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[=OAG 1-00]January 28, 2000

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Mr. J. Denis Moran
Director of State Courts
Supreme Court of Wisconsin
119 Martin Luther King Jr. Blvd., Room LL2
Madison, WI 53703

Dear Mr. Moran:

You ask my opinion concerning whether circuit courts may, by blanket order, allow motion costs under Wis. Stat. § 814.07 on all motions brought to open a judgment entered on a forfeiture action under Wis. Stat. § 345.37.

**A COURT MAY NOT BY BLANKET ORDER IMPOSE WIS. STAT.
§ 814.07 COSTS ON ALL WIS. STAT. § 345.37(1)(b) MOTIONS.**

Wisconsin Stat. § 814.07 costs may be allowed on a motion “in the discretion of the court or judge.” Discretion “contemplates a process of reasoning.” *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). Wisconsin Stat. § 345.37(1)(b) specifies criteria a court must evaluate when considering a motion to open the judgment. The court must determine whether the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. The process of discretion depends “on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.” *McCleary*, 49 Wis. 2d at 277.

State v. Smith, 203 Wis. 2d 288, 299, 553 N.W.2d 824 (Ct. App. 1996) is instructive. It involved a trial court’s blanket ruling rejecting prior conviction evidence for impeachment purposes under Wis. Stat. § (Rule) 906.09. The trial court did not individualize to each witness its analysis of the factors to be weighed in the balancing test under Wis. Stat. § (Rule) 906.09(2) to determine whether the probative value of the prior conviction evidence was substantially outweighed by the danger of unfair prejudice. The *Smith* court found that a “blanket ruling, while expedient and consistent, fails to show a consideration of the proper factors with respect to each witness, and thus, is an erroneous exercise of discretion.” *Smith*, 203 Wis. 2d at 299, citing *McCleary*, 49 Wis. 2d at 277-78. *See also State v. Martin*, 100 Wis. 2d 326, 302 N.W.2d 58 (Ct. App. 1981).

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[=OAG 1-00,2]Imposing costs by blanket order without an inquiry into the facts of each case as applied to the criteria of Wis. Stat. § 345.37(1)(b), would therefore be a failure to exercise the discretion called for in Wis. Stat. § 814.07.

In sum, Wis. Stat. § 814.07 costs may not be imposed by blanket order.

Sincerely,

James E. Doyle
Attorney General

JED:SJN:ajl

CAPTION: Wisconsin Stat. § 814.07 motion costs on motions brought to open a judgment entered on a forfeiture action under Wis. Stat. § 345.37 may not be imposed by blanket order.