

# **DISPATCH**

**Monthly Magazine**

This document was obtained and posted by

**DISPATCH Monthly Magazine**

[www.911Dispatch.com](http://www.911Dispatch.com)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

---

ESTATE OF BRITTANY ZIMMERMANN  
By its Special Administrator,  
KEVIN ZIMMERMANN  
709 E. Becker Rd.  
Marshfield, WI 54449,

JEAN ZIMMERMANN  
709 E. Becker Rd.  
Marshfield, WI 54449

KEVIN ZIMMERMANN  
709 E. Becker Rd.  
Marshfield, WI 54449,

Plaintiffs,

vs.

CASE NO: 08-349

DANE COUNTY  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703-3345,

RITA GAHAGAN  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703-3345

Defendants.

---

COMPLAINT

---

Plaintiffs Plead:

Jurisdiction and Venue:

1. This action arises under the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983, the Fifth and Fourteenth Amendments to the United States Constitution and under Wisconsin common and statutory law.

2. This Court has jurisdiction over the Federal claims in this action based on 28 U.S.C. Secs. 1331 and 1343.

3. The unlawful conduct and illegal practices alleged in this Complaint were all committed in the Western District of Wisconsin. Venue therefore lies in this District pursuant to 28 U.S.C. Sec. 1391(b).

**Parties:**

4. At all times material hereto Kevin and Jean Zimmermann were adult individuals residing at 709 E. Becker Rd., Marshfield, WI 54449, and are the natural parents of Brittany Zimmermann.

5. At all times material hereto Brittany Zimmermann was a student attending the University of Wisconsin at Madison and was a tenant living at the rental property located at 517 W, Doty Street, Madison, WI. At all times material hereto she was a resident of the home of her parents, 709 E. Becker Rd., Marshfield, WI 54449.

6. Kevin Zimmermann is the Special Administrator of the Estate of Brittany Zimmermann, Wood County Circuit Court, Probate Division, Case No. 08-PR-155: "Estate of Brittany Zimmermann".

7. Defendant, Dane County is a municipality in the Western District of Wisconsin.

8. Upon information and belief, at all times material hereto, Dane County was responsible for the supervision, training, funding and staffing of its employees, including, but not limited to, its agency known as the "9-1-1 Communications Center" and its employees, including, specifically, Rita Gahagan, a Dane County employee and a dispatcher in the Dane County 9-1-1 Communications Center.

9. Upon information and belief, Rita Gahagan is an adult individual residing in the Western District of Wisconsin and at all times material hereto was an employee of Dane County, specifically, as a dispatcher for the Dane County 9-1-1 Communications Center, and, upon information and belief, resides at 210 Martin Luther King Jr. Blvd., Madison, WI.

10. Upon information and belief, Defendants Dane County and Rita Gahagan at all times material hereto acted under color, authority and pretense of the laws, statutes, regulations, customs and/or usages of the

State of Wisconsin, Dane County and under the authority of their official capacities.

11. Upon information and belief, each and every act or omission of Dane County and Rita Gahagan as alleged in this Complaint was done by them in the execution and implementation of an official policy, practice and/or custom of Dane County and the Dane County 9-1-1 Communications Center.

**Facts Common to All Claims for Relief:**

12. On and for some time prior to April 2, 2008 Brittany Zimmermann was a tenant of one of the rental units owned and operated by Wisconsin Management Co., Inc. at 517 W. Doty Street, Madison, Wisconsin.

13. Upon information and belief, the property known at 517 W. Doty Street, Madison, WI was known to Wisconsin Management Co., Inc. and law enforcement agencies and Dane County as located in a part of the City of Madison known to be frequented by vagrants, panhandlers and criminals who preyed upon, harassed, and sought to victimize residents in that area.

14. Upon information and belief, Wisconsin Management Co., Inc. knowingly failed to provide adequate security for the residents of 517 W. Doty Street, including, but not limited to, Brittany Zimmermann and intentionally disregarded her rights, as that term is used in Sec. 895.043, Wis. Stats.

15. Upon information and belief, on April 2, 2008, an intruder gained entry to the premises of 517 W. Doty Street and entrance to the premises rented by Wisconsin Management Co., Inc. to Brittany Zimmermann and assaulted and ultimately murdered her.

16. Upon information and belief, in 2004 Dane County received a 145 page Strategic Plan from MTG Management Consultants of Seattle advising Dane County that it had serious deficiencies with its 9-1-1 Communications Center which must be corrected including, but not limited to, increasing the staff

of the 9-1-1 Communications Center, changing the procedures of the 9-1-1 Communications Center, having stronger supervision and oversight over the 9-1-1 Communications Center and having the 9-1-1 Communications Center operated independent from the supervision and the funding of the Dane County Board.

17. Upon information and belief, since 2004, Dane County has not followed the warnings and recommendations of the Strategic Plan it received from MTG Management Consultants of Seattle and has not further studied or properly supervised the operations of its 9-1-1 Communications Center.

18. Upon information and belief, since 2004, Dane County has negligently failed to properly fund the 9-1-1 Communications Center, has negligently failed to review and create sufficient mandatory, non-discretionary rules and regulations which must be followed by its 9-1-1 operators, has failed to properly supervise the employees, including the operators of the 9-1-1 Communications Center, to make certain that they follow the mandatory, non-discretionary rules it did create, has negligently failed to properly staff the 9-1-1 Communications Center, has failed to properly train the employees of its 9-1-1 Communications Center, and has negligently failed to properly respond to the Complaints of its employees of lack of training, staffing, funding or supervision. Dane County has also negligently failed to employ the software it purchased and possesses which would allow it to study the effectiveness and efficiency of its 9-1-1 call system.

19. Upon information and belief, on and before April 2, 2008 the Dane County 9-1-1 Communications Center was able to receive a 9-1-1 call from a cell phone and identify the callers name, cell phone telephone number and location.

20. Upon information and belief, in conjunction with the City of Madison Police Department, the Dane County 9-1-1 Communications Center did

create some mandatory, non-discretionary rules and regulations that must be followed by all 9-1-1 operators which required:

- (1) If an operator receives a 9-1-1 call and does not hear anyone on the line, the operator is required to not hang up, to keep the line open and to dispatch appropriate police resources to the location of the call;
- (2) Any 9-1-1 call received from a cell phone which is disconnected before completed or which cannot be understood by the 9-1-1 operator must be called back by the 9-1-1 operator and, if the dispatcher has reason to believe police services are needed, the dispatcher must dispatch appropriate police resources to the scene; and
- (3) If the operator calls back to a disconnected 9-1-1 call and cannot get an answer, the operator is required to dispatch police resources to the location of the call.

21. Upon information and belief, during the course of being assaulted, Brittany Zimmermann placed a 9-1-1 call to the Dane County 9-1-1 Communications Center, a call which was handled by Rita Gahagan.

22. Upon information and belief, this call from Brittany Zimmermann to the 9-1-1 Communications Center lasted approximately 90 seconds.

23. Upon information and belief, using the equipment of the 9-1-1 Communications Center Rita Gahagan was able to identify Brittany Zimmermann's name, her cell phone telephone number and her location at 517 W. Doty Street.

24. Upon information and belief, Brittany Zimmermann's location at 517 W. Doty Street was approximately 4-5 blocks from a City of Madison Police Station.

25. Upon information and belief, Brittany Zimmermann's location at 517 W. Doty Street was widely known in the Madison community and among law

enforcement and Dane County and its agencies including, but not limited to the Dane County 9-1-1 Communications Center to be a location frequented by vagrants, panhandlers, drug users and criminals.

26. Upon information and belief, the location of Brittany Zimmermann at 517 W. Doty Street was known to Dane County, the Dane County 9-1-1 Communications Center and Rita Gahagan as a location in the City of Madison which generates a high number of serious, legitimate calls to the Dane County 9-1-1 Communications Center which require a dispatch of appropriate police resources to the scene of the calls.

27. Upon information and belief, during the 9-1-1 call made by Brittany Zimmermann to the Dane County 9-1-1 Communications Center and handled by Rita Gahagan, information was obtained during the call that would lead any Dane County 9-1-1 Communications Center operator to reasonably believe that police services were needed and which would require, under the laws, rules and regulations of Dane County that such operator, operating under the mandatory, non-discretionary rules and regulations that must be followed by all Dane County 9-1-1 Communications Center operators to dispatch police to Brittany Zimmermann's location and to so advise Brittany Zimmermann and to keep the line open until police arrived.

28. Upon information and belief, contrary to the mandatory, non-discretionary rules and regulations of Dane County applicable to Dane County 9-1-1 Communications Center operators, after approximately 90 seconds, Rita Gahagan negligently hung up on Brittany Zimmermann, did not dispatch police or any other responding authorities to Brittany Zimmermann's locations, did not call Brittany Zimmermann back and forgot about the call from Brittany Zimmermann.

29. Upon information and belief, some time later Brittany Zimmermann was murdered by the intruder.

30. Upon information and belief, Dane County has admitted that in handling the 9-1-1 call from Brittany Zimmermann to the Dane County 9-1-1 Communications Center Rita Gahagan failed to follow the mandatory rules and regulations of Dane County that must be followed by all Dane County 9-1-1 Communications Center operators.

31. Upon information and belief, at all times material hereto the conduct, acts and omissions of Dane County and Rita Gahagan were done under color, authority and pretense of the laws, statutes, regulations, customs and usage of the State of Wisconsin and Dane County and under the authority of their official capacities and under color of law.

32. Upon information and belief, the conduct of Rita Gahagan described above violated the clear rules and regulations of Dane County applicable to 9-1-1 Communications Center operators which are applicable to and must be followed by 9-1-1 Communications Center operators without the exercise of discretion. Such conduct was far removed from the ordinary course of her duties as a Dane County 9-1-1 Communications Center operator, outside any discretionary authority she had to act, and does not entitle her to a defense of a claim of qualified immunity or any other immunities.

33. Upon information and belief, such conduct on the part of Dane County and Rita Gahagan described above caused severe and grievous emotional distress to Brittany Zimmermann by causing her to realize that her call for help while she was being attacked by an intruder would not be responded to by public authorities, and thereby deprived Brittany Zimmermann of her constitutional rights to life and liberty including, but not limited to, the right to be free of emotional distress guaranteed to her by the Fifth and Fourteenth Amendments to the United States Constitution, and caused her death.



34. Brittany Zimmermann's constitutional rights described in paragraph 39 were clearly established at the time of the violations and wrongful conduct of Dane County and Rita Gahagan alleged above; and Dane County and Rita Gahagan knew or should have known of such rights of the Plaintiff and knew or should of known that their wrongful and illegal conduct violated Brittany Zimmermann's rights in that regard.

**FIRST CAUSE OF ACTION - 42 U.S.C. SEC. 1983 AGAINST DANE COUNTY AND RITA GAHAGAN**

35. The allegations, statements and denials set forth in the above paragraphs are restated and incorporated by reference herein as though more fully set forth.

36. Such conduct of the part of Dane County and Rita Gahagan, acting under color of law, regulations and ordinances of Dane County, negligently, recklessly, intentionally and in bad faith deprived Brittany Zimmermann of her rights, privileges and immunities secured and guaranteed to her by the Fifth and Fourteenth Amendments of the United States Constitution in that it deprived her of her right to life and liberty.

37. Brittany Zimmermann's rights described above were clearly established at the time of the violations and wrongful conduct alleged in this Complaint by Dane County and Rita Gahagan. Dane County and Rita Gahagan knew or should have known of Plaintiffs rights and knew or should have known that their wrongful and illegal conduct violated such rights of the Plaintiff.

38. As a direct and proximate result of the illegal and wrongful acts of Dane County and Rita Gahagan, Brittany Zimmermann suffered grievous and extreme emotional distress until the moment of her death, and her ultimate death.

**SECOND CAUSE OF ACTION - 42 U.S.C. SEC. 1983 - DANE COUNTY**

39. The allegations, statements and denials set forth in the above paragraphs are restated and incorporated by reference herein as though more fully set forth.

40. Upon information and belief, Dane County permitted, encouraged, tolerated and ratified a pattern and practice of its 9-1-1 Communications Center of it being understaffed, its staff being untrained and/or under-trained with regard to the mandatory, non-discretionary rules applicable to 9-1-1 operators, being under and improperly supervised such that its 9-1-1 Communications Center's operators were either unaware of or not required to abide by the mandatory, non-discretionary rules and procedures applicable to, or which should have been implemented and made applicable to the operators of the Dane County 9-1-1 Communications Center.

41. Upon information and belief, such acts, omissions and systematic deficiencies engaged in by Dane County with regard to its 9-1-1 Communications Center constitute policies, practices and customs of Dane County which caused its employees operating the Dane County 9-1-1 Communications Center to disregard the laws, rules and regulations governing the operations of operators at the 9-1-1 Communications Center.

42. Upon information and belief, as a direct, proximate and legal result of such illegal and wrongful acts, omissions and systematic deficiencies, policies, practices and customs of Dane County, Brittany Zimmermann was deprived of her constitutional right to life and liberty including, but not limited to, the right to be free of severe and grievous emotional distress, guaranteed to her by the Fifth and Fourteenth Amendments to the United States Constitution.  
punitive damages.

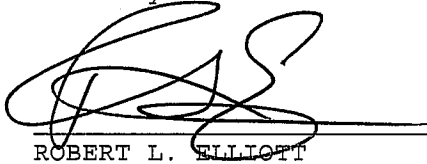
WHEREFORE, Plaintiff, Kevin Zimmermann, as the Special Administrator of the Estate of Brittany Zimmermann, demands judgment:

- a. Against Dane County and Rita Gahagan under the Fifth Cause of Action for compensatory damages;
- b. Against Dane County upon the Second Cause of Action for compensatory damages together with taxable costs and disbursements;
- c. Judgment for such other and further relief as the Court deems just and equitable.

A JURY OF 12 PERSONS IS HEREBY DEMANDED

Dated this 12<sup>th</sup> day of June, 2008.

ROBERT L. ELLIOTT  
Attorney for Plaintiffs

  
\_\_\_\_\_  
ROBERT L. ELLIOTT  
SBN: 1013862

P.O. ADDRESS:  
633 W. Wisconsin Ave., #1001  
Milwaukee, WI 53203  
(414) 225-9000

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

---

THE ESTATE OF BRITTANY  
ZIMMERMANN by its Special Administrator,  
KEVIN ZIMMERMANN,  
JEAN ZIMMERMANN, and  
KEVIN ZIMMERMANN,

Plaintiffs,

Civil Action No. 08-CV-349-BBC

vs.

DANE COUNTY and  
RITA GAHAGAN,

Defendants.

---

MOTION TO DISMISS

---

NOW COME the defendants, Dane County, Wisconsin, and Rita Gahagan, by their attorneys Bell, Gierhart & Moore, S.C. by John M. Moore, Timothy J. Yanacheck and Sheila M. Sullivan, and move to dismiss plaintiffs' Complaint pursuant to F.R.C.P. 12(b)(6) in that plaintiffs' Complaint fails to state a claim upon which relief can be granted.

Dated this \_\_\_\_ day of June, 2008.

BELL, GIERHART & MOORE, S.C.

/s/ Sheila M. Sullivan

---

John M. Moore  
State Bar No. 1010235  
Timothy J. Yanacheck  
State Bar No. 1015126  
Sheila M. Sullivan  
State Bar No. 1025532

Address:

44 East Mifflin Street, 10<sup>th</sup> Floor  
Post Office Box 1807  
Madison, WI 53701-1807  
Phone: 608-257-3764  
Fax: 608-257-3757