

Judicial Branch

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

Scenes from the Sesquicentennial



WISCONSIN SUPREME COURT

Justice	Supreme Court Justice Since	1st 10-year Elected Term Began	Term Expires July 31	Annual Salary ²
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	1999 ¹	\$120,318
Donald W. Steinmetz	1980	August 1980	2000	112,318
William A. Bablitch	1983	August 1983	2003	112,318
Jon P. Wilcox	1992*	August 1997	2007	112,318
Ann Walsh Bradley	1995	August 1995	2005	112,318
N. Patrick Crooks	1996	August 1996	2006	112,318
David T. Prosser, Jr. ³	1998*	—	2004	112,318

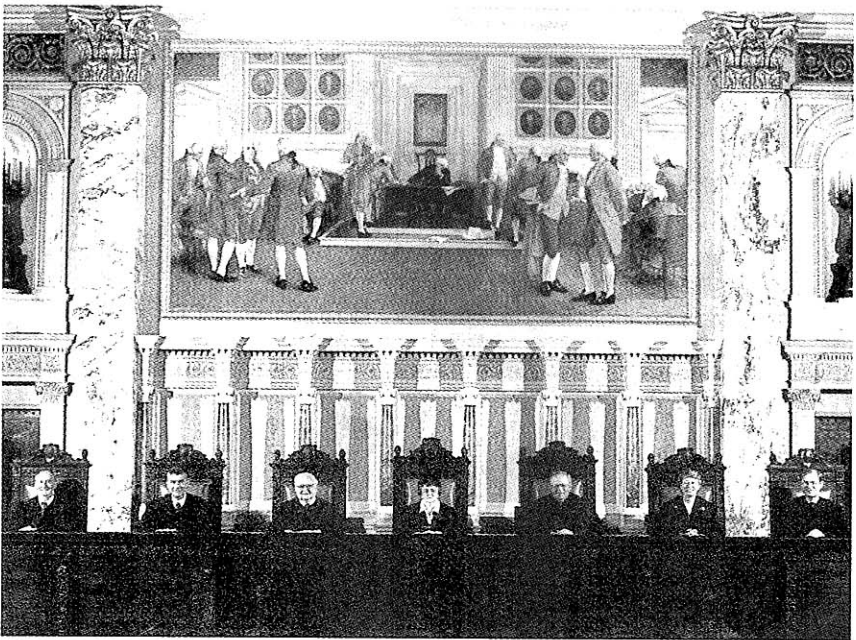
*Initially appointed by the governor.

¹Chief Justice Abrahamson was reelected to a new term beginning on August 1, 1999, and expiring on July 31, 2009.

²Salaries established pursuant to Article IV, Section 26, *Wisconsin Constitution* and Section 20.923 (2) (b), *1997-98 Wisconsin Statutes*. The salaries for all justices may change when a justice assumes a new term of office, e.g., Chief Justice Abrahamson on August 1, 1999.

³Appointed to Supreme Court on September 4, 1998, to fill a vacancy created by the resignation of Justice Janine P. Geske.

Sources: *1997-98 Wisconsin Statutes*; State Elections Board, departmental data, April 1999; Director of State Courts, departmental data, April 1999.



The Wisconsin Supreme Court in session. From left to right are Justices N. Patrick Crooks, Jon P. Wilcox, Donald Steinmetz; Chief Justice Shirley S. Abrahamson; and Justices William A. Bablitch, Ann Walsh Bradley and David T. Prosser, Jr. (Wisconsin Supreme Court)

JUDICIAL BRANCH

A PROFILE OF THE JUDICIAL BRANCH

Introducing the Court System. The court system is probably the least understood branch of government. Although courts attract attention through news accounts of controversial cases and dramatic portrayals of judicial proceedings on television, an individual's personal involvement with the courts is likely to be limited to brief exposures, such as jury duty, a traffic violation, a divorce proceeding or the settlement of a deceased relative's estate. From these experiences, it may appear that the judicial system is a complicated maze. Actually a tremendous variety and volume of business is transacted daily in the court system. At one time or another, almost every aspect of life is touched by the courts.

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 disputes between private citizens, ranging from a landlord-tenant dispute over a rental deposit to the complex adjudication of an antitrust case involving many millions of dollars and months, even years, 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, Forest-Florence and Shawano-Menominee), 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 June 30, 1997, Wisconsin had a combined total of 240 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.

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. Cities, villages and towns may create municipal courts, and over 200 have done so. 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 Board of Attorneys Professional Responsibility, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Conference, 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, but if both parties consent, 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 in which procedures are streamlined and informal. The judge decides the outcome, unless a jury trial is requested, and attorneys commonly are not used. The circuit court (or a specified branch of the court) can sit as a small claims court at the request of the plaintiff if the amount in question is \$5,000 or less. Small claims actions typically involve the collection of small personal or commercial debts.

Criminal Cases. Under Wisconsin law, criminal conduct is an act prohibited by state law and punishable by fine or imprisonment or both. There are two types of crime – felonies and misdemeanors. A felony is punishable by imprisonment 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 county official who acts as an agent of the state in prosecuting the case, files a criminal complaint in the circuit court stating the essential facts constituting the offense charged. The defendant may or may not be arrested at that time. If the defendant has not yet been arrested, 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 must then serve a copy of the warrant or summons on an individual and 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 may be set at this time or later. 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 defendant does not waive the preliminary examination, the judge or court commissioner transfers the action to a circuit court for a formal hearing, called an “arraignment”. If probable cause is found, the person is bound over for trial.

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”).

The case next proceeds 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. The court may order a presentence investigation before pronouncing sentence.

In a criminal case, the jury’s verdict must be unanimous. If not, the defendant is exonerated (cleared of the charge). Once exonerated, 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 in Wisconsin were established by Article VII of the Wisconsin Constitution when Wisconsin became a state 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. The justice with the longest continuous service presides as chief justice, unless that person declines, in which case the office passes to the next justice in terms of seniority. 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. In recent 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 statewide 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.



More than 1,000 citizens have volunteered to assist Wisconsin court services. U.S. Attorney General Janet Reno (left) praised their efforts during her visit to the state to study community volunteer efforts. Here she and Supreme Court Chief Justice Shirley S. Abrahamson review the Volunteers in Courts catalog, published by the Wisconsin Supreme Court and the State Bar of Wisconsin.

(Greg Anderson)

SUPREME COURT

Chief Justice: SHIRLEY S. ABRAHAMSON

Justices: DONALD W. STEINMETZ
WILLIAM A. BABLITCH
JON P. WILCOX
ANN WALSH BRADLEY
N. PATRICK CROOKS
DAVID T. PROSSER, JR.

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

Locations: Supreme Court: Room 231 East, State Capitol, Madison; Clerk: 110 East Main Street, Madison.

Telephone: (608) 266-1298.

Fax: (608) 261-8299.

Internet Address: <http://www.courts.state.wi.us/WCS/sc.html>

Clerk of Supreme Court: MARILYN L. GRAVES, 266-1880, Fax: 267-0640.

Court Commissioners: NANCY KOPP, 266-7442; GREGORY POKRASS, 266-7442; JOSEPH M. WILSON, 266-7442; WILLIAM MANN, 266-6708.

Number of Positions: 90.50.

Total Budget 1997-99: \$7,142,200.

Constitutional References: Article VII, Sections 2-4, 9-11 and 13.

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 "original jurisdiction" as the first court to hear a case if 4 or more justices approve a petition requesting it to do so. It exercises "appellate jurisdiction" if 3 or more justices grant a petition to review a decision of a lower court. In some instances, the supreme court may decide to bypass the court of appeals on its own motion or do so when the parties to a case petition for bypass or the appellate court certifies a case may proceed directly from circuit court.

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

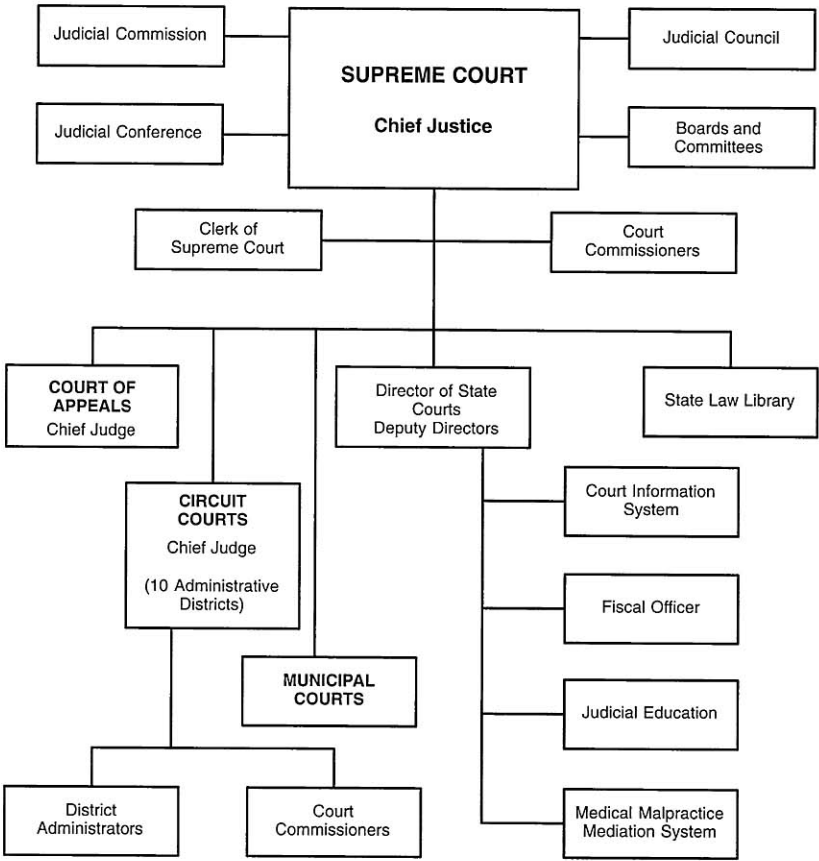
The supreme court sets procedural rules for all courts in the state, and the chief justice serves as administrative head of the state's judicial system. Assisted by the director of state courts, the chief justice monitors the status of judicial business in Wisconsin's courts. When a calendar is congested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

Organization: The supreme court consists of 7 justices elected to 10-year terms on the nonpartisan April ballot. They take office on August 1 after the April election. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are often filled by gubernatorial appointees who serve until a successor can be elected.

The justice with the longest seniority on the court serves as chief justice unless he or she declines the position. In that event, the justice with the next longest seniority serves as chief justice. 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 private secretary and a law clerk.

WISCONSIN COURT SYSTEM – ADMINISTRATIVE STRUCTURE



Associated Unit: State Bar of Wisconsin

COURT OF APPEALS

<i>Judges: District I:</i>	PATRICIA S. CURLEY (2002) RALPH ADAM FINE (2000) CHARLES B. SCHUDSON (2004) TED E. WEDEMAYER, JR.* (2003)
<i>District II:</i>	DANIEL P. ANDERSON (2001) RICHARD S. BROWN (2000) NEAL P. NETTESHEIM (2002) HARRY G. SNYDER* (2004)
<i>District III:</i>	R. THOMAS CANE** (2001) MICHAEL W. HOOVER* (2003) GREGORY PETERSON† (2005)
<i>District IV:</i>	DAVID G. DEININGER (2003) CHARLES P. DYKMAN* (2004) WILLIAM F. EICH† (2005) PATIENCE D. ROGGENSACK (2002) MARGARET J. VERGERONT (2000)

Note: *indicates the presiding judge of the district. **indicates chief judge of the Court of Appeals. The judges' current terms expire on July 31 of the year shown. †Gregory Peterson elected 4/6/99 to take office 8/1/99, and William F. Eich reelected 4/6/99 to new term beginning 8/1/99.

Clerk of Appeals Court: MARILYN L. GRAVES, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Madison, 266-1880, Fax: 267-0640.

Chief Staff Attorney: MARGARET CARLSON, 7th Floor, 119 Martin Luther King Jr. Boulevard, Madison 53703, 266-9323.

Telephones: (608) 266-1880; Bulletin Board: (608) 266-7866.

Fax: (608) 267-0640.

Internet Address: <http://www.courts.state.wi.us/WCS/ca.html>

Number of Positions: 73.00.

Total Budget 1997-99: \$12,772,800.

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 at the nonpartisan April election and must reside in the district from which they are chosen. Judges begin their terms of office on August 1 following election. Only one judge may be elected in a district in any one year.

The current statutory salary for appellate judges is \$105,960 annually. (This salary could change on August 1, 1999, or later, depending on legislative action.) The judges are assisted by staff attorneys, private secretaries and law examiners.

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.

CIRCUIT COURTS

- District 1:** Room 609, Milwaukee County Courthouse, 901 North 9th Street, Milwaukee 53233-1425. Telephone: (414) 278-5113; Fax: (414) 223-1264.
Chief Judge: MICHAEL SKWIERAWSKI.
Administrator: BRUCE HARVEY.
- District 2:** Racine County Courthouse, 730 Wisconsin Avenue, Racine 53403-1274. Telephone: (414) 636-3133; Fax: (414) 636-3437.
Chief Judge: BARBARA A. KLUKA.
Administrator: KERRY CONNELLY.
- District 3:** Room 359, Waukesha County Courthouse, 515 West Moreland Boulevard, Waukesha 53188-2428. Telephone: (414) 548-7209; Fax: (414) 548-7815.
Chief Judge: MARK S. GEMPELER.
Administrator: MICHAEL NEIMON.
- District 4:** Suite 102, 315 Algoma Boulevard, Oshkosh 54901-4773. Telephone: (920) 424-0028; Fax: (920) 424-0096.
Chief Judge: ROBERT A. HAASE.
Administrator: JERRY LANG.
- District 5:** Room 319, City-County Building, Madison 53709-0001. Telephone: (608) 267-8820; Fax: (608) 267-4151.
Chief Judge: DANIEL R. MOESER.
Administrator: GAIL RICHARDSON.
- District 6:** Suite 9, 101 Division, North, Stevens Point 54481-1150. Telephone: (715) 345-5295; Fax: (715) 345-5297.
Chief Judge: JAMES EVENSON.
Administrator: SAMUEL SHELTON.
- District 7:** La Crosse County Courthouse, 400 North 4th Street, La Crosse 54601-4017. Telephone: (608) 785-9546; Fax: (608) 785-5530.
Chief Judge: ROBERT W. RADCLIFFE.
Administrator: STEVEN STEADMAN.
- District 8:** Suite 221, 414 East Walnut Street, Green Bay 54301-5020. Telephone: (920) 448-4281; Fax: (920) 448-4336.
Chief Judge: PHILIP M. KIRK.
Administrator: JANE SCHETTER.
- District 9:** 740 Third Street, Wausau 54401-4706. Telephone: (715) 842-3872; Fax: (715) 845-4523.
Chief Judge: JAMES MOHR.
Administrator: JAMES SEIDEL.
- District 10:** Suite C, 405 South Barstow Street, Eau Claire 54701-3606. Telephone: (715) 839-4826; Fax: (715) 839-4891.
Chief Judge: EDWARD BRUNNER (effective 8/1/99).
Administrator: GREGG MOORE.

Internet Address: <http://www.courts.state.wi.us/WCS/circuit.html>

State-Funded Positions: 494.00.

Total Budget 1997-99: \$131,112,400.

Constitutional References: Article VII, Sections 2, 6-11 and 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

various civil, criminal, family, small claims, juvenile and probate court proceedings, including 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.

JUDGES OF CIRCUIT COURT May 1, 1999

Circuits ¹	Court Location	Judges	Term Expires July 31
Adams	Friendship	Duane H. Polivka	2003
Ashland	Ashland	Robert E. Eaton	2000
Barron			
Branch 1	Barron	James C. Eaton	2004
Branch 2	Barron	Edward R. Brunner	2000
Bayfield	Washburn	Thomas J. Gallagher	2001
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder	2003
Branch 2	Green Bay	Vivi Dilweg	2001
Branch 3	Green Bay	Susan Bischel	2004
Branch 4	Green Bay	William Griesbach	2002
Branch 5	Green Bay	Peter J. Naze ²	1999
Branch 6	Green Bay	John D. McKay	2003
Branch 7	Green Bay	Richard J. Dietz	2001
Branch 8	Green Bay	William M. Atkinson	2003
Buffalo-Pepin	Alma	Dane Morey	2002
Burnett	Siren	James H. Taylor	2003
Calumet	Chilton	Donald A. Poppy	2004
Chippewa			
Branch 1	Chippewa Falls	Roderick Cameron	2002
Branch 2	Chippewa Falls	Thomas J. Szama	2001
Clark	Neillsville	Michael W. Brennan	2003
Columbia			
Branch 1	Portage	Daniel S. George	2003
Branch 2	Portage	Lewis W. Charles ³	1999
Branch 3	Portage	Richard L. Rehm	2003
Crawford	Prairie du Chien	Michael T. Kirchman	2001
Dane			
Branch 1	Madison	Robert A. DeChambeau ²	1999
Branch 2	Madison	Maryann Sumi ²	1999
Branch 3	Madison	P. Charles Jones	2001
Branch 4	Madison	Steven D. Ebert	2004
Branch 5	Madison	Robert R. Pekowsky	2002
Branch 6	Madison	Richard J. Callaway	2003
Branch 7	Madison	Moria Krueger	2003
Branch 8	Madison	Patrick J. Fiedler	2000
Branch 9	Madison	Gerald C. Nichol	2000
Branch 10	Madison	Angela B. Bartell	2003
Branch 11	Madison	Daniel R. Moeser	2003
Branch 12	Madison	Mark A. Frankel	2003
Branch 13	Madison	Michael N. Nowakowski	2003
Branch 14	Madison	C. William Foust	2004
Branch 15	Madison	Stuart Schwartz	2004
Branch 16	Madison	Sarah O'Brien	2004
Branch 17	Madison	Paul Higginbotham	2000
Dodge			
Branch 1	Juneau	Daniel Klossner	2002
Branch 2	Juneau	John R. Storck	2001
Branch 3	Juneau	Andrew P. Bissonnette	2001
Door			
Branch 1	Sturgeon Bay	John D. Kochn	2000
Branch 2	Sturgeon Bay	Peter C. Diltz	2000
Douglas			
Branch 1	Superior	Michael T. Lucci	2003
Branch 2	Superior	Joseph A. McDonald	2001
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2004
Branch 2	Menomonie	Rod Smeltzer	2003
Eau Claire			
Branch 1	Eau Claire	Thomas H. Barland	2000
Branch 2	Eau Claire	Eric J. Wahl	1999
Branch 3	Eau Claire	Gregory Peterson	2002
Branch 4	Eau Claire	Benjamin Proctor	2000
Branch 5	Eau Claire	Paul J. Lenz	2000
Florence (see <i>Forest-Florence</i>)			
Fond du Lac			
Branch 1	Fond du Lac	Dale L. English	2002
Branch 2	Fond du Lac	Peter L. Grimm	2004
Branch 3	Fond du Lac	Henry B. Buslee	2004
Branch 4	Fond du Lac	Steven W. Weinke	2004
Branch 5	Fond du Lac	New circuit branch (eff. 8/1/99) ⁴	2004
Forest-Florence	Crandon	Robert A. Kennedy	2002
Grant			
Branch 1	Lancaster	John R. Wagner ⁵	2003
Branch 2	Lancaster	George S. Curry	2003
Green	Monroe	James R. Beer	2003
Green Lake	Green Lake	William M. McMonigal ²	1999
Iowa	Dodgeville	William D. Dyke	2004
Iron	Hurley	Patrick J. Madden ²	1999
Jackson	Black River Falls	Robert Radcliffe	2002

JUDGES OF CIRCUIT COURT
May 1, 1999

Circuits ¹	Court Location	Judges	Term Expires July 31
Jefferson			
Branch 1	Jefferson	John M. Ullsvik	2003
Branch 2	Jefferson	William F. Hue	2001
Branch 3	Jefferson	Jacqueline R. Erwin	2003
Branch 4	Jefferson	New circuit branch (eff. 8/1/99) ⁶	
Juneau	Mauston	John W. Brady	2004
Kenosha			
Branch 1	Kenosha	David M. Bastianelli	2003
Branch 2	Kenosha	Barbara A. Kluka	2001
Branch 3	Kenosha	Bruce Schroeder	2002
Branch 4	Kenosha	Michael S. Fisher ²	1999
Branch 5	Kenosha	Wilbur W. Warren III	2003
Branch 6	Kenosha	Mary K. Wagner-Malloy	2003
Branch 7	Kenosha	S. Michael Wilk	2000
Kewaunee	Kewaunee	Dennis J. Meziva	2004
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez	2001
Branch 2	La Crosse	Michael Mulroy	2001
Branch 3	La Crosse	Dennis G. Montabon	2003
Branch 4	La Crosse	John J. Perlich	2003
Branch 5	La Crosse	New circuit branch (eff. 8/1/99) ⁷	
Lafayette	Darlington	William D. Johnston	2003
Langlade	Antigo	James P. Jansen ²	1999
Lincoln			
Branch 1	Merrill	John Michael Nolan	2004
Branch 2	Merrill	New circuit branch (eff. 8/1/99) ⁸	
Manitowoc			
Branch 1	Manitowoc	Patrick Willis	2004
Branch 2	Manitowoc	Darryl W. Deets	2001
Branch 3	Manitowoc	Fred H. Hazlewood ²	1999
Marathon			
Branch 1	Wausau	Dorothy L. Bain	2004
Branch 2	Wausau	Raymond F. Thums	2001
Branch 3	Wausau	Vincent K. Howard	2002
Branch 4	Wausau	Gregory Grau	2001
Branch 5	Wausau	New circuit branch (eff. 8/1/99) ⁹	
Marinette			
Branch 1	Marinette	Charles D. Heath	2002
Branch 2	Marinette	Tim A. Duket	2002
Marquette	Montello	Richard O. Wright	2001
Menominee (see Shawano-Menominee)			
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White ²	1999
Branch 2	Milwaukee	M. Joseph Donald	2003
Branch 3	Milwaukee	Clare L. Fiorenza	2003
Branch 4	Milwaukee	Mel Flanagan	2000
Branch 5	Milwaukee	Mary K. Kuhnmuensch	2004
Branch 6	Milwaukee	Kitty K. Brennan	2003
Branch 7	Milwaukee	Jean W. DiMotto	2000
Branch 8	Milwaukee	Michael J. Barron	2004
Branch 9	Milwaukee	Robert W. Crawford	2002
Branch 10	Milwaukee	Timothy G. Dugan ²	1999
Branch 11	Milwaukee	Dominic S. Amato	2001
Branch 12	Milwaukee	Michael J. Skwierawski	2003
Branch 13	Milwaukee	Victor Manian	2000
Branch 14	Milwaukee	Christopher R. Foley	2004
Branch 15	Milwaukee	Ronald S. Brooks	2001
Branch 16	Milwaukee	Michael J. Dwyer	2003
Branch 17	Milwaukee	Francis Wasielewski	2002
Branch 18	Milwaukee	Patricia D. McMahon ²	2002
Branch 19	Milwaukee	John E. McCormick ²	1999
Branch 20	Milwaukee	Dennis P. Moroney	1999
Branch 21	Milwaukee	Stanley A. Miller ²	2000
Branch 22	Milwaukee	William J. Haese ²	1999
Branch 23	Milwaukee	Elsa C. Lamelas	1999
Branch 24	Milwaukee	Charles F. Kahn	2000
Branch 25	Milwaukee	John A. Franke ²	2004
Branch 26	Milwaukee	Michael P. Sullivan	1999
Branch 27	Milwaukee	Thomas P. Doherty ²	2002
Branch 28	Milwaukee	Thomas R. Cooper	1999
Branch 29	Milwaukee	Richard J. Sankovitz	2000
Branch 30	Milwaukee	Jeffrey A. Conen	2003
Branch 31	Milwaukee	Daniel A. Noonan	2002
Branch 32	Milwaukee	Michael D. Guolee	2002
Branch 33	Milwaukee	Laurence C. Gram, Jr. ¹⁰	1999
Branch 34	Milwaukee	Jacqueline D. Schellinger ²	1999
Branch 35	Milwaukee	Lee E. Wells	2000
Branch 36	Milwaukee	Jeffrey A. Kremers ²	1999
Branch 37	Milwaukee	Karen E. Christenson	2000
Branch 38	Milwaukee	Jeffrey A. Wagner	2004
Branch 39	Milwaukee	Michael Malmstadt	2000
Branch 40	Milwaukee	Louise M. Tesmer	2001

JUDGES OF CIRCUIT COURT

May 1, 1999

Circuits ¹	Court Location	Judges	Term Expires July 31
Milwaukee (continued)			
Branch 41	Milwaukee	John J. DiMotto	2002
Branch 42	Milwaukee	David A. Hansher	2003
Branch 43	Milwaukee	Diane S. Sykes	2004
Branch 44	Milwaukee	Daniel L. Konkol	2004
Branch 45	Milwaukee	Thomas P. Donegan	2004
Branch 46	Milwaukee	Bonnie L. Gordon	2000
Branch 47	Milwaukee	New circuit branch (eff. 8/1/99) ¹¹	—
Monroe			
Branch 1	Sparta	Steven L. Abbott	2001
Branch 2	Sparta	Michael J. McAlpine	2004
Oconto			
Branch 1	Oconto	Larry L. Jeske ²	1999
Branch 2	Oconto	Richard D. Delforge	2004
Oneida			
Branch 1	Rhineland	Robert E. Kinney	2002
Branch 2	Rhineland	Mark A. Mangerson	2000
Outagamie			
Branch 1	Appleton	James T. Bayorgeon	2002
Branch 2	Appleton	Dennis C. Luebke	2003
Branch 3	Appleton	Joseph M. Troy ²	1999
Branch 4	Appleton	Harold Froehlich	2000
Branch 5	Appleton	Michael W. Gage	2003
Branch 6	Appleton	Dee R. Dyer	2000
Branch 7	Appleton	John A. Des Jardins	2000
Ozaukee			
Branch 1	Port Washington	Walter J. Swietlik	2003
Branch 2	Port Washington	Tom R. Wolgram	2001
Branch 3	Port Washington	Joseph D. McCormack	2003
Pepin (see Buffalo-Pepin)			
Pierce	Ellsworth	Robert W. Wing	2004
Polk			
Branch 1	Balsam Lake	James Erickson	2002
Branch 2	Balsam Lake	Robert H. Rasmussen	2003
Portage			
Branch 1	Stevens Point	Frederic W. Fleishauer ²	1999
Branch 2	Stevens Point	John V. Finn	2001
Branch 3	Stevens Point	Thomas T. Flugaur	2000
Price	Phillips	Douglas Fox	2002
Racine			
Branch 1	Racine	Gerald P. Ptacek	2001
Branch 2	Racine	Stephen A. Simanek	2004
Branch 3	Racine	Emily S. Mueller ²	1999
Branch 4	Racine	Emmanuel J. Vvunas	2004
Branch 5	Racine	Dennis J. Barry ²	1999
Branch 6	Racine	Wayne J. Marik	2003
Branch 7	Racine	Charles H. Constantine	2002
Branch 8	Racine	Dennis J. Flynn	2000
Branch 9	Racine	Allan B. Torhorst	2003
Branch 10	Racine	Richard J. Kreul	2000
Richland	Richland Center	Edward Leineweber	2003
Rock			
Branch 1	Janesville	James P. Daley	2002
Branch 2	Janesville	John H. Lussow	2004
Branch 3	Janesville	Michael J. Byron	2004
Branch 4	Beloit	Edwin C. Dahlberg	2002
Branch 5	Beloit	John W. Roethe	2004
Branch 6	Janesville	Richard T. Werner	2003
Branch 7	Beloit	James E. Welker	2000
Rusk	Ladysmith	Frederick Henderson	2004
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2002
Branch 2	Hudson	Conrad A. Richards	2001
Branch 3	Hudson	Scott R. Needham	2000
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2000
Branch 2	Baraboo	James Evenson	2004
Branch 3	Baraboo	Virginia Wolfe	2000
Sawyer	Hayward	Norman L. Yackel	2003
Shawano-Menominee			
Branch 1	Shawano	Earl Schmidt	2002
Branch 2	Shawano	Thomas G. Grover	2001
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel	2003
Branch 2	Sheboygan	Timothy M. Van Akkeren	2001
Branch 3	Sheboygan	Gary Langhoff ²	1999
Branch 4	Sheboygan	John B. Murphy	2003
Branch 5	Sheboygan	James J. Bolgert	2000
Taylor	Medford	Gary Lee Carlson	2004
Trempealeau	Whitehall	John A. Damon	2001

JUDGES OF CIRCUIT COURT
May 1, 1999

Circuits ¹	Court Location	Judges	Term Expires July 31
Vernon	Viroqua	Michael J. Rosborough ²	1999
Vilas	Eagle River	James Mohr	2002
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2000
Branch 2	Elkhorn	James L. Carlson	2004
Branch 3	Elkhorn	John R. Race	2003
Branch 4	Elkhorn	Michael S. Gibbs	2004
Washburn	Shell Lake	Eugene D. Harrington	2003
Washington			
Branch 1	West Bend	Lawrence F. Waddick	2002
Branch 2	West Bend	Annette K. Ziegler	2004
Branch 3	West Bend	Richard T. Becker	2002
Branch 4	West Bend	Leo F. Schlaefer	2000
Waukesha			
Branch 1	Waukesha	Joseph Wimmer	2004
Branch 2	Waukesha	Mark Gempeler	2002
Branch 3	Waukesha	Roger P. Murphy ¹²	1999
Branch 4	Waukesha	Patrick L. Snyder	2003
Branch 5	Waukesha	Lee Sherman Dreyfus, Jr.	2002
Branch 6	Waukesha	Patrick C. Haughney	2002
Branch 7	Waukesha	J. Mac Davis	2003
Branch 8	Waukesha	James R. Kieffer	2003
Branch 9	Waukesha	Donald J. Hassin, Jr.	2003
Branch 10	Waukesha	Marianne E. Becker	2003
Branch 11	Waukesha	Robert G. Mawdsley	2000
Branch 12	Waukesha	Kathryn W. Foster	2000
Waupaca			
Branch 1	Waupaca	Philip M. Kirk ²	1999
Branch 2	Waupaca	John P. Hoffmann	2004
Wausara	Wautoma	Lewis R. Murach ²	1999
Winnebago			
Branch 1	Oshkosh	William E. Crane	2000
Branch 2	Oshkosh	Robert Haase	2000
Branch 3	Oshkosh	Barbara Key	2004
Branch 4	Oshkosh	Robert Hawley	2000
Branch 5	Oshkosh	William H. Carver	2004
Branch 6	Oshkosh	Bruce K. Schmidt	2003
Wood			
Branch 1	Wisconsin Rapids	Dennis D. Conway	2003
Branch 2	Wisconsin Rapids	James M. Mason	2004
Branch 3	Wisconsin Rapids	Edward F. Zappen, Jr.	2003

¹Circuits are comprised of one county each, except for Buffalo-Pepin, Forest-Florence and Shawano-Menominee. The current annual salary for all circuit court judges is \$99,961. Salaries could change as of August 1, 1999, when any one of the circuit court judges is inaugurated for a new term, but the amount will be determined upon passage of the 1999-2000 state budget.

²Reelected on April 6, 1999, for a 6-year term to commence August 1, 1999.

³⁻¹²Newly elected on April 6, 1999, for a 6-year term to commence August 1, 1999.

³James O. Miller.

⁴Robert J. Wirtz.

⁵Robert P. VanDeHley.

⁶Randy R. Koschnick.

⁷Dale Pasell.

⁸Glenn H. Hartley.

⁹Patrick Brady.

¹⁰Carl Ashley.

¹¹John Siefert.

¹²Ralph Ramirez.

Sources: 1997-98 Wisconsin Statutes; State Elections Board, departmental data, April 1999; Director of State Courts, departmental data, May 1999; governor's appointment notices.

MUNICIPAL COURTS

Constitutional References: Article VII, Sections 2 and 14.

Statutory References: Chapters 755 and 800.

Internet Address: <http://www.courts.state.wi.us/WCS/municiprts.html>

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 June 30, 1999, there were 218 municipal courts. Courts may have multiple branches, as illustrated by the City of Milwaukee's municipal court, which has 3 branches. (The statutes also authorize Milwaukee County to appoint municipal court commissioners, and it had 5, as of June 1999.) Two or more municipalities may agree to form a joint court, and there were 13 joint courts, serving 2 to 10 municipalities each.

Upon convicting a defendant, the municipal court may order payment of a forfeiture plus costs and assessments, or, if the defendant agrees, it may order community service in lieu of a forfeiture. Municipal courts also may order restitution up to \$4,000. 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 the forfeiture or 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 local governing body fixes the term of office at 2 to 4 years and 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 in the district. 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.

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

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

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 213 Northeast, State Capitol, Madison; Staff: 110 East Main Street, Madison.

Fax: (608) 267-0980.

Address e-mail by combining the user ID and the state extender: userid@courts.state.wi.us

Internet Address: <http://www.courts.state.wi.us/>

Deputy Director for Court Operations: PATRICK BRUMMOND, 266-3121, patrick.brummond@

Deputy Director for Management Services: MARY RIDER, 266-8914, mary.rider@

Circuit Court Automation Project: JEAN BOUSQUET, *director*, 267-0678, jean.bousquet@

Fiscal Officer: PAM RADLOFF, 266-6865, pam.radloff@

Information Technology, Office of: JOHN HARTMAN, *director*, 267-5292, john.hartman@

Judicial Education: DAVID H. HASS, *director*, 266-7807, david.hass@

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

Number of Employees: 63.00.

Total Budget 1997-99: \$22,728,800.

References: Wisconsin Statutes, Chapter 655, Subchapter VI, and Section 758.19; Supreme Court Rules 70.01-70.08.

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 legislative liaison, public information, and the court information system. This officer 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: MARCIA J. KOSLOV, 266-1424, marcia.koslov@courts.state.wi.us

Collection Management: JULIE TESSMER, *director*, 266-1600, julie.tessmer@courts.state.wi.us

Public Services (reference, circulation, government documents): JANE COLWIN, *director*, 266-1600, jane.colwin@courts.state.wi.us

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

Location: Room 310 East, State Capitol, Madison.

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

Fax: (608) 267-2319.

Internet Address: <http://www.wsll.state.wi.us>

Publications: *A User's Guide to the Wisconsin State Law Library*; WSSL Newsletter; miscellaneous bibliographies of titles.

Number of Employees: 5.75.

Total Budget 1997-99: \$2,082,900.

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 the Wisconsin Supreme Court and Court of Appeals, the Department of Justice, the Wisconsin Legislature, the Office of the Governor, executive agencies and members of the State Bar of Wisconsin. The library is administered by the supreme court, which appoints the library staff and determines the rules governing library use. The library serves 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 Legal Resource Center and the Dane County Law Library).

The library's 140,000-volume collection features the session laws, statutory codes, court reports, administrative rules, legal indexes, and case law digests 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 library also provides reference, basic legal research and document delivery services. The collection circulates to judges, attorneys, legislators and state agency personnel.

BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY

Board of Attorneys Professional Responsibility: SHARREN ROSE (State Bar member), *chairperson*; ADRIAN SCHOONE (State Bar member), *vice chairperson*; JON P. AXELROD, WILLIAM FALE, WILLIAM KOSLO, JAMES MARTIN, GERALD O'BRIEN, TRINETTE PITTS (State Bar members); LAURA DEGOLIER, ARTHUR EGBERT, BONNIE SCHWID, WALTER L. WASHBURN (nonlawyers). (All members are appointed by the supreme court.)

Interim Administrator: JAMES L. MARTIN, james.martin@courts.state.wi.us

Deputy Administrator: ELSA P. GREENE, elsa.greene@courts.state.wi.us

Deputy Administrator, Milwaukee Office: JEANANNE L. DANNER, jeananne.danner@courts.state.wi.us

Mailing Addresses: Room 315, 110 East Main Street, Madison 53703; 342 North Water Street, Suite 300, Milwaukee 53202-5715.

Telephones: Madison: (608) 267-7274; Milwaukee: (414) 227-4623.

Fax: Madison: (608) 267-1959; Milwaukee: (414) 227-4414.

Number of Employees: 18.00.

Total Budget 1997-99: \$2,639,600.

References: Supreme Court Rules, Chapters 21 and 22.

Responsibility: The Board of Attorneys Professional Responsibility is the agency of the supreme court that assists 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. It investigates complaints of attorney misconduct and takes disciplinary action ranging from private reprimand to the filing of a formal complaint with the supreme court asking public reprimand, license suspension or revocation, monetary payment, or conditions on the continued practice of law. Upon request of the supreme court or the Board of Bar Examiners, the board investigates the moral character of persons seeking admission to the State Bar. It also reports its findings and recommendations to the supreme court when an attorney petitions for reinstatement of a license, and it investigates and files petitions with the court regarding an attorney's medical incapacity.

The 12-member board was created on January 1, 1977, by order of the Wisconsin Supreme Court. It assumed the attorney disciplinary function of the former Board of State Bar Commissioners on January 1, 1978. Members serve staggered 3-year terms, but none may serve more than two consecutive terms. The board appoints an administrator who must be eligible to practice law in Wisconsin to investigate and report to the board regarding any possible misconduct or medical incapacity.

BOARD OF BAR EXAMINERS

Board of Bar Examiners: THEODORE J. POULOS (State Bar member), *chairperson*; GERALD J. THAIN (UW Law School faculty), *vice chairperson*; CELIA M. JACKSON, JAMES P. O'BRIEN, MARY L. STAUDENMAIER, vacancy (State Bar members); HOWARD B. EISENBERG (Marquette University Law School faculty); ERIC WAHL (circuit court judge); HARRY MAIER (public member). (All members are appointed by the supreme court.)

Director: GENE R. RANKIN, 266-9760; Fax: (608) 266-1196.

Mailing Address: Room 715, 110 East Main Street, Madison 53703.

Internet Address: <http://www.courts.state.wi.us/WCS/news.html?NewsDoc=barexam>

Number of Employees: 7.50.

Total Budget 1997-99: \$926,600.

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

Responsibility: The Board of Bar Examiners manages all bar admissions by examination or by reciprocity, 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 9-member board originated as the Board of Continuing Legal Education, created in 1975 by rule of the Wisconsin Supreme Court. It became the Board of Attorneys Professional Competence in 1978 and was renamed the Board of Bar Examiners, effective January 1, 1991. Members are appointed for staggered 3-year terms, but no member may serve more than two consecutive full terms.

JUDICIAL COMMISSION

Members: ROBERT H. PAPKE (nonlawyer), *chairperson*; CHARLES P. DYKMAN (appeals court judge), KATHRYN FOSTER (circuit court judge), PHILIP BREHM, THOMAS S. SLEIK (State Bar members); SPYRO CONDOS, DAVID R. HUEBSCH, ILEEN SIKOWSKI, BIANCA S. TYLER (nonlawyers). (Judges and State Bar members appointed by supreme court. Nonlawyers are appointed by governor with senate consent.)

Executive Director: JAMES C. ALEXANDER.

Administrative Assistant: GINNY L. EGLI.

Mailing Address: Suite 606, Tenney Building, 110 East Main Street, Madison 53703-3328.

Telephone: (608) 266-7637.

Fax: (608) 266-8647.

Agency E-mail: judcmm@courts.state.wi.us

Publication: Annual Report.

Number of Employees: 2.00.

Total Budget 1997-99: \$435,400.

Statutory References: Sections 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 will select 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.

JUDICIAL CONFERENCE

Members: All supreme court justices, court of appeals judges, circuit court judges and reserve judges.

References: Section 758.171, 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 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 and traffic law. It also maintains a standing committee on legislation.

JUDICIAL COUNCIL

Members: WAYNE J. MARIK (circuit judge designated by Judicial Conference), *chairperson*; GRETCHEN VINEY (designated by State Bar), *vice chairperson*; N. PATRICK CROOKS (justice designated by supreme court); TED E. WEDEMEYER, JR. (judge designated by appeals court); J. DENIS MORAN (director of state courts); EDWARD BRUNNER, EARL W. SCHMIDT, LEE WELLS (circuit judges designated by Judicial Conference); SENATOR GEORGE (chairperson, Senate Committee on Judiciary, Campaign Finance Reform and Consumer Affairs), REPRESENTATIVE HUEBSCH (chairperson, Assembly Judiciary Committee); MATTHEW J. FRANK (designated by attorney general); BRUCE MUNSON (revisor of statutes); DAVID E. SCHULTZ (designated by dean, UW Law School); SHIRLEY A. WIEGAND (designated by dean, Marquette University Law School); MARLA J. STEPHENS (designated by state public defender); PATRICIA HEIM (president-elect, State Bar); LEONARD L. LOEB, PEGGY L. PODELL (designated by State Bar); ERIC JOHNSON (district attorney appointed by governor); LISA T. SOIK, GWEN WORTOCK (public members appointed by governor).

Mailing Address: 110 East Main Street, Suite 606, Madison 53703.

Telephone: (608) 266-7637.

Fax: (608) 266-8657.

Statutory References: Sections 757.83 (4) and 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 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. It helps prepare the supreme court rules for biennial publication. The council studies the rules of pleading, practice, and procedure and advises the supreme court about changes that will simplify procedure and promote a speedy disposition of litigation.

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 executive director of the Judicial Commission provides staff services to the council.

JUDICIAL EDUCATION COMMITTEE

Judicial Education Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice), *chairperson*; WILLIAM EICH (designated by appeals court chief judge); KENNETH B. DAVIS, JR. (dean, UW

Law School); JOHN J. DiMOTTO, RAMONA A. GONZALEZ, WILLIAM GRIESBACH, ELSA C. LAMELAS, LEWIS R. MURACH, SCOTT R. NEEDHAM, GERALD C. NICHOL, JOHN R. STOREK (circuit court judges appointed by supreme court); J. DENIS MORAN (director of state courts); HOWARD B. EISENBERG (dean, Marquette University Law School); ROBERT G. MAWDSLEY (dean, Wisconsin Judicial College).

Office of Judicial Education: DAVID H. HASS, *director*, david.hass@courts.state.wi.us

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

Telephone: (608) 266-7807.

Fax: (608) 261-6650.

Internet Address: <http://www.courts.state.wi.us/WCS/news.html?NewsDoc=juded>

Reference: Supreme Court Rules 31-33.

Responsibility: The 14-member Judicial Education Committee approves educational programs for judges and court personnel. The 8 circuit court judges on the committee serve staggered 2-year terms and may not serve more than two consecutive terms.

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 was established in 1971 by the supreme court, administers the program. It also sponsors initial and continuing educational programs for municipal judges and circuit court clerks.

PLANNING AND POLICY ADVISORY COMMITTEE

Planning and Policy Advisory Committee: SHIRLEY S. ABRAHAMSON (supreme court chief justice, *chairperson*); DANIEL ANDERSON (appeals court judge selected by court); JAMES T. BAYORGEON, RODERICK CAMERON, ROBERT DECHAMBEAU, DOUGLAS T. FOX, DAVID HANSHER, FRED HAZELWOOD, WILLIAM HUE, JEFFREY A. KREMERS, WILLIAM MCMONIGAL, JOHN J. PERLICH, JOHN ROETHE, LOUISE TESMER, ALLAN TORHORST (circuit court judges elected by judicial administrative districts); MICHAEL C. HURT (municipal judge elected by Wisconsin Municipal Judges Association); PAM BARKER, MICHELLE BEHNKE (State Bar members selected by board of governors); JEAN JACOBSON (nonlawyer, elected county official); JOHN KAMINSKI, MARY WILLIAMS (nonlawyers); NICHOLAS CHIARKAS (public defender); STEVEN STEADMAN (court administrator); RAY PELRINE (prosecutor); BERNADETTE FLATOFF (circuit court clerk). (Unless indicated otherwise, members are appointed by the chief justice.)

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Reference: Supreme Court Rule 70.14.

Responsibility: The 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 25-member committee meets at least quarterly, and the supreme court meets with the committee annually.

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 — ASSOCIATED UNIT
STATE BAR OF WISCONSIN

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Publications: *Consumer's Guide to Wisconsin Law; A Handbook for Personal Representatives; Wisconsin Lawyer; Wisconsin News Reporter's Legal Handbook*; various brochures, pamphlets and videotapes.

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, which works to raise professional standards, improve the administration of justice 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 for supreme court boards 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.

Organization: Subject to rules prescribed by the Wisconsin Supreme Court, the State Bar is governed by a 48-member board of governors consisting of the board's 6 officers, 34 members selected by State Bar members from the association's 16 districts, 5 selected by divisions of the State Bar and 3 nonlawyers appointed by the supreme court. The board of governors selects the executive director and the president of the board.

History: In 1956, the Wisconsin Supreme Court ordered 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 pending the disposition of a lawsuit in the U.S. Supreme Court, temporarily making the State Bar a voluntary membership association. The U.S. 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.

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

October 1996 – September 1998

Robert Nelson and Jefren Olsen
Legislative Reference Bureau

CONSTITUTIONAL LAW

The Constitutionality of Wisconsin's Flag Desecration Statute

"It is poignant but fundamental that the flag protects those who hold it in contempt." These words, written by U.S. Supreme Court Justice Anthony Kennedy in *Texas v. Johnson*, 491 U.S. 397 (1989), aptly capture the tension between the right of free expression guaranteed to all citizens under the Wisconsin and U.S. Constitutions and the veneration accorded to the U.S. flag as a symbol of our nation and its aspirations. The Wisconsin Supreme Court confronted this tension in *State v. Janssen*, 219 Wis. 2d 362 (1998), when it was asked to decide a challenge to the constitutionality of a Wisconsin statute that prohibits a person from intentionally and publicly mutilating, defiling or casting contempt upon the flag.

In the *Texas v. Johnson* case, the U.S. Supreme Court was faced with a challenge to a Texas statute that prohibited desecration of the American flag by defacing, damaging or otherwise physically mistreating it in a way that would seriously offend persons likely to observe or discover the desecration. The Supreme Court held that, when applied to a person who publicly burned the flag as a form of political protest, the statute was unconstitutional because it suppressed expression out of concern for the impact of the message being expressed. The Supreme Court recognized a state's interest in preserving the flag as a symbol of nationhood and national unity. However, noting that the state's interest is threatened only when a person's treatment of the flag communicates a message of some sort, the court decided that the state's interest cannot justify infringing First Amendment rights. Shortly after the *Johnson* decision, Congress passed a federal Flag Protection Act, which the Supreme Court held in *U.S. v. Eichman*, 496 U.S. 310 (1990), would also be unconstitutional when applied to a person who publicly burned the flag as a form of political protest.

Unlike the defendants in the *Johnson* and *Eichman* cases, Matthew Janssen did not burn a flag. Over a period of several weeks, Janssen and some friends stole a number of U.S. flags from different places in Appleton, including a municipal golf course. Upon noticing that a new flag was flying at the golf course, Janssen and his friends took it down. Janssen then defecated on the flag and left it on the steps of the golf course clubhouse. A few weeks later, after this sullied flag was cleaned and put back, Janssen and his friends stole it and left a note, peppered with expletives, on the steps of the clubhouse. In it they took responsibility for stealing and defecating on the flags and claimed that the "anarchist platoon" had invaded Appleton.

Eventually, Janssen was arrested. He confessed to the various flag thefts and to defecating on the flag. In addition to being charged with theft, Janssen was charged with flag desecration. He asked the trial court to dismiss the flag desecration charge on the grounds that, like the flag burning in the *Johnson* and *Eichman* cases, his act of defecating on the flag was an act of expression that is protected by the First Amendment. The trial court denied Janssen's request to dismiss the charge on this ground after concluding that defecating on the flag was not by itself expressive communication and that, while Janssen's note suggested that the act was done as an expression of opinion, the 17-day interval between the act and delivery of the note did not make the defecation an act of expression. The trial court did, however, conclude that the flag desecration statute was unconstitutionally vague and overbroad and, on these grounds, it dismissed the charge. The court of appeals agreed with the trial court, and the Wisconsin Supreme Court unanimously affirmed that decision.

Janssen argued that prosecuting him under Wisconsin's flag desecration statute violated his First Amendment rights. The First Amendment generally prevents the government from pro-

scribing speech or expressive conduct based on disapproval of the ideas expressed. The courts give special scrutiny to any statute affecting free speech under the First Amendment to make sure that the language is not unconstitutionally overbroad. A statute is unconstitutionally overbroad when the language, given its normal meaning, is so sweeping that its prohibitions appear to apply to conduct that the state cannot regulate under the First Amendment. The courts apply special scrutiny to statutes that may be unconstitutionally overbroad in the belief that it is better that unprotected speech go unpunished than that protected speech be chilled.

In weighing Janssen's First Amendment arguments, the court focused on the language prohibiting "defiling" the flag. The prosecution had conceded that the prohibitions against "casting contempt upon" or "mutilating" the flag were unconstitutionally overbroad but argued the statute could be preserved and applied to Janssen because the prohibition of defilement was not overbroad. The supreme court rejected the state's argument.

The court noted that a dictionary definition of "defile" included the words "to make filthy or dirty" and "to make unclean or unfit for ceremonial use". Under this definition, the court said, a person could be prosecuted for any expressive act which dirties the flag (such as splattering a flag with oil to protest the Persian Gulf War) or which makes the flag unfit for its ceremonial use (such as affixing a peace sign to the flag with removable tape). Even accepting the state's argument that "defilement" means purely physical acts that make the flag physically unclean or dirty would not solve the problem, the court said, because "if one is protected by the First Amendment when he or she conveys a message by burning, tearing or otherwise mutilating the flag during a political protest or rally, he or she would also be protected for the less destructive act of 'defiling' the flag under equivalent circumstances."

Because the broad language of the flag desecration statute "casts an inescapable shadow upon protected expression which utilizes the United States flag", the court concluded that the statute is unconstitutionally overbroad. The court also explicitly stated that it was not required in this case to endorse Janssen's argument that all flag desecration is protected expression. "We leave for another day the question of whether an appropriately drafted flag desecration statute might be applied constitutionally to certain nonexpressive conduct." (388)

At the end of its decision, the supreme court wrote of the difficulty it experienced in invalidating the flag desecration statute. Calling Janssen's conduct "repugnant and completely devoid of any social value" and "a slap in the face" to many citizens, the court noted its own sense of personal anguish with the facts of the case. However, it observed that the Wisconsin Supreme Court cannot write its private notions of policy into the U.S. Constitution. The court concluded by quoting the U.S. Supreme Court: "The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result." *Johnson*, 491 U.S. at 420-421.

The Constitutionality of Six-Person Juries in Misdemeanor Cases

The Declaration of Rights in the Wisconsin Constitution proclaims that: "In all criminal prosecutions the accused shall enjoy the right . . . in prosecutions by indictment, or information, to a speedy public trial by an impartial jury. . ." In *State v. Hansford*, 219 Wis. 2d 226 (1998), the Wisconsin Supreme Court had to decide whether providing only six jurors in some criminal cases violated this provision.

1995 Wisconsin Act 427 reduced the number of jurors for misdemeanor crime cases from 12 to 6 persons. There was no change for felony cases. (In Wisconsin, a crime may be either a misdemeanor or a felony. A misdemeanor carries a maximum imprisonment of 12 months in a county jail while a felony conviction can result in imprisonment of one year or more in prison.) After the change, Ronald Hansford was charged with several misdemeanor crimes as the result of an altercation at a bar. He requested a trial by a jury of 12 persons, contending that the six-person jury violated his right to a trial by jury as guaranteed by the Wisconsin Constitution. The trial court decided that the legislature had the authority to alter the number of jurors in a misdemeanor case and thus denied Hansford's motion. Hansford was tried before a jury of six persons and convicted. He appealed his conviction, again arguing that a 6-person jury in a misdemeanor case is unconstitutional. A unanimous supreme court agreed with Hansford.

In deciding Hansford's appeal, the supreme court first had to determine the meaning of the constitution's declaration that the accused in a criminal prosecution has the right to a speedy public

trial by an impartial jury. To do this, the court said: “[W]e must attempt to ascertain the intent of the framers of the constitution, as well as how the right to trial by jury was understood at common law, at the time the constitution was adopted.” The court looked first at the records of the Wisconsin constitutional conventions of 1846 and 1847-48. It concluded there was little debate about the right to trial by jury and what there was did not directly address the issue of the number of jurors.

The court reviewed early decisions of the Wisconsin Supreme Court, particularly those decided shortly after the adoption of the constitution in 1848. The earliest of these was *Norval v. Rice*, 2 Wis. 17 (1853), in which the supreme court concluded that the constitution was intended to enshrine the right to a jury trial as it existed in common law at the time of the constitution’s adoption. After referring to numerous well-known and highly esteemed authorities on the common law, such as Lord Coke, Blackstone and Sir Matthew Hale, the *Norval* court determined that from the earliest period of the common law the term “jury” has meant “a body of twelve citizens”. The court considered the *Norval* opinion especially significant because the chief justice of the court at the time of the *Norval* decision had practiced law in the Wisconsin Territory and was himself a delegate to the 1848 constitutional convention.

The *Hansford* court considered several other cases spanning a period from the 1880s to the 1960s that explicitly or implicitly recognized that the right to a jury trial provided in the constitution is the right to the jury trial provided in the common law, which calls for a panel of 12 qualified and impartial persons. On the strength of this long line of cases, the court rejected two arguments advanced for allowing six-person juries in misdemeanor cases.

The first argument rejected by the court was based on the language in the constitution that the right applies only in prosecutions “by indictment or information”. That language would apply only to prosecutions for felonies, because misdemeanors are not prosecuted using an indictment (which is filed after a grand jury decides there is probable cause to charge a felony) or an information (which is filed after a judge finds probable cause to believe a felony has been committed). Instead, the argument continued, misdemeanors are prosecuted using a complaint (a document prepared by the prosecutor, usually based on the reports of police and other witnesses). The court acknowledged these points but decided, nonetheless, that a person charged with a misdemeanor still had the right to a 12-person jury. To hold otherwise, the court said, would allow a defendant’s constitutional rights to hinge upon the discretion of the prosecutor who files misdemeanor or felony charges and the often-changing procedures for charging persons with crimes.

The second argument rejected by the court was that the Wisconsin Supreme Court should follow the U.S. Supreme Court case of *Williams v. Florida*, 399 U.S. 78 (1970). In that case, the U.S. Supreme Court held that the right to a jury trial guaranteed by the Sixth Amendment to the U.S. Constitution was not intended to incorporate the common-law characteristics of the jury and, therefore, does not require a jury to consist of 12 persons. While the U.S. Supreme Court’s decision is binding authority on the meaning of the Sixth Amendment, the Wisconsin Supreme Court recognized that the Wisconsin Constitution may afford greater protection than the U.S. Constitution. The Wisconsin court said that the history surrounding the adoption of the Wisconsin Constitution and the long-standing precedent of the Wisconsin courts in interpreting the meaning of the right to trial by jury under the state constitution showed beyond a reasonable doubt that a 6-person jury in misdemeanor cases violates the Wisconsin constitutional right of an accused to trial by an impartial jury.

School Choice

Wisconsin was the first state to initiate a broad pilot program of state-funded vouchers for parents wishing to send their children to private nonsectarian schools. In an earlier case, *Davis v. Grover*, 166 Wis. 2d 501 (1992), the Wisconsin Supreme Court had held that the program, as it was initiated, was not a private or local bill subject to certain state constitutional prohibitions; it did not violate the uniformity clause of the Wisconsin Constitution; and it did not violate the public purpose doctrine because it served a sufficient public purpose.

The constitutionality of the Milwaukee Parental Choice Program (Choice) was again before the Wisconsin Supreme Court in *Jackson v. Benson*, 218 Wis. 2d 835 (1998). 1995 Wisconsin Act 27 presented new questions of constitutionality. Among other changes, it removed the requirement that schools participating in the Choice program must be nonsectarian. Actions were filed

alleging that the amended program was unconstitutional. Before the circuit court could make a decision, the Wisconsin Supreme Court accepted original jurisdiction on a petition asking that the revised Choice be declared constitutional. The Wisconsin Supreme Court split 3-3 on the constitutionality issues and sent the case back to the circuit court. On the basis of state constitutional issues, the circuit court invalidated the amended program, and the court of appeals affirmed that decision.

The first constitutional issue before the supreme court on appeal was whether allowing sectarian schools to participate in Choice violated the First Amendment to the U.S. Constitution, which prohibits making any law regarding the establishment of a religion or prohibiting the exercise of religion. The court noted that the Wisconsin Supreme Court is bound by the decisions of the U.S. Supreme Court regarding the U.S. Constitution, and the U.S. Supreme Court has established a three-pronged test to determine if a statute complies with the Establishment Clause:

Under this test, a statute does not violate the Establishment Clause if (1) it has a secular legislative purpose; (2) its principal or primary effect neither advances nor inhibits religion; and (3) it does not create excessive entanglement between government and religion. (856)

The Wisconsin court held that the legislative purpose of the amended Choice program was to provide low-income parents with an opportunity to have their children taught outside of the Milwaukee Public Schools system, and this is an appropriate secular purpose.

The court stated the second prong is not violated merely because state money is given to a religious institution. Such funding may be constitutional if the program is wholly neutral in offering educational assistance directly to citizens without reference to religion. According to the court, the U.S. Supreme Court has found that programs:

... do not have the primary effect of advancing religion if those programs provide public aid to both sectarian and nonsectarian institutions (1) on the basis of neutral, secular criteria that neither favor nor disfavor religion; and (2) only as a result of numerous private choices of the individual parents of school-age children. (869)

The court found, using the second prong test, that neutral, secular criteria are used in Choice. To be initially eligible for the program, the children must reside in Milwaukee, attend public schools and meet certain income guidelines. Students are then selected from this group of applicants on a random basis. The program does not favor religion, according to the court, because parents have the option of sending their children to a neighborhood public school, a different public school in the district, a specialized public school, a private nonsectarian school or a private sectarian school.

Choice met the third prong test regarding state entanglement in religion, the court said, because the program does not give the state additional authority to monitor and control sectarian schools.

The supreme court then discussed a provision of the Wisconsin Constitution prohibiting the use of any state money for the benefit of "religious seminaries". The court concluded that this provision, like the Establishment Clause, concerns not whether some benefit goes to a religious institution, but whether the primary effect advances religion. Based on its conclusion regarding the Establishment Clause, the court concluded that the statute does not primarily benefit religious groups.

The court dismissed the argument that Choice compels citizens to support places of worship without their consent, in violation of Article I, Section 18, of the Wisconsin Constitution. That section provides that no person be compelled to attend, erect or support any place of worship. The court held that:

Since the amended MPCP [Choice law] neither compels students to attend sectarian private schools nor requires them to participate in religious activities, the program does not violate the compelled support clause of art. I, s. 18. (883)

The court was also asked to determine if Choice violated Article IV, Section 18, of the Wisconsin Constitution, which provides that no private or local bill shall embrace more than one subject. The Choice amendments were included in the biennial budget bill, which includes numerous subjects. The court said, when considering this provision, the first issue is whether the process in which the bill was enacted was constitutional. If the legislature did adequately consider the amendments to Choice, then the court will presume those amendments were passed in a constitu-

tional manner. Noting the introduction of the amendments by the governor, the discussions in public committee hearings, and the changes made by the legislature, the court concluded that those amendments were not smuggled through the legislature and, therefore, the process by which the amendments were enacted is presumed constitutional.

The court said the second question that must be answered regarding Section 18 is whether the Choice amendments constituted a private or local law. The court referred to five elements that are used to determine whether a bill is a private or local law. It noted it had found the original Choice program constitutional, based on those elements, and it said the amended Choice also met the test because both were experiments designed to address a perceived problem of inadequate educational opportunities for disadvantaged children in Milwaukee.

Another issue addressed by the court was whether the amended Choice violated the provision of the Wisconsin Constitution that district schools must be as uniform as practicable. The court concluded that the payment of public moneys to private schools, regardless of the amount, does not transform them into public schools, nor does it deprive any student of the opportunity to attend a public school with the uniform character of education required by the uniformity provision.

The Wisconsin Supreme Court also addressed the argument that the amended Choice violated the doctrine that public funds may only be used for a public purpose. It said that none of the parties disputed that education constitutes a valid public purpose or that private schools may be employed to further that purpose. Opponents argued that the amended Choice did not include proper control and accountability requirements to secure the public purpose. The court concluded that the statutory controls applicable to private schools, coupled with parental choice, suffice to ensure that the public purpose was met.

The final challenge raised was the allegation that the amended Choice resulted in racial discrimination, in violation of the equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 1, of the Wisconsin Constitution. The burden in proving such a violation, said the court, is significant:

To show racial discrimination in violation of this guarantee, a plaintiff must show that a statute was enacted with a purpose or intent to discriminate. (902)

The court noted that Choice is race-neutral on its face; students are chosen, without regard to race, to attend the school of their parent's choice. In addition, the participating schools are required to select program students on a random basis and to comply with antidiscrimination requirements. The court held that the allegations made by the plaintiff do not support a claim of violation of equal protection.

Justice William A. Bablitch, joined by Chief Justice Shirley S. Abrahamson, dissented, saying the amended Choice violates the prohibition against state expenditures for the benefit of religious institutions.

Limit on Governor's Partial Veto

Under the Wisconsin Constitution, Article V, Section 10 (1) (b), the governor is authorized to approve appropriation bills "in whole or in part". In *Risser v. Klauser*, 207 Wis. 2d 176 (1997), the Wisconsin Supreme Court was asked to determine if that partial veto authority, which includes the authority to strike digits in an appropriation and write in smaller amounts, extends to revenue bonding limits in a bill that includes appropriations.

This case involved a bill that dealt with transportation appropriations and included revenue bonding authority for transportation facilities and projects. The governor vetoed the amount related to the bonding authorization and wrote in a figure that was \$40 million lower. The governor argued that the write-in veto power is not limited to reduction of appropriation amounts but can be applied to reduce any monetary figure within an appropriation bill. The court, however, cited the governor's arguments in *Citizens Utility Board v. Klauser*, 194 Wis. 2d 484 (1995), in which the court limited writing in lower amounts to appropriation amounts. In that case, the governor expressly asked the court to limit the write-in veto power to appropriation amounts, and the court agreed:

The court responded unequivocally in the affirmative to this issue: "We now make explicit the fact that a governor may only reduce an appropriation by a number contained within the original appropriation allotment." *C.U.B.*, 194 Wis. 2d at 508-09. (189)

The court concluded that the *C.U.B.* decision, in which it had adopted the position argued by the governor, was clear. It held that the governor's position in the case now before it contravened his earlier position in the *C.U.B.* case. It declared that decision was on point and, therefore, following precedent, it concluded that the constitution prohibits the write-in veto of monetary figures that are not appropriation amounts.

The court next considered the argument that the bonding authority is an appropriation and subject to a write-in veto. After reviewing definitions of "appropriation", it concluded that an appropriation is a measure that authorizes or sets aside public funds for a particular purpose, saying:

We can find nothing in section 57 that authorizes an expenditure or the setting aside of public funds for a particular purpose. Section 57 deals with raising revenue and limiting the use to which the revenue may be put. . . .

Whether the three sentences of section 57 are looked at individually or collectively, increasing a bond authorization and limiting the purposes for which a certain amount of the moneys raised might be used do not constitute an expenditure or setting aside of public funds for a particular purpose. (193)

The court quoted the Legislative Reference Bureau drafting manual as requiring that appropriation wording must be contained in Chapter 20, Wisconsin Statutes, and must state from which fund the money is appropriated along with the type, duration and general purpose of the appropriation. This drafting directive makes it clear that a revenue-generating bonding provision is not an appropriation, the court said. The court concluded that, even in Wisconsin where governors have more extensive power to alter legislation, a "governor's power to craft legislation necessarily must have constitutional limits". To consider a provision authorizing the raising of revenue to be an appropriation, it said, would result in no clearly applicable distinction with which to differentiate an appropriation bill from any other bill. The court also found that creating an expansive and flexible definition of "appropriation" would create conflicts with other court decisions interpreting that term in other parts of the constitution. It noted that the governor's veto message clearly characterized the bond provision as a revenue raising provision, not an appropriation as argued. Then, it concluded that only monetary figures that express an appropriation amount in an appropriation bill are subject to the governor's write-in veto.

In a dissent, Justice N. Patrick Crooks, joined by Justices Donald W. Steinmetz and Jon P. Wilcox, said the purpose of the partial veto amendment was to give the governor strong authority to control spending. The decision of the majority, they said, misinterpreted the decision in *C.U.B.* and was contrary to the intent of the constitutional amendment. The dissent concluded that the governor's veto power extends to any monetary sum in an appropriation bill if the monetary sum is an appropriation or is inseparably connected to an appropriation.

CRIMINAL LAW

The Common Law Right to Resist Unlawful Arrest

The Wisconsin Constitution provides that the rights and rules contained in the common law as it existed in the Territory of Wisconsin in 1848 continue to be part of the law of this state, unless they are inconsistent with the constitution itself or are altered or suspended by the legislature. In *State v. Hobson*, 218 Wis. 2d 350 (1998), the supreme court had to decide whether the common law right to forcibly resist an unlawful arrest is part of the common law of Wisconsin. Although the court concluded that there is such a common law right in this state, it decided to annul the common law right for public policy reasons.

The case arose when a police officer sought to question Shonna Hobson's five-year-old son about a bicycle theft. Another child had told the officer that he had seen the Hobson child riding a stolen bicycle. The officer went to Hobson's home and told her that he wanted to talk to her son about the bicycle theft. Hobson refused to allow the officer to speak with her son. The officer then said he would have to take her son to the police station and that she could go along, but she responded by saying that the officer was not taking her son anywhere.

Because of Hobson's refusal to cooperate, the officer called for additional officers. By the time they arrived, Hobson was standing on the front steps of the house with her son, yelling and swear-

ing in a loud voice. When the officers stated again that they had to take her son to the police station, she again said, "You aren't taking my son anywhere." The officers then told her she was under arrest for obstructing a police officer, but when the officers tried to handcuff her she resisted and struck and kicked one of the officers. She was eventually subdued and after her arrest charged with disorderly conduct, obstructing an officer, resisting arrest, and battery to a police officer.

Hobson asked the trial court to dismiss the charges of disorderly conduct, obstructing an officer and resisting arrest, based on a lack of probable cause for the officers to have arrested her in the first place. She also asked the trial court to dismiss the battery charge, based on the common law right to forcibly resist an unlawful arrest. The trial court granted her requests, and the state appealed the dismissal of the battery charge only, arguing that Wisconsin had never adopted the common law right to forcibly resist an unlawful arrest.

To decide the question presented by Hobson's argument, the supreme court turned first to the history of the right to resist unlawful arrest, a right which had emerged in England in the 17th century as part of a citizen's right to resist action by an official that exceeded the official's lawful authority. The right, as it developed, allowed only the use of force necessary to repel the attempted arrest. In some cases, the right was available not only to the person unlawfully arrested but also to others who went to the aid of that person. American courts adopted the English rule, and, as recently as 1948, it was recognized by the U.S. Supreme Court as part of American common law.

Turning next to whether Wisconsin had recognized the common law right to use physical force to resist an unlawful arrest, the court noted that under the state constitution the common law as it existed at the time of the adoption of the constitution is preserved as the law of this state unless modified or annulled. Thus, the court concluded that the right was preserved in Wisconsin, and that the next question was whether the right has been modified or annulled by the legislature or the courts. After reviewing both previous and current statutes relating to self-defense and previous Wisconsin court decisions concerning the right to resist unlawful arrest, the court concluded that nothing in those sources demonstrated that the right had been modified or annulled. It held that the right was, therefore, still a part of state law at the time of Hobson's arrest and available for her to use in defense of the criminal charges against her.

The court then turned to the question of whether public policy is best served by continuing to recognize the right to use physical force to resist an unlawful arrest or whether it should be annulled. Because the common law is judge-made law that must be flexible and adapt to changing conditions in order to effect recognized social policy, the court noted that they must undo or modify a common-law rule if the rule thwarts social policy rather than promotes it.

The court reviewed the actions of other states and found that most of them have annulled the common law right to use physical force to resist an unlawful arrest. They have done so because of the change in legal and social circumstances since the inception of the right. According to the court, in the early development of the common law, physical resistance was an effective response to the problem of unlawful arrest because there were few, if any, means of effective redress for unlawful arrest. At the time of the right's inception, for instance, many arrests were made by private citizens. Bail for felonies was usually unattainable and years might pass before the royal judges arrived for a court session to hear the cases of persons in jail. Further, conditions in the jails were such that a prisoner had a high probability of dying of disease before he or she could get a trial. In short, the court noted, the right developed before modern police departments with trained and armed police officers, before laws providing for bail and prompt arraignment before a judge, before the establishment of the right to counsel, before the right to exclude the fruits of an unlawful arrest and the right to sue police for using excessive force.

Because of these changes, the court concluded that the old common-law rule has little utility to recommend it under conditions of life today. In the eyes of the court, "violent self-help" in the form of resisting unlawful arrest is both antisocial and unacceptably dangerous because persons resisting arrest endanger themselves, the arresting officers and innocent bystanders. "Although we are sympathetic to the temporary deprivation of liberty the individual may suffer," the court said, "the law permits only a civilized form of recourse. . . . Justice can and must be had in the courts, not in the streets."

Though the court decided to annul the common law right to use physical force to resist an unlawful arrest, it also decided to apply the annulment of the right only to cases arising after its

decision because the constitutional prohibition against *ex post facto* laws prevents the state from depriving a defendant of a defense that was available at the time of his or her criminal acts. Because the right was available at the time of Hobson's actions, she was entitled to invoke the right as a defense to the criminal charges against her, and the court affirmed the order dismissing the charges against her.

Chief Justice Abrahamson concurred in the decision to affirm the dismissal of the charges against Hobson, but she argued that neither the facts of the case nor public policy provided adequate cause to overturn the long-standing common law right. She argued that the facts of Hobson's arrest present the classic situation for the right to resist unlawful arrest. She also argued that the majority ignored the rationale behind the right – namely, that it was designed to protect a person provoked to anger by a wrongful arrest from being criminally charged with obstructing an officer. To her, the real question was not about “violent self-help” but about whether a justifiably angry person ought to be prosecuted for resisting an unlawful arrest. Finally, she argued that the various modern safeguards in the criminal justice system that the majority pointed to as providing redress for unlawful arrest do not always work so smoothly and so may provide no redress at all. She argued the majority should only modify the common-law right to permit a person to resist unlawful arrest when the health or safety of the person being arrested, or of a family member, is threatened in a manner not susceptible of subsequent cure in a courtroom. Justices Bablitch and Ann Walsh Bradley wrote concurring opinions, arguing that the privilege should not be completely annulled but should be modified in a way similar to that suggested by the chief justice.

Authority of a Sheriff to Refuse to Accept State Prisoners in the County Jail

In *Department of Corrections v. Kliemet*, 211 Wis. 2d 254 (1997), the Wisconsin Supreme Court had to determine the meaning of a statute governing the use of county jails. County jails are generally used only to confine persons awaiting trial and persons sentenced to imprisonment for one year or less. Persons sentenced to imprisonment of more than one year and persons on probation or parole are legally in the custody of the state Department of Corrections (DOC). However, under the statute at issue in the *Kliemet* case, county jails may be used for the “temporary detention” of persons in the custody of DOC. The question the court faced was whether the statute allowed DOC to place its detainees in a county jail even though the county sheriff, who is in charge of the jail, objects to the placement.

The *Kliemet* case had a long history before it reached the supreme court. In 1975, the Milwaukee County sheriff announced that persons taken into custody for violating the conditions of probation or parole would no longer be held in the jail for more than five days. The sheriff said that he needed to limit the stay of these probationers and parolees because the jail was dangerously overcrowded, and he claimed that he had the power to take the action because of his constitutional and statutory role as custodian of the county jail. A circuit court issued a temporary injunction requiring the sheriff to continue holding persons alleged to have violated probation or parole. This injunction was later removed and then reinstated by the court of appeals, which instructed the circuit court to construe the meaning of the phrase “temporary detention”. After several years of inactivity, the circuit court again addressed the case in 1987, concluding that the detention of alleged probation or parole violators was “temporary” and that the sheriff was therefore required under the statute to keep them in the jail. On that basis, the court issued a permanent injunction that prohibited the sheriff from refusing to keep DOC detainees for longer than five days.

In 1995 the sheriff challenged it and, after further legal wrangling as to whether there had been a change in law or circumstances that would justify lifting the injunction, the circuit court removed it after deciding that DOC had no authority to compel the sheriff to take probation and parole detainees when doing so contributes to dangerous overcrowding of the jail. DOC then appealed the circuit court's decision.

In deciding the case, the supreme court first addressed whether there had been a change in circumstances that justified reconsideration of the 1987 permanent injunction. The court concluded that the overcrowding situation at the Milwaukee County jail constituted a changed circumstance warranting renewed consideration of the injunction. The court noted that the jail was designed to hold about 800 inmates but could with double bunking hold 1,032 inmates. By April 1996, however, the inmate population had reached 1,448, almost 200% of its designed capacity. This compared to the overcrowding that existed in 1975, when the jail had a capacity of 380 persons

and was either at capacity or occasionally over capacity. Thus, the court concluded, the increase in the degree of overcrowding at the jail constituted a substantial change in circumstances that justified reexamining the 1987 permanent injunction.

The court then turned to the statute authorizing the use of county jails for the temporary detention of persons in the custody of DOC. When interpreting a statute, a court looks first to the language of the statute. If the language is unambiguous, the court's work is done. If the language is ambiguous, it must ascertain the intent of the statute by examining such things as its history, context and purpose. Accordingly in the *Kliesmet* case, the court began by looking at the statute in question, which says that "[t]he county jail may be used . . . for the temporary detention of persons in the custody of the department." The court noted that the use of the word "may" generally means that discretion is being given to those required to implement the statute. However, the court went on to note that "the statute is utterly silent as to the identity of the party or parties empowered with the authority to keep DOC detainees at the Jail." Because it appears that either DOC or the sheriff or both could exercise the discretion granted in the statute, the court concluded that the statute was ambiguous.

Because the statute at issue was ambiguous, the court turned to other statutes and to the common law to determine the limits, if any, on the power of DOC to keep its detainees in county jail. The court noted that the sheriff has a statutory duty to take the charge and custody of the jail and the persons in the jail, and that, as custodian of the jail, the sheriff is under a duty to safely keep and protect the prisoners. The sheriff's statutory duty to maintain a safe jail is consistent with early English and American common law. These duties in turn extend to protecting prisoners from others in custody. The court noted that jail overcrowding can imperil the sheriff's discharge of his duties in numerous ways, such as threatening the ability to evacuate inmates in the event of an emergency or heightening tension and hostility in what is already an anxious environment, which may, in turn, increase the likelihood that a jail deputy might be attacked and overpowered or that an inmate might be injured in a fight.

Based on the duty and authority of the sheriff to act in the interest of jail safety, the court concluded that even though the legislature meant to give DOC discretion to keep alleged probation or parole violators in jails, the legislature also intended to limit the DOC authority in those situations in which a sheriff determines that taking additional DOC detainees would result in a degree of overcrowding that would create unacceptable risks to inmates, deputies and jail staff. Because of the difficulties that DOC argued it would encounter in administering its probation and parole functions as a result of the court's decision and because of the need to give the legislature sufficient time to address those difficulties, the court delayed the effective date of the decision by one year until June 25, 1998.

Police Searches of Students on School Grounds

In *State v. Angelia D. B.*, 211 Wis. 2d 140 (1997), the supreme court was faced with the question of whether the search of a high school student by a "school liaison police officer" violated the state and federal constitutional rights to freedom from unreasonable searches and seizures. The juvenile court had held that the search was a violation of the student's constitutional rights, but the supreme court disagreed.

The case began when a student at the high school informed an assistant principal that he had seen a knife in another student's backpack and that he believed the other student might also have access to a gun. The assistant principal called both the police department and the school liaison police officer who was on duty at the high school. During an interview, the student informant told the liaison officer that Angelia D. B. was the student he had seen with the knife. The officer removed Angelia from her classroom and told her that they had information that she may be carrying a knife or gun. The officer then did a pat down search of her jacket and pants and told Angelia to search her backpack while he watched. Her locker was also searched, as authorized by school policy. The officer found no weapons. After Angelia denied that she had any weapons, the officer searched Angelia again, this time lifting up her shirt just enough to expose the top of her pants, where he saw a brown knife tucked into the waistband at her right hip. Angelia was arrested and charged in juvenile court with carrying a concealed weapon.

Angelia asked the juvenile court to throw out the evidence because she had been searched without probable cause to believe she had violated a law or possessed evidence of a crime. The juve-

nile court granted Angelia's request, finding that the search was unreasonable under all the circumstances of the case.

The supreme court disagreed and held that the search satisfied the "reasonable grounds" standard that the U.S. Supreme Court established for searches conducted by public school officials in the case of *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). Generally, for a search to be reasonable under the Fourth Amendment, the official who authorizes or conducts the search must have probable cause to believe that the search will reveal evidence of a crime. However, the courts have not hesitated to allow searches based on a standard of reasonableness that requires less than probable cause where a careful balancing of governmental and private interests suggests that the public interest is best served by such a lower standard. Thus, courts have held that in situations involving the search of a minor student at a school, the interest of preserving the proper educational environment in the schools permits school officials to exercise a degree of supervision and control that cannot be exercised over free adults. Although school children do not lose all expectation of privacy when they are on school grounds, that expectation must be balanced against the interests of school officials in maintaining a safe and orderly learning environment. Accordingly, a public school official may search a student when there are reasonable grounds to believe the student may be violating a law or a school rule.

The central issue in Angelia's case was whether the fact that the search was conducted by a school liaison police officer would require probable cause or only some lower "reasonable grounds" standard. The court noted that there are fundamental differences between the roles of police officers and school officials that make the lower "reasonable grounds" standard inapplicable to searches conducted by police officers acting independently of school officials. But, the court said, if a police officer searches a public school student in an investigation that is begun by school officials, who are responsible for the welfare and education of all the students within the school, the police officer is effectively brought into the school-student relationship. Applying the "reasonable grounds" standard to police searches done at the request of school officials is appropriate in light of the fact that in Wisconsin school attendance is compulsory. School officials not only educate students who are required to attend school but must also protect the safety of those students and their teachers. As the incidence of weapons and violence at schools increases, the court said, schools have a more difficult job of meeting their responsibility to educate and protect students. If the courts fail to extend the "reasonable grounds" standard to searches by police officers under these circumstances, it might encourage teachers and officials, who usually are untrained in proper pat down search procedures and in the safe handling of dangerous weapons, to conduct a search of a student suspected of carrying a dangerous weapon without the assistance of a school liaison police officer or other law enforcement officer.

The supreme court then evaluated the search of Angelia using the standard that required not probable cause but only "reasonable grounds" to suspect that she possessed a knife or other weapon. Based on the facts of the case, the court concluded that the search was reasonable and did not violate Angelia's constitutional right to be free from unreasonable searches.

Chief Justice Abrahamson and Justice Bradley agreed that the search of Angelia did not violate the constitution, but they believed that under the facts of the case the school liaison police officer had probable cause to search her for a weapon. Because there was a well-accepted constitutional ground supporting the search, they would not have decided the issue of whether a police officer acting at the behest of school officials needs probable cause or some lesser basis for searching a student.

CIVIL LAW

Is a Viable Fetus a "Child" Under the Children's Code?

State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112 (1997), required the Wisconsin Supreme Court to review the meaning of the term "child" in the statutory references to "a child in need of protection and services" (CHIPS) and determine whether a viable fetus is included in the definition.

While providing prenatal care to Angela M.W., her obstetrician took blood tests which indicated that she was using cocaine and other drugs. Angela declined to seek treatment for her drug

use and failed to keep scheduled appointments with her obstetrician. The obstetrician reported his concerns to the Waukesha County Department of Health and Human Services, which asked the juvenile court to take the fetus into custody to prevent the mother's use of drugs harmful to the unborn child. The juvenile court ordered that the mother be taken into a facility that would provide inpatient treatment and protection.

The county filed a CHIPS petition with the juvenile court, and, while the petition was pending, Angela commenced an original action in the court of appeals, seeking a writ of habeas corpus or a supervisory writ staying the proceedings in the juvenile court. She maintained the CHIPS statute did not confer jurisdiction over her or her fetus. The court of appeals declined to stay the juvenile court proceedings, and Angela appealed that decision to the supreme court.

The supreme court recognized that the case was moot (that is, the judicial settlement would no longer have a practical effect on the existing controversy) because the child had been born in the interim and the petitioner was no longer being detained. Generally, the court dismisses moot cases, but it chose to retain and decide this case because, it said, this case presented an issue "of great public importance" that was likely to be repeated and for which appellate review is ineffective because of the critical time frame.

The statute that authorizes CHIPS proceedings in juvenile court defines "child" as "a person under 18 years of age". In trying to determine whether a viable fetus is a "child" under the definition, the court found no definitive answer in the legislative history or in other jurisdictions where the courts had arrived at different interpretations of the same language. The supreme court did not, however, accept the argument that the legislature had acquiesced to the previous appellate court decision that "child" includes a viable fetus based on the fact the legislators had not amended the statute immediately following that decision. It stated that a final decision by the courts is a prerequisite of legislative acquiescence, and the legislature knew this case was being appealed to the supreme court.

The court next looked at the use of "child" in the children's code and found that "certain relevant sections of the Code would be rendered absurd if 'child' is understood to include a viable fetus." The court noted, for example, that many critical provisions of the code anticipate that the "child" can be removed from the presence of the parent, an impossibility if the "child" is a fetus. Based on this review of the use of "child" in statutory context, the court held that the legislature intended that term to mean a human being born alive.

The court also held that language in tort and property law that provides legal standing to a fetus does not give any guidance because, if the legislature had wanted to protect a fetus within the children's code, it could easily have done so.

The court stated that the issue raised in this case presents a major policy issue that the legislature, not the court, should decide:

Finally, the confinement of a pregnant woman for the benefit of her fetus is a decision bristling with important social policy issues. We determine that the legislature is in a better position than the courts to gather, weigh, and reconcile the competing policy proposals addressed to this sensitive area of the law. (134)

The court concluded that the definition of "child" in the children's code does not include a fetus and reversed the court of appeals decision.

In a dissent, Justice Crooks, joined by Justices Steinmetz and Wilcox, argued that the plain meaning of "person" and "child" includes a viable fetus and that requiring every provision of the children's code to fit with a definition of "child" that includes a viable fetus is erroneous. The dissent concluded that the court failed to follow its own cardinal rule of interpreting statutes, which is "to favor a construction which will fulfill the purpose of the statute over a construction which defeats the manifest object of the act."

Withdrawal of Artificial Nutrition

In *Spahn v. Eisenberg*, 210 Wis. 2d 557 (1997), the Wisconsin Supreme Court was asked to determine whether the guardian of an incompetent person has the authority to direct withdrawal of life-sustaining medical treatment if that person is not in a vegetative state and has not executed an advance directive.

Edna M.F., a 71-year-old woman, suffered from dementia and was bedridden in a nursing home in Wood County. She was able to breathe without a respirator, responded to stimulation from voice and movement and appeared alert at times with her eyes open. Betty Spahn, who was Edna's sister and court-appointed guardian, asked that the artificial nutrition and hydration being administered to Edna be removed, stating that Edna would not want to live under these conditions. The ethics committee of the facility where Edna lived agreed to withhold artificial nutrition if no family member objected, but one niece did object. Spahn then petitioned the circuit court to issue an order allowing the withholding of nutrition. The court denied the petition, and the Wisconsin Supreme Court took the case on a petition to bypass the court of appeals.

The court reviewed the cases that have discussed the issue of the right to terminate life-sustaining medical treatment, starting with *In re Quinlan*, 355 A.2d 647 (N.J. 1976), which brought this issue to national attention. In those earlier cases, the guardians had asked for permission to discontinue life support to the ward who was in a persistent vegetative state and had no cognitive function. In *Quinlan*, the New Jersey court granted the request for ending life support, but in *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), the U.S. Supreme Court affirmed a decision requiring a guardian to meet a "clear and convincing" standard before terminating life support. In the case *In re Guardianship of L.W.*, 167 Wis. 2d 53 (1992), the Wisconsin Supreme Court held that an incompetent individual in a persistent vegetative state has the constitutionally protected right to refuse unwanted medical care and his or her guardian may exercise that right on the person's behalf if withholding care is in the "best interests" of the ward.

In the case of Edna M.F., the court said the guardian was asking it to extend the holding of *In re Guardianship of L.W.* "to include incompetent wards who are not in a persistent vegetative state" but "who are afflicted with incurable or irreversible conditions of health". The court asserted that if a person is not in a persistent vegetative state, it is not in the best interest of the ward to withdraw life-sustaining treatment, unless the ward has executed an advance directive or made a clear statement of his or her intent. The court made this decision, in part, because, if a person is not in a persistent vegetative state, medical experts agree the person could feel the pain and discomfort of starving to death. To subject the person to that pain and discomfort is never in his or her best interest, according to the court.

In addition, the court recognized that a decision to agree to the withdrawal is permanent and irreversible and, if wrong, there is no remedy. In this case, without a clear showing of the ward's desires by a preponderance of the evidence, the court decided that making an irreversible decision to end Edna's life was inappropriate.

The court recognized that, if Edna had clearly indicated her desire to discontinue life support under circumstances such as currently existed, it would be in her best interests to honor her wishes. It then reviewed the evidence of Edna's desires regarding the termination of her life support treatment and found little to indicate her intentions. The court refused to rely on the statement made by Edna during her mother-in-law's fight with cancer that she "would not want to be kept alive", because that statement was made 30 years earlier. In addition, the court said, her family and friends never had any conversations with her about her specific feelings on the withdrawal of nutrition or hydration.

The court concluded, "[T]he evidence contained in the record is simply not sufficient to rebut the presumption that Edna would choose life." It upheld the circuit court and denied the petition to withhold nutrition.

In her concurring opinion, Chief Justice Abrahamson explained Edna's condition in more detail, saying the majority failed to describe her true condition. Abrahamson also discussed the *In re Guardianship of L.W.* case, saying that case applied to persons in a persistent vegetative state, which was not the fact in this case.

Justice Bablitch, in his concurring opinion, argued that because the determination of "persistent vegetative state" is a decision affecting the continued life of a person, safeguards should be established to make sure that such a critical decision is as error-free as possible.

Statutes of Repose

A statute of repose, sometimes called a "statute of limitations", is a law that limits a person's ability to bring a lawsuit, based on the amount of time elapsed since the specific event that resulted in an injury. In *Estate of Makos v. Masons Health Care Fund*, 211 Wis. 2d 41 (1997), the Wiscon-

sin Supreme Court reviewed the medical malpractice statute of repose in terms of a misdiagnosed medical condition that resulted in death. Cheryl Makos had a growth on her leg that was diagnosed in February 1985 as nonmalignant. In May 1994, Makos was diagnosed with malignant melanoma when the earlier growth was reexamined and found to be malignant. Makos commenced an action against the doctor responsible for the earlier misdiagnosis within one year of her discovering the medical malpractice but more than 10 years after it had occurred. This time lapse well exceeded the provision of the controlling statute of repose that required a person bring suit within five years after the date of the medical malpractice. The circuit court dismissed the action based on the time elapsed, but the resulting appeal was certified to the Wisconsin Supreme Court.

Makos' estate argued that the statute of repose was unconstitutional because it violated her due process rights, as guaranteed by the Fourteenth Amendment to the U.S. Constitution. The court agreed that:

... this court has consistently held that procedural due process requires that an individual who has life, liberty, or property at stake must be afforded the "opportunity to be heard at a meaningful time and in a meaningful manner." This opportunity to be heard, this day in court, is essential to the principles of fundamental fairness that are behind the Due Process Clause. (46-47)

The court went on to say that the issue in this case was whether Makos was provided with a full and fair opportunity to be heard, as required by the Due Process Clause. Makos was misdiagnosed in 1985, and the statute of repose would have required her to commence an action in 1990, four years before she could have proven the injury. The court held that the statute violated Makos' procedural due process rights because:

There is no basic fairness to eliminate her claim for injury before she knew or could have known that she was injured. The operation of the statute of repose effectively denied Cheryl Makos her opportunity to be heard because the doors of the courtroom were closed before she was even injured. (49)

The court also held that the statute of repose violated Makos' rights under Article I, Section 9, Wisconsin Constitution, because she was deprived of a remedy for a wrong that is clearly recognized by the laws of this state.

A dissenting opinion by Justice Bradley, in which she was joined by Chief Justice Abrahamson, argued that the plaintiff had not demonstrated beyond a reasonable doubt that her constitutional rights were violated.

Punitive Damages

The question before the Wisconsin Supreme Court in *Jacque v. Steenberg Homes, Inc.*, 209 Wis. 2d 605 (1997), was whether punitive damages may be awarded in a case where only nominal (minimum) compensatory damages are awarded.

Steenberg sold a mobile home to a neighbor of the Jacque family but realized that it would be very difficult to deliver the mobile home unless the delivery was made across Jacque's property. Steenberg asked for permission to cross the Jacque property on several occasions, but each time the Jacques refused. On the morning of the planned delivery, Jacque observed the mobile home parked on the town road adjacent to his property. After learning that the movers had been instructed to move the mobile home over his property, he had neighbors and the town chairman come to his home. The assistant manager of Steenberg was told his employees could not cross the Jacque property. He attempted to buy access but was denied. After leaving the meeting, he told the movers to cross the Jacque property anyway, which they did. The sheriff was later called and issued a citation to the assistant manager.

Jacque commenced an action for an intentional tort against Steenberg. The jury awarded Jacque a nominal \$1 in compensatory damages and \$100,000 in punitive damages, but the circuit court set aside the \$100,000 punitive damage award. The court of appeals agreed with the circuit judge, concluding the punitive damages may not be awarded when compensatory damages for the injury are only nominal:

The rationale for the compensatory damage requirement is that if the individual cannot show actual harm, he or she has but a nominal interest, hence, society has little interest

in having the unlawful, but otherwise harmless, conduct deterred, therefore punitive damages are inappropriate. (615)

Noting that this case involved an intentional trespass to land, the supreme court found it had never addressed this situation, but it did cite a decision in English law that resulted in a large damage award against a magistrate who hunted on a person's property over the continued objections of the landowner. The court said this illustrates that "in certain situations of trespass, the actual harm is not in the damage done to the land, which may be minimal, but in the loss of the individual's right to exclude others from his or her property . . ." (617)

The court held that an intentional trespass to land violates both an individual's and society's interest in preventing such trespass, and the rule prohibiting punitive damages when only nominal damages are awarded does not apply. The court found that without punitive damages as a method of punishment, the right to exclusive enjoyment of one's property would be hollow. The court noted the \$30 forfeiture in this case was not an appropriate punishment to prevent Steenberg from concluding that delivering mobile homes by intentional trespass and then paying the resulting forfeiture is not more profitable than obeying the law.

The supreme court determined, using the U.S. Supreme Court test of whether a punitive damage award violates the Due Process Clause of the U.S. Constitution, that the award of \$100,000 in punitive damages was not excessive. According to the court, that test requires a review of the reprehensibility of the defendant's conduct, the disparity between the harm suffered and the punitive damage award, and a comparison between the punitive damage award and the possible civil or criminal penalty that could be imposed for the conduct.

Scope of Worker's Compensation Act

In *Weiss v. City of Milwaukee*, 208 Wis. 2d 95 (1997), the Wisconsin Supreme Court was asked to decide the scope of the Worker's Compensation Act (WCA) in a civil action to recover damages for the negligence infliction of emotional distress.

Yvette Weiss obtained a temporary restraining order against her abusive husband and then commenced an action for divorce. When she obtained employment with the City of Milwaukee, she moved into the city as a condition of that employment, and the city's payroll department assured her that her new address and telephone number would be kept confidential. The husband, falsely representing himself as a bank employee, requested verification of Weiss' address and telephone number for credit purposes and was given that information. He began to harass her again, and she sued the city for negligent infliction of emotional distress caused by the city's disclosure of her address and telephone number.

The city asserted Weiss was barred from bringing this action for negligence, saying that Weiss' only remedy was under the WCA. The circuit court and court of appeals found for the city.

The Wisconsin Supreme Court affirmed the lower court decisions, saying that if the facts in this case created an obligation on behalf of the employer under WCA to pay for Weiss' injury, then Weiss was barred from bringing a tort action, because the remedies under WCA are the only remedies available for a worker's injuries. The court held that an employer's obligation to pay worker's compensation accrues when all of the following conditions exist:

- 1) the employee sustains an injury; 2) at the time of the injury, both the employer and employee are subject to the provisions of the WCA; 3) at the time of the injury, the employee is performing service growing out of and incidental to his or her employment; 4) the injury is not intentionally self-inflicted; and 5) the accident or disease causing injury arises out of the employment. (102)

The court said the only issues in this case related to conditions 3 and 5. Weiss argued that an employee cannot satisfy condition 3 when receiving a personal telephone call at work. The court disagreed, saying that the statutory phrase "performing service growing out of and incidental to his or her employment" refers to the time, place and circumstances under which the injury occurred. It concluded answering a personal telephone call while at work was a "circumstance" of employment, and, therefore, condition 3 was met. It said the WCA provides that:

[A]n employee acts within the course of employment when he or she is otherwise within the space and time limits of employment, and briefly turns away from his or her work to

tend to matters “necessary or convenient to his [or her] own personal health or comfort.” (105).

The court then discussed whether Weiss’ injury was caused by an accident that arose out of her employment, meeting condition 5. The court held that “arising out of employment” is not the same as “caused by the employer”. According to the court, because Weiss was required to provide her residential information to the city as a condition of employment and that information was accidentally released to her abusive spouse, that employment condition contributed to the attack. The court affirmed the lower courts, holding that Weiss’ complaint states a claim covered under the WCA, so her action in tort is barred because she is required to ask for the exclusive remedies under that law.

Action for Wrongful Discharge

Jane Hausman, a licensed nurse, and Karen Wright, a licensed social worker, were employees of the St. Croix Care Center, Inc. (St. Croix), a private nursing home facility. As members of the 5-person interdisciplinary care team at the home, they were charged with ensuring that St. Croix provided appropriate and sufficient care to its residents. Hausman and Wright became concerned that certain residents were not receiving appropriate care and raised those concerns with the director of nursing. When no action was taken, they brought their concerns to the board of directors, but the board did not respond. They next contacted the regional officer for the state’s Bureau of Quality Compliance, who was required by statute to investigate and resolve complaints made by or on behalf of nursing care providers. They also contacted relatives of some of the residents. In response to the state regional officer’s request, the bureau investigated St. Croix’s facilities but did not issue any citations. At about the same time as that investigation, St. Croix terminated Hausman for unprofessional conduct and breach of confidence. Three months later, Wright was also terminated.

Hausman and Wright commenced an action in circuit court, alleging the wrongful termination of their employment in violation of Section 50.07, Wisconsin Statutes. That statute, sometimes referred to in the media as a “whistle-blower law”, prohibits intentionally retaliating against an employee for contacting or providing information to a state official in any action related to licensure of residential care facilities. The statute provides a penalty of up to six months imprisonment or a fine of not more than \$1,000 or both. The circuit court and court of appeals dismissed the action, saying that Section 50.07 did not create a private right of action; it is a penal statute, which means action must be initiated by a public prosecutor. The Wisconsin Supreme Court, in *Hausman v. St. Croix Care Center*, 214 Wis.2d 654 (1997), was asked to decide if Hausman and Wright could pursue their suit for wrongful discharge.

The court noted that, under existing law, an employer generally may discharge an employee at will for good cause, for no cause, or even for a morally wrong cause without being guilty of a legal wrong. However, the court said, there are instances where an employee has a cause of action for wrongful discharge when the discharge is contrary to a fundamental and well-defined public policy. Thus far, that exception has been limited to cases where the employee is terminated for refusing an employer’s command or request to violate public policy, as established by existing law.

All of the parties agreed that this case involves a fundamental and well-defined public policy of protecting nursing home residents from abuse and neglect. According to the court, this policy is demonstrated in the retaliation prohibition in Section 50.07, as well as Section 46.90 (4), (b), which prohibits an employer from discharging an employee for reporting abuse or neglect to a county official, and Section 940.295 (3), which imposes criminal penalties on workers who knowingly permit abuse or neglect to occur.

The court concluded, however, that the termination involved in this case was not the result of the employee’s refusal to violate a public policy at the employer’s request. The court refused to create a broad whistle-blower exception to the “at-will” employment doctrine because to do so would open every termination decision by an employer to court scrutiny.

Instead, the court reviewed the particular facts in this case and found that the plaintiffs’ attempt to comply with public policy was “in response to a more significant legal command, one imposed by the legislature to further promote the strong public policy of protecting nursing home residents.” Had the plaintiffs failed to report their concerns, the court said, they could be subjected

to criminal prosecution. It held that allowing persons who have been terminated for complying with an affirmative legal duty to sue will not excessively broaden the exception to the at-will employment doctrine and will not open every termination to court scrutiny. The court argued these cases are easily identified and frivolous actions could be screened out.

The court concluded that Hausman and Wright had an affirmative duty to report abuse of the nursing home residents and the employer's termination of those employees for fulfilling that duty exposes the employer to a wrongful termination action. It reversed the lower courts decisions and allowed Hausman and Wright to sue for wrongful discharge.
