

An attorney whose license is suspended for a lesser violation may obtain reinstatement at the end of the suspension after fulfilling any conditions imposed by the Supreme Court. An attorney whose license is revoked or suspended for more than six months must petition for reinstatement and prove to a referee and to the Supreme Court that he or she is fit to practice law.

OLR received 2,225 inquiries and grievances in fiscal year 2003-2004. The most common grievances were lack of diligence by an attorney, lack of communication with the client, and misrepresentation or dishonesty. Approximately 16 percent of cases were forwarded for formal investigation, 3 percent were resolved through diversion programs, 11 percent were withdrawn, and the remaining 70 percent were closed for lack of sufficient information to support an allegation of misconduct. The Supreme Court and referees imposed public discipline on 66 attorneys, including six license revocations. The remaining public disciplines include suspensions or reprimands. In addition, 33 attorneys received private reprimands.

## Navigating the Legal System



Litigants are not required to be represented by an attorney in court and a growing number are not. Some people choose not to be represented and some cannot afford to pay for legal representation. The state provides legal assistance to indigent defendants in criminal cases. Indigent litigants in civil cases generally must turn to private groups for legal assistance. Courts can provide some assistance to

litigants who proceed without representation, but cannot assert a litigant's rights or strategize for a litigant as an attorney is likely to do.

### Self-represented parties

Courts are seeing an increasing number of self-represented or *pro se* litigants navigating a legal system that is not designed to serve individuals without attorneys. These litigants fall into two categories: those who truly can't afford an attorney but are otherwise ineligible for any type of low-income legal assistance, and those who can afford an attorney but choose not to hire one.

Confusing language and complicated rules and procedures can alienate litigants representing themselves in court. The frustration experienced by a litigant is often shared by court staff, attorneys, and judges who must balance conflicting obligations to assist litigants, prioritize workload demands, and adhere to legal and ethical constraints concerning the unauthorized practice of law. Judges find

*"Well over half of my original divorce and small claim filings are pro se (neither side has an attorney). Other counties in this district are close – some are a little higher and some a little lower."*

*– Judge Gary Carlson, Taylor County Circuit Court*

*The Waukesha County Family Court Self-Help Center provides both in-person and online assistance to court users who do not have attorneys. Litigants are increasingly representing themselves in court, and the legal profession is responding to this trend by providing a variety of new services.*

*(Kathleen Sitter, LRB)*



themselves placed in the uneasy position of providing useful explanations of law and procedures without violating the judicial code. They are concerned about the appearance of impropriety if they intervene too much or too little, and the balancing act becomes all the more challenging in cases where one litigant is represented and the other is not.

A 1999 survey of 13 northwestern Wisconsin counties showed that more than half of family court cases involved at least one person who was not represented by an attorney. In Milwaukee County, the number of family court cases involving a self-represented litigant was more than 70 percent in 1999. Since then, “snapshot” surveys of case filings show the numbers have increased. In Dane County, a two-month snapshot of family court filings in 1999 revealed that in 48 percent of the cases, both litigants were self-represented; by 2002, in a similar two-month snapshot, that had number increased to 60 percent.

In 1999, Chief Justice Shirley S. Abrahamson appointed a *Pro Se* Working Group, comprised of judges, attorneys, law professors, advocates, and court staff, to study the problem and recommend solutions. The group’s report, issued in December 2000, recommended simplifying court documents, establishing better referral systems to link people with legal help, and facilitating accurate and complete filing of paperwork. Since the report was issued, various initiatives have been undertaken to help *pro se* litigants navigate the court system.

In 2002, the Wisconsin Supreme Court adopted guidelines to help court staff to provide quality customer service while steering clear of the unauthorized practice of law. In 2003, the courts unveiled a new Self-Help Center on their Web site. In addition, counties across the state have developed their own court self-help centers to assist litigants with information, and have developed low-cost packets of forms with plain-English instructions for some of the most common court procedures and directories of local attorneys who might be willing to offer low-cost or “unbundled”

legal services for those who need help only with specific items. In 2004, a statewide effort to provide understandable court forms that would be acceptable, but not mandatory, got underway. In 2005, this effort produced 34 plain-English forms and instructions for various actions related to divorce. Also in 2004, a group of central Wisconsin counties began work on a special plan to address the needs of self-represented litigants in rural areas where the small number of lawyers means more potential conflicts of interest for lawyers who volunteer their time to offer free legal advice. These lawyers, or their law firms, often discover that they represent the same banks and merchants whom the litigant is attempting to sue, meaning that they cannot ethically offer assistance to the *pro se* litigant. To address this conflict-of-interest problem, the rural counties are researching establishing a partnership with the University of Wisconsin-Extension that might allow videoconferencing to facilitate free legal advice from attorneys who practice in other parts of the state – essentially, virtual self-help centers.

### **The public defender system**

The Sixth Amendment to the U.S. Constitution provides a criminal defendant the right to assistance of counsel. In the 1963 case *Gideon v. Wainwright*, the U.S. Supreme Court declared that if a criminal defendant cannot afford to pay for counsel, the state must provide counsel. It is up to the states to decide how counsel will be provided to indigent criminal defendants. In 1977, Wisconsin established a statewide public defender system, funded with state dollars, to provide legal representation to criminal defendants. Wisconsin's Office of the State Public Defender (SPD), provides legal representation to indigent adult defendants in criminal, commitment, and termination of parental rights cases. The SPD also provides legal representation to juveniles in delinquency cases and to children in certain child welfare cases, regardless of indigence.

The SPD represents indigent defendants at the trial level and also in appeals; it provided legal representation to 145,000 clients in 2004. The SPD employs attorneys to provide representation and also contracts with private attorneys to provide legal representation. In-house attorneys handle just over half of the cases. The SPD determines indigence according to statutory income and asset guidelines that were last modified in 1987.

Although Wisconsin's statewide public defender system is not unusual, it is also not typical of indigent defense across the 50 states. Some states leave it to the local government to provide counsel to indigent criminal defendants, allowing for inconsistency both in determinations as to who is indigent and in the quality of counsel provided. In jurisdictions without a public defender system, judges either appoint counsel from the private bar on a case-by-case basis, or the government contracts with private attorneys to take multiple indigent defense cases. The benefits to Wisconsin's statewide public defender system include that the attorneys assigned to provide indigent defense are generally experienced in criminal law and have been vetted, either through the hiring process for SPD employees or the certification



*Howard B. Eisenberg (1946-2002), called “Wisconsin’s Atticus Finch” (from Harper Lee’s “To Kill a Mockingbird”) by Chief Justice Shirley Abrahamson, wrote the statutes creating the state public defender system and was the first chief State Public Defender. Eisenberg, who later served as dean of Marquette Law School, continued to represent indigent defendants, free of charge, after leaving the Office of the State Public Defender.*

*(Andy Manis)*

process for private bar attorneys. Wisconsin’s system is uniform across the state. And, because the SPD makes indigence determinations, the intake process may start after defendants are charged, rather than waiting until the defendant makes his or her first appearance before a judge, avoiding the need to delay cases while counsel is appointed.

## **Representation for indigent litigants in civil cases**

In civil cases, unlike criminal matters, litigants generally do not have a right to be provided counsel if they cannot afford to hire an attorney; however, the stakes in civil matters can be quite high. People faced with eviction from their homes, people who need restraining orders, people fighting for custody of their children are all involved in civil proceedings. Several legal aid organizations provide legal services to indigent clients in various parts of Wisconsin. They tend to represent clients in cases concerning eligibility for public benefits, family law (including divorce, custody, child support, and domestic violence), housing, education, employment, and consumer law.

Legal aid organizations are funded by a mix of public and private money. One source of funding is interest on lawyers’ trust accounts (IOLTA). Wisconsin lawyers who receive funds that belong to a client must deposit the funds into a pooled interest-bearing account if the client’s funds alone would not generate sufficient interest to cover the cost of maintaining a separate account. Interest on the pooled accounts is used to fund legal aid. Another source of funding is federal money distributed by the Legal Services Corporation (LSC), a private, nonprofit corporation created by the U.S. Congress. Organizations that receive LSC funding are subject to a number of restrictions, including that they may not provide representation in criminal cases, accept cases in which attorney’s fees may be earned, challenge welfare reform laws, file class actions, lobby, litigate on behalf of prisoners, or represent clients in drug-related evictions from public housing.

In recent years, declining interest rates have taken a bite out of IOLTA, and a resulting toll on Wisconsin's ability to meet the civil legal service needs of low-income people. In 2004, the Wisconsin Trust Account Foundation (WisTAF), which operates the IOLTA program and distributes money to legal-services providers, took the unusual step of petitioning the Wisconsin Supreme Court to levy a \$50 fee on all active members of the State Bar of Wisconsin in order to shore up the program. The court agreed that the situation was dire, and voted to impose the fee. In its order, the court made clear its concern that funding of legal services for the poor not fall exclusively on the shoulders of lawyers. "The legal profession, alone, cannot solve the problem of adequate civil legal representation for the poor, nor should it be expected to do so," the court wrote. "The very integrity of our justice system is compromised when legal representation for critical needs is available only to those with financial means. As such, this issue affects our entire community. Our entire community will need to participate if a long-term solution is to succeed."

## Court Automation and Public Information



The Wisconsin court system's Consolidated Court Automation Programs, better known as CCAP, represents one of the nation's first – and, as measured by its users, most successful – efforts to develop, implement, and maintain

automated information systems for the courts and give the public Internet access to court information. CCAP's custom-developed software is in use in the courts' administrative offices as well as in courtrooms throughout the state.

*As the Wisconsin court system moves toward electronic filing, visits to the clerk's office to file paperwork could become a thing of the past. Court automation is making the court system more efficient, improving government by facilitating the sharing of information among agencies, and making court information more accessible to the public.*

*(Kathleen Sitter, LRB)*





*A Capitol tour guide gives visitors an explanation of the four murals on the walls of the Supreme Court hearing room. The murals, along with the rest of the room, were the subject of significant restoration efforts from 1999-2001, as part of the Capitol restoration project. (Kathleen Sitter, LRB)*

CCAP operates under the direction of the Director of State Courts and with guidance from the CCAP Steering Committee, which is comprised of judges, clerks of court, and court administrators from around the state.

### **Public access to court records and information**

Public access to a variety of court information is available through the Wisconsin court system Web site at ([www.wicourts.gov](http://www.wicourts.gov)). One of the most popular sources of information within this site is Wisconsin Circuit Court Access (WCCA), which provides up-to-date information on action in circuit court cases across the state. WCCA receives about 2.3 million hits every day. Because easy public access to court records raises privacy concerns, the Director of State Courts Office in 2005 appointed the WCCA Oversight Committee, which will meet periodically to review WCCA and address concerns with an eye on maintaining access without unduly compromising individual privacy. A committee of the same name and with similar membership was convened in 1999 to develop guidelines for the site and was disbanded when this task was completed.

Named one of the nation's top 10 justice-related Web sites, WCCA is searchable statewide or county-by-county using various criteria including an individual's name or a case number. WCCA displays circuit court information such as party names, criminal charges, sentences, civil judgments, case schedules, and case events and is updated hourly. In addition to free individual inquiries, bulk information can be extracted from WCCA by subscribing to a fee-based service.

Supreme Court and Court of Appeals case information is also available on the Wisconsin court system Web site, free of charge. The information includes party names, attorney names and addresses, and case events.

In addition to case information, the Wisconsin court system Web site contains a wide variety of court information. Published opinions and calendars of the Supreme Court and Court of Appeals; downloadable court forms; budget information; historical facts; educational materials for children; press releases; court system telephone directories; and much more is available on this site.

To ensure that access is available to all, CCAP provides free, public-access computer terminals in every county courthouse.

## Records automation

Court case, financial, and jury management applications within CCAP include features such as in-court processing, which provides litigants with the papers they need before they leave the courtroom; automated court calendars, which streamline the process for scheduling hearings; and bar code scanners to track files. Document imaging is used to help alleviate the physical storage requirements of large quantities of paper files, and pilot projects to develop an electronic-filing system are underway in several counties.



*With 64 employees and a 2003-2005 budget of \$20.8 million, CCAP replaces labor-intensive, paper-based court processes with state-of-the-art computer technology, saving time and valuable staff resources and helping the courts to run smoothly and efficiently. CCAP supports about 3,000 computers in 85 locations throughout the state, providing computer hardware, software, and a variety of technology services to the Wisconsin Supreme Court, the four districts of the Court of Appeals, the 72-county Circuit Court, and seven administrative departments.*

While the court system may never be a “paperless” operation, building an infrastructure that will allow for electronic filing (e-filing) of documents in the Wisconsin courts is an important goal, for e-filing can save money, increase efficiency, and improve access to the courts. An electronic filing system is expected to save money in the long term for the courts, lawyers, and litigants by reducing the costs of printing, copying, mailing, courier services, travel, and storage of paper documents. E-filing also is expected to save time, increasing the speed with which documents can be sent to the court and to opposing counsel and eliminating hurdles for litigants who live far away from the courthouse. Further, e-filing will give the parties, lawyers, judges, and court staff the ability to electronically access and search court files and dockets from remote locations, 24 hours a day.

Progress toward e-filing began in 2000, when the director of state courts appointed a 20-person Electronic Filing Committee to examine the current system and make recommendations for change in order to accommodate e-filing. The committee was comprised of judges, clerks of court, court administrators, technology experts, and representatives from the state Department of Justice, as well as district attorneys, public defenders, and attorneys in private practice. The group tackled its job by working to identify possible barriers to e-filing in the law, policies, and court operations. This work involved identifying current court processes and flow of information through the court system and determining where workflow should be reengineered to create a more efficient system and to accommodate/facilitate electronic filing. Big picture concerns such as an integrated case management system and protection of privacy were considered alongside details such as how to clock filing times, collect fees, and verify signatures.

Two recent projects are streamlining the court process for jurors and litigants. The **on-line juror qualification questionnaire**, which became available in 2004 at [www.wicourts.gov/services/juror/online.htm](http://www.wicourts.gov/services/juror/online.htm) allows potential jurors to provide their responses quickly and easily, and saves valuable court staff resources by reducing data entry. More than 13,000 people used the online jury questionnaire in the first eight months of this project.

Electronic filing of court forms, better known as **e-filing**, is in the works for small claims and family cases. Attorneys or parties representing themselves will be able to fill out and file new cases or actions, respond to actions filed by other parties, print or reprint forms to be filed, and obtain information about electronically filing case information with the courts.

## Sharing information with state and local agencies

Extensive data is shared between the courts and other justice business partners to facilitate the accurate and efficient administration of justice in Wisconsin. The following data interfaces are in production:

- **District Attorney to Circuit Courts** – District attorneys send criminal complaint/charging information electronically to the clerks of circuit court in 59 counties in the state. This information includes the name and address of the

person being charged, the statutory citation, severity, and offense date of the violation. Plans are being made to expand this interface to remaining counties.

- **Circuit Courts with the Department of Transportation (DOT)** – Data are exchanged between the circuit courts and the Department of Transportation for the following initiatives: Citation filing (18 counties are now receiving citation filings electronically – 12 from weigh stations and 6 from the State Patrol); and Disposition Reporting (18 circuit courts are exporting forfeiture disposition data to the DOT for electronic citations). The electronic reporting of dispositions for nonelectronic citations is operating in two counties. Electronic reporting of suspensions and revocations to the DOT is currently in development.
- **Circuit Courts to the Crime Information Bureau (CIB)** – The dispositions and sentences for all circuit court criminal cases statewide are being reported to the Department of Justice’s Crime Information Bureau. District attorneys, law enforcement, and others rely on this information when carrying out their duties.
- **Circuit Courts to the State Public Defender’s Office** – The circuit court case, calendar, and disposition data for all circuit court criminal cases statewide are being reported to the State Public Defender’s Office.
- **Circuit Courts to the Department of Revenue (DOR)** – 54 circuit courts are electronically intercepting the tax returns of people that have outstanding fines, fees, and forfeitures with the clerks of circuit court or registers in probate. In 2004, about \$2.1 million was intercepted. Outstanding debt information is electronically sent to the DOR, which deducts the outstanding amounts from the specified tax returns. The funds are then sent to the clerks or registers to apply to the outstanding debts. Seventy-one counties are participating in the filing of electronic tax warrants from the DOR to the circuit courts. Satisfactions and releases are also electronically filed with the courts.
- **Future Interfaces with the Circuit Courts** – Numerous other data sharing projects are either being developed or planned in the upcoming year. The future interfaces with the circuit courts include Department of Workforce Development unemployment compensation warrant filings and judgment of conviction information exports to the Department of Corrections.

## End notes

<sup>1</sup>See 1987 Wisconsin Act 355 for more explanation for creation of family counseling requirement (Judicial Council bill).

<sup>2</sup>Casey, Pamela and Rottman, David. *Problem-Solving Courts: Models and Trends*. National Center for State Courts, 2003.

<sup>3</sup>Supreme Court Internal Operating Procedures, II (intro.).

<sup>4</sup>Clausen, Charles D., “The Long and Winding Road: Political and Campaign Ethics Rules for Wisconsin Judges.” *Marquette Law Review*, v.83, no.1, Fall 1999. See also “Wisconsin’s Courts,” *The Wisconsin Taxpayer*. The Wisconsin Taxpayer’s Alliance, June 1999, v.67, no.6.

## Court System Timeline

**1836**

### Wisconsin territory created

The U.S. Congress established the territorial government of Wisconsin (covering present day Wisconsin, Iowa, and Minnesota) and created three judicial districts in the territory. The territorial Supreme Court, comprised of three district court judges appointed by President Andrew Jackson, convened for the first time on December 8, 1836, in Belmont. **Charles Dunn** was the first chief justice, and **David Irvin** and **William Frazer** were the two associate justices.

**1848**

### Wisconsin became the nation's 30th state

The constitution of the new state granted the courts the power to hear and decide cases, and created five judicial circuits, allowing the voters of each district to choose a judge. The five circuit judges sat as the Supreme Court in Madison, reviewing their own cases. Chief Justice **Alexander Stow** of Fond du Lac and Associate Justices **Edward Whiton** of Janesville, **Levi Hubbell** of Milwaukee, **Mortimer Jackson** of Mineral Point, and **Charles Larrabee** of Horicon were elected to the court.

The 1848 Constitution gave the governor the authority to appoint a justice to the court when a vacancy occurs and provided that the appointee continue in the office until a successor is elected and qualified. This is still the system today.

**1849**

### The Supreme Court expanded to six

The legislature created a sixth judicial circuit. Janesville lawyer **Wiram Knowlton** was elected judge, thus making six justices on the Supreme Court bench.

**1850**

### County courts created

The legislature created county courts and gave them authority over probate matters and civil matters involving less than \$500. Lawmakers also authorized justice of the peace and municipal courts to handle civil disputes involving less than \$100.

## 1852 A new Supreme Court created

The constitution in 1848 had provided that the circuit court judges would sit as the Supreme Court for five years. The legislature took advantage of the five-year expiration to create a new, separate Supreme Court. For the first time, the members of the court provided an independent review of lower court rulings. The people of Wisconsin elected three men (in a September 1852 election) – Milwaukee lawyer **Abram D. Smith**, **Edward V. Whiton**, and Irish immigrant **Samuel Crawford** of Mineral Point – to serve as the first justices of the newly formed Wisconsin Supreme Court.

**1853** The **first term** of the separate Wisconsin Supreme Court commenced on June 1, 1853. The justices' salary was \$2,000 per year. The court's first case was *Winne v. Nickerson*, which involved a \$10.40 debt and \$14.36 in court costs. The dispute centered on a question of the reliability of an account book.

## 1858 Election day for judges set


The legislature enacted a law setting judicial elections for the first Tuesday in April, which continues to this day.

**1870s** The **workload of the Supreme Court** greatly expanded. The court had no stenographers, typewriters, or even copyists, so each justice did his own clerical work. To keep up with the calendar, the justices voted to increase the number of cases on assignment to the court from 15 to 25. (Chief Justice **Edward Ryan** objected strenuously, accusing his fellow justices of attempting to kill him with labor.)

**1874** After 15 years on the Supreme Court, Chief Justice **Luther Dixon**, a Portage resident who was saddled with financial problems, resigned and returned to private practice. The justices' annual salary was \$2,500.

## 1877 More justices, longer terms

A constitutional amendment changed the number of justices from three to five and increased the term of service from six to 10 years to ensure that justices could issue rulings without constantly considering politics and reelection.

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- 1878** The **Wisconsin Bar Association** was organized. The first membership roll was signed on January 9, 1878, by 265 state lawyers. **Moses M. Strong**, an attorney from Mineral Point, was elected as the bar's first president.
- 1881** The State Bar adopts its first **code of ethics**.
- 1889** The new State Bar surveyed the state and found 1,239 resident lawyers, many of whom were unqualified. **Reforming its admission standards** was one of the bar's first challenges.
- 1901** **Selecting the chief justice**
- The people of Wisconsin amended the constitution to provide that the justice having the longest continuous service on the court shall be the chief justice; that is still the method today.
- 1903** **...And still more justices**
- A constitutional amendment established a court of **seven members**. That structure continues today.
- 1924** **Nonpartisan elections**
- The legislature passed a law mandating that candidates for judicial office be nonpartisan, though nonpartisan judicial elections apparently date back to 1878 in Wisconsin.
- The **annual salary** for Wisconsin Supreme Court justices is \$12,000 a year.
- 1955** **Job qualifications set**
- The people amended the constitution to provide that in order to become a Supreme Court justice or trial court judge, a person must be a qualified voter and licensed to practice law in Wisconsin for at least five years. The 1955 amendment also set a mandatory retirement age of 70 for justices. By 1977, this provision was removed.
- 1959** The legislature enacted a **reorganization of the court system**, abolishing municipal, district, superior, civil, and small claims courts. A uniform system of jurisdiction and procedure was established for county courts.

**1961**

The legislature created the post of administrative **director of the courts**. This position has since been redefined by the Supreme Court and renamed the director of state courts.

**1966**

The legislature ratified two constitutional amendments that **abolished the justice of the peace courts** and **permitted municipal courts**. Thus, the court system consisted of a Supreme Court, circuit courts, county courts, and municipal courts.

**1976**

**Shirley S. Abrahamson**, a UW Law School professor and Madison attorney was appointed to the Wisconsin Supreme Court by Governor Patrick J. Lucey. She was the **first woman on the court**.

**1977**

Wisconsin voters approved a constitutional amendment to **reorganize the court system**. The legislature eliminated county courts and created a single-level trial court (the circuit court). Lawmakers also authorized municipal courts, created the Court of Appeals, and provided for permissive review by the Wisconsin Supreme Court.

**1999**

The **Supreme Court Hearing Room** was shut down for renovation; court moved to temporary quarters until the hearing room was reopened in 2001.

**2003**

### Majority female Supreme Court

In 2003, Justice **Patience Drake Roggensack** was elected to the Supreme Court, creating the first majority female Supreme Court along with Chief Justice **Shirley S. Abrahamson** and fellow Justices **Ann Walsh Bradley** and **Diane S. Sykes**. The female majority was temporary, ending when Justice Sykes was appointed to a federal judgeship in 2004.

**2004**

**Louis B. Butler, Jr.**, the first African-American Supreme Court justice in Wisconsin history, was appointed to the bench by Governor Jim Doyle.

