

## INTRODUCTION

These internal operating procedures, which were adopted May 24, 1984, and amended thereafter, describe the manner in which the Supreme Court currently processes, considers and decides judicial matters brought to the court. They also set forth the administrative and professional staff function in the conduct of the court's judicial business and the procedure by which the Supreme Court administers the non-judicial business of the court. These procedures are intended to structure the internal operations of the court, to advise counsel practicing before the Supreme Court and to inform the public. They are not rules of appellate procedure.

Following court reorganization in 1978, the court experimented with various procedures that seemed to best serve the objectives of collegiality and efficiency. The court continually reviews its procedures to improve the efficient processing of its caseload and the effective discharge of its administrative responsibilities. Accordingly, these procedures may be changed without notice as circumstances require.

It should be reemphasized that these are not rules. They do not purport to limit or describe in binding fashion the powers or duties of any Supreme Court personnel. These internal operating procedures are merely descriptive of how the court currently functions. Any internal operating procedure may be suspended or modified by majority vote of a quorum of the court.

## I. CHIEF JUSTICE

Pursuant to Article VII, Section 4 (2) of the Wisconsin Constitution, the chief justice of the Supreme Court is elected for a term of 2 years by a majority of the justices then serving on the court. Pursuant to Article VII, Section 4 (3) of the Wisconsin Constitution, the chief justice of the Supreme Court is the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the Supreme Court.

The chief justice may delegate portions of the chief justice's duties to another justice. If the chief justice is unwilling or unable to perform the duties of the chief justice, the delegee of the chief justice is to perform the duties of the chief justice. Under those circumstances, the term "chief justice" in the following Internal Operating Procedures is hereby defined as including the delegee when the chief justice is not acting.

## II. STAFF

### A. Administrative

1. *Director of State Courts.* The director of state courts, who is appointed by and serves at the pleasure of the court, administers the nonjudicial business of the court system at the direction of the chief justice and the court. The authority and responsibilities of the director are set forth in the Supreme Court Rules, chapter 70.

2. *Clerk.* The clerk of the Supreme Court, who is appointed by the Supreme Court, performs the duties of the office prescribed by law and such other duties as may be prescribed by the court or the chief

justice. The clerk is the custodian of all court records and is responsible for the supervision and processing of matters from the time of filing with the court until their ultimate disposition. The clerk is also clerk of the Court of Appeals, and the clerk's office serves both courts. The clerk is responsible for implementing modes of filing in the Supreme Court and Court of Appeals, such as e-filing, that are adopted by the Supreme Court.

3. *Chief Deputy Clerk.* The chief deputy clerk, who is hired by the clerk of the Supreme Court, assists the clerk in the performance of the duties of that office and performs those duties in the absence of the clerk.

4. *Marshal.* The marshal, who is hired by the director of state courts with the advice and approval of the Supreme Court, attends the public sittings of the court and performs the duties assigned by the chief justice, the court and the director of state courts.

5. *Deputy Marshal.* The deputy marshal, who is hired by the director of state courts with the advice and approval of the supreme court, assists in the performance of the duties of the marshal and, in the absence of the marshal, performs those duties.

## **B. Legal**

1. *Supreme Court Commissioners.* Supreme Court commissioners are attorneys licensed to practice law in Wisconsin who are hired by and serve at the pleasure of the court. The commissioners perform research, prepare memoranda and make recommendations to the court regarding matters brought within the court's appellate and original jurisdictions and rule-making authority, and perform other

duties as the court or the chief justice may direct. Matters are assigned to the commissioners on a rotating basis.

2. *Law Clerks.* Law clerks assist the justices in performing research. Law clerks are hired by and serve at the pleasure of the individual justice. Law clerks are law school graduates who are customarily hired to serve for one year. Each law clerk performs research, prepares memoranda and performs other duties as the individual justice may direct.

### III. DECISIONAL PROCESS - APPELLATE AND ORIGINAL JURISDICTION

The Wisconsin Constitution confers upon the Supreme Court appellate jurisdiction over all courts and jurisdiction to hear original actions and proceedings. As a corollary, the court has constitutional authority to issue all writs necessary in aid of its jurisdiction.

The court's appellate jurisdiction is sought to be invoked by the filing of a petition for review of a decision of the Court of Appeals by a party to whom the decision was adverse, by the filing of a petition to bypass the Court of Appeals by a party to the circuit court action to whom the decision was adverse, or by certification by the Court of Appeals of a circuit court order or judgment appealed to the Court of Appeals. The Supreme Court may also, in its discretion, answer questions of law certified to it by a federal court of appeals or the highest appellate court of any state. The Supreme Court exercises its appellate jurisdiction by granting a petition for review, a petition to bypass, or a certification or by deciding on its own motion to review

directly a matter appealed to the Court of Appeals. The court's original and superintending jurisdictions are sought to be invoked by the filing of a petition. The court exercises its original or superintending jurisdiction by granting a petition therefor or by ordering the relief sought.

When a matter is brought to the Supreme Court for review, the court's principal criterion in granting or denying review is not whether the matter was correctly decided or justice done in the lower court, but whether the matter is one that should trigger the institutional responsibilities of the Supreme Court. The same determination governs the exercise of the court's original jurisdiction.

#### **A. Court Schedule**

Subject to modification as needed, in the spring of each year the court sets a schedule for its decisional process for each month from September through June. During each month the chief justice may schedule oral arguments, decision conferences, and administrative conferences on any date in the agreed-upon calendar. Any additional days added to previously agreed-upon court dates need unanimous approval.

#### **B. Staff Analysis and Reporting**

1. *Petition for Review.* Upon filing in the office of the clerk, petitions for review are assigned by clerk staff to the court's commissioners for analysis prior to the court's consideration of the matters presented. Within 50 days of assignment of the petition, the commissioner to whom a petition for review is assigned prepares and circulates to the court a memorandum containing a thorough legal and

factual analysis of the petition, including the applicability of the criteria for the granting of a petition for review set forth in Wis. Stat. § (Rule) 809.62(1), a recommendation to grant or deny the petition and, where appropriate, a recommendation for submission of the matter to the court for decision on briefs without oral argument.

In addition to the written memorandum, once each month and at other times as the court may direct, a conference is held at which each commissioner orally reports to the court on the petitions for review for which the court has requested further discussion. Two weeks prior to the conference at which the commissioners report, each commissioner circulates to the court the petitions for review, the responses to those petitions, and a memorandum on each petition, together with an agenda sheet listing by caption and docket number the cases assigned to that commissioner and the commissioner's recommendation in each case. Prior to the conference, each member of the court reads the materials circulated and each justice votes by email at least two full business days prior to the conference date, on all petitions, draft disciplinary decisions, and other matters.

Following discussion, the court decides whether to grant or deny the petition for review and, if the petition is granted, whether the case will be scheduled for oral argument or for submission on briefs and whether the court will limit or expand the issues in the case.

A petition for review is granted upon the affirmative vote of three or more members of the court. The purpose of requiring less than a majority of the court to grant a petition for review is to accommodate the general public policy that appellate review is desirable. A request

for a response from a party requires the vote of at least three justices, but it takes the vote of at least four justices to add an issue to those set forth in the petition for review.

The commissioner to whom the petition has been assigned prepares an order setting forth the court's decision on the petition for review and arranges for the issuance of the order by the office of the clerk. If the petition is granted, the order specifies the court's limitation or expansion of issues, if any, and the briefing schedule. The order provides that a party may file a brief or may stand on the brief filed in the Court of Appeals. A party shall not, in any new brief filed, incorporate by reference any portion of a Court of Appeals brief or a brief submitted with or in response to the petition for review.

*Im. Wisconsin Stat. § (Rule) 809.105(11) Petition.* Upon the filing in the office of the clerk under Wis. Stat. § (Rule) 809.105(11) of a petition for review of a judgment in an appeal of a decision of the circuit court on a petition to waive parental consent prior to a minor's abortion, the clerk shall notify the chief justice that the petition has been filed. As soon as practicable after the petition is filed, the clerk shall furnish a copy of the petition to each justice and assign it, with a copy, to a commissioner.

The commissioner to whom such a petition for review has been assigned shall prepare and circulate to the court within three calendar days of the assignment a memorandum containing a thorough legal and factual analysis of the petition, including the applicability of the criteria for the granting of a petition for review set forth in Wis. Stat. § (Rule) 809.62(1), a recommendation to grant or deny the petition and, where

appropriate, a recommendation for submission of the matter to the court for decision with or without briefs and with or without oral argument.

Within five calendar days after the filing of such petition for review, the chief justice shall convene a conference of the members of the court, which may be held by telephone conference call, and the court shall issue an order granting or denying the petition for review. An order granting the petition for review shall set forth a date and time for oral argument, if any, to be held in the court's hearing room, and a date and time for the filing of briefs, if the court orders briefs.

If such a petition for review is granted, the court shall issue its decision, with or without a written opinion, within 10 calendar days after the petition for review is filed.

2. *Petition to Bypass, Certification and Direct Review.* A party may request the court to take jurisdiction of an appeal or other proceeding pending in the Court of Appeals by filing a petition to bypass pursuant to Wis. Stat. § (Rule) 809.60. A matter appropriate for bypass is usually one which meets one or more of the criteria for review, Wis. Stat. § (Rule) 809.62(1), and one the court concludes it ultimately will choose to consider regardless of how the Court of Appeals might decide the issues. At times, a petition for bypass will be granted where there is a clear need to hasten the ultimate appellate decision.

The Court of Appeals may request the Supreme Court to exercise its appellate jurisdiction by certifying a pending appeal to the Supreme Court prior to hearing and deciding the matter. Certifications are granted on the basis of the same criteria as petitions to bypass.



Petitions to bypass and certifications are processed according to the procedures set forth above for petitions for review, except that these matters are given priority over petitions for review. Petitions to bypass and certifications are granted upon the affirmative vote of four or more members of the court.

Before the court on its own motion decides to review directly a matter appealed to the Court of Appeals, the chief justice may assign the matter to a commissioner for analysis. If the matter is so assigned, it is processed according to the procedures set forth in this section for petitions to bypass and certifications.

3. *Original Action.* Upon filing in the office of the clerk, a petition requesting the court to take jurisdiction of an original action is assigned to a commissioner for analysis prior to the court's consideration of the merits of the matter presented. The commissioner orally reports on the matter to the chief justice as soon as practicable, and the chief justice determines a date on which the matter will be considered by the court at conference. The commissioner reports on the matter at that conference. If time permits, the commissioner circulates a memorandum to the court prior to that conference analyzing the legal and factual issues involved and making a recommendation to deny the petition *ex parte* or to order a response. The commissioner also may recommend scheduling oral argument on the question of the court's exercise of its original jurisdiction, if the commissioner concludes that oral argument is necessary. If circumstances warrant, the chief justice may order a response to the petition for original action and may act on non-substantive motions concerning the proceeding.

If the petition is denied, the commissioner prepares an order setting forth that decision and arranges for its issuance through the office of the clerk; if a response is ordered, the commissioner prepares an order setting forth that decision, as well as the decision on oral argument. When the order is approved by the court, the commissioner arranges for its issuance by the office of the clerk. Upon the filing of a response, the matter is referred to the commissioner for analysis and reporting. The original action is then processed according to the procedures set forth above for petitions for review.

A petition to commence an original action is granted upon the vote of four or more members of the court. The criteria for the granting of a petition to commence an original action are set forth in case law. See, e.g., Petition of Heil, 230 Wis. 428 (1939). The Supreme Court is not a fact-finding tribunal, and although it may refer issues of fact to a circuit court or referee for determination, it generally will not exercise its original jurisdiction in matters involving contested issues of fact. Upon granting a petition to commence an original action, the court may require the parties to file pleadings and stipulations of fact. The court customarily holds oral argument on the merits of the action and expedites the matter to decide it promptly.

4. *Petition for Supervisory Writ; Petition for Writ of Mandamus, Prohibition, Quo Warranto, Habeas Corpus.* The Supreme Court has superintending authority over all actions and proceedings in the circuit courts and the Court of Appeals. It does not ordinarily issue supervisory writs concerning matters pending in circuit courts, as the Court of Appeals also has supervisory authority over all actions and

proceedings in those courts. A person may request the Supreme Court to exercise its superintending jurisdiction by filing a petition pursuant to Wis. Stat. § (Rule) 809.71.

Petitions for supervisory writ and petitions for writ of mandamus, prohibition, quo warranto, or habeas corpus are processed according to the procedure set forth above for a petition for commencement of an original action, except that if time does not permit consideration by the court, petitions for supervisory writ may be denied *ex parte* by the chief justice. If it appears from the petition that it should be dismissed on procedural grounds, the chief justice, acting for the court, may deny the petition *ex parte*.

4m. *Mail-in conference procedures.* Regarding petitions for review, certifications, petitions to bypass, original actions, petitions for supervisory writ, and petitions for writ of mandamus, prohibition, quo warranto, and habeas corpus, some months are scheduled as mail-in conferences, whereby each justice votes, by e-mail, on the recommendations of each commissioner. When the initial email vote on petitions for review, and drafts of disciplinary decisions and other matters, are due on an identified date, but the court will not be meeting on that date, all email responses are due on the identified date.

A justice who wishes to deny or hold a matter for which a commissioner has recommended granting review must submit in writing, with his or her e-mail votes, the specific reason(s) why he or she would not approve the grant as recommended by the commissioner.

Within five calendar days after the deadline for email votes, all justices shall vote, by e-mail, to grant, to deny, or request additional information relative to the suggestions in the commissioner's report. If sufficient votes to grant the matter remain, the grant order shall issue within two business days. If the matter no longer has the requisite votes to grant, a justice may hold the matter for discussion during the next in-court conference.

5. *Regulatory Jurisdiction.* A matter within the regulatory jurisdiction of the court, *e.g.*, bar admission, continuing legal education, lawyer discipline, judicial discipline, Supreme Court Rules and rules of pleading, practice and procedure in civil and criminal actions, is assigned to a commissioner for analysis and reporting to the court. The commissioner shall indicate whether a matter requires a public hearing. The commissioner prepares orders in these matters as the court may direct and arranges for their issuance by the office of the clerk.

6. *Motions.* When acting on motions, the chief justice acts on behalf of the court and pursuant to rules of the Supreme Court promulgated from time to time.

a. Unopposed procedural motions are acted on by the clerk after consultation with a commissioner. Procedural motions which do not adversely affect another party, *e.g.*, motions to extend time to file briefs or to exceed page limitations of briefs, are acted on by the clerk without a response from the adverse party, unless the clerk requests a response. The clerk acts on these motions after consultation with the commissioner to whom the matter has been assigned for analysis and when appropriate, with the chief justice. The clerk or the commissioner

prepares an appropriate order.

When appropriate, the commissioner presents a motion to the chief justice with a recommendation to grant or deny the motion, and the chief justice either decides the motion or determines that the matter should be submitted to the court. The commissioner prepares an appropriate order and, when the order is approved, arranges for its issuance by the office of the clerk.

b. Substantive motions are assigned by clerk staff to the court's commissioners for review and reporting to the court, with or without a memorandum, as time may permit and circumstances may indicate. If a motion is filed in a case that has been assigned to a justice, clerk staff transmits the motion to the court. When the motion has been decided, the commissioner or clerk staff, at the court's direction, prepares an appropriate order and, when the order is approved, arranges for its issuance by the office of the clerk.

c. A motion to file a brief by a person not a party to a proceeding is assigned to the commissioner to whom the matter has been assigned for analysis, who may grant the motion if it appears that the movant has a special knowledge or experience in the matter at issue in the proceedings so as to render a brief from the movant of significant value to the court. If the commissioner questions the propriety of granting the motion or if it appears that the motion should be denied, the commissioner reports the matter to the court with a recommendation that it be denied. The decision to deny a motion to file an *amicus* brief is the court's. The commissioner prepares an appropriate order and arranges for its issuance by the office of the clerk.

If a motion is filed in a case that has been assigned to a justice, clerk staff transmits the motion to the court for review and decision. Clerk staff, with the assistance of a commissioner and at the court's direction, prepares and issues an appropriate order.

d. Motions for temporary relief concerning matters pending in the Supreme Court are assigned to the court or to the commissioner to whom the underlying matter has been assigned and with whom it remains at the time of the filing of the motion. The matter is reported to the court or to the chief justice with or without a memorandum, as time and circumstances may indicate. The court or the chief justice decides the motion, and the commissioner or the court prepares an appropriate order and arranges for its issuance by the office of the clerk.

### **C. Submission Calendar**

The clerk of the court, in consultation with the chief justice, prepares and distributes to the court for each month from September through June, inclusive, a list of cases for submission to the court that month. The clerk assigns cases to the submission calendar in the order of the anticipated filing of the last brief, except that criminal cases and cases involving child custody and termination of parental rights are given priority to the extent possible. The chief justice sets the cases to be assigned each month based on the court's calendar.

The submission calendar sets the date of oral argument for cases assigned for submission with oral argument and lists cases assigned for submission on briefs. The date of submission of the oral argument cases is the date of oral argument, and the date of submission of cases assigned for submission on briefs is the date set by the chief justice.

Generally, cases are assigned for submission with oral argument unless it appears from the issues or the briefs that oral argument would not be sufficiently informative to the court to justify the additional expenditure of court time or cost to the parties or there is another case or cases assigned for submission with oral argument presenting the same issue(s). At least 30 days prior to the first day of oral argument on the submission calendar, the clerk makes the submission calendar public and distributes a copy of it to the court, to the parties to the cases, and to others who have arranged with the clerk to receive it.

As soon as each month's submission calendar is distributed, the court's marshal delivers a copy of the submission calendar and the briefs filed to date for each case on that calendar to the office of each justice. Each justice's law clerk prepares memoranda thoroughly analyzing the factual and legal issues in the cases on the submission calendar as the law clerk's justice may direct. Prior to oral argument, each justice reads the briefs and legal memoranda in each case on the calendar.

#### **D. Oral Argument**

After the submission calendar is circulated, each justice is randomly assigned cases on it for purposes of leading the discussion of those cases at post-argument conference on the day of oral argument.

The submission calendar lists those cases to be argued in the morning, beginning at 9:45 a.m., and those cases to be argued in the afternoon, beginning at 1:30 p.m. Attorneys are to be present and prepared to argue at the time indicated, which is the earliest time at which their case may be called. Upon their arrival for oral argument, attorneys are to check in with the marshal outside the courtroom.

When a case is called by the chief justice, counsel are to take their places immediately. The petitioner is to be seated to the right of the podium facing the court and the respondent is to be seated to the left of the podium facing the court.

At oral argument, each side is allowed 30 minutes or such other period of time as the court may grant to present argument supplementing or clarifying arguments set forth in the briefs, to present argument on issues specified by the court prior to oral argument and to discuss developments in applicable law that have occurred subsequent to the filing of the briefs. Requests for additional time for oral argument are to be made in writing to the clerk, but such requests are rarely granted. Oral arguments are recorded by the marshal for the court's use, and the recordings are retained for at least 120 days following remittitur. The court may permit parties or interested persons to listen to the recordings. Oral arguments are posted to the court's website.

The court's marshal monitors the time for oral argument by the use of light signals on the podium.

(a) *Opening Argument.* A green light signals the beginning of the opening argument of the petitioner or other party having the burden of going forward. Twenty-five minutes is allotted for opening argument, leaving five minutes for rebuttal. Five minutes prior to the expiration of the time allowed for opening argument, the green light goes off and a yellow light comes on. When the time reserved for opening argument has expired, the yellow light goes off and a red light comes on, and attorneys are to terminate their arguments immediately. The division of oral argument time in cases with a cross-appeal is to be



agreed to by the parties; no more than five minutes may be reserved for rebuttal. A party may cede part of its time to an amicus.

(b) *Respondent's Argument.* The same procedure outlined above for opening argument is used for respondent's thirty minute argument.

(c) *Rebuttal.* A yellow light signals commencement of the time for rebuttal argument by the petitioner or other party having the burden of going forward; five minutes is allotted for rebuttal unless more than 25 minutes has been used in the opening argument. A red light comes on when the time expires, and attorneys are to terminate their arguments immediately.

#### **E. Post-argument Decision Conference**

Following each day's oral arguments, the court meets in conference to discuss the cases argued that day. The chief justice presides at the conference, facilitates the court's discussion, and calls for the vote on the decision of each case.

For each case, the justice to whom the case was assigned for presentation at the post-argument conference, the reporting justice, gives his or her analysis and recommendation first, the court discusses the issues in the case, and the vote of each member of the court on the decision is taken, beginning with the reporting justice. When possible, the court reaches a decision, including the legal rationale on which the decision is to rest, in each of the cases argued that day, but any decision is tentative until the decision is mandated.

At this conference, the court may discuss those cases assigned for submission on briefs that present the same issue(s) as a case scheduled for oral argument that same day, or the court may delay decision and

request the parties to comment on the effect of the case orally argued when that decision is mandated. The court discusses other cases assigned for submission on briefs on the date set by the chief justice. Following the court's tentative decision, any justice may request re-conferencing for further discussion of the case.

#### **F. Assignment of Cases**

Immediately after the court reaches its tentative decision in a case, whether at post-argument decision conference or at a succeeding conference, the case is assigned to a member of the court who is in the majority, on both the disposition and its legal rationale, to prepare the court's opinion. No case is assigned to a justice until after oral argument and after the court has reached its tentative decision.

Cases are assigned by lot: each justice is assigned a number from one to seven according to seniority, and the next senior justice, aside from the chief justice, draws one of seven numbered tokens. The number drawn for each case determines the justice to whom the writing of the opinion is assigned. Where possible, a case is assigned only to a justice who has voted with the majority and agrees with a majority on the legal rationale for the decision. In the event a justice to whom a case has been assigned subsequently decides to change his or her vote on the decision or the legal rationale of the case and ceases to be among the majority, he or she may withdraw from the assignment; the case is then reassigned by lot to a justice who is among the majority, and another case is assigned to the justice who has withdrawn.

The court attempts to assign an equal number of opinions to each justice during the term. Accordingly, where possible, a justice who

votes with the majority is eligible to be assigned to write the opinion when that justice has been assigned fewer opinions than other justices in the majority unless each justice in the majority has been assigned the same number of opinions.

After the cases are assigned, the justice prepares a draft opinion for circulation to the court.

## **G. Opinion**

1. *First Circulation Dates for Majority Opinions.* Majority opinions assigned in September, October and November shall be circulated no later than January 31. Majority opinions assigned in December and January shall be circulated no later than March 31. Majority opinions assigned in February shall be circulated no later than 60 days after assignment. Majority opinions assigned in March and April shall be circulated no later than May 31. Majority opinions assigned in May and separate opinions responding to opinions circulated in May shall be subject to a shortened timeline that will be circulated when it can be determined what deadlines are needed.

### *2. Majority Opinion Declarations.*

(a) *Initial Declarations.* Within 10 days after the first circulation of a majority opinion, each participating justice shall declare by email to all justices participating in the case in one of three ways: (1) joins the opinion; (2) joins the opinion if specifically described changes are made; (3) does not join the opinion and may or will write separately.

(b) *Second Circulation of Majority Opinion.* Within 21 days of receiving all initial declarations, the author of the majority opinion shall revise and recirculate the majority opinion, incorporating some or all of

the changes specifically requested upon the initial circulation of the majority opinion, or issue a statement that no changes will be made. A justice who asked for changes in the majority opinion that were not made and any other justice who does not join the majority opinion shall declare by email within 10 days of circulation of the second circulation of the majority opinion that he or she joins the majority opinion or may be joining another justice's separate writing or will be writing separately.

3. *Separate Writings.* Whether concurring or dissenting, a justice who declares a separate writing in response to the first circulation of a majority opinion has 30 days after the justice's declaration to circulate his or her separate writing. A justice who declares a separate writing in response to a second circulation of the majority opinion shall circulate his or her separate writing within 21 days of the second circulation of the majority opinion or the statement that the majority opinion will not be revised further.

If upon circulation of separate writings, a justice who had not intended to write separately but had anticipated joining the writing of another justice decides to write, that justice shall discuss with the author of the majority opinion the date on which to circulate the separate writing. The author of the majority opinion shall advise the court of the date chosen for circulation of that separate writing.

4. *Revisions to Majority Opinions/Separate Writings; Procedure for Mandating Opinions.* Upon circulation of a separate opinion, the author of the majority opinion has 14 days in which to revise, and upon receipt of those revisions, dissents and concurrences have 14 days to

respond to the majority's revision. Any further revisions/circulations of the majority opinion and or separate writings shall occur within 5 days of the writing to which the revision is responding.

The revision of dissents and concurrences shall not create new opinions, but shall respond only to revisions in the majority opinion.

Unless a justice decides to join a different opinion than previously declared, declarations upon recirculations of the majority opinion or recirculations of separate writings are not necessary until revisions of the majority opinion and separate writings are complete, at which time, each justice shall, within 5 days by email to all justices participating in the case, make a final declaration of which opinion he or she is joining.

If during this process the opinion originally circulated as the majority opinion does not garner the vote of a majority of the court, it shall be referred to in separate writings as the "lead opinion" unless a separate writing garners the vote of a majority of the court. If a separate writing garners the vote of a majority of the court, it shall be revised as the majority opinion within 14 days of the vote of the court. Within 7 days of the circulation of this majority opinion, the opinion initially circulated as the majority opinion and other separate writings shall be revised and indicate their status as concurrences or dissents to the new majority opinion.

Upon receipt of the final declarations of all participating justices, the majority author shall send an email summarizing the final declarations of all participating justices and that the opinion is approved for mandate. If the deadline for separate writings has passed and no

separate writings have been circulated, the majority opinion author shall send an email to the participating justices indicating that no separate writings have been received and shall mandate the opinion.

Within 5 days of the mandate, the majority opinion shall be placed in the release drive; within 5 days after that event, the separate writings also shall be placed in the release drive for transmittal of all writings to the clerk's office for release to the public, unless release of separate writings is delayed as required by step 5 below.

5. *Separate Writings to Follow.* If, during the course of a separate writing, the author cites to a case then pending before the court for which the opinion of the court has not been released, the majority opinion shall be released with the designation "separate opinion(s) to follow," unless the citation can be replaced with ellipses in which case the separate opinion shall be released with the majority opinion and the ellipses shall be replaced with the omitted citation when the cited opinion is released. There shall be no further changes to the separate writings after mandate. Separate writings for which the citation cannot be replaced with ellipses shall be released when the then unreleased decision that was cited in the separate opinion is released.

6. *Holds; Tying Together Release of Two Pending Cases.* No one justice may block the release of a majority opinion by a "Hold." It shall take the affirmative vote of the majority of the participating justices to block the release of a majority opinion. No one justice may tie together the release of two pending cases. It shall take the affirmative vote of a majority of the participating justices in each case to tie together the release of two pending cases.

7. *Court Conferences on Circulated Opinions.* There will be no court conferences on circulated opinions unless the author of the majority opinion or at least a majority of justices participating in the case request court conference on the circulated opinion(s) in that case.

8. *Next Business Day Deadline Extension.* If a deadline set forth in these procedures falls on a state holiday, the deadline shall be on the next business day following the state holiday.

#### **H. Per Curiam Opinion**

Per curiam opinions may be prepared by a justice or a commissioner for consideration by the court. Per curiam opinions in judicial and attorney disciplinary proceedings are prepared by a commissioner for the court's consideration. The decisions in all cases are made by the court, and per curiam opinions are reviewed by the entire court and are approved as to form and substance by the court prior to issuance.

#### **I. Mandate**

The court's decision in a case is mandated promptly upon approval of the opinion by the court, as set forth above, and upon notification by the chief justice to the clerk. The court's opinion is issued simultaneously with any concurring or dissenting opinions, unless concurring or dissenting opinions come within paragraph 5 above as "Separate Writing to Follow."

When a decision is ready to be mandated, the court's opinion, along with any concurring or dissenting opinions, is transmitted to the clerk's office where it is reviewed and assigned a public domain citation. The case name and number of opinions that are scheduled for release

are ordinarily posted on the court's website two days prior to the scheduled release date. On the day of mandate, the clerk's office telephones the attorneys for the parties, notifying them of the court's decision, releases the opinion to the parties and makes copies of the opinion available for public inspection. The opinion is also posted to the court's website. The opinion remains subject to further editing and modification. The office of the clerk arranges for the publication of the final version of the opinion in official publications.

### **J. Reconsideration**

The court does not reconsider its decision on petitions for review or petitions to bypass. Motions for reconsideration of the judgment or order of the court in other matters are assigned in rotation by the office of the clerk to a member of the court who participated in but did not author the court's opinion or write a dissent in the case. The justice reports on the motion and makes a recommendation. Every motion for reconsideration is decided by the court.

Reconsideration, in the sense of a rehearing of the case, is seldom granted. A change of decision on reconsideration will ensue only when the court has overlooked controlling legal precedent or important policy considerations or has overlooked or misconstrued a controlling or significant fact appearing in the record. A motion for reconsideration may result in the court's issuing a corrective or explanatory memorandum to its opinion without changing the original mandate.

The justice to whom a motion for reconsideration is assigned informs the office of the clerk of the court's decision on reconsideration, and the clerk issues an appropriate order. If reconsideration is granted



and further briefing required, the case is placed with other pending cases and processed accordingly.

### **K. Remittitur**

The clerk transmits to the Court of Appeals or to the circuit court, as appropriate, the mandate and opinion of the court together with the record in the case as follows: 31 days after the filing of the opinion of the court when no motion for reconsideration is filed; upon completion of reconsideration when reconsideration is granted; promptly upon the court's decision denying a motion for reconsideration.

### **L. Miscellaneous**

1. *Recusal or Disqualification of Justices.* A justice may recuse himself or herself under any circumstances sufficient to require such action. The grounds for disqualification of a justice are set forth in Wis. Stat. § 757.19. The decision of a justice to recuse or disqualify himself or herself is that of the justice alone. When a justice recuses or disqualifies himself or herself, the justice takes no further part in the court's consideration of the matter. A justice who recuses himself or herself may file with the court or as part of a published opinion only the statement that: (a) the justice did not participate; or (b) the justice withdrew from participation. The court's orders and the opinion in the matter bear the notation that the justice did not participate or withdrew from consideration of the case.

2. *Indigency.* If a person seeking to proceed in the Supreme Court claims to be indigent, that claim generally will be accepted if an indigency determination as to that person previously has been made in the Supreme Court or in the Court of Appeals. If more than one year

has elapsed since the indigency determination or if the subsequent case is of a substantially different type than the one in which the indigency determination was originally made, the clerk may request the person to submit a new affidavit of indigency form. If no indigency determination has been made previously, the clerk sends the person an affidavit of indigency to be completed and returned. The affidavit is accompanied by a form order requiring completion and filing of the affidavit within 10 days of the date of the order or, failing which, ordering the dismissal of the proceedings.

The clerk makes indigency determinations. If the person is determined to be indigent, the clerk issues an order waiving payment of the filing fee in the proceeding. If the affidavit of indigency is incomplete or is not credible, the clerk issues an order stating that the affidavit is incomplete or the reasons for which the affidavit is deemed not credible, stating that the affidavit is not approved and requiring the person either to pay the appropriate filing fee or submit a credible and completed affidavit within five days of the date of the order, failing which the proceedings will be dismissed.

If the clerk determines on the basis of a complete and credible affidavit that a person is not indigent, the clerk issues an order directing the person to pay the appropriate filing fee in the proceedings. If the person does not respond to a court order concerning indigency, the clerk assigns the matter to a commissioner for review; the commissioner reports to the court with recommendations.

3. *Statistics.* The clerk prepares a monthly statistical report setting forth the status of matters pending with the court and a

cumulative accounting of matters disposed by the court from the preceding September. The clerk distributes a copy of these statistical reports to the court and to the director of state courts.

4. *Voluntary Dismissal.* If a notice of voluntary dismissal of a proceeding on a petition for review, petition for bypass or certification or of an original action or supervisory writ proceeding is filed before all of the briefs in the proceeding are filed, the chief justice may act on the notice; if a notice of voluntary dismissal is filed after all of the briefs in the proceeding are filed, the chief justice shall bring the notice to the court for action.

#### IV. RULE-MAKING PROCESS

##### **A. Public Hearing**

The court notices and holds a public hearing on petitions for the creation or amendment of rules governing pleading, practice and procedure in judicial proceedings in all courts, provided that the court deems the petition to have arguable merit. In the event the court deems a petition meritless, it may, without holding a public hearing, summarily dismiss the petition or decline to take any action. See Wis. Stat. § 751.12. The court also holds a public hearing on petitions for amendment of the Supreme Court Rules except, in the court's discretion, when the petition concerns ministerial or otherwise non-substantive matters or when exigent circumstances exist.

##### **B. Closed Conference**

After a public hearing is held the court meets in closed conference to discuss the merits of and act on the rules petition. All

matters within the court's rule-making jurisdiction are assigned to a commissioner for analysis and reporting to the court. See IOP. III. B. 5. The commissioner prepares and circulates material to the court for its assistance at the conference, participates in the conference at the court's discretion, and drafts rules and prepares orders at the court's direction.

## V. APPOINTMENT PROCESS

The Wisconsin Supreme Court, pursuant to statutory authority and the court's rules, regularly appoints lawyers and non-lawyer members of the public to various boards, committees, and other entities. In making those appointments, the court's objective is to maximize the participation of lawyers and the public in the work of those entities. The court has created the Appointment Selection Committee (ASC) independent of the court to assist in the process. The ASC solicits and evaluates persons for appointment and nominates for the court's consideration the persons it determines are best qualified to serve. In evaluating the qualifications of persons interested in appointment, the ASC applies the criteria established by the court for each of the entities to which appointment is made.

In making appointments, the court's objective is to provide quality and promote diversity on the boards, committees and other entities. The appointment procedure established by the court is designed to produce appointments based solely on the qualities of integrity, intelligence, experience and commitment.

### **A. Appointment Selection Committee**

The ASC consists of the following 12 persons:

One attorney from the Milwaukee metropolitan area selected by the dean of the Marquette University Law School.

One attorney from outside the Milwaukee metropolitan area selected by the dean of the University of Wisconsin Law School.

The president of a county bar association located within the Eastern District of Wisconsin chosen by the court by lot, or his or her designee.

The president of a county bar association located within the Western District of Wisconsin chosen by the court by lot, or his or her designee.

The chair of the Family Law Section of the State Bar of Wisconsin, or his or her designee.

The chair of the General Practice Section of the State Bar of Wisconsin, or his or her designee.

The president of the Government Lawyers Division of the State Bar of Wisconsin, or his or her designee.

One former member of the Board of Attorneys Professional Responsibility or the Board of Bar Examiners who has not served within the preceding five years, chosen by the court by lot.

The chair of one of the district professional responsibility committees provided in SCR 21.08, chosen by the court by lot.

One non-lawyer member of the public designated by the Senate Co-Chair of the Legislative Council.

One non-lawyer member of the public designated by the Assembly Co-Chair of the Legislative Council.

One non-lawyer member of the public designated by the chair of the State Ethics Board.

To be eligible to serve on the ASC, a lawyer must have practiced law for more than five years.

The term of a member is three years.

Vacancies on the ASC are filled by the persons identified above, respectively. When the person is specified to be chosen by lot, a person is chosen by lot each time there is a vacancy in that position.

The ASC selects its chair at the first meeting of each calendar year. Staff support is provided to the ASC.

### **B. Meetings**

The ASC meets at such times as considered necessary by its chair. The meetings are held at locations and times so as to enable the greatest number of members to participate.

### **C. Nomination Procedure**

*1. Notice of Vacancy.* Each board, committee and other entity to which the Supreme Court makes appointment of lawyers and non-lawyer members of the public notifies the clerk of the court as soon as practicable of appointments that need to be made. The clerk of the court notifies the ASC chair of those appointments.

*2. Information to and Solicitation of Interested Persons.* In addition to the information disseminated by the court regarding the appointment of lawyers and non-lawyer members of the public, the

ASC publicizes the appointments to be made by such means as, in the ASC's discretion, will provide notice to the greatest number of persons likely to be interested in being appointed. To the extent it deems necessary, the ASC may conduct in-person information and solicitation sessions to produce qualified persons interested in being appointed.

3. *Resumes; Interviews.* The ASC invites persons interested in being appointed to submit a written resume of their qualifications. The ASC may personally interview those persons whose resumes demonstrate qualifications that appear to warrant a personal, confidential interview before the full ASC or any number of its members the ASC may designate.

4. *Nomination.* Not less than 30 days prior to the expiration of a term or other applicable date that requires an appointment by the Supreme Court, the ASC submits to the Supreme Court the names of persons it nominates for appointment. Each attorney nominated shall be vetted by OLR, and each public member nominated shall be vetted through relevant sources. If more than one position on a particular board, committee or other entity is to be filled by appointment at the same time, the ASC, in its discretion, may submit the number of names it considers appropriate for appointment to the positions generally or in respect to each position separately. Together with the nominations, the ASC submits to the court all of the resumes and other material it has collected to consider regarding nominations. The court also may ask the ASC to submit additional nominations.

5. *Reappointment.* When a member of a board, committee or other entity is eligible for reappointment to a successive term, the ASC ascertains whether the member regularly attended meetings of the board, committee or other entity, made significant contribution to its work, and is willing to accept reappointment. If the member's participation has been satisfactory and the member is willing to accept reappointment, and the ASC nominates the member for reappointment to a successive term, it is unnecessary for the ASC to nominate other persons for appointment to the position. If the member's participation has been unsatisfactory or the member is not willing to accept reappointment, the ASC proceeds as in the case of an appointment.

6. *Criteria.* In determining the qualifications of persons for appointment, the ASC applies the criteria for the specific position established by the court from time to time and provided to the ASC in writing. The ASC may, with the approval of the court, apply additional specific criteria.

#### **D. Reimbursement**

Members of the ASC are reimbursed for travel, lodging and related expenses reasonably incurred in carrying out their duties.

Amended July 1, 1991; February 18, 1992; June 24, 1992; June 1, 1995; September 16, 1996; June 22, 1998; March 16, 2000; April 2006; May 4, 2012; April 16, 2015; November 2015; December 20, 2016; February 13, 2017; June 21, 2017; February 22, 2018; September 12, 2019.