

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 Employees. The supreme court may authorize the employees 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 employees should be consistent with that paid to state employees 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 judicial assistant 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 primarily in the court or branch of court to which he or she was elected or appointed if the court reporter is certified as qualified by the director of state courts. The chief judge or district court administrator may assign that court reporter to other courts to assure adequate coverage of all reported proceedings. 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; Sup. Ct. Order No. 19-01, 2019 WI 44, 386 Wis. 2d xvii.

751.025 Temporary use of court reporters. The chief judge or district court administrator for the judicial district shall attempt to locate and use a court reporter from another branch of court before hiring a private court reporter.

History: 1995 a. 27; Sup. Ct. Order No. 19-01, 2019 WI 44, 386 Wis. 2d xvii.

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 Wis. 2d xxi (1985); 1985 a. 304; Sup. Ct. Order, 141 Wis. 2d xiii (1987); Sup. Ct. Order, 146 Wis. 2d xxxiii (1988).

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]

Judicial Council Note, 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]

Nothing in the grant of authority under sub. (3) says anything about a method, process, or mechanism by which a chief judge may assign a case, let alone the method by which the chief judge must assign a case. Thus, sub. (3) permits a chief judge to develop and adopt methods for assigning substitute judges that do not involve personal involvement of the chief judge in each assignment. In this case, a substitute judge was assigned by using an e-mail volunteer system, under which an e-mail was sent to the other judges and the first responding available judge was assigned to the case. The e-mail volunteer system used to assign a substitute judge did not violate sub. (3) or s. 801.58. *Petitioner v. Evans*, 2018 WI App 53, 383 Wis. 2d 669, 917 N.W.2d 218, 17-2297.

751.035 Assignment to a judicial panel; appeals. (1) Upon receiving notice under s. 801.50 (4m), the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter. The supreme court shall choose one judge from each

of 3 circuits and shall assign one of the circuits as the venue for all hearings and filings in the matter.

(2) Notwithstanding s. 801.58, no party may move for substitution of any circuit court judge assigned under this section.

(3) An appeal from any order or decision issued by the panel assigned pursuant to sub. (1) may be heard by the supreme court and may not be heard by a court of appeals for any district.

History: 2011 a. 39.

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. A judgment was reversed because the defendant's counsel persisted in asking questions that amounted to testimony on his part and because in arguing to the jury he commented on facts that he had observed. *Lorenz v. Wolff*, 45 Wis. 2d 407, 173 N.W.2d 129 (1970).

A general judgment creditor, having failed to timely appeal from a foreclosure judgment, was not entitled under this section to remand for a factual determination of a real, although perhaps untried, issue affecting the homestead exemption. *Anchor Savings & Loan Association v. Week*, 62 Wis. 2d 169, 213 N.W.2d 737 (1974).

A new trial was necessary because of the prosecution's failure to make full and fair pretrial disclosure to the defendant of exculpatory evidence. *State v. Stanislawski*, 62 Wis. 2d 730, 216 N.W.2d 8 (1974).

Requirements for a new trial upon the ground of newly discovered evidence are discussed. *State v. Boyce*, 75 Wis. 2d 452, 249 N.W.2d 758 (1977).

When a verdict form did not contain a special fact question regarding a major issue of the case, the real issues had not been tried. *Schulz v. St. Mary's Hospital*, 81 Wis. 2d 638, 260 N.W.2d 783 (1978).

Although failure to object at a conference under s. 805.13 to a substantive defect in the verdict constituted waiver, the failure to object did not preclude the court's consideration of the defect under s. 751.06. *Clark v. Leisure Vehicles, Inc.*, 96 Wis. 2d 607, 292 N.W.2d 630 (1980). See also *Air Wisconsin, Inc. v. North Central Airlines, Inc.*, 98 Wis. 2d 301, 296 N.W.2d 749 (1980).

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

Under the second prong of the discretionary-reversal statute, the "miscarriage of justice" prong, a court would have to conclude that there would be a substantial probability that a different result would be likely on retrial in order to grant a discretionary reversal. *State v. Schumacher*, 144 Wis. 2d 388, 424 N.W.2d 672 (1988).

A new trial may be ordered in either of two ways: 1) whenever the real controversy has not been fully tried; or 2) whenever it is probable that justice has for any reason miscarried. Separate criteria exists for determining each of these two distinct situations. Situations in which the controversy may not have been fully tried have arisen in two factually distinct ways: 1) when the jury was erroneously not given the opportunity to hear important testimony that bore on an important issue of the case; and 2) when the jury had before it evidence not properly admitted which so clouded a crucial issue that it may be fairly said that the real controversy was not fully tried. *State v. Hicks*, 202 Wis. 2d 150, 549 N.W.2d 435 (1996), 94-2256.

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

A Fearless Search for the Truth No Longer: *State v. Henley* and Its Destructive Impact on New Trials in the Interest of Justice. Mark. 2012 WLR 1367.

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.

A supreme court order reversing the court of appeals can establish the law of the case even if the supreme court states no reasons for the decision. Although this section requires decisions to be in writing, nothing in the rule mandates giving reasons. *State v. Stuart*, 2003 WI 73, 262 Wis. 2d 620, 664 N.W.2d 82, 01-1345.

751.12 Rules of pleading and practice. (1) 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 purposes 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 rules promulgated under this section 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 considers proper.

(2) All statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section. No rule modifying or suspending statutes relating to pleading, practice, and procedure may be adopted until the court has held a public hearing with reference to the rule.

(3) 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 shall include, at a minimum, the time, date, and location of the hearing and a summary of the proposed rules, including changes, if any, in existing rules, that are the subject of

the hearing. The State Bar of Wisconsin shall not charge the state treasury for publication of this notice. The full text of the proposed rules, including changes, if any, in existing rules, shall be placed on the Internet site maintained by the director of state courts for the supreme court.

(4) This section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to pleading, practice, or procedure.

(5) 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; 2001 a. 103; 2015 a. 69.

Separation of constitutional powers and shared legislative and judicial functions relating to pleading and procedure are discussed. In *Matter of E.B.*, 111 Wis. 2d 175, 330 N.W.2d 584 (1983).

The establishment of an effective date does not determine whether a statute will apply retroactively. *Salzman v. DNR*, 168 Wis. 2d 523, 484 N.W.2d 337 (Ct. App. 1992).

A rule adopted by this court in accordance with this section is numbered as a statute, is printed in the Wisconsin Statutes, may be amended by both the court and the legislature, has been described by this court as a statute promulgated under the court's rule-making authority, and has the force of law. *Rao v. WMA Securities, Inc.*, 2008 WI 73, 310 Wis. 2d 623, 752 N.W.2d 220, 06-0813

751.15 Rules regarding the practice of law; delinquent support obligors. (1) The supreme court is requested to enter into a memorandum of understanding with the department of children and families under s. 49.857.

(2) The supreme court is requested to promulgate rules that require each person who has a social security number, as a condition of membership in the state bar, to provide the board of bar examiners with his or her social security number, that require each person who does not have a social security number, as a condition of membership in the state bar, to provide the board of bar examiners with a statement made or subscribed under oath or affirmation on a form prescribed by the department of children and families that the person does not have a social security number, and that prohibit the disclosure of that number to any person except the department of children and families for the purpose of administering s. 49.22.

(3) The supreme court is requested to promulgate rules that deny, suspend, restrict or refuse to renew a license to practice law if the applicant or licensee fails to provide the information required under rules promulgated under sub. (2) or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or if the department of children and families certifies that the applicant or licensee has failed to pay court-ordered pay-

ments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse. The supreme court is also requested to promulgate rules that invalidate a license to practice law if issued in reliance upon a statement made or subscribed under oath or affirmation under rules promulgated under sub. (2) that is false.

History: 1997 a. 191; 1999 a. 9, 32; 2007 a. 20.

751.153 Rules regarding the practice of law; waiver of fee for veterans. The supreme court is requested to promulgate a rule that waives, for an individual who is eligible for the veterans fee waiver program under s. 45.44, the initial fee for admission to the state bar or for a license to practice law.

History: 2011 a. 209.

751.155 Rules regarding the practice of law; delinquent taxes and unemployment insurance contributions. (1) The supreme court is requested to enter into a memorandum of understanding with the department of revenue under s. 73.0301, and the supreme court is requested to enter into a memorandum of understanding with the department of workforce development under s. 108.227.

(2) The supreme court is requested to promulgate rules that require each person, as a condition of membership in the state bar, to provide the board of bar examiners with his or her social security number and that prohibit the disclosure of that number to any person except the department of revenue for the sole purpose of making certifications under s. 73.0301 and the department of workforce development for the sole purpose of making certifications under s. 108.227.

(3) The supreme court is requested to promulgate rules that deny an application for a license to practice law or revoke a license to practice law already issued if the applicant or licensee fails to provide the information required under rules promulgated under sub. (2), if the department of revenue certifies that the applicant or licensee is liable for delinquent taxes under s. 73.0301, or if the department of workforce development certifies that the licensee is liable for delinquent unemployment insurance contributions under s. 108.227.

History: 1997 a. 237; 1999 a. 32 s. 336; 2013 a. 36.

751.20 Transfer authority. Notwithstanding s. 20.680 (2) (a) to (L), the supreme court may transfer money from the appropriations under s. 20.680 (2) (a) to (L) to the appropriation under s. 20.670 (1) (k) for the purposes of the judicial council under s. 758.13.

History: 2011 a. 32; 2017 a. 366.