

**Motion to admit Miss Lavinia Goodell to the Bar of this Court**

39 Wis. 232 (1875)

and

**Application of Miss Goodell**

48 Wis. 693 (1879)

*In a unanimous opinion, a three-justice panel determined that women should not be allowed to practice law before the Supreme Court. Chief Justice Edward G. Ryan wrote the opinion. Three and a half years later, on appeal (Application of Miss Goodell), the Court voted 4-1 in favor of admitting her. Justice Orsamus Cole wrote the majority opinion granting Goodell's admission, while Ryan dissented.*

This case stands as a testament to the obstacles women faced in the 19<sup>th</sup> century as they attempted to work in traditionally male professions. It focused on the state statute governing admission to the bar. This statute (then and now) refers to a “person” being admitted to the bar and uses the masculine pronoun throughout. It was up to the Supreme Court to determine whether the statute was intended to prohibit the admission of women to the bar.

In November 1874, Rhoda Lavinia Goodell, a Janesville lawyer, was retained to represent a widow in a probate matter. The case presented a novel question and Goodell eventually appealed it to the Wisconsin Supreme Court. At the time, practice before the Supreme Court required admission to a separate bar. Customarily, this admission was automatic for lawyers who already had been admitted to the circuit court bar (as Goodell had); however, since Goodell was the first woman to seek admission to the Supreme Court bar, her application was carefully scrutinized.

As Chief Justice Ryan was well-known for his belief that a woman's place was in the home, Goodell watched him closely when the Court convened to hear oral argument on whether to admit her to the bar. Later, she wrote that Ryan “bristled all up when he saw me, like a hen when she sees a hawk, and did not recover his wonted serenity during my stay. It was fun to see him! I presume I was the coolest person present.”\*

In making Goodell's case for admission to the bar of the Supreme Court, Assistant Attorney General I.C. Sloan, a leading Janesville lawyer, made it clear that he was presenting an argument prepared by Goodell. The argument for admission centered on three issues.

First, Goodell (through Sloan) demonstrated that state law did not exclude women from admission to the bar. The statute in question referred to admission of a “person” and used the male pronoun in the text; however, another statute provided that male pronouns in state laws should be construed as extending to females as well.

Second, she showed that, based on an Illinois case, a Supreme Court's discretion on whom to admit should be based on what will promote the proper administration of justice. Through Sloan, Goodell argued that the proper administration of justice “would be better promoted by the admission of women to the practice of law than by their exclusion” for several reasons:

1. a class of people cannot truly obtain justice in courts where its members are not represented;

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\* Letter of December 20, 1875

2. the inclusion of women would result in a combination of “the peculiar delicacy, refinement and conscientiousness attributed to woman with the decision, firmness and vigor of men;”
3. it was unfair to the community to curtail “free and wholesome competition of the best existing talent” and
4. it was unjust to shut out anyone with ability and interest of a lucrative and honorary profession.

Finally, Goodell showed that only Illinois and Washington, D.C. (in the Court of Claims) had refused women admission to the bar. On the other hand, women had been admitted in Iowa, Missouri, Michigan, Maine, the District of Columbia and federal district courts in Illinois and Iowa.

In February 1876, the Court denied Goodell’s petition. Writing for the Court, Ryan said that the Legislature’s use of the masculine pronoun in the statute indicated an intent that it should apply only to men. Reading the statute to include women would, he wrote, lead to “judicial revolution, not judicial construction.”

Ryan then added his thoughts on why women were not suited to practice law, discussing “the peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling.” He summed up with:

(I)t is public policy to provide for the sex, not for its superfluous members; and not to tempt women from the proper duties of their sex by opening to them duties peculiar to ours. There are many employments in life not unfit for female character. The profession of law is surely not one of these.

When Goodell learned that she had lost the case, she turned to legislation as the next step. \*\* She worked to have a bill introduced that would prohibit gender-based denial of bar admissions. The Legislature passed it on a voice vote and Governor Harrison Ludington signed it on March 22, 1877.

Goodell’s second application for admission to the bar of the Wisconsin Supreme Court was heard on April 22, 1879. Sloan again made the motion on her behalf and on June 18 the Court issued an opinion granting her petition. Chief Justice Ryan dissented.

Goodell died the following March, at age 40.

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\*\* Catherine B. Cleary, “Lavinia Goodell, First Woman Lawyer in Wisconsin.” *Wisconsin Magazine of History* (summer 1991)