

State of the Judiciary Address 2018: Judicial Excellence
Chief Justice Patience Drake Roggensack, Wisconsin Supreme Court
Message to the Wisconsin Judicial Conference
October 31, 2018, in Lake Geneva, Wisconsin

Welcome to the 2018 Judicial Conference.

During the Judicial Conference, we will focus on judicial excellence, which is promoted by the judges and administrative staff who comprise our court system. We have made significant strides this year in moving our courts forward to meeting the many challenges we face in serving the public.

Jean Bousquet expressed the concept of judicial excellence to which we aspire when she said, "The Wisconsin Court System protects individuals' rights, privileges and liberties, maintains the rule of law, and provides a forum for the resolution of disputes that is fair, accessible, independent and effective."

Through my remarks, and throughout the Judicial Conference, we will talk about judicial excellence, achieving it and continuing to maintain it in our ever-changing world.

However, before we begin that conversation, this morning we continue a long tradition of recognizing those judges who have passed since the last Judicial Conference. Accordingly, we honor and remember:

Justice William Callow
Judge James Carlson, Walworth County
Judge Dennis Conway, Wood County
Judge Allan Deehr, Sheboygan and Manitowoc Counties
Judge Richard Greenwood, Brown County
Judge Patrick Madden, Milwaukee County
Judge Hugh Nelson, Calumet County
Judge Timothy Vocke, Vilas County

Although those judges who are no longer with us leave an emptiness, we are gladdened by each new judge who has joined our judicial team and by those who have accepted new judicial responsibilities. We recognize the following changes in Wisconsin's judiciary. Please stand when you hear your name:

Justice Rebecca Frank Dallet
Judge Pat Barrett, Sauk County
Judge Teresa Basiliere, Winnebago County Judge Lyndsey Brunette, Clark County
Judge Thomas Clark, Buffalo and Pepin Counties
Judge Susan Crawford, Dane County
Judge Laura Crivello, Milwaukee County
Judge Troy Cross, Columbia County

Judge Jerilyn Deitz, Manitowoc County
Judge Jon Fredrickson, Racine County
Judge Derrick Grubb, Rock County
Judge William Gruber, Jefferson County
Judge Karl Hanson, Rock County
Judge Sarah Harless, Eau Claire County
Judge Andrew Jones, Milwaukee County
Judge Laura Lau, Waukesha County
Judge Emily Long, Eau Claire County
Judge Kelly McKnight, Ashland County
Judge Richard Radcliffe, Monroe County
Judge Audrey Skwierawski, Milwaukee County
Judge Stacy Smith, Juneau County

We look forward to working with our new judges and welcome them to our Wisconsin judicial team. Please give them a warm welcome.

As I begin the state of the judiciary, I acknowledge my colleagues on the Supreme Court: Justice Shirley Abrahamson, Justice Ann Walsh Bradley, Justice Annette Ziegler, Justice Rebecca Bradley, Justice Daniel Kelly and Justice Rebecca Dallet. I am blessed with six talented colleagues who bring their unique backgrounds and dispositions to the development of judicial decisions and the administration of the Wisconsin judicial system.

Since I began as Chief Justice in 2015, I have worked to improve the Court's relationship with the legislative and executive branches. It was my belief then and continues to be my belief now that we are all engaged in serving the people of Wisconsin, although we have different roles. With that purpose in mind, we continue to work toward cooperative solutions to problems facing Wisconsin whenever possible. Currently, I am working with Kelli Thompson, State Public Defender, and members of the legislature to move forward on increases in the pay rates for contract public defenders. Increasing those rates is necessary to assure that every defendant in a criminal trial has accessible, competent counsel. I also am working with Brad Schimel, Attorney General, for increases in assistant district attorneys so that cases can move more efficiently through circuit courts.

eFiling

Judicial excellence is apparent over and over in our court system. eFiling is a good example. We are blessed with an excellent CCAP team lead by Jean Bousquet. The implementation of eFiling has been a perfect demonstration of their skill as they moved us forward into the electronic age without losing any judge or staff along the way. Through the cooperation and hard work of Wisconsin judges, their staff and CCAP staff, eFiling, also known as paper on demand, is currently operational in all 72 counties for small claims, criminal, paternity, probate, family, traffic, ordinance, guardianship, and judgment/lien cases. Juvenile cases are beginning on a voluntary basis and will be required in all counties by March of 2019. CCAP is in the process of forming a design for eFiling in all appellate and supreme court cases.

Electronic filing does much more than facilitate efficient case management. It also continues to add data as the case progresses. This ongoing data collection provides an opportunity to create a searchable data warehouse that can be used to statistically analyze many facets of court participation in the Wisconsin criminal justice system, as well as our work with children and families and in civil disputes.

Research and Justice Statistics

Recently, we hired Michael Thompson as Director of Research and Justice Statistics for Wisconsin Courts. He is with us today, so please say hello when you have the opportunity. Dr. Thompson will engage in many projects designed to assess whether Wisconsin courts are doing the best we can for those who come before our courts. One broad area he will consider, in many different contexts, is whether our "best practices" accomplish what we all hoped when "evidence-based decision making" was implemented as the best practice.

Having the ability to statistically review the work of Wisconsin courts has long been an interest of mine. For four summers, I employed Nick Keuler, a statistician from the University of Wisconsin, Madison, to assist in my attempts to determine whether similarly situated African-American and Caucasian male defendants were sentenced similarly. My concerns arose because of the well-publicized disparity between the percentage of African Americans in Wisconsin prisons and their percentage in Wisconsin's population. This disparity gave rise to implications in newspaper articles that Wisconsin courts were partly to blame for what was occurring.

By the end of my fourth summer of study, we had made progress. For example, we were able to employ a uniform numerical system of identification, the State Identification Number or State ID, to track defendants from the courts through the custody of the Department of Corrections (DOC). This was a huge step forward because when we began, there was no uniform number that identified each individual defendant. Therefore, we could not be sure that we actually were tracking the same person through CCAP as we tracked when DOC became a defendant's custodian.

During our study of race and sentencing, we also assigned mathematically proportioned numbers to each class of felony to assist us in determining when defendants were similarly situated. DOC was very helpful in providing reports that showed the crime that actually had resulted in incarceration. However, I was not able to fully answer the question I posed about race and sentencing because statistics operate on numbers and many parts of court sentencings that are recorded in CCAP are verbal only.

The results of our efforts – CCAP, DOC and our statistician – were published in *The Marquette Lawyer* in the Fall of 2016, as "Race and Sentencing in Wisconsin Criminal Courts, a Preliminary Inquiry." If you have an interest, it is available online at <https://law.marquette.edu/assets/marquette-lawyers/pdf/marquette-lawyer/2016-fall/2016-fall-p22.pdf>.

Since 2016, we have been working with the Department of Justice (DOJ) to promote the use of the State ID beginning with an arrest and moving forward by requiring all district attorney

offices to employ it. I met with Attorney General Schimel about this again a month ago, and he is supporting our efforts. When the use of the State ID is complete, we will be able to analyze whether there are disparities in similarly situated African Americans and Caucasians in the period before a decision is made about whether to file a court action or to forgo filing.

Enter Michael Thompson and his statistically astute research team. They will conduct analyses of the functioning of the Wisconsin justice system, its evidence-based practices and its many programs. In addition to considering race and sentencing further, they will examine substance abuse and rehabilitation. They also will create and maintain our justice data warehouse. I am very excited about this excellent innovation for Wisconsin's judicial system. Dr. Thompson and I will participate in breakout sections during the conference. If you have an interest in statistically assessing judicial excellence, please join us.

Commercial Docket, aka Business Court, Pilot Project

Another innovation promoting judicial excellence is our commercial docket pilot project. This pilot began operation July 1, 2017, both in Waukesha County and in the 8th Judicial Administrative District. We have put commercial cases in the hands of judges with business experience and an appreciation of the needs of prompt intervention, early resolution and the larger impact to the community as a whole of commercial court disputes. In Waukesha County, Judges Aprahamian, Bohren and Domina serve and in District 8, Judges Atkinson, Hock, Judge and Morrison handle the filings.

As of September, 35 cases had been filed in commercial dockets, 22 in Waukesha County and 12 in the 8th Judicial District. In September, there were 21 cases pending and 14 cases that have been successfully concluded. 23 of the 35 cases have been filed under the class code of prohibited business activity, which involves cases relating to tortious or statutorily prohibited business activity, unfair competition, tortious interference with business organizations and restrictive covenants.

The remaining 12 cases have spread over six class codes. 4 relate to internal business organizations, 1 to business sale consolidation, 1 to franchise related claims, 2 to securities sales, 2 to intellectual property disputes and 2 have UCC claims in excess of \$100,000.

These types of cases typically take about 36 months to resolve in a normal docket. However, in the commercial docket 14 cases have been resolved in less than one year and three other cases are awaiting paperwork to complete their resolution.

One of the features of the pilot project is to collect accurate data from participants to determine whether they are satisfied with the process. In addition, anecdotal experiences of the judges have been discussed. The litigants have been appreciative of the knowledge and prompt attention of the business court judges, the judges' understanding of the importance of scheduling, of promptly holding temporary injunction hearings and of regular status conferences to keep cases on track.

The business court judges are recommending that the project expand its case types to include receiverships in excess of \$250,000 and confirmation or enforcement of arbitration awards that

have been granted in a sanctioned arbitration proceeding.

There are several significant and ongoing challenges to this pilot project. The most significant challenge is a lack of recognition on the part of the bar that the commercial docket is a mandatory docket in Waukesha County and District 8 and that permissive transfers from other venues are permitted. Only 13 of the 35 cases filed were identified by the attorneys involved as a business court case. In all other cases, the clerk of courts, the initially assigned judge or in one case, one of the judges responding to a news story determined that the case should be in a commercial court docket. We appreciate the excellent work of judges who staff the pilot project and their judicial colleagues who recognize when a case should be transferred to a commercial docket. We will be doing training with our clerks of court to gain their assistance in recognizing the types of cases that should be assigned to commercial dockets.

Treatment Courts

Treatment courts provide further examples of judicial excellence. We currently have 86 treatment courts in Wisconsin. Wisconsin has been selected to receive technical assistance from the National Drug Court Institute to develop and implement a peer review process for our treatment courts. This process will be developed by our Effective Justice Strategies Committee to evaluate local treatment courts to ensure they are operating efficiently and effectively.

Our statewide coordinator, Katy Burke, has been providing onsite training and support to new and existing treatment courts. In 2018, Katy completed numerous site visits, onsite trainings/conferences and met many onsite technical assistance requests. In 2019, we will provide a 1.5-day training for new and existing treatment court judges. The training will be skills-based and interactive. The Effective Justice Strategies Committee is receiving technical assistance from the Center for Court Innovations in order to create a statewide strategic plan for treatment courts in Wisconsin.

The main goal of a treatment court is recovery. In order for participants to achieve and maintain recovery, they must change their social network and be open to addressing emotional, mental and physical health concerns. Participants achieve stabilization through treatment, support from the community and accountability in court.

The excellent work of our judges who preside in treatment courts is critical to recovery. It can be emotionally trying work, but they are changing the future for people, young and old, whose lives once were ruled by narcotic and alcohol abuse.

Our Courts

So, what does the public see of judicial excellence? The circuit courts are the face of our court system to the public. They shoulder the important work of meeting the people's demands day after day, face to face. Their work is critical to the public's perception of the Wisconsin judicial system. From criminal prosecutions to civil adoptions, they touch every aspect of the need for impartial, fair and knowledgeable judicial decisions. They are doing a great job in Wisconsin.

Our reserve judges, who keep our circuit courts operating at full speed when a sitting judge must be away, are fantastic. We could not do without the skilled assistance of our reserve judges.

Municipal courts also are on the front lines. They handle so many repetitive interactions with the people of Wisconsin. They do an outstanding job.

The court of appeals is celebrating its 40th year as a court this year. Before 1978 when the court of appeals was created, the only review of circuit court decisions was in the Supreme Court. The court of appeals hears more than 3,000 cases per year, and because the Supreme Court takes only 60-65 cases per year, the court of appeals does so much more than error correcting.

The tribal courts are an important part of justice in Wisconsin. They issue decisions that are critical to the families that come before tribal courts. Justice Daniel Kelly is the Supreme Court's liaison to Wisconsin tribal courts. I am pleased to see that tribal judges have joined us for the Judicial Conference. The Supreme Court will meet with all the tribal judges this spring so we can share ideas and work together to solve problems that arise in meeting the diverse challenges presented by Wisconsin families.

Judicial Salaries

Last year at the judicial conference, I explained that there would be judicial salary increases. A meaningful raise in judicial salaries was long overdue.

After many, many meetings, we fared well with the legislature and Governor Walker in regard to increasing judicial salaries. Judges all received half of the salary increase for the current biennium in June. In January, judges will receive the other half of that raise. The raise in salary for current judges also raises the per diem for reserve judges who substitute for a sitting judge. Please thank your legislators. They recognized the hard work that judges do and they were very supportive of a judicial pay increase.

So, I conclude as I began, with a warm welcome to the 2018 Judicial Conference. It is so good to stand here before our excellent Wisconsin judicial team. Let's have a super conference.