Judicial Branch

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

Capitol construction crew, 1910.

State Historical Society of Wisconsin, WHi (X3) 52939

WISCONSIN SUPREME COURT

Justice	First Assumed Office	Began First Elected Term	Current Term Expires July 31
Shirley S. Abrahamson, Chief Justice	1976*	August 1979	2009
William A. Bablitch	1983	August 1983	2003
Jon P. Wilcox	1992*	August 1997	2007
Ann Walsh Bradley	1995	August 1995	2005
N. Patrick Crooks	1996	August 1996	2006
David T. Prosser, Jr.	1998*	August 2001	2011
Diane S. Sykes	1999*	August 2000	2010

*Initially appointed by the governor.

Sources: *1999-2000 Wisconsin Statutes;* State Elections Board, departmental data, April 2001; Director of State Courts, departmental data, January 2001.

The Wisconsin Supreme Court met in temporary quarters during the renovation of its permanent chamber at the State Capitol. From left to right are Justice David T. Prosser, Jr., Justice Ann Walsh Bradley, Justice William A. Bablitch, Chief Justice Shirley S. Abrahamson, Justice Jon P. Wilcox, Justice N. Patrick Crooks, and Justice Diane S. Sykes. *(Wisconsin Supreme Court)*

JUDICIAL BRANCH

A PROFILE OF THE JUDICIAL BRANCH

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

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

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

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

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

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

Circuit Courts. Following a 1977-78 reorganization of the Wisconsin court system, the circuit court became the "single level" trial court for the state. Circuit court boundaries were revised so that, except for 3 combined-county circuits (Buffalo-Pepin, 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, 2001, Wisconsin had a combined total of 241 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. Individually or jointly, cities, villages, and towns may create municipal courts with jurisdiction over municipal ordinance violations that have monetary penalties. Over

200 municipalities 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 director of the Office of Lawyer Regulation, and the Judicial Education Committee. Other agencies that assist the judicial branch include the Judicial Commission, Judicial Council, and the State Bar of Wisconsin.

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

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

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

In a typical civil case, the plaintiff brings an action by filing a summons and a complaint with the circuit court. The defendant is served with copies of these documents, and the summons directs the defendant to respond to the plaintiff's attorney. Various pretrial proceedings, such as pleadings, motions, pretrial conferences, and discovery, may be required. If no settlement is reached, the matter goes to trial. The U.S. and Wisconsin Constitutions guarantee trial by jury, 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 that are streamlined and informal. These actions typically involve the collection of small personal or commercial debts and are limited to questions of $5,000 or less. Small claims cases are decided by the circuit court judge, unless a jury trial is requested. Attorneys commonly are not used.

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

Because a crime is an offense against the state, the state, rather than the crime victim, brings action against the defendant. A typical criminal action begins when the district attorney, an elected 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 concerning 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 then must 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 acquitted (cleared of the charge). Once acquitted, a person cannot be tried again in criminal court for the same charge, based on provisions in both the federal and state constitutions that prevent double jeopardy. Aggrieved parties may, however, bring a civil action against the individual for damages, based on the incident.

History of the Court System. The basic powers and framework of the court system 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.

Since 1993, over 6,000 citizens across the state have been able to watch the Wisconsin Supreme Court conduct oral arguments through the "Justice on Wheels" program. By visiting major cities to conduct its proceedings, it can include larger numbers of the public, especially school students. Here the court meets the press on a trip to Janesville. *(Amanda Todd, Director of State Courts Office)*

SUPREME COURT

Chief Justice: **SHIRLEY S. ABRAHAMSON**
Justices: WILLIAM A. BABLITCH
JON P. WILCOX
ANN WALSH BRADLEY
N. PATRICK CROOKS
DAVID T. PROSSER, JR.
DIANE S. SYKES

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

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

Telephone: 266-1298.

Fax: 261-8299.

Internet Address: http://www.courts.state.wi.us/supreme

Clerk of Supreme Court: CORNELIA G. CLARK, 266-1880, Fax: 267-0640.

Court Commissioners: NANCY KOPP, 266-7442; GREGORY POKRASS, 266-7442; JULIE RICH, 266-7442; JOSEPH M. WILSON, 266-7442.

Number of Positions: 38.50.

Total Budget 1999-2001: $8,788,400.

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 "appellate jurisdiction" if 3 or more justices grant a petition to review a decision of a lower court. It exercises "original jurisdiction" as the first court to hear a case if 4 or more justices approve a petition requesting it to do so. Although the majority of cases advance from the circuit court to the court of appeals before reaching the supreme court, the high court may decide to bypass the appellate court. It can do so on its own motion; when the parties to a case petition for bypass; or when the appellate court certifies that a case may proceed directly from circuit court.

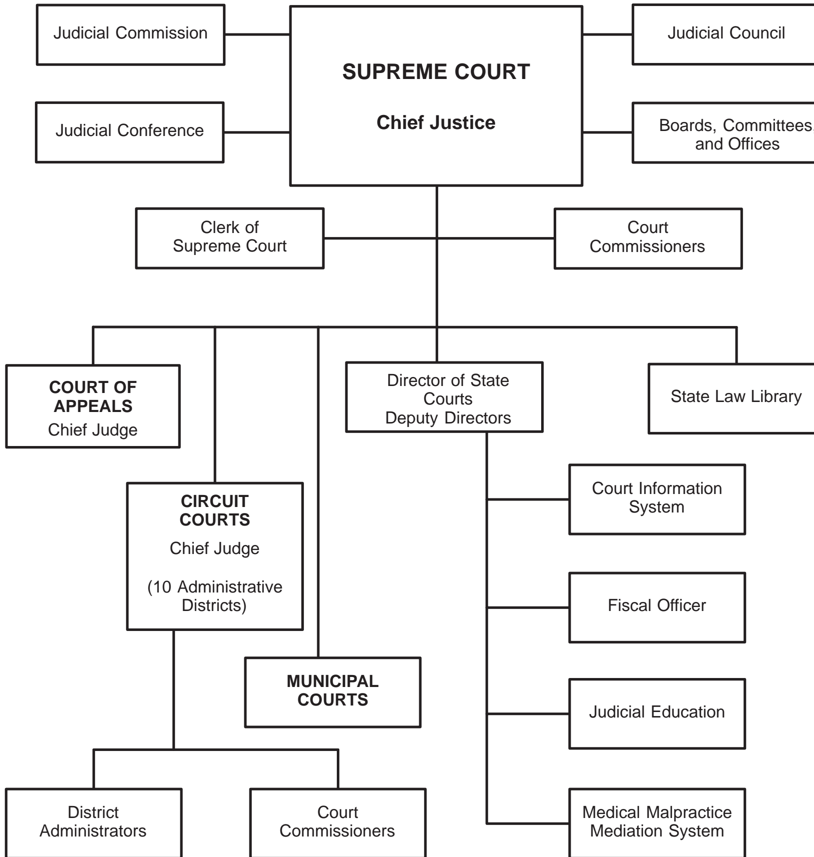
The court does not take testimony. Instead, it decides cases on the basis of written briefs and, occasionally, oral arguments. It is required by statute to deliver its decisions in writing, and it may publish them in the *Wisconsin Reports* as it deems appropriate.

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. With the assistance of the director of state courts, the chief justice monitors the status of judicial business in Wisconsin's courts. When a calendar is congested or a vacancy occurs in a circuit or appellate court, the chief justice may assign an active judge or reserve judge to serve temporarily as a judge of either type of court.

Organization: The supreme court consists of 7 justices, who are elected to 10-year terms on the nonpartisan April ballot and take office on the following August 1. The Wisconsin Constitution provides that only one justice can be elected in any single year, so supreme court vacancies are often filled by gubernatorial appointees who serve until a successor can be elected. The authorized salary for supreme court justices for fiscal year 2001-02 is $120,017. The chief justice receives $128,017.

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 marshall who performs a variety of duties. Each justice has a private secretary and one or two law clerks.



Associated Unit: State Bar of Wisconsin

COURT OF APPEALS

Judges: District I: PATRICIA S. CURLEY (2002)
RALPH ADAM FINE (2006)
CHARLES B. SCHUDSON (2004)
TED E. WEDEMEYER, JR.* (2003)

District II: DANIEL P. ANDERSON (2007)
RICHARD S. BROWN* (2006)
NEAL P. NETTESHEIM (2002)
HARRY G. SNYDER (2004)

District III: R. THOMAS CANE** (2007)
MICHAEL W. HOOVER* (2003)
GREGORY PETERSON (2005)

District IV: DAVID G. DEININGER (2003)
CHARLES P. DYKMAN* (2004)
PAUL LUNDSTEN (2007)
PATIENCE D. ROGGENSACK (2002)
MARGARET J. VERGERONT (2006)

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.

Clerk of Appeals Court: CORNELIA G. CLARK, P.O. Box 1688, Madison 53701-1688; Location: 110 East Main Street, Suite 215, Madison, 266-1880, Fax: 267-0640.

Chief Staff Attorney: MARGARET CARLSON, 10 East Doty Street, 7th Floor, Madison 53703, 266-9323.

Telephones: 266-1880; Bulletin Board: 266-7866.

Fax: 267-0640.

Internet Address: http://www.courts.state.wi.us/appeals/

Number of Positions: 75.50.

Total Budget 1999-2001: $15,608,200.

Constitutional Reference: Article VII, Section 5.

Statutory Reference: Chapter 752.

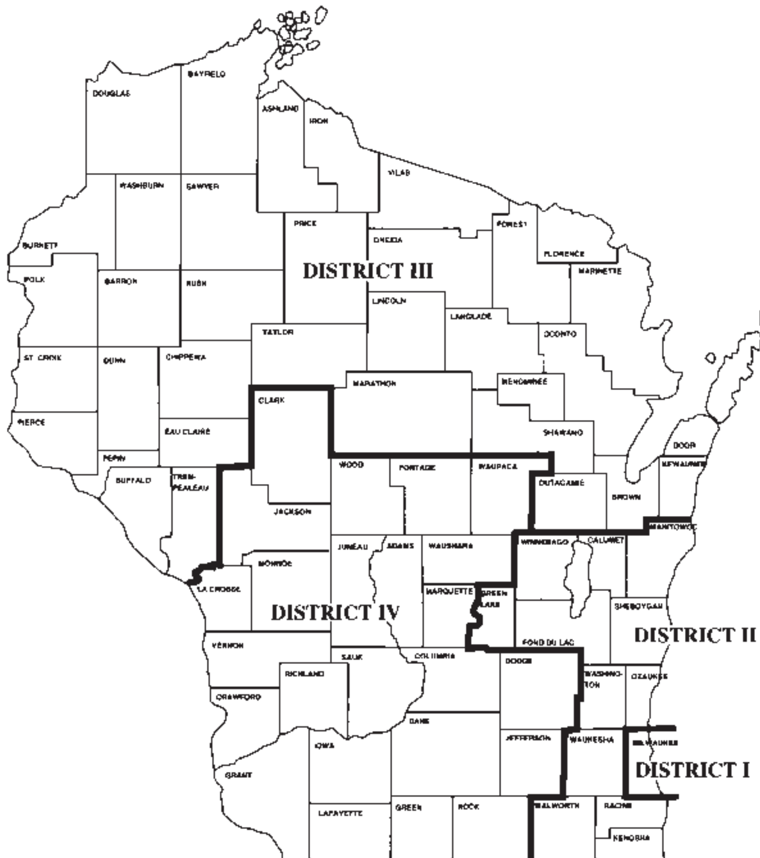
Organization: A constitutional amendment ratified on April 5, 1977, mandated the Court of Appeals, and Chapter 187, Laws of 1977, implemented the amendment. The court consists of 16 judges serving in 4 districts (4 judges each in Districts I and II, 3 judges in District III and 5 judges in District IV).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

Appellate judges are elected for 6-year terms 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 judges are assisted by staff attorneys, private secretaries, and law examiners. The authorized salary for appeals court judges for fiscal year 2001-02 is $113,222.

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

The court usually sits as a 3-judge panel to dispose of cases on their merits. However, a single judge may decide certain categories of cases, including juvenile cases; small claims; municipal

COURT OF APPEALS DISTRICTS



ordinance and traffic violations; and mental health and misdemeanor cases. No testimony is taken in the appellate court. The court relies on the trial court record and written briefs in deciding a case, and it prescreens all cases to determine whether oral argument is needed. Both oral argument and "briefs only" cases are placed on a regularly issued calendar. The court gives criminal cases preference on the calendar when it is possible to do so without undue delay of civil cases.

Decisions of the appellate court are delivered in writing, and the court's publication committee determines which decisions will be published in the *Wisconsin Reports*. Only published opinions have precedential value and may be cited as controlling law in Wisconsin.

CIRCUIT COURTS

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

Chief Judge: MICHAEL SKWIERAWSKI.

Administrator: BRUCE HARVEY.

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

Chief Judge: BARBARA A. KLUKA.

Administrator: KERRY CONNELLY.

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

Chief Judge: KATHRYN W. FOSTER.

Administrator: MICHAEL NEIMON.

District 4: 315 Algoma Boulevard, Suite 102, Oshkosh 54901-4773. Telephone: (920) 424-0028; Fax: (920) 424-0096.

Chief Judge: L. EDWARD STENGEL (effective August 1, 2001).

Administrator: JERRY LANG.

District 5: City-County Building, Room 319, Madison 53709-0001. Telephone: 267-8820; Fax: 267-4151.

Chief Judge: MICHAEL N. NOWAKOWSKI (effective August 1, 2001).

Administrator: GAIL RICHARDSON.

District 6: 2957 Church Street, Suite B, Stevens Point 54481-5210. Telephone: (715) 345-5295; Fax: (715) 345-5297.

Chief Judge: JAMES EVENSON.

Administrator: SCOTT JOHNSON.

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

Chief Judge: MICHAEL J. ROSBOROUGH (effective August 1, 2001).

Administrator: STEVEN STEADMAN.

District 8: 414 East Walnut Street, Suite 221, Green Bay 54301-5020. Telephone: (920) 448-4281; Fax: (920) 448-4336.

Chief Judge: JOSEPH M. TROY.

Administrator: KATHLEEN MURPHY.

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

Chief Judge: JAMES MOHR.

Administrator: vacancy.

District 10: 405 South Barstow Street, Suite C, Eau Claire 54701-3606. Telephone: (715) 839-4826; Fax: (715) 839-4891.

Chief Judge: EDWARD BRUNNER.

Administrator: GREGG MOORE.

Internet Address: http://www.courts.state.wi.us/circuit/

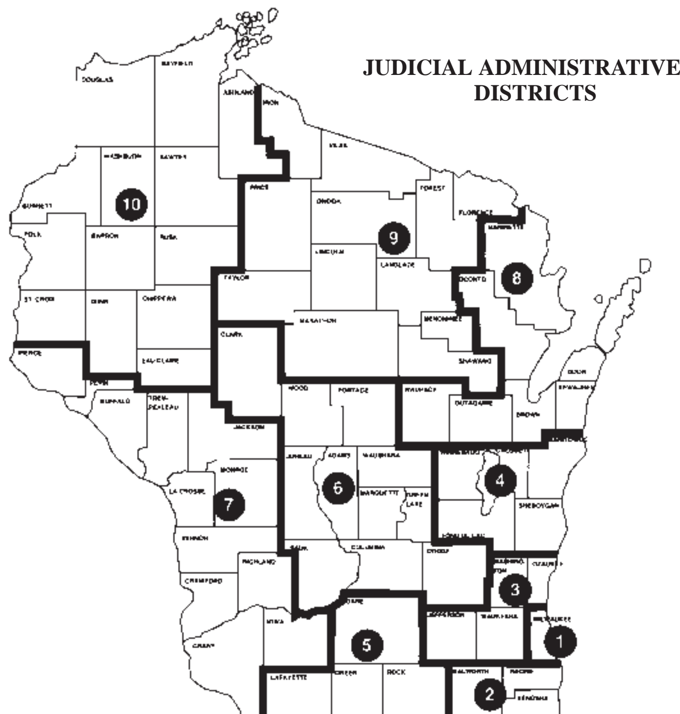
State-Funded Positions: 509.00.

Total Budget 1999-2001: $148,724,700.

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



another court. It also reviews state agency decisions and hears appeals from municipal courts. Jury trials are conducted only in circuit courts.

The constitution requires that a circuit be bounded by county lines. As a result, each circuit consists of a single county, except for 3 two-county circuits (Buffalo-Pepin, Florence-Forest, and Menominee-Shawano). Where judicial caseloads are heavy, a circuit may have several branches, each with an elected judge. Statewide, 38 of the state's 69 judicial circuits had multiple branches as of June 30, 2001, for a total of 241 circuit judgeships.

Organization: Circuit judges, who serve 6-year terms, are elected on a nonpartisan basis at the April election and take office the following August 1. The governor may fill circuit court vacancies by appointment, and the appointees serve until a successor is elected. The authorized salary for circuit court judges for fiscal year 2001-02 is $106,812. The state pays the salaries of circuit judges and court reporters. It also covers some of the expenses for interpreters, guardians ad litem, judicial assistants, court-appointed witnesses, and jury per diems. Counties bear the remaining expenses for operating the circuit courts.

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

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

Court Commissioners are appointed by the circuit court to assist the court, and they must be attorneys licensed to practice law in Wisconsin. They may be authorized by the court to conduct various civil, criminal, family, small claims, juvenile, and probate court proceedings. Their duties

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

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

JUDGES OF CIRCUIT COURT
June 30, 2001

Circuits[1]	Court Location	Judges	Term Expires July 31
Adams	Friendship	Duane H. Polivka	2003
Ashland	Ashland	Robert E. Eaton	2006
Barron			
Branch 1	Barron	James C. Eaton	2004
Branch 2	Barron	Edward R. Brunner	2006
Bayfield	Washburn	Thomas J. Gallagher[3]	2001
Brown			
Branch 1	Green Bay	Donald R. Zuidmulder	2003
Branch 2	Green Bay	Mark Warpinski	2006
Branch 3	Green Bay	Susan Bischel	2004
Branch 4	Green Bay	William Griesbach	2002
Branch 5	Green Bay	Peter Naze	2005
Branch 6	Green Bay	John D. McKay	2003
Branch 7	Green Bay	Richard J. Dietz[2]	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. Sazama[2]	2001
Clark	Neillsville	Jon M. Counsell	2006
Columbia			
Branch 1	Portage	Daniel George	2003
Branch 2	Portage	James O.Miller	2005
Branch 3	Portage	Richard Rehm	2003
Crawford	Prairie du Chien	Michael T. Kirchman[2]	2001
Dane			
Branch 1	Madison	Robert DeChambeau	2005
Branch 2	Madison	Maryann Sumi	2005
Branch 3	Madison	John C. Albert	2006
Branch 4	Madison	Steven D. Ebert	2004
Branch 5	Madison	Diane M. Nicks[2]	2001
Branch 6	Madison	Richard Callaway	2003
Branch 7	Madison	Moria Krueger	2003
Branch 8	Madison	Patrick J. Fiedler	2006
Branch 9	Madison	Gerald C. Nichol	2006
Branch 10	Madison	Angela B. Bartell	2003
Branch 11	Madison	Daniel R. Moeser	2003
Branch 12	Madison	David Flanagan	2006
Branch 13	Madison	Michael Nowakowski	2003
Branch 14	Madison	C. William Foust	2003
Branch 15	Madison	Stuart Schwartz	2004
Branch 16	Madison	Sarah O'Brien	2004
Branch 17	Madison	Paul Higginbotham	2006
Dodge			
Branch 1	Juneau	Daniel Klossner	2002
Branch 2	Juneau	John R. Storck[2]	2001
Branch 3	Juneau	Andrew P. Bissonnette[2]	2001
Door			
Branch 1	Sturgeon Bay	D. Todd Ehlers	2006
Branch 2	Sturgeon Bay	Peter C. Diltz	2006
Douglas			
Branch 1	Superior	Michael T. Lucci	2003
Branch 2	Superior	Joseph A. McDonald[2]	2001
Dunn			
Branch 1	Menomonie	William C. Stewart, Jr.	2004
Branch 2	Menomonie	Rod Smeltzer	2003
Eau Claire			
Branch 1	Eau Claire	Lisa Stark	2006
Branch 2	Eau Claire	Eric J. Wahl	2005
Branch 3	Eau Claire	William M. Gabler	2006
Branch 4	Eau Claire	Benjamin Proctor	2006
Branch 5	Eau Claire	Paul J. Lenz	2006
Florence (see *Forest-Florence*)			
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	Robert J. Wirtz	2005
Forest-Florence	Crandon	Robert A. Kennedy	2002
Grant			
Branch 1	Lancaster	Robert P. Van De Hey	2005
Branch 2	Lancaster	George S. Curry	2003
Green	Monroe	James R. Beer	2003
Green Lake	Green Lake	William M. McMonigal	2005
Iowa	Dodgeville	William D. Dyke	2004
Iron	Hurley	Patrick John Madden	2005
Jackson	Black River Falls	Robert Radcliffe	2002

JUDGES OF CIRCUIT COURT
June 30, 2001–Continued

Circuits[1]	Court Location	Judges	Term Expires July 31
Jefferson			
Branch 1	Jefferson	John M. Ullsvik	2003
Branch 2	Jefferson	William F. Hue[2]	2001
Branch 3	Jefferson	Jackie Erwin	2003
Branch 4	Jefferson	Randy R. Koschnick	2005
Juneau	Mauston	John W. Brady	2004
Kenosha			
Branch 1	Kenosha	David M. Bastianelli	2003
Branch 2	Kenosha	Barbara A. Kluka[2]	2001
Branch 3	Kenosha	Bruce Schroeder	2002
Branch 4	Kenosha	Michael S. Fisher	2005
Branch 5	Kenosha	Wilbur W. Warren III	2003
Branch 6	Kenosha	Mary K. Wagner-Malloy	2003
Branch 7	Kenosha	S. Michael Wilk	2006
Kewaunee	Kewaunee	Dennis J. Mleziva	2004
La Crosse			
Branch 1	La Crosse	Ramona A. Gonzalez[2]	2001
Branch 2	La Crosse	Michael J. Mulroy[2]	2001
Branch 3	La Crosse	Dennis G. Montabon	2003
Branch 4	La Crosse	John J. Perlich	2003
Branch 5	La Crosse	Dale T. Pasell	2005
Lafayette	Darlington	William D. Johnston	2003
Langlade	Antigo	James P. Jansen	2005
Lincoln			
Branch 1	Merrill	John Michael Nolan	2004
Branch 2	Merrill	Glenn H. Hartley	2005
Manitowoc			
Branch 1	Manitowoc	Patrick Willis	2004
Branch 2	Manitowoc	Darryl W. Deets[2]	2001
Branch 3	Manitowoc	Fred H. Hazlewood	2005
Marathon			
Branch 1	Wausau	Dorothy L. Bain	2004
Branch 2	Wausau	Raymond F. Thums[2]	2001
Branch 3	Wausau	Vincent K. Howard	2002
Branch 4	Wausau	Gregory Grau[2]	2001
Branch 5	Wausau	Patrick Brady	2005
Marinette			
Branch 1	Marinette	Charles D. Heath	2002
Branch 2	Marinette	Tim A. Duket	2002
Marquette	Montello	Richard O. Wright[2]	2001
Menominee (see *Shawano-Menominee*)			
Milwaukee			
Branch 1	Milwaukee	Maxine Aldridge White	2005
Branch 2	Milwaukee	M. Joseph Donald	2003
Branch 3	Milwaukee	Clare Fiorenza	2003
Branch 4	Milwaukee	Mel Flanagan	2006
Branch 5	Milwaukee	Mary Kuhnmuench	2004
Branch 6	Milwaukee	Kitty K. Brennan	2006
Branch 7	Milwaukee	Jean W. DiMotto	2003
Branch 8	Milwaukee	William Sosnay	2006
Branch 9	Milwaukee	Robert W. Crawford	2002
Branch 10	Milwaukee	Timothy G. Dugan	2005
Branch 11	Milwaukee	Dominic S. Amato[2]	2001
Branch 12	Milwaukee	Michael J. Skwierawski	2003
Branch 13	Milwaukee	Victor Manian	2006
Branch 14	Milwaukee	Christopher R. Foley	2004
Branch 15	Milwaukee	Michael B. Brennan[2]	2001
Branch 16	Milwaukee	MichaelDwyer	2003
Branch 17	Milwaukee	Francis Wasielewski	2002
Branch 18	Milwaukee	Patricia McMahon	2005
Branch 19	Milwaukee	John E. McCormick	2005
Branch 20	Milwaukee	Dennis P. Moroney	2006
Branch 21	Milwaukee	Stanley A. Miller	2005
Branch 22	Milwaukee	William J. Haese	2005
Branch 23	Milwaukee	Elsa C. Lamelas	2006
Branch 24	Milwaukee	Charles F. Kahn	2004
Branch 25	Milwaukee	John A. Franke	2005
Branch 26	Milwaukee	Michael P. Sullivan	2002
Branch 27	Milwaukee	Kevin E. Martens[5]	2002
Branch 28	Milwaukee	Thomas R. Cooper	2006
Branch 29	Milwaukee	Richard J. Sankovitz	2003
Branch 30	Milwaukee	Jeffrey A. Conen	2003
Branch 31	Milwaukee	Daniel A. Noonan	2002
Branch 32	Milwaukee	Michael D. Guolee	2002
Branch 33	Milwaukee	Carl Ashley	2005
Branch 34	Milwaukee	Jacqueline D. Schellinger	2005
Branch 35	Milwaukee	Lee E. Wells	2006
Branch 36	Milwaukee	Jeffrey A. Kremers	2005
Branch 37	Milwaukee	Karen Christenson	2004
Branch 38	Milwaukee	Jeffrey A. Wagner	2006
Branch 39	Milwaukee	Michael Malmstadt	2006
Branch 40	Milwaukee	Louise M. Tesmer[4]	2001

JUDGES OF CIRCUIT COURT
June 30, 2001–Continued

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	Marshall Murray	2006
Branch 44	Milwaukee	Daniel L. Konkol	2004
Branch 45	Milwaukee	Thomas P. Donegan	2004
Branch 46	Milwaukee	Bonnie L. Gordon	2006
Branch 47	Milwaukee	John Siefert	2005
Monroe			
Branch 1	Sparta	Steven L. Abbott[2]	2001
Branch 2	Sparta	Michael J. McAlpine	2004
Oconto			
Branch 1	Oconto	Larry L. Jeske	2005
Branch 2	Oconto	Richard D. Delforge	2004
Oneida			
Branch 1	Rhinelander	Robert E. Kinney	2002
Branch 2	Rhinelander	Mark A. Mangerson	2006
Outagamie			
Branch 1	Appleton	James T. Bayorgeon	2002
Branch 2	Appleton	Dennis C. Luebke	2003
Branch 3	Appleton	Joseph Troy	2005
Branch 4	Appleton	Harold Froehlich	2006
Branch 5	Appleton	Michael W. Gage	2003
Branch 6	Appleton	Dee R. Dyer	2006
Branch 7	Appleton	John A. Des Jardins	2006
Ozaukee			
Branch 1	Port Washington	Walter J. Swietlik	2003
Branch 2	Port Washington	Tom R. Wolfgram[2]	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 Fleishauer	2005
Branch 2	Stevens Point	John V. Finn[2]	2001
Branch 3	Stevens Point	Thomas T. Flugaur	2006
Price	Phillips	Douglas Fox	2002
Racine			
Branch 1	Racine	Gerald P. Ptacek[2]	2001
Branch 2	Racine	Stephen A. Simanek	2004
Branch 3	Racine	Emily S. Mueller	2005
Branch 4	Racine	Emmanuel J. Vuvunas	2004
Branch 5	Racine	Dennis J. Barry	2005
Branch 6	Racine	Wayne J. Marik	2003
Branch 7	Racine	Charles H. Constantine	2002
Branch 8	Racine	Dennis J. Flynn	2006
Branch 9	Racine	Allan Torhorst	2003
Branch 10	Racine	Richard J. Kreul	2006
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	Daniel Dillon[2]	2001
Branch 5	Beloit	John W. Roethe	2004
Branch 6	Janesville	Richard T. Werner	2003
Branch 7	Beloit	James E. Welker	2006
Rusk	Ladysmith	Frederick Henderson	2004
St. Croix			
Branch 1	Hudson	Eric J. Lundell	2002
Branch 2	Hudson	Conrad A. Richards[6]	2001
Branch 3	Hudson	Scott R. Needham	2006
Sauk			
Branch 1	Baraboo	Patrick J. Taggart	2006
Branch 2	Baraboo	James Evenson	2004
Branch 3	Baraboo	Guy Reynolds	2006
Sawyer	Hayward	Norman L. Yackel	2003
Shawano-Menominee			
Branch 1	Shawano	Earl Schmidt	2002
Branch 2	Shawano	Thomas G. Grover[2]	2001
Sheboygan			
Branch 1	Sheboygan	L. Edward Stengel	2003
Branch 2	Sheboygan	Timothy M. Van Akkeren[2]	2001
Branch 3	Sheboygan	Gary Langhoff	2005
Branch 4	Sheboygan	John B. Murphy	2003
Branch 5	Sheboygan	James J. Bolgert	2006
Taylor	Medford	Gary Lee Carlson	2004
Trempealeau	Whitehall	John A. Damon[2]	2001
Vernon	Viroqua	Michael J. Rosborough	2005
Vilas	Eagle River	James Mohr	2002

JUDGES OF CIRCUIT COURT
June 30, 2001–Continued

Circuits[1]	Court Location	Judges	Term Expires July 31
Walworth			
Branch 1	Elkhorn	Robert J. Kennedy	2006
Branch 2	Elkhorn	James L. Carlson	2004
Branch 3	Elkhorn	John Race	2003
Branch 4	Elkhorn	Michael S. Gibbs	2004
Washburn	Shell Lake	Eugene D. Harrington	2003
Washington			
Branch 1	West Bend	Patrick J. Faragher[2]	2001
Branch 2	West Bend	Annette Ziegler	2003
Branch 3	West Bend	David Resheske	2006
Branch 4	West Bend	Andrew Gonring	2006
Waukesha			
Branch 1	Waukesha	Michael D. Bohren[2]	2001
Branch 2	Waukesha	Mark Gempeler	2002
Branch 3	Waukesha	Ralph Ramirez	2005
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.[2]	2001
Branch 10	Waukesha	Marianne Becker	2003
Branch 11	Waukesha	Robert G. Mawdsley	2006
Branch 12	Waukesha	Kathryn W. Foster	2006
Waupaca			
Branch 1	Waupaca	Philip M. Kirk	2005
Branch 2	Waupaca	John P. Hoffmann	2004
Branch 3	Waupaca	Raymond Huber	2006
Waushara	Wautoma	Lewis R. Murach	2005
Winnebago			
Branch 1	Oshkosh	Thomas J. Gritton	2006
Branch 2	Oshkosh	Robert Haase	2006
Branch 3	Oshkosh	Barbara Key	2004
Branch 4	Oshkosh	Robert Hawley	2006
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

[1]Circuits 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 $105,755. Salaries could change as of August 1, 2001, when the circuit court judges commence new terms.
[2]Reelected on April 3, 2001, for a 6-year term to commence August 1, 2001.
[3]Thomas T. Lindsey was newly elected on April 3, 2001, for a 6-year term to commence August 1, 2001.
[4]Joseph Wall was newly elected on April 3, 2001, for a 6-year term to commence August 1, 2001.
[5]Appointed by governor.
[6]Edward F. Vlack was newly elected on April 3, 2001, for a 6-year term to commence August 1, 2001.
Sources: *1999-2000 Wisconsin Statutes;* State Elections Board, departmental data, May 2001; Director of State Courts, departmental data, April 2001; 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/municipal

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 March 1, 2001, there were 224 municipal courts, with 226 municipal judges. Courts may have multiple branches, as illustrated by the City of Milwaukee's municipal court, which has 3 branches. (Milwaukee County, which is the only county authorized to appoint municipal court commissioners, had five as of June 1999.) Two or more municipalities may agree to form a joint court, and there are 13 joint courts, serving up 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 require community service in lieu of a forfeiture. In general, municipal courts may also 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 a forfeiture or make restitution, the municipal court may suspend the driver's license or commit the defendant to jail. Municipal court decisions may be appealed to the circuit court of the county where the offense occurred.

Organization: Municipal judges are elected at the nonpartisan April election and take office May 1. The 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@

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

Deputy Director for Management Services: vacancy.

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

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

Information Technology, Office of: vacancy.

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

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

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

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

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

Fax: 267-0980.

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

Number of Employees: 121.75.

Total Budget 1999-2001: $28,701,600.

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: vacancy, 266-1424.

Collection Management Services: JULIE TESSMER, *director,* 261-7557, julie.tessmer@courts.state.wi.us

Public Services (reference, circulation, government documents): JANE COLWIN, *director,* 261-2340, jane.colwin@courts.state.wi.us

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

Location: 1 East Main Street, 2nd Floor, Madison 53703 (until January 2002);
120 Martin Luther King, Jr. Blvd., 2nd Floor, Madison 53703 (after January 2002).

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

Fax: 267-2319.

Internet Address: http://wsll.state.wi.us

Reference E-mail Address: wsll.ref@courts.state.wi.us

Publications: *WSLL @ Your Service* (e-newsletter) at http://wsll.state.wi.us/news.html; miscellaneous bibliographies of titles.

Number of Employees: 14.75.

Total Budget 1999-2001: $2,769,200.

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 acts as a consultant and resource for county law libraries throughout the state. Milwaukee County and Dane County contract with the State Law Library for management and operation of their courthouse libraries (the Milwaukee Legal Resource Center and the Dane County Law Library).

The library's 150,000-volume collection features 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 offers reference, basic legal research, and document delivery services. The collection circulates to judges, attorneys, legislators, and government personnel.

OFFICE OF LAWYER REGULATION

Board of Administrative Oversight: BURNEATTA L. BRIDGE, DENNIS R. CIMPL, JOHN W. HOLZHUTER, W.H. LEVIT, JR., TRUMAN Q. MCNULTY, JAMES W. MOHR, JR., ANN USTAD SMITH, DEBORAH M. SMITH (lawyers); KRISTA L. GINGER, CLAIRE FOWLER, T. JAMES KENNEDY, MICHAEL J. O'NEILL (nonlawyers). (All members are appointed by the supreme court.)

Preliminary Review Committee: WAYNE A. ARNOLD, THOMAS W. BERTZ, JOHN R. DAWSON, JAMES D. FRIEDMAN, KARRI L. FRITZ-KLAUS, BERNARD T. MCCARTAN, FRANK D. REMINGTON, JAMES D. WICKHEM (lawyers); MICHAEL S. ARIENS, STEVEN K. GJERDE, JOAN GREENDEER-LEE, M. TAMBURA OMOIELE (nonlawyers). (All members are appointed by the supreme court.)

Office of Lawyer Regulation: KEITH L. SELLEN, *director*, keith.sellen@courts.state.wi.us

Telephone: 267-7274.

Fax: 267-1959.

Number of Employees: 20.00.

Total Budget 1999-2001: $2,765,400.

References: Supreme Court Rules, Chapters 21 and 22.

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

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

The Board of Administrative Oversight consists of 12 members, eight lawyers and four nonlawyers. Board members are appointed by the supreme court to staggered 3-year terms and may

not serve more than two consecutive terms. The board monitors the overall system for regulating lawyers but does not handle actions regarding individual complaints or grievances. It reviews the "fairness, productivity, effectiveness and efficiency" of the system and reports its findings to the supreme court. After consultation with the director, it proposes the annual budget for the agency to the supreme court.

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

After investigation, the director decides whether the matter must be forwarded to a panel of the Preliminary Review Committee or may be dismissed or diverted for alternative action. This 12-member committee consists of eight lawyers and four nonlawyers, who are appointed by the supreme court to staggered 3-year terms and may not serve more than two consecutive terms.

If a panel of the Preliminary Review Committee determines there is cause to proceed, the director may seek disciplinary action, ranging from private reprimand to filing a formal complaint with the supreme court that requests public reprimand, license suspension or revocation, monetary payment, or imposing conditions on the continued practice of law. An attorney may be offered alternatives to formal disciplinary action, including mediation, fee arbitration, law office management assistance, evaluation and treatment for alcohol and other substance abuse, psychological evaluation and treatment, monitoring of the attorney's practice or trust account procedures, continuing legal education, ethics school, or the multistate professional responsibility examination.

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

BOARD OF BAR EXAMINERS

Board of Bar Examiners: HOWARD B. EISENBERG (Marquette University Law School faculty), *chairperson;* MARY L. STAUDENMAIER (State Bar member), *vice chairperson;* ROBERT J. JANSSEN, JAMES P. O'BRIEN, JOHN O. OLSON, CATHERINE M. ROTTIER (State Bar members); ERIC WAHL (circuit court judge); KEVIN M. KELLY (UW Law School faculty); CURTIS BRIESKE, DENNIS A. DANNER, HARRY MAIER (public members). (All members are appointed by the supreme court.)

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

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

E-mail Address: bbe@courts.state.wi.us

Internet Address: http://www.courts.state.wi.us/bbe

Number of Employees: 8.00.

Total Budget 1999-2001: $1,056,400.

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

Responsibility: The 11-member Board of Bar Examiners manages all bar admissions by examination or by 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 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. The number of public members was increased from one to 3 by a supreme court order, effective January 1, 2001.

JUDICIAL COMMISSION

Members: PHILIP R. BREHM (State Bar member), *chairperson;* KATHRYN FOSTER (circuit court judge), *vice chairperson;* CHARLES P. DYKMAN (appeals court judge), HANNAH DUGAN (State Bar member); SPYRO CONDOS, TEE HEISER, CLIFFORD LECLEIR, ILEEN SIKOWSKI, vacancy (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: ANGELA BUCHHOLZ.

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

Telephone: 266-7637.

Fax: 266-8647.

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

Publication: Annual Report.

Number of Employees: 2.00.

Total Budget 1999-2001: $452,000.

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

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: MARLA J. STEPHENS (designated by state public defender), *chairperson;* RUTH ANN BACHMAN (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); JAMES MASON, GERALD C. NICHOL, EARL W. SCHMIDT, LEE WELLS (circuit judges designated by Judicial Conference); SENATOR GEORGE (chairperson, senate judicial committee); REPRESENTATIVE GUNDRUM (chairperson, assembly judicial 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); GERALD W. MOWRIS (president-elect, State Bar); PEGGY L. PODELL, TIMOTHY VOCKE (desginated by State Bar); ERIC JOHNSON (district attorney appointed by governor); SCOTT C. BAUMBACH, LISA SOIK (public members appointed by governor).

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

Telephone: 266-7637.

Fax: 266-8647.

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. 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;* MARGARET J. VERGERONT (designated by appeals court chief judge); KENNETH B. DAVIS, JR. (dean, UW Law School); KAREN E. CHRISTENSON, ROBERT E. EATON, THOMAS T. FLUGUAR, WILLIAM GRIESBACH, DONALD J. HASSIN, RALPH RAMIREZ, WILLIAM C. STEWART, JR., ANNETTE K. ZIEGLER (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, 110 East Main Street, Room 200, Madison 53703.

Telephone: 266-7807.

Fax: 261-6650.

E-mail Address: JED@courts.state.wi.us

Internet Address: http://www.courts.state.wi.us/education

Reference: Supreme Court Rules 31-33, 75.05.

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); CARL ASHLEY, JAMES T. BAYORGEON, RODERICK CAMERON, JEFFREY CONEN, DAVID FLANAGAN, BONNIE GORDON, FRED HAZELWOOD, WILLIAM HUE, ROBERT KINNEY, WILLIAM MCMONIGAL, JOHN J. PERLICH, JOHN ROETHE, ALLAN TORHORST (circuit court judges elected by judicial administrative districts); MICHAEL C. HURT (municipal judge elected by Wisconsin Municipal Judges Association); JEAN JACOBSON (nonlawyer, elected county official); JOHN KAMINSKI, MARY WILLIAMS (nonlawyers); NICHOLAS CHIARKAS (public defender); SCOTT JOHNSON (court administrator); JOHN ZAKOWSKI (prosecutor); BERNADETTE FLATOFF (circuit court clerk). (Unless indicated otherwise, members are appointed by the chief justice.)

Staff Policy Analyst: DAN WASSINK, dan.wassink@courts.state.wi.us

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

Telephone: 266-8861.

Fax: 267-0911.

Internet Address: http://www.courts.state.wi.us/misc/reports/planning&policy .html

Reference: Supreme Court Rule 70.14.

Responsibility: The 23-member Planning and Policy Advisory Committee advises the Wisconsin Supreme Court and the Director of State Courts on planning and policy and assists in a continuing evaluation of the administrative structure of the court system. It participates in the budget process of the Wisconsin judiciary and appoints a subcommittee to review the budget of the court system. The committee meets at least quarterly, and the supreme court meets with the committee annually.

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

Board of Governors (effective July 1, 2001): *Officers:* GERALD W. MOWRIS, *president;* PATRICIA K. BALLMAN, *president-elect;* GARY L. BAKKE, *past president;* KRISTIN L. KARRMANN, *secretary;* DEAN R. DIETRICH, *treasurer;* MICHELLE A. BEHNKE, *chair of the board. District members:* JOHN H. ANDREWS, JOHN E. BERMINGHAM, HOWARD J. BICHLER, JAMES M. BRENNAN, BURNEATTA L. BRIDGE, JOHN A. BUSCH, KENT I. CARNELL, RICHARD J. CAYO, MICHAEL R. CHRISTOPHER, DIANE S. DIEL, WILLIAM J. DOMINA, JAMES L. DUNLAP, WILLIAM F. FALE, MILO G. FLATEN, JR., G. JEFFREY GEORGE, ROBERT R. GOEPEL, THOMAS J. GRAHAM, JR., GREGG M. HERMAN, WILLIAM C. HESS, PETER D. KAFKAS, GRANT F. LANGLEY, ROBERT C. LEIBSLE, DEBRA R. MANCOSKE, JAMES W. MOHR, JR., EARL H. MUNSON, JR., CORY L. NETTLES, JAMES T. QUINN, MICHAEL D. ROSENBERG, DANIEL L. SHNEIDMAN, CHRISTOPHER J. STAWSKI, ROBERT W. SWAIN, JR., MARY E. TRIGGIANO, 2 vacancies; *Young Lawyers Division:* TRISTAN R. PETTIT. *Government Lawyers Division:* JACQUELYNN B. ROTHSTEIN. *Nonresident Lawyers Division:* CHRISTOPHER R. BENSON, SARA CLARENBACH, BENTON C. STRAUSS. *Nonlawyer members:* ANDREA-TERESA ARENAS, OSCAR BOLDT, KATHRYN HASSELBLAD-PASCALE.

Executive Director: GEORGE C. BROWN.

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

Location: 5302 Eastpark Boulevard, Madison.

Internet Address: http://www.wisbar.org

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

Agency E-mail: lbarth@wisbar.org

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. It 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 the organization of the State Bar of Wisconsin, effective January 1, 1957, to replace the formerly voluntary Wisconsin Bar Association, organized in 1877. All judges and attorneys entitled to practice before Wisconsin courts were required to join the State Bar. Beginning July 1, 1988, the Wisconsin Supreme Court suspended its mandatory membership rule, and the State Bar temporarily became a voluntary membership association, pending the disposition of a lawsuit in the U.S. Supreme Court. The Supreme Court ruled in *Keller v. State Bar of California,* 496 U.S. 1 (1990) that it is permissible to mandate membership provided certain restrictions are placed on the political activities of the mandatory State Bar. Effective July 1, 1992, the Wisconsin Supreme Court reinstated the mandatory membership rule upon petition from the State Bar Board of Governors.

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

October 1998 – June 2001

Robert Nelson and Mike Dsida
Legislative Reference Bureau

CONSTITUTIONAL LAW

Attorney General's Power to Challenge Constitutionality of a Statute

This case, *State v. City of Oak Creek,* 232 Wis. 2d 612 (2000), centers upon the right of the attorney general to challenge the constitutionality of a state statute. In 1985, the City of Oak Creek lined one-quarter mile of the channel of Crawfish Creek with concrete to prevent local flooding and drainage problems. The city did not request a permit from the Department of Natural Resources (DNR), and DNR brought an administrative action that resulted in an order to restore the creek bed to its natural state. The legislature passed a law allowing Oak Creek to keep the concrete channel, but the attorney general commenced an action saying that this statute was unconstitutional and that the channel constituted a public nuisance. The circuit court agreed with the attorney general, but that decision was reversed by the court of appeals. The supreme court upheld the decision by the court of appeals.

The supreme court held that the attorney general did not have standing to challenge the statute's constitutionality. It found that Article IV, Section 3, of the Wisconsin Constitution, which created the office of attorney general, specifies that the attorney general's powers and duties "shall be prescribed by law." The court, after reviewing the court cases discussing this phrase and the record of the constitutional convention, determined that the phrase means the powers of the attorney general are prescribed only by statutory law. The court did not find any current statutory authority for the attorney general to contest the constitutionality of a statute. It held that the attorney general's duty is to defend, not challenge, the constitutionality of a state statute. It also held that the "great public concern doctrine", which allows public officers to question the constitutionality of a statute only when the issue is of great public concern, did not apply because the attorney general did not have a duty to challenge this particular statute and, further, the doctrine does not apply to an action between two agencies of the state – in this case, the Office of the Attorney General and the City of Oak Creek.

The court did agree that the attorney general may, in certain instances, bring a suit against a perceived violation of the public trust but only if the governor or a house of the legislature directs the attorney general to sue or if the attorney general petitions the supreme court to take original jurisdiction in a case. None of those circumstances fit the current case.

Chief Justice Abrahamson dissented from the majority and was joined by Justices Bablitch and Bradley. She argued that the majority came to the wrong conclusion because they answered the wrong question. She agreed with the majority that there was no express statutory authorization for the attorney general to attack the constitutionality of the specific statute involved in this case, but she argued the attorney general does have statutory authorization to commence an action to enjoin a public nuisance. She also contended that if the attorney general has the authority to bring a specific lawsuit, there is discretionary authority to proceed in that lawsuit in any legal manner, which may include questioning the constitutionality of a specific statute. The chief justice asserted that three important doctrines when read together supported the attorney general's standing to bring action in the current case: 1) the great public concern doctrine; 2) the attorney general's power to bring an original action in the court challenging the constitutionality of a statute; and 3) the public trust doctrine. She argued further that, as a constitutional officer, the attorney general has the duty to uphold the constitution and attacking a specific statute as unconstitutional may be necessary to fulfill that duty.

State Pension Changes Declared Constitutional

In *Wisconsin Professional Police Association v. Lightbourn* (2001 WI 59), the supreme court was asked to decide if 1999 Wisconsin Act 11, which became effective December 30, 1999, was

constitutional. Act 11 included numerous changes to the Wisconsin Retirement System (WRS) that affected the pension interests of approximately 461,000 current and former state and local government employees. In issuing its opinion on June 12, 2001, the court lifted an injunction against the application of the law, which it had issued on December 29, 1999.

This summary reviews the constitutional questions discussed by the court. For detailed information about the effect of the act, consult the Department of Employee Trust Funds website at http://badger.state.wi.us/agencies/etf

The court rejected all claims that the Act 11 changes to the WRS were unconstitutional. One question it addressed was the claim that the changes constituted the taking of property without due process of law. It ruled such a taking had not occurred, because no pension participant was deprived of an accrued benefit. Instead, it stated: "Most participants will receive substantial benefit improvements". (par.142)

The court rejected the argument that changes to the WRS would result in the impairment of contracts, holding that the act would not operate as an impairment on any property right or benefit existing under that retirement system.

The court reviewed the $200-million portion of the total funds that was distributed to the employer reserve and earmarked as a credit against the employers' unfunded liability, thereby reducing employer payment to the WRS. The court determined the $200-million credit was constitutional because the distribution did not abrogate the obligation of employers to fulfill benefit contributions to WRS participants and because no money was being removed from the employer reserve for a nontrust purpose.

Finally, the court found that the difference between the protective occupational participants with social security maximum benefit of 65% and the other participants maximum benefit of 70% did not violate the equal protection clause of the U.S. Constitution because, it said, there was a rational, long-standing basis for the differential treatment of the two groups of participants, based on the policy of setting the protective occupation participants' retirement age years lower than that for the general participants.

Justice Bablich dissented to that part of the decision upholding the use of $200 million for a credit against unfunded liability, saying that the legislature, in effect, took money from the WRS when it reduced the present and future debt owed by employers to the system. Clearly, Justice Bablich said, forgiving a debt of $200 million results in fewer assets coming into the system and, thus, is a taking of property without due process. His dissent also raised the question of whether this act might set a precedent for using WRS assets to cover deficits in the state budget.

Chief Justice Abrahamson, joined by Justice Bradley, also dissented from the majority decision. She cautioned that her discussion of only two of the majority opinion's positions regarding the challenges to the act should not be interpreted as agreement with their other positions. The chief justice argued that the $200-million contribution credit was a diversion of the pension monies in which the WRS participants have a protected property and contract right.

> This diversion is an unlawful taking and an impairment of contract, as well as a violation of trust principals. The Wisconsin and federal constitutions do not allow the legislature to balance the state budget or shift resources among governmental entities by using assets belonging to the ETF. As a result of the majority opinion, Wisconsin now unfortunately joins other states that have viewed their once–burgeoning pension funds as sources of budget relief. (par. 252)

The chief justice also said the majority failed to consider the constitutional requirement that the legislature must provide sufficient state funds to finance the benefit improvements. In this case, sufficient state funds were not provided, she said.

Chief Justice Abrahamson supported two precedents set forth by the majority. One, she said, was its holding that the statutory adjustment to actuarial assumptions is limited to the extent that the adjustment does not interfere with the pension board's discretion. The second was that employees may have a cause of action in the future if they have to make contributions to the employee reserve as a result of the $200-million credit to employers.

Constitutionality of the State's School Aid Formula

The Wisconsin Constitution requires the legislature to "provide by law for the establishment of district schools, which shall be as nearly uniform as practicable." In *Vincent v. Voight,* 236 Wis. 2d 588 (2000), the petitioners asked the supreme court to revisit its 1989 decision, *Kukor v. Grover,* 148 Wis. 2d 469 (1989), in which it held that the existing formula for school aids did not violate the uniformity provision. In *Kukor*, the court determined that the uniformity clause required only that pupils have an "equal opportunity for a basic education" and that the "character of instruction" in school districts be as uniform as practicable. In its 1989 decision, the court upheld the constitutionality of the formula because it found that the legislature had established the "character of instruction" when it enacted academic requirements and that the equalization aid formula permitted school districts to meet these requirements. The court also held that the equalization formula did not violate the "equal protection" clause of the Wisconsin Constitution.

In *Vincent*, the petitioners argued that various aspects of the school finance system, including the equalization aid formula, categorical aids, the school levy tax credit, and revenue limits, violated the uniformity clause and the equal protection clause. The majority of the court, however, elaborated upon the *Kukor* standard of educational opportunity by holding that the uniformity clause guarantees pupils an "equal opportunity for a sound basic education . . . that will equip [them] for their roles as citizens and enable them to succeed economically and personally." Although the court noted that its standard requires any school finance system to take "into account districts with disproportionate numbers of disabled students, economically disadvantaged students, and students with limited English language skills", it found that the state adequately funds each school district to provide for a sound, basic education and that any disparity between school districts stems from differing taxing capacities. Moreover, the court noted that the current school finance system "more effectively equalizes the tax base among districts than the system did at the time *Kukor* was decided", because it redistributes funds to low-spending school districts with lower property values.

Justice Abrahamson, joined by Justice Bablitch, concurred in the standard established by the majority but wrote a separate opinion because she believed that the case should be remanded to the circuit court to allow the petitioners to demonstrate that the school finance system was unconstitutional under that standard. She emphasized her concern, shared by Justice Bablitch, that the school finance system "may be failing to provide each of the property-poor districts with the necessary resources to provide all students with the opportunity for a sound basic education."

Justices Prosser and Sykes concurred in that portion of the majority opinion that upheld the constitutionality of the school finance system, but did not agree that the uniformity clause guaranteed pupils an equal opportunity for a sound basic education. Both justices argued that a standard for educational adequacy is a policy question, rather than a judicial one, and the court should not have addressed it because of the principle of separation of powers.

Distributing Child Pornography

In *State v. Zarnke*, 224 Wis. 2d 116 (1999), the supreme court considered the constitutionality of prosecuting a person for distributing child pornography without having to prove that the person was aware that anyone depicted in the pornographic materials was a child. The court concluded that the statute in question violated the free speech protections of both the U.S. Constitution and the Wisconsin Constitution.

In this case, the defendant, Joel R. Zarnke, was charged with sexual exploitation of a child. The state alleged that he had reproduced or distributed "photographs, electronically stored images, and other pictorial reproductions of children engaging in sexually explicit conduct." It further alleged that the children appeared to be between five and seven years old and that the defendant knew as much.

Under Section 948.05, Wisconsin Statutes, the state was not required to prove that the defendant was aware that the person engaging in the sexually explicit conduct was a child. Instead, the defendant had the burden to prove – as an affirmative defense – lack of such knowledge by showing there was reasonable cause to believe that the person was not a child and that the person had provided an official document indicating he or she was at least 18 years old. Zarnke argued that

such an allocation of the burden of proof was unconstitutional and moved to dismiss the charges. The trial court agreed, ruling that the statute was unconstitutional in its entirety.

The court of appeals reversed that decision. It relied on the legislative history of the statute, which, it said, indicated that the legislature did not intend to punish persons who were free of guilty knowledge. The court concluded that the statute did, in fact, place that burden of proof on the state in cases where the defendant did not have face-to-face contact with the child. The court stated that alternatively the portions of the statute relating to the distribution of sexually explicit materials could be severed from the statute and the court could then read into the severed material a requirement that the state prove the defendant's awareness of the child's age.

The supreme court reversed the appellate court decision. It asserted that the language of the statute unambiguously placed on a distributor-defendant the burden of proof regarding lack of knowledge about the child's age. Therefore, in the court's view, it was inappropriate to use the legislative history to construe the statute.

The court then addressed the question of whether the statute permits the state to convict a defendant without establishing the defendant's mental state regarding the victim's minority status as an element of the crime. The court noted that a state may create crimes that do not require it to show the defendant's mental state but not when the absence of that element in the offense might inhibit a person's freedom of expression, as would be the case here. Relying on the U.S. Supreme Court's decision in *U.S. v. X-Citement Video*, 513 U.S. 64 (1994), the court stated that the age of the person is an "elemental fact" under the statute and that the state must prove, at some level, the defendant's mental state regarding that fact if the defendant does not personally meet the child. The court also indicated that the statute's affirmative defense provision does not remedy this defect. In the court's view, a distributor, who is one or more steps removed from the production of the sexually explicit materials, will typically be unable to use that defense.

Finally, the court held that the statutory provisions relating to distribution of sexually explicit materials could not be saved. To save the provisions, it would be necessary to first sever them from the remainder of the statute and then read into the severed material a constitutionally acceptable mental state provision. The court indicated that combining those two "saving doctrines" was inappropriate in this case.

The court added that the legislative history of the statute indicated that the legislature intended to place the burden of proof on the distributor-defendant. Therefore, trying to preserve the statute by placing the burden on the state in such cases would conflict with the legislature's intent. Consequently, the court severed the language relating to distribution from the statute, stating that language was unconstitutional because it might inhibit constitutionally protected speech. Therefore, the court reversed Zarnke's conviction.

Justice Prosser dissented. He stressed the court's obligation to construe statutes to save them from constitutional attacks. He then contended that, in view of its legislative history and cases and legislative history relating to other statutes, the statute at issue in this case may be construed to make the defendant's mental state an element of the offense.

Express Advocacy in Political Advertisements

The question originally raised in *Elections Board v. WMC,* 227 Wis. 2d 650 (1999), was whether specific advertisements, sponsored by Wisconsin Manufacturing and Commerce (WMC) and unidentified corporations in the Fall 1996 political campaign, had "the political purpose of expressly advocating" the defeat or reelection of six incumbent state legislators. Each advertisement described the legislator's vote on specific issues and encouraged calls to the legislator to express approval or disapproval of the legislator's position.

Initially, after the advertisements were run, some of the legislators involved filed complaints with the Elections Board, contending that the advertisements subjected WMC to elections regulations, including a requirement to name the parties who paid for the advertisements. The legislators also requested and received injunctive relief from various circuit courts restraining WMC from broadcasting the advertisements.

About four months after the complaints were filed, the Elections Board found that WMC had engaged in express advocacy for political purposes and ordered WMC to file a campaign registration statement and report all contributions and disbursements made during 1996. When WMC

refused, the board brought this action, asking the circuit court to order WMC to comply with the registration and reporting requirements and pay certain forfeitures.

The circuit court dismissed the board's complaint, saying that the board could not apply the definition of express advocacy to WMC because the board had not previously published or formally adopted that definition. The circuit court also found that the board's standard for express advocacy was unconstitutionally vague.

The supreme court, which took the case directly from the circuit court, bypassing the appellate court, agreed with the circuit court that it would violate "the due process right of fair warning" to hold the respondents to a standard which had not been established prior to the airing of the advertisements. It held that neither state law nor board ruling defined "expressly advocate" at the time the ads were run. It also noted the term was added to the Wisconsin Statutes in response to *Buckley v. Valeo*, 424 U.S. 1 (1976), a U.S. Supreme Court decision that found federal regulation of certain political advertisements was constitutional. In that case, the Court attempted to reconcile First Amendment rights to free speech and free association with the need to regulate campaign financing. It held that regulation is constitutional only if the communications expressly advocate the election or defeat of a clearly identified candidate.

In its review of express advocacy, the Wisconsin Supreme Court found that it is not necessary that the advertisement use specific words, such as "vote for" or "defeat", but explicit language is required. The court declined to create a new standard for express advocacy that would meet constitutional requirements, saying that was a policy issue that should be handled through statute or administrative rule. It did, however, suggest that communication should be evaluated on a case-by-case basis, taking into account: the context, intent, and effect of the advertisement; the proximity of the election; the audience; and the placement of the advertising relative to the voting district.

The court concluded:

> . . .WMC, when it broadcast its advertisements, had insufficient warning that the ads could qualify as express advocacy under Wisconsin's campaign finance law. The Board's after-the-fact attempt to apply a context-oriented standard of express advocacy must fail, since, in effect, it was an unfair attempt at retroactive rule-making, without any express statutory grant of authority, and thus, a violation of due process. Because this conclusion prevents the Board from prevailing in the action under any factual conditions, we affirm the circuit court's dismissal of the Board's complaint. (681)

Both Justice Bablitch and Justice Prosser concurred in the majority opinion to dismiss the case against WMC, but both expressed reservations. Justice Bablitch said he preferred the constitutional standard expressed by the dissenting opinion. Justice Prosser dissented in part because of his belief that regulation of political expression should be very narrowly written and construed so as to leave no doubt about whether a particular type of expression is regulated.

Chief Justice Abrahamson and Justice Bradley dissented from the outcome of the majority's opinion but agreed that whether or not a communication constitutes express advocacy does not depend on certain "magic words". They criticized the majority for failing to determine a constitutional standard for determining when a communication constituted express advocacy. Justice Bradley suggested that advertisements should be considered express advocacy for a political purpose when their essential nature unmistakably advocates the election or defeat of a candidate.

Time Limits on Malpractice Lawsuits

In *Aicher v. Wisconsin Patients Compensation Fund*, 237 Wis. 2d 99 (2000), the plaintiff asked the court to declare unconstitutional those statutes that required her to commence an action for medical malpractice within five years of the behavior that resulted in the injury. In her case, that 5-year period ended before she was aware of the injury. At age 11, the plaintiff was diagnosed with a cataract in her right eye that eventually resulted in permanent blindness in that eye. The minor's mother was told by a physician that the cataract was the result of a condition that would have been treatable when the minor was under six months of age. The mother learned that the physician who treated the child during infancy had noted the condition but had not provided treatment or notified the parents. When the child was 13, her parents brought an action on her behalf for medical malpractice against the physician who failed to treat her.

This case focused on Sections 893.55 (1) and 893.56, Wisconsin Statutes. Section 893.55 (1) requires a person who is injured by an act or omission that resulted in medical malpractice to commence an action for redress within three years from the date of the injury or one year of the date of discovery of the injury, except that the one-year period cannot extend beyond five years after the date of the malpractice. In addition to the general provisions of Section 893.55 (1), Section 893.56 allows additional time for minors to commence an action for medical malpractice if the action is brought before the child reaches the age of 10.

In this case, the omission by the physician occurred more than five years before the injury was discovered, and the action was brought after the plaintiff had reached the age of 10. Based on an earlier supreme court case, the circuit court held that, regardless of those facts, the statutory provisions were unconstitutional because they provided the plaintiff no remedy for a wrong, in violation of Article I, Section 9 of the Wisconsin Constitution.

The supreme court reversed the lower court, holding that, however harsh the result, the plaintiff's action was barred by the 5-year limit. The court noted that statutes are presumed to be constitutional and are sustained unless the plaintiff proves that the statute is unconstitutional beyond a reasonable doubt.

> The presumption of statutory constitutionality is the product of our recognition that the judiciary is not positioned to make economic, social, and political decisions that fall within the province of the legislature. . . . The duty of the court is only to determine if the legislation clearly and beyond doubt offends a provision of the state constitution that specifically circumscribes legislative action. (111)

The court found the statutes in question were enacted in response to a perceived increase in the number of malpractice suits, the size of awards, and the cost of medical malpractice insurance, which, in turn, resulted in increased health care costs, defensive medical procedures, and possible reductions in the availability of medical care.

The court held that the constitutional right-to-remedy applies only when a litigant seeks a remedy for the impairment or interference of an already existing right. In this case, there was no existing constitutional right. Rather, the legislature had determined who had a right to bring a medical malpractice action. The court said the legislature is the arena for deciding public policy, and the question of what limitations are placed on a person's right to bring an action is a fundamental question of public policy. The court also reviewed the arguments made by the plaintiff that the statute violated the equal protection and due process clauses of the state and U.S. constitutions and found those arguments unpersuasive.

Justice Crooks, joined by Justice Bablitch, dissented, saying that this decision did violate the plaintiff's constitutional right to a remedy because the right to bring a medical malpractice claim is present in common law and the legislature barred that remedy by creating a 5-year limit on the right to bring an action.

CRIMINAL LAW

County Responsibility for Released Sexual Predators

When a court determines that a person committed as a sexual predator may be released, the person may be placed on "supervised release". *State v. Sprosty*, 227 Wis. 2d 316 (1999), raised the question about what happens if the county to which the person is being released tells the court that it does not have the necessary programs or facilities to handle the release. The supreme court ruled that the court must ensure that the person is still released under an appropriate treatment plan.

Larry Sprosty was committed as a sexual predator in 1995. In 1996, he filed a petition for supervised release or for discharge. After hearing testimony from experts, the circuit court concluded that, although Sprosty still needed to participate in sex offender and substance abuse treatment programs, he could do so on an outpatient basis while living in the community. In October 1996, the court granted Sprosty's petition for supervised release and ordered the preparation of a treatment plan.

Clinical staff from the Wisconsin Resource Center (WRC), the state's center for mentally ill inmates, decided upon a treatment plan that would first involve placement at a halfway house, followed by electronic monitoring in the community. WRC also recommended sex offender treat-

ment, substance abuse treatment, and high-risk supervision. Crawford County – Sprosty's county of residence – did not have these resources. Four other counties did, but at least some of the facilities were unwilling or unable to admit Sprosty for placement or services.

In April 1997, the court ordered Crawford County to prepare a supervised release plan. Two months later, the county informed the court that although it had developed a plan, in cooperation with the Department of Health and Family Services (DHFS), it did not have the resources to treat Sprosty. The court agreed, but it also determined that no other county had the necessary resources. Finally, the court stated that it could not compel private agencies to accept Sprosty, and it would not require the state to build the necessary facilities. The court ruled that Sprosty, who had remained in custody during the proceedings, could not be released. Sprosty then appealed.

The court of appeals reversed the trial court's decision. It held that once the court has determined that supervised release is appropriate, it may not maintain a person in custody. The court stated that if a person's county of residence cannot facilitate the release and no other county steps in, the court must designate a county for the person's placement. The state then appealed.

The supreme court affirmed. It explained that unless the state demonstrates that a person committed as a sexual predator is still sexually violent and that it is substantially probable that the person will engage in acts of sexual violence if not institutionalized, the court must release the person. In that context, the court may consider the availability of facilities or the cost of providing the necessary programs. It may even condition the release on the provision of certain placement or other services. But it may not deny the person's petition for supervised release based on whether a facility is or is not willing to accept the person for treatment.

The court rejected the state's suggestion that a trial court may reconsider an order for supervised release if facilities are not available. It ruled that once a circuit court has granted a petition for supervised release, it may order a county, through DHFS, to create whatever programs or facilities are necessary to accommodate the person's release. In reaching this conclusion, the court relied exclusively on the relevant statutory language, which specifies a number of mandates applicable to DHFS, the counties, and the court. The court also noted that in successfully defending the constitutionality of the sexual predator law in previous cases, the state had assured the court that it was committed to providing treatment to sexual predators.

In addition, the court rejected the state's argument that the DHFS and county plan to reinstitutionalize Sprosty constituted an appropriate treatment plan. According to the court, supervised release must entail the placement of the person in the community. Finally, the court concluded that DHFS bears the burden of paying for facilities and treatment for people committed as sexual predators.

Chief Justice Abrahamson authored a brief concurring opinion in which she contended that the issue of financial responsibility for the facilities and treatment was not properly before the court.

Dogs as Dangerous Weapons

Under Wisconsin law, a person who causes bodily harm to another by the negligent operation or handling of a dangerous weapon is guilty of a felony. In *State v. Bodoh*, 226 Wis. 2d 718 (1999), the supreme court was asked to determine the applicability of this law when someone's dog attacks another person.

In this case, the defendant, Jene R. Bodoh, owned two Rottweiler dogs. While he was out of town, the dogs chased a 14-year-old boy who was riding a bicycle. They knocked the boy off the bicycle and bit him as he tried to run away. (The boy's injuries ultimately required over 300 stitches.) Calumet County Sheriff's officers, summoned by a neighbor, arrived to find one of the dogs lying near the boy. The dog growled as the officers approached, and the officers shot and killed it. The officers found the other dog nearby. When it growled, the officers shot and killed it too.

The officers determined that Bodoh owned the dogs, and he was charged with and convicted of negligent handling of a dangerous weapon. He then appealed, contending that the dogs were not dangerous weapons; that he was not operating or handling the dogs; and that the evidence did not demonstrate that he was negligent. A divided court of appeals affirmed the conviction, and the supreme court unanimously affirmed the appellate court's decision.

The supreme court began by examining whether dogs, in general, could be dangerous weapons. Under the definition contained in the Wisconsin Statutes, a dangerous weapon includes any "device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm." Relying on the history of the statute and *State v. Sinks*, 168 Wis. 2d 245 (Ct. App. 1992), the court determined that a dog may be a dangerous weapon. It then reviewed the evidence to determine how the law applied to the dogs in this case.

The court noted that the defendant, in a letter sent the Calumet County Sheriff's Department, referred to the dogs as "watch dogs". It also found that the Rottweilers had chased another boy riding a bicycle the same evening as the attack in this case. It recounted evidence that the defendant's dogs had attacked another dog 14 months earlier (and that one of them had attacked the same dog a second time), that they had chased a teenage boy four months earlier (with one of them biting at the boy's pants leg), and that the dogs were aggressive when people walked nearby. The state's expert witness testified that a dog may attack indiscriminately if improperly trained and that failure to punish a dog's bad behavior is an example of improper training. The defendant's veterinarian also testified that once a dog has bitten, it is more likely to bite again. Finally, the court stated that there was no evidence that Bodoh had attempted to correct the dogs' behavior. Based on the record, the court concluded that there was sufficient evidence for a jury to find that Bodoh had used the dogs, or intended that the dogs be used, in a manner likely to produce death or great bodily harm.

The court then considered Bodoh's contention that, since he was out of town, he was not "handling" or "operating" the dogs at the time of the attack. Reviewing dictionary definitions of the terms, the court agreed that a person normally must be physically present in order to operate a dangerous weapon, but it stated the same requirement did not seem to apply to "handling". The court noted that "to handle" may mean to "deal with or have responsibility for" or "to conduct". Using this definition, the court concluded that the defendant had handled a dangerous weapon.

The court concluded that there was sufficient evidence for the jury to find that Bodoh had unreasonably and substantially created a risk of death or great bodily harm. It noted the dogs had initiated unprovoked attacks prior to the one involved in this case, and Bodoh had never informed his veterinarian of this. The state's expert witness testified that a Rottweiler is capable of causing death or great bodily harm and that an untrained Rottweiler should be contained by chain link fence anchored in a concrete base, while a dog with a history of biting should be contained by two separate fences. (The stakes for Bodoh's fence were driven into the ground.) The court found the defendant's attempts to contain the dogs were insufficient. It dismissed Bodoh's arguments that the legislature, having explicitly criminalized negligent control of a vicious animal only when it results in a person's death, intended that less serious injuries should result only in civil liability.

Harm Inflicted on an Unborn Child by Its Mother

State v. Deborah J. Z., 228 Wis. 2d 468 (1999), addressed the question of whether an unborn child is a human being for the purposes of Wisconsin's first-degree intentional homicide and first-degree reckless injury statutes. The defendant, a pregnant woman who claimed she was about to give birth, was brought to the hospital from a tavern. She was uncooperative and belligerent, and her blood alcohol concentration exceeded 0.30%. The defendant allegedly stated to a nurse, "[I]f you don't keep me here, I'm just going to go home and keep drinking and drink myself to death and I'm going to kill this thing because I don't want it anyways [sic]." After consulting with her doctor, the defendant consented to a cesarean section. The baby girl was extremely small, had no significant subcutaneous fat, and had physical abnormalities consistent with fetal alcohol effect. The baby's blood alcohol level at birth was 0.199%. Eventually, the child was discharged to a foster family.

The state then charged the defendant with attempted first-degree intentional homicide and first-degree reckless injury. The defendant filed a motion to dismiss, contending the state's allegations did not constitute a criminal offense and that the lower court had no probable cause to bind her over for trial. She argued that she could not have committed either crime because the statutes in question only criminalized causing the death of or great bodily harm to a human being and an unborn child is not a "human being". The trial court denied the motion, and the defendant petitioned for review by the court of appeals. At the request of the court of appeals, the supreme court agreed to bypass the appellate court and consider the case on certification but, because the high

court was equally divided on the merits of the appeal, it vacated the certification and remanded the case to the court of appeals.

The court of appeals began its analysis of the merits of the case by setting forth the language of the statutes, noting that "human being" is defined as "one who has been born alive". It then set forth its conclusions that the statutes involved are unambiguous and clearly set forth the legislature's intent. It found that in the context of the statutes before it, "human being" did not include an unborn child.

To support its conclusions, the court of appeals pointed out that in 91 other sections of the Wisconsin Statutes, the legislature had specifically referred to an "unborn child". It also emphasized that the statutes at issue in this case included separate subsections that related to offenses against an unborn child, indicating the legislature was making a distinction between "human being" and and "unborn child". (The court, however, did not note that those provisions were enacted two years after this case began.) From this, the court concluded that if the legislature had intended to treat an offense against an unborn child in the same way as it treated offenses against human beings generally, it could have done so with different language.

The court rejected the state's argument that the term "human being" includes an unborn child if the perpetrator of the offense is the child's mother, saying it was "absurd" to construe the statutory language in such a manner.

> Furthermore, the conclusion that these statutes were not intended to apply to conduct harming an unborn child is supported by the existence of abortion statutes that prohibit prosecuting a mother for aborting her unborn child. *See* Sections 940.13, 940.15(7), STATS. These statutes more appropriately address the present situation — one where a mother intends to harm her unborn child — and exempt a pregnant woman from prosecution. (479)

The court also rejected the state's request that it apply the "born alive" rule, which has been adopted by judicial decision in 31 states. Under that rule, a third party may be liable to certain civil or criminal charges resulting from prenatal injuries caused by the party. The court stated that it was basing its decision on the statutory language and that it did not need to invoke that rule.

Based on its decision that an unborn child had not been defined as a human being under the specific statute in question, the court of appeals concluded that there was no probable cause to charge the defendant with attempted first-degree intentional homicide and reckless injury. Therefore, it reversed the trial court's decision that had denied the defendant's motion to dismiss.

Relevance of a Victim's Crime Record at Sentencing

In *State v. Spears*, 227 Wis. 2d 495 (1999), the supreme court held that a court may consider the criminal record of the victim in sentencing the defendant if it supports the defendant's view of the crime for which the sentence is being imposed.

The *Spears* case began when Philip Young stole Yolanda Spears' purse. In Spears' version of the events, Young hit her in the face twice during the purse-snatching. He also stole a purse from one of Spears' companions. An unknown bystander chased and beat Young and successfully retrieved both purses.

After getting her purse back, Spears borrowed a friend's car and chased Young, who was on foot. According to a witness, Spears missed Young at first. She then turned around and drove back toward him. As Young fled down the sidewalk, Spears struck him with the car, throwing him into the street. After driving a couple of blocks away, Spears turned around and drove the car directly over Young. Young died shortly thereafter.

Spears was arrested and initially charged with first-degree intentional homicide. Spears pled guilty to a reduced charge of second-degree intentional homicide. Before the sentencing hearing, Spears' attorney submitted a sentencing memorandum, which included Young's criminal record. The prosecutor argued that the victim's criminal record was not relevant for sentencing, and the trial court agreed with her.

The court heard from members of Young's family, who stated it was unlikely he assaulted Spears as she described. They requested a harsh sentence for Spears. The court stated that it did not doubt that Spears had committed the crime, and it "accepted that the victim [Young] provoked

the incident by committing an assaultive offense against the defendant and her friend." However, it chose not to consider the victim's criminal record in determining the sentence.

Spears, who was sentenced to 20 years in prison, filed a postconviction motion, objecting to the length of the sentence and contending that the court had erred by failing to consider Young's criminal record. The trial court denied the motion, stating:

> While the victim's bad conduct and character on the night of his death was an important mitigating factor in this sentencing, the victim's general character was not a sentencing factor, and there was simply no reason to give his prior record any weight. (505)

The court of appeals reversed the lower court's decision, concluding that the victim's criminal record is relevant if it supports the defendant's view of the circumstances surrounding the crime. The appellate court reversed the trial court's decision and remanded the case for a new sentencing hearing. The supreme court upheld the appellate court decision on this ground.

The supreme court stated that sentencing is left to the discretion of the trial court, but all relevant information should be considered. In this case, it noted, the trial court had indicated that it considered the circumstances surrounding the crime relevant to sentencing. The supreme court said an examination of Young's criminal record – which referred to 18 separate arrests, including several for violent crimes, over a 10-year period – might have assisted the trial court in deciding upon a sentence. If nothing else, it was relevant for the purposes of refuting the claims by members of Young's family that he would not have assaulted Spears.

The court was unsure of what sentence the trial court would have imposed if it had concluded that the robbery involved a physical assault, but, given that the trial court indicated that the circumstances of the crime – including the victim's conduct and character that night – were relevant to the sentence, it erred by not considering the victim's criminal record.

Justice Bablitch concurred, saying the majority opinion merely authorized a defendant to use a victim's criminal record to rebut a misstatement made about the victim relating to the circumstances of the crime.

Chief Justice Abrahamson dissented, stating that the circuit court did admit the victim's record into evidence but reasonably gave it no weight. Because it concluded that the victim's conduct was "assaultive", it did not need to consider his criminal record.

Justice Prosser, who also dissented, argued that the majority opinion creates an "open season" on victims, by requiring each sentencing court to consider any evidence that is arguably relevant to the defendant's view of the crime.

Odor of Marijuana as Probable Cause for Arrest

The Fourth Amendment to the U.S. Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit the arrest of a person without probable cause. In *State v. Secrist*, 224 Wis. 2d 201 (1999), the supreme court considered whether a strong odor of marijuana in a car provided probable cause to arrest the driver. The court concluded that under certain circumstances it did.

The defendant, Timothy M. Secrist, was arrested on July 4, 1996. That afternoon, while driving alone, he stopped his car to ask directions from a uniformed New Berlin police officer, who was directing traffic during a parade. After noticing a strong odor of marijuana coming from the car, the officer, who recognized the odor from his police training and service, directed the defendant to pull the car over to the side of the road and get out. He then arrested the defendant for suspected possession of marijuana. Soon thereafter, other officers arrived. One of them searched the car and found a marijuana cigarette and an attached "roach clip" in the ashtray next to the driver's seat.

Secrist ultimately was charged with one count of possession of a controlled substance and one count of possession of drug paraphernalia. He asked the court not to consider the evidence on the ground that it had been seized in an illegal arrest. During the hearing on that request, the arresting officer testified that, when speaking to Secrist in the car, he did not "make any physical observations about him", but that he did detect a strong odor of marijuana coming from the area of the vehicle where the defendant was seated and the defendant was alone in the vehicle. He also testified that Secrist's "balance might have been a little bit off [and] perhaps his speech was not slurred but maybe a little bit haulting" [sic]. Based on that testimony, the court concluded that Secrist's

arrest was lawful, and it admitted the marijuana cigarette and the roach clip into evidence. Secrist then pled no contest to the charge of possession of a controlled substance.

The court of appeals reversed the trial court's decision regarding admissibility of the seized evidence. It found that although there may have been evidence that a crime had been committed, there was insufficient evidence that the defendant had committed it. Therefore, it concluded, the defendant was arrested without probable cause. The state then appealed.

The supreme court stated its standard for reviewing an order granting or denying a motion to suppress evidence would be to uphold a circuit court's findings of fact unless they were clearly erroneous or violated constitutional principles.

The court began by noting that the police officer had probable cause to search the car once he detected the odor of marijuana, but it stated that probable cause to search is not the same as probable cause to arrest. Probable cause to arrest requires enough evidence so that a reasonable police officer would believe that a specific person committed or was committing the crime. The court explained, however, that the evidence does not need to prove guilt to a "degree of technical certainty" nor does it even need to show that it was more likely than not that the defendant committed the crime. The court then stated that, depending on an officer's training and experience, odor of a controlled substance may provide probable cause for arrest. The officer, however, must be able to link the odor to the person, based on the particular circumstances in which the odor was detected or on other evidence. The court then explained that a "strong odor of marijuana in an automobile will normally provide probable cause to believe that the driver and sole occupant of the vehicle is linked to the drug."

The court concluded that there was sufficient evidence for a reasonable police officer to conclude that the defendant had committed a crime. Because there was probable cause to arrest the defendant, the search that the police conducted in connection with the arrest was valid.

CIVIL LAW

Contributory Negligence Standard for Mentally Ill Individuals

In *Jankee v. Clark County,* 235 Wis. 2d 700 (2000), the supreme court was asked to articulate the standard of care required of a mentally ill person who is the plaintiff in a tort action. In this case, the plaintiff had a history of mental illness, including an attempted suicide as a teenager, and a tendency to discontinue his medication. After release from an institution in 1984, the plaintiff did not experience a relapse until 1989, when he was jailed as the result of a domestic relations altercation. The court ordered him detained for 30 days, and he was admitted to the Clark County Health Care Center. During part of his detention period, he was housed on the third floor of the center where the windows were designed to open about four inches. One night, the plaintiff used his toothbrush to pry open a window and escaped. During the escape, he fell two stories, sustaining paralyzing injuries. He sued Clark County and the manufacturers and installers of the windows, alleging negligent provision of care and negligent construction of the windows.

Both the circuit court and court of appeals granted summary judgment to the manufacturers and installers of the windows, based on the defense of government contract immunity. Under that defense, if an independent professional contractor has met the product specifications approved by a governmental authority and warned the authority of any known possible dangers associated with those specifications, the contractor is immune from liability for damages resulting from the product.

The court of appeals reversed the circuit court's grant of summary judgment for Clark County, however, concluding that the plaintiff's contributory negligence should be measured under a subjective, "capacity-based standard of care", not the "reasonable person standard" that the circuit court had used.

The supreme court reversed the court of appeals standard for assessing the plaintiff's contributory negligence and also discussed the issue of government contract immunity. The court found, as a matter of law, that the plaintiff's negligence exceeded the negligence of the county and of the manufacturers and installers of the windows and that, accordingly under the contributory negligence law of Wisconsin, the plaintiff was barred from recovery.

The court discussed which standards should be applied to the plaintiff's conduct. Generally, under the reasonable person standard, everyone has a duty to protect others from foreseeable

harm. The doctrine of contributory negligence requires a person to exercise that same standard of care for his or her own safety.

As a general rule, the court said, this state holds mentally disabled defendants to the reasonable person standard of care as a way to better apportion loss between two innocent parties, to encourage restraint on the part of the disabled, and to prevent persons who commit torts from feigning incapacity in order to avoid liability. The court also emphasized the difficulty in distinguishing among variations in character, emotional equilibrium, and intellect as a practical reason for the court's preference for the reasonable person standard when determining negligence.

The court stated its reasons for using the reasonable person standard in this case. The plaintiff suffered from a foreseeable and treatable illness and had received numerous warnings that failure to take his medication would result in a return of his mental illness. He had observed that when he discontinued his medication, his illness returned.

> Were Jankee to prevail here, we would be promoting an environment that allows the mentally disabled to cease treatment for foreseeable illness and then to pursue recovery for self-inflicted injuries under an insulating theory that effectively excuses them from the consequences of their own negligence. We decline to reward a plaintiff for choosing this course of action. (750-751)

The court held that the plaintiff did understand the duty of ordinary care as evidenced by his carefully planned escape. He put pillows in his bed to make it appear that he was asleep. He created an instrument to force open the window. He made his escape in the middle of the night when the institution's vigilance was least. He escaped through the window that involved a two-foot drop to the roof on an adjacent building, rather than the windows that were three stories above the ground. The court said this showed that the plaintiff had the capacity to comprehend and avoid danger. For those reasons, the court held the reasonable person standard should apply to this case. Under that standard, the plaintiff's negligence exceeded that of any of the defendants. He was contributorily negligent because of his failure to take his medications and his attempt to escape from a window three stories above the ground.

The court noted that if the county owed the plaintiff a special duty of care because of his known mental disability and self-injuring behavior, that duty would override the negligence of the plaintiff, but it concluded that the plaintiff's behavior at the center did not indicate that any special care was required and the center was not negligent in its care.

Chief Justice Abrahamson, joined by Justice Bradley, dissented, saying that the determination as to the negligence of the county is a question for a fact-finder and should not be determined by the court on summary judgment. She also argued that the subjective standard should be applied to cases like this one, when the defendant is aware of the plaintiff's mental illness and can take appropriate precautions to prevent injury.

Immunity from Liability for Guardians Ad Litem

Paige K. B. v. Molepske, 219 Wis. 2d 418, concerns the immunity, if any, granted to an attorney who was appointed guardian *ad litem* (GAL) by a circuit court to represent the best interests of a child in a custody suit. During a divorce proceeding, the circuit court appointed the defendant to act as guardian ad litem for two children during divorce and custody proceedings. During those proceedings allegations were made that the father had sexually abused the children. Three psychologists subsequently examined the children, after which one testified the father probably had sexually abused the children, one found no evidence of abuse, and one was unable to tell whether abuse had occurred. The GAL recommended that the mother be granted custody of the children, but the court, based on the evidence of the psychologist that found that no abuse had occurred, granted joint custody and gave the father primary physical custody. The GAL was terminated after the divorce was final. The children were later placed in a foster home after a petition was filed alleging that the father had sexually abused the children. The father was formally charged with the sexual abuse and was found guilty, whereupon the children were placed in the mother's custody. The children brought an action against the GAL, alleging negligence in the performance of his duties during the custody proceedings.

The circuit court and court of appeals concluded that, as a GAL, the defendant was entitled to absolute quasi-judicial immunity for the acts done while performing his GAL duties. The supreme court was asked whether such immunity should apply in this case. The court noted that

Wisconsin courts have recognized an absolute quasi-judicial immunity for those persons who perform functions that are intimately related to the judicial process. It pointed out that unsatisfied litigants are prevented from suing a judge, to reduce the chance for judicial decisions based on intimidation. This rationale also applies to court personnel, the court said, to prevent litigation that would intimidate other persons who perform judicial duties.

The court rejected the argument that a GAL is an independent advocate for the children who, like any other licensed attorney, is answerable in damages for negligence. It noted that the GAL and the court have the same responsibility to promote the best interests of the children and their functions are intimately related. According to the court, GALs must be allowed to independently consider the facts of a case and advocate for the child without fearing the harassment of retaliatory litigation. Otherwise, litigation could result in fewer attorneys being willing to serve as GALs, and the fear of liability could lead them to appease disappointed parents or children, rather than protecting the child's best interests. On the other hand, the court pointed out, there are remedies available to the children or parents who are dissatisfied with a GAL's recommendations or conduct, including reprimand for violating the professional rules that apply to attorneys, removal from office by the appointing court, and modification of the attorney's recommendations by the court involved in the dispute.

The court held that a GAL was performing functions intimately related to the court and is entitled to absolute immunity in this case.

Lemon Law Applies to Known Defects

In *Dieter v. Chrysler Corporation*, 234 Wis. 2d 670 (2000), the supreme court was asked to decide if Wisconsin's "lemon law" applied only to motor vehicle defects that are hidden from the purchaser at the time of the delivery. The law allows the purchaser of a defective motor vehicle to return it to the manufacturer for the full purchase price if the manufacturer has attempted to repair the defect at least four times without success or if the purchaser has been unable to use the vehicle for a total of 30 days or more within one year of the original delivery date.

In this case, the purchase agreement covered the purchase and installation of several after-market accessories. During installation at the dealership, the vehicle was scratched in many places. The purchasers told the dealer they did not want the vehicle. When the dealer offered to repair the scratches and threatened to keep the purchaser's deposit if they did not take delivery, the purchasers agreed to take the vehicle. After the dealer had tried four times without success to repair the scratches, the purchasers demanded refund of the full amount of the purchase price.

The circuit court found that the lemon law did not apply because the scratches were caused by the dealer, not the manufacturer. The court of appeals reached the same finding for a different reason. It said that the lemon law is intended to apply only to defects that are hidden at the time of delivery. The supreme court reversed the decision of the court of appeals, saying there is no "hidden defect" requirement in the state's lemon law.

The court said that the lemon law can only apply when there is manufacturer warranty coverage, and the warranty language, if clear, must be given effect. If the warranty is ambiguous, the ambiguities must be construed against the drafter of the warranty.

The court then reviewed the manufacturer's warranty to determine whether it covered the scratches. The court found that the scratches were covered by the warranty:

> So repairs to, or necessitated by, the installation of "genuine MOPAR accessories approved by Chrysler for dealer installation" are covered by the warranty, because they are excepted from the exclusion by the plain language of the warranty. (680)

The court rejected the court of appeals opinion that the purpose of the lemon law was to protect a purchaser from defects that manifest themselves after the vehicle is delivered.

> The lemon law does not, on its face, speak to whether the vehicle defect must be "hidden" or the consumer unaware of its existence at the time of delivery in order to trigger relief. (682)

The court said that if the legislature wanted to limit the lemon law to defects that are hidden at the time of vehicle delivery, it could have done so. It also noted that the legislature did include language that prohibited the purchaser from waiving any of the protections of the lemon law, so that ruling the lemon law does not apply when the purchaser is aware of the defect constitutes a

waiver by notice, which would contravene the law. The court rejected the manufacturer's assertion that allowing the lemon law to apply in this case would create a loophole for consumers who, for their own reasons, wanted to void the purchase. It noted that the purchaser has to return the vehicle to the manufacturer's agents and give them at least four chances to cure the defect. The court held that the lemon law does apply to known defects and the defendant must comply with that law.

Recreational Immunity Does Not Apply to a Spectator at a High School Sporting Event

In *Meyer v. School District of Colby*, 226 Wis. 2d 704 (1999), the supreme court was asked to decide whether a person injured as the result of a defect in the bleachers at a high school football game could recover damages from the school district, the owner of the bleachers. The circuit court and court of appeals decided that a definition in the recreational immunity law, Section 895.52 (1) (g), Wisconsin Statutes, prevented recovery. The supreme court reversed those decisions and sent the case back to the circuit court for further proceedings.

The recreational immunity law provides immunity to owners of property if a person is injured on the property while engaged in a recreational activity, even if the injury is the result of the property owner's negligence. The immunity does not apply to any organized team sport activity sponsored by the owner of the property on which the activity takes place.

The supreme court agreed with the lower courts that attendance at the football game was a recreational activity and that the game was an organized team sport activity, sponsored by the owner of the property, i.e., the school district. However, it said the lower courts erred in finding that the immunity did apply even though the spectator had not participated in the sport activity itself.

> Determining whether an injured person is engaging in a recreational activity requires examination of "all aspects of the activity," including "the intrinsic nature, purpose and consequence of the activity." (712)

The court said one must consider not only whether the injured person was a spectator, but what he or she was watching. If the person had been watching a sunset or band concert on the bleachers, rather than a recreational activity, the school district would not be liable for the injury. The court noted that if the legislature wanted to limit the sport activity exception to the organized team players it could have done so but did not. The court said it found nothing in the legislative history of the act that indicated the property owner who sponsors an organized team activity should be liable for the players' injuries but not the injuries of coaches or spectators.

The court reviewed the policy behind the recreational immunity law and determined it was designed to encourage property owners to open their property to recreational activities because the land available for recreation is limited. The court said, however, this case did not involve a shortage of facilities but related to facilities constructed to attract the public to the property owner's sponsored event. There is no need to encourage owners to open their property by granting immunity.

The court unanimously found that the injured person's attendance at the football game did fall within the exception to the recreational immunity statute, and the person could recover damages for the injury.

A Third Party May Sue a Psychiatrist for Reinforcing False Memories

In *Sawyer v. Midelfort*, 227 Wis. 2d 124 (1999), the parents sued two psychiatrists for pain and suffering they incurred as the result of their daughter's accusations of physical abuse and sexual abuse by the parents. The parents alleged the daughter, Nancy Anneatra, was given false memories while under treatment for mental illness.

Anneatra began suffering from mental problems at a young age and required psychiatric hospitalization on at least one occasion prior to meeting the defendants. In 1984, when Anneatra was approximately 26 years old, Celia Lausted, one of the defendants and an unlicensed therapist at the time, began treating her. In 1985, in the presence of Lausted, the daughter accused her parents of physically abusing her and her father of sexually abusing her while she was a child. She then changed her name from Sawyer to Anneatra and discontinued contact with her parents. In 1987, Lausted referred the daughter to the second defendant, Dr. H. Berit Midelfort, for psychiatric treatment. Anneatra died of cancer in 1995. The mother, as special administrator of the estate, gained access to the the daughter's medical records, and the parents and the estate brought this

action. The Sawyers alleged that negligent treatment by the defendants resulted in the development of false memories by the daughter of sexual and physical abuse, causing the parents pain and suffering. On the behalf of the estate, it was alleged that Anneatra experienced "pain, suffering and disability; medical, psychiatric, and psychological expenses; the loss of the enjoyment of life." The circuit court granted summary judgment to the defendants, saying the plaintiffs did not state a claim for which relief could be granted. The court also said their claims were barred by the statute of limitations. The court of appeals reversed both of those rulings.

In petitioning the supreme court to reverse the decision of the appellate court, the defendants argued: 1) there was no recognized cause of action under Wisconsin law; 2) the claim should be rejected on public policy grounds; and 3) the claims were precluded by the statute of limitations.

The supreme court determined that the plaintiff's case was distinguishable from cases that involved claims for loss of society and companionship. Here the parents were not asking for damages based on that loss, but rather on the pain and suffering they incurred as the result of being accused of sexual and physical abuse.

Generally, a person who commits an act that injures another person is fully liable for all foreseeable consequences of that act except as that liability is limited by public policy factors. The court, assuming that the facts were true as alleged in this case, held that the injuries had resulted from the defendants' treatment that implanted false memories in the daughter's mind. They were foreseeable and expected following negligent therapy and subjected the plaintiffs to considerable harm.

The court also found that, as a matter of public policy, cases like this would not open a large category of false or frivolous claims:

> The Sawyers' claims are not related to their estrangement from Anneatra. Their claims are appropriately limited to those who are harmed by the accusations of sexual abuse arising from false and reinforced memories arising from negligent therapies. So limited, the claim has a sensible and just stopping point. (146-147)

The court rejected the defendants' argument that if liability is found in this case therapists will either cease treating patients who may have been sexually abused or will not use new or untested therapies to treat their patients. The court said the standard of care for therapists in this case is the same as that imposed on other professionals – the degree of care and skill that is exercised by the average practitioner in the class to which the practitioner belongs, acting in the same or similar circumstances.

> Presumably, the more complex the health problem a therapist is faced with, the more latitude a therapist will have in treatment choices. However, we do not believe that a therapist should be relieved from liability when his or her treatment is negligent simply because the problem he or she is treating is complex. (149-150)

The plaintiffs suffered the injury in 1985, when their daughter accused them of abuse, so normally the limit on starting an action for personal injury within three years of the injury would bar the plaintiffs from bringing this action in 1996. The court relied on the discovery rule, however, which provides that a cause of action will not accrue until the plaintiff discovers, or should have discovered, the injury and who caused the injury. The plaintiffs allege that they did not know that the therapists used repressed memory therapy on their daughter until after the daughter's death in 1995, when they gained access to her medical records. The facts do not establish as a matter of law when the plaintiffs knew or should have known who caused their injury.

Since the case was decided on summary judgment motions without any testimony as to the facts, the court affirmed the appellate court's finding that there was a cause of action for professional negligence, and it sent the matter back to the trial court for a factual determination.