THE CIVIL APPEALS PROCESS IN WISCONSIN

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Part 1:
Overview of Civil Appeals

A. Introduction to the Wisconsin Court of Appeals

Often, the conclusion of a case in the Circuit Court is only the beginning of the case's legal life. When a litigant in front of one of Wisconsin's nearly 250 Circuit Court judges believes that the court 'got it wrong,' he can request that the Wisconsin Court of Appeals review the Circuit Court's decision. The Wisconsin Court of Appeals is an important stop in the life of a case because, although the Wisconsin Court of Appeals is not the last opportunity for judicial review of a case, it is the last forum wherein a court is *required* to consider the merits of an argument.

B. Birds Eye View of the Civil Appellate Process

Wisconsin law provides every litigant with the right to have proceedings in the Circuit Court reviewed by the Wisconsin Court of Appeals. For purposes of litigation in the

Wisconsin Court of Appeals, the litigant filing the appeal is the "appellant," and the responding party is the "respondent."

Importantly, the Wisconsin Court of Appeals does not provide a forum for re-litigation of a claim. A litigant cannot approach an appeal with the mindset that he simply wants 'another bite at the apple.' The Wisconsin Court of Appeals will review proceedings in the Circuit Court to ensure that the Circuit Court applied the proper law, interpreted the law correctly, and did not commit an erroneous exercise of discretion.

In contrast to matters in the Circuit Court, which are often tried to a judge or jury, matters considered in the appellate court are often considered based on briefs only. A short oral argument may be requested by the Court of

Appeals, however an appellant should not assume that he or his attorney will be afforded an opportunity to verbally argue his position to the Court of Appeals. In fact, oral arguments at the appellate level are unusual in Wisconsin. The appellant will have the opportunity to submit two briefs – an appellate brief and a reply brief – and the respondent will have the opportunity to submit only one brief – a responsive brief. However, if the respondent does not respond to the initial appellate brief, then the appellant has nothing to reply to, and will have only submitted the initial brief.

After the matter is fully briefed or the time to respond has expired, the appellate court will apply the oral argument criteria to determine whether oral argument is necessary. Wis. Stat. § 809.22 provides that a court may determine oral argument is unnecessary where: (1) the

appellant's arguments are "plainly contrary to relevant legal authority that appear to be sound and are not significantly challenged," "are on their face without merit and for which no supporting authority is cited or discovered," or "involve solely questions of fact and the fact findings are clearly supported by sufficient evidence," or (2) "the briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant."

If oral argument is scheduled, each side will have a limited amount of time – determined by the court hearing the particular case – to present argument and answer questions from the judges.[1] This oral argument may take

[1] *See* Wis. Stat. 809.22(3).

place telephonically at the request of any party, or on the court's own motion.[2] After oral argument – if any – it is time for the Court of Appeals to rule on the case. If oral argument is not scheduled, parties will receive notice that the case has been "Submitted on Briefs" – meaning all briefs have been provided to the court for review.

Most cases are decided by a panel of three judges.[3] Cases that are decided by one judge include cases brought under the Children's Code (Wis. Stat. § 48), Mental Health Act (Wis. Stat. §51), Protective Services (Wis. Stat. § 55), Small Claims Actions (Wis. Stat. § 799), the Juvenile Justice Code (Wis. Stat. § 938), and cases involving traffic and municipal ordinance violations, misdemeanors, civil forfeitures, and contempt.

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[2] *See* Wis. Stat. 809.22(4).

[3] The Wisconsin Court of Appeals consists of a total of 16 judges from 4 districts.

In 2012, the average number of days from start to finish in the appellate court was 264[4] and 86% of civil cases were affirmed.[5] A party who receives an adverse decision in the appellate court may ask the Wisconsin Supreme Court to review the decision, however the Wisconsin Supreme Court chooses which cases it hears, and the granting of petitions for review are rare.

In order to keep up with what is going on in a Wisconsin appeal, the Wisconsin Court System provides a free online database, "Supreme Court and Court of Appeals Access," or "WSCCA" for short. To access a case, go to http://wscca.wicourts.gov/index.xsl. Click "I Agree" to the terms and conditions in order to move to the search page.

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[4] *See* 2012 Court of Appeals – Case Load Statistics.

[5] *See* 2012 Court of Appeals – Case Load Statistics.

Once the case is located via the "Case Search" page, clicking on the desired case will redirect to a "Summary" page. This page contains pertinent details such as the names and contact information for all parties and their attorneys, and the status of the case. For further detail on the status of a case, click on the "Case History" option in the top right corner. Selecting this option will display all events that have occurred in the case, as well as some pending events (i.e. the anticipated deadline of a brief or order).

C. The Expedited Appeals Program

This book discusses the 'normal' civil appeal process as dictated under Wis. Stat. § 809, Subchapter II. However, it is important to recognize that – for appropriate cases – the process can be expedited.[6] For a complete listing of procedures and rules for the Wisconsin Expedited Appeals

[6] *See* Wis. Stat. § 809.17.

Program, see Appendix "A." Due to the fact that appeals usually stretch over a year from the conclusion of a case at the trial level and the final opinion handed down by the Court Appeals, the Wisconsin Court of Appeals developed the expedited appeals program to shorten this window for interested parties with qualifying cases.

All civil appeals are eligible for consideration under the expedited appeals program unless specifically excluded.[7] Notably, an appeal is not eligible for the expedited appeals program where a party to the appeal is representing himself, *pro se*. An eligible appeal will be expedited if both parties agree to taking part in the expedited appeals

[7] Excluded appeals include those brought under Wis. Stat. § 809.105, Wis. Stat. § 809.107, Wis. Stat. § 809.32, Wis. Stat. § 974.06(7), Wis. Stat. § 809.30, Wis. Stat. § 809.40(1), cases arising under chs. 48, 51, 55, 938, and cases where a party is proceeding *pro se*. *See* Rules of Appellate Procedure, attached at "Appendix A."

program, and the appellate court finds that the case is appropriate. An expedited appeal will be briefed according to a reduced briefing schedule. The briefs will not be required to meet the strict formatting requirements of normal briefs, discussed below.

D. Is Counsel Required?

Even if a party wishing to appeal is not an attorney, he can still represent himself on appeal. Those who do not want to hire, or cannot hire, an appellate attorney are referred to as *pro se* litigants. A *pro se* litigant is one who appears in court or files documents without the assistance of an attorney. The Clerk of the Wisconsin Supreme Court and Court of Appeals publishes a free guide to appellate procedure for *pro se* litigants, which is attached hereto at Appendix "B."

Importantly, courts do not extend special treatment to *pro se* appellants. These appellants must comply with all administrative requirements and meet all deadlines as outlined in the Wisconsin Rules of Appellate Procedure – attached hereto at Appendix "C." Some of these deadlines are jurisdictional in nature, meaning that the courts do not have the power to extend them, even if they want to. So, it is imperative that litigants know all of the deadlines involved in Wisconsin appeals and either follow them strictly or know which ones can be extended and timely ask for reasonable extensions. These deadlines are contained in the Rule 809.30 Appellate Time Table, attached hereto at Appendix "D." While it is not unheard of for a *pro se* litigant to successfully appeal his or her case, it is very rare. The process of filing an appeal is difficult and time consuming, and therefore best handled by an experienced appeals attorney.

Part 2:
Laying the Groundwork for the Civil Appeal

A. Final Judgment or Order

Once the court issues a final judgment or order, the losing party may exercise his right to appeal. A final judgment or order is any judgment or order that "disposes of the entire matter in litigation as to one or more of the parties."[8] Additionally, the final judgment or order must be in writing and "entered" before an appellate court can review it. A final judgment or order is "entered" on the date in which it is filed in the office of the clerk of the Circuit Court. If a litigant is unsure of when any order has been entered in his case, he can simply check the date listed on WSCAA.

Final judgments or orders are appealable as of right, meaning that the Court of Appeals will be required to

[8] Wis. Stat. § 808.03(1).

consider the review.[9] Although litigants have a right to appeal a final judgment or order in a civil case, this right can expire. Therefore, ***counsel must preserve this right*** by filing a Notice of Appeal within the applicable statutory deadline (discussed below). A Notice of Appeal template is attached hereto at Appendix "E."

B. Non-final Judgment or Order (Interlocutory Appeals)

Prior to the conclusion of a case on the Circuit Court level, a litigant may ask the Court of Appeals for permission to appeal a non-final judgment or order entered by the Circuit Court.[10] This type of appeal is referred to as an 'interlocutory appeal.' Interlocutory appeals are only

[9] Wis. Stat. § 808.03 (1).

[10] *See* Wis. Stat. § 809.50(1).

allowed where a non-final order causes great prejudice to one of the parties to the case. For example, where a defendant files a motion to dismiss because the instant prosecution violates his right to double jeopardy, and the motion to dismiss is denied, the Wisconsin Supreme Court has recommended that Appellate Courts hear appeals of these denials.[11] Although the denial of the motion to dismiss does not end the case in the Circuit Court, the defendant would be greatly prejudiced by having to endure the remainder of the prosecution and then appeal the final order.

As with the appeal of a final judgment or order, the non-final judgment or order must be in writing and "entered" in order to be potentially appealable. A litigant may request that the Court of Appeals review a non-final

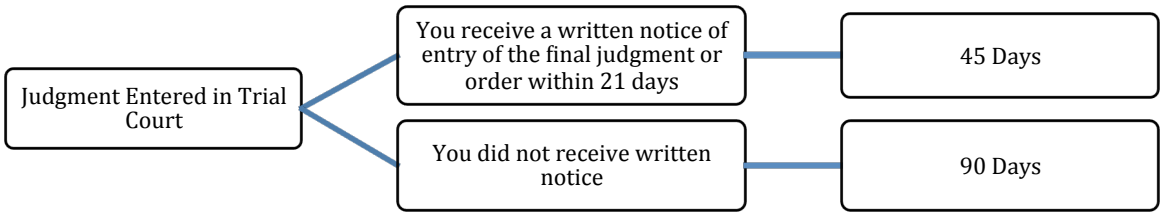
[11] ***State v. Jenich***, 94 Wis. 2d 74, 288 N.W.2d 114 (1980).

judgment or order by filing a petition for permission for review of non-final judgment or order with the Court of Appeals within 14 days of the entry of the non-final judgment or order. The Circuit Court may also certify a question for interlocutory appeal, meaning that the Circuit Court formally requests that the Court of Appeals issue an opinion on a particular question.

C. Notice of Appeal

After a case has ended in the Circuit Court, the losing party does not have much time to decide whether to appeal. Use the graph below to determine on what date the statutory deadline for filing an appeal will fall. These deadlines may not be extended in civil cases.

How Much Time Do I Have To File A Notice of Appeal?



The Notice of Appeal simply informs the Trial Court that the losing party plans to appeal the decision. It must be filed with (1) the Clerk of the Circuit Court in which the case was decided, and (2) with the Clerk of the Court of Appeals. To determine which of the four districts the Notice of Appeal should be filed in, consult the district map, located at Appendix "F." A Notice of Appeal must contain six pieces of information:

- The case name used in trial court proceedings
- The case number used in trial court proceedings
- The title of the judgment being appealed, the date upon which the judgment was entered, and the name of the judge who entered it
- A statement indicating whether the appeal is one to be decided by a single judge per Wis. Stat. § 752.31(2)
- A statement indicating whether the appeal is one of those to be given preference in the Circuit Court or Court of Appeals by statute
- The signature of an attorney or party appearing pro se

When the Notice of Appeal is filed with the Circuit Court, the filing fee becomes due. The filing fee is $195, and must be paid to the Court of Appeals. If a litigant is representing himself and cannot afford to pay the filing fee, he may apply for indigent status. If the court finds that he is indigent, he will be exempt

from paying the filing fee. An application for waiver of this fee is located at Appendix "G."

D. Docketing Statement

Along with the Notice of Appeal, parties represented by counsel are required to file an original and one copy of a Docketing Statement with the Court of Appeals.[12] The sole purpose of the Docketing Statement is to assist the Court of Appeals in determining whether a particular case is eligible to be expedited. A Docketing Statement Template is located at Appendix "H."

[12] Wis. Stat. § 809.10(1)(d)

E. Statement on Transcript

Within 14 days after filing the Notice of Appeal, the appellant must complete and file a Statement on Transcript with the clerk of court of the Court of Appeals.[13] A Statement on Transcript template is located at Appendix "I." The Statement of Transcript must then be served on:

- The opposing party; and
- The clerk of the Circuit Court in which granted the decision being appealed.

Through the Statement on Transcript, the appellant either (1) designates the portions of the transcript that he has requested from the court reporters, or (2) indicates that un-requested transcripts are not necessary for the appeal. Importantly, an appellant cannot reference any statement made in court without first requesting a copy of the

[13] Wis. Stat. § 809.11(4).

corresponding transcript, so often appellate attorneys will request that all trial transcripts be prepared, just to be safe.

The determination of whether an appeal will require transcripts is case-specific and depends on how a particular case was decided and what he wishes to argue on appeal. If, for example, the case was decided solely on written documents, it may not be necessary to request any transcripts from the lower court in order to proceed with the appeal. Alternatively, if the appellant wishes to make an argument on appeal that references anything that happened or was said in a hearing in the Circuit Court, then he must request the corresponding transcripts.

Importantly, the transcripts must be ordered before the appellant files the Statement on Transcript. Each transcript must be ordered directly from the appropriate court reporter, which means multiple requests must often

be made. The easiest way to determine who the court reporter was for any particular hearing is to review the case history on CCAP at http://wcca.wicourts.gov/index.xsl. If the applicable transcripts are not already on file, the court reporter will need to fill out a portion of the Statement on Transcript certifying the requests have been made. After the court reporter has done so, the appellant will have the information necessary to file the Statement on Transcript.

F. The Record on Appeal

The record on appeal is a compilation of all documents that were filed with the Circuit Court that considered the case.[14] Because a case is not re-litigated at the appellate level, the Circuit Court transmits the record on appeal to the appellate court so the appellate court can thoroughly review the proceedings in the Circuit Court. This

[14] *See* Wis. Stat. § 809.15 for an exhaustive list of all documents included in the record on appeal.

transmittal must occur within 40 days after the notice of appeal is filed.[15]

Once the clerk of the Circuit Court prepares the record on appeal, it will be available for inspection at least 10 days before transmittal to the Court of Appeals.[16] All parties will receive a written notice of the record's availability for inspection. It is important for an appellant to inspect the record before it is transmitted to the Court of Appeals to ensure that it includes all documents that he anticipates citing in his appeal. If an important document is missing, ether party may file a Motion to Supplement or Correct the Record.[17]

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[15] Wis. Stat. § 809.30(2)(k).

[16] Wis. Stat. 809.15(2).

[17] Wis. Stat. § 809.15(2).

If this motion is filed while the record is still in the Circuit Court:[18]

- The moving party must also serve the motion on the Court of Appeals
- The record cannot be transmitted to the Court of Appeals until the motion is decided
- The Circuit Court will have 14 days to determine, by order, the motion. If the Circuit Court does not file an order within 14 days, the motion is considered to be denied
- The record will be transmitted to the Court of Appeals within 20 days of the entry of the order or filing of the supplemental corrected record in the Circuit Court, whichever is later

If this motion is filed after the record has been transmitted to the Court of Appeals:

- The moving party must also serve the motion on the Circuit Court

[18] Wis. Stat. § 809.15(4)(c).

G. Calculating Deadlines

Importantly, the filing of the record on appeal with the appellate court sets the deadline for the appellant's brief in motion. Briefing deadlines are as follows:

- **Deadline for Appellant's Brief**: 40 days after the record is filed with the Court of Appeals[19]
- **Deadline for Respondent's Brief**: 30 days after the date of service of the appellant's brief (add 3 additional days if service was accomplished by mail)[20]
- **Deadline for Appellant's Reply Brief**: 15 days after the date of service of the respondent's brief (add 3 additional days if service was accomplished by mail.[21]

If it becomes unmanageable to meet a briefing deadline, either party can file a motion to extend the deadline for filing any of these briefs. A sample of which is attached hereto at Appendix "J."

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[19] Wis. Stat. § 809.19(1).

[20] Wis. Stat. § 809.19(3)(a)1.

[21] Wis. Stat. § 809.19(4).

Part 3:
Drafting the Brief of Appellant

A. Overview and Strategies

The first brief allowed in the briefing process is the Brief of Appellant. This brief must present the issues for review in a clear and precise manner. For an overview of acceptable arguments, see section "D," below. This brief has very specific content requirements, discussed below in section "C."

B. Timeline of Brief of Appellant

The appellant has 40 days from the date upon which the record was filed with the Court of Appeals from which to file and serve his initial Brief of Appellant.

C. Content Requirements

The Brief of Appellant explains what the appellant believes was wrong with the proceedings in the Circuit Court, and requests the appropriate relief. More specifically, the Brief of Appellant should include:[22]

- A table of contents
- A table of all cases, statutes, and other authorities cited, listed in alphabetical order
- A statement of the issues presented for review, as well as how the trial court decided them
- A statement indicating whether oral argument is necessary and whether the opinion should be published
- A statement of the case, including (1) the nature of the case, (2) the procedural status of the case, (3) the disposition in the trial court, and (4) a statement of facts relevant to the issues presented to review
- An argument on each issue, preceded by a one sentence summary of the argument

[22] Wis. Stat. 809.19.

- A conclusion stating the precise relief sought
- The signature of the attorney or *pro se* litigant filing the brief
- An appendix containing at least (1) the findings or opinion of the Circuit Court, (2) limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the Circuit Court's reasoning regarding those issues, and (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b)
- Required certifications

The Wisconsin Court of Appeals has strict formatting rules for the Brief of Appellant. First, when drafting the statement of the case, every factual assertion requires a citation to the record. A fact cannot be presented if it is not in the record. Additionally, the argument section must also include citations to legal authorities, statutes, or parts of the record relied upon.[23] Citation should follow the Uniform

[23] Wis. Stat. § 809.19(1)(e).

System of Citation, as well as SCR 80.02. A copy of SCR 80 is attached hereto as Appendix "K."

D. Form and Length Requirements

The Brief of Appellant must have a light blue cover, and must be securely bound down the right side. A sample brief cover, along with the required certifications, is located at Appendix "L." Additional form requirements are dependent on whether the brief uses a monospaced (i.e. Courier) or proportional (i.e. Times New Roman) font.

For a Monospaced Font:

- 10 characters per inch
- Double-spaced
- 1.5 inch margin on left side, 1 inch margin on all other sides
- Shall not exceed 50 pages

For a Proportional Font:

- 13 pt body text
- 11 pt text for quotes and footnotes

- Maximum of 60 characters per full line of body text
- Italics may only be used for citations, headings, emphasis, and foreign words
- Shall not exceed 11,000 words

E. Appropriate Arguments

As discussed in the introductory remarks, an appeal is not an opportunity for an appellant to re-litigate an issue that was not decided in his favor at the Circuit Court level. Rather, an appellate court will only entertain arguments that there was something wrong with the process or decision-making at the Circuit Court level.

Many appellate issues stem from errors with the way a trial was conducted. These issues include – but are not limited to – a judge's decision to allow the introduction of evidence or testimony that the appellant argues was irrelevant or prejudicial, or to deny the introduction of

evidence or testimony that the appellant argues was admissible, to improperly limit the scope of cross examination, or to provide problematic jury instructions. Procedural issues may also arise from errors made by the trial attorneys, including improper argument or withholding of evidence. Appellate issues may also arise from errors with the judge's interpretation of a relevant statute.

F. How Will the Court of Appeals Review the Argument?

Not all issues are treated equally by the reviewing court. There are three different standards of review that a reviewing court may use to decide an issue on appeal. Importantly, the standard of review applied to a particular issue will no doubt serve as a strong indicator of the possibility that the issue is successful on appeal, because

the standard of review dictates the degree of deference the appellate court will give the Circuit Court's decision.

The highest degree of deference is afforded to questions of fact. Questions of fact are those issues that can be resolved by considering the facts and evidence in a case, such as whether the evidence is sufficient to show that the defendant refused to deliver goods required under contract with plaintiff. If there is any credible evidence that supports the finding of fact at issue, the reviewing court will affirm. The rationale behind the high degree of deference is that the trial court is in a better position to make factual findings than the reviewing court.

The lowest degree of deference is afforded to questions of law. Questions of law are those that must be answered by applying relevant legal principals, such as whether evidence showed the defendant failed to deliver goods required under

contract with plaintiff. These questions are afforded a 'de novo' standard of review, meaning that the reviewing court will place no weight on the trial court's conclusions when conducting its analysis.

Sometimes, issues present mixed questions of law and fact. These questions require both a determination of the facts at hand, as well as an application of relevant law to those facts. For these questions, the reviewing court will first apply the more deferential standard to the facts, then the less deferential standard to the legal conclusions.

G. Preserving Issues

In order to make any argument on appeal, the issue must be preserved. The principal behind issue preservation is that the Circuit Court should have an opportunity to correct its own errors before the appellate court steps in. Therefore, where an issue has not been preserved – i.e. not

first brought to the attention of the Circuit Court – it cannot be appealed. In order to determine whether an issue has been preserved, consider the following four questions:

(1) Was the issue raised during the Circuit Court stage and addressed by the Circuit Court?

(2) Was the issue raised by the appellant?

(3) Was the issue timely raised?

(4) Was the issue specifically raised?

In order to preserve error for appellate review, a party must make the proper objection or motion – on the record – at the trial court level. Objections must be timely made to alert the trial court of the alleged error, as well as the grounds for the objection. An objection that does not include a legal basis may be ignored on appeal for failing to sufficiently describe the alleged error. Where an issue is important enough that it calls the fairness of the trial into

question, it must be preserved through a motion for mistrial. Counsel at the trial level should move for a mistrial as soon as possible after the alleged error.

G. Filing the Brief of Appellant

Below is a checklist for the brief of appellant.

Checklist for Filing Brief of Appellant

Printing

- ☐ Determine how many copies to print
  - 10 (including the original) for the Court of Appeals
  - 3 for each remaining party[24]
  - 1 copy to retain
- ☐ Have copies professionally printed with the following options
  - Blue cover pages
  - Either staple or hot glue binding along the left side

Filing

- ☐ File 10 copies, *including the original*, with the Court of Appeals via:
  - Hand service at the Clerk's Office
    110 East Main St. #215
    Madison, WI 53703
  - Mail to Clerk's Office (Same Address as Above)[25]
- ☐ Serve 3 copies on each party via:
  - Mail or hand delivery to the address listed on CCAP for each party
- ☐ File an electronic copy of the brief if represented by an attorney
  - Use the "Print to PDF" feature to create a text-searchable PDF of the word version of the brief
  - E-file the unsigned PDF *without* exhibits at the Court of Appeals Web site.

[24] All parties to an action, as well as their attorney – if applicable – and address can be located on the CCAP web page for a case.

[25] Note that if an appeal is mailed, it must *arrive* at the court on or after its due date.

Part 4:
Drafting the Brief of Respondent

A. Overview and Strategies

The Second brief allowed in the briefing process is the Brief of Respondent. This brief must be responsive to the Brief of Appellant, and may not raise new issues. In addition to responding to the arguments of appellant, the respondent may wish to include a supplemental statement of facts. The inclusion of a supplemental statement of facts is beneficial where the respondent believes that the appellant left out or misstated important facts. Additionally, a supplemental statement of facts provides an opportunity for the respondent to characterize the facts at issue in a light favorable to his argument. When drafting the Brief of Respondent, begin by carefully reviewing the Brief of Appellant. Mark any place where it appears that the Appellant got the facts or law wrong. Then, draft a brief that addresses these perceived errors. The respondent may

also frame out his brief by responding directly to the numbered arguments made by the appellant. Cite cases that support desirable legal arguments. Additionally, use facts to differentiate the case being appealed from any cases that are more favorable to the opposing party's position, or explain why those cases should not be followed.

B. Timeline of Brief of Respondent

The respondent has 30 days from the date upon which he was served with the Brief of Appellant from which to file and serve his responsive brief. Additionally, 3 more days are added if the respondent was served (i.e. received the Brief of Appellant) through postal mail.[26]

[26] Wis. Stat. § 809.19(3)(a)1.

C. Content Requirements

Through the Brief of Respondent, the Respondent explains to the court why the outcome of the Circuit Court was proper and, therefore, should stand. The Brief of Respondent should reply directly to the issues raised in the Brief of Appellant. The format and length requirements for the Brief of Respondent are identical to those for the Brief of Appellant, save for the following parts, which are optional for the Brief of Respondent:

(1) Statement of the Issues

(2) Statement of the Case

(3) Appendix

Although these sections are optional, they should not automatically be omitted. It is good practice for the Respondent to include a Supplemental Statement of the

Case that includes facts the Respondent believes were left out or mischaracterized by the Appellant.

D. Form and Length Requirements

The Brief of Respondent must have a red cover, and must be securely bound down the right side. Additional form requirements are dependent on whether the brief uses a monospaced (i.e. Courier) or proportional (i.e. Times New Roman) font.

For a Monospaced Font:

- 10 characters per inch
- Double-spaced
- 1.5 inch margin on left side, 1 inch margin on all other sides
- Shall not exceed 50 pages

For a Proportional Font:

- 13 pt body text
- 11 pt text for quotes and footnotes
- Maximum of 60 characters per full line of body text

- Italics may only be used for citations, headings, emphasis, and foreign words
- Shall not exceed 11,000 words

E. Filing the Brief of Respondent

Below is a checklist for the Brief of Respondent

Checklist for Filing Brief of Respondent
Printing ☐ Determine how many copies to print o 10 (including the original) for the Court of Appeals o 3 for each remaining party[27] o 1 copy to retain ☐ Have copies professionally printed with the following options o Red cover pages o Either staple or hot glue binding along the left side **Filing** ☐ File 10 copies, *including the original*, with the Court of Appeals via: o Hand service at the Clerk's Office 110 East Main St. #215 Madison, WI 53703 o Mail to Clerk's Office (Same Address as Above)[28] ☐ Serve 3 copies on each party via: o Mail or hand delivery to the address listed on CCAP for each party ☐ File an electronic copy of the brief if represented by an attorney o Use the "Print to PDF" feature to create a PDF of the word version of the brief o E-file the unsigned PDF *without* exhibits at the Court of Appeals Web site.

[27] All parties to an action, as well as their attorney – if applicable – and address can be located on the CCAP web page for a case.

[28] Note that if an appeal is mailed, it must *arrive* at the court on or after its due date.

Part 6:
Drafting the Appellant's Reply Brief

A. Overview and Strategies

The final brief allowed in the briefing process is the Appellant's Reply Brief. This brief is optional, however, it is generally good practice to file one. This brief must be responsive to the Brief of Respondent, and may not raise new issues. When drafting the Appellant's Reply Brief, begin by carefully reviewing the Brief of Respondent. Mark any place where it appears as though the Respondent got the facts or law wrong. Then, draft a brief that addresses these perceived errors. Another way to frame out the Appellant's Reply Brief is to respond directly to the numbered arguments made by the Respondent. Cite cases that support desirable legal arguments. Additionally, use facts to differentiate the case being appealed from any cases that are more favorable to the opposing party's position, or explain why those cases should not be followed.

B. Timeline of the Appellant's Reply Brief

The appellant has 15 days from the date upon which the Brief of Respondent was filed with the Court of Appeals from which to fie and serve the Appellant's Reply Brief. Additionally, 3 more days are added if the respondent was served (i.e. received the Brief of Respondent) through postal mail.

C. Content Requirements

The Appellant's Reply Brief must necessarily be shorter than the initial Brief of Appellant and Respondent. The Appellant's Reply Brief must include a certification as to form and length, as well as an argument section that cites the proper legal authority and responds directly to the Brief of Respondent.

D. Form and Length Requirements

The Appellant's Reply Brief must have a grey cover, and must be securely bound down the right side. Additional form requirements are dependent on whether the brief uses monospaced (i.e. Courier) or proportional (i.e. Times New Roman) font.

For a Monospaced Font:

- 10 characters per inch
- Double-spaced
- 1.5 inch margin on left side, 1 inch margin on all other sides
- Shall not exceed 13 pages

For a Proportional Font:

- 13 pt body text
- 11 pt text for quotes and footnotes
- Maximum of 60 characters per full line of body text
- Italics may only be used for citations, headings, emphasis, and foreign words
- Shall not exceed 3,000 words

E. Filing the Appellant's Reply Brief

Below is a checklist for the Appellant's Reply Brief.

Checklist for Filing Appellant's Reply Brief
Printing ☐ Determine how many copies to print o 10 (including the original) for the Court of Appeals o 3 for each remaining party[29] o 1 copy to retain ☐ Have copies professionally printed with the following options o Grey cover pages o Either staple or hot glue binding along the left side **Filing** ☐ File 10 copies, *including the original*, with the Court of Appeals via: o Hand service at the Clerk's Office 110 East Main St. #215 Madison, WI 53703 o Mail to Clerk's Office (Same Address as Above)[30] ☐ Serve 3 copies on each party via: o Mail or hand delivery to the address listed on CCAP for each party ☐ File an electronic copy of the brief if represented by an attorney o Use the "Print to PDF" feature to create a PDF of the word version of the brief o E-file the unsigned PDF *without* exhibits at the Court of Appeals Web site.

[29] All parties to an action, as well as their attorney – if applicable – and address can be located on the CCAP web page for a case.

[30] Note that if an appeal is mailed, it must *arrive* at the court on or after its due date.

Part 7:
Order of Court of Appeals

Unlike the stringent time requirements imposed on the parties while briefing a matter on appeal, there is no timeline for the Court of Appeals to issue its decision. Statistics released by the Wisconsin Court of Appeals suggest that it takes an average of 10 months, from the date the Appellant filed the Notice of Appeal, until a decision is handed down.

A. Dealing With A Loss

Much like a loss in the Circuit Court, a loss in the Court of Appeals is not necessarily the end of a case. The losing party at the appellate level has several options available to him.

B. Motion to Reconsider

A Motion to Reconsider is filed in the Court of Appeals, and is therefore often decided by the same appellate judge(s) who issued the initial ruling in a given case. A Motion to Reconsider must be filed *within 20 days* after the date of the order to be reconsidered.[31] A Motion to Reconsider must tell the Court of Appeals what points of law or fact the losing party believes were erroneously decided. Importantly, the filing party will not be permitted to file a separate memorandum of law in support of the motion unless the Court of Appeals subsequently orders that he do so.

In almost all cases, it is better for the losing party to file a Petition for Review than a Motion to Reconsider. A Motion to Reconsider is appropriate only where the losing

[31] Wis. Stat. § 809.24(1)

party can show that the Court of Appeals made a serious error in either its recitation of the facts or its application of the law. A Motion to Reconsider is not appropriate where the losing party simply disagrees with the decision reached by the Court of Appeals.

If the losing party files a Motion to Reconsider, the opposing party has the opportunity to file a response in opposition. Both the motion, as well as the response, shall not exceed 5 pages for a monospaced font, and 1,100 words for a proportional font. Upon reviewing the motion, response, and any additional memorandum of law requested, the Court of Appeals will either issue an amended decision or an order denying the motion.

C. Petition for Review to Wisconsin Supreme Court

The losing party on appeal may also continue to seek justice in the Wisconsin Supreme Court. Unlike the Court of Appeals, the Wisconsin Supreme Court is not required to hear a case. Rather, the first filing is a Petition for Writ of Review — this is essentially asking permission to file an appeal at the Supreme Court level. It is not common for the Wisconsin Supreme Court to grant permission to appeal from a Court of Appeals order. Of the 346 Petitions for Review filed during the 2012-2013 term, the Wisconsin Supreme Court chose to hear only 29. This is a review rate of only 8%. A guide for pro se litigants in the Wisconsin Supreme Court is attached hereto at Appendix "M."

The Wisconsin Supreme Court will not accept review of a case to vindicate the rights of a single person. Rather, the Wisconsin Supreme Court selects cases that will have

an important impact on Wisconsin law. A case presented for review should do at least one of the following:

(1) Present a significant question of law

(2) Demonstrate the need for a new or changed policy

(3) Assist in developing, clarifying, or harmonizing the law

A Petition for Review must be filed ***within 30 days after the appellate decision*** is reached in a case. This deadline cannot be moved or extended, and Petitions to Review must set out the argument that will be made if the Petition is granted.

The Wisconsin Supreme Court grants fewer than 10 percent of the petitions for review that are filed. If the state Supreme Court accepts your petition, it will send a briefing schedule. The process of briefing a case in the supreme

court is much like that of briefing a case in the court of appeals, with a Petitioner's Brief, Respondent's Brief, and Petitioner's Reply Brief being filed.

Win or lose, the state supreme court is often the last forum for relief in a particular case. However, because the chances of Supreme Court review – let alone success – are minimal, it is important that litigants do their best to 'get it right' at the appellate level.

Appendix A: Procedures and rules for Wisconsin Expedited Appeals

Following are the procedures and rules litigants must follow when handling an expedited appeal in the Wisconsin Court of Appeals. These rules are formulated and promulgated by the Wisconsin Court of Appeals.

Court of Appeals
Procedures for Expedited Appeals

(1) Eligible Cases.

All appeals in the Court of Appeals shall be eligible for the expedited appeals program except for the following: (1) appeals brought under s. 809.105; (2) appeals brought under s. 809.107; (3) no merit appeals brought under s. 809.32; (4) appeals brought under s. 974.06(7); (5) appeals in which a party represents himself or herself; and (6) appeals brought under s. 809.30 or 809.40(1) except for cases arising under chs. 48, 51, 55, or 938.

(2) Docketing Statement.

(a) In all eligible cases, the appellant shall file in the Court of Appeals an original and one copy of a completed docketing statement and serve one copy of the completed docketing statement on each respondent. The completed docketing statement shall be submitted along with the notice of appeal sent to the Court of Appeals by the appellant, pursuant to WIS. STAT. RULE 809.10(1)(a). The respondent need not fill out a docketing statement but may file a response as outlined in paragraph (2)(e). Filing of the docketing statement with Court of Appeals constitutes certification of service on the respondents. Rules 809.80(2) and 801.14(4). The respondents must therefore be provided with a completed docketing statement by the appellant.

(b) The statement must be fully filled out and must accurately describe the jurisdictional facts, nature of trial court proceedings, issues on appeal, and standards of review applicable to those issues. Failure to include any matter in the docketing statement does not constitute a waiver. The court may, however, impose sanctions on counsel or appellant if it appears that available information has been withheld. WIS. STAT. RULE 809.83(2). The appellant must attach to the docketing statement a copy of the judgment or order appealed from and any findings of fact, conclusions of law or memorandum decision or opinion upon which the order or judgment is based.

(c) Failure to file a docketing statement within the time set forth above will be grounds for sanctions, including dismissal of the appeal, under WIS. STAT. RULE 809.83(2).

(d) A motion for extension of time within which to file the docketing statement will be granted only for the most compelling reasons. Counsel who filed the notice of appeal is responsible for insuring that the docketing statement is timely filed in this court even if new counsel will actually handle the appeal. Only one docketing statement may be filed for each notice of appeal; if there is more that one appellant, appellants must consult and decide jointly who is responsible for filing the single docketing statement.

(e) Respondent, within 7 days of receipt of the docketing statement, may file an original and one copy of a single-page response if respondent strongly disagrees with appellant's statement of the case or the issues on appeal. The response must be sent to all other counsel. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. Multiple respondents should consult on the nature of the response to appellant's docketing statement and, if they decide to file a response, file only one response.

(f) Respondent must file a separate docketing statement if a cross-appeal is filed. The prior paragraph applies to appellants who are also cross-respondents. Cross-appellants and cross-respondents are subject to the same above provision as are appellants and respondents.

(g) If a docketing statement indicates a jurisdictional defect, the Presiding Judge may direct the parties by order to address the question of jurisdiction in a specific form and time period.

(3) Time Limits for Records and Briefs.

Unless ordered otherwise by the court, the time for designating, ordering, preparing, serving and filing the transcripts, preparing and filing the record, and filing the briefs established by the Rules of Appellate Procedure, ch. 809, shall not be affected by the provisions of these procedures.

(4) Presubmission Conference.

(a) In any eligible case, the court may, at its option, require counsel to attend, either by telephone or in person, a presubmission conference with a senior staff attorney of the court designated as a conference attorney.

(b) All attorneys of record are required to participate in the conference unless they notify the conference attorney that they are waiving their briefing rights. Failure to attend the conference may result in the imposition of sanctions pursuant to WIS. STAT. RULE 809.83(2). The purposes of a conference are to determine: (a) whether the appeal can be adequately briefed in fewer than the maximum number of pages permitted by WIS. STAT. RULE 809.19; (b) whether the submission and decision of the appeal can be expedited by a reduced briefing schedule, by summary disposition, or by other expedited means permitted under the Rules of Appellate Procedure; (c) what the issues are on appeal and the standards of review for those issues; (d) whether it is possible to narrow the issues on appeal; (e) whether the transcripts and record can be reduced and whether a statement in lieu of a portion of the record or a transcript can be agreed upon under WIS. STAT. RULE 809.15(5); (f) whether oral argument and/or a published opinion is likely to result in the appeal; (g) whether joint briefing by multiple parties is practical; (h) whether opposing counsel, after having an opportunity to discuss the case, may be able to reach a settlement; and (i) whether the processing of the appeal can be simplified or expedited in any other way.

(c) The ultimate objectives of the conference will be to reduce the time between the filing of the notice of appeal and the decision of the Court of Appeals while, at the same time, permitting the Court of Appeals to address its increasing workload and to reduce the expense of appeals to the litigants while providing alternative methods for expediting appeals. An order will be entered by the Presiding Judge upon recommendation of the conference attorney after the conference incorporating any matters resolved or identified at the conference.

(d) Conferences must be attended by counsel with responsibility for the appeal and authority to make decisions about any aspect of the appeal covered by these procedures. If lead counsel cannot attend, that attorney must: (1) appoint a substitute attorney to attend the conference; (2) delegate to the attending attorney the broadest feasible authority to narrow the appeal or agree on case processing matters; and (3) be available at the time of the conference. The parties to an appeal may be required to attend a conference. When the business office of counsel is not in the vicinity of the conference site, or for any other reason, the court may, at its option, hold any conference by telephone conference call.

(e) The conference date will be set by telephone with written confirmation or in a written notice informing counsel that a conference will be held. Unless counsel already has a directly conflicting court date, a request to alter the date will be disfavored. If a scheduled conference unavoidably conflicts with any counsel's schedule, he or she is obliged to contact all opposing counsel to determine alternative dates before contacting the conference attorney's secretary to reschedule.

(f) All matters discussed at the conference are completely confidential and will not be disclosed by the conference attorney except as embodied in the conference attorney's recommendation to the Presiding Judge for an order concerning further proceedings in the appeal or to the judge reviewing a request for reconsideration.

(g) The costs of preparing and filing a docketing statement are not taxable.

(h) In a case in which, after review of the docketing statement, the court finds a conference unnecessary or inappropriate, the court may on its own motion issue an order limiting the length of briefs, requiring joint briefing, setting the schedule for filing the record and briefs, or regulating any other aspect of the appeal that could be handled at a conference. Rules 809.20, 809.21(1) and 809.82(2).

(i) Any order issued by a Presiding Judge upon the recommendation of the conference attorney is subject to reconsideration upon filing of an appropriate motion within 5 days of the date of the order.

(j) If the case is expedited per agreement reached at the presubmission conference, the clerk's office will not send notice of receipt of briefs or notice of submission. The timing and length of briefs will be detailed in the order expediting the case.

Effective October 1, 2001

Appendix B:
Pro se Guide to Appellate Procedure

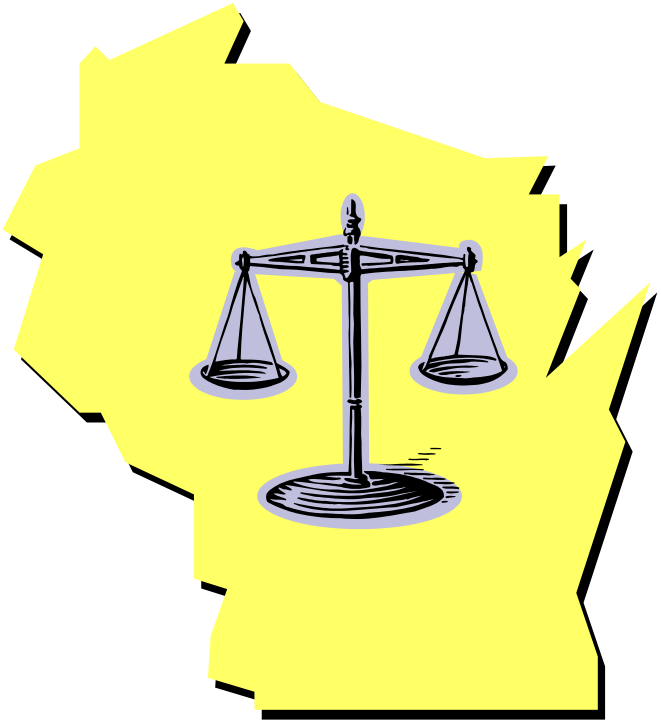
Following is a guide to practicing in the Wisconsin Court of Appeals and the Wisconsin Supreme Court. This guide was written by the Clerk's office for the Wisconsin Supreme Court and Court of Appeals, and is available free of charge at its Web site.

Guide to

APPELLATE PROCEDURE

for the

SELF-REPRESENTED



Clerk of the Wisconsin Supreme Court and Court of Appeals

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The Guide to Appellate Procedure for the Self-Represented is not legal advice and cannot be cited as legal authority. This guide is not intended to replace or to be a substitute for the Wisconsin Rules of Appellate Procedure, and should be used in conjunction with the Rules. Anyone considering initiating an appeal may wish to seek legal counsel.

This *Guide to Appellate Procedure for the Self-Represented* is based upon the Wisconsin Rules of Appellate Procedure in effect as of January 1, 2011.

Shirley S. Abrahamson
Chief Justice

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Richard S. Brown
Chief Judge

Dear Friend:

The goal of this *Guide* is to provide general information to assist individuals in understanding the appeals process and to help non-lawyers with the basic steps and procedures for filing an appeal in the Wisconsin Court of Appeals and Supreme Court. This *Guide* focuses primarily on appeals to the Court of Appeals (the intermediate-level court which hears criminal and civil appeals from Wisconsin's circuit courts), but also deals with some types of cases heard by the Supreme Court.

The Frequently Asked Questions section is intended to be an introduction to concepts related to the appeals process. The question and answer format provides definitions of terms and general information about deadlines, fees, and the options available at the various stages of an appeal. Subsequent sections provide contact information for the Clerk's Office, links to useful websites, information on types of appeals and how to get your appeal started, more detail regarding the requirements of Briefs, Appendices, and Motions, and checklists for use in preparing these documents. There is a Glossary of terms associated with appeals, and several of the most commonly used forms are appended to this *Guide* for your convenience.

Please keep in mind that this *Guide* is not a substitute for legal counsel or a thorough understanding of the Wisconsin Rules of Appellate Procedure. It is not and does not purport to be a complete explanation of all aspects of Wisconsin appellate procedure; such an explanation would require a much longer and more complex document than this *Guide.* If you have comments or questions about this *Guide* or about appellate procedure, please do not hesitate to contact the Clerk's Office at clerk@wicourts.gov or 608-266-1880.

The Clerk's Office is dedicated to serving the citizens of Wisconsin, and we hope that this *Guide* is a useful tool for navigating the complex appeals process.

Clerk of the Wisconsin Supreme Court
and Court of Appeals

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I FREQUENTLY ASKED QUESTIONS ABOUT THE APPELLATE PROCESS

Q. What is an appeal?

A. If you go to court, and you are not satisfied with the court's judgment or order, you are entitled to appeal that judgment or order to the Court of Appeals. An appeal asks the Court of Appeals to look at what the circuit court did to determine if the circuit court made the right decision or followed the correct procedure. Unless the appeal is an "appeal by permission" (explained below), the order appealed from must be a final judgment or order from the circuit court.

An individual or party who appeals a circuit court judgment or order is called an "Appellant" in the Court of Appeals. The individual or party who must respond to the appeal (most often the opposing party in the circuit court) is called the "Respondent."

Q. What is a judgment or order?

A. A "judgment" is a ruling made by a circuit court judge. It usually comes at the end of a case and usually favors one of the parties. The judgment, sometimes referred to as an "order," often requires one or both of the parties to do something. The judgment is usually in writing and explains why the court ruled the way it did. Many civil cases end when one party asks for summary judgment. A motion for summary judgment filed by one of the parties asks the judge to rule in its favor *prior to* a trial. If the circuit court grants summary judgment resolving all the issues in the case in favor of one party, the other party can appeal that decision.

A judgment that does *not* resolve all the issues in the case is referred to as a "nonfinal judgment." In order to appeal a nonfinal judgment, an appellant must request permission to appeal. See "Permissive Appeals" in Section III of this *Guide.*

An order or judgment must be in writing and must be "entered" (that is, filed in the office of the circuit court clerk) before the Court of Appeals has jurisdiction to review it. The date of entry is the date the document is filed with the circuit court clerk. With a few exceptions, an appeal from an *oral* judgment or order will be dismissed.[1]

Q. Who can appeal?

A. With few exceptions, any party who is dissatisfied with the result in the circuit court has the right to appeal, with or without the assistance of an attorney. The process of an appeal is complicated, time-consuming, and difficult, however, and the assistance of an attorney is recommended. No special treatment is given to parties who represent themselves. Like attorneys, a self-represented party (also known as a *pro se* party) must comply with the requirements of the Wisconsin Rules of Appellate Procedure.

[1] An exception to the rule that the judgment or order must be in writing and entered exists for final dispositions in small claims, traffic regulation or municipal ordinance violations prosecuted in circuit court. An appeal in one of these types of cases may be taken from a disposition of the case recorded in the circuit court clerk's case record entries, and the time for appeal begins to run when the entry is made.

Q. What types of courts are there?

A. In sixty-six of Wisconsin's seventy-two counties, there is a circuit court that serves that county's residents. In the other six counties, one circuit court serves two counties (Buffalo/Pepin, Florence/Forest, and Shawano/Menominee). Some counties have several courts, with some hearing criminal cases and others hearing civil cases or small claims cases. The next level above the circuit court is the Wisconsin Court of Appeals. If you are dissatisfied with the final judgment in the circuit court, you may appeal the judgment to the Court of Appeals. The next level above the Court of Appeals is the Wisconsin Supreme Court. If you are dissatisfied with the judgment of the Court of Appeals, you may ask the Wisconsin Supreme Court to look at your case.

Q. What is the difference between a criminal case and a civil case?

A. A criminal case is where a person is charged with violating one of Wisconsin's criminal laws. In a criminal case, the State of Wisconsin, represented by the District Attorney (also referred to as the Prosecutor), may bring the accused person to trial. In a criminal case, the State is the plaintiff and the accused person is the defendant (because that person must *defend* himself or herself against the accusation). If the defendant is found guilty, the defendant may appeal that judgment to the Court of Appeals.

A civil case is where individuals, groups of individuals, or companies (called parties or litigants) are in conflict and ask the court to resolve that conflict. Civil cases can involve disputes over contracts, automobile accidents, injuries, divorce, child custody, and many other issues. If any party to the case is dissatisfied with the court's ruling in the case, that party can appeal the court's final ruling to the Court of Appeals.

Q. How much does it cost to appeal?

A. The filing fee to open a case in the Court of Appeals is $195.[2] This filing fee is due once the Notice of Appeal is filed in the circuit court. Payment may be made to the circuit court clerk or sent to the Clerk of the Court of Appeals. A copy of the Notice of Appeal must be sent to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status, under which you will be exempt from payment of the filing fee. See "Applying for Indigent Status" in Section IV of this *Guide.*

If a Transcript is requested, there are fees that the Court Reporter will charge to prepare the transcript for the Court. Even if a party is granted indigent status, the court reporter, in some circumstances, can still charge to prepare the transcript. The circuit court can explain those costs. There are also costs involved with preparing documents for the Court as well as getting copies made. Most filings in the Court of Appeals require multiple copies—as many as ten in the case of briefs. Thus, there are expenses for copying documents in addition to the filing fee, the cost of copying portions of the Record on Appeal, and the cost of preparing any transcripts in the case.

Q. Can the Court of Appeals or Supreme Court appoint an attorney to represent me?

A. No. The circuit court can appoint an attorney to represent a party on appeal in a criminal case under certain circumstances. The Court of Appeals and Supreme Court generally do not appoint attorneys. Circuit courts generally do not appoint attorneys in civil cases. If you are financially unable to hire an attorney, a motion can be filed in the circuit court asking for indigent status and/or

[2] 809.25(2).

the appointment of counsel in a criminal case. Contact the circuit court to determine what is necessary for this procedure and if it is possible to obtain court-appointed counsel in your particular kind of case.

Q. If I choose to get an attorney to represent me, can the Clerk's office recommend a good lawyer?

A. No. The Clerk cannot recommend a particular lawyer. The State Bar of Wisconsin has a lawyer referral and information service where you can get names of attorneys specializing in a particular area of law. The State Bar can only provide names of attorneys, but cannot recommend an attorney. The State Bar lawyer referral and information service can be reached at (800) 362-9082 (outside the Madison area) or (608) 257-4666 (in Madison or outside Wisconsin). You may also contact the State Bar to get the phone number for a local bar association, which may also be able to give a referral. For further information, visit the State Bar of Wisconsin website at www.wisbar.org.

Q. Is there any difference between the way civil and criminal cases are handled on appeal?

A. Yes, there are significant differences prior to the start of the briefing period. Compare Section IV, Section A Appeal in a Civil case and Section B Appeal in a Criminal Case.

Q. Where can I find the rules for filing an appeal?

A. You can access the appellate rules on the State of Wisconsin website. The internet address for the rules is: http://www.legis.state.wi.us/statutes/Stat0809.pdf. In addition, most public libraries have the Wisconsin Statutes, which contain the appellate rules in Chapters 809 and 808.

Q. What is the first thing I should do if I want to appeal the circuit court's judgment?

A. Except for permissive appeals, the circuit court must be finished with your case before you can appeal. The circuit court is finished when it issues a final judgment or a final order.[3]

Civil cases. In a civil case, you have 45 days from the entry of final judgment or final order to file a document called a Notice of Appeal if you have received written notice of the entry of the final judgment or final order within 21 days.[4] If no written notice has been given, you have 90 days. The Notice of Appeal is filed in the circuit court clerk's office, and copies must be sent to the Clerk of the Court of Appeals and to all other parties in the case. The Notice of Appeal tells the circuit court that you are going to appeal the circuit court's judgment and contains information about your case.[5] A Notice of Appeal Form is in the Appendix at the back of this *Guide*.

Small Claims Eviction cases. In a small claims *eviction* case, you have 15 days from the entry of final judgment or order to file a Notice of Appeal.[6] [Note: in eviction actions, an order for judgment for restitution of the premises is appealable even though other claims (such as for monetary damages) may be unresolved.] Other small claims cases have the same deadlines as regular civil

[3] 808.03(1).
[4] 808.04(1). Written notice of entry of judgment or order is a formal, captioned and signed notice stating the correct date of entry of judgment or order. It must be served on the opposing parties within 21 days of entry and filed with the circuit court.
[5] 809.10(1).
[6] 799.445; 808.04(2).

cases.

Criminal cases. In a criminal case, you have twenty days after the date of sentencing or final judgment to file a Notice of Intent to Pursue Postconviction or Postdisposition Relief.[7] Within 5 days after you file this Notice of Intent, the circuit court will send either to the state public defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of court reporters who worked on your trial or hearings (also called the "proceedings"), and a list of the proceedings in your case for which a transcript has been filed with the circuit court. Please note that the Notice of Intent is **not** the same or a substitute for filing the Notice of Appeal. See "How to Initiate a Criminal Appeal" in Section IV of this *Guide*.

Termination of Parental Rights cases. Termination of parental rights ("TPR") cases are *expedited* cases, meaning that they are moved through the appeals process more quickly than other cases. In a TPR case, a Notice of Intent to Appeal must be filed within 30 days after the entry of final judgment,[8] and a Notice of Appeal must be filed within 30 days after the transcript or circuit court case record has been served.[9]

Q. What does the Notice of Appeal need to contain?

A. The Notice of Appeal must contain all of the following information: (1) the case name and number of the circuit court proceedings; (2) a description of the judgment or order appealed from, including the date it was entered; (3) a statement whether the appeal is one of the types specified in 752.31(2) (small claims actions, municipal ordinance violations, violations of traffic regulations, cases under chs. 48, 51, 55, or 938, contempt, misdemeanors, and cases involving civil forfeitures);[10] and (4) a statement whether the appeal is one of those to be given preference in the circuit court or court of appeals by statute. A Notice of Appeal Form is in the Appendix at the back of this *Guide*. **Note:** The Notice of Appeal must be signed by the filing party.

Q. If I file a Motion to Reconsider in the circuit court, when is my Notice of Appeal due?

A. If a Motion to Reconsider, to Vacate, or to Modify (or any other postjudgment motion) is filed in the circuit court, the Notice of Appeal is still due 45 days from the entry of final judgment or 90 days if you have not received written notice of the entry of the final judgment. No additional time is granted while the Motion to Reconsider is being considered by the circuit court, with the exception of actions tried by the court without a jury under 805.17. In those circumstances, if the court grants the motion and amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the court denies the motion, the time for initiating an appeal begins when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within 90 days after entry of judgment the court does not decide the motion, the motion is considered denied and the time for initiating an appeal begins 90 days after the judgment.[11]

Q. Do I need to file a Docketing Statement?

A. The purpose of a Docketing Statement is primarily to ask the Court of Appeals to examine whether or not the case is eligible to be expedited.[12] A Docketing Statement does **not** need to be filed by a

[7] 809.30(2).
[8] 809.107(2).
[9] 809.107(5).
[10] These types of cases are decided by a single judge rather than by three judges. If you wish to have this type of case decided by a three-judge panel, you must file a motion under 809.41(1).
[11] 805.17(3).
[12] 809.17; 809.10(1)(d).

self-represented party.[13] For more information on *expedited* or *fast-track* cases, please see 809.17 and 809.10(1)(d).

Q. What do I do after I file my Notice of Appeal?

A. After you file your Notice of Appeal, you have 14 days to file a "Statement on Transcript" with the Clerk of the Court of Appeals and the circuit court clerk.[14]

Q. What is a Statement on Transcript?

A. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. A Statement on Transcript Form is in the Appendix at the back of this *Guide*. If your case was decided entirely on briefs or other written documents, you will not need a transcript. If you want to refer to statements made in court, you must request a transcript and make arrangements with the court reporter to pay for it.

If you request a transcript, you must communicate with the court reporter preparing the transcript to make arrangements for the filing and service of the transcript. You must do this *before* filing the Statement on Transcript. If the court reporter has not yet filed the transcript in the circuit court clerk's office at that time, the court reporter must complete the court reporter's portion of the Statement on Transcript indicating when the transcript will be filed. [If you are unable to contact the court reporter and are unable to get the court reporter to sign the Statement on Transcript, you may request an extension of time to file your statement.] You then file the Statement on Transcript with the Clerk's Office and the clerk of the circuit court, and serve it on the other parties. Please keep in mind that the *original* of the Statement on Transcript is filed with the appellate Clerk's Office and *copies* of the statement are filed with the clerk of the circuit court and served on the parties.

Q. How long does the Court Reporter have to prepare and file the Transcript?

A. In most cases, the Court Reporter has 60 days after the date on which the transcript was requested and arrangements were made for payment.[15] By that deadline, the Court Reporter must serve copies of the transcript on the parties to the appeal, file the transcript with the circuit court, and notify the Clerk of the Court of Appeals that the transcript has been filed and served.

In cases where a motion for postconviction or postdisposition relief has been heard by the circuit court, the court reporter must file the transcript within 20 days after the date on which the transcript was requested.

Q. What is the Record on Appeal?

A. The Record on Appeal is a compilation of the original documents filed with the circuit court. It also includes the transcript, if one was prepared. It is the job of the clerk of the circuit court to assemble the Record on Appeal.[16] At least 10 days before the due date for filing the Record on Appeal in the court, the circuit court clerk notifies the parties that the record is ready for inspection. You then have the right to inspect the record to determine if it accurately reflects what happened in the circuit court. If you believe it is defective in some way, you can file a motion asking the circuit court to supplement or correct the record.

[13] 809.10(1)(d).
[14] 809.11(4).
[15] 809.11(7).
[16] 809.15.

The circuit court clerk sends the Record on Appeal to the Court of Appeals within 20 days of the date of the filing of the transcript (or within 20 days of the filing of the Statement on Transcript if there is to be no transcript or all necessary transcripts were previously filed).

Q. What happens after the Record on Appeal is filed?

A. The next step for the Appellant is the preparation and filing of the Brief of Appellant, which is due 40 days after the filing of the Record on Appeal.[17]

Q. What is a brief?

A. A brief is a document prepared by each of the parties explaining to the Court what happened in the circuit court, and why that party believes the circuit court's judgment or order should be changed or remain the same. The brief is a party's chance to argue its case to the judges. Because most cases do not have an oral argument, the brief is very important. There are very specific requirements for the form and contents of a brief. See Section VI: Briefs in this *Guide* and Rule 809.19(1).

Q. When do I file my brief?

A. The Brief of Appellant (the brief by the party who is appealing) is due 40 days after the filing of the Record on Appeal (except in Termination of Parental Rights cases; see below). The Brief of Respondent is due 30 days after the date of service of the Brief of Appellant, with 3 days added if the service is accomplished by mail.[18]

Q. What do I do if I can't file my brief within the time limit?

A. If you cannot file your brief within the time limit, you can file a Motion for Extension of Time to File Brief. In this motion, you explain to the Court why you need additional time and for how long. Generally, Motions for Extension of Time ask for an extension of between seven and thirty days.

Q. What is an Appendix and when do I file it?

A. An Appendix is a compilation of documents selected from the Record on Appeal that are essential to the Court's understanding of the issues raised on appeal. A party (usually the Appellant) prepares the Appendix and attaches it to the back of the party's brief. The Appendix must include a table of contents. It includes documents filed by the parties in the circuit court as well as judgments or orders issued by the judge in the circuit court.

NOTE: The Brief and Appendix must include two certifications. First, you must certify that the Appendix meets certain content requirements.[19] Second, you must certify that the Brief and Appendix are within certain length requirements.[20] These certifications must be reproduced exactly as they are set out in the Rules. A sample appellant's certification is in the Appendix to this *Guide*.

Q. Can I present new evidence to the Court of Appeals or Supreme Court that was not given to the circuit court?

A. No. Parties in an appeal are not permitted to offer any evidence that was not presented in the circuit court. The Court decides the case strictly on the basis of the record in the circuit court.

[17] 809.19(1).
[18] 809.19(3).
[19] 809.19(2)(b).
[20] 809.19(8)(d).

Q. What happens after the Appellant submits its brief?

A. The Respondent has thirty (30) days from the filing of the Brief of Appellant to file its answer brief. This brief is the chance for the winning party in the circuit court to respond to the issues presented by the Appellant in its brief.

Q. Does the party filing the appeal have a chance to respond to the Brief of Respondent?

A. Yes. The Appellant may file a Reply Brief. This brief allows the Appellant the opportunity to respond to the arguments made by the Respondent. The Reply Brief is limited to issues that were raised in the Brief of Appellant or a response to issues raised in the Brief of Respondent. The Appellant cannot bring up new issues in the Reply Brief that were not presented in the Brief of Appellant. If you choose *not* to file a Reply Brief, you should file a written statement informing the court that a reply brief will not be filed.

The Reply Brief is due 15 days after service of the Brief of Respondent, plus three days from the date of mailing *if* you received the Brief of Respondent in the mail.

Q. Are there different types of appeals?

A. Yes. Most appeals are regular direct appeals. There are also permissive appeals. See Section III: Types of Appeals.

Q. Do I get a court hearing in a Court of Appeals case?

A. No. No trial or hearing takes place in an appeal and no new evidence is presented. The parties make their arguments to the appellate court in writing. Occasionally, the appellate court may order the parties to participate in an oral argument. This is where each party gets a short time, usually 30 minutes, to argue its case in front of a panel of three judges. [21]

Q. Who decides a Court of Appeals case?

A. When all the documents necessary for an appeal have been filed, the case is submitted to the judges who will decide the appeal. Most cases are assigned to a panel of three judges. Certain cases, however, are decided by one judge. These cases include any case under the Children's Code (Ch. 48 of the Wisconsin Statutes), the Mental Health Act (Ch. 51), Protective Services (Ch. 55), small claims actions (Ch. 799), the Juvenile Justice Code (Ch. 938), traffic cases, municipal ordinance violation cases, misdemeanor cases, civil forfeitures, and contempt cases.

Q. Who decides a Supreme Court case?

A. There are seven justices who serve on the Wisconsin Supreme Court. In most cases, the justices all participate in deciding the case, and one justice is chosen to write the opinion. See the Wisconsin Supreme Court's publication, *Filing a Petition for Review*, for further information.

Q. How will my case be decided?

A. Once all the parties have filed briefs with the Court of Appeals, the case is sent to the Court for a decision. The judges carefully review all of the circuit court records, including the transcript, and review the briefs and appendices submitted by the parties. The judges will decide the case, applying the appropriate legal standards using previous cases and statutes as a guide. Please note that judges cannot be contacted directly about a case.

[21] 809.22.

Q. How will I know what decision the Court makes?

A. The Court will issue its decision in a document called an opinion, and it is mailed to the parties in the case. In the opinion the Court explains the facts of the case, discusses the parties' arguments, and outlines a rationale for its decision. At the end of the opinion, the Court explains whether or not it agrees with the circuit court or believes the circuit court made some type of error. When the Court agrees with the decision of the circuit court, the opinion will say, "affirmed." If the Court disagrees with the circuit court, the opinion may say, "reversed" or "reversed and remanded." If the case is reversed or remanded, the Court explains why it thinks the decision was wrong, and it gives instructions to the circuit court to modify its result or rehear the case.

Q. How do I ask the Court to do something or ask the Court to order the circuit court to do something?

A. Any request presented to the Court must be in the form of a Motion. See Section V: Motions. Do not send letters to the Court requesting assistance with a matter related to your case. Make any request in the form of a Motion that conforms to the Appellate Rules.

Q. When are my documents considered filed?

A. Most documents are considered "filed" when they are received by the Clerk of the Court of Appeals and Supreme Court. However, a Brief and/or Appendix can be considered "filed" when it is mailed or sent by Federal Express, UPS, or another commercial carrier, as long as several conditions are met. First, the document must be mailed on or before the filing deadline. If a commercial carrier is used, it must be for delivery within three days. Second, the Brief and/or Appendix **must** have attached to it a certification or affidavit setting forth the date and manner by which it was mailed or delivered to a commercial carrier.

Rule for Incarcerated or Institutionalized Persons. If you are confined to an institution, your Brief and/or Appendix is considered timely if it is correctly addressed and delivered to the proper institution authorities for mailing on or before the filing deadline. You **must** also attach a certification or affidavit setting forth the date on which it was delivered to the proper institution authorities for mailing.

Q. If my due date for a filing falls on a weekend or holiday, what happens?

A. If the due date falls on a weekend or holiday, the document to be filed is due on the next business day the Clerk's office is open. Therefore, if the due date for your brief falls on a Saturday, the brief is due the following Monday.

Q. How long will it take for the Court to make a decision?

A. The Court considers cases in the order in which they are submitted to the Court. The Clerk's Office has no way to know in advance when a particular case will be decided.

Q. What can I do if I do not like the decision of the Court of Appeals?

A. You have two options.

First, you can file a **Motion for Reconsideration**, which asks the Court of Appeals to review your case again. A Motion for Reconsideration must be filed within 20 days after the date of the Court of

Appeals decision. This motion would need to explain why, based on previous cases, statutes, or policy, you think the decision of the Court of Appeals was made in error.[22]

Second, you can file a **Petition for Review** in the Wisconsin Supreme Court.[23] A Petition for Review must be filed within 30 days after the date of the Court of Appeals decision, or, if a Motion for Reconsideration has been filed in the Court of Appeals, within 30 days of the Court of Appeals decision on the motion. See 808.10. A Petition for Review requires an additional filing fee of $195. This petition asks the Supreme Court to look at the decision of the circuit court and Court of Appeals. Like a Brief, the Petition for Review has very specific requirements as to its form and content. See 809.62. The Wisconsin Supreme Court has the discretion to decide which cases it will consider. Thus, when a party files a Petition for Review, the Court may decide not to hear the case. The Court does not automatically accept a Petition for Review.

Q. What happens if my Petition for Review is denied? Can I appeal to the federal courts?

A. Once the Wisconsin Supreme Court issues an opinion, the losing party may attempt to challenge the court's decision in the federal courts. There are time limits and filing requirements for this process. Please contact the appropriate federal district court clerk's office. Additional information is available at the Clerk's Office for the U.S. District Court, Eastern District of Wisconsin at http://www.wied.uscourts.gov/ or (414) 297-3372 or Clerk's Office for the U.S. District Court, Western District of Wisconsin at http://www.wiwd.uscourts.gov/ or (608) 264-5156.

[22] 809.24.
[23] 809.62.

II GENERAL INFORMATION ABOUT CLERK/INTERNET RESOURCES

The Clerk's office is open 7:15 a.m. to 5:00 p.m., Monday through Friday, except on State holidays. All documents for the Court of Appeals and Supreme Court must be filed with the Clerk's office, either by mail or hand-delivery. We accept some filings by facsimile (fax).[24] [Briefs, Petitions for Review, and indigency applications may **not** be filed by facsimile.] An attorney is required to electronically file a copy of all appellate briefs, no-merit reports, petitions for review and responses. Self-represented litigants can file these documents electronically, but are not required to by the Supreme Court Rules. The appellate court eFiling web page, http://wicourts.gov/services/attorney/electronicfileac.htm, provides further instruction. We do **not** accept filings by email. Documents are file-stamped the date they are received, with the exception of Briefs and Appendices that meet the requirements of 809.80.

Mailing Address

110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Phone: (608) 266-1880
Fax: (608) 267-0640

Delivery Address (for 3rd Party Carriers)

110 East Main Street, Suite 215
Madison, WI 53703

Court/Clerk Websites

- The Clerk of the Court of Appeals and Supreme Court.
  http://www.wicourts.gov/courts/offices/clerk.htm
- Wisconsin Appellate Rules.
  http://legis.wisconsin.gov/statutes/Stat0809.pdf
- The Court of Appeals and Supreme Court on-line case search. Use this website to check the status of your case online.
  http://wscca.wicourts.gov/index.xsl

Wisconsin Statutes and Constitution

- http://www.legis.state.wi.us/rsb/stats.html

Legal Research Websites

- Barger on Legal Writing — *Tips for writing appellate briefs.*
  http://www.ualr.edu/cmbarger/persuasive.html
- Cornell Law School, Legal Information Institute — *Provides information about legal topics as well as links to state statutes and state constitutions.*
  http://www.law.cornell.edu
- Find Law — *Provides information about legal topics by subject matter and jurisdiction.*
  http://www.findlaw.com
- LLRX.com — *Provides articles on specific legal topics and links to resources.*
  http://www.llrx.com
- The Virtual Chase: Legal Research on the Internet — *Provides links to various resources.*
  http://www.virtualchase.com

[24] Please note that when filing by fax, you must send the required number of copies by fax. If the document is filed by fax, it should *not* also be mailed to the Clerk's Office. Documents completing transmission after 5:00 PM are considered "filed" the next business day. 801.16(2)(c).

III TYPES OF APPEALS

Regular Direct Appeals

A regular direct appeal is an appeal from a final judgment or order of a circuit court to the Court of Appeals. Regular direct appeals can be criminal or civil.

Permissive Appeals

A permissive appeal is an appeal from a judgment or order issued by the circuit court **before the case is finished**. This type of decision is called a "nonfinal judgment" or "nonfinal order." It often involves an order relating to evidence or a procedural matter.

The procedure for filing a permissive appeal is different from a regular appeal because you must ask the Court of Appeals for permission to appeal before the appeal can proceed.[25] If you want to appeal a nonfinal order or judgment, you must file a petition within 14 days after the entry of the order or judgment. The petition may be accompanied by a supporting memorandum. The petition and memorandum combined may not exceed 35 pages or 8,000 words. The requirements of the petition are set out in 809.50.

Please note that like regular direct appeals, a permissive appeal does not stay the circuit court proceedings while it is pending. If you wish to have your circuit court proceedings stayed, you must file a separate motion with the circuit court.

[25] 809.50.

IV INITIATION OF AN APPEAL

A HOW TO INITIATE AN APPEAL IN A CIVIL CASE

First, you must file a **Notice of Appeal**. You have 45 days from the entry of final judgment to file the Notice of Appeal if you have received written notice of the entry of the final judgment or final order within 21 days.[26] If no written notice has been given, you have 90 days. You file the Notice of Appeal in the circuit court clerk's office, and copies must be sent to the Clerk of the Court of Appeals and to all other parties in the case. The Notice of Appeal tells the circuit court that you are going to appeal the circuit court's decision and contains information about your case.[27] A Notice of Appeal Form is in the Appendix at the back of this *Guide*.

Paying the Filing Fee. You must pay the $195.00 filing fee when you file your Notice of Appeal in the circuit court or when you send a copy of your Notice of Appeal to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See page 15 below.

Second, you must file a **Statement on Transcript** with the Clerk of the Court of Appeals and with the circuit court clerk.[28] You must also serve a copy on all other parties to the appeal. You have 14 days to do this after filing your Notice of Appeal. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. A Statement on Transcript Form is in the Appendix at the back of this *Guide*. If your case was decided entirely on briefs or other written documents, you may not need a transcript. If you want to refer to statements made in court, you must request a transcript and make arrangements with the court reporter to pay for it.

If you request a transcript, you must communicate with the court reporter preparing the transcript to make arrangements for the filing and service of the transcript. You must do this *before* filing the Statement on Transcript. If at that time the court reporter has not yet filed the transcript in the circuit court clerk's office, the court reporter must complete the court reporter's portion of the Statement on Transcript indicating when the transcript will be filed. You then file the Statement on Transcript with the Clerk's Office and the clerk of the circuit court, and serve it on the other parties.

The court reporter has 60 days to file the transcript with the circuit court and to serve copies of the transcript on the parties to the appeal. The court reporter must also notify the Clerk of the Court of Appeals and the parties that the transcript has been filed.

The circuit court clerk must then transmit the **Record on Appeal**, including any transcripts, to the Clerk of the Court of Appeals within 20 days of the filing of the transcript (or within 20 days of the filing of a Statement on Transcript indicating that there is no transcript necessary to the appeal). The Clerk of the Court of Appeals must notify all parties of the date on which the Record on Appeal was filed. The Brief of Appellant will be due 40 days from this date.

[26] 808.04(1).
[27] 809.10(1).
[28] 809.11(4).

B HOW TO INITIATE AN APPEAL IN A CRIMINAL CASE[29]

First, you must file a **Notice of Intent to Pursue Postconviction or Postdisposition Relief**. A Notice of Intent Form is in the Appendix at the back of this *Guide*. You have 20 days after the date of sentencing or final judgment to do this.[30] Within 5 days after you file this Notice of Intent, the circuit court will send either to the state public defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of court reporters who worked on your trial or hearings (also called the "proceedings"), and a list of the proceedings in your case for which a transcript has been filed with the circuit court.

Second, you must **request a copy of the circuit court transcript(s)** and may **request a copy of the circuit court case record**. If you have not requested representation by the state public defender on appeal, you must request a copy of the circuit court transcript(s) within 30 days after filing your Notice of Intent to Pursue Postconviction or Postdisposition Relief. You may also request a copy of the circuit court case record at this time. If you have been denied representation by the state public defender, you have 90 days to request a copy of the circuit court transcript(s) and the circuit court case record.

The clerk of the circuit court has 60 days to serve upon you a copy of the circuit court case record (or 20 days after order on a postconviction motion). The court reporter must file the transcript with the circuit court and serve a copy upon you within 60 days of the request for the transcript.

Third, you must file a Notice of Appeal *or* a Motion for Postconviction or Postdisposition Relief with the circuit court and serve a copy on the prosecutor and any other party within 60 days after the later of service of the transcript or the circuit court case record. A Motion for Postconviction or Postdisposition Relief must be filed before a Notice of Appeal can be filed unless the grounds for seeking relief are insufficiency of the evidence or issues previously raised. The circuit court must rule on this motion within 60 days of filing, or it will be considered denied.

After the circuit court rules on your Motion for Postconviction or Postdisposition Relief (if you filed one), you have 20 days to file a Notice of Appeal in the circuit court. The Notice of Appeal must also be served on the prosecutor, the Clerk of the Court of Appeals, and any other party in the case.

Note: All requests to extend the deadlines for the various steps in a criminal appeal must be directed to the Court of Appeals, not the circuit court, even if the deadline precedes the filing of a Notice of Appeal.

Paying the Filing Fee. You must pay the $195.00 filing fee when you file your Notice of Appeal in the circuit court or when you send a copy of your Notice of Appeal to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See page 15 below.

The clerk of the circuit court must file your Record on Appeal with the Clerk of the Court of Appeals within 40 days of the filing of the Notice of Appeal. When the Record on Appeal has been filed, the Brief of Appellant becomes due within 40 days.

[29] The rules for the initiation of a criminal appeal also apply to appeals under ch. 48 (the Children's Code), ch. 51 (the Mental Health Act), ch. 55 (Protective Services), ch. 938 (Juvenile Justice Code), and some cases under ch. 980 (sexually violent person commitments).
[30] 809.30(2).

C HOW TO INITIATE AN APPEAL IN A TERMINATION OF PARENTAL RIGHTS CASE

Termination of parental rights ("TPR") cases are *expedited* cases, meaning that they are moved through the appeals process more quickly than other cases.

First, you must file a **Notice of Intent to Pursue Postdisposition or Appellate Relief** with the circuit court clerk within 30 days after the entry of final judgment.[31] A Notice of Intent Form is in the Appendix at the back of this *Guide*. A copy of the Notice of Intent must be served on the person representing the interests of the public, opposing counsel, the guardian ad litem, the child's parent, and any guardian and appointed custodian.

Within 5 days after you file this Notice of Intent, the circuit court will send either to the state public defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of court reporters who worked on your trial or hearings (also called the "proceedings"), and a list of the proceedings in your case for which a transcript has been filed with the circuit court.

Second, you must **request a copy of the circuit court transcript(s)** and may **request a copy of the circuit court case record**. If you have not requested representation by the state public defender on appeal, you must request a copy of the circuit court transcript within 15 days after filing your Notice of Intent to Pursue Postconviction or Postdisposition Relief. You may also request a copy of the circuit court case record at this time. If you have been denied representation by the state public defender, you have 30 days to request a copy of the circuit court transcript and the circuit court case record.

The clerk of the circuit court has 30 days from the date the court case record was requested to serve upon you a copy of the circuit court case record. The court reporter must file the transcript with the circuit court and serve a copy upon you within 30 days of the request for the transcript.

Third, you must file a **Notice of Appeal** within 30 days after the later of service of the transcript or the circuit court case record and serve a copy on the Clerk of the Court of Appeals, the person representing the interests of the public, opposing counsel, the guardian ad litem, the child's parent, and any guardian and appointed custodian.

Paying the Filing Fee. You must pay the $195.00 filing fee when you file your Notice of Appeal in the circuit court or when you send a copy of your Notice of Appeal to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See page 15 below.

The clerk of the circuit court must file your **Record on Appeal** with the Clerk of the Court of Appeals within 15 days of the filing of the Notice of Appeal. When the Record on Appeal has been filed, the Brief of Appellant becomes due within 15 days. The Clerk's Office sends notice to all parties to the appeal, informing them that the Record on Appeal has been filed.

[31] 809.107(2).

D HOW TO INITIATE A PERMISSIVE APPEAL

If you wish to appeal a nonfinal judgment or order, you must file a petition and supporting memorandum asking the Court of Appeals for permission to appeal. [32] You must file this petition and memorandum within 14 days after the entry of the nonfinal judgment or order. The petition and memorandum combined may not exceed 35 pages or 8,000 words. The requirements of the petition, set out in 809.50, are that the petition must contain a statement of the issues, a statement of the facts necessary to understanding the issues, a statement showing that immediate review of the issues is necessary, and a copy of the judgment or order you wish the court to review. The **filing fee** of $195.00 must be paid at the time the petition is filed.

Any opposing party in circuit court must file a response with supporting memorandum, if any, within 14 days after the service of the petition. The response is subject to the same length limitations as the petition.

If the Court of Appeals grants the petition, the procedures applicable to final judgments apply. The order granting permission (or "leave") to appeal has the effect of the filing of a Notice of Appeal.

E APPLYING FOR INDIGENT STATUS

If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status, under which you will be exempt from payment of the filing fee and certain other costs.[33] Determinations of indigency are made by the Clerk of the Court of Appeals and Supreme Court based on the criteria in 814.29 and the monetary guidelines established by the Court of Appeals.

In order to apply for indigent status, you must file a Petition for Waiver of Fees/Costs – Affidavit of Indigency at the time that you file your Notice of Appeal with the Clerk of the Court of Appeals. A form for the Petition is attached to this *Guide*.

If you are incarcerated, you must file the Prisoner's Petition for Waiver of Fees/Costs – Affidavit of Indigency when the Notice of Appeal is filed. The Clerk's Office will send you this form upon request; it is also attached to this *Guide*. You must also submit a certified copy of your prison trust fund account for the prior six months *and* a copy of a written authorization to the Department of Corrections to forward payments to the court from your account.[34] Note: A prisoner who believes that he or she is in imminent danger of physical harm does not need to submit the trust fund account information. In such cases, a special form of the Prisoner's Petition for Waiver of Fees/Costs must be filed.

Costs of the Transcript. If you believe you are indigent and would like the transcript to be prepared at no cost to you, you will need to file a Motion for Waiver of the Cost of Preparing the Transcript. This motion must be filed in the circuit court when you file your Notice of Appeal.

[32] 809.50.
[33] 814.29.
[34] 814.29(1m).

V MOTIONS

A motion is the procedure by which a party asks the Court to do something or to permit one of the parties to do something.[35] Parties filing a motion need to be specific about what they want the Court to do and give reasons why the Court should grant their request. A motion may be supported by a memorandum.

The other party may file a response or opposition to a Motion within 11 days of service of the motion. In a TPR case, any other party may file a response to the motion within 5 days after service.

The filing of a motion that may affect the disposition of an appeal or the content of a brief, or a motion seeking consolidation of appeals, automatically tolls the time (i.e., stops the running of the time limit) for performing an act required by the rules. The time is stopped from the date the motion is filed until the date the motion is disposed of by the court. Check the Rules of Appellate Procedure or contact the Clerk's Office to determine if a particular motion tolls a time limit.

The following are examples of motions that are filed with the Court.

Motion for Extensions of Time

Motions for extensions of time can be filed in most cases to enlarge the time permitted to do any act, or to waive or permit an act to be done after the expiration of the deadline.[36] The time for filing a Notice of Appeal or notice of cross-appeal in a civil case may not be enlarged. The time for filing a Notice of Appeal may be enlarged in a criminal case, in some TPR cases, or in a case involving parental consent prior to performance of an abortion, where certain circumstances exist. The time for filing a Motion for Reconsideration or a Petition for Review may not be enlarged.

Motion to Supplement or Correct the Record

If a party believes that the Record on Appeal needs to be supplemented or corrected, that party can file a Motion to Supplement or Correct the Record.[37] The motion must be filed with the Clerk of the Court of Appeals and served on the circuit court clerk and the other parties if the record is already on file with the Court of Appeals. If the Record is still at the circuit court, the motion must be filed in the circuit court. If a motion to correct or supplement the record is granted, time limits are tolled from the date on which the motion was filed until the date on which the supplemental or corrected record return is filed, except that the time for preparation of supplemental or corrected transcripts is governed by 809.11(7)(a).

Motion to Consolidate Appeals

Multiple parties or issues may be consolidated for the purpose of appeal upon the filing and granting of a motion to consolidate appeals.[38] The Motion should be filed as early in the process as possible to enable the court to rule on the Motion and help facilitate the process of filing briefs in a timely manner.

[35] 809.14.
[36] 809.82(2).
[37] 809.14(3)(b).
[38] 809.10(3).

Motion to File Oversized Documents/Briefs

The Court has imposed word and page limitations for a number of different filings.[39] If a party wishes to exceed the page and word limits, a Motion must be filed with the Court prior to the filing of the document/brief. Such motions are granted only in extraordinary circumstances.

Motion for Relief Pending Appeal

An appeal does **not** stay the execution or enforcement of the judgment or order appealed from.[40] If you want the circuit court to stay its order or judgment, suspend, modify, restore, or grant an injunction, or make any order appropriate to preserve the existing state of affairs, you may file a motion in the circuit court requesting relief pending appeal.[41] If it is impractical to seek such relief in the circuit court, you may file a motion with the Court of Appeals asking for relief. In such a motion, you must show why it was impractical to seek relief in the circuit court. If a motion had been filed in the circuit court and was denied, you may file a motion in the Court of Appeals, setting forth the reasons given by the circuit court for its action.

[39] 809.19(8)(c), for example.
[40] 808.07(1).
[41] 809.12.

VI BRIEFS

Brief of Appellant

A brief is where you make your argument to the Court explaining why you think the decision the circuit court made was wrong. The brief is the most important document you will file in your case. The focus of the brief should be on the law and the facts. The brief should explain how the law should apply to the facts. It should not be used to personally attack the opposing party or the judge who made the decision. The purpose of the brief is to convince the appellate court that the circuit court made a specific error or errors in law, fact, or procedure that affected the outcome of your case.

Please note that you may not discuss facts in your brief not presented to the circuit court. Also, in your brief you should refer to parties by their names and *not* by party designation ("plaintiff," "defendant," "respondent," etc.).

Deadline: The Brief of Appellant must be filed no later than 40 days after the filing of the Record on Appeal with the Clerk of the Court of Appeals.

Contents: The brief must contain the following sections:

1. A Table of Contents with page references to the sections of the brief.
2. A Table of Authorities with page references to where cases, statutes, and other authorities are cited.
3. A statement of the issues presented for review.
4. A statement as to whether oral argument is necessary (and if so, why) and a statement as to whether the opinion should be published (and if so, why).
5. A statement of the case, which must include a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the circuit court; and a statement of facts relevant to the issues presented for review, with appropriate reference to the record.
6. An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one-sentence summary of the argument. The argument must set out your contentions and the reasons for them, with citations to authorities and parts of the Record on Appeal.
7. A short conclusion stating exactly what you are asking the Court of Appeals to do.
8. A signed certificate of word/page count.

You must conform to the Rules of Appellate Procedure, and in writing your Brief you are advised to be as neat, concise, and as organized as possible.

The following are some suggestions with regard to the main substantive sections of the Brief:

Statement of Issues

- This section describes each of the issues you want to present to the Court. There can be several issues, or there can be just one. This section is very important, and you should take your time formulating the issues you will be presenting to the Court.
- As a general rule, you should keep the number of issues on appeal to a minimum. Most appeals present no more than two or three issues to the Court.

- The clearest way to write issues is to begin with the general area of law at issue, proceed to more specific areas of the law, and then incorporate the facts of your case and policies that should be followed.[42]

Statement of Case

- The statement must describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and how the circuit court addressed these issues.
- The purpose of this section is to inform the Court about the legal steps taken in the controversy between the two parties. This includes explaining, concisely, the history of the case in chronological order. Let the Court know what happened to the case in the circuit court.

Statement of Facts

- State the facts relevant to the issues you have presented and the arguments you have made. The facts must be chronological and should not list what each person said word for word. This section should state the events that occurred that caused the case to come about in the first place.
- You may only refer to facts that were presented in evidence in the circuit court. Each of the facts must have a source in the Record on Appeal – that is, either in sworn testimony in the transcript or in documents that were filed with the circuit court. Each fact that you state should be followed by a reference to where it can be found in the Record on Appeal. If you are quoting a statement made by a witness, for example, you would write the quote in the brief followed by the page number in the Record on Appeal (or in the Appendix, which is made up of material from the Record on Appeal). To cite to a page in the record, write "R: 25-23" (meaning Item 25, page 23 of the Record).
- Do not repeat the material you already covered in the statement of the case section of the brief.

Argument

- This section covers the reasons why the party feels the circuit court made a mistake.
- Give each argument a heading. The heading should be a succinct, clear, and accurate statement of the argument you make below.
- Your argument must be backed up with case law, statutes, etc. that support your argument.
- Be clear. Analyze the law in a fair way.
- Incorporate the facts of the case and analyze those facts with the applicable law.
- The Court may disregard any argument based on facts that are not referenced to the Record on Appeal.
- Organize each separate argument. Make sure the arguments are easy to read and understand.

Conclusion

- The conclusion should include a precise statement of the relief sought.
- Tell the Court exactly what you are asking it to do. This statement should be very short and to the point.
- After the conclusion, put a line for your signature, and sign the brief.

Form and Length Certification

- The Brief must include a certification that the Brief meets the form and length requirements. The Brief of Appellant may not exceed 50 pages if a monospaced font is used or 11,000 words if a proportional font is used. See the "Form and Length Certification" form at the back of this *Guide*.
- The Certification must be signed and must state: "I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a [monospaced] [proportional serif] font. The length of this brief is _____ [pages] [words]."

[42] This idea was suggested by Professor Henry Weihofen. See Henry Weihofen, Legal Writing Style, 246-59 (2d ed. 1980).

Brief of Respondent

The Brief of Respondent is due thirty (30) days after the filing of the Brief of Appellant (plus 3 days from the date of mailing if the Brief of Appellant is served by mail). This brief is a response to the brief filed by the party who is appealing. This is the Respondent's opportunity to respond to the arguments made by the Appellant and to explain why the decision in the circuit court was correct. The Brief of Respondent can omit the statement of issues and the statement of the case if the Respondent agrees with the statements made by the Appellant. [43] Aside from omitting portions the Respondent agrees with, the Brief should meet the same requirements as the Brief of Appellant. The Respondent should refer to cases, statutes, or other materials that support the decision of the circuit court. The Brief of Respondent must be signed by the person filing it.

Reply Brief

The Appellant's Reply Brief is due to be filed fifteen (15) days after the filing of the Brief of Respondent (plus 3 days from the date of mailing if the Brief of Respondent is served by mail). A Reply Brief is not required. No new issues can be raised in the Reply Brief that were not presented in the Brief of Appellant, and you should not repeat what was said in that brief. Therefore, it is important to make sure the Brief of Appellant covers everything you want presented to the Court. The Reply Brief must be signed by the person filing it.

Confidentiality

If you are appealing in a case that is required by law to be confidential (for example, appeals under chapters 48, 938, 51 and 55 and paternity cases), you should not include an individual's complete name in any document filed with the court. You must refer to individuals only by their first name and first initial of their last name. This includes the Notice of Appeal and briefs.[44] If you include portions of the record in an appendix to a brief, the portions should be reproduced so that only the first name and first initial of the last name is shown. [45]

[43] 809.81(3)(a)(2).
[44] 809.81(8).
[45] 809.19(2)(a).

Checklist for Briefs

Requirement and Rule	√
Paper size of 8 ½ x 11, white paper (809.19(8)(b))	
Typeface must be either a monospaced font or a proportional serif font. If it is monospaced, the type must be 10 characters per inch and there must be a 1.5 inch margin on the left side and 1 inch on all other sides. If it is a proportional serif font, the body text must be 13-point and the quotes and footnotes 11-point. (809.19(8)(b))	
Front Cover must include (809.19(9)): • Court name (Court of Appeals or Supreme Court) • Case caption (the names of the parties involved) • Case number on appeal • Title of the document (i.e., Brief of Appellant) • Circuit court case number and circuit court judge's name • Name, address and telephone numbers of the person submitting the brief	
Color cover of the Briefs in Court of Appeals (809.19(9)): • Brief of Appellant is blue • Brief of Respondent is red • Reply Brief is gray	
The table of authorities should go in the following order: • cases listed in alphabetical order • constitutional citations • statutes, listed in ascending order by number	
All pages must be numbered at the bottom. (809.81(5))	
The brief must be securely bound only on the left side. (809.19(8)(b))	
Page limits (809.19(8)(c)): • Brief of Appellant - 50 pages (monospaced) or 11,000 words (proportional font) • Brief of Respondent - 50 pages or 11,000 words • Reply Brief - 13 pages or 3,000 words	
The Appellant must file 10 copies of a brief or appendix in the Court of Appeals and must serve 3 copies on each party. A person found indigent or a prisoner granted leave to proceed without prepayment of fees and not represented by counsel must file 5 copies of a brief or appendix and serve 1 copy on each party. (809.19(8)(a)) In 1-judge cases under 809.40, a person found indigent or a prisoner granted leave to proceed without prepayment of fees and not represented by counsel must file 3 copies of a brief or appendix and serve 1 copy on each party.	
All briefs must have a *signed* certification of word/page count (809.19(8)(d))	
Serve the other parties a copy of the brief	

VII APPENDICES

The Appendix is a compilation of relevant circuit court record entries, the findings or opinion of the circuit court, and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning. The Appendix is used by the Court of Appeals to help it learn what happened in the circuit court, and it assists the Court in reaching a decision.

You must include a Table of Contents. You may number each page of the Appendix consecutively in the center at the bottom of the page. That way, in your Brief, you may refer to a document in the Appendix by noting: App., p. 6.

If the record is required by law to be confidential – as in a case involving minors – the portions of the record included in the appendix must be reproduced using the first names and last initials instead of the full names of persons. In that case, you must also include a notation that portions of the record have been reproduced to preserve confidentiality.

You can make copies of your documents you have in your personal files, or you can contact the circuit court clerk to get copies of motions and pleadings. The circuit court clerk will charge you to make copies. It may be helpful to check the Docket from the circuit court to determine if you have copies of all of the motions and pleadings necessary to complete your appendix. You can only put documents in your appendix that were filed in the circuit court by either of the parties or orders/judgments issued by the circuit court judge.

Certification. The Appendix must contain a certification that the appendix meets certain content requirements.[46] The required certification must be written in your Appendix exactly as it is set out in the rule, and it must be signed.

The Appendix should be bound with the Brief at the back of the Brief, unless it is too large, in which case it should be bound separately. If the Appendix is bound separately, it should have a **white cover**.

The Appendix is filed when you file your Brief. If it is separately bound, the Appendix should have a cover that lists all of the same information as the cover of the brief.

Respondent's Appendix. The Respondent can file an Appendix if he or she feels the materials in the Appellant's Appendix are not sufficient for the Court of Appeals to make a decision. The Respondent's Appendix should be prepared under the same rules as the Appellant's Appendix, but should only include items not included in the Appellant's Appendix.

Confidentiality

If you include portions of the record in an appendix to a brief in a case that is required by law to be confidential (for example, appeals under chapters 48, 938, 51 and 55 and paternity cases), the portions should be reproduced so that only the first name and first initial of the last name is shown.[47]

[46] 809.19(2)(b).
[47] 809.19(2)(a).

Checklist for Appendix

Requirements (809.19)	√
Copies shall be 8 ½ x 11 inch white paper	
Table of Contents	
All pages should be numbered at the bottom consecutively	
Front Cover must include: • Court name (Court of Appeals or Supreme Court) • Case caption (the names of the parties involved) • Case number in Court of Appeals • Title of the document (i.e., Appellant's Appendix) • Circuit court case number and circuit court judge's name • Name, address and telephone numbers of the person submitting the brief	
Docket or Court Record (Chronological Case Summary) from circuit court	
Judgment being appealed	
Jury verdict (if applicable)	
Any instruction not included in the Brief of Appellant or the transcript of the instruction when arguing about the instruction or refusal to give an instruction	
Portion of transcript that contains the rationale for the circuit court's decision	
Pleadings or other documents from the circuit court record that are necessary to the appeal	
Certification	
Bound at the back of the Brief or, if too large, separately from the Brief (with white cover)	

VIII MOTION FOR RECONSIDERATION AND PETITION FOR REVIEW

Motion for Reconsideration

A losing party to an appeal may file a Motion for Reconsideration.[48] This motion asks the Court of Appeals to reconsider its decision. A Motion for Reconsideration in the Court of Appeals must be filed within 20 days of the Court's decision. **Note:** This deadline *cannot* be extended. The Motion for Reconsideration can be no longer than 5 pages if a monospaced font is used or 1,100 words if a proportional font is used.

The motion must state specifically why you believe the Court of Appeals was wrong. You must say what points of law or fact you think were erroneously decided, and you must include supporting argument. A Motion for Reconsideration should not be viewed as a second opportunity to argue the case, but should be used only when the Court of Appeals has made a factual or legal error in its decision.

No response to a Motion for Reconsideration is permitted unless ordered by the Court.

Petition for Review

A party may file a Petition for Review from an adverse decision issued by the Court of Appeals.[49] A Petition for Review must be filed with the Supreme Court Clerk within 30 days of the Court of Appeals decision, or, if a Motion for Reconsideration has been filed in the Court of Appeals, within 30 days of the Court of Appeals decision on the motion. See 808.10.

The Supreme Court has discretion whether or not to accept the case for review. Review will be granted only when special and important reasons are presented. See 809.62(1) for information regarding the Supreme Court's criteria in considering review.

A $195.00 filing fee is due at the time of the filing of a Petition for Review. This fee can be waived due to indigency. See "Applying for Indigent Status" in Section IV of this *Guide*.

For more information, see the Appellate Rules and the Supreme Court's publication, *Filing a Petition for Review*, available from the Clerk's Office and on-line at www.wicourts.gov.

[48] 809.24. No Motion for Reconsideration may be filed in an appeal related to parental consent prior to performance of an abortion.
[49] 809.62.

IX WRITS AND ORIGINAL ACTIONS

Writs

A party can ask the Court of Appeals or the Supreme Court to order a court, a circuit court judge, or any other person or agency to do or to refrain from doing something. This type of request is called a "Petition for Supervisory Writ" and the request is made by filing a petition and supporting memorandum. The petition and memorandum may not exceed 35 pages or 8,000 words (if a proportional font is used). The Petition must also contain a *signed* certification of word count.[50]

The filing fee of $195.00 must be submitted with the Petition for Supervisory Writ. This fee can be waived due to indigency. See "Applying for Indigent Status" in Section IV of this *Guide*.

The Petition must name as respondents the court and judge or other person or body and all other parties in the action or proceeding. In addition, the Petition must set out a statement of the issues, a statement of the facts necessary to an understanding of the issues, the relief sought, and the reasons why the court should take jurisdiction.

If a party's Petition for Supervisory Writ is denied by the Court of Appeals, the party may file a writ in the Supreme Court. In that case, the party must show the disposition made by the Court of Appeals and the reasons for it. If a party wishes to file a Petition for Supervisory Writ directly with the Supreme Court, bypassing the Court of Appeals, the party must show why it was impractical to seek the writ in the Court of Appeals.[51]

Original Actions

The Wisconsin Supreme Court has the exclusive authority to hear original actions. An original action is often a complaint against a circuit court and a circuit court judge (and sometimes a circuit court clerk), asking the Supreme Court to direct that circuit court, judge, or clerk to take certain action or refrain from taking certain action.[52] The original jurisdiction of the Supreme Court can also be invoked when there is a showing made that a citizen is wrongfully deprived of his or her liberty or a franchise grantable only by the state has been usurped, abused or forfeited, among other circumstances. Generally, a case must be of great importance to the people of the state, must require relief that cannot adequately be provided by a lower court, and must require a speedy and authoritative determination. The court does not accept a case on original jurisdiction solely to expedite the judicial process, for the convenience of the parties, or to prevent multiple lawsuits.[53]

For more information, see the Appellate Rules and the Supreme Court's publication, *Filing a Petition for Review*, available from the Clerk's Office and on-line at www.wicourts.gov.

[50] 809.51.
[51] 809.71.
[52] 809.70.
[53] *Petition of Heil*, 230 Wis. 428 (1939).

X NO-MERIT APPEALS

No-Merit Appeals

If an attorney appointed by the court in a criminal case or a termination of parental rights case concludes that a direct appeal on your behalf would be frivolous and without any arguable merit, the attorney must file a no-merit report with the Court of Appeals. Although typically employed in criminal cases, the no-merit procedure is applicable in other proceedings involving appointed counsel.[54] A no-merit report identifies any issues that might support the appeal and discusses why these issues lack merit – that is, why they are unlikely to succeed in convincing the appeals court to reverse the circuit court's ruling. The legal standards for no-merit reports are derived from a U.S. Supreme Court case, *Anders v. California*, 386 U.S. 738 (1967).[55]

Before filing a no-merit report, an attorney must discuss with you all potential issues for appeal (identified by either the attorney or you) and the merit of each issue. The attorney must inform you that you have three options: (1) to have the attorney file the no-merit report; (2) to have the attorney close the file without an appeal; and (3) to have the attorney close the file and to proceed without an attorney or with another attorney retained at your expense.[56]

The attorney must also inform you of several other things. First, the attorney must tell you that if you choose option (1) or if you do not consent to the attorney closing the file and withdrawing from representing you, the attorney will file the no-merit report. Second, the attorney must tell you that if a no-merit report is filed (or if you choose to proceed with an appeal or to have the attorney close the file without an appeal), he or she will provide you with a copy of the transcripts and circuit court record, if you so request. Third, the attorney must tell you that you may file a response to the no-merit report. If you file a response, the attorney may file a reply to your response (a "supplemental no-merit report") and affidavit or affidavits containing facts outside the record, possibly including confidential information, to rebut the allegation made in your response.[57]

Response to No-Merit Report

You may file a response to the no-merit report within 30 days after service of the no-merit report. If you file a response, the Clerk's Office will send a copy of your response to the attorney who filed the no-merit report.[58]

Notice of Appeal

Even if your attorney plans to file a no-merit report, the attorney must file a notice of appeal in the circuit court. The notice of appeal must be identified as a no-merit notice of appeal and must state the date on which the no-merit report is due.[59]

[54] 809.32(1).
[55] 809.32(1)(a).
[56] 809.32(1)(b)1.
[57] 809.32(1)(b)2.
[58] 809.32(1)(e).
[59] 809.32(2).

Decision of the Court of Appeals

If the Court of Appeals agrees with the no-merit report that further appellate proceedings would be frivolous and without any arguable merit, the court will affirm the judgment of the circuit court and relieve the attorney of further responsibility in the case. If this occurs, the attorney must inform you of your right to file a petition for review to the Supreme Court.[60]

No-Merit Petition for Review

In addition, if a fully-briefed appeal of your case is taken to the Court of Appeals and the attorney believes that a further appeal to the Supreme Court would be frivolous and without any arguable merit, the attorney must advise you of the reasons for this belief and must tell you that you have the right to file a petition for review. You can ask your attorney to file a petition for review satisfying the requirements of 809.62(2)(d) and (f), but you must then file a supplemental petition satisfying the requirements of 809.62(a)(b)(c) and (e).

The petition for review and supplemental petition must be both filed within 30 days after the date of the decision or order of the Court of Appeals. An opposing party may file a response to the petition and supplemental petition within 14 days after service of the supplemental petition.

[60] 809.32(3).

XI DEADLINES/ NUMBER OF COPIES

Deadlines:

Document	Deadline
Notice of Appeal	**In Civil Cases:** *Notice of Appeal* is due 45 days from date of final judgment/order (90 days if no written notice of judgment/order is given). **In Criminal Cases (& cases under Ch. 48 (Children's Code), Ch. 51 (Mental Health Act), Ch. 55 (Protective Services), and Ch. 938 (Juvenile Justice Code)):** *Notice of Intent to Pursue Postconviction or Postdisposition Relief* is due 20 days after date of sentencing or final judgment. *Notice of Appeal* is due 60 days after the later of service of the transcript or record if no *Motion for Postconviction or Postdisposition Relief* has been filed. If a *Motion for Postconviction or Postdisposition Relief* has been filed, the *Notice of Appeal* is due 20 days after the circuit court has entered an order on the motion. **In Termination of Parental Rights Cases:** *Notice of Intent to Pursue Postdisposition or Appellate Relief* is due 30 days after entry of final judgment. *Notice of Appeal* is due 30 days after the later of service of the transcript or record **In Permissive Appeals:** No *Notice of Appeal* is filed. Within 14 days after the entry of the nonfinal judgment or order, you must file a *Petition for Leave to Appeal and Supporting Memorandum* asking the Court of Appeals for permission to appeal.
Statement on Transcript	14 days after filing of Notice of Appeal in the circuit court.
Brief and Appendix of Appellant	40 days from date of filing of the Record on Appeal with the Clerk of the Court of Appeals.
Brief of Respondent	30 days from date Brief of Appellant filed (plus 3 extra days if Brief of Appellant served by mail).
Reply Brief	15 days from the date the Brief of Respondent filed (plus 3 extra days if Brief of Respondent served by mail).
Motion for Reconsideration	20 days from the date of the decision of the Court of Appeals.
Petition for Review	30 days from the date of the Court of Appeals' decision or date the Court of Appeals decides the motion for reconsideration.
Response to Petition for Review	14 days from service of Petition for Review (plus 3 extra days from date of mailing if Petition for Review served by mail)

Number of Copies to be *Filed* (not including service copies):

Document	Number of Copies
Notice of Appeal	1 copy filed in circuit court and 1 copy served on Court of Appeals
Statement on Transcript	1 copy in Court of Appeals and 1 copy in circuit court
Motions	5 copies in Court of Appeals *unless* it is a one-judge case under 752.31, in which case 3 copies; 9 copies in the Supreme Court
Briefs and Appendices	10 copies in Court of Appeals unless ruled indigent, in which case 5 copies (3-judge cases) or 3 copies (1-judge cases)
Petition for Review	10 copies in Supreme Court

XII MISCELLANEOUS PROCEDURES

Recovering Costs in the Court Of Appeals

If you are the appellant and the Court of Appeals reverses the circuit court's judgment or order, you may recover your appeal costs from the respondent.[61] If you are the respondent and the Court of Appeals dismisses the appeal or affirms the circuit court's judgment or order, you may recover your costs from the appellant. The Court of Appeals may decide not to award costs to either side if the circuit court's order is affirmed in part and reversed in part. Recoverable costs include:

(1) Cost of printing and assembling the number of copies and appendices required by the rules, not to exceed the rates generally charged in Dane County, Wisconsin for offset printing of camera-ready copy and assembling;
(2) Fees charged by the clerk of the court;
(3) Cost of the preparation of the transcript of testimony or for appeal bonds;
(4) Fees of the clerk of the circuit court for preparation of the record on appeal; and
(5) Other costs as directed by the court.

To recover costs, you must file a statement of costs no later than 14 days after the court issues its final decision in the appeal and serve the other side with a copy.

A prisoner who has received permission to commence an appeal or other action without paying costs or fees may later be required to pay the unpaid costs or fees out of his or her prison account if he or she loses on appeal.[62]

If the Court of Appeals finds that an appeal or cross-appeal is frivolous, it shall award to the successful party costs, fees and reasonable attorney fees. A motion for costs and fees for a frivolous appeal must be filed no later than the filing of the Brief of Respondent or, in a cross-appeal, the Brief of the Cross-respondent.[63]

Voluntary Dismissal

An appellant may dismiss his or her own appeal at any time prior to a decision without approval of the court or the respondent. If you decide to voluntarily dismiss your appeal, file a notice of dismissal in the Court of Appeals. If the appeal has not yet been docketed in the Court of Appeals, file the notice of voluntary dismissal in the circuit court. The notice of voluntary dismissal will not affect a cross-appeal that has been filed by the respondent.[64]

Publication

Any person may at any time request publication of an unpublished Court of Appeals' opinion. The request must be served on the parties and should state how the criteria for publication are satisfied.[65] The Court does not publish opinions in one-judge appeals, per curiams on issues other than appellate jurisdiction or procedure, or summary disposition orders.

[61] 809.25.
[62] 814.29(3)(b).
[63] 809.25(3).
[64] 809.18.
[65] 809.23.

If the Court releases a per curiam opinion that you believe should be published, you may request that the court withdraw the opinion and reissue it as an authored opinion that is recommended for publication.[66] This request must be filed within 20 days after the date of the opinion. You must send a copy of your request to all parties to the appeal.[67]

Sanctions

Failure to comply with any of the Rules of Appellate Procedure, or any order of the Court, may subject you to sanctions, including monetary penalties or dismissal of your appeal.[68]

[66] 809.23(4)(c).
[67] 809.23(4)(d).
[68] 809.83(2).

XIII GLOSSARY OF TERMS

Adversary – The opponent in a case or the other party to a case.

Appeal – A review by an appellate court of what happened in a circuit court to determine if errors occurred and if the errors are significant enough to require some form of relief to the party that raised the error or errors.

Appellant – The party appealing a decision. This party was dissatisfied with the circuit court judgment and wants the Court of Appeals to reverse or modify the judgment or order.

Appendix – A document prepared by the Appellant containing documents filed by the parties in the circuit court as well as judgments or orders issued by the judge in the circuit court. It is filed at the same time as the Brief of Appellant. The Respondent may also file an Appendix with its brief.

Brief – A written presentation of arguments. The Appellant argues why the judgment or order of the circuit court was made in error; the Respondent argues why the circuit court's judgment or order was correct.

Brief of Appellant – The initial brief. The Brief of Appellant sets out the history of the case, explains to the Court of Appeals the error the circuit court made in its decision, and argues why the Court should reverse that decision.

Brief of Respondent – The Respondent's response to the Brief of Appellant. The Brief of Respondent sets out the Respondent's argument that the circuit court's decision is correct.

Certificate of Service – A statement saying how and when you served a document on a party. The rules require that you send a copy of any document or brief that you file with the court to each opposing party.

Circuit court – The county court where a case starts; the court that decides the facts and law in the case; sometimes referred to as the "trial court."

Citation – A reference to legal authority, which includes cases that have already been decided by a Court ("case law"), statutes, or the state or federal constitution. This term can also refer to a document in the appendix or the transcript in the case.

Civil case – A case to protect the private right of a person or compel some type of solution in a dispute between parties. These cases usually involve money damages or equitable relief (e.g., injunction or specific performance).

Court of Appeals – The intermediate level court in Wisconsin. The Court of Appeals hears appeals of cases that have taken place in the circuit court.

Court Record – *See* "Docket."

Criminal case – A case dealing with a violation of Wisconsin's criminal laws.

Decision – The written decision of the court, including the reasons for the decision and the facts on which the decision was based.

Defendant – The person being sued or the person charged with a crime in a criminal case.

Docket – List of proceedings in a case and documents that have been filed with the circuit court clerk's office and the date on which they were filed. Also referred to as the "Court Record," which is not the same as the "Record on Appeal."

File-stamped – A document that has the official stamp of a clerk's office indicating the date on which a document was accepted for filing.

Final Judgment – The judgment of the circuit court is final if it disposes of the entire matter in litigation as to one or more parties. A document constitutes the final document for purposes of appeal when it satisfies each of the following conditions: (1) it has been entered by the circuit court, (2) it disposes of the entire matter in litigation as to one or more parties; and (3) it states on the face of the document that it is the final document for purposes of appeal.[69]

Indigent – Someone who is unable to afford to pay the fees related to a case. A party must make a motion in the circuit court, the Court of Appeals, and/or the Supreme Court asking to be declared indigent. See "Applying for Indigent Status" in Section IV of this *Guide*.

Indigent Status – The status given to a party without the financial resources to pay the court fees, and to whom the court grants permission to proceed without paying all the fees.

Judgment – A ruling made by a circuit court judge in a civil or criminal case. It can be a final judgment or order or a non-final judgment or order.

Jurisdiction – The authority or power the court has to act or hear a case and make a decision.

Litigants – Parties to a case. The persons involved in a lawsuit.

Mandamus – A command. A party may file a petition for writ of mandamus asking the Wisconsin Court of Appeals to order a judge or circuit court to do something.

Motion – The procedure by which a party asks the appellate court to do something or to permit one of the parties to do something. For example, a party may ask the court for an extension of time to prepare a brief.

Movant – The party asking the court for something. This is usually done in the form of a motion to the Court.

Notice of Appeal – A document filed in the circuit court that lets the court know that you are appealing the court's judgment. The filing of the Notice of Appeal starts the appeal and triggers appellate jurisdiction.

Order – A written or oral decision by a court that resolves a matter and/or directs the parties to do something.

Permissive Appeal – An appeal that is filed before the circuit court has entered its final order in the case.

Plaintiff – The party who starts a lawsuit, or in criminal cases, the prosecutor acting on behalf of the State of Wisconsin.

Postconviction Relief – The procedure where a defendant in a criminal case can argue that the conviction or sentence was made in violation of the Constitution, that the court which sentenced the defendant was without the authority to do so, or that the sentence imposed exceeds the maximum sentence in the statute, among other things. A Motion for Postconviction Relief is filed in the circuit court and the final order can be appealed to the Court of Appeals.

Precedent – A previously decided case that is recognized as binding on future cases that have similar facts and/or legal issues.

Pro se – A person, not represented by an attorney, who is representing himself or herself in a case.

Record on Appeal – The papers and motions filed in the circuit court, including orders issued by the judge, and the transcript, if any, of hearings or trials conducted in the case.

[69] Gerald Tyler v. The RiverBank, 728 N.W.2d 686, 299 Wis. 2d 751 (2007).

Reply Brief – This is a brief in response to the Brief of Respondent. The brief is limited to issues that were raised in the Brief of Appellant or a response to issues raised in the Brief of Respondent.

Respondent – The party who won in the circuit court. This party generally wants the Court of Appeals to agree with the decision of the circuit court.

Stay – A court order which temporarily suspends court proceedings or the effect of a judgment. Initiating an appeal does **not** automatically stay enforcement of a circuit court judgment.

Supreme Court – The highest court in the State of Wisconsin. The Supreme Court consists of seven justices. The Court also hears all cases involving attorney admission and discipline and original actions. Once a case has been decided by the Court of Appeals, parties may file a Petition for Review asking the Supreme Court to hear the case. The Court has the discretion to decide whether or not to take these cases.

Table of Authorities – A listing of all the legal cases, statutes and secondary authority used in the brief and the page(s) on which each authority was cited.

Transcript – Written version of everything that was said at the trial or hearings in the case.

Writ – An extraordinary remedy that can be sought from the Wisconsin Court of Appeals or Supreme Court. A writ can be sought to compel a person to do something or to stop doing something. Writs are usually sought to compel the circuit court to perform a duty or obligation that it is required to do. This option should be used when there is no other legal remedy to solve the problem.

XIII SAMPLE FORMS

The following sample forms are attached to this *Guide* for your convenience.

- CA-120: Notice of Appeal
- CA-110: Notice of Intent to Seek Postconviction or Postdisposition Relief
- CA-100: Notice of Intent to Seek Postconviction or Appellate Relief (TPR cases)
- CA-130: Statement on Transcript
- CA-170: Motion (general)
- CA-150: Brief Cover
  Includes: Certification of Mailing (or Third-Party Commercial Delivery)
  Form and Length Certification
  Appendix Certification
- CA-160: Motion for Relief Pending Appeal

- AP-010: Petition for Waiver of Fees/Costs – Affidavit of Indigency
- AP-011: Prisoner's Petition for Waiver of Fees/Costs – Affidavit of Indigency
- AP-012: Prisoner's Petition for Waiver of Fees/Costs – Affidavit of Indigency (Allegation of Imminent Danger)
- AP-013: Authorization to Withhold Money from Trust Fund Accounts

Appendix C:
Wisconsin Rules of Appellate Procedure

Following is a copy of chapter 809 of the Wisconsin Statutes. This chapter contains all statutory rules for appellate practice in the state of Wisconsin.

CHAPTER 809

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SUBCHAPTER I

DEFINITIONS

809.01 Rule (Definitions). In this chapter:

(1) "Appeal" means a review in an appellate court by appeal or writ of error authorized by law of a judgment or order of a circuit court.

(2) "Appellant" means a person who files a notice of appeal.

(3) "Co–appellant" means a person who files a notice of appeal in an action or proceeding in which a notice of appeal has previously been filed by another person and whose interests are not adverse to that person.

(4) "Court" means the court of appeals or, if the appeal or other proceeding is in the supreme court, the supreme court.

(5) "Cross–appellant" means a respondent who files a notice of cross–appeal or a respondent who files a statement of objections under s. 808.075 (8).

(5d) "Monospaced font" means a font in which each character uses an equal amount of horizontal space.

(5g) "Proportional font" means a font in which the horizontal space used by a character varies.

(6) "Respondent" means a person adverse to the appellant or co–appellant.

(8) "Serif font" means a font that has short ornaments or bars at the upper and lower ends of the main strokes of the characters.

(8m) "Sixty characters per full line" means the length of a nonindented line of 13 point proportional serif font characters determined by using a line composed of a repeating string of lowercase characters in alphabetical order.

(12) "Word" means a group consisting of one or more alphabetical characters with a space or punctuation mark preceding and succeeding the group.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1977 c. 449; Sup. Ct. Order No. 93–20, 179 Wis. 2d xxv; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1978: The definitions reflect some of the changes incorporated into the rules. The term "appeal" applies both to an appeal authorized by statute and the writ of error guaranteed by Section 21 of Article I of the Constitution. The objective of these rules is to provide the same procedure for appeals and writs of error. Historically, the review authorized by a writ of error was limited to questions of law, while both the law and the facts could be reviewed on appeal. The Wisconsin Supreme Court does not distinguish between its power in appeals and in writs of error. Although under the former procedure appeals were normally used in civil cases and writs of error in criminal cases, the only differences between them were in nomenclature and method of initiating the review process. There is no reason to retain the formalistic differences between them.

The definitions of the parties to the appeal are intended to change the former statute, section 817.10, under which the party first appealing was the appellant, and all other parties were respondents. This often resulted in a party with interests identical to the appellant being labeled a respondent, while two parties opposed to each other were both labeled respondents. Under this section the party first appealing is the appellant, parties appealing from the same judgment or order not opposed to the appellant are co–appellants, and parties adverse to the appellant or co–appellant are respondents. The terms "plaintiff in error" and "defendant in error" previously used in connection with writs of error are no longer used. [Re Order effective July 1, 1978]

Understanding the New Rules of Appellate Procedure. Stephens. Wis. Law. July 2001.

SUBCHAPTER II

CIVIL APPEAL PROCEDURE IN COURT OF APPEALS

809.10 Rule (Initiating the appeal). (1) NOTICE OF APPEAL. (a) *Filing*. A person shall initiate an appeal by filing a notice of appeal with the clerk of the circuit court in which the judgment or order appealed from was entered.

(b) *Content*. The notice of appeal shall include all of the following:

1. The case name and number.

2. An identification of the judgment or order from which the person filing the notice intends to appeal and the date on which it was entered.

3. A statement of whether the appeal arises in one of the types of cases specified in s. 752.31 (2).

4. A statement of whether the appeal is to be given preference in the circuit court or court of appeals pursuant to statute.

5. If the appeal is under s. 809.30 or 809.32, a statement of the date of service of the last transcript or copy of the circuit court case record if no postconviction motion is filed, the date of the order deciding postconviction motions, or the date of any other notice–of–appeal deadline that was established by the court of appeals.

6. If counsel is appointed under ch. 977, a copy of the order appointing counsel.

(c) *Copies of the notice*. At the same time that the person files the notice of appeal, the person shall send a copy of the notice of appeal to the clerk of the court of appeals.

(d) *Docketing statement*. The person shall send the court of appeals an original and one copy of a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany the court of appeals' copy of the notice of appeal. The person shall send a copy of the completed docketing statement to the other parties to the appeal. Docketing statements need not be filed in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under ch. 980, or in cases in which a party represents himself or herself. Docketing statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under chs. 48, 51, 55, or 938.

(e) *Time for filing*. The notice of appeal must be filed within the time specified by law. The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.

(f) *Error in content not jurisdictional defect*. An inconsequential error in the content of the notice of appeal is not a jurisdictional defect.

(2) MULTIPLE APPEALS. (a) *Joint and co–appeals*. If 2 or more persons are each entitled to appeal from the same judgment or order entered in the same action or proceeding in the trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may, after filing separate notices of appeal, proceed as a single appellant. If the persons do not file a joint appeal or elect to proceed as a single appellant, or if their interests are such as to make joinder impracticable, they shall proceed as appellant and co–appellant, with each co–appellant to have the same procedural rights and obligations as the appellant.

(b) *Cross–appeal*. A respondent who seeks a modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross–appeal within the period established by law for the filing of a notice of appeal, or 30 days after the filing of a notice of appeal, whichever is later. A cross–appellant has the same rights and obligations as an appellant under this chapter.

(3) CONSOLIDATED APPEALS IN SEPARATE CASES. The court may consolidate separate appeals in separate actions or proceedings in the trial court upon its own motion, motion of a party, or stipulation of the parties.

(4) MATTERS REVIEWABLE. An appeal from a final judgment or final order brings before the court all prior nonfinal judgments, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed and ruled upon.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 123 Wis. 2d xix (1985); Sup. Ct. Order, 131 Wis. 2d xv (1986); 1987 a. 403; Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93–19, 179 Wis. 2d xxiii; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 434.

Cross–reference: See also s. 767.217 (2) for appeals involving child support and maintenance.

Court of Appeals Note, 1986: Sub. (1) (a) is amended to require appellants to file a docketing statement in the court of appeals on a form prescribed by the court at the time the notice of appeal is filed in the trial court. The docketing statement will provide the court with information for its expedited appeals program pursuant to s. 809.17 and the rules and procedures set forth in Section VII, Expedited Appeals, of the Court of Appeals Internal Operating Procedures (amended March 1, 1986). Docketing statement forms are available in the offices of clerks of the circuit courts. [Re Order effective January 1, 1987]

Judicial Council Committee's Note, 1978: Sub. (1) (a) establishes the same procedure for initiating a review by the Court of Appeals whether it be the statutory appeal or constitutional writ of error. Both are begun by filing a notice of appeal in the trial court. The prior procedure under which a person could obtain a writ of error from the Supreme Court and then file it in the trial court at his leisure is eliminated. It is important to recognize that the right to seek review by writ of error as established by the Constitution is not abolished, but the procedure for seeking that review is made uniform with that for filing an appeal.

The second sentence of sub. (1) (b) is designed to change the law as declared in former s. 817.11 (4), and the decisions of the Supreme Court interpreting former s. 269.59 (1), under which the Supreme Court was vested with subject matter jurisdiction when an appealable order was entered. Under former s. 817.11 (4), the notice of appeal was necessary only to confer personal jurisdiction which could have been waived. The court often had to decide whether the respondent by some conduct, such as signing a stipulation or receiving a brief, had waived any objection to personal jurisdiction. The result was that a judgment of a trial court in Wisconsin was never completely final because even after the expiration of the time for an appeal a party could still appeal, and if the respondent failed to object or take some step that could be considered as participating in the appeal prior to objecting, the Supreme Court was able to review the judgment. This section conforms Wisconsin practice to that in the federal system and most other states.

Sub. (2) (a) provides that appellants whose interests are substantially identical may proceed jointly or separately. See Rule 3 (b), Federal Rules of Appellate Procedure (FRAP). If they do not wish to proceed jointly, or their interests are not the same, or if they are challenging from the same judgment or order, the subsequent appeal should be docketed with the first appeal, but the second person appealing has the same procedural rights, such as filing of briefs, as the first appellant. The respondent has separate briefing rights as to each appellant and co–appellant filing a separate brief. It is anticipated under this section that all appeals arising out of the same case filed within the same appeal period will be considered in a single appeal and not be treated as separate cases in the Court of Appeals.

Sub. (2) (b). The respondent who desires to challenge a judgment or order must file a notice of cross–appeal. Notices of review are abolished. Under former s. 817.12, it was very difficult to ascertain when a notice of review or cross–appeal was appropriate. Requiring a notice of cross–appeal in each instance eliminates this confusion. The respondent is given a minimum of 30 days after the filing of the notice of appeal to determine whether to file a cross–appeal. As was the case under former s. 817.12, a respondent loses the right to cross–appeal if the cross–appeal is not filed within the specified time.

Sub. (3). Appeals from judgments or orders in separate cases in the trial court are docketed as separate appeals in the Court of Appeals. If appropriate, these cases can be consolidated after docketing by order of the Court of Appeals. Rule 3 (b), FRAP.

Sub. (4). The provision of former s. 817.34 that an appeal from a final judgment brings before the court for review all of the prior orders entered in the case is continued. This does not apply, however, to any prior final order or judgment which could have been appealed as of right under s. 808.03 (1). Thus a judgment dismissing a codefendant from a case must be appealed immediately and cannot be reviewed when judgment is rendered on the plaintiff's claim against the other defendants. Nonfinal orders and judgments that are appealed and ruled upon by the Court of Appeals are, of course, not subject to further review upon appeal of the final judgment. This section is also limited to those orders made in favor of the named respondents to prevent the possibility of the court reviewing an order in favor of a person not a party to the appeal.

A change is made in prior law in that an interlocutory judgment, Rule 806.01 (2), which previously must have been appealed within the statutory period from the entry of the interlocutory judgment, Richter v. Standard Manufacturing Co., 224 Wis. 121, 271 N.W. 14 (1937), is now reviewable by the Court of Appeals upon an appeal of the final judgment. The objective is to have only one appeal in each case, absent unusual circumstances which would justify an appeal from a nonfinal order under s. 808.03 (2). [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1981: To facilitate the efficient administration of appeals by the court of appeals, sub. (1) (a) is amended to require that the notice of appeal state whether the appeal is in one of the types of cases specified in s. 752.31 (2). [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: Former sub. (1) (a) has been repealed and recreated as subs. (1) (a) to (d). Subsection 1 (d) clarifies when a docketing statement must be filed. Former sub. (1) (b) has been repealed and recreated as sub. (1) (e). Subsection (1) (f) codifies existing law. See *Northridge Bank v. Community Eye Care Ctr.*, 94 Wis. 2d 201, 203, 287 N.W.2d 810, 811 (1980); *Carrington v. St. Paul Fire & Marine Ins. Co.*, 169 Wis. 2d 211, 217 n.2, 485 N.W.2d 267, 269 n.2 (1992). Please see s. 809.32 for special requirements for a Notice of Appeal in a No–Merit Report appeal. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: See also related changes in ss. 809.40 (3) and 809.50 (3). Prior to 2001 WI 39, effective 7/1/01, s. 809.10 (1) provided that docketing statements were not required in "criminal cases or in cases in which a party appears pro se." State's appeals in criminal cases were inadvertently omitted from

the list of statutory references that replaced "criminal cases" in the prior statute. Subsection (1) (d) is amended to clarify that docketing statements are not required in state's appeals in criminal cases. The amendment also clarifies that docketing statements are not required in permissive appeals in criminal cases, but are required in other permissive appeals. [Re Order No. 02–01 effective January 1, 2003]

When an appeal is pending, matters not directly concerned with the appeal but related to the case are still properly within the trial court's jurisdiction. In Matter of Trust Estate of Schaefer, 91 Wis. 2d 360, 283 N.W.2d 410 (Ct. App. 1979).

The filing date stamped on the notice of appeal is not conclusive as to the date of filing. Boston Old Colony Insurance Co. v. International Rectifier Corp. 91 Wis. 2d 813, 284 N.W.2d 93 (1979).

A respondent was allowed to challenge a trial court order denying a motion for summary judgment despite the failure to file a notice of cross–appeal. Auric v. Continental Casualty Co. 111 Wis. 2d 507, 331 N.W.2d 325 (1983).

Service of the notice of appeal on opposing parties is not necessary to confer jurisdiction on the court of appeals. Rhyner v. Sauk County, 118 Wis. 2d 324, 348 N.W.2d 588 (Ct. App. 1984).

Failure to submit the docketing fee within the time specified for filing a notice of appeal does not deprive the court of appeals of jurisdiction. The notice of appeal, not the docketing fee, vests the court with jurisdiction. Douglas v. Dewey, 147 Wis. 2d 328, 433 N.W.2d 243 (1989).

The federal prohibition against stacking cross–appeals is not applicable under sub. (2) (b). The time limits under sub. (1) (b) are jurisdictional and may not be extended. Estate of Donnell v. Milwaukee, 160 Wis. 2d 529, 466 N.W.2d 670 (Ct. App. 1991).

A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. To do so constitutes practicing law without a license in violation of s. 757.30 and voids the appeal. Requiring a lawyer to represent a corporation in filing the notice is constitutional. Jadair Inc. v. United States Fire Insurance Co. 209 Wis. 2d 187, 561 N.W.2d 718 (1997), 95–1946.

Section 799.06 (2) authorizes a non–lawyer employee to represent a party to a small claims action at the appellate, as well as trial court, level and is an exception to the rule stated in *Jadair*. Holz v. Busy Bees Contracting, Inc. 223 Wis. 2d 598, 589 N.W.2d 633 (Ct. App. 1998), 98–1076.

The failure to sign a notice of appeal can be corrected and does not compel immediate dismissal. State v. Seay, 2002 WI App 37, 250 Wis. 2d 761, 641 N.W.2d 437, 00–3490.

Section 753.016 (1) and (2) provide that in Milwaukee County each branch of the circuit court shall have a deputy clerk provided by the clerk of the circuit court. In Milwaukee County "the clerk of the trial court" under sub. (1) (a) necessarily encompasses the deputy clerk assigned to the specific branch of the circuit court as well as deputy clerks performing duties within the office of the clerk of circuit court. Kelley v. State, 2003 WI App 81, 261 Wis. 2d 803, 661 N.W.2d 854, 02–1495.

Appeal of a judgment, the date of which was specified in the notice of appeal, included an appeal of an order for costs entered after that date. A judgment is perfected by the taxation of costs and the insertion of the amount into the judgment so that the order of costs becomes part of the judgment subject to appeal. DeWitt Ross & Stevens v. Galaxy Gaming and Racing, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02–0359. Affirmed on other grounds, 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839, 02–0359.

In order to confer jurisdiction on the court of appeals, a notice of appeal filed by counsel must contain the handwritten signature of an attorney authorized to practice law in Wisconsin. Counsel cannot delegate the duty to affix a signature on a notice of appeal to a person not authorized to practice law in Wisconsin. When a notice of appeal is not signed by an attorney when an attorney is required, the notice of appeal is fundamentally defective and cannot confer jurisdiction. Brown v. MR Group, LLC 2004 WI App 121, 274 Wis. 2d 804, 683 N.W.2d 804, 03–2309.

The plaintiffs in this case were not "respondents" under sub. (4) because they were not named in the notice of appeal, and thus were not "respondents" adverse to the appellants. The appellants could not name the plaintiffs as respondents in the notice of appeal because the appellants were not aggrieved by any final order entered against the appellants and in favor of the plaintiffs. The appellants could not evade the bar to appealing non–final–orders as of right by the expedient of appealing final orders against those named in the notice of appeal in order to get review of non–final orders and rulings favorable to parties who were still active in the litigation. Dixon v. Hnilicka Company, Inc. 2011 WI App 46, 332 Wis. 2d 357, 798 N.W.2d 264, 09–1953.

Applying well–established principles of law that apply equally to the United States government when it is a party, a decision not to litigate any of the issues involved in the circuit court precludes the United States from pursuing relief in the court of appeals. Nickel v. United States of America, 2012 WI 22, 339 Wis. 2d 48, 810 N.W.2d 450, 11–0987.

Mechanics of making an appeal in the court of appeals. Felsenthal, WBB October 1981.

Appellate review: Choosing and shaping the proper standard. Leavell. WBB Apr. 1987.

Changing standards of review. Leavell. WBB May 1987.

809.103 Appeals in proceedings related to prisoners.

(1) In this section, "prisoner" has the meaning given in s. 801.02 (7) (a) 2.

(2) The appellate court shall notify the department of justice by a procedure developed by the director of state courts in cooperation with the department of justice when the appellate court rules that an appeal or supervisory writ proceeding brought by a prisoner meets any of the following conditions:

(a) Is frivolous, as determined under s. 802.05 (2) or 895.044.

(b) Is used for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

(c) Seeks review of a denial of monetary damages from a defendant who is immune from such relief.

(d) There is no ground upon which relief may be granted.

(3) A prisoner is not relieved from paying the full filing fee related to an appeal or supervisory writ proceeding if the appellate court dismisses the appeal or supervisory writ proceeding for one of the reasons listed in sub. (2).

History: 1997 a. 133; Sup. Ct. Order No. 03–06A, 2005 WI 86, 280 Wis. 2d xiii; 2011 a. 2.

809.105 Appeals in proceedings related to parental consent prior to performance of abortion.

(1) APPLICABILITY. This section applies to the appeal of an order under s. 48.375 (7) and supersedes all inconsistent provisions of this chapter.

(2) INITIATING AN APPEAL. Only a minor may initiate an appeal under this section. The minor shall initiate the appeal by filing, or by a member of the clergy filing on the minor's behalf, a notice of appeal with the clerk of the trial court in which the order appealed from was entered and shall specify in the notice of appeal the order appealed from. At the same time, the minor or member of the clergy shall notify the court of appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of the court of appeals. The clerk of the trial court shall assist the minor or member of the clergy in sending a copy of the notice of appeal to the clerk of the court of appeals. The minor may use the name "Jane Doe" instead of her name on the notice of appeal and all other papers filed with the court of appeals.

(3) PERFECTING THE APPEAL. (a) *Fee*. No fee for filing an appeal in the court of appeals under this section may be required of a minor or of a member of the clergy who files an appeal under this section on behalf of the minor.

(b) *Forwarding to court of appeals*. The clerk of the trial court shall forward to the court of appeals within 3 calendar days after the filing of the notice of appeal a copy of the notice of appeal and a copy of the trial court case record maintained as provided in s. 59.40 (2) (b), using the name "Jane Doe" instead of the minor's name, and the record on appeal, assembled as provided in sub. (4).

(c) *Filing in court of appeals*. The clerk of the court of appeals shall file the appeal immediately upon receipt of the items specified in par. (b).

(d) *Statement on transcript*. A minor or member of the clergy may not be required to file a statement on transcript in an appeal under this section.

(4) RECORD ON APPEAL. The record in an appeal under this section consists of the following:

(a) The petition.

(b) Proof of service of the notice of hearing.

(c) The findings of fact, conclusions of law and final order of the trial court.

(d) Any other order made that is relevant to the appeal and the papers upon which that other order is based.

(e) Exhibits material to the appeal, whether or not received in evidence.

(f) Any other paper or exhibit filed in the trial court that the minor requests to have included in the record.

(g) The notice of appeal.

(h) A transcript of the reporter's notes.

(i) The certificate of the clerk.

(j) If the trial court appointed a guardian ad litem under s. 48.235 (1) (d), a letter written to the court of appeals by the guardian ad litem indicating his or her position on whether or not the minor is mature and well–informed enough to make the abortion decision on her own and whether or not the performance or inducement of an abortion is in the minor's best interests.

(5) TRANSCRIPT OF REPORTER'S NOTES. At the time that a minor or member of the clergy files a notice of appeal, the minor or member of the clergy shall make arrangements with the reporter for the preparation of a transcript of the reporter's notes of the proceedings under s. 48.375 (7). The reporter shall file the transcript with the trial court within 2 calendar days after the notice of appeal is

filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay the expense of transcript preparation under this subsection.

(6) VOLUNTARY DISMISSAL. A minor may dismiss an appeal under this section by filing a notice of dismissal in the court of appeals.

(7) BRIEFS. Briefs are not required to be filed in appeals under this section.

(8) ASSIGNMENT AND ADVANCEMENT OF CASES. The court of appeals shall take cases appealed under this section in an order that ensures that a judgment is made within 4 calendar days after the appeal has been filed in the court of appeals. The time limit under this subsection may be extended with the consent of the minor and her counsel, if any, or the member of the clergy who initiated the appeal under this section, if any.

(8m) ORAL ARGUMENT. If the court of appeals determines that a case appealed under this section is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel or through the member of the clergy who filed the appeal under this section, if any, or on the court of appeals' own motion, by telephone, unless the minor through her counsel or the member of the clergy demands that the oral argument be held in open court.

(9) COSTS. The court of appeals may not assess costs against a minor or member of the clergy in an appeal under this section.

(10) REMITTITUR. (a) A judgment by the court of appeals under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the court of appeals reverses a trial court order denying a petition under s. 48.375 (7), the court of appeals shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the court of appeals granting the minor's petition. If the court of appeals affirms the trial court order, it shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a copy of the order of the court of appeals denying the petition and shall also notify the minor by her counsel or the member of the clergy who initiated the appeal under this section on behalf of the minor, if any, that she may, under sub. (11), file a petition for review with the supreme court under s. 809.62. The court of appeals shall pay the expenses of service of notice under this subsection. The clerk of the court of appeals shall transmit to the trial court the judgment and opinion of the court of appeals and the record in the case filed under sub. (4), within 31 days after the date that the judgment and opinion of the court of appeals are filed. If a petition for review is filed under sub. (11), the transmittal shall be made within 31 days after the date that the supreme court rules on the petition for review.

(b) Counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall immediately, upon notification under par. (a) that the court of appeals has granted or denied the petition, notify the minor. If the court of appeals has granted the petition, counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order of the court of appeals to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the copy in the minor's medical record.

(11) PETITION FOR REVIEW IN SUPREME COURT. (a) Only a minor or the member of the clergy who initiated the appeal under this section, if any, may initiate a review of an appeal under this section. The petition for review of an appeal in the supreme court shall contain:

1. A statement of the issues presented for review and how the issues were decided by the trial court and court of appeals.

2. A brief statement explaining the reason for appeal to the supreme court.

3. The judgment and opinion of the court of appeals, and the findings of fact, conclusions of law and final order of the trial court that were furnished to the court of appeals. The court of appeals shall provide a copy of these papers to the minor, if any, the member of the clergy who initiated the appeal under this section, if any, her counsel or her guardian ad litem, if any, immediately upon request.

4. A copy of any other document submitted to the court of appeals under sub. (4).

(b) The supreme court shall decide whether or not to grant the petition for review and shall decide the issue on review within the time specified in par. (c).

(c) The supreme court shall, by court rule, provide for expedited appellate review of cases appealed under this subsection because time may be of the essence regarding the performance of the abortion.

(cm) If the supreme court determines that a case reviewed under this subsection is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel or through the member of the clergy who initiated the appeal under this section, if any, or on the supreme court's own motion, by telephone, unless the minor through her counsel or the member of the clergy demands that the oral argument be held in open court.

(d) A judgment or decision by the supreme court under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the supreme court reverses a court of appeals order affirming a trial court order denying a petition under s. 48.375 (7), the supreme court shall immediately so notify the minor by personal service on her counsel, if any, or on the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the supreme court granting the minor's petition. If the supreme court affirms the order of the court of appeals, it shall immediately so notify the minor by her counsel or by the member of the clergy who initiated the appeal under this section, if any. The clerk of the supreme court shall transmit to the trial court the judgment, or decision, and opinion of the supreme court and the complete record in the case within 31 days after the date that the judgment, or decision, and opinion of the supreme court are filed. The supreme court shall pay the expense of service of notice under this subsection.

(e) Counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall immediately, upon notification under par. (d) that the supreme court has granted or denied the petition, notify the minor. If the supreme court has granted the petition, counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order of the supreme court to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated

association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the order in the minor's medical record.

(12) CONFIDENTIALITY AND ANONYMITY. All proceedings in the court of appeals and the supreme court that are brought under this section shall be conducted in a confidential manner, and the minor may use the name "Jane Doe" instead of her name on all papers filed with either court. The identity of the minor involved and all records and other papers pertaining to an appeal shall be kept confidential, except as provided in s. 48.375 (7) (e).

(13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or guardian or legal custodian, if one has been appointed, or foster parent, if the minor has been placed in a foster home, and the minor's parent has signed a waiver granting the department of children and families, a county department under s. 46.215, 46.22, or 46.23, or the foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, as defined in s. 48.375 (2) (b), of any minor who has initiated an appeal under this section may attend or intervene in any proceeding under this section.

History: 1991 a. 263, 315; 1993 a. 213, 446; 1995 a. 27 s. 9126 (19); 1995 a. 201, 224; 2007 a. 20; 2009 a. 28.

809.107 Appeals in proceedings related to termination of parental rights. (1) APPLICABILITY. This section applies to the appeal of an order or judgment under s. 48.43 and supersedes all inconsistent provisions of this chapter.

(1m) DEFINITION. In this section, "appellant" means a person who files a notice of intent to pursue postdisposition or appellate relief.

(2) APPEAL OR POSTDISPOSITION MOTION. (am) *Appeal procedure; counsel to continue.* A person seeking postdisposition or appellate relief shall comply with this section. If the person desires to pursue postdisposition or appellate relief, counsel representing the person during circuit court proceedings under s. 48.427 shall continue representation by filing a notice under par. (bm), unless sooner discharged by the person or by the circuit court.

(bm) *Notice of intent to pursue postdisposition or appellate relief.* A person shall initiate an appeal under this section by filing, within 30 days after the date of entry of the judgment or order appealed from, as specified in s. 808.04 (7m), a notice of intent to pursue postdisposition or appellate relief with the clerk of the circuit court in which the judgment or order appealed from was entered. Also within that time period, the appellant shall serve a copy of the notice of intent on the person representing the interests of the public, opposing counsel, the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding, the child's parent and any guardian and any custodian appointed under s. 48.427 (3) or 48.428 (2). If the record discloses that final adjudication occurred after the notice of intent was filed, the notice shall be treated as filed after entry of the judgment or order appealed from on the day of the entry of the final judgment or order. The notice of intent shall include all of the following:

1. The circuit court case name, number, and caption.

2. An identification of the judgment or order from which the appellant intends to seek postdisposition or appellate relief and the date on which the judgment or order was entered.

3. The name and address of the appellant and the appellant's trial counsel.

4. For an appellant other than the state, whether the trial counsel for the appellant was appointed by the state public defender and, if so, whether the appellant's financial circumstances have materially improved since the date on which the appellant's indigency was determined.

4m. Whether the appellant requests representation by the state public defender for purposes of postdisposition or appellate relief.

5. For an appellant other than the state, who does not request representation by the state public defender, whether the appellant will represent himself or herself or will be represented by retained counsel. If the appellant has retained counsel to pursue postdisposition or appellate relief, counsel's name and address shall be included.

(c) *Early notice of intent to pursue postdisposition or appellate relief.* If the record discloses that the judgment or order appealed from was entered after the notice of intent to pursue postdisposition or appellate relief was filed, the notice of intent shall be treated as filed after that entry and on the date of the entry.

(3) CLERK TO SEND MATERIALS. Within 5 days after a notice under sub. (2) (bm) is filed, the clerk of the circuit court shall do all of the following:

(a) If the appellant requests representation by the state public defender for purposes of postdisposition or appellate relief, the clerk shall send to the state public defender's appellate intake office a copy of the notice of intent that shows the date on which the notice was filed, a copy of the judgment or order specified in the notice that shows the date on which the judgment or order was entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings for which a transcript already has been filed with the clerk of circuit court.

(b) If the appellant does not request representation by the state public defender, the clerk shall send or furnish to the appellant, if the appellant is appearing without counsel, or to the appellant's attorney, if one has been retained, a copy of the judgment or order specified in the notice that shows the date on which the judgment or order was entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings in which a transcript already has been filed with the clerk of circuit court.

(4) REQUEST FOR TRANSCRIPT AND CIRCUIT COURT CASE RECORD. (a) *State public defender appointment of counsel.* Within 15 days after the state public defender appellate intake office receives the materials from the clerk of circuit court under sub. (3) (a), the state public defender shall appoint counsel for the appellant and request a transcript of the reporter's notes and a copy of the circuit court case record.

(b) *Person not represented by public defender.* An appellant who does not request representation by the state public defender for purposes of postdisposition or appellate relief shall request a transcript of the reporter's notes, and may request a copy of the circuit court case record within 15 days after filing the notice of intent under sub. (2) (bm). An appellant who is denied representation by the state public defender for purposes of postdisposition or appellate relief shall request a transcript of the reporter's notes, and may request a copy of the circuit court case record, within 30 days after filing a notice of intent under sub. (2) (bm).

(4m) FILING AND SERVICE OF TRANSCRIPT AND CIRCUIT COURT CASE RECORD. The court reporter shall file the transcript with the circuit court and serve a copy of the transcript on the appellant within 30 days after the transcript is requested. The clerk of circuit court shall serve a copy of the circuit court case record on the appellant within 30 days after the case record is requested, and shall indicate in the case record the date and manner of service.

(5) NOTICE OF APPEAL. (a) *Filing; and service of notice of appeal.* Within 30 days after the later of the service of the transcript or the circuit court case record, unless extended under s. 809.82, the appellant shall file a notice of appeal as provided in s. 809.10 and serve a copy of the notice on the persons required to be served under sub. (2) (bm).

(am) *Notice of abandonment of appeal*. If the person who filed a notice of intent to appeal under sub. (2) and requested a transcript and case record under sub. (4) decides not to file a notice of appeal, that person shall notify the person required to be served under sub. (2) of this decision, within 30 days after the service of the transcript and case record under sub. (4).

(b) *Transmittal of record by clerk*. The clerk of circuit court shall transmit the record to the court of appeals as soon as the record is prepared, but in no event more than 15 days after the filing of the notice of appeal.

(c) *Requesting transcripts for other parties*. The appellant shall request a copy of the transcript of the reporter's notes of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 5 days after the filing of the notice of appeal.

(d) *Statement on transcript*. The appellant shall file a statement on transcript with the clerk of the court of appeals, shall file a copy of the statement on transcript with the clerk of circuit court, and shall serve a copy of the statement on transcript on the other parties to the appeal within 5 days after the filing of the notice of appeal in the circuit court. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.

(e) *Service of transcript on other parties*. The court reporter shall serve copies of the transcript on the parties indicated in the statement on transcript within 5 days after the date the appellant requested copies of the transcript under par. (c).

(5m) NO–MERIT REPORTS. A s. 809.32 no–merit report, response, and supplemental no–merit report may be filed in an appeal from an order or judgment terminating parental rights. The appointed attorney shall file in the court of appeals and serve on the client–parent the no–merit report and certification within 15 days after the filing of the record on appeal. The appointed attorney shall serve on the client–parent a copy of the transcript and the record on appeal at the same time that the no–merit report is served on the client–parent. The client–parent may file in the court of appeals a response to the no–merit report within 10 days after service of the no–merit report. Within 5 days after the response to the no–merit report has been filed in the clerk's office, the clerk shall send a copy of the response to the appointed attorney. The attorney may file a supplemental no–merit report and affidavit within 10 days after receiving the response to the no–merit report.

(6) SUBSEQUENT PROCEEDINGS IN COURT OF APPEALS; PETITION FOR REVIEW IN SUPREME COURT. Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:

(a) *Appellant's brief–in–chief*. The appellant shall file a brief within 15 days after the filing of the record on appeal.

(am) *Motion for remand*. If the appellant intends to appeal on any ground that may require postjudgment fact–finding, the appellant shall file a motion in the court of appeals, within 15 days after the filing of the record on appeal, raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue. If the court of appeals grants the motion for remand, it shall set time limits for the circuit court to hear and decide the issue, for the appellant to request transcripts of the hearing, and for the court reporter to file and serve the transcript of the hearing. The court of appeals shall extend the time limit under par. (a) for the appellant to file a brief presenting all grounds for relief in the pending appeal.

(b) *Respondent's brief*. The respondent shall file a brief within 10 days after the service of the appellant's brief.

(c) *Appellant's reply brief*. The appellant shall file within 10 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.

(d) *Guardian ad litem's brief*. If the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding takes the position of the appellant, the guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal with the court of appeals. If the guardian ad litem takes the position of a respondent, the guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief.

(e) *Decision*. Cases appealed under this section shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief or statement that a reply brief will not be filed.

(f) *Petition for review*. A petition for review of an appeal in the supreme court, if any, shall be filed within 30 days after the date of the decision of the court of appeals. The supreme court shall give preference to a petition for review of an appeal filed under this paragraph.

History: 1993 a. 395; 1995 a. 275; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; 2005 a. 293; Sup. Ct. Order No. 05–07, 2006 WI 37, 287 Wis. 2d xix; Sup. Ct. Order No. 04–08, 2008 WI 108, filed 7–30–08, eff. 1–1–09.

NOTE: 1993 Wis. Act 395 contains explanatory notes.

Judicial Council Note, 2001: Titles and subtitles were added. Subsection (4) is amended to require that the person who files a notice of intent to appeal must request a copy of the circuit court case record within 15 days after filing the notice of intent to appeal. Subsection (4) also requires the clerk of the circuit court to serve a copy of the circuit court case record upon the person requesting it within 30 days after the date of the request.

Former sub. (5) is recreated as subs. (5) (a) and (b).

Subsection (5) (c) requires the appellant to request a copy of the transcript for the other parties to the appeal, and to make arrangements to pay for those copies, within 5 days after filing the notice of appeal.

Subsection (5) (d) requires the appellant to file a statement on transcript within 5 days after filing the notice of appeal.

Subsection (5) (e) requires the court reporter to serve copies of the transcript on the other parties to the appeal within 5 days after the appellant requests the copies.

Subsection (5m) codifies *Brown County v. Edward C.T.*, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998), 98–0075, which extends the no–merit procedure to TPR cases.

Subsection (6) (am) provides a procedure for ineffective assistance of counsel claims and other claims that require fact–finding after the final judgment or order has been entered. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2006: The creation of s. 809.107 (2) (am) requires counsel representing a parent who wants to appeal the TPR disposition to file a notice of intent to pursue postdisposition or appellate relief. Trial counsel's representation continues until the notice of intent is filed.

Subsection 809.107 (2) (bm) contains the substance of former sub. (2). The amendment adds the case number to the content requirements for the notice of intent. Subsection (2) (bm) 2. deletes a reference to the date on which the judgment or order was granted because the time limits in s. 808.04 (7m) commence on the date the judgment or order was entered.

The amendment to s. 809.107 (2) (c) addresses the practical concern that arises when a notice of intent is filed before the final judgment or order is entered. Similar to s. 808.04 (8), the amendment allows the filing date of the notice of intent to be deemed the date that the judgment or order was entered, and thereby preserves appellate jurisdiction.

To facilitate compliance with the time limits in this section, the amendment to (3) requires the clerk to send a copy of the judgment or order that shows the date on which it was entered and a list of transcripts already on file to the state public defender's intake office, or to the person if appearing without counsel, or to retained counsel.

New s. 809.107 (4) (a) codifies existing practice and establishes a time limit for the state public defender to appoint counsel and request transcripts and circuit court case records. The public defender's time limit commences on the date that the public defender's office receives the materials from the circuit court clerk, rather than on the date the notice of intent is filed, so as to reduce the number of extension motions that must be filed when the clerk does not timely send the materials under sub. (3) (a).

The amendment to s. 809.107 (4) (b) clarifies the procedure applicable to persons who are not represented by the state public defender and creates time limits applicable to a person who has applied for and has been denied public defender representation. In the latter case, the rule provides an additional 15 days for the person to obtain private counsel and request a copy of the transcript and case record. The time limit is set at 30 days because 15 days will have expired while the public defender's office determines whether the person is eligible for appointed counsel. This time limit commences on the date the notice of intent was filed, rather than the date of the public defender's determination because that determination does not appear in the case record.

Subsection (4m) includes the last two sentences of former sub. (4). Subsection (4m) also creates a new requirement for the circuit court clerk to indicate the date and manner of service in the case record. The new requirement is necessary because the

notice of appeal time limit is measured from the date of service of the case record or transcript, whichever is later.

The amendment to s. 809.107 (5) (a) clarifies that the time limit for filing a notice of appeal commences 30 days from the *later* of the service of the transcript or case record. Persons contemplating filing a notice of appeal are better able to assess grounds for relief after reviewing both the transcripts and the circuit court case record. [Re Order No. 05–07 effective July 1, 2006]

Time limits imposed by the legislature in sub. (6) did not constitute unconstitutional infringements on the judiciary, as they are subject to court modification. Time limits imposed by sub. (5) did not violate constitutional guarantees of due process or effective assistance of counsel. Interest of Christopher D. 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

The no merit appeal procedure under s. 809.32 and the authority to extend the time for filing a notice of appeal under s. 809.82 (2) do not apply to appeals regarding terminations of parental rights. Gloria A. v. State, 195 Wis. 2d 268, 536 N.W.2d 396 (Ct. App. 1995), 95–0315.

While s. 809.32 relating to no merit reports does not apply to appeals under this section, the filing of a no merit report is not precluded if the notice of intent and notice of appeal under subs. (2) and (5) are timely filed and the report is filed within the time for filing the appellant's brief under sub. (6) (a). Brown County v. Edward C.T. 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998), 98–0075.

Despite the express service provisions in this section, service does not initiate the appeal and confer jurisdiction, filing does. Carla B. v. Timothy N. 228 Wis. 2d 695, 598 N.W.2d 924 (Ct. App. 1999), 99–0853.

809.11 Rule (Items to be filed and forwarded). (1) FEE. The appellant shall pay the filing fee with the notice of appeal.

(2) FORWARDING TO COURT OF APPEALS. The clerk of the trial court shall forward to the court of appeals, within 3 days of the filing of the notice of appeal, a copy of the notice of appeal, the filing fee, and a copy of the trial court record of the case maintained pursuant to s. 59.40 (2) (b) or (c).

(3) FILING IN COURT OF APPEALS. The clerk of the court of appeals shall file the appeal upon receipt of the items referred to in sub. (2).

(4) REQUESTING TRANSCRIPTS AND FILING STATEMENT ON TRANSCRIPT. (a) The appellant shall request a copy of the transcript of the reporter's notes of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 14 days after the filing of the notice of appeal.

(b) The appellant shall file a statement on transcript with the clerk of the court of appeals, shall file a copy of the statement on transcript with the clerk of the circuit court, and shall serve a copy of the statement on transcript on the other parties to the appeal within 14 days after the filing of the notice of appeal in the circuit court. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript that is not yet filed in the circuit court is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.

(5) ADDITIONAL PORTIONS OF TRANSCRIPT. Within 14 days after filing of a statement on transcript as required under sub. (4), any other party may file a designation of additional portions to be included in the transcript and serve a copy of the designation on the appellant. Within 14 days after the filing of such a designation, the appellant shall file the statement required by sub. (4) (b) covering the other party's designation. If the appellant fails or refuses to request the designated portions, the other party, within 14 days of the appellant's failure or refusal, may request the portions or move the circuit court for an order requiring the appellant to request the designated portions.

(6) CROSS–APPEALS. Subsections (4) and (5) apply to cross–appellants.

(7) REPORTER'S OBLIGATIONS. (a) *Service of transcript copies.* The reporter shall serve copies of the transcript on the parties to the appeal, file the transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the transcript has been filed and served within 60 days after the date on which the transcript was requested and arrangements were made for payment under sub. (4). If additional portions of the transcript are requested under sub. (5), the reporter shall serve copies of the additional portions of the transcript on the parties to the appeal, file the additional portions of the transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the additional portions of the transcript have been filed and served within 60 days after the date on which the additional portions were requested and arrangements were made for payment. If supplementation or correction of the record is ordered under s. 809.14 (3) (b), the reporter shall serve copies of the supplemental or corrected transcript on the parties to the appeal, file the supplemental or corrected transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the supplemental or corrected transcript has been filed and served within 20 days after the order for supplementation or correction is entered or within the time limit set by order of the court.

(b) *Return of statement regarding transcript arrangements.* The reporter shall sign and send to the appellant, within 5 days after receipt, the statement regarding transcript arrangements and filing required under sub. (4) (b).

(c) *Extensions.* A reporter may obtain an extension for filing the transcript only by motion, showing good cause, that is filed in the court of appeals and served on all parties to the appeal, the clerk of the circuit court and the district court administrator.

(d) *Sanctions.* If a reporter fails to timely file a transcript, the court of appeals may declare the reporter ineligible to act as an official court reporter in any court proceeding and may prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1995 a. 201, 224; 1997 a. 35; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii.

Judicial Council Committee's Note, 1978: This section requires the forwarding of the notice of appeal, filing fee and trial court docket entries immediately, the record to be forwarded when the transcript is completed. This will permit early notice to the court of the pendency of the appeal and will permit it to monitor the appeal during the period when the record and transcript are being prepared.

Another purpose of this section is to expedite the appellate process by requiring the appellant to order the transcript, if one is necessary, within 10 days of the filing of the notice of appeal. The filing of the statement of the reporter that the transcript has been ordered and arrangements made for payment for it will prevent any delay resulting from counsel not ordering the transcript immediately.

Docket entries are required by s. 59.39 (2) and (3). In order to comply with this section, the docket entries will have to be kept. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (4) is amended to clarify that the statement on transcript that is initiated by the appellant must include information that arrangements have been made for the preparation and payment of copies of the transcript for the other parties to the appeal. The language clarification rectifies a present ambiguity in chapter 809 in regard to who is responsible for initiating the arrangements for preparation and payment of copies of the transcript as compared with just the original. The appellant must make all arrangements for the original and copies of a transcript and is responsible for payment. Cost of the preparation of the transcript is included in allowable costs under 809.25. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (4) is amended to require that the appellant file a copy of the statement on transcript with the clerk of the trial court within 10 days of the filing of the notice of appeal. This filing will notify the trial court clerk as to whether a transcript is necessary for prosecution of the appeal and, if so, the date on which the transcript is due. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: The revision places all of the rules concerning transcript preparation and service in one statute, and eliminates the need for former s. 809.16. Subsection (4) combines and recreates former s. 809.11 (4) and the first sentence of former s. 809.16 (1). Subsection (5) recreates the remaining portions of former s. 809.16 (1). The time limits in subs. (4) and (5) are changed from 10 to 14 days. See the comment to s. 808.07 (6) concerning time limits. No other substantive changes in subs. (4) and (5) were intended. Subsection (6) recreates former s. 809.16 (2). Subsection (7) (a) recreates former s. 809.16 (3). Subsection (7) (b) is created to specify a time within which the court reporter must furnish a statement regarding transcript arrangements to the appellant or cross–appellant. Subsection (7) (c) recreates former s. 809.16 (4). Subsection (7) (d) recreates former s. 809.16 (5). [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: Subsection (4) (b) is amended for consistency in terminology and to clarify that the court reporters' statement regarding transcript arrangements, sometimes referred to as the court reporters' certification, is required only for a transcript that has not been filed in circuit court when the statement on transcript is filed, consistent with the clerk of the court of appeals' interpretation and enforcement practices.

Subsection (5) is amended to create a time limit for the completion of the transcript ordering process. If the appellant does not request the preparation of the additional portions of transcript that have been designated by another party within 14 days of

the designation, the other party may either request the preparation of the portions from the reporter or move the circuit court for an order requiring the appellant to request the designated portions. This revision creates a 14–day time period for the other party to take action to obtain the additional portions of the record.

Subsection (7) (a) is amended to clarify the time limits for the preparation of additional portions of the transcript requested under s. 809.11 (5), and to require the court reporter to notify the clerk of the court of appeals and the parties to the appeal when a transcript is filed and served.

Subsection (7) (b) is amended to correct the cross–reference to the rule in sub. (4) (b) that requires the reporter to file a statement regarding transcript arrangements.

Subsection (7) (c) is amended to require a court reporter who files a motion to extend the time within which to prepare a transcript to serve a copy of the motion on the clerk of the circuit court and the district court administrator. Early notice that a reporter has requested additional time to prepare a transcript will enable the clerk and the district court administrator to provide workload relief to the reporter if deemed appropriate. [Re Order No. 02–01 effective January 1, 2003]

Failure to submit the docketing fee within the time specified for filing the notice of appeal does not deprive the court of appeals of jurisdiction. The notice of appeal, not the docketing fee, vests the court with jurisdiction. Douglas v. Dewey, 147 Wis. 2d 328, 433 N.W.2d 243 (1989).

809.12 Rule (Motion for relief pending appeal). A person seeking relief under s. 808.07 shall file a motion in the trial court unless it is impractical to seek relief in the trial court. A motion in the court must show why it was impractical to seek relief in the trial court or, if a motion had been filed in the trial court, the reasons given by the trial court for its action. A person aggrieved by an order of the trial court granting the relief requested may file a motion for relief from the order with the court. A judge of the court may issue an ex parte order granting temporary relief pending a ruling by the court on a motion filed pursuant to this rule. A motion filed in the court under this section must be filed in accordance with s. 809.14.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252.

809.13 Rule (Intervention). A person who is not a party to an appeal may file in the court of appeals a petition to intervene in the appeal. A party may file a response to the petition within 11 days after service of the petition. The court may grant the petition upon a showing that the petitioner's interest meets the requirements of s. 803.09 (1) or (2).

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1978: Former s. 817.12 (6) permitted the addition of parties but did not set the criteria for doing so. This void is filled by making the intervention rule in the Rules of Civil Procedure applicable to proceedings in the Court of Appeals. [Re Order effective July 1, 1978]

Judicial Council Note, 2001: The 7–day time limit has been changed to 11 days. Please see the comment to s. 808.07 (6) concerning time limits. [Re Order No. 00–02 effective July 1, 2001]

A party who could have, but failed to, file a timely notice of appeal may not participate in the appeal as an intervenor or by filing a non–party brief. Weina v. Atlantic Mutual Insurance Co. 177 Wis. 2d 341, 501 N.W.2d 465 (Ct. App. 1993).

A non–party to a circuit court action may intervene in an appeal brought by another party, even after the time for filing a notice of appeal has passed. City of Madison v. WERC, 2000 WI 39, 234 Wis. 2d 550, 610 N.W.2d 94, 99–0500.

809.14 Rule (Motions). (1) A party seeking an order or other relief in a case shall file a motion for the order or other relief. The motion must state the order or relief sought and the grounds on which the motion is based and may include a statement of the position of other parties as to the granting of the motion. A motion may be supported by a memorandum. Except as provided in sub. (1m), any other party may file a response to the motion within 11 days after service of the motion.

(1m) If a motion is filed in an appeal under s. 809.107, any other party may file a response to the motion within 5 days after service of the motion.

(2) A motion for a procedural order may be acted upon without a response to the motion. A party adversely affected by a procedural order entered without having had the opportunity to respond to the motion may move for reconsideration of the order within 11 days after service of the order.

(3) (a) The filing of a motion seeking an order or other relief which may affect the disposition of an appeal or the content of a brief, or a motion seeking consolidation of appeals, automatically tolls the time for performing an act required by these rules from the date the motion was filed until the date the motion is disposed of by order.

(b) The filing of a motion to supplement or correct the record automatically tolls the time for performing an act required by these rules from the date the motion was filed until the date the motion is disposed of by order. If a motion to correct or supplement the record is granted, time limits for performing an act required by these rules shall be tolled from the date on which the motion was filed until the date on which the supplemental or corrected record return is filed, except that the time for preparation of supplemental or corrected transcripts is governed by s. 809.11 (7) (a).

(c) The moving party shall serve the clerk of circuit court with any motion filed in the court of appeals under this subsection.

(4) Subsection (3) does not apply in an appeal under s. 809.105.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii; 1991 a. 263; 1995 a. 224; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 05–07, 2006 WI 37, 287 Wis. 2d xix.

Judicial Council Committee's Note, 1978: The motion procedure under former Rule 251.71 is continued except that the time for replying to a motion is reduced from 10 to 7 days. A response is not required before action can be taken on a procedural motion because these motions include matters previously handled by letter request or which usually do not adversely affect the opposing party. If an opposing party is adversely affected by a procedural order, he has the right to request the court to reconsider it. Procedural orders include the granting of requests for enlargement of time, to file an amicus brief, or to file a brief in excess of the maximum established by the rules. This section is based on Federal Rules of Appellate Procedure, Rule 27. Sub. (3) modifies the prior practice under which the filing of any motion stayed any due date until 20 days after the motion was decided. This could result in an unintentional shortening of the time in which a brief had to be filed. It could also result in an unnecessary delay if a ruling on the motion would not affect the outcome of the case, the issues to be presented to the court, or a brief or the record. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) is amended by deleting a provision that required only an original and one copy of a motion be filed with an appellate court. With the amendment, the number of copies of a motion to be filed is now governed by 809.81 on the form of papers to be filed with an appellate court, which requires in sub. (2) that 4 copies of a paper be filed with the Court of Appeals and 8 copies with the Supreme Court. [Re Order effective Jan. 1, 1979]

Judicial Council Note, 2001: The 7–day time limits in subs. (1) and (2) have been changed to 11 days. Please see the comment to s. 808.07 (6) concerning time limits. Subsection (3) (a) was revised to include consolidation motions within the tolling provision. Subsection (3) (b) creates a tolling provision when a motion to supplement or correct the record is filed. Subsection (3) (c) creates a service requirement for motions affecting the time limits for transmittal of the record. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2006: The amendment to s. 809.14 (1) and the creation of s. 809.14 (1m) to establish a shorter response time to appellate motions should advance the ultimate resolution of TPR appeals. [Re Order No. 05–07 effective July 1, 2006]

A motion to dismiss an appeal under sub. (3) does not extend the time for filing a cross–appeal. Rossmiller v. Rossmiller, 151 Wis. 2d 386, 444 N.W.2d 445 (Ct. App. 1989).

809.15 Rule (Record on appeal). (1) COMPOSITION OF RECORD. (a) The record on appeal consists of the following unless the parties stipulate to the contrary:

1. The paper by which the action or proceeding was commenced;
2. Proof of service of summons or other process;
3. Answer or other responsive pleading;
4. Instructions to the jury;
5. Verdict, or findings of the court, and order based thereon;
6. Opinion of the court;
7. Final judgment;
8. Order made after judgment relevant to the appeal and papers upon which the order is based;
9. Exhibits material to the appeal whether or not received in evidence;
10. Any other paper or exhibit filed in the court requested by a party to be included in the record;
11. Notice of appeal;
12. Bond or undertaking;
13. Transcript of reporter's notes;
14. Certificate of the clerk.

(b) The clerk of the circuit court may request by letter permission of the court to substitute a photocopy for the actual paper or exhibit filed in the circuit court. A photocopy does not include a

document that the clerk of the circuit court has electronically scanned into the court record as permitted under SCR 72.05.

(c) For purposes of preparing the record on appeal, if the original record has been discarded as permitted under SCR 72.03 (3), the electronically scanned document constitutes the official court record. The clerk of circuit court shall assemble a paper record under sub. (2).

(2) COMPILATION AND APPROVAL OF THE RECORD. The clerk of circuit court shall assemble the record in the order set forth in sub. (1) (a), identify by number each paper, and prepare a list of the numbered papers. At least 10 days before the due date for filing the record in the court, the clerk shall notify in writing each party appearing in the circuit court that the record has been assembled and is available for inspection. The clerk shall include with the notice the list of the papers constituting the record.

(3) DEFECTIVE RECORD. A party who believes that the record, including the transcript of the reporter's notes, is defective or that the record does not accurately reflect what occurred in the circuit court may move the court in which the record is located to supplement or correct the record. Motions under this subsection may be heard under s. 807.13.

(4) PROCESSING THE RECORD. (a) *Transmittal of the record*. The clerk of circuit court shall transmit the record to the court of appeals within 20 days after the date of the filing of the transcript designated in the statement on transcript or within 20 days after the date of the filing of a statement on transcript indicating that no transcript is necessary for prosecution of the appeal, unless the court extends the time for transmittal of the record or unless the tolling provisions of s. 809.14 (3) extend the time for transmittal of the record. If additional portions of the transcript are requested under s. 809.11 (5), the clerk of the circuit court shall transmit the record to the court of appeals within 20 days after the date of the filing of the additional portions of the transcript.

(b) *Late transcript*. If the reporter fails to file the transcript within the time limit specified in the statement on transcript, the clerk of circuit court shall transmit the record not more than 90 days after the filing of the notice of appeal, unless the court of appeals extends the time for filing the transcript of the reporter's notes. If the court extends the time for filing the transcript of the reporter's notes, the clerk of circuit court shall transmit the record within 20 days after the date that the transcript is filed.

(c) *Supplementation or correction of record*. Notwithstanding pars. (a) and (b), if a motion to supplement or correct the record is filed in circuit court, the clerk of circuit court may not transmit the record until the motion is determined. A copy of any motion to supplement or correct the record that is filed in circuit court shall be sent to the clerk of the court of appeals. The circuit court shall determine, by order, the motion to supplement or correct the record within 14 days after the filing or the motion is considered to be denied and the clerk of circuit court shall immediately enter an order denying the motion and shall transmit the record to the court of appeals within 20 days after entry of the order. If the circuit court grants the motion, the clerk of circuit court shall transmit the supplemented or corrected record to the court of appeals within 20 days after entry of the order or filing of the supplemental or corrected record in the circuit court, whichever is later.

(4m) NOTICE OF FILING OF RECORD. The clerk of the court of appeals shall notify the clerk of circuit court and all parties appearing in the circuit court of the date on which the record was filed.

(5) AGREED STATEMENT IN LIEU OF RECORD. The parties may file in the court within the time prescribed by sub. (4) an agreed statement of the case in lieu of the record on appeal. The statement must:

(a) Show how the issues presented by the appeal arose and were decided by the trial court; and

(b) Recite sufficient facts proved or sought to be proved as are essential to a resolution of the issues presented.

History: Sup. Ct. Order, 83 Wis. 2d xiii; Sup. Ct. Order, 104 Wis. 2d xi; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 12–05, 2012 WI 112, filed 11–1–12, eff. 1–1–13.

Judicial Council Committee's Note, 1978: Sub. (1) substantially embodies former s. 251.25. It also permits the filing of a photocopy instead of the original record but only with the approval of the Court of Appeals, changing to some extent prior Rules 251.25 (13) and 251.27. Under this section the parties can stipulate to exclude some items from the record, but this should be done before the clerk assembles the record.

Sub. (2). The responsibility for having the record assembled and transmitted to the Court of Appeals is transferred from the appellant to the clerk of the trial court. It is not necessary to have the attorneys present at the pagination of the record. The federal procedure set forth in Rule 11 (b), FRAP, under which the clerk assembles the record and then notifies the parties so that they can inspect the record prior to it being sent to the Court of Appeals is adopted. Also adopted is the federal procedure of the clerk preparing a list of all the papers in the record. The former system of numbering each page in the record consecutively is abandoned for the simpler practice of assigning a letter or number to each document and using its internal page reference. Thus, the reference to the third page of the first document would be A–3 and to the fifth page of the second document B–5.

Sub. (3). This provision replaces former Rule 251.30 and s. 817.117.

Subs. (4) and (5). The provisions of former Rules 251.29 and 251.28 are included in these subsections. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1981: Sub. (4) is amended to provide for an expedited transmittal of the record for appeals in which a transcript is not necessary for prosecution of the appeal or a transcript is filed in less than the maximum time period permitted by ch. 809. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 1988: Sub. (3) is amended to allow motions to correct the record to be heard by telephone conference. [Re Order effective Jan. 1, 1988]

Judicial Council Note, 2001: Subsection (2) requires that numbers be used to identify the contents of the record. Subsection (4) (a) recreates the general rule for record transmittal from former sub. (4). Exceptions to the general rule are set forth in subs. (4) (b) and (c). Subsection (4m) recreates the last sentence of former sub. (4). [Re Order No. 00–02 effective July 1, 2001]

An appellant's failure to file a motion under sub. (3) did not constitute waiver of the right to challenge the adequacy of the transcript. State v. Perry, 136 Wis. 2d 92, 401 N.W.2d 748 (1987).

It is the appellant's responsibility to assure that the record is complete. If the record is incomplete, it is assumed that the missing material supports the trial court's ruling. Fiumefreddo v. McLean, 174 Wis. 2d 10, 496 N.W.2d 226 (Ct. App. 1993).

809.17 Rule (Expedited appeals program, voluntary alternative dispute resolution and presubmission conference). (1) In order to minimize appellate delay and reduce its backlog, the court of appeals may develop an expedited appeals program. The program may involve mandatory completion of docketing statements by appellant's counsel and participation in presubmission conferences at the direction of the court, but participation in the court's accelerated briefing and decision process is voluntary. The rules and procedures governing the program shall be set forth in the court of appeals' internal operating procedures.

(2) The court of appeals may require all attorneys of record in any appeal to participate in a presubmission conference, either by telephone or in person, with an officer of the court. An attorney of record with no direct briefing interest in the appeal may waive his or her participation in the conference by written notice to the court.

(2m) The court of appeals may establish an appellate mediation program and make and enforce all rules necessary for the prompt and orderly dispatch of the business of the program. Participation in the appellate mediation program is voluntary, but the program may involve mandatory participation in the presubmission conferences at the direction of the court. Only those cases in which a docketing statement is required to be filed under s. 809.10 (1) (a) are eligible for participation in the appellate mediation program. The parties to the appeal shall pay the fees of a mediator providing services under the program, unless those fees are waived or deferred by the court. The rules and procedures governing the program shall be set forth in the court of appeals' internal operating procedures.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 131 Wis. 2d xvi (1986); Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Court of Appeals Note, 1986: Section (Rule) 809.17 is repealed and recreated to give the court of appeals authority to administer its expedited appeals program pursuant to Section VII, Expedited Appeals, of the Court of Appeals Internal Operating Procedures (amended 1986). The rule replaces a similar delegation of authority to the chief judge of the court of appeals by order of the supreme court dated December 19, 1983. [Re Order effective January 1, 1987]

809.18 Rule (Voluntary dismissal). (1) An appellant may dismiss a filed appeal by filing a notice of dismissal in the court or, if the appeal is not yet filed, in the circuit court. The dismissal of an appeal by the appellant or by agreement of the parties or their

counsel does not affect the status of a lower court decision, the status of a cross–appeal, or the right of a respondent to file a cross–appeal.

(2) If the parties compromise or otherwise settle the entire matter in litigation prior to the issuance of the decision of the court of appeals, the appellant shall immediately inform the court in writing, signed by all parties, that the matter has been compromised or settled. Upon receipt of such information, the court shall dismiss the appeal in accordance with sub. (1).

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1995 a. 224; Sup. Ct. Order No. 01–15, 2003 WI 94, 261 Wis. 2d xxxvii; Sup. Ct. Order No. 07–15, 2008 WI 27, filed 4–2–08, eff. 7–1–08.

Judicial Council Committee's Note, 1978: An appeal may be dismissed by the appellant at any time prior to a court decision on the appeal without approval of the court or the respondent. This changes the former procedure and modifies Rule 42, FRAP. The Rule specifically protects a respondent who has or intends to file a cross–appeal, and for this reason the appellant is authorized to dismiss the appeal at will. The filing of a notice of dismissal does not affect the liability of the appellant for costs or fees, or the power of the court to impose penalties under Rule 809.83 (1). [Re Order effective July 1, 1978]

This section does not require the dismissal of a petition for a supervisory writ upon the filing of a notice of voluntary dismissal. A petition for a supervisory writ is not an "appeal." Interest of Peter B. 184 Wis. 2d 57, 616 N.W.2d 746 (Ct. App. 1994).

The court of appeals must dismiss an appeal when an appellant files a notice of voluntary dismissal before the court issues its decision on the appeal. State v. Lee, 197 Wis. 2d 960, 542 N.W.2d 143 (1996).

The date stamped on a court of appeals decision or order is the date it is issued and filed. That the clerk's office mails appellate decisions to the parties the day before they are dated and filed does not mean that decisions are to be deemed to have been issued on the mailing date. A notice of voluntary dismissal filed on the day prior to an opinion being issued operates to automatically dismiss the appeal. State v. Jones, 2002 WI 53, 252 Wis. 2d 592, 645 N.W.2d 610, 01–1155.

809.19 Rule (Briefs and appendix). (1) BRIEF OF APPELLANT. The appellant shall file a brief within 40 days of the filing in the court of the record on appeal. The brief must contain:

(a) A table of contents with page references of the various portions of the brief, including headings of each section of the argument, and a table of cases arranged alphabetically, statutes and other authorities cited with reference to the pages of the brief on which they are cited.

(b) A statement of the issues presented for review and how the trial court decided them.

(c) A statement with reasons as to whether oral argument is necessary and a statement as to whether the opinion should be published and, if so, the reasons therefor.

(d) A statement of the case, which must include: a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record.

(e) An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the appellant, the reasons therefor, with citations to the authorities, statutes and parts of the record relied on as set forth in the Uniform System of Citation and SCR 80.02.

(f) A short conclusion stating the precise relief sought.

(g) Reference to an individual by first name and last initial rather than by his or her full name when the record is required by law to be confidential.

(h) The signature of the attorney who files the brief; or, if the party who files the brief is not represented by an attorney, the signature of that party.

(i) Reference to the parties by name, rather than by party designation, throughout the argument section.

(2) APPENDIX. (a) *Contents.* The appellant's brief shall include a short appendix containing, at a minimum, the findings or opinion of the circuit court, limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues, and a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b). If the appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix shall also contain the findings of fact and conclusions of law, if any, and final decision of the administrative agency. The appendix shall include a table of contents. If the record is required by law to be confidential, the portions of the record included in the appendix shall be reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

(b) *Certification.* An appellant's counsel shall append to the appendix a signed certification that the appendix meets the content requirements of par. (a) in the following form:

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Signed: ....

Signature

(3) RESPONDENT'S BRIEF. (a) 1. The respondent shall file a brief within the later of any of the following:

a. Thirty days after the date of service of the appellant's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail.

b. Thirty days after the date on which the court accepts the appellant's brief for filing.

c. Thirty days after the date on which the record is filed in the office of the clerk.

2. The brief must conform with sub. (1), except that the statement of issues and the statement of the case may be excluded.

3. Within the time limits for filing a respondent's brief, a party who has been designated as a respondent may file a statement with the court that it will not be filing a brief because its interests are not affected by the issues raised in the appellant's brief or because its interests are adequately represented in another respondent's brief.

(b) The respondent may file with his or her brief a supplemental appendix. If the record is required by law to be confidential, the supplemental appendix must comply with the confidentiality requirements under sub. (2) (a). Any supplemental appendix shall include a table of contents, a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b), and a signed certification that the appendix complies with the confidentiality requirements under sub. (2) (a) in a form substantially similar to the confidentiality provision under sub. (2) (b).

(4) REPLY BRIEF. (a) The appellant shall file a reply brief, or a statement that a reply brief will not be filed, within the later of:

1. Fifteen days after the date of service of the respondent's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail; or

2. Fifteen days after the date on which the court accepts the respondent's brief for filing.

(b) The reply brief under par. (a) shall comply with sub. (1) (e) and (f). If an unpublished opinion is cited under s. 809.23 (3) (a) or (b), a copy of the opinion shall be provided in an appendix to the reply brief.

(5) CONSOLIDATED AND JOINT APPEALS. Each appellant in consolidated appeals or a joint appeal and each co–appellant may file a separate brief or a joint brief with another appellant or co–appellant. A joint brief must not exceed the page allowance for a single appellant.

(6) CROSS–APPEAL. Briefing in a cross–appeal shall be as follows:

(a) An appellant–cross–respondent shall file a brief titled "Appellant's Brief" within the time specified by, and in compliance with, the requirements of subs. (1) and (2).

(b) 1. A respondent–cross–appellant shall file a brief titled "Combined Brief of Respondent and Cross–Appellant" within the later of any of the following:

a. Thirty days after the date of service of the appellant–cross–respondent's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail.

b. Thirty days after the date on which the court accepts the appellant–cross–respondent's brief for filing.

c. Thirty days after the date on which the record is filed in the office of the clerk.

2. The front and back covers of the combined brief shall be red. The respondent portion of the combined brief shall comply with the requirements of this section for a respondent's brief, including the length limitation for such a brief set forth in sub. (8) (c) 1. The cross–appellant portion of the combined brief shall comply with the requirements of subs. (1) and (2) for an appellant's main brief, including the length limitation for such a brief set forth in sub. (8) (c) 1., except that the requirements of sub. (1) (c) and (d) may be omitted, the cross–appellant portion of the combined brief shall be preceded by a blank blue cover, and a signature shall be required only at the conclusion of the cross–appellant portion of the combined brief.

(c) 1. An appellant–cross–respondent shall file a brief titled "Combined Brief of Appellant and Cross–Respondent" within the later of:

a. Thirty days after the date of service of the respondent–cross–appellant's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail; or

b. Thirty days after the date on which the court accepts the respondent–cross–appellant's brief for filing.

2. The front and back covers of the combined brief shall be gray. The appellant portion of the combined brief shall comply with the requirements of sub. (4) for a reply brief, including the length limitation for such a brief set forth in sub. (8) (c) 2. The cross–respondent portion of the combined brief shall comply with the requirements of sub. (3) for a respondent's brief, including the length limitation for such a brief set forth in sub. (8) (c) 1., except that the requirement of sub. (1) (c) may be omitted, the cross–respondent portion of the combined brief shall be preceded by a blank red cover, and a signature shall be required only at the conclusion of the cross–respondent portion of the combined brief.

(d) A respondent–cross–appellant shall file either a reply brief titled "Reply Brief of Cross–Appellant" in the form required by sub. (4) for reply briefs, or a statement that a reply brief will not be filed, within the later of:

1. Fifteen days after the date of service of the appellant–cross–respondent's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail; or

2. Fifteen days after the date on which the court accepts the appellant–cross–respondent's brief for filing.

(e) Each part of a combined brief shall comply with the form and length certification requirements of sub. (8) (d).

(f) A respondent–cross–appellant must comply with the same appendix rules as an appellant under sub. (2) (a) and (b), except that a respondent–cross–appellant shall not be required to include materials that are contained in the appellant's appendix.

(7) NONPARTY BRIEFS. (a) A person not a party may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person is desirable.

(b) If the brief will support or oppose a petition under s. 809.62 or 809.70, the brief shall accompany the motion and shall be filed within the time permitted for the opposing party to file a response to the petition. If an unpublished opinion is cited under s. 809.23 (3) (a) or (b), a copy of the opinion shall be provided in an appendix to the brief.

(c) Except as provided in par. (b), the motion shall be filed not later than 14 days after the respondent's brief if filed, and the brief shall be filed within the time specified by the court. If an unpublished opinion is cited under s. 809.23 (3) (a) or (b), a copy of the opinion shall be provided in an appendix to the brief.

(8) NUMBER, FORM AND LENGTH OF BRIEFS AND APPENDICES. (a) *Number.* 1. A person shall file either 22 copies of a brief or appendix in the supreme court or the number that the court directs and shall serve 3 copies on each party.

2. Except as provided in subd. 3. and s. 809.43, a person shall file either 10 copies of a brief or appendix in the court of appeals or the number that the court directs and shall serve 3 copies on each party.

3. Except as provided in s. 809.43, a person who is found indigent under s. 814.29 (1) and who is not represented by counsel shall file 5 copies of a brief or appendix in the court of appeals and shall serve one copy on each party. A prisoner who has been granted leave to proceed without prepayment of fees under s. 814.29 (1m) and who is not represented by counsel shall file 5 copies of a brief or appendix in the court of appeals and shall serve one copy on each party.

4. In addition to the copies required in subds. 1., 2., and 3., all parties represented by counsel shall file one electronic copy of each brief as provided in s. 809.19 (12) and may file one electronic copy of each appendix as provided in s. 809.19 (13).

(b) *Form.* A brief and appendix must conform to the following specifications:

1. Produced by a duplicating or copying process that produces a clear, black image of the original on white paper. Briefs shall be produced by using either a monospaced font or a proportional serif font. Carbon copies may not be filed.

2. Produced on 8–1/2 by 11 inch paper.

3. b. If a monospaced font is used: 10 characters per inch; double–spaced; a 1.5 inch margin on the left side and a one–inch margin on all other sides.

c. If a proportional font is used: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. Italics may not be used for normal body text but may be used for citations, headings, emphasis and foreign words.

4. Securely bound only on the left side with heavy strength staples or by means of velobinding or the "perfect" ("hot glue") binding method, with pagination at the center of the bottom margin. A brief may be bound by another method if authorized in writing by the clerk of the court.

(c) *Length.* 1. Those portions of a party's or a guardian ad litem's brief referred to in sub. (1) (d), (e) and (f) shall not exceed 50 pages if a monospaced font is used or 11,000 words if a proportional serif font is used.

2. Appellant's reply brief or a brief filed under sub. (7) shall not exceed 13 pages if a monospaced font is used or 3,000 words if a proportional serif font is used.

(d) *Form and length certification*. Counsel shall append to the brief and appendix a signed certification that the brief and appendix meet the form and length requirements of pars. (b) and (c) in the following form:

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) for a brief and appendix produced with a [monospaced] [proportional serif] font. The length of this brief is .... [pages] [words].

Signed: ....
Signature

For purposes of the certification and length requirements of this subsection, counsel may use the word count produced by a commercial word processor available to the general public.

(8m) GUARDIAN AD LITEM BRIEF. If the guardian ad litem chooses to participate in an appeal and takes the position of an appellant, the guardian ad litem's brief shall be filed within 40 days after the filing in the court of the record on appeal. If the guardian ad litem chooses to participate in an appeal and takes the position of a respondent, the guardian ad litem's brief shall be filed within 30 days after service of the appellant's brief. If an unpublished opinion is cited under s. 809.23 (3) (a) or (b), a copy of the opinion shall be provided in an appendix to the brief. If the guardian ad litem chooses not to participate in an appeal of an action or proceeding, the guardian ad litem shall file with the court a statement of reasons for not participating within 20 days after the filing of the appellant's brief.

(9) BRIEF COVERS. Each brief or appendix shall have a front and back cover. The front cover shall contain the name of the court, the caption and number of the case, the court and judge appealed from, the title of the document, and the name and address of counsel filing the document. Except as provided in s. 809.81 (8), the caption shall include the full name of each party in the circuit court and shall designate each party so as to identify each party's status in the circuit court and in the appellate court, if any. The covers of the appellant's brief shall be blue; the respondent's, red; a combined respondent–cross–appellant's, red with a blue divider page; a combined reply–cross–respondent's, gray with a red divider page; a guardian ad litem's, yellow; a person other than a party, green; the reply brief, gray; and the appendix, if separately printed, white. In the event the supreme court grants a petition for review of a decision of the court of appeals, the covers of the briefs of each party shall be the same color as the cover of that party's briefs filed in the court of appeals. In the supreme court, "petitioner" shall be added to the party designation of the petitioner, and the respondent's party designation shall remain the same as in the court of appeals.

(10) CITATION OF SUPPLEMENTAL AUTHORITIES. If pertinent authorities decided after briefing come to the attention of a party or a nonparty under sub. (7) or a guardian ad litem under sub. (8m) after the party's or nonparty's or guardian ad litem's brief has been filed, or after oral argument but before decision, the party, nonparty, or guardian ad litem may promptly advise the clerk of the court, by letter, and serve a copy of that letter on all parties to the appeal. If the new authority is a decision of the Wisconsin court of appeals, the authority is considered decided for purposes of this subsection on the date of an order for publication issued under s. 809.23 (2). The letter shall do the following:

(a) Set forth the citations for the authority.

(b) Identify the page of the brief or the point that was argued orally to which the citations pertain.

(c) For each authority that is cited, briefly discuss the proposition that the authority supports.

(11) RESPONSE TO SUPPLEMENTAL AUTHORITIES. A response to the letter under sub. (10) may be filed within 11 days after service of that letter. The response shall briefly discuss the reason why each authority does not support the stated proposition, unless the proposition is not disputed.

(12) ELECTRONIC BRIEFS. (a) *General rule*. An attorney filing a brief under these rules shall file with the court a copy of the brief in electronic form. A self–represented party is not required to file an electronic copy of the brief, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the brief remains the official court record.

(b) *Process*. Attorneys and self–represented parties filing an electronic brief shall use the electronic filing system under s. 801.17.

(c) *Format*. The electronic brief shall be in text–searchable Portable Document Format (PDF).

(d) *Filing*. The date on which the paper brief is filed under s. 809.80 (3) (b) shall be the official date of filing of the brief. The electronic copy of the brief shall be electronically transmitted on or before the date that the paper brief is filed under s. 809.80 (3) (b). An electronic copy of a brief submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date, provided it is subsequently accepted by the clerk upon review. An electronic brief submitted after the close of regular business hours shall be considered transmitted the next business day.

(e) *Corrections*. If corrections are required to be made, both the paper and electronic copies shall be corrected.

(f) *Certification*. In addition to the form and length certification required under s. 809.19 (8) (d), attorneys and self–represented parties shall certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

(g) *Motion for relief*. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper brief. An attorney shall show good cause why it is not feasible to file a copy of the brief electronically.

(13) ELECTRONIC APPENDIX. (a) *General rule*. An attorney filing an appendix under these rules may file with the court a copy of the appendix in electronic form. A self–represented party is not required to file an electronic copy of the appendix, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the appendix remains the official court record.

(b) *Process*. Attorneys and self–represented parties filing an electronic appendix shall use the electronic filing system under s. 801.17.

(c) *Format*. An electronic appendix shall be in Portable Document Format (PDF). An electronic appendix shall be filed as a document or documents separate from the brief.

(d) *Filing*. The date on which the paper appendix is filed under s. 809.80 (3) (b) shall be the official date of filing of the appendix. The electronic copy of the appendix shall be electronically transmitted on or before the date that the paper appendix is filed under s. 809.80 (3) (b). An electronic copy of an appendix submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date, provided it is subsequently accepted by the clerk upon review. An electronic appendix submitted after the close of regular business hours shall be considered transmitted the next business day.

(e) *Corrections*. If corrections are required to be made, both the paper and electronic copies shall be corrected.

(f) *Certification*. In addition to the certification required under s. 809.19 (2) (b) and (3) (b), attorneys and self–represented parties shall certify that the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); 1979 c. 110; Sup. Ct. Order, 104 Wis. 2d xi (1980); 1981 c. 390 s. 252; Sup. Ct. Order, 111 Wis. 2d xiii (1983); Sup. Ct. Order, 112 Wis. 2d xv (1983); Sup. Ct. Order, 115 Wis. 2d xv (1983); Sup. Ct. Order, 123 Wis. 2d xx (1985); Sup. Ct. Order, 146 Wis. 2d xxxiii (1988); Sup. Ct. Order, 151 Wis. 2d xvii (1989); Sup. Ct. Order, 161 Wis. 2d xiii (1981); Sup. Ct. Order, 164 Wis. 2d xxix (1991); Sup. Ct. Order, 167 Wis. 2d xiii (1992); Sup. Ct. Order, 171 Wis. 2d xiii, xvii, xxxvii (1992); Sup. Ct. Order No. 93–20, 179 Wis. 2d xxv; 1993 a. 486; 1995 a. 224; Sup. Ct. Order No.

97–01, 208 Wis. 2d xxiii (1997); 1997 a. 35; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 04–11, 2005 WI 149, 283 Wis. 2d xix; Sup. Ct. Order No. 06–02, 2006 WI 118, 291 Wis. 2d xiii; Sup. Ct. Order No. 07–03, 2007 WI 129, 303 Wis. 2d xxvii; Sup. Ct. Order No. 08–15 and 08–18, 2009 WI 4, 311 Wis. 2d xxix; 2009 a. 180; Sup. Ct. Order No. 10–01 and 10–02, 2010 WI 42, 323 Wis. 2d xxiii.

Judicial Council Committee's Note, 1978: Sub. (1). The format for briefs established in former Rule 251.34 is generally followed except that the requirement of a synopsis of the argument in the table of contents is eliminated. Former Rule 251.34 (1) required the synopsis and gave 200 Wis. 530 as an illustration. The synopsis was no longer included in most briefs and if it was, often was very lengthy and served no real purpose. It is replaced in the table of contents by a shorter, one sentence summary of each section of the argument portion of the brief. New statements pertaining to the need for oral argument and whether the opinion in the case will set precedent and thus should be published are added. The purpose of the latter is to assist the court in screening cases for oral argument or submission on briefs.

Sub. (2). The lengthy appendix with the narrative of testimony required by former Rule 251.34 (5) is replaced with the system used in the United States Court of Appeals for the Seventh Circuit. Under this system the original record serves as the primary evidence of what occurred in the trial court. The appendix becomes a very abbreviated document with only those items absolutely essential to an understanding of the case. It is designed to be nothing more than a useful tool to the members of the court. The failure to include some item in the appendix has no effect on the ability or willingness of the court to consider any matter in the record. This change, combined with the elimination of the requirement of printed briefs, should reduce the cost of an appeal.

Sub. (5). Each appellant in a case has the right to file a separate brief and need not share a brief with co–appellants.

Sub. (6). The parties to a cross–appeal can file the same briefs as the parties to the main appeal. Thus the cross–appellant can file a 40 page brief as cross–appellant in addition to his 40 page brief as respondent. The cross–appellant can also combine both briefs in a single brief but is limited to the page limits on each section of brief. A cross–appellant filing a 30 page brief as respondent is still limited to a 40 page brief as cross–appellant.

Sub. (7). The practice under former Rule 251.40 is modified to require the request to file an amicus curiae brief be made by motion rather than by letter. Rule 29, FRAP. The motion should indicate the interest of the amicus and why a brief by the amicus is desirable.

Subs. (8) and (9). In addition to briefs produced by the standard typographical process, briefs produced by a mimeograph or photocopy process from typewritten copy may also be filed. The principal objective is to reduce the cost of an appeal to the Court of Appeals. The specifications for the printed and typewritten pages are designed to result in briefs of approximately an equal number of words no matter which process is used. The paper size of 8–1/2 x 11 is specified for the sake of uniformity and ease of handling.

Colors for covers are specified to permit easy identification of the briefs. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (8) (a) previously required that 30 copies of a brief or appendix be filed in either the Court of Appeals or Supreme Court. The number of copies to be filed in the Court of Appeals or Supreme Court has been reduced to 20 copies to reflect the smaller number of judges deciding an appeal before the Court of Appeals and the difficulty the Supreme Court is facing in having enough storage space to retain the 30 copies of a brief previously required. The provision in Rule 809.43 requiring the filing of 10 copies of a brief and appendix in an appeal heard by one judge remains unchanged. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (1) (e) is amended to incorporate SCR 80.02, governing citation of a published court of appeals or supreme court opinion in a brief, memorandum or other document filed with the court of appeals or supreme court.

Sub. (8) (b) 4 previously required that a brief and appendix be bound only on the left side with staple or tape. A sufficient number of heavy strength staples are to be used to assure that the briefs and appendix remain securely bound when used by the court of appeals and supreme court. The prior alternative method of binding the brief and appendix solely with tape is repealed.

Sub. (9) is amended to clarify that both a front and back cover of a brief and appendix are required. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 1988: Sub. (7) (b) permits nonparties to request permission to file a brief supporting or opposing a petition for the Supreme Court to review a decision of the Court of Appeals or to take original jurisdiction. In these cases, the motion and the brief shall be filed together, within the time permitted for response by the opposing party.

Revised sub. (8) (c) clarifies that the page limit does not include the table of contents, table of cases and other authorities, statement of issues, statement on oral argument and publication, appendix or supplemental appendix. [Re Order effective Jan. 1, 1989]

Judicial Council Note, 2001: Subsection (1) (h) requires a signature on briefs. Subsection (1) (i) makes identification of the parties consistent and less confusing. Subsection (3) was revised to address a situation in which the appellant's brief is served on the respondent, but has not yet been accepted for filing by the court. If the respondent undertakes to prepare its brief within 30 days after service of the appellant's brief and the appellant's brief has not yet been accepted for filing, the respondent will have wasted time and energy if the appellant's brief ultimately is rejected. The last sentence of sub. (4) was added to require record references and a conclusion in a reply brief. Subsection (6) was rewritten to clarify briefing requirements in cross–appeals. The time limit in sub. (7) (c) was changed from 10 to 14 days. Please see the comment to s. 808.07 (6) concerning time limits. The reference to s. 809.43 was deleted in sub. (8) (a) 1. because the greater number of copies is needed when a single–judge appeal reaches the supreme court. Subsection (8) (a) 3. was amended to apply to *pro se* parties only. Subsection (8) (b) 4. was amended to allow "velobinding" of briefs, a process commonly accepted but not authorized by statute. Subsection (9) requires parties to use the complete case caption. Parties shall not abridge the caption by use of "et al" or similar phrases. Subsections (10) and (11) are new and establish a procedure for supplementing briefs or oral argument with pertinent authorities that subsequently come to the attention of a party or an amicus curiae, who is denoted a "nonparty" under sub. (7), or a guardian ad litem under sub. (8m). This procedure is based upon Federal Rule of Appellate Procedure 28 (j) and Circuit Rule 28 (e) of the Seventh Circuit Court of Appeals. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: Occasionally an appellant's brief is filed before the record is filed with the appellate court clerk, especially in cases involving pro se appellants. The amendments to subs. (3) and (6) (b) 1. conform to current practice by establishing the due date for the respondent's brief or respondent–cross–appellant's brief as the latest of thirty days after date of service of the appellant's brief (plus three days if service is by mail), thirty days after the date on which the court accepts the appellant's brief or appellant–cross–respondent's brief for filing, or thirty days after the date on which the record is filed in the office of the clerk.

Subsection (9) is amended to conform to the party designations used by the clerk's office when a petition for review is granted. [Re Order No. 02–01 effective January 1, 2003]

Comment, October 2005: As the number of appeals has increased, the Court of Appeals' reliance on appendices during the decision–making process has increased. The Court of Appeals requests that Wis. Stat. § (Rule) 809.19 (2) (b) be created to require that appellant's counsel certify compliance with Wis. Stat. § (Rule) 809.19 (2) (a) (as renumbered by this order), that requires an appellant's brief include an appendix and sets forth the contents of the appendix. The Court of Appeals believes that a certification requirement, similar to the form and length certification required by Wis. Stat. § (Rule) 809.19 (8) (d) will result in increased compliance with renumbered Wis. Stat. § (Rule) 809.19 (2) (a) and improve the quality of appendices that are filed with the court. [Re Sup. Ct. Order No. 04–11]

NOTE: Sup. Ct. Order No. 08–15 and 08–18, 2009 WI 4, states: "The following Comment to Wis. Stat. §§ (Rule) 809.19 (12) and 809.19 (13) is not adopted but will be published and may be consulted for guidance in interpreting and applying the statute."

Comment, 2008: An electronic brief required under s. 809.19 (12) and an electronic appendix requested under s. 809.19 (13) are in addition to and not a replacement for the paper brief and appendix required under s. 809.19. The filing requirement is satisfied only when the requisite number of paper copies of the brief and appendix and the electronic brief are filed.

The filing of an electronic appendix is encouraged, but not required. These rules do not provide for total electronic filing at the appellate level. Accordingly, the paper copies of appellate briefs and appendices constitute the official court record.

An electronic brief shall be submitted to the court as a text–searchable Portable Document Format (PDF) document. "PDF" is a universal file format that preserves the fonts, formatting, pagination, and graphics of a source document. A text–searchable brief is created by electronically converting the original word processing file to a PDF document. An electronic appendix may be submitted as a non–text–searchable PDF document. A non–text–searchable appendix is created by scanning the paper document to create a PDF document.

Electronic briefs may be enhanced with internal links (such as a table of contents with links to locations in the brief) or external links (links to websites containing the text of cases or statutes cited in the brief). External links in an electronic brief shall not require a password for access to the case or statute. No enhancement to an electronic brief shall alter the text of the brief.

All electronic briefs shall be submitted in a single electronic file. The file containing the electronic brief ***shall not*** contain the appendix or any other document or material. An electronic appendix containing more than 200 pages may be split into smaller electronic files.

Sample electronic brief certification form:

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Signed ....
Signature

Sample electronic appendix certification form:

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (13)

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of s. 809.19 (13). I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Signed ....
Signature

[Re Order No. 08–15 and 08–18 effective July 1, 2009]

Appellate counsel's appendix containing only a copy of the judgment of conviction, a notice of motion and motion to suppress, and a notice of intent to pursue postconviction relief did not meet the standard under sub. (2) (a) to contain "essential to an understanding of the issues raised." When counsel certified that the essential items were in the appendix when they were not, the certification was false and counsel was subject to sanction. State v. Bons, 2007 WI App 124, 301 Wis. 2d 227, 731 N.W.2d 367, 06–1625.

When the court of appeals is considering imposing a sanction on an attorney for filing a brief with a deficient appendix, an order to show cause should be issued directing counsel to explain why a violation of sub. (2) (a) and (b) should not be found and why the attorney should not pay a monetary penalty for failing to include in the appendix portions of the record that may have been essential to an understanding of the issue in the case and for filing a false certification. The order to show cause should state that alternatively, the attorney may pay the amount of money stated in the order within 30 days of the date of the order without showing cause why the attorney should not be relieved of this obligation. State v. Nielsen, 2011 WI 94, 337 Wis. 2d 302, 805 N.W.2d 353, 10–0387.

The page length limits in sub. (8) apply in original jurisdiction actions. Watts v. Thompson, 116 F.3d 220 (1997).

809.20 Rule (Assignment and advancement of cases). The court may take cases under submission in such order and upon such notice as it determines. A party may file a motion to advance the submission of a case either before or after the briefs have been filed. The motion should recite the nature of the public or private interest involved, the issues in the case and how delay in submission will be prejudicial to the accomplishment of justice.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978).

Judicial Council Committee's Note, 1978: This rule incorporates the present unwritten procedure for having the submission of a case advanced. It also specifies the factors that may affect the advancement of a case. [Re Order effective July 1, 1978]

809.21 Rule (Summary disposition). (1) The court upon its own motion or upon the motion of a party may dispose of an appeal summarily.

(2) A party may file at any time a motion for summary disposition of an appeal. Section 809.14 governs the procedure on the motion.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252.

Judicial Council Committee's Note, 1978: The basic concept in former Rule 251.54 of allowing the Supreme Court to dispose of appeals summarily is continued, but Rule 809.21 specifically authorizes a motion for this purpose. Such a motion was often used under prior procedure, but the rules did not expressly authorize it. [Re Order effective July 1, 1978]

809.22 Rule (Oral argument). (1) The court shall determine whether a case is to be submitted with oral argument or on briefs only.

(2) The court may direct that an appeal be submitted on briefs only if:

(a) The arguments of the appellant:

1. Are plainly contrary to relevant legal authority that appear to be sound and are not significantly challenged;

2. Are on their face without merit and for which no supporting authority is cited or discovered; or

3. Involve solely questions of fact and the fact findings are clearly supported by sufficient evidence; or

(b) The briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant.

(3) The court shall determine the amount of time for oral argument allowed to each party in a case either by general or special order.

(4) On motion of any party or its own motion, the court may order that oral argument be heard by telephone.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 141 Wis. 2d xiii (1987).

Judicial Council Committee's Note, 1978: The Supreme Court has for a number of years scheduled some cases for submission on briefs only without oral argument in an effort to accommodate its burgeoning caseload. The criteria by which the court decides whether a case is to have oral argument have never been formally adopted. This rule is a statement of those criteria. Counsel should address these criteria in their briefs in discussing the question of the need for oral argument. See Rule 809.19 (1) (c). Flexibility is provided by sub. (3) as to the length of oral argument in order to meet the needs of an individual case. It may be appropriate, for example, to have an oral argument for the sole purpose of allowing the court to ask questions of counsel. [Re Order effective July 1, 1978]

Judicial Council Note, 1988: Sub. (4) [created] authorizes oral arguments to be heard by telephone conference on motion of any party or the court of appeals. [Re Order effective Jan. 1, 1988]

809.23 Rule (Publication of opinions). (1) CRITERIA FOR PUBLICATION. (a) While neither controlling nor fully measuring the court's discretion, criteria for publication in the official reports of an opinion of the court include whether the opinion:

1. Enunciates a new rule of law or modifies, clarifies or criticizes an existing rule;

2. Applies an established rule of law to a factual situation significantly different from that in published opinions;

3. Resolves or identifies a conflict between prior decisions;

4. Contributes to the legal literature by collecting case law or reciting legislative history; or

5. Decides a case of substantial and continuing public interest.

(b) An opinion should not be published when:

1. The issues involve no more than the application of well–settled rules of law to a recurring fact situation;

2. The issue asserted is whether the evidence is sufficient to support the judgment and the briefs show the evidence is sufficient;

3. The issues are decided on the basis of controlling precedent and no reason appears for questioning or qualifying the precedent;

4. The decision is by one court of appeals judge under s. 752.31 (2) and (3);

5. It is a per curiam opinion on issues other than appellate jurisdiction or procedure;

6. It has no significant value as precedent.

(2) DECISION ON PUBLICATION. The judges of the court of appeals who join in an opinion in an appeal or other proceeding shall make a recommendation on whether the opinion should be published. A committee composed of the chief judge or a judge of the court of appeals designated by the chief judge and one judge from each district of the court of appeals selected by the court of appeals judges of each district shall determine whether an opinion is to be published.

(3) CITATION OF UNPUBLISHED OPINIONS. (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).

(b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three–judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

(c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

(4) REQUEST FOR PUBLICATION. (a) Except as provided in par. (b), any person may at any time file a request that an opinion not recommended for publication or an unreported opinion be published in the official reports.

(b) No request may be made for the publication of an opinion that is a decision by one court of appeals judge under s. 752.31 (2) and (3) or that is a per curiam opinion on issues other than appellate jurisdiction or procedure.

(c) A person may request that a per curiam opinion that does not address issues of appellate jurisdiction or procedure be withdrawn, authored and recommended for publication. That request shall be filed within 20 days of the date of the opinion and shall be decided by the panel that decided the appeal.

(d) A copy of any request made under this subsection shall be served under s. 809.80 on the parties to the appeal or other proceeding in which the opinion was filed. A party to the appeal or proceeding may file a response to the request within 5 days after the request is filed.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii; 1981 c. 390 s. 252; Sup. Ct. Order, 109 Wis. 2d xiii (1982); Sup. Ct. Order, 118 Wis. 2d xiii (1984); 1991 a. 189, Sup. Ct. Order No. 96–10, 208 Wis. 2d xiii (1997), Sup. Ct. Order No. 01–04, 2001 WI 135, 248 Wis. 2d xvii; Sup. Ct. Order No. 08–02, 2009 WI 2, 311 Wis. 2d xxv.

Judicial Council Committee's Note, 1978: As with Rule 809.22 on oral argument, a former practice of the Supreme Court is written into this Rule and formal criteria established for it. The trend toward nonpublication of opinions is nationwide and results from the explosion of appellate court opinions being written and published. Many studies of the problem have concluded that unless the number of opinions published each year is reduced legal research will become inordinately time–consuming and expensive. Some argue that even accepting the premise that a court may properly decide not to publish an opinion this should not prevent that opinion from being cited as precedent since in common law practice any decision of a court is by its nature precedent. Others argue that a court may try to hide what it is doing in a particular case by preventing the publication of the opinion in the case.

There are several reasons why an unpublished opinion should not be cited: (1) The type of opinion written for the benefit of the parties is different from an opinion writ-

ten for publication and often should not be published without substantial revision; (2) If unpublished opinions could be cited, services that publish only unpublished opinions would soon develop forcing the treatment of unpublished opinions in the same manner as published opinions thereby defeating the purpose of nonpublication; (3) Permitting the citation of unpublished opinions gives an advantage to a person who knows about the case over one who does not; (4) An unpublished opinion is not new authority but only a repeated application of a settled rule of law for which there is ample published authority.

If it is desirable to reduce the number of published opinions, the only alternative to having some opinions unpublished is to decide cases without written opinions. This would be far worse because it would compound the problems of nonpublication and at the same time take away from the parties the benefit of a written opinion.

Section 752.41 (3) authorizes the Supreme Court to establish by rule the procedure under which the Court of Appeals decides which of its opinions are to be published. Sub. (1) provides for a committee of judges of the Court of Appeals to make this decision.

As a safeguard against any mistakes as to nonpublication, sub. (4) adopts the procedure of the United States Court of Appeals for the Seventh Circuit in permitting a person to request that an unpublished opinion be published. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (4) is amended to delete the prior requirement that a motion had to be filed in order to ask the Court of Appeals to have one of its unreported opinions published in the official reports of the Court of Appeals. Requiring a motion to be filed led to confusion in some instances because the person requesting the opinion to be published may not be a party to the appeal decided by the opinion and uncertainty can occur as to who should be served with a copy of the motion and given an opportunity to respond. The requirement to file a motion has been replaced by the need to simply make a request to the Court of Appeals for publication of an unreported opinion. [Re Order effective Jan. 1, 1980]

Court of Appeals Note, 1997: A request under this paragraph [sub. (4) (c)] does not affect the time under sec. (Rule) 809.62 for filing a petition for review. As in the case of reconsideration of a Court of Appeals decision or opinion, withdrawal of an opinion renders that opinion a nullity. Accordingly, a petition for review of that opinion filed prior to its withdrawal is of no effect, except that the petitioner may incorporate it by reference in a petition for review of the opinion subsequently issued in the appeal or proceeding.

Court of Appeals Note, 1997: The Court of Appeals recognizes that many of its opinions are issued as per curiam opinions that should not be published under sec. (Rule) 809.23 (1) (b) 5., Stats. This amendment [of sub. (4)] establishes a procedure whereby a person may request that a per curiam opinion be withdrawn, authored and recommended for publication. The amendment also expressly states that an opinion issued by a single judge of the Court of Appeals under s. 752.31 (2) and (3), Stats., will not be published.

Judicial Council Note, 2008: Subsection (3) was revised to reflect that unpublished Wisconsin appellate opinions are increasingly available in electronic form. This change also conforms to the practice in numerous other jurisdictions, and is compatible with, though more limited than, Fed. R. App. P. 32.1, which abolished any restriction on the citation of unpublished federal court opinions, judgments, orders, and dispositions issued on or after January 1, 2007. The revision to Section (3) does not alter the non–precedential nature of unpublished Wisconsin appellate opinions.

Citing an unpublished opinion of the court of appeals subjected the attorney to a $50 fine. Tamminen v. Aetna Casualty & Surety Co. 109 Wis. 2d 536, 327 N.W.2d 55 (1982).

Sub. (3) does not ban citation to circuit court opinions. Brandt v. LIRC, 160 Wis. 2d 353, 466 N.W.2d 673 (Ct. App. 1991).

Citation to an unpublished court of appeals decision to show a conflict between districts for purposes of s. 809.62 (1) (d) is appropriate. State v. Higginbotham, 162 Wis. 2d 978, 471 N.W.2d 24 (1991).

A party's invitation to the court of appeals to consider an unpublished opinion, or even a naked citation to it, violates the letter and spirit of sub. (3). Kuhn v. Allstate Co. 181 Wis. 2d 453, 510 N.W.2d 826 (Ct. App. 1993).

Only the supreme court has the power to overrule, modify, or withdraw language from a published opinion of the court of appeals. Cook v. Cook, 208 Wis. 2d 166, 560 N.W.2d 246 (1997), 95–1963.

The rule against citing unpublished cases is essential to the reduction of the overwhelming number of published opinions and is a necessary adjunct to economical appellate court administration. Unless and until the nonpublication rule is changed, violations of this rule will not be tolerated. State v. Milanes, 2006 WI App 259, 297 Wis. 2d 684, 727 N.W.2d 94, 06–0014.

The noncitation rule and the concept of stare decisis. Walther. 61 MLR 581 (1978).

Publication of court of appeals' opinions. Scott. WBB July 1988.

Citing Unpublished Opinions in Wisconsin State and Federal Tribunals. Sefarbi & Zaporski. Wis. Law. Nov. 2004.

809.24 Rule (Reconsideration). (1) Except as provided in sub. (4), a party may file a motion for reconsideration in the court of appeals within 20 days after the date of a decision issued pursuant to s. 752.41 (1). The motion must state with particularity the points of law or fact alleged to be erroneously decided in the decision and must include supporting argument. No separate memorandum in support of the motion is permitted unless subsequently ordered by the court. The court may order a response before issuing an amended decision. No response to the motion is permitted unless ordered by the court. The motion and any response shall not exceed 5 pages if a monospaced font is used or 1,100 words if a proportional serif font is used.

(2) In response to a motion for reconsideration, the court shall issue an amended decision or the court shall issue an order denying the motion.

(3) Nothing in this section prohibits the court from reconsidering a decision on its own motion at any time prior to remittitur if no petition for review is filed under s. 809.62 or, if a petition for review is filed, within 30 days after filing the petition for review.

(4) No motion for reconsideration of a court of appeals decision issued under s. 809.105 or 809.107 is permitted.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; 2009 a. 25.

Judicial Council Committee's Note, 1981: Rule 809.24 is amended to refer properly to the petition for supreme court review of decisions of the court of appeals. The rule has been redrafted stylistically. No substantive change is intended. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: Section 809.24 is amended to conform with the court of appeals' internal operating procedures, and to provide an orderly procedure for reconsideration. Reconsideration is intended for those rare cases in which the court of appeals overlooks or misapprehends relevant and material facts or law, not for cases in which a party simply disagrees with the court of appeals. Presentation of new facts or alternate legal arguments is not appropriate on reconsideration. Reconsideration is not permitted in s. 809.105 proceedings related to parental consent prior to performance of abortion due to the abbreviated appellate time periods provided in s. 809.105. Service requirements of s. 801.14 (4) apply. The time for filing a motion for reconsideration cannot be extended. See s. 809.82 (2) (e). [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: The reference to an "order" of the court of appeals is deleted. Prior to 2001 WI 39, s. 809.24 applied to a "decision" of the court. To clarify that a summary disposition order was subject to reconsideration under s. 809.24, a reference to "order" was added by 2001 WI 39. That amendment created confusion as to whether procedural orders issued by the court during the pendency of an appeal could be reconsidered under s. 809.24. However, reconsideration of procedural orders is available under s. 809.14. To eliminate the confusion created by 2001 WI 39, a reference to s. 752.41 (1) was added and "order" was deleted. See *In Interest of A.R.*, 85 Wis. 2d 444, 446, 270 N.W.2d 581 (1978) ("decision" as used in s. 752.41 (1) is the final decision disposing of the appeal).

The amendment also eliminates the requirement that the court of appeals order a response to a motion for reconsideration prior to amending a decision. Often a motion for reconsideration will bring the court's attention to a minor factual misstatement that may be corrected without the benefit of a response. The court of appeals retains the option to order that a response be filed, if it determines that a response will assist the court. [Re Order No. 02–01 effective January 1, 2003.]

809.25 Rule (Costs and fees). (1) COSTS. (a) Costs in a civil appeal are allowed as follows unless otherwise ordered by the court:

1. Against the appellant before the court of appeals when the appeal is dismissed or the judgment or order affirmed.

2. Against the respondent before the court of appeals when the judgment or order is reversed.

3. Against the petitioner before the supreme court when the judgment of the court of appeals is affirmed by the supreme court.

4. Against the respondent before the supreme court when the judgment of the court of appeals is reversed by the supreme court and the costs in the court of appeals are canceled and may be taxed by the supreme court as costs against another party.

5. In all other cases as allowed by the court.

(b) Allowable costs include:

1. Cost of printing and assembling the number of copies and briefs and appendices required by the rules, not to exceed the rates generally charged in Dane County, Wisconsin, for offset printing of camera–ready copy and assembling;

2. Fees charged by the clerk of the court;

3. Cost of the preparation of the transcript of testimony or for appeal bonds;

4. Fees of the clerk of the trial court for preparation of the record on appeal;

5. Other costs as directed by the court.

(c) A party seeking to recover costs in the court shall file a statement of the costs within 14 days of the filing of the decision of the court. An opposing party may file, within 11 days after service of the statement, a motion objecting to the statement of costs.

(d) Costs allowed by the court are taxed by the clerk of the court of appeals irrespective of the filing by a party of a petition

for review in the supreme court. In the event of review by the supreme court, costs are taxed by the clerk of the supreme court as set forth in pars. (a) and (b). The clerk of the supreme court shall include in the remittitur the costs allowed in the court. The clerk of circuit court shall enter the judgment for costs in accordance with s. 806.16.

(2) FEES. (a) The clerk of the court shall charge the following fees:

1. For filing an appeal, cross–appeal, petition for review, petition to bypass, or other proceeding, $195.

2. For making a copy of a record, paper, or opinion of the court and comparing it to the original, 40 cents for each page.

3. For comparing for certification of a copy of a record, entry or paper, when the copy is furnished by the person requesting its certification, 25 cents for each page.

4. For a certificate and seal, $1, except for an attorney's certificate of good standing, $3.

(b) The state is exempt from payment of the fees set forth in par. (a) 1. to 4., except that the clerk is not obligated to supply the state with free copies of opinions.

(c) The clerk of the court of appeals may refuse to file, record, certify, or render any other service without prepayment of the fees established by this section.

(3) FRIVOLOUS APPEALS. (a) If an appeal or cross–appeal is found to be frivolous by the court, the court shall award to the successful party costs, fees, and reasonable attorney fees under this section. A motion for costs, fees, and attorney fees under this subsection shall be filed no later than the filing of the respondent's brief or, if a cross–appeal is filed, no later than the filing of the cross–respondent's brief. This subsection does not apply to appeals or cross–appeals under s. 809.107, 809.30, or 974.05.

(b) The costs, fees and attorney fees awarded under par. (a) may be assessed fully against the appellant or cross–appellant or the attorney representing the appellant or cross–appellant or may be assessed so that the appellant or cross–appellant and the attorney each pay a portion of the costs, fees and attorney fees.

(c) In order to find an appeal or cross–appeal to be frivolous under par. (a), the court must find one or more of the following:

1. The appeal or cross–appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

2. The party or the party's attorney knew, or should have known, that the appeal or cross–appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 316, 317; 1981 c. 390 ss. 220, 252; 1985 a. 29; Sup. Ct. Order, 151 Wis. 2d xvii (1989); 1995 a. 224; 1997 a. 254; 1999 a. 85; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; 2003 a. 33.

Judicial Council Committee's Note, 1978: Most of the provisions of former ss. 251.23 and 251.90 are retained. The major change is to provide that execution for costs in the Court of Appeals is to be had in the trial court in accordance with Rule 806.16 rather than in the Court of Appeals. The Judicial Council did not review the adequacy of the fees and thus made no recommendations on them. It is suggested, however, that many of the fees appear to be out of date and should be revised. This should be done in connection with a general review of fees in all courts. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) (a) and (d), which governs costs that are allowed in an appeal to the Court of Appeals or a review by the Supreme Court, have been amended for purposes of clarification.

A provision has been added to clarify that costs are taxed by the clerk in the Court of Appeals irrespective of the filing of a petition for review in the Supreme Court. In the event of review by the Supreme Court, a provision has been added specifically stating that costs are allowed against a petitioner in a case before the Supreme Court when the decision of that court affirms a judgment of the Court of Appeals.

An additional clarifying provision has been added allowing costs against a respondent in a case before the Supreme Court when the petitioner before the Supreme Court has achieved reversal of a judgment of the Court of Appeals. The provision further states that the costs that were allowed when the case was originally decided by the Court of Appeals are canceled. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (2) (a) 1. is amended to correct the reference from a petition to appeal to a petition for review. The supreme court reviews the decisions of the court of appeals. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: The 7–day time limit in sub. (1) (c) was changed to 11 days. Please see the comment to s. 808.07 (6) concerning time limits. [Re Order No. 00–02 effective July 1, 2001]

An appeal was frivolous when an assertion of trial court error was without any reasonable basis in law or equity and there was no argument that existing law should have been extended, modified, or reversed. In Matter of Estate of Koenigsmark, 119 Wis. 2d 394, 351 N.W.2d 169 (Ct. App. 1984).

Tax protesters appealing without counsel were properly assessed costs under sub. (3) (c) 2. Tracy v. Department of Revenue, 133 Wis. 2d 151, 394 N.W.2d 756 (Ct. App. 1986).

Restricting access to courts as a sanction for a frivolous action was appropriate when the order was narrowly tailored to balance the interests of public access to courts, res judicata, and the public's right not to have frivolous litigation be a drain on public resources. Minniecheske v. Griesbach, 161 Wis. 2d 743, 468 N.W.2d 760 (Ct. App. 1991).

Asking the court of appeals to reweigh the testimony of witnesses and to reach a conclusion regarding credibility contrary to that reached by a trial judge was frivolous. Lessor v. Wangelin, 221 Wis. 2d 659, 586 N.W.2d 1 (Ct. App. 1998), 97–2974.

A frivolous appeal filed by a non–lawyer results in the same harm as if it were filed by a lawyer. It would not be fair or logical to say that had a lawyer filed the appeal costs would have been awarded but to deny recovery because the appeal was presented by a pro se litigant. Holz v. Busy Bees Contracting, Inc. 223 Wis. 2d 598, 589 N.W.2d 633 (Ct. App. 1998), 98–1076.

While only an appellate court can find an appeal frivolous, the case may be remanded to the circuit court to determine the amount of attorney fees to be awarded. Lucarelli v. Vilas County, 2000 WI App 157, 238 Wis. 2d 84, 616 N.W.2d 153, 99–2827.

In addition to an order to pay the respondent's costs, fees, and attorney fees, an appellant whose appeal was found frivolous after his brief was stricken for being offensive, scurrilous, and inappropriate was barred from filing any future proceedings in the court of appeals and the circuit court arising from, relating to, or involving the respondents. Puchner v. Hepperla, 2001 WI App 50, 241 Wis. 2d 545, 625 N.W.2d 609, 98–2853.

The circuit court's award of fees to the respondent due to the appellant's overlitigating by filing multiple frivolous issues on appeal, in violation of the circuit court's order, was not prevented by a court of appeals finding that no fees could be awarded under sub. (3). Zhang v. Yu, 2001 WI App 267, 248 Wis. 2d 913, 637 N.W.2d 754, 00–3237.

In order to be awarded costs, fees, and reasonable attorney fees, the moving party must prove that the entire appeal presented was frivolous. If an argument advanced has arguable merit, then the appeal is not frivolous. Baumeister v. Automated Products, Inc. 2004 WI 148, 277 Wis. 2d 21, 690 N.W.2d 1, 02–1003

The trial court cannot make a finding that an appeal is frivolous and is without authority to order the payment of frivolous costs and fees associated with an appeal. Morters v. Aiken & Scoptur, 2006 WI App 46, 289 Wis. 2d 833, 712 N.W.2d 71, 05–0703.

809.26 Rule (Remittitur). (1) The clerk of the court of appeals shall transmit to the circuit court the judgment and decision or order of the court and the record in the case filed pursuant to s. 809.15 31 days after the filing of the decision or order of the court, or as soon thereafter as practicable. If a petition for review is filed pursuant to s. 809.62, the transmittal is stayed until the supreme court rules on the petition. If a motion for reconsideration is filed under s. 809.24, the transmittal is stayed until the court files an order denying the motion, or files an amended decision or order, and the subsequent expiration of any period for filing a petition for review.

(2) If the supreme court grants a petition for review of a decision of the court of appeals, the supreme court upon filing its decision shall transmit to the trial court the judgment and opinion of the supreme court and the complete record in the case unless the case is remanded to the court of appeals with specific instructions.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); 1981 c. 390 s. 252; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii.

Judicial Council Committee's Note, 1978: Former s. 817.35 is embodied in this section except that the time for issuance of the remittitur is reduced from 60 to 31 days. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: This section is amended by creating a sub. (2) that specifically authorizes the Supreme Court after filing its decision in the review of a decision from the Court of Appeals to remit directly to the trial court the complete record of the case without the necessity of returning the case to the Court of Appeals for remittitur to the trial court. The only exception to this new procedure will occur when the Supreme Court remands a case to the Court of Appeals with some

specific instructions that the Court of Appeals is required to follow. [Re Order effective Jan. 1, 1980].

Judicial Council Note, 2002: Subsection (1) is amended to permit the clerk of courts some flexibility in the 31–day remittitur deadline to accommodate workload fluctuation. By Supreme Court Order 00–02, 2001 WI 39, "within" was added immediately preceding "31 days." The Judicial Council had not intended to suggest changing the substance of existing time parameters for remittitur, when it petitioned for that amendment, but merely proposed the additional word for ease of reading. Since that amendment, it has been argued that the addition of "within" permits remittitur prior to the expiration of the 31–day period. However, the 31–day period coincides with the time limit for filing a petition for review. Absent stipulation among the parties that no petition for review will be filed, remittitur should not occur before the expiration of the petition for review deadline. [Re Order No. 02–01 effective January 1, 2003]

An appellate court's jurisdiction ceases upon remittitur in the absence of inadvertence, fraud, or void judgment. The inadvertence exception applies to the act of remitting the record itself, which must be inadvertently done. State ex rel. Fuentes v. Court of Appeals, 225 Wis. 2d 446, 593 N.W.2d 48 (1999), 98–1534.

SUBCHAPTER III

APPEAL PROCEDURE IN COURT OF APPEALS IN S. 971.17 PROCEEDINGS AND IN CRIMINAL AND CH. 48, 51, 55, 938, AND 980 CASES

809.30 Rule (Appeals in s. 971.17 proceedings and in criminal, ch. 48, 51, 55, 938, and 980 cases). (1) DEFINITIONS. In this subchapter:

(a) "Final adjudication" means the entry of a final judgment or order by the circuit court in a s. 971.17 proceeding, in a criminal case, or in a ch. 48, 51, 55, 938, or 980 case, other than a termination of parental rights case under s. 48.43 or a parental consent to abortion case under s. 48.375 (7).

(b) "Person" means any of the following:

1. A defendant seeking postconviction relief in a criminal case.

2. A party, other than the state, seeking postdisposition relief in a case under ch. 48, other than a termination of parental rights case under s. 48.43 or a parental consent to abortion case under s. 48.375 (7).

3. A party, other than the state, seeking postdisposition relief in a case under ch. 938.

4. A subject individual or ward seeking postdisposition relief in a s. 971.17 proceeding or a case under ch. 51, 55, or 980.

5. Any other person who may appeal under ss. 51.13 (5), 51.20 (15), or 55.20.

(c) "Postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m) or (9g), 973.19, 973.195, 973.198, 974.06, or 974.07 (2). In a ch. 980 case, the term means an appeal or a motion for postcommitment relief under s. 980.038 (4).

(d) "Postdisposition relief" means an appeal or a motion for relief under this subchapter from a circuit court's final adjudication.

(e) "Prosecutor" means a district attorney, corporation counsel, or other attorney authorized by law to represent the state in a criminal case, a proceeding under s. 971.17, or a case under ch. 48, 51, 55, 938, or 980.

(f) "Sentencing" means the imposition of a sentence, a fine, or probation in a criminal case. In a ch. 980 case, the term means the entry of an order under s. 980.06.

(2) APPEAL; POSTCONVICTION OR POSTDISPOSITION MOTION. (a) *Appeal procedure; counsel to continue.* A person seeking postconviction relief in a criminal case; a person seeking postdisposition relief in a case under ch. 48 other than a termination of parental rights case under s. 48.43 or a parental consent to abortion case under s. 48.375 (7); or a person seeking postdisposition relief in a s. 971.17 proceeding or in a case under ch. 51, 55, 938, or 980 shall comply with this section. Counsel representing the person at sentencing or at the time of the final adjudication shall continue representation by filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition relief unless counsel is discharged by the person or allowed to withdraw by the circuit court before the notice must be filed.

(b) *Notice of intent to pursue postconviction or postdisposition relief.* Within 20 days after the date of sentencing or final adjudication, the person shall file in circuit court and serve on the prosecutor and any other party a notice of intent to pursue postconviction or postdisposition relief. If the record discloses that sentencing or final adjudication occurred after the notice of intent was filed, the notice shall be treated as filed after sentencing or final adjudication on the day of the sentencing or final adjudication. The notice shall include all of the following:

1. The case name and number.

2. An identification of the judgment or order from which the person intends to seek postconviction or postdisposition relief and the date on which the judgment or order was entered.

3. The name and address of the person and his or her trial counsel.

4. Whether the person's trial counsel was appointed by the state public defender and, if so, whether the person's financial circumstances have materially improved since the date on which his or her indigency was determined.

5. Whether the person requests the state public defender to appoint counsel for purposes of postconviction or postdisposition relief.

6. Whether a person who does not request the state public defender to appoint counsel will represent himself or herself or will be represented by retained counsel. If the person has retained counsel to pursue postconviction or postdisposition relief, counsel's name and address shall be included.

(c) *Clerk to send materials.* Within 5 days after a notice under par. (b) is filed, the clerk of circuit court shall:

1. If the person requests representation by the state public defender for purposes of postconviction or postdisposition relief, send to the state public defender's appellate intake office a copy of the notice that shows the date on which it was filed or entered, a copy of the judgment or order specified in the notice that shows the date on which it was filed or entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings in which a transcript has been filed with the clerk of circuit court.

2. If the person does not request representation by the state public defender, send or furnish to the person, if appearing without counsel, or to the person's attorney if one has been retained, a copy of the judgment or order specified in the notice that shows the date on which it was filed or entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings in which a transcript has been filed with the clerk of circuit court.

(d) *Indigency redetermination.* Except as provided in this paragraph, whenever a person whose trial counsel is appointed by the state public defender files a notice under par. (b) requesting public defender representation for purposes of postconviction or postdisposition relief, the prosecutor may, within 5 days after the notice is served and filed, file in the circuit court and serve upon the state public defender a request that the person's indigency be redetermined before counsel is appointed or transcripts are requested. This paragraph does not apply to a person who is entitled to be represented by counsel under s. 48.23, 51.60 (1), 55.105, or 938.23.

(e) *State public defender appointment of counsel; transcript and circuit court case record request.* Within 30 days after the state public defender appellate intake office receives the materials from the clerk of circuit court under par. (c), the state public defender shall appoint counsel for the person and request a transcript of the reporter's notes and a copy of the circuit court case record, except that if the person's indigency must first be determined or redetermined the state public defender shall do so,

appoint counsel, and request transcripts and a copy of the circuit court case record within 50 days after the state public defender appellate intake office receives the material from the clerk of circuit court under par. (c).

(f) *Person not represented by public defender; transcript and circuit court case record request.* A person who does not request representation by the state public defender for purposes of postconviction or postdisposition relief shall request a transcript of the reporter's notes, and may request a copy of the circuit court case record, within 30 days after filing a notice under par. (b). A person who is denied representation by the state public defender for purposes of postconviction or postdisposition relief shall request a transcript of the reporter's notes, and may request a copy of the circuit court case record, within 90 days after filing a notice under par. (b).

(fm) *Transcript and circuit court case record request in chs. 48 and 938 proceedings.* A child or juvenile who has filed a notice of intent to pursue relief from a judgment or order entered in a ch. 48 or 938 proceeding shall be furnished at no cost a transcript of the proceedings or as much of the transcript as is requested, and may request a copy of the circuit court case record. To obtain the transcript and circuit court case record at no cost, an affidavit must be filed stating that the person who is legally responsible for the child's or juvenile's care and support is financially unable or unwilling to purchase the transcript and a copy of the circuit court case record.

(g) *Filing and service of transcript and circuit court case record.* 1. The clerk of circuit court shall serve a copy of the circuit court case record on the person within 60 days after receipt of the request for the circuit court case record.

2. The court reporter shall file the transcript with the circuit court and serve a copy of the transcript on the person within 60 days of the request for the transcript. Within 20 days after the request for a transcript of postconviction or postdisposition proceedings brought under sub. (2) (h), the court reporter shall file the original with the circuit court and serve a copy of that transcript on the person. The reporter may seek an extension under s. 809.11 (7) for filing and serving the transcript.

(h) *Notice of appeal, postconviction or postdisposition motion.* The person shall file in circuit court and serve on the prosecutor and any other party a notice of appeal or motion seeking postconviction or postdisposition relief within 60 days after the later of the service of the transcript or circuit court case record. The person shall file a motion for postconviction or postdisposition relief before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised. A postconviction or postdisposition motion under this section may not be accompanied by a notice of motion and is made when filed. A notice of appeal filed under this section shall conform to the requirements set forth in s. 809.10.

(i) *Order determining postconviction or postdisposition motion.* Unless an extension is requested by a party or the circuit court and granted by the court of appeals, the circuit court shall determine by an order the person's motion for postconviction or postdisposition relief within 60 days after the filing of the motion or the motion is considered to be denied and the clerk of circuit court shall immediately enter an order denying the motion.

(j) *Appeal from judgment and order.* The person shall file in circuit court and serve on the prosecutor and any other party a notice of appeal from the judgment of conviction and sentence or final adjudication and, if necessary, from the order of the circuit court on the motion for postconviction or postdisposition relief within 20 days of the entry of the order on the postconviction or postdisposition motion. A notice of appeal filed under this section shall conform to the requirements set forth in s. 809.10. Appeals in cases under chs. 48, 51, 55, and 938 are subject to the docketing statement requirements of s. 809.10 (1) (d) and may be eligible for the expedited appeals program in the discretion of the court.

(k) *Transmittal of record.* Except as otherwise provided in ss. 809.14 (3) and 809.15 (4) (b) and (c), the clerk of circuit court shall transmit the record on appeal to the court of appeals as soon as prepared but in no event more than 40 days after the filing of the notice of appeal. Subsequent proceedings in the appeal are governed by the procedures for civil appeals.

(L) *Appeals under s. 974.06 or 974.07.* An appeal under s. 974.06 or 974.07 is governed by the procedures for civil appeals.

(3) APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL. In a case in which the state of Wisconsin, the representative of the public, any other party, or any person who may appeal under s. 51.13 (5), 51.20 (15), or 55.20 appeals and the person who is the subject of the case or proceeding is a child or claims to be indigent, the court shall refer the person who is the subject of the case or proceeding to the state public defender for the determination of indigency and the appointment of legal counsel under ch. 977.

(4) MOTION TO WITHDRAW AS APPOINTED COUNSEL. (a) If postconviction, postdisposition, or appellate counsel appointed for the person under ch. 977 seeks to withdraw from the case, counsel shall serve a motion to withdraw upon the person and upon the appellate division intake unit in the Madison appellate office of the state public defender. If the motion is filed before the notice of appeal is filed, the motion shall be filed in circuit court. If the motion is filed after a notice of appeal has been filed, the motion shall be filed in the court of appeals. Service of the motion to withdraw on the state public defender is not required when the motion is filed by an assistant state public defender or when a no–merit report is filed with the motion.

(b) Within 20 days after receipt of the motion under par. (a), the state public defender shall determine whether successor counsel will be appointed for the person and shall notify the court in which the motion was filed of the state public defender's determination.

(c) Before determining the motion to withdraw, the court shall consider the state public defender's response under par. (b) and whether the person waives the right to counsel.

(d) When the motion to withdraw is filed in circuit court, appointed counsel shall prepare and serve a copy of the order determining counsel's motion to withdraw upon the person and the appellate division intake unit in the Madison appellate office of the state public defender within 14 days after the court's determination.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 112 Wis. 2d xvii (1985); Sup. Ct. Order, 123 Wis. 2d xi (1985); 1985 a. 332; Sup Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93–19, 179 Wis. 2d xxiii (1994); 1993 a. 16, 395, 451; 1995 a. 77; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 264, 434; 2007 a. 20; Sup. Ct. Order No. 04–08, 2008 WI 108, filed 7–30–08, eff. 1–1–09; 2009 a. 26, 28, 180, 276; 2011 a. 38.

Judicial Council Committee's Note, 1978: Many changes are made in prior practice in criminal cases and in protective placement, juvenile and mental commitment cases. Under the former procedure counsel, usually the State Public Defender appointed by the Supreme Court, was required to order a transcript, wait for its preparation, review it, present to the trial court by a post–trial motion any issues which the defendant desired to raise on appeal even if the issue had been presented to and decided by the court during the trial, [see State v. Charette, 51 Wis. 2d 531, 187 N.W.2d 203 (1971) and State v. Wuensch, 69 Wis. 2d 467, 230 N.W.2d 665 (1975)], and after the court ruled on the motion, appeal both the original conviction and the denial of the post–trial motion to the Supreme Court. Often a year or more elapsed between the sentencing of the defendant and the docketing of his appeal in the Supreme Court. This delay, combined with the delay in the Supreme Court caused by its backlog, often resulted in an appeal not being decided by the Supreme Court until two or three years after conviction.

The procedures in this section are designed to expedite the entire process by putting time limits on each step and by eliminating the necessity of each issue being presented twice to the trial court.

The term "postconviction relief", as used in this Rule, includes new trial, reduction of sentence and any other type of relief which the trial court is authorized to give, other than under s. 974.06.

Extensions of time for taking various steps under this section can be granted by the court of appeals under Rule 809.82. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) (h) is amended to increase from 10 to 20 days the period for a defendant to file a notice of appeal after entry of a trial court's order denying postconviction relief. It is sometimes difficult to meet the present 10–day requirement for filing an appeal under this subsection due to the delays that may occur in the prompt delivery by mail of the order of the trial court on

a motion for postconviction relief. Increasing the time period by 10 days does not unduly lengthen the appellate process for determination of an appeal on its merits. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Sub. (1) (e) is amended to increase from 40 to 60 days the period for the court reporter to complete and serve a copy of the transcript on the defendant and sub. (1) (f) is amended to increase from 30 to 60 days the period for the defendant to either file a notice of appeal or motion seeking postconviction relief. The previous time periods were often insufficient for preparation of the transcript and for review of the transcript and record by the defendant determining which, if any, postconviction proceedings to commence.

Sub. (1) (e) is clarified to establish that the original of the transcript is filed with the trial court by the court reporter whereas a copy is served by the court reporter on the defendant. Also, the transcript of postconviction proceedings must be filed and served by the court reporter within 20 days of ordering by the defendant.

Sub. (1) (i) is amended to provide that the clerk of the trial court shall transmit the record to the court of appeals no later than 40 days after the filing of the notice of appeal. Presently transmittal of the record is governed by Rule 809.15 (4) which allows up to 90 days from the filing of the notice of appeal.

The total time period from ordering the transcript to transmittal of the record to the court of appeals has not been altered by these amendments.

Judicial Council Committee's Note, 1978, explained that extensions of time for taking various steps under Rule 809.30 can be granted by the court of appeals under Rule 809.82. In State v. Rembert, 99 Wis. 2d 401, 299 N.W.2d 292 (Ct. App. 1980), the court of appeals stated that its authority to extend the time periods of Rule 809.30 is to the exclusion of the trial court. The court of appeals, not the trial court, is responsible for monitoring, enforcing or extending the time periods of Rule 809.30. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 1984: Requiring that the appellate process be initiated by filing a notice in the trial court within 20 days after sentencing is intended to:

Expedite the process; the information needed for a decision regarding postconviction relief is available to the defendant at sentencing and the decision can usually be made shortly thereafter.

Emphasize trial counsel's duties to counsel the defendant about the decision to seek postconviction relief and to continue representation until appellate counsel is retained or appointed. SCR 20.34 (2) (d); Whitmore v. State, 56 Wis. 2d 706, 203 N.W.2d 56 (1973).

Create a record in the trial court showing whether the postconviction process has been timely invoked.

Notify the judge, clerk, court reporter and district attorney that postconviction relief is contemplated and allow the district attorney to request a redetermination of indigency in public defender cases.

Give the public defender the information needed to appoint counsel and order transcripts promptly, and to decide whether the defendant's indigency must first be determined or redetermined. [Re order effective July 1, 1985]

Judicial Council Note, 1986: Sub. (1) is amended to clarify the application of the statute when the appeal is taken from the final judgment or order in a non–criminal case.

Sub. (2) (fm) is prior s. 48.47 (2), renumbered for more logical placement in the statutes. [Re Order eff. 7–1–87]

Judicial Council Note, 2001: Subtitles have been added. Subsection (2) (e) was revised to amend the time for appointing appellate counsel and to clarify that a defendant represented by appointed counsel must request a copy of the circuit court case record from the circuit court. Subsection (2) (f) was amended to clarify that a defendant not represented by the state public defender may request a copy of the circuit court case record from the circuit court. The second sentence of sub. (2) (f) sets a time limit for a defendant who has unsuccessfully sought public defender representation under sub. (2) (e) to request the transcripts and circuit court case record. Subsection (2) (g) was amended to require the circuit court clerk to send the circuit court case record to the defendant within 60 days after receipt of the request. Subsection (2) (h) was revised to require the defendant to file the notice of appeal either within 60 days after service of the last transcript or the circuit court case record, whichever occurs later. The second sentence of sub. (2) (h) specifies that a notice of motion shall not be filed with a s. 809.30 postconviction motion. If the circuit court grants a hearing on the motion, the circuit court will notify the parties of the date.

The first clause of sub. (2) (i) specifies that an extension may be granted by the court of appeals.

Subsection (3) was revised to clarify that it applies in all appeals utilizing s. 809.30, including cases under chs. 48, 51, 55, and 938.

Subsection (4) establishes a procedure for making and determining motions to withdraw by appointed counsel. This rule does not change existing law concerning when a withdrawal motion is necessary. See e.g. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 622–24, 516 N.W.2d 362 (1994).

Often motions to withdraw are the result of a disagreement between appointed counsel and the defendant, sometimes inaccurately called a "conflict," about the existence of a meritorious issue for appeal, or about the manner in which any such issue should be raised. It is counsel's duty to decide what issues in a case have merit for an appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). Postconviction counsel is entitled to exercise reasonable professional judgment in winnowing out even arguable issues in favor of others perceived to be stronger. *Id.* Counsel's failure to raise an issue on direct appeal may prevent the defendant from raising it in a subsequent s. 974.06 collateral review proceeding, absent "sufficient reason." *State v. Escalona–Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

The rules of appellate procedure require that a defendant choose whether to proceed with the assistance of appointed counsel or proceed *pro se*. *State v. Redmond*, 203 Wis. 2d 13, 552 N.W.2d 115 (Ct. App. 1996). A defendant has neither the right to appointed counsel of choice nor the right to insist that a particular issue be raised. *Oimen v. McCaughtry*, 130 F.2d 809 (7th Cir. 1997). "The defendant may terminate appellate counsel's representation and proceed *pro se* or the defendant may allow postconviction relief to continue based on counsel's brief and then seek relief on the grounds of ineffective assistance of appellate counsel." *State v. Debra A.E.*, 188 Wis. 2d 111, 137–39, 523 N.W.2d 727 (1994). On ineffective assistance of appellate counsel claims, the court will determine whether counsel's choice of issues met the objective standard of reasonableness. *Gray v. Greer*, 778 F.2d 350 (7th Cir. 1985).

The state public defender will not appoint successor counsel where a defendant disagrees with the legal conclusions of appointed counsel or when a defendant wants a second opinion as to the merits of an appeal. To do so would unduly delay the disposition of the appeal, and would be contrary to the interests of justice. Wis. Admin. Code s. PD 2.04.

If a defendant elects to waive counsel and proceed *pro se*, the court must find that the defendant has been provided with clear warnings with respect to forfeiture of the right to counsel and the dangers of self–representation. *State v. Cummings*, 199 Wis. 2d 721, 546 N.W.2d 406 (1996). [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: The terminology throughout s. 809.30 is amended to clarify that persons seeking to appeal final judgments or orders in criminal, ch. 48 (child or unborn child in need of protection or services, guardianship or adoption), ch. 51 (civil commitment), ch. 55 (protective placement), and ch. 938 (delinquency or juvenile justice) cases must comply with this rule. Prior language referred to all such persons as defendants and to all appeal proceedings as "postconviction," and was confusing to parties and practitioners.

Amended sub. (2) (h) provides a cross–reference to the statutory section governing the requirements of a notice of appeal. The requirement of a motion for postconviction or postdisposition relief on grounds other than sufficiency of the evidence or issues previously raised is consistent with s. 974.02 (2).

Prior to 2001 WI 39, effective 7/1/01, this rule did not specify who could request an extension of time for a circuit court to decide a postconviction motion. Sub. (2) (i) is amended to permit the circuit court, the state, the defendant, or any other party to request an extension of time for the circuit court to decide a postconviction or postdisposition motion.

Subsection (2) (j) is amended for clarification and consistency, and to cross–reference s. 809.10, which contains the requirements governing a notice of appeal. In a criminal case, the prosecutor who represented the state in the circuit court should be served with a copy of the notice of appeal.

The amendment to sub. (4) (a) clarifies that the rule requiring service on the state public defender appellate division is applicable only to postconviction, postdisposition, and appellate appointments. Rule 809.30 (4), 2001 WI 39, effective 7/1/01, is designed to assure that courts acting on motions to withdraw have knowledge of the state public defender's position with respect to appointing successor counsel. Subsection (4) (a) is amended to reflect that withdrawal motions filed by state public defender staff attorneys already contain that information and that the issue of appointment of successor counsel is irrelevant to the court's determination when a no–merit report is filed. [Re Order No. 02–01 effective January 1, 2003]

NOTE: Sup. Ct. Order No. 04–08, 2008 WI 108, states, "The Judicial Council Committee Comments are not adopted, but will be published and may be consulted for guidance in interpreting and applying Wis. Stat. ss. 809.30, 809.32 and 809.62."

Judicial Council Committee Comment, July 2008: The amendment to s. 809.30 (2) (b) allows a notice of intent that is filed too early to be deemed filed on the date that a judgment and sentence or other final adjudication is filed. This is consistent with the procedure applicable to civil appeals under s. 808.04 (8). [Re Order No. 08–04 effective January 1, 2009]

The court of appeals did not abuse its discretion in refusing to allow a convicted felon to pursue a late appeal. State v. Argiz, 101 Wis. 2d 546, 305 N.W.2d 124 (1981).

The limitation period under sub. (1) (f) [now sub. (2) (h)] cannot begin to run until the entry of an appealable order. In Interest of M. T. 108 Wis. 2d 410, 321 N.W.2d 289 (1982).

For issues on appeal to be considered matters of right, postconviction motions must be made except in challenges to sufficiency of the evidence under s. 974.02 (2). State v. Monje, 109 Wis. 2d 138, 325 N.W.2d 695 (1982).

Because double jeopardy precludes retrial if an appellate court finds a conviction is not supported by sufficient evidence, the court must decide a claim of insufficiency even if there are other grounds for reversal that would not preclude retrial. State v. Ivy, 119 Wis. 2d 591, 350 N.W.2d 622 (1984).

The court may for good cause grant extensions under this section. State v. Harris, 149 Wis. 2d 943, 440 N.W.2d 364 (1989).

A defendant unable to assist counsel or make decisions committed by law to the defendant with a degree of rational reasoning is incompetent to pursue postconviction relief. The process to be followed when a competency issue arises is discussed. State v. Debra A. E. 188 Wis. 2d 111, 523 N.W.2d 727 (Ct. App. 1994).

If a defendant is represented by counsel, the defendant is statutorily barred from proceeding pro se during the pendency of an appeal. State v. Redmond, 203 Wis. 2d 13, 552 N.W.2d 115 (Ct. App. 1996), 94–1544.

A criminal defendant may bring a motion under sub. (2) (h) for a new trial based on newly–discovered evidence. The defendant has the burden of establishing the 5 criteria enumerated by the court by clear and convincing evidence. State v. Brunton, 203 Wis. 2d 195, 552 N.W.2d 452 (Ct. App. 1996), 95–0111.

When a criminal appeal is taken from a plea bargain, it brings the entire judgment before the appellate court. When a plea bargain is negated, the proper disposition is to remand the cause for further proceedings on the original charges. State v. Briggs, 218 Wis. 2d 61, 579 N.W.2d 783 (Ct. App. 1998), 97–1558.

A defendant subject to a post–probation revocation sentence cannot use this section and s. 973.19 (1) (b) to raise issues that go the original judgment, but the defendant may take a direct appeal from a subsequent judgment in order to fully litigate issues initially raised by the resentencing. State v. Scaccio, 2000 WI App 265, 240 Wis. 2d 95, 622 N.W.2d 449, 99–3101.

Section 973.195 creates a separate and specific statutory procedure for requesting a sentence reduction that should be used in place of this section whenever the basis for the modification is a change in law or procedure related to sentencing effective after the inmate was sentenced that would have resulted in a shorter term of a confinement. State v. Torres, 2003 WI App 199, 267 Wis. 2d 213, 670 N.W.2d 400, 03–0233.

Neither sub. (4) or other law requires that a motion to withdraw be filed any time an attorney appointed by the public defender terminates his or her postconviction/appellate representation of a defendant. Counsel for the defendant did not render ineffective assistance by closing his file without first obtaining court permission to withdraw or otherwise seeking a contemporaneous judicial determination that his client had knowingly waived either the right to appeal or the right to counsel. Ford v. Holm, 2004 WI App 22, 269 Wis. 2d 810, 676 N.W.2d 500, 02–1828.

When a defendant seeks modification of the sentence imposed at resentencing, sub. (2) and s. 973.19 require the defendant to file a postconviction motion with the circuit court before taking an appeal. These rules on sentence modification apply

even though the sentence imposed at resentencing is identical to a previous sentence and regardless of whether a defendant challenges the original sentence, a sentence after revocation, or the sentence imposed at resentencing. State v. Walker, 2006 WI 82, 292 Wis. 2d 326, 716 N.W.2d 498, 04–2820.

If a defendant does not want a no–merit report, the defendant has 3 choices: 1) fire counsel and proceed pro se; 2) fire counsel and hire private counsel if financially feasible; or 3) direct that the file be closed. A defendant cannot: 1) insist that appointed counsel pursue an advocacy appeal under s. 809.30 despite counsel's view that an appeal would lack arguable merit; 2) alternatively insist on different appointed counsel who will write a brief the way the defendant wants it written; or 3) forbid appointed counsel from filing a no–merit report and then claim that counsel has abandoned him or her when counsel moves to withdraw from representation. Van Hout v. Endicott, 2006 WI App 196, 296 Wis. 2d 580, 724 N.W. 2d 692, 04–1192.

Wisconsin affords a convicted person the right to postconviction counsel. It would be absurd to suggest that a person has a right to counsel at trial and on appeal, but no right to counsel at a postconviction proceeding in the circuit court, which is often the precursor to an appeal. However, a defendant does not have the right to be represented by: 1) an attorney he or she cannot afford; 2) an attorney who is not willing to represent the defendant; 3) an attorney with a conflict of interest; or 4) an advocate who is not a member of the bar. State v. Peterson, 2008 WI App 140, 314 Wis. 2d 192, 757 N.W.2d 834, 07–1867.

The decision to appeal. Kempinen, WBB August, 1985.

Sentence modification by Wisconsin trial courts. Kassel. 1985 WLR 195.

The decision to appeal a criminal conviction: Bridging the gap between the obligations of trial and appellate counsel. 1986 WLR 399.

809.31 Rule (Release on bond pending seeking postconviction relief). (1) A defendant convicted of a misdemeanor or felony who is seeking relief from a conviction and sentence of imprisonment or to the intensive sanctions program and who seeks release on bond pending a determination of a motion or appeal shall file in the trial court a motion seeking release.

(2) The trial court shall promptly hold a hearing on the motion of the defendant, determine the motion by order and state the grounds for the order.

(3) Release may be granted if the court finds that:

(a) There is no substantial risk the appellant will not appear to answer the judgment following the conclusion of postconviction proceedings;

(b) The defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice;

(c) The defendant will promptly prosecute postconviction proceedings; and

(d) The postconviction proceedings are not taken for purposes of delay.

(4) In making the determination on the motion, the court shall take into consideration the nature of the crime, the length of sentence and other factors relevant to pretrial release.

(5) The defendant or the state may seek review of the order of the circuit court by filing a motion in the court of appeals under s. 809.14. The party seeking review must attach to its motion a copy of the judgment of conviction or other final judgment or order, the circuit court order regarding release pending appeal, the circuit court statement of reasons for the decision regarding release pending appeal, and the transcript of any release proceedings in the circuit court or a statement explaining why no transcript is available. The party filing the motion shall request a transcript of the reporter's notes for any proceeding in the circuit court regarding release pending appeal for all parties to the appeal and make arrangements to pay for the transcript within 7 days after the entry of the circuit court order regarding release pending appeal. Within 7 days after the date on which the transcript was requested and arrangements were made for payment, the reporter shall serve copies of the transcript on the parties to the appeal, file the transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the transcript has been filed and served. The motion shall be filed within 21 days after the entry of the circuit court order. The opposing party may file a response within 14 days after the filing of the motion.

(6) The court ordering release shall require the defendant to post a bond in accordance with s. 969.09 and may impose other terms and conditions. The defendant shall file the bond in the trial court.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252; 1991 a. 39; 1997 a. 232; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii.

Judicial Council Committee's Note, 1978: Section 969.09 provides for release on bond pending appeal and the conditions of the bond. Section 969.01 (2) provides for bond in felony cases after conviction in the discretion of the trial court or by the Supreme Court or a justice thereof or the Court of Appeals or a judge thereof. Neither the statutes nor case law, however, establishes the standards for release or indicates whether the Supreme Court or Court of Appeals is reviewing the action of the trial court or acting de novo. This Rule is intended to meet these deficiencies. The standards for release are those included in the American Bar Association Criminal Justice Standards, Criminal Appeals, s. 2.5. [Re Order effective July 1, 1978]

Judicial Council Note, 2001: Former rules required a party seeking review of a release decision to file a petition for discretionary review, and pay a separate filing fee, generating a separate appeal. The new motion procedure under sub (5) provides a more efficient mechanism for appellants seeking release pending appeal. No change in the substantive standards governing release decisions is intended. See *State v. Whitty,* 86 Wis. 2d 380, 272 N.W.2d 843 (1978); *State v. Salmon,* 163 Wis. 2d 369, 471 N.W.2d 286 (Ct. App. 1991). [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: Subsection (5) is amended to establish time limits within which a party must request a transcript of the reporter's notes of any circuit court proceeding concerning release pending postconviction relief or appeal, and within which the reporter must file and serve the transcript, and to require the party seeking relief from the circuit court order to request, and make arrangements to pay for, a copy of the transcript for all parties. The amendment also enlarges the time within which a party must file a motion in the court of appeals to allow time to review the transcript before deciding to file a motion. [Re Order No. 02–01 effective January 1, 2003]

Appellate procedure for a petition for bail pending appeal is discussed. State v. Whitty, 86 Wis. 2d 380, 272 N.W.2d 842 (1978).

The power of a circuit court to stay execution of a sentence for legal cause does not include the power to stay sentence while a collateral attack is being made on a conviction by habeas corpus proceeding in federal court. This rule has no application to that situation. State v. Shumate, 107 Wis. 2d 460, 319 N.W.2d 834 (1982).

The merits of the underlying appeal may be considered by the trial court in considering release pending appeal and by the appellate court in determining whether immediate review of the order denying release pending appeal is necessary. State v. Salmon, 163 Wis. 2d 369, 471 N.W.2d 286 (Ct. App. 1991).

809.32 Rule (No merit reports). (1) NO–MERIT REPORT, RESPONSE, AND SUPPLEMENTAL NO–MERIT REPORT. (a) *No–merit report*. If an attorney appointed under s. 809.30 (2) (e) or ch. 977 concludes that a direct appeal on behalf of the person would be frivolous and without any arguable merit within the meaning of *Anders v. California*, 386 U.S. 738 (1967), and the person requests that a no–merit report be filed or declines to consent to have the attorney close the file without further representation by the attorney, the attorney shall file with the court of appeals 3 copies of a no–merit report. The no–merit report shall identify anything in the record that might arguably support the appeal and discuss the reasons why each identified issue lacks merit.

(b) *Counseling and notification*. 1. Prior to the filing of a no–merit report, the attorney shall discuss with the person all potential issues identified by the attorney and the person, and the merit of an appeal on these issues. The attorney shall inform the person that he or she has 3 options:

a. To have the attorney file a no–merit report;

b. To have the attorney close the file without an appeal; or

c. To have the attorney close the file and to proceed without an attorney or with another attorney retained at the person's expense.

2. The attorney shall inform the person that a no–merit report will be filed if the person either requests a no–merit report or does not consent to have the attorney close the file without further representation by the attorney. The attorney shall inform the person that if a no–merit report is filed the attorney will serve a copy of the transcripts and the circuit court case record upon the person at the person's request. The attorney shall inform the person that, if the person chooses to proceed with an appeal or chooses to have the attorney close the file without an appeal, the attorney will forward the attorney's copies of the transcripts and circuit court case record to the person at the person's request. The attorney shall also inform the person that the person may file a response to the no–merit report and that the attorney may file a supplemental no–

merit report and affidavit or affidavits containing facts outside the record, possibly including confidential information, to rebut allegations made in the person's response to the no–merit report.

(c) *Certification by attorney.* The attorney shall append to the no–merit report a signed certification that the attorney has complied with the client–counseling and client–notification requirements of par. (b). The certification shall be in the following form:

CERTIFICATION BY ATTORNEY

I hereby certify that I have discussed with my client all potential issues identified by me and by my client and the merit of an appeal on these issues, and I have informed my client that he/she must choose one of the following 3 options: 1) to have me file a no–merit report; 2) to have me close the file without an appeal; or 3) to have me close the file and to proceed without an attorney or with another attorney retained at my client's expense. I have informed my client that a no–merit report will be filed if he/she either requests a no–merit report or does not consent to have me close the file without further representation. I have informed my client that the transcripts and circuit court case record will be forwarded at his/her request. I have also informed my client that he/she may file a response to the no–merit report and that I may file a supplemental no–merit report and affidavit or affidavits containing matters outside the record, possibly including confidential information, to rebut allegations made in my client's response to the no–merit report.

Signed:....
Signature

(d) *Service of copy of no–merit report, transcript, and circuit court case record.* The attorney shall serve a copy of the no–merit report on the person and shall file a statement in the court of appeals that service has been made upon the person. The attorney shall also serve upon the person a copy of the transcript and circuit court case record within 5 days after receipt of a request for the transcript and circuit court case record from the person and shall file a statement in the court of appeals that service has been made on the person.

(e) *Response to no–merit report.* The person may file a response to the no–merit report within 30 days after service of the no–merit report. If the person files a response, the clerk shall, within 5 days after the filing of the response, send a copy of the response to the attorney who filed the no–merit report.

(f) *Supplemental no–merit report.* If the attorney is aware of facts outside the record that rebut allegations made in the person's response, the attorney may file, within 30 days after receipt of the person's response, a supplemental no–merit report and an affidavit or affidavits, including matters outside the record. The supplemental report and affidavit or affidavits shall be served on the person, and the attorney shall file a statement in the court of appeals that service has been made upon the person.

(fm) *Electronic no–merit report and supplemental no–merit report.* An attorney filing a no–merit report or the optional supplemental no–merit report under this rule shall file with the court a copy of the no–merit report and supplemental no–merit report, if any, in electronic form, using the procedure under s. 809.19 (12). The date on which the paper no–merit report or supplemental no–merit report is filed shall be the official date of filing of the no–merit report or supplemental no–merit report. The electronic copy of the no–merit report and supplemental no–merit report shall be electronically transmitted on or before the date that the paper no–merit report and supplemental no–merit report is filed. An electronic copy of a no–merit report or supplemental no–merit report submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date. An electronic no–merit report or supplemental no–merit report submitted after the close of regular business hours shall be considered transmitted the next business day. The attorney shall certify that the text of the electronic copy of the report is identical to the text of the paper copy of the report. Notwithstanding s. 801.17 (9), the paper copy of the no–merit report or supplemental no–merit report remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper no–merit report or supplemental no–merit report. An attorney shall show good cause why it is not feasible to file a copy of the report electronically.

(g) *Remand for fact–finding prior to decision.* If the person and the attorney allege disputed facts regarding matters outside the record, and if the court determines that the person's version of the facts, if true, would make resolution of the appeal under sub. (3) inappropriate, the court shall remand the case to the circuit court for an evidentiary hearing and fact–finding on those disputed facts before proceeding to a decision under sub. (3).

(2) NOTICE OF APPEAL, STATEMENT ON TRANSCRIPT, SERVICE OF COPIES. The attorney also shall file in circuit court a notice of appeal of the judgment of conviction or final adjudication and of any order denying a postconviction or postdisposition motion. The notice of appeal shall be identified as a no–merit notice of appeal and shall state the date on which the no–merit report is due and whether the due date is calculated under par. (a) or (b). The clerk of circuit court shall transmit the record in the case to the court pursuant to s. 809.15. The attorney also shall file a statement on transcript complying with the requirements of s. 809.11 (4), except that copies of the transcript need not be provided to other parties. All papers filed with the court under this subsection, except the transcript, shall be served on the state in accordance with s. 809.80 (2) (b) and on any other party. The no–merit report, notice of appeal, and statement on transcript must be filed within whichever of the following is later:

(a) One hundred eighty days after the service upon the person of the transcript and circuit court case record requested under s. 809.30 (2) (e).

(b) Sixty days after the entry of the order determining a postconviction or postdisposition motion.

(3) DECISION ON NO–MERIT REPORT. In the event that the court of appeals determines that further appellate proceedings would be frivolous and without any arguable merit, the court of appeals shall affirm the judgment of conviction or final adjudication and the denial of any postconviction or postdisposition motion and relieve the attorney of further responsibility in the case. The attorney shall advise the person of the right to file a petition for review to the supreme court under s. 809.62.

(4) NO–MERIT PETITION FOR REVIEW. (a) *Petition and supplemental petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is of the opinion that a petition for review in the supreme court under s. 809.62 would be frivolous and without any arguable merit, the attorney shall advise the person of the reasons for this opinion and that the person has the right to file a petition for review. If requested by the person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f), and the person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).

(b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and supplemental petition shall both be filed within 30 days after the date of the decision or order of the court of appeals.

(c) *Responses time limit.* Except as provided in sub. (5), an opposing party may file a response to the petition and supplemental petition as provided in s. 809.62 (3) within 14 days after the service of the supplemental petition.

(5) NO–MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR RECONSIDERATION. (a) *Petition.* If a motion for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition or a supplemental petition in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.

(b) *Supplemental petition.* If a motion for reconsideration in the court of appeals under s. 809.24 (1) is denied and a petition for review was filed before the motion for reconsideration was filed, and if the time for filing a supplemental petition under this subsec-

tion had not expired when the motion for reconsideration was filed, the supplemental petition may be filed within 14 days after the filing of the order denying the motion for reconsideration or within the time remaining to file the supplemental petition at the time that the motion for reconsideration was filed, whichever is greater.

(c) *Notice affirming, withdrawing, or amending pending petition or supplemental petition.* If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review or a supplemental petition for review under this section prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition or supplemental petition, a notice withdrawing the pending petition or supplemental petition, or an amendment to the pending petition or supplemental petition within 14 days after the date of the filing of the court of appeals' amended decision.

(d) *Responses.* If a motion for reconsideration is denied and a petition for review or a supplemental petition had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition or supplemental petition had not expired when the motion for reconsideration was filed, a response to the petition or the supplemental petition may be filed within 14 days of the order denying the motion for reconsideration. If a supplemental petition is filed under par. (b), the responding party may file a response to the supplemental petition within 14 days after service of the supplemental petition. After the petitioning party files the notice affirming or withdrawing the pending petition or supplemental petition or an amendment to the pending petition or supplemental petition under par. (c), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response to the notice or amendment may be an affirmation of the responding party's earlier response or a new response.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; 1983 a. 192; Sup. Ct. Order, 123 Wis. 2d xix (1985); 1987 a. 403 s. 256; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 04–08, 2008 WI 108, filed 7–30–08, eff. 1–1–09; Sup. Ct. Order No. 08–15 and 08–18, 2009 WI 4, 311 Wis. 2d xxix; 2009 a. 25.

Judicial Council Committee's Note, 1981: Subs. (3) and (4) are amended to refer properly to the petition for supreme court review of decisions of the court of appeals.

Sub. (4) is amended to reflect the amendments to Rule 809.62 regulating the form, contents and length of a petition for review. If requested by the defendant, the attorney shall file with the supreme court a petition for review containing the statement of the case and the appendix required by Rule 809.62 (2) (d) and (f), as the attorney is in the best position to formulate the statement of the case and to provide the documents required for the appendix. The defendant shall file a supplement containing the statement of the issues presented for review, the table of contents, the statement of the criteria relied upon for a review and the argument amplifying the reasons relied on to support the petition as required by Rule 809.62 (2) (a), (b), (c) and (e). The rule does not prohibit the defendant from including a supplement to the statement of the case provided by the attorney.

The rule requires that both the petition and supplemental petition be filed within 30 days of the date of the decision of the court of appeals. As with all petitions for review, the opposing party may file a response to the petition and supplemental petition within 10 days. The amendment provides that the 10 days begins to run from the service of the supplemental petition. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: Titles and subtitles were added. Subsection (1) was subdivided into paragraphs (1) (a) through (g).

Subsection (1) (a) was amended to specify that the no–merit procedure applies only to direct appeals and that no–merit reports should be filed only when the defendant requests submission of a no–merit report or does not consent to closing the file without further representation by the appointed attorney.

Subsection (1) (b) creates new counseling and notification requirements for appointed attorneys. Before filing a no–merit report, the appointed attorney must discuss each identified issue with the defendant and explain why the issue lacks arguable merit. The attorney must inform the defendant of the defendant's options: file a no–merit report, close the file without filing an appeal or a no–merit report, or file an appeal without the assistance of appointed counsel. The attorney must inform the defendant that a no–merit report will be filed if the defendant requests submission of a no–merit report or if the defendant does not consent to closing the file without further representation by the appointed attorney. The attorney must inform the defendant that, if a no–merit report is submitted, the attorney will furnish copies of the transcript and circuit court case record to the defendant upon request. The attorney must notify the defendant that, if a no–merit report will not be submitted, the attorney will forward the attorney's copies of the transcript and circuit court case record to the defendant upon request. The attorney must also advise the defendant of the no–merit procedures set forth in this section, including the defendant's right to file a response to the attorney's no–merit report, and the attorney's right to file a supplemental no–merit report and affidavit containing facts outside the record, possibly including confidential information, to rebut allegations made in the defendant's response to the no–merit report.

Subsection (1) (c) creates a new certification rule that requires the appointed attorney to certify that the attorney has complied with the counseling and notification requirements of sub. (1) (b).

Subsection (1) (d) contains the no–merit report service rule from former sub. (1) (a) and creates a new transcript and circuit court case record service rule. The attorney must serve a copy of the no–merit report on the defendant. If the defendant requests a copy of the transcript and circuit court case record, the attorney must forward the copies within 14 days after receipt of the defendant's request. The attorney must file a statement in the court of appeals that service has been made on the defendant.

Subsection (1) (e) contains the response to the no–merit report rule from former sub. (1) (a). Subsection (1) (e) also creates a new rule that requires the clerk of the court of appeals to send a copy of the defendant's response to the no–merit report, within 5 days of the filing of the response, to the attorney who filed the no–merit report.

Subsection (1) (f) was created to allow the attorney to reply to the defendant's response to a no–merit report. The rule allows the attorney to file a supplemental no–merit report and affidavit(s) disclosing information that is outside the record and relevant to the attorney's no–merit determination without violating confidentiality rules. The supplemental report and affidavit procedure is in accordance with SCR 20:1.6 (c) (1), which allows disclosures of otherwise confidential communications "to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services had been used;" SCR 20:1.6 (c) (2), which allows disclosures "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client ... or to respond to allegations in any proceeding concerning the lawyer's representation of the client;" and SCR 20:3.3, which requires candor toward the tribunal.

Subsection (1) (g) creates a new rule that requires fact–finding upon a remand to the circuit court if the defendant's response to the no–merit report and the attorney's supplemental no–merit report and affidavit allege facts outside the record; and if the facts alleged by the defendant, if true, would make resolution of the appeal under sub. (3) inappropriate.

The second sentence in sub. (2) requires the attorney to state, in the no–merit notice of appeal, of the time limit for filing the no–merit report and the calculation used to determine that time limit. The fourth sentence in sub. (2) requires the attorney to file a statement on transcript with the clerk, but exempts counsel from serving a transcript on other parties. The fifth sentence in sub. (2) requires counsel to serve copies of all other papers on the state.

Subsection (2) (a) establishes the time limits if a no–merit report is not preceded by a postconviction motion. The cross–reference was changed from s. 809.30 (2) (g) to (e) because only the original transcript and circuit court case record request triggers the 180–day time limit.

Subsection (2) (b) establishes the time limits if a no–merit report follows a postconviction motion.

The 10–day time limit in sub. (4) was changed to 14 days. Please see the comment to s. 808.07. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: When a no–merit report is filed, s. 809.32 (1) (e) gives the person 30 days after the service of the no–merit report to file a response. The time limit in sub. (1) (d) is amended to adjust the time within which the attorney must send copies of the transcript and circuit court case record because five days should be sufficient time for the attorney to make copies and send them to the person. The amendment is intended to avoid delay that may occur if the person is not served with the record in time to utilize it in preparing a response to the no–merit report. [Re Order No. 02–01 effective January 1, 2003]

This rule is constitutional although it does not secure an indigent convict the right to counsel in preparing a petition for review. State v. Mosley, 102 Wis. 2d 636, 307 N.W.2d 200 (1981).

The "no–merit brief" requirement under sub. (1) does not deny the right to counsel. State ex rel. McCoy v. Appeals Ct., 137 Wis. 2d 90, 403 N.W.2d 449 (1987).

Appellate counsel's closing of a file because of no merit, without the defendant knowing of the right to disagree and compel a no merit report, is ineffective assistance of counsel. A defendant must be informed of the right to appeal and to a no merit report, but need not be informed orally. State ex rel. Flores v. State, 183 Wis. 2d 587, 516 N.W.2d 362 (1994).

The no merit appeal procedure does not apply to appeals regarding terminations of parental rights under s. 809.107. Gloria A. v. State, 195 Wis. 2d 268, 536 N.W.2d 396 (Ct. App. 1995), 95–0315.

Together, sub. (4) and s. 977.05 (4) (j) create a statutory, but not constitutional, right to counsel in petitions for review, provided counsel does not determine the appeal to be without merit. If counsel fails to timely file a petition for review, the defendant may petition for a writ of habeas corpus and the supreme court has the power to allow late filing. Schmelzer v. Murphy, 201 Wis. 2d 246, 548 N.W.2d 45 (1996), 95–1096.

When a defendant's postconviction issues have been addressed by the no merit procedure under this section, the defendant may not again raise those issues or other issues that could have been raised in a previous postconviction motion under s. 974.06, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously. State v. Tillman, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574, 04–0966.

A convicted defendant could not be faulted for his reliance on his appellate counsel's assertion in the no–merit report that there were no issues of arguable merit when there was a potential appellate issue that was also not identified by appellate court review. In that case the defendant had shown a sufficient reason for failing to raise the issue in a response to the no–merit report and was not procedurally barred from raising the issue of a sentence being illegally increased. State v. Fortier, 2006 WI App 11, 289 Wis. 2d 179, 709 N.W.2d 893, 04–3189.

A defendant's constitutional right to effective representation for the purpose of exercising the right to directly appeal a conviction did not require postconviction counsel to offer the defendant the option of a "partial no–merit" report on any potential issues remaining after the defendant declined for strategic reasons to pursue an issue having arguable merit. The U.S. Constitution requires only that "an indigent's appeal will be resolved in a way that is related to the merit of that appeal." Ford v. Holm, 2006 WI App 176, 296 Wis. 2d 119, 722 N.W. 2d 609, 02–1828.

This section comports with constitutional requirements. McCoy v. Court of Appeals, 486 U.S. 429 (1988).

A defendant is not required to file a response to the no–merit report, but the fact that a defendant does not file a response to a no–merit report is not, by itself, a suffi-

cient reason to permit the defendant to raise new claims under s. 974.06. Defendants must show a sufficient reason for failing to raise an issue in a response to a no–merit report because the court will have performed an examination of the record and determined any issues noted or any issues that are apparent to be without arguable merit. State v. Allen, 2010 WI 89, 328 Wis. 2d 1, 786 N.W.2d 124, 07–0795.

A defendant gets review of issues not raised only if the court of appeals follows the no–merit protocol. If the no–merit procedure was followed, then it is irrelevant whether the defendant raised his or her claims. He or she got review of those claims from the court of appeals and is barred from raising them again. If it was not followed, it is similarly irrelevant whether the claims were raised. The failure to raise them may or may not have contributed to the court of appeals' failure to identify issues of arguable merit, but the court of appeals and appellate counsel should have found them and the defendant may not be barred from bringing a motion under s. 974.06 if the no–merit procedure was not followed. State v. Allen, 2010 WI 89, 328 Wis. 2d 1, 786 N.W.2d 124, 07–0795.

If the court of appeals fails to discuss an issue of actual or arguable merit, the defendant has the opportunity to file: 1) a motion for reconsideration of the decision under sub. (1); 2) a petition for review with the supreme court; or 3) an immediate s. 974.06 motion, identifying any issue of arguable merit that was overlooked and, in the latter instance, explaining why nothing was said in a response to the no–merit report. Delay in these circumstances can seldom be justified. Failure of a defendant to respond to both a no–merit report and the decision on the no–merit report firms up the case for forfeiture of any issue that could have been raised. State v. Allen, 2010 WI 89, 328 Wis. 2d 1, 786 N.W.2d 124, 07–0795.

SUBCHAPTER IV

APPEAL PROCEDURE IN COURT OF APPEALS IN TERMINATION OF PARENTAL RIGHTS, CH. 799, TRAFFIC REGULATION, MUNICIPAL ORDINANCE VIOLATION, AND PARENTAL CONSENT TO ABORTION CASES

809.40 Rule (Appeals in termination of parental rights, ch. 799, traffic regulation, municipal ordinance violation, and parental consent to abortion cases). (1m) An appeal from an order denying a petition under s. 48.375 (7) is governed by the procedures specified in s. 809.105, and an appeal from an order or judgment under s. 48.43 is governed by the procedures specified in s. 809.107.

(2) An appeal to the court of appeals from a judgment or order in a ch. 799, traffic regulation or municipal ordinance violation case must be initiated within the time period specified in s. 808.04, and is governed by the procedures specified in ss. 809.01 to 809.26 and 809.50 to 809.85, unless a different procedure is expressly provided in ss. 809.41 to 809.43.

(3) Any civil appeal to the court of appeals under sub. (2) is subject to the docketing statement requirement of s. 809.10 (1) (d) and may be eligible for the expedited appeals program in the discretion of the court.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 32 s. 92 (16); Sup. Ct. Order, 92 Wis. 2d xiii (1979); 1979 c. 175 s. 53; 1979 c. 355; 1981 c. 390 s. 252; Sup. Ct. Order, 130 Wis. 2d xi xix ((1986); Sup. Ct. Order, 131 Wis. 2d xv (1986); Sup. Ct. Order, 136 Wis. 2d v, xxv ((1987); 1991 a. 263; 1993 a. 395; 1995 a. 77; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii.

Judicial Council Committee's Note, 1978: Rule 809.40 establishes the time periods for appealing in a misdemeanor case or Chapter 48, 51 or 55 case or seeking postconviction relief in a misdemeanor case pursuant to s. 974.02 (1). It also makes the procedures set forth in Rules 809.30 to 809.32 apply to these types of cases.

Rules 809.41 to 809.43 establish special procedures for appeals that may be heard by one appellate judge. The appeal time periods in Chapter 299, traffic regulation and municipal ordinance violation cases, are found in s. 808.04. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (2) is repealed and recreated to place into it for purposes of clarity the appropriate reference in Chapter 808 containing the appeal time periods for Chapter 799, traffic regulations, and municipal ordinance violations cases. No substantive change is intended. [Re Order effective Jan. 1, 1980]

Judicial Council Note, 2002: Sub. (1) is repealed to eliminate confusing cross–references to appeal procedures under Subchapter III. Appeals under former sub. (1) were and are governed by the procedures in ss. 809.30 to 809.32. [Re Order No. 02–01 effective January 1, 2003.]

809.41 Rule (Motion for 3–judge panel or hearing in county of origin). (1) MOTION FOR 3–JUDGE PANEL. If an appellant or a petitioner requesting the court of appeals to exercise its supervisory jurisdiction or its original jurisdiction to issue prerogative writs or its appellate jurisdiction to grant petitions for leave to appeal desires the matter to be decided by a 3–judge panel, the appellant or petitioner shall file with the copy of the notice of appeal required by s. 809.10 (1) (a), or with the petition requesting the court to exercise its supervisory, original, or appellate jurisdiction, a motion for a 3–judge panel. Any other party must file a motion under this rule for a 3–judge panel within 14 days after service of the notice of appeal or with the response to the petition. The failure to file a motion under this rule waives the right to request the matter to be decided by a 3–judge panel. A motion for a 3–judge panel in a case in which the state is a party shall also be served upon the attorney general. The attorney general may file a response to the motion within 11 days after service.

(2) DECISION ON MOTION FOR 3–JUDGE PANEL. The chief judge may change or modify his or her decision on a motion that the matter be decided by a 3–judge panel at any time prior to a decision on the merits of the appeal or petition.

(3) THREE–JUDGE PANEL ON COURT'S OWN MOTION. Whether or not a motion for a 3–judge panel has been filed, the chief judge may order that an appeal or petition be decided by a 3–judge panel at any time prior to a decision on the merits of the appeal or petition.

(4) MOTION FOR HEARING IN COUNTY OF ORIGIN. If an appellant desires that the appeal be heard in the county where the case or action originated under s. 752.31 (3), the appellant shall file with the copy of the notice of appeal required by s. 809.10 (1) (a) a motion requesting a hearing in the county of origin. Any other party must file a motion requesting a hearing in the county of origin within 14 days after service of the notice of appeal. The failure to file a motion under this subsection waives the right to request the appeal be heard in the county where the case or action originated.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); Sup. Ct. Order 151 Wis. 2d xvii (1989); 1993 a. 486; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1979: Sub. (3) is created to clarify that the chief judge of the Court of Appeals has the authority to order that an appeal be decided by a 3–judge panel after it has initially been assigned to a single Court of Appeals judge. This authority of the chief judge may be exercised at any time prior to a decision on the merits of the appeal by the single Court of Appeals judge to whom the appeal was originally assigned. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Rule 809.41 is amended to harmonize with ch. 192, Laws of 1979.

Sub. (1) is amended to apply the procedure for requesting a 3–judge panel for appeals to other proceedings in the types of case specified in s. 752.31 (2). The rule is also amended to require that if the motion for 3–judge panel is in a case in which the state is a party the motion must be served upon the attorney general as well as all persons of record. If the district attorney files the motion for 3–judge panel, the district attorney must serve the motion on the attorney general. The attorney general is given 7 days to respond to the motion.

The rule is further amended to require that the motion for 3–judge panel be filed with the copy of the notice of appeal required to be sent to the clerk of the court of appeals under Rule 809.10 (1) (a) and not with the original notice of appeal filed with the clerk of the circuit court.

Subs. (2) and (3) are amended to clarify that their provisions may apply to both an appeal and a petition requesting the exercise of supervisory jurisdiction or original jurisdiction to issue a prerogative writ.

Section 752.31, as amended by ch. 192, Laws of 1979, provides for a hearing in the county of origin for appeals but not for other proceedings such as a petition for supervisory writ or original jurisdiction prerogative writ. Sub. (4) is created to set out in a separate subsection of Rule 809.41 the procedure to request that an appeal be heard in the county where a case or action originated as authorized under sub. 752.31 (3). The creation of this separate subsection makes no substantive change in the prior procedure that was contained in Rule 809.41 (1). The rule requires that the motion for hearing in county of origin be filed with the copy of the notice of appeal required to be sent to the clerk of the court of appeals under Rule 809.10 (1) (a).

Rule 809.41 is also amended to clarify that the appeal or petition is decided rather than heard, as oral argument may not occur in all matters filed in the court of appeals. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: Titles were added. The time limits in sub. (1) and sub. (4) have been changed from 7 to 11 and 10 to 14 days. See the comment to s. 808.07. [Re Order No. 00–02 effective July 1, 2001]

809.42 Rule (Waiver of oral argument). The appellant and respondent in an appeal under s. 752.31 (2) may waive oral argument, subject to approval of the court.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979).

Judicial Council Committee's Note, 1979: This rule is amended to delete language authorizing an appellant and respondent to waive the filing of briefs in an appeal to the Court of Appeals. The Court of Appeals as a consistent policy does not allow the waiving of filing of briefs. The rule is brought into conformity with that policy. [Re Order effective Jan. 1, 1980]

809.43 Rule (Number of briefs). (1) A person shall file 10 copies of a brief and appendix in the court of appeals, or the number that the court directs, and shall serve 3 copies on each party. If the opposing party is not represented by counsel, only one copy need be served on that party.

(2) A person who is found indigent under s. 814.29 and who is not represented by counsel shall file 3 copies of a brief and appendix in the court of appeals and shall serve one copy on each party. A prisoner who has been granted leave to proceed without prepayment of fees under s. 814.29 (1m) and who is not represented by counsel shall file 3 copies of a brief or appendix in the court of appeals and shall serve one copy on each party.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 164 Wis. 2d xxix (1991); Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Note, 2001: Subsection (1) was revised to simplify statutory language. The last sentence in sub. (1) reduces the number of copies required for a *pro se* party. Subsection (2) was revised to simplify the language and to specify that this section applies only to *pro se* parties. [Re Order No. 00–02 effective July 1, 2001]

SUBCHAPTER V

DISCRETIONARY JURISDICTION PROCEDURE IN COURT OF APPEALS

809.50 Rule (Appeal from judgment or order not appealable as of right). (1) A person shall seek leave of the court to appeal a judgment or order not appealable as of right under s. 808.03 (1) by filing within 14 days after the entry of the judgment or order a petition and supporting memorandum, if any. The petition and memorandum combined may not exceed 35 pages if a monospaced font is used or 8,000 words if a proportional serif font is used. The petition shall contain:

(a) A statement of the issues presented by the controversy;

(b) A statement of the facts necessary to an understanding of the issues;

(c) A statement showing that review of the judgment or order immediately rather than on an appeal from the final judgment in the case or proceeding will materially advance the termination of the litigation or clarify further proceedings therein, protect a party from substantial or irreparable injury, or clarify an issue of general importance in the administration of justice; and

(d) A copy of the judgment or order sought to be reviewed.

(2) An opposing party in circuit court shall file a response with supporting memorandum, if any, within 14 days after the service of the petition. The response and memorandum combined may not exceed 35 pages if a monospaced font is used or 8,000 words if a proportional serif font is used. Costs and fees may be awarded against any party in a petition for leave to appeal proceeding.

(3) If the court grants leave to appeal, the procedures for appeals from final judgments are applicable to further proceedings in the appeal. The entry of the order granting leave to appeal has the effect of the filing of a notice of appeal. The court may specify the issue or issues that it will review in the appeal. If the court grants leave to appeal, the petitioner shall file a docketing statement if required by s. 809.10 (1) (d), identifying the issues to be reviewed in the appeal. The docketing statement shall be filed within 11 days after the date of the order granting the petition for leave to appeal.

(4) A person filing a petition under this section shall append to the petition a statement identifying whether the petition is produced with a monospaced font or with a proportional serif font. If produced with a proportional serif font, the person shall set forth the word count of the petition.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 151 Wis. 2d xvii (1989); Sup. Ct. Order, 164 Wis. 2d xxix (1991); Sup. Ct. Order, 171 Wis. 2d xxxv (1992); Sup. Ct. Order No. 93–20, 179 Wis. 2d xxv; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii.

Judicial Council Committee's Note, 1978: Section 808.03 (1) makes only final judgments and final orders appealable as of right. All other judgments and orders are appealable only in the discretion of the court. This section provides the procedure for asking the court to permit the appeal of a nonfinal order. The issue of whether the court should hear the appeal is presented to the court by petition with both parties given the opportunity of submitting memoranda on the question. The standards on which nonfinal judgments or orders should be reviewed immediately are set forth in s. 808.03 (2) and are taken from the American Bar Association's Standards of Judicial Administration, Standards Relating to Appellate Courts, s. 3.12 (b). [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1979: Sub. (1) (c) is amended to conform with 808.03 (2) (b), which sets out the standards created by the Wisconsin Legislature for appeals to the Court of Appeals by permission. A drafting error in the original preparation of chapter 809 replaced the word "or" found in 808.03 (2) (b) with the word "and", which results in a party having to show in a petition to the Court of Appeals for the court to assume discretionary jurisdiction that granting such a petition will protect a party from both substantial "and" irreparable injury rather than meeting just one of the 2 criteria, as was the intention of the Wisconsin Legislature. [Re Order effective Jan. 1, 1980]

Judicial Council Note, 2001: The time limits in subs. (1) and (2) were changed from 10 to 14 days. Please see the comment to s. 808.07. Subsection (3) specifies that the court may grant discretionary review on specified issues. This rule codifies *Fedders v. American Family Mut. Ins. Co.*, 230 Wis. 2d 577, 601 N.W.2d 861 (Ct. App. 1999), 99–1526, which held a grant of leave to appeal from a nonfinal order or judgment does not authorize cross–appeals as of right from the same or from another nonfinal order or judgment; cross–appeals require a separate petition for leave to appeal. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: Subsection (3) is amended to clarify the docketing statement requirements following the grant of a petition for leave to appeal a non–final order. [Re Order No. 02–01 effective January 1, 2003]

Once leave to appeal is granted, a cross–appeal from the same interlocutory order or judgment in the action requires a petition for leave to appeal. Fedders v. American Family Mutual Insurance Co. 230 Wis. 2d 577, 601 N.W.2d 861 (Ct. App. 1999), 99–1526.

A person who is granted leave to appeal a nonfinal order is limited solely to those issues outlined in the petition to the court of appeals. State v. Aufderhaar, 2004 WI App 208, 277 Wis. 2d 173, 689 N.W.2d 674, 03–2820. Reversed on other grounds. State v. Aufderhaar, 2005 WI 108, 283 Wis. 2d 336, 700 N.W.2d 4, 03–2820

Interlocutory Appeals in Wisconsin. Towers, Arnold, Tess–Mattner & Levenson. Wis. Law. July 1993.

809.51 Rule (Supervisory writ and original jurisdiction to issue prerogative writ). (1) A person may request the court to exercise its supervisory jurisdiction or its original jurisdiction to issue a prerogative writ over a court and the presiding judge, or other person or body, by filing a petition and supporting memorandum. The petition and memorandum combined may not exceed 35 pages if a monospaced font is used or 8,000 words if a proportional serif font is used. The petitioner shall name as respondents the court and judge, or other person or body, and all other parties in the action or proceeding. The petition shall contain:

(a) A statement of the issues presented by the controversy;

(b) A statement of the facts necessary to an understanding of the issues;

(c) The relief sought; and

(d) The reasons why the court should take jurisdiction.

(2) The court may deny the petition ex parte or may order the respondents to file a response with a supporting memorandum, if any, and may order oral argument on the merits of the petition. The response and memorandum combined may not exceed 35 pages if a monospaced font is used or 8,000 words if a proportional serif font is used. The respondents shall respond with supporting memorandum within 14 days after service of the order. A respondent may file a letter stating that he or she does not intend to file a response, but the petition is not thereby admitted.

(3) The court, upon a consideration of the petition, responses, supporting memoranda and argument, may grant or deny the petition or order such additional proceedings as it considers appropriate. Costs and fees may be awarded against any party in a writ proceeding.

(4) A person filing a petition under this section shall append to the petition a statement identifying whether the petition is produced with a monospaced font or with a proportional serif font. If produced with a proportional serif font, the person shall set forth the word count of the petition.

History: Sup. Ct. Order, 83 Wis. 2d xiii; Sup. Ct. Order, 104 Wis. 2d xi (1978); Sup. Ct. Order, 151 Wis. 2d xix (1981); Sup. Ct. Order, 164 Wis. 2d xxix (1991); Sup. Ct. Order, 171 Wis. 2d xxxv (1992); Sup. Ct. Order No. 93–20, 179 Wis. 2d xxv; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1981: Sub. (1) is amended to reflect the procedure for issuance of a prerogative writ currently followed by the court of appeals and to alert attorneys to the correct procedure to be followed. Rule 809.51 governs

the procedures for seeking a petition for supervisory writ or original jurisdiction prerogative writ in the court of appeals. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: The time limit in sub. (2) was changed from 10 to 14 days. See the comment to s. 808.07. [Re Order No. 00–02 effective July 1, 2001]

The court of appeals abused its discretion by ordering oral argument one day after the petition for a writ was filed and served. State ex rel. Breier v. Milwaukee County Circuit Court, 91 Wis. 2d 833, 284 N.W.2d 102 (1979).

The court of appeals does not have jurisdiction to entertain original actions unrelated to its supervisory or appellate authority over circuit courts. State ex rel. Swan v. Elections Board, 133 Wis. 2d 87, 394 N.W.2d 732 (1986).

809.52 Rule (Temporary relief). A petitioner may request in a petition filed under s. 809.50 or 809.51 that the court grant temporary relief pending disposition of the petition. The court or a judge of the court may grant temporary relief upon the terms and conditions it considers appropriate.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252.

Judicial Council Committee's Note, 1978: Rules 809.51 to 809.52 incorporate into the rules for the first time the procedures to be followed when the court is asked to exercise its supervisory jurisdiction. For an excellent discussion of original and supervisory jurisdiction of the Supreme Court and the distinction between them see the opinion by Justice Wickhem in Petition of Heil, 230 Wis. 428, 284 N.W. 42 (1939). To a large degree the procedures specified in 201 Wis. 123, 229 N.W. 643 (1930) are followed, but some of the features of Rule 21, FRAP, are included.

There are a number of changes, however, from prior procedures. The parties in the action or proceeding in the trial court must be made respondents in the Court of Appeals because they in most cases are the real parties in interest. Usually the judge whose order is being challenged has no direct interest in the outcome and should not be forced to appear but may, of course, do so. The Attorney General must also be served in certain cases such as declaratory judgments involving the constitutionality of a statute or arising under Chapter 227, the administrative procedure act.

The petition must be filed with the clerk rather than being submitted ex parte to a judge of the court. By virtue of the requirement that the petition be filed, it must previously have been served on opposing parties as required by s. 809.80. The initial action of the court will be to direct the respondents to answer the petition rather than to issue an order to show cause why the relief requested should not be granted. [Re Order effective July 1, 1978]

SUBCHAPTER VI

APPELLATE PROCEDURE IN SUPREME COURT

809.60 Rule (Petition to bypass). (1) A party may file with the supreme court a petition to bypass the court of appeals pursuant to s. 808.05 no later than 14 days following the filing of the respondent's brief under s. 809.19 or response. The petition must include a statement of reasons for bypassing the court of appeals.

(2) An opposing party may file a response to the petition within 14 days after the service of the petition.

(3) The filing of the petition stays the court of appeals from taking under submission the appeal or other proceeding.

(4) The supreme court may grant the petition upon such conditions as it considers appropriate.

(5) Upon the denial of the petition by the supreme court the appeal or other proceeding in the court of appeals continues as though the petition had never been filed.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1981: The amendment to sub. (1) establishes time periods for filing a bypass petition to discourage use of the petition for dilatory purposes. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: The time limits in subs. (1) and (2) have been changed from 10 to 14 days. Please see the comment to s. 808.07. [Re Order No. 00–02 effective July 1, 2001]

809.61 Rule (Bypass by certification of court of appeals or upon motion of supreme court). The supreme court may take jurisdiction of an appeal or other proceeding in the court of appeals upon certification by the court of appeals or upon the supreme court's own motion. The supreme court may refuse to take jurisdiction of an appeal or other proceeding certified to it by the court of appeals.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978).

The supreme court's denial of certification has no precedential value on the merits of the case. State v. Shillcutt, 119 Wis. 2d 788, 350 N.W.2d 686 (1984).

When confronted with a direct conflict between a decision of the state supreme court and a later decision of the U. S. Supreme Court on a matter of federal law, the court of appeals may certify the case to the state supreme court under s. 809.61. If it does not, or certification is not accepted, the supremacy clause of the U. S. Constitution compels adherence to U. S. Supreme Court precedent on matters of federal law, although it means deviating from a conflicting decision of the state supreme court. State v. Jennings, 2002 WI 44, 252 Wis. 2d 228, 647 N.W.2d 142, 00–1680.

Discretionary review by the Wisconsin supreme court. Pokrass, WBB March, 1985.

809.62 Rule (Petition for review). (1g) DEFINITIONS. In this section:

(a) "Adverse decision" means a final order or decision of the court of appeals, the result of which is contrary, in whole or in part, to the result sought in that court by any party seeking review.

(b) "Adverse decision" includes the court of appeals' denial of or failure to grant the full relief sought or the court of appeals' denial of the preferred form of relief.

(c) "Adverse decision" does not include a party's disagreement with the court of appeals' language or rationale in granting a party's requested relief.

(1m) GENERAL RULE; TIME LIMITS. (a) A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to s. 808.10.

(b) If a motion for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition for review in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.

(c) If a motion for reconsideration is denied and a petition for review had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition had not expired when the motion for reconsideration was filed, a response to the petition may be filed within 14 days of the order denying the motion for reconsideration.

(d) If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition, a notice withdrawing the pending petition, or an amendment to the pending petition within 14 days after the date of the filing of the court of appeals' amended decision.

(e) After the petitioning party files a notice affirming or withdrawing the pending petition or an amendment to the pending petition under par. (d), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response may be an affirmation of the responding party's earlier response or a new response.

(1r) CRITERIA FOR GRANTING REVIEW. Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:

(a) A real and significant question of federal or state constitutional law is presented.

(b) The petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority.

(c) A decision by the supreme court will help develop, clarify or harmonize the law, and

1. The case calls for the application of a new doctrine rather than merely the application of well–settled principles to the factual situation; or

2. The question presented is a novel one, the resolution of which will have statewide impact; or

3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court.

(d) The court of appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the supreme court or other court of appeals' decisions.

(e) The court of appeals' decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

(2) CONTENTS OF PETITION. Except as provided in s. 809.32 (4), the petition must contain:

(a) A statement of the issues the petitioner seeks to have reviewed, the method or manner of raising the issues in the court of appeals and how the court of appeals decided the issues. The statement of issues shall also identify any issues the petitioner seeks to have reviewed that were not decided by the court of appeals. The statement of an issue shall be deemed to comprise every subsidiary issue as determined by the court. If deemed appropriate by the supreme court, the matter may be remanded to the court of appeals.

(b) A table of contents.

(c) A concise statement of the criteria of sub. (1r) relied upon to support the petition, or in the absence of any of the criteria, a concise statement of other substantial and compelling reasons for review.

(d) A statement of the case containing a description of the nature of the case; the procedural status of the case leading up to the review; the dispositions in the circuit court and court of appeals; and a statement of those facts not included in the opinion of the court of appeals relevant to the issues presented for review, with appropriate citation to the record.

(e) An argument amplifying the reasons relied on to support the petition, arranged in the order of the statement of issues presented. All contentions in support of the petition must be set forth in the petition. A memorandum in support of the petition is not permitted.

(f) An appendix containing, in the following order:

1. The decision and opinion of the court of appeals.

2. The judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition.

3. Any other portions of the record necessary for an understanding of the petition.

4. A copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b).

(2m) INAPPLICABLE TO PARENTAL CONSENT TO ABORTION CASES. Subsection (2) does not apply to a petition for review of an appeal that is governed by s. 809.105. A petition governed by that section shall comply with s. 809.105 (11).

(2r) APPLICATION TO TERMINATION OF PARENTAL RIGHTS CASES. This section applies to petitions for review of an appeal under s. 809.107, except as provided in s. 809.107 (6) (f).

(3) RESPONSE TO PETITION. Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14 days after the service of the petition. If an unpublished opinion is cited under s. 809.23 (3) (a) or (b), a copy of the opinion shall be provided in an appendix to the response. If filed, the response may contain any of the following:

(a) Any reasons for denying the petition.

(b) Any perceived defects that may prevent ruling on the merits of any issue in the petition.

(c) Any perceived misstatements of fact or law set forth in the petition that have a bearing on the question of what issues properly would be before the court if the petition were granted.

(d) Any alternative ground supporting the court of appeals result or a result less favorable to the opposing party than that granted by the court of appeals.

(e) Any other issues the court may need to decide if the petition is granted, in which case the statement shall indicate whether the other issues were raised before the court of appeals, the method or manner of raising the issues in the court of appeals, whether the court of appeals decided the issues, and how the court of appeals decided the issues.

(3m) PETITION FOR CROSS–REVIEW. (a) *When required; time limit*. A party who seeks to reverse, vacate, or modify an adverse decision of the court of appeals shall file a petition for cross–review within the period for filing a petition for review with the supreme court, or 30 days after the filing of a petition for review by another party, whichever is later.

(b) *No cross–petition required*. 1. A petition for cross–review is not necessary to enable an opposing party to defend the court of appeals' ultimate result or outcome based on any ground, whether or not that ground was ruled upon by the lower courts, as long as the supreme court's acceptance of that ground would not change the result or outcome below.

2. A petition for cross–review is not necessary to enable an opposing party to assert grounds that establish the party's right to a result that is less favorable to it than the result or outcome rendered by the court of appeals but more favorable to it than the result or outcome that might be awarded to the petitioner.

(c) *Rights and obligations of parties*. A party seeking cross–review has the same rights and obligations as a party seeking review under ch. 809, and any party opposing a petition for cross–review has the same rights and obligations as a party opposing review.

(4) FORM AND LENGTH REQUIREMENTS. (a) The petition for review and response, if any, shall conform to s. 809.19 (8) (b) and (d) as to form and certification, shall be as short as possible, and may not exceed 35 pages in length if a monospaced font is used or 8,000 words if a proportional serif font is used, exclusive of appendix. The petition for review and the response shall have white front and back covers, and a party shall file 10 copies with the clerk of the supreme court.

(b) *Electronic petition for review.* An attorney filing a petition for review under this rule shall file with the clerk of the supreme court a copy of the petition for review or response in electronic form using the procedure under s. 809.19 (12) and may file a copy of an appendix to the petition for review or response in electronic form using the procedure under s. 809.19 (13). A self–represented party is not required to file an electronic copy of the petition for review or response, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the petition for review or response remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper petition for review. An attorney shall show good cause why it is not feasible to file a copy of the petition of review electronically.

(c) *Effect of electronic filing*. Except as provided in s. 809.80 (3) (e), the date on which the clerk receives the paper copies of the petition for review shall be the official date of filing of the petition for review. Transmitting the electronic copy of a petition for review does not satisfy the filing requirements of this section.

(d) *Timing of electronic filing*. The electronic copy of the petition for review and response shall be electronically transmitted on or before the date that the paper petition for review and response is filed.

(4m) COMBINED RESPONSE AND PETITION FOR CROSS–REVIEW. When a party elects both to submit a response to the petition for review and to seek cross–review, its submission shall be titled "Combined Response and Petition for Cross–Review." The time limits set forth in sub. (3m) shall apply. The response portion of the combined document shall comply with the requirements of subs. (3) and (4). The cross–review portion of the combined document shall comply with the requirements of subs. (2) and (4), except that the requirement of sub. (2) (d) may be omitted. The

cross–review portion shall be preceded by a blank white cover. A signature shall be required only at the conclusion of the cross–review portion of the combined document.

(5) EFFECT ON COURT OF APPEALS PROCEEDINGS. Except as provided in s. 809.24, the filing of the petition stays further proceedings in the court of appeals.

(6) CONDITIONS OF GRANT OF REVIEW. The supreme court may grant the petition or the petition for cross–review or both upon such conditions as it considers appropriate, including the filing of additional briefs. If a petition is granted, the parties cannot raise or argue issues not set forth in the petition unless ordered otherwise by the supreme court. The supreme court may limit the issues to be considered on review. If the issues to be considered on review are limited by the supreme court and do not include an issue that was identified in a petition and that was left undecided by the court of appeals, the supreme court shall remand that issue to the court of appeals upon remittitur, unless that issue has become moot or would have no effect.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1991 a. 263; Sup. Ct. Order No. 93–20, 179 Wis. 2d xxv; 1993 a. 395; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 04–08, 2008 WI 108, filed 7–30–08, eff. 1–1–09; Sup. Ct. Order No. 08–15 and 08–18, 2009 WI 4, 311 Wis. 2d xxix; 2009 a. 25, 180; Sup. Ct. Order No. 10–01 and 10–02, 2010 WI 42, 323 Wis. 2d xxiii.

Judicial Council Committee's Note, 1979: The caption of Rule 809.62 is amended to more properly describe the function of the Supreme Court in reviewing decisions of the Court of Appeals.

Rule 809.62 (5) [7] is created to protect the review rights of all parties to a review in the Supreme Court by creating a cross–review provision for a decision being reviewed by the Supreme Court similar to the cross–appeal provision for a judgment or order being appealed to the Court of Appeals from a trial court found in Rule 809.10 (2) (b). New sub. 809.62 (5) gives a party the ability to file for cross–review with the Supreme Court up to an additional 30 days from the filing of a petition for review by another party to the decision rendered by the Court of Appeals. [Re Order effective Jan. 1, 1980]

Judicial Council Committee's Note, 1981: Rule 809.62 is amended to regulate the form, contents and length of petitions for review. The amendments are intended to focus the petition for review on the criteria promulgated by the supreme court for granting a petition for review, to facilitate the efficient and effective consideration of the petition by the supreme court, and to develop a petition that may be used by the supreme court for consideration of the merits after review is granted.

Sub. (1) incorporates criteria promulgated by the supreme court for granting a petition for review. In re Standards to Review Petitions to Appeal, 85 Wis. 2d xiii, 268 N.W.2d xxviii (1978).

Sub. (2) regulates the contents of the petition. Sub. (2) (a) requires that the petition contain a statement of the issues presented for review, the method or manner of raising the issues in the court of appeals, and how the court of appeals decided the issues. Correspondingly, sub. (6), formerly sub. (4), is amended to provide that if the petition is granted, the petitioner cannot raise or argue issues not set forth in the petition unless ordered otherwise by the supreme court. The supreme court may limit the issues to be considered on review. These amendments establish that the parties are limited to the issues raised in the petition, but the supreme court may order the parties to argue issues not raised. Likewise, the supreme court may limit the issues to be reviewed. The petition informs the supreme court as to whether an issue had been raised in the court of appeals. If an issue was not raised in the court of appeals, then it is left to the judicial discretion of the supreme court as to whether it will grant the petition so as to allow the issue to be raised in the supreme court.

Sub. (2) (c) requires that the petition contain a concise statement of the criteria of sub. (1) relied upon to support the petition, or in the absence of any of the criteria, a concise statement of other substantial and compelling reasons for review. Supreme court review is a matter of discretion. The supreme court has promulgated the criteria as guidelines for the exercise of its discretion. In the absence of one of the criteria, the supreme court may grant a petition for review if the petitioner establishes other substantial and compelling reasons for review. The amendment requires that the petitioner either state criteria relied upon or in the absence of any of the criteria, state other substantial and compelling reasons for review. The burden is on the petitioner to explicitly define the other substantial and compelling reasons for review.

Sub. (2) (d) requires that the petition contain a statement of the case containing a description of the nature of the case, the procedural status of the case leading up to the review, the dispositions in the trial court and court of appeals, and a statement of those facts not included in the opinion of the court of appeals relevant to the issues presented for review, with appropriate references to the record. The opinion of the court of appeals must be included in an appendix to the petition. Consequently, if the opinion of the court of appeals sets forth a complete statement of the facts relevant to the issues presented for review, the petition for review need not restate those facts. The petition need only state those facts not included in the opinion of the court of appeals relevant to the issues presented for review. The statement of facts must include appropriate references to the record.

Sub. (2) (e) provides that the petition must contain an argument amplifying the reasons relied on to support the petition, arranged in the order of the statement of issues presented. All contentions must be contained within the petition. There is no memorandum in support of the petition.

The appendix required by sub. (2) (f) will assure that all relevant supporting documents necessary for an understanding of the petition for review be before the supreme court for consideration. This will facilitate not only the review of the petition for review but will enhance the petition as an aid to the court in any subsequent review on the merits.

Sub. (4) is created to regulate the form and length of the petition for review and response. The form of the petition and response is based on Rule 809.19 for briefs as to printing requirements, page size and binding. The petition and response shall be as short as possible but shall not exceed 35 pages in length, exclusive of appendix.

Prior sub. (3) is renumbered sub. (5) and amended to allow the court of appeals to reconsider on its own motion a decision or opinion within 30 days of a filing of a petition for review.

The amendments to the rule refer to Rule 809.32 (4) which governs the filing of a petition for review in a criminal case where there has been a fully briefed appeal to the court of appeals and appointed counsel is of the opinion that a petition for review in the supreme court under Rule 809.62 would be frivolous and without any arguable merit.

Prior subs. (2) and (5), relating to the time for filing the response to the petition for review and the provisions for cross–review have been renumbered subs. (3) and (7), respectively, but have not been substantively altered. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: The time limit in sub. (3) has been changed from 10 to 14 days. Please see the comment to s. 808.07. The last sentence of sub. (4) specifies the color of the cover that should accompany a petition for review and the number of copies required. [Re Order No. 00–02 effective July 1, 2001]

NOTE: Sup. Ct. Order No. 04–08, 2008 WI 108, states, "The Judicial Council Committee Comments are not adopted, but will be published and may be consulted for guidance in interpreting and applying Wis. Stat. ss. 809.30, 809.32 and 809.62."

Judicial Council Committee Comments, July 2008: The definition in s. 809.62 (1g) codifies the holding in *Neely v. State*, 89 Wis. 2d 755, 757–58, 279 N.W.2d 255 (1979), to the effect that a party cannot seek review of a favorable result merely because of disagreement with the court of appeals' rationale. At the same time, s. 809.62 (1g) underscores the fact that a court of appeals' decision that is generally favorable to a party remains adverse to that party to the extent that it does not grant the party all the relief requested, i.e., the full relief or the preferred form of relief sought by the party. See also *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

As an example, a criminal defendant seeking reversal of his conviction or, if that is not granted, resentencing, would be entitled to seek review of the court of appeals' failure to grant a new trial, even if it did order resentencing. Similarly, a civil appellant challenging a verdict finding liability and, should that be denied, the amount of damages, would be entitled to seek review of the court of appeals' failure to grant a new trial on liability, even if the court of appeals did order reassessment of damages.

Rules 809.62 (1m) and (1r) are former Rule 809.62 (1), divided into subsections and subtitled. Subtitles are added throughout Rule 809.62 to help practitioners and parties locate particular provisions.

Rule 809.62 (2) (a) is amended to require the petitioner to identify all issues on which it seeks review, including issues raised in the court of appeals but not decided in the court of appeals. The amendment to Rule 809.62 (2) (a) also clarifies that the statement of an issue incorporates all subsidiary issues. This amendment is adapted from the United States Supreme Court's rules. See U.S. Sup. Ct. Rule 14.1(a). See also *In the Interest of Jamie L.*, 172 Wis. 2d 218, 232–33, 493 N.W.2d 56 (1992).

Rule 809.62 (3) is amended to advise the respondent to apprise the supreme court, in the response to the petition, of any issues the court may need to decide if it grants review of the issue(s) identified in the petition. This applies whether or not the court of appeals actually decided the issues to be raised.

The amendments to Rule 809.62 (3) also advise the respondent to identify in its response any perceived misstatements of law or fact, or any defects (such as waiver, mootness, or estoppel) that could prevent the supreme court from reaching the merits of the issue presented in the petition. Compare U.S. Sup. Ct. Rule 15.2.

Rule 809.62 (3) (d) addresses the circumstance in which the respondent asserts an alternative ground to defend the court of appeals' ultimate result or outcome, whether or not that ground was raised or ruled upon by the lower courts.

Rule 809.62 (3) (d) also addresses the circumstances in which the respondent asserts an alternative ground that would result in a judgment less favorable than that granted by the court of appeals but more favorable to the respondent than might be granted for the petitioner (e.g., remand for a new trial rather than a rendition of judgment for the petitioner). The language is modified from Tex. R. App. P. 53.3(c)(3).

Rule 809.62 (3) (d) and (e) are intended to facilitate the supreme court's assessment of the issues presented for review, not to change current law regarding the application of waiver principles to a respondent. See *State v. Holt*, 128 Wis. 2d 110, 125, 382 N.W.2d 679 (Ct. App. 1985) (An appellate court may sustain a lower court's holding on a theory or on reasoning not presented to the lower court.)

Implicit in these amendments, although not expressly stated as in the federal rule, U.S. Sup. Ct. Rule 15.2, is the understanding that a respondent may be deemed to have waived issues or defects that do not go to jurisdiction if they are not called to the attention of the supreme court in a response to the petition. The supreme court retains its inherent authority to disregard any waiver and address the merits of an unpreserved argument or to engage in discretionary review under Wis. Stat. §§ 751.06 or 752.35. See *State v. Mikrut*, 2004 WI 79, ¶38. The possible invocation of waiver for failure to raise such alleged defects in the response will encourage the respondent to inform the supreme court of such defects before the supreme court decides whether to expend scarce judicial resources on the case. See *Oklahoma City v. Tuttle*, 471 U.S. 808, 815–16 (1985).

A number of other states have rules requiring the respondent to identify other issues it seeks to raise if review is granted, and either expressly or impliedly limiting the issues before the supreme court on a grant of review to those set forth in the petition and response. See Ariz. R. Civ. App. P. 23(e); Calif. App. R. 28(e)(2) & (5); Kan. R.S. & A. Cts. Rule 8.03(g)(1); N.C. R. App. P. 15(d) & 16(a); Oregon R. App. P. 9.20(2); Wash. R. App. 13.4(d).

A leading handbook on United States Supreme Court practice describes the procedure in that Court as follows:

> A respondent may also choose to waive the right to oppose a petition, which seems clearly without merit. This will save time and money, without any substantial risk if respondent feels certain that certiorari will be denied. In order that the waiver will clearly be understood as based upon the lack of merit in the petition, the statement filed with the Court — which may be in the form of a letter to the Clerk — should contain language to this effect: "In view of the fact that the case clearly does

not warrant review by this Court [as is shown by the opinion below], respondent waives the right to file a brief in opposition." The letter may also request leave to file a response to the petition if the Court wishes to see one. This will seldom be necessary, since if the respondent has not filed a response, or has affirmatively waived the right to file, and if the Court believes that the petition may have some merit, the respondent will usually be requested to file a response — usually within 30 days from the request.

In recent years, in order to expedite the filing of responses in the more meritorious cases, the Solicitor General has waived the right to file opposition briefs in many cases deemed to be frivolous or insubstantial. States often do the same thing, especially in criminal cases. Such waivers should be filed promptly, in order to speed up the distribution of the petition and the disposition of the case. Usually such petitions are denied, even though the Court may call for a response if any of the Justices so request.

Stern, R., et al., *Supreme Court Practice* §6.37 at 374–75 (7th ed. 1993) (footnote omitted).

Rule 809.62 (3m) is former Rule 809.62 (7) renumbered and amended. The requirements governing petitions for cross–review fit more logically after the requirements for the petition and the response, contained in Rules 809.62 (2) and (3).

Amended Rule 809.62 (3m) (a) replaces the permissive "may" with the mandatory "shall" to clarify that a petition for cross–review is mandatory if the respondent seeks to reverse, vacate, or modify an adverse decision of the court of appeals.

Amended Rule 809.62 (3m) also clarifies when a respondent must raise an issue in a petition for cross–review, rather than raising the issue in a response to the petition or merely arguing it in the brief. *Compare State v. Scheidell,* 227 Wis. 2d 285, 288 n.1, 595 N.W.2d 661 (1999) (respondent cannot argue issue raised below unless the issue was raised in a petition for cross–review), *with, e.g., In the Interest of Jamie L.,* 172 Wis. 2d 218, 232–33, 493 N.W.2d 56 (1992) (noting "general rule" that a petition for cross–review is not necessary to defend a judgment on any ground previously raised). Complicating these matters are holdings that a party may not petition for review (or cross–review) if it receives a favorable outcome from the court of appeals, *State v. Castillo,* 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

Rule 809.62 (3m) (b) clarifies that a respondent need not file a petition for cross–review to raise alternative issues or grounds in support of either (1) the court of appeals' ultimate result or (2) a judgment less favorable than that granted by the court of appeals but more favorable to the respondent than might be granted for the petitioner. Any such alternative grounds for affirmance or lesser relief should, however, be identified in the response. See Rules 809.62 (3) (d), (3) (e) and (6).

Amended Rule 809.62 (3m) (c) clarifies that a party opposing a petition for cross–review has the same rights and obligations as a respondent under Rule 809.62 (3).

New Rule 809.62 (4m) is created to permit a combined document when a party elects both to respond to the petition for review and to submit a petition for cross–review. The content and format requirements of the combined document are similar to the requirements for a combined brief of respondent and cross–appellant found in s. 809.19 (6) (b) 2.

The last sentence of Rule 809.62 (6) is new and is intended to preserve, for review by the court of appeals following remand, any issue raised at the court of appeals but not decided by that court or by the supreme court on review. For instance, after a civil jury verdict, an insured party might appeal issues relating to liability and damages. The insurer might appeal issues relating to coverage and damages. If the court of appeals reverses on the liability issue, without deciding the coverage and damages issues, and the supreme court accepts review on the liability issue only, amended Rule 809.62 (6) preserves the damage and coverage issues raised in the court of appeals and identified in the petition or response for consideration by the court of appeals following remand and remittitur from the supreme court. Remand of a preserved issue will not occur if the supreme court's decision renders the issue moot or of no effect. [Re Order No. 08–04 effective January 1, 2009]

NOTE: Sup. Ct. Order No. 08–15 and 08–18, 2009 WI 4, states "The following Comment to Wis. Stat. §§ (Rule) 809.62 (4) is not adopted but will be published and may be consulted for guidance in interpreting and applying the statute."

Comment, 2008: The electronic copy of a petition for review, response, or appendix is in addition to and not a replacement for the paper copies required under this rule. The filing requirement is satisfied only when the requisite number of paper copies is filed; the transmittal of an electronic copy does not satisfy requirements for a timely filing. A petition for review shall be physically received in the clerk's office within 30 days of the date of the decision of the court of appeals to invoke this court's appellate jurisdiction. *St. John's Home v. Continental Casualty Co.,* 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam. [Re Order No. 08–15 and 08–18 effective July 1, 2009]

The supreme court has power to entertain petitions filed by the state in criminal cases. State v. Barrett, 89 Wis. 2d 367, 280 N.W.2d 114 (1979).

If the court of appeals reverses a defendant's conviction on grounds of insufficiency of evidence, the double jeopardy clause does not bar the supreme court from reviewing the case. State v. Bowden, 93 Wis. 2d 574, 288 N.W.2d 139 (1980).

"Decision" under sub. (1) means the result, disposition, or mandate reached by court, not the opinion. Neely v. State, 89 Wis. 2d 755, 279 N.W.2d 255 (1979).

The supreme court will not order a new trial if the majority concludes that there is prejudicial error but there is no majority with respect to a particular error. "Minority vote pooling" is rejected. State v. Gustafson, 121 Wis. 2d 459, 359 N.W.2d 920 (1985).

Petitions for review must be filed by 5:00 p.m. on the 30th day following the filing of the court of appeals decision. St. John's Home v. Continental Casualty Co. 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam.

Citation to an unpublished court of appeals decision to show conflict between districts for purposes of s. 809.62 (1) (d) is appropriate. State v. Higginbotham, 162 Wis. 2d 978, 471 N.W.2d 24 (1991).

Issues before the court are issues presented in the petition for review and not the discrete arguments that may be made, pro or con, in the disposition of the issue. State v. Weber, 164 Wis. 2d 788, 476 N.W.2d 867 (1991).

Together, s. 809.32 (4) and 977.05 (4) (j) create a statutory, but not constitutional, right to counsel in petitions for review, provided counsel does not determine the appeal to be without merit. If counsel fails to timely file a petition for review, the defendant may petition for a writ of habeas corpus and the supreme court has the power to allow late filing. Schmelzer v. Murphy, 201 Wis. 2d 246, 548 N.W.2d 45 (1996), 95–1096.

The 30–day deadline for receipt of a petition for review is tolled on the date that a pro se prisoner delivers a correctly addressed petition to the proper prison authorities for mailing. State ex rel. Nichols v. Litscher, 2001 WI 119, 247 Wis. 2d 1013, 635 N.W.2d 292, 00–0853. See also, Brown v. Bradley, 2003 WI 14, 259 Wis. 2d 630, 658 N.W.2d 427, 01–3324.

Discretionary review by the Wisconsin supreme court. Wilson and Pokrass. WBB Feb. 1983.

Petitions for review by the Wisconsin supreme court. 1979 WLR 1176.

809.63 Rule (Procedure in supreme court). When the supreme court takes jurisdiction of an appeal or other proceeding, the rules governing procedures in the court of appeals are applicable to proceedings in the supreme court unless otherwise ordered by the supreme court in a particular case.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978).

809.64 Rule (Reconsideration). A party may seek reconsideration of the judgment or opinion of the supreme court by filing a motion under s. 809.14 for reconsideration within 20 days after the date of the decision of the supreme court.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1978: Rule 809.64 replaces former Rules 251.65, 251.67 to 251.69, which provided for motions for rehearing. The necessity for the filing of briefs on a motion for reconsideration as required by former Rule 251.67 is eliminated. The matter will be considered on the motion and supporting and opposing memoranda as with any other motion. The term "reconsideration" is used rather than rehearing because in a case decided without oral argument there has been no initial hearing. [Re Order effective July 1, 1978]

Judicial Council Note, 2001: This section has been changed to specify that the time limit for filing motions for reconsideration of supreme court opinions is calculated from the date, not the filing, of the decision. [Re Order No. 00–02 effective July 1, 2001]

A supreme court order denying a petition to review a court of appeals decision was neither a judgment nor an opinion. Archdiocese of Milwaukee v. Milwaukee, 91 Wis. 2d 625, 284 N.W.2d 29 (1979).

A motion mailed within the 20–day period, but received after the period expired, was not timely and did not merit exemption from the time requirement. Lobermeier v. General Telephone Co. of Wisconsin, 120 Wis. 2d 419, 355 N.W.2d 531 (1984).

SUBCHAPTER VII

ORIGINAL JURISDICTION PROCEDURE IN SUPREME COURT

809.70 Rule (Original action). (1) A person may request the supreme court to take jurisdiction of an original action by filing a petition which may be supported by a memorandum. The petition must contain all of the following:

(a) A statement of the issues presented by the controversy.

(b) A statement of the facts necessary to an understanding of the issues.

(c) A statement of the relief sought.

(d) A statement of the reasons why the court should take jurisdiction.

(2) The court may deny the petition or may order the respondent to respond and may order oral argument on the question of taking original jurisdiction. The respondent shall file a response, which may be supported by a memorandum, within 14 days after the service of the order.

(3) The court, upon a consideration of the petition, response, supporting memoranda and argument, may grant or deny the petition. The court, if it grants the petition, may establish a schedule for pleading, briefing and submission with or without oral argument.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1995 a. 225; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Note, 2001: The time limit in sub. (2) was changed from 10 to 14 days. Please see the comment to s. 808.07. [Re Order No. 00–02 effective July 1, 2001]

809.71 Rule (Supervisory writ). A person may request the supreme court to exercise its supervisory jurisdiction over a court and the judge presiding therein or other person or body by filing a petition in accordance with s. 809.51. A person seeking a super-

visory writ from the supreme court shall first file a petition for a supervisory writ in the court of appeals under s. 809.51 unless it is impractical to seek the writ in the court of appeals. A petition in the supreme court shall show why it was impractical to seek the writ in the court of appeals or, if a petition had been filed in the court of appeals, the disposition made and reasons given by the court of appeals.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252.

Judicial Council Committee's Note, 1981: The supreme court will not exercise its supervisory jurisdiction where there is an adequate alternative remedy. Unless the court of appeals is itself the object of the supervisory writ, usually there is an adequate alternative remedy of applying to the court of appeals under Rule 809.51 for the supervisory writ. The amendment to Rule 809.71 establishes that before a person may request the supreme court to exercise its supervisory jurisdiction, the person must first seek the supervisory writ in the court of appeals, unless to do so is impractical. Following the decision of the court of appeals, the amendment does not preclude the supreme court from considering a petition for review under Rule 809.62 or a petition for supervisory writ under Rule 809.71, depending upon the circumstances and the petitioner's ability to establish the respective governing criteria. [Re Order effective Jan. 1, 1982]

SUBCHAPTER VIII

MISCELLANEOUS PROCEDURES IN COURT OF APPEALS AND SUPREME COURT

809.80 Rule (Filing and service of papers). (1) A person shall file any paper required to be filed by these rules with the clerk of the court unless a different place of filing is expressly required or permitted by statute or rule. The clerk of the court is located at 110 E. Main Street, Madison, Wisconsin 53703. The mailing address for the clerk of the supreme court and the court of appeals is P.O. Box 1688, Madison, Wisconsin 53701–1688.

(2) (a) A person shall serve and file a copy of any paper required or authorized under these rules to be filed in a trial or appellate court as provided in s. 801.14 (1), (2) and (4).

(b) Any paper required or authorized to be served on the state in appeals and other proceedings in felony cases in the court of appeals or supreme court shall be served on the attorney general unless the district attorney has been authorized under s. 978.05 (5) to represent the state. Any paper required or authorized to be served on the state in appeals and other proceedings in misdemeanor cases decided by a single court of appeals judge under s. 752.31 (2) and (3) shall be served on the district attorney. Every petition for review by the supreme court of a decision of the court of appeals in a misdemeanor case shall be served on the attorney general.

(3) FILING OF PAPERS; USE OF MAIL. (a) *All filings — general rule*. Except as provided in pars. (b) to (e), filing is not timely unless the clerk receives the paper documents within the time fixed for filing. Filing may be accomplished by hand delivery, mail, or by courier. Filing by facsimile is permitted only as set forth in s. 801.16.

(b) *Brief or appendix — general rule*. Except as provided in par. (c), a brief or appendix is timely filed if, on or before the last day of the time fixed for filing, it is correctly addressed and:

1. Deposited in the United States mail for delivery to the clerk by first–class mail, or other class of mail that is at least as expeditious, postage pre–paid; or

2. Delivered to a 3rd–party commercial carrier for delivery to the clerk within 3 calendar days.

(c) *Pro se brief or appendix from person confined in institution — special rule*. A pro se brief or appendix from a person confined in an institution is timely filed if the brief or appendix is correctly addressed and delivered to the proper institution authorities for mailing on or before the last day of the time fixed for filing. A confined person who mails a brief or appendix under this subsection shall also file a certification or affidavit setting forth the date on which the document was delivered to the proper institution authorities for mailing.

(d) *Petition for review — general rule*. Except as provided in par. (e), a petition for review is timely filed only if the clerk actually receives the petition within the time fixed for filing.

(e) *Pro se petition for review from person confined in institution — special rule*. The 30–day time limit for the clerk's receipt of a pro se petition for review filed by a person confined in an institution is tolled on the date that the confined person delivers a correctly addressed petition to the proper institution authorities for mailing. The confined person shall also file a certification or affidavit setting forth the date on which the petition was delivered to the proper institution authorities for mailing.

(4) PROOF OF FILING DATE FOR BRIEF OR APPENDIX. (a) When a brief or appendix is filed by mail or commercial carrier in accordance with s. 809.80 (3) (b), the attorney or person filing the document shall append a certification or affidavit setting forth the date and manner by which the document was mailed or delivered to a 3rd–party commercial carrier.

(b) If a certification or affidavit is appended, the clerk's office shall consider the brief or appendix filed on the date of mailing or delivery set forth in the certification or affidavit. If no certification or affidavit is appended, the date of filing shall be the date on which the brief or appendix is received by the clerk's office.

(c) The date shown on a postage meter does not establish that the document was mailed on that date.

(5) ELECTRONIC BRIEFS AND NO–MERIT REPORTS. (a) *Clerk review*. 1. The clerk shall review the electronic copy of the brief, no–merit report, or supplemental no–merit report to determine if the electronic document should be accepted for filing.

2. If the clerk accepts the electronic copy of the brief, no–merit report, or supplemental no–merit report under subd. 1., the electronic copy shall be considered transmitted to the court at the time the original transmission to the electronic filing system was complete. Upon acceptance of the electronic copy, the electronic filing system shall issue a confirmation with the date and time of the original transmission. The confirmation receipt shall serve as proof of the electronic transmission only. The filing date for the document remains the date on which the paper document is filed.

3. If the clerk rejects the electronic copy of the document following review under subd. 1., the filer will receive notification of the rejection. The filer may be required to resubmit the electronic copy of the document.

(b) *Effect of noncompliance*. Failure to transmit the electronic copy of the brief, no–merit report, or supplemental no–merit report on or before the date that the paper document is filed may result in the document being considered untimely, in the absence of leave of the court.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252; Sup. Ct. Order, 130 Wis. 2d xi (1986); 1989 a. 31; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 253; Sup. Ct. Order No. 08–15 and 08–18, 2009 WI 4, 311 Wis. 2d xxix.

Judicial Council Committee's Note, 1978: The prior requirement of an affidavit of service is eliminated. The provision of the Rules of Civil Procedure that the filing of a paper is a certification that the paper has been served is adopted. [Re Order effective July 1, 1978]

Judicial Council Note, 1986: Sub. (2) (b) does not change the existing service rules; it is intended to consolidate and clarify the procedure specified by ss. 59.47 (7), 165.25 (1) and 752.31 (2) and (3). [Re Order effective July 1, 1986]

Judicial Council Note, 2001: Subsection (1) was amended to provide the correct address of the clerk of the supreme court and court of appeals. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: Subsections (3) through (4) are new, and are taken largely from the Federal Rules of Appellate Procedure, Rule 25. Under the former rules, a brief was not filed until the clerk physically received it, regardless of when the brief may have been mailed. Because a party outside the Madison area had to allow time for postal or courier delivery, briefing periods were often adversely affected merely to ensure that a brief was actually received by the clerk before the expiration of the filing deadline.

Subsection (3) (a) retains the general rule that a document is not filed until it is received by the clerk. Filing may be accomplished in person, by mail, or by courier or common carrier. Electronic filing of papers, other than filing by facsimile, is not permitted unless otherwise ordered by the supreme court. See s. 801.16 (2) addressing rules governing facsimile filing. The supreme court and the court of appeals have adopted local rules governing facsimile filing.

However, sub. (3) (b) creates a mailbox rule for briefs and appendices only. For briefs and appendices, filing will be considered timely if, on or before the deadline, the brief or appendix is correctly addressed and either: (a) deposited in the United States mail for delivery by first–class mail, or other class of mail at least as expedi-

tious, postage pre–paid, or (b) delivered to a commercial delivery service for delivery within 3 calendar days. When a brief or appendix is mailed or sent by commercial courier, subsection (4) requires that the party also file a certification or affidavit of mailing stating the date and manner of mailing or delivery.

Subsection (3) (c) addresses pro se briefs and appendices filed by confined persons. For confined persons, a brief or appendix will be timely filed if, on or before the deadline, the brief or appendix is correctly addressed and delivered to the proper institution authorities for mailing. In order for the brief or appendix to be timely filed under sub. (3) (c), a certification or affidavit must be filed stating the date on which the brief or appendix was delivered to the proper institution authorities for mailing. The important point is that the pro se confined person must follow the institution rules or practices as to outgoing mail — whether they require placing mail in the hands of certain institution authorities, depositing mail in a designated receptacle, or some other procedure. See *State ex rel. Nichols v. Litscher*, 2001 WI 119 ¶ 32 n. 6, 247 Wis. 2d 1013, 1028 n. 6, 635 N.W.2d 292.

Subsection (3) (d) reiterates the long–standing rule that a petition for review filed with the clerk of the supreme court must actually be received by the clerk on or before the last day of the filing period. The time limit for filing a petition for review cannot be extended. The timely filing of a petition for review is necessary to invoke the supreme court's appellate jurisdiction. See *First Wis. Nat'l Bank of Madison v. Nicholaou*, 87 Wis. 2d 360, 274 N.W.2d 704 (1979). The mailbox rule for briefs and appendices created in sub. (3) (b) does not apply to the filing of a petition for review under s. 809.62.

Subsection (3) (e) expands the coverage of the rule tolling the time limit for the clerk's receipt of a pro se petition for review from a prisoner on the date the prisoner delivers a correctly addressed petition to the proper prison authorities, as established in *State ex rel. Nichols v. Litscher*, *supra*. to include petitions for review from all pro se confined persons. Subsection (3) (e) also adds a requirement for filing of a certification or affidavit setting forth the date on which the petition for review was delivered to the proper institution authorities for mailing. The important point is that in order to trigger tolling, the pro se confined person must follow the institution rules or practices as to outgoing mail — whether they require placing mail in the hands of certain institution authorities, depositing mail in a designated receptacle, or some other procedure. See *State ex rel. Nichols v. Litscher, supra*. [Re Order No. 02–01 effective January 1, 2003]

To avoid potential delay, address all types of mail to: Clerk of the Court, Supreme Court of Wisconsin, P. O. Box 1688, Madison, WI 53701. Gunderson v. State, 106 Wis. 2d 611, 318 N.W.2d 779 (1982).

809.81 Rule (Form of papers). A paper filed in the court must conform to the following requirements unless expressly provided otherwise in these rules:

(1) SIZE. 8–1/2 x 11 inches.

(2) NUMBER OF COPIES. Five copies in the court of appeals, 9 copies in the supreme court, and 3 copies of a motion filed under s. 809.14 in the court of appeals if the appeal or other proceeding is one of the types of cases specified in s. 752.31 (2).

(3) STYLE. Produced using either a monospaced or a proportional serif font.

(4) SPACING AND MARGINS. Double–spaced with a minimum of a 1.5 inch margin on each of the 4 sides.

(5) PAGINATION. Paginated at the center of the bottom margin.

(6) COPYING PROCESS. Any duplicating or copying process that produces a clear, black image on white paper. Carbon copies may not be filed.

(7) BINDING. Bound or stapled at the top margin.

(8) CONFIDENTIALITY. Every notice of appeal or other document that is filed in the court and that is required by law to be confidential shall refer to individuals only by their first name and the first initial of their last name.

(9) CAPTIONS. Except as provided in s. 809.81 (8), the caption of any document shall include the full name of each party in the circuit court and shall designate each party so as to identify each party's status in the circuit court and in the appellate court, if any. In the supreme court, "petitioner" shall be added to the designation of a party filing a petition for review. The designation of a party responding to a petition for review shall remain the same as in the court of appeals.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); Sup. Ct. Order No. 93–18, 179 Wis. 2d xxi; Sup. Ct. Order No. 93–20, 179 Wis. 2d xxv; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii.

Judicial Council Committee's Note, 1978: The 8–1/2 x 11 letter size paper is adopted as the standard size for all papers to be filed in the Court of Appeals in place of using both 8–1/2 x 14 and 8–1/2 by 11. A standard size paper simplifies records management. There is a national trend away from legal size paper. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1981: Sub. (2) is amended to clarify that an original must be filed with the 4 copies in the court of appeals or with the 8 copies in the supreme court. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: Subsection (2) was amended to eliminate the distinction between "original" and "copy," because current technology produces copies of quality as good as the original. Subsection (8) requires that only the first name and last initial be used in all documents in confidential cases. [Re Order No. 00–02 effective July 1, 2001]

Judicial Council Note, 2002: Subsection (9) is created to clarify that the same caption should be used on all documents filed in an appellate case, and specifies that caption. Captions on pleadings and other documents filed pursuant to this rule are consistent with the current s. 809.19 (9) requirement governing captions on briefs. [Re Order No. 02–01 effective January 1, 2003]

809.82 Rule (Computation and enlargement of time).

(1) COMPUTATION. In computing any period of time prescribed by these rules, the provisions of s. 801.15 (1) and (5) apply.

(2) ENLARGEMENT OR REDUCTION OF TIME. (a) Except as provided in this subsection, the court upon its own motion or upon good cause shown by motion, may enlarge or reduce the time prescribed by these rules or court order for doing any act, or waive or permit an act to be done after the expiration of the prescribed time.

(b) Notwithstanding par. (a), the time for filing a notice of appeal or cross–appeal of a final judgment or order, other than in an appeal under s. 809.107 of a judgment or order that was entered as a result of a petition under s. 48.415 that was filed by a representative of the public under s. 48.09 or an appeal under s. 809.30 or 809.32, may not be enlarged.

(c) The court may not enlarge the time prescribed for an appeal under s. 809.105 without the consent of the minor and her counsel.

(d) A copy of any motion to enlarge time limits under this subsection shall be served on the clerk of circuit court.

(e) Notwithstanding par. (a), the time for filing a motion for reconsideration under s. 809.24 may not be enlarged.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; 1991 a. 263; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02–01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 293.

Judicial Council Committee's Note, 1978: Sub. (1). The provisions of the Rules of Civil Procedure as to computation of time are adopted for appeals to avoid any problems resulting from a lack of uniformity.

Sub. (2) continues the first sentence of former Rule 251.45. It eliminates the second sentence of that Rule permitting the attorneys by stipulation to extend the time for filing briefs if the extension does not interfere with the assignment of the case because this procedure interferes with the ability of the court to monitor cases pending before it and because it is not always certain when a case will be on an assignment. The Supreme Court considers that deadlines as to briefs and other actions in the court should have priority over all matters except previously scheduled trials in circuit and county courts and deadlines set by a federal court. Requests for extensions are not, consequently, looked upon with favor by the court. [Re Order effective July 1, 1978]

Judicial Council Committee's Note, 1981: Sub. (2) is amended to permit the court of appeals to extend the time for filing a notice of appeal or cross–appeal in appeals under Rules 809.30 and 809.40 (1), which cover criminal appeals and postconviction motions and appeals in ch. 48, 51 and 55 cases. When read with Rules 809.30 and 809.40 (1), the rule was previously ambiguous regarding extensions of time to file a notice of appeal or cross–appeal in ch. 48, 51 and 55 cases. The amendment clarifies the rules. Other than appeals under Rules 809.30 and 809.40 (1), the time for filing a notice of appeal or cross–appeal may not be extended. [Re Order effective Jan. 1, 1982]

Judicial Council Note, 2001: Subsection (2) (d) was created to provide notice to the clerk of any motion affecting time limits. Subsection (2) (e) was created to facilitate computation of due dates on petitions for review. [Re Order No. 00–02 effective July 1, 2001]

The court of appeals abused its discretion by ordering oral argument one day after the petition for a writ was filed and served. State ex rel. Breier v. Milwaukee County Cir. Ct. 91 Wis. 2d 833, 284 N.W.2d 102 (1979).

The authority to extend the time for filing a notice of appeal under sub. (2) does not apply to appeals regarding terminations of parental rights under s. 809.107. Gloria A. v. State, 195 Wis. 2d 268, 536 N.W.2d 396 (Ct. App. 1995), 95–0315.

A claim of ineffective assistance of appellate counsel must be brought by a petition for writ of habeas corpus. Utilizing sub. (2) as a substitute for habeas corpus, so as to avoid making a substantive determination that a defendant was denied the effective assistance of appellate counsel constitutes an erroneous exercise of discretion. State v. Evans, 2004 WI 84, 273 Wis. 2d 192, 682 N.W.2d 784, 02–1869. See also Santana v. Endicott, 2006 WI App 13, 288 Wis. 2d 707, 709 N.W.2d 515, 05–0332.

It is unwise and unhelpful to replace the good cause standard for deciding extension motions under this section with an ineffective assistance of counsel analysis under *Evans* when deciding requests for extensions of time to file notices of intent to pursue postconviction relief. State v. Quackenbush, 2005 WI App 2, 278 Wis. 2d 611, 692 N.W.2d 340, XX–02–0489.

The writ of habeas corpus may be used in the court of appeals to seek relief from a termination of parental rights (TPR) even though there is no restraint of liberty of the petitioner, when appellate counsel failed to appeal before the deadline. Under sub. (2) (b), the time for filing an appeal of a TPR may not be enlarged when the petition was filed by someone other than a representative of the public. If the court was not able to recognize the petitioner's right to raise ineffectiveness of counsel, the petitioner will never have an appeal through no fault of his or her own. Amy W. v. David G., 2013 WI App 83, ___ Wis. 2d ___, ___ N.W.2d ___, 13–0731.

809.83 Rule (Penalties for delay or noncompliance with rules). (1) DELAY; EXTRA COSTS AND DAMAGES. (a) If the

court finds that an appeal was taken for the purpose of delay, it may award any of the following:

1. Double costs.

2. A penalty in addition to interest not exceeding 10% on the amount of the judgment affirmed.

3. Damages occasioned by the delay.

4. Reasonable attorney fees.

(b) A motion for costs, penalties, damages and fees under this subsection shall be filed no later than the filing of the respondent's brief or, if a cross–appeal is filed, the cross–respondent's brief.

(2) NONCOMPLIANCE WITH RULES. Failure of a person to comply with a court order or with a requirement of these rules, other than the timely filing of a notice of appeal or cross–appeal, does not affect the jurisdiction of the court over the appeal but is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 151 Wis. 2d xvii (1989); 1995 a. 225; Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii.

Judicial Council Committee's Note, 1978: Former ss. 251.22, 251.23, 251.51, 251.56, 251.57, 251.73, 251.75, 251.77, 251.81, 251.82, 251.85 and 251.89, providing for specific penalties for delay and for certain rule violations, are replaced. In the event of a rule violation, the court is authorized to take such action as it considers appropriate. If the court finds an appeal was taken for purposes of delay, it can impose one or more of the four types of penalties specified in sub. (1). [Re Order effective July 1, 1978]

Judicial Council Note, 2001: Subsection (2) is changed to allow appellate courts to sanction parties who violate court orders. [Re Order No. 00–02 effective July 1, 2001]

The untimely service of a petition filed under s. 808.10 does not affect jurisdiction, but the opposing party may move to dismiss under s. 809.83 (2). State v. Rhone, 94 Wis. 2d 682, 288 N.W.2d 862 (1980).

Summary reversal of a dismissal order as a sanction under sub. (2) entitled the plaintiffs to a trial without consideration of the issue that resulted in the dismissal. State ex rel. Blackdeer v. Town of Levis, 176 Wis. 2d 252, N.W.2d (Ct. App. 1993).

To dismiss an appeal under sub. (2), there must be demonstrated egregious conduct or bad faith on the party's or attorney's part. In certain cases attorney bad faith may be imputed to the party, but the attorney conduct should involve the same litigation. It was improper to consider an attorney's repeated requests for time extensions in other cases in denying a motion and dismissing the appeal. State v. Smythe, 225 Wis. 2d 456, 592 N.W.2d 628 (1999), 97–3191.

The court of appeals may not grant summary reversal of a circuit court order on appeal as a sanction without a finding of bad faith, egregious conduct, or a litigant's abandonment of the appeal. Raz v. Brown, 2003 WI 29, 260 Wis. 2d 614, 660 N.W.2d 647, 01–2436.

809.84 Rule (Applicability of rules of civil procedure). An appeal to the court is governed by the rules of civil procedure as to all matters not covered by these rules unless the circumstances of the appeal or the context of the rule of civil procedure requires a contrary result.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978).

809.85 Rule (Counsel to continue). An attorney appointed by a lower court in a case or proceeding appealed to the court shall continue to act in the same capacity in the court until the court relieves the attorney.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 151 Wis. 2d xxv (1989).

Judicial Council Committee's Note, 1978: Rule 809.85 continues former Rule 251.88. [Re Order effective July 1, 1978]

Judicial Council Note, 1990: See ss. 48.235 (7), 767.045 (5) and 880.331 (7).

In this section, "the court" means the court of appeals. Once a timely notice of appeal is filed, the court of appeals gains jurisdiction over the case and the circuit court no longer has jurisdiction to remove court appointed counsel. Roberta Jo W. v. Leroy W. 218 Wis. 2d 225, 578 N.W.2d 185 (1998), 96–2753.

Appendix D:
Rule 809 Appellate Time Table

Following is an easy reference chart for calculating deadlines throughout the process of a Wisconsin appeal. This chart was created by the Wisconsin State Public Defender's Office, and is available free of charge at it's Web site.

Rule 809.30 Appellate Time Table

For criminal appeals and those under ch. 48 (except TPR), 51, 55, 938, and 980 (among others).

BETWEEN	AND	TIME
Sentencing or final adjudication	Filing of Notice of Intent to Seek Postconviction or Postdisposition Relief	**20 days** 809.30(2)(b)
Filing of Notice of Intent (where person requests representation by State Public Defender (SPD))	Clerk of Court transmission of the Notice, judgment, and court reporter list to SPD Intake	**5 days** 809.30(2)(c)(1)
Filing of Notice of Intent (where person will represent self or retain counsel)	Clerk of Court's transmission of the Notice, judgment, and court reporter list to unrepresented person or to retained counsel	**5 days** 809.30(2)(c)(2)
SPD receipt of materials from Clerk of Court	SPD's appointment of counsel and request for transcripts and court record	**30 days** (if indigency does not need to be determined) **or 50 days** (if indigency must be determined or re-determined) 809.30.(2)(e)
Filing of Notice of Intent	Retained counsel or unrepresented person's request for transcripts and court record	**30 days** **or 90 days** (if denied SPD representation) 809.30(2)(f)
Request for transcripts and court record	Service of transcripts and court record on appellant or counsel	**60 days** **or 20 days** (for service of transcript of post-judgment hearing, after hearing on postconviction or postdisposition motion) 809.30(2)(g)
Service of later of: last transcript or court record	Filing of Notice of Appeal (and, in ch. 48, 51, 55 & 938 cases, a docketing statement) *OR* Filing of postconviction or postdisposition motion (PCM)	**60 days** (plus 3 days for mailed service) 809.30(2)(h)&(j); 801.15(5); 809.10(1)
Filing of PCM	Entry of order determining PCM	**60 days** 809.30(2)(i)

Entry of order determining PCM	Filing of Notice of Appeal (and, in ch. 48, 51, 55 & 938 cases, a Docketing Statement)	**20 days** 809.30(2)(j)
Service of later of: last transcript or court record	Filing of No Merit Notice of Appeal and No Merit Report	**180 days or 60 days** after entry of order determining PCM, whichever is later 809.32(2)
Filing of Notice of Appeal	Filing of statement on transcript and arranging for service of transcripts on other parties	**14 days** 809.11(4)
Filing of Statement on Transcript	Service of any PCM hearing transcripts	**20 days** 809.30(2)(g)2.
Filing of Notice of Appeal	Transmission of record from circuit court to court of appeals (COA)	**40 days** 809.30(2)(k)
Filing of record in COA	Filing of appellant's brief	**40 days** 809.19(1)
Filing of appellant's brief	Filing of respondent's brief	**30 days** after the later of: service of appellant's brief (including 3 days for mailed service), filing of appellant's brief, or filing of record in COA 809.19(3)(a); 801.15(5)
Filing of respondent's brief	Filing of reply brief	**15 days** after the later of: service of respondent's brief (including 3 days for mailed service) or filing of respondent's brief 809.19(4); 801.15(5)
Filing of reply brief	Decision of Court of Appeals	**Varies depending on court's schedule**
Decision of Court of Appeals	Filing of motion to reconsider	**20 days** 809.24(1)
Decision of Court of Appeals	Filing of petition for review or no-merit petition for review	**30 days** (unless a motion to reconsider was timely filed, in which case the 30-day deadline begins to run on the date the COA denies the motion or issues an amended decision) 809.62(1m); 808.10(2)
Filing of petition for review	Filing of response to petition for review	**14 days** (plus 3 days for mailed service) 809.62(3); 801.15(5)
Filing of response to petition for review	Decision of Supreme Court on granting review	**Varies depending on court's schedule**

Appendix E:
Notice of Appeal Template

The following template is available free of charge at the Web site for the Wisconsin Clerk of Circuit Court. Litigants may complete and file this form, rather than drafting from scratch.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	*For Official Use*
_____) _____,)) (party designation) _____)) -vs-)) _____) _____,)) (party designation) _____)	**Notice of Appeal** Case No. _____

Notice is hereby given that (name of party filing appeal) _____ appeals to the Court of Appeals, District _____, from [choose one] ☐ the whole ☐ a part of the final judgment or order, entered on (date) _____ in the circuit court for _____ County, the Honorable (name of Judge) _____, presiding, in favor of (name of party opposing appeal) _____, and against (name of party filing appeal) _____, wherein the court (describe judgment or order) _____ _____.

NOTE: If this is an appeal under §809.30 or §809.32, also include the following (*see* §809.10(1)):

- If a postconviction motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.

  If a postconviction motion was filed, state the date of the order deciding the postconviction motion(s).

- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This [choose one] ☐ is ☐ is not an appeal within Wisconsin Statutes §752.31(2).

This [choose one] ☐ is ☐ is not an appeal to be given preference in the circuit court or court of appeals pursuant to statute.

Date: _____

Signature of Filing Attorney or Party	Telephone Number
Name Printed or Typed	State Bar Number (if applicable)
Address	

This completed form must be *filed* with the clerk of the circuit court in which the judgment or order appealed from was entered. In addition, copies of this completed form must be served upon the following:

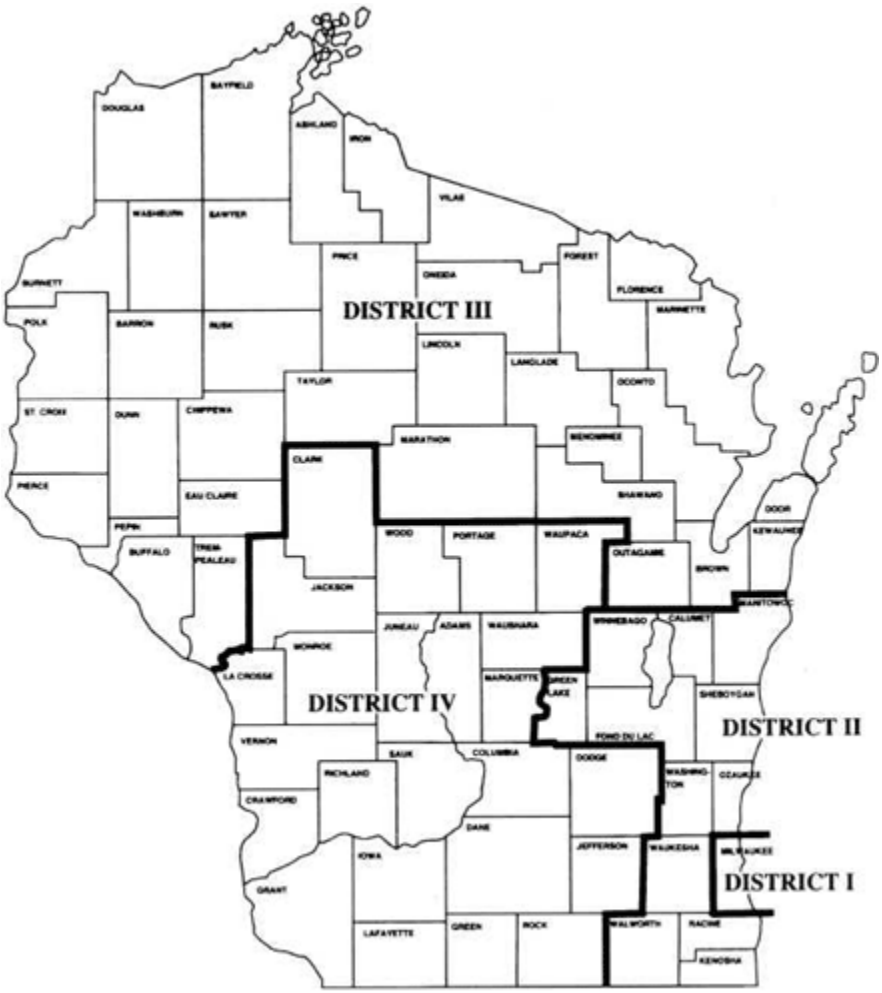
1. the Clerk of the Court of Appeals;
2. opposing counsel; and
3. any other party.

Appendix F:
Wisconsin Court of Appeals District Map

Following is a map of appellate districts for the state of Wisconsin. Appellate proceedings for a particular case will occur in the district that is inclusive of the county wherein circuit court proceedings were held.

Wisconsin Court System
Court of Appeals
District map

District I
Milwaukee County
330 East Kilbourn Avenue,
Suite 1020
Milwaukee, WI 53202-3161
Phone: (414) 227-4680
Fax: (414) 227-4051



District II
Calumet, Fond du Lac, Green Lake, Kenosha, Manitowoc, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha, Winnebago counties
2727 N. Grandview Blvd., Suite 300
Waukesha, WI 53188-1672
Phone: (262) 521-5230
Fax: (262) 521-5419

District III
Ashland, Barron, Bayfield, Brown, Buffalo, Burnett, Chippewa, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Outagamie, Pepin, Pierce, Polk, Rice, Rusk, Sawyer, Shawano, St. Croix, Taylor, Trempealeau, Vilas, Washburn counties
2100 Stewart Avenue, Suite 310
Wausau, WI 54401
Phone: (715) 848-1421
Fax: (715) 845-4523

District IV
Adams, Clark, Columbia, Crawford, Dane, Dodge, Grant, Green, Iowa, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Marquette, Monroe, Portage, Richland, Rock, Sauk, Vernon, Waupaca, Waushara, Wood counties
10 E. Doty Street, Suite 700
Madison, WI 53703-3397
Phone: (608) 266-9250
Fax: (608) 267-0432

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Back to Court of Appeals

Appendix G:
Petition for Waiver of Fees/Costs

The following is available free of charge at the Web site for the Wisconsin Clerk of Circuit Court. Litigants requesting a waiver of court fees must complete and file this form.

STATE OF WISCONSIN

SUPREME COURT – COURT OF APPEALS, DISTRICT _____

For Official Use

Appellant or Petitioner: *Please print or type.*

_____

-vs-

Respondent:

_____

Petition for Waiver of Fees/Costs - Affidavit of Indigency

Case No. _____

Under oath I state that because of poverty, I am unable to pay the costs of this action, proceeding, or appeal, or to give security for those costs, and request waiver of those costs. I am attaching and incorporating into this affidavit a brief statement of the nature of the appeal or petition and the relief requested.

Complete Section 1 or 2, as appropriate.

Section 1.

☐ I currently receive:

- ☐ Supplemental security income
- ☐ Relief funded under Wis. Stats. §59.53(21)
- ☐ Medical assistance
- ☐ Food stamps
- ☐ Relief funded under public assistance
- ☐ Benefits for veterans under §45.351(1) or 38 USC 501-562
- ☐ Legal representation from a civil legal services program, a public defender program, or a volunteer attorney program based on indigency. Name of program: _____
- ☐ Other means-tested public assistance: _____

My financial situation ☐ has ☐ has not changed since I became eligible for this program.

If you checked the "has" box, and such changes would make you ineligible for the program(s) if you applied today, you must complete Section 2 below.

Section 2.

Complete this section only if you do not qualify under Section 1 above, or if the instructions for that section require you to complete it.

1. I ☐ am ☐ am not married.
2. I ☐ am ☐ am not employed. Name of employer: _____
3. I earn $ _____ gross ☐ weekly. ☐ every 2 weeks. ☐ twice monthly. ☐ monthly.
   My take-home pay is $ _____ per payperiod.
4. I receive monthly income totaling the amount of $ _____ from:
   ☐ Pension ☐ Social security ☐ Unemployment compensation
   ☐ Disability ☐ Student loans/grants ☐ Other: _____
5. I have the following cash assets:
   ☐ Savings accounts: $ _____ ☐ Cash: $ _____
   ☐ Checking accounts: $ _____ ☐ Money owed me: $ _____
6. I have the following other assets:
   ☐ Vehicle-Yr./Make: _____ $ _____ ☐ Household furnishings: $ _____
   ☐ Vehicle-Yr./Make: _____ $ _____ ☐ Equity in real estate: $ _____
   ☐ Other individual assets valued over $200 each: _____ $ _____

Continued on Page 2

File original with the Clerk of the Supreme Court – Court of Appeals.

Section 2 Continued:

7. My household consists of myself and _____ others:
   Full name: _____ Relationship to me: _____ Under age 18 ☐ Yes ☐ No
   Full name: _____ Relationship to me: _____ Under age 18 ☐ Yes ☐ No
   Full name: _____ Relationship to me: _____ Under age 18 ☐ Yes ☐ No
   Full name: _____ Relationship to me: _____ Under age 18 ☐ Yes ☐ No
   Full name: _____ Relationship to me: _____ Under age 18 ☐ Yes ☐ No

8. The other members of my household have monthly income totaling the amount of $ _____ from:
   ☐ Wages ☐ Social security ☐ Relief funded under public assistance ☐ Food stamps
   ☐ Pension ☐ Student loans/grants ☐ Unemployment compensation ☐ Supplemental security income
   ☐ Disability ☐ Relief funded under §59.53(21), Wisconsin Statutes ☐ Support/maintenance
   ☐ Other: _____

9. I do not receive income from any source because:
   _____
   _____
   _____
   _____

10. I have the following unusual debts or expenses, other than ordinary living expenses:
    This can include attorneys fees or cash bail, if applicable.

Type:	Amount:
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____
_____	$ _____

11. Anticipated transcript costs for this appeal (as represented to me by the court reporter): $ _____

Note:

- You may attach a brief explanation of circumstances you feel the court should be made aware of in determining indigency.
- If you are a prisoner who is requesting permission to file an appeal or other proceeding in the supreme court or court of appeals without having to pay fees or costs, you are considered to have consented to the court ordering the prison to deduct the unpaid fees and costs from the prisoner's account if you lose the appeal or other proceeding. Wis. Stats. §814.29(3).

Subscribed and sworn to before me
on _____

_____
Notary Public/State of Wisconsin

My commission expires: _____

I understand that if my financial situation changes,
I must notify the court immediately.

_____ _____
Affiant Date

Appendix H:
Docketing Statement

The following is available free of charge at the Web site for the Wisconsin Clerk of Circuit Court. Litigants must complete and file this form.

STATE OF WISCONSIN **COURT OF APPEALS DISTRICT ___** **COUNTY OF ORIGIN _____**

Case Caption (Case Name)

DOCKETING STATEMENT

Circuit Court Case No. _____

Case Number Issued by Court of Appeals

Appellant(s) (Cross-Appellant)	Attorney's Name and Address Attorney's Telephone Number	*(Space for file stamp.)*
Respondent(s) (Cross-Respondent)	Attorney's Name and Address Attorney's Telephone Number	

CRITERIA FOR EXPEDITED APPEALS

- This Docketing Statement is used solely to determine whether an appeal should be placed on the expedited appeal calendar. The respondent is not required to respond to the Docketing Statement. Generally, an appeal is appropriate for the expedited appeal calendar if:
  1. no more than 3 issues are raised;
  2. the parties' briefs will not exceed 15 pages in length; and
  3. the briefs can be filed in a shorter time than normally allowed.

  These requirements can be modified somewhat in appropriate cases.
- Parties should assume that the appeal will proceed under regular appellate procedure unless the court notifies them that the appeal is being considered for placement on the expedited appeals calendar.

JURISDICTION

Has judgment or order appealed from been "entered" (filed with the clerk of circuit court)?

☐ Yes ☐ No If yes, date of entry _____.

Is appeal timely? *(See §808.04, Wisconsin Statutes)*

☐ Yes ☐ No

Is judgment or order final (does it dispose of the entire matter in litigation as to one or more of the parties)?

☐ Yes ☐ No *(If "no", explain jurisdiction basis for appeal on separate sheet.)*

NATURE OF ACTION – Briefly describe the nature of action and the result in circuit court:

ISSUES – Specify the issues to be raised on appeal: *(Attach separate sheet if necessary.)*

(Failure to include any matter in the docketing statement does not constitute waiver of that issue on appeal. The court may impose sanctions if it appears available information was withheld. Court of Appeals Internal Operating Procedures, sec. VII(2)(b).)

STANDARD OF REVIEW – Specify the proper standard of review for each issue to be raised, citing relevant authority:

Do you wish to have this appeal placed on the expedited appeals calendar? *(See Criteria For Expedited Appeals.)*

☐ Yes ☐ No If "no", explain :

Will a decision in this appeal meet the criteria for publication in Rule 809.23(1)?

☐ Yes ☐ No

Will you request oral argument?

☐ Yes ☐ No

List all parties in trial court action who will not participate in this appeal:

Party	Attorney's Name and Telephone Number	Reason for not Participating

Are you aware of any pending or completed appeal arising out of the same or a companion trial court case that involves the same facts and the same or related issue?

☐ Yes ☐ No Name of Case _____

Appeal Number _____

_____
Signature of Person Preparing Docketing Statement

_____
Name Printed or Typed

_____
Date

Appellant Note:

You MUST attach a copy of the following trial court documents to this form:

1. Trial court's judgment or order and findings of fact.
2. Conclusions of law.
3. Memorandum decision or opinion upon which the judgment or order is based.

You MUST also furnish all opposing counsel with a copy of this completed Docketing Statement and attached trial court documents.

Appendix I:
Statement on Transcript Template

The following template is available free of charge at the Web site for the Wisconsin Clerk of Circuit Court. Litigants may complete and file this form, rather than drafting from scratch.

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT _____

For Official Use

_____)
_____,)
)
(party designation) _____)
)
-vs-)
)
_____)
_____,)
)
(party designation) _____)

Statement on Transcript

Case No. _____

To: Clerk of the Court of Appeals **(original)**
Circuit Court Clerk **(copy)**
Parties' Attorneys **(copies)**

Check one:

☐ A transcript is not necessary for prosecution of this appeal.

☐ All transcripts necessary for this appeal are already on file and satisfactory arrangements with the court reporter(s) for service of a copy of the transcript(s) on the other parties have been made.

☐ Satisfactory arrangements with the court reporter(s) have been made for the filing and service of the following transcript(s), as certified below by the court reporter: **(Specify transcript(s) requested and dates of proceedings, for example; "pre-trial proceedings, 9/24/08," "trial, 10/14/08," etc.)**

_____
_____
_____

Date: _____

Signature of Filing Attorney or Party	Telephone Number
Name Printed or Typed	State Bar Number (if applicable)
Address	

The COURT REPORTER must complete the following certification only if the transcript(s) is/are not already on file:

COURT REPORTER:

I certify that on (date) _____ the above-designated portion(s) of the transcript(s) in (case name (caption) _____, appeal no. _____, were requested and arrangements made for the payment of the costs of the transcript(s). The transcript(s) will be filed with the circuit court and served on the parties, pursuant to Wisconsin Statutes, §809.11(7), on or before (date) _____.

Signature of Court Reporter	Telephone Number
Name Printed or Typed	Court
Address	

NOTE: §809.11(7) requires a court reporter to return this signed statement to the appellant within 5 days after receipt.

Appendix J:
Sample Motion for Extension

Following is a sample motion for extension, drafted by the authors of this book.

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT ___

Appeal No. _____

JOHN SMITH,

Plaintiff-Appellant,

v.

JANE DOE,

Defendant-Respondent.

JOHN SMITH'S MOTION FOR A ____ -DAY EXTENSION

Plaintiff-Appellant John Smith respectfully moves the Court, pursuant to Wis. Stat. §§ 809.14(1) and 809.82(2), for an order extending the deadline for service and filing of his appellate brief by __ days, until _____. In support of this motion, Smith states the following:

1. On _____, Smith timely filed his Notice of Appeal in the above captioned case.
2. The current deadline for Smith's appellate brief, as reflected in the Wisconsin Court System Supreme Court and Court of Appeals Access Web page for the above-captioned case is _____.
3. *Put your reasoning for the extension here.*

Accordingly, Smith humbly requests that this Court extend the deadline for service and filing of the plaintiff's brief by __ days, until _____.

Respectfully submitted on
_____,

_____
John Smith
Address Line 1
Address Line 2
Phone Number
Email Address
Plaintiff-Appellant

Appendix K:
SCR 80

The following is a copy of SCR 80 from the Wisconsin Statutes. This chapter concerns the publication of opinions, and contains rules for citing to Wisconsin cases.

SCR CHAPTER 80

PUBLICATION OF OPINIONS

JUDICIAL COUNCIL COMMITTEE'S NOTE, 1979: The following rules, governing the publication of opinions of the court of appeals and supreme court, were adopted by the supreme court on December 19, 1975, effective January 1, 1976. The rules were originally numbered 2 to 4 and have been clarified and numbered SCR 80.01 to 80.03 for uniformity and convenience and redrafted to reflect the existence of the court of appeals.

SCR 80.001 Definition.

In this chapter, "public domain citation" means the calendar year in which an opinion, rule, order, or other item that is to be published is issued or ordered to be published, whichever is later, followed by the designation of the court issuing the opinion, rule, order, or other item, followed by the sequential number assigned to the opinion, rule, order, or other item by the clerk of the court, in the following form:

2000 WI 14
2001 WI App 9

SCR 80.01 Official publications.

(1) The supreme court designates the Wisconsin Reports as published by Lawyers Cooperative Publishing and the Wisconsin Reporter edition of the North Western Reporter published by West Group as official publications of the opinions, rules, and orders of the court of appeals and the supreme court and other items designated by the supreme court. If any authorized agency of this state publishes the opinions, rules, orders, and other matters of the court of appeals and the supreme court in a format approved by the supreme court after January 1, 1979, that publication shall also be designated as an official publication.

(2) The official publication of each opinion, rule, order, and other item of the supreme court issued on or after January 1, 2000, shall set forth the public domain citation of the opinion, rule, order, or other item and shall include the paragraph numbering of the opinion.

(3) The official publication of each opinion, rule, order, and other item of the court of appeals ordered to be published on or after January 1, 2000, shall set forth the public domain citation of the opinion, rule, order, or other item and shall include the paragraph numbering of the opinion.

SCR 80.02 Proper citation.

(1) The citation of any published opinion of the court of appeals or the supreme court in the table of cases in a brief and the initial citation in a memorandum or other document filed with the court of appeals or the supreme court shall include, in the order set forth, a reference to each of the following:

(a) the public domain citation, if it exists;

(b) the volume and page number of the Wisconsin Reports in which the opinion is published;

(c) the volume and page number of the North Western Reporter in which the opinion is published;

(2) Subsequent citations shall include at least one of the references in sub. (1) and shall be internally consistent.

(3) (a) Citation to specific portions of an opinion issued or ordered to be published prior to January 1, 2000, shall be by reference to page numbers, in the following form:

Smith v. Jones, 214 Wis. 2d 408, 412.

Doe v. Roe, 595 N.W.2d 346, 352.

(b) Citation to specific portions of an opinion issued on or after January 1, 2000, shall be by reference to paragraph numbers, in the following form:

Smith v. Jones, 2000 WI 14, ¶6

Smith v. Jones, 214 Wis. 2d 408, ¶12

Doe v. Roe, 2001 WI App 9, ¶17

Doe v. Roe, 595 N.W.2d 346, ¶27

(c) Citation to specific portions of an opinion issued prior to January 1, 2000, and ordered to be published after January 1, 2000, shall be by reference to paragraph numbers if they exist or to page numbers if paragraph numbers do not exist.

SCR 80.03 Title.

Lawyers Cooperative Publishing is authorized to designate the reports published by it as "Wisconsin Reports" provided that "Callaghan's" is a prefix to the title.

Amended October 30, 1981; January 19, 1994; June 28, 1999.

Appendix L:
Brief Cover Template & Required Certificates

The following is available free of charge at the Web site for the Wisconsin Clerk of Circuit Court. Litigants must complete and file this form. Litigants may use these forms as a reference when creating the front and back matter of their appellate briefs.

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT _____

For Official Use

_____)
_____,)
)
(party designation) _____)
)
-vs-)
)
_____)
_____,)
)
(party designation) _____)

Brief Cover

Case No. _____

ON APPEAL FROM THE CIRCUIT COURT FOR _____COUNTY,

THE HONORABLE (name of Judge) _____, PRESIDING

BRIEF OF _____*

Name: _____
State Bar No., if applicable: _____
Address: _____
Telephone No.: _____

BRIEF COVERS, FRONT AND BACK, MUST BE THE FOLLOWING COLORS:
Appellant's Brief: **BLUE**
Respondent's Brief: **RED**
Reply Brief: **GRAY**
Separate Appendix: **WHITE**

* STATE THE PARTY'S STATUS in the circuit court *and* in the appellate court (e.g., Plaintiff-Appellant, Defendant-Appellant, Plaintiff-Respondent, etc.).

CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on (date of mailing) _____. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Date: _____

_____
Signature

OR

CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on (date of delivery to carrier) _____, this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: _____

Signature:_____

NOTE: You may also file an affidavit of mailing or delivery, setting forth the same information. See §809.80(4), Wis. Stats.

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a [choose one] ☐ monospaced or ☐ proportional serif font.

The length of this brief is _____ pages [if a monospaced font is used] or _____ words [if a proportional serif font is used].

Date: _____

Signature:_____

Notes:

This form and length certification must be included at the end of each brief. See also Wis. Stat. § (Rule) 809.50(4), 809.51(4) and 809.62(4) for additional form and length requirements.

Examples of fonts acceptable under §809.19(8)(b):

A monospaced font must be 10 characters per inch; double-spaced; a 1.5 inch margin on the left side and 1 inch margins on all other sides. This font is Courier New-12.

A proportional serif font must have a minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of a minimum 2 points, maximum of 60 characters per full line of body text. This font is Times New Roman, 13 point.

APPELLANT'S BRIEF APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names or persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Date: _____

Signature: _____

Note: This certification must be appended to the appendix.

Note: An appendix certification is also required if a respondent or cross-appellant files a supplemental appendix (809.19(3)(b) and 809.19(6)(f)).

Appendix M:
Guide for Pro se Litigants of the Wisconsin Supreme Court

Following is a guide to petitioning the Wisconsin Supreme Court to hear your case. This guide was written by the Clerk's office for the Wisconsin Supreme Court and Court of Appeals, and is available free of charge at its Web site.

FILING A

PETITION FOR REVIEW

A GUIDE TO SEEKING REVIEW

IN THE

WISCONSIN SUPREME COURT

2011

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INTRODUCTION

This is a simplified guide to the Wisconsin Rules of Appellate Procedure and is intended primarily for people who are not lawyers and lawyers with limited appellate experience. This handbook is not intended to replace the Rules of Appellate Procedure and should not be cited as legal authority. You must rely on the rules and case law as legal authority. The Rules of Appellate Procedure are contained in Chapter 809 of the Wisconsin Statutes, which is available at www.legis.state.wi.us/statutes/Stat0809.pdf. You may also want to consult the Supreme Court's Internal Operating Procedures (IOPs), which are published periodically and are available at www.wicourts.gov/sc/IOPSC.pdf. This handbook reflects the rules and case law as they exist on **January 1, 2011**. The rules and case law are always subject to change, and should be consulted for changes.

WHAT IS A PETITION FOR REVIEW?

A petition for review is a document that asks the Supreme Court to review what happened in the Court of Appeals. The Supreme Court's jurisdiction is entirely discretionary, meaning that the court only takes certain cases. The Supreme Court grants review of fewer than 10 percent of the petitions for review that are filed.

The Supreme Court's primary function is not to correct errors that might have occurred in the lower courts, but instead to develop the law.[1] Therefore, the Supreme Court ordinarily does not grant review to determine, for example, if evidence was sufficient to support a conviction[2] or whether the lower courts properly excluded or included certain evidence.[3]

[1] State v. Mosely, 102 Wis.2d 636, 307 N.W.2d 200 (1981).
[2] Winkie, Inc. v. Heritage Bank, 99 Wis.2d 616, 299 N.W.2d 829 (1981)
[3] Hagenkord v. State, 100 Wis.2d 452, 302 N.W.2d 421 (1981)

FILING YOUR PAPERS

Except for briefs, all papers are considered "filed" when they are received by the clerk.[4] All documents submitted to the court must be filed with:

By mail:

Clerk, Wisconsin Supreme Court
P.O. Box 1688
Madison, WI 53701-1688

Delivery:

Clerk, Wisconsin Supreme Court
110 E. Main Street, Suite 215
Madison, WI 53703

Attorneys filing appellate briefs, no-merit reports, petitions for review, and responses are required to file an electronic version using the courts' eFiling system; these electronic copies are filed in addition to the paper copies. Self-represented litigants can file these documents electronically, but are not required to by the Supreme Court Rules. Filing an electronic version of an appendix is optional for both attorneys and self-represented litigants.

A copy of all documents filed with the court must be served (mailed or hand-delivered) on all other parties to the appeal. All papers filed with the court must be 8½ x 11 inches.[5]

FILING BY FAX OR E-MAIL

Petitions for review may not be filed by fax or by e-mail.

[4] Rule 809.80(3)(a), Stats.
[5] Rule 809.81(1), Stats.

WHEN CAN I FILE A PETITION FOR REVIEW?

You may petition the Supreme Court only if:

You are a party to the case.

You lost in the Court of Appeals.

You have a final decision from the Court of Appeals.

There are a few rules about who may file a petition for review, and when that document may be filed.

First, only a party to a case (a person or entity actually involved in the case) may seek review of the lower court ruling.

Second, you must have lost in the Court of Appeals.[6] If you won, you cannot seek review in the Supreme Court -- even if you disagree with some aspect of the Court of Appeals' decision.

Third, you must have a final decision from the Court of Appeals before you come to the Supreme Court.[7] An order by the Court of Appeals denying or granting a petition for permissive appeal under Wisconsin Statutes section 808.03(2) (find this law at www.legis.state.wi.us/statutes/Stat0808.pdf, is not reviewable in the Supreme Court.[8]

TIME LIMITS FOR FILING

A petition for review must be filed with the clerk of the Supreme Court within 30 days of the date of the Court of Appeals' decision, or if a timely motion for reconsideration has been filed with the Court of Appeals, within 30 days of the Court of Appeals' decision on the motion.[9] A petition for review is considered filed when it is physically received in the clerk's office. Office hours are 7:45 a.m. to 5:00 p.m.[10] This rule is strictly enforced. The 30-day period for filing a petition for review cannot be extended. If a petition for review is not filed within 30 days

[6] Neely v. State, 89 Wis.2d 755, 279 N.W.2d 225 (1979)
[7] In Interest of A.R., 85 Wis.2d 444, 270 N.W.2d 581 (1978)
[8] State v. Whitty, 86 Wis.2d 380, 272 N.W.2d 842 (1978)
[9] Sec.808.10, Rule 809.62(1), Stats.
[10] St. John's Home v. Continental Casualty Co., 150 Wis. 2d 37, 4441 N.W. 2d 219 (1989).

of the Court of Appeals' decision, the court lacks subject matter jurisdiction over the case and the petition must be dismissed. [11]

The person filing the petition for review is solely responsible for the vagaries of mail delivery. You assume the risk of late delivery if you choose to file your petition by mail.[12]

If you are confined in an institution (Wis. Stat. § 809.30(3)) and are acting as your own attorney, the 30-day deadline for filing a petition for review is tolled on the date that you deliver a correctly-addressed petition to the proper prison authorities for mailing,[13] provided that you file a certification or affidavit setting forth the date on which the petition was delivered to the proper institution authorities for mailing. [14]

WHAT'S IN A PETITION FOR REVIEW?

Strict rules govern the length, appearance and contents of a petition for review. First, your petition must contain all of the following information:

(a) A statement of the issues presented for review and an explanation of how these issues were raised in the Court of Appeals and how the Court of Appeals decided the issues;

(b) A table of contents;

(c) A short statement of the reasons that the case merits Supreme Court review. This might include the criteria that the case meets or, in the absence of any of the criteria, a concise statement of other important reasons for review;

(d) A description of the nature of the case and a description of what occurred in the trial court and Court of Appeals, including the end result in both courts. You should also include a statement of those facts not included in the opinion of the Court of Appeals that you believe are relevant to the issues presented for review, with appropriate references to the trial court record to show how these issues were handled there; and

(e) For each of the issues you have presented for review under (a), an argument as to why the issue merits Supreme Court review. These arguments should be arranged in the order of the statement of issues presented. All of your arguments in support of the petition must be included in the petition. A separate memorandum in support of the petition is not permitted.

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[11] First Wis. Nat. Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).
[12] Gunderson v. State, 106 Wis. 2d 611, 318 N.W.2d 779 (1982)
[13] State ex rel. Nichols v. Litscher, 2001 WI 119, 247 Wis. 2d 1013, 635 N.W.2d 292.
[14] Rule 809.80(3)(d), Stats.

Does your case present a significant question of law?

Does it demonstrate a need for a new or changed policy?

Will it help to develop, clarify or harmonize the law?

(f) An appendix containing these items, in the following order:

1. The decision and opinion of the Court of Appeals;

2. Judgments, orders, findings of fact, case law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition; and

3. Any other portions of the record necessary for an understanding of the petition.

You should take care in compiling the appendix. It must include the Court of Appeals' decision in your case as well as pertinent judgments or orders from the circuit court that will help explain the background of the case. While other portions of the record may also be included in the appendix if necessary for an understanding of the petition for review, it is not necessary to attach copies of the entire record. Do not include materials in an appendix that were not part of the record presented in the Court of Appeals.

As we have mentioned, Supreme Court review is granted only when special and important reasons are presented. The following, while not controlling or exclusive, are criteria that the court will consider in deciding whether to grant a petition for review:

(a) A real significant question of federal or state constitutional law is presented;

(b) The petition for review demonstrates a need for the Supreme Court to consider establishing, implementing or changing a policy within its authority;

(c) A decision by the Supreme Court will help develop, clarify or harmonize the law, and

1. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation; or

2. The question presented is a novel one, the resolution of which will have statewide impact; or

3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme Court.

(d) The Court of Appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the Supreme Court or other Court of Appeals' decisions.

(e) The Court of Appeals' decision is in accord with opinions of the Supreme Court or the Court of Appeals but due to the passage of time or changing circumstances, such opinions are ripe for re-examination.

It is not necessary to repeat all of the above criteria in the petition for review. Rather, you should explain which criteria might apply to your case and why you believe the case requires Supreme Court review.

THE FORM AND APPEARANCE OF A PETITION

As we have mentioned, your petition for review must adhere to certain rules of length and appearance: (1) It should be as short as possible and may not exceed 35 pages in length if a monospaced font is used (these are fonts, such as Courier 12, in which each letter or character is given the same amount of room, so that an "l" and a "d", for example, will both take identical space) or 8,000 words if a proportional serif font is used (these are fonts that vary the space given each character; for example, Times New Roman 13 and CG Times 13). The appendix does not count in the page limit total. (2) It must have white front and back covers.

Keep it short

White covers front and back

File 10 copies

Electronically file a copy

FILING YOUR PETITION: COPIES AND FEES

You must file 10 copies of your petition for review with the clerk of the Supreme Court. Attorneys are required to electronically file one copy of the petition for review; self-represented litigants may electronically file one copy. A sample petition for review form is attached. When you file your petition, you must pay the $195 filing fee, which is not refundable. If you believe you cannot afford the fee, you should ask the person who helps you in the Office of the Clerk of the Supreme Court to send you an affidavit of indigency, which you must complete and return. The clerk of the Supreme Court will determine whether you are indigent by applying section 814.29 of the

Wisconsin Statutes and the monetary guidelines established by the court. Section 814.29, which is available at www.legis.state.wi.us/statutes/Stat0814.pdf, says that you may be found indigent if you are receiving public assistance such as aid to families with dependent children, medical assistance, supplemental security income, food stamps, and certain benefits for veterans. If you do not receive public assistance, an analysis of your ability to pay will be conducted based upon the federal poverty guidelines and taking into account the size of your household, your income, expenses, assets and debts.

If you are a prisoner, you may request a waiver of the filing fee – but you must first meet the definition of "prisoner" in the Wisconsin Statutes. Prisoners who meet this definition and who request a waiver of the prepayment of the filing fee must follow the procedures in section 814.29(1m) of the Wisconsin Statutes, available at http://www.legis.state.wi.us/statutes/Stat0814.pdf.

Defining 'prisoner'

Under section 801.02(7)(a)2, available at www.legis.state.wi.us/statutes/Stat0801.pdf. a prisoner is any person who is "incarcerated, imprisoned or otherwise detained by a law enforcement officer" EXCEPT:

a. a person committed under Chapter 980, the Sexually Violent Persons law;

b. a person seeking relief from a judgment or order terminating parental rights;

c. a person seeking relief from a judgment of conviction or a sentence of a court. This includes an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under rules 809.30 or 809.40, which are available at www.legis.state.wi.us/statutes/Stat0809.pdf, or under Wisconsin Statutes sections 973.19 or 974.06, which are available at www.legis.state.wi.us/statutes/Stat0973.pdf.

d. a person seeking discretionary review under Rule 809.50 of a non-final order that was entered in a Chapter 980 (Sexually Violent Persons Law) proceeding or in a case specified under Rule 809.30 or 809.40;

e. a person who is not serving a sentence for the commission of a crime but who is detained, admitted or committed under:

Chapter 51 (the State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act, available at www.legis.state.wi.us/statutes/Stat0051.pdf) or

Chapter 55 (the Protective Service System Act, available at www.legis.state.wi.us/statutes/Stat0055.pdf) or

Section 971.14(2) or (5) of the Wisconsin Statutes, which covers competence to stand trial and is available at www.legis.state.wi.us/statutes/Stat0971.pdf.

If you are a prisoner, you may request that the clerk of the Supreme Court send the affidavit of indigency designed specifically for use by prisoners. You should complete it and return it to the clerk. You must also submit a certified copy of your prison trust fund account for the six months leading up

to your request[15] AND a copy of a written authorization to the Department of Corrections to forward payments to the court from the prisoner's account when required.[16] A form authorization may also be obtained from the clerk of the Supreme Court. If the trust fund information is not provided to the court, the petition for review will be dismissed without prejudice.[17] The court may also dismiss the petition for review if the written authorization is not provided.[18]

Upon review of the affidavit of indigency and the trust fund account statement, the court will determine the amount of the initial filing fee according to the requirements of the law.

CONFIDENTIALITY

If you are filing a petition for review in a case that is required by law to be confidential (for example, appeals under Chapters 48, 938, 51 and 55, and paternity cases), you should not include an individual's complete name in any document filed with the court. You must refer to individuals only by their first name and first initial of their last name. This includes the petition for review and briefs.[19] If you include portions of the record in an appendix to a brief, the portions should be reproduced so that only the first name and first initial of the last name is shown.[20] Please also note that an individual filing a notice of appeal or brief in a confidential case must include a complete signature on these documents.

[15] Sec. 814.29(1m)(b)2, Stats.
[16] Sec. 814.29(1m)(c)2, Stats.
[17] Sec. 814.29(1m)(g), Stats.
[18] A prisoner need not submit the trust fund account information if he or she is in imminent danger of serious physical harm. A special affidavit of indigency should be requested from the clerk of the Supreme Court.
[19] Rule 809.81(8), Stats.
[20] Rule 809.19(2), Stats.

THE OTHER SIDE'S RESPONSE TO YOUR PETITION FOR REVIEW

The opposing side need not respond to your petition, but if it chooses to do so, it must respond within 14 days of service of the petition. The response should be as short as possible and may not exceed 35 pages in a monospaced font or 8,000 words in a proportional serif font. The appendix is not counted in this total. The response must have white front and back covers and 10 copies must be filed with the clerk of the Supreme Court. Attorneys are also required to electronically file one copy of the response; self-represented litigants may electronically file one copy.

THE COURT'S DECISION ON YOUR PETITION FOR REVIEW

There are seven justices on the Wisconsin Supreme Court. At least three of them must vote "yes" in order to grant your petition for review. The court meets in closed session in its conference room in the Capitol at least once a month between September and June in order to consider petitions for review, but this does not mean that your petition will be taken up during the same month it is filed. In fact, you likely will not receive notification of the court's action on your petition for several months.

Whether the court decides to grant or deny your petition, you and the other parties to the case will receive a written order notifying you of the court's decision. In some cases, the order also may explain that the court has decided to limit the issues to be considered on review – so, for example, if you presented three issues and the court concluded that just one of those met its criteria, then it would explain that in the order and ask that you limit your briefing and arguments to that one issue. You must abide by the court's decision with regard to the issues that are to be briefed. You also cannot raise or argue issues not set forth in the petition unless ordered otherwise by the court.

BRIEFING

If the Supreme Court grants your petition for review, the order informing you of this fact will also set out the briefing schedule. Normally, you (the petitioner) must file a brief within 30 days after the date the petition for review is granted, and then the respondent (the party who is

opposing you) must file a brief within 20 days after your brief is filed. Finally, you may file a reply brief within 10 days after the respondent's brief is filed.

> If the Clerk's Office receives your brief or appendix without a certification or affidavit of mailing attached, the date of filing will be the date on which it was received by the clerk. The date of mailing cannot be established by the date shown on a postage meter.

You must file 22 copies of your brief with the Supreme Court and serve the other party or parties with three copies each. While the general rule is that a paper is "filed" when it is received by the clerk, a different rule applies to briefs or appendices.

A brief or appendix will be considered timely filed if, on or before the filing deadline, it is correctly addressed and either:

(1) mailed first-class, with postage pre-paid, through the U.S. Postal Service or by another class that is as quick or quicker, or

(2) given to a commercial delivery service for delivery to the clerk within three calendar days.[21]

If you are mailing in your brief or appendix, be sure to note that these will be considered filed only if a certification or affidavit setting forth the date and manner by which it was mailed or delivered to the commercial carrier is attached to it.[22] (See sample certification form at end of this handbook). [23] The date of mailing cannot be established by the date shown on a postage meter.[24]

MOTIONS

A motion is a written request asking the court to make a special ruling in your case. Either the petitioner or the respondent may file a motion with the court. You should file nine copies of

[21] Rule 809.80(3)(b), Stats.
[22] Rule 809.80(4)(a), Stats.
[23] Rule 809.80(4)(b), Stats.
[24] Rule 809.80(4)(c), Stats.

your motion with the Supreme Court and you must serve a copy of the motion on the other parties in the case. Your motion should state the reasons why you are making a particular request.[25] For example, if you need more time to file your brief, tell the court how much time you need and the reason you need an extension. The court will inform you of its decision by mailing you and the other parties in the case an order granting or denying your motion. Do not submit a proposed order. A sample motion form is attached.

SAMPLE FORMS

Petition for review
Certification of Mailing or Certification of Third-Party Commercial Delivery
Motion

[25] Rule 809.14, Stats.

STATE OF WISCONSIN
SUPREME COURT
Case No. ____

_____

_____ *(party designation, for example appellant or respondent)*

v.

_____

_____ *(party designation, for example appellant or respondent)*

PETITION FOR REVIEW

Name:_____
State Bar No., if applicable _____
Address: _____
Telephone No.: _____

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PETITION FOR REVIEW

_____ *(name)* _____, *(party designation, for example appellant)* hereby petitions the Supreme Court of the State of Wisconsin, pursuant to Wis. Stat. § 808.10 and Wis. Stat. § (Rule) 809.62 to review the decision or order of the Court of Appeals, District _____, in _____, *(case caption)* case no. _____, filed on _____. *(date of Court of Appeals decision or order)*

ISSUES PRESENTED FOR REVIEW

The issues presented for review are: *(describe issues in list format)*

> **[For example: 1. Does the forced ingestion of laxatives at the direction of the police in order to obtain a package swallowed by a person constitute a search for purposes of the Fourth Amendment to the United States Constitution?]**

The Court of Appeals decided the issues as follows:

> **[Set forth the Court of Appeals decision on each issue.]**

The reasons the Supreme Court should grant review are:

[Refer to criteria in Wis. Stat. § (Rule) 809.62 and explain why the criteria are satisfied by the issues presented.]
For example: The Court should grant review because the issue described above presents a novel question of constitutional law that the Wisconsin Appellate Court have not previously considered. Resolution of these issues by the Supreme Court is necessary to provide guidance to the lower courts and law enforcement regarding the limits that law enforcement officials must observe in attempting to recover evidence of a drug crime.

STATEMENT OF FACTS AND OF THE CASE

[Set forth a statement of the case, including a description of the nature of the case, including a description of the nature of the case.]

and

[Set forth the procedural status of the case leading up to the filing of this petition for review; the dispositions in the trial court and Court of Appeals.]

and

[Set forth a statement of any facts not included in the Court of Appeals' decision or order that are relevant to the issues presented for review.]

ARGUMENT

[Set forth an argument expanding on the reasons why the Supreme Court should grant the petition for review.]

Date: _____

_____ (Signature, State Bar No. if applicable)

_____ (Address)

_____ (Telephone No.)

CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of appeals by first-class mail, or other class of mail that is at least as expeditious, on _____ (date of mailing). I further certify that the petition for review or appendix was correctly addressed and postage was pre-paid.

Date:_____

Signature _____

OR

CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on _____ (date of delivery to carrier), this petition for review or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date:_____

Signature _____

NOTE: You may also file an affidavit of mailing or delivery, setting forth the same information. See § 809.80(4) Wis. Stats.

STATE OF WISCONSIN, SUPREME COURT

For Official Use

_____)
_____ ,)
)
_(party designation)_____)
)
-vs-)
)
_____)
_____ ,)
)
_(party designation)_____)

Motion for

_____
_____
_____

Case No. _____

(Name of party making motion) _____, the [choose one] ☐ Petitioner ☐ Respondent,

moves the court, pursuant to (specify statute or rule under which motion is made) _____,

as follows: _____

_____

_____

_____

_____

_____

_____

Date: _____

Signature of Filing Attorney or Party	Telephone Number
Name Printed or Typed	State Bar Number (if applicable)
Address	

This completed form must be *filed* with the clerk of the Supreme Court, and copies must be served upon opposing counsel and/or parties.