

May 19, 2017

## WISCONSIN SUPREME COURT

### TABLE OF PENDING CASES

Clerk of Supreme Court  
Telephone: (608) 266-1880  
Facsimile: (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)  
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The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an \* next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **May 19, 2017**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

APPENDIX  
**WISCONSIN SUPREME COURT PENDING CASES**

Clerk of Supreme Court  
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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP2377 (consolidated with 2015AP870)	<p><u>Debra K. Sands v. John R. Menard, Jr.</u></p> <p>May a fiancé/cohabitant use alleged noncompliance with Supreme Court Rule (SCR) 20:1.8(a) (“Rule 1.8(a)”) as a defense to a civil suit for unjust enrichment under <u>Watts v. Watts</u>, 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987)?</p> <p>If Rule 1.8(a) can be raised as a defense to a <u>Watts</u> claim arising from a long-term romantic relationship, may a non-attorney cohabitant be found to have waived, ratified, or be estopped to assert the other cohabitant’s alleged non-compliance with Rule 1.8(a)?</p> <p>If the Court of Appeals had considered the issues of waiver, ratification, and estoppel, does the record contain sufficient evidence to create genuine issues of fact precluding summary judgment?</p> <p>Can a lawyer invoke the discovery rule to bar a client’s claim for breach of fiduciary duty under the applicable statute of limitations, where the lawyer, despite obligations under SCR 20:1.7(b) allegedly concealed the conflicts of interest that gave rise to such claims?</p>	01/20/2017 REVW	3 Eau Claire	10/26/2016 Pub. 2016 WI App 76 372 Wis. 2d 126 887 N.W.2d 94
2013AP2882	<p><u>Dr. Randall Melchert, et al. v. Pro Electric Contractors</u></p> <p>Whether Wis. Stat. § 893.80(4) immunizes a government or any of its agents or employees from liability for causing property damage through negligent construction work.</p> <p>Does Wis. Stat. § 182.0175(2), the Diggers Hotline statute, create a ministerial duty?</p>	06/16/2016 REVW <b>Affirmed</b> <b>04/07/2017</b> <b>2017 WI 30</b>	2 Waukesha	Unpub.
2014AP1623-CR	<p><u>State v. Raymond L. Nieves</u></p> <p>Did the admission of a co-defendant’s nontestimonial statement at a joint trial violate this defendant’s Sixth Amendment right to confront the witnesses against him given that, after the change in confrontation law initiated by <u>Crawford v. Washington</u>, 541 U.S. 36 (2004), “only testimonial statements are excluded by the Confrontation Clause?” <u>Giles v. California</u>, 554 U.S. 353, 376 (2008).</p> <p>Even if <u>Bruton v. United States</u>, 391 U.S. 123 (1968)] prohibits the admission of a non-testifying co-defendant’s nontestimonial statements, did the admission of this defendant’s statement at trial violate his confrontation rights when other testimony about the statement did not say that the defendant was involved in the crimes, but instead used “they” to refer to the perpetrators?</p> <p>Was any <u>Bruton</u> violation harmless error in light of the strong evidence against the defendant?</p>	09/13/2016 REVW Oral Arg 01/19/2017	1 Milwaukee	Unpub.

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2014AP1767-CR	<u>State v. Brian I. Harris</u>  Whether a defendant was deprived of his constitutional right against self-incrimination (Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Wisconsin Constitution) by the admission at trial in the state's case-in chief of the defendant's unwarned custodial statements made in response to the law enforcement's request for a statement.	04/06/2016 REVW <b>Affirmed</b> <b>04/07/2017</b> <b>2017 WI 31</b>	2 Kenosha	01/27/2016 Pub. 2016 WI App 2 366 Wis. 2d 777 874 N.W.2d 602
2014AP1914	<u>McKee Family I, LLC v. City of Fitchburg</u>  Does the building permit rule announced in <u>Lake Bluff Housing Partners v. City of South Milwaukee</u> , 197 Wis. 2d 157, 540 N.W.2d 189 (1995), apply where the government has actively, knowingly and directly induced developer expenditures, including the installment of public improvements and dedications of land to the public in exchange for land use approvals?  Did Planned Development District (PDD) Zoning granted by a city for the subject property create private rights of a contractual nature where the city actively induced developer investments in reliance on zoning including maintaining an ordinance that expressly states that the zoning obtained constitutes an "agreement" between the property owner and the city?  Is the sole test for regulatory takings whether the owner has been deprived of all or nearly all economically productive use of the property?	04/07/2016 REVW <b>Affirmed</b> <b>04/12/2017</b> <b>2017 WI 34</b>	4 Dane	Unpub.
2014AP2236	<u>Carolyn Moya v. Healthport Technologies, LLC</u>  Whether a person authorized in writing by a patient may obtain the patient's medical records without having to pay the certification or retrieval fees set forth in Wis. Stat. § 146.83(3f)(b).	04/06/2016 REVW <b>Reversed and remanded</b> <b>05/04/2017</b> <b>2017 WI 45</b>	1 Milwaukee	01/27/2016 Pub. 2016 WI App 5 366 Wis. 2d 541 874 N.W.2d 336
2014AP2278/ 2014AP2279	<u>Ricardo M. Garza v. American Transmission Co.</u>  Whether an easement grants the right to change, replace, and upgrade use of the easement area to take advantage of technological developments.  Whether an easement grants the right to cut brush and trees on the owner's property to prevent interference with the operation of a transmission line in the contiguous highway right-of-way.	04/06/2016 REVW <b>Reversed</b> <b>04/13/2017</b> <b>2017 WI 35</b>	4 Waupaca	Unpub.

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2014AP2360	<u>Dennis A. Teague, et al. v. Brad D. Schimel</u>  Does Wis. Stat. § 19.356 preclude petitioners from seeking a declaratory judgment that the DOJ's alias name policy violates Wisconsin's public records law?  Does Wis. Stat. § 19.70 require the DOJ to correct or supplement the criminal history reports it produces in response to name-based requests about innocent subjects once those subjects demonstrate to DOJ they have no criminal history?  Does the DOJ's alias name policy violate equal protection by discriminating against one class of "innocent" persons?  Does the DOJ's alias name policy violate substantive due process by identifying innocent people with criminal records that are not their own?  Is the DOJ's criminal history database sufficiently like other government databases that courts must apply the constitutional principles developed in those cases?	06/15/2016 REVW Oral Arg 11/09/2016	4 Dane	03/30/2016 Pub. 2016 WI App 20 367 Wis. 2d 547 877 N.W.2d 379
2014AP2376	<u>Donna Brenner v. National Casualty Company</u>  Should Wisconsin adopt the <u>Restatement (Third) of Torts § 51</u> which supersedes the <u>Restatement (Second) of Torts §§ 352 and 353</u> ?  Does the <u>Restatement (Second) of Torts § 352</u> relieve former possessors of land from liability for hazards created at their direction?  Under the <u>Restatement (Second) of Torts § 353</u> , does the liability of a former possessor of land who concealed a hazardous condition it created continue until the current possessor has actual knowledge of the condition?	02/03/2016 REVW <b>Affirmed</b> <b>04/18/2017</b> <b>2017 WI 38</b>	1 Milwaukee	11/18/2015 Pub. 2015 WI App 85 365 Wis. 2d 476 872 N.W.2d 124
2014AP2420	<u>Estate of Stanley G. Miller v. Diane Storey</u>  Whether statutory claims are considered tort claims for purposes of Wis. Stat. § 799.01(1).  Whether Wis. Stat. § 895.446(3) allows for recovery of attorney's fees to a prevailing plaintiff.  Whether the appellate court abused its discretion by taking up arguments improperly placed before the court in an appellate brief.	01/09/2017 REVW	3 Marathon	09/28/2016 Pub. 2016 WI App 68 371 Wis. 2d 669 885 N.W.2d 787

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2014AP2581	<u>Taft Parsons, Jr. v. Associated Banc-Corp</u>  Can parties to a business transaction agree that any disputes between them will be resolved without the need for a jury trial?  Should a party seeking to enforce a jury trial waiver be required to prove—beyond establishing elements of the contract as a whole—that the specific waiver term was made “knowingly and voluntarily” by the other party?  If a party seeking to enforce a jury trial waiver is required to establish a “knowing and voluntary” waiver, does the party seeking enforcement have the burden of proof and may the court rely upon the allegations of the complaint and a conflicting affidavit to make this determination?  Did the trial court properly exercise its discretion to manage the procedure and timing to resolve the dispute regarding a jury trial?  Is it procedurally and substantively unconscionable for a lender to advise a business customer that it will not provide financing unless certain terms are agreed upon and the loan is closed “soon” and must the lender give up something of value within the jury clause itself in order to maintain enforceability?	09/13/2016 REVW <b>Reversed and remanded 04/13/2017 2017 WI 37</b>	1 Milwaukee	06/29/2016 Pub. 2016 WI App 44 370 Wis. 2d 112 881 N.W.2d 793
2014AP2603-CR	<u>State v. Glenn T. Zamzow</u>  Whether the Sixth Amendment confrontation clause applies at a pretrial suppression hearing.	03/07/2016 REVW <b>Affirmed 04/06/2017 2017 WI 29</b>	2 Fond du Lac	01/27/2016 Pub. 2016 WI App 7 366 Wis. 2d 562 874 N.W.2d 328
2014AP2701-CR	<u>State v. Robert Joseph Stietz</u>  Whether the circuit court erred when it denied a request for a self-defense jury instruction.	10/11/2016 REVW Oral Arg 02/15/2017	4 Lafayette	Unpub.
2015AP79	<u>Maya Elaine Smith v. Jeff Anderson</u>  Can a third-party complaint state a claim that an insurance company has a duty to defend, where the complaint against the third-party plaintiff is for misrepresentation?  Should a party looking to his insurance company to provide him with a defense be able to introduce information not stated in the pleadings to show that there could be claims requiring his insurer to provide a defense?  Can a party denied a defense after his insurance company succeeds on a motion for summary judgment reassert a right to a defense if later developments in the case show that he is entitled to a defense?	04/06/2016 REVW <b>Petition dismissed 04/27/2017 2017 WI 43</b>	1 Milwaukee	Unpub.

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2015AP175	<u>Deutsche Bank National Trust Company v. Thomas P. Wuensch</u>  Whether a trial court may accept as proven fact that plaintiff in a residential foreclosure action possesses the original promissory note at issue when counsel presented the originally executed ( <i>i.e.</i> , "wet-ink") note to the court and Wis. Stat. § 909.02(9) provides that commercial paper, such as promissory notes, are self-authenticating.  Whether the court of appeals, after summarily reversing a judgment of foreclosure under Wis. Stat. § (Rule) 809.21(1), should have remanded the case to the trial court to allow petitioner an opportunity to provide sworn testimony that it possesses the note.	02/13/2017 REVW	4 La Crosse	--
2015AP231	<u>John Krueger v. Appleton Area School District Board of Education</u>  Whether a formal committee, created by school district officials, pursuant to school district policies, in order to carry out school district functions, is a "governmental body" subject to the Open Meetings Act. (Wis. Stat. § 19.82(1))  Whether, if the committee is a "governmental body," it met in violation of the Open Meetings Act.	10/11/2016 REVW Oral Arg 02/15/2017	3 Outagamie	Unpub.
*2015AP330	<u>State v. David Hager, Jr.</u>  Effective December 14, 2013, a circuit court must grant a committed Chapter 980 patient a discharge hearing if the patient's petition alleges facts from which a factfinder "would likely conclude" that the patient's condition has changed so that he no longer meets the criteria for commitment as a sexually violent person. Wis. Stat. § 980.09(2) (2013–14). When circuit courts are determining whether a patient has met this higher "would likely conclude" standard, can the courts now compare the newly proffered evidence with evidence already in the record and submitted by the State to determine whether to grant a discharge trial?	05/15/2017 REVW	3 Chippewa	02/22/2017 Pub. 2017 WI App 8 373 Wis. 2d 692 ___ N.W.2d ___
2015AP366-CR	<u>State v. Stanley J. Maday, Jr.</u>  Did a social worker's testimony constitute a prohibited opinion that, during an interview, a child was telling the truth?	02/11/2016 REVW <b>Reversed</b> <b>04/05/2017</b> <b>2017 WI 28</b>	4 Columbia	Unpub.

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2015AP450-CR	<u>State v. Adam M. Blackman</u>  Whether the circuit court properly suppressed a defendant's warrantless blood test on the grounds that he was allegedly unconstitutionally coerced into taking the test.  Whether the circuit court properly suppressed a defendant's blood test where the defendant was allegedly unconstitutionally coerced into taking the blood test under the totality of the circumstances.  Whether Section 343.305(3)(ar)2 is unconstitutional on its face and as applied because it coerces consent to otherwise unconstitutional searches without due process of law.	12/19/2016 REVW Oral Arg 04/12/2017	2 Fond du Lac	09/28/2016 Pub. 2016 WI App 69 371 Wis. 2d 635 886 N.W.2d 94
2015AP491	<u>AllEnergy Corporation v. Trempealeau County Environment &amp; Land Use Committee</u>  Do unsubstantiated public comments on the possible negative impacts of a non-metallic mine constitute substantial evidence upon which to base a conditional use permit denial?  Should the court adopt a new doctrine that where a conditional use permit applicant has shown that all conditions and standards, both by ordinance and as devised by the zoning committee, have been or will be met, the applicant is entitled to the issuance of the permit?  Did the county committee exceed its jurisdiction by denying a conditional use permit based upon generalized concerns, reflecting the exercise of policy-based, quasi-legislative authority by a committee whose members are appointed, not elected?	09/13/2016 REVW Oral Arg 01/11/2017	3 Trempealeau	Unpub.
2015AP583	<u>Jerome Movrich v. David J. Lobermeier</u>  Does the Wisconsin public trust doctrine allow the respondent upland lot owners to install a dock onto or over a portion of the Sailor Creek Flowage bed, the record title to which bed is privately owned in fee by the petitioners, not by the State of Wisconsin in trust, as in instances of a natural lake?  Does the Wisconsin public trust doctrine allow the respondent upland lot owners to directly access the water of the Sailor Creek Flowage from their upland lot where the record title to the flowage bed is privately owned in fee by petitioners, not by the State of Wisconsin in trust, as in instances of a natural lake?  Does the Wisconsin public trust doctrine, in addition to bestowing the <u>public</u> with various recreational rights to and uses of navigable water, also effect the transfer of <u>private</u> property interests in instances of privately owned flowage bed?	03/13/2017 REVW	3 Price	12/21/2016 Pub. 2016 WI App 90 372 Wis. 2d 724 889 N.W.2d 454

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2015AP643	<u>North Highland Inc. v. Jefferson Machine &amp; Tool Inc.</u>  Is the amount of money that a company bids on a contract "information" protectable as a trade secret under Wis. Stat. § 134.90(1)I, when it has value through secrecy meeting the requirements of Wis. Stat. § 134.90(1)I(1)-(2)?  In a covenant not to sue one defendant, can a plaintiff maintain suit against other defendants for any of the following: (a) conspiracy among all defendants to violate covenanted defendant's fiduciary duties to plaintiff, (b) aiding and abetting covenanted defendant's breach of fiduciary duties to plaintiff, (c) interference with covenanted defendant's contractual or fiduciary obligations to plaintiff?	09/13/2016 REVW Oral Arg 01/17/2017	4 Jefferson	Unpub.
2015AP648-CR	<u>State v. Anton R. Dorsey</u>  Whether evidence of other criminal acts committed against a person other than the victim are admissible in cases of alleged domestic abuse for the purpose of showing a generalized motive or purpose on the part of the defendant to control persons with whom he or she is in a domestic relationship.  Whether the other acts testimony presented in this case was relevant to the purpose of proving intent on the part of the defendant to cause bodily harm to the victim.	04/10/2017 REVW	3 Eau Claire	Unpub.
2015AP671-CR	<u>State v. Keimonte Antonie Wilson, Sr.</u>  Is a witness in a criminal case properly served when a subpoena is left at the witness's abode? See Wis. Stat. § 885.03  Was trial counsel ineffective for: (1) failing to argue that a key witness was properly subpoenaed; or in the alternative, (2) failing to properly subpoena the witness?	10/11/2016 REVW Oral Arg 02/17/2017	1 Milwaukee	--
2015AP756-CR	<u>State v. Frederick S. Smith</u>  When a police officer performs a lawful traffic stop, is it reasonable for the officer to make contact with the driver to ask for the driver's name and identification and to explain the basis for the stop, even if the reasonable suspicion supporting the stop has dispelled by the time the officer does so?  When an officer is unable to request a driver's name and identification and explain the basis for a traffic stop because the driver indicates that the driver's side window and door are both broken, is the officer then permitted to open the passenger's side door to achieve that goal?	01/09/2017 REVW	4 Dane	Unpub.

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2015AP791-CR	<u>State v. Ernesto E. Lazo Villamil</u>  Whether it is proper to determine that a single offense can be punished as either a misdemeanor or felony in order to resolve ambiguity in the statutory language when the legislative intent was to create a penalty scheme with increasing punishment for additional elements (cf., Wis. Stat. § 343.44 (1)(b) (2009 – 10) and Wis. Stat. § 343.44 (2)(ar) 4 (Eff. Mar. 1, 2012).  Whether a statute, as interpreted by the court, gives discretion to the prosecution where none was intended by the legislature, [can] be applied constitutionally.  Should Wis. Stat. § 343.44(1)(b) be authoritatively construed as though the word “knowingly” did not appear there, to correct an oversight by the Legislature in failing to delete this word when it revised the statute, to clarify the statutory scheme for punishing drivers who cause a death while operating after revocation of their operator’s license, and to fully effectuate the Legislature’s actual intent?  Should Wis. Stat. § 343.44(2)(b) be authoritatively construed to be directory rather than mandatory, so as to provide that a circuit court may, but is not required to, consider the enumerated factors in the exercise of its sentencing discretion, just as it may, but is not required to, consider other proper sentencing factors?	01/09/2017 REVW Oral Arg 04/12/2017	2 Waukesha	09/07/2016 Pub. 2016 WI App 61 371 Wis. 2d 519 885 N.W.2d 381
2015AP829	<u>Penny L. Springer v. Nohl Electric Products Corporation</u>  Whether the “fraudulent transfer” exception to Wisconsin’s general rule against successor liability must be analyzed in the context of Wisconsin’s Uniform Fraudulent Transfer Act, Wis. Stat. ch. 242, such that the petitioners are subjected to successor liability for a former entity’s sale of asbestos-containing products.	10/11/2016 REVW	4 Jefferson	Unpub.

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2015AP870 (consolidated with 2012AP2377)	<u>Debra K. Sands v. John R. Menard, Jr.</u>  May a fiancé/cohabitant use alleged noncompliance with Supreme Court Rule (SCR) 20:1.8(a) ("Rule 1.8(a)") as a defense to a civil suit for unjust enrichment under <u>Watts v. Watts</u> , 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987)?  If Rule 1.8(a) can be raised as a defense to a <u>Watts</u> claim arising from a long-term romantic relationship, may a non-attorney cohabitant be found to have waived, ratified, or be estopped to assert the other cohabitant's alleged non-compliance with Rule 1.8(a)?  If the Court of Appeals had considered the issues of waiver, ratification, and estoppel, does the record contain sufficient evidence to create genuine issues of fact precluding summary judgment?  Can a lawyer invoke the discovery rule to bar a client's claim for breach of fiduciary duty under the applicable statute of limitations, where the lawyer, despite obligations under SCR 20:1.7(b) allegedly concealed the conflicts of interest that gave rise to such claims?	01/20/2017 REVW	3 Eau Claire	10/26/2016 Pub. 2016 WI App 76 372 Wis. 2d 126 887 N.W.2d 94
2015AP959-CR	<u>State v. Jack M. Suriano</u>  Whether the trial court erred by ruling that a defendant forfeited his Sixth Amendment right to counsel after three appointed attorneys withdrew from his case, without first warning defendant that forfeiture was a possibility or advising him of the difficulties and dangers of self-representation.	09/13/2016 REVW <b>Affirmed</b> <b>04/27/2017</b> <b>2017 WI 42</b>	3 Door	Unpub.
2015AP993-CR	<u>State v. Heather L. Steinhardt</u>  Was a defendant's right to be free from double jeopardy violated when she was convicted of both failure to protect a child and first-degree sexual assault of a child pursuant to Wis. Stat. §§ 948.02(3) and 948.02(1)?  Did a defendant relinquish her right to raise the double jeopardy issue by pleading no contest to the charges?  In a defendant's postconviction claim that her trial attorney was ineffective for failing to advise her of the double jeopardy issue, did she sufficiently allege that she was prejudiced by her attorney's failure?	10/11/2016 REVW Oral Arg 02/28/2017	2 Ozaukee	Unpub.
2015AP1016/ 2015AP1119	<u>Margaret Pulera v. Town of Richmond</u>  What is the certiorari review filing deadline under Wis. Stat. § 68.13 in the context of raising a challenge in the highway order process of Wis. Stat. § 82.15? (See <u>Dawson v. Town of Jackson</u> , 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316)	04/13/2016 CERT Oral Arg 01/17/2017	4 Rock	--

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2015AP1039	<u>John Y. Westmas v. Selective Insurance Company of South Carolina</u>  Is a company, as the entity in charge of grooming and maintaining trees on recreational land, entitled to immunity under Wis. Stat. § 895.52 as an “agent” of the owner of the land?  Is a company, as the entity in charge of grooming and maintaining trees on recreational land, entitled to immunity under Wis. Stat. § 895.52 as an “occupant” of the land?	03/13/2017 REVW	2 Walworth	12/21/2016 Pub. 2016 WI App 92 372 Wis. 2d 683 889 N.W.2d 178
2015AP1055	<u>Lela M. Operton v. LIRC</u>  What is the standard of review of the LIRC’s conclusions of law in cases where the issue is whether an unemployment benefit claimant has allegedly committed substantial fault?  Did the LIRC reasonably conclude that the benefit claimant’s failures amount to substantial fault? (See Wis. Stat. § 108.04 (5g) (a) (2013-14)).	07/14/2016 REVW <b>Affirmed and remanded 05/04/2017 2017 WI 46</b>	4 Dane	05/25/2016 Pub. 2016 WI App 37 369 Wis. 2d 166 880 N.W.2d 169
2015AP1261-CR	<u>State v. Navdeep S. Brar</u>  Whether consent justified a warrantless blood draw.  Whether the State proved consent to be voluntary.	12/19/2016 REVW Oral Arg 04/12/2017	4 Dane	Unpub.
2015AP1292-CR/ 2015AP1293-CR	<u>State v. Edward J. Zimbal</u>  Is a substitution request timely when: (1) a defendant, before having an attorney appointed, requests substitution in the circuit court orally and in the court of appeals in writing, within the deadline to do so, (2) is told by the circuit court that action on substitution will be deferred until after an attorney is appointed, and (3) counsel formalizes the substitution request 17 days after being appointed?	09/13/2016 REVW Oral Arg 12/02/2016	3 Brown	Unpub.
2015AP1294-CR	<u>State v. Lewis O. Floyd, Jr.</u>  Whether an officer’s justification to search is objectively reasonable where the suspect is not observed doing or saying anything suspicious, but cooperating in circumstances that the officer believes are suspicious?  Whether counsel rendered ineffective assistance by failing to present additional evidence to show the suspect did not provide valid consent?	01/10/2017 REVW Oral Arg 04/19/2017	2 Racine	09/07/2016 Pub. 2016 WI App 64 371 Wis. 2d 404 885 N.W.2d 156

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2015AP1311	<u>State v. Howard Carter</u>  Did the trial court err in denying petitioner a trial on his petition for discharge because 2013 Wis. Act 84 did not apply to this case and counsel was ineffective in not objecting to its application?  If 2013 Wis. Act 84 applied to this case, should the saving construction applied by the court of appeals in <u>State v. Hager</u> (case no. 2015AP330, 2017 WI App 8, 373 Wis. 2d 692, ___ N.W.2d ___ ) be applied and was the petitioner entitled to a discharge trial under that construction?  If 2013 Wis. Act 84 applied to this case, was it unconstitutional because it unduly restricted access to the courts for persons committed under chapter 980 seeking to terminate their commitment?	05/15/2017 REVW	3 Chippewa	02/22/2017 Pub. 2017 WI App 9 373 Wis. 2d 722 ___ N.W.2d ___
2015AP1331	<u>In Re: Partnership Health Plan, Inc. v. Office of the Commissioner of Insurance</u>  Is Community Health Partnership, Inc. (“CHP”), as the sole member of the nonstock insurance corporation, Partnership Health Plan, Inc. (“PHP”), the owner of PHP entitled under Wis. Stat. § 645.68(11) to be paid the surplus funds remaining in PHP’s Wis. Stats. ch. 645 liquidation proceeding after all of PHP’s liabilities have been satisfied?  Does the Commissioner of Insurance (the “Commissioner”), as the Wis. Stat. ch. 645 liquidator of PHP, have authority under applicable law to recommend a 501©(3) charitable organization to which to pay the surplus funds of PHP remaining after all PHP’s liabilities have been satisfied, and does the circuit court have subject matter jurisdiction to make that determination upon the Commissioner’s recommendation?  Did PHP’s board of directors have authority under PHP’s articles of incorporation to direct that any surplus funds in PHP’s Wis. Stat. ch. 645 liquidation proceeding be paid to CHP, a section 501©(3) charitable organization, for payment of CHP’s creditors?  Is the resolution of PHP’s board of directors providing that any surplus funds in PHP’s chapter 645 liquidation proceeding be paid to CHP for payment of CHP’s creditors, which was part of the PHP board resolution that the Commissioner filed with the circuit court as grounds for his appointment as rehabilitator and subsequently liquidator of PHP, nevertheless invalid because it was not expressly approved by the Commissioner under Wis. Stat. § 617.21(3g), Wis. Admin. Code § Ins 40.04, and a prior order of the Commissioner?	04/10/2017 REVW	4 Dane	Unpub.

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2015AP1452-CR	<p><u>State v. Gary F. Lemberger</u></p> <p>In <u>State v. Bolstad</u>, 124 Wis. 2d 576, 584, 370 N.W.2d 257 (1985) and <u>State v. Albright</u>, 98 Wis. 2d 663, 669, 298 N.W.2d 196 (Ct. App. 1980), a refusal to take a breathalyzer was admissible as evidence of a “guilty mind” in drunk-driving cases because “Wisconsin drivers [had] no constitutional right to refuse” a breathalyzer. It has since been held that Wisconsin drivers do have the constitutional right to refuse a breathalyzer. See, e.g., <u>Skinner v. Ry. Labor Exec. Ass’n</u>, 489 U.S. 602, 616—17 (1989); <u>State v. Kennedy</u>, 2014 WI 132, ¶5, 359 Wis. 2d 454, 856 N.W.2d 834. In light of these latter cases, should <u>Bolstad</u> and <u>Albright</u> be overruled?</p> <p>Did the State violate a defendant’s constitutional right against self-incrimination by asking the jury to infer he had a “guilty mind” because he refused a warrantless breathalyzer?</p> <p>Was defense trial counsel ineffective for failing to object to the State’s comments to the jury seeking an inference of guilt from a defendant’s refusal of a warrantless breathalyzer?</p> <p>Did a defendant forfeit his argument that the State violated his constitutional right against self-incrimination by failing to cite <u>Bolstad</u> and <u>Albright</u> before the circuit court, and instead relying on recent case law supporting his position?</p>	<p>10/11/2016            REVW  <b>Affirmed</b>  <b>04/20/2017</b>  <b>2017 WI 39</b></p>	<p>4            Dane</p>	<p>Unpub.</p>
2015AP1493	<p><u>The Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc.</u></p> <p>Does a foreign corporation’s appointment of an agent to receive service of process in Wisconsin, as required by Wis. Stat. § 180.1507 when registering to do business here, without more, constitute consent to the general jurisdiction of the Wisconsin courts?</p> <p>Would requiring a foreign corporation to consent to general jurisdiction of the Wisconsin courts as a condition of doing business in the state violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution?</p>	<p>10/11/2016            REVW            Oral Arg            02/28/2017</p>	<p>4            Dane</p>	<p>Unpub.</p>

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2015AP1523	<p><u>Vincent Milewski v. Town of Dover</u></p> <p>Whether government entry into a citizen's home under Wis. Stat. § 70.47(7)(aa) and § 74.37(4)(a) (which together require property owners to permit interior inspections of homes for tax assessment purposes or forfeit their right to challenge their assessment in any manner) constitute a search for Fourth Amendment purposes.</p> <p>Whether warrantless searches under Wis. Stat. § 70.47(7)(aa) and § 74.37(4)(a) are reasonable as a matter of law.</p> <p>Whether Wis. Stat. § 70.47(7)(aa) and § 74.37(4)(a) violate the Due Process Clause by depriving a citizen of any right to appeal a tax assessment if the citizen denies consent to an assessor to conduct an interior inspection of the citizen's home.</p>	<p>10/11/2016  REVW  Oral Arg  01/19/2017</p>	<p>2  Racine</p>	<p>Unpub.</p>
2015AP1530	<p><u>The Manitowoc Company, Inc. v. John M. Lanning</u></p> <p>Whether Wis. Stat. § 103.465, which refers to a "covenant by an assistant, servant or agent not to compete with his or her employer or principal during the term of the employment or agency, or after the termination of that employment or agency," governs non-solicitation of employees ("NSE") clauses, which do not prohibit any individual from competing with his/her former employer.</p> <p>If Wis. Stat. § 103.465 governs NSE clauses:</p> <ol style="list-style-type: none"> <li>a. Whether an NSE clause, which does not prohibit competition with the former employer, should be evaluated under the same legal standard(s) as a non-compete clause.</li> <li>b. Whether the NSE provision unreasonably restrains trade.</li> <li>c. Whether the NSE provision is "reasonably necessary" to protect Manitowoc's legitimate business interests.</li> <li>d. Whether the constitutional right to contract may be infringed through the use of hypothetical scenarios rather than the undisputed facts of a case to invalidate an NSE clause in a contract between an employer and employee.</li> </ol>	<p>12/19/2016  REVW</p>	<p>2  Manitowoc</p>	<p>09/28/2016  Pub.  2016 WI App 72  371 Wis. 2d 696  885 N.W.2d 798</p>
2015AP1586	<p><u>Nationstar Mortgage LLC v. Robert R. Stafsholt</u></p> <p>Whether an offset against a principal balance due on a mortgage as an award for attorney fees and costs is proper under the circumstances of the case.</p>	<p>04/10/2017  REVW</p>	<p>3  St. Croix</p>	<p>Unpub.</p>

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2015AP1610-CR	<u>State v. Ginger M. Breitzman</u>  Do our constitutional free speech protections prohibit the State from prosecuting one family member for calling another family member rude names inside the privacy of the family home?  When reviewing a claim of ineffective assistance of counsel, the court of appeals must defer to the postconviction court's fact-findings but reviews <u>de novo</u> the legal questions of deficient performance and prejudice. Within this framework, can the court of appeals defer to the legal conclusions of the postconviction court?	03/13/2017 REVW	1 Milwaukee	Unpub.
2015AP1782-CR	<u>State v. Sambath Pal</u>  Whether a defendant was properly convicted of two counts of leaving the scene of an accident causing death.	10/11/2016 REVW <b>Affirmed 04/28/2017 2017 WI 44</b>	4 Rock	--
2015AP1877-CR	<u>State v. Lazaro Ozuna</u>  Whether to "15atisfy[y] the conditions of probation" under Wis. Stat. § 973.015(1m)(b), a probationer must perfectly comply with every probation condition, or whether under <u>State v. Hemp</u> , 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, it is enough that the probation agent determines that the probationer has "successfully completed . . . probation."  Whether the defendant's procedural due process rights were violated when the court failed to provide him with notice or a hearing before denying expungement.	09/13/2016 REVW Oral Arg 01/11/2017	2 Walworth	Unpub.
2015AP1904	<u>Mark Halbman v. Mitchell J. Barrock</u>  Whether the court of appeals erred in affirming the circuit court's grant of the defendant's motion to dismiss on the basis that the plaintiff had failed to establish a <u>prima facie</u> case as to damages.  Whether the circuit court erred in ruling that the value of the plaintiff's underlying case was conclusively established at the second trial and therefore, precluding the plaintiff from introducing evidence of the first jury verdict.	02/13/2017 REVW	1 Milwaukee	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2015AP1906	<u>G&amp;D Properties, LLC v. Milwaukee Metropolitan Sewerage District</u>	02/13/2017 REVW	1 Milwaukee	Unpub.
	<p>Even though plaintiffs did not file a formal notice of claim to defendants within 120 days, did plaintiffs satisfy the notice of claim requirements of Wis. Stat. § 893.80(1d)(a) when they filed formal notice of claim within 120 days of receiving from MMSD a specifically requested flow study of the combined sewer overflow system that affected plaintiffs' property?</p> <p>Wisconsin Stat. § 893.80(1d)(a) provides that "[f]ailure to give the requisite notice shall not bar action on the claim if" the government entity being sued "had actual notice of the claim and the claimant shows . . . that the delay or failure to give the requisite notice has not been prejudicial to the defendant . . ." Did defendants have "actual notice" of plaintiffs' claim as a matter of law?</p> <p>Did plaintiffs satisfactorily demonstrate that their alleged failure to give the "requisite notice" was not "prejudicial" to defendants?</p>			
2015AP1989	<u>Tracie L. Flug v. LIRC</u>	11/14/2016 REVW Oral Arg 03/15/2017	3 Chippewa	Unpub.
	<p>Does Wis. Stat. § 102.42(1m) require a worker's compensation claimant to prove that invasive treatment was related to a compensable work injury?</p> <p>Does Wis. Stat. § 102.42(1m) apply to invasive treatment that is not related to the employee's work injury, regardless of whether the treatment is medically necessary, or does it only apply to invasive treatment that is related to a work injury and determined to be medically unnecessary?</p>			
2015AP2019	<u>Tetra Tech EC, Inc., v. Wisconsin Department of Revenue</u>	04/24/2017 REVW	3 Brown	01/26/2017 Pub. 2017 WI App 4 373 Wis. 2d 287 890 N.W.2d 598
	<p>Whether a subcontractor's services are subject to Wisconsin sales and use tax (see Wis. Stat. § 77.52).</p> <p>Does the practice of deferring to agency interpretations of statutes comport with Article VII, Section 2 of the Wisconsin Constitution, which vests the judicial power in the unified court system?</p>			
2015AP2041-CR	<u>State v. Jose Alberto Reyes Fuerte</u>	01/18/2017 REVW	4 Columbia	10/26/2016 Pub. 2016 WI App 78 372 Wis. 2d 106 887 N.W.2d 121
	<p>Now that criminal defense attorneys are obligated to advise their clients about the immigration consequences of their pleas (<u>Padilla v. Kentucky</u>, 559 U.S. 356 (2010)), should the Wisconsin Supreme Court overturn its decision in <u>State v. Douangmala</u>, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1, and reinstate the harmless error rule where a defendant who was aware of the potential immigration consequences of his plea attempts to withdraw the plea after the circuit court failed to give a statutory immigration warning that complied with Wis. Stat. § 971.08(1)(c)?</p>			

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2015AP2052-CR	<u>State v. Kenneth M. Asboth, Jr.</u>  Must a community-caretaker impoundment of a vehicle be governed by "standard criteria" limiting the discretion of law enforcement officers and, if so, was an impoundment made in accordance with such criteria?  Was an impoundment a valid community caretaker action where the vehicle was parked at a private storage facility? Relatedly, does the Constitution require the state to show that a community caretaker impoundment and search is not a pretext concealing criminal investigatory motives?	01/09/2017 REVW Oral Arg 04/19/2017	4 Dodge	Unpub.
2015AP2224	<u>Wisconsin Association of State Prosecutors v. Wisconsin Employment Relations Commission</u>  The Legislature delegated to the Wisconsin Employment Relations Commission (Commission) authority to promulgate reasonable rules of governing annual elections for bargaining representatives. Here, the Commission promulgated rules requiring that interested associations, including current representatives, give notice by petition that they wish to appear on the next annual election's ballot. The issue is whether that rule is unreasonable in light of the annual election statutes.  An issue raised in the court of appeals by the plaintiffs concerns the timing of decertification. This issue only arises if the Commission has authority to decertify for failure to timely file a petition.	02/13/2017 REVW	1 Milwaukee	11/16/2016 Pub. 2016 WI App 85 372 Wis. 2d 347 888 N.W.2d 237
2015AP2366	<u>Thomas F. Benson v. City of Madison</u>  Is a Wisconsin municipality or other governmental unit engaging in revenue-generating activities in competition with private sector businesses a "person" required to abide by the rules under the Wisconsin Fair Dealership Law (Wis. Stat. ch. 135) that private businesses are obligated to follow?  Did a municipality, through the operation of its city-owned golf courses, sell any goods or services to the public, satisfying the goods and services element of the Wisconsin Fair Dealership Law, through independent contractors selling goods and services on behalf of the municipality?  Did the independent contractors' contractual obligations to contribute money annually to a joint advertising fund with the municipality, for purposes of marketing municipality golf courses utilizing a municipal brand, satisfy the Wisconsin Fair Dealership Law requirement for selling goods or services using a "trade name, trademark, service mark, logotype, advertising or other commercial symbol"?	01/10/2017 REVW Oral Arg 04/19/2017	4 Dane	Unpub.

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*2015AP2429-CR	<u>State v. Shannon Olance Hendricks</u>  Do Wisconsin Stat. § 971.08(1) and <u>State v. Bangert</u> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986) require that a defendant entering a guilty plea to child enticement with intent to have sexual contact understands the meaning of "sexual contact"?	05/15/2017 REVW	1 Milwaukee	Unpub.
2015AP2667-CR/ 2015AP2668-CR	<u>State v. Gerrod R. Bell</u>  Did the prosecutor's statements, which began in <u>voir dire</u> and continued in closing argument, deprive the defendant of a fair trial by shifting the burden of proof, depriving him of the benefits of a reasonable doubt instruction and commenting on his decision not to testify where the prosecutor told the jury that in order to find the defendant not guilty:  • they "have to believe" or "must believe" that the victims were lying about the alleged assaults; and  • there must be evidence of a reason for the victims to lie and the defendant has presented no reason, just speculation?  Was the defendant denied the right to effective assistance of counsel because the jury was given two unredacted exhibits containing information that one victim had never had sexual intercourse until she was assaulted by the defendant?	03/13/2017 REVW	4 Monroe	Unpub.
2016AP21	<u>Metropolitan Associates v. City of Milwaukee</u>  Whether the lower courts erred in determining that the City of Milwaukee complied with Wisconsin property assessment law, including the mandate of Wis. Stat. § 70.32(1) that the assessor utilize the best information available, in valuing the subject property for tax years 2008-2011 and holding that the City's assessments were valid and proper.  Whether the lower courts erred in holding that Metropolitan Associates failed to overcome the initial presumption of correctness contained in Wis. Stat. § 70.49.	03/13/2017 REVW	1 Milwaukee	Unpub.
2016AP46-FT	<u>Waukesha County v. J.W.J.</u>  Whether the standard adopted in <u>Fond du Lac County v. Helen E.F.</u> , 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, for determining whether an individual is a proper subject for treatment under Chapter 51 should be clarified.	09/13/2016 REVW Oral Arg 01/17/2017	2 Waukesha	Unpub.

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2016AP173-CR	<u>State v. Brian Grandberry</u>  As a matter of law, is there sufficient evidence to convict a person for carrying a concealed weapon (CCW), contrary to Wis. Stat. § 941.23, if the firearm is being transported in a vehicle in full compliance with the safe transport statute, Wis. Stat. § 167.31?  Is the CCW statute void for vagueness as applied to a person who transports a firearm in a vehicle in full compliance with the safe transport statute?	03/13/2017 REVW	1 Milwaukee	Unpub.
2016AP238-CR	<u>State v. Michael L. Washington</u>  May a defendant, by voluntary absence or other conduct, waive the statutory right to be present at trial before the trial has begun?	04/10/2017 REVW	2 Racine	01/26/2017 Pub. 2017 WI App 6 373 Wis. 2d 214 890 N.W.2d 592
2016AP275	<u>The Honorable William M. Gabler, Sr. v. Crime Victims Rights Board</u>  Whether separation of powers doctrine and due process protections in the state constitution are infringed where an executive branch agency sanctions a judge for a discretionary scheduling decision.  What are the limits of remedial powers of the Crime Victims Rights Board against sitting judges?  Whether a sitting judge is entitled to due process protections in the administrative proceedings of the Crime Victims Rights Board.	10/11/2016 BYPA Oral Arg 02/17/2017	3 Eau Claire	--
*2016AP474	<u>CED Properties, LLC v. City of Oshkosh</u>  Whether a plaintiff created a genuine issue of material fact such that the case should not have been decided on summary judgment.	05/15/2017 REVW	2 Winnebago	Unpub.
*2016AP619	<u>Winnebago County v. J.M.</u>  Whether the subject of a Wis. Stat. § 51.20(l)(a) extension of involuntary commitment and involuntary medication order has a claim for ineffective assistance of trial counsel where his lawyer fails to object to, prevent the admission of, or request a curative instruction to address, evidence of his prisoner status during his jury trial?  Whether the subject of a Wis. Stat. § 51.20(l)(a) extension of commitment is entitled to a new trial in the interests of justice where the jury repeatedly sees and hears evidence of his prisoner status?	05/15/2017 REVW	2 Winnebago	Unpub.

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*2016AP832	<u>Horizon Bank, National Association v. Marshalls Point Retreat LLC</u>  Where a foreclosure on mortgaged premises involves a guarantor, does Wis. Stat. § 846.165 require the trial court to determine the amount to be credited against the guarantor's obligation before confirming a sheriff's sale, or does the trial court have discretion to reach that issue later?  If the trial court must determine the amount to be credited against a guarantor's obligation in connection with confirming a sheriff's sale, does the guarantor have a due process right to present evidence on the question of fair value?	05/15/2017 REVW	3 Door	Unpub.
2016AP1980-W	<u>Department of Natural Resources v. Wisconsin Court of Appeals, District IV</u>  Whether Wis. Stat. § 752.21 (2) applies in this case to allow the petitioner to designate the appellate court that will hear its appeal.  Whether the petitioner has established the criteria to justify the issuance of an extraordinary writ. (See e.g., <u>State ex rel. Kalal v. Circuit Court for Dane Co.</u> , 2004 WI 58, ¶ 17, 271 Wis. 2d 633, 681 N.W. 2d 110)	02/14/2017 WRIT	4 Dane	--

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