

**CHIEF JUDGE ORDER REQUIRING THE SHERIFF TO COMPLY
WITH THE STATUTORY AND CONSTITUTIONAL OBLIGATION TO
“ATTEND UPON THE COURT”**

Free and open access to justice requires adequate courtroom and courthouse security, such that parties, attorneys, court personnel, witnesses, victims, jurors and other spectators may be protected from potentially violent and dangerous situations. As our supreme court commented:

The presence of sworn officers serves as a deterrent to violent outbursts and provides the ability to respond to incidents that may arise. In this respect, the open and obvious presence of uniformed officers is an example of basic court security principles designed to deter those intent on harm, detect those who have breached security, and limit the damage caused by the breach. It is impossible to predict the type of case that might lead to a violent incident. Therefore, it is essential to provide court security for all types of cases.

Comment to Supreme Court Rule 68.07 (emphasis in original). Accordingly, our supreme court opined that “[t]here should be no fewer than two sworn officers in each courtroom and each court commissioner hearing room when court is in session.” SCR 68.07(1). Milwaukee County has 47 circuit court judges and 24 full-time court commissioners.

The Supreme Court Rules, while not necessarily binding on the sheriff, were drafted in recognition of the “constitutionally appropriate participation” of the courts’ facilities and staffing

needs. SCR 68.01(1). Indeed, “it is clear that circuit courts . . . have constitutional authority over matters of staff and judicial administration.” *Barland v. Eau Claire Cnty.*, 216 Wis. 2d 560, 577, 575 N.W.2d 691, 698 (1998). In particular, trial courts have “inherent, implied and incidental powers” which “must necessarily be used to enable the judiciary to accomplish its constitutionally or legislatively mandated functions.” *City of Sun Prairie v. Davis*, 22 Wis. 2d 738, 747, 595 N.W.2d 635 (1999). Such powers have been conceded to the courts “because without them they could neither maintain their dignity, transact their business, nor accomplish the purposes of their existence.” *Id.* at 748 (citing *Jacobson v. Avestruz*, 81 Wis.2d 240, 245, 260 N.W.2d 267 (1977)). “If a specific function falls within the courts exclusive inherent authority, neither the legislature nor the executive branches may constitutionally exercise authority within that area.” *Id.*

One area of inherent authority is the internal operations of the court. *City of Sun Prairie v. Davis*, 22 Wis. 2d at 749 (1999). Stated differently, trial courts exercise inherent authority to guard against “any action that would unreasonably curtail the powers or materially impair the efficacy of the courts or judicial system.” *Id.* In addition, courts have inherent authority to “ensur[e] that the court functions efficiently and effectively to provide the fair administration of justice.” *Id.* at 749-50. Notably, the Wisconsin appellate courts have repeatedly determined that a circuit court has inherent power to appoint its own bailiff, even in the presence of legislation that attempted to restrict appointments to candidates selected by the sheriff. *See, e.g., Barland v. Eau Claire Cnty.*, 216 Wis. 2d 560, 583, 575 N.W.2d 691, 700 (1998); *State ex rel. Moran v. Dep’t of Admin.*, 103 Wis. 2d 311, 317, 307 N.W.2d 658, 662 (1981); *Stevenson v. Milwaukee County*, 140 Wis. 14, 121 N.W. 654 (1909).

Likewise, the position of sheriff enjoys certain powers that emanate from Article V, Section 4 of the Wisconsin Constitution. While the Wisconsin Constitution does not delineate the powers, rights, and duties of the office of sheriff, the sheriff enjoys constitutional protections when performing tasks that are “immemorial and distinctive,” as opposed to mundane and administrative. *See Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶ 43, 301 Wis. 2d 266, 285, 732 N.W.2d 828, 838. The sheriff, and his or her appointed bailiffs, provide a vital and invaluable resource to our court system.

However, the sheriff does not have unfettered discretion in the performance of his or her duties. In particular, the sheriff is constitutionally bound to perform certain duties for the courts, including executing court orders and otherwise “attending upon the courts.” *See Wisconsin Pro. Police Ass'n/L. Enft Emp. Rels. Div. v. Dane Cnty.*, 149 Wis. 2d 699, 707, 439 N.W.2d 625, 628 (Ct. App. 1989). As stated by one court:

The sheriff [is] an officer of the court and obliged to the court’s commands. The sheriff remains today subject to the orders of the courts. We conclude that when the sheriff executes an arrest warrant issued by the court to bring a prisoner before the court the sheriff attends upon the court.

Id.

The sheriff’s constitutional obligations to the court have been codified by the legislature. In particular, Wis. Stat. § 59.27 requires sheriffs to “attend upon the circuit court” and “execute all processes, writs, precepts and orders.” Wis. Stat. § 59.27(3),(4). In addition, “the court may by special order authorize additional deputies to attend when the court is engaged in the trial of any person charged with a crime.” Wis. Stat. § 59.27(3). In light of the sheriff’s constitutional and statutory obligation to “attend upon the courts,” a court has ample power to require the

attendance of as many bailiffs as may be reasonably necessary for the fair administration of justice.

Unfortunately, the fair administration of justice is threatened by various bailiff-staffing concerns, as articulated in the recent inter-agency communication issued by Chief Deputy Sheriff Daniel Hughes. Therefore, pursuant to the courts' constitutional and inherent authority, and the sheriff's corresponding constitutional and statutory duties, the sheriff is hereby ordered to provide a minimum of two bailiffs in each of the felony courts, one bailiff in each of the misdemeanor courts, and one bailiff in each of the family courts, while those courts are in session. These measures, which address the elevated risk of danger in these particular courts, are necessary: (1) to provide our community with the fundamental opportunity to participate in the judicial process safely; (2) to avoid further backlogs in court proceedings that emanated from the COVID-19 pandemic; (3) to allow jurors to enjoy adequate protections while fulfilling their civic responsibilities; and (4) to enable the judiciary to function efficiently and effectively. The fair administration of justice and the protection of everyone's rights and liberties are largely achieved through the teamwork of courts and bailiffs who, working together in a common effort, put into practice the protection of rights and access to justice.

Further, Supreme Court Rule 68.04 provides that: "Day to day security decisions and case specific security are within the discretion of each individual judicial officer. The judicial officer shall consult as needed, with the chief judge, the sworn officers, or the court security officers." Pursuant to the courts' constitutional and inherent authority, and the sheriff's corresponding constitutional and statutory duties, the sheriff is hereby ordered to provide bailiffs to all other courts, including civil and probate courts, as necessary. SCR 68.04.

Accordingly, Sheriff Denita R. Ball is hereby **ORDERED**, forthwith:

- (1) To staff each of the felony courts with two bailiffs while they are in session;
- (2) To staff each of the misdemeanor courts with one bailiff while they are in session;
- (3) To staff each of the family courts with one bailiff while they are in session;
- (4) To staff each of the Children's Courts as currently staffed;
- (5) To continue to staff other courts including Court Commissioners operations;
- (6) Staff other court operations as needed.

Carl Ashley

Chief Judge Carl Ashley Milwaukee County District 1
September 6, 2024