

CHAPTER 751

SUPREME COURT

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751.01 Terms of justices. The term of office of an elected justice of the supreme court commences on the August 1 next succeeding the justice's election.

History: 1977 c. 187 s. 74; Stats. 1977 s. 751.01.

751.02 Employes. The supreme court may authorize the employes it considers necessary for the execution of the functions of the supreme court and the court of appeals and the court reporting functions of the circuit courts and may designate titles, prescribe duties and fix compensation. Compensation and benefits of employes should be consistent with that paid to state employes in the classified service for services involving similar work and responsibility. Each justice and court of appeals judge may appoint and prescribe the duties of a secretary and a law clerk to assist the justice or judge in the performance of his or her duties. Each circuit judge may appoint a court reporter to serve in the court or branch of court to which he or she was elected or appointed if the reporter is certified as qualified by the director of state courts. A person appointed by the supreme court or a justice or court of appeals judge or a circuit judge serves at the pleasure of the court or the justice or judge.

History: 1977 c. 187; 1981 c. 353.

751.03 Assignment of judges. (1) The chief justice of the supreme court may assign any active supreme court justice, court of appeals judge or circuit judge to serve temporarily as a judge of the court of appeals or any circuit court to aid in the proper disposition of business in that court. The chief justice of the supreme court may designate and assign reserve judges under s. 753.075 to serve temporarily in the court of appeals or the circuit court for any county. While acting under a temporary assignment, an active or reserve justice or judge may exercise all the authority of the court to which he or she is assigned.

(2) The chief justice of the supreme court may exercise the authority under sub. (1) in regard to municipal courts for the purpose of:

(a) Assigning a case in which a change of judge is requested under s. 757.19 (5) or is required under s. 800.05 to another municipal judge or, if none is available, transferring the case to circuit court.

(b) Assigning cases in municipal court in which a municipal judge is incompetent, unable or fails to act, to another municipal judge, former municipal judge or former circuit judge. A judge to whom cases are so assigned may serve until the chief justice determines that the incompetency, inability or failure ceases, or until the term of the municipal judge expires or the vacancy is permanently filled under s. 8.50 (4) (fm), whichever occurs first. If no judge is available, the chief justice may transfer a case from municipal court to circuit court.

(3) The chief judge of any judicial administrative district may assign any circuit judge within the district to serve in any circuit court within the district.

(4) (a) If a judge before whom a reported proceeding has commenced is unable to proceed, the judge to whom the case is assigned may proceed with it upon certifying familiarity with the record and determining that proceedings in the case may be completed without prejudice to the parties. Otherwise the judge assigned may grant a new trial or rehearing.

(b) If a judge before whom an action or proceeding has been tried is unable to proceed after a verdict is returned or findings of fact and conclusions of law are filed, the judge to whom the case is assigned may proceed with it unless satisfied that the duties cannot be performed without prejudice to the parties, in which event a new trial may be granted.

(5) Any assignment referred to in this section or SCR 70.23 may be requested or ordered by telephone to minimize disruption of court calendars and inconvenience to parties and witnesses.

History: 1971 c. 46; 1977 c. 29, 135; 1977 c. 187 s. 84; 1977 c. 305, 447, 449; Stats. 1977 s. 751.03; 1979 c. 32 s. 92 (17); Sup. Ct. Order, 123 W (2d) xxi; 1985 a. 304; Sup. Ct. Order, 142 W (2d) xvii; Sup. Ct. Order, eff. 1-1-89.

Judicial Council Note, 1985: Sub. (4), modeled on proposed Rule 63, F.R.C.P., provides a procedure to be followed when the presiding judge dies, becomes disabled, or is otherwise unable to proceed, either during trial or after the verdict or findings and conclusions have been filed. It provides an efficient mechanism for completing these cases without violating due process, preventing unnecessary expense and delay. [Re Order effective July 1, 1985]

Judicial Council Note, 1988: Sub. (5) allows judicial assignments to be requested and made by telephone. [Re Order effective Jan. 1, 1988]

Sub. (4) (a) is amended to extend its application to reported proceedings in addition to trials. The intent is to allow recourse to this provision for preliminary examinations, hearings in actions under chs. 48, 51, 55, 880, motion hearings and other proceedings. [Re order effective Jan. 1, 1989]

751.04 Seal. The supreme court shall have a seal and may direct and from time to time alter the inscription and devices thereon; and the department of administration shall procure such seal as may be ordered. The seal of the court now in use shall be the seal thereof until another is provided hereunder.

History: 1977 c. 187 s. 86; Stats. 1977 s. 751.04.

751.05 Appellate jurisdiction. The supreme court has appellate jurisdiction only, except as otherwise provided by law or the constitution.

History: 1977 c. 187 s. 76; Stats. 1977 s. 751.05.

751.06 Discretionary reversal. In an appeal in the supreme court, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record, and may direct the entry of the proper judgment or remit the case to the trial court for the entry of the proper judgment or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court,

not inconsistent with statutes or rules, as are necessary to accomplish the ends of justice.

History: 1977 c. 187 s. 76; Stats. 1977 s. 751.06.

The court may reverse in the interest of justice even though proper motions or objections were not made. Judgment reversed where defendant's counsel persisted in asking questions which amounted to testimony on his part and commented on the facts he observed in argument to the jury. *Lorenz v. Wolff*, 45 W (2d) 407, 173 NW (2d) 129.

Where the trial court's order for a new trial is ineffective for failure to comply with 270.49, the supreme court will review the record to determine whether it will order a new trial in the interest of justice. *Tuschel v. Haasch*, 46 W (2d) 130, 174 NW (2d) 497.

A new trial will seldom be ordered under this section where there is a default judgment and no record to show that defendant probably should have prevailed, particularly where 269.46 (1) applies. *Collings v. Phillips*, 54 W (2d) 204, 194 NW (2d) 677.

The general judgment creditor, having failed to timely appeal from the foreclosure judgment, is not entitled under this section to remand for factual determination of one of the real, although perhaps untried, issues affecting the homestead exemption. *Anchor Savings & Loan Assn. v. Week*, 62 W (2d) 169, 213 NW (2d) 737.

A new trial is necessary because of the prosecution's failure to make full and fair pretrial disclosure to defendant of exculpatory evidence. *State v. Stanislawski*, 62 W (2d) 730, 216 NW (2d) 8.

Requirements for new trial upon ground of newly discovered evidence discussed. *State v. Boyce*, 75 W (2d) 452, 249 NW (2d) 758.

Plaintiffs' request for new trial to permit jury to consider absence of right exterior mirror was properly denied because the real controversy, driver's negligence, had been fully tried. *Buel v. La Crosse Transit Co.* 77 W (2d) 480, 253 NW (2d) 232.

Where verdict form did not contain special fact question regarding major issue of case, real issues had not been tried. *Schulz v. St. Mary's Hospital*, 81 W (2d) 638, 260 NW (2d) 783.

See note to 805.13, citing *Clark v. Leisure Vehicles, Inc.* 96 W (2d) 607, 292 NW (2d) 630 (1980).

See note to 805.13, citing *Air Wisconsin, Inc. v. North Cent. Airlines, Inc.* 98 W (2d) 301, 296 NW (2d) 749 (1980).

Where credibility of witness was critical issue, exclusion of evidence offered under 906.08 (1) was grounds for discretionary reversal. *State v. Cuyler*, 110 W (2d) 133, 327 NW (2d) 662 (1983).

See note to 752.35, citing *State v. Wyss*, 124 W (2d) 681, 370 NW (2d) 745 (1985).

See note to 972.11 citing *State v. Penigar*, 139 W (2d) 569, 408 NW (2d) 28 (1987).

Broad scope of court's power of review discussed. *State v. Schumacher*, 144 W (2d) 388, 424 NW (2d) (1988).

State v. Wyss: A new appellate standard for granting new trials in the interest of justice. 1987 WLR 171.

751.07 Writs. In addition to the writs under article VII, section 3, of the constitution the supreme court may issue all writs necessary to enforce the administration of justice. One or more justices may issue writs in accordance with court rules or internal procedures.

History: 1977 c. 187 s. 76; Stats. 1977 s. 751.07; 1983 a. 192.

751.08 Enforcement of judgments and determinations. The supreme court has all power and authority to enforce its judgments and determinations and to exercise its jurisdiction as the supreme judicial tribunal of the state.

History: 1977 c. 187.

751.09 Referral of issues of fact and damages. In actions where the supreme court has taken original jurisdiction, the court may refer issues of fact or damages to a circuit court or referee for determination.

History: 1977 c. 187 s. 78; Stats. 1977 s. 751.09.

751.10 Decisions to be written; part of record; certification. The supreme court shall decide all cases in writing. One copy of each written decision or opinion delivered by the court or a justice in an action or proceeding in the court shall remain in the office of the clerk of the supreme court and one copy shall constitute a part of the record in the action or proceeding and shall be certified to a court of the United States to which the action or proceeding or record is certified or removed.

History: 1977 c. 187 s. 79; Stats. 1977 s. 751.10; 1985 a. 29.

751.11 Wisconsin reports; distribution. (1) The supreme court may make such provisions for publication of its opinions as it deems appropriate.

(2) The supreme court shall purchase sufficient copies of its reports to meet the requirements for distribution under ss. 16.79 (1), 35.84 and 35.85. The court shall reimburse the department of administration for all costs associated with the distribution of its reports, including, but not limited to, printing, mailing, handling, shipping and storage costs.

(3) The supreme court shall provide copies of its reports for any new judgeship of a court of record.

History: 1975 c. 39; 1977 c. 187 s. 80; Stats. 1977 s. 751.11; 1979 c. 34; 1985 a. 29, 332.

751.12 Rules of pleading and practice. The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice and procedure in judicial proceedings in all courts, for the purpose of simplifying the same and of promoting the speedy determination of litigation upon its merits. The rules shall not abridge, enlarge or modify the substantive rights of any litigant. The effective dates for all rules adopted by the court shall be January 1 or July 1. A rule shall not become effective until 60 days after its adoption. All such rules shall be printed by the state printer and paid for out of the state treasury, and the court shall direct the rules to be distributed as it deems proper. All statutes relating to pleading, practice and procedure may be modified or suspended by rules promulgated under this section. No rule modifying or suspending such statutes may be adopted until the court has held a public hearing with reference to the rule. Notice of public hearings shall be given by publication of a class 3 notice, under ch. 985, the expense of the publication to be paid out of the state treasury. Notice shall also be given in an official publication of the state bar of Wisconsin, the notice to be published not more than 60 days nor less than 30 days before the date of hearing. The state bar of Wisconsin shall not charge the state treasury for publication of this notice. Proposed rules, including changes, if any, in existing rules, shall be set forth in full in the notice. This section shall not abridge the right of the legislature to enact, modify or repeal statutes or rules relating to pleading, practice or procedure. The judicial council shall act in an advisory capacity to assist the court in performing its duties under this section.

History: 1977 c. 187 s. 82; Stats. 1977 s. 751.12.

Separation of constitutional powers discussed. In *Matter of E.B.* 111 W (2d) 175, 330 NW (2d) 584 (1983).

751.13 Sentencing rules; determination of authority to promulgate. (1) INTENT. The legislature finds that sentencing of criminal defendants should be even-handed and consistent. Guidelines for use by judges are useful to accomplish this purpose. Under our criminal justice system, the legislature generally establishes the minimum and maximum sentences for crimes, and judges use their discretion to determine, within the limits established by the legislature, what particular sentence is appropriate in a particular case. As this exercise of judicial discretion is so directly related to the establishment of sentencing guidelines, it is most appropriate that the supreme court promulgate rules for sentencing guidelines. Only if the supreme court declines to do so will the legislature establish an independent sentencing commission to establish sentencing guidelines.

(2) FIRST TIME PERIOD. The supreme court may promulgate rules under s. 973.011. The supreme court retains that authority if, on or before September 1, 1984, it promulgates an order directing the director of state courts to continue the study of sentencing guidelines initiated by the sentencing guidelines advisory committee and to begin preparation of proposed rules under s. 973.011.

(3) DETERMINATION REGARDING FIRST TIME PERIOD. The supreme court may determine whether it has met the condi-

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tions in sub. (2) by the date specified in sub. (2). If the supreme court declares in any order prior to the date specified in sub. (2) that it has met the conditions, the authority to promulgate rules under s. 973.011 is retained by the supreme court.

(4) TRANSFER OF AUTHORITY. If the supreme court does not promulgate the order under sub. (3), the authority to promulgate rules under s. 973.011 transfers to the sentencing commission on the day after the date specified in sub. (2).

(5) SECOND TIME PERIOD. If the supreme court retains authority under sub. (3), the supreme court may promulgate rules under s. 973.011. The supreme court continues to retain that authority if, on or before September 1, 1986, it promulgates rules under s. 973.011 for robbery, armed robbery, burglary, first and 2nd degree sexual assault, felony theft including motor vehicle theft, forgery and violations under ch. 161.

(6) DETERMINATION REGARDING 2ND TIME PERIOD. The supreme court may determine whether it has met the conditions in sub. (5) by the date specified in sub. (5). If the supreme court declares in any order prior to the date specified in sub. (5) that it has met the conditions, the authority to promulgate rules is retained by the supreme court.

(7) TRANSFER OF AUTHORITY. If the supreme court does not promulgate the order under sub. (6), the authority to promul-

gate rules under s. 973.011 transfers to the sentencing commission on the day after the date specified in sub. (5).

History: 1983 a. 371.

751.14 Supreme court sentencing rules. (1) The supreme court may do all of the following:

(a) Promulgate rules under s. 973.011, in accordance with s. 751.13.

(b) Collect, develop and maintain statistical information relating to sentencing practices and other dispositions of criminal complaints. The supreme court may promulgate forms for this purpose. Sentencing courts shall promptly complete and return these forms as directed by the supreme court.

(c) Develop instructional programs for judges relating to sentencing, including restitution policies and community service alternatives to incarceration and probation.

(d) Explain sentencing practices and rules to the public.

(2) This section applies only if the authority to promulgate sentencing rules is not transferred to the sentencing commission under s. 751.13 (4) or (7).

History: 1983 a. 371.