



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-4010/3
TKK:jld/kjf/med:jf

2011 SENATE BILL 454

February 9, 2012 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT to repeal** 19.01 (4) (c) 3. and 59.40 (2) (L); **to amend** 19.01 (4) (c) 4.,
2 800.02 (2) (a), 814.08 (1) and 814.65 (5); and **to create** 800.08 (5) of the statutes;
3 **relating to:** the role of the clerk of a circuit court in filing the oath and bond
4 of a municipal judge; signatures on citations or complaints alleging a violation
5 of a municipal ordinance; the fee for a transcript of an electronic recording of
6 municipal court proceedings; and the authority of a municipal court judge to
7 order a default judgment against a defendant who fails to appear at trial
8 (suggested as remedial legislation by the Law Revision Committee).

Analysis by the Legislative Reference Bureau

This bill makes several changes to municipal court practice and procedure.

Current law requires municipal judges to take and file an official oath and execute and file an official bond. 2009 Wisconsin Act 402 (Act 402) made a number of changes to the law governing municipal courts and municipal judges. Prior to the enactment of Act 402, municipal judges were required to file the oath and bond with the clerk of the circuit court. Act 402 requires municipal judges to, instead, file the oath and bond with the clerk of the city, town, or village, where the judge was elected.

This bill eliminates a provision that requires municipal judges to file the oath and bond with the clerk of the circuit court for which the municipal judge serves. The

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bill also eliminates a requirement that the clerks of the circuit courts annually send a certified list of all municipal court judges who filed their official bonds with the clerks during the preceding year.

Under current law, a citation or complaint alleging a violation of a municipal ordinance must be signed by a law enforcement officer, an attorney representing the municipality, or, under certain circumstances, a conservation warden, municipal official, or municipal employee (signatory). This bill eliminates the requirement that the citation be signed and, instead, requires only that the name of the signatory appear in the citation or complaint.

Current law requires a defendant in municipal court to make an initial court appearance in person or in a written response to the citation or complaint. Current law permits a municipal court judge to order a default judgment against a defendant who fails to make an initial appearance or to make a deposit in the amount set for the violation. This bill permits a municipal court judge to order a default judgment against a defendant who fails to appear at trial.

Under current law, a person who appeals a municipal court judgment or decision (appellant) must pay for the cost of any transcript made of electronic recordings of the municipal court action. Current law also requires the appellant to pay a \$10 fee for the preparation of the transcript. Finally, under certain circumstances, current law requires a defendant appellant who does not prevail on appeal or whose appeal is dismissed to pay for the cost of the transcript. This bill eliminates the requirement that the appellant pay a \$10 transcript fee, and eliminates the duplicative requirement that a defendant appellant pay for the cost of the transcript if the appellant does not prevail on appeal.

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 19.01 (4) (c) 3. of the statutes is repealed.

2 **SECTION 2.** 19.01 (4) (c) 4. of the statutes is amended to read:

3 19.01 (4) (c) 4. All judges ~~or, other than municipal judges, and all~~ judicial
4 officers, ~~not included in subds. 1. and 3. other than judicial officers under subd. 1.,~~
5 elected or appointed for that county, or whose jurisdiction is limited to that county.

6 **SECTION 3.** 59.40 (2) (L) of the statutes is repealed.

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NOTE: Sections 1 to 3 eliminate references to the circuit court clerk's responsibilities to file the oaths and bonds taken by municipal judges. Due to the enactment of 2009 Wisconsin Act 402, the clerk of the city, town, or village where the judge was elected is required to file the judge's oath and bond.

1 **SECTION 4.** 800.02 (2) (a) of the statutes is amended to read:

2 800.02 (2) (a) The citation or complaint shall ~~be signed by~~ contain the name of
3 a law enforcement officer, attorney representing the municipality, or, if applicable,
4 a conservation warden. In addition, the governing body of a municipality authorized
5 to adopt the use of citations or complaints may designate by ordinance or resolution
6 other municipal officials who ~~may sign and~~ are authorized to issue and be named in
7 citations or complaints with respect to ordinances which are directly related to the
8 official responsibilities of the officials. Officials granted the authority to sign and
9 issue and be named in citations and complaints may delegate, with the approval of
10 the governing body, the authority to employees. Authority delegated to an official or
11 employee may be revoked only in the same manner by which it is conferred.

NOTE: Section 4 eliminates the requirement that a municipal citation or complaint must be signed by a law enforcement officer, attorney representing the municipality, or a conservation warden, municipal official, or municipal employee. This signature requirement is eliminated due to the increased use of electronically generated citations. Instead, the bill requires that the citation or complaint contain the name of the law enforcement officer, attorney, or conservation warden, municipal official, or employee.

12 **SECTION 5.** 800.08 (5) of the statutes is created to read:

13 800.08 (5) If a defendant does not appear at trial, the court may enter a default
14 judgment under s. 800.09.

NOTE: Municipal judges currently have the authority to enter a default judgment if the defendant fails to make an initial appearance or to make a deposit for the amount set for the violation. This provision gives a municipal judge the authority to order a default judgment at a municipal trial, if the defendant fails to appear.

15 **SECTION 6.** 814.08 (1) of the statutes is amended to read:

16 814.08 (1) In actions appealed from municipal court, where there is no new
17 trial, if the judgment is affirmed or the appeal dismissed the respondent shall have

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1 costs; if reversed, the appellant; if affirmed in part and reversed in part, the court
2 may award the costs or such part thereof as is just to either party. ~~In actions appealed~~
3 ~~by the defendant from municipal court, where there is no new trial, if the judgment~~
4 ~~finding the defendant guilty under s. 800.09 is affirmed, or if the defendant's appeal~~
5 ~~is dismissed, the defendant shall pay the full costs of the transcript prepared under~~
6 ~~s. 800.14 (5), minus the \$10 transcript payment under s. 814.65. Where there is a~~
7 new trial, costs shall be awarded to the successful party; but if the appeal is from a
8 judgment in favor of the appellant he or she shall have costs only if he or she obtains
9 a more favorable judgment, and otherwise the respondent shall have costs. In all
10 those cases full costs shall be the applicable fee under s. 814.61 (8) and all
11 disbursements made for return of the judge and officers' and witnesses' fees, together
12 with all costs taxable in the municipal court in the action.

13 **SECTION 7.** 814.65 (5) of the statutes is amended to read:

14 814.65 (5) COSTS AND FEES ON APPEAL. On appeal from municipal court, the
15 appellant shall pay the fee prescribed in s. 814.61 (8). ~~The appellant shall also pay~~
16 ~~a fee of \$10 for the transcript prepared under s. 800.14 (5).~~ Costs shall be as provided
17 in s. 814.08.

NOTE: Sections 6 and 7 delete obsolete references to payment for appeal transcripts, since another statute, section 800.14 (5), covers all issues related to payment for transcripts.

18 (END)