

New (and Newish) Judges Panel: What Lawyers Need to Know

American Inns of Court – James E. Doyle Chapter
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Moderator: Attorney Jessica M. Kramer

Panelists:

Honorable Tonia Bonnett, Adams County Circuit Court

Honorable Payal Khandhar, Dane County Circuit Court

Honorable Stephanie Hilton, Dane County Circuit Court

Honorable Benjamin Jones, Dane County Circuit Court

Honorable Anita Boor, United States District Court for the Western District of Wisconsin

I. What powers do trial court judges have?

- A. Constitutional authority: Wisconsin Constitution Article VII
- B. Statutory authority: Wis. Stats. Chapters 753 and 757
- C. Limited administrative authority over the circuit courts and related functions: *See, e.g.,* Wis. Stat. 17.21(4m) (majority vote of county circuit court judges to fill a vacancy in the county clerk of courts office) and Wis. Stat. 753.35 (circuit court may enact local rules).
- D. Common law powers of the circuit court:
 - 1) “In addition to the powers expressly granted to courts under the constitution, courts have inherent, implied and incidental powers. These terms are used to describe those powers which must necessarily be used to enable the judiciary to accomplish its constitutionally or legislatively mandated functions.” *State ex. rel. Friedrich v. Circuit Court for Dane County*, 192 Wis. 2d 1, 16 (Sup. Ct. 1995) (internal quotation and citation omitted).
 - 2) A circuit court’s “inherent powers are those which must necessarily be used to enable the judiciary to accomplish its constitutionally or legislatively mandated functions. Therefore, they include those powers that courts need to maintain their dignity, transact their business, or accomplish the purposes of their existence.” *Schultz v. Sykes*, 2001 WI App 255, ¶ 11, 248 Wis.2d 746, 764 (internal quotations and citations omitted).

3) In *In Matter of Guardianship of Eberhardy*, 102 Wis. 2d 539 (1981), the Wisconsin Supreme Court commented on the “extremely broad” jurisdiction granted to state circuit courts, which “do not depend solely upon statute for their powers”.

i. The Wisconsin Constitution, art. VII, sec. 8, declares:

Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state”

ii. This grant of jurisdiction is extremely broad. In *State ex rel. Attorney General v. Portage City Water Co.*, 107 Wis. 441, 447, 83 N.W. 697 (1900), this court said:

iii. The circuit courts of Wisconsin are constitutional courts and, unlike special courts which may be created from time to time by the legislature, under art. VII, sec. 2, are courts of plenary jurisdiction. They “do not depend solely upon statute for their powers.” *Stevenson v. Milwaukee County*, 140 Wis. 14, 17, 121 N.W. 654 (1907). Unlike the relationship between the Congress and the federal courts, under which the Congress may grant or withhold jurisdiction as it pleases, in Wisconsin the jurisdiction and the power of the circuit court is conferred not by act of the legislature, but by the Constitution itself. *Jelke Co. v. Beck*, 208 Wis. 650, 660, 242 N.W. 576 (1932). Circuit court jurisdiction is general and extends to all matters, civil and criminal. *Mack v. State*, 93 Wis.2d 287, 294, 286 N.W.2d 563 (1980); *State ex rel. First National Bank v. M & I People's Bank of Coloma*, 95 Wis.2d 303, 308 n. 4, 290 N.W.2d 321 (1980).”

II. Practice Tips for Attorneys

A. Efficient Advocacy:

- 1) Being prepared
- 2) Providing background for the judge where needed
- 3) Educating a newer judge on areas of law with which they are unfamiliar or less familiar

B. Calling the court during a deposition: Dos and Don'ts

C. Equitable access for litigants: The question of equity is one that is always before the courts. In family law cases, evictions, and other civil law cases,

some parties have lawyers, but many cannot afford them. In criminal law cases, defendants who can afford to hire a lawyer usually get one right away, while indigent defendants often have to wait to get a public defender appointed. What can the judiciary do to ensure access to justice when some parties have many more resources than other parties? What can lawyers do?

- D. Waiver/forfeiture arguments: how they differ in trial courts versus courts of appeals
- E. Motions for summary judgment: best practices for oral arguments