MILWAUKEE BAR ASSOCIATION, INC. 1858

Spring 2017 • Volume 1

MBA Messenger

Judges Night 2017

Photo by *Wisconsin Law Journal*

RE-ELECT BILL GLEISNER TO THE JUDICIAL COUNCIL

Elections to the Wisconsin Judicial Council ought to be very different from routine State Bar Elections. The Judicial Council has nothing to do with the administration of the State Bar. Pursuant to Wis. Stat. §§751.12 and 758.13, the twenty-one-member Judicial Council is a public body that is charged with assisting the Wisconsin Supreme Court and the Legislature in developing rules of judicial administration, civil procedure and evidence that control the day-to-day and long term operation of all our courts. Candidates for election to the Judicial Council should have demonstrated proficiency in legal scholarship and extensive experience in and knowledge of our courts. Further, since there are only three State Bar representatives on the Council, State Bar representatives to the Council must represent the interests of **all State Bar members** by seeking always to achieve balanced rule-making which serves the best interests of all members of the Bar. This in turn presupposes a firm grasp of the history of Wisconsin's Common Law, as well as Wisconsin's existing rules of procedure, evidence and appellate practice. Finally, State Bar representatives to the Council should be skilled at performing comprehensive analyses of how laws function in the other forty-nine states and in the Federal Court System, so as to assure the best solution for Wisconsin.

• **My background has prepared me to serve on the Council.** I have been a trial lawyer since 1974 and I have an established record of legal scholarship and practical experience in the administration of justice in Wisconsin.

• **Since 2008, I have strived to serve the interests of all the members of the Wisconsin State Bar.** My commitment to representing the interests of all members of the State Bar is demonstrated best by the diversity of my supporters, some of whom are set forth below. I have always tried hard to protect the best interests of all parties and their counsel by seeking the adoption of rules which are both well written and carefully designed in order to facilitate the fair resolution of procedural disputes in our trial and appellate courts.

• **The Council's work must address Twenty-First Century issues.** I was one of the principal drafters of Wisconsin's new e-discovery rules and I am able to provide important guidance to the Council concerning the realities of the electronic practice of law, e-discovery and digital evidence. I co-authored (with Professor Jay Grenig of the Marquette Law School) a lengthy treatise entitled e-Discovery & Digital Evidence, which is a nationally recognized resource that has been published and re-published every year since 2005.

• **The Council's work should be completely transparent.** The Judicial Council is a public body and it impacts all aspects of the civil and criminal justice system in Wisconsin. I have always worked to insure that input is sought from all members of the State Bar who will be affected by recommendations of the Council.

• **Work on the Council includes appearances before the Supreme Court.** I am an experienced appellate advocate, having researched, authored or co-authored over one hundred appellate briefs in Wisconsin and elsewhere. I have appeared a number of times before the Wisconsin Supreme Court both as counsel and as an advocate for recommendations of the Council.

I respectfully ask that you vote to keep me on the Council as your representative this coming April. You can contact me at bill@pksd.com.

Bill Gleisner

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See www.electgleisner.com for other accomplishments and endorsements.

Regular Features

Make Your Voice Heard

Send your articles, editorials, or anecdotes to mflores@milwbar.org. We also have seats available on the *Messenger* Committee.

We look forward to hearing from you!
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Letter From the Editor

Charlie Barr, Editor

Recently, I spent a week in Israel, which included a visit to Yad Vashem, the Holocaust memorial in Jerusalem. The spate of anti-Semitic crimes in the U.S.—widespread bomb threats to Jewish community centers, desecration of Jewish cemeteries—is big news in Israel, seemingly bigger there than where it's happening.

Is this just an anomalous spike? Or is it the harbinger, or start, of something else? Is it a venomous outgrowth of the nationalism sweeping Western politics?

I'll admit my first inclination was complacency. The legal traditions and institutions in this country, built on principles of equality and fairness, are so strong. And do we not have a prominent Holocaust memorial in our capital, as well?

The Jewish citizens entrenched in German cultural and economic life in the 1930s thought their country's legal traditions and institutions were strong too—until suddenly they weren't citizens any more. It looks like a long journey from where we are now, but it can be a swift one. Only three generations removed from genocide, I can't quite ignore the still, small voice: "This is how it starts."

So, yes, it's time to speak out. Time to ring the bell.

But is that good enough? The Israeli news included an account of Muslim groups and individuals who not only spoke out against the cemetery desecration, but also came to help right the toppled headstones. I must ask myself: where was my outrage when Muslims suffered violence and discrimination in the aftermath of 9/11? When a group of immigrants was recently gunned down in Kansas? During the seemingly endless epidemic of young black men dying in law enforcement encounters? We've all heard the familiar quotation of Protestant pastor Martin Niemöller that ends, "Then they came for me—and there was no one left to speak for me." This adorns a wall at Yad Vashem.

Easy enough it is, and natural, to decry hate crimes against those with whom one closely identifies. But if we stop there, if we don't speak up and act to counter hatred and violence against all religious and ethnic groups, we won't make much headway. And we lawyers should be the first to ring the bell.

We have a great spring lineup in the *Messenger.* Judge Michael Dwyer and Susan Hansen report on the Wisconsin Supreme Court's approval of a petition to expand the role of lawyer-mediators in family law cases. Staying in the family law arena, Matt Ackmann updates us on proposed changes in the high-income payer child support formula.

Ben Reyes dissects a recent Seventh Circuit opinion on a developing defense to "no-injury" class actions based on lack of standing. Andrew Mishlove and Lauren Stuckert review the tricky issues that arise in defending Illinois residents against drunk driving charges in Wisconsin. Regular contributor Doug Frazer is back with a primer on Wisconsin's forms of local government, including the volatile home rule issue.

Moving to healthcare law, Robyn Shapiro assays the "right to try" laws springing up across the country to facilitate access by terminally ill patients to experimental treatments. Raphael Ramos discusses the work of the Eviction Defense Project. Our friends at Michael Best open windows on the future of the Dodd-Frank Act under the Trump administration, and an unsuccessful effort by mortgage bankers to exempt themselves from robocall rules under the Telephone Consumer Protection Act.

Fran Deisinger reviews the film "Woman in Gold." We link to the MBA's Judicial Forums for the contested municipal and circuit court races. We have Judges Night photos and a food review from *Messenger* alum Britt Wegner.

And now for something completely different: the MBA's Annual Meeting on May 16 will be at Miller Park! Batting practice immediately following the meeting! I've been waiting for a long time to get some of you characters out on the field of play. Yes, *especially* the judges. Now we'll see who has the goods and who's just a big talker. Hold the phone … you're telling me the Brewers nixed that idea? No BP? Oh, fudge. Never mind, then. But you still can't miss the first-ever Annual Meeting at Miller Park.

We hope you enjoy this issue of the *Messenger,* and that spring isn't as far off as it appears at this writing. You could indulge that perennially vain hope with long, mournful gazes out the window, or you could make productive use of your time and drop us a line.

—C.B.

Member News


Joseph M. Peltz

Beck, Chaet, Bamberger & Polsky announced that **Joseph M. Peltz** has become a shareholder in the firm. He concentrates his practice in business litigation, including breach of contract and business tort cases, real estate disputes, shareholder disputes, and debtor/creditor disputes.

The firm also announced that **Ilana Spector** has joined the firm as an associate. She concentrates her practice in healthcare regulatory and related matters.


Kelly S. Kuglitsch

O'Neil, Cannon, Hollman, DeJong & Laing announced the addition of two lawyers. **Kelly S. Kuglitsch** joined the employment law practice group, representing employer sponsors and related service providers concerning benefit and compensation plans. **J. William Boucher** joined the corporate practice group, representing businesses and individuals concerning federal, state, and international tax issues.


J. William Boucher


Nancy Bonniwell


Ann Chandler

von Briesen & Roper announced that all the attorneys and staff from the Milwaukee law firm of **Weiss Berzowski** joined von Briesen effective November 30, 2016. The lawyers at Weiss Berzowski concentrate their practices in corporate law, real estate, estate planning, and tax.


Adam Finkel


Aaron Foley


Andrew Frost


Dan McDermott


Randy Nelson


Rick Rakita


Dave Roettgers


John Sikora


Rob Teuber


Barry White


Peter White


Jeff Wilson

Volunteer Spotlight


Tim Teicher

Tim Teicher, a graduate of the University of Minnesota Law School and former MBA Lawyer Referral & Information Service volunteer, recently accepted a position at the United States Patent and Trademark Office in Alexandria, VA, where he will focus on patent law issues. As an MBA volunteer, Tim donated several hours every week aiding southeastern Wisconsin residents with legal problems by providing referrals to local attorneys and direction to *pro bono* legal services.

When asked what he believes to be the most important aspect of his volunteer work, Tim said, "Access to legal help for those who could not otherwise get it is big. However, I think the greater benefit comes from the non-legal help that lawyers can provide—the advice based on past experiences (personal and professional), knowledge of the local area's legal resources and social services, and being able to objectively look at someone's problem. After all, if someone thinks they might need legal help, they probably aren't in a good emotional state and therefore can't be objective."

When Tim isn't working or volunteering, he enjoys visiting the family cabin, watching stand-up comedy, and playing fetch with his family's dog, Denny.

What's next for Tim? You might imagine he envisions ascending the ladder at the Patent and Trademark Office, but when asked, his response was a bit more modest: "Keep learning, keep improving, and get some more interesting hobbies to talk about."

Like most attorneys, Tim isn't ostentatious or looking for fame. He is a professional who vowed never to reject the cause of the defenseless or oppressed. It is a vow he has honored.

Attorneys Needed for Milwaukee Justice Center Mobile Legal Clinic

Is improving access to justice a priority for you? Are you looking for opportunities to provide *pro bono* services to those in need? The Mobile Legal Clinic is currently requesting attorney volunteers to staff the clinic for these shifts:

- **Second Tuesday of every month** from 9:30 to 11:30 a.m. at the Washington Park Senior Center
- **Third Wednesday of every month** from 3:00 to 5:00 p.m. at the Silver Spring Neighborhood Center
- **Saturdays** throughout the year

For more information or to sign up, contact Melissa Bartolomei, Attorney Supervisor, Milwaukee Justice Center, (414) 278-3988 or melissa.bartolomei@wicourts.gov.

Message From the President

Attorney Andrew J. Wronski, Foley & Lardner

It's hard to believe this is my last column as MBA president; the year has gone quickly. As they say, time flies when you're having fun! My last message is something of a hodge-podge of thoughts, so here we go.

We welcomed our newest honorary member, Evelyn Celine Martis, to the world on March 23. Congratulations to Sarah Martis, our executive director, and her family on this wonderful blessing!

Evelyn is not the only new addition to our MBA family. I am excited to introduce Chronda Higgins as the MBA's new meeting and events coordinator and Marion Berry as our new LRIS coordinator. Please stop in and welcome them to the MBA.

In the past few weeks, the MBA conducted three judicial candidate forums, two for municipal court and one for circuit court. These events were well attended and, for the first time, streamed on Facebook Live, which enabled many more members of our community to join us. I thank Judge John DiMotto for facilitating the forums, and all of the candidates for participating. The forums were interesting and informative, and fostered one of the MBA's central missions. I encourage everyone to attend future candidate forums and reinforce with your presence the critical importance of judicial elections in our community.

We have two great events on the horizon. The MBA Memorial Service will be held at noon on May 19 in Room 500 of the courthouse. To be honest, I had never attended before holding an MBA office. Having now attended the past several years, it has become one of my favorite MBA events. The service is solemn and moving. We pay tribute to the remarkable achievements and contributions of our members who have passed away. Last year, I was approached after the service by a family member of one of those we remembered. She thanked me and expressed how deeply touched she was that we honored her loved one. That made a profound impact on me. I'll never miss this event again if I can help it. It will make an impact on you, too. Please come.

You may have seen some of our teasers; we are shaking up the Annual Meeting this year. Our traditional venue, the Italian Conference Center, is unavailable due to renovations, so we are using this opportunity to try something new and, we think, very exciting. The event will be held at Miller Park in the evening on May 16. We'll conduct our annual business and honor our award winners in the seating bowl, and then have a networking and cocktail reception in the Miller Park concourses. As many of you know, I am a baseball nut, so it seemed only fitting to end my tenure on (okay, near) a baseball field. There will be free and ample parking. We promise some fun surprises and plenty of time to connect and catch up with your colleagues over a beer on a (hopefully) warm and beautiful spring evening. We'll have the roof in any event! Watch for more details in coming weeks and please spread the buzz!

Finally, a few words of thanks. This was an exciting and challenging (in a good way) year at the MBA, with lots of change. Our amazing staff led the way and showed me the ropes. To Sarah, Katy, Morgan, and Dorothy, thank you for all of your energy, enthusiasm, and love for the MBA. It shows in everything you do, and the MBA is lucky to have you. I am also so grateful to have worked closely and become fast friends with our Executive Committee—Marcia Drame, Shannon Allen, Matt Falk, and Pat Hintz—and for the dedication of time and talent by every member of our board. The MBA will be in wonderful hands with Shannon at the helm and Matt waiting in the wings. We will continue to roll out innovative and exciting initiatives, such as the comprehensive and multi-disciplinary "CLE 101" curriculum focused on our newest members, in the coming year. Stayed tuned, as there is much more to come.

Most of all, I want to thank all of you, our members, for giving me this wonderful opportunity. In past columns, I have written about how isolating and lonely a modern law practice can be, and encouraged everyone to put down their phones, close their laptops, and reconnect with friends and colleagues in our legal community. Through this experience, I have been able to do that in a special way. It has been my pleasure and my privilege to meet so many of you whose paths I would never have crossed were it not for the MBA. I hope each of you will take advantage of everything this fine organization has to offer, so that we can continue to connect and build community in the bar. Thank you for giving me that opportunity over the past year. I look forward to seeing you all around town!

2017 State Bar of Wisconsin President-Elect Nominees Announced

Christopher E. Rogers and **Jon P. Axelrod** have accepted nominations to run for 2017 State Bar of Wisconsin president-elect. The president-elect serves a one-year term before becoming president.

Rogers graduated from the University of Wisconsin Law School in 1995. He has been with *Habush Habush & Rottier* since 1999 and is a shareholder there. After practicing in the firm's Lake Geneva office for several years, he is now based in the Madison office, working on cases involving injuries from product defects, automobile accidents, and general negligence. "If elected, I will work with the energy, passion, and commitment that the position requires," he said. "I will never lose sight of the fact that the State Bar needs to drive competitive advantage for you, our members, and that we are here to serve you. I welcome your dialogue and your ideas and I ask for your vote."

Axelrod is a shareholder at *DeWitt Ross & Stevens,* where he has practiced civil litigation since 1974. For the past 12 years, he has served as a board member of the University of Wisconsin Law School Friends of the Remington Center Endowment, which funds criminal justice programs at the UW Law School. "The State Bar can now more than ever be a progressive force to make our civil and criminal justice system more fair, our judiciary more independent, and our profession more skilled in serving the needs of the public," he said. "I am excited about the prospect of taking on these challenges. If I am fortunate enough to be elected president of the State Bar, I will work tirelessly on your behalf."

Voting begins in April.

CLE Calendar

Spring 2017

All CLEs at the MBA unless otherwise noted.

Monday, March 27
Working Effectively with Milwaukee County Child Support Services
12:30 - 1:30 p.m.
Jim Sullivan and Nidhi Kashyap, Milwaukee County Child Support Services
1.0 CLE credit will be applied for

Wednesday, April 5
Annual ERISA Litigation Update
12:30 - 1:30 p.m.
Charles Stevens, Michael Best & Friedrich
1.0 CLE credit to be applied for

Thursday, April 13
CERCLA Litigation: The Basics
12:30 - 1:30 p.m.
Dillon Ambrose and Elizabeth Miles, Davis & Kuelthau
1.0 CLE credit will be applied for

Tuesday, April 25
The Milwaukee County Children's Court Unified Court – The Nexus Between Children's and Family Court
12:30 - 1:30 p.m.
Hon. Mary Triggiano, Milwaukee County Circuit Court; Jane Probst, Probst Law Offices
1.0 CLE credit to be applied for

Wednesday, April 26
Health Care Worker Protection
12:30 - 1:30 p.m.
James A. Schacht, Wisconsin Department of Workforce Development, Equal Rights Division

Thursday, April 27
How to Win Cases Under the Trade Secrets Act
12:30 - 1:30 p.m.
Patrick Huston, The Huston Law Firm, San Diego, CA
1.0 CLE credit will be applied for

Thursday, May 11
Understanding and Calculating Lost Profits for Litigation
12:30 - 1:30 p.m.
Benjamin Wilner, Ph.D., Alvarez & Marsal, Chicago, IL
1.0 CLE credit will be applied for

Tuesday, May 16
Startup Intellectual Property Issues
12:30 - 1:30 p.m.
Louis Condon, gener8tor
1.0 CLE credit will be applied for

Can't make a CLE course in person? No problem! We offer live webcast options during registration for the majority of our courses. MBA courses are also offered On Demand.

MBA Judicial Forums

Milwaukee Municipal Court Forum

The MBA hosted two judicial forums for the contested Milwaukee Municipal Court race. The first, on February 9, featured incumbent Judge Valerie Hill and her three challengers: Brian Michel of the Legal Aid Society, Kail Decker of the City Attorney's Office, and William Crowley of Disability Rights Wisconsin. In the primary later in February, Judge Hill garnered the most votes, while William Crowley edged the remaining challengers to earn the underdog spot in the general election. The two candidates faced off in the second municipal judge forum on March 13.

Milwaukee County Circuit Court Forum

Scott Wales and Kristy Yang, who are vying for the open seat in Branch 47, participated in the MBA's circuit court forum on March 16. The candidates answered a variety of questions ranging from how they would handle a busy docket to how their life experiences shape their judicial philosophies. From vastly different backgrounds, each candidate would bring a unique perspective to the bench.

The general election for both judicial posts is April 4. Polls open at 7:00 a.m.

View footage from the MBA's Judicial Forums here. http://milwbar.org/index.php


William Crowley


Judge Valerie Hill


Scott Wales


Kristy Yang

CLE Speaker Thank You

The Milwaukee Bar Association thanks those who presented continuing legal education programs in the months of January, February and March.

Comm. Patrice A. Baker, *Milwaukee County Circuit Court*
Greg Bareta, *Wisconsin Department of Agriculture, Trade & Consumer Protection*
Comm. Ana Berrios-Schroeder, *Milwaukee County Circuit Court*
Hon. David L. Borowski, *Milwaukee County Circuit Court*
Sean O'D. Bosack, *Godfrey & Kahn*
Lindsey Burghardt, *Gagne McChrystal De Lorenzo Burghardt*
Erin (Maggie) M. Cook, *Godfrey & Kahn*
Cesar J. del Peral, *U.S. Equal Employment Opportunity Commission*
Art Flater, *Central Office Systems*
Mark J. Goldstein, *Goldstein Law Group*
Rebecca H. Hartzel, *Deloitte Tax*
Peter G. Herman, *DOL/OSHA*
Karen Hurley, *Thomson Reuters*
Nidhi Kashyap, *Milwaukee County Child Support Services*
Maria L. Kreiter, *Godfrey & Kahn*
Rebeca M. Lopez, *Godfrey & Kahn*
Jeaneen J. Mardak, *Milwaukee County Circuit Court*
Kate E. Maternowski, *Reinhart Boerner Van Deuren*
James J. Mathie, *Mathie Mediation Services*
Avery J. Mayne, *Walny Legal Group*
Kate McChrystal, *Gagne McChrystal De Lorenzo Burghardt*
Chelsey B. Metcalf, *Foley & Lardner*
Daniel C.W. Narvey, *Godfrey & Kahn*
Timothy J. Pierce, *State Bar of Wisconsin*
Justin M. Prince, Moertl, *Wilkins & Campbell*
Comm. David R. Pruhs, *Milwaukee County Circuit Court*
Elizabeth Ruthmansdorfer, *Moertl, Wilkins & Campbell*
Andrea Schneider, *Marquette University Law School*
David Seitz, *TRC Environmental Corporation*
Jill Hamill Sopha, *Sopha Mediation*
Carlton D. Stansbury, *Burbach & Stansbury*
James O. Sullivan Jr., *Milwaukee County Child Support Services*
Dirk A. Vanover, *Vanover Legal*
Hon. Francis T. Wasielewski, *Milwaukee County Circuit Court (ret.)*
Justin P. Webb, *Reinhart Boerner Van Deuren*
Jill Welytok, *Absolute Technology Law Group*
Scott Wildman, *Vrakas CPAs + Advisors*
Ramona Williams, *Milwaukee County Department on Aging*

Meet Your MBA Board Member: Steven P. Bogart

Sarah J. Martis, CAE, Milwaukee Bar Association Executive Director

Steven P. Bogart, shareholder and co-chair of Reinhart Boerner Van Deuren's Litigation Practice, joined the Milwaukee Bar Association Board of Directors in June 2016.

Steve draws on years of professional experience to achieve the best legal and business results for his clients, through out-of-court settlement, mediation, arbitration, or trial. As a member of Reinhart's multi-disciplinary product distribution team, he works at the leading edge of law and business practices affecting clients involved in the buying and selling of products and services. With nearly three decades of legal experience, Steve possesses the skill and knowledge to provide clients with targeted, accessible, and cost-effective legal expertise.

Steve hails from Green Bay, where he was a member of the first generation raised (at least in part) by television. His career aspirations followed his tastes in television, his first choice being cowboy, followed closely by Packer player. Lacking the means to acquire a horse and the physical gifts required to make even his 8th grade football roster, Steve was forced to turn his sights to something more attainable. He had become enthralled by the weekly confessions from the witness stand on "Perry Mason." The lawyer's role in getting things right and doing justice had great appeal to Steve. Flash forward to undergraduate education at Carroll University in Waukesha and then to Madison for law school. Steve now calls Milwaukee home.

When asked to describe the MBA in three words, Steve speaks of the *opportunities* it provides to serve the community and to network with other attorneys. He also calls the MBA an important *resource* for members and the community through CLE programming, lawyer referral services, and the Milwaukee Justice Center. This is all tantamount to *caring*. The MBA cares about its members and the legal community. It is Steve's hope that the MBA will reach more young attorneys and future law school graduates, enabling the organization to continue its important community work for generations to come.

"A perch fry" is Steve's answer when asked what his last meal would be. You can take the man out of Green Bay, but you can't take Green Bay out of the man.

New Benefits for MBA Members!

The MBA values your continued membership. To show you just how important you are, we've added several new benefits:

- 35 - 45% off Konica Minolta printers and copiers with Central Office Systems
- 15% discount on American Bar Association book purchases with our special code
- Up to 50% off on office essentials, furniture, break-room solutions, and more through Office Depot

Upcoming Events

Tuesday, May 16, 2017
Annual Meeting
6:00 – 7:30 p.m.
Miller Park
1 Brewers Way
Milwaukee, WI 53214

Friday, May 19, 2017
Memorial Service
Noon – 1:00 p.m.
Milwaukee County Courthouse,
Room 500
901 N. 9th Street
Milwaukee, WI 53233

Wednesday, August 2, 2017
Golf Outing
11:30 a.m. – 7:30 p.m.
Fire Ridge Golf Club
2241 County Road W
Grafton, WI 53024

Coming in November
Law & Technology Conference
8:00 a.m. – 5:00 p.m.
Italian Conference Center
631 E. Chicago Street
Milwaukee, WI 53202

Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to: promote the professional interests of the local bench and bar; encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin; improve access to justice for those living and working in Milwaukee County; support the courts of Milwaukee County in the administration of justice; and increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

A Brief Explanation of Wisconsin's Local Forms of Government

Attorney Douglas H. Frazer, DeWitt Ross & Stevens

The local forms of government in Wisconsin include cities, villages, and towns. The form of government is predicated not on a community's population or area, but rather on citizen preference and legislative approval.

Wisconsin has 190 cities, 406 villages, and 1,257 towns. Cities and villages are viewed as self-contained units of government and defined as "full" or "true" municipal corporations.

Towns, considered quasi-municipal corporations, govern those areas not within the corporate boundaries of cities or villages. Originally, most towns were 6 miles by 6 miles (36 square miles)—the basic "township" survey unit, which is the grid-based framework for legal descriptions of all land in the state.

Although only 30 percent of Wisconsin's residents live in a town, towns contain 95 percent of Wisconsin's land area. The smallest town is the Town of Germantown—only 1.7 square miles. The entire 365 square-mile county of Menominee (more or less coterminous with the Menominee Indian Reservation), also designated as a town, is the largest.

Many of us live in what was once the Town of Milwaukee, formed in 1835. With the incorporation of Glendale in 1950 and Bayside in 1953, as well as the municipal annexation of other territory, the Town of Milwaukee ceased its legal existence in 1955.

Cities and villages typically provide services such as police, fire, water, sewer, licensing, property tax billing and collection, parks and recreation, cultural services, planning and development, zoning, social services, and solid waste and recycling collection. Moreover, cities and villages have broad authority to create tax incremental finance districts (TIFs) to foster economic development or redevelopment. By means of a TIF, the municipality loans money to a developer or makes public works improvements and is paid back by the increase in tax revenue from the project. *See generally* Wis. Stat. Chapters 61 (villages), 62 (cities), and 66 (general municipal law).

Towns, on the other hand, typically do not provide the full spectrum of urban services found in cities and villages, such as public water and sewer systems, libraries, and police and fire departments. Towns have TIF authority, but it is limited. *See generally* Wis. Stat. Chapter 60.

Cities and villages, unlike towns, can expand their boundaries through annexation of unincorporated territory. Residents of cities and villages can initiate ordinances through the direct legislation statute[1]—i.e., by presenting a proposed law directly to the legislative body—while citizens in towns lack this power.

Towns have an annual town meeting where qualified voters are entitled to discuss and vote on matters specified by state law. Cities and villages, on the other hand, work exclusively on the representative model.

Cities typically are organized with separate executive and legislative functions, under which authority is shared by a mayor and common council. Villages have unified executive and legislative functions and are governed by a board of trustees, elected at large and led by a president. Towns also have unified executive and legislative functions and are governed by a town board of supervisors, led by a chairman.

Menomonee Falls, with about 35,000 residents, is the state's most populous village. In contrast, a few cities have populations under 1,000.

Villages and cities, as opposed to towns, enjoy constitutional home rule: enhanced power to govern themselves in local matters without state government interference. This power is conferred by a 1924 state constitutional amendment commonly referred to as the Home Rule Amendment.

The amendment provides: "Cities and villages … may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village …." Wis. Const. art. XI, § 3(1). The amendment requires a municipality to exercise its constitutional home rule through the adoption of a charter ordinance.

The Legislature, over time, has been active in preempting the home rule powers. It happens a lot. For instance, the Legislative Fiscal Bureau identified 128 instances between 2011 and 2016 of the Legislature restricting or preempting local authority, or imposing unfunded mandates on local government.[2] In two of the most widely reported examples, the Wisconsin Supreme Court upheld legislative preemption—over municipal home rule objection—occasioned by 2011 Wisconsin Act 10 and the statute abolishing local government residency requirements.[3]

The courts almost always uphold state decision-making authority over local government. This is because the Wisconsin Supreme Court has interpreted the home rule provision to mean that a statute controls over any conflicting ordinance if the statute meets a disjunctive test: *either* the enactment addresses a matter of statewide concern, *or* the enactment uniformly affects every city or village. This has resulted in a narrow opening for the home rule amendment to operate without legislative restriction. Indeed, since the adoption of the Home Rule Amendment, the Wisconsin Supreme Court has only twice upheld a municipality's exercise of home rule authority.

All this could change. Three sitting justices have argued for a re-examination and reversal of this precedent. These justices interpret the Home Rule Amendment to require a conjunctive test: that is, a legislative enactment preempts a conflicting ordinance under the home rule amendment only when the enactment *both* concerns a matter of statewide concern and uniformly affects every city or village.[4] This interpretation would give an ordinance more chance of surviving a conflicting legislative enactment.

State statutes are a second source of municipal home rule authority, although that authority is still subservient to conflicting enactments of the Legislature. The statutory grants of home rule power are broad. They give the governing municipal body, except as otherwise provided by law, management and control of municipal property, finances, highways, navigable waters, and public service. The statutes empower governing bodies to act for the municipality's commercial benefit, and for the public's health, safety, and welfare. The statutes authorize the governing bodies to carry out these powers by license, regulation, borrowing, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. Wis. Stat. § 61.34(1) (villages); § 62.11(5) (cities).

There you have it. We have in Wisconsin an interesting mix of local government forms—one quite different from the next. Toss the volatile home rule issue into that mix, and you have a recipe for continuing legal controversy.

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Welcome
New MBA Members!

Kenneth Acker, *The City Law School, University of London*
Gabrielle Adams, *Husch Blackwell*
Michael Altman, *Michael Best & Friedrich*
Christine Bestor-Townsend, *Michael Best & Friedrich*
Alex Bielinski
Matthew Brown, *Michael Best & Friedrich*
Andrew Christman, *von Briesen & Roper*
James Davies
Jessica Dickman, *Lagmann*
Dale Egan, *von Briesen & Roper*
Randy Ensign-Jones, *Marquette University Law School*
Adam Finkel, *von Briesen & Roper*
Steven Gage, *Schmidt, Rupke, Tess-Mattner & Fox*
Thomas Gartner, *Michael Best & Friedrich*
Elly Goettelman, *DePaul University College of Law*
Julie Gorens-Winston, *Michael Best & Friedrich*
Christopher Guthrie, *Marquette University Law School*
Scott Halloin, *Halloin & Murdock*
Joel Henry, *Michael Best & Friedrich*
Eric Hobbs, *Oggletree, Deakins, Nash, Smoak & Stewart*
Brian Jacobs, *Michael Best & Friedrich*
Thomas Kallies, *Kohner, Mann & Kailas*
Liana Kapelke-Dale
Russell Karnes, *Gimbel, Reilly, Guerin & Brown*
Jessica Koo, *Nonprofit Legal Referral Services*
Casimis Laska, *Michael Best & Friedrich*
Sean Lees, *MacGillis Wiemer*
Darius Love, *Ogletree, Deakins, Nash, Smoak & Stewart*
Benjamin Lutgen, *Kim & LaVoy*
Kelsey Mader, *Centro Legal*
Daniel McDermott, *von Briesen & Roper*
Linda Meagher, *Gass Weber Mullins*
Justin Mertz, *Michael Best & Friedrich*
James Mueller
Andrew Phillips, *von Briesen & Roper*
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Amber Ragonese, *Schmidlkofer, Toth, Loeb & Drosen*
Andrew Rider, *University of Wisconsin - Madison*
Patrick Ritter, *Kim & LaVoy*
Jeunesse Rutledge, *Reinhart Boerner Van Deuren*
Jonathan Sopha, *Sopha Law*
Ilana Spector, *Beck, Chaet, Bamberger & Polsky*
Brian Tumm, *Michael Best & Friedrich*
Comm. Robert Webb, *Milwaukee County Circuit Court*
Monte Weiss, *Weiss Law*

Eviction Defense Project Is Undaunted by Statistics

Attorney Raphael Ramos, Legal Action of Wisconsin

16,000 is a large number, and it becomes even more daunting in the context of evictions. According to researcher Dr. Matthew Desmond in *Evicted: Poverty and Profit in the American City,* approximately 16,000 eviction actions were filed in Milwaukee County in a single year. That translates to approximately 308 evictions filed per week or 62 evictions filed per business day. Of course, those numbers only reflect the filings. The number of people actually facing homelessness due to eviction, which includes the spouses, children, siblings, grandparents, and other family members of named tenants, is higher by a significant amount.

Since January 2017, Legal Action of Wisconsin's Eviction Defense Project and its volunteer attorneys have worked with some of the tenants threatened by this eviction epidemic. We have seen the people behind the statistics, and have seen that evictions encapsulate many different stories.

We have seen an African-American single mother, pregnant with her second child, who was up to date on her rent but still evicted by her landlord because she had the gall to ask that her apartment be tested for lead before she had her baby. We have seen clients pay exorbitant amounts for rent even though they have no working plumbing or furnaces and are forced to heat their homes with their stoves. We have seen clients, finally fed up with landlord neglect, refuse to pay any more, and then be evicted because they mistakenly believed they could unilaterally abate their rent under the law.

We have seen clients evicted when they fall behind on rent due to illness, death in the family, or lost jobs, and are unable to catch up because their incomes simply don't allow them to do so. For a tenant living on the razor's edge of financial survival, a single sick day can leave her unable to pay the full amount of the rent, leading to an eviction.

We have seen clients develop histories of eviction, each eviction a scarlet letter that renders the prospect of finding a reputable landlord who will rent to them difficult or impossible. We have seen these clients forced into homelessness or forced to rent in horrendous conditions because they cannot access decent housing.

In almost all these circumstances, legal advocacy or advice can provide an immeasurable benefit to an impoverished tenant.

In eviction cases, *pro se* tenants must navigate a byzantine legal eviction process, in which they must represent themselves, frequently against an attorney, in intimidating hearings that can decide whether they have a place to live and whether they can rent decent housing in the future. Alternatively, *pro se* tenants may try to negotiate a settlement with the landlord, the landlord's agent, or an attorney for the landlord. In either scenario, tenants are asked to negotiate, persuade, or plead at a particularly vulnerable moment and without the benefit of training, experience, or an advocate. Under such circumstances, tenants often end up signing anything, just to have a chance to clear their names.

That is the reality faced by tenants who are being evicted. It is an imperfect and imbalanced system, and the Eviction Defense Project strives to even the scales through civil legal aid. When tenants have civil legal aid, the entire system benefits and the prospect of a better long-term outcome increases for all stakeholders.

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I May Have Left, But Judges Night Stayed the (Delicious) Same

Britt Wegner, Marketing Director, Gimbel, Reilly, Guerin & Brown

Having worked at the MBA for 15 years, I became quite familiar with the annual events. Some were informative sessions based on the state of the courts or the practice of law; others, such as Judges Night, just pure networking fun. For the first time, I was able to attend Judges Night as a patron and not as an employee. It was odd being on the other side of the table, but the food is equally as delicious whether tasting it as staff or socializer.

My service as a tour guide for Milwaukee Food & City Tours for the past five years suffices, I trust, to qualify me for the role of Judges Night foodie.

When I arrived shortly after the official start time, the room was already buzzing and people were wasting no time sliding up to the bar and beginning their delicious food journeys, courtesy of the Bartolotta catering group. Knowing the drill, and after some MBA mini-reunions, I started the stroll through Appetizer Lane. As always, the cheese boards immediately drew me in and did not disappoint. I paired the variety of cheeses with a few crackers and pickles and headed over to the finger food carnivore station. The smoked trout and salmon were both as fresh as newly passed legislation. I added a little cured meat and pork pate, and then peppered it all with some olives. A solid start, but I was nowhere near finished.

As I was making my way to the entrees, I conveniently bumped several times into staff while passing a variety of hors d'oeuvres, assuring my not-yet-satisfied-stomach that there would be almost no lag time between bites. The deviled eggs were tremendous (hello white truffle oil!) and the caprese bruschetta was one-bite heaven.

On to the main event. I was determined to try everything while not coming off as a pig as I kibitzed with Milwaukee's legal community. The grilled veggies were tender and made me feel better about myself. (They also seemed to stare rudely at the dessert display, as did the mixed green salad.) The chive and cheddar mashed potatoes were blissful. And the hanger steak with choice of horseradish cream or cognac cream sauce (or in my gluttonous case, both) was amazing, as expected—carved on location and tender as could be. Bravo, Bartolotta.

Not to make the carbs jealous, I made a stop at the "Little Italy" station. This was a good balance to the meat, chicken, and potatoes in close proximity. The Caesar salad was standard, but the penne with shrimp was fantastic. Just the right amount of pesto with green beans and grape tomatoes to chase your woes away. Butternut squash ravioli isn't really my cup of tea, but the brown butter and sage sauce can easily keep one warm on a cold February night.

As for the grand finale, the desserts were everything they've ever been. (And maybe I ate more than I ever had.) The chocolate covered strawberries are always gorgeous, and the assorted cupcakes, apple tarts, and cheesecake bites were as pretty and popular as on Judges Nights past. I loitered around the mini-chocolate cups with chocolate mousse until I was afraid I was going to be served with a restraining order. I felt better when I saw that I wasn't the only one—not by a long shot.

All in all, Judges Night was a great success and offered the same comfortably lit, intimate, yet expansive networking atmosphere we have all come to know and love. I look forward to attending next year as a guest once again, as I realized you can spend a lot more time with the food when you're not behind the registration table.

Wisconsin Supreme Court Approves Drafting Role for Lawyer-Mediators

Honorable Michael J. Dwyer, Presiding Judge, Family Division, Milwaukee County Circuit Court, and Attorney Susan A. Hansen, Family Mediation Center and Hansen & Hildebrand

On January 12, 2017, the Wisconsin Supreme Court approved Rule Petition 16-04 to expand the role of lawyer-mediators in family law cases. The rule permits a lawyer-mediator who assists parties in reaching agreements in a case arising under the Family Code to select, draft, complete, modify, and file the legal documents required to implement the agreements reached in mediation. Pursuant to the Supreme Court Order issued on February 21, 2017, the rule is effective July 1, 2017.

Previously, lawyer-mediators could not draft legal documents such as marital settlement agreements and judgments, which meant that parties had to use checkbox forms, hire individual lawyers, or most frequently, do their legal drafting and filing themselves. The new rule authorizes neutral drafting, with informed written consent, and states that the ethical rules of competence and diligence apply to such lawyer-mediators. The rule provides professional direction for lawyers and protection for the public.

The rule specifies the minimum requirements for informed consent, which include an explanation of the lawyer's limited role, the fact that the lawyer does not represent either party and cannot give legal advice to the parties, and the desirability of each party seeking independent legal advice. The rule permits the lawyer-mediator to file documents on behalf of the parties but not appear in court. It requires the lawyer to disclose the fact that a document was drafted with the assistance of a lawyer acting as a mediator.

The impetus for the rule was the need to adapt the practice of family law to the dramatic increase in the number of parties who attempt to navigate the family court system without legal assistance. Because an estimated 70% of all divorcing couples make this attempt, mediation is an efficient and cost-effective alternative. The new rule allows parties to enjoy the full value of a lawyer-mediator's expertise by authorizing the lawyer to neutrally draft all necessary legal documents on behalf of both parties. It is a significant advance that supports the changing role of lawyers as neutral or limited scope problem-solvers, not just adversarial advocates.

Because mediation is not an adversarial, two-lawyer process, parties who currently avoid lawyers for fear of escalating conflict or losing control of their case will be more willing to seek legal assistance from a

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Judges Night 2017

Grant Killoran and Al Foekcler

All photos by *Wisconsin Law Journal*

April Toy, Jacob Sosnay, and Taylor Gumbleton

A Look Back at Judges Night 2017

Over 400 members of the Milwaukee legal community gathered for Judges Night to honor the judiciary at the Grain Exchange Building on February 7. The food was as delicious as expected (see Britt Wegner's review), and the atmosphere was buzzing the entire evening. Judges, attorneys, and Marquette University Law School students could be seen weaving through the crowd while networking. From the venue to the guest list, Judges Night is an event you can't afford to miss!

U.S. District Court Magistrate Judge David Jones

100% Club

In sincere appreciation and recognition for their commitment to the legal profession and our community, the Milwaukee Bar Association salutes the following law firms of five or more attorneys who enroll all of their attorneys as members of the MBA.

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Hupy & Abraham
Kravit Hovel & Krawczyk
Kim & LaVoy
Meissner Tierney Fisher & Nichols
Michael Best & Friedrich
O'Neil, Cannon, Hollman, DeJong & Laing
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Attorney Fran Deisinger, Reinhart Boerner Van Deuren

Woman in Gold

Directed by Simon Curtis
2015; 109 minutes

Woman in Gold tells the story of Maria Altmann, an Austrian-Jewish émigré whose wealthy Viennese family lost its possessions to Nazi extortion. Fifty-four years after the war, she pursues legal remedies to recover the most renowned of those possessions, a series of paintings by Gustav Klimt, most notably his expressionist masterpiece "Portrait of Adele Bloch-Bauer," a/k/a the "Woman in Gold"— Altmann's aunt. Helen Mirren plays Altmann. Ryan Reynolds plays Randy Schoenberg, the plucky young LA lawyer she recruits to help her. He is the scion of another famous Jewish family from Vienna, grandson of the great composer Arnold.

While the story is fascinating and has been the subject of several books and documentaries, it is unfortunately not well told in this film. To be sure, the narrative is challenging for a film of less than two hours, requiring both exposition in 1930s Vienna and a recounting of the convoluted, slow-moving legal battle many years later to recover the paintings from the Austrian government.

The scenes in pre-war Vienna of the Bloch-Bauer family life, the onset of the Anschluss, and Maria's harrowing escape from the Nazis as a newlywed are well done and the best parts of the movie. These are intercut with the modern story, but those scenes, in Los Angeles, Washington, and modern Vienna, consistently seem to grind the film into legal drudgery. The slow pace of the litigation requires numerous narrative ellipses announced with titles such as "Six months later."

It is the modern story that features Mirren. She plays the part of the elderly Maria with a clipped Viennese accent and a somewhat endearing bossiness, but it seems more caricature than character. Part of the problem is Reynolds, whom she is made to play against almost as though the two are in a "buddy" movie. Reynolds has a certain casual charm but the part taxes his range, which is stick-thin. In fact, Mirren aside, all the actors in the modern part of the story seem to have gone to the "make a face to convey an emotion" school of acting. In particular, the Austrian bureaucrats opposed to the return of the paintings are so broadly portrayed as to seem sinister. I wonder if this reflects the director, Curtis, whose resume is almost entirely in British television.

Altmann recruits Schoenberg to pursue the return of the paintings just as he has rejoined a large law firm after a failed solo career. Reluctant at first, she wins him over, and eventually he convinces his cartoonishly severe senior partner (Charles Dance) to allow him to go to Vienna with Maria to pursue an appeal before a newly formed Austrian restitution commission. This fails—in part, we are led to believe, because "Woman in Gold" has become a national icon. But after visiting the Holocaust Memorial in Vienna, Schoenberg is emotionally hooked to continue the fight. Back in LA, the case becomes his obsession, ultimately leading him to quit his job, much to the chagrin of his wife (Katie Holmes, whose acting chops are a near match for Reynolds'). Altmann, meanwhile, has fits of enthusiasm for the case and moments of despair when she wants to give up, although this never comes off very believably, even in Mirren's usually capable hands.

Schoenberg finally finds a way to bring an action in the U.S., and this leads to two courtroom scenes: a district-court level argument on a motion to dismiss, and then an argument before the U.S. Supreme Court. The scenes are brief and not particularly authentic from a lawyer's perspective (probably because they are so brief). The Supreme Court rules in Maria's favor, but only on the question of whether she has a right to pursue litigation at all, not on the ultimate issue of ownership.

Immediately (in film time, and with little explanation), this leads to Schoenberg requesting arbitration in Vienna. Maria, emotionally wrought, vows never to go back, but as Schoenberg stands to present his argument to the Austrian tribunal, Altmann strides into the room, to his great surprise. (I don't know if this actually happened; if it did, the writers should have changed it.) The arbitrators tie the bow on the story by ruling for Maria. (This did happen. Maria sold the paintings for more than $300 million and Schoenberg took a 40% contingency fee. "Portrait of Adele Bloch-Bauer" is now owned by and displayed at the Neue Gallery in New York. Both Altmann and Schoenberg used some of this wealth to support Holocaust memorials and education.)

This film reminded me a little of Steven Spielberg's *Amistad*—not in its subject or quality, but in its struggle to keep audience interest (and comprehension) through a long, complex series of legal proceedings. It is not easy to do. But Spielberg had a deeper complement of good actors and better writers—and of course he had Spielberg directing. *Woman in Gold* does not.

I don't mean this assessment of the film to be entirely negative. Despite its flaws, *Woman in Gold* has some powerful emotional resonance, given its story. And as noted, the pre-war scenes are very good. Finally, whether you choose to see this film or not, I recommend that you look up the painting. It is breathtaking.

FCC Denies Exemption Under TCPA for Mortgage Servicers

Attorneys Michelle L. Dama and Albert Bianchi, Jr., Michael Best

Recently, the Federal Communications Commission denied the Mortgage Bankers Association's petition seeking an exemption from the Telephone Consumer Protection Act's prior-express-consent requirement for mortgage servicing calls to wireless telephone numbers. According to 47 U.S.C. § 227(b)(1) and (2)(C) of the TCPA and the FCC's rules, robocalls to wireless telephone numbers and other specified recipients are prohibited except when made: (1) for an emergency purpose, (2) solely to collect a "debt owed to or guaranteed by the United States," (3) with the prior express consent of the called party, or (4) pursuant to a Commission-granted exemption.

In June 2016, the mortgage bankers sought a narrow exemption from the FCC that would permit mortgage servicers to make non-telemarketing residential mortgage servicing calls to wireless telephone numbers. In its petition, the association argued that mortgage servicers needed such an exemption to be able to contact borrowers for various matters, including mortgage defaults. More specifically, the mortgage bankers reasoned that it was important for mortgage servicers to be able to speak with delinquent borrowers as early as possible to discuss various options. According to the association, mortgage servicing calls are required under both federal and state laws and, given the volume of mortgage borrowers and the loan term of a typical mortgage, an exemption is necessary for mortgage servicers to effectively communicate with their customers. Thus, in light of the need to contact such delinquent borrowers, the mortgage bankers argued that the benefits of being able to call wireless telephone numbers without prior express consent far outweigh any potential privacy interests.

The FCC was not persuaded and denied the petition for the exemption. In the past, the FCC has granted "free-to-end-user exemptions" to the general prohibition on calls to wireless numbers pursuant to § 227(b)(2)(C) in limited circumstances. In granting such "free-to-end-user exemptions" in the past, the FCC has always analyzed three factors: (1) whether the petitioner was clear that the messages would be free to the end user, (2) whether the messages were time-sensitive or there was some other compelling public interest that supports timely receipt of these calls, and (3) whether the caller could apply conditions to the exemption to preserve consumer privacy interests. Applying those factors to the mortgage bankers' petition, the FCC determined that (1) the association had not demonstrated it could make the calls to wireless telephone numbers free to the end user; and (2) the public interest in, and the need for the timely delivery of, the mortgage servicer calls described by the association did not justify setting aside the privacy interests of called parties. The FCC reasoned that while the mortgage servicer calls may be beneficial and desired by some consumers, mortgage servicers are free to autodial consumers without an exemption by simply relying on the prior express consent a consumer provides when including his or her wireless phone number on a mortgage application, or the servicer can make a call without using an autodialer.

The FCC also rejected the mortgage bankers' attempt to expand on the recently created exemption for calls regarding the collection of a debt owed to or guaranteed by the United States. The FCC found if Congress "had intended the exception to apply universally, regardless of who owned or guaranteed a debt, it easily could have done so." This position goes against the recommendation of numerous governmental entities, such as the Federal Housing Finance Agency, to exempt mortgage servicers of residential mortgage loans from TCPA requirements.

This ruling emphasizes the need for mortgage servicers to obtain prior express consent from borrowers, and confirms that the TCPA will continue to present an obstacle for financial institutions attempting to communicate with borrowers.

The authors can be reached at mldama@michaelbest.com and abianchi@michaelbest.com.

Seventh Circuit Invokes *Spokeo* to Dismiss Wisconsin "No-Injury" Class Action

Attorney Benjamin E. Reyes, McCoy Leavitt Laskey

On December 13, 2016, the Seventh Circuit Court of Appeals issued its first opinion addressing the viability of so-called "no-injury" federal class actions in the wake of the U.S. Supreme Court's decision in *Spokeo, Inc. v. Robins,* 136 S. Ct. 1540 (2016).

In *Meyers v. Nicolet Restaurant of De Pere, LLC,* 843 F.3d 724 (7th Cir. 2016), a case originating in the Eastern District of Wisconsin, the federal appeals court dismissed plaintiff Jeremy Meyers' putative class action claims against the Nicolet Restaurant of De Pere for alleged violations of the Fair and Accurate Credit Transactions Act (FACTA). This was Meyers' second attempt at certifying a class for alleged FACTA violations occurring in Wisconsin. In the first attempt, the Seventh Circuit held that sovereign immunity barred a claim against the Oneida Tribe of Wisconsin. *Meyers v. Oneida Tribe of Indians of Wisconsin,* 836 F.3d 818 (7th Cir. 2016) (*Meyers I*).

FACTA, enacted as an amendment to the Fair Credit Reporting Act (FCRA), was intended to reduce the amount of information printed on credit and debit card transaction receipts. It prescribes that a party shall print no more than the last five digits of the card number or its expiration date on any receipt provided to the cardholder. 15 U.S.C. § 1681c(g)(1). Each willful violation entitles the consumer to recover either any actual damages sustained due to the violation, or statutory damages between $100 and $1,000. 15 U.S.C. § 1681n(a)(1)(A).

In *Meyers II,* the plaintiff alleged that after dining at the Nicolet Restaurant of De Pere in February of 2015, he received a copy of his receipt that did not truncate the expiration date, as FACTA requires. In response to that event and without alleging any further injury, Meyers filed a putative class action complaint in federal district court in Green Bay, purportedly on behalf of everyone who had been provided a non-compliant receipt at the Nicolet Restaurant. In his complaint, Meyers sought only statutory damages for the FACTA violations. In other words, there were no allegations that he sustained any actual damages as a result of the failure to truncate the credit card expiration date.

In *Meyers I,* the Seventh Circuit did not reach the issue of whether the

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JON P. AXELROD

EXPERIENCE & COMMITMENT

Why Elect Jon for State Bar President?

"Jon is an outstanding lawyer who I have known personally and professionally for many years. Having closely observed Jon's leadership abilities while he was the President of the Fellows for the Wisconsin Law Foundation, I am confident the State Bar will be well served by his ideas and experience. He has spent his entire career working to improve his community, the Bar and its members. I endorse Jon and believe he will serve our profession well if elected as President of the State Bar."

— HON. LOUIS BUTLER, JR.,
Former Wisconsin Supreme Court Justice

"In 2012, the jurisdiction of court commissioners was challenged in State v. Williams. *Jon was selected to represent The Wisconsin Association of Judicial Court Commissioners and the Wisconsin Family Court Commissioners' Association before the Wisconsin Supreme Court. His representation was successful and went well beyond our ability to pay him. Jon felt strongly that commissioners were an integral part of the Wisconsin judicial system and needed to be preserved. I know that Jon will bring that same dedication to the broader legal system and all the lawyers in Wisconsin as our State Bar President."*

— HON. DAVID FLESCH,
Former President of the Wisconsin Association of Judicial Court Commissioners

A Message from Jon

The State Bar has an opportunity for enormous and positive change, requiring leadership that focuses on the future. I will work diligently to improve the State Bar so that it is more responsive, effective, and appealing to all lawyers, including those who would not join if membership was not mandatory. If elected, I will bring fresh ideas, courage, and a clearly-defined mission.

I have the experience and commitment to implement changes where necessary. My platform, among other things, includes supporting fair pay for assistant district attorneys, public defenders and other government attorneys, and assigned counsel. The State Bar needs a President who will advocate to improve access to justice in civil as well as criminal cases. The lack of civility displayed by a very small percentage of attorneys should be addressed in a constructive manner.

Positive change can come in many ways. For example, new attorneys should be mentored and CLE credit should be awarded to both the mentor and the new attorney. The State Bar should encourage recent law school graduates to practice in underserved areas of Wisconsin by raising funds to forgive law school loans and match new attorneys to senior attorneys who are retiring. More technology courses should be offered by the State Bar, including online courses.

I respectfully ask for your vote. If you choose to elect me, together we can make a difference.

With warm regards,

Jon

Learn more about Jon at:
dewittross.com/our-people/jon-axelrod

REPRESENTATIVE ENDORSEMENTS

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*Past State Bar President

DeWitt Ross & Stevens S.C. Law Firm

Reconciling States' "Right to Try" Legislation and FDA's Expanded Access Program: Legal Issues

Attorney Robyn S. Shapiro, Health Sciences Law Group

In the past several years, a number of states have passed "Right to Try" (RTT) laws. These laws seek to facilitate access by terminally ill patients to potentially lifesaving investigational products (most commonly drugs) that are not approved for the market, but have passed Phase I of the Food and Drug Administration's clinical trial process and continue to undergo testing in clinical trials. Two other conventional ways for patients to access potentially life-prolonging investigational drugs are through a clinical trial (if the patient meets enrollment criteria) or through the FDA's expanded access program. This article discusses legal issues relating to the role of state and federal governments in expanded access to investigational drugs.

Federal Regulation of Drug Approval and Expanded Access

The federal Food, Drug and Cosmetic Act (FDCA) tasks the FDA with evaluating and monitoring the safety and effectiveness of drugs in the U.S.[1] Drugs cannot be sold or distributed in interstate commerce until they are proven safe and effective.[2] Developing data about the safety and efficacy of investigational drugs takes time, which can be a problem for patients for whom alternative treatments are unavailable and who do not qualify to participate in a clinical trial. After Congress mandated in 1962 that the FDA validate substantial evidence of safety and efficacy for new drug products based on adequately controlled clinical trials, the average development time for a new drug rose from 2.5 to 8 years.[3]

To address this problem, the FDA developed "expanded access" pathways to permit patients with serious conditions to receive investigational drugs before formal product approval. Under the most commonly used expanded access pathway, an individual can access an investigational product if (1) the individual has a serious or immediately life-threatening condition and there is no satisfactory alternative therapy, (2) the potential benefit justifies the potential risks of the treatment and those potential risks are not unreasonable in the context of the disease or condition to be treated, (3) providing the investigational product will not interfere with the clinical trials process or otherwise compromise the product's development, (4) the individual's physician determines that the probable risk from the investigational drug is not greater than the probable risk from the disease or condition, and (5) the FDA determines that the patient cannot obtain the drug under another IND (investigational new drug) exemption or protocol.[4]

The FDA has granted almost all expanded access requests—5,816 of 5,849 applications in the past four years.[5] Nonetheless, there are hurdles to more widespread implementation of expanded access programs. Manufacturers are not required to make their products available for expanded access, and they may be reluctant to agree to do so due to administrative burden, insufficient production capacity to meet the demands of both expanded use and ongoing clinical trials, and concerns that an adverse reaction could jeopardize the drug's regulatory approval. Also, the required paperwork reportedly took physicians, on average, 100 hours to complete.[6] In response, the FDA in June 2016 issued guidance that explains how physicians can use a new Form FDA 3926 to request FDA approval for expanded access to investigational drugs to treat individual patients. The agency also issued two additional guidance documents aimed at helping physicians, patients, and drug manufacturers understand the process for accessing investigational drugs for treatment use.

RTT Laws

As of March 2017, 33 states had passed RTT laws,[7] and bills to create such laws were pending in a number of state legislatures. On March 7, 2017, the Wisconsin Assembly passed "Right to Try" legislation and sent it to the Senate for consideration. While each state RTT law has unique elements, the laws generally permit a patient to request directly from the manufacturer an investigational product that has not been approved by the FDA if: (1) the patient is terminally ill, (2) a physician recommends use of the product, (3) the patient provides informed consent, and (4) the product has completed a Phase I clinical safety/dose limitation trial. Under most state laws, product manufacturers and physicians receive liability protection against claims arising from adverse events caused by the investigational product, and medical

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MBA Memorial Service Scheduled for May 19

The MBA will host its annual Memorial Service at noon on Friday, May 19, in Room 500 of the Milwaukee County Courthouse. Chief Judge Maxine A. White will preside. Here is a list of attorneys and judges who will be honored at the service. If you know of others who should be included on the list, please contact Katy Borowski at 414-276-5933 or kborowski@milwbar.org.

Robert Budic
Peter Bunde
Richard F. "Dick" Cimpl
Robert Paul "Beau" "Bob" Crowley Jr.
Rodney Cubbie
Jacqueline L'Herault Hanson Dee
Thomas J. Duffey
Kenneth J. Dunlap
Kenneth J. Ehlenbach
Howard H. Elder Jr.
Charles W. Foran
Dennis M. Gall
David F. Gerlach
Raymond Ernst Gieringer
Geoffrey Gnadt
Harry Halloway
Paul Henningsen
Marvin C. Holz
David Jerrold Hughes
James A. Koester
Erwin "Erv" Koppel
David J. MacDougall
Susan R. Maisa
Larry J. Maloney
Marvin Margolis
John J. McLario
Dennis J. McNally
Rita A. Michalski
Andres Velez Moreno
Bruce C. O'Neill
Lloyd S. Peters
Donald R. Peterson
Rudolph T. Randa
Peter J. Reilly
Anthony Morris "Tony" Rood Jr.
George R. Schimmel
Paul E. Sicula
Carl R. Schwartz
Gerald Stein
Kathleen Thiemann
Leonard A. Tokus Jr.
Natalia Walter
Hugo W. Wandt III
William Yellin

The Path Forward: Community, Partnership, and Visibility

Sarah J. Martis, CAE, Executive Director, Milwaukee Bar Association

In November 2015, the Milwaukee Bar Association Board of Directors undertook the daunting yet necessary task of building a strategic plan—a pathway to the organization's future. We asked you—MBA members—what you value, what would you like to see from this organization, and what hurdles you face.

Data was collected, analyzed, and scrutinized, which resulted in endpoints and a roadmap to help the MBA, its members, and the Milwaukee legal community navigate the ever-changing seas together.

Shortly following the survey, the board undertook another challenging task: identifying a new executive director to work with the board and the membership to make these plans a reality.

Here's where we stand. Based on your feedback, the board has created a plan that focuses on three topics: community, partnership, and visibility.

Community

Goal: Be a primary resource, convener, and forum for the Milwaukee legal community.
Progress: The board of directors has spearheaded creation of the CLE 101 Program. This two-year program will provide 15 free CLE credits per year for attorneys who have graduated from law school in the past five years, which will satisfy CLE credit requirements for a two-year period. The program is designed to be broad-based, focusing on substantive areas that cut across the practice of law, and will also incorporate practice-management education and resources. The courses, which rolled out in the fall of 2016, are open to anyone but are geared specifically to the needs of newer attorneys entering or starting small firms or solo practices.

Katy Borowski, the MBA's Director of Programs, is a familiar face with a new plan. She assists MBA section chairs in planning CLE programs with high-level speakers, as well as formats such as panel discussions and pro/con debates, which not only educate but also attract people to the MBA for the opportunity to network before and after the programs. Speaking of networking, more CLE programs will be formatted to include late afternoon/early evening mini-receptions to provide additional networking opportunities.

Did you know you can view MBA CLE programs online through Westlaw Legal Education Center both live and on demand? Because we understand that it can be difficult to get away for CLE, the MBA can come to you! The online platform is also a bonus for CLE presenters: most viewers of MBA CLE programs are from outside the State of Wisconsin, which provides a national audience and an opportunity for national recognition. The MBA is continuing to explore the online format and how to best enhance it for ease of use by our members.

Partnership

Goal: Create and participate in strategic alliances with other organizations.
Progress: MBA leadership has met with numerous specialty bar and bar-related associations, including the Wisconsin Association of African-American Lawyers, Wisconsin Hispanic Lawyers Association, Association of Women Lawyers, Asian Bar Association, Milwaukee Young Lawyers Association, and Greater Milwaukee Association of Legal Professionals. Discussions continue regarding opportunities for collaboration to enhance the legal community and get the most from all these groups have to offer.

Visibility

Goal: Enhance visibility of the MBA, its programs, and its members. Communicate activities and successes to diverse audiences, leveraging multiple channels.
Progress: The MBA has enhanced its e-mail and online presence in the past nine months. (We hope you've noticed!) Using a new platform has allowed us to create more attractive e-mails. Enhanced use of social media has allowed a broader reach. If you haven't "liked" or followed the MBA on Twitter, Facebook, or LinkedIn, please do so!

The use of technology in creating visibility for the MBA and MBA member firms and attorneys has significantly increased, led by Morgan Flores, MBA Membership and Marketing Coordinator. Recent examples are the first three Facebook live streaming events from the MBA, which included two Milwaukee Municipal Court Judicial Forums and the Milwaukee County Circuit Court Judicial Forum. What started with 17 live viewers and 2,000 impressions online spiked to 100 viewers and over 3,500 impressions online by the conclusion of the third forum. The enhanced visibility and online platform will continue to grow as we contemplate a new website design and ways to engage MBA members with targeted content. Please remember to update your interests in your profile on the MBA website. This will take only minutes, but will greatly improve the relevance of the information you receive from the MBA.

Thank you for your active participation in the MBA. We hope you continue the voyage along with us and provide us your feedback on how we can make the MBA the best bar association it can be!

You Talked, We Listened...

Top values sought by MBA membership

- CLE
- Networking
- News
- Special events

Desires

- Cost effective, targeted CLE
- More CLEs, both substantive and practice management-based
- Additional networking opportunities

Greatest needs in the legal community

- *Pro bono* services/access to justice
- Education
- Career support for new attorneys

MU Pre-Game Party: MU vs. St. John's

February 21, 2017

MBA members flaunted their Marquette pride at the MU pre-game gathering at Turner Hall. Attendees came together to share a pint and to cheer on the Golden Eagles as they faced off against the St. John's Red Storm.

▲ Shannon Allen and the Hon. Michael J. Skwierawski

▲ Fran Hughs, Dan Davis, and John Gelshenan

Left starting from bottom: Joe Gartner, Dieter Juedes, Jim O' Connell
▼ Right starting from bottom: Cathy La Fleur, Mike Cohen, Judy O' Connell

Changes to High-Income Payer Child Support Formula Debated

Attorney Matt Ackmann, Hawks Quindel

Most lawyers and family law clients are aware of the existence, if not the nuances, of the percentage-of-gross-income standard for calculating child support. One such nuance is that there are numerous contexts in which to apply the percentage standard: for example, serial payers, shared placement, split placement, high and low-income situations, as well as combinations of these circumstances. This article focuses on potential changes to the high-income payer formula.

The Department of Children and Families (DCF) is responsible for administering the child support program and developing guidelines for the establishment of child support orders in Wisconsin. The child support guidelines are found in Administrative Rule DCF 150.

In October 2014, DCF announced the formation of an advisory committee to assist the department in its federally required quadrennial review of Wisconsin's child support guidelines. The Child Support Guidelines Review Advisory Committee brought together representatives of the judiciary, the Legislature, the State Bar, public interest groups, and the Wisconsin Child Support Enforcement Association to review the application of the guidelines in special circumstances. The advisory committee held periodic meetings in 2015 to discuss possible changes to the child support guidelines. In September 2015, the advisory committee made its formal recommendations to DCF.

Currently, the high-income payer formula is triggered when a payer parent earns more than $84,000 per year. Once the formula is triggered, the payer, for support of one child, pays 17% of income up to $84,000 per year, 14% of annual income between $84,000 and $150,000, and 10% of annual income above $150,000. The above percentages for each income bracket increase depending on the number of children subject to the award, with no change to the percentages after five children. For instance, the high-income bracket percentages for two children are 25%, 20%, and 15%, respectively.

After completing its process, the advisory committee strongly recommended no change to the high-income payer formula. Because the Legislature expressed an interest in reviewing an alternative formula for application of the percentage standard in high-income payer situations, however, the advisory committee then suggested a modification in which the amount of child support for those earning over $300,000 per year is reduced.

If the advisory committee's suggestion is adopted, the high-income payer formula will be largely untouched until the payer earns $300,000 or more a year. The advisory committee suggested a sliding scale percentage on income between $300,000 and $500,000. The court would retain judicial discretion to determine the child support amount for any earned income more than $500,000.

The advisory committee's initial recommendation not to modify the high-income payer standard had several bases. One was the lack of data. Connie Chesnik, the advisory committee's chairperson and legal counsel for the DCF's Child Support Office, recently discussed the process at a Leander J. Foley, Jr. Matrimonial American Inns of Court meeting. Ms. Chesnik noted that less than 1% of the Wisconsin population earns over $150,000 annually, and less than one-half of 1% earns more than $500,000 annually. While it is generally agreed that there is an income level at which parents can stop sharing income with their children at the rates in the percentage standard, there is no usable date to suggest at what income level is. The lack of data is a result of the small sample size, which is even smaller when narrowed to such earners who are subject to a child support obligation. Without any supporting data, the advisory committee was uncomfortable recommending any changes to the high-income payer formula.

In addition, the advisory committee found that no other state provides for a cap on income for the purpose of setting a child support obligation. Without precedent to support a termination of support at any particular income level, the advisory committee was uncomfortable recommending a cap.

The advisory committee did recommend a change to the determination of support that addresses a recurring source of contention. There are situations in which multiple formulas under the administrative rules may apply in a single case. For example, a payer parent who has equal shared placement has support governed by the shared placement formula. If that parent also makes $150,000 per year, it is unclear whether the payer is entitled a reduction in support under the high-income payer formula and a reduction as a shared time parent, or should pay support based only on one of these two formulas. Because the regulations offer no guidance on this issue, it is left to the courts, resulting in inconsistent rulings.

The advisory committee recommended that the revised rule allow the high-income payer formula to be combined with the shared, serial, and

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What Does the Future Hold for Dodd-Frank?

Trump Administration Issues Executive Order on Core Principles for Regulating U.S. Financial System

Attorneys Vincent M. Morrone and Adam E. Witkov, Michael Best

On February 3, President Trump issued an executive order that, although it doesn't directly mention the Dodd-Frank Act, will start the predictably long process of revising or repealing various aspects of that law.

While the executive order is very short and general in its scope, it sets the tone and lays the groundwork for the Trump administration's goals regarding Dodd-Frank. The executive order declares it the policy of the Trump administration to regulate the United States financial system in accordance with certain "Core Principles," which include:

- empowering Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
- fostering economic growth and vibrant financial markets;
- enabling American companies to be competitive with foreign firms in domestic and foreign markets; and
- making regulation efficient, effective, and appropriately tailored.

The executive order also directs the Secretary of the Treasury (newly-appointed Steven Mnuchin) to consult with the heads of the member agencies of the Financial Stability Oversight Council (FSOC) and report back to President Trump by June 3, 2017. That report from the FSOC (which is chaired by the Secretary of the Treasury) will identify the extent to which existing laws, regulations, and other policies and requirements promote the Core Principles, the actions taken (and currently being taken) to promote and support the Core Principles, and the actions inhibiting the implementation and support of those principles.

Short-Term Impact of the Executive Order

The immediate impact of the executive order is likely to be relatively small. Because of the other items on the Trump administration's agenda (e.g., healthcare) and the inherent delays built into the regulatory and political system, substantive changes to Dodd-Frank will take months, if not years, to enact and implement.

In addition to the Senate, one of the major obstacles to the Trump administration will be persuading independent agencies, such as the Consumer Financial Protection Bureau (CFPB), Federal Deposit Insurance Corp., the Federal Reserve Board, and the Comptroller of Currency, which are responsible for implementing Dodd-Frank, to pull back on their regulations. The heads of all these agencies were installed by the Obama administration, are likely to serve out their remaining terms, and are not likely to ease Dodd-Frank regulations during their respective terms.

Nonetheless, an important aspect of the 120-day mandated review period for the FSOC is that it will give financial regulators an opportunity to review all rules and regulations to determine the best ways to minimize unnecessary burdens and promote economic growth, while also ensuring the safety of the financial system.

Long-Term Impact of the Executive Order

The long-term impact of the executive order could be much greater than the immediate impact, especially once the Trump administration has the chance to appoint new heads of the regulatory agencies.

The Senate will always be a major hurdle to getting new legislation passed to revise or repeal portions of Dodd-Frank, but the Trump administration could get around this obstacle once it appoints new heads of regulatory agencies charged with implementing the rules and regulations under that law. Regulatory policy can change drastically depending upon who the regulators are, due to new enforcement priorities implemented by each regulator.

If the Trump administration appoints regulators who value the Core Principles and are willing to implement regulations in accordance with those principles (which seems a safe assumption), then the regulatory environment could change drastically, even if new legislation isn't passed. We could start to see some real changes in the financial system: burdens on smaller community banks might be reduced, reporting and recordkeeping requirements might be peeled back, and consumers who have the wherewithal to get a mortgage will be able to do so in a reasonable amount of time without having to jump through various hoops. A complete overhaul of the Dodd-Frank rules is unlikely, but specific changes, such as those just mentioned, are more realistic.

Financial CHOICE Act

Although President Trump's executive order was not long or detailed, House Financial Services Committee Chairman Jeb Hensarling (R-Texas), who last year introduced the Financial CHOICE Act as a replacement for Dodd-Frank, has stated that the executive order contains provisions very similar to those proposed in his legislation.

New legislation is expected to be introduced very soon by Representative Hensarling. Some reports have noted that the new legislation is likely to be more aggressive than the original Financial CHOICE Act. According to reports, two of the major changes from the original Federal CHOICE Act are directed at the CFPB: (i) making the head of the CFPB a political appointee who can be dismissed at will, rather than the director of an independent agency; and (ii) stripping the CFPB of its authority to bring cases against financial institutions.

The authors can be reached at vmmorrone@michaelbest.com and aewitkov@michaelbest.com.

MBA to Host Annual Boy Scouts Law Merit Badge Clinic

The Milwaukee Bar Association will host the annual Law Merit Badge Clinic on Saturday, April 29 from 8:00 a.m. to 4:00 p.m. For nearly 10 years, the Three Harbors Boy Scout Council has gathered Boy Scouts from southeastern Wisconsin in conjunction with Law Day. Participants complete the merit badge requirements, culminating in a moot court demonstration in which the scouts participate. The event, started by attorney Mike Tobin, includes presentations by law enforcement personnel, the district attorney, judges, and attorneys representing numerous substantive practice areas.

Wisconsin OWI Defense for the Out-of-State Driver: An Illinois Study

Attorneys Andrew Mishlove and Lauren Stuckert, Mishlove and Stuckert

A client charged with Operating While Intoxicated (OWI) or Operating with a Prohibited Alcohol Concentration (PAC)[1] will tell you that the experience is like a bad headache. That headache, however, may be far worse for the Illinois driver who is charged in Wisconsin.

Penalties for a Wisconsin OWI include driver's license revocations, ignition interlock device orders, forfeitures, alcohol counseling, and jail or prison plus fines if the offense is criminal. When an out-of-state driver is arrested for a Wisconsin OWI, it adds another level of complication. Every state has its own set of laws relating to the prosecution of drunken driving.[2] When an out-of-state driver is convicted in Wisconsin, the DOT will notify the driver's home state, and that state may reciprocally impose its own driver's license penalties. Often, those penalties will be more severe than the driver's license revocation ordered by the Wisconsin court.

A common scenario is that of the Illinois driver charged with drunken driving in Wisconsin. It is essential that lawyers handling these types of cases know the differences between the states' drunken driving laws. Without proper planning, a Wisconsin OWI conviction can quickly become a nightmare for the Illinois driver.

Illinois Drivers Face Severe Consequences

The maximum driver's license revocation for a Wisconsin driver convicted of first-offense OWI is nine months, usually with immediate eligibility for an occupational permit. Regardless of the Wisconsin court's order, however, an Illinois driver convicted of a first-offense Wisconsin OWI faces an indeterminate Illinois driver's license revocation for a minimum of one year and a maximum of life. An occupational permit, called a restricted driving permit (RDP) in Illinois, may be difficult to obtain. In addition, the refusal to submit to chemical testing (called an implied-consent or IC violation in Illinois) will result in the suspension of an Illinois driver's license for one year. Again, an RDP may be difficult to obtain. In Illinois, a "suspension" is for a definite period of time, whereas a "revocation" is for an indeterminate period of time. Reinstatement of a revoked Illinois license is discretionary and may be difficult to obtain.

Differing Offense Classifications and Plea Bargaining Laws

Wisconsin is the only state where a first offense OWI is a non-criminal violation, subject only to civil penalties. A first offense DUI is a criminal violation in Illinois, but many first-time offenders can take advantage of the state's "court supervision" program. Court supervision is a formal deferred-prosecution program, in which a person charged with a misdemeanor DUI in Illinois is placed on supervision for a specified period of time and, if the supervision is successfully completed, the charge is dismissed. Although a disposition of court supervision is not a conviction under Illinois law, it does count as a prior offense in Wisconsin.[3]

In contrast, Wisconsin statutes severely limit plea bargains in OWI/PAC cases.[4] Plea bargains, which are the rule in Illinois, are the exception in Wisconsin.

Disparate Driver's License Revocation Systems

A Wisconsin driver convicted of a first offense OWI in Wisconsin faces a six to nine-month driver's license revocation, with immediate eligibility for an occupational license. Illinois licensed drivers will be unable to drive in Wisconsin for the entire length of a Wisconsin-imposed revocation, since non-Wisconsin residents are ineligible for an occupational license and the Wisconsin DOT takes the position that an Illinois RDP is not valid in Wisconsin. The authors, however, believe that if the Illinois RDP specifies Wisconsin as an allowed location, it can be used in our state. There is no case law on this question.

This is especially problematic for the Illinois resident who commutes to Wisconsin for work. A person in such a predicament will be forced to either find alternative means of transportation or move to Wisconsin and establish new legal residence to be eligible for an occupational license. Persons who are considering such a move must ensure it is done prior to any actual OWI conviction, because they will not be eligible to obtain a Wisconsin license once Illinois orders its own revocation. Timing multi-state revocations requires a deft hand of defense counsel.

If an Illinois driver is convicted in Wisconsin, it will be reported to the Driver's Services Division of the Illinois Secretary of State. That office will impose a separate Illinois driver's license revocation. All Illinois revocations are for an indeterminate period, but the driver may apply for discretionary reinstatement after a minimum revocation period. The minimum period for a first offense OWI is one year.[5] A person with two DUI convictions within 20 years will receive a minimum five-year

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The Milwaukee Bar Association (MBA), Central Office Systems and Konica Minolta have created an exclusive member program that can reduce the cost of your next office equipment purchase or lease. Here's how it works:

- MBA members receive special pricing from Konica Minolta and Central Office Systems
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***Seventh Circuit* continued from p. 15**

plaintiff had sufficient standing under Article III to pursue such claims in federal court, because it ruled that sovereign immunity barred the claims. *Meyers II* called on the court to address the issue of standing. The issue at hand was whether the plaintiff had alleged the necessary "injury-in-fact" to meet the federal standing requirements under Article III.

The Seventh Circuit reversed the trial court's determination that the plaintiff had pleaded sufficient standing, and thus had met the jurisdictional requirements, to pursue his FACTA claims in federal court. The appellate court determined that Meyers had not suffered the requisite "concrete harm" sufficient to trigger Article III standing. Relying heavily on the U.S. Supreme Court's recent decision in *Spokeo,* the Seventh Circuit panel reiterated that in federal court, "a concrete injury is required 'even in the context of a statutory violation.'" 843 F.3d at 727 (quoting *Spokeo,* 136 S.Ct. at 1549). The court went on to hold that "[m]ore than a 'bare procedural violation, divorced from any concrete harm' is required to satisfy Article III's injury-in-fact requirement." *Id.* (quoting *Spokeo,* 136 S.Ct. at 1549.)

In the case before it, the court held that "*Spokeo* compels the conclusion that Meyers' allegations are insufficient to satisfy the injury-in-fact requirement for Article III standing." *Id.* It reasoned that:

> The allegations demonstrate that Meyers did not suffer any harm because of Nicolet's printing of the expiration date on his receipt. Nor has the violation created any appreciable risk of harm. After all, Meyers discovered the violation immediately and nobody else ever saw the non-compliant receipt. In these circumstances, it is hard to imagine how the expiration date's presence could have increased the risk that Meyers' identity would be compromised.

Id.

Meyers II clearly demonstrates the increasing hostility of federal courts, and the consequent refusal to exercise jurisdiction, over so-called no-injury statutory violation claims. The Seventh Circuit cited post-*Spokeo* 2016 decisions from the D.C. Circuit, Fifth Circuit, Eighth Circuit, and Eleventh Circuit, noted that its ruling was in accord with its sister circuits in similar statutory-injury cases. *Id.* at 728.

That hostility, however, does not necessarily signify the end of such claims. Rather, depending on the jurisdiction, class action plaintiffs may still be entitled to pursue their statutory injury claims in state courts. Importantly, the Article III standing limitations do not apply to many state courts, and they are not constrained by the "case or controversy" requirement. While most states have some sort of standing doctrine, in many jurisdictions the standard is less demanding than it is in federal court.

Wisconsin boasts one of the most liberal standing requirements in the country. In fact, the Wisconsin Supreme Court has stated that "[u]nlike in federal courts, which can only hear 'cases' or 'controversies,' standing in Wisconsin is not a matter of jurisdiction, but of sound judicial policy." *McConkey v. Van Hollen,* 2010 WI 57, ¶ 15, 326 Wis. 2d 1, 783 N.W.2d 855. Accordingly, under the Wisconsin standard, "even an injury to a trifling interest may suffice." *Id.* It is worth noting, however, that while the federal law on standing is not "binding on Wisconsin," its courts "look to federal case law as persuasive authority regarding standing questions." *Id.,* n.7.

Depending on your point of view (and your side of the bar), the potential shift of statutory injury class actions away from federal courts and into state courts can be viewed as positive or negative. Ironically, this was the result the defense bar hoped to avoid through the 2005 enactment of the Class Action Fairness Act (CAFA), 28 U.S.C. §§ 1332(d), 1453, 1711-15. CAFA was enacted at least in part to ensure that federal courts could exercise subject matter jurisdiction over large class actions and reduce "forum shopping" by plaintiffs in state courts.

The ruling in *Meyers II* is likely to impact not only class actions under FACTA, but also other common statutory-injury class actions, such as those brought under the Telephone Consumer Protection Act (TCPA), the Truth in Lending Act (TILA), and the Fair Debt Collection Practices Act (FDCPA). Only time will tell if Wisconsin state courts will experience an increase in the number of class actions based solely on a statutory violation.

***Lawyer-Mediators* continued from p. 11**

lawyer-mediator to resolve their disputes. Having the lawyer-mediator draft all legal documents neutrally for both parties helps assure their joint decisions are well-informed and properly written for the court, and that all necessary implementation steps are taken. This will reduce conflict and post-judgment litigation that arises from ill-informed decisions and poorly drafted documents.

The new rule is a trend-setting response to the evolution of family law. Wisconsin has taken a step that few other states have. It is a step forward for the public, the legal profession, and the courts.

Please join Commissioner Paul Stenzel and Attorney Susan A. Hansen for a CLE seminar, "Limited Scope Representation and New Mediator Drafting Rule: Major Changes in Family Law," hosted by the MBA on April 3, 2017 over the lunch hour.

***Eviction* continued from p. 10**

The Eviction Defense Project benefits tenants with two general forms of civil legal aid. First, the project provides "brief service." A volunteer attorney advises the client about her rights, options, and outcomes she can expect. The attorney may draft documents that the client can file in court to clearly identify her defenses and arguments. Volunteer attorneys also work with landlords to seek stipulated dismissals. Such dismissals may prevent, or at least minimize, the impact of an eviction judgment on a client's record.

Second, the project can provide a "lawyer for a day," where a volunteer attorney represents and advocates for the client at a contested hearing before the small claims court judge.

In all instances, legal assistance by the Eviction Defense Project is limited in scope. This allows a volunteer attorney to provide brief *pro bono* service at the courthouse without the long-term obligations of extended service.

While the 16,000 evictions cases filed each year are far too many for the Eviction Defense Project to handle every case, the project is making a substantial impact through its volunteers by preventing eviction and, in some cases, stopping the spiral of serial eviction before it begins. Just as we must look past the numbers to see the people affected by eviction filings, we must also set aside the erroneous and self-defeating concept that the problem is too big to be addressed one case at a time. There are people behind each of these cases—people whom *pro bono* attorneys are uniquely situated to help at the moment when civil legal aid is needed most.

If you are interested in helping, I encourage you to count yourself among our volunteers. The Eviction Defense Project currently operates on Thursdays in Room G-9 of the Milwaukee County Courthouse, and plans to expand to other weekdays in the near future. Volunteers are asked to staff the project from 12:30 to 4:00. Please contact Raphael Ramos (rfr@legalaction.org), Don Tolbert (dht@legalaction.org), or Maggie Niebler-Brown (mnb@legalaction.org) with any questions or to volunteer.

***Child Support* continued from p. 19**

split placement formulas. The recommendations also allow the low-income formula to be combined with these other formulas. If DCF 150 is amended to reflect this, attorneys will no longer have to spend time and money debating which formula should apply.

The changes to the high-income payer formula are just some of the many proposed changes the advisory committee submitted to DCF as a part of the federally required review. The others include changes to help the judiciary realistically impute income to a low-income earner, more fairly allocate support between children of a serial payer, and recognize the costs of a child's medical insurance.

The advisory committee's work is finished and the ball is in DCF's court. After the advisory committee submitted its recommendations, the possible changes to the high-income payer formula drew significant media attention. This prompted DCF to hold its own public hearings, which have since been completed. Whether DCF will make any changes to the original proposal due to testimony at the hearings remains to be seen. In any event, proposed changes must be submitted to the Legislature, which is likely to hold additional public hearings. Once the Legislature approves the proposed regulations, they can be published. Keep your eyes and ears open for more information as these proposals wend their way through the legislative system.

***Right to Try* continued from p. 17**

licensing boards are prohibited from taking disciplinary action against a physician for recommending an investigational product. Manufacturers may charge for the product, and health insurers are not required to cover costs of treatment with the product. The RTT laws, however, do not compel any manufacturer to fulfill a patient's request for an investigational product.

Proposed Federal Legislation

Senate Bill 2912, the Trickett Wendler Right to Try Act, seeks to remove some of the obstacles that hinder states' RTT efforts. The bill would bar the federal government from restricting use of an investigational drug, which has successfully completed a Phase 1 clinical trial and remains under investigation, to treat a terminally ill patient who has exhausted all other treatment options, as authorized by state law; grant full immunity from suit to those acting under a state RTT statute; and prohibit use of adverse events involving RTT participants from negatively affecting FDA's action on applications for the drug's approval.[9]

While this proposal would avoid the preemption issue discussed below, as well as eliminate the patchwork of variable liability provisions in state RTT laws, it probably would not relieve a number of concerns associated with state RTT laws. For example, the Senate bill reinforces requirements in state RTT laws that permit access to investigational drugs after they have passed Phase I trials, but at that point in the drug development process, scant data exist about the drug's safety, and almost none about its efficacy in treating the targeted disease. Also, the federal bill, like state RTT laws, does not require insurance companies to cover costs associated with the experimental treatment and does not require drug manufacturers to make their products available. Therefore, its potential impact on access to investigational drugs is questionable.

Federal Preemption and Case Law

Preemption:

While the U.S. Supreme Court has not addressed the issue of investigational products in the context of RTT laws, such laws would probably be found to violate the Supremacy Clause of the federal Constitution by encroaching on congressionally mandated FDA authority to regulate the drug approval process and ensure the safety and efficacy of drugs for the market. Federalism, which is central to the United States' constitutional design, embodies the principle that both federal and state governments have elements of sovereignty that the other is bound to respect. This concept creates the possibility that laws can be in conflict or at cross purposes.[10] The Supremacy Clause establishes federal law as the "Supreme Law of the Land … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

In other words, state law that contravenes federal law is "without effect."[11] While the FDCA does not contain an express preemption clause, it does state that a federal rule governs if there is a "direct and positive conflict" with any state law.[12] RTT laws present a "direct conflict" with the FDCA because they permit manufacturers to provide patients with access to unapproved drugs, contrary to the FDCA mandate that "no person shall introduce or deliver for introduction into interstate commerce any new drug" unless FDA has approved an application for that drug or otherwise authorized use of the investigational drug through a clinical trial or an expanded access program.

Indeed, in analogous situations, federal courts have held that FDA's comprehensive regulatory regime governing the manufacture, labeling, approval, and distribution of drugs preempts state laws in this area. For example, in the *Celexa and Lexapro Marketing and Sales Practices Litigation*,[13] plaintiffs claimed that Lexapro's FDA-approved drug label

continued next page

***Right to Try* continued from p. 24**

misled California consumers by omitting material efficacy information in violation of California's consumer protection laws. The U.S. Court of Appeals for the First Circuit affirmed dismissal of the complaint on the ground that the FDCA implicitly preempted the claims because it prohibits the manufacturer from independently changing its FDA-approved label as the plaintiffs claimed California's law required.

Moreover, conflict preemption applies "where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[14] RTT laws may frustrate the purposes of the FDCA and the FDA in regulating new drugs. As the Supreme Court has observed: "Congress enacted the FDCA to bolster consumer protection against harmful products."[15] In furtherance of this purpose, Congress created a complex regulatory scheme covering the testing, approval, and distribution of pharmaceuticals. RTT laws allow individuals to receive investigational products without the knowledge or oversight of the FDA, thereby undermining the agency's monitoring mechanisms and safeguards, such as scientific and ethical review by institutional review boards. Also, widespread use of RTT laws could discourage patients from enrolling in FDA-sanctioned clinical trials, slowing FDA's evaluation of safety and effectiveness and delaying approval of new drugs for general public use.[16]

There is a presumption against preemption "in any field in which there is a history of state law regulation, even if there is also a history of federal regulation." Thus, if a state law regulates in an area of traditional local concern, Congress must make its intent to preempt that state law clear.[17] Although states have had great latitude in regulating health and safety, Congress did make the intent to preempt state law clear in the 1962 amendments to the FDCA with respect to "direct conflicts."

Case Law:
Aside from obstacles posed by legal challenge under the Supremacy Clause, RTT laws run counter to the *Abigail Alliance* court decision, which preceded the emergence of those laws. Abigail Alliance for Better Access to Developmental Drugs is an organization that seeks access to experimental drugs for terminally ill individuals.[18] The organization was founded by Frank Burroughs, whose daughter Abigail was diagnosed with head and neck cancer. Abigail failed to qualify for enrollment in clinical trials of experimental cancer drugs, and she failed to obtain access to treatment through FDA's expanded access program because manufacturers would not provide the drugs. After Abigail's death, her father founded the Alliance, which filed a citizen's petition with the FDA urging that terminally ill patients should have the opportunity to try new treatments that have met a lower evidentiary burden in terms of safety and efficacy than that required for general regulatory approval. When the FDA failed to respond, the Alliance filed suit in federal court arguing that the Constitution provides a right of access to experimental drugs for the terminally ill, which the FDA process impeded.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit found merit in the Alliance's claim and recognized the existence of a constitutional right of access, but this decision was reversed *en banc.* The *en banc* court held that terminally ill individuals do not have a fundamental due process right to access investigational drugs, noting that our nation has a history of federal drug regulation under which the FDA has full authority to condition a drug's market approval on satisfying safety and efficacy requirements.

Anticipating Legal Challenge

The Supreme Court has not addressed viability of RTT laws, and various factors suggest that such a challenge will not soon be forthcoming. Drug manufacturers may be the most likely entities to bring a challenge; RTT laws subject them to varying legal requirements concerning expanded access to investigational drugs, both from state to state and between states and the FDA. Because RTT laws do not require manufacturers to fulfill a patient's request for an investigational product, however, incentive to challenge them is minimal.

If a preemption challenge were brought, however, it would probably succeed under the jurisprudence discussed above. While FDA regulations may not preempt state laws that preserve constitutionally protected rights, the court in *Abigail Alliance* found that individuals do not have a constitutional due process right to access investigational drugs, and other courts would probably follow this ruling. Indeed, courts before *Abigail Alliance* ruled similarly.[19]

Conclusion

The uncertainties surrounding the legal validity of RTT laws, along with the health and safety issues they invoke, should sound a note of caution to state legislatures considering the adoption or extension of such laws. They are unlikely to survive legal challenge under the Supremacy Clause. Attempts at the federal level to pass legislation to expand the ability of terminally ill patients to gain access to experimental medicine might avoid preemption hurdles faced by state RTT laws discussed above. To date, however, federal legislative efforts have languished, perhaps because of the challenging patient protection and practical questions raised by expanded access outside the FDA's purview under either federal or state legislation.

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[1]Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301, et seq.
[2]Section 505, Food, Drug and Cosmetic Act, 21 U.S.C. § 355.
[3]Roberts, B.S., Bodenheimer, D.Z., "The Drug Amendments of 1962: The Anatomy of a Regulatory Failure," *Arizona State Law Journal* 1982: 581-614.
[4]21 CFR § 312.305; 21 CFR § 312.310(a)(1)-(2).
[5]Y. Tony Yank, et al., "Right to Try Legislation: Progress or Peril?," 33 *J Clinical Oncology* 2597 (2015), available at http://jco.ascopubs.org/content/33/24/2597.full.pdf (last visited 3/13/3017).
[6]Steven Ross Johnson, "Despite Political Support, State Right to Try Bills Show No Takeup," *Modern Healthcare* (Oct 17, 2015), available at www.modernhealthcare.com/article/20151017/MAGAZINE/310179969 (last visited 3/12/17).
[7]righttotry.org (last visited 3/12/17).
[8]S. 2912, Trickett Wendler Right to Try Act of 2016, 114th Congress (2015-2016), § 2(b)(i) (introduced 5/10/2016). The Senate bill joins a companion bill (H.R. 3012), introduced in the House in July 2015 by Representative Matt Salmon, which has languished in committee.
[9]*Id.,* § 2(b)(2).
[10]*Arizona v. United States,* 567 U.S. 387, 132 S. Ct. 2492, 2500, 183 L.Ed.2d 351 (2012).
[11]*Maryland v. Louisiana,* 451 U.S. 725, 746 (1981).
[12]*See* savings clause to the FDCA 1962 amendments, Pub. L. No. 87-781, 76 Stat. 793, discussed in *Wyeth v. Levine,* 555 U.S. 555, 567 (2009).
[13]*In re Celexa and Lexapro Marketing and Sales Practices Litigation (Marcus v. Forest Laboratories and Forest Pharmaceuticals),* 779 F.3d 34, 35 (1st Cir. 2015).
[14]*Freightliner Corp v. Myrick,* 514 U.S. 280, 287 (1995).
[15]*Wyeth v. Levine,* 555 U.S. 555, 574 (2009).
[16]One element of state RTT laws that might survive a preemption challenge is tort liability protection. Because the FDCA does not regulate tort liability, liability protections of drug manufacturers and physicians in RTT laws probably would survive challenge.
[17]*National Foreign Trade Council v. Natsios,* 181 F.3d 38, 73 (1st Cir. 1999) (citing *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947)).
[18]*Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach (Alliance II),* 495 F.3d 695, 697 (D.C. Cir. 2007) (en banc) (reversing 445 F.3d 470 (D.C. Cir. 2006)).
[19]*See Mitchell v. Clayton,* 995 F.2d 772, 775 (7th Cir. 1993) (parents have no constitutional right to obtain certain treatment); *United States v. Burzynski Cancer Research Institute,* 819 F.2d 1301, 1313-14 (5th Cir. 1987) (terminally ill patients had no constitutional right to obtain specific treatment); *Carnohan v. United States,* 616 F.2d 1120, 1122 (9th Cir. 1980) (right of privacy and personal liberty did not encompass right to obtain laetrile free of government regulation).

***OWI Defense* continued from p. 21**

revocation,[6] while three DUI convictions in 20 years will result in a ten-year revocation.[7] An Illinois driver convicted of a fourth offense DUI will be permanently ineligible to obtain an unrestricted license in that state.[8]

The Illinois Secretary of State will not reinstate an otherwise eligible driver until that person has been issued an RDP and has driven on it without incident for at least nine months. RDPs are similar to Wisconsin occupational licenses, except that Illinois RDP eligibility is discretionary. A driver who applies for these licenses must demonstrate at a hearing that he or she has met the stringent treatment and other requirements for an RDP. It is wise to hire an Illinois lawyer for this process. Similarly, when the minimum revocation period has expired, another hearing is required to determine whether reinstatement of unrestricted driving privileges will be permitted.

A prerequisite to applying for an RDP is completion of an alcohol evaluation and the recommended treatment at a treatment facility licensed by the Illinois Office of Alcohol and Substance Abuse.[9] The treatment required in Illinois, even for persons assessed as low risks for reoffending, is significantly more time-consuming than that required for a first offense OWI conviction in Wisconsin.

Wisconsin Ignition Interlock Orders Currently Not Transferable to Illinois

A person convicted of first offense OWI in Wisconsin is required to install an ignition interlock device (IID) in all registered vehicles for a period of one year if his or her breath or blood alcohol concentration was .15 or higher.[10] IIDs require a driver to blow a breath sample into the device before starting the vehicle and at random times during the operation of the vehicle. It will prevent the vehicle from starting if the subject's breath alcohol concentration is more than the device's programmed blood alcohol concentration (BAC) allowance. Illinois also often requires that these devices be installed in offenders' vehicles as a condition of its court supervision program. At the present time, however, Wisconsin IID orders are unenforceable in Illinois.

Conflicting Refusal Laws Can Benefit Illinois Drivers Arrested in Wisconsin

A Wisconsin driver arrested for OWI who refuses to submit to an evidentiary chemical breath or blood test will be charged with refusal under Wisconsin's implied consent law.[11] In Wisconsin, a first offense refusal carries a more severe penalty than a first offense OWI: a one-year IID order, a one-year driver's license revocation, and ineligibility for an occupational license for 30 days.[12]

Illinois, however, will impose a less severe penalty for a Wisconsin refusal violation than it will for a first offense Wisconsin OWI conviction. In Illinois, the Wisconsin refusal conviction will result in a one-year suspension of a person's Illinois driving privileges as opposed to an indefinite revocation.[13] Upon conclusion of the one-year refusal suspension, reinstatement of regular driving privileges is automatic, thus eliminating the need for the adjudicative step that would be required for reinstatement after revocation resulting from a Wisconsin OWI conviction.[14] Also, the RDP may be easier to obtain in the case of an implied consent violation. Thus, unlike the Wisconsin driver, the Illinois driver is better off with a refusal conviction than an OWI conviction. The standard Wisconsin resolution of dismissing the refusal is definitely not helpful to an Illinois driver.

Lawyers defending Illinois drivers must be prepared to explain to both prosecutors and judges that a resolution of this nature is consistent with the plea-bargaining limitations set forth in Wis. Stat. § 967.055.

Illinois Driver Cases Require Additional Work

Multi-state driver's license revocations can present the lawyer with a bewildering number of permutations and hazards, especially if the client needs to drive in both Wisconsin and the home state. These can be predicted and managed. Still, lawyers must be aware that they are continually subject to potential pitfalls and changes.

The Wisconsin and Illinois systems do not align with each other. This often leads to inequitable results for the driver caught between the rock of Wisconsin and the hard place of Illinois. Also, confusion can result when the same vocabulary terms (e.g., "revocation" and "suspension") have different meanings in each state. Wisconsin lawyers who represent Illinois or any out-of-state drivers must educate themselves on the respective state laws. This requires efforts on several levels, including statutory research, phone calls, written requests to obtain information from the licensing agency of the client's home state, and discussions with knowledgeable attorneys in that state. Skipping these steps could lead to irreversible damage to an out-of-state offender's driving privileges.

Andrew Mishlove and Lauren Stuckert, of Mishlove and Stucker, www.Wisconsin-OWI.com, are Wisconsin's only board certified, ABA accredited OWI defense specialists. They practice statewide, with offices in Glendale and Oshkosh.

[1]Wis. Stats. §§ 346.65(1)(a), 346.65(1)(b).
[2]In Wisconsin, the acronyms OWI and PAC are commonly used. In other states, including Illinois, DUI is the preferred acronym. For purposes of this article, OWI is used in reference to Wisconsin law (including both OWI and PAC charges) and DUI is used when referring to Illinois law.
[3]*State v. List,* 2004 WI App 230, 277 Wis.2d 836, 691 N.W.2d 366.
[4]Wis. Stat. § 967.055.
[5]625 Ill. Comp. Stat. 5/6-208(b)1.
[6]625 Ill. Comp. Stat. 5/6-208(b)2.
[7]625 Ill. Comp. Stat. 5/6-208(b)3.
[8]625 Ill. Comp. Stat. 5/6-208(b)4.
[9]92 Ill. Admin. Code tit. II, § 1001.420(a)1.
[10]Wis. Stat. § 343.301(1g)(a)2.
[11]Wis. Stat. § 343.305(9).
[12]Wis. Stat. §§ 343.305(10), 343.301(1g)(a)1.
[13]625 Ill. Comp. Stat. 5/6-203.1, 5/6-206(a)(6).
[14]625 Ill. Comp. Stat. 5/6-203.1(b).

***Local Government* continued from p. 9**

Douglas H. Frazer, Northwestern 1985, is a shareholder in the Milwaukee office of Dewitt Ross & Stevens. He focuses his practice on tax litigation and controversy.

[1]Wis. Stat. § 9.20 "permits local electors to submit a petition requesting that an attached proposed ordinance either be adopted by the municipality's governing body without alternation or be referred to a vote in the next election." *See* Bach, "Vox Populi: Wisconsin's Direct Legislation Statute," *Wisconsin Lawyer* (May 2008).

[2]*See* Memorandum from Bob Lang, Director of the Legislative Fiscal Bureau, to Rep. Katrina Shankland (May16, 2016). For an interesting discussion of the Home Rule Amendment *see* May, "Rejected: Municipal Home Rule Powers in Milwaukee Cases," *Wisconsin Lawyer* (Nov. 2016).

[3]*Black v City of Milwaukee,* 2016 WI 47, ¶¶ 23-39, 369 Wis. 2d 272, 882 N.W.2d 333, *cert. denied,* --- U.S. ---, 137 S.Ct. 538 (upholding statute precluding city from enforcing residency requirement); *Madison Teachers Inc. v Walker,* 2014 WI 99, ¶¶ 87-129, 358 Wis. 1, 851 N.W.2d 337 (upholding Act 10's prohibition of City of Milwaukee from paying employee share of pension contributions).

[4]*Black,* 2016 WI 47, ¶¶ 52-127 (Justice Rebecca Bradley concurring in result, Justices Abrahamson and Ann Bradley concurring and dissenting).

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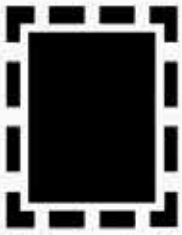

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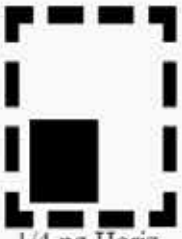

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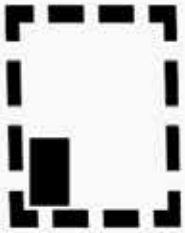

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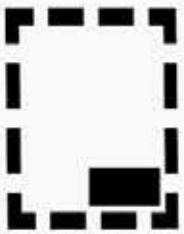

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