

Legal NEWSLETTER

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MARITAL PROPERTY AGREEMENTS

By Attorney Kamryn K. Ramker

Wisconsin is one of a handful of “community property” states in the United States. Community property states assume equal ownership of property between married couples, which is called marital property. In Wisconsin, there are certain exceptions to marital property, such as property acquired by a spouse through gift or inheritance, as long as such property is not mingled with marital property. Wisconsin’s marital property laws provide a framework for managing spousal property rights in marriage, during a legal separation or divorce, and in the event of death. Wisconsin’s marital property law can be used as a powerful tool in the context of estate planning, because it allows for certain marital property to be transferred to

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NAME, IMAGE, AND LIKENESS IN HIGH SCHOOL SPORTS

By Attorney Brent W. Jacobson

The right of an athlete to contract for compensation in exchange for the use of his or her name, image, and likeness (“NIL”) has become a hot topic in recent years, particularly in the world of college sports. Following extensive federal court litigation, college athletes gained the right to earn money for associating their name, image, and likeness with products and services.

As the NIL industry evolves at the collegiate level, attention has started to turn to high school sports. In each state, including Wisconsin, there is some form of high school athletic association, the purpose of which is to facilitate interscholastic sports competition. In Wisconsin, the principal organization overseeing high school athletics is the Wisconsin Interscholastic Athletic Association (“WIAA”).

Prior to 2025, the WIAA’s amateur status rules precluded student-athletes at WIAA member schools from accepting valuable consideration for the use of their name, image, and likeness. As part of a growing trend in other states in an effort to avoid costly litigation that burdened the NCAA, the WIAA membership adopted changes to its amateur status rules in April 2025 to allow for some name, image, and likeness activities by student athletes.

While allowing student-athletes to accept some value in exchange for their name, image, and likeness, WIAA rules restrict student athletes from appearing in school uniforms and from endorsing



certain products, such as tobacco among others.

For the complete language of the WIAA’s NIL rule, one can visit www.wiaawi.org and retrieve the Senior High Handbook under school publications.

You may also reach out to one of our experienced attorneys that has extensive experience with the WIAA. ♦

**BIG ENOUGH TO WIN,
SMALL ENOUGH TO CARE.**

ARREST RECORD DISCRIMINATION IN THE WORKPLACE

By Attorney Brian G. Formella

The Wisconsin Fair Employment Act (WFEA) is a cornerstone for various rights of employees, including protection from a range of unlawful discrimination actions that apply to the employment relationship.

For example, the WFEA prohibits employment discrimination based on an individual's arrest record. In a recent Wisconsin Supreme Court decision, the Court clarified that the scope of this protection extends to arrest records for noncriminal forfeiture offenses, not just criminal wrongdoing. In other words, the Court concluded that the definition of "arrest record" includes non-criminal offenses like municipal theft citations.

In Oconomowoc Schools v. Cota (2025), the Court concluded that the term "arrest record," applies to arrest records relating to non-criminal and criminal offenses alike. Municipal citations, which are non-criminal in nature, fall within the Wisconsin definition of arrest record. This decision broadens the scope of the WFEA's protections available to employees and candidates for employment. It requires that employers be more vigilant in complying with the law to avoid successful suits that allege arrest record discrimination.

The Oconomowoc School District launched an internal investigation when a co-worker accused two fellow District employees of stealing money from the District. That investigation was inconclusive. The District determined that it was missing cash but could not identify who was responsible. The District turned the case over to the local police department for further review. After further investigation, two employees were cited by the



municipality for municipal theft, a non-criminal offense.

Approximately one year later, the Assistant City Attorney for the municipality told the District that he believed he could obtain a conviction against the two suspected employees. The next day, the District terminated the employees' employment. The employees then filed suit, alleging arrest record discrimination under the WFEA.

The WFEA was enacted to ensure that individuals are evaluated for employment based on their qualifications rather than factors such as race, age, disability, religion, or arrest record. The legislature's intent was to protect individuals from stigmatization and to promote equal access to employment opportunities. By clarifying that municipal citations are covered under the WFEA's definition of "arrest record," the Court has underscored that employers must not discriminate against employees or applicants based on municipal citation records, subject to certain exceptions.

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the surviving spouse without the need for probate. However, such a transfer is not necessarily automatic. The best way to take advantage of marital property law in the estate planning context is for married couples to create marital property agreements, as set forth in Wis. Stat. Chapter 766. Spouses have broad authority to structure their property ownership through such agreements. Sometimes marital property agreements are referred to as pre- or post-nuptial agreements (a “prenup” or “post-nup”), and they may be created before or during marriage.

Marital property agreements can be used for a variety of purposes, such as ensuring certain property remains individually owned in the event of marriage dissolution, starting or stopping spousal support, and simplifying estate planning through probate avoidance. Married couples may create a marital property agreement in the context of estate planning to avoid probate through what are known as “Washington Will” provisions, as you can guess they were first used in Washington, another community property state.

Most commonly, spouses use marital property agreements in the context of estate planning to direct all assets to the surviving spouse upon death, without the need for probate, but Washington Will provisions also allow for non-probate transfers on death to other specific beneficiaries, such as children, trusts, entities, etc. This is opposed to a traditional last will and testament in Wisconsin, which simply acts to provide instruction to the probate court for the purpose of estate administration. Probate is not necessarily a scary process, as it is a quite common step-by-step procedure, but avoiding probate can help ease further burden for already grieving surviving spouses and families by reducing the expense and shortening the timeline to settle the decedent’s affairs. It is important to note that these provisions expire in the event of divorce, and may be revoked or changed at any time with the consent of both spouses.

If you are interested in pursuing a marital property agreement for asset protection and/or estate planning, please schedule an appointment with one of our experienced attorneys. ♦

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This decision has significant implications for both employers and employees. There are several approaches that employers may lawfully follow to avoid arrest record discrimination. An employer’s attorney will be of assistance in helping the employer in such situations

For employees, the decision underscores the importance of understanding their rights under the WFEA. Employees should be aware that arrest records pertaining to non-criminal municipal citations are a protected category under the WFEA.

Relevant legislation is pending in the Wisconsin legislature concerning this matter.

If you are an employer or employee and have any questions about employment law please reach out to one of our skilled employment lawyers. ♦

FIRM NEWS

Anderson O’Brien, LLP is pleased to announce that Steven H. Thompson has been named Partner at the firm. Steven has been a valued member of the team since 2018, and practices in the areas of estate planning, business law, and real estate. Steven’s professionalism, commitment to exceptional client service and alignment with the firm’s core values make him truly deserving of this well-earned milestone.



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