

# SUPREME COURT OF WISCONSIN

No. 02-03

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In the matter of the adoption of procedures for  
original action cases involving state  
legislative redistricting

**FILED**

**OCT 1, 2008**

David R. Schanker  
Clerk of Supreme Court  
Madison, WI

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On November 25, 2003, this court appointed a committee to review this court's opinion in Case No. 02-0057-OA, Jensen v. Wisconsin Elections Bd., 2002 WI 13, 249 Wis. 2d 706, 639 N.W.2d 537, the history of state legislative redistricting in Wisconsin, and redistricting rules and procedures in other jurisdictions, including federal and state courts. The court authorized the committee, upon completion of its review, to propose procedural rules in the event an original action involving redistricting litigation was filed and accepted.

The committee's appointment resulted from the original action petition filed in this court in the Jensen case by Assembly Speaker Scott R. Jensen and Senate Minority Leader Mary E. Panzer, representing Assembly and Senate Republicans, seeking this court's involvement in the redistricting process due to a legislative impasse. The original action petition filed in Jensen sought a declaration that the existing legislative districts were constitutionally invalid due to population shifts documented by the 2000 census. The petition requested this

court to enjoin the Wisconsin Elections Board from conducting the 2002 elections using the existing districts.

Although the court found that the petition filed in the Jensen case warranted this court's original jurisdiction, it determined this court lacked procedures for redistricting litigation in the event of a legislative impasse resulting in a petition for an original action. The court's decision in the Jensen case said this court's existing original jurisdiction procedures would have to be substantially modified to accommodate the case's requirements. It explained that a "procedure would have to be devised and implemented, encompassing, at a minimum, deadlines for the development and submission of proposed plans, some form of fact-finding (if not a full-scale trial), legal briefing, public hearing, and decision."

The Jensen decision stated, in part: "[T]o assure the availability of a forum in this court for future redistricting disputes, we will initiate rulemaking proceedings regarding procedures for original jurisdiction in redistricting cases." The timing of the request in Jensen for this court to take original jurisdiction did not permit the exercise of jurisdiction in a way to do substantial justice, and the dispute was ultimately resolved in federal court, where a case was already pending.

The Jensen decision indicated new procedures could include "provisions governing factfinding (by a commission or panel of special masters or otherwise); opportunity for public hearing

and comment on proposed redistricting plans; established timetables for the factfinder, the public and the court to act; and if possible, measures by which to avoid the sort of federal-state court 'forum shopping' conflict presented [in this case]." Consequently, this court voted to convene a committee to study and draft procedural rules that govern state legislative redistricting litigation in Wisconsin.

The committee filed its initial report with the court in September 2007, which was distributed to interested parties and is available on the court's Web site. See [http://wicourts.gov/supreme/petitions\\_audio.htm](http://wicourts.gov/supreme/petitions_audio.htm). The committee has now filed a supplemental memorandum, which supplements information in the committee's initial proposal and was drafted in response to public comment and questions asked by various justices during an open administrative conference held on April 8, 2008. The committee's supplemental memorandum is also available on the court's Web site. The supplemental memorandum addresses details of the committee's original proposal, which outlined procedures that could be implemented if:

- 1) the Legislature is at an impasse in attempting to redraw legislative and congressional district boundaries; and
- 2) a party files a lawsuit asking the court to take original jurisdiction; and
- 3) the court agrees to accept the case; and
- 4) the court approves the procedures.

The court has invited public comment on the supplemental memorandum and, following discussion of the matter at its upcoming open administrative conferences, shall decide any future steps that may be necessary.

IT IS ORDERED that on Thursday, January 22, 2009, at 10:00 a.m., and on Friday, February 20, 2009, at 9:30 a.m., at its open administrative conferences in the Supreme Court Room in the State Capitol, Madison, Wisconsin, the court shall discuss the committee's report, the committee's supplemental memo, and comments received.

IT IS FURTHER ORDERED that any interested persons may file with the court a written submission for the court's review at these conferences, preferably no later than December 31, 2008. The court retains the entire file on this matter and interested persons are encouraged not to file duplicative submissions. As this matter is not presently scheduled for public hearing, general public testimony will not be entertained at the open conferences at this time. The court may, in its discretion, direct questions to individuals present at the conferences to aid the court's consideration of these matters.

IT IS FURTHER ORDERED that notice of the open administrative conference be given by publication of a copy of this order in the official state newspaper once each week for three consecutive weeks, and in an official publication of the State Bar of Wisconsin not more than 60 days nor less than 30 days before the date of each of the two conferences,

specifically in the State Bar's November 2008, December 2008,  
and February 2009 publications.

Dated at Madison, Wisconsin, this 1st day of October, 2008.

BY THE COURT:

David R. Schanker  
Clerk of Supreme Court

