

Wisconsin Counties Association

2024 ANNUAL CONFERENCE



8:00 – 9:00 AM

When “Spirited Debate” Crosses the Line:
What Can You Do?

When “Spirited Debate” Crosses the Line: What Can You Do?

2024 WCA Annual Conference
September 23, 2024

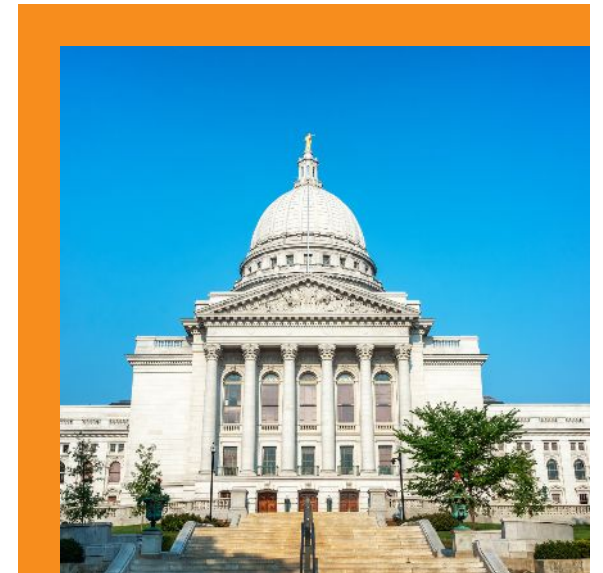
ATTOLLES
LAW, S.C.

WCA
Wisconsin Counties Association



PRESENTATION OVERVIEW

1. Introduction
2. State Law Remedies
3. Local Law Remedies
4. RONR
5. A Path Forward...



An aerial photograph of a city, showing a mix of modern high-rise buildings and older, lower-rise structures. The image is partially obscured by a semi-transparent white rectangular box in the center, which contains the title text. The background shows green trees interspersed among the buildings.

Introduction: “Attolles, please help us!”

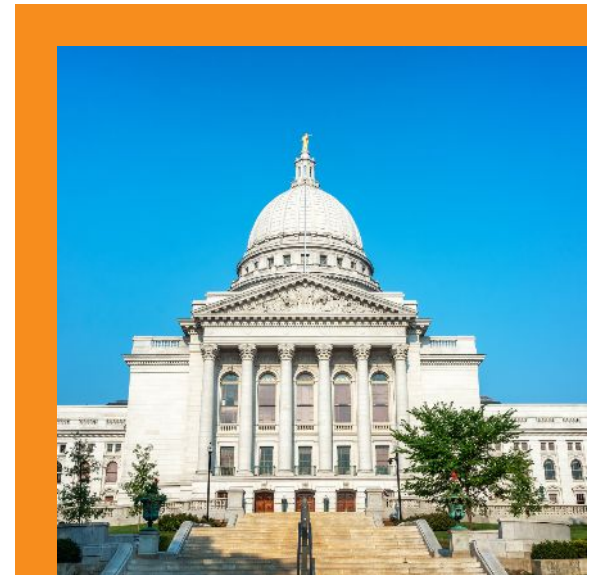
- Your county is not alone!
- Not an uncommon request. Several counties have challenging County Board members and situations surrounding decorum at Board meetings (and elsewhere.)
- Available options depend on three (3) things:
 - Applicable law
 - Facts and circumstances
 - Just how bad is it, and how far are the parties willing to go for a solution?



Warning - What our Presentation Is Not:

- A one-size, fits-all solution.
- Each County is different, each County Board Supervisor is different, so the potential variations in scenarios are endless.

Ethics Code Violations





What is “Behaving”?


- Wis. Stat. Ch. 19 – General Duties of Public Officials
 - Wis. Stat. s. 19.59 – Code of ethics for local government officials, employees and candidates



What is “Misbehaving”? Wis. Stat. s. 19.59(1) and the Code of Ethics

- Wis. Stat. s. 19.59(1)(a): No county official may use his or her office to:


Obtain a financial gain of anything of substantive value for the private benefit of himself or herself or his or her immediate family, or an organization with which he or she is associated.



What is “Misbehaving”? Wis. Stat. s. 19.59(1)

- Wis. Stat. s. 19.59(1)(c)1: No county official may:

Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.



What is “Misbehaving”? Wis. Stat. s. 19.59(1)

- Wis. Stat. s. 19.59(1)(c)2: No county official may:

Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official’s immediate family either separately or together, or an organization with which the official is associated.



Enforcement of Ethics Code

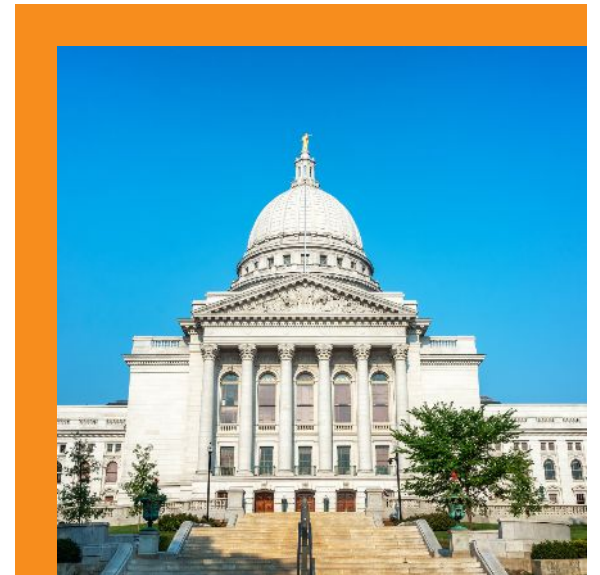
1. Official complaint with District Attorney
 - May seem drastic depending upon the circumstances
2. Advisory opinion from corporation counsel
 - Will the advice be followed?
 - Do we want to ask corporation counsel to “pick sides?”
3. Complaint to Ethics Board or Committee
 - Do we want to weaponize the ethics board or committee?
4. Ethics Code violations do NOT result in removal from office...



A Different Option? Wis. Stat. s. 59.15 - Neglect of Duty

- Wis. Stat. s. 59.15: Any supervisor who refuses or neglects to perform any of the duties which are required of the supervisor by law as a member of the board, without just cause therefor, shall for each such refusal or neglect forfeit not less than \$50 nor more than \$200.
- While a County Board may provide for a forfeiture, it may not adopt an Ordinance or impose a penalty prohibiting the violator from running for office. See 66 Atty. Gen. 148.
- What is “required by law?” (Synonymous with “ministerial.”)
- Has anybody EVER seen this enforced?

The Ultimate Remedy – Removal From Office





Wis. Stat. s. 17.09 – Removal

- Wis. Stat. s. 17.09 – a county board member may be removed “by the county board, for cause, by a vote of two-thirds of all the supervisors entitled to seats on such board.”
- Wis. Stat. s. 17.001 – “cause” is defined as “inefficiency, neglect of duty, official misconduct, or malfeasance in office.”



Wis. Stat. s. 17.16 – Removal

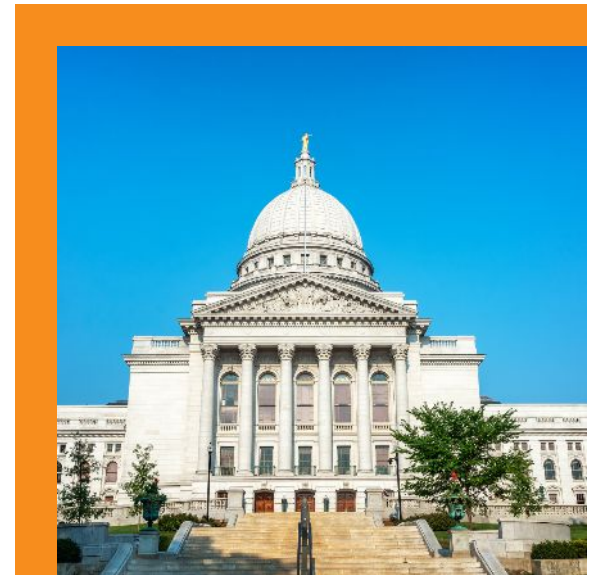
- (3) Removals from office for cause under this chapter ... shall be made as provided in this section, and may be made only upon written verified charges brought by a resident taxpayer of the governmental unit of which the person against whom the charges are filed is an officer, and after a speedy public hearing at which the officer shall have full opportunity to be heard to present a defense against the charges, personally and by counsel. A copy of the charges and written notice of the time and place for the hearing shall be given the officer by the removing power by delivery to the officer in person or by mailing the same to the officer at the officer's last and usual post-office address not less than 10 days prior to the hearing. The officer may within 10 days from service of the charges file with the removing power a verified answer thereto. The hearing shall be conducted and investigation made by the removing power with due dispatch
- (5) The removing power, and in case such power consists of more than one person, each such person is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence, and may make and enforce such orders and rules as are necessary to properly conduct such hearing and may appoint and fix the compensation of a stenographer to take testimony thereat.

An aerial photograph of a city with a semi-transparent white banner overlaid in the center. The banner contains the title 'Removal from Office' in a bold, blue, sans-serif font. The background shows a mix of urban buildings, green trees, and residential areas.

Removal from Office

1. It is a lengthy process full of due process guarantees.
2. It is a public process that will impact how the community views the board and the allegedly offending supervisor.
3. It is an expensive process.
 - Counsel to investigate and prosecute
 - Counsel to the Board

Less Drastic –
Censure





Censure

- Defined: An official reprimand or condemnation; to criticize harshly.
- RONR:
 - An organization ultimately has authority to adopt its own rules and to require that its members refrain from conduct injurious to the organization or its purposes.
 - May take the form of a Motion of reprimand or strong opinion of disapproval; an exception to the general rule that a motion must not use language that reflects on a member's conduct or character



Limitations on Censure: Freedom of Speech?

- Houston Community College System v. Wilson, 142 S. Ct. 1253 (2022):
 - Houston Community College System Board of Trustees member censured for a variety of misbehaviors, including publicly criticizing other Board members and filing multiple lawsuits challenging Board actions.
 - The Supreme Court of the United States (SCOTUS) recognized that since “colonial times, the power of assemblies to censure their members was assumed.”
 - Claim: The Board’s censure of Mr. Wilson violated his First Amendment right to free speech.



Limitations on Censure: Freedom of Speech? Houston Community College System v. Wilson

Limitation: a government body may not take adverse action in response to protected speech that would not have been taken absent the “retaliatory motive.”

- “Adverse action” is usually dismissal from government employment/position.
- Is the person prevented from doing his or her job? Does it deny the person his or her office? Was it defamatory?
- Censure is not the same as exclusion from office.

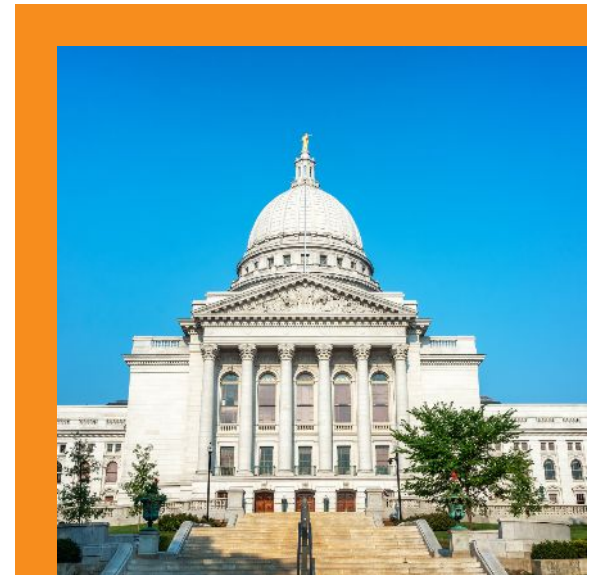
An aerial photograph of a city with various buildings and greenery. A semi-transparent white box is overlaid on the center of the image, containing the title text in blue.

Limitations on Censure: Freedom of Speech? Houston Community College System v. Wilson

- The SCOTUS held that the censure was not a “retaliatory action” against Mr. Wilson and therefore the Board was not prohibited from censuring his conduct.
- Censure itself is a form of speech by other elected officials that concerns conduct of public office.

“The First Amendment promises an elected representative the right to speak freely on questions of government policy, but it cannot be used as a weapon to silence other representatives seeking to do the same thing.”

Setting Expectations – County Board Rules





County Board Rules – the Basics

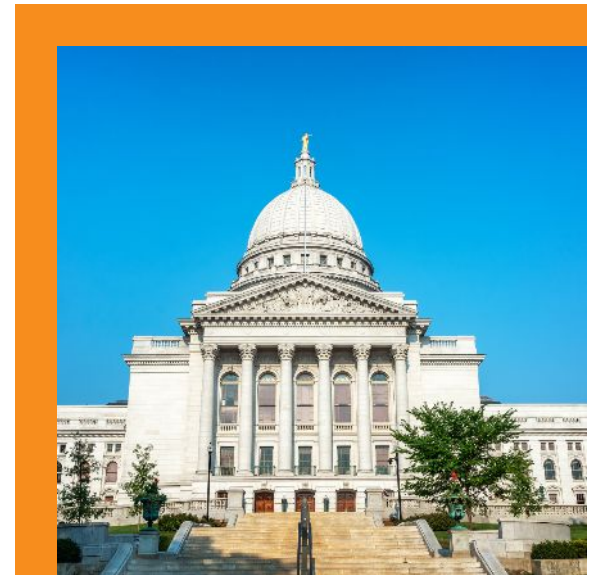
- Wis. Stat. s. 59.03 provides counties with tremendous organizational flexibility
- One of the ways counties can “institutionalize” expectations for meetings is to adopt board rules
- Board rules may (but are not required to) be codified in ordinance
- Remember the precedential hierarchy – federal law, state law, local law, board rules, RONR



County Board Rules – Concepts of Decorum

- Supervisors, visitors, staff and others shall at all times conduct themselves in respectful manner
- No conversation on the board floor or in the visitor's section
- All electronic devices shall be kept in the silent mode
- Supervisors shall use county provided electronic devices in accordance with policy
- Designate who may distribute literature - supervisors, county board staff, sergeant-at-arms, county clerk, administrator, etc.
– not the general public.

Boardsmanship and rules of decorum (RONR)





Debate on the Question

- Members remarks must be germane to the question before the assembly
- Speakers must address their remarks to the chair, maintain a courteous tone, avoid injecting a personal tone into the debate
- Member has a right to speak twice in the same question
- Can speak no longer than 10 minutes in total



Address the Chair

- Address all remarks through the chair – not the body, gallery or TV cameras
- Members cannot address one another directly
- Direct questions to other members through the chair



Avoid Use of Member's Names

- Address all remarks through the chair – not the body, gallery or TV cameras
- Members cannot address one another directly
- Direct questions to other members through the chair



Avoid Use of Member's Names

- Presiding officer should not be referred to by name
- Presiding officer speaks of himself/herself in the third person
- Avoid mentioning another's name when the person can be described in another way



Duties of the chair

- All persons at a meeting have an obligation to obey the presiding officer
- Members using parliamentary procedure for obstructive purposes should not be recognized or ruled out of order
- Enforce the rules relating to debate, order and decorum
- Remind members to confine remarks to the merits of the question



Duties of the chair

- Announces issues and keeps members on track
- Restates motion to place before the body and for clarity
- Recognizes members
- Asks for votes on each side and announces outcome
- Responds to requests and rules on points of order



What Can We Do Besides Invoke These Remedies???

1. Have open and honest discussions about decorum and expectations
 - Avoid discussions on this topic outside the board room to avoid quorums
 - Confidential?
2. Public Comment by Chair
3. Remember: Respect
4. Suggest EAP for personal issues or challenges
5. Work with your HR Department



THANK YOU!

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