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# WISCONSIN COURT RULES AND PROCEDURE

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S T A T E

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2003

FOR FEDERAL RULES, SEE WISCONSIN COURT RULES AND  
PROCEDURE, FEDERAL, 2003

THOMSON  
— ★ —  
WEST

WISCONSIN  
COURT RULES  
AND  
PROCEDURE  
STATE  
2003

WITH AMENDMENTS TO COURT RULES RECEIVED  
THROUGH OCTOBER 1, 2002  
AND STATUTES RECEIVED THROUGH  
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THOMSON  
—★—™  
WEST

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# PREFACE

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This two-volume set of *Wisconsin Court Rules and Procedure, State and Federal, 2003* replaces the 2002 set. It sets forth the text of court rules governing state and federal practice in Wisconsin, with rule changes received through October 1, 2002. The state volume also includes selected practice and procedure provisions from Wisconsin Statutes Annotated, with amendments through 2001 Act 109, published July 29, 2002.

## ***State Rule and Procedure Changes***

Amended features in the state volume include statutes governing Civil Procedure, Appeals and Writs of Error, Rules of Appellate Procedure, Court Costs and Fees, Executions and Limitations of Commencement of Actions and Proceedings and Procedure for Claims Against Governmental Units and Supreme Court Rules governing Regulation of the State Bar and the State Bar By-Laws, Regulation of Members of the State Bar, Code of Judicial Conduct, Rules of Judicial Administration and Circuit Court Commissioners.

## ***Updating Court Rules***

Amendments to the rules in this edition are published, as received, in advance sheets as follows:

State rules	<i>North Western Reporter 2d</i> <i>Wisconsin Reporter</i>
Federal Rules of Appellate Procedure	<i>Federal Reporter 3d</i> <i>Federal Supplement 2d</i> <i>Supreme Court Reporter</i> <i>Federal Rules Decisions</i> <i>Bankruptcy Reporter</i>
U.S. Court of Appeals for the Seventh Circuit	<i>Federal Reporter 3d</i> <i>Illinois Decisions</i> <i>Illinois Edition of North Eastern 2d</i> <i>Indiana Cases</i> <i>Wisconsin Reporter</i>
U.S. District and Bankruptcy Court Rules	<i>North Western Reporter 2d</i> <i>Wisconsin Reporter</i>
Rules of Procedure of the Judicial Panel on Multidistrict Litigation	<i>Federal Reporter 3d</i> <i>Federal Supplement 2d</i> <i>Federal Rules Decisions</i>
Federal Courts Miscellaneous Fee Schedules	<i>Federal Reporter 3d</i> <i>Federal Supplement 2d</i> <i>Supreme Court Reporter</i>

## PREFACE

### ***Research Tips***

Westlaw® may also be used to update court rules. The WI-RULES database contains state rules and local rules of the U.S. District and Bankruptcy Courts in Wisconsin; US-RULES contains federal rules. An "UPDATE" command from a rule in the WI-RULES database will retrieve, from the WI-ORDERS or WI-LEGIS databases, judicial or legislative amendments to that rule. Similarly, an "UPDATE" command from a rule in the US-RULES database will retrieve judicial or legislative amendments from US-ORDERS or US-PL. See the Scope Screens for these Westlaw databases for further information.

The RULES, ORDERS, and LEGIS databases described above may be searched on Westlaw to find specific court rules and terms.

Case law databases on Westlaw may be used to find cases citing specific court rules.

See the Research Note preceding each set of rules for further information.

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## CHAPTER 68

### MUNICIPAL ADMINISTRATIVE PROCEDURE

#### Section

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- 68.01. Review of administrative determinations.
- 68.02. Determinations reviewable.
- 68.03. Determinations not subject to review.
- 68.04. Municipalities included.
- 68.05. Municipal authority defined.
- 68.06. Persons aggrieved.
- 68.07. Reducing determination to writing.
- 68.08. Request for review of determination.
- 68.09. Review of determination.
- 68.10. Administrative appeal.
- 68.11. Hearing on administrative appeal.
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- 68.13. Judicial review.
- 68.14. Legislative review.
- 68.15. Availability of methods of resolving disputes.
- 68.16. Election not to be governed by this chapter.

#### 68.001. Legislative purpose

The purpose of this chapter is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by municipal authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th amendment to the U.S. constitution.

##### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.

#### 68.01. Review of administrative determinations

Any person having a substantial interest which is adversely affected by an administrative determination of a governing body, board, commission, committee, agency, officer or employee of a municipality or agent acting on behalf of a municipality as set forth in s. 68.02, may have such determination reviewed as provided in this chapter. The remedies under this chapter shall not be exclusive. No department, board, commission, agency, officer or employee of a municipality who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, officer or employee of the same municipality, but may respond or intervene in a review proceeding under this chapter initiated by another.

##### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
1999 Act 185, § 193(1), eff. Sept. 1, 2000.

#### 68.02. Determinations reviewable

The following determinations are reviewable under this chapter:

- (1) The grant or denial in whole or in part after application of an initial permit, license, right, privilege, or authority, except an alcohol beverage license.
- (2) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege, or authority, except as provided in s. 68.03(5).
- (3) The denial of a grant of money or other thing of substantial value under a statute or ordinance prescribing conditions of eligibility for such grant.
- (4) The imposition of a penalty or sanction upon any person except a municipal employee or officer, other than by a court.

##### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
L.1981, c. 79, § 5, eff. July 1, 1982.  
1999 Act 185, § 193(1), eff. Sept. 1, 2000.

#### 68.03. Determinations not subject to review

Except as provided in s. 68.02, the following determinations are not reviewable under this chapter:

- (1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the governing body of a municipality.
- (2) Any action subject to administrative or judicial review procedures under other statutes.
- (3) The denial of a tort or contract claim for money, required to be filed with the municipality pursuant to statutory procedures for the filing of such claims.
- (4) The suspension, removal or disciplining or non-renewal of a contract of a municipal employee or officer.
- (5) The grant, denial, suspension or revocation of an alcohol beverage license under s. 125.12(1).
- (6) Judgments and orders of a court.
- (7) Determinations made during municipal labor negotiations.
- (8) Any action which is subject to administrative review procedures under an ordinance providing such procedures as defined in s. 68.16.

(9) Notwithstanding any other provision of this chapter, any action or determination of a municipal authority which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
L.1981, c. 79, § 6, eff. July 1, 1982.  
1999 Act 185, § 193(1), eff. Sept. 1, 2000.

### 68.04. Municipalities included

"Municipality", as used in this chapter, includes any county, city, village, town, technical college district, special purpose district or board or commission thereof, and any public or quasi-public corporation or board or commission created pursuant to statute, ordinance or resolution, but does not include the state, a state agency, a corporation chartered by the state or a school district as defined in s. 115.01(3).

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
1993 Act 399, § 146, eff. May 6, 1994.

### 68.05. Municipal authority defined

"Municipal authority" includes every municipality and governing body, board, commission, committee, agency, officer, employee, or agent thereof making a determination under s. 68.01, and every person, committee or agency of a municipality appointed to make an independent review under s. 68.09(2).

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
1999 Act 185, § 193(1), eff. Sept. 1, 2000.

### 68.06. Persons aggrieved

A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, commission or agency of the municipality, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
1993 Act 112, § 38, eff. Jan. 1, 1994.

### 68.07. Reducing determination to writing

If a determination subject to this chapter is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within 10 days of notice of such determination, reduce the determination and the reasons therefor to writing and mail or deliver such determination and reasons to the person making the request. The determination shall be dated, and shall advise such person of the right to have such determination reviewed, the time within which such review may be obtained, and the office or person to whom a request for review shall be addressed.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
L.1975, c. 421, § 91, eff. June 29, 1976.

### 68.08. Request for review of determination

Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within 30 days of notice to such person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed. A request for review shall be made to the officer, employee, agent, agency, committee, board, commission or body who made the determination but failure to make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
1999 Act 185, § 193(1), eff. Sept. 1, 2000.

### 68.09. Review of determination

(1) **Initial determination.** If a request for review is made under s. 68.08, the determination to be reviewed shall be termed an initial determination.

(2) **Who shall make review.** A review under this section may be made by the officer, employee, agent, agency, committee, board, commission or body who made the initial determination. However, an independent review of such initial determination by another person, committee or agency of the municipality may be provided by the municipality.

(3) **When to make review.** The municipal authority shall review the initial determination within 15 days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

(4) **Right to present evidence and argument.** The person aggrieved may file with the request for review or within the time agreed with the municipal authority written evidence and argument in support of the person's position with respect to the initial determination.

(5) **Decision on review.** The municipal authority may affirm, reverse or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the municipal authority's decision on review, which shall state the reasons for such decision. The decision shall advise the person aggrieved of the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom notice of appeal shall be filed.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
L.1975, 421, §§ 92, 93, eff. June 29, 1976.  
1999 Act 185, § 193(1), eff. Sept. 1, 2000.

### 68.10. Administrative appeal

(1) **From initial determination or decision on review.** (a) If the person aggrieved did not have a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may appeal under this section from the decision on review and shall follow the procedures set forth in ss. 68.08 and 68.09.

(b) If the person aggrieved had a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may elect to follow the procedures provided in ss. 68.08 and 68.09, but is not entitled to appeal under this section unless granted by the municipal authority. The person may, however, seek review under s. 68.13.

(2) **Time within which appeal may be taken under this section.** Appeal from a decision on review under s. 68.09 shall be taken within 30 days of notice of such decision.

(3) **How appeal may be taken.** An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
L.1975, c. 421, § 94, eff. June 29, 1976.

### 68.11. Hearing on administrative appeal

(1) **Time of hearing.** The municipality shall provide the appellant a hearing on an appeal under s. 68.10 within 15 days of receipt of the notice of appeal filed or mailed under s. 68.10 and shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing.

(2) **Conduct of hearing.** At the hearing, the appellant and the municipal authority may be represented by an attorney and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The municipality shall provide an impartial decision maker, who may be an officer, committee, board, commission or the governing body who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. The decision maker may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07(4) and must be served in the manner provided in s. 805.07(5). The attorney shall, at the time of issuance, send a copy of the subpoena to the decision maker. The hearing may, however, be conducted by an impartial person, committee, board or commission designated to conduct the hearing and report to the decision maker.

(3) **Record of hearing.** The person conducting the hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.  
1989 Act 139, § 1m, eff. March 31, 1990.

### 68.12. Final determination

(1) Within 20 days of completion of the hearing conducted under s. 68.11 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons



therefor. Such determination shall be a final determination.

(2) A determination following a hearing substantially meeting the requirements of s. 68.11 or a decision on review under s. 68.09 following such hearing shall also be a final determination.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.

### 68.13. Judicial review

(1) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.

(2) If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the municipality and the person seeking review shall be furnished a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.

L.1975, c. 421, § 95, eff. June 29, 1976.

L.1981, c. 289, § 9, eff. May 1, 1982.

### 68.14. Legislative review

(1) The seeking of a review pursuant to s. 68.10 or 68.13 does not preclude a person aggrieved from

seeking relief from the governing body of the municipality or any of its boards, commissions, committees, or agencies which may have jurisdiction.

(2) If in the course of legislative review under this section, a determination is modified, such modification and any evidence adduced before the governing body, board, commission, committee or agency shall be made part of the record on review under s. 68.13.

(3) The governing body, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under s. 68.11.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.

### 68.15. Availability of methods of resolving disputes

This chapter does not preclude any municipality and person aggrieved from employing arbitration, mediation or other methods of resolving disputes, and does not supersede contractual provisions for that purpose.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.

### 68.16. Election not to be governed by this chapter

The governing body of any municipality may elect not to be governed by this chapter in whole or in part by an ordinance or resolution which provides procedures for administrative review of municipal determinations.

#### Historical and Statutory Notes

##### Source:

L.1975, c. 295, § 4, eff. June 4, 1976.

## CHAPTER 751

### SUPREME COURT

#### Section

- 751.01. Terms of justices.
- 751.02. Employees.
- 751.025. Temporary use of court reporters.
- 751.03. Assignment of judges.
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- 751.09. Referral of issues of fact and damages.
- 751.10. Decisions to be written; part of record; certification.
- 751.11. Wisconsin reports; distribution.
- 751.12. Rules of pleading and practice.
- 751.15. Rules regarding the practice of law; delinquent support obligors.
- 751.155. Rules regarding the practice of law; delinquent taxpayers.

#### 751.01. Terms of justices

The term of office of an elected justice of the supreme court commences on the August 1 next succeeding the justice's election.

##### Historical and Statutory Notes

#### Source:

- L.1875, c. 218, § 5.
- R.S.1878, § 2397.
- St.1878, § 2397.
- L.1919, c. 362 § 31.
- L.1925, c. 4.
- St.1925, § 251.01.
- L.1953, c. 606, § 3.
- St.1975, § 251.01.
- L.1977, c. 187, § 74, eff. Aug. 1, 1978.

#### 751.02. Employees

The supreme court may authorize the employees it considers necessary for the execution of the functions of the supreme court and the court of appeals and the court reporting functions of the circuit courts and may designate titles, prescribe duties and fix compensation. Compensation and benefits of employees should be consistent with that paid to state employees in the classified service for services involving similar work and responsibility. Each justice and court of appeals judge may appoint and prescribe the duties of a secretary and a law clerk to assist the justice or judge in the performance of his or her duties. Each circuit judge may appoint a court reporter to serve in the court or branch of court to which he or she was elected or appointed if the reporter is certified as qualified by the director of state courts. A person

appointed by the supreme court or a justice or court of appeals judge or a circuit judge serves at the pleasure of the court or the justice or judge.

##### Historical and Statutory Notes

#### Source:

- L.1977, c. 187, § 110, eff. Dec. 2, 1977.
- L.1981, c. 353, § 4, eff. May 7, 1982.
- 1999 Act 185, § 193(1), eff. Sept. 1, 2000.

#### Prior Laws:

- L.1852, c. 395, § 5.
- L.1853, c. 105, § 1.
- R.S.1858, p. 1044.
- R.S.1858, c. 115, § 2.
- L.1861, c. 198, §§ 1, 6.
- L.1868, c. 147.
- L.1875, c. 218, §§ 1, 2.
- L.1876, c. 284.
- L.1878, c. 124, §§ 1 to 3, 5, 6.
- R.S.1878, §§ 346 to 347b, 2399, 2400, 2401, 2402, 2404.
- R.S.1885, c. 182.
- L.1887, c. 61.
- Ann.St.1889, §§ 346, 346a, 2400.
- L.1895, c. 187.
- L.1897, c. 241.
- St.1898, §§ 346, 2399, 2400, 2401, 2402, 2404.
- L.1899, c. 328.
- L.1901, c. 226.
- Supl.1906, § 346.
- L.1907, c. 466, § 3.
- L.1909, c. 206.
- L.1911, c. 107.
- L.1911, c. 580.
- L.1911, c. 657.
- L.1911, c. 664, § 128.
- St.1911, §§ 20.71 to 20.73.
- L.1913, c. 772, §§ 117, 118.
- L.1917, c. 336, §§ 72, 74.
- L.1917, c. 353.
- St.1917, §§ 35.71, 35.73, 2399a.
- L.1925, c. 4.
- St.1925, §§ 251.02 to 251.07.
- L.1929, c. 482, § 9.
- L.1931, c. 45, § 1.
- L.1943, c. 571.
- L.1947, c. 9, § 31.
- L.1947, c. 571.
- L.1951, c. 319, § 220.
- L.1951, c. 727, § 8.
- St.1951, § 251.055.
- L.1955, c. 204, § 70a.
- St.1957, § 35.71.
- L.1959, c. 516, § 6.
- L.1959, c. 659, §§ 73, 74, 79.
- L.1959, c. 691, § 1, eff. July 1, 1961.
- L.1965, c. 240, § 1.
- L.1969, c. 154, § 367, eff. Aug. 31, 1969.
- L.1971, c. 125, § 494, eff. Nov. 5, 1971.
- St.1975, § 251.02 to 251.07.



**751.025. Temporary use of court reporters**

If the court reporter appointed by the judge is not available or if an additional court reporter is needed, the judge, in cooperation with the chief judge and court administrator for that judicial district, shall attempt to locate and use a court reporter from another branch of court before hiring a private court reporter.

**Historical and Statutory Notes****Source:**

1995 Act 27, § 7068g, eff. July 29, 1995.

**751.03. Assignment of judges**

(1) The chief justice of the supreme court may assign any active supreme court justice, court of appeals judge or circuit judge to serve temporarily as a judge of the court of appeals or any circuit court to aid in the proper disposition of business in that court. The chief justice of the supreme court may designate and assign reserve judges under s. 753.075 to serve temporarily in the court of appeals or the circuit court for any county. While acting under a temporary assignment, an active or reserve justice or judge may exercise all the authority of the court to which he or she is assigned.

(2) The chief justice of the supreme court may exercise the authority under sub. (1) in regard to municipal courts for the purpose of:

(a) Assigning a case in which a change of judge is requested under s. 757.19(5) or is required under s. 800.05 to another municipal judge or, if none is available, transferring the case to circuit court.

(b) Assigning cases in municipal court in which a municipal judge is incompetent, unable or fails to act, to another municipal judge, former municipal judge or former circuit judge. A judge to whom cases are so assigned may serve until the chief justice determines that the incompetency, inability or failure ceases, or until the term of the municipal judge expires or the vacancy is permanently filled under s. 8.50(4)(fm), whichever occurs first. If no judge is available, the chief justice may transfer a case from municipal court to circuit court.

(3) The chief judge of any judicial administrative district may assign any circuit judge within the district to serve in any circuit court within the district.

(4)(a) If a judge before whom a reported proceeding has commenced is unable to proceed, the judge to whom the case is assigned may proceed with it upon certifying familiarity with the record and determining that proceedings in the case may be completed with-

out prejudice to the parties. Otherwise the judge assigned may grant a new trial or rehearing.

(b) If a judge before whom an action or proceeding has been tried is unable to proceed after a verdict is returned or findings of fact and conclusions of law are filed, the judge to whom the case is assigned may proceed with it unless satisfied that the duties cannot be performed without prejudice to the parties, in which event a new trial may be granted.

(5) Any assignment referred to in this section or SCR 70.23 may be requested or ordered by telephone to minimize disruption of court calendars and inconvenience to parties and witnesses.

**Historical and Statutory Notes****Source:**

L.1959, c. 315, § 9.  
L.1961, c. 261, § 2, eff. Jan. 1, 1962.  
L.1971, c. 46, §§ 2, 3, eff. Jan. 1, 1972.  
St.1975, § 251.182.  
L.1977, c. 29, § 1391, eff. July 1, 1977.  
L.1977, c. 135, §§ 5g, 5r, eff. Nov. 1, 1977.  
L.1977, c. 187, § 84, eff. Aug. 1, 1978.  
L.1977, c. 305, § 42, eff. July 1, 1978.  
L.1977, c. 447, § 210, eff. July 9, 1978.  
L.1977, c. 449, § 296, eff. Aug. 1, 1978.  
L.1979, c. 32, § 92(17), eff. July 20, 1979.  
S.Ct. Order dated April 30, 1985, eff. July 1, 1985.  
1985 Act 304, §§ 153g, 153r, eff. July 1, 1986.  
S.Ct. Order dated Oct. 29, 1987, eff. Jan. 1, 1988.  
S.Ct. Order dated Oct. 28, 1988, eff. Jan. 1, 1989.

**751.04. Seal**

The supreme court shall have a seal and may direct and from time to time alter the inscription and devices thereon; and the department of administration shall procure such seal as may be ordered. The seal of the court now in use shall be the seal thereof until another is provided hereunder.

**Historical and Statutory Notes****Source:**

R.S.1878, § 2415.  
St.1898, § 2415.  
L.1913, c. 772, § 117.  
L.1925, c. 4.  
St.1925, § 251.20.  
L.1961, c. 316, § 19.  
St.1975, § 251.20.  
L.1977, c. 187, § 86, eff. Aug. 1, 1978.

**751.05. Appellate jurisdiction**

The supreme court has appellate jurisdiction only, except as otherwise provided by law or the constitution.