

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, or to vest any interest in any individual justice of the Wisconsin Supreme Court. These internal operating procedures are merely descriptive of how the court currently functions. Any internal operating procedure may be suspended or modified by a majority vote of the court. Any amendment of these internal operating procedures is effective immediately. See *infra* I.O.P. VI.

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 is selected based on managerial, administrative and leadership abilities, without regard to seniority only.

The chief justice may delegate portions of the chief justice's duties to another justice in accordance with the supreme court rules and internal operating procedures. If the chief justice is unwilling or unable to perform the duties of the chief justice, the delegatee 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 delegatee of the chief justice 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 efilings, 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 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. 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, 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 the United States Supreme Court, 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(1r), 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 court 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(1r), 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(1r), one which the court concludes it ultimately will choose to consider regardless of how the Court of Appeals might decide the issues, and one for which there is a need for an expeditious final resolution of the issues.

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 for review and where the court concludes that final resolution of the issues by this court is warranted without an intermediate level of appellate review.

Petitions to bypass and certifications are processed according to the procedures set forth above for petitions for review, except that these matters are generally given priority over petitions for review. Petitions

to bypass and certifications are granted upon the affirmative vote of a majority of the participating members of the court.

Before the court on its own motion decides to review directly a matter appealed to the Court of Appeals, the court 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. The court decides on its own motion to review directly an appeal pending in the court of appeals upon the affirmative vote of a majority of the participating members of the court.

If circumstances warrant, the court may by order set a different time for the response to a petition for bypass than is provided in Wis. Stat. § (Rule) 809.60(2). Once a majority of the participating members of the court vote to set a different time for the response to a petition for bypass, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to set a different time for the response and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within two business days of the majority vote to set a different time for the response. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

If a majority of the participating members of the court votes to grant or deny a petition for bypass or a certification or to assume

jurisdiction over a matter pending in the court of appeals, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to grant, deny, or assume jurisdiction, and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within seven business days of the majority vote to grant, deny, or assume jurisdiction. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

3. *Original Action.* Upon filing, a petition requesting leave to commence an original action is assigned to a commissioner, who advises the court of the petition, if warranted, and makes a recommendation whether to deny the petition ex parte or to order a response. If a majority of the participating members of the court vote to order a response, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to order a response and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within two business days of the majority vote to order a response. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after

the expiration of all time periods referenced above.

Whether or not a response is ordered, 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 as to the disposition of the petition. 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.

A petition to commence an original action is granted upon the vote of a majority of the participating 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.

If a majority of the participating members of the court vote to grant or deny a petition for leave to commence an original action, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to grant or deny the petition and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within

seven business days of the majority vote to grant or deny the petition. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

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.

If circumstances warrant, the court may order a response to a petition for supervisory writ or a petition for a writ of mandamus, prohibition, quo warranto, or habeas corpus. If a majority of the participating members of the court vote to order a response to a petition, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to order a response and declare whether they will be preparing

a separate writing. Any initial separate writing shall be circulated within two business days of the majority vote to order a response. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

If a majority of the participating members of the court vote to grant or deny a petition for a writ, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to grant or deny the petition and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within seven business days of the majority vote to grant or deny the petition. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

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 votes are due on the identified date.

Any justice may hold for discussion any matter on the agenda for a mail-in conference. In the event one or more matters is held, the chief justice shall place the matter(s) on the agenda for the next available court conference or in-person petitions 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.

a. Unopposed procedural motions are acted on by the commissioners. 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 commissioners without a response from the adverse party, unless the commissioners request a response. The commissioners prepare and issue an appropriate order.

When appropriate, the commissioner presents a motion to the chief justice or the court with a recommendation to grant or deny the motion. The commissioner prepares an appropriate order and, when the order is

approved, arranges for its issuance.

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.

Once a majority of the participating members of the court vote to grant or deny a substantive motion, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to grant or deny the motion and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within seven business days of the majority vote to set a different time for the response. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

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 a nonparty brief is the court's. The commissioner prepares an appropriate order and arranges for its issuance by the office of the clerk.

Once a majority of the participating members of the court vote to grant or deny a motion to file a nonparty brief, by 4:00 p.m. on the next business day, all remaining justices must vote on whether grant or deny the motion and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within two business days of the majority vote to grant or deny the motion. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

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 with or without a memorandum, as time and circumstances may indicate.

If a majority of the participating members of the court vote to grant or deny a motion for temporary relief, by 4:00 p.m. on the next business day, all remaining justices must vote on whether grant or deny the motion

and whether they will be preparing a separate writing. Any initial separate writing shall be circulated within seven business days of the majority vote to grant or deny the motion. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

7. *Other Orders.* If a majority of the participating members of the court vote to issue any other order related to a pending case, by 4:00 p.m. on the next business day, all remaining justices must vote on whether to issue the order and declare whether they will be preparing a separate writing. Any initial separate writing shall be circulated within seven business days of the majority vote to issue the order. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within one business day. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

8. *Separate Opinion(s) To Follow.* If the author of a declared separate writing fails to circulate a separate writing or fails to circulate timely revisions to a separate writing within the deadlines specified in subpar. 2, 3, 4, 6, or 7, the order may be released with the designation "separate opinion(s) to follow" upon a majority vote of the participating

justices.

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.

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, typically beginning at 9:45 a.m., and those cases to be argued in the afternoon, typically 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.

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 posted to the court's website.

1. *Opening Argument.* Twenty-five minutes are allotted for opening argument, leaving five minutes for rebuttal. The court generally will not question counsel during the first two minutes of opening argument. 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.

2. *Respondent's Argument.* The same procedure outlined above for opening argument is used for respondent's thirty-minute argument. The court generally will not question counsel during the first two minutes of respondent's argument.

3. *Rebuttal.* Five minutes are allotted for rebuttal.

4. *Additional Questioning.* At the end of each principal argument, the chief justice shall afford justices the opportunity to ask additional questions.

E. Post-argument Decision Conference

Following each day's oral arguments, the court typically 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.

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 may be 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 shall be circulated no later than December 10. Majority opinions assigned in October shall be circulated no later than January 10. Majority opinions assigned in November shall be circulated no later than January 31. Majority opinions assigned in December shall be circulated no later than the last business day in February. Majority opinions assigned in January shall be circulated no later than March 31. Majority opinions assigned in February shall be

circulated no later than April 30. Majority opinions assigned in March or 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. In the event any of these deadlines falls on a weekend or state holiday, the deadline shall be extended to the next business day.

2. Majority Opinion Declarations.

(a) *Initial Declarations.* Within five business 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 15 business 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 five business 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 40 days from the date of the first circulation of the majority opinion 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. In the event either of these deadlines falls on a weekend or state holiday, the deadline shall be extended to the next business day.

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 10 business days in which to revise, and upon receipt of those revisions, dissents and concurrences have 10 business days to respond to the majority's revision. Any further revisions/circulations of the majority opinion and or separate writings shall occur within four business 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 three business 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 on all issues sufficient to resolve the case fully. If a separate writing garners the vote of a majority of the court on all issues sufficient to resolve the case fully, it shall be revised as the majority opinion within 14 days of the vote of the court or the next business day, if that date would otherwise fall on a weekend or state holiday. Within five business 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 three business days of the mandate, the majority opinion and all separate writings shall be placed in the release drive for transmittal

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.

If the author of a declared separate writing fails to circulate a separate writing within the deadlines specified in subpar. 3, or fails to circulate timely revisions to a separate writing within the deadlines specified in subpar. 4, the majority opinion may be released with the designation "separate opinion(s) to follow" upon a majority vote of the participating justices.

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.* Any justice may request a court conference on any circulated opinion. In the event such a request is made, the chief justice shall place the opinion(s) on the agenda for discussion at conference.

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 opinion is 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 under Wis. Stat. § 809.64 for reconsideration of the judgment or opinion of the court 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 under Wis. Stat. § 809.64 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 choose to file with the court or as part of a published opinion 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 or when necessary to bring the Supreme Court Rules and Internal Operating Procedures into conformance. Upon a vote of a majority of the court, a public hearing shall be held to review a rule amended pursuant to an exception.

B. Open Conference

Subject to par. 7, after a public hearing is held the court meets in open conference in the Supreme Court Hearing Room to discuss the merits of and act on the petition. The court also holds open conference on other administrative matters. The following provisions apply to open conference.

1. *Notice.* The court gives notice prior to the conference as

promptly and as widely circulated as feasible. Written notice of the open administrative conference generally is provided along with notice of the public hearing pursuant to Wis. Stat. § 751.12(3).

2. *Procedure.* Members of the court convene at the attorneys table in the Supreme Court Hearing Room and the chief justice presides.

3. *Public Attendance.* The public is invited to observe the conference from the area designated for public seating and may not participate in it.

4. *Media Coverage.* The rules governing electronic media and still photography coverage of judicial proceedings, SCR chapter 61, apply to open conferences.

5. *Staff.* All matters within the court's rule-making jurisdiction are assigned to a commissioner for analysis and reporting to the court. See IOP. IV.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.

6. *Adjournment.* If the court does not complete discussion of the petition at the conference, it adjourns to a specified date or a date to be determined. Notice of an adjourned open administrative conference is provided pursuant to par. 1 once the adjourned date is scheduled.

7. *Exceptions.*

(a) An open conference is not held when it appears that only non-substantive aspects of the petition will be discussed.

(b) Upon vote of the majority in open court, the court may discuss and act on the petition in conference closed to the public.

(c) Upon motion of a member of the court at open conference to discuss matters pertaining to personnel, the conference is adjourned to closed session and reconvenes in open session upon the vote of the majority.

8. *Orders.* At open conference, the court votes on whether or not to adopt or deny the petition in whole, in part, or as modified, and the date upon which any adopted petition shall become effective. The commissioner assigned to the matter is responsible for drafting and circulating the final order consistent with the court's decision at open conference.

9. *Separate Writings.* If the court decides to grant a petition, in whole or in part, to modify the rule proposed by the petition, or to deny a petition, and the draft order to that effect is circulated after the court's decision, any initial separate writing to the order shall be circulated within 30 days of the approval of a draft order by a majority of the court. If one or more initial separate writings are circulated, any separate writing in response shall be circulated within five business days. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above.

If the author of a declared separate writing fails to circulate a separate writing or fails to circulate timely revisions to a separate writing within the deadlines specified in this subparagraph, the order may be released with the designation "separate opinion(s) to follow" upon a majority vote of the participating justices.

C. Private Discussion

Members of the court are not precluded from discussing privately the subject of a pending rule petition among themselves or with others. The commissioners may discuss the substance of a pending rule petition with the petitioner or other interested persons.

V. COURT OF APPEALS CHIEF JUDGE TERM LIMIT

The chief judge of the court of appeals, appointed under Wis. Stat. § 752.07, is subject to removal by the supreme court and may not serve more than two consecutive terms. In exceptional circumstances the supreme court, in its discretion, may extend the chief judge's service beyond the two-term limit.

VI. AMENDMENTS

These internal operating procedures may be amended at any time by a majority vote of the court. Any such amendment is effective immediately unless there is an affirmative vote of a majority of the court otherwise. The amended procedure shall be published on the court's website as soon as practicable (with a notation of the effective date), regardless of whether a justice plans to concur or dissent to the amendment. An order is not necessary but in the event one or more justices wish to concur or dissent to any amendment to these internal operating procedures, a commissioner shall prepare and circulate an order memorializing the amendment adopted by the court. Any separate writing to such an order shall be circulated within 30 days of the circulation of the draft order. In the event this deadline falls on a weekend or state holiday, the deadline shall be extended to the next business day. If one or more initial separate writings are circulated, any

separate writing in response shall be circulated within seven business days. Justices other than the author of an initial or additional separate writing shall have until 4:00 p.m. on the next business day following the circulation of that writing to state whether they join. The order shall be issued as soon as practicable after the expiration of all time periods referenced above. If a justice is unable to prepare his or her separate writing by the time the order is issued, or to circulate timely revisions to a separate writing within the deadlines specified in this section, the order may be released with the designation "separate opinion(s) to follow" upon a majority vote of a quorum of the court.

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; June 30, 2021; February 28, 2023; April 20, 2023; August 4, 2023; October 30, 2023; February 22, 2024; June 28, 2024; September 16, 2025; January 21, 2026.