

WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES OCTOBER 2026

The October 6 and 8 cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The October 13 cases will be heard at the Heyde Center for the Arts as part of the *Justice on Wheels* program. The cases listed below originated in the following counties:

Milwaukee County
Columbia County
Waukesha County
Iowa County

TUESDAY, October 6, 2026

9:00 a.m.	2023AP1432	Children's Hospital of Wisconsin v. City of Wauwatosa
10:30 a.m.	2024AP2368-CR	State v. Samuel R. Osornio

THURSDAY, October 8, 2026

9:00 a.m.	2023AP1549	Bank of America NA v. The Estate of Richard P. Nelson
10:30 a.m.	2024AP178	Wildwood Estate, LLC v. Village of Summit
1:30 p.m.	2023AP2155-D	Office of Lawyer Regulation v. Aneeq Ahmad

TUESDAY, October 13, 2026

9:00 a.m.	2024AP777-CR	State v. John R. Phelan
10:30 a.m.	2024AP577	Friends of Blue Mound State Park v. Wisconsin Department of Natural Resources

Note: The Supreme Court calendar may change between the time you receive it and when a case is 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 type of camera coverage of the Supreme Court oral argument, you must contact media coordinator Jason Cuevas at WISC-TV, (608) 277-5241. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT

October 6, 2026

9:00 a.m.

2023AP1432

Children's Hospital of Wisconsin, Inc. v. City of Wauwatosa

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court order, Judge Gwendolyn Connolly presiding, that granted the City of Wauwatosa's motion for summary judgment because Children's Hospital of Wisconsin, Inc. (CHW) is not entitled to a tax exemption under WIS. STAT. § 70.11(4m) for CHW's North Tower for the 2020 tax year.

In 2019, CHW began construction of the North Tower of its facilities in the Milwaukee Regional Medical Complex in the City of Wauwatosa. CHW had acquired the parcel of land on which the North Tower was located from Milwaukee County. CHW intended to connect the North Tower to the existing hospital building and surrounding clinic buildings. The City assessed the North Tower for the 2020 tax year, and the assessor noted that the North Tower construction was approximately 14% completed at the time of the assessment. CHW requested a tax exemption under § 70.11(4m) because the North Tower, once completed, would be used exclusively to provide outpatient services. The City disagreed and assessed CHW a tax bill accordingly. In 2021 CHW filed suit in the circuit court challenging the 2020 tax assessment, and the City moved for summary judgment in response, contending that CHW was not entitled to the exemption as a matter of law. The circuit court agreed with the City and entered judgment in the City's favor.

CHW appealed, and the Wisconsin Court of Appeals affirmed the circuit court. The Court of Appeals discussed CHW's argument that it was entitled to an exemption under the "readying rule" created in *Family Hospital Nursing Home, Inc. v. City of Milwaukee*, 78 Wis. 2d 312, 323 (1977). Under that rule, a tax exemption may apply to properties that are not yet operational but once operational will be used exclusively for a tax-exempt purpose. The Court of Appeals agreed with the circuit court that the readying rule did not apply to the North Tower. The court distinguished the *Family Hospital* decision as well as other Court of Appeals decisions discussing *Family Hospital*, none of which involved a partially constructed building. The Court of Appeals further reasoned that tax exemptions cannot be extended by implication, and that applying the readying rule to the North Tower would contravene the plain language of § 70.11(4m).

Before the Wisconsin Supreme Court, CHW argues that the readying rule is designed to permit exemption of real property under construction at the time of assessment. CHW further contends that the Court of Appeals' decision improperly construed the readying rule, undermines the public policy of ensuring the delivery of the public good of hospital services, and conflicts with the Department of Revenue's Assessment Manual. The City of Wauwatosa maintains in response that the Court of Appeals' decision was correct, that the plain language of § 70.11(4m) must be applied, that tax exemption statutes must be strictly construed, that Wisconsin Court of Appeals' decisions do not support CHW's position, and that the Assessment Manual conflicts with the law.

The Wisconsin Supreme Court granted review to address the following issue:

Does WIS. STAT. § 70.11(4m), which exempts from taxation nonprofit hospitals such as the children's hospital CHW operates, and the "readying rule," which allows for incomplete additions to such hospitals to be exempt from taxation if they are "being readied for use," exempt the incomplete North Tower from taxation?

WISCONSIN SUPREME COURT

October 6, 2026

10:30 a.m.

2024AP2368-CR

State v. Samuel R. Osornio

This is a review of a decision by the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Columbia County Circuit Court order, Judge Todd J. Hepler presiding, that denied defendant Samuel R. Osornio's motion for a new trial on the ground of ineffective assistance of counsel.

The State filed a criminal complaint against Osornio, alleging that Osornio delivered heroin to a victim in a parking lot, and that the victim died on or around the next day from the combined effects of the victim's use of heroin and alcohol. Based on those allegations, the State charged Osornio with one count of first-degree reckless homicide and violation of WIS. STAT. § 961.41(1)(d)1, when he delivered the heroin to the victim. At trial, the circuit court instructed the jury consistent with WIS JI—CRIMINAL 1021, that the prosecution had the burden of proving beyond a reasonable doubt the five elements of first-degree reckless homicide, and the instruction set forth those five elements. The circuit court likewise instructed the jury, consistent with WIS JI—CRIMINAL 6020, of the three elements on the heroin delivery charge. Neither party nor the circuit court saw an issue with the two charges being tried together until after the jury began deliberating, when Osornio's counsel contended that the two charges were multiplicitous. At that point, the circuit court provided the jury a supplemental instruction that described how the jury should consider the evidence on the counts. The jury returned a guilty verdict on both counts, and the circuit court entered a guilty verdict only on the reckless homicide charge. Osornio filed a postconviction motion for a new trial, bringing an ineffective assistance of trial counsel claim based on the multiplicity issue. The circuit court held a *Machner* hearing and denied Osornio's motion.

Osornio appealed, and the Court of Appeals reversed. The Court of Appeals concluded that a new trial was warranted because Osornio's trial counsel performed deficiently in failing to raise the multiplicity issue earlier, and because Osornio proved prejudice by showing it was reasonably probable that the jury would have returned a guilty verdict on the heroin delivery count alone if defense counsel had raised the multiplicity issue earlier and requested a lesser-included offense instruction at that point.

On appeal to the Wisconsin Supreme Court, the State contends that the Court of Appeals erred because Osornio failed to prove that trial counsel prejudiced him by failing to request the lesser-included offense instruction before the jury began deliberations. In support, the State maintains that the Court of Appeals misapplied the prejudice analysis set forth under *Strickland v. Washington*, 466 U.S. 668 (1984), that the Court of Appeals presumed that the jury failed to follow the jury instructions, and that the proper application of the *Strickland* test shows that Osornio failed to prove prejudice. Osornio contends in response that the Court of Appeals correctly applied the *Strickland* prejudice test, that the Court of Appeals made no presumptions about how the jury interpreted the confusing jury instructions, and that Osornio proved prejudice.

The Wisconsin Supreme Court granted review to address the following issue:

Did Osornio prove that trial counsel's failure to request the lesser-included offense instruction before the jury began deliberating created a reasonable probability of a different result at his trial?

WISCONSIN SUPREME COURT

October 8, 2026

9:00 a.m.

2023AP1549

Bank of America NA v. The Estate of Richard P. Nelson

This is a review of a decision by the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Waukesha County Circuit Court order, Judge Michael P. Maxwell presiding, that directed the clerk of court to pay a surplus amount from an estate to the United States, as opposed to the Wisconsin Department of Revenue (DOR).

Richard Nelson died owing unpaid taxes to both the United States and the DOR. In addition, Bank of America, NA, held a mortgage on real property Nelson owned, and commenced an action in Waukesha County Circuit Court to foreclose on its mortgage and sell the property to pay off the bank's loan. After the circuit court entered a foreclosure judgment, Bank of America sold the property at a sheriff's sale, and the purchaser of the property paid the sale price to the clerk of court. After Bank of America's claim and fees were paid, a surplus of \$54,421.96 was left, and the circuit court entered an order instructing the clerk of court to hold the surplus pending further order of the court. Both the United States and DOR filed claims to that surplus, and the United States contended it had priority under 31 U.S.C. § 3713, which gives the United States priority over "the estate of a deceased debtor, in the custody of the executor or administrator." The DOR contended that the statute did not apply to the surplus. The circuit court agreed with the United States, concluding that the clerk of court was an "administrator" under § 3713(a)(1)(B), meaning that the United States' claim to the surplus had priority. The circuit court also denied the DOR's subsequent motion for reconsideration.

The DOR appealed and the Court of Appeals affirmed. The Court of Appeals concluded that § 3713 applies to the surplus amount. The Court of Appeals reasoned that the priority statute has been consistently construed broadly in federal courts to give the United States priority, and that the meaning of the term "administrator" includes the clerk of court because the proper inquiry is the degree of control the individual has over the estate, and the clerk of court had exclusive control over the surplus.

On appeal to the Wisconsin Supreme Court, the DOR contends that the priority statute does not apply here because the clerk of court is not an "administrator" of the estate. In support, the DOR maintains that probate law defines an administrator as an individual appointed to administer a deceased intestate's estate, with the same powers of an executor, which the clerk of court is not. The DOR further contends that the unambiguous statutory language prohibited the Court of Appeals interpretation. The DOR separately argues that the priority statute does not apply because the surplus is not part of the estate. The United States argues in response that the priority rule must be broadly construed, that the DOR's interpretation is too narrow and foreclosed by United States Supreme Court precedent, and the estate's lack of custody does not defeat the priority rule.

The Wisconsin Supreme Court granted review to address the following issue:

Whether the federal priority statute's deceased-debtor provision, 31 U.S.C. § 3713(a)(1)(B), gives the United States priority over only "the estate of a deceased debtor, in the custody of the executor or administrator," or instead may also apply to a foreclosure surplus in the custody of a court official.

WISCONSIN SUPREME COURT

October 8, 2026

10:30 a.m.

2024AP178

Wildwood Estate, LLC v. Village of Summit

This is a review of a decision by the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Waukesha County Circuit Court order, Judge Michael P. Maxwell presiding, determining that the Village of Summit's Ordinance No. 71-2019 was an invalid zoning ordinance which failed to comply with relevant procedural requirements.

This case concerns the Village's attempt to regulate short-term rentals. To preface, the Village has what is referred to as the "police power" to enact ordinances that promote the health, safety, and welfare of the community. As a subset of that power, the Village can enact zoning ordinances which are subject to additional requirements under WIS. STAT. § 62.23. As such, the parties discuss whether the Village acted under its zoning power or its non-zoning police power in this case. Also, the parties discuss whether the case is affected by WIS. STAT. § 66.1014, which says, among other things, that "a political subdivision may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer."

In August 2019, the Village adopted Ordinance No. 71-2019 which prohibited the rental of a residential dwelling for 6 consecutive days or fewer and imposed other requirements for rentals of 7 days or longer. The Ordinance was codified under Chapter 6 of the Village Code regarding businesses rather than under Chapter 111 regarding zoning and did not follow the procedures established in § 62.23. Wildwood Estate, LLC owns a residential property in the Village, which it marketed for short-term rental since 2018. It brought an action asking Waukesha County Circuit Court to declare that the Ordinance was unenforceable.

The circuit court determined that the Ordinance was a zoning ordinance, irrespective of whether it was labeled a zoning ordinance. Since the Village did not meet the procedural requirements of § 62.23, the circuit court declared that the Ordinance was void and unenforceable. The Village appealed and the Court of Appeals affirmed. The Court of Appeals determined that under § 66.1014, the legislature declared that short-term rentals are permitted unless the community's zoning code says otherwise. The Court of Appeals then applied the factors listed in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, to determine that the Ordinance was a zoning ordinance.

On appeal to the Wisconsin Supreme Court, the Village contends that § 66.1014 does not specify that a political subdivision must use their zoning authority when regulating rentals of fewer than seven days. It further argues that the *Zwiefelhofer* factors weigh in favor of the Ordinance being an exercise of the Village's general police powers. Wildwood responds that the circuit court and Court of Appeals were correct and that the Ordinance is an unenforceable zoning ordinance.

The Wisconsin Supreme Court granted review to address the following issue:

Whether the Village of Summit properly used its police powers (rather than zoning regulation) when it exercised its reserved right under WIS. STAT. § 66.1014 to create Ordinance 71-2019 to regulate short-term rentals of fewer than seven days.

WISCONSIN SUPREME COURT

October 8, 2026

1:30 p.m.

2023AP2155-D

Office of Lawyer Regulation v. Aneeq Ahmad

This is an attorney disciplinary proceeding before the Wisconsin Supreme Court on appeal from a referee's report. The case examines whether Attorney Aneeq Ahmad's deficient representation of four clients constituted a basis for a finding that he committed 13 Supreme Court Rule violations.

The Office of Lawyer Regulation commenced this matter by disciplinary complaint. A referee was appointed, an evidentiary hearing was held, and the referee issued written findings of fact, conclusions of law, and a recommendation regarding discipline and costs. The appeal now before the Supreme Court challenges the referee's legal conclusions and recommended sanction under Supreme Court Rule.

According to the referee's findings, Ahmad committed the violations during his representation of four criminal defendants. The referee concluded that for one defendant, Ahmad failed to explain to his client that he failed to file motions to extend time to file a postconviction motion or notice of appeal, in violation of SCR 20:1.4(b). The referee concluded that for another defendant Ahmad failed to diligently pursue appellate and postconviction interests, in violation of SCR 20:1.3; Ahmad failed to keep that client reasonably informed about the status of his case, in violation of SCR 20:1.4(a)(3); and he failed to comply with that client's reasonable requests for information, in violation of SCR 20:1.4(a)(4). The referee concluded for a third defendant that Ahmad failed to communicate in writing the rate and basis of his fees and expenses, in violation of SCR 20:1.5(b)(1) and (2); that Ahmad converted advanced costs to his own use or use of third parties, in violation of SCR 20:8.4(c); and that Ahmad failed to promptly refund unexpended advanced costs, in violation of SCR 20:1.16(d). The referee concluded for a fourth defendant that Ahmad failed to timely and accurately explain to his client what actions he would take on his behalf and to timely and accurately explain the status of that client's postconviction and appellate interests, in violation of SCR 20:1.4(a)(3); and that Ahmad failed to promptly refund unearned fees received for that client's representation, in violation of SCR 20:1.15(e)(1). The referee recommended a five-month suspension and restitution.

Ahmad contends that not all of OLR's alleged violations have been established by clear, satisfactory, and convincing evidence, and contends that there are mitigating circumstances in play. The Office of Lawyer Regulation responds that the factual record supports the referee's finding, and requests a three-month suspension due to certain mitigating factors and because reinstatement is unnecessary.

The Wisconsin Supreme Court granted review to address the following issues:

- 1) Did Ahmad's deficient representation of four clients constitute a basis for a finding that he committed 13 counts of misconduct?
- 2) What sanction should the court impose to address Ahmad's misconduct?

WISCONSIN SUPREME COURT
October 13, 2026
9:00 a.m.
(Argument held in Chippewa Falls, WI)

2024AP777-CR

State v. John R. Phelan

This is a review of a decision by the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Columbia County Circuit Court judgment, Judge W. Andrew Voigt presiding, convicting John Phelan of operating with a restricted controlled substance in his blood and possession of drug paraphernalia.

Wisconsin Department of Natural Resources (DNR) Warden Ryan Volenberg pulled John Phelan over after suspecting Phelan littered and observing Phelan drive erratically. While talking to Phelan through the open driver's side window, Volenberg noted the smell of burnt marijuana, Phelan's bloodshot eyes, and Phelan's slurred speech. Volenberg asked Phelan to exit the vehicle to perform field sobriety tests. Upon questioning by Volenberg, Phelan admitted to smoking marijuana earlier in the day and said there was marijuana in his truck. Volenberg then requested assistance from the Columbia County Sheriff's Department. Phelan admitted to the Sheriff's Department deputies that he had smoked marijuana about four hours earlier. The deputies arrested Phelan. Phelan then consented to a blood test which showed the presence of delta-9 THC.

The State charged Phelan with operating while intoxicated (OWI), operating with a restricted controlled substance (RCS), possession of THC, possession of drug paraphernalia, and bail jumping. Phelan moved to suppress the evidence obtained by Warden Volenberg on the ground that Volenberg did not have statutory authority under WIS. STAT. § 29.921 to investigate, detain, or arrest Phelan. The circuit court denied the suppression motion and the jury ultimately found Phelan guilty of RCS and possession of drug paraphernalia. Phelan appealed and the Court of Appeals reversed. The Court of Appeals determined that Volenberg was authorized to stop Phelan's vehicle on suspicion of littering and to detain Phelan, but that he was not statutorily authorized to investigate whether Phelan was impaired. As such, the Court of Appeals suppressed evidence that Volenberg discovered during his investigation, reversed Phelan's judgment of conviction, and remanded to the circuit court.

On appeal to the Wisconsin Supreme Court, the State contends that Warden Volenberg was statutorily permitted to detain Phelan and perform law enforcement tasks incident to his power to arrest for a crime committed in his presence. It also argues that suppression is not an appropriate remedy if there was a violation and that any error was harmless. Phelan argues that the plain text of § 29.921(5) prohibits a Warden from investigating in this case, suppression of the evidence was warranted, and the error was not harmless.

The Wisconsin Supreme Court granted review to address the following issues:

- 1) Did the Court of Appeals misinterpret WIS. STAT. § 29.921(5) in a manner that circumscribes the Legislature's grant of additional arrest authority to trained and certified wardens?
- 2) If a warden violates WIS. STAT. § 29.921(5) by improperly conducting an investigation, is suppression of evidence a proper remedy?

- 3) Did the Court of Appeals err by failing to perform a harmless error review pursuant to WIS. STAT. § 805.18(2) before vacating Phelan's convictions?

WISCONSIN SUPREME COURT
October 13, 2026
10:30 a.m.
(Argument held in Chippewa Falls, WI)

2024AP577

Friends of Blue Mound State Park v. Wisconsin Department of Natural Resources

This is a review of a decision by the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), affirming an Iowa County Circuit Court order, Judge Matthew C. Allen presiding, dismissing the Friends of Blue Mound State Park's petition for judicial review of the Wisconsin Department of Natural Resources (DNR) order denying Friends' request for a contested case hearing on DNR's master plan for Blue Mound State Park.

In May of 2021, DNR adopted a master plan for Blue Mound State Park that, among other things, provided for a snowmobile trail through the park. In June of 2021, Friends filed a petition with DNR for a contested case hearing under WIS. STAT. § 227.42(1), so that Friends could present evidence and arguments on the environmental and economic impacts of the snowmobile trail. DNR denied Friends' petition, determining that the master plan was a discretionary decision for DNR and Friends had no right to a contested case hearing under an exception found in WIS. STAT. § 227.42(3). Friends petitioned the circuit court for review of that decision, and the circuit court affirmed under similar reasoning. The Court of Appeals also affirmed. Specifically, the Court of Appeals reasoned that Friends' right to be heard was already incorporated into the master planning process, that Friends was in fact heard during the process, and that DNR had discretion over how public input was heard during the process, thus qualifying for the exception under § 227.42(3). The Court of Appeals also determined that the Wisconsin Environmental Policy Act did not require a hearing in this case because the master planning process is not a major action under applicable regulations and only major actions require a hearing.

On appeal to the Wisconsin Supreme Court, Friends argues that § 227.42(3)'s exception refers to situations in which contested case hearings or substantially similar hearings are left to the discretion of the agency, not generic public hearings. If the Court agrees, then Friends goes on to argue it met the four conditions in § 227.42(1) to be entitled to a contested case hearing here. DNR responds that master planning is a discretionary action for which individualized fact-finding hearings are not required, and that the exception of § 227.42(3) applies because DNR has the discretion to hold any type of hearing. In the alternative, DNR argues Friends has not satisfied the requirements of § 227.42(1) and are so not entitled to a hearing.

The Wisconsin Supreme Court granted review to address the following issues:

- 1) WIS. STAT. § 227.42 grants parties a right to a contested case hearing before an administrative agency, even when one is not otherwise provided by law. Subsection (3) of § 227.42 is a limited exception to that right "where hearings at the discretion of the agency are expressly authorized by law." The question is whether a "hearing[]" at the discretion of the agency" refers to a contested case hearing or something substantially similar or any hearing at all, regardless of its form or procedural safeguards.
- 2) Did the Friends satisfy the criteria for a contested case hearing enumerated in WIS. STAT. § 227.42(1)(a)-(d)?