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JUL 20 2016

CLERK OF SUPREME COURT
OF WISCONSIN

July 20, 2016

VIA HAND DELIVERYMs. Diane Fremgen
Clerk of the WI Supreme Court
110 East Main Street, Suite 215
Madison, WI 53703RE: *The Honorable William M. Gabler, Sr. v. Crime Victims Rights Board*
Appeal No. 2016AP00275
Our File No. 18900.74492

Dear Ms. Fremgen:

Enclosed for filing are 10 copies of Petitioner-Respondent-Petitioner, The Honorable William M. Gabler, Sr.'s Petition to Bypass and Appendix to Petition to Bypass. I have also included an additional copy of the same to be file-stamped and returned to my courier.

Three copies of the Petition to Bypass and Appendix to Petition to Bypass are being served on counsel for Respondent-Appellant, Crime Victims Rights Board

Thank you for your attention to this matter.

Sincerely,

AXLEY BRYNELSON, LLP



Timothy M. Barber
TMB:rl

Enclosure

cc: Attorney Thomas Bellavia (via US Mail and email)
Attorney Patrick J. Fiedler (via US Mail and email)

FILED

JUL 20 2016

STATE OF WISCONSIN
SUPREME COURTCLERK OF SUPREME COURT
OF WISCONSIN

THE HONORABLE WILLIAM M. GABLER, SR.,
Petitioner-Respondent-Petitioner,

v.

APPEAL NO. 2016AP275

CRIME VICTIMS RIGHTS BOARD,
Respondent-Appellant,

WISCONSIN DEPARTMENT OF JUSTICE,
Respondent.

Appeal From the Final Order of
Eau Claire County Circuit Court Case No. 13cv473
The Honorable James J. Duvall Presiding

**THE HONORABLE WILLIAM M. GABLER, SR.'S
PETITION TO BYPASS**

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Hon. William M. Gabler, Sr.

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Petitioner-Respondent-Petitioner, the Honorable William M. Gabler, Sr., petitions the Wisconsin Supreme Court, pursuant to Wis. Stat. § 809.60, to bypass the court of appeals and take jurisdiction of the above-captioned appeal pursuant to Wis. Stat. § 808.05.

INTRODUCTION

The fundamental question in this case is whether an executive branch agency can sanction a circuit court judge for a discretionary scheduling decision. At stake is nothing less than the continued existence of a fair and impartial judiciary and a judge's ability to exercise discretion without fear of being reprimanded and fined by the state.

The Crime Victims Rights Board (CVRB) is attached to the Department of Justice and has the power to hear complaints alleging violations of a crime victim's rights, issue public reports, assess forfeitures, seek equitable relief, and refer complaints involving judges to the Wisconsin Judicial Commission. Wis. Stat. § 950.09(2). CVRB determined that Judge Gabler violated a

crime victim's (K.L.) rights to a timely and speedy disposition "of the case" when he decided to wait to sentence a defendant in a multi-count, severed case until all charges had been adjudicated. As a "remedy," it issued a Report and Recommendation directing Judge Gabler to promptly sentence convicted defendants.

In Judge Gabler's ch. 227 review action, the circuit court concluded that CVRB's actions violated the separations of powers doctrine in that CVRB usurped the core, exclusive powers of the judiciary to decide unsettled areas of law, control court scheduling, and discipline judges. It further held that when presented with a crime victim complaint against a judge, CVRB's remedial powers are limited to referring the complaint to the Wisconsin Judicial Commission pursuant to Wis. Stat. § 950.09(2)(b).

CVRB contends it has the power to subject a circuit court's discretionary scheduling decision to "greater scrutiny" than an appellate court, and may sanction a judge for a discretionary scheduling decision—even if that decision would be upheld as a

proper exercise of discretion on appeal and even if it comports with the judge's duties under the Code of Judicial Conduct. CVRB claims that the Crime Victim Rights Amendment, Wis. Const., art. I, § 9m, and the Crime Victims Rights Act, Wis. Stat. ch. 950, supersede this Court's separation of powers jurisprudence, including its decision in *In re Complaint Against Grady*, 118 Wis. 2d 762, 348 N.W.2d 559 (1984), which held that only this Court may set and enforce time periods for rendering judicial decisions.

This case also raises the undecided issue of whether a crime victim's rights under Wisconsin Constitution art. I, § 9m and Wis. Stat. § 950.04(iv)(k) to a timely and speedy "disposition of the case" grant her the right to have a defendant sentenced in a multi-count case on *specific charges* when the charges have been severed for trial and the entire case has not been adjudicated. Despite no statute, administrative rule, interpretative guide, or prior CVRB decision creating such a right, CVRB nonetheless concluded that Judge Gabler violated a K.L's rights because it

determined that his decision to wait until all charges were adjudicated was “unreasonable.” And, despite no experience addressing such issues, CVRB claims its decision is entitled to great weight deference.¹ The circuit court concluded that CVRB’s decision was entitled to no deference, was without legal basis, and not supported by substantial evidence.

Additionally, this case involves important issues of procedural due process. Contrary to its own governing statutes and regulations, before making a finding of probable cause, CVRB accepted a confidential investigative report about Judge Gabler from the DOJ Office of Crime Victim Services (CVS), used the report to make a probable cause determination, failed to provide it to Judge Gabler during the administrative proceedings, and then denied his request for an evidentiary hearing. CVRB contends that Judge Gabler had no right to due process in its administrative proceeding because its decision affected only his reputational interest. The circuit court found otherwise.

¹ While it has not pursued these additional arguments on appeal, in the ch. 227 proceeding below, CVRB also claimed that its decision was not reviewable and that Judge Gabler lacked standing to challenge it.

Finally, this case presents an important issue of agency jurisdiction. CVRB is not entitled to adjudicate a crime victim complaint until CVS has “completed its action.” By statute, CVS is allowed only to receive complaints, “seek consent to mediate,” and mediate such complaints. Wis. Stat. § 809.08(3). Here, CVS issued an ex parte “request” to Judge Gabler that he schedule a partial sentencing before the entire case was adjudicated. It never sought or obtained his consent to mediate. CVRB failed to verify that any mediation had occurred, as required by its own regulations. The circuit court concluded that CVRB lacked jurisdiction based on this failure.

Bypass in this case is appropriate because this case satisfies the criteria for review under Wis. Stat. § 809.62(1r), in that it involves multiple novel and significant constitutional and statutory issues that require the law-developing function of this Court to resolve. The issues presented are not primarily factual in nature. Resolution of the issues in this case will have statewide impact and will affect the day-to-day decisions of

judges at all levels of the judiciary, the operations of the CVRB, and the rights of all crime victims.

Immediate review by this Court is appropriate because it is almost certain that a petition for review will be filed regardless of the disposition before the court of appeals and the issues here are of such significance that immediate resolution by this Court is warranted. Finally, Judge Gabler has been defending himself from the CVRB's crusade against him and unconstitutional actions since 2012. CVRB's unconstitutional application of Wis. Stat. ch. 950 needs to be stopped before more judges are caught in the agency's cross-hairs.

STATEMENT OF THE CASE

In 2011, Leigh Beebe was charged with multiple counts of sexual assault involving two victims, K.L. and K.H. in Eau Claire County (P.App.1:¶¶5-6.) Judge Gabler granted the defendant's motion to sever the charges for trial (*id.*, ¶8), although both charges remained part of the same case. A jury found Beebe

guilty of the charges pertaining to K.L. on January 11, 2012. (*id.*, ¶9.)

A scheduling conference was held on January 18, 2012 and trial was set on the remaining counts for August, 2012. (*Id.*, ¶10.) Without prior notice or briefing, the prosecutor requested that Judge Gabler sentence Beebe on the charges relating to K.L. before the remaining counts were tried. (*Id.*, ¶11.) Judge Gabler denied the request, citing the amount of time necessary to obtain a PSI, Beebe's ability to prepare for trial, concerns over costs and judicial efficiency, and K.L.'s minimal remaining duties. (P.App.41-43.)

K.L. contacted CVS on April 13, 2012, to complain about the "delay" in sentencing. (P.App.2:¶12.) CVS Victim Witness Coordinator, Jennifer Rhodes, investigated K.L.'s complaint, including interviewing the prosecutor and local Victim Witness Coordinator, (P.App.2:¶13), both of whom had biases against Judge Gabler and made untrue comments about him and his treatment of victims. (P.App.25:n.1.)

Rhodes then sent Gabler an ex parte letter on June 19, 2012 suggesting his decision violated K.L.'s rights as a crime victim and "requesting" that he immediately sentence Beebe. (P.App.2-3:¶¶15-16.) Judge Gabler responded on July 3, 2012 and further explained the rationale for his decision, including his desire to wait until the remaining charges were adjudicated so he would have complete information when he sentenced Beebe. (P.App.4-5:¶29.) Rhodes did not seek or obtain Judge Gabler's consent to mediate K.L.'s complaint and did not further contact him. (P.App.3:¶¶18-22.) On August 2, 2011, K.L. filed a formal complaint with CVRB, alleging that her right to a speedy disposition of the case was violated, as well as her right to have reasonable protection from the accused. (P.App.5:¶32.)

Beebe pleaded guilty to the remaining counts against K.H. on August 6, 2012, at which time Judge Gabler ordered a PSI. (P.App.5:¶33.) Beebe was sentenced on all charges on October 18, 2012. (P.App.6:¶41.)

On August 20, 2012, the Operations Director for CVRB, Julie Braun (who is also employed as a policy analyst for CVS) requested that Rhodes send a “summary” of the CVS actions. (P.App.6:¶36.) Braun did not verify that CVS had mediated K.L.’s complaint or sought consent to mediate. (P.App.6:¶38.) Rhodes sent Braun CVS’s entire file, including the witness statements and a charging recommendation. (P.App.6:¶¶ 39-40.)

CVRB then notified Judge Gabler of K.L.’s complaint and that it would be making a probable cause determination. (P.App.6:¶42.) CVRB did not share the information it received from CVS with Judge Gabler at any time before it made its Final Decision and Order. (P.App.7:¶46.) CVRB issued a probable cause determination favorable to K.L. on February 11, 2013, and indicated Judge Gabler could request a hearing. (P.App.7:¶¶47-48.) The probable cause determination stated that it was based, in part, on the information from CVS. (P.App.21-22.)

Judge Gabler requested an evidentiary hearing, identifying several disputed issues of fact, and also moved to dismiss the

complaint on a number of grounds, including that CVRB was violating the separation of powers doctrine by attempting to exercise authority over him. (P.App.7:¶¶49.) CVRB denied the motion, concluding that the disputed facts identified by Judge Gabler were not material. (P.App.7:¶¶50-51.)

Thereafter, CVRB issued a Final Decision and Order finding Judge Gabler guilty of violating K.L.'s rights to a timely and speedy disposition "of the case" under Wis. Const., art. I, § 9m, and Wis. Stat. § 950.04(iv)(k). (P.App.82:¶36.) The decision concluded that Judge Gabler "erroneously" interpreted K.L.'s rights under ch. 950, adopted an "erroneous legal position," and that the reasons he gave on the record for refusing an immediate, partial sentencing of Beebe "lacked a legal basis, factual basis, or both." (P.App.78,80.) CVRB refused to consider any reason identified by Judge Gabler for his decision that was not stated on the record. (P.App.79:¶27.) Its 37-page opinion discounted every reason identified by Judge Gabler, criticized his rationale extensively, and disagreed with all of his legal conclusions. As a

“remedy,” CVRB issued a public Report and Recommendation directed to Judge Gabler, instructing him to “promptly sentence [] convicted defendant[s].” (P.App.90.)

Judge Gabler filed a ch. 227 petition for review of CVRB’s decision, arguing that CVRB violated the separation of powers doctrine, his right to procedural due process, and that its decision was incorrect as a matter of law. He also filed a declaratory judgment action against CVS, claiming, among other things, that it violated the separation of powers doctrine and exceeded its statutory authority by conducting an unauthorized investigation, sharing its report with CVRB, and attempting to direct Judge Gabler to comply with K.L.’s wishes. The circuit court consolidated the actions. Upon Judge Gabler’s motion, the circuit court held an evidentiary hearing pursuant to Wis. Stat. § 227.57(1) to take evidence of procedural irregularities. It issued detailed Findings of Fact and Conclusions of Law and entered judgment in favor of Judge Gabler on both actions.

In the ch. 227 action, the circuit court rejected CVRB's argument that its decision was not reviewable and that Judge Gabler lacked standing to challenge it. (P.App.19-20.) The court concluded that CVRB violated the separation of powers doctrine, violated Judge Gabler's right to due process, that its decision on the merits was contrary to law and lacked substantial evidence, and that CVRB lacked jurisdiction over K.L.'s complaint.

Specifically, the circuit court concluded that the manner in which CVRB exercised its authority in this case under Wis. Stat. § 950.09(2) violated the separation of powers doctrine in that CVRB unconstitutionally intruded upon the judiciary's core zone of exclusive powers to manage court calendars and discipline judges by sanctioning a sitting judge for a discretionary scheduling decision involving an unsettled area of law. (P.App.31-38.) The circuit court ruled that while judges are subject to the Crime Victim's Rights Act, CVRB's remedial authority against judges is limited to referring complaints to the Judicial Commission, as is authorized in Wis. Stat. § 950.09(2)(b).

(P.App.34.) The circuit court also concluded that CVRB violated Judge Gabler's right to due process by accepting a confidential report from CVS, withholding it from Judge Gabler while using it to make a probable cause determination, and by denying his request for a hearing. (P.App.22-30.)

On the merits, the circuit court concluded that CVRB's decision was wrong as a matter of law and not based on substantial evidence. (P.App.40-43.) The court reasoned that there was no law permitting or requiring Judge Gabler to sentence a defendant on particular charges before the entire case was decided. (P.App.41.) The court further ruled that Judge Gabler provided numerous valid reasons for his decision to wait to sentence Beebe until all charges in the same case had been adjudicated. (*Id.*) And, the circuit court concluded that CVRB lacked jurisdiction over K.L.'s complaint because CVS never mediated the complaint or sought Judge Gabler's consent to mediate and because CVRB never verified CVS obtained his consent. (P.App.15,44.)

As such, the circuit court reversed CVRB's Final Decision and vacated the Report and Recommendation.

Constitutional and Statutory Framework

The Crime Victim Rights Amendment to the Wisconsin Constitution provides crime victims with certain rights including the right to a "timely disposition of the case." Wis. Const. art. I, § 9m. It further states that "[t]he legislature shall provide remedies for violation of this section." *Id.* A similar right "to a speedy disposition of the case" is found in Wis. Stat. § 950.04(iv)(k).

CVRB has the power to review crime victim complaints and sanction those whom it determines violate a crime victim's rights.

Wis. Stat. § 950.09(2). Its remedial powers are as follows:

- (a) Issue private and public reprimands of public officials, employees or agencies that violate the rights of crime victims provided under this chapter, ch. 938 and article I, section 9m, of the Wisconsin constitution.
- (b) Refer to the judicial commission a violation or alleged violation by a judge of the rights of crime victims provided under this chapter, ch. 938 and article I, section 9m, of the Wisconsin constitution.
- (c) Seek appropriate equitable relief on behalf of a victim if such relief is necessary to protect the rights of the victim. The board may not seek to appeal, reverse or modify a judgment of conviction or a sentence in a criminal case.

(d) Bring civil actions to assess a forfeiture under s. 950.11

(Emphasis added).

CVRB is a 5-member board “attached to the department of justice.” Wis. Stat. § 15.255(2). It is comprised of a district attorney, a local law enforcement representative, a county victim services provider, and two citizen members. *Id.* During 2012-2014, none of the members of CVRB were active or former judges. *Wisconsin Blue Book* at 435 (2013-2014).² CVRB is staffed entirely by employees of the DOJ. *Id.*

CVS is a unit of DOJ and is responsible for receiving informal complaints from crime victims. Wisconsin Legislative Reference Bureau, *Wisconsin Blue Book* at 432-33. Its authority is as follows:

The department may receive complaints, seek to mediate complaints and, with the consent of the involved parties, actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. The department may act as a liaison between crime victims or witnesses and others when seeking to mediate these complaints and may request a written response regarding the complaint from the subject of a complaint. . . .

²Available at https://docs.legis.wisconsin.gov/misc/lrb/blue_book/2013_2014/600_executive.pdf.

Wis. Stat. § 809.08(3).

A party dissatisfied with CVS's actions may make a formal complaint to CVRB. Wis. Stat. § 950.09(2). However, “[a] party may not request the board to review a complaint under this subsection until the department has completed its action on the complaint under s. 950.08 (3).” Wis. Stat. § 950.09(2). Further, CVRB “may not begin any investigation or take any action specified in pars. (a) to (d) until the board first determines that there is probable cause to believe that the subject of the complaint violated the rights of a crime victim.” Wis. Stat. § 950.09(2).

REASONS FOR BYPASS

- I. **Real and Significant Questions of State Constitutional Law are Presented Regarding The Separation of Powers Doctrine and Due Process Protections in CVRB Proceedings.**
 - A. **An Executive Branch Agency Cannot Sanction a Judge For a Discretionary Scheduling Decision.**

CVRB's actions in this case violated the separation of powers doctrine in three respects. First, CVRB intruded upon the

judiciary's exclusive power of judicial review by sanctioning Judge Gabler because it disagreed with his legal and discretionary determinations. Second, CVRB intruded upon the judiciary's exclusive power to control court dockets. Third, by claiming the power to sanction a sitting judge beyond referring the matter to the judicial commission, CVRB intruded upon the judiciary's exclusive power to discipline judges.

The law is clear that all three of these are core constitutional powers that are exclusive to the judiciary. The judiciary's core constitutional powers include those inherent powers which are "essential to the expedition and proper conducting of judicial business." *Barland v. Eau Claire Cty.*, 216 Wis. 2d 560, 575 N.W.2d 691 (1998) (quoting *In re Janitor of the Supreme Court*, 35 Wis. 410, 419 (1874)).

First, the Wisconsin Constitution enshrines the power of judicial review solely within the judicial branch. Wis. Const., art. VII, § 2. *See also* SCR 60.02 ("Legal decisions made in the course of judicial duty on the record are subject solely to judicial review")

(emphasis added); *In re Complaint Against Grady*, 118 Wis. 2d 762, 782, 348 N.W.2d 559 (1984) (it is a “well-established policy that the judicial branch of government must be independent in the fulfillment of its constitutional responsibilities”).

CVRB claims it has the power to subject discretionary judicial decisions implicating crime victim rights to “greater scrutiny” than an appellate court. (P.App.64:¶16.) It determined that Judge Gabler not only violated the Crime Victim Rights Act, but that he erroneously interpreted the law, (P.App.67:¶21), violated Wis. Stat. § 971.105, (P.App.70-72), adopted an “erroneous legal position,” (P.App.71), and that his constitutional and practical reasons for waiting to sentence Beebe “lacked a factual or legal justification”/“lacked a factual basis, a legal basis, or both.” (P.App.78, 80.) CVRB’s decision afforded no deference to Judge Gabler’s factual determinations, overruled his legal and constitutional determinations, and second-guessed every discretionary determination made by Judge Gabler. In short,

CVRB has assumed the power of judicial review in matters concerning crime victim rights.

Simply put, a circuit court cannot fulfill its constitutional role as an independent arbiter of the law if it is subject to sanction by the executive branch for the manner in which it exercises its inherent authority and exclusive powers. The powers claimed by CVRB “constitute an attempt . . . to coerce judges in their exercise of the essential case-deciding function of the judiciary,” are “an intrusion . . . into the exclusively judicial area of judicial decision-making and, as such, [are] unconstitutional.” *Grady*, 118 Wis. 2d 782. Moreover, allowing CVRB to create its own standards for evaluating discretionary decisions runs the risk of inconsistent rulings. That is, a judge could have his discretionary decision upheld on appeal and yet be subject to sanction by CVRB for the very same decision.

Second, this Court has clearly and unambiguously held that “[t]he setting and enforcement of time periods for judges to decide cases lies within an area of authority *exclusively reposed in the*

judicial branch of government.” Grady, 118 Wis. 2d at 783 (emphasis added). See also Hefty v. Strickhouser, 2008 WI 96, ¶31, 312 Wis. 2d 530, 752 N.W.2d 820 (“Wisconsin circuit courts have discretion to control their dockets. This power is inherent to their function. It is also granted by statute.”).

In *Grady*, this Court struck down a law attempting to dictate that circuit judges must decide cases within 90 days or forfeit their salary. This Court held that “the setting of time limits for judicial decision-making concerns the efficient and effective functioning of the court system,” which is an area of the judiciary’s exclusive constitutional authority. *Id.* at 782. The court ruled that “**a reasonable time period for judicial decision-making can be established only by the supreme court as a rule of judicial administration adopted pursuant to its administrative authority over all courts**” *Id.* at 783 (emphasis added).

CVRB’s Final Decision is flatly inconsistent with *Grady* inasmuch as CVRB sanctioned Judge Gabler because it determined that the timing of his sentencing of Beebe was

“unreasonable.” Under *Grady*, only the judicial branch can set time periods for judicial decision-making and determine if the timing of a decision is “unreasonable.”

Third, the Wisconsin Constitution grants the Supreme Court “general superintending control over all inferior courts.” Wis. Const., art. VII, § 3. This power is “unlimited in extent . . . undefined in character . . .” *In re Kading*, 70 Wis. 2d 508, 519, 235 N.W.2d 409 (1975) (quoted source omitted). This exclusive power is enshrined in Article VII, Section 11 of the Wisconsin Constitution, which provides that judges “shall be subject to reprimand, censure, suspension, removal for cause or for disability, **by the supreme court** . . .” This provision sets forth the only four “disciplinary alternatives for judicial misconduct . . .” *In re Judicial Disciplinary Proceedings against Aulik*, 146 Wis. 2d 57, 77, 429 N.W.2d 759 (1988) (emphasis added).

Acting pursuant to this power, the Wisconsin Supreme Court has promulgated the Code of Judicial Conduct, SCR ch. 60. *In re*

Kading, 70 Wis. 2d at 519. Charges of judicial misconduct are investigated by the Wisconsin Judicial Commission, which was created as an “agency of the judicial branch of our state government[.]” *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 289, 238 N.W.2d 81 (1976).

By assuming the power to independently sanction judges, CVRB violated the separation of powers doctrine. The sanction imposed against Judge Gabler was an adverse Final Decision and a Report and Recommendation finding he violated a crime victim’s rights and directing him to promptly sentence convicted defendants. CVRB also has the power to seek forfeitures and “other equitable relief.” Wis. Stat. § 950.09(2)(c)&(d). The judiciary cannot fulfil its constitutional responsibility to act in a fair and impartial manner if judges are subject to public reprimands, executive directives, and forfeitures because an agency of mostly non-lawyers disagrees with their legal determinations and discretionary decisions. The circuit court correctly ruled that when considering crime victim complaints

against judges, CVRB's remedial powers must be limited to referring such complaints to the judicial commission, as is expressly provided for under Wis. Stat. § 950.09(2)(b).

Immediate review by this Court is necessary to address these real and significant constitutional issues.

B. Judges Have Due Process Protections in CVRB Proceedings, Regardless of The Form of Sanction Imposed.

As noted above, the circuit court concluded that CVRB violated Judge Gabler's due process rights by obtaining an unauthorized confidential report from CVS, using the report to make a probable cause determination, failing to share that report with Judge Gabler, and by denying his request for an evidentiary hearing. CVRB's primary challenge to these rulings is to assert that Judge Gabler was not entitled to any due process protections in its administrative proceedings because it only issued a finding that he violated a crime victim's constitutional rights. CVRB claims Judge Gabler lacks a protected liberty interest in his professional reputation. Immediate review by this Court is

necessary to clarify that public officials have a protected liberty interest in administrative proceedings in which their professional reputations and property interests are *at stake* at the beginning of the proceeding.

The United States Supreme Court has ruled that “to determine whether due process requirements apply in the first place, we must look not to the ‘weight’ but to the *nature* of the interest at stake” in a particular proceeding. *Bd. of Regents v. Roth*, 408 U.S. 564, 570 (1972) (emphasis added). *See also Lehr v. Robertson*, 463 U.S. 248, 256 (1983) (protected interest determined by examining the “nature of the private interest that is threatened by the state.”) Wisconsin Courts are in agreement. *Neylan v. Vorwald*, 121 Wis. 2d 481, 488, 360 N.W.2d 537 (Ct. App. 1984) (focus is on what “rights may be affected by government action”) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 632 (1962)). CVRB seeks to upend this established law by claiming that it is free to violate its own procedural regulations and governing constitutional standards so long as it imposes a

less severe sanction at the end of the proceeding than it otherwise could have. This is not—and should not—be the law.

Moreover clarification is needed as to whether a public official's professional reputation and threat of financial injury is sufficient to confer due process protections. The United States Supreme Court has held that in some instances reputational interests are sufficient to invoke due process protections. *Roth*, 408 U.S. at 573 (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971) & citing *Wieman v. Updegraff*, 344 U.S. 183, 191 (1952), et al.). This Court has held that public employees have a constitutionally protected liberty interest in their professional reputations. *Nufer v. Vill. Bd. of Palmyra*, 92 Wis. 2d 289, 297, 284 N.W.2d 649 (1979) ("In a public employment context, liberty is composed of two interests—a reputation interest and an employability interest. The reputation interest has been infringed whenever charges impugn one's good name, reputation, honor, or integrity in the community.") *See also Bracegirdle v. Dep't of*

Regulation & Licensing, Bd. of Nursing & Div. of Enft, 159 Wis. 2d 402, 418-19, 464 N.W.2d 111 (Ct. App. 1990) (same).

In contrast, CVRB argues that the “stigma-plus” standard articulated in *Hinkle v. White*, 793 F.3d 764, 767 (7th Cir. 2015), should be applied to state employees, and should further be limited by looking solely at what action was ultimately *taken* against an individual—as opposed to what interests were *threatened* at the beginning of the proceeding. Judge Gabler believes that a public employee’s reputational interest, standing alone, is sufficient to invoke due process protections under Wisconsin law and that, in any event, a stigma-plus standard is satisfied here because his financial interests were at stake in the proceeding, as CVRB has the power to seek forfeitures.

Immediate review by this Court is necessary to resolve these important due process issues.

- II. Review by This Court is Necessary to Clarify The Law Concerning The Scope of Crime Victim Rights and Authority of the CVRB.
- A. Crime Victims Do Not Have a Right to Demand A Judge Sentence a Defendant on Particular Charges Until The Entire Case is Adjudicated.

On the merits, there is a substantial undecided issue of state law—whether a crime victim has the right to demand an immediate sentencing of a defendant *on particular charges* in a multi-count case before the entire case is adjudicated. Wisconsin Const., art. I, § 9m and Wis. Stat. § 950.04(iv)(k) provide a crime victim with rights to a timely and speedy “disposition of the case.” (Emphasis added).

CVRB’s entire decision is predicated on the notion that K.L. had a right to compel Judge Gabler to sentence Beebe on the charges pertaining to her before the remaining charges relating to K.H. were adjudicated. The circuit court correctly noted that no law either compels or permits a partial sentencing in a multi-count criminal case. (P.App.36-37, 41.) CVRB has identified no

legal authority for the existence of any such “right,” other than its own subjective determination as to what is “reasonable.”³

Finding such a right would have serious implications both for judges and criminal defendants in multi-count cases. *State v. Gallion*, 2004 WI 42, ¶11, n.11 & 12, 270 Wis. 2d 535, 678 N.W.2d 197, requires a court to consider all pertinent information concerning a defendant’s character and culpability in fashioning a sentence, including aggravating factors and related criminal offenses. *See also State v. Frey*, 2012 WI 99, ¶45, 343 Wis. 2d 358, 817 N.W.2d 436 (“a sentencing court needs the fullest amount of relevant information concerning a defendant’s life and characteristics”). Whether a defendant is ultimately found guilty

³ CVRB claims its “reasonableness” determination is entitled to great weight deference, even though: 1) it had not previously addressed the right to a partial sentencing; 2) it has no experience in applying judicial sentencing factors; 3) none of CVRB’s “reports” address the issue in this case; 3) CVRB handled only 51 cases between 1999 and 2012, only 11 involving judges, and only 1 involving an issue of speedy disposition against a judge where a finding of probable cause was found; and 4) at the time of its decision, only 1 member of CVRB was an attorney, and none were current or former judges. Moreover, CVRB does not employ an objective test in determining if a “delay,” once identified, is “reasonable.” Thus, CVRB does not meet the test for great weight deference. *Knight v. LIRC*, 220 Wis. 2d 137, 149, 582 N.W.2d 448 (Ct. App. 1998); *Wisconsin Dep’t of Revenue v. Menasha Corp.*, 2008 WI 88, ¶¶64-65, 311 Wis. 2d 579, 754 N.W.2d 95.

of related charges in the same case certainly is a “relevant factor” for a court to properly consider during sentencing. Indeed, one of the reasons provided by Judge Gabler in his letter to CVS for refusing a partial sentencing was that he wanted to see how the remaining charges against Beebe were resolved, as that disposition would affect his sentence. (P.App.4-5:¶29.) CVRB’s position, if adopted, would undermine a circuit court’s ability to fulfil its responsibility to ensure it has complete information when sentencing a criminal defendant.

B. CVRB is Required to Confirm That CVS Has Mediated or Sought Consent to Mediate Crime Victim Complaints Before it Has Jurisdiction.

Finally, this case raises the important issue of whether Wis. Stat. § 950.09(2) and Wis. Admin. Code § CVRB 1.05(1) require CVRB to verify that CVS has “completed its action”—mediated the informal complaint or sought consent to mediate—before CVRB may exercise jurisdiction over a formal crime victim complaint. This issue is important not only because both of the above provisions impose this requirement, but also because this

case's history demonstrates that CVS does not, in practice, act as an impartial "mediator" of crime victim complaints but instead acts as an advocate for victims—by seeking consent only from victims, demanding that judges comply with victim requests, and collaborating with CVRB to circumvent CVRB's statutory prohibition against investigating a crime victim complaint before making a finding of probable cause.

Indeed, the circuit court's decision granting Judge Gabler relief in his declaratory judgment action against CVS catalogued a number of instances in which CVS acted outside its statutory authority. (P.App.10-16, 46-47).⁴ The requirement in § 950.09(2) and Wis. Admin. Code § CVRB 1.05(1) that CVRB confirm that CVS has "completed its action" acts as an important check on CVS and should be enforced.

CONCLUSION

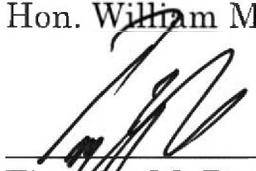
For these reasons, the Court should accept the Petition to Bypass and affirm the decision of the circuit court, which

⁴ Notably, CVS did not appeal from the circuit court's judgment.

reversed CVRB's Final Decision and vacated its Report and Recommendation.

Dated this 20th day of July, 2016.

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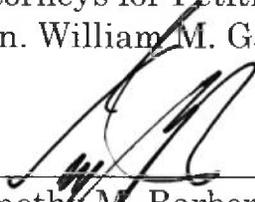
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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b)&(c) as to form and length for a document produced with proportional serif front—Century— 13 point for text and 11 point for quotes and footnotes. The length of this Petition is 5163 words.

Dated this 20th day of July, 2016.

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APPENDIX CERTIFICATION

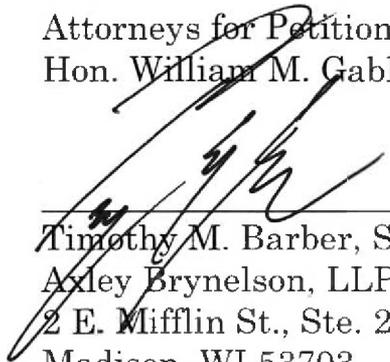
I hereby certify that filed with this Petition, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(3)(b) and § 809.62(2)(f) that contains a table of contents, a copy of the judgment, order, findings of fact, and conclusions of law of the circuit court, copies of other documents necessary for an understanding of the Petition, a copy of any unpublished opinion cited under § 809.23(3)(a) or (b), and a signed certification that the appendix complies with the confidentiality requirements under § 809.19 (2) (a) in a form substantially similar to the confidentiality provision under sub. (2) (b).

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have

been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 20th day of July, 2016.

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