per diem levels that range from 60% to 77% of that of a Circuit Court judge. Sometimes the per diem rate was set as a specific relationship to a circuit judge's salary, while in other years this relationship did not enter into the establishment of the per diem. The current per diem relationship (70%), as well as the provision for increasing the rate, was established in the 1993-95 biennial budget, with a technical modification made in the 1997-99 budget repair bill. There does not appear to be any rationale for the 70% figure.

The FY 01 per diem rate for reserve judges will become \$284.02 on October 8, 2000; reserve judges are not eligible for the standard state fringe benefit package. If the rate were set at 100% of a sitting judge's salary, the per diem would be \$406.75. For comparison purposes, the equivalent full daily compensation of an elected judge, including the standard fringe benefit package, is \$523.39.

Historically, the court system has requested that the reserve judge per diem be established as a percentage of the equivalent daily salary paid to a circuit judge (either 90% or 100%), at a rate based on what reserve judges could receive as arbitrators/mediators or at the rate paid to court appointed attorneys (see Table 4). For the past three biennia, neither the Governor nor the Legislature has recommended any changes to the current reserve judge pay procedure.

TABLE 3. JUDICIAL COMPENSATION
Comparison: Circuit to Reserve Judge

<u>Date</u>	<u>FY</u>	<u>Reserve Judge (per diem)</u>	<u>Circuit Judge (per day)</u>	<u>Reserve Judge %</u>
Jan-79		125	139	89.9%
Aug-79	FY80	125	165	75.7%
Aug-80	FY81	125	189	66.1%
Aug-81	FY82	125	189	66.1%
Aug-82	FY83	125	189	66.1%
Aug-83	FY84	150	195	77.0%
Aug-84	FY85	150	231	65.0%
Aug-85	FY96	150	240	62.5%
Aug-86	FY87	150	251	59.8%
Aug-87	FY88	175	256	68.3%
Aug-88	FY89	175	261	67.0%
Aug-89	FY90	190	261	72.7%
Aug-90	FY91	190	281	67.7%
Aug-91	FY92	205	300.78	68.2%
Aug-92	FY93	205	309.80	66.2%
Aug-93	FY94	225	322.20	69.8%
Aug-94	FY95	231.75	331.88	69.8%
Aug-95	FY96	238.71	341.84	69.8%
Aug-96	FY97	243.49	348.70	69.8%
Oct-97	FY98	243.49	366.15	66.5%
Jun-98	FY98	255.66	366.15	69.8%
Aug-98	FY99	268.45	384.47	69.8%
Jul-99	FY00	273.82	392.15	69.9%
Aug-00	FY01	282.04	403.92	69.8%
Oct-00	FY01	284.02	406.75	69.8%

TABLE 4. RESERVE JUDGE COMPENSATION REQUESTS AND ACTION

<u>BIENNIUM</u>	<u>PER DIEM</u>	<u>REQUEST</u>	<u>GOV REC</u>	<u>FINAL ACTION</u>	<u>COMPARE TO CC JUDGE SALARY</u>
1981-83	\$125	None	N/A	N/A	N/A
1983-85	\$125	90% of Circuit Judge (\$175/\$208)	90% of Circuit Judge	\$150	Year I: 77% Year II: 65%
1985-87	\$150	90% of Circuit Judge (\$216/\$226)	80% of Circuit Judge (\$192/\$201)	\$150	Year I: 63% Year II: 60%
1987-89	\$150	\$400* (156%/153%)	80% of Circuit Judge (\$205/\$209)	\$175	Year I: 68% Year II: 67%
1989-91	\$175	\$450* (172%/160%)	\$250 (96%/89%)	\$190	Year I: 73% Year II: 68%
1991-93	\$190	\$480* (160%/155%)	\$200 (66%/65%)	\$205 (68%/66%)	Year I: 68% Year II: 66%
1993-95	\$205	100% of Circuit Judge (\$322/\$332)	\$225/\$250 (70%/75%)	\$225 yr. I Same % incr. as CC Judge yr. II	70% Each Yr.
1995-97	\$231.75	No Request	Current Law	Current Law	70% Each Yr.
1997-99	\$243.49	90% of Circuit Judge	Current Law	Current Law	70% Each Yr.
1999-2001	\$268.45	100% of Circuit Judge	Current Law	Current Law	70% Each Yr.

* 1987-93 requests are based upon rates for arbitrators/mediators and court appointed attorneys
NOTE: When two figures appear in parenthesis they are for each year of the biennium

COMPARISONS WITH OTHER STATES

Table 5 contains comparative information for the fifty states on reserve judge compensation, mandatory judicial retirement age (if any), limitations on earnings, per diem and whether a judge receives retirement if serving in a reserve judge capacity. While Wisconsin uses only temporary reserve judges who serve on an ad hoc basis, other states also assign former judges for more extended, defined periods of time. In some states, service after retirement is obligatory, but coupled with enhanced retirement benefits. Perhaps the most significant conclusion is that each state has its own unique way of dealing with former judges. In particular:

- Retirement Age – Thirty-five states have some form of mandatory retirement provisions, with the most common retirement age being 70. In general, mandatory retirement age refers either to the age at which one may begin a new term, or the year in which one must retire. Wisconsin's Constitution (Article VII, Section 24(2)) requires retirement on July 31 following the date on which the person attains the age of not less than seventy, which the Legislature shall prescribe by law. The Legislature has not prescribed an age, and therefore, Wisconsin does not have mandatory retirement.
- Per Diem – More than half of the states pay (reserve) judges the equivalent of the daily salary of the judge who is being replaced or the difference between this daily salary and the annuity the reserve judge is entitled to. Fourteen states (including Wisconsin) pay reserve judges a fixed per diem amount, which most commonly ranges from \$200 - \$300 per day. The Wisconsin per diem is \$284.02. Two states set the per diem at 85% of a sitting judge's salary. Four states did not pay reserve judges an additional per diem. In addition, it is common practice to reimburse reserve judges for travel and other necessary expenses, and to provide them with space and support staff – this is not the case in Wisconsin.
- Salary Limitation – About half the states limit total compensation (either daily, monthly or annual) of per diem and annuity to the compensation of the judge who is being replaced. Eleven states have no such limitations.

Obviously, states that have mandatory retirement provisions, or that require retired judges to serve a particular period of time, have a more readily accessible pool of potential reserve judges.

**TABLE 5. RESERVE JUDGE COMPENSATION:
NATIONAL COMPARISONS**

STATE	RET. AGE	PER DIEM	ANNUITY	LIMIT
ALABAMA	70: begin term	Travel only	Yes	No additional pay for Circuit or district judges
ALASKA	70	225 per day	Yes	Per Diem + Annuity = Active judge compensation
ARIZONA	70	Travel See limit	Yes	Per Diem + Annuity = Active judge compensation
ARKANSAS	End of term turn 70	Travel	Yes	Per Diem + Annuity = Active judge compensation
CALIFORNIA	None	1/250 judge salary: 451.27 per day	Yes	Retirement plus daily rate = judge compensation
COLORADO	72	1/20 monthly salary plus expenses	Yes	None
CONNECTICUT	70	160 per day plus expenses	Yes	Per Diem + Annuity cannot exceed Salary of pos. retired from
DELAWARE	None	150 per day plus expenses	Yes	Per Diem + Annuity cannot exceed Salary of pos. retired from
FLORIDA	End of term turn 70	275 per day	Yes	None
GEORGIA	End of term turn 75	165 per day plus expenses	Yes	None
HAWAII	70	Daily judge salary: 399.84 per day	No	No retirement pay while serving
IDAHO	None	85% of active judge salary	Yes	Per Diem + Annuity = Salary of pos. retired from
ILLINOIS	75	Active judge Salary	No	No retirement benefits During service
INDIANA	75: Appeals & Supreme	50 per day Plus expenses	Yes	Up to 100 days per year
IOWA	After 72 senior until 78	Retired: Daily active judge salary	No	Senior: 5800 annually plus Enhanced annuity
KANSAS	End of term turn 70	Daily Legis. Salary (76.44) Plus expenses (85)	Yes	Per Diem + Annuity = Active judge compensation
KENTUCKY	None	Expenses	See limit	Diff. Between .4% retirement And .4% sal. of active judge
LOUISIANA	70	Expenses	Yes	Daily judge salary less pension
MAINE	None	150 per day 90 per half day	Yes	Annually: Per Diem + Annuity < Active judge compensation
MARYLAND	70	Daily active judge Sal + expenses	Yes	Per Diem + Annuity cannot exceed Salary of pos. retired from
MASSACHUSETTS	70	1/220 (judge salary Less pension)	Yes	See per diem
MICHIGAN	End of term turn 70	Per Diem: see limit Expenses	Yes	Greater of \$100/day or 1/250 judge sal - 1/250 annuity
MINNESOTA	70	See limit Expenses	Yes	Pay + expenses provide by law Less retirement
MISSISSIPPI	None	1/260 active judge Travel	Yes	Yearly total cannot exceed 25% of Current active judge salary
MISSOURI	70	1/235 active judge Expenses	Yes	None

RESERVE JUDGE COMPENSATION:
NATIONAL COMPARISONS (CONT)

STATE	RET. AGE	PER DIEM	ANNUITY	LIMIT
MONTANA	None	Actual expenses	Yes	Daily: 5% of active judge mo. salary Less 5% mo. Retirement allowance
NEBRASKA	None	See Limit Expenses	Yes	Annuity + Per Diem = Daily active judge compensation
NEVADA	None	5% mo. Salary + Expenses	Yes	None
NEW HAMPSHIRE	70	None Service is required	Yes	None
NEW JERSEY	70	300 per day	Yes	Per Diem + Annuity cannot exceed Active judge compensation
NEW MEXICO	None	None	Yes	None
NEW YORK	70	300 per day	Yes	None
NORTH CAROLINA	72	300 per day + Expenses	Yes	Total Per Diem + Annuity cannot exceed Annual active judge compensation
NORTH DAKOTA	73 (Encouraged)	5% mo. Salary + Daily salary + travel	Yes	Total Per Diem + Annuity cannot exceed Annual active judge compensation
OHIO	70	Daily salary of active judge	Yes	None
OKLAHOMA	None	300 per day + Expenses	Yes	None
OREGON	75	Senior: 5% mo. Salary Formula B: None	Yes	Senior: Annual limit Formula B: Enhanced Annuity
PENNSYLVANIA	70	348 per day + COLA Plus expenses	Yes	Total Per Diem + Annuity cannot exceed Annual active judge compensation
RHODE ISLAND	None	See limit	Yes	Per Diem + Annuity cannot exceed Active judge compensation
SOUTH CAROLINA	72	See limit Expenses	Yes	Less than 3 consec. mos: no pay > 3 mos: Annuity - Active judge sal.
SOUTH DAKOTA	70	Expenses Only	Yes	No added compensation
TENNESSEE	None	Expenses	Yes	Per Diem + Annuity = Active judge compensation
TEXAS	75	85% of active judge salary	Yes	None
UTAH	75	Hourly rate of judge In half day increments	Yes	None
VERMONT	End of term turn 70	Active judge salary: 360 per day	Yes	Per Diem + Annuity cannot exceed Active judge compensation
VIRGINIA	70	200 per day + Expenses	Yes	Max. 90 days
WASHINGTON	75	Active judge salary Expenses	Yes	No retirement for service time Greater than 810 hours in a year
WEST VIRGINIA	None	Reasonable payment Expenses	Yes	Per Diem + Annuity cannot exceed Active judge compensation
WISCONSIN	None	284.02 per day + Expenses	Yes	Per Diem + Annuity cannot exceed Active judge compensation
WYOMING	70 None: County	Expenses	Yes	Active Judge Compensation

* Source: B.S. Meyer, Judicial Retirement Laws of the Fifty States (1999)

AMERICAN BAR ASSOCIATION STANDARDS **FOR STATE JUDICIAL RETIREMENT**

In July 2000, the American Bar Association adopted standards for state judicial retirement. Among the relevant items are:

- Standard 5: Involuntary Retirement on the Basis of Age – A judge should be subject to mandatory retirement at age 75. A judge involuntarily retired on the basis of age should be able to continue in judicial service as a senior (reserve) judge.
- Standard 13: Application for Senior Judge Status -A judge should not be allowed to serve as a senior judge after the last day of the calendar year in which the judge turns 80 years of age.
- Standard 16: Compensation of Senior Judges – Retirement benefits received by a senior judge should be continued notwithstanding such service. Compensation for each day of service should be not less than 1/235th* of the annual salary of the judge of the tribunal to which the senior judge is assigned. Compensation for service as a senior judge should be reduced to the extent that the judge's total compensation from judicial service and retirement benefits for the year would exceed the current salary of a judge of the tribunal to which the senior judge is assigned or a judge of the tribunal from which the senior judge retired, whichever is greater. A senior judge should receive the same benefits by way of health, dental, accident, and life insurance as are provided for active judges. A senior judge should receive reimbursement for reasonable and necessary expenses related to the rendition of judicial services.
- Standard 17: Facilities and Services for Senior Judges – A senior judge should be provided with facilities and services reasonable and necessary for the performance of judicial duties.

* In Wisconsin 1/235th of the annual salary of a circuit court judge is \$450.02/day – the current rate is \$284.02/day.

DISCUSSION

Reserve judges are essential to the daily operation of Circuit Courts in Wisconsin. They are used extensively across the state to hear cases which otherwise could not be heard in a timely manner because of caseloads, disqualification, substitution, medical leave, vacation, vacancy or judicial education. Reserve judges provide an indispensable safety net for the Circuit Courts; without them, it would be difficult to conduct judicial business in an efficient, effective manner. If reserve judges were not available, many one-judge counties would have to curtail operations during times of unfilled vacancies and extended illness. The skills, knowledge and experience of reserve judges provide an invaluable and irreplaceable service to litigants, the Court System as a whole and the public.

Notwithstanding the value of reserve judges, there are significant practical and political differences between a reserve judge and an elected judge:

- Reserve judges are not directly accountable to the electorate. Instead, reserve judges are accountable to the Chief Justice and the Director of State Courts.
- Reserve judges do not have the independence or stability of a term of office or a central base of operations.
- Reserve judges may decline assignments. Reserve judges are employed on an as needed basis. The reserve judge may decline assignments and concentrate in areas of greatest interest and comfort. In fact, however, there is great pressure on a reserve judge to accept assignments on short notice in order to meet local needs.
- Reserve judges may have unique educational needs. They may be called on to handle a variety of cases in many different counties. Because many of these assignments are made on short notice, the reserve judge may not be able to plan and prepare adequately in areas of law outside the judge's past experience.
- Reserve judges often do not have the advantage of local meetings where current issues are reviewed and discussed.

When considering that when on the bench, reserve judges and elected judges perform the same functions, it could be asserted that there is a lack of fairness in the per diem rate paid to reserve judges. As of October 8, 2000, reserve judges will be paid \$284.02 per day. They are not entitled to the fringe benefit package available to elected judges. At eight hours per day, this equals \$35.50 per hour, although a reserve judge "day" may be more or less than eight hours. When compared to others in the legal profession:

- Reserve judges are paid far less than court appointed attorneys under SCR 81.02(1), i.e. a minimum of \$70 per hour. This is the rate generally paid to guardians ad litem and often paid to court commissioners.

- Reserve judges are not paid for travel time.
- Reserve judges are paid less than Wisconsin Employment Relations Commission arbitrators who need not be attorneys and are typically paid between \$600 and \$700 per day.
- Private bar, public defenders who appear before reserve judges are paid \$45 per hour or \$360 per day for court time.
- Reserve judges can earn from \$100 - \$200 per hour when serving as mediators for private sector dispute resolution companies.
- Reserve judges do not get paid when an assignment is canceled at the last minute; this is not the case for mediation/arbitration cases.
- Statute (s.19.52 (2)) requires the Ethics Board to assign reserve judges to try ethics cases – the Ethics Board contract rate for reserve judges is \$60 per hour.
- The market rate for interpreters serving the courts is \$35-\$40 per hour.
- Reserve judges earn considerably less than the daily compensation for circuit judges, although the work they perform is comparable.

It seems apparent that the current reserve judge compensation rate is inequitably low. Hearing officers with less training and experience and a much lower level of responsibility are generally paid more than twice the rate for their work. It also seems unfair that the State of Wisconsin sets a low statutory compensation rate for reserve judges, and pays a rate competitive with private services to WERC arbitrators.

When evaluating any request to change the per diem rates for reserve judges, one argument stands out above the others: equity. Reserve judges should receive fair compensation for indispensable public service. There is no logic in paying a reserve judge trying a case 70% of the salary paid for a sitting judge. Second, there is the market factor - the reserve judge pool is finite and voluntary. Former judges can receive greater compensation performing other functions either within or outside of state government. Lower per diems would logically lead to fewer available judges, which in turn leads to fewer cases tried and a slower, less efficient justice system.

It has been argued that since most reserve judges receive some form of retirement pay, they should not receive (in total) greater compensation than an elected judge. This cannot happen due to the statutory cap on annual earnings imposed on reserve judges. The removal of this cap has not been part of the biennial budget requests submitted by the Supreme Court. In addition, as has been previously stated, the artificially low per diem has caused many reserve judges under the retirement age to seek other employment with greater pay. On the other hand, reserve judges continue to accept assignments at the low compensation rate because of their personal dedication to the work of the Court System and their willingness to help their judicial colleagues.

Finally, the public suffers when reserve judges are unavailable. Insufficient judicial resources may result in civil case delays (family and other non-criminal matters)

and backlogs. In criminal, juvenile and certain other cases, judges must be assigned to meet statutorily mandated deadlines. Thus, the ordinary citizen may find it difficult to obtain swift judicial service if reserve judges cannot be found to fill judicial assignments.