WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
FEBRUARY 2019

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol. This calendar includes cases that originated in the following counties:

Ashland
Brown
Dane
La Crosse
Marathon
Milwaukee
Taylor
Walworth
Washington
Waukesha

FRIDAY, FEBRUARY 1, 2019

9:45 a.m.	16AP2334	Leicht Transfer & Storage Co. v. Pallet Central Enterprises, Inc.
10:45 a.m.	17AP739	David W. Paynter v. ProAssurance Wisconsin Ins. Co.
1:30 p.m.	17AP1408	Security Finance v. Brian Kirsch

MONDAY, FEBRUARY 11, 2019

9:45 a.m.	17AP1468	Waukesha County v. S.L.L.
10:45 a.m.	17AP1593	Alan W. Pinter v. Village of Stetsonville
1:30 p.m.	18AP1346-CQ	United States of America v. Dennis Franklin

THURSDAY, FEBRUARY 14, 2019

9:45 a.m.	14AP2244-D	Office of Lawyer Regulation v. James Edward Hammis
10:45 a.m.	17AP2021	Town of Rib Mountain v. Marathon County
1:30 p.m.	17AP344	Yasmeen Daniel v. Armslist, LLC et al.

THURSDAY, FEBRUARY 21, 2019

9:45 a.m.	17AP141-CR	State v. Dennis L. Schwind
10:45 a.m.	16AP2296	Maple Grove C.C. Inc. v. Maple Grove Estates Sanitary Dist.
1:30 p.m.	14AP2528-D	Office of Lawyer Regulation v. Kathleen Anna Wagner

Note: The Supreme Court calendar may change between the time you receive these synopses and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any camera coverage of Supreme Court oral argument, contact media coordinator Hannah McClung at WISC-TV, (608) 271-4321. The synopses provided are not complete analyses of the issues.

WISCONSIN SUPREME COURT
February 1, 2019
9:45 a.m.

2016AP2334 Leicht Transfer & Storage Company v. Pallet Central Enterprises, Inc.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a Brown County Circuit Court decision, Judge Marc A. Hammer presiding, granting summary judgment in favor of the defendants, several insurance companies.

This case asks the Supreme Court to consider whether certain insurance policies should encompass the plaintiff's losses for theft by fraud.

Leicht Transfer & Storage Company provides warehousing services, which includes ordering pallets from Pallet Central to be used by Georgia-Pacific. Typically, when it delivered pallets, Pallet Central would send a voucher with invoices and delivery tickets signed by Leicht employees. Leicht would pay those invoices and, in turn, bill Georgia-Pacific. This claim arose when Leicht learned that Pallet Central had fraudulently submitted a number of invoices for pallets by forging signatures of Leicht employees on the invoices.

Leicht had paid Pallet Central about $505,000 for pallets it had never ordered or received when this was discovered. Leicht reimbursed Georgia-Pacific and, in turn, tendered a claim for the loss to its insurers citing its forgery coverage. The insurers all denied Leicht's claims.

Leicht filed a lawsuit arguing it is entitled to coverage under three separate policies. All of the insurance policies contained nearly identical forgery coverage for:

> [L]oss resulting directly from Forgery or alteration of "checks, drafts, promissory notes, convenience checks, [home equity line of credit] HELOC checks, or similar written promises, orders or directions to pay a sum certain in Money" that are: (i) Made or drawn by or drawn upon You; or (ii) Made or drawn by one acting as Your agent; or that are purported to have been so made or drawn.

Two of the insurance companies settled prior to oral argument. This case now focuses on crime insurance coverage issued by Hiscox Insurance Company.

Both the Brown County Circuit Court and the Court of Appeals ruled in favor of the insurers, concluding that the policies covered forged checks and similar documents, but not forged bills or requests for payment like the forged delivery tickets. The courts reasoned that forged delivery tickets are unlike checks because banks would not honor a delivery ticket and exchange it for money; a delivery ticket merely acknowledges receipt of goods.

Leicht disagrees. Leicht asserts that the forged delivery tickets should be considered a "direction to pay" under the policies. It reasons that a signed delivery ticket was an intrinsic representation of delivery and acceptance of the goods and a corresponding obligation to pay. Leicht argues further that to the extent the policies are ambiguous, the insurers were the drafters of the language and marketed and sold these policies as "crime insurance."

Leicht asserts that Supreme Court guidance is needed because policyholders cannot possibly understand what instruments might be "similar" enough to those enumerated in the policy to extend coverage without further clarification.

The Supreme Court is expected to provide guidance that may aid in the interpretation of insurance policies intended to provide crime-fraud coverage.

The following issue is presented for review:

> Did crime policies issued against forgery cover losses ensuing from forged delivery tickets that the parties utilized to direct payment for pallets?

WISCONSIN SUPREME COURT
February 1, 2019
10:45 a.m.

2017AP739 David W. Paynter v. ProAssurance Wisconsin Insurance Company

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed an Ashland County Circuit Court decision, Judge Robert E. Eaton presiding, granting summary judgment to Dr. James Hamp in a medical malpractice claim.

David and Katherine Paynter are residents of Bessemer, Michigan, a city on the Wisconsin-Michigan border. Dr. James Hamp was an ear, nose and throat specialist with offices in Ironwood, Michigan and Ashland, Wisconsin. In 2010, David saw Dr. Hamp at his offices in Ironwood about a growth on his neck. Dr. Hamp took a specimen from David's neck and sent it to a pathologist in Ashland. A few days later, the pathologist sent a report to Dr. Hamp stating that the specimen contained malignant cells.

Dr. Hamp then called David Paynter from his Ashland, Wisconsin office and told him – incorrectly – that the growth was not cancerous and that he did not need any further treatment. Four years later, David underwent surgery to remove the growth. The post-surgical report stated that the removed tissue was cancerous and consistent with the malignant cells found in the 2010 sample.

In 2015, the Paynters sued Dr. Hamp; his Michigan medical malpractice insurer, American Physicians Assurance Company; and his Wisconsin medical malpractice insurer, ProAssurance Wisconsin Insurance Company. The Paynters asserted both negligence and informed consent claims against Dr. Hamp.

This case presents a which-state's-limitations-period-applies problem. If Wisconsin's statute of limitation applies, the Paynters' lawsuit was timely. If Michigan's statute of limitations applies, the Paynters' lawsuit was untimely.

The Court of Appeals held that Michigan's statute of limitations applied, and it barred the Paynters' lawsuit. More specifically, the Court held that, under Wisconsin's "borrowing statute" (Wis. Stat. § 893.07), the Paynters had brought a "foreign cause of action" in Wisconsin – one premised on an injury that occurred outside Wisconsin – and because the foreign period of limitation had expired, the action was barred in Wisconsin. The Court of Appeals held that the Paynters' action was a "foreign" one because David was located in Michigan at the time of his "first injury."

The Paynters petitioned the Supreme Court for review on the grounds that David's injury – the growth of his malignant cancer cells – was continuous, and because he was frequently in Wisconsin due to the location of his residence, his injury necessarily occurred here, too. The Paynters argue that the borrowing statute says nothing about the place of first injury being dispositive. The Paynters also argue that David's right to be given sufficient information so that he could provide informed consent was violated, and that this violation occurred in Wisconsin, where Dr. Hamp was located when he called David with the misdiagnosis.

The following issues are presented for review:

1. Guertin v. Harbour Assurance Co. of Bermuda, Ltd., 141 Wis. 2d 622, 415 N.W.2d 831 (1987), defined a "foreign cause of action," as used in Wis. Stat. § 893.07, Wisconsin's

borrowing statute, as a claim for injuries sustained outside of Wisconsin. However, neither § 893.07 nor Guertin specifies whether § 893.07 applies where injuries are sustained, in part, in Wisconsin. See Faigin v. Doubleday Dell Pub. Group, Inc., 98 F.3d 268, 270-272 (7th Cir. 1996). Neither sets forth criteria for determining whether § 893.07 applies in multi-state claims. Id.

   a. Because § 893.07 does not address how to treat claims arising in multiple states, because Wisconsin courts have an interest in redressing claims arising here, and because of the all-or-nothing consequences of declaring all causes of action arising in multiple states "foreign," should this court adopt the Seventh Circuit's decision in Faigin and declare that § 893.07 does not apply to claims arising, at least in part, in Wisconsin?
   b. Given Guertin's holding, should an injury-in-fact test or the nature of the cause of action determine whether § 893.07 applies to a particular cause of action?
   c. Although Guertin declared that § 893.07 does not apply to actions if injury occurred in Wisconsin, does that rule continue to apply if injury also occurred in another state?

2. Where Dr. Hamp failed to diagnose Mr. Paynter's cancer, which continued to grow until it was removed, and the Paynters, who lived on the border of Wisconsin and Michigan, were frequently in Wisconsin, did a question of fact exist regarding whether Mr. Paynter's cause of action arose, at least in part, in Wisconsin?
3. Was Dr. Hamp's failure to inform Mr. Paynter of available treatment options, constituting a harm to Mr. Paynter's rights, an injury in Wisconsin such that § 893.07 did not apply?
4. ProAssurance told Dr. Hamp it planned to exclude "any medical professional health care services he provided in the State of Michigan." Its policy precluded coverage for "liability" arising from "professional services" rendered "in the State of Michigan and/or outside the State of Wisconsin." Did ProAssurance cover Dr. Hamp's negligence 1) in reviewing or failing to review the pathology report in Wisconsin and 2) calling Mr. Paynter from Wisconsin and incorrectly advising that his tumor was benign?

WISCONSIN SUPREME COURT
February 1, 2019
1:30 p.m.

2017AP1408 Security Finance v. Brian Kirsch

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Washington County Circuit Court decision, Judge Todd K. Martens presiding, dismissing the case and Kirsch's counterclaims.

This case presents an opportunity to clarify the interplay between different provisions of the Wisconsin Consumer Act, Wis. Stat. Chs. 421 through 427 (WCA). The WCA was designed to protect consumers from unfair, deceptive, and unconscionable merchant practices. The question presented is whether a consumer has a right to sue for damages if a merchant violates certain procedural requirements of the WCA, such as filing a lawsuit without first providing a proper notice of right to cure default.

The case commenced when Security Finance filed a small claims action seeking a money judgment against Brian Kirsch for $1,252.82, based on his alleged default on a consumer loan agreement. Kirsch filed an answer and counterclaims. He said there were various problems with Security Finance's complaint, and claims he is entitled to damages and attorney fees under the WCA.

The circuit court agreed that Security Finance's complaint failed to satisfy certain pleading requirements, so it granted Security Finance's motion to voluntarily dismiss the case and dismissed Kirsch's counterclaims, without prejudice.

On appeal, Kirsch asserted that he should be permitted to maintain his counterclaims. The Court of Appeals ruled that noncompliance with the notice of cure requirement does not give rise to an affirmative claim for relief under the WCA.

Kirsch would like the Supreme Court to rule that the filing of a complaint, without first providing a proper notice of right to cure default is actionable under chapter 427. Kirsch argues that the WCA states that "any right or obligation declared by chs. 421 to 427 is enforceable by action." Wis. Stat. § 425.301(2). He relies on language in the Supreme Court's decision in Kett v. Community Credit Plan, Inc., 228 Wis. 2d 1, 596 N.W.2d 786 (1999), that said that "[a]s a result of the improper venue, Community Credit has violated other provisions of the [WCA] for which penalties may be assessed." Id. at 26.

The Supreme Court is expected to provide guidance on whether the filing of a complaint without first providing a proper notice of right to cure default is actionable under chapter 427 of the WCA.

The following issue is presented for review:

> Whether a customer sued on a consumer credit transaction without first receiving a notice of right to cure default may sue the merchant for damages under chapter 427 of the Wisconsin Consumer Act?

WISCONSIN SUPREME COURT
February 11, 2019
9:45 a.m.

2017AP1468 Waukesha County v. S.L.L.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which dismissed as moot an appeal of a Waukesha County Circuit Court decision, Judge William Domina presiding, that extended S.L.L.'s involuntary commitment and involuntary medication and treatment under Chapter 51 of the Wisconsin Statutes.

S.L.L. is homeless. In August 2016, the Waukesha County Circuit Court ordered her commitment and involuntary medication and treatment for schizophrenia. In September 2016, S.L.L. was permitted to live at a hotel in Milwaukee County, provided she comply with the treatment and services recommended by the Waukesha County Health and Human Services Department. In February 2017, Waukesha County petitioned the circuit court for an extension of S.L.L.'s commitment, citing S.L.L.'s lack of compliance with her treatment, failure to notify her case manager of her address, and her lack of insight and competency.

A hearing was scheduled for the commitment extension. A notice of the hearing and a notice that S.L.L. was to be examined by two physicians before the hearing was sent to S.L.L. at her last known address (a Milwaukee homeless shelter). The notice was returned, stamped as "undeliverable." S.L.L. did not appear for her examinations, but two physicians, who were not involved in the original commitment and had never personally met with S.L.L. nor examined her, each filed a report of examination opining that S.L.L. was mentally ill, dangerous, a proper subject for treatment, required psychotropic medication, and incapable of understanding her diagnosis to make an informed choice about whether to accept or refuse medications.

S.L.L. did not appear for the recommitment hearing. Both her counsel and the County admitted they had had no communication with her and did not know where she was. S.L.L.'s attorney asked that the case be dismissed, noting that S.L.L.'s last known residence was in Milwaukee County. The County argued that S.L.L.'s last known permanent address was in Waukesha County and therefore she was still under Waukesha County jurisdiction. The circuit court found that S.L.L. was under the jurisdiction of Waukesha County because a homeless shelter does not count as a permanent address.

The circuit court then signed a default judgement extending S.L.L.'s commitment for 12 months, found the least restrictive level of care for her to be in-patient, ordered involuntary medication, declared her to be a Waukesha County resident, and issued a writ of capias for her detention that had no end date.

S.L.L.'s attorney appealed. Six weeks later, Waukesha County filed a motion asking the circuit court to dismiss the matter because they could not locate S.L.L. The circuit court granted that motion and dismissed the case.

S.L.L.'s attorney pursued the appeal and filed her opening brief in the Court of Appeals. Waukesha County moved to dismiss the appeal as moot based on the circuit court's dismissal. The Court of Appeals denied the motion to dismiss and briefing continued. Eventually, the Court of Appeals reversed this earlier decision and dismissed the appeal as moot.

S.L.L.'s attorney sought Supreme Court review, arguing that the case was not moot because the issues are of state-wide importance and lower courts need guidance on how to

proceed in such cases. She states that circuit courts in different counties are resolving differently the question of whether the court has personal jurisdiction over the subject of a Chapter 51 petition for commitment and involuntary medication when the county fails to serve the subject of the petition. S.L.L. also argues that a circuit court order for commitment and medication under Chapter 51 lacks sufficient evidence and violates due process when it rests on reports of examining physicians that never actually examined the subject and did not testify at the commitment hearing. Lastly, S.L.L. argues that a circuit court has no authority to enter a default judgment in a Chapter 51 commitment proceeding.

The following issues are presented for review:

1. Whether this appeal is moot.
2. Whether a circuit court has personal jurisdiction over the subject of a Chapter 51 petition for commitment and involuntary medication where the county fails to serve the subject of petition.
3. Whether, as a matter of law, a circuit court may enter a default judgment against the subject of a Chapter 51 commitment proceeding.
4. Whether a circuit court order for commitment and medication under Chapter 51 is supported by sufficient evidence and violates due process where it rests upon the reports of "examining physicians" who never examined the subject individual and did not testify at the commitment hearing.

WISCONSIN SUPREME COURT
February 11, 2019
10:45 a.m.

2017AP1593 Alan W. Pinter v. Village of Stetsonville

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed the Taylor County Circuit Court decision, Judge Ann N. Knox-Bauer, presiding, to grant summary judgment in favor of the Village of Stetsonville.

The Village of Stetsonville operates a wastewater/sewage disposal system that serves about 500 people. The system is generally gravity-fed, except that it contains two lift stations, the north lift station and the main lift station. The system is supposed to be a closed system; it is intended solely to transport wastewater from homes to a treatment facility. However, the Village concedes that in heavy rain events, outside water gets into the system and can overwhelm the concrete holding pits at the two lift stations (the north lift station and the main lift station). Alan Pinter lives in Stetsonville, very close to the main lift station. When the main lift station has been overwhelmed, wastewater and sewage have backed up into his house. In order to address the back-ups, the Village adopted an oral policy to have a portable bypass pump ready to pump the excess wastewater from the main lift station to a ditch when the water reached a certain level (the fourth rung from the top of a series of rungs embedded into the side of the concrete pit in the main lift station). There was no written policy on record for Village employees to follow, but the bypass procedure was "more or less a rule-of-thumb."

In September 2014, a heavy rain event occurred that overwhelmed the system. Village employees were on alert and watching the levels at the lift stations. High level alarms sounded at both lift stations. The individual in charge contacted a trucking firm and directed them to begin pumping wastewater from the north lift station into their truck for transport to the treatment facility. The firm began pumping from the north lift station approximately 35-40 minutes after being notified. At approximately the same time as pumping began at the north lift station, Pinter ran from his house to the main lift station, notified the Village employees that he heard gurgling in his pipes and feared a backup, and offered to help the Village employees set up the bypass pump. A village employee declined Pinter's offer, apparently having decided to wait for the trucking firm to arrive at the main lift station. Pinter left for work, but within minutes, his wife called and notified him that sewage and water had begun backing up in their basement. The bypass pump was eventually set up and used, and the water in Pinter's basement receded, but not before depositing sewage waste and debris in Pinter's home.

In May 2015, Pinter sued the Village, claiming negligence and private nuisance. The Village moved for summary judgment, arguing governmental immunity under Wis. Stat. § 891.80(4), which states that "no suit" may be brought against, governmental subdivisions or their employees "for acts done in the exercise of legislative, judicial or quasi-judicial functions." In response Pinter relied on an exception to governmental immunity when the governmental unit fails to perform a ministerial duty. The circuit court granted summary judgment to the Village, concluding that the Village employees did not have a ministerial duty to use the bypass pump and that Pinter had not provided sufficient evidence of the Village's failure to maintain the sewer system such that he could prevail on private nuisance claims.

Pinter appealed; the Court of Appeals affirmed. The Court of Appeals found that the oral policy of bypassing the system was not sufficiently clear to create a ministerial government duty as described by the statutes, and therefore the Village was not negligent. The Court of Appeals also concluded that Pinter could not raise private nuisance claims because he had not created a genuine issue of material fact as to whether the Village's conduct in maintaining the wastewater system had been the legal cause of the damage to his basement. The Court of Appeals determined that expert testimony was a necessity in all such sewage backup cases. Since Pinter had not offered expert testimony in response to the Village's summary judgment motion, the Court of Appeals agreed that the circuit court had properly dismissed his private nuisance claim.

Pinter sought Supreme Court review of the Court of Appeals' determination that the Village's oral policy was not sufficient to establish a ministerial duty. The Supreme Court also will review whether expert testimony is required to prove a private nuisance in similar factual situations and whether the record in this case created a genuine dispute of material fact as to whether the Village's wastewater system constituted a private nuisance.

The following issues are presented for a determination by the Supreme Court:

1. Whether a Village's oral policy, as testified to unequivocally by the Village president and all of its employees, that raw sewage accumulating in a lift station was to be pumped into a ditch when the raw sewage reached a certain level, creates a ministerial duty that upon its breach results in an exception to the governmental immunity of Wis. Stat. § 893.80(4)?
2. What must a plaintiff alleging that a private nuisance maintained by a municipality caused damage to the plaintiff show regarding causation in order to avoid dismissal on summary judgment, especially in the context of a backup from a municipal sewer system? Is expert testimony always required? Why or why not? If so, what must be included in the expert's testimony?;
3. Were the evidence and the inferences from that evidence in the summary judgment record sufficient to create a genuine issue of material fact regarding causation on plaintiff-appellant-petitioner's claim for private nuisance?

WISCONSIN SUPREME COURT
February 11, 2019
1:30 p.m.

2018AP1346-CQ U.S. v. Dennis Franklin

This is a review of a question of Wisconsin law certified to this court by the United States Court of Appeals for the Seventh Circuit, which is considering, on appeal, two criminal sentences imposed by the federal district court.

The United States Court of Appeals for the Seventh Circuit has asked the Wisconsin Supreme Court to answer a question of Wisconsin law to enable the Seventh Circuit court to decide the appropriate sentences for two defendants convicted under the federal Armed Career Criminal Act (ACCA).

Dennis Franklin and Shane Sahm each pled guilty to unlawful possession of a firearm. The normal sentence for unlawful possession of a firearm under the ACCA is a maximum of ten years in prison. See 18 U.S.C. § 924(a)(2). However, a defendant with three "qualifying convictions" for "violent felonies" faces a mandatory minimum of fifteen years. 18 U.S.C. § 924(e).

Under the ACCA, a conviction for "burglary" counts as a violent felony. The U.S. Supreme Court has generically defined "burglary" for purposes of the ACCA as "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime."

Franklin and Sahm each had three prior convictions for burglary in Wisconsin. The wording of the Wisconsin burglary statute, Wis. Stat. § 943.l0(lm), is considerably broader than the "generic burglary" definition; it encompasses burglaries of boats, trucks, motor homes, and trailers. It provides:

Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony: (a) Any building or dwelling; or (b) An enclosed railroad car; or (c) An enclosed portion of any ship or vessel; or (d) A locked enclosed cargo portion of a truck or trailer; or (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or (f) A room within any of the above.

The U.S. Supreme Court has explained that alternatively phrased statutes like Wisconsin's come in two types: (1) those that list alternative *elements* (thus effectively defining more than one crime within the single statute); and (2) those that list alternative *means* of committing an element of a single crime. See Mathis v. United States, 136 S. Ct. 2243, 2249 (2016) (construing Iowa's burglary statute).

If the different locations included in the Wisconsin burglary statute signal different elements, and thus different crimes, then the statute is "divisible" and may be used as a predicate conviction under the ACCA. If the different locations are merely different means for committing the same crime, then the statute is not divisible and will not qualify as a predicate conviction under the ACCA.

Here, the federal district court found that both men had three prior burglary convictions that were "violent felonies" within the meaning of the ACCA. The court therefore sentenced both to the mandatory minimum of fifteen years in prison.

Franklin and Sahm appealed, arguing that their prior convictions for burglary in Wisconsin are not "violent felonies" under the ACCA, so their sentences could be no more than ten years in prison.

The Seventh Circuit court has asked the Wisconsin Supreme Court to ascertain whether the different locations included in the Wisconsin burglary statute signal different elements or different means for committing the same crime.

This court's ruling will determine the validity of these appellants' federal sentences and may be relevant to how Wisconsin juries must be instructed, what jurors must agree upon unanimously, and how double jeopardy protections may apply.

The case presents this issue**:**

> Whether the different location subsections of the Wisconsin burglary statute, Wis. Stat. § 943.10(lm)(a)-(f), identify alternative elements of burglary, one of which a jury must unanimously find beyond a reasonable doubt to convict, or whether they identify alternative means of committing burglary, for which a unanimous finding beyond a reasonable doubt is not necessary to convict?

WISCONSIN SUPREME COURT
February 14, 2019
9:45 a.m.

2014AP2244-D Office of Lawyer Regulation v. James Edward Hammis

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation (OLR) investigates, and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court. The lawyer involved in this case is from Stoughton.

In this case, Attorney James Edward Hammis has appealed the referee's recommendation that his license to practice law in Wisconsin be revoked.

Attorney Hammis was admitted to practice law in Wisconsin in 1988. In 2011, his license was suspended for four months for ten counts of misconduct involving two clients. In 2015, his license was suspended for 90 days for nine counts of misconduct. This appeal arises out of an amended complaint filed by the OLR alleging 49 counts of misconduct. Attorney Hammis stipulated and pled no contest to 40 counts of misconduct involving nine separate client matters as well as numerous trust account and other violations. The misconduct to which Attorney Hammis pled no contest included multiple counts of engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and multiple counts of failing to respond to the OLR's requests for information. The OLR agreed to withdraw nine counts of misconduct alleged in its amended complaint. The OLR and Attorney Hammis agreed to refer the matter to a referee to determine the appropriate level of discipline.

The referee concluded the OLR had met its burden to prove by clear, satisfactory, and convincing evidence that Attorney Hammis committed all of the counts of misconduct to which he pled no contest. The referee noted that virtually all of the conduct stipulated to by Attorney Hammis occurred after the OLR had filed its complaint in Attorney Hammis' first disciplinary matter. The referee said that many of the violations of Supreme Court rules alleged in this case are similar to violations that occurred in Attorney Hammis' two previous disciplinary matters. Given his history of misconduct and the recurrence of similar violations on a seemingly routine basis, the referee recommended that the Supreme Court revoke Attorney Hammis' license to practice law and ordered him to pay restitution in one of the matters.

Attorney Hammis has appealed the referee's report and recommendations. His appellate brief raises the following issues:

> (1) Did the referee err in the introduction and utilization of facts and subsequent conclusions that were not stipulated by the parties?
> (2) Is the use of the OLR of unknown and undisclosed subpoena's and discovery with financial institutions a violation of due process?
> (3) Did the referee err in the recommendation that the Attorney Hammis' license be revoked?

The Supreme Court is expected to decide whether Attorney Hammis' license to practice law should be revoked.

WISCONSIN SUPREME COURT
February 14, 2019
10:45 a.m.

2017AP2021 Town of Rib Mountain v. Marathon County

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a declaratory judgment of the Marathon County Circuit Court decision, Judge Gregory B. Huber, presiding, in favor of Marathon County allowing the County to issue an ordinance requiring the Town of Rib Mountain to rename and renumber certain roads and addresses.

In 2016 Marathon County enacted an ordinance that was intended to create a uniform addressing system throughout the County. The ordinance stated that its purpose was to give each location in the unincorporated portions of the County a unique address to aid first responders in providing fire protection, emergency medical services, and law enforcement services, as well as to assist delivery services. In January 2017 the County published a draft "Uniform Addressing Implementation Plan" (the Plan), which required all towns in the County to participate in the uniform addressing system. The Plan stated that the County had "jurisdiction over addressing in unincorporated areas based on [Wis. Stat. sec.] 59.54(4) and (4m)," which provide as follows:

(4) RURAL NAMING OR NUMBERING SYSTEM. The board [i.e., a county board] may establish a rural naming or numbering system in towns for the purpose of aiding in fire protection, emergency services, and civil defense, and appropriate and expend money therefor, under which:

(a) Each rural road, home, business, farm or other establishment, may be assigned a name or number.

(b) The names or numbers may be displayed on uniform signs posted on rural roads and intersections, and at each home, business, farm or other establishment.

(4m) RURAL NAMING OR NUMBERING SYSTEM; TOWN COOPERATION. The rural naming or numbering system under sub. (4) may be carried out in cooperation with any town or towns in the county.

Rib Mountain is an unincorporated town within the County. Pursuant to the Plan, the County notified Rib Mountain that it would have to rename 61 of its 202 roads. The Town objected and filed a lawsuit, in which it sought a declaration that the County lacked authority to enact the ordinance and plan, and injunctive relief against completion of the County's plan. Essentially, the Town argued that under the statute, a county's authority to enact a naming and numbering system extends only to "rural" areas.

The circuit court granted a declaratory judgment in favor of the County, agreeing that the statute granted it authority to implement a naming and numbering system in all unincorporated towns within the County. The circuit court rejected the Town's reliance on the term "rural" in the statute, concluding that the term merely meant unincorporated.

The Town of Rib Mountain appealed. The Court of Appeals concluded that the statute limited a county's unilateral authority to implement a renaming and renumbering system to "rural" areas, which it defined as "areas that are comparatively less densely populated by people or buildings, or areas that are characteristic of, or related to, the country." It therefore further

concluded that the County had exceeded its authority by enacting an ordinance and creating a plan that would impose such a system in all portions of every unincorporated town, regardless of the character of the area. It reversed the circuit court's declaratory judgment and remanded the case for further proceedings. The County sought Supreme Court review.

The Supreme Court is expected to provide guidance on whether the term "rural" should be interpreted as limiting the scope of a county's renaming and renumbering system and on what the definition of "rural" should be in this context.

The following issues are presented for review:

1. Does the implementation of a Marathon County ordinance requiring adherence to a uniform naming and numbering system in the unincorporated Town of Rib Mountain exceed the authority granted by Wisconsin Statutes §§ 59.54(4) and (4m)?
2. Does the term "rural" within the context of Wisconsin Statutes §§ 59.54(4) and (4m) mean "unincorporated"?

WISCONSIN SUPREME COURT
February 14, 2019
1:30 p.m.

2017AP344 Yasmeen Daniel v. Armslist, LLC et al.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Milwaukee County Circuit Court decision, Judge Glenn H. Yamahiro presiding, that dismissed a complaint filed by Yasmeen Daniel, individually and as the special administrator of the Estate of Zina Daniel Haughton, based on the federal Communications Decency Act of 1996.

In 2012, Radcliffe Haughton entered the Azana Spa and Salon in Brookfield, Wisconsin, where he shot and killed four people, including himself and Zina Daniel Haughton, and wounded four others. Haughton had been prohibited from gun ownership under both state and federal law due to a domestic violence injunction. Haughton had successfully purchased the gun used for the shooting through Armslist.com, a website that connects potential arms buyers and sellers with each other.

Federally-licensed firearms dealers are required to access and consider certain background information about potential buyers in order to prevent sales to individuals prohibited by law from possessing firearms. By contrast, unlicensed private sellers who are not engaged in the business of selling firearms are not required under federal law to conduct background checks.

Yasmeen Daniel, the daughter of Zina Daniel Haughton, filed multiple tort claims against Armslist, LLC, the company that created and operates Armslist.com. Her claims were dismissed in their entirety by the circuit court, based on the federal Communications Decency Act of 1996 (the CDA). The circuit court concluded that Armslist has immunity under the CDA because Daniel alleged only that Armslist passively displays content that was created entirely by third parties and simply maintained neutral policies prohibiting or eliminating certain content, and because Daniel failed to allege facts to establish that Armslist was materially engaged in creating or developing the illegal content on its page. The circuit court also dismissed Daniel's negligence per se claim against Armslist.

The Court of Appeals reversed the circuit court's order in its entirety, concluding that when applying a plain language interpretation of the CDA, the allegations in the complaint did not seek to hold Armslist liable on any theory prohibited by the CDA. The Court of Appeals also found that the circuit court erred in dismissing Daniel's negligence per se claim.

Armslist argues that the question of whether a website can be held liable under Wisconsin law for alleged breach of duties arising from the publication of a third-party user's information is a novel legal issue of great public importance.

The following issue is presented for review:

> Does the CDA permit liability to be imposed under Wisconsin law against the website based on an alleged breach of duties arising from the publication of a third-party seller's information?

WISCONSIN SUPREME COURT
February 21, 2019
9:45 a.m.

2017AP141-CR State v. Dennis L. Schwind

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Walworth County Circuit Court decision, Judge David M. Reddy presiding, denying a defendant's motion to terminate his probation.

This case raises the question of whether the circuit court has inherent authority to modify or reduce a criminal defendant's probation.

In 2001, Schwind pled guilty and was convicted of numerous acts of sexual assault of a child. The circuit court imposed and stayed a sentence of ten years of imprisonment, and placed Schwind on probation for 25 years. The judgment of conviction stated that the court would consider terminating his probation early after he "served a minimum of 15 years" and "upon recommendation of the Agent."

In 2014, Schwind unsuccessfully asked the circuit court to terminate his probation early.

In 2016, Schwind again sought early release from probation. His lawyer explained that the Department of Corrections no longer recommends early release from probation in this type of case. Schwind's probation agent agreed, but stated that he could verbally weigh in on the request. He said that Schwind was "doing exemplary" and endorsed Schwind's release from probation. The circuit court denied the motion, citing Wis. Stat. § 973.09(3)(a), which provides that "[p]rior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof."

Schwind appealed. The Court of Appeals summarily affirmed, stating that it was bound by its earlier decision in State v. Dowdy, 2010 WI App 158, 330 Wis. 2d 444, 792 N.W.2d 230, (Dowdy I). Dowdy I was a published decision in which the Court of Appeals ruled that the circuit court had neither statutory nor inherent authority to reduce the length of Dowdy's probation. The Supreme Court granted review in Dowdy I and agreed that, by its plain language, the statute does not permit a circuit court to reduce the length of probation. The Supreme Court, however, declined to decide whether a circuit court has inherent authority to reduce the length of probation, and if so, what standard applies. See State v. Dowdy, 2012 WI 12, ¶1 n.2, 338 Wis. 2d 565, 808 N.W.2d 691 (Dowdy II).

Schwind petitioned the Supreme Court for review. He focuses on the "for cause" language in the statute and argues that it should be construed to permit circuit courts to consider all circumstances to decide whether reducing the length of probation would effectuate the purposes of probation. He argues that the standard adopted in Dowdy I is not suited to addressing probation because it allows modification only in cases involving a clear mistake, a new factor, or undue harshness or unconscionability. Dowdy I, 330 Wis. 2d 444, ¶¶28-31. He reasons probation has different purposes than sentencing. He argues, further, that a circuit court has inherent authority to reduce the length of probation.

The court is expected to provide guidance on the circuit courts' statutory and inherent authority to reduce a criminal defendant's length of probation and the scope of that authority.

The following issues are presented for review:

1. Did the circuit court have inherent authority to reduce the length of Schwind's probation?
2. If circuit courts have inherent authority to reduce the length of probation, what standard applies to their exercise of that authority?

WISCONSIN SUPREME COURT
February 21, 2019
10:45 a.m.

2016AP2296 Maple Grove Country Club Inc. v. Maple Grove Estates Sanitary District

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a La Crosse County Circuit Court decision, Judge Elliott M. Levine presiding, dismissing Maple Grove Country Club's statutory claim of inverse condemnation.

The Town of Hamilton formed the Maple Grove Country Club Estates Sanitary District (the District) in 1978. There was no sewer system in the District until around 1990, when the predecessor of Maple Grove Country Club Inc. (the Club) contracted with a sewage treatment plant and related collection and outflow facilities. The Club operated the sewer system initially, but the District took over operations in 1998. At that time, the District adopted a "Sewer Use and User Charge Ordinance," obligating the District to lease or purchase the sewer system from the Club. The parties entered into a five-year lease for the sewer system, running from January 1, 2000 through December 31, 2004. A second lease was in effect from January 1, 2005 through December 31, 2009.

In October 2008, more than a year before the second lease was to expire, the Club's president wrote to the District board informing the District that the Club did not intend to renew the lease. The sewer use ordinance provided that in the event the District needs the sewer system but cannot reach an agreement to lease or purchase it, the District must exercise its powers of eminent domain to acquire it.

The second lease expired without an agreement. In July 2011, the Club served a notice of circumstances on the District alleging an inverse condemnation claim based on the District's continued occupation of the property. The District has continued to occupy and operate the sewer system since December 31, 2010.

The Club filed a petition for inverse condemnation in June 2014. The District filed an answer and affirmative defenses. The answer pled six affirmative defenses, but did not plead the notice of claim defense. The Club filed a motion for partial summary judgment in April 2015 seeking a declaration that the District had adversely condemned its property. The District filed a brief in opposition to the summary judgment motion, arguing that the Club's claim for statutory inverse condemnation was barred by the alleged failure to comply with the notice of claim statute. The Club filed a reply brief arguing the District had waived the affirmative defense by failing to plead it in its answer.

After two oral arguments, an evidentiary hearing, and briefing, the circuit court decided that the Club's statutory inverse condemnation claim was barred by failure to comply with the notice of claim statute. However, the court also held that the Club did have a constitutional claim of inverse condemnation.

The Club file a petition for leave to appeal. The Court of Appeals granted the petition with respect to the waiver issue only. The Court of Appeals affirmed the circuit court's conclusion that the District did not waive its notice of claim defense by failing to plead it. However, it said it was doing so because it was bound by its earlier decision in Lentz v. Young, 195 Wis. 2d 457, 536 N.W.2d 451 (Ct. App. 1995), which, the Court of Appeals stated, "almost

certainly misinterpreted prior case law in a way that is not consistent with relevant statutes." The Club sought Supreme Court review.

The following issues are presented for review:

1. Did the Maple Grove Estates Sanitary District waive the right to assert the notice of claim statute 893.80(1d), Wis. Stats., as an affirmative defense when it failed to plead it in its answer?
2. Did the Maple Grove Country Club, Inc., satisfy the requirements of the notice of claim statute, sec. 893.80(1d)?

WISCONSIN SUPREME COURT
February 21, 2019
1:30 p.m.

2014AP2528-D Office of Lawyer Regulation v. Kathleen Anna Wagner

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation (OLR) investigates, and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court. The lawyer involved in this case is from Madison.

The disciplinary charges in this proceeding stem from Attorney Wagner's trust and estate work for a certain family. In April 2008 W.G. met with Attorney Wagner and asked her to provide legal assistance with her late husband's estate, some family trusts, and some tax issues. On that date W.G. signed Attorney Wagner's representation agreement and provided Attorney Wagner with a $500 check, which was to be used to pay for Attorney Wagner's initial fees in beginning to look at W.G.'s legal issues. The representation agreement provided that Attorney Wagner's practice was to bill for her services upon completion of a matter, unless her fees exceeded the initial payment. Attorney Wagner did not deposit the $500 payment into her client trust account.

Attorney Wagner began to work on the issues identified by W.G., earning at least $500 in fees within five days and meeting with W.G. in July and September 2008. Attorney Wagner deposited the $500 check into her trust account in October 2008. That amount was later credited toward Attorney Wagner's fees.

On Feb. 22, 2009, W.G. passed away. Her son, J.G., became the successor trustee of the trusts for which Attorney Wagner was performing legal work. J.G. began making requests to Attorney Wagner to receive a bill for her legal services in 2009. He made a written request for such an invoice in a Nov. 30, 2009 email. Attorney Wagner did not provide an invoice as requested.

T.G., J.G.'s brother, also began making requests to Attorney Wagner for invoices and back-up receipts in January 2010, and requested fee arbitration through the State Bar of Wisconsin. Attorney Wagner did not provide the requested information and did not respond to the arbitration request. T.G. continued to make requests for invoices throughout early 2010, but Attorney Wagner did not provide the requested billing information.

In July 2010 J.G. and T.G. filed a civil action against Attorney Wagner in the Dane County circuit court, asking for a declaration as to the amount of legal fees. The circuit court on at least three occasions ordered Attorney Wagner to provide invoices for her legal services. Attorney Wagner did not comply with the first two orders, but she did comply with the third order, providing an invoice on January 3, 2012.

Based on these facts, the referee granted summary judgment to the OLR, concluding that Attorney Wagner had violated two rules of professional conduct: (Count 1) SCR 20:1.15(b)(1) (failing to hold the $500 payment in trust); and (Count 2) SCR 20:1.5(b)(3) (failing to respond to a client's request for information concerning fees and expenses).

The referee recommended that no discipline be imposed for the violation found in Count 1, and that a private reprimand be imposed for the violation found in Count 2.[1]

Attorney Wagner's appellate brief asks the Supreme Court to address following issues:

1. When rescission of contract occurs is there a representation of a client or is it ended?
2. Does an attorney have a right under SCR 20:1.16 to a rescission when there has been a fraudulent inducement in the scope of representation due to material [mis]representation?
3. When an attorney has been granted a Protective Order, which stays discovery[,] is the attorney deemed not to have violated a delay in preparing an invoice?
4. [No issue presented.]
5. When a Court has granted a discovery stay and the client ignores the stay and continues to file frivolous motions and additional lawsuits requiring an answer/response[,] is the attorney deemded to have violated SCR 20:1.5(b)(3) because s/he is unable to meet prior agreements to deliver documents?
6. When an attorney has been blocked by a client in his/her ability to prepare a final invoice for services performed[,] is the attorney forced to forego collection for legal services and to provide a partial invoice when the client refuses to comply with multiple discovery requests and a court has denied the client's motions to waive discovery compliance?
7. Is the attorney who is blocked from access to records held by client that are needed to finalize an invoice when the work was performed in a highly rushed time frame due to the client's imminent death, deemed to have violated SCR 20:1.5(b)(3)?

[1] On appeal the OLR has requested that the Supreme Court dismiss Count 1 because the OLR's summary judgment motion requested, and the referee's report found, a violation of SCR 20:1.15(b)(1), but the rule that OLR alleged had been violated in its complaint was SCR 20:1.15(b)(4).