



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #375

Staff Attorneys (Court of Appeals)

CURRENT LAW

There are currently 14.5 staff attorneys that serve 16 appellate judges in four appellate districts. The 16 appellate judges are distributed among the four districts as follows: (a) District I, located in Milwaukee (four judges); (b) District II, located in Waukesha (four judges); (c) District III, located in Wausau (three judges); and District IV, located in Madison (five judges). Each of the three appellate districts outside Madison has one staff attorney located in the district. The remaining 11.5 staff attorneys, which includes a chief staff attorney, are located in Madison and assigned to particular districts. In addition to the staff attorneys, each appellate judge is statutorily authorized to hire a secretary and a law clerk to perform duties as directed by the judge.

GOVERNOR

No provision.

DISCUSSION POINTS

1. In its 2001-03 budget request, the Director of State Courts office requested 2.0 GPR central staff attorneys and 4.0 GPR district staff attorneys to manage an increased Court of Appeals workload. However, the request was modified to include only the 2.0 central staff attorneys during the testimony from Chief Judge Thomas Cane before the Joint Committee on Finance on March 15, 2001. Both staff attorneys would be located in Madison, with one staff attorney assigned to District I (Milwaukee) and the other assigned to District II (Waukesha).

2. Staff attorneys provide professional assistance as house counsel to judges. They draft per curiam opinions and summary disposition orders as directed by the judges, review the record and prepare the opinions for the Court's no merit cases, review the petitions and motions filed

with the court, confer with judges as necessary, and draft the appropriate orders disposing of motions and petitions.

3. According to the Director of State Courts office, although the Court of Appeals has gained four additional judgeships since 1986, only one additional staff attorney has been approved during the same period. The Court of Appeals received one additional staff attorney position in the 1991-93 biennial budget, which was added to District IV, bringing the total number of staff attorneys to 13.0. Through reallocation of clerical staff positions, the Court of Appeals has been able to increase its position authority for staff attorneys to its current level of 14.5 positions.

4. One measure of appellate workload is case filings, although the Director of State Courts believes case filings are not the best measure of staff attorney workload. The following table shows case filing data by district from 1986 to 2000.

Case Filings

<u>Year</u>	<u>District I</u>	<u>District II</u>	<u>District III</u>	<u>District IV</u>	<u>Total</u>
1986	502	538	558	677	2,275
1987	484	695	580	647	2,406
1988	523	618	547	687	2,375
1989	501	595	511	748	2,355
1990	616	779	581	877	2,853
1991	764	742	620	843	2,969
1992	795	811	626	955	3,187
1993	845	812	642	991	3,290
1994	880	845	681	939	3,345
1995	967	909	655	1,001	3,532
1996	899	881	749	1,099	3,628
1997	968	966	695	1,134	3,763
1998	838	882	708	1,149	3,577
1999	839	844	688	908	3,279
2000	899	832	777	964	3,472

Although case filings have increased by 53% since 1986, the rate of increase has slowed or been negative in recent years. Case filings increased by 5.5% from 1993 (the year the last new staff attorney was approved) to 2000. In 1998 and 1999, case filings decreased from the previous year. In 2000, the number of case filings increased by 193 cases over 1999 levels.

5. However, according to the Director of State Courts Office, the more appropriate measures of workload and efficiency for appellate court staff attorneys are the number of per curiam opinions and summary dispositions, since staff attorneys draft per curiam and summary dispositions for approval or revision by the judges, and the time to disposition. Per curiam opinions are those that are controlled by case law, well-settled rules of law, or unquestioned and controlling precedent. Summary dispositions are typically shorter opinions (but some districts write longer summary dispositions, which some districts would label per curiams). The following table shows the number

of per curiams/summary dispositions from 1986 to 2000.

Per Curiams/Summary Dispositions

<u>Year</u>	<u>District I</u>	<u>District II</u>	<u>District III</u>	<u>District IV</u>	<u>Total</u>
1986	112	149	143	157	561
1987	110	136	150	166	562
1988	110	151	143	172	576
1989	90	134	129	167	520
1990	93	133	133	123	482
1991	112	219	138	227	696
1992	130	182	151	231	694
1993	175	212	144	253	784
1994	187	201	148	253	789
1995	197	208	155	297	875
1996	144	239	184	274	841
1997	184	243	185	258	870
1998	211	237	189	398	1,035
1999	242	232	182	352	1,008
2000	247	235	155	358	995

There has been a statewide increase of 77% in the number of per curiams/summary dispositions written from 1986 to 2000, and a 27% increase from 1993 to 2000, although for the last two years the number of per curiams/summary dispositions written have dropped.

6. The greatest increase in workload for staff attorneys has been in the number of no merit cases. These criminal appeals cases are independently reviewed and written by staff attorneys, and have increased from 13 filed statewide in 1986, to 567 filed statewide in 2000, or a 4262% increase.

7. In addition, the time to disposition of a case has increased, particularly in Districts I and II (where the 2.0 central staff attorneys are requested to be assigned). For example, from 1991 to 1999, the time to disposition of a case in Districts I and II has increased from 234 and 249 days, to 372 and 400 days, respectively. It should be noted that, unlike appeals to the Supreme Court, the Court of Appeals' workload is non-discretionary; the Court and its staff must dispose of all cases that come before it.

8. In written remarks to the Committee on March 15, 2001, Chief Judge Thomas Cane referenced the impact that two additional temporary staff attorneys in Districts I and II have had on dropping the average time from appeal to decision in those districts. From 1999 to 2000, the time to disposition of a case in Districts I (Milwaukee) and II (Waukesha) decreased from 372 and 400 days respectively, to 338 and 362 days, respectively. This reduction in time to disposition of a case was achieved in Districts I and II with temporary staff attorneys being in place for approximately half of 2000. These reductions occurred at a time when the time to disposition of a case continued to increase in Districts III (Wausau) and IV (Madison), where the number of staff attorneys remained

constant. This Court of Appeals request would convert these temporary staff attorney positions to permanent.

9. Approving the Court of Appeals request and converting its two temporary staff attorney positions to permanent might improve the Court's ability to hire and retain qualified personnel in that the Court could offer fringe benefits.

10. The Committee may wish to address the Court of Appeals increased workload and time to disposition issues by providing \$69,100 GPR in 2001-02 and \$98,800 GPR in 2002-03 and 2.0 GPR staff attorney positions annually to be located in Madison but assigned to Districts I and II.

11. Alternatively, the Committee may wish to address the increased workload and time to disposition issues at a reduced level, and provide \$34,600 GPR in 2001-02 and \$49,400 GPR in 2002-03 and 1.0 staff attorney position annually. Under this alternative, the Court of Appeals could decide how to allocate the 1.0 position to best meet its workload need.

12. The Committee may also wish to maintain current law. Under this alternative, the Court of Appeals would continue with its current operations by addressing all cases that come before it, but with the possibility of extending the time it takes to address each case.

ALTERNATIVES

1. Provide \$69,100 in 2001-02 and \$98,800 in 2002-03 and 2.0 staff attorney positions annually to be assigned to Districts I and II.

Alternative 1	GPR
2001-03 FUNDING (Change to Bill)	\$167,900
2001-03 POSITIONS (Change to Bill)	2.00

2. Provide \$34,600 in 2001-02 and \$49,400 in 2002-03 and 1.0 staff attorney position annually. The allocation of this position would be determined by the Court of Appeals.

Alternative 2	GPR
2001-03 FUNDING (Change to Bill)	\$84,000
2001-03 POSITIONS (Change to Bill)	1.00

3. Maintain current law.

Prepared by: Paul Onsager