

# Judicial Branch

**The judicial branch:** profile of the judicial branch, summary of recent significant supreme court decisions, and descriptions of the supreme court, court system, and judicial service agencies

## Cassius Fairchild

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*(Wisconsin Veterans Museum)*

**WISCONSIN SUPREME COURT**

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson . . . . .	1976*	August 1979	2019
Ann Walsh Bradley . . . . .	1995	August 1995	2015**
N. Patrick Crooks . . . . .	1996	August 1996	2016
David T. Prosser, Jr. . . . .	1998*	August 2001	2021
Patience Drake Roggensack, Chief Justice . . . . .	2003	August 2003	2023
Annette K. Ziegler . . . . .	2007	August 2007	2017
Michael J. Gableman . . . . .	2008	August 2008	2018

\*Initially appointed by the governor.

\*\*Justice Bradley was reelected to a new term beginning August 1, 2015, and expiring July 31, 2025.



*Seated, from left to right are Justice Annette K. Ziegler, Justice N. Patrick Crooks, Justice Shirley S. Abrahamson, Chief Justice Patience D. Roggensack, Justice Ann Walsh Bradley, Justice David T. Prosser, Jr., and Justice Michael J. Gableman. (Wisconsin Supreme Court)*

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## JUDICIAL BRANCH

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### A PROFILE OF THE JUDICIAL BRANCH

**Introducing the Court System.** The judicial branch and its system of various courts may appear very complex to the nonlawyer. It is well-known that the courts are required to try persons accused of violating criminal law and that conviction in the trial court may result in punishment by fine or imprisonment or both. The courts also decide civil matters between private citizens, ranging from landlord-tenant disputes to adjudication of corporate liability involving many millions of dollars and months of costly litigation. In addition, the courts act as referees between citizens and their government by determining the permissible limits of governmental power and the extent of an individual's rights and responsibilities.

A court system that strives for fairness and justice must settle disputes on the basis of appropriate rules of law. These rules are derived from a variety of sources, including the state and federal constitutions, legislative acts and administrative rules, as well as the "common law", which reflects society's customs and experience as expressed in previous court decisions. This body of law is constantly changing to meet the needs of an increasingly complex world. The courts have the task of seeking the delicate balance between the flexibility and the stability needed to protect the fundamental principles of the constitutional system of the United States.

**The Supreme Court.** The judicial branch is headed by the Wisconsin Supreme Court of 7 justices, each elected statewide to a 10-year term. The supreme court is primarily an appellate court and serves as Wisconsin's "court of last resort". It also exercises original jurisdiction in a small number of cases of statewide concern. There are no appeals to the supreme court as a matter of right. Instead, the court has discretion to determine which appeals it will hear.

In addition to hearing cases on appeal from the court of appeals, there also are three instances in which the supreme court, at its discretion, may decide to bypass the appeals court. First, the supreme court may review a case on its own initiative. Second, it may decide to review a matter without an appellate decision based on a petition by one of the parties. Finally, the supreme court may take jurisdiction in a case if the appeals court finds it needs guidance on a legal question and requests supreme court review under a procedure known as "certification".

**The Court of Appeals.** The Court of Appeals, created August 1, 1978, is divided into 4 appellate districts covering the state, and there are 16 appellate judges, each elected to a 6-year term. The "court chambers", or principal offices for the districts, are located in Madison (5 judges), Milwaukee (4 judges), Waukesha (4 judges), and Wausau (3 judges).

In the appeals court, 3-judge panels hear all cases, except small claims actions, municipal ordinance violations, traffic violations, and mental health, juvenile, and misdemeanor cases. These exceptions may be heard by a single judge unless a panel is requested.

**Circuit Courts.** Following a 1977-78 reorganization of the Wisconsin court system, the circuit court became the "single level" trial court for the state. Circuit court boundaries were revised so that, except for 3 combined-county circuits (Buffalo-Pepin, Florence-Forest, and Menominee-Shawano), each county became a circuit, resulting in a total of 69 circuits.

In the more populous counties, a circuit may have several branches with one judge assigned to each branch. As of August 1, 2014, Wisconsin had a combined total of 249 circuits or circuit branches and the same number of circuit judgeships, with each judge elected to a 6-year term. For administrative purposes, the circuit court system is divided into 10 judicial administrative districts, each headed by a chief judge appointed by the supreme court. The circuit courts are funded with a combination of state and county money. For example, state funds are used to pay the salaries of judges, and counties are responsible for most court operating costs.

A final judgment by the circuit court can be appealed to the Wisconsin Court of Appeals, but a decision by the appeals court can be reviewed only if the Wisconsin Supreme Court grants a petition for review.

**Municipal Courts.** Individually or jointly, cities, villages, and towns may create municipal courts with jurisdiction over municipal ordinance violations that have monetary penalties. There are more than 200 municipal courts in Wisconsin. These courts are not courts of record, and they have limited jurisdiction. Usually, municipal judgeships are not full-time positions.

**Selection and Qualification of Judges.** In Wisconsin, all justices and judges are elected on a nonpartisan ballot in April. The Wisconsin Constitution provides that supreme court justices and appellate and circuit judges must have been licensed to practice law in Wisconsin for at least 5 years prior to election or appointment. While state law does not require that municipal judges be attorneys, municipalities may impose such a qualification in their jurisdictions.

Supreme court justices are elected on a statewide basis; appeals court and circuit court judges are elected in their respective districts. The governor may make an appointment to fill a vacancy in the office of justice or judge to serve until a successor is elected. When the election is held, the candidate elected assumes the office for a full term.

Since 1955, Wisconsin has permitted retired justices and judges to serve as “reserve” judges. At the request of the chief justice of the supreme court, reserve judges fill vacancies temporarily or help to relieve congested calendars. They exercise all the powers of the court to which they are assigned.

**Judicial Agencies Assisting the Courts.** Numerous state agencies assist the courts. The Wisconsin Supreme Court appoints the Director of State Courts, the State Law Librarian and staff, the Board of Bar Examiners, the director of the Office of Lawyer Regulation, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Council, and the State Bar of Wisconsin.

The shared concern of these agencies is to improve the organization, operation, administration, and procedures of the state judicial system. They also function to promote professional standards, judicial ethics, and legal research and reform.

**Court Process in Wisconsin.** Both state and federal courts have jurisdiction over Wisconsin citizens. State courts generally adjudicate cases pertaining to state laws, but the federal government may give state courts jurisdiction over specified federal questions. Courts handle two types of cases – civil and criminal.

*Civil Cases.* Generally, civil actions involve individual claims in which a person seeks a remedy for some wrong done by another. For example, if a person has been injured in an automobile accident, the complaining party (plaintiff) may sue the offending party (defendant) to compel payment for the injuries.

In a typical civil case, the plaintiff brings an action by filing a summons and a complaint with the circuit court. The defendant is served with copies of these documents, and the summons directs the defendant to respond to the plaintiff’s attorney. Various pretrial proceedings, such as pleadings, motions, pretrial conferences, and discovery, may be required. If no settlement is reached, the matter goes to trial. The U.S. and Wisconsin Constitutions guarantee trial by jury, except in cases involving an equitable action, such as a divorce action. In civil actions, unless a party demands a jury trial and pays the required fee, the trial may be conducted by the court without a jury. The jury in a civil case consists of 6 persons unless a greater number, not to exceed 12, is requested. Five-sixths of the jurors must agree on the verdict. Based on the verdict, the court enters a judgment for the plaintiff or defendant.

Wisconsin law provides for small claims actions that are streamlined and informal. These actions typically involve the collection of small personal or commercial debts and are limited to questions of \$10,000 or less except for third party complaints, personal injury claims, and actions based in torts where the limit is \$5,000 or less. Small claims cases are decided by the circuit court judge, unless a jury trial is requested. Attorneys commonly are not used.

*Criminal Cases.* Under Wisconsin law, criminal conduct is an act prohibited by state law and punishable by a fine or imprisonment or both. There are two types of crime – felonies and misdemeanors. A felony is punishable by confinement in a state prison for one year or more; all other crimes are misdemeanors punishable by imprisonment in a county jail. Misdemeanors have a maximum sentence of 12 months unless the violator is a “repeater” as defined in the statutes.

Because a crime is an offense against the state, the state, rather than the crime victim, brings action against the defendant. A typical criminal action begins when the district attorney, an elected official, files a criminal complaint in the circuit court stating the essential facts concerning the offense charged. The defendant may or may not be arrested at that time. If the defendant has not yet been arrested, generally the judge or a court commissioner then issues an “arrest warrant” in the case of a felony or a “summons” in the case of a misdemeanor. A law enforcement officer then must serve a copy of the warrant or summons on an individual and, in the case of a warrant, make an arrest.

Once in custody, the defendant is taken before a circuit judge or court commissioner, informed of the charges, and given the opportunity to be represented by a lawyer at public expense if he or she cannot afford to hire one. Bail is usually set at this time. In the case of a misdemeanor, a trial date is set. In felony cases, the defendant has a right to a preliminary examination, which is a hearing before the court to determine whether the state has probable cause to charge the individual.

If the preliminary examination is waived, or if it is held and probable cause found, the district attorney files an information (a sworn accusation on which the indictment is based) with the court. The arraignment is then held before the circuit court judge, and the defendant enters a plea (“guilty”, “not guilty”, “no contest subject to the approval of the court”, or “not guilty by reason of mental disease or defect”).

Following further pretrial proceedings, if a plea agreement is not reached, the case goes to trial in circuit court. Criminal cases are tried by a jury of 12, unless the defendant waives a jury trial or there is agreement for fewer jurors. The jury considers the evidence presented at the trial, determines the facts and renders a verdict of guilty or not guilty based on instructions given by the circuit judge. If the jury issues a verdict of guilty, a judgment of conviction is entered and the court determines the sentence. In a felony case, the court may order a presentence investigation before pronouncing sentence.

In a criminal case, the jury’s verdict to convict the defendant must be unanimous. If not, the defendant is acquitted (cleared of the charge) or, if the jury is unable to reach a unanimous verdict, the court may declare a mistrial and the prosecutor may seek a new trial. Once acquitted, a person cannot be tried again in criminal court for the same charge, based on provisions in both the federal and state constitutions that prevent double jeopardy. Aggrieved parties may, however, bring a civil action against the individual for damages, based on the incident.

**History of the Court System.** The basic powers and framework of the court system were established by Article VII of the state constitution when Wisconsin gained statehood in 1848. At that time, judicial power was vested in a supreme court, circuit courts, courts of probate, and justices of the peace. Subject to certain limitations, the legislature was granted power to establish inferior courts and municipal courts and determine their jurisdiction.

The constitution originally divided the state into five judicial circuit districts. The five judges who presided over those circuit courts were to meet at least once a year at Madison as a “Supreme Court” until the legislature established a separate court. The Wisconsin Supreme Court was instituted in 1853 with 3 members chosen in statewide elections – one was elected as chief justice and the other 2 as associate justices. In 1877, a constitutional amendment increased the number of associate justices to 4. An 1889 amendment prescribed the current practice under which all court members are elected as justices. Until a constitutional amendment was passed in 2015, the justice with the longest continuous service presided as chief justice. Under the new constitutional provision, the chief justice is elected by a majority of the justices for a 2-year term. Since 1903, the constitution has required a court of 7 members.

Over the years, the legislature created a large number of courts with varying types of jurisdiction. As a result of numerous special laws, there was no uniformity among the counties. Different types of courts in a single county had overlapping jurisdiction, and procedure in the various courts was not the same. A number of special courts sprang up in heavily urbanized areas, such as Milwaukee County, where the judicial burden was the greatest. In addition, many municipalities established police justice courts for enforcement of local ordinances, and there were some 1,800 justices of the peace.

The 1959 Legislature enacted Chapter 315, effective January 1, 1962, which provided for the initial reorganization of the court system. The most significant feature of the reorganization was the abolition of special statutory courts (municipal, district, superior, civil, and small claims). In addition, a uniform system of jurisdiction and procedure was established for all county courts.

The 1959 law also created the machinery for smoother administration of the court system. One problem under the old system was the imbalance of caseloads from one jurisdiction to another. In some cases, the workload was not evenly distributed among the judges within the same jurisdiction. To correct this, the chief justice of the supreme court was authorized to assign circuit and county judges to serve temporarily as needed in either type of court. The 1961 Legislature took another step to assist the chief justice in these assignments by creating the post of Administrative Director of Courts. This position has since been redefined by the supreme court and renamed the Director of State Courts. Over the years, the director has been given added administrative duties and increased staff to perform them.

The last step in the 1959 reorganization effort was the April 1966 ratification of two constitutional amendments that abolished the justices of the peace and permitted municipal courts. At this point the Wisconsin system of courts consisted of the supreme court, circuit courts, county courts, and municipal courts.

In April 1977, the court of appeals was authorized when the voters ratified an amendment to Article VII, Section 2, of the Wisconsin Constitution, which outlined the current structure of the state courts:

The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform state-wide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature under section 14.

In June 1978, the legislature implemented the constitutional amendment by enacting Chapter 449, Laws of 1977, which added the court of appeals to the system and eliminated county courts.



*Justice David T. Prosser discusses the role of the Supreme Court and the process it uses to decide cases with students from D.C. Everest Senior High School as part of the Court with Class education program. Each year, hundreds of students visit the Supreme Court Hearing Room, listen to oral arguments and meet with a justice. (Tom Sheehan, Wisconsin Supreme Court)*

## SUPREME COURT

**Chief Justice:** PATIENCE DRAKE ROGGENSACK

**Justices:** SHIRLEY S. ABRAHAMSON  
ANN WALSH BRADLEY  
N. PATRICK CROOKS  
DAVID T. PROSSER, JR.  
ANNETTE K. ZIEGLER  
MICHAEL J. GABLEMAN

**Mailing Address:** Supreme Court and Clerk: P.O. Box 1688, Madison 53701-1688.

**Locations:** Supreme Court: Room 16 East, State Capitol, Madison; Clerk: 110 East Main Street, Madison.

**Telephone:** 266-1298.

**Fax:** 261-8299.

**Internet Address:** [www.wicourts.gov](http://www.wicourts.gov)

*Clerk of Supreme Court:* DIANE FREMGEN, 266-1880, Fax: 267-0640.

*Court Commissioners:* NANCY KOPP, MARK NEUSER, JULIE RICH, DAVID RUNKE, 266-7442.

**Number of Positions:** 38.50.

**Total Budget 2013-15:** \$10,097,300.

**Constitutional References:** Article VII, Sections 2-4, 9-13, and 24.

**Statutory Reference:** Chapter 751.

**Responsibility:** The Wisconsin Supreme Court is the final authority on matters pertaining to the Wisconsin Constitution and the highest tribunal for all actions begun in the state, except those involving federal issues appealable to the U.S. Supreme Court. The court decides which cases it will hear, usually on the basis of whether the questions raised are of statewide importance. It exercises “appellate jurisdiction” if 3 or more justices grant a petition to review a decision of a lower court. It exercises “original jurisdiction” as the first court to hear a case if 4 or more justices approve a petition requesting it to do so. Although the majority of cases advance from the circuit court to the court of appeals before reaching the supreme court, the high court may decide to bypass the court of appeals. The supreme court can do this on its own motion or at the request of the parties; in addition, the court of appeals may certify a case to the supreme court, asking the high court to take the case directly from the circuit court.

The supreme court does not take testimony. Instead, it decides cases on the basis of written briefs and oral argument. It is required by statute to deliver its decisions in writing, and it may publish them in the *Wisconsin Reports* as it deems appropriate.

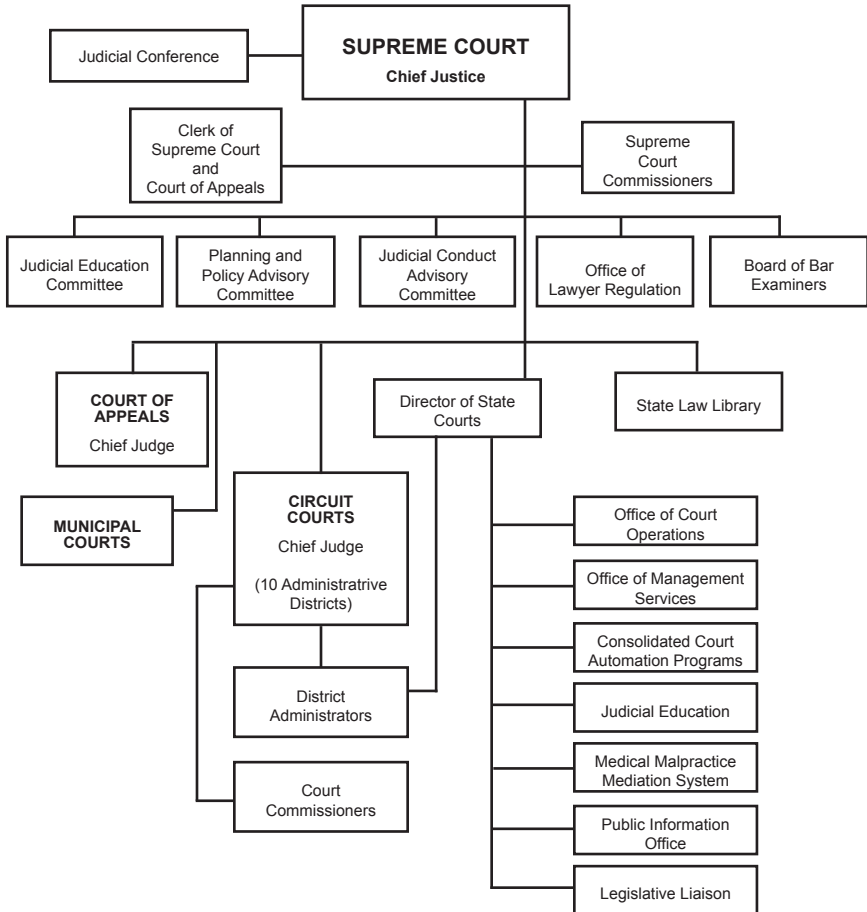
The supreme court sets procedural rules for all courts in the state, and the chief justice serves as administrative head of the state’s judicial system. With the assistance of the director of state courts, the chief justice monitors the status of judicial business in Wisconsin’s courts. When a calendar is congested or a vacancy occurs in a circuit or appellate court, the chief justice may assign an active judge or reserve judge to serve temporarily as a judge of either type of court.

**Organization:** The supreme court consists of 7 justices elected to 10-year terms. They are chosen in statewide elections on the nonpartisan April ballot and take office on the following August 1. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are sometimes filled by gubernatorial appointees who serve until a successor can be elected. The authorized salary for supreme court justices for 2014 is \$147,403. The chief justice receives \$155,403.

In April 2015, voters amended the state constitution to allow the justices to elect the chief justice by a majority vote for a term of 2 years. Prior to this, the justice with the most seniority on the court served as chief justice unless he or she declined the position. Any 4 justices constitute a quorum for conducting court business.

The court staff is appointed from outside the classified service. It includes the director of state courts who assists the court in its administrative functions; 4 commissioners who are attorneys and assist the court in its judicial functions; a clerk who keeps the court’s records; and a marshal who performs a variety of duties. Each justice has a secretary and one law clerk.

**WISCONSIN COURT SYSTEM – ADMINISTRATIVE STRUCTURE**



Independent Bodies: Judicial Commission; Judicial Council  
 Associated unit: State Bar of Wisconsin



## COURT OF APPEALS

<i>Judges:</i>	<i>District I:</i>	REBECCA BRADLEY (2017) KITTY K. BRENNAN (2021) PATRICIA S. CURLEY* (2020) JOAN F. KESSLER (2016)
	<i>District II:</i>	RICHARD S. BROWN** (2018) MARK D. GUNDRUM (2019) LISA S. NEUBAUER* (2020) PAUL F. REILLY (2016)
	<i>District III:</i>	MICHAEL W. HOOVER† (2015) THOMAS M. HRUZ (2016) LISA K. STARK* (2019)
	<i>District IV:</i>	BRIAN W. BLANCHARD* (2016) PAUL B. HIGGINBOTHAM (2017) JOANNE F. KLOPPENBURG (2018) PAUL LUNDSTEN (2019) GARY E. SHERMAN (2020)

Note: \*Indicates the presiding judge of the district. \*\*Indicates chief judge of the court of appeals. Lisa S. Neubauer has been appointed chief judge as of August 2, 2015. The judges' current terms expire on July 31 of the year shown. †Mark A. Seidl elected April 7, 2015, to take office August 1, 2015.

*Court of Appeals Clerk:* DIANE M. FREMGEN, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Suite 215, Madison, 266-1880, Fax: 267-0640.

*Central Staff Attorneys:* 10 East Doty Street, 7th Floor, Madison 53703, 266-9320.

**Internet Address:** [www.wicourts.gov/courts/appeals/index.htm](http://www.wicourts.gov/courts/appeals/index.htm)

**Number of Positions:** 75.50.

**Total Budget 2013-15:** \$20,514,200.

**Constitutional Reference:** Article VII, Section 5.

**Statutory Reference:** Chapter 752.

**Organization:** A constitutional amendment ratified on April 5, 1977, mandated the Court of Appeals, and Chapter 187, Laws of 1977, implemented the amendment. The court consists of 16 judges serving in 4 districts (4 judges each in Districts I and II, 3 judges in District III, and 5 judges in District IV). The Wisconsin Supreme Court appoints a chief judge of the court of appeals to serve as administrative head of the court for a 3-year term, and the clerk of the supreme court serves as the clerk for the court.

Appellate judges are elected for 6-year terms in the nonpartisan April election and begin their terms of office on the following August 1. They must reside in the district from which they are chosen. Only one court of appeals judge may be elected in a district in any one year. The authorized salary for appeals court judges for 2015 is \$139,059.

**Functions:** The court of appeals has both appellate and supervisory jurisdiction, as well as original jurisdiction to issue prerogative writs. The final judgments and orders of a circuit court may be appealed to the court of appeals as a matter of right. Other judgments or orders may be appealed upon leave of the appellate court.

The court usually sits as a 3-judge panel to dispose of cases on their merits. However, a single judge may decide certain categories of cases, including juvenile cases; small claims; municipal ordinance and traffic violations; and mental health and misdemeanor cases. No testimony is taken in the appellate court. The court relies on the trial court record and written briefs in deciding a case, and it prescreens all cases to determine whether oral argument is needed. Both oral argument and "briefs only" cases are placed on a regularly issued calendar. The court gives criminal cases preference on the calendar when it is possible to do so without undue delay of civil cases. Staff attorneys, judicial assistants, and law clerks assist the judges.

Decisions of the appellate court are delivered in writing, and the court’s publication committee determines which decisions will be published in the *Wisconsin Reports*. Only published opinions have precedential value and may be cited as controlling law in Wisconsin. Unpublished opinions that are authored by a judge and issued after July 1, 2009, may be cited for their persuasive value.

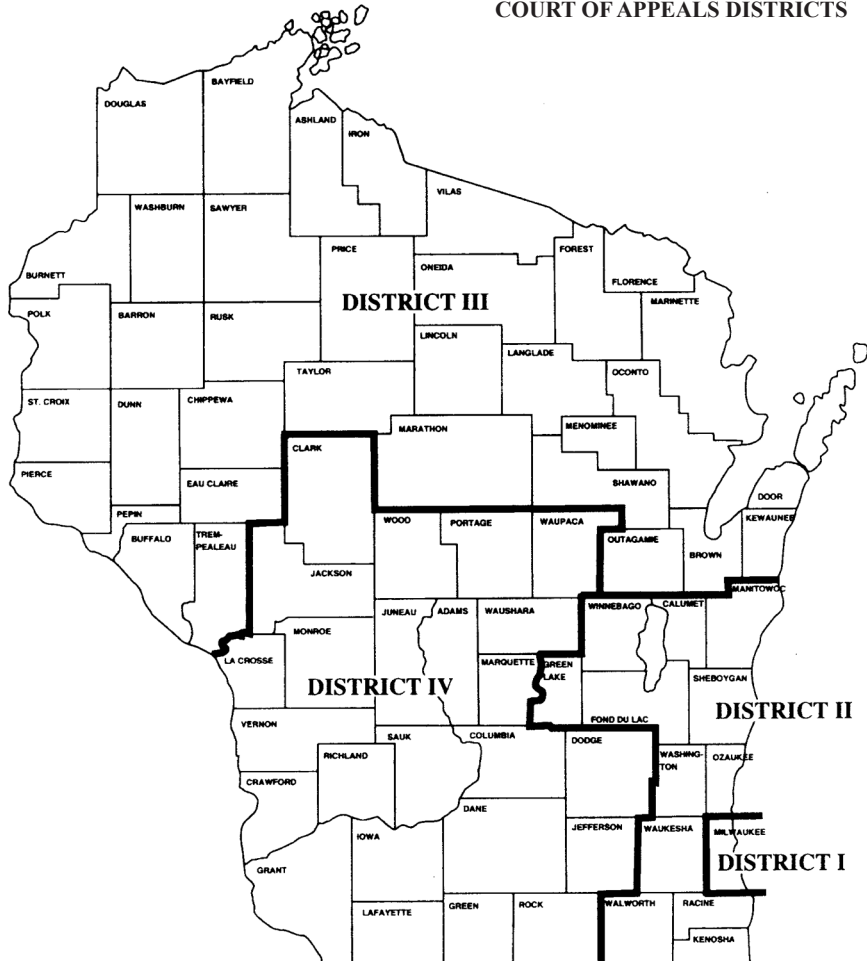
**District I:** 330 East Kilbourn Avenue, Suite 1020, Milwaukee 53202-3161. Telephone: (414) 227-4680.

**District II:** 2727 North Grandview Boulevard, Suite 300, Waukesha 53188-1672. Telephone: (262) 521-5230.

**District III:** 2100 Stewart Avenue, Suite 310, Wausau 54401-1700. Telephone: (715) 848-1421.

**District IV:** 10 East Doty Street, Suite 700, Madison 53703-3397. Telephone: (608) 266-9250.

**COURT OF APPEALS DISTRICTS**



**CIRCUIT COURTS**

**District 1:** Milwaukee County Courthouse, 901 North 9th Street, Room 609, Milwaukee 53233-1425. Telephone: (414) 278-5113; Fax: (414) 223-1264.

*Chief Judge:* JEFFREY KREMERS (MAXINE WHITE as of 8/1/2015).

*Administrator:* HOLLY SZABLEWSKI.

**District 2:** Racine County Courthouse, 730 Wisconsin Avenue, Racine 53403-1274. Telephone: (262) 636-3133; Fax: (262) 636-3437.

*Chief Judge:* ALLAN TORHORST.

*Administrator:* THERESA OWENS.

**District 3:** Waukesha County Courthouse, 515 West Moreland Boulevard, Room 359, Waukesha 53188-2428. Telephone: (262) 548-7209; Fax: (262) 548-7815.

*Chief Judge:* RANDY KOSCHNICK.

*Administrator:* MICHAEL NEIMON.

**District 4:** 415 Jackson Street, Room 510, P.O. Box 2808, Oshkosh 54903-2808. Telephone: (920) 424-0028; Fax: (920) 424-0096.

*Chief Judge:* ROBERT WIRTZ.

*Administrator:* JON BELLOWS.

**District 5:** Dane County Courthouse, 215 South Hamilton Street, Madison 53703-3290. Telephone: 267-8820; Fax: 267-4151.

*Chief Judge:* JAMES P. DALEY.

*Administrator:* GAIL RICHARDSON.

**District 6:** 3317 Business Park Drive, Suite A, Stevens Point 54481-8834. Telephone: (715) 345-5295; Fax: (715) 345-5297.

*Chief Judge:* GREGORY POTTER.

*Administrator:* RON LEDFORD.

**District 7:** La Crosse County Law Enforcement Center, 333 Vine Street, Room 3504, La Crosse 54601-3296. Telephone: (608) 785-9546; Fax: (608) 785-5530.

*Chief Judge:* JAMES J. DUVALL.

*Administrator:* PATRICK BRUMMOND.

**District 8:** 414 East Walnut Street, Suite 100, Green Bay 54301-5020. Telephone: (920) 448-4281; Fax: (920) 448-4336.

*Chief Judge:* DONALD ZUIDMULDER.

*Administrator:* DONALD HARPER.

**District 9:** 2100 Stewart Avenue, Suite 310, Wausau 54401. Telephone: (715) 842-3872; Fax: (715) 845-4523.

*Chief Judge:* NEAL NIELSEN.

*Administrator:* SUSAN BYRNES.

**District 10:** 4410 Golf Terrace, Suite 150, Eau Claire 54701-3606. Telephone: (715) 839-4826; Fax: (715) 839-4891.

*Chief Judge:* SCOTT NEEDHAM.

*Administrator:* KRISTINA ASCHENBRENNER.

**Internet Address:** [www.wicourts.gov/courts/circuit/index.htm](http://www.wicourts.gov/courts/circuit/index.htm)

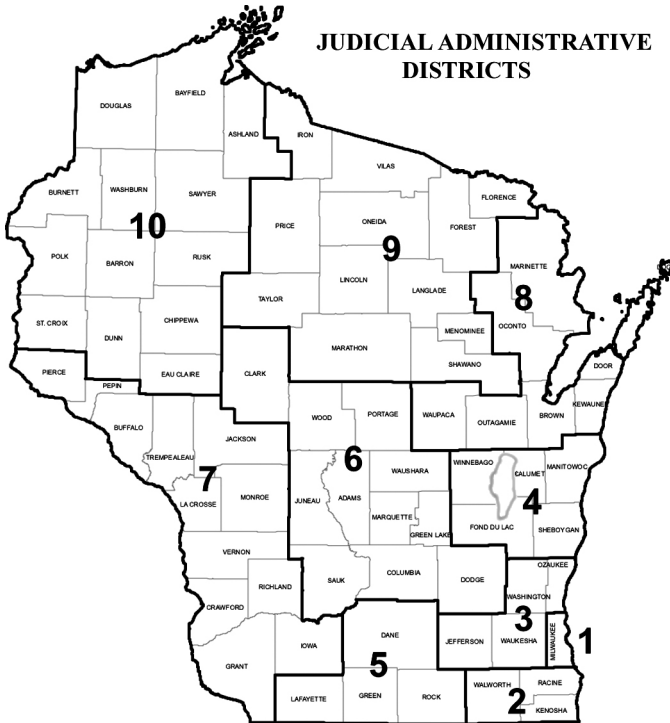
**State-Funded Positions:** 527.00.

**Total Budget 2013-15:** \$189,467,400.

**Constitutional References:** Article VII, Sections 2, 6-13.

**Statutory Reference:** Chapter 753.

**Responsibility:** The circuit court is the trial court of general jurisdiction in Wisconsin. It has original jurisdiction in both civil and criminal matters unless exclusive jurisdiction is given to another court. It also reviews state agency decisions and hears appeals from municipal courts. Jury trials are conducted only in circuit courts.



The constitution requires that a circuit be bounded by county lines. As a result, each circuit consists of a single county, except for 3 two-county circuits (Buffalo-Pepin, Florence-Forest, and Menominee-Shawano). Where judicial caseloads are heavy, a circuit may have several branches, each with an elected judge. Statewide, 40 of the state's 69 judicial circuits had multiple branches as of August 1, 2014, for a total of 249 circuit judgeships.

**Organization:** Circuit judges, who serve 6-year terms, are elected on a nonpartisan basis in the county in which they serve in the April election and take office the following August 1. The governor may fill circuit court vacancies by appointment, and the appointees serve until a successor is elected. The authorized salary for circuit court judges for 2014 is \$131,187. The state pays the salaries of circuit judges and court reporters. It also covers some of the expenses for interpreters, guardians ad litem, judicial assistants, court-appointed witnesses, and jury per diems. Counties bear the remaining expenses for operating the circuit courts.

*Administrative Districts.* Circuit courts are divided into 10 administrative districts, each supervised by a chief judge, appointed by the supreme court from the district's circuit judges. A judge usually cannot serve more than 3 successive 2-year terms as chief judge. The chief judge has authority to assign judges, manage caseload, supervise personnel, and conduct financial planning.

The chief judge in each district appoints a district court administrator from a list of candidates supplied by the director of state courts. The administrator manages the nonjudicial business of the district at the direction of the chief judge.

*Circuit Court Commissioners* are appointed by the circuit court to assist the court, and they must be attorneys licensed to practice law in Wisconsin. They may be authorized by the court to conduct various civil, criminal, family, small claims, juvenile, and probate court proceedings. Their duties include issuing summonses, arrest warrants, or search warrants; conducting initial

appearances; setting bail; conducting preliminary examinations and arraignments; imposing monetary penalties in certain traffic cases; conducting certain family, juvenile, and small claims court proceedings; hearing petitions for mental commitments; and conducting uncontested probate proceedings. On their own authority, court commissioners may perform marriages, administer oaths, take depositions, and issue subpoenas and certain writs.

The statutes require Milwaukee County to have full-time family, small claims, and probate court commissioners. All other counties must have a family court commissioner, and they may employ other full- or part-time court commissioners as deemed necessary.

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*The Wisconsin Supreme Court holds oral argument in the Wisconsin Supreme Court Hearing Room at the State Capitol. Here, an overflow crowd gathered on February 25, 2014, to hear challenges to the validity of 2011 Act 23's photo identification voting requirements under the Wisconsin Constitution. (Tom Sheehan, Wisconsin Supreme Court)*

## JUDGES OF CIRCUIT COURT June 30, 2015

County	Court	Judges	Term Expires
Circuits	Location		July 31
Adams	Friendship	Charles A. Pollex <sup>1</sup>	2015
Ashland	Ashland	Robert E. Eaton	2018
Barron			
Branch 1	Barron	James C. Babler	2016
Branch 2	Barron	J. Michael Bitney	2020
Branch 3	Barron	Maureen D. Boyle	2020
Bayfield	Washburn	John P. Anderson <sup>2</sup>	2015
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder <sup>2</sup>	2015
Branch 2	Green Bay	Tom Walsh	2018
Branch 3	Green Bay	Tammy Jo Hock	2019
Branch 4	Green Bay	Kendall M. Kelley <sup>2</sup>	2015
Branch 5	Green Bay	Marc A. Hammer <sup>2</sup>	2015
Branch 6	Green Bay	John P. Zakowski	2018
Branch 7	Green Bay	Timothy A. Hinkfuss	2019
Branch 8	Green Bay	William M. Atkinson <sup>2</sup>	2015
Buffalo-Pepin	Alma	James J. Duvall	2018
Burnett	Siren	Kenneth Kutz <sup>2</sup>	2015
Calumet	Chilton	Jeffrey S. Froehlich	2018
Chippewa			
Branch 1	Chippewa Falls	Roderick A. Cameron	2020
Branch 2	Chippewa Falls	James Isaacson <sup>2</sup>	2015
Branch 3	Chippewa Falls	Steven R. Cray	2020
Clark	Neillsville	Jon M. Counsell	2018
Columbia			
Branch 1	Portage	Daniel S. George <sup>3</sup>	2015
Branch 2	Portage	W. Andrew Voigt	2017
Branch 3	Portage	Alan White	2019
Crawford	Prairie du Chien	James P. Czajkowski	2016
Dane			
Branch 1	Madison	John Markson	2020
Branch 2	Madison	Josann M. Reynolds <sup>4,5</sup>	2015
Branch 3	Madison	Jim Troupis <sup>4</sup>	2016
Branch 4	Madison	Amy Smith	2016
Branch 5	Madison	Nicholas J. McNamara	2016
Branch 6	Madison	Shelley J. Gaylord <sup>2</sup>	2015
Branch 7	Madison	William E. Hanrahan	2020
Branch 8	Madison	Frank D. Remington	2018
Branch 9	Madison	Richard Niess	2017
Branch 10	Madison	Juan B. Colas <sup>2</sup>	2015
Branch 11	Madison	Elen K. Betz	2018
Branch 12	Madison	David T. Flanagan	2018
Branch 13	Madison	Julie Genovese <sup>2</sup>	2015
Branch 14	Madison	C. William Foust	2016
Branch 15	Madison	Stephen Ehлке	2016
Branch 16	Madison	Rhonda L. Lanford	2019
Branch 17	Madison	Peter C. Anderson	2016
Dodge			
Branch 1	Juneau	Brian A. Pfitzinger	2020
Branch 2	Juneau	John R. Storck	2019
Branch 3	Juneau	Joseph G. Sciascia	2019
Branch 4	Juneau	Steven Bauer	2020
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2018
Branch 2	Sturgeon Bay	Peter C. Diltz	2018
Douglas			
Branch 1	Superior	Kelly J. Thimm <sup>2</sup>	2015
Branch 2	Superior	George L. Glonek <sup>2</sup>	2015
Dunn			
Branch 1	Menomonie	James M. Peterson	2020
Branch 2	Menomonie	Rod W. Smeltzer <sup>2</sup>	2015
Eau Claire			
Branch 1	Eau Claire	vacancy	—
Branch 2	Eau Claire	Michael Schumacher	2020
Branch 3	Eau Claire	William M. Gabler	2018
Branch 4	Eau Claire	Jon M. Theisen	2018
Branch 5	Eau Claire	Paul J. Lenz	2018
Florence-Forest	Crandon	Leon D. Stenz	2020
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2020
Branch 2	Fond du Lac	Peter L. Grimm	2016
Branch 3	Fond du Lac	Richard J. Nuss <sup>2</sup>	2015
Branch 4	Fond du Lac	Gary R. Sharpe	2016
Branch 5	Fond du Lac	Robert J. Wirtz	2017
Forest (see Florence-Forest)			
Grant			
Branch 1	Lancaster	Robert P. VanDeHey	2017
Branch 2	Lancaster	Craig R. Day <sup>2</sup>	2015
Green			
Branch 1	Monroe	Jim Beer <sup>2</sup>	2015
Branch 2	Monroe	Thomas J. Vale <sup>2</sup>	2015
Green Lake	Green Lake	Mark Slate	2017
Iowa	Dodgeville	William D. Dyke	2016
Iron	Hurley	Patrick John Madden	2017

**JUDGES OF CIRCUIT COURT  
June 30, 2015–Continued**

County	Court	Judges	Term Expires
Circuits	Location		July 31
Jackson	Black River Falls	Anna L. Becker <sup>4,5</sup>	2015
Jefferson			
Branch 1	Jefferson	Jennifer L. Weston <sup>2</sup>	2015
Branch 2	Jefferson	William F. Hue	2019
Branch 3	Jefferson	David J. Wambach	2020
Branch 4	Jefferson	Randy R. Koschnick	2017
Juneau			
Branch 1	Mauston	John Pier Roemer	2016
Branch 2	Mauston	Paul S. Curran	2020
Kenosha			
Branch 1	Kenosha	David Mark Bastianelli <sup>2</sup>	2015
Branch 2	Kenosha	Jason A. Rossell	2018
Branch 3	Kenosha	Bruce E. Schroeder	2020
Branch 4	Kenosha	Anthony Milisauskas	2017
Branch 5	Kenosha	David P. Wilk <sup>4,5</sup>	2015
Branch 6	Kenosha	Mary K. Wagner <sup>2</sup>	2015
Branch 7	Kenosha	S. Michael Wilk	2018
Branch 8	Kenosha	Chad G. Kerkman <sup>2</sup>	2015
Kewaunee	Kewaunee	Dennis J. Mleziva	2016
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez	2019
Branch 2	La Crosse	Elliott Levine	2019
Branch 3	La Crosse	Todd Bjerke	2019
Branch 4	La Crosse	Scott L. Horne	2019
Branch 5	La Crosse	Candice Tlustosch <sup>4,6</sup>	2015
Lafayette	Darlington	William D. Johnston <sup>7</sup>	2015
Langlade	Antigo	vacancy <sup>8</sup>	—
Lincoln			
Branch 1	Merrill	Jay R. Tlusty	2016
Branch 2	Merrill	Robert Russell	2019
Manitowoc			
Branch 1	Manitowoc	Mark R. Rohrer	2019
Branch 2	Manitowoc	Gary Bendix	2018
Branch 3	Manitowoc	Jerome L. Fox	2017
Marathon			
Branch 1	Wausau	Jill N. Falstad <sup>2</sup>	2015
Branch 2	Wausau	Gregory Huber	2016
Branch 3	Wausau	Lamont K. Jacobson	2020
Branch 4	Wausau	Gregory Grau	2019
Branch 5	Wausau	Mike Moran	2017
Marinette			
Branch 1	Marinette	David G. Miron	2020
Branch 2	Marinette	James A. Morrison	2019
Marquette	Montello	Bernard Ben Bult	2019
Menominee-Shawano			
Branch 1	Shawano	James R. Habeck	2020
Branch 2	Shawano	William F. Kussel, Jr.	2018
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	2017
Branch 2	Wauwatosa	Joe Donald <sup>2</sup>	2015
Branch 3	Milwaukee	Clare L. Fiorenza <sup>2</sup>	2015
Branch 4	Milwaukee	Mel Flanagan	2018
Branch 5	Milwaukee	Mary Kuhnmuensch	2016
Branch 6	Milwaukee	Ellen R. Brostrom <sup>2</sup>	2015
Branch 7	Milwaukee	Thomas J. McAdams	2020
Branch 8	Milwaukee	William Sosnay	2018
Branch 9	Milwaukee	Paul R. Van Grunsven	2017
Branch 10	Milwaukee	Timothy G. Dugan	2019
Branch 11	Milwaukee	Dave Swanson	2017
Branch 12	Milwaukee	David L. Borowski <sup>2</sup>	2015
Branch 13	Milwaukee	Mary Trigiano	2017
Branch 14	Milwaukee	Christopher R. Foley	2016
Branch 15	Milwaukee	J.D. Watts <sup>2</sup>	2015
Branch 16	Wauwatosa	Michael J. Dwyer <sup>2</sup>	2015
Branch 17	Milwaukee	Carolina Maria Stark	2018
Branch 18	Wauwatosa	Pedro Colón	2017
Branch 19	Wauwatosa	Dennis R. Cimpl	2017
Branch 20	Milwaukee	Dennis P. Moroney	2018
Branch 21	Milwaukee	William Brash III	2020
Branch 22	Milwaukee	Timothy M. Witkowiak <sup>2</sup>	2015
Branch 23	Milwaukee	Lindsey Grady	2018
Branch 24	Milwaukee	Janet Protasiewicz	2020
Branch 25	Milwaukee	Stephanie Rothstein	2016
Branch 26	Milwaukee	William Pocan	2019
Branch 27	Milwaukee	Kevin E. Martens	2020
Branch 28	Wauwatosa	Mark A. Sanders	2018
Branch 29	Milwaukee	Richard J. Sankovitz <sup>2</sup>	2015
Branch 30	Milwaukee	Jeffrey A. Conen <sup>2</sup>	2015
Branch 31	Milwaukee	Daniel A. Noonan	2020
Branch 32	Milwaukee	Laura Gramling Perez	2020
Branch 33	Milwaukee	Carl Ashley	2017
Branch 34	Milwaukee	Glenn H. Yamahiro	2016
Branch 35	Milwaukee	Frederick C. Rosa	2017
Branch 36	Milwaukee	Jeffrey A. Kremers	2017

## JUDGES OF CIRCUIT COURT

### June 30, 2015–Continued

County	Court	Judges	Term Expires
Circuits	Location		July 31
Branch 37	Wauwatosa	T. Christopher Dee <sup>1,5</sup>	2015
Branch 38	Milwaukee	Jeffrey A. Wagner	2018
Branch 39	Milwaukee	Jane Carroll	2018
Branch 40	Milwaukee	Rebecca Dallett	2020
Branch 41	Wauwatosa	John J. DiMotto	2020
Branch 42	Milwaukee	David A. Hansher <sup>2</sup>	2015
Branch 43	Milwaukee	Marshall B. Murray	2018
Branch 44	Milwaukee	Daniel L. Konkol	2016
Branch 45	Wauwatosa	Rebecca G. Bradley	2019
Branch 46	Milwaukee	vacancy <sup>9</sup>	—
Branch 47	Milwaukee	John Siefert	2017
Monroe			
Branch 1.	Sparta	Todd L. Ziegler	2019
Branch 2.	Sparta	Mark L. Goodman	2016
Branch 3.	Sparta	J. David Rice	2016
Oconto			
Branch 1.	Oconto	Michael T. Judge	2017
Branch 2.	Oconto	Jay N. Conley	2016
Oneida			
Branch 1.	Rhineland	Patrick F. O'Melia	2020
Branch 2.	Rhineland	Michael H. Bloom	2018
Outagamie			
Branch 1.	Appleton	Mark McGinnis	2017
Branch 2.	Appleton	Nancy J. Krueger	2020
Branch 3.	Appleton	Mitchell J. Meiropoulos	2020
Branch 4.	Appleton	Greg Gill, Jr.	2018
Branch 5.	Appleton	Michael W. Gage <sup>2</sup>	2015
Branch 6.	Appleton	Vincent Biskupic <sup>4,5</sup>	2015
Branch 7.	Appleton	John A. Des Jardins	2018
Ozaukee			
Branch 1.	Port Washington	Paul V. Malloy <sup>2</sup>	2015
Branch 2.	Port Washington	Joe Voiland	2019
Branch 3.	Port Washington	Sandy A. Williams <sup>2</sup>	2015
Pepin (see Buffalo-Pepin)			
Pierce	Ellsworth	Joe Boles	2016
Polk			
Branch 1.	Balsam Lake	Molly E. GaleWyrick	2020
Branch 2.	Balsam Lake	Jeff Anderson	2017
Portage			
Branch 1.	Stevens Point	Thomas B. Eagon	2018
Branch 2.	Stevens Point	John V. Finn	2019
Branch 3.	Stevens Point	Thomas T. Flugaur	2018
Price	Phillips	Douglas T. Fox	2020
Racine			
Branch 1.	Racine	Gerald P. Ptacek	2019
Branch 2.	Racine	Eugene Gasioriewicz	2016
Branch 3.	Racine	Emily S. Mueller	2017
Branch 4.	Racine	John S. Jude	2016
Branch 5.	Racine	Mike Piontek	2018
Branch 6.	Racine	Wayne J. Marik <sup>10</sup>	2015
Branch 7.	Racine	Charles H. Constantine	2020
Branch 8.	Racine	Faye M. Flancher <sup>2</sup>	2015
Branch 9.	Racine	Allan P. Torhorst <sup>2</sup>	2015
Branch 10.	Racine	Timothy D. Boyle	2018
Richland	Richland Center	Andrew Sharp	2018
Rock			
Branch 1.	Janesville	James P. Daley	2020
Branch 2.	Janesville	Alan Bates	2016
Branch 3.	Janesville	Michael R. Fitzpatrick <sup>2</sup>	2015
Branch 4.	Janesville	Daniel T. Dillon	2019
Branch 5.	Janesville	Kenneth Hebeck <sup>11</sup>	2015
Branch 6.	Janesville	Richard T. Werner <sup>2</sup>	2015
Branch 7.	Janesville	Barbara W. McCrory	2018
Rusk	Ladysmith	Steven P. Anderson	2016
St. Croix			
Branch 1.	Hudson	Eric J. Lundell	2020
Branch 2.	Hudson	Edward F. Vlack III	2019
Branch 3.	Hudson	Scott R. Needham	2018
Branch 4.	Hudson	R. Michael Waterman <sup>4</sup>	2016
Sauk			
Branch 1.	Baraboo	Michael P. Screnock <sup>4</sup>	2016
Branch 2.	Baraboo	James Evenson	2016
Branch 3.	Baraboo	Guy D. Reynolds	2018
Sawyer	Hayward	Jerry Wright <sup>12</sup>	2015
Shawano-Menominee (see Menominee-Shawano)			
Sheboygan			
Branch 1.	Sheboygan	L. Edward Stengel <sup>2</sup>	2015
Branch 2.	Sheboygan	Timothy M. Van Akkeren	2019
Branch 3.	Sheboygan	Angela Sutkiewicz	2017
Branch 4.	Sheboygan	Terence T. Bourke <sup>3</sup>	2015
Branch 5.	Sheboygan	James J. Bolger <sup>2</sup>	2018
Taylor	Medford	Ann Knox-Bauer <sup>2</sup>	2015
Trempealeau	Whitchell	John A. Damon	2019
Vernon	Viroqua	Michael J. Rosborough	2017



**JUDGES OF CIRCUIT COURT  
June 30, 2015–Continued**

County Circuits	Court Location	Judges	Term Expires
			July 31
Vilas	Eagle River	Neal A. Nielsen	2016
Walworth			
Branch 1	Elkhorn	Phillip A. Koss	2018
Branch 2	Elkhorn	James L. Carlson	2016
Branch 3	Elkhorn	Kristine E. Drettwan <sup>45</sup>	2015
Branch 4	Elkhorn	David M. Reddy	2016
Washburn	Shell Lake	Eugene D. Harrington <sup>2</sup>	2015
Washington			
Branch 1	West Bend	James Poulos	2017
Branch 2	West Bend	James K. Muehlbauer	2020
Branch 3	West Bend	Todd Martens	2017
Branch 4	West Bend	Andrew T. Gonring	2018
Waukesha			
Branch 1	Waukesha	Michael O. Bohren	2019
Branch 2	Waukesha	Jennifer Dorow	2018
Branch 3	Waukesha	Ralph M. Ramirez	2017
Branch 4	Waukesha	Lloyd V. Carter	2017
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2020
Branch 6	Waukesha	Patrick C. Haughney	2020
Branch 7	Waukesha	J. Mae Davis <sup>44</sup>	2015
Branch 8	Waukesha	James R. Kieffer <sup>15</sup>	2015
Branch 9	Waukesha	Michael Aprahamian <sup>15</sup>	2015
Branch 10	Waukesha	Linda M. Van De Water <sup>16</sup>	2015
Branch 11	Waukesha	William Domina	2017
Branch 12	Waukesha	Kathryn W. Foster	2018
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	2017
Branch 2	Waupaca	Vicki Taggart Clusman	2020
Branch 3	Waupaca	Raymond S. Huber	2018
Waushara	Wautoma	Guy Dutcher	2017
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2018
Branch 2	Oshkosh	Scott C. Woltd	2017
Branch 3	Oshkosh	Barbara Hart Key	2016
Branch 4	Oshkosh	Karen L. Seifert	2018
Branch 5	Oshkosh	John Jorgensen	2016
Branch 6	Oshkosh	Daniel J. Bissett	2017
Wood			
Branch 1	Wisconsin Rapids	Gregory J. Potter	2020
Branch 2	Wisconsin Rapids	Nicholas J. Brazeau, Jr.	2018
Branch 3	Wisconsin Rapids	Todd P. Wolf <sup>3</sup>	2015

<sup>1</sup>Daniel Glen Wood was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>2</sup>Reelected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>3</sup>Todd J. Hepler was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>4</sup>Appointed by the governor.

<sup>5</sup>Newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>6</sup>Gloria Doyle was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>7</sup>Duane M. Jorgenson was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>8</sup>John Rhode was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>9</sup>David Feiss was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>10</sup>David W. Paulson was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>11</sup>Mike Haakenson was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>12</sup>John Yackel was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>13</sup>Rebecca Persick was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>14</sup>Maria S. Lazar was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>15</sup>Michael P. Maxwell was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

<sup>16</sup>Paul Bugenhagen, Jr., was newly elected on April 7, 2015, for a 6-year term to commence on August 1, 2015.

Sources: 2013-2014 Wisconsin Statutes; Government Accountability Board, departmental data, April 2015; governor's appointment notices; *The Third Branch* newsletter, Winter 2015 and previous issues.

## MUNICIPAL COURTS

**Constitutional References:** Article VII, Sections 2 and 14.

**Statutory References:** Chapters 755 and 800.

**Internet Address:** [www.wicourts.gov/courts/municipal/index.htm](http://www.wicourts.gov/courts/municipal/index.htm)

**Responsibility:** The Wisconsin Legislature authorizes cities, villages, and towns to establish municipal courts to exercise jurisdiction over municipal ordinance violations that have monetary penalties. In addition, the Wisconsin Supreme Court ruled in 1991 (*City of Milwaukee v. Wroten*, 160 Wis. 2d 107) that municipal courts have authority to rule on the constitutionality of municipal ordinances.

As of May 1, 2015, there were 240 municipal courts with 239 municipal judges. Courts may have multiple branches; the City of Milwaukee's municipal court, for example, has 3 branches. (Milwaukee County, which is the only county authorized to appoint municipal court commissioners, had 3 part-time commissioners as of May 2015.) Two or more municipalities may agree to form a joint court, and there are 70 joint courts, serving a total of 214 municipalities. Besides Milwaukee, Madison is the only city with a full-time municipal court.

Upon convicting a defendant, the municipal court may order payment of a forfeiture plus costs and surcharges, or, if the defendant agrees, it may require community service in lieu of a forfeiture. In general, municipal courts may also order restitution up to \$10,000. Where local ordinances conform to state drunk driving laws, a municipal judge may suspend or revoke a driver's license.

If a defendant fails to pay a forfeiture or make restitution, the municipal court may suspend the driver's license or commit the defendant to jail. Municipal court decisions may be appealed to the circuit court of the county where the offense occurred.

**Organization:** Municipal judges are elected at the nonpartisan April election and take office May 1. The term of office is 4 years and the governing body determines the position's salary. There is no state requirement that the office be filled by an attorney, but a municipality may enact such a qualification by ordinance.

If a municipal judge is ill, disqualified, or unavailable, the chief judge of the judicial administrative district containing the municipality may transfer the case to another municipal judge. If none is available, the case will be heard in circuit court.

**History:** Chapter 276, Laws of 1967, authorized cities, villages, and towns to establish municipal courts after the forerunner of municipal courts (the office of the justice of the peace) was eliminated by a constitutional amendment, ratified in April 1966. A constitutional amendment ratified in April 1977, which reorganized the state's court system, officially granted the legislature the power to authorize municipal courts.

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## STATEWIDE JUDICIAL AGENCIES

A number of statewide administrative and support agencies have been created by supreme court order or legislative enactment to assist the Wisconsin Supreme Court in its supervision of the Wisconsin judicial system.

**DIRECTOR OF STATE COURTS**

**Interim Director of State Courts:** J. DENIS MORAN, 266-6828, denis.moran@

*Deputy Director for Court Operations:* SARA WARD-CASSADY, 266-3121, sara.ward-cassady@

*Deputy Director for Management Services:* PAM RADLOFF, 266-8914, pam.radloff@

*Consolidated Court Automation Programs:* JEAN BOUSQUET, *director*, 267-0678, jean.bousquet@

*Fiscal Officer:* BRIAN LAMPRECH, 266-6865, brian.lamprech@

*Judicial Education:* KARLA J. BAUMGARTNER, *director*, 266-7807, karla.baumgartner@

*Medical Malpractice Mediation System:* RANDY SPROULE, *director*, 266-7711, randy.sproule@

*Public Information Officer:* TOM SHEEHAN, 261-6640, tom.sheehan@

*Legislative Liaison:* NANCY ROTTIER, 267-9733, nancy.rottier@

Address e-mail by combining the user ID and the state extender: [userid@wicourts.gov](mailto:userid@wicourts.gov)

**Mailing Address:** Director of State Courts: P.O. Box 1688, Madison 53701-1688; Staff: 110 East Main Street, Madison 53703.

**Location:** Director of State Courts: Room 16 East, State Capitol, Madison; Staff: 110 East Main Street, Madison.

**Fax:** 267-0980.

**Internet Address:** [www.wicourts.gov](http://www.wicourts.gov)

**Number of Employees:** 130.25.

**Total Budget 2013-15:** \$39,292,300.

**References:** Wisconsin Statutes, Chapter 655, Subchapter VI, and Section 758.19; Supreme Court Rules Chapter 70.

**Responsibility:** The Director of State Courts administers the nonjudicial business of the Wisconsin court system and informs the chief justice and the supreme court about the status of judicial business. The director is responsible for supervising state-level court personnel; developing the court system's budget; and directing the courts' work on legislation, public information, and information systems. This office also controls expenditures; allocates space and equipment; supervises judicial education, interdistrict assignment of active and reserve judges, and planning and research; and administers the medical malpractice mediation system.

The director is appointed by the supreme court from outside the classified service. The position was created by the supreme court in orders, dated October 30, 1978, and February 19, 1979. It replaced the administrative director of courts, which had been created by Chapter 261, Laws of 1961.

**STATE LAW LIBRARY**

**State Law Librarian:** JULIE TESSMER, 261-2340, julie.tessmer@wicourts.gov

*Deputy Law Librarian:* AMY CROWDER, 267-2253, amy.crowder@wicourts.gov

**Mailing Address:** P.O. Box 7881, Madison 53707-7881.

**Location:** 120 Martin Luther King, Jr. Blvd., 2nd Floor, Madison.

**Telephones:** General Information and Circulation: 266-1600; Reference Assistance: 267-9696; (800) 322-9755 (toll-free).

**Fax:** 267-2319.

**Internet Address:** <http://wilawlibrary.gov>

**Reference E-mail Address:** [wsl.ref@wicourts.gov](mailto:wsl.ref@wicourts.gov)

**Publications:** *WSLL @ Your Service* (monthly e-newsletter), at: <http://wilawlibrary.gov/newsletter/index.html>

**Number of Employees:** 16.50.

**Total Budget 2013-15:** \$5,844,500.

**References:** Wisconsin Statutes, Section 758.01; Supreme Court Rule 82.01.

**Responsibility:** The State Law Library is a public library open to all citizens of Wisconsin. It serves as the primary legal resource center for justices, judges, and staff of the entire Wisconsin court system. The library is administered by the supreme court, which appoints the library staff and determines the rules governing library use. The library acts as a consultant and resource for county law libraries throughout the state. Milwaukee County and Dane County contract with the State Law Library for management and operation of their courthouse libraries (the Milwaukee County Law Library and the Dane County Law Library).

The library's 140,000-volume collection features session laws, statutory codes, court reports, administrative rules and legal indexes of the U.S. government, all 50 states and U.S. territories. It also includes selected documents of the federal government, legal and bar periodicals, legal treatises, and legal encyclopedias. The collection circulates to judges and court staff, attorneys, legislators, and government personnel.

The library offers reference, basic legal research and document delivery services, and training in the use of legal research Web sites and databases.

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### OFFICE OF LAWYER REGULATION

*Board of Administrative Oversight:* ROD ROGAHN (lawyer), *chairperson*; JOHN P. MCNAMARA (lawyer), *vice chairperson*; DONALD J. CHRISTL, MARGADETTE DEMET, CHARLES P. DYKMAN, JOSEPH E. REDDING, GARY VAN DOMELLEN (lawyers); JOHN J. BLAHNIK, DANIEL C. BRUCH, CHARLES A. BUNGE, THOMAS L. HEINE, LAWRENCE J. QUAM (nonlawyers). (All members are appointed by the supreme court.)

*Preliminary Review Committee:* FRANK LO COCO (lawyer), *chairperson*; TIMOTHY NIXON (lawyer), *vice chairperson*; LANCE GRADY, MARTIN W. HARRISON, OLIVIA KELLEY, WILLIAM MUNDT, NORA PLATT, DUSTIN T. WOEHL, *vacancy* (lawyers); DENNIS BLASIUS, KRISTINE DEISS, JOHN FLANNERY, MICHAEL KINDSCHI, MICHAEL D. NOVAK (nonlawyers). (All members are appointed by the supreme court.)

*Special Preliminary Review Panel:* THOMAS A. CABUSH (lawyer), *chairperson*; BRUCE EHLKE, CATHERINE LA FLEUR, ROBERT A. MATHERS (lawyers); DANIEL ADAMS, DEE KITTLESON, JANE E. SNILSBERG (nonlawyers). (All members are appointed by the supreme court.)

*Sixteen District Committees* (all members are appointed by the supreme court):

*District 1 Committee (serves Jefferson, Kenosha, and Walworth Counties):* MARK BROMLEY (lawyer), *chairperson*; TIMOTHY J. GERAGHTY, HEATHER IVERSON, C. BENNETT PENWELL, CHRISTINE TOMAS, *vacancy* (lawyers); WILLIAM J. BRYDGES, CHARLES P. FRANDSON, RANDALL J. HAMMETT, JEROME HONORE, JEROME K. LAURENT, CHARLES F. TAYLOR (nonlawyers).

*District 2 Committee (serves Milwaukee County):* BRADLEY S. FOLEY (lawyer), *chairperson*; CHRISTOPHER J. MACGILLIS (lawyer), *vice chairperson*; COLLEEN D. BALL, PAUL BARGREN, REBECCA BLEMBERG, SARAH FRY BRUCH, RICHARD H. CASPER, JACQUES C. CONDON, CEDRIC CORNWALL, DONAL M. DEMET, MICHELE FORD, JAMES GEHRKE, DAVID B. KARP, HARVEY KURTZ, LYNN LAUFENBERG, MICHAEL LAUFENBERG, BRETT LUDWIG, THOMAS MERKLE, JAMES MOCZYDLOWSKI, ROBERT E. NAILEN, KEITH O'DONNELL, FRANK TERSCHAN, DANIEL TREUDEN, ROY E. WAGNER, MONTE WEISS, JOSEPH WELCENBACH, THOMAS WHIPP, *vacancy* (lawyers); ARLYN ADAMS, FRANK V. BIALEK, RON BLAZEL, NEILAND COHEN, KRISTINA EHNERT, BRUCE HARVEY, RICHARD IPPOLITO, J. DAIN MADDOX, BARBARA J. MILLER, GARY NOSACEK, KEITH J. ROBERTS, WILLIAM WARD, *vacancy* (nonlawyers).

*District 3 Committee (serves Fond du Lac, Green Lake, and Winnebago Counties):* TIMOTHY R. YOUNG (lawyer), *chairperson*; PETER CULP, KENNARD N. FRIEDMAN, KATHERINE SEIFERT,

vacancy (lawyers); PAUL M. BAKER, JOHN FAIRHURST, MARY JO KEATING, THOMAS E. KELROY, JULIETTE STERKENS, SUSAN T. VETTE, vacancy (nonlawyers).

*District 4 Committee (serves Calumet, Door, Kewaunee, Manitowoc, and Sheboygan Counties):* NATASHA TORRY-MORGAN (lawyer), *chairperson*; BARRY S. COHEN, MARY LYNN DONOHUE, WILLIAM F. FALE, ROBERT LANDRY, vacancy (lawyers); VICTORIA CERINICH, JAMES STECKER, SUZANNE J. WEGNER, ALLAN WHITE, RICHARD YORK (nonlawyers).

*District 5 Committee (serves Buffalo, Clark, Crawford, Jackson, La Crosse, Monroe, Pepin, Richland, Trempealeau, and Vernon Counties):* KARA M. BURGOS (lawyer), *chairperson*; MICHAEL C. ABLAN, DANIEL C. ARNDT, BRUCE J. BROVOLD, BERNARDO CUETO, CHRISTOPHER DOERFLER, STEPHANIE HOPKINS, DAVID RUSSELL, vacancy (lawyers); DAVID CAMPBELL, JAMES W. GEISSNER, RICHARD A. MERTIG, vacancy (nonlawyers).

*District 6 Committee (serves Waukesha County):* GARY KUPHALL (lawyer), *chairperson*; LINDA S. COYLE, MARTIN DITKOF, ROSEMARY JUNE GORETA, MICHAEL JASSAK, RAMON A. KLITZKE, BRAD A. MARKVART, DANIEL MURRAY, STEPHEN C. RAYMONDS, PAUL E. SCHWEMER, NELSON E. SHAFER, MARGARET G. ZICKUHR, vacancy (lawyers); TELEMACHOS AGOUEDEMOS, MICHAEL H. BRANKS, ROBERT HAMILTON, GREGORY J. KSIKINSKI, THERESA M. PETERMAN, JOHN SCHATZMAN, JAMES C. WENZLER, vacancy (nonlawyers).

*District 7 Committee (serves Adams, Columbia, Juneau, Marquette, Portage, Sauk, Waupaca, Waushara, and Wood Counties):* THOMAS M. KUBASTA (lawyer), *chairperson*; STEPHEN D. CHIQUOINE, LEO J. GRILL, ERIK C. JOHNSON, vacancy (lawyers); PHILIP BAEBLER, LAVINDA CARLSON, SUSAN G. MARTIN, CHARLES W. NASON, ALAN K. PETERSON, vacancy (nonlawyers).

*District 8 Committee (serves Dunn, Eau Claire, Pierce, and St. Croix Counties):* JAY E. HEIT, MARK N. MATHIAS, GREGORY S. NICASTRO, CAROL N. SKINNER, PHILLIP M. STEANS, TRACY N. TOOL, vacancy (lawyers); KRISTEN AINSWORTH, EDWARD HASS, THERESA JOHNSON, BRAD NEMEE, PAUL W. SCHOMMER, vacancy (nonlawyers).

*District 9 Committee (serves Dane County):* THOMAS W. SHELLANDER (lawyer), *chairperson*; THOMAS S. HORNIG (lawyer), *vice chairperson*; JON CALLAWAY, ANDREW CLARKOWSKI, TIMOTHY EDWARDS, ROGER FLORES, AARON HALSTEAD, ROBERT KASIETA, JASON J. KNUTSON, DAVID S. KOWALSKI, JENNIFER M. KRUEGER, JENNIFER SLOAN LATTIS, JENNIFER E. NASHOLD, BRIANE F. PAGEL, JR., MICHELE PERREAULT, MEGAN A. SENATORI, JAMES R. TROUPIS (lawyers); PATRICIA BASS, PATRICK DELMORE, NORMAN JENSEN, LYNN M. LEAZER, LARRY MCCRAY, BARBARA MORTENSEN, LARRY NESPER, ROBERT G. OWENS, KATHLEEN M. RAAB, JEFFREY B. ROBERTS, CHRISTOPHER D. WASHBURN, KENNETH YUSKA, JOHN ZERBE, vacancy (nonlawyers).

*District 10 Committee (serves Marinette, Menominee, Oconto, Outagamie, and Shawano Counties):* MICHAEL F. BROWN (lawyer), *chairperson*; LEONARD D. KACHINSKY, ROBERT SISSON, LAURA C. SMYTHE, CATHERINE C. STICHMANN, GERALD WILSON, vacancy (lawyers); GUY T. GOODING, TERRY HILGENBERG, CONNIE M. SEEFELDT, STEPHEN C. WARE, vacancy (nonlawyer).

*District 11 Committee (serves Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Polk, Price, Rusk, Sawyer, Taylor, and Washburn Counties):* CRAIG HAUKAAS (lawyer), *chairperson*; DEBORAH ASHER, ANNETTE M. BARNA, JOHN R. CARLSON, PARRISH J. JONES, TIMOTHY T. SEMPE, AMANDA L. WIECKOWICZ (lawyers); GENE ANDERSON, JOHN BENNETT, ELIZABETH ESSER, ERNY HEIDEN, MARY ANN KING (nonlawyers).

*District 12 Committee (serves Grant, Green, Iowa, Lafayette, and Rock Counties):* DAN D. GARTZKE (lawyer), *chairperson*; PETER HERMAN, MELISSA B. JOOS, MARGARET M. KOEHLER, KELLY MATTINGLY, CAROLYN L. SMITH, JAMES D. WICKHEM, vacancy (lawyers); LORI R. BIENEMA, DENNIS L. EVERSON, MICHAEL FURGAL, WILLIAM HUSTAD, MICHAEL F. METZ, ROBERT D. SPOODEN, LARRY WOLF, vacancy (nonlawyers).

*District 13 Committee (serves Dodge, Ozaukee, and Washington Counties):* JOSEPH G. DOHERTY (lawyer), *chairperson*; JOHN A. BEST, MICHAEL P. HERBRAND, CHRISTINE EISENMANN KNUDTSON, DANIEL L. VANDE ZANDE, ANNAMARIE A. WINEKE (lawyers); ROBERT

BLAZICH, MARK L. BORN, RAMONA LARSON, vacancy (nonlawyers).

*District 14 Committee (serves Brown County):* BRUCE R. BACHHUBER (lawyer), *chairperson*; ROBERT GAGAN, EDWARD J. VOPAL, ANN C. WEISS, vacancy (lawyers); DEBRA L. BURSİK, JIM MARSHALL, JOSEPH NEIDENBACH, vacancy (nonlawyers).

*District 15 Committee (serves Racine County):* MARK F. NIELSEN (lawyer), *chairperson*; ROBERT W. KELLER (lawyer), *vice chairperson*; JOHN J. BUCHAKLIAM, KRISTIN CAFFERTY, PATRICIA J. HANSON, LINCOLN K. MURPHY, TIMOTHY J. PRUITT, ROBERT K. WEBER (lawyers); THOMAS CHRYSY, PATRICIA HOFFMAN, FRANK KONIESKA, PETER SMET, vacancy (nonlawyers).

*District 16 Committee (serves Forest, Florence, Langlade, Lincoln, Marathon, Oneida, and Vilas Counties):* GINGER MURRAY (lawyer), *chairperson*; LISA BROUILLETTE, LAURA K. FITZSIMMONS, JAMES P. LONSDORF, DANIEL R. PETERS, PETER M. YOUNG, vacancy (lawyers); JOHN P. COLEMAN, MONTY RASKIN, vacancy (nonlawyers).

**Office of Lawyer Regulation:** KEITH L. SELLEN, *director*, keith.sellen@wicourts.gov; JOHN O'CONNELL, *deputy director*, john.o'connell@wicourts.gov; ELIZABETH ESTES, *deputy director*, elizabeth.estes@wicourts.gov; BILL WEIGEL, *litigation counsel*, bill.weigel@wicourts.gov; MARY HOEFT SMITH, *trust account program administrator*, mary.hoeftsmith@wicourts.gov

**Telephone:** 267-7274; Central Intake toll-free (877) 315-6941.

**Fax:** 267-1959.

**Mailing Address:** 110 East Main Street, Suite 315, Madison 53703-3383.

**Number of Employees:** 27.50.

**Total Budget 2013-15:** \$5,608,300.

**References:** Supreme Court Rules, Chapters 21 and 22.

**Responsibility:** The Office of Lawyer Regulation was created by order of the supreme court, effective October 1, 2000, to assist the court in fulfilling its constitutional responsibility to supervise the practice of law and protect the public from professional misconduct by members of the State Bar of Wisconsin. This agency assumed the attorney disciplinary functions that had previously been performed by the Board of Attorneys Professional Responsibility and, prior to January 1, 1978, by the Board of State Bar Commissioners.

The director of the Office of Lawyer Regulation is appointed by the supreme court and must be admitted to the practice of law in Wisconsin no later than six months following appointment. The Board of Administrative Oversight and the Preliminary Review Committee perform oversight and adjudicative responsibilities under the supervision of the supreme court.

The Board of Administrative Oversight consists of 12 members, 8 lawyers and 4 public members. Board members are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms. The board monitors the overall system for regulating lawyers but does not handle actions regarding individual complaints or grievances. It reviews the "fairness, productivity, effectiveness and efficiency" of the system and reports its findings to the supreme court. After consultation with the director, it proposes the annual budget for the agency to the supreme court.

The Office of Lawyer Regulation receives and evaluates all complaints, inquiries, and grievances related to attorney misconduct or medical incapacity. The director is required to investigate any grievance that appears to support an allegation of possible attorney misconduct, and the attorney in question must cooperate with the investigation. District investigative committees are appointed in the 16 State Bar districts by the supreme court to aid the director in disciplinary investigations, forward matters to the director for review, and provide assistance when grievances can be settled at the district level.

After investigation, the director decides whether the matter should be forwarded to a panel of the Preliminary Review Committee, be dismissed, or be diverted for alternative action. This 14-member committee consists of 9 lawyers and 5 public members, who are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms.

If a panel of the Preliminary Review Committee determines there is cause to proceed, the director may seek disciplinary action, ranging from private reprimand to filing a formal complaint with the supreme court that requests public reprimand, license suspension or revocation,

monetary payment, or imposing conditions on the continued practice of law. An attorney may be offered alternatives to formal disciplinary action, including mediation, fee arbitration, law office management assistance, evaluation and treatment for alcohol and other substance abuse, psychological evaluation and treatment, monitoring of the attorney's practice or trust account procedures, continuing legal education, ethics school, or the multistate professional responsibility examination.

Formal disciplinary actions for attorney misconduct are filed by the director with the supreme court, which appoints a referee from a permanent panel of attorneys and reserve judges to hear discipline cases, make disciplinary recommendations to the court, and to approve the issuance of certain private and public reprimands. Referees conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity, and petitions for reinstatement. They make findings, conclusions, and recommendations and submit them to the supreme court for review and appropriate action. Only the supreme court has the authority to suspend or revoke a lawyer's license to practice law in the State of Wisconsin.

Allegations of misconduct against the director, a lawyer member of staff, retained counsel, a lawyer member of a district committee, a lawyer member of the preliminary review committee, a lawyer member of the board of administrative oversight, or a referee are assigned by the director for investigation by a special investigator. The special investigator may close a matter if there is not enough information to support an allegation of possible misconduct. If there is enough information to support an allegation of possible misconduct an investigation is commenced. The investigator can then dismiss the matter after investigation or submit an investigative report to the special preliminary review panel which will ultimately decide whether or not there is cause to proceed. The special preliminary review panel consists of 7 members, 4 lawyers and 3 public members appointed by the supreme court who serve staggered 3-year terms and may not serve more than two consecutive terms. If cause is found, the special investigator can proceed to file a complaint with the supreme court and prosecute the matter personally or may assign that responsibility to counsel retained by the director for such purposes.

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### BOARD OF BAR EXAMINERS

*Board of Bar Examiners:* MARK R. FREMGEN (State Bar member), *chairperson*; STEVEN M. BARKAN (UW Law School faculty), *vice chairperson*; KENNETH KUTZ (circuit court judge); CHARLES P. DYKMAN, KIMBERLY HAAS, RICHARD B. MORIARTY, W. CRAIG OLAFSSON (State Bar members); JUDITH G. McMULLEN (Marquette University Law School faculty); JAMES A. COTTER, PATRICIA EVANS, SALLY M. YOUNGER (public members). (All members are appointed by the supreme court.)

*Director:* JACQUELYNN B. ROTHSTEIN, 266-9760; Fax: 266-1196.

**Mailing Address:** 110 East Main Street, Suite 715, P.O. Box 2748, Madison 53701-2748.

**E-mail Address:** [bbe@wicourts.gov](mailto:bbe@wicourts.gov)

**Internet Address:** [www.wicourts.gov/courts/offices/bbe.htm](http://www.wicourts.gov/courts/offices/bbe.htm)

**Number of Employees:** 8.00.

**Total Budget 2013-15:** \$1,510,100.

**References:** Supreme Court Rules, Chapters 30, 31, and 40.

**Responsibility:** The 11-member Board of Bar Examiners manages all bar admissions by examination or by motion on proof of practice; conducts character and fitness investigations of all candidates for admission to the bar, including diploma privilege graduates; and administers the Wisconsin mandatory continuing legal education requirement for attorneys.

The board was formed from two Supreme Court Boards: the Board of Continuing Legal Education and the Board of Bar Commissioners. The Board of Continuing Legal Education was created effective January 1, 1976, to administer the Wisconsin Supreme Court's mandatory continuing legal education requirements for lawyers. Effective January 1, 1978, the Board of Continuing Legal Education was renamed the Board of Attorneys Professional Competence and continued to be charged with administering mandatory continuing legal education.

The Board of Bar Commissioners was charged with administering bar admission and compliance with the Code of Professional Responsibility. Effective January 1, 1978, the Board of Bar Commissioners' duties with respect to bar admission were transferred to the Board of Attorneys Professional Competence. Effective January 1, 1991, the Board of Attorneys Professional Competence was renamed the Board of Bar Examiners.

Members are appointed for staggered 3-year terms, but no member may serve more than two consecutive full terms.

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### JUDICIAL CONDUCT ADVISORY COMMITTEE

*Judicial Conduct Advisory Committee:* D. TODD EHLERS (circuit court or reserve judge serving in a rural area); DONALD ZUIDMULDER (judicial administrative district chief judge); LISA S. NEUBAUER (court of appeals judge); WAYNE MARIK (circuit court or reserve judge serving in an urban area); DANIEL P. KOVAL (municipal court judge); MORIA KRUEGER (reserve judge); ANTON JAMIESON (circuit court commissioner); DAN CONLEY (State Bar member); RANDY MORRISSETTE II (public member). (All members are selected by the supreme court.)

**Mailing Address:** P.O. Box 1688, Madison 53701-1688.

**Internet Address:** [www.wicourts.gov/courts/committees/judicialconduct.htm](http://www.wicourts.gov/courts/committees/judicialconduct.htm)

**Telephone:** 266-6828.

**Fax:** 267-0980.

**Reference:** Supreme Court Rules, Chapter 60 Appendix.

**Responsibility:** The Wisconsin Supreme Court established the Judicial Conduct Advisory Committee as part of its 1997 update to the Code of Judicial Conduct. The 9-member committee gives formal advisory opinions and informal advice regarding whether actions judges are contemplating comply with the code. It also makes recommendations to the supreme court for amendment to the Code of Judicial Conduct or the rules governing the committee.

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### JUDICIAL CONFERENCE

*Members:* All supreme court justices, court of appeals judges, circuit court judges, reserve judges, 3 municipal court judges (designated by the Wisconsin Municipal Judges Association), 3 judicial representatives of tribal courts (designated by the Wisconsin Tribal Judges Association), one circuit court commissioner designated by the Family Court Commissioner Association, and one circuit court commissioner designated by the Judicial Court Commissioner Association.

**Internet Address:** [www.wicourts.gov/courts/committees/judicialconf.htm](http://www.wicourts.gov/courts/committees/judicialconf.htm)

**References:** Sections 758.171-758.18, Wisconsin Statutes; Supreme Court Rule 70.15.

**Responsibility:** The Judicial Conference, which was created by the Wisconsin Supreme Court, meets at least once a year to recommend improvements in administration of the justice system, conduct educational programs for its members, adopt the revised uniform traffic deposit and misdemeanor bail schedules, and adopt forms necessary for the administration of certain court proceedings. Since its initial meeting in January 1979, the conference has devoted sessions to family and children's law, probate, mental health, appellate practice and procedures, civil law, criminal law, truth-in-sentencing, and traffic law.

Judicial Conference bylaws have created a Nominating Committee and five standing committees. Committee members are elected by the Judicial Conference. The standing committees include: the Civil Jury Instructions Committee, the Criminal Jury Instructions Committee, the Juvenile Jury Instructions Committee, the Legislative Committee, and the Uniform Bond Committee. Chairpersons of each standing committee are selected annually by the committee members. The Nominating Committee is made up of the judges who chair the standing committees and the secretary of the Judicial Conference.



The Judicial Conference may create study committees to examine particular topics. These study committees must report their findings and recommendations to the next annual meeting of the Judicial Conference. Study committees usually work for one year, unless extended by the Judicial Conference.

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### JUDICIAL EDUCATION COMMITTEE

*Judicial Education Committee:* PATIENCE DRAKE ROGGENSACK (supreme court chief justice); THOMAS R. HRUZ (designated by appeals court chief judge); vacancy (director of state courts); STEVEN G. BAUER, ELLEN K. BERZ, ELLEN BROSTROM, JEFFREY A. CONEN, MOLLY E. GALE WYRICK, SCOTT L. HORNE, CHAD G. KERKMAN, MARK J. MCGINNIS (circuit court judges appointed by supreme court); REBECCA PERSICK, ALICE A. RUDEBUSCH (circuit court commissioners appointed by supreme court); JINI M. RABAS (designated by dean, UW Law School); THOMAS HAMMER (designated by dean, Marquette University Law School). *Ex officio* member: LISA K. STARK (dean, Wisconsin Judicial College).

*Office of Judicial Education:* KARLA J. BAUMGARTNER, *director*,  
karla.baumgartner@wicourts.gov

**Mailing Address:** Office of Judicial Education, 110 East Main Street, Room 200, Madison 53703.

**Telephone:** 266-7807.

**Fax:** 261-6650.

**E-mail Address:** JED@wicourts.gov

**Internet Address:** [www.wicourts.gov/courts/committees/judicial.htm](http://www.wicourts.gov/courts/committees/judicial.htm)

**Reference:** Supreme Court Rules, Chapters 32, 33, and 75.05.

**Responsibility:** The 16-member Judicial Education Committee approves educational programs for judges and court personnel. The 8 circuit court judges and 2 circuit court commissioners on the committee serve staggered 2-year terms and may not serve more than two consecutive terms. The dean of the Wisconsin Judicial College is an *ex officio* member of the committee and has voting privileges.

In 1976, the supreme court issued Chapter 32 of the Supreme Court Rules, which established a mandatory program of continuing education for the Wisconsin judiciary, effective January 1, 1977. This program applies to all supreme court justices and commissioners, appeals court judges and staff attorneys, circuit court judges, and reserve judges. Each person subject to the rule must obtain a specified number of credit hours of continuing education within a 6-year period. The Office of Judicial Education, which the supreme court established in 1971, administers the program. It also sponsors initial and continuing educational programs for municipal judges and circuit court clerks.

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### PLANNING AND POLICY ADVISORY COMMITTEE

*Planning and Policy Advisory Committee:* PATIENCE DRAKE ROGGENSACK (supreme court chief justice), *chairperson*; JUAN COLÁS (circuit court judge), *vice chairperson*; JOANNE KLOPPENBURG (appeals court judge selected by court); JAMES BOLGERT, DAVID BOROWSKI, WILLIAM BRASH, NICHOLAS BRAZEAU, EUGENE HARRINGTON, TIMOTHY HINKFUSS, LAMONT JACOBSON, ELLIOTT LEVINE, WILLIAM POCAN, DAVID REDDY, THOMAS VALE, LINDA VAN DE WATER (circuit court judges elected by judicial administrative districts); RANDI OTHROW (municipal judge elected by Wisconsin Municipal Judges Association); TERESA ARROWOOD, TIM VERHOFF (selected by State Bar Board of Governors); GREGG MOORE (nonlawyer, elected county official); LINDA HOSKINS, DIANE TREIS-RUSK (nonlawyers); KELLI THOMPSON (public defender); JON BELLOWES (court administrator); JEFFREY ALTENBURG (prosecutor); CARLO ESQUEDA (circuit court clerk); DOLORES BOMRAD (circuit court commissioner). (Unless indicated otherwise, members are

appointed by the chief justice.) Nonvoting associates: ALLAN TORHORST (chief judge liaison), vacancy (director of state courts).

*Planning Subcommittee:* MICHAEL ROSBOROUGH (circuit court judge), *chairperson*; LISA NEUBAUER (appeals court judge); KATHRYN FOSTER, PAT MADDEN, MARY TRIGGIANO (circuit court judges); ANDREW GRAUBARD (court administrator); THERESA RUSSELL (circuit court clerk); DOLORES BOMRAD (circuit court commissioner); JOSEPH HEIM (public member). *Ex officio* members: PATIENCE DRAKE ROGGENSACK (supreme court chief justice), JUAN COLÁS (circuit court judge, vice chairperson of Planning and Policy Advisory Committee), vacancy (director of state courts).

*Staff Policy Analyst:* Office of Court Operations.

**Mailing Address:** 110 East Main Street, Room 410, Madison 53703.

**Telephone:** 266-3121.

**Fax:** 267-0911.

**Internet Address:** [www.wicourts.gov/courts/committees/ppac.htm](http://www.wicourts.gov/courts/committees/ppac.htm)

**Reference:** Supreme Court Rule 70.14.

**Responsibility:** The 26-member Planning and Policy Advisory Committee advises the Wisconsin Supreme Court and the Director of State Courts on planning and policy and assists in a continuing evaluation of the administrative structure of the court system. It participates in the budget process of the Wisconsin judiciary and appoints a subcommittee to review the budget of the court system. The committee meets at least quarterly, and the supreme court meets with the committee annually. The Director of State Courts participates in committee deliberations, with full floor and advocacy privileges, but is not a member of the committee and does not have a vote.

This committee was created in 1978 as the Administrative Committee of the Courts and renamed the Planning and Policy Advisory Committee in December 1990.

## WISCONSIN JUDICIAL SYSTEM — INDEPENDENT BODIES

### JUDICIAL COMMISSION

*Members:* FRANK J. DAILY, vacancy (State Bar members); SAIED ASSEF, MARK BARRETTE, EILEEN BURNETT, WILLIAM E. CULLINAN, LYNN M. LEAZER (nonlawyers); EMILY S. MUELLER (circuit court judge); PAUL F. REILLY (appeals court judge). (Judges and State Bar members appointed by supreme court. Nonlawyers are appointed by governor with senate consent.)

*Executive Director:* JEREMIAH C. VAN HECKE.

*Administrative Assistant:* LAURY BUSSAN.

**Mailing Address:** 110 East Main Street, Suite 700, Madison 53703-3328.

**Telephone:** 266-7637.

**Fax:** 266-8647.

**Agency E-mail:** [judcmm@wicourts.gov](mailto:judcmm@wicourts.gov)

**Internet Address:** [www.wicourts.gov/judcom](http://www.wicourts.gov/judcom)

**Publication:** Annual Report.

**Number of Employees:** 2.00.

**Total Budget 2013-15:** \$627,800.

**Statutory References:** Sections 757.001, 757.81-757.99.

**Responsibility:** The 9-member Judicial Commission conducts investigations for review and action by the supreme court regarding allegations of misconduct or permanent disability of a judge or court commissioner. Members are appointed for 3-year terms but cannot serve more than two consecutive full terms.

The commission's investigations are confidential. If an investigation results in a finding of probable cause that a judge or court commissioner has engaged in misconduct or is disabled, the commission must file a formal complaint of misconduct or a petition regarding disability with the supreme court. Prior to filing a complaint or petition, the commission may request a jury hearing of its findings before a single appellate judge. If it does not request a jury hearing, the chief judge of the court of appeals selects a 3-judge panel to hear the complaint or petition.

The commission is responsible for prosecution of a case. After the case is heard by a jury or panel, the supreme court reviews the findings of fact, conclusions of law, and recommended disposition. It has ultimate responsibility for determining appropriate discipline in cases of misconduct or appropriate action in cases of permanent disability.

**History:** In 1972, the Wisconsin Supreme Court created a 9-member commission to implement the Code of Judicial Ethics it had adopted. The code enumerated standards of personal and official conduct and identified conduct that would result in disciplinary action. Subject to supreme court review, the commission had authority to reprimand or censure a judge.

A constitutional amendment approved by the voters in 1977 empowered the supreme court, using procedures developed by the legislature, to reprimand, censure, suspend, or remove any judge for misconduct or disability. With enactment of Chapter 449, Laws of 1977, the legislature created the Judicial Commission and prescribed its procedures. The supreme court abolished its own commission in 1978.

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### JUDICIAL COUNCIL

**Members:** ANNETTE KINGSLAND ZIEGLER (justice designated by supreme court); BRIAN W. BLANCHARD (judge designated by court of appeals); vacancy (director of state courts); MICHAEL R. FITZPATRICK, GERALD P. PTACEK, ROBERT P. VAN DE HEY, JEFFREY A. WAGNER (circuit court judges designated by Judicial Conference); SENATOR WANGGAARD (chairperson, senate judicial committee); REPRESENTATIVE J. OTT (chairperson, assembly judicial committee); GREG M. WEBER (designated by attorney general); TRACY K. KUCZENSKI (designated by Legislative Reference Bureau Chief); DAVID E. SCHULTZ (faculty member, UW Law School, designated by dean); THOMAS L. SHRINER, JR. (adjunct professor, Marquette University Law School, designated by dean); DEVON M. LEE (designated by state public defender); JILL M. KASTNER (State Bar member, designated by president-elect); THOMAS W. BERTZ, WILLIAM GLEISNER, AMY E. WOCHOS (State Bar members selected by State Bar); vacancy (district attorney appointed by governor); DENNIS MYERS, BENJAMIN J. PLISKIE (public members appointed by governor).

**Mailing Address:** 110 East Main Street, Suite 822, Madison 53703.

**Telephone:** 261-8290.

**Fax:** 261-8289.

**Number of Employees:** 1.00.

**Total Budget 2013-15:** \$139,400.

**Statutory References:** Section 758.13.

**Responsibility:** The Judicial Council, created by Chapter 392, Laws of 1951, assumed the functions of the Advisory Committee on Rules of Pleading, Practice and Procedure, created by the 1929 Legislature. The 21-member council is authorized to advise the supreme court, the governor, and the legislature on any matter affecting the administration of justice in Wisconsin, and it may recommend legislation to change the procedure, jurisdiction, or organization of the courts. The council studies the rules of pleading, practice, and procedure and advises the supreme court about changes that will simplify procedure and promote efficiency.

Several council members serve at the pleasure of their appointing authorities. The 4 circuit judges selected by the Judicial Conference serve 4-year terms. The 3 members selected by the State Bar and the 2 citizen members appointed by the governor serve 3-year terms. The council is supported by one staff attorney.

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## WISCONSIN JUDICIAL SYSTEM — ASSOCIATED UNIT

## STATE BAR OF WISCONSIN

*Board of Governors* (effective July 1, 2015): *Officers*: RALPH M. CAGLE, *president*; FRANCIS W. DEISINGER, *president-elect*; ROBERT R. GAGAN, *past president*; SHERRY COLEY, *secretary*; PAUL G. SWANSON, *treasurer*; JILL M. KASTNER, *chair of the board*. *District members*: ROBERT G. BARRINGTON, HOWARD J. BICHLER, JOHN A. BIRSDALL, DANIEL J. BLINKA, TRUSCENIALYN BROOKS, BRUCE J. BROVOLD, DOUGLAS S. BUCK, ANDREW J. CHEVREZ, MILTON L. CHILDS, MICHAEL J. COHEN, BYRON B. CONWAY, JOHN E. DANNER, CATHERINE J. DORL, HANNAH C. DUGAN, DANIEL P. FAY, MARTIN P. GAGNE, JEFF GOLDMAN, ANTHONY J. GRAY, KIMBERLY K. HAINES, STEVEN C. HARVEY, GREGG M. HERMAN, DEANNE M. KOLL, PEGGY A. LAUTENSCHLAGER, KELLY J. MATTINGLY, KELLY MOULD, RANDALL L. NASH, JOHN R. ORTON, SARAH A. PONATH, CHRISTOPHER E. ROGERS, THOMAS P. SCHWABA, LAURA SKILTON VERHOFF, JEFFREY R. WISNICKY, AMY E. WOCHOS, NICHOLAS C. ZALES. *Young Lawyers Division*: CHARLES STERTZ. *Government Lawyers Division*: MIRIAM R. HORWITZ. *Nonresident Lawyers Division*: JAMES J. CASEY, JR., DEBRA E. KUPER, NILESH P. PATEL, DANIEL F. RINZEL, VIET-HANH NGUYEN WINCHELL. *Senior Lawyers Division*: JOHN F. WILCOX. *Nonlawyer members*: SUSAN K. MILLER, CHRISTINE PROCKNOW, LELAND WIGGINHAM. *Minority Bar Liaisons*: ERIC L. ANDREWS, TONI CALDWELL, VUE YANG (nonvoting members).

*Executive Director*: GEORGE C. BROWN.

**Mailing Address**: P.O. Box 7158, Madison 53707-7158.

**Location**: 5302 Eastpark Boulevard, Madison.

**Internet Address**: [www.wisbar.org](http://www.wisbar.org); [www.facebook.com/statebarofwi](https://www.facebook.com/statebarofwi);  
[www.twitter.com/statebarofwi](https://www.twitter.com/statebarofwi)

**Telephones**: General: 257-3838; Lawyer Referral and Information Service: (800) 362-9082.

**Agency E-mail**: [service@wisbar.org](mailto:service@wisbar.org)

**Publications**: *WisBar InsideTrack*; *Wisconsin Lawyer Directory*; *Wisconsin Lawyer Magazine*; *Wisconsin News Reporter's Legal Handbook*; *Rotunda Report*; various legal practice handbooks and resources; various consumer pamphlets and videotapes, including *A Gift to Your Family: Planning Ahead for Future Health Care Needs*.

**References**: Supreme Court Rules, Chapters 10 and 11.

**Responsibility**: The State Bar of Wisconsin is an association of persons authorized to practice law in Wisconsin. It works to raise professional standards, improve the administration of justice and the delivery of legal services, and provide continuing legal education to lawyers. The State Bar conducts legal research in substantive law, practice, and procedure and develops related reports and recommendations. It also maintains the roll of attorneys, collects mandatory assessments imposed by the supreme court for supreme court boards and to fund civil legal services for the poor, and performs other administrative services for the judicial system.

Attorneys may be admitted to the State Bar by the full Wisconsin Supreme Court or by a single justice. Members are subject to the rules of ethical conduct prescribed by the supreme court, whether they practice before a court, an administrative body, or in consultation with clients whose interests do not require court appearances.

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**History**: In 1956, the Wisconsin Supreme Court ordered the organization of the State Bar of Wisconsin, effective January 1, 1957, to replace the formerly voluntary Wisconsin Bar Association, organized in 1877. All judges and attorneys entitled to practice before Wisconsin courts were required to join the State Bar. Beginning July 1, 1988, the Wisconsin Supreme Court suspended its mandatory membership rule, and the State Bar temporarily became a voluntary mem-

bership association, pending the disposition of a lawsuit in the U.S. Supreme Court. The Supreme Court ruled in *Keller v. State Bar of California*, 496 U.S. 1 (1990), that it is permissible to mandate membership provided certain restrictions are placed on the political activities of the mandatory State Bar. Effective July 1, 1992, the Wisconsin Supreme Court reinstated the mandatory membership rule upon petition from the State Bar Board of Governors.

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*The Wisconsin Supreme Court Hearing Room features four massive murals painted by prominent New York artist Albert Herter (1871-1950). Three of the murals, including “The Signing of the Magna Carta” shown here, are visible to justices from the bench. (Tom Sheehan, Wisconsin Supreme Court)*

## SUMMARY OF SIGNIFICANT DECISIONS OF THE WISCONSIN SUPREME COURT AND COURT OF APPEALS

June 2013 – June 2015

Michael Duchek, Michael Gallagher, Peggy Hurley,  
Mary Pfotenhauer, Elisabeth Shea, Sarah Walkenhorst-Barber  
Legislative Reference Bureau

### CONSTITUTIONAL LAW

#### Cell Phone Location Tracking

In a pair of cases decided on the same day, the Wisconsin Supreme Court considered constitutional issues implicated with cell phone tracking information. In 2013 Wisconsin Act 375, the legislature prescribed actions that must be taken when law enforcement seek to obtain cell phone tracking information. The provisions in Act 375, however, were not in effect when the events giving rise to these cases took place.

In *State v. Subdiaz-Osorio*, 2014 WI 87, 357 Wis. 2d 41, 849 N. W.2d 748 (2014), the court considered the case of a man who fatally stabbed his brother and subsequently fled the state. On the day following the stabbing, Kenosha police contacted the state Department of Justice's Division of Criminal Investigation (DCI) to request certain information related to the defendant's cell phone from his cell phone carrier, including his location. Later that day, DCI obtained the location information, which indicated that the defendant was driving southbound in Arkansas. Shortly after receiving word from the Kenosha police, Arkansas authorities pulled the defendant over and took him into custody, and the defendant was later extradited to Wisconsin. The defendant sought unsuccessfully to have his statements and evidence obtained after his arrest suppressed, and subsequently pled guilty to first-degree reckless homicide but appealed the denial of the suppression motion. The supreme court accepted the case following an unpublished court of appeals opinion that affirmed the conviction without addressing whether the evidence should have been suppressed.

While six justices agreed that the conviction should be affirmed, there was little consensus on the reasoning, resulting in six different opinions in the case, including one dissent. Justice Prosser wrote the lead opinion upholding the conviction, but his reasoning was not joined by other justices. Without deciding whether the defendant had a reasonable expectation of privacy in his cell phone location information or whether a search had occurred for purposes of the Fourth Amendment to the U.S. Constitution, Prosser concluded that obtaining the defendant's cell phone location information was justified by the exigent circumstances exception to the Fourth Amendment's warrant requirement and that doing so was therefore not constitutionally invalid. Justice Bradley concluded that a search had occurred and that resultant evidence should have been suppressed, but agreed with the court of appeals that the error was harmless given the other evidence in the case that included eyewitness testimony. Justice Crooks concluded that police should be required to obtain a warrant for cell phone location information, but that the evidence in the case should not have been excluded because police had acted in good faith. Justices Roggensack, Ziegler, and Gableman agreed that the facts of the case justified an exigent circumstances exception to the warrant requirement, but did not join Justice Prosser's opinion, and Justices Roggensack and Ziegler both wrote separate opinions joined by other justices. Also at issue in the case was an alleged *Miranda* violation when officers continued questioning after the defendant inquired about an attorney, but five justices agreed that there was no violation, and one concluded that although there was a violation, the error was harmless. Chief Justice Abrahamson dissented. She both concluded that a Fourth Amendment search and *Miranda* violation had occurred, and that no exigent circumstances justified the failure to obtain a warrant.

A less divided court also addressed the availability of cell phone location information to law enforcement in *State v. Tate*, 2014 WI 89, 357 Wis. 2d 172, 849 N. W.2d 798 (2014). Following a homicide in Milwaukee, police found surveillance camera footage from a grocery store that showed a person matching the suspect's description purchasing a prepaid cellular phone. Information provided by the store and the store's clerk gave police a name for the suspect and

the telephone number assigned to the phone. Police applied for an “order” to obtain the location information for the phone, which a circuit court judge subsequently issued. Police were consequently able to obtain the location information for the phone and, using a “stingray” tracking device, found the suspect at his mother’s apartment. The defendant moved to suppress evidence obtained resulting from the order and argued the order was not equivalent to a warrant. The circuit court denied the motion, and the defendant appealed the suppression ruling following a guilty plea. The court of appeals affirmed the ruling, stating that there was probable cause to issue the order.

Justice Roggensack wrote a majority opinion in a holding that affirmed the defendant’s conviction. The majority assumed, without deciding, that the police activities constituted a search within the meaning of the Fourth Amendment and that because the tracking led police to the defendant’s home, a warrant was needed. The majority concluded that the circuit court had probable cause to issue the order and that the order, which referenced the phone’s electronic serial number, satisfied the Fourth Amendment’s particularity requirement. The court said that although the order was not issued pursuant to any particular statute, it complied with the spirit of statutes that address warrants and criminal subpoenas. Chief Justice Abrahamson, joined in part by Justice Bradley, dissented. She concluded that a warrant was required for police to access the defendant’s cell phone location information and that the order was defective in a number of respects for failing to comply with the statute regarding criminal subpoenas.

### **Constitutionality of Limits on Collective Bargaining in Act 10**

In *Madison Teachers, Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N. W.2d 337 (2014), the supreme court ruled on a number of challenges to 2011 Wisconsin Act 10, which significantly curtailed collective bargaining between public employees and employers in Wisconsin at the state and local levels. The court upheld the act in its entirety, holding that the law: 1) does not infringe on the plaintiffs’ constitutional right to associate; 2) does not violate constitutional equal protection provisions; 3) does not violate the “home rule” amendment to the state constitution; and 4) does not violate the state constitution’s contract clause.

In March of 2011, the bill that became known as Act 10 was signed into law by Governor Scott Walker. Act 10 made a number of changes to state laws including the Municipal Employment Relations Act and the State Employee Labor Relations Act, which, together, dictate the extent of collective bargaining that is permitted to take place between public employees and employers in the state. Specifically, the act prohibited collective bargaining with most state employees on matters other than base wages, prohibited fair share agreements that require both represented and nonrepresented employees to pay certain collective bargaining and contract costs, imposed annual recertification requirements for collective bargaining units, and prohibited public employers at the local level from deducting union dues from employees’ paychecks.

Two unions brought suit in Dane County against the governor and the state’s Employment Relations Commission, alleging that portions of the act violated numerous constitutional provisions. The circuit court ruled in favor of the plaintiffs on a number of issues, holding certain provisions of the act unconstitutional. Following an appeal by the defendants, the court of appeals certified the case to the supreme court, which the supreme court accepted.

The court first addressed plaintiffs’ arguments that the act violated their associational rights under the Wisconsin constitution’s provisions that protect freedom of speech and assembly, analyzing the allegations under the First and Fourteenth Amendments to the U.S. Constitution. The plaintiffs argued that provisions in the act burdened their associational rights by imposing restrictions on negotiations with employers that were not applicable to nonrepresented employees. The court, however, said that the act did not implicate any protected First Amendment activities, and did not affect plaintiffs’ freedom of speech and associational rights. Emphasizing that no constitutional right existed to engage in collective bargaining, the court rejected plaintiffs’ freedom of association arguments.

The court then addressed allegations that the cumulative effect of various provisions in the act rendered the act unconstitutional. The court rejected the plaintiffs’ argument that a prohibition on fair-share agreements burdened their associational rights, going so far as to question whether such agreements are even constitutional. The court also held that the certification requirements

and payroll deduction prohibitions did not unconstitutionally burden the plaintiffs' associational rights, since no such rights were implicated. Because the court found nothing unconstitutional about the provisions in isolation, the court found that no such violation existed when the provisions were considered cumulatively.

The court next addressed arguments that two provisions of the act violated constitutional equal protection provisions. The court, relying on its earlier analysis, first rejected the notion that a fundamental right was implicated that necessitated a heightened standard of review under the equal protection clause. Consequently, the court analyzed the challenges under a rational basis standard of review and rejected the plaintiffs' arguments that the act's limitations on permissible subjects of collective bargaining and prohibitions on payroll deductions were denials of equal protection.

Finally, the court addressed two arguments with respect to a provision in the act that prohibits the City of Milwaukee from paying the employee share of retirement contributions on behalf of certain employees. Acknowledging that the provision unquestionably implicates local affairs but analyzing it within the broader context of the act itself, the court found that the provision primarily implicated a matter of statewide concern. The court also found that the provision did not violate the contract clause of the state constitution because contributions themselves were not contractually protected "benefits."

Justice Crooks concurred, and Justice Bradley dissented, joined by Chief Justice Abrahamson. Justice Bradley concluded that: 1) provisions in the act collectively infringe on the associational right to organize and unconstitutionally infringe on those rights by discouraging and punishing membership in unions; 2) the prohibition on the City of Milwaukee making pension contributions on behalf of its employees was not a matter of statewide concern and therefore violated the home rule amendment; and 3) that prohibition also violated the contract clause because the contributions fell within the gambit of the contractually protected pension benefits.

#### **Denial of a Petition to Raise Water Levels on Lake Koshkonong**

In *Rock-Koshkonong Lake Dist. v. State*, 2013 WI 74, 350 Wis. 2d 45, 833 N. W.2d 800 (2013), the supreme court considered the Department of Natural Resources' (DNR) denial of a petition to raise water levels on Lake Koshkonong, a large, shallow lake located in Jefferson, Rock, and Dane Counties. Several miles of the lake's shoreline consist of wetlands, some of which are located above the ordinary high-water mark of the lake. The nearby Indianford Dam was constructed in 1851, raising water levels on Lake Koshkonong.

Section 31.02 (1), Wisconsin Statutes, authorizes DNR to regulate the level and flow of water in navigable waters "in the interest of public rights in navigable waters or to promote safety and protect life, health and property." Although DNR set water levels for Lake Koshkonong, from 1965 until 2002 water levels almost always exceeded targets due to disrepair of the dam. In 2002, the dam was restored and water levels dropped to the levels previously ordered by DNR.

The Rock-Koshkonong Lake District petitioned DNR to amend its existing water level order to allow the lake's water levels to be raised, arguing that lowering water levels on the lake from previous decades restricted boating and other recreation and required piers to be extended to reach navigable water depths. DNR denied the petition, and the circuit court and court of appeals affirmed.

There were four issues presented on appeal to the supreme court: 1) what level of deference, if any, the court should give DNR's conclusions of law; 2) whether DNR exceeded its authority by considering impacts of water levels on private wetlands adjacent to Lake Koshkonong and located above the ordinary high-water mark; 3) whether DNR exceeded its authority by considering wetland water quality standards under the administrative code; and 4) whether DNR erred by excluding evidence and failing to consider impacts of water levels on residential property values, business income, and public revenue.

The court first found that DNR's conclusions of law were not entitled to any deference, and therefore subject to de novo review, in part because an agency's interpretation of the scope of its powers is not subject to deference, and in part because the court ultimately determined that DNR's interpretation of Section 31.02 (1), Wisconsin Statutes, and the Wisconsin Constitution, and its exclusion of economic evidence, were not reasonable.



The court next found that DNR properly considered the impact of water levels on public and private wetlands in and adjacent to Lake Koshkonong, but that DNR improperly relied on the public trust doctrine for its authority to protect nonnavigable land and water above the ordinary high-water mark.

Under the public trust doctrine of the Wisconsin Constitution, the state is required to hold navigable waters in trust for the public. Navigable waters are waters that are navigable in fact, in other words, capable of floating any boat of the shallowest draft used for recreational purposes.

DNR, relying on prior supreme court cases such as *Just v. Marinette County*, 56 Wis. 2d 7, 201 N. W.2d 761 (1972), argued that wetlands in and adjacent to navigable waters, whether privately or publicly owned or above or below the ordinary high-water mark, had previously fallen within the scope of the public trust doctrine because of their special relationship to navigable waters.

The court disagreed, finding that, because nonnavigable wetlands above the ordinary high-water mark are not navigable in fact, they do not fall within the scope of the public trust doctrine. The court noted that under the public trust doctrine the riparian owners along navigable rivers and streams have a qualified title in the bed of the river or stream, while the state holds and effectively controls the beds in trust for the public – what the court called “virtual state ownership.” The court worried that applying the public trust doctrine to any land, including non-navigable wetlands, above the ordinary high-water mark could therefore have very significant ramifications for private property owners, creating questions about ownership of and trespass on that land.

However, the court went on to find that DNR had statutory authority to consider the impact of water levels on wetlands adjacent to Lake Koshkonong under its police power authority in Section 31.02 (1), Wisconsin Statutes.

The court held that Section 31.02 (1) distinguishes between DNR’s public trust authority and its police power authority. Section 31.02 (1) permits the department to control the level and flow of navigable waters “in the interest of public rights in navigable waters,” representing DNR’s authority under the public trust doctrine. The statute also allows DNR to regulate and control the level and flow of navigable waters “to promote safety and protect life, health and property.” According to the court, “[b]ecause the quoted language follows the key word ‘or,’ the department is given distinct and different authority to consider interests affected by the level of the ‘navigable waters.’”

The court also noted that, unlike the constitutionally-based public trust authority, DNR’s police power-based statutory authority may be modified by the legislature, and requires balancing of competing interests in its enforcement.

The court next held that DNR could consider wetland water quality standards when making a water level determination.

Chapter 281 of the statutes requires DNR to promulgate water quality standards, including wetland water quality standards, which DNR has done. The district argued that DNR could not consider these standards when making a water level determination under Chapter 31, because Chapter 281 says, in part, that “nothing in this chapter affects . . . [Chapter] 31.”

The court disagreed, and found that DNR could, but was not required to, consider water quality standards promulgated under chapter 281 when making a water level determination under Section 31.02 (1).

Finally, the court held that DNR erred in excluding testimony on “the economic impact of lower water levels on the residents, businesses, and tax bases adjacent to and near Lake Koshkonong.”

DNR argued that, under Section 31.02 (1), it was only required to consider direct physical impacts to real property when making a water level determination, while the district argued that DNR was also required to consider secondary economic impacts to real property, such as impacts on residential property values, business income, and local tax revenue.

The court looked to the history of Chapter 31 and prior case law to find that Section 31.02 (1) does not limit DNR to consideration of physical impacts to real property when making a water level determination. The court noted, however, that while DNR must consider evidence of eco-

conomic impacts to property, it is not necessarily required to conduct an economic analysis when making a water level determination.

Based on its findings, the supreme court reversed the court of appeal's decision and remanded the matter to the circuit court for further proceedings.

Justice Crooks, joined by Chief Justice Abrahamson and Justice Bradley, dissented. The dissent argued that the court's prior decisions had explicitly held that wetlands above the ordinary high-water mark could be subject to the public trust doctrine, and that DNR is not required to consider secondary or indirect economic impacts when making water level determinations under Section 31.02 (1).

### **Houseguest's Consent to a Search of a Home by Law Enforcement**

In *State v. Sobczak*, 2013 WI 52, 347 Wis. 2d 724, 833 N. W.2d 59 (2013), the supreme court was asked to consider under what circumstances a guest in another person's home may consent to a search of the home and its effects by a law enforcement officer. The State and Sobczak agreed that an officer had entered Sobczak's home and looked at files on a laptop computer pursuant to consent given by a guest in the home; the question was whether the guest had proper authority to give consent. The court held that no bright-line rule was applicable or desirable, so that a fact-finder would need to consider several factors to determine whether a houseguest had sufficient "run of the house" so as to authorize a search of the home.

The court first noted that the Fourth Amendment to the U.S. Constitution places its "greatest protection around the home" and that the police may not generally enter into a home to conduct a search without a valid search warrant. One exception to this rule, "jealously and carefully drawn," is an entry and search that an officer conducts pursuant to the "voluntary consent of an individual possessing authority" to grant entry and allow a search. The court noted that in order to protect the sanctity of the home and the integrity of the Fourth Amendment, the State must prove by clear and convincing evidence that the limited exception applies.

Sobczak argued that the exception did not apply, as his guest had no authority to grant consent to enter or search his home. He argued that only a "co-inhabitant" or "co-occupant" held that authority and that his guest, his girlfriend of three months, was a mere weekend visitor who did not possess the requisite authority. The court rejected that argument after setting forth factors that would weigh in favor of, or against, a determination that a houseguest had proper authority to allow a search of his or her host's home.

The court noted that the proper analysis does not focus on any property ownership rights, but instead hinges upon whether the person who granted entry into the home enjoyed the "mutual use of the property" and had "joint access or control for most purposes" at the time he or she gave consent. Considering several factors, including the nature of the relationship, the duration of the guest's stay in the home, whether the guest keeps belongings in, or has a key to, the home, and the shared expectations of control over the premises and its contents, the court held that in this case, Sobczak's guest had proper authority to give consent for an officer to enter the home and view Sobczak's computer.

The court found that the romantic nature of the relationship, coupled with the fact that Sobczak left his girlfriend alone in the home while he went to work with no apparent restrictions on her use of the home, gave her the authority to allow an officer to enter the living room of the home for the purpose of viewing Sobczak's laptop computer. The court recognized that other factors, including the fact that the girlfriend kept no belongings in the home and had no indication that she would be visiting again, weighed against a finding of authority, but ultimately held that she did possess the requisite authority to grant entry into the home. The court next found that, once the officer was in the home, the guest had the authority to allow the officer to view the laptop, which Sobczak had expressly allowed her to use with no restrictions.

The court cautioned that their ruling does not give broad authority to a houseguest to consent to a search of an entire home and all of its contents. Rather, the specific facts in this case required a finding that this particular houseguest had sufficient access to and control over the premises to allow an officer to enter into the home in order to view certain contents on Sobczak's computer.

Justice Ziegler concurred, writing to emphasize that the officer entered Sobczak's home with the sole purpose to view limited items on a laptop computer and that the guest had ample authority to authorize the officer to view the computer.

Justice Abrahamson dissented, joined by Justice Bradley. The dissent also considered several factors in determining the circumstances under which a houseguest possesses authority to consent to entry and search of a home. The dissent cited several factors, including that Sobczak's girlfriend did not possess a key to the home, did not live there or claim to live there, kept no belongings there and had no responsibilities for the home, to conclude that she did not have sufficient access or control over the premises to authorize an entry or search.

### **Mortgage Sale**

In *Bank of New York Mellon v. Carson*, 2015 WI 15, 361 Wis. 2d 23, 859 N. W.2d 422 (2015), the supreme court considered the scope of authority granted to a circuit court under Section 846.102, Wisconsin Statutes, specifically, whether a court can order a mortgagee to bring a property to sale and, if so, whether a court can require a mortgagee to bring the property to sale by a particular date. The court held that when a court determines that a property is abandoned, Section 846.102 authorizes the circuit court to order a mortgagee to bring the property to sale after the redemption period. The court further held that the circuit court must order the property to be brought to sale within a reasonable time after the redemption period, as determined based on the totality of the circumstances.

The Bank of New York Mellon (Bank) filed suit against Shirley Carson, seeking a judgment of foreclosure and sale of the mortgaged premises. Carson did not file an answer or otherwise dispute the foreclosure. The circuit court entered judgment in favor of the Bank, acknowledging that the property was not owner occupied, and ordering that the property be sold at public auction at any time after three month(s) from the date of entry of judgment. In its judgment, the court also specified that in the event the property was abandoned, the Bank "may take all necessary steps to secure and winterize the subject property."

After entry of the judgment, the Bank did not take steps to secure the property. It was burglarized, vandalized, and someone started a fire in the garage. The Bank did not maintain the property, despite an order from the City of Milwaukee Department of Neighborhood Services (City). Carson received notices about trash and debris, overgrown weeds, grass, and trees, and was fined multiple times by the City.

More than 16 months after the judgment of foreclosure was entered, the Bank had not yet sold the property. Carson moved to amend the judgment to include a finding that the property was abandoned and for an order under Section 846.102 that the sale of the premises be made upon the expiration of five weeks from the date the amended judgment was entered. The circuit court denied the motion, finding that Section 846.102 does not authorize the circuit court to order sale of the property at a specific time. The court of appeals reversed and remanded, holding that the plain language of the statute grants the circuit court authority to order the sale of property upon the expiration of the redemption period.

The supreme court affirmed and remanded the case to the circuit court to determine whether the property had been abandoned and for further proceedings. The Bank argued that Section 846.102 is permissive rather than mandatory, but the supreme court disagreed, finding that the plain language of the statute, including use of the word shall, mandates that, if the court determines that the property has been abandoned, the court must order a sale of the mortgaged property.

Having concluded that the statutory language authorizes a court to order a mortgagee to bring a property to sale, the court then also determined that the statute permits a court to order a mortgagee to bring a property to sale by a certain point in time. The court rejected the Bank's argument that the statute provides no time limit for a sale and that, accordingly, it should have five years to execute its judgment under a general execution provision. The court acknowledged that the language of the statute is ambiguous with respect to the timing, but based on the statute's context, purpose, and legislative history, determined that the statute requires an abandoned property to be brought to sale within a reasonable time after the redemption period. A court

must consider the totality of the circumstances to determine what constitutes a reasonable time in a particular case.

Justice Prosser, joined by Justice Ziegler and Justice Gableman, concurred in the result, but disagreed with the majority's interpretation of Section 846.102. The concurrence concluded, instead, that the result was appropriate under Section 840.03 (1), which allows a mortgagor such as Carson to bring an action for judicial sale or conveyance of interest in his or her property.

### **Prosecution of Parents for Reckless Homicide When Child Is Treated by Prayer**

In *State v. Neumann*, 2013 WI 58, 348 Wis. 2d 455, 832 N. W.2d 560 (2013), the supreme court was asked to consider whether two parents' convictions for reckless homicide were unconstitutional in light of another statute that shields a parent from prosecution for child abuse if the parent uses prayer to treat a child's illness. The parents also alleged that their case had been unfairly tried because of faulty jury instructions and, in the father's case, a biased jury that was aware the mother had been previously convicted.

Under Wisconsin law, a parent may not be found guilty of child abuse "solely because he or she provides a child with treatment by spiritual means through prayer alone for healing..." The parents argued that this provision, when read in combination with the reckless homicide statute and the statutes that define the words "reckless" and "great bodily harm" for the purposes of the homicide statute and the child abuse statute, so muddles the question of when criminal penalty attaches to specific conduct as to be unconstitutionally vague. The parents argued that their convictions in light of this vagueness are an impermissible violation of their due process rights.

The majority of the court rejected this argument, finding that the exception for the child abuse statute is narrowly drawn and cannot reasonably be expected to be a shield from conviction under the reckless homicide statute. The court held that the statutes, when read in combination and separately, provide sufficient notice as to when conduct becomes criminal and that prosecution on the facts of this case did not violate the parents' due process rights. The court found that the jury reasonably concluded that the parents, in failing to seek medical assistance when their child was seriously ill and her condition visibly worsening, created "an unreasonable and substantial risk of [the child]'s death, were subjectively aware of that risk, and caused her death."

The court then considered whether the jury instructions erroneously created criminal liability for the parents' failure to act and failed to provide the jury with sufficient understanding that the parents' religious beliefs could negate the element of scienter (knowledge of the wrongness of) necessary for a conviction for reckless homicide. The court found no fault with the jury instructions.

The parties agreed that, if there is a legal duty to act, then failure to act in accordance with the duty may amount to criminal conduct. The parents argued, however, that the statutes requiring a parent to provide medical care for his or her child were an unconstitutional intrusion into the parents' right to direct the care of his or her child. The court did not agree, noting that the statutes are replete with provisions requiring parents to provide medical care to their children. The court rejected the notion that the parents' constitutional right to direct the care of their children was violated because "neither rights of religion nor rights of parenthood are beyond limitation." The court found that the jury instructions relating to the parents' duty to provide medical care to their child were appropriate.

The court also found that the trial court had reasonably rejected the parents' proposed jury instruction that would have informed the jury that their sincere belief in prayer treatment may negate the subjective awareness element necessary to find them guilty of reckless homicide. The parents argued that the juries should have been informed that they could find that, given the parents' sincere beliefs that prayers would heal their child, the parents were not subjectively aware that they were creating an unreasonable and substantial risk of harm to her. The court found that this instruction was not necessary, given the elements of the crime under consideration, and that "the juries could have reasonably concluded on the basis of the instructions and the record that the parents were subjectively aware that their conduct created the unreasonable and substantial risk of death or great bodily harm[.]"

Finally, the court rejected the father's argument that his jury had been impermissibly prejudiced by the knowledge that, at the time of his trial, the mother had already been convicted

of reckless homicide. The court noted that the district attorney and counsel for the father had agreed to inform the jury of the mother's conviction. The court found that, although it was unusual for a jury to have this knowledge, the knowledge did not necessarily render a juror unconstitutionally biased. Under the circumstances of this case, the court found that the father could not bear his burden of proving that the jury was unable to distinguish his case from the mother's.

Justice Prosser dissented, noting that the child abuse statute and the reckless homicide statute, when read in combination, are incredibly difficult to distinguish from each other. He argued that reasonable people would be unable to determine when their specific conduct is protected by the exception for religious beliefs, and when it is not. Justice Prosser noted that, under the circumstances of this specific case, the line between permissible conduct and impermissible failure to act is unconstitutionally vague.

### **Voter I.D.**

In a pair of cases handed down on July 31, 2014, the supreme court upheld the voter photo identification requirements in 2013 Wisconsin Act 23. Under Act 23, a voter must present one of nine acceptable forms of photo identification in order to vote. That requirement to present photo identification applies, with some exceptions, to absentee as well as in-person voting.

In the first case, *League of Women Voters of Wisconsin Education Network, Inc. v. Walker*, 2014 WI 97, 357 Wis. 2d 360, 851 N. W.2d 302 (2014), the plaintiffs argued that Act 23's requirement to present photo identification is unconstitutional on its face. According to the plaintiffs, the photo identification requirement unconstitutionally creates an additional voter qualification, exceeds the legislature's constitutional authority to make laws governing elections, and is unreasonable.

Article III, Section 1 of the Wisconsin Constitution establishes the qualifications a person must have in order to vote. Specifically, the person must be a United States citizen who is at least 18 years of age, a resident of Wisconsin, and a resident of the district in which the person proposes to vote. The court determined that Act 23's photo identification requirement does not represent a qualification in addition to those constitutional qualifications. Instead, the court found that photo identification is a permissible way to verify that a person possesses the constitutionally required qualifications – that the person is who they say they are.

The court further held that the photo identification requirement was a valid exercise of the legislature's power to make laws concerning voter registration. Article III, Section 2 of the Wisconsin Constitution provides that certain laws may be enacted regulating elections, including laws regulating voter registration. Act 23 generally requires that a voter's photo identification be matched to the registration lists before the voter may receive a ballot. According to the court, the photo identification requirement is an acceptable way to verify a voter's registration at the polls on election day.

Finally, the court held in *League of Women Voters* that the photo identification requirement in Act 23 is a reasonable means of deterring voter fraud and maintaining the integrity of the election process. Noting that presenting photo identification is, to some extent, "a condition of our times," the court concluded that the photo identification requirement is a reasonable way to preserve and promote the right to vote, although the court declined to evaluate whether that requirement is the best way to do so from a public policy standpoint.

Justice Crooks concurred with the majority decision of the court, noting the high bar that must be reached in order to overturn a law as unconstitutional on its face. Chief Justice Abrahamson, joined by Justice Bradley, filed a vigorous dissent, arguing, among other things, that Act 23's photo identification requirement unconstitutionally creates an additional qualification to vote, that the fees required to obtain Act 23 photo identification constitute an unconstitutional "poll tax," and that Act 23, and specifically the majority's affirmation of it, raises the specter of Jim Crow.

*League of Women Voters* did not address the question of whether Act 23's photo identification requirement places an unconstitutional burden on the exercise of the right to vote. That was the issue before the supreme court in *Milwaukee Branch of the NAACP v. Walker*, 2014 WI 98, 357 Wis. 2d 469, 851 N. W.2d 262 (2014). The plaintiffs in *Milwaukee Branch of the NAACP* argued that Act 23's photo identification requirement would severely burden a significant number of

constitutionally qualified voters and is not reasonably necessary nor designed to deter fraud or otherwise serve a compelling state interest. The plaintiffs identified burdens of time, inconvenience, and costs associated with Act 23; in particular, associated with obtaining a Department of Transportation (DOT) photo identification card.

The court concluded that such burdens are not undue burdens rendering the photo identification requirement invalid. Noting that “photo identification is a condition of our times where more and more personal interactions are being modernized to require proof of identity with a specified type of photo identification,” the court held that “[w]ith respect to these familiar burdens, which accompany many of our everyday tasks, . . . Act 23 does not constitute an undue burden on the right to vote.”

However, the court further held that payment to a government agency to obtain a photo identification necessary for voting would render Act 23’s photo identification requirement unconstitutional. While Act 23 requires that DOT provide a photo identification for voting free of charge, the plaintiffs produced evidence that government agencies impose fees for documents required to obtain a DOT photo identification, such as a birth certificate. While such fees were modest for most citizens – up to \$20 to obtain a birth certificate – the fees are a significant burden for some. In any case, the court held that the state may not enact a law that requires any voter, rich or poor, to pay any fee whatsoever to a government agency as a precondition to the exercise of his or her constitutional right to vote.

The court determined, however, that the potential constitutional infirmity was not in Act 23 itself but in DOT’s administrative regulations requiring certain supporting documentation to obtain DOT photo identification. Rather than invalidate Act 23, the court applied a “saving construction” to those administrative regulations. The court required DOT to exercise its discretion under the regulations to issue photo identification for voting without requiring documents for which a voter must pay a fee to a government agency. With that saving construction, the court upheld the constitutionality of Act 23’s photo identification requirement.

While Justice Crooks concurred in *League of Women Voters*, he dissented from the majority’s decision in *Milwaukee Branch of the NAACP*. Joined by Justice Bradley, he determined that Act 23’s photo identification requirement severely burdens the right to vote of otherwise qualified voters without being narrowly tailored to achieve a compelling state interest, such as deterring voter fraud. Chief Justice Abrahamson incorporated in full her dissent from *League of Women Voters*.

### **Wisconsin’s Domestic Partnership Law**

In *Appling v. Walker*, 2014 WI 96, 358 Wis. 2d 132, 853 N. W.2d 888 (2014), the supreme court held that the legal status provided by Wisconsin’s domestic partnership statutes are not unconstitutionally “substantially similar” to marriage. This decision upheld the court of appeals’ decision in *Appling v. Doyle*, 2013 WI App 3, 345 Wis. 2d 762, N. W.2d 666 (2012). For a discussion of the issues and grounds for the decision in this case, please see the *2013-2014 Wisconsin Blue Book*, pp. 586-587.

## **CIVIL LAW**

### **Ownership of Property on Which Dog Resides Insufficient to Establish Individual Is a Dog Owner**

In *Augsburger v. Homestead Mutual Insurance Co.*, 2014 WI 133, 359 Wis. 2d 385, 856 N. W.2d 874 (2014), the supreme court considered whether ownership of the property on which a dog resides was sufficient to establish that an individual harbored, and therefore was a statutory owner of, a dog under Section 174.02, Wisconsin Statutes. The court held that mere ownership of the property is insufficient to establish ownership of a dog under Section 174.02, and that under the totality of the circumstances, the property owner did not exercise sufficient control over the property to be considered a harbinger and thus an owner of the dogs.

The facts of the case were undisputed. George Kontos purchased property in Larsen, Wisconsin, on which he allowed his daughter, Janet Veith, and her family to live so that Veith could be near her mother. Kontos did not reside on the property with the Veiths. There was no formal lease between Kontos and the Veiths, and Kontos did not expect the Veiths to pay rent to live on

the property. Veith's husband did general repairs and maintenance on the property, including partially remodeling the interior of the home. Kontos was aware that the Veiths owned horses and dogs that resided with the family on the property. The parties agreed that Kontos had the authority to prohibit the dogs from the property, but did not exercise that authority. Kontos visited the property, but not frequently. Though Kontos occasionally yelled at the dogs to be quiet when he visited, he rarely went near the dogs and did not feed, water, bathe, or groom them. He did not pay for the dog food, take care of the dogs, or instruct his daughter how to care for the dogs.

On June 21, 2008, Julie Augsburgberger came to the Larsen property to visit Veith. Veith's daughter informed Augsburgberger that Veith was in the barn on the property. As Augsburgberger proceeded toward the barn, she was attacked and injured by four of Veith's dogs. Augsburgberger sued the Veiths, Kontos, and Homestead Mutual Insurance Company, alleging that the Veiths and Kontos were liable for her injuries under Section 174.02, which imposes strict liability on dog owners for injuries caused by their dogs. The circuit court granted Augsburgberger's motion for summary judgment, finding that Kontos harbored the dogs and was therefore a statutory owner under Section 174.02. The court of appeals affirmed the decision.

The supreme court reversed, holding that the determination of whether an individual is a harbinger of a dog must be determined on the totality of the circumstances, and that mere ownership of the property on which a dog resides is insufficient to establish that an individual is an owner of a dog.

The court began by analyzing the relevant statutory language. Section 174.02 imposes strict liability on dog owners for injuries caused by their dogs. The term "owner" is defined in Section 174.001 (5) which provides that an owner "includes any person who owns, harbors or keeps a dog." It was undisputed that Kontos did not own or keep the dogs. Thus, the sole issue before the court was whether Kontos was a harbinger of the dogs. As the term harbor is not defined in the statute, and the statutory scheme did not provide a clear interpretation of the term, the court looked to prior Wisconsin caselaw for guidance. The court noted that harboring has been distinguished from keeping, and that harboring has been previously found to mean affording lodging, to shelter or to give refuge to a dog. The court noted that caselaw has suggested that an important factor in the determination is whether the landowner lives on the premises with the dog. Relying upon case law and the canons of statutory construction, the court found that a narrow interpretation of the term harbinger should be applied. The court noted earlier caselaw holding generally that landlords are not liable for the actions of their tenants' dogs, and compared that caselaw with cases in which a dog owner was found to be more analogous to a houseguest. The court stated that there was no need to determine the official relationship between the dog owner and the landowner, but focused on the amount of control Kontos exercised over the premises on which the dog was kept and whether the dog's legal owner was "more akin to a houseguest or a tenant." The court distinguished between harboring and keeping, noting that although both might involve consideration of control, the control in the analysis of the term keeper relates to control of the dog, whereas control in the analysis of harbinger relates to the landowner's control of the property on which the dog resides. The court also stated that its interpretation was appropriate because the dog bite statute derogates the common law, and such statutes should be narrowly construed.

Justice Prosser dissented. While Prosser agreed that mere ownership of the property on which a dog resides is an insufficient basis for finding an individual to be a harbinger, he disagreed with the majority's application of the statutes, finding that Kontos exercised sufficient control over the property and provided shelter, including financial support, for the Veiths and their animals such that, under a totality of the circumstances, Kontos should be considered a harbinger and thus an owner of the dogs.

### **Surrogacy Agreements Are Enforceable**

In *In re the Paternity of F.T.R.: Rosecky v. Schissel*, 2013 WI 66, 349 Wis. 2d 84, 833 N. W.2d 634 (2013), the supreme court held that a surrogacy agreement is enforceable unless enforcement is contrary to the best interests of the child.

David and Marcia Rosecky entered into a parentage agreement with their friends, Monica and Cory Schissel. Under the agreement, Monica agreed to serve as a traditional surrogate, which

means that she agreed to be artificially inseminated with David's sperm, to carry the pregnancy to term, and to terminate her parental rights upon the birth of the resulting child. The agreement also set out the couples' agreement regarding custody and placement. The couples were each represented by counsel and had extensive discussions about the ramifications of the arrangement, legal and otherwise.

During the pregnancy, the relationship between the couples deteriorated. Following the birth of the child, Monica allowed David and Marcia to take the child home, but she refused to terminate her parental rights. A court appointed the Roseckys temporary guardians of the child. A court also adjudicated David as the child's father.

Monica then sought increased custody and placement of the child, and David sought specific performance of the parentage agreement. The trial court found the agreement to be unenforceable. Without considering the parentage agreement, the court granted custody and placement to David with periods of placement to Monica. David appealed and the court of appeals certified the case to the supreme court.

The supreme court held that surrogacy is not contemplated nor does it fit within the existing statutory scheme for determining parentage or child custody and placement. The court also held that the statutes do state any public policy against enforcement of a parentage agreement.

The supreme court then used principles of contract law to examine the parentage agreement, and held that it is a valid, enforceable contract unless enforcement is contrary to the best interests of the child. The court noted that the interests supporting enforcement outweigh the interests opposing enforcement, namely "that enforcement of surrogacy agreements promotes stability and permanence in family relationships because it allows the intended parents to plan for the arrival of their child, reinforces the expectations of all parties to the agreement, and reduces contentious litigation that could drag on for the first several years of the child's life."

The supreme court held that portions of the parentage agreement that required Monica to terminate her parental rights were not enforceable under Section 48.41, Wisconsin Statutes, which requires procedural safeguards for the voluntary termination of parental rights. Further, the court held there was no legal basis for involuntary termination of Monica's parental rights under Section 48.415. However, because the parental agreement included a valid severability provision, the supreme court held that the unenforceable provisions of the agreement could be severed and the remainder enforced.

The supreme court also held that the trial court had erroneously exercised its discretion by not considering the parental agreement in making its custody and placement determination. The supreme court reversed and remanded to the trial court for a hearing on custody and placement, requiring the trial court to enforce the terms of the parentage agreement unless contrary to the best interests of the child. The court also urged the legislature to consider enacting legislation regarding surrogacy, noting that "[s]urrogacy is currently a reality in our Wisconsin court system."

Justice Abrahamson concurred (joined by Justice Bradley) to admonish the court to be cautious about broadly stating that surrogacy agreements are valid, because the public policy questions surrounding them have not yet been settled. Justice Abrahamson also said she would instruct the circuit court to follow Section 767.41(5)(am), Wisconsin Statutes, in determining custody and placement issues, in addition to considering the parentage agreement.

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