

June 26, 2023

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **June 26, 2023**. 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.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2018AP2005-CR	<u>State v. Garland Dean Barnes</u> Can a defendant "open the door" to testimonial hearsay violating his confrontation rights, and which was excluded based on an "egregious" discovery violation, by challenging the quality of the police investigation? Can the claim that a non-testifying officer witnessed the defendant commit the crime be admitted over hearsay objections under the theory that it is admissible to show the course of investigation, not for the truth of the matter asserted?	04/15/2022 REVW Affirmed 06/06/2023 2023 WI 45	3 Douglas	Unpub.
2019AP664-CR	<u>State v. Alan S. Johnson</u> Whether an alleged victim in a criminal case has standing under the 2020 Wisconsin Constitutional Amendment to lodge legal arguments in opposition to a defendant's motion for in camera review. Whether the 2020 Wisconsin Constitutional Amendment applies retroactively to an alleged victim's request for standing to lodge legal arguments in opposition to a pending motion for in camera review which was filed, and pertinent issue litigated, prior to the enactment of the amendment. Whether Wis. Stat. § 950.105, which provides in relevant part that, "[a] crime victim has a right to assert, in a court in the county in which the alleged violations occurred, his or her rights as a crime victim under the statutes or under article 1, section 9m of the Wisconsin Constitution," confers standing upon the alleged crime victim in this matter.	02/26/2021 REVW Reversed; remanded 05/16/2023 2023 WI 39	4 Waupaca	11/19/2020 Pub. 2020 WI App 73 394 Wis. 2d 807 951 N.W. 2d 616

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2019AP1085 2019AP1086	<p><u>5 Walworth, LLC v. Engerman Contracting, Inc.</u></p> <p>Whether there must be damage to third-property for there to be "property damage" caused by an "occurrence" under a standard Commercial General Liability ("CGL") insurance policy.</p> <p>Whether the integrated-systems test analysis applies to insurance coverage disputes to aid in the determination of whether there was "property damage" caused by an "occurrence."</p> <p>When a plaintiff's claims exclusively seek the cost of removing and replacing an improperly constructed product, and allege no damage to property other than to that product itself, has there been an "occurrence" such that a standard Commercial General Liability ("CGL") insurance policy must provide coverage?</p> <p>Does the integrated-systems test apply in construction related insurance coverage cases to help determine whether "property damages" were the result of an "occurrence"?</p> <p>Is an insurer entitled to summary judgment declaring it has no coverage obligations when its policy commenced roughly a year after a contractor had received notices of damages, had attempted to repair damages, and was aware of claims of ongoing damages at a pool complex, when its policy does not extend to losses which have occurred, or which have begun to occur, prior to its term?</p> <p>Does the plaintiff's claim that it bought a defective pool complex that needed to be replaced constitute "property damage" caused by an "occurrence" within the meaning of the commercial general liability policy issued by the insurer to a construction company?</p> <p>Is the pool complex an "integrated system" such that damage by one component to another component is not "property damage" caused by an "occurrence"?</p> <p>Do the policy's business risk exclusions, specifically the "your product" exclusion, eliminate coverage under the insurer's policy?</p>	<p>01/11/2022 REVW Affirmed; remanded 06/20/2023 2023 WI 51</p>	<p>2 Walworth</p>	<p>08/25/2021 Pub. 2021 WI App 51 399 Wis.2d 240 963 N.W.2d 779</p>
2019AP2383-CR	<p><u>State v. Daimon Von Jackson, Jr.</u></p> <p>Is a defendant prejudiced when trial counsel does not communicate with the defendant in advance of a homicide trial?</p> <p>Should a defendant be allowed to obtain new counsel when that defendant's counsel is deficient?</p>	<p>03/15/2022 REVW Dismissed 05/12/2023 2023 WI 37</p>	<p>2 Racine</p>	<p>Unpub.</p>

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*2020AP333	<u>Erik A. Andrade v. City of Milwaukee Bd. of Fire and Police Commissioners</u> Did the Chief of Police deprive an officer of Due Process by failing to provide an explanation of his evidence supporting his decision to discharge the officer? Did the Chief of Police deprive an officer of Due Process by failing to comply with Wis. Stat. §62.50(13)?	06/22/2023 REVW	1 Milwaukee	Unpub.
2020AP806	<u>Allsop Venture Partners III v. Murphy Desmond SC</u> When is evidence of a settlement between plaintiff and co-defendant joint tortfeasors admissible under Wis. Stat. § 904.08? Are allegations in a prior, unverified and superseded complaint admissible as admissions of a party opponent if the prior allegations are not inconsistent with the operative complaint? Is a negligent tortfeasor entitled to indemnity from an intentional tortfeasor without proof of any connection between the intentional wrongdoing and subsequent negligence? Do certain comments made in defense counsel's closing argument require a new trial?	05/18/2022 REVW Affirmed 06/02/2023 2023 WI 43	4 Dane	Unpub.
2020AP819-CR	<u>State v. Wilson P. Anderson</u> Did the State present sufficient evidence to meet its burden to prove the second, third, and fourth <u>Sell</u> factors by clear and convincing evidence? <u>Sell v. United States</u> , 539 U.S. 166 (2003). Was a doctor sufficiently qualified to offer expert testimony on the <u>Sell</u> factors?	09/13/2022 REVW Per Curiam; reversed 06/02/2023 2023 WI 44	1 Milwaukee	--
2020AP1213-CR	<u>State v. Corey T. Rector</u> Whether the plain meaning of "separate occasions" in the sex-offender-registration statute means that the two convictions must have occurred at <u>different</u> times in two <u>separate proceedings</u> so that the qualifying convictions occurred sometime before a defendant is convicted in the current case. Stated otherwise, can the qualifying convictions occur simultaneously, as they did in this case, and as <u>State v. Wittrock</u> , 119 Wis. 2d 664, 350 N.W.2d 647 (1984) and <u>State v. Hopkins</u> , 168 Wis. 2d 802, 484 N.W.2d 549 (1992) held?	02/16/2022 CERT Affirmed 05/23/2023 2023 WI 41	2 Kenosha	--

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2020AP1454	<p><u>Neil J. Rennick v. Teleflex Medical Incorporated</u></p> <p>Should the Court expressly adopt the learned intermediary doctrine as a matter of Wisconsin law? (See, e.g., <u>Rodman v. Otsuka Amer. Pharm., Inc.</u>, 2020 WL 2525032, ___ F.Supp. 3d ___, (N.D. Cal. 2020), <u>In re Zimmer, NexGen Knee Implant Prods. Liab. Litig.</u>, 884 F.3d 746, 752 (7th Cir. 2018)).</p> <p>Is the court of appeals permitted to reverse a circuit court decision based on incorrect statements by the court of appeals regarding what the circuit court decided and what was argued on appeal?</p>	<p>09/13/2022 REVW Per Curiam; Affirmed by evenly divided court 04/28/2023 2023 WI 34</p>	<p>1 Milwaukee</p>	<p>Unpub.</p>
2020AP1728-CR	<p><u>State v. Percy Antione Robinson</u></p> <p>Whether the CR-215 procedure triggers the attachment of the Sixth Amendment right to counsel, which would then entitle an accused person to have the right to counsel for any subsequent "critical stage" of the legal proceedings.</p>	<p>05/18/2022 CERT Oral Arg 11/08/2022</p>	<p>1 Milwaukee</p>	<p>--</p>
2020AP1775	<p><u>Nancy Kindschy v. Brian Ash</u></p> <p>Whether Wis. Stat. §813.125, as construed by the Court of Appeals to prohibit speech from a public sidewalk intended to persuade listeners to repent sinful conduct violates the First Amendment of the U.S. Constitution and Art. I, §3 of the Wisconsin Constitution?</p> <p>Whether speech from a public sidewalk intended to persuade listeners, even if directed to a specific listener, to repent sinful conduct serves "no legitimate purpose" within the meaning of Wis. Stat. §813.125?</p> <p>Whether enjoining, for a period of four years, a pro-life, anti-Planned Parenthood protestor from protesting on a public sidewalk in front of a Planned Parenthood during its business hours constitutes an unconstitutional restraint on First Amendment protected expression?</p>	<p>06/22/2022 REVW Oral Arg 12/01/2022</p>	<p>3 Trempealeau</p>	<p>04/28/2022 Pub. 2022 WI App 17 401 Wis. 2d 406 973 N.W.2d 828</p>

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2020AP2003	<u>Wisconsin Justice Initiative, Inc. v. Wisconsin Elections Commission</u> In the April 7, 2020 election, Wisconsin voters ratified "Marsy's Law"—the proposed amendment to WIS. CONST. art. I, § 9m that provided additional "privileges and protections" to crime victims. Did the ballot question for the Marsy's Law amendment in the April 2020 election "reasonably, intelligently, and fairly comprise or have reference to every essential of the amendment"? <u>See State ex rel. Ekern v. Zimmerman</u> , 187 Wis. 180, 201, 204 N.W. 803 (1925). Was the ballot question for the Marsy's Law amendment misleading—either by containing misinformation or by failing to "mention[] [its subject] in accord with the fact"? <u>See State ex rel. Thomson v. Zimmerman</u> , 264 Wis. 644, 660, 60 N.W.2d 416 (1953). Under the "separate amendment" rule, was the Marsy's Law amendment required to have been submitted as more than one ballot question because it encompassed more than one subject matter and accomplished more than one purpose? <u>See McConkey v. Van Hollen</u> , 2010 WI 57, ¶¶25-26, 41, 326 Wis. 2d 1, 783 N.W.2d 855.	02/17/2022 CERT Reversed 05/16/2023 2023 WI 38	4 Dane	--
2020AP2007	<u>Catholic Charities Bureau, Inc. v. State of Wisconsin Labor and Industry Review Commission</u> Whether Wisconsin's unemployment insurance law, which exempts "an organization operated primarily for religious purposes," exempts Petitioners. Whether the court of appeals' interpretation of the religious exemption to Wisconsin's unemployment insurance law violates the First Amendment to the United States Constitution and Article I, Section 18 of the Wisconsin Constitution.	04/18/2023 REVW	3 Douglas	03/29/2023 Pub. 2023 WI App 12 406 Wis. 2d 586 987 N.W.2d 778
2020AP2012-CR	<u>State v. James P. Killian</u> Has the defendant been exposed to multiple prosecutions for the same offense in violation of double-jeopardy principles?	01/18/2023 REVW Reversed; remanded 06/21/2023 2023 WI 52	3 Trempealeau	08/31/2022 Pub. 2022 WI App 43 404 Wis. 2d 451 979 N.W.2d 569
2021AP69-FT	<u>Greenwald Family Limited Partnership v. Village of Mukwonago</u> Did the service of the Notice of Appeal required by Wis. Stats. § 66.0703(12) on the attorney of record for the Village, who had previously admitted service of the underlying summons and complaint in the case, satisfy the requirement to serve written notice of appeal on the Village clerk?	11/16/2022 REVW Affirmed 06/21/2023 2023 WI 53	2 Waukesha	--

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2021AP267-CR	<u>State v. Mitchell D. Green</u> Did the circuit court erroneously exercise its discretion when it concluded that there was a manifest necessity for a mistrial after the defendant introduced unnoticed third-party perpetrator evidence at trial via the testimony of a witness who claimed to have committed the crime but was unrepresented by counsel?	06/22/2022 REVW Oral Arg 12/01/2022	1 Milwaukee	Unpub
2021AP311-CR	<u>State v. Donte Quintell McBride</u> When reviewing a motion to suppress, what is the proper application of the “clearly erroneous” standard of review? Was the seizure and subsequent search constitutional where the law enforcement officer observed two people sitting in an unilluminated SUV, which appeared to obstruct traffic, late at night in a high crime area when the defendant made furtive movements in response to officer’s spotlight?	04/18/2023 REVW	1 Milwaukee	Unpub.
2021AP373	<u>Derrick A. Sanders v. State of Wisconsin Claims Board</u> When a petitioner has requested compensation in excess of the \$25,000 statutory maximum and the Claims Board awards that \$25,000 statutory maximum, does Wis. Stat. § 775.05(4) require the Claims Board to offer an affirmative exercise of discretion as to why it did not submit a report to the Legislature regarding additional compensation?	01/18/2023 REVW Oral Arg 04/19/2023	4 Dane	Unpub.
2021AP462-CR	<u>State v. Michael K. Fermanich</u> Whether, in order to prove that his custody was “in connection with the course of conduct for which sentence was imposed” on count one, under Wis. Stat. § 973.155(1)(a), the defendant was required to prove that count one was based on the same “specific act” as counts four and five. Whether <u>State v. Tuescher</u> 226 Wis. 2d 465, 595 NW 2d 443 (1999 Ct. App.) should be re-examined to determine whether its definition of “course of conduct” as meaning “specific act” was erroneous, or alternatively, whether the definition should be limited to the specific circumstances present in <u>Tuescher</u> .	06/22/2022 REVW Reversed 06/14/2023 2023 WI 48	3 Langlade	Unpub

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2021AP635	<p><u>Pepsi-Cola Metropolitan Bottling Company, Inc. v. Employers Insurance Company of Wausau</u></p> <p>Whether the unambiguous consent-before-assignment provisions in the Wausau Policies should be applied as written to prevent assignment of policy rights after an occurrence but prior to any third-party claims being brought.</p> <p>Even if the consent-before-assignment provisions are held unenforceable, whether Old Waukesha assigned its insurance rights under the Wausau Policies to New Waukesha as part of the 1968 Reorganization Agreement.</p> <p>Even if the consent-before-assignment provisions are held unenforceable, whether Abex assigned New Waukesha's insurance rights under the Wausau Policies to PA Holdings as part of the 1990 Assignment and Assumption Agreement.</p> <p>Assuming the consent-before-assignment provisions are unenforceable, and the Wausau Policies were properly assigned to Pneumo Abex, whether Wausau has a duty to defend the Huff Complaint.</p>	<p>11/16/2022 REVV Per Curiam; Affirmed – court did not reach a majority 05/24/2023 2023 WI 42</p>	<p>2 Waukesha</p>	<p>08/31/2022 Pub. 2022 WI App 45 404 Wis. 2d 337 979 N.W.2d 627</p>
2021AP809-CR	<p><u>State v. Junior L. Williams-Holmes</u></p> <p>Can a circuit court use its statutory authority to modify conditions of probation and extended supervision to regulate the day-to-day affairs of individuals on supervision, contrary to statutes conferring on the Department of Corrections the exclusive authority to administer probation?</p>	<p>11/16/2022 REVV Reversed; remanded 06/20/2023 2023 WI 49</p>	<p>2 Kenosha</p>	<p>07/27/2022 Pub. 2022 WI App 38 404 Wis. 2d 88 978 N.W.2d 523</p>
2021AP938-CR	<p><u>State v. Quaheem O. Moore</u></p> <p>Did the court of appeals correctly apply <u>State v. Secrist</u>, 224 Wis. 2d 201, 589 N.W.2d 387 (1999) to establish a standard of evidence for search and arrest based on the odor of a controlled substance that is more demanding than the constitutional standard of probable cause?</p> <p>Under the totality of the circumstances, which included the "strong" odor of marijuana and these two, additional objective facts, did officers have probable cause to conduct the search of the defendant's person incident to arrest?</p>	<p>12/22/2022 REVV Reversed; remanded 06/20/2023 2023 WI 50</p>	<p>4 Wood</p>	<p>Unpub.</p>

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2021AP1054	<u>Femala Fleming v. Amateur Athletic Union of the United States, Inc.</u> Do claims for negligent hiring and negligent supervision of the sexual abuser of a child constitute violations of Wis. Stat. § 948.02 or Wis. Stat. § 948.025 such that an injured party may file such claims against a non-abuser at any time before reaching the age of 35 years under Wis. Stat. § 893.587? Are claims for negligent hiring and negligent supervision of a sexual abuser subject to the three-year limitations period in Wis. Stat. § 893.54? If Wis. Stat. § 893.587 applies to plaintiff's claims against a non-abuser, does § 893.587 operate as a statute of repose to which no tolling provision applies, thus barring any claims brought after the injured party turns 35 years old, or as a statute of limitations, such that the tolling provisions in Wis. Stat. § 893.13 apply to extend the time within which plaintiff may file an action under § 893.587?	11/16/2022 REVW Reversed 05/17/2023 2023 WI 40	4 Dane	08/31/2022 Pub. 2022 WI App 46 404 Wis. 2d 377 979 N.W.2d 614
2021AP1399-CR	<u>State v. Morris V. Seaton</u> In light of the 2014 amendment of Wis. Stat. § 904.04(2)(b) (2019-20), ¹ codifying and expanding the "greater latitude" rule and the Wisconsin Supreme Court's decision in <u>State v. Dorsey</u> , 2018 WI 10, ¶¶23-25, 379 Wis. 2d 386, 906 N.W.2d 158, interpreting and applying that amendment, are <u>State v. Alsteen</u> , 108 Wis. 2d 723, 324 N.W.2d 426 (1982), and <u>State v. Cofield</u> , 2000 WI App 196, 238 Wis. 2d 467, 618 N.W.2d 214, still controlling law as they relate to the admissibility of prior nonconsensual sexual wrongs in cases involving an adult victim of an alleged sexual assault where consent is the primary issue?	03/24/2023 CERT	2 Waukesha	--
2021AP1732-CR	<u>State v. Eric J. Debrow</u> Did the court of appeals apply the proper legal standard to its review of the circuit court's decision to deny a defendant's motion for a mistrial when it considered the adequacy of the curative instruction given by the circuit court and, if not, did the circuit court properly exercise its discretion in denying the motion for a mistrial?	12/14/2022 REVW Reversed 06/23/2023 2023 WI 54	4 Dane	Unpub.

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2021AP1764	<u>Thomas G. Miller v. Zoning Bd. of Appeals of the Village of Lyndon Station</u> Whether there is a Due Process right to impartial decisionmakers in rezoning hearings in Wisconsin and, if so, whether it is commensurate with the recusal requirements of Wis. Stat. § 19.59; Whether rezoning of a single parcel is a quasi-judicial or legislative determination; and Whether the zoning board of appeals had jurisdiction to hear petitioner's appeal from the village board's rezoning decision, and, if not, whether the court of appeals' decision should be vacated.	12/14/2022 REVW Affirmed 06/06/2023 2023 WI 46	4 Juneau	09/28/2022 Pub. 2022 WI App 51 404 Wis. 2d 539 980 N.W.2d 295
2021AP1787-FT	<u>Allen Gahl v. Aurora Health Care, Inc.</u> Whether the "plain-meaning" of the Health Care Power of Attorney from which was created statutorily by Wis. Stat. § 155.30(1) gave the circuit court the authority to grant declaratory and injunctive relief to patients. Whether a violation of the Hippocratic Oath or the provider's contractual duty of "good faith and fair dealing" breach an implied contract between the patient and hospital. Whether the circuit court has the inherent authority to provide equitable remedy for a patient. Whether the Circuit Court has the authority under Wis. Stat. § 448.30 to provide declaratory and injunctive relieve to a patient.	09/13/2022 REVW Affirmed 05/02/2023 2023 WI 35	2 Waukesha	06/29/2022 Pub. 2022 WI App 29 403 Wis. 2d 539 977 N.W.2d 756
2022AP140-FT	<u>Walworth County v. M.R.M.</u> Does the Wisconsin Supreme Court's decision in <u>Waukesha County v. E.J.W.</u> , 2021 WI 85, ¶138, 399 Wis. 2d 471, 966 N.W.2d 590, have retroactive application or only prospective application? In a Wis. Stat. ch. 51 case involving a petition to extend a commitment order, is circuit court competency determined from the expiration of the earlier commitment order or from the expiration of the extension order, even where the extension order is determined on appeal to be invalid?	09/13/2022 CERT Oral Arg 02/20/2023	2 Walworth	--

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2022AP652	<u>State v. A.G.</u> Whether criminal procedures prescribed in <u>State v. Bangert</u> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986) regarding review of a motion to withdraw plea should rigidly apply to termination of parental rights proceedings. Whether a respondent parent loses their right to appeal after failing to attend a remand hearing for which they were provided sufficient notice of the hearing and for which there is no excuse given for their lack of appearance. Was the respondent's plea entered knowingly, intelligently and voluntarily?	10/11/2022 REVW Oral Arg 01/17/2023	1 Milwaukee	Unpub.
2022AP1233	<u>Wisconsin Property Tax Payers, Inc. v. Town of Buchanan</u> Does Wis. Stat. § 66.0827 authorize the Town's Transportation Utility Fee? Does the Town's Transportation Utility Fee violate its levy limit under Wis. Stat. § 66.0602? Does the Town's Transportation Utility Fee violate the Uniformity Clause of the Wisconsin Constitution?	12/14/2022 BYPA Oral Arg 03/13/2023	3 Outagamie	--
2022AP1334	<u>A.M.B. v. Circuit Court of Ashland County</u> Whether Wis. Stat. Ann. § 48.81 and 48.92(2) violate the equal protection rights under Wis. Const., art. I, § 1 and the Fourteenth Amendment of the U.S. Constitution, by requiring A.M.B. and T.G. to be married to enable T.G. to adopt her. Whether Wis. Stat. Ann. § 48.81 and 48.92(2) violate the equal protection rights under Wis. Const., art. 1, § 1 and the Fourteenth Amendment of the U.S. Constitution by requiring T.G. to be married to A.M.B. to adopt M.M.C. Do unstated legislative interests of "promoting marriage" and "preserving the traditional unitary family" trump the stated legislative interest of promoting the best interest of the child in Chapter 48? Is it consistent with Wisconsin law to discriminate against individuals based on marital status for stepparent adoptions to "promot[e] marriage" and "protect the traditional unitary family"?	02/21/2023 BYPA	3 Ashland	--
2022AP1999-W	<u>Antonio S. Davis v. Circuit Court for Dane County</u> Whether the State Public Defender's inability to appoint counsel before the deadline for requesting a substitution of judge expires is a "government created obstacle" that interferes with a defendant's intelligent exercise of his right of substitution. Alternatively, whether the doctrine of equitable tolling tolls the deadline for filing a request for substitution of judge until the defendant is appointed counsel.	03/31/2023 REVW	4 Dane	

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