

# WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES DECEMBER 2016

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:

Brown  
Door  
Milwaukee

## **FRIDAY, DECEMBER 2, 2016**

9:45 a.m.	15AP959-CR	State v. Jack M. Suriano
10:45 a.m.	14AP2581	Taft Parsons, Jr. v. Associated Banc-Corp
1:30 p.m.	15AP1292-CR	State v. Edward J. Zimbal

**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 argument in Madison, contact media coordinator Rick Blum at (608) 271-4321. Summaries provided are not complete analyses of the issues presented.

**Wisconsin Supreme Court**  
**9:45 a.m.**  
**Friday, Dec. 2, 2016**

2015AP959-CR

[State v. Suriano](#)

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District III

**Circuit Court:** Door County, Judge D.Todd Ehlers, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Jack M. Suriano, Defendant-Appellant-Petitioner.

**Issues presented:** This case examines whether the trial court erred by ruling that the defendant, Jack M. Suriano, forfeited his Sixth Amendment right to counsel after three appointed attorneys withdrew from his case, without first warning Suriano that forfeiture was a possibility or advising him of the difficulties and dangers of self-representation.

**Some background:** Jack M. Suriano was charged with obstructing an officer as a result of an incident that occurred after he refused the Door County sanitation department access to his property to check his septic system.

During pretrial proceedings, three attorneys appointed by the State Public Defender's Office (SPD) withdrew from representing Suriano. At the hearing on the third such lawyer's motion to withdraw, the trial court ruled that Suriano had forfeited his right to appointed counsel. Suriano was unable to arrange for an attorney on his own to represent him at his one-day trial. He was sentenced to 10 days in jail, with the jail time stayed and the stay to become permanent if Suriano pays a \$100 fine plus costs.

In previous cases, the Wisconsin Supreme Court has recommended, but not required, that to establish a valid forfeiture of representation, a trial court should: (1) provide the defendant with an explicit warning that he will forfeit the right to counsel and have to represent himself if he persists in specific conduct; (2) engage in a colloquy to ensure that the defendant has been made aware of the difficulties and dangers of self-representation; (3) make a clear ruling when the court deems the right to counsel to have been forfeited; and (4) make factual findings to support the ruling. State v. Cummings, 199 Wis. 2d 721, 756 n.18, 546 N.W.2d 406 (1996).

The trial court did not do all of the things the Cummings court recommended. Specifically, the trial court never warned Suriano that forfeiture of his right to counsel was a possibility and did not engage Suriano in a colloquy about the difficulties and dangers of self-representation.

Suriano appealed, and the Court of Appeals affirmed. The Court of Appeals wrote that the decisive issue was whether Suriano frustrated the orderly and efficient progression of the case and had the purpose to do so. The Court of Appeals held that, on the facts before it, the answer was yes.

Suriano argues that this court should either make the four-step procedure in Cummings mandatory, or should implement some other basic, mandatory procedure for courts to follow when contemplating a forfeiture finding.

The state's position in this case is that Suriano has failed to present a convincing reason why this court should overrule or modify the recommended four-step procedure described in Cummings.

The state also argues that requiring trial courts to warn an uncooperative defendant that forfeiture is a possibility and to advise them of the difficulties of self-representation would hurt the interests of finality and the conservation of judicial resources.

**Wisconsin Supreme Court**  
**10:45 a.m.**  
**Friday, Dec. 2, 2016**

2014AP2581

[Parsons v. Associated Banc-Corp.](#)

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District I

**Circuit Court:** Milwaukee County, Judge Jeffrey A. Conen, reversed and cause remanded

**Long caption:** Taft Parsons, Jr. and Carol Parsons, Plaintiffs-Appellants-Respondents, v. Associated Banc-Corp., Defendant-Respondent-Petitioner, XYZ Insurance Company, Defendant.

**Issues presented:**

The Supreme Court reviews whether, in advance of civil litigation, the right to a jury trial may be contractually waived, and if so, the process and requirements that may be involved in such a waiver. Discussion of this issue concerns Wis. Const. art. I, § 5, which guarantees the right to a jury trial – even for civil litigants – and provides for the waiver of that right “in the manner prescribed by law.”

**Some background:** This case starts in 2012 with Taft Parsons, Jr.’s and Carol Parsons’s plan to develop townhomes in their Milwaukee neighborhood, and ends up in a dispute with a bank in a case now before the Supreme Court. In the meantime, the couple faced bankruptcy, foreclosure, and loan repayment demands for work that was never done. The bank originating the loan was also sold to another bank, and the loan officer involved was convicted of bank fraud in a different case in federal court.

Over the course of events, one of the many loan documents presented to the Parsons was a promissory note that contained a jury waiver clause. According to the Parsons’ complaint, the Parsons were not allowed any time to review the documents in question or to consult with an attorney before signing them. The complaint also alleges that the loan officer threatened to withdraw the construction loan if Taft Parsons did not promptly sign the documents.

In 2011, five years after Associated Bank acquired State Financial Bank (the bank that originated the loan), the Parsons sued Associated Bank, alleging a pattern of racketeering activity under Wis. Stat. § 946.83, and alleging that the bank negligently hired, supervised, and trained the loan officer that was ultimately convicted of bank fraud related to a different townhouse project. The Parsons alleged that the loan officer’s multiple acts of fraud, extortion, and threats occurred under State Financial Bank’s watch, for which Associated Bank assumed liability when it purchased State Financial Bank and continued to employ the loan officer in question.

The Parsons’ complaint contained a jury demand, as did a subsequent amended complaint. The Parsons paid the jury fee. Associated Bank participated actively in the litigation for nearly three years, filing multiple pleadings with no objection to the jury demand. Three years into the litigation, at the third pretrial conference in 2014, Associated Bank raised an off-the-record objection to the Parsons’ jury demand. Later, the bank filed a motion to strike the Parsons’ jury demand, arguing that when Taft signed the promissory note with the waiver clause 10 years earlier, the Parsons waived any right to a jury trial involving the bank. The trial court granted Associated Bank’s motion to strike the Parsons’ jury demand.

The Court of Appeals granted the Parsons' motion for leave to appeal the trial court's non-final order and stayed the trial. The Court of Appeals held that the Parsons have both a constitutional and a statutory right to a jury trial that can be waived. The Court of Appeals ultimately concluded that the trial court erroneously exercised its discretion when it ignored the bank's unexplained three-year delay in asserting its jury waiver claim, as well as the prejudice to the Parsons and the waste of judicial resources caused by changing the mode of trial after years of preparation for a jury.

Associated Bank petitioned this court for review, challenging the Court of Appeals' decision.

**Wisconsin Supreme Court**  
**1:30 p.m.**  
**Friday, Dec. 2, 2016**

2015AP1292-CR and 2015AP1293-CR [State v. Zimbal](#)

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District III

**Circuit Court:** Brown County, Judge William M. Atkinson, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Edward J. Zimbal, Defendant-Appellant-Petitioner.

**Issues presented:** The question in this case is whether, under the circumstances presented, defendant Edward J. Zimbal properly invoked his right to substitution of a circuit court judge.

**Some background:** Zimbal unsuccessfully appealed judgments convicting him of four felonies and two misdemeanors, and an order denying his post-conviction motion. He contends the trial judge erred by denying his request for substitution.

The Court of Appeals held that Zimbal did not properly invoke Wis. Stat. § 971.20(7), which governs requests for substitution following appeal. Although Zimbal made an oral request within the time set by that statute, the statute requires the request to be “filed,” which would require a written document. The Court of Appeals also noted that any doubt about the requirement for filing a written request is clarified by § 971.20(10), which provides an example of the form a request for substitution should take, and requires the request to be signed by the defendant or his attorney.

The Court of Appeals then noted that a written substitution request filed by Zimbal’s subsequently appointed attorney was not filed within 20 days of remittitur, and therefore, was not timely filed under Wis. Stat. § 971.20(7).

Zimbal argued that the Court of Appeals should apply an equitable “tolling rule” because circumstances beyond Zimbal’s control – the delay in appointment of counsel by the state public defender – resulted in the belated filing of the substitution request. Zimbal claimed he “could not file an acceptable request for substitution until he had a lawyer, but he could not get a lawyer until one was assigned by the State Public Defender.”

The appellate court held that although the trial court ruled it would not grant a request for substitution until Zimbal was represented by counsel, the trial court did not prevent Zimbal from timely filing a written request.

Zimbal argues to this court that his efforts to make a substitution request should have been deemed sufficient, despite their technical flaws.