

 **99hr_AC-JPP_ajr0096_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Judiciary and Personal Privacy
(AC-JPP)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Assembly

Record of Committee Proceedings

Committee on Judiciary and Personal Privacy

Assembly Joint Resolution 96

Relating to: temporary service in the supreme court (first consideration).

By Representatives Huber, Cullen, Walker, Meyerhofer, Gunderson, Plouff, Kedzie, Hebl, Bock, J. Lehman, Staskunas, Ryba, Kreuser, Gronemus and Miller; cosponsored by Senators Burke, Huelsman and Decker.

December 30, 1999 Referred to committee on Judiciary and Personal Privacy.

January 27, 2000 **PUBLIC HEARING HELD**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Excused: (0) None.

Appearances for

- Representative David Cullen - 13th Assembly District
- Representative Greg Huber - 85th Assembly District

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- Senator Brian Burke - 3rd Senate District

Registrations against

- None.

March 1, 2000 **EXECUTIVE SESSION**

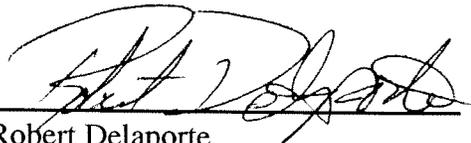
Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Excused: (0) None.

Moved by Representative Staskunas, seconded by Representative Hebl, that **Assembly Joint Resolution 96** be recommended for adoption.

Ayes: (8) Representatives Huebsch, Gundrum, Walker, Suder, Sherman, Colon, Hebl and Staskunas.
Noes: (1) Representative Grothman.
Excused:(0) None.

ADOPTION RECOMMENDED, Ayes 8, Noes 1, Excused 0



Robert Delaporte
Committee Clerk

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 3-1-00
 Moved by: Stask Seconded by: Hebl
 AB: _____ Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: 96 SR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Rep. Michael Huebsch, Chair
 Rep. Mark Gundrum
 Rep. Scott Walker
 Rep. Scott Suder
 Rep. Glenn Grothman
 Rep. Gary Sherman
 Rep. Pedro Colon
 Rep. Tom Hebl
 Rep. Tony Staskunas

| | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|-----------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| Rep. Michael Huebsch, Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Mark Gundrum | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Scott Walker | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Scott Suder | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Glenn Grothman | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Gary Sherman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Pedro Colon | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tom Hebl | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rep. Tony Staskunas | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Totals: 8 1 _____ _____

Motion Carried

Motion Failed



Pagel, Matt

From: ProQuest [tsupport@bellhowell.infolearning.com]
Sent: Friday, January 21, 2000 9:21 AM
To: matt.pagel@legis.state.wi.us
Subject: state supreme court 3-3 ties pt.3

The following article has been sent by a user at BADGERLINK via ProQuest, a Bell & Howell information service.

Court divided over mother's drunken delivery State's justices vote 3-3
on whether case warrants attempted homicide charge

[Final Edition]

Milwaukee Journal Sentinel

Milwaukee

Apr 10, 1999



Authors: RICHARD P. JONES

Pagination: 1

Dateline: Madison

Abstract:

In a case that has received nationwide attention, the state Supreme Court was divided Friday over whether a woman who allegedly tried to end her pregnancy and her life in a drinking binge can be charged with attempted homicide.

The appeals court can schedule further arguments or decide the case based on legal briefs already submitted and arguments made before the Supreme Court on Dec. 3. Or it could send the case back to the trial judge.

Chief Justice Shirley Abrahamson abstained from voting Friday because her son, a lawyer in California, represents an organization in a similar case before the U.S. Supreme Court. That organization was among groups filing written arguments on the woman's behalf before the Wisconsin Supreme Court, Abrahamson's office said in a statement.
Copyright Journal/Sentinel, Inc. Apr 10, 1999

Full Text:

In a case that has received nationwide attention, the state Supreme Court was divided Friday over whether a woman who allegedly tried to end her pregnancy and her life in a drinking binge can be charged with attempted homicide.

The 3-3 deadlock means the case will head back to the state Court of Appeals in Wausau, which passed on the case last year and asked the Supreme Court to rule on it.

The appeals court can schedule further arguments or decide the case based on legal briefs already submitted and arguments made before the Supreme Court on Dec. 3. Or it could send the case back to the trial judge.

Chief Justice Shirley Abrahamson abstained from voting Friday because her son, a lawyer in California, represents an organization in a similar case before the U.S. Supreme Court. That organization was among groups filing

written arguments on the woman's behalf before the Wisconsin Supreme Court, Abrahamson's office said in a statement.

The case involves Deborah J. Zimmerman, who had a blood-alcohol level of 0.30 three times the state's limit for evidence of intoxication for drivers when she gave birth in March 1996 to a baby girl. The child was born with a blood-alcohol level of 0.199.

Before she gave birth, the Racine County woman told a nurse that she wanted to drink herself to death and take the life of her fetus as well, according to the criminal complaint against her.

Zimmerman, then 35, was charged with attempted first-degree homicide and first-degree reckless injury. Zimmerman, of the community of Franksville, was the first woman to be charged in Wisconsin with attempted homicide of a baby for allegedly drinking alcohol during her pregnancy.

She lost the parental rights to her daughter, who was born with symptoms of fetal alcohol syndrome and now lives with foster parents.

In September 1996, Racine County Circuit Judge Dennis Barry denied a motion to dismiss the charges against her. Zimmerman's attorney appealed the matter and the appeals court last April asked the Supreme Court to take the case.

On Friday, Justices N. Patrick Crooks, Donald W. Steinmetz and Jon P. Wilcox voted to uphold Barry's decision to let the charges stand; Justices William A. Bablitch, Ann Walsh Bradley and David T. Prosser voted to reverse his decision.

The case is similar to one two years ago in which the high court ruled 4-3 that the state could not take a pregnant, cocaine-addicted mother into custody to protect her fetus. The majority then consisted of Abrahamson, Bradley, Bablitch and Justice Janine Geske.

Since then, Geske resigned, and Gov. Tommy G. Thompson appointed David Prosser, the former Assembly speaker and Republican lawmaker from Appleton, to succeed her. With Abrahamson's recusal in the Zimmerman case, the litigants saw Prosser as the swing vote in the case.

Attorneys on both side expressed disappointment in the court's indecision.

"It's just been so long, and we're not any further than we were two years ago," said former Racine County Assistant District Attorney Joan M. Korb, who argued the case before the Supreme Court. Korb is now a Door County prosecutor, but said she would continue with the case.

"I started it, and I have to finish what I started," she said.

Zimmerman is serving a two-year person term in the Taycheedah Correctional Institution for violating conditions of bail by failing to attend alcohol treatment sessions.

"Unfortunately, while she has this charge pending, she's not eligible for discretionary parole, or she would have been out already," said Sally Hoelzel, a Racine attorney representing Zimmerman.

Though Hoelzel is Zimmerman's attorney, Patricia Smith of the Center for Reproductive Law and Policy in New York City argued the case for dismissal of the charges before the Supreme Court.

"We just consider this a procedural delay," said Margie Kelly, spokeswoman for the center. "We're just hoping for swift justice. Our concern is with the client, rather than this hot potato hopping back and forth between the courts."

At least three times recently, the high court has deadlocked on major cases. Three years ago, the court split 3-3 on whether low-income children in Milwaukee could attend religious schools at state expense. Bradley abstained without explanation.

The religious school choice case ultimately landed back before the court, and the court ruled 4-2 in favor of religious school choice the second time around.

Just last month, the court split 3-3 on whether football fans injured in the 1993 Camp Randall stampede could sue University of Wisconsin-Madison officials for negligence. That ruling let stand an appeals court decision to dismiss the suits. Abrahamson abstained because her husband, Seymour, is a faculty member.

"I don't think that you can look at this as some indication of a problem on the court," said Howard Eisenberg, dean of the Marquette University Law School. "These are tough cases and the court is closely divided. So if you have one judge who has a conflict, that prevents a decision."

Eisenberg said that some states allow a substitution of judges to avoid stalemates if a judge has a conflict.

"It's just unfortunate that there's no good way to deal with it, so that the lawyers don't go through all of the problems of briefing and litigating it, and the parties are paying, the time delay, and then you get no decision," Eisenberg said. "There are real consequences of this."

Credit: Journal Sentinel staff

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===== End of Document =====





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: February 28, 2000

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Disqualification of Judges Assigned to Temporary Service in the Supreme
Court Under 1999 Assembly Joint Resolution 96

1999 Assembly Joint Resolution 96, a proposed constitutional amendment, authorizes the Wisconsin Supreme Court to assign on a temporary basis any person who has been elected to and is serving as a court of appeals judge to assist in the proper disposition of judicial business in the supreme court when it is necessary to provide seven justices for the consideration of that business. Under the proposal, the judge must be assigned by lot from all judges who are eligible to be assigned.

At the January 27, 2000 public hearing on Assembly Joint Resolution 96, questions were raised concerning when a court of appeals judge who is assigned to assist the supreme court would be required to disqualify himself or herself from assisting in a particular case. Attached to this memorandum is s. 757.19, Stats., which sets forth the circumstances under which a judge must disqualify himself or herself from an action or proceeding and the procedure for doing so. In particular, questions were raised concerning a court of appeals judge who as a court of appeals judge handled a case currently before the supreme court and who is assigned by lot to assist the supreme court with that case. Note that s. 757.19 (2) (e), Stats., provides that a judge of an appellate court who previously handled the action or proceeding while a judge of an inferior court must disqualify himself or herself from the action or proceeding.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:rv:ksm;tlu

Attachment

Section 757.19, Stats.

757.19 Disqualification of judge. (1) In this section, "judge" includes the supreme court justices, court of appeals judges, circuit court judges and municipal judges.

(2) Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs:

(a) When a judge is related to any party or counsel thereto or their spouses within the 3rd degree of kinship.

(b) When a judge is a party or a material witness, except that a judge need not disqualify himself or herself if the judge determines that any pleading purporting to make him or her a party is false, sham or frivolous.

(c) When a judge previously acted as counsel to any party in the same action or proceeding.

(d) When a judge prepared as counsel any legal instrument or paper whose validity or construction is at issue.

(e) When a judge of an appellate court previously handled the action or proceeding while judge of an inferior court.

(f) When a judge has a significant financial or personal interest in the outcome of the matter. Such interest does not occur solely by the judge being a member of a political or taxing body that is a party.

(g) When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.

(3) Any disqualification that may occur under sub. (2) may be waived by agreement of all parties and the judge after full and complete disclosure on the record of the factors creating such disqualification.

(4) Any disqualification under sub. (2) in a civil or criminal action or proceeding must occur, unless waived under sub. (3), when the factors creating such disqualification first become known to the judge.

(5) When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 751.03.

(6) In addition to other remedies, an alleged violation under this section or abuse of the disqualification procedure shall be referred to the judicial commission.



Greg Huber

STATE REPRESENTATIVE



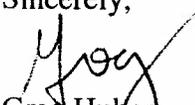
March 16, 2000

Mike Huebsch
State Representative
119 North
State Capitol

Dear Mike,

I thought you might be interested in this. I received it from the Wisconsin Court of Appeals Judge regarding AJR 96.

Sincerely,


Greg Huber
State Representative
85th Assembly District.

OFFICE: State Capitol, P.O. Box 8952, Madison, WI 53708 • (608) 266-0654
HOME: 406 South 9th Avenue, Wausau, WI 54401 • (715) 848-3705
LEGISLATIVE HOTLINE: 1-800-362-9472 • FAX (608) 266-7038

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WISCONSIN COURT OF APPEALS

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WAUSAU, WISCONSIN 54401

Chambers of
THOMAS CANE, Chief Judge

Telephone: (715) 845-6404
Fax: (715) 845-4523
Email: Thomas.Cane@courts.state.wi.us

March 13, 2000

Rep. Gregory Huber
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Greg:

Here are two more cases where our Supreme Court tied on a 3 to 3 vote after one of the Justices was disqualified. Why would anybody question the need for your proposed constitutional amendment?

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas Cane", written over a horizontal line.

Thomas Cane
Chief Judge

TC:ame
Enclosure

2000 WI 23

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 98-2792-CR

STATE OF WISCONSIN

:

IN SUPREME COURT

State of Wisconsin,

Plaintiff-Respondent-Petitioner,

v.

Michael M. Longcore,

Defendant-Appellant.

FILED

MAR 10, 2000

Cornelia G. Clark
Acting Clerk of Supreme Court
Madison, WI

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. The court is equally divided on the question of whether the decision of the court of appeals should be affirmed or reversed. Chief Justice SHIRLEY S. ABRAHAMSON, Justice WILLIAM A. BABLITCH, and Justice DAVID T. PROSSER would affirm; Justice JON P. WILCOX, Justice ANN WALSH BRADLEY, and Justice DIANE S. SYKES would reverse. Justice N. PATRICK CROOKS did not participate. Accordingly, the decision of the court of appeals is affirmed.

2000 WI 22

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 98-1737

STATE OF WISCONSIN

:

IN SUPREME COURT

FILED

Douglas-Hanson Company, Inc.,

Plaintiff-Respondent,

v.

BF Goodrich Company,

Defendant-Appellant-Petitioner.

MAR 10, 2000

Cornelia G. Clark
Acting Clerk of Supreme Court
Madison, WI

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. The court is equally divided on the question of whether the published decision of the court of appeals, Douglas-Hanson Co., Inc. v. BF Goodrich Co., No. 98-1737 (June 29, 1999), should be affirmed or reversed. Chief Justice SHIRLEY S. ABRAHAMSON, Justice ANN WALSH BRADLEY, and Justice DAVID T. PROSSER would affirm; Justice WILLIAM A. BABLITCH, Justice N. PATRICK CROOKS, and Justice DIANE S. SYKES would reverse. Justice JON P. WILCOX did not participate.

¶2 Accordingly, the decision of the court of appeals is affirmed.