

TECHNICAL COMPLICATIONS

MILWAUKEE FIRM OWNER BACKS ALLOWING AG TO BE PERSONALLY SERVED

By Erika Strebel

estrebel@wislawjournal.com

The Wisconsin Supreme Court last year dealt Jason Abraham of Hupy & Abraham a loss when it ruled against his client, finding that she could not recover compensation for injuries because a lawyer who had represented her previously in the case had neglected to use certified mail to serve the attorney general with a notice of claim.

Undeterred, Abraham, managing partner of the firm, returned to the Capitol last week to urge lawmakers to change state law in a way

he contends would prevent other lawyers from making a similar mistake and other injured persons from losing compensation because of such a minor technical error.

State Rep. Ron Tusler, an author of a bill that would change the rule Abraham was complaining of, agreed that Abraham's story offered a good example of technical complications standing in the way of justice.

"The plaintiff, in my opinion, got really screwed," Tusler said.

Tusler's legislation - Assembly Bill 519 - would make changes to Wis. Stat. 893.82(5), which stipulates that a plain-

*"If this can happen to me,
it can happen to anybody,
because I file more lawsuits
than anybody else."*

Jason Abraham,
managing partner at Hupy & Abraham

tiff cannot proceed with a lawsuit against a state officer or employee without first using certified mail to serve the attorney general. The notice must be sent within 120 days of

the occurrence of whatever incident is at the heart of a dispute.

AB 519 would add personal service as an acceptable means by which a plaintiff could serve the attorney general with a notice of claim.

Tusler said he thinks the exclusion of personal service, the state courts' preferred method of service, was the result of either a drafting error or an attempt to discourage lawsuits. Abraham said that he has found, from his own experience in discovery proceedings, that the statute is in fact technically impossible to follow.

Mail, continued on page 11

MAIL

CONTINUED FROM PAGE 1

The reason? The AG doesn't actually receive mail in his office in the state Capitol.

Serving the AG personally instead of using certified mail is a rare mistake in a type of case that remains fairly uncommon. Of all personal-injury cases, fewer than 10 percent are filed against government employees. And of those cases, the mistake of personally serving the AG is made from 10 to 20 percent of time, Abraham said.

In his 25 years of practicing personal-injury law, he said, he had never before encountered this situation.

"If this can happen to me, it can happen to anybody, because I file more lawsuits than anybody else," he said.

Abraham also testified in support of AB 566, which would modify the state's Rules of Civil Procedure contained in chapters 801 and 802 by letting certain pleadings and court documents be served using email if the attorney or party being served has consented in writing to accept them that way.

AB 566 would allow lawyers and parties to serve each other pleadings using email as long as they have agreed to do so in writing. When that sort of agreement were made,

an email address would have to be listed in documents submitted to the court and the email addresses would have to be kept up to date.

The legislation would further specify that email service is completed once an electronic message is transmitted, unless the sender receives notification that the message was not delivered.

Tusler, also an author of the bill, noted that the change would not require that lawyers use email. It would merely allow them to opt into a common practice.

"Right now, in the state of Wisconsin, we do it a lot," he said. "There isn't a lot that the courts can do to stop you. Most judges are going to say, 'That's ridiculous' and want to move to the merits of the case."

"It's the way of the future," Abraham said. "It allows for instantaneous access to stuff that happens in cases."

Abrahamson said the current system can lead to unnecessary delays. In a recent case, he said, he had to wait two to three days to receive a motion after being told by an assistant that it would be coming.

"It would have been nice to look at it right away," said Abraham.

Should the committee give AB 519 and AB 566 favorable recommendations, their next stop would be the full Legislature.