BY JENNIFER L. BINKLEY & SARA T. GHADIRI

Special Immigrant Juvenile Status:

Predicate Orders Demystified

Special Immigrant Juvenile Status is a pathway to legal status for immigrant minors who have been abandoned, abused, or neglected by one or both of their parents. This article explains the pathway and provides guidance for attorneys who would like to take these cases on, including suggestions for how to provide courts with the necessary information to adjudicate these requests without undue delay.

Special Immigrant Juvenile Status (SIJS) is a pathway to legal status for immigrant minors who have been abandoned, abused, or neglected by one or both of their parents or who have experienced maltreatment from one or both of their parents that, under state law, is similar to abandonment, abuse, or neglect. It is a unique area of the law in that it involves an interaction of federal and state law that is often misunderstood.

The goals of this article are 1) to dispel misconceptions and explain the statutory framework that exists under federal and Wisconsin law that relates to helping abandoned, abused, or neglected minors in Wisconsin find a pathway to legal status in the United States; and 2) to encourage attorneys, regardless of area of focus, to consider taking these cases on and resolving them expeditiously. This article examines common misconceptions that exist in Wisconsin, including the findings that can be made, in which types of cases findings can be made, and which judicial officers are empowered to make these findings; and provides a framework of understanding to make it easier for attorneys and judges to understand how these federal issues should be analyzed under state law.

Federal SIJS Framework

U.S. Citizenship and Immigration Services (USCIS), a federal agency, adjudicates applications for SIJS pursuant to 8 U.S.C. § 1101(a)(27)(J), part of the Immigrant and Nationality Act (INA). An application consists of two parts. The first is a valid order issued by a state "juvenile court" (as defined under federal law) that makes certain findings (pursuant to state law):

- The minor is dependent on the court or is in the custody of a state agency or department or an individual or entity appointed by the court;
- The minor cannot be reunified with one or both of the minor's parents because of any of the following: abuse, abandonment, neglect, or a similar basis under state law; and
- It is not in the minor's best interests to return to the minor's (or the minor's parents') country of nationality or last habitual residence.

Without a state court order making those factual findings in a proceeding under state law, a USCIS application cannot proceed. Until the application to USCIS is adjudicated, the state court predicate order has no effect on the minor's immigration status.

The idea behind this framework was to create a federal overlay that could be applied across states (each of which has a different family law system) and that would build on existing state law and state judicial expertise to prove that minors meet certain legal definitions that would qualify them for SIJS, while leaving to USCIS the immigration expertise needed to adjudicate cases. This article therefore focuses on the state law framework for these cases.

Wisconsin's Lack of Precedent in SIJS Cases

As of early March 2025, the Wisconsin Court of Appeals and the Wisconsin Supreme Court have not presented a roadmap of Wisconsin law for the circuit courts to follow in deciding requests for SIJS findings regarding abandonment, abuse, or neglect of minors. The authors provide a framework of understanding of which judicial officers hear which kinds of cases and can make findings to support an application for SIJS and thus fill a crucial gap to make it easier for attorneys and judges to understand how these federal issues should be analyzed under state law. The authors hope that this article will increase the number of attorneys willing to take these cases on, expand attorneys' pro bono practices, and improve judicial economy by providing courts with the necessary

Juvenile Status_Feature-half-top-left.indd 27 3/25/2025 11:04:54 AM

information to adjudicate these requests without undue delay.

SIJS Findings Not Limited to Wis. Stat. Chapter 48 Cases

Federal Framework for "Juvenile Courts." The fact that SIJS applications require findings about whether a child has been abandoned, abused, or neglected or has experienced similar maltreatment under state law has led many judges and attorneys to believe that SIJS findings in Wisconsin can only be made in the context of Wis. Stat. chapter 48, the statute under which minor guardianships, adoptions, and TPR and CHIPS cases are handled in Wisconsin. However, federal law is deliberately broad so as not to limit the types of cases in which SIJS findings can be made.

A minor child is eligible for SIJS if the court making decisions about the child is a state "juvenile court" as defined by federal regulations.[1] These regulations define a *juvenile court* as "a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles."[2] There is no listing of definitions to be used in determining the types of cases in which these findings can be made.[3]

Courts have interpreted this to mean that the INA places no restriction on what qualifies as an "appropriate" proceeding or on how these SIJS factual findings should be made. The only limitation, as those courts have explained, is that the court entering the findings fit the federal definition of a "juvenile court."[4] Pursuant to this guidance, for decades, courts around the U.S. have heard SIJS-related evidence in a variety of settings, including custody proceedings, adoption petitions, and probate issues.[5]

Applying the Federal Framework to Wisconsin Law for "Juvenile Courts." Likewise, Wisconsin courts[6] are broadly empowered to make SIJS findings in several different contexts: the only requirement of the SIJS statute and regulations is that the court have the jurisdiction to make determinations about juvenile custody, care, or dependency. Of course, courts that are hearing cases pursuant to Wis. Stat. chapter 48 and deciding cases pertaining to termination of parental rights or minor guardianships, for example, would qualify. However, courts hearing cases pursuant to Wis. Stat. chapter 767 (actions involving the family), Wis. Stat. chapter 938 (juvenile delinquency), and Wis. Stat. section 806.24 (enforcement of foreign judgments) can also have the appropriate jurisdiction to make the requisite findings.

The most common of these are cases under Wis. Stat. chapter 767. Wisconsin circuit courts hearing cases involving custody and placement, paternity, child support, and enforcement of foreign family court orders, as well as divorce actions, qualify as juvenile courts under the federal SIJS provisions. This is because two Wisconsin laws confer jurisdiction over family law matters on Wisconsin circuit courts.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) vests "a court of this state" with the exclusive jurisdiction to make "child custody determinations" when Wisconsin is the child's "home state" and in other circumstances.[7] In addition, Wis. Stat. section 767.01 explains that "[t]he circuit courts have jurisdiction of all actions affecting the family and have authority to do all acts and things necessary and proper in those actions...."[8] Notably, that statute is contingent on the authority vested in Wisconsin courts under the UCCJEA because all proceedings relating to the custody of children "shall comply with the requirements of ch. 822."[9] Thus, courts hearing any type of case that invokes the UCCJEA or Wis. Stat. chapter 767 qualify as juvenile courts under the federal SIJS statutory and regulatory guidelines.

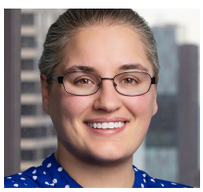
Ultimately, the analysis is simple and replicable for any other type of case in Wisconsin that affects minors: find the statute granting jurisdiction of a Wisconsin court over minors as it relates to their dependency, custody and care, or both and that circuit court will qualify as a juvenile court for the purposes of SIJS.[10]

Type of SIJS Findings Required Do Not Limit Type of Case in Which SIJS Findings Can Be Made

Another confusing aspect of SIJS is the type of finding required to be made by the juvenile court. Again, the purposeful ambiguity of the SIJS statute, which was designed for maximum flexibility, creates misunderstandings for attorneys and judges about a court's ability to make those findings.

Understanding the Federal Framework for Making Findings. One of the findings required to be made by the juvenile court to support an SIJS petition is that the juvenile court "[l]egally committed to or placed the [SIJS] petitioner under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court."[11] The use of "or" means that a declaration of dependency of a juvenile on the court is only one of several circumstances that could possibly trigger SIJS. The statute therefore also covers children who are placed into the "custody" of individuals "appointed" by the state court.[12]

BINKLEY



GHADIRI

Jennifer L. Binkley, U.W. 2001, is associate clinical professor and the director of the Family Court Clinic at the University of Wisconsin Law School, Madison. She is a member of the State Bar of Wisconsin's Children & the Law, Family Law, and Public Interest Law sections and the Government Lawyers Division and a Fellow of the Wisconsin Law Foundation.
jbinkley@wisc.edu

Sara T. Ghadiri, Iowa College of Law 2014, is pro bono counsel at Chapman & Cutler LLP, Chicago. She is a member of the State Bar of Wisconsin's Nonresident Lawyers Division.
ghadiri@chapman.com

Access the digital article at www.wisbar.org/wl.

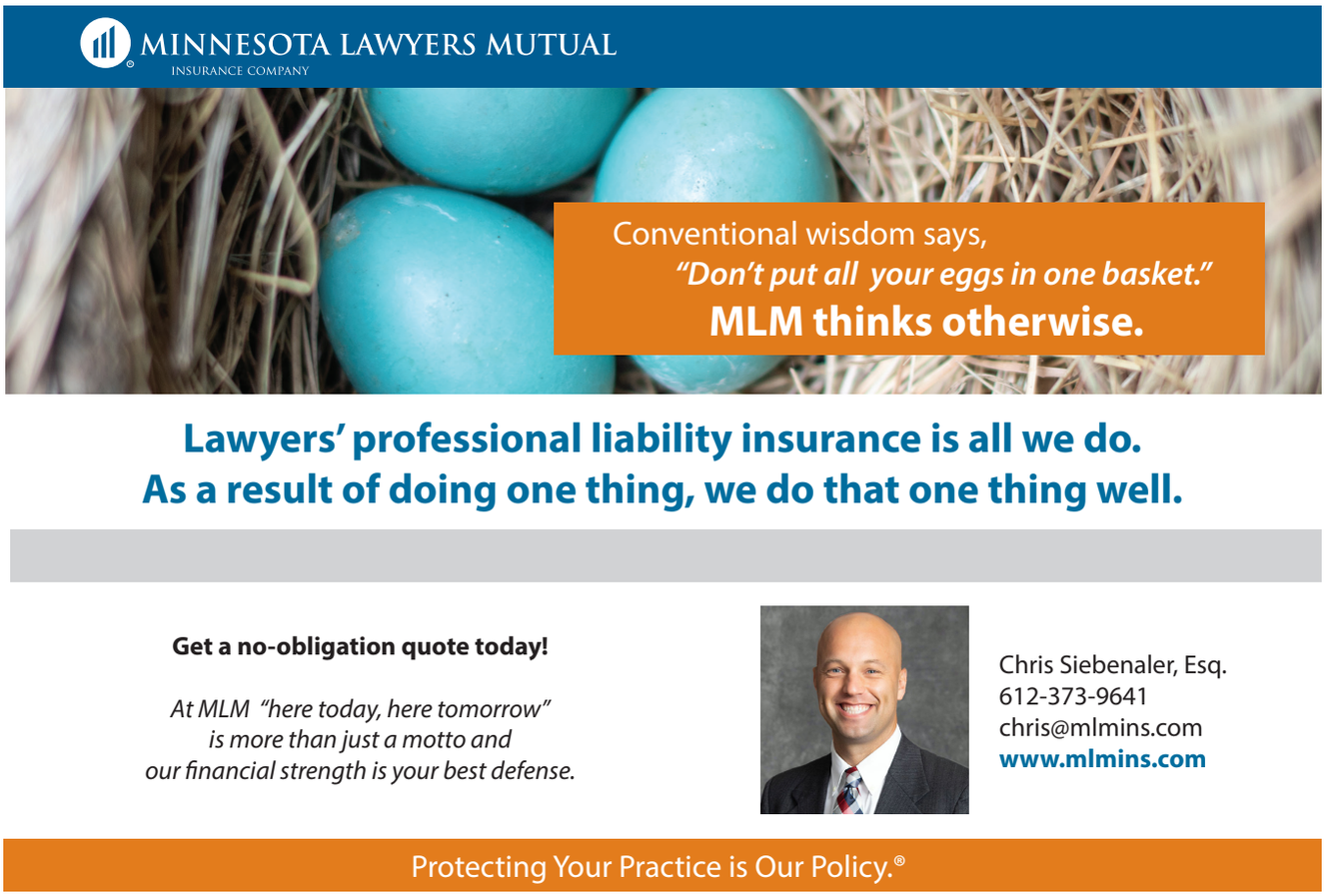
Juvenile Status_Feature-half-top-left.indd 28 3/25/2025 11:04:54 AM

The operative term "appointed" is not defined in the INA or in the implementing regulations, so an analysis properly begins with the plain meaning, with reference to relevant dictionary definitions.[13] *Black's Law Dictionary* defines "appoint" as "[t]o fix by decree, order, command, decision, or mutual agreement."[14] Someone can be appointed guardian, as in the Wis. Stat. chapter 48 minor guardianship context, but a guardian could also include any other individual who has been ordered to have custody of a minor. In fact, as the Pennsylvania Supreme Court recently reasoned, a "custody order to one parent is easily the kind of appointment envisioned by the SIJ statute, as the order sets, fixes and defines custody in that individual."[15]

Applying the Federal Framework to Wisconsin Law for Case Types. To set, fix, and define custody of a minor in an individual, entity, department, or agency, a Wisconsin court follows the same analysis it ordinarily would in any other similar type of case. In the Wis. Stat. chapter 48 context, the question of whether a minor has been abandoned, abused, or neglected, or has experienced similar maltreatment under state law, is part of the statutory analysis required to find that a child needs some type of state intervention. Therefore, a state-initiated Wis. Stat. chapter 48 case seeking SIJS findings has the exact same statutory analysis as a case under that chapter that does not seek SIJS findings: the court is being asked to analyze the same questions. In a private minor guardianship action under Wis. Stat. chapter 48, the court can also look to the definitions found in that chapter that relate to abuse, abandonment, and neglect when finding that a guardianship is in a child's best interest.

> Whether a child has been abandoned, abused, or neglected is undoubtedly relevant, and whether it is in the child's best interest to be returned to the child's home country (or the country of the child's parents) is within the purview of a best-interest determination made under this section.

Similarly, the entry of an order fixing custody in one parent for SIJS purposes, for example, requires the same analysis as is undertaken for non-SIJS purposes. To award custody, Wisconsin law requires that such an award be based on the best interest of the child after considering the factors under Wis. Stat.



Juvenile Status_Feature-half-top-left.indd 29 3/25/2025 11:04:55 AM

section 767.41(5)(am).[16] The list in Wis. Stat. section 767.41 has a catch-all provision that, in addition to specifically enumerated best-interest factors, includes in Wisconsin "any other factor that the court determines to be relevant."[17] Whether a child has been abandoned, abused, or neglected is undoubtedly relevant, and whether it is in the child's best interest to be returned to the child's home country (or the country of the child's parents) is within the purview of a best-interest determination made under this section. A Wis. Stat. chapter 767 case seeking SIJS findings has the same statutory analysis as a case under that chapter that does not seek SIJS findings: the court here, too, is being asked to analyze the same questions.

Again, this part of the statute is not limiting but quite expansive. A juvenile court, as defined under the federal SIJS regulatory scheme, must only be entering an order that gives custody of a minor to an agency or department, or to an individual or entity that the court has selected, to qualify under the federal requirements. The court then follows the normal procedures for hearing a case to make factual findings to support the final order, just as it would in any other case.

Circuit Court Commissioners Can Make SIJS Findings

The last common misconception this article addresses is the power of circuit court commissioners in Wisconsin to make SIJS findings. In many circumstances, time is of the essence in SIJS cases – in Wisconsin, the state juvenile court must make the requisite findings before the minor turns 18. Delays caused by busy dockets can make or break a minor's opportunity to pursue legal status. If all SIJS findings require referral to a circuit court judge, many minors could miss the opportunity to apply because of backed-up dockets. However, if judges and court commissioners understand that commissioners too are empowered to enter SIJS orders in uncontested actions, delays need not be barriers to 1) attorneys' willingness to take these cases on, or 2) minors who are entitled to seek immigration relief.

Applying Wisconsin Law Regarding Court Commissioners to Federal SIJS Finding Requirements. Starting at the required findings and then working back to grants of authority answers whether a circuit court commissioner is empowered to make SIJS findings. In addition to making a finding that the court has jurisdiction over children who are placed into the custody of individuals appointed by the state court, as discussed above, the juvenile court must make findings that 1) the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or other similar basis under state law;[18] and 2) it is not in the best interest of the child to return to the parents' previous country of nationality or country of last habitual residence.[19]

The source of a circuit court commissioner's powers is by statute and by assignment.[20] Pursuant to Wisconsin Supreme Court Rule (SCR) 75.02, the chief judge of each judicial administrative district authorizes commissioners "to perform one or more specific duties allowed court commissioners by statute and approved by the supreme court." This is formally accomplished using a Wisconsin Court System form, Order Appointing/Authorizing Circuit Court Commissioner (GF-146), which specifically enumerates the powers a commissioner is granted by checking certain boxes. There are two choices: 1) granting "all the powers and duties specified below and all other powers and duties authorized by SCR 75," or 2) limiting the authority of the commissioner to particular powers noted in Wis. Stat. section 757.69.[21]

In addition to these specific powers, Wisconsin law grants circuit court

BUSINESS LITIGATION

"LET MY EXPERTISE WORK FOR YOUR CLIENTS"

Non-Compete Agreements • Contract Disputes
Fraud and Misrepresentation • Trade Secrets/Customer Lists
Dealership Terminations • Injunction Hearings

CASE OF THE MONTH

LKQ Corp. v. Rutledge, 96 F. 4th 977 (7th Cir. 2024). This case presented a complicated and important issue of Delaware law: whether, and in what circumstances, contractual provisions requiring a corporation's former employees to forfeit a monetary benefit upon leaving the firm and joining a competitor—so-called forfeiture-for-competition provisions—are subject to review for reasonableness. LKQ designated Rutledge, a plant manager, a key person entitled to receive restricted stock unit awards. Separately he signed a Restrictive Covenant Agreement. The RSU and RCA agreements prohibited Rutledge from working for a competitor for 9 months within a 75-mile radius of the facility where Rutledge worked. Applying Illinois law, the Court saw the non-competition provision as overboard and unreasonable for the reasons stated in the opinion and declined to blue pencil because the degree of unreasonableness rendered it unfair. The RSU contained a forfeiture-for-competition provision under Delaware law, and LKQ sought to claw back 8 years of stock awards, worth at least $600,000 from a middle manager making about $109,000. Two weeks before oral argument, the Delaware Supreme Court held in Cantor Fitzgerald, that forfeiture-for-competition provisions in limited partnership agreements are not subject to review for reasonableness. Describing the two views that have emerged – either a restraint of trade that should be reviewed for reasonableness or the "employee choice" doctrine, the Court asked whether the differences in circumstances in Cantor Fitzgerald matter. The Delaware Supreme Court concluded that the provision was not a restraint on trade, that the parties to the LPA were sophisticated, and that Delaware's ULPA explicitly directs "to give maximum effect to the principle of freedom of contract." Rutledge did not agree to the forfeiture in a partnership agreement or specialized contract, rather he signed an ordinary corporate contract as part of the RSU program. The Court certified 2 questions to the Delaware Supreme Court: (1) Whether Cantor Fitzgerald precludes reviewing forfeiture-for- competition provisions for reasonableness outside the limited partnership context, and (2) if Cantor Fitzgerald does not apply in all circumstances, what factors inform its application?

ROBERT B. CORRIS, S.C.

414.573.8000 • rcorris@corrislaw.com
co-counsel and conflicts representation to serve your clients

Juvenile Status_Feature-half-top-left.indd 30 3/25/2025 11:04:55 AM

commissioners "by implication such additional powers as are necessary for the due and efficient exercise of the powers expressly granted or such as may be fairly implied from the statute granting express powers."[22] In other words, as long as a circuit court commissioner has an "all the powers" assignment from the chief judge, the commissioner is vested with the power to take all actions specifically listed under Wis. Stat. section 757.69, in addition to any other powers that are required to exercise the powers expressly granted by that statute.

In terms of express powers, Wis. Stat. section 757.69(1)(g) directly authorizes circuit court commissioners to "[c]onduct uncontested proceedings under s. 48.13," which necessarily includes making factual findings that a child has been abandoned (Wis. Stat. section 48.13(2)), abused (Wis. Stat. section 48.13(3)), or neglected (Wis. Stat. section 48.13(11), (11m)) to ensure that the court has jurisdiction over the case. Wis. Stat. section 757.69(1)(p) authorizes circuit court commissioners to preside over uncontested matters involving child custody and to modify existing custody orders. In addition, the definition of "court" in Wis. Stat. chapter 767, which governs family law actions, "includes the circuit court commissioner when the circuit court commissioner has been authorized by law to exercise the authority of the court or has been delegated that authority as authorized by law."[23] Of course, without the ability to make findings about a child's best interest, a circuit court commissioner would not be able to exercise the power granted to the commissioner to preside over and enter orders in custody matters.[24] Thus, a circuit court commissioner with an "all powers" grant has the authority to make all of the findings that could be requested in an uncontested SIJS case.

Conclusion

The federal overlay onto state law can lead to confusion in the application of Wisconsin law to cases that are requesting SIJS findings. However, Wisconsin law does grant circuit courts and commissioners the power to make SIJS findings in a number of different case types, as long as the court has the statutory authority to make decisions about the dependency or custody and care of minors. As a result, attorneys should not shy away from taking on these cases, and judges should feel comfortable that the statutory authority exists for them to make these findings according to the facts of each case. **WL**

ENDNOTES

[1]8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a).

[2]8 C.F.R. § 204.11(a).

[3]Importantly, in the course of the notice and commenting process for issuing regulations accompanying the SIJS section of the INA, the Department of Homeland Security (DHS) specifically declined to include terms such as "care," "guardianship," "delinquency," "placement of a child," or "best interest of the juvenile" in the definition of "juvenile court" so as not to limit "the variety of types of proceeding [that] may result in a qualifying order for SIJ classification." The DHS also declined a commenter's request to list the types of state court proceedings in which a qualifying SIJS predicate order may be issued, including divorce, custody, guardianship, dependency, adoption, child support, protection orders, parentage, paternity, termination of parental rights, declaratory judgments, domestication of a foreign order, or delinquency, to avoid creating a list that courts would interpret as exhaustive. Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066-01, 13077.

[4]*Simbaina v. Bunay*, 109 A.3d 191, 200 (Md. App. 2015); *see also In re L.F.O.C.*, 901 N.W.2d 906, 912 (Mich. App. 2017).

[5]*Simbaina*, 109 A.3d at 200.

[6]Wisconsin has a unified court system, and the circuit court has original jurisdiction in all matters civil and criminal within the state, including probate, juvenile, and traffic matters, as well as civil and criminal jury trials. Wis. Const. art. VII, §§ 2, 8. In many counties, there is a single judge (or, in some counties, a judge who also works in another county) that hears all these types of cases. Other counties, such as Milwaukee, have the circuit courts divided into different "divisions" for administrative purposes, including felony, misdemeanor and traffic, civil (including probate and small claims), and family and children's. Thus, the administrative division designations do not matter for SIJS purposes: any Wisconsin circuit court could conceivably be a "juvenile court" for the purposes of the SIJS federal regulations because all Wisconsin circuit court judges have original jurisdiction over all cases. What is determinative for SIJS purposes is the statutory authority in the underlying case for the courts to make decisions regarding juvenile custody, care, or dependency.

[7]*See, e.g.,* Wis. Stat. §§ 822.21 (initial custody jurisdiction), 822.22 (exclusive, continuing jurisdiction).

[8]Wis. Stat. § 767.01.

[9]Wis. Stat. § 767.01(2)(m).

[10]*See, e.g.,* Wis. Stat. §§ 938.12-.183 (jurisdiction over juvenile delinquents); Wis. Stat. §§ 48.13-.15 (CHIPS, minor guardianship, termination of parental rights, adoption); Wis. Stat. § 822.33 (enforcement of a foreign custody order domesticated under Wis. Stat. § 806.24).

[11]*See* 8 C.F.R. § 204.11.

[12]*See Velasquez v. Miranda*, 321 A.3d 876, 897 (Pa. 2024).

[13]*See, e.g., Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) (recognizing that "[w]hen terms used in a statute are undefined, we give them their ordinary meaning" and that courts can rely on dictionary definitions to discern such meaning); *see also State v. A.L. (In Int. of A.L.)*, 2019 WI 20, ¶ 16, 385 Wis. 2d 612, 923 N.W.2d 827 (courts must rely on dictionary definitions when the meaning is plain and definitions are not included in the statute).

[14]*Appoint* (1), Black's Law Dictionary (12th ed. 2024).

[15]*See Velasquez*, 321 A.3d at 897.

[16]Wis. Stat. § 767.41(2).

[17]Wis. Stat. § 767.41(5)(am)14.

[18]8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(a).

[19]8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.22(d)(2)(iii).

[20]*See* Wis. Stat. § 757.69; Wis. SCR ch. 75.

[21]Some counties have local rules that can additionally restrict a commissioner's powers. For example, pursuant to Racine County's local court rules, "[a]ll prejudgment orders shall be signed by the family court commissioner, unless directed otherwise by the judge assigned to that case." It is possible that a judge could not allow a commissioner to sign those orders. *See* Racine Cty. Local R. II.G.1.

[22]*Radmer v. Edell*, 133 Wis. 2d 410, 413-14, 395 N.W.2d 629 (Ct. App. 1986); *see also State v. Evans*, 187 Wis. 2d 66, 89, 522 N.W.2d 554 (Ct. App. 1994) ("While the power to perform a particular act cannot be predicated upon a mere inference or implication, the statute will not be construed to prohibit additional acts merely because they are not particularized.").

[23]Wis. Stat. § 767.001.

[24]*See Radmer*, 133 Wis. 2d at 413-14; *Evans*, 187 Wis. 2d at 89. **WL**

Juvenile Status_Feature-half-top-left.indd 31 3/25/2025 11:04:55 AM