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) "Bookmark" means a hyperlink allowing the reader to quickly navigate to different sections of a document.

(4) "Clerk of court" or "clerk" means the clerk of the supreme court and court of appeals.

(5) "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.

(6) "Converted" means that all documents in a paper case file have been imaged by the clerk of court and the case file is available to accept filings via the electronic filing system.

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

(8) "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).

(9) "Director" means the director of state courts.

(10) "Docketing" means receiving a document and entering its receipt into the court record. A new matter is "docketed" when the clerk accepts an initiating document and creates a new case.

(11) "Document" means a pleading, notice of appeal, petition, writ, form, notice, motion, order, affidavit, exhibit, brief, judgment, opinion, or other filing in an action or proceeding.

(12) "Electronic filing system" means an Internet−accessible system established by the supreme court for the purpose of filing documents in an appellate court, automatically integrating them into the court case management system, and electronically serving them on the parties.

(13) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the document. To be considered electronically signed, a document must be submitted by or on behalf of a user through the electronic filing system. An electronic signature shall state "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. "Electronic signature" includes only those signature technologies specifically approved by the director.

(14) "Filing agent" means a person authorized under s. 799.06 (2) to appear on behalf of another.

(15) "High−volume filing agent" means a person authorized under s. 799.06 (2) who appears on behalf of an entity filing 10 or more actions per calendar year in the circuit courts of this state.

(16) "Hyperlink" means a link allowing the reader to quickly navigate to a location within or external to the document.

(17) "Imaged document" means an electronic copy of a document originally created or submitted on paper.

(18) "Initiating document" means a notice of appeal, petition, complaint, certification from the court of appeals, pre–appeal motion, or any other document filed to commence an action or proceeding in the appellate court.

(19) "Mandatory user" means a user who is subject to s. 809.801 (3) (a).

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

(21) "Notice of activity" means a notice sent by the electronic filing system to alert the parties that there has been a new user, filing, or activity on the case.

(22) "Notice of docketing" means a notice sent by clerk after an appeal or other appellate court proceeding has been initiated that identifies the assigned appellate case number, caption, and court, and that includes relevant information and instructions about the case.

(23) "Opt in" means to agree to receive electronic service and file electronic documents on a particular case, after first registering for access to the electronic filing system.

(24) "Opt out" means to cease participation as a voluntary user or to indicate withdrawal from the case as an attorney.

(25) "Paper party" means a party not subject to s. 809.801 (3) (a) who chooses not to participate in the electronic filing system.

(26) "Portable document format" means a universal file format that preserves the fonts, formatting, pagination, and graphics of a source document.

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

(28) "Registration" means entering into an agreement to access the electronic filing system prior to filing documents under s. 801.18 (3) (d) or 809.801 (3) (d).

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

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

(31) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.

(32) "Transmit" means to send or transfer documents and records from one court to another and may be completed by making the documents and records electronically available to the other court.

(33) "User" means an individual who has registered to use the electronic filing system. Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.

(34) "Voluntary user" means a party not subject to s. 809.801 (3) (a) who voluntarily registers to use the electronic filing system under s. 809.801 (3) (b).

(35) "Word" means a group consisting of one or more letters, numbers or symbols 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 (1993); Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 15–02, 2015 WI 102, 365 Wis. 2d xix; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: The definitions of s. 809.01 have been broadened to incorporate electronic filing terminology.

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. The clerk of the circuit court may not refuse to accept a notice of appeal for failure to pay the appellate court filing fee required by s. 809.25 (2) (a).

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

1. The circuit court 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.

(d) *Docketing statement.* The person shall file in the circuit court a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany the notice of 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 ch. 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.

(g) *Motions under s. 809.41 (1) (a) or (4).* A motion for an order or other relief under s. 809.41 (1) (a) or (4), if any, shall be filed in the circuit court and shall accompany the notice of appeal.

(h) *Service.* For electronic filing users in the circuit court case, receipt of the notice of appeal, docketing statement, and motions filed under s. 809.41 (1) or (4) through the circuit court electronic filing system under s. 801.18 shall constitute service of the documents. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The appellant shall serve paper parties in the circuit court by traditional methods.

(i) *Filing in court of appeals.* Subject to s. 809.12, other than the notice of appeal, docketing statement, appellant's motion under s. 809.41 (1) or (4), if any, and statement on transcript under s. 809.11 (4) (b), which shall be filed in the circuit court, all subsequently filed documents in an appeal shall be filed in the court of appeals.

(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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Sub. (1) (a) adds a provision codifying *Douglas v. Dewey*, 147 Wis. 2d 328, 338, 433 N.W.2d 243 (1989), holding that payment of the appellate filing fee under s. 809.25 (2) (a) 1. is not a prerequisite to filing a notice of appeal.

To facilitate the adoption of electronic filing and service, three documents will be filed and served in the circuit court case either with the notice of appeal or shortly thereafter: docketing statement, statement on transcript, and optional motions under s. 809.41 (1) and (4). Circuit court electronic filing users are served when they receive these documents through the circuit court electronic filing system. When the attorney general is made a party by operation of s. 809.802 (1), the attorney general will be served through the appellate electronic filing system. Subsequent documents will be filed and served via the appellate electronic filing system.

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. First National Bank of Kenosha v. 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. City of 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, 562 N.W.2d 401 (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*, 209 Wis. 2d 187 (1997). 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) provides 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. State ex rel. 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, S.C. v. Galaxy Gaming & Racing Ltd. Partnership, 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 122, 274 Wis. 2d 804, 683 N.W.2d 481, 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. Commerce Bluff One Condominium Ass'n v. Dixon, 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, 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 Oct. 1981.

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

Changing standards of appellate 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.

809.104 Appeal of decisions relating to electronics and information technology manufacturing zone.

(1) APPLICABILITY. This section applies to the appeal of a judgment or order vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an electronics and information technology manufacturing zone designated under s. 238.396 (1m) and supersedes all inconsistent provisions of this chapter.

(2) APPEAL AS OF RIGHT. (a) Notwithstanding s. 808.03 (1), an appeal from a judgment or order of the trial court vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an electronics and information technology manufacturing zone designated under s. 238.396 (1m) may be taken to as a matter of right and is governed by this section.

(b) A party may initiate an appeal under this section by filing a notice of appeal with the clerk of the trial court in which the order or judgment appealed from was entered and shall specify in the notice of appeal the order or judgment appealed from. The docketing statement required under s. 809.10 (1) (d) shall be filed in the circuit court and shall accompany the notice of appeal. The appellant shall pay the filing fee with the notice of appeal. The clerk of the circuit court shall transmit to the court of appeals, within 3 days after the filing of the notice of appeal, the docketing statement, a copy of the notice of appeal, and a copy of the circuit court record of the case maintained under s. 59.40 (2) (b) or (c).

(bm) The clerk of the court of appeals shall file the appeal upon receipt of the items referred to in par. (b). The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. The clerk shall serve the notice of docketing on paper parties by traditional methods.

(c) The appellant shall request a copy of the transcript of the court reporter's verbatim record 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 under par. (b).

(d) Within 5 days after filing of the notice of appeal in the circuit court, the appellant shall file a statement on transcript with the clerk of circuit court, who shall transmit the statement on transcript to the court of appeals within 3 days after its filing. 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 the 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.

(dm) For electronic filing users in the circuit court case, receipt of the notice of appeal, docketing statement, and statement on transcript through the circuit court electronic filing system shall constitute service of the documents. The appellant shall serve the notice of appeal, docketing statement, and statement on transcript on paper parties by traditional methods.

(e) 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).

(f) Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:

1. The appellant shall file a brief within 15 days after the filing of the record on appeal.

2. The respondent shall file a brief within 10 days after the service of the appellant's brief.

3. 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.

4. Within 3 days of receipt of the appellant's reply brief or statement that a reply brief will not be filed under subd. 3., the court of appeals shall certify the appeal to the supreme court under s. 809.61.

5. The supreme court shall give preference to a certification from the court of appeals under this section. If the supreme court refuses to take jurisdiction of the appeal certified to it by the court of appeals under this section, the appeal shall continue in the court of appeals as though the certification had not been made.

(3) STAY PENDING APPEAL. Any judgment or order of a circuit court vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an electronics and infor-

mation technology manufacturing zone designated under s. 238.396 (1m) shall be stayed automatically upon the filing of an appeal as provided under this section. Any party to the proceeding may apply to the appellate court in which the case is pending at the time to request that the stay be modified or vacated.

History: 2017 a. 58; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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. 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 transmit 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) *Docketing in court of appeals.* The clerk of the court of appeals shall docket the appeal immediately upon receipt of the items specified in par. (b). The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. The clerk shall serve the notice of docketing on paper parties by traditional methods.

(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 documents upon which that other order is based.

(e) Exhibits, whether or not received in evidence, including photographs, video recordings, audio recordings, and computer media such as discs or flash drives, except that physical evidence, models, charts, diagrams, and photographs exceeding 8.5 x 11 inches in size shall not be included unless requested by the minor to be included in the record.

(f) Any other document 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 court reporter's verbatim record.

(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 COURT REPORTER'S VERBATIM RECORD. 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 court reporter's verbatim record 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; Sup. Ct. Order No. 15–02, 2015 WI 102, 365 Wis. 2d xix; 2017 a. 365 s. 111; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

NOTE: Sup. Ct. Order No. 15–02 states: The Comments to Wis. Stat. ss. 809.105 (3) and 809.15 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

Comment, 2015: Effective July 1, 2016, the Wisconsin Supreme Court amended the Rules of Appellate Procedure to permit the clerk of circuit court to transmit the record to the appellate court electronically. The amendment applies to record transmittals due on or after July 1, 2016. [Re: Order No. 15–02 effective July 1, 2016]

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 (3m). 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.

6. For an appellant other than the state, the signature of the appellant on whose behalf the notice of intent is filed. Appellant's counsel, if any, shall also sign the notice, but may not sign in lieu of the appellant.

(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 court reporter's verbatim record 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 court reporter's verbatim record, 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 court reporter's verbatim record, 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). For an appellant other than the state, the appellant on whose behalf the notice of appeal is filed shall sign the notice. Appellant's counsel, if any, shall also sign the notice of appeal, but may not sign in lieu of the appellant. Within 3 days after the filing of the notice of appeal, the clerk of circuit court shall transmit to the court of appeals the notice of appeal and a copy of the circuit court record of the case maintained pursuant to s. 59.40 (2) (b) or (c).

(ag) *Docketing in court of appeals.* The clerk of the court of appeals shall docket the appeal upon receipt of the notice of appeal. The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. The clerk shall serve the notice of docketing on paper parties by traditional methods.

(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 court reporter's verbatim record 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.* Within 5 days after filing the notice of appeal in the circuit court, the appellant shall file a statement on transcript with the clerk of circuit court, who shall transmit the statement on transcript to the clerk of the court of appeals within 3 days after its filing. 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.

(dm) *Service for electronic filing users.* For electronic filing users in the circuit court case, receipt of the notice of appeal and statement on transcript through the circuit court electronic filing system shall constitute service. The appellant shall serve the notice of appeal and statement on transcript on paper parties by traditional methods.

(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. 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 appellant is not represented by counsel, the appellant shall file any motion under this paragraph within 45 days after the filing of the record on appeal. The appellant's counsel or, if the appellant is not represented by counsel, the appellant, shall file an affidavit in support of the motion stating with specificity the reasons that postjudgment fact–finding is necessary. The person signing the affidavit shall in the affidavit affirm under s. 802.05 (2) that, to the best of his or her knowledge, information, and belief, remand is warranted and is not being sought to cause unnecessary delay. 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 later of the appellant's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the appellant.

(c) *Appellant's reply brief.* The appellant shall file within 10 days after the service of the later of the respondent's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the respondent, 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. If the guardian ad litem chooses not to participate in an appeal, the guardian ad litem shall file with the court a statement of reasons for not participating under s. 48.235 (7) within 15 days of the filing of the notice of appeal.

(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. For a petitioner other than the state, the petitioner on whose behalf the petition for review is filed shall sign the petition. Petitioner's counsel, if any, shall also sign the petition for review, but may not sign in lieu of the petitioner. 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; 2015 a. 128; Sup. Ct. Order No. 17–05, 2017 WI 95, filed 11–9–17, eff. 7–1–18; 2017 a. 258; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21; 2021 a. 240 s. 30.

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.

Section 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) do not constitute unconstitutional infringements on the judiciary, as they are subject to court modification. Time limits imposed by sub. (5) do not violate constitutional guarantees of due process or effective assistance of counsel. Rhonda R.D. v. Franklin R.D., 191 Wis. 2d 680, 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.

809.108 Appeals in proceedings related to political subdivision approvals. (1) APPLICABILITY. This section applies to the appeal of a judgment or order under s. 781.10 (2) (d) 5. and supersedes all inconsistent provisions of this chapter.

(2) INITIATING AN APPEAL. A party may initiate an appeal under this section by filing a notice of appeal with the clerk of the circuit court in which the judgment or order appealed from was entered and shall specify in the notice of appeal the judgment or order appealed from.

(3) APPEAL PROCEDURE. Subsequent proceedings in an appeal under this section are governed by the procedures for civil appeals under this subchapter and the procedures under subch. VI, except as follows:

(a) The appellant shall file a brief within 30 days after the filing of the record on appeal.

(b) The respondent shall file a brief within 30 days after the service of the appellant's brief.

(c) The appellant shall file within 15 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.

(4) DECISION. The court of appeals shall give preference to an appeal under this section and shall take the appeal in an order that ensures that the court of appeals issues a decision no later than 90 days after the deadline under sub. (3) (c).

History: 2023 a. 16.

809.11 Rule (items to be filed and transmitted). (1) FEE. The appellant shall pay the filing fee to the clerk of the court of appeals when the notice of appeal is filed. Payment may be made by check or through the court electronic payment system, unless arrangements are made with the clerk of court or otherwise ordered by the court. An appellant may file with the court of appeals a petition or motion for waiver of the filing fee under s. 814.29 (1) or (1m), using a form provided by the court for that purpose.

(2) TRANSMITTAL OF NOTICE OF APPEAL. The clerk of the circuit court shall transmit to the court of appeals, within 3 days of the filing of the notice of appeal, the notice of appeal, the appellant's docketing statement, the appellant's motion filed under s. 809.41 (1) or (4), if any, and the circuit court record of the case maintained pursuant to s. 59.40 (2) (b) or (c).

(3) DOCKETING IN COURT OF APPEALS. (a) The clerk of the court of appeals shall docket the appeal upon receipt of the items referred to in sub. (2), create a notice of docketing, and transmit the notice of docketing to the clerk of circuit court.

(b) For electronic filing users in the circuit court case, receipt of the notice of docketing through the circuit court electronic filing system shall constitute service of the notice of docketing and notification that the court of appeals proceeding has been commenced. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on the paper parties by traditional methods.

(4) REQUESTING TRANSCRIPTS AND FILING STATEMENT ON TRANSCRIPT. (a) The appellant shall request a copy of the transcript of the court reporter's verbatim record 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 circuit court 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. The clerk of circuit court shall transmit the statement on transcript to the court of appeals within 3 days after its filing. 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.

(c) For electronic filing users in the circuit court case, receipt of the statement on transcript through the circuit court electronic filing system shall constitute service. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The appellant shall serve the statement on transcript on paper parties by traditional methods.

(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 in the court of appeals 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 in the circuit court 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 by filing a statement on transcript in the circuit court 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. Where service of a transcript on the attorney general is required by s. 809.802 (1), access to an electronic copy of the transcript through the appellate electronic filing system shall constitute service of the transcript.

(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; Sup. Ct. Order No.

15−02, 2015 WI 102, 365 Wis. 2d xix; Sup. Ct. Order No. 19−01, 2019 WI 44, 386 Wis. 2d xvii; Sup. Ct. Order No. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

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 s. 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]

NOTE: Sup. Ct. Order No. 20−07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Sub. (3) codifies the clerk's practice of sending a notice of docketing to inform the parties that the appeal has been filed and providing the case number. The appellate clerk serves the notice of docketing on the electronic parties in the circuit court case, advising them to opt in to the court of appeals case. The appellate clerk also serves the notice of docketing on the attorney general and opts in the attorney general as an attorney for the state.

To facilitate the adoption of electronic filing and service, s. 809.11 (4) requires that the statement on transcript be filed and served in the circuit court case. The statement on transcript must be filed within 14 days of filing the notice of appeal, the docketing statement under s. 809.10 (1) (d), and motions made under s. 809.10 (1) (g), if any.

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), (2), or (2m).

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; 2017 a. 369.

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 moving the appellate court for 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, a motion seeking consolidation of appeals, a motion for extension of time to file a statement on transcript, or a motion relating to production of transcripts 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 transmitted to the clerk of the court of appeals, except that the time for preparation of supplemental or corrected transcripts is governed by s. 809.11 (7) (a).

(c) The clerk of the court of appeals shall transmit to the clerk of circuit court a copy of any motion filed in the appellate court under this subsection.

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

(5) (a) Any motion for an order or other relief made under sub. (1) before a notice of appeal is filed shall be made in the court of appeals. The clerk of the court of appeals shall assign a pre−appeal case number, create a notice that the case has been docketed, and transmit a copy of the notice of docketing and pre−appeal motion to the clerk of circuit court.

(b) For electronic filing users in the circuit court case, receipt of the notice of docketing and the pre−appeal motion through the circuit court electronic filing system provides access to the pre−

appeal proceeding and constitutes service of the pre–appeal motion. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional methods. The movant shall serve the pre–appeal motion on paper parties by traditional methods.

(c) Subsequent pre–appeal motions arising out of the same circuit court case shall be filed and docketed in the same pre–appeal proceeding. The clerk shall transmit a copy of the motions to the clerk of circuit court.

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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Sub. (3) identifies those motions needed by both the appellate and circuit court and provides for cross–copying to the other court without duplicate filing by the litigants.

Sub. (5) codifies the existing process for filing motions prior to appeal. The first motion prior to appeal is filed as a new action in the court of appeals and transmitted to the circuit court, providing service on the electronic parties. Subsequent motions are also transmitted to the circuit court.

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 initiating document 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 documents upon which the order is based;
9. Exhibits whether or not received in evidence, including photographs, video recordings, audio recordings, and computer media such as discs or flash drives, except that physical evidence, models, charts, diagrams, and photographs exceeding 8.5 x 11 inches in size shall not be included unless requested by a party to be included in the record;
10. Any other document 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 court reporter's verbatim record;
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.

(d) If the record includes the redacted version of any document, it shall also contain the unredacted version if submitted to the circuit court. The unredacted version shall be marked as confidential.

(e) If the record includes a sealed document, the document shall be marked as sealed.

(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 each record item by its circuit court document number, date of filing, and title, and prepare a list of the numbered documents. The clerk shall use the document number assigned in the circuit court as the record number on appeal. The clerk shall also include in the list of numbered documents a list of exhibits not electronically maintained that are part of the record on appeal. At least 10 days before the due date for filing the record in the court, the clerk of the circuit court shall notify in writing each party appearing in the circuit court that the record has been assembled and is available for inspection. The clerk of the circuit court shall include with the notice the list of the documents constituting the record.

(3) DEFECTIVE RECORD. A party who believes that the record, including the transcript of the court reporter's verbatim record, 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 the circuit court shall electronically 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. The clerk of the circuit court shall transmit by traditional methods any original documents or exhibits not electronically maintained.

(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 court reporter's verbatim record. If the court extends the time for filing the transcript of the court reporter's verbatim record, 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. The clerk of the circuit court shall transmit to the clerk of the court of appeals a copy of any motion to supplement or correct the record that is filed in cir-

cuit court. 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. When the clerk of the circuit court must transmit original documents or exhibits not electronically maintained by traditional methods, the date on which the record was filed is the date the electronic transmission and index was received by the clerk of the court of appeals.

(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 (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 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, 344 Wis. 2d xxxiii; Sup. Ct. Order No. 15–02, 2015 WI 102, 365 Wis. 2d xix; 2017 a. 365 s. 111; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 15–02 states: The Comments to Wis. Stat. ss. 809.105 (3) and 809.15 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

Comment, 2015: Effective July 1, 2016, the Wisconsin Supreme Court amended the Rules of Appellate Procedure to permit the clerk of circuit court to transmit the record to the appellate court electronically. The amendment applies to record transmittals due on or after July 1, 2016. [Re: Order No. 15–02 effective July 1, 2016]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: In 2016 the court adopted ss. 809.19 (2) (i) and 801.21 (9) relating to redaction and sealing of certain court documents. Sub. (1) addresses transmittal to the court of appeals of a record that contains redacted or sealed documents.

In 2018 the circuit court case management software began assigning a document number to each item in the circuit court record as it is filed. Sub. (2) requires the record index to use the same numbering on appeal. This will facilitate identification of documents and minimize confusion that may arise when a document is stamped with two different numbers by the circuit and appellate courts. If a circuit court record item is not included in the record on appeal, this will appear as a numbering gap in the index to the record.

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." Peter B. v. State, 184 Wis. 2d 57, 516 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 959, 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 one or more initials or other appropriate pseudonym or designation rather than by his or her full name when the record is required by law to be confidential or as required under s. 809.86. In an appeal from a domestic abuse protective order or harassment injunction in which "petitioner" has been substituted for an individual's name in the caption, reference to that individual shall be made only as "petitioner."

(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. If the brief was prepared with the drafting assistance of an attorney under s. 802.05 (2m), the brief must contain a statement that "This document was prepared with the assistance of a lawyer."

(i) Reference to the parties by name, rather than by party designation, throughout the argument section, unless "petitioner" must be substituted for the party's name under par. (g).

(2) APPENDIX. (a) *Contents.* The appellant's brief shall be filed with 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 indicating, for each record item included in the appendix, the title, page of the appendix on which the record item begins, and the circuit court document number. The table of contents shall also contain the citation of any unpublished opinion included in the appendix.

(ae) *Form.* The appendix shall be filed as a single document separate from the brief. Each document shall be imaged at a resolution sufficient to ensure legibility.

(am) *Confidentiality.* If the record is required by law to be confidential, the portions of the record included in the appendix shall be reproduced using one or more initials or other appropriate pseudonym or designation 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.

(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 appellant's brief is filed.

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 the respondent's brief a supplemental appendix as a separate document. If the record is required by law to be confidential, the supplemental appendix must comply with the confidentiality requirements under sub. (2) (am). Any supplemental appendix shall include a table of contents that conforms with sub. (2) (a) and a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b). Each document to be included in the appendix shall be imaged at a resolution sufficient to ensure legibility.

(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 respondent's brief is filed.

(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, JOINT, AND MULTIPLE PARTY APPEALS. (a) 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. Appellants and co−appellants represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single appellant.

(b) In appeals involving more than one respondent, including consolidated cases, each respondent may file a separate brief or a joint brief with another respondent. Respondents represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single respondent.

(c) When multiple appellants' briefs have been filed, only a single respondent's brief is allowed by each respondent or by respondents filing a joint brief. When multiple respondents' briefs have been filed, only a single reply brief is allowed by an appellant or co−appellant or by appellants and co−appellants who filed a joint brief.

(d) If separate briefs are filed by multiple appellants or co−appellants, the time for filing and serving the respondent's brief shall not commence until all briefs on behalf of all appellants and co−appellants have been filed. If separate briefs are filed by multiple respondents, the time for filing and serving the reply brief shall not commence until all briefs on behalf of all respondents have been filed.

(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 appellant–cross–respondent's brief is filed.

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

2. 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 white cover page titled "Cross–Appellant's Brief," 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 respondent–cross–appellant's brief is filed.

2. 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 white cover page titled "Cross–Respondent's Brief," 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 appellant–cross–respondent's brief is filed.

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

(f) A respondent–cross–appellant must comply with the same appendix rules as an appellant under subs. (2) (a) and (am) and (8g), except that a respondent–cross–appellant shall not be required to include materials that are contained in the appellant's appendix.

(g) Subsection (5) applies to appeals involving multiple appellants–cross respondents or respondents–cross appellants.

(6m) 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. In an appeal related to the termination of parental rights, a guardian ad litem shall follow the filing procedures set forth under s. 809.107 (6) (d). 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. The time for filing and serving the brief due after the guardian ad litem's brief shall not commence until all briefs of the parties in the position taken by the guardian ad litem have been filed.

(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 is 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.

(d) A nonparty brief shall comply with sub. (1) (e) and (f).

(8) NUMBER, FORM, PAGINATION, AND LENGTH OF BRIEFS AND APPENDICES. (a) *Number.* 1. For electronic filing users, each brief or appendix shall be filed and served using the electronic filing system as provided in s. 809.801 (6) (a). The filing party shall serve one copy of the brief and appendix on each paper party by traditional methods.

2. A paper party shall file, serve, and receive paper documents by traditional methods as provided in s. 809.80. A paper party shall file one copy of each brief or appendix with the court and serve one copy on every other paper party by traditional methods.

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

1. Created by a process that produces a clear, black image on a white background. Cover pages shall be white. Carbon copies may not be filed.

2. Formatted to fit 8.5 by 11 inch paper.

3. a. The use of word processors or typewriters is encouraged but not required.

b. If a monospaced font is used: 10 characters per inch; double–spaced.

c. If a proportional serif font is used: minimum 13 point body text, 11 point for block quotes and footnotes. Italics may be used only for citations, headings, emphasis and foreign words; bold may be used only for citations, headings, and emphasis. Line spacing in body text must be between 1.15 and 1.5 lines or an equivalent line spacing; additional space between paragraphs is permitted but not required. Block quotes and footnotes must be single–spaced.

d. If handwriting is used: the text must be legibly printed and not include cursive writing, except the person's signature.

e. Margins must be a minimum of a 1.25–inch margin on the right and left sides and a minimum of a 1–inch margin on the top and bottom.

4. The pages of paper documents must be secured together at the top left corner.

(bm) *Pagination.* A brief or appendix must have page numbers centered in the bottom margin using Arabic numerals with sequential numbering starting at "1" on the cover.

(c) *Length.* 1. For a brief filed by a party under sub. (1), (5), or (6) (a), (b), or (c), or by a guardian ad litem under sub. (6m),

those portions of the brief referred to in sub. (1) (d), (e) and (f) shall not exceed 50 pages if a monospaced font or handwriting is used, or 11,000 words if a proportional serif font is used.

2. For a reply brief filed under sub. (4) or (6) (d), those portions referred to in sub. (1) (e) and (f) shall not exceed 13 pages if a monospaced font or handwriting is used, or 3,000 words if a proportional serif font is used.

3. For a brief filed under sub. (7), those portions of the brief referred to in sub. (1) (e) and (f) shall not exceed 13 pages if a monospaced font or handwriting is used, or 3,000 words if a proportional serif font is used.

(8g) CERTIFICATIONS. (a) *Briefs; certification regarding form and length.* 1. Counsel shall submit with the brief a signed certification that the brief meets the form and length requirements of sub. (8) (b), (bm), and (c) in the following form:

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is .... [pages] [words].

Signed: ....

Signature

2. For purposes of the certification of length under this paragraph, counsel filing a brief may use the word count produced by a commercial word processor available to the general public. The word count shall include the words of any text included in the brief in the form of an image.

(b) *Appendices; certification regarding contents and confidentiality.* 1. An appellant's counsel shall submit with the appendix a signed certification that the appendix meets the content and confidentiality requirements of sub. (2) (a) and (am) in the following form:

CERTIFICATION BY ATTORNEY

I hereby certify that filed with 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 one or more initials or other appropriate pseudonym or designation 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

2. Counsel filing a supplemental appendix shall submit it with a signed certification that the appendix complies with the confidentiality requirements under sub. (2) (am) in a form substantially similar to the confidentiality provision under subd. 1.

(c) *Combined certifications.* Certification of a brief under par. (a) and certification of an appendix or supplemental appendix under par. (b) may be combined in a single document for signature.

(d) *Electronic signature.* For electronic filing users, a certification may be electronically signed in accordance with s. 809.801 (12) (a).

(9) BRIEF COVERS. Each brief or appendix shall have a white front 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) and (9), 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. 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. (6m) 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.

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 (1981); 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 (1991); 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); 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 Sup. Ct. Order No. 08–18, 2009 WI 4, 311 Wis. 2d xxix; 2009 a. 180; Sup. Ct. Order No. 10–01 and Sup. Ct. Order No. 10–02, 2010 WI 42, 323 Wis. 2d xxiii; Sup. Ct. Order No. 13–10, 2014 WI 45, 354 Wis. 2d xliii; Sup. Ct. Order No. 14–01, 2015 WI 21, filed 3–2–15, eff. 7–1–15; Sup. Ct. Order No. 17–05, 2017 WI 95, filed 11–9–17, eff. 7–1–18; 2017 a. 364 s. 49; 2017 a. 365; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21; 2021 a. 240 s. 30.

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]

NOTE: Sup. Ct. Order No. 20−07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Sub. (1) (g) addresses cases in which an individual seeks a restraining order or harassment injunction as protection against domestic abuse or violence. 18 U.S.C. 2265 (d) prohibits making public on the Internet any information that would reveal the identity or location of the party seeking protection. In Wisconsin, parties should designate the party seeking protection solely as "petitioner" in the case caption and the briefs. Adding this requirement to the rule is consistent with current practice and federal requirements. It is an exception to par. (i), which otherwise requires reference to the parties by name and not by party designation. A similar change is made to s. 809.81 (9) regarding the caption.

Since late 2018, the circuit court case management software has been assigning a document number to each item in the circuit court record as it is filed. Sub. (2) (a) provides that the same number will be used in the record index for the appeal. This will make it easier for parties to refer to documents and will prevent confusion from stamping a document with two different numbers.

Sub. (2) (ae) requires the appendix to be filed as a single document. In the event of a very large appendix that cannot be electronically filed as a single document due to the size limitations of the system, s. 809.801 (8) directs the user to contact the clerk of court for assistance.

Sub. (3) (a) provides that the events used for calculation of the time for a response brief are filing of the brief, service of the brief, and filing of the record. When the clerk accepts a filed document, the clerk's entry of the new document into the court record will trigger a notice of activity to the electronic parties, thereby serving them. Thus, for electronic parties the filing and service of the brief will often be the same day. For briefs submitted after the business hours of the clerk's office, the clerk will enter the document into the court record the next business day, so the filing date will be different than the date of electronic service. The calculation of time for parties served by paper remains as provided in s. 809.8 (4) (b) and 801.14 (2).

Sub. (8) (a) provides that electronic filing users no longer need to file multiple paper copies of briefs with the court. A notice of activity to users is generated when the clerk enters the brief into the court record, allowing the other electronic parties to access the brief electronically. Paper parties file one paper copy of each brief and appendix with the court, which the clerk will scan and make part of the record.

Sub. (8) (b) makes a number of changes to form, while maintaining the overall appearance of the documents. Standards for handwritten briefs have been added, along with a statement of the court's authority to review briefs for legibility. Margins are required so that scanned documents will include all the words.

Sub. (8) (bm) requires pagination using Arabic numerals beginning on the first page of each document. This will match the page number to the page header applied by the eFiling system, avoiding the confusion of having two different page numbers.

Sub. (8) (c) is reorganized to clarify allowable page counts and word limits for the various kinds of briefs. Page limits specific to handwritten briefs have been added, based on the average number of words per page found in handwritten briefs currently on file.

Sub. (8g) addresses certification of the brief, appendix, and supplemental appendix in a single section. The language of the certifications for brief and appendix is largely unchanged. Certifications may be combined into a single document for signature. Electronic filing users may certify using their electronic signatures.

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 items "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 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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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 pub-

lished. 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 written 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 Insurance 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 or handwriting 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; Sup. Ct. Order No. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

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 of briefs and appendices required by the rules to be served by traditional methods, 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 or waiver 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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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. Vierck v. Richardson, 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. DOR, 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. Lucareli 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 the appellant's 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 is 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. But see Thompson v. Ouellette, 2023 WI App 7, 406 Wis. 2d 99, 986 N.W.2d 338, 21–1087.

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, S.C., 2006 WI App 46, 289 Wis. 2d 833, 712 N.W.2d 71, 05–0703.

Discussing the interplay between sub. (3) and s. 895.044 (5), two parallel statutes that do not cross reference each other and that both purport to govern how appellate courts should direct the payment of attorney fees for frivolous appeals. Thompson v. Ouellette, 2023 WI App 7, 406 Wis. 2d 99, 986 N.W.2d 338, 21–1087.

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, a guardianship proceeding under s. 48.9795, 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, a guardianship proceeding under s. 48.9795, 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, a guardianship proceeding under s. 48.9795, 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 child who is entitled to be represented by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by counsel under s. 51.60 (1), 55.105, or 980.03 (2) (a).

(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 tran-

script of the court reporter's verbatim record 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 court reporter's verbatim record, 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 court reporter's verbatim record, 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. The appeal shall be initiated and docketed in accordance with ss. 809.10 and 809.11.

(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. The appeal shall be initiated and docketed in accordance with ss. 809.10 and 809.11. 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; 2017 a. 184, 359; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii; 2019 a. 109; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21; 2021 a. 238 ss. 31, 45.

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. T.T. v. 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. Discussing the process to be followed when a competency issue arises. State v. Debra A.E., 188 Wis. 2d 111, 523 N.W.2d 727 (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 five 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 to 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 the attorney's postconviction/appellate representation of a defendant. Counsel for the defendant did not render ineffective assistance by closing counsel's file without first obtaining court permission to withdraw or otherwise seeking a contemporaneous judicial determination that the client had knowingly waived either the right to appeal or the right to counsel. State ex rel. 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 three 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 this section 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 the defendant when counsel moves to withdraw from representation. State ex rel. 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 the defendant 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 court in which an alleged ineffective assistance of counsel occurred is the proper forum in which to seek relief unless that forum is unable to provide the relief necessary to address the ineffectiveness claim. The remedy for an attorney's failure to file a notice of intent to pursue postconviction relief is an extension of the timeframe to file the notice. Because the circuit court is without authority to extend the deadline to file a notice of intent to pursue postconviction relief, the proper forum lies in the court of appeals. State ex rel. Kyles v. Pollard, 2014 WI 38, 354 Wis. 2d 626, 847 N.W.2d 805, 12–0378.

The fact that a defendant was deemed competent to stand trial should not create a presumption that the defendant is competent at a later date when the same defendant pursues postconviction relief. State v. Daniel, 2015 WI 44, 362 Wis. 2d 74, 862 N.W.2d 867, 12–2692.

There is no statute directly governing postconviction competency proceedings, but courts will look to s. 971.14 for guidance. Once a defense attorney raises the issue of competency at a postconviction hearing, the burden is on the state to prove by a preponderance of the evidence that the defendant is competent to proceed. State v. Daniel, 2015 WI 44, 362 Wis. 2d 74, 862 N.W.2d 867, 12–2692.

Before a circuit court can require a non–dangerous but incompetent defendant to be involuntarily treated to competency in the context of postconviction proceedings, the circuit court must follow the procedure established in *Debra A.E.*, 188 Wis. 2d 111 (1994). *Debra A.E.* fashioned a mandatory process for managing postconviction relief of allegedly incompetent defendants. If this process is followed, a court order for treatment to restore competency will ordinarily be unnecessary because meaningful postconviction relief can be provided even though a defendant is incompetent. In this case, the circuit court acted prematurely by ordering that the defendant be medicated to competency without determining whether and to what extent postconviction proceedings could continue despite the defendant's incompetency. State v. Scott, 2018 WI 74, 382 Wis. 2d 476, 914 N.W.2d 141, 16–2017.

When a postconviction motion under this section is denied in part and granted in part such that further proceedings are required, an appeal cannot be taken until the further proceedings are completed. State v. Wolfe, 2019 WI App 32, 388 Wis. 2d 45, 931 N.W.2d 298, 18–2268.

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. Monkmeyer. 1986 WLR 399.

The decision to appeal: The role of trial counsel under the new rules of criminal appellate procedure. Kempinen. WBB Aug. 1985.

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 court reporter's verbatim record 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; Sup. Ct. Order No. 19–01, 2019 WI 44, 386 Wis. 2d xvii.

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]

Discussing appellate procedure for a petition for bail pending appeal. 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 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. The no−merit report shall comply with the form requirements of s. 809.19 (8) (b) and (bm). The no−merit report shall not exceed 50 pages if a monospaced font or handwriting is used, or 13,000 words if a proportional serif font is used. The no−merit report shall be submitted with a signed certification setting forth the word count or page count of the report.

(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 include with the no−merit report a signed certification that the attorney has complied with the length requirement of par. (a) and the client−counseling and client−notification requirements of par. (b). Certification of a brief under par. (a) and certification of client counseling and client notification under par. (b) may be combined in a single document for signature. The certification may be electronically signed by the attorney in accordance with s. 809.801 (12) (a). 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 the client 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 the client 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 the client's request. I have also informed my client that the client 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.

I further certify that this no−merit report conforms to the length limit set out in s. 809.32 (1) (a). The length of this report is .... [pages] [words].

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. The response shall not exceed 50 pages if a monospaced font or handwriting is used, or 13,000 words if a proportional serif font is used. If the response is handwritten, the text must be legibly printed and not include cursive writing or script, except for the person's signature. The response shall comply with the form requirements of s. 809.19 (8) (b) and (bm). If the person files a response, the attorney who filed the no−merit report shall receive a copy of the response through the electronic filing system.

(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 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.

(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. (a) 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 notice of appeal is due and whether the due date is calculated under subd. 1. or 2. The clerk of circuit court shall transmit the record in the case to the court pursuant to s. 809.15. With the no−merit notice of appeal, the attorney also shall file in the circuit court 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 documents filed with the court under this subsection, except the transcript, shall be served on the state in accordance with s. 809.802 and on any other party. The no−merit notice of appeal and statement on transcript must be filed within whichever of the following is later:

1. 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).

2. Sixty days after the entry of the order determining a postconviction or postdisposition motion.

(b) The clerk of circuit court shall transmit the no−merit notice of appeal and the statement on transcript to the court of appeals within 3 days of filing. The clerk of the court of appeals shall docket the no−merit appeal upon receipt. The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court.

(c) For electronic filing users in the circuit court case, receipt of the no−merit notice of appeal and statement on transcript through the circuit court electronic filing system shall constitute service of the documents. Receipt of the notice of docketing shall

constitute service and notification that the no–merit appeal has been commenced in the court of appeals. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk of the court of appeals shall serve the notice of docketing on paper parties by traditional means.

(d) The no–merit report shall be filed in the court of appeals within 14 days after the date on which the record is filed in the office of the clerk of the court of appeals. Service on electronic users shall be through the appellate electronic filing system. The attorney shall serve the no–merit report on paper parties by traditional means.

(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). The person's supplemental petition shall not exceed 35 pages if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used.

(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 subsection 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 Sup. Ct. Order No. 08–18, 2009 WI 4, 311 Wis. 2d xxix; 2009 a. 25; 2017 a. 365; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20−07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Page limits are added for the no−merit report, the response to the no−merit report, and the supplemental no−merit petition for review. In sub. (1) (e), adding a page limit for the response to the no−merit report is intended to improve counsel's ability to file a supplemental no−merit report within the required 30−day time limit. The page limit is equal to the page limit for a brief in chief to allow full discussion of all potential issues.

Sub. (2) (b) and (c) provide for electronic filing, transmission, and service of documents under this section consistent with ss. 809.10 and 809.11.

Sub. (2) (d) separates the due date of the no−merit notice of appeal and statement on transcript from the due date for no−merit report. This will facilitate the use of proper record citations in the no−merit report and avoid the need for motions for extension.

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. Court of Appeals, 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. State ex rel. 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 the defendant's reliance on 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. State ex rel. Ford v. Holm, 2006 WI App 176, 296 Wis. 2d 119, 722 N.W.2d 609, 02−1828.

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 sufficient 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 the defendant's claims. The defendant 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.

This section comports with constitutional requirements. McCoy v. Court of Appeals, 486 U.S. 429, 108 S. Ct. 1895, 100 L. Ed. 2d 440 (1988).

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 809.42.

(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 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; Sup. Ct. Order No. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

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.

(a) If an appellant desires the matter to be decided by a 3−judge panel, the appellant shall file a motion for a 3−judge panel with the notice of appeal required by s. 809.10 (1) (a). Service of the appellant's motion shall be as provided by s. 809.10 (1) (h).

(b) If a petitioner requesting the court of appeals to exercise its supervisory jurisdiction or its original jurisdiction to issue prerogative writs desires the matter to be decided by a 3−judge panel, the petitioner shall file a motion for a 3−judge panel in the court of appeals with the petition requesting the court to exercise its super-

visory or original jurisdiction. Service of the petitioner's motion shall be provided by traditional methods.

(c) If a petitioner requesting the court of appeals to exercise its appellate jurisdiction to grant petitions for leave to appeal desires the matter to be decided by a 3–judge panel, the petitioner shall file a motion for a 3–judge panel in the court of appeals with the petition for leave to appeal. Service of the petitioner's motion shall be as provided in s. 809.50 (1).

(d) If any other party desires the matter to be decided by a 3–judge panel, the party must file in the court of appeals 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.

(e) The failure to file a motion under this section waives the right to request the matter to be decided by a 3–judge panel.

(f) 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. If the motion is filed with a petition for leave to appeal, service on the attorney general shall be provided as in s. 809.50 (1m). 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 in the circuit court, with the notice of appeal required by s. 809.10 (1) (a), a motion requesting a hearing in the county of origin. Service of the appellant's motion shall be as provided in s. 809.10 (1) (h). If any other party desires the matter to be heard in the county of origin, the party must file in the court of appeals a motion 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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: The motions addressed by this section may accompany direct appeals, petitions for leave to appeal, petitions for writs, or original jurisdiction matters. This section provides that motions in appeals and leave to appeal proceedings will be electronically served, while supervisory writs and original jurisdiction proceedings will use traditional service. This section is reorganized to reflect the different modes of service.

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]

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 with the court of appeals 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 or handwriting 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.

(1m) The clerk of the court of appeals shall docket the petition upon receipt of the items referred to under sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, and transmit the notice and petition to the clerk of the circuit court. For electronic filing users in the circuit court case, receipt of the notice of docketing and the petition through the circuit court electronic filing system provides access to the appellate proceeding and constitutes service of the petition. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional methods. The petitioner shall serve the petition on paper parties by traditional methods.

(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 or handwriting 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 in the court of appeals 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 or response under this section shall file with the petition or response a certification setting forth the word count or page count of the document as provided in sub. (1) or (2).

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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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 nonfinal order. [Re Order No. 02–01 effective January 1, 2003]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: A petition for leave to appeal may be filed in the court of appeals and served through the circuit court case in the same manner as a pre–appeal motion under s. 809.14 (5). Where the state needs to be added as a party, the attorney general is served through the appellate electronic filing system.

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. 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 shall be served on each party and proposed respondent, and, if applicable, upon the originating court or tribunal, by traditional methods as provided in s. 809.80 (2). The petition and memorandum combined may not exceed 35 pages if a monospaced font or handwriting 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.

(1m) The clerk of the court of appeals shall docket the petition upon receipt of the items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, transmit the notice of docketing to the clerk of circuit court if applicable, and send the notice of docketing to the parties by traditional methods.

(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 or handwriting 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 the respondent 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 or response under this section shall file with the petition or response a certification setting forth the word count or page count of the document as provided in sub. (1) or (2).

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 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 (1993); Sup. Ct. Order No. 00–02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Unlike an appeal from a circuit court proceeding, writs and original actions do not necessarily arise from a pending case through which the parties can be served electronically. A proceeding under this section is a new action that must be served on the respondents by traditional methods.

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. 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).

The term "supervisory writ" is both: 1) the general term used in petitioning the court of appeals to exercise its constitutional supervisory authority and in petitioning the supreme court to exercise its constitutional superintending authority; and 2) a new writ the supreme court devised independent of the traditional common law writs. State ex rel. CityDeck Landing LLC v. Circuit Court, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18–0291.

Neither this section nor equity imposes a prompt and speedy pleading requirement in the filing of a petition for habeas corpus. The equitable defense of laches exists to address any prejudice to the state caused by a petitioner's unreasonable delay in the filing of a habeas petition. A habeas petition may not be denied ex parte solely because the petitioner failed to assert and demonstrate the petitioner sought relief in a prompt and speedy manner. State ex rel. Lopez–Quintero v. Dittmann, 2019 WI 58, 387 Wis. 2d 50, 928 N.W.2d 480, 18–0203.

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) 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.

(b) The clerk shall docket the petition to bypass in the supreme court and notify the parties that the petition has been filed. For electronic filing users in the court of appeals proceeding, the notice of activity constitutes service of the petition and provides notification that the proceeding is pending before the supreme court. The clerk shall serve the notice of docketing on paper parties by traditional methods. The petitioner shall serve the petition for bypass on paper parties by traditional methods.

(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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Sub. (1) provides that when a petition to bypass is filed, electronic filing users will be served through the electronic filing system.

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 this section. 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 Mar. 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) 1. 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. The clerk shall docket the petition for review in the supreme court and notify the parties that the petition has been filed.

2. For electronic filing users in the court of appeals proceeding, the notice of activity constitutes service of the petition and provides notification that the petition is pending before the supreme court. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional methods. The petitioner shall serve the petition for review on paper parties by traditional methods.

(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) As a separate document, an appendix containing, in the following order, all of the following:

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. The petition for review and response, if any, shall conform to s. 809.19 (8) (b) and (bm) and (8g) as to form, pagination, and certification. The petition shall be as short as possible and may not exceed 35 pages in length if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used, exclusive of appendix. The first page of the petition for review shall be a white cover page that includes the proper case caption, including the case number, and shall bear the title "Petition for Review." The first page of the response shall be a white cover page that includes the proper case caption, including the case number, and shall bear the title "Response to Petition for Review."

(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, the first page shall be a white cover page that includes the proper case caption and case number, and shall bear the title "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 or petition for cross–review is granted, the petitioner or cross–petitioner cannot raise or argue issues not set forth in the petition or petition for cross–review 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 or petition for cross–review 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); 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 Sup. Ct. Order No. 08–18, 2009 WI 4, 311 Wis. 2d xxix; 2009 a. 25, 180; Sup. Ct. Order No. 10–01 and Sup. Ct. Order No. 10–02, 2010 WI 42, 323 Wis. 2d xxiii; 2017 a. 365; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21; 2021 a. 240 s. 30.

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. s. 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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Under sub. (1m), an electronic filing user may electronically file a petition for review with the court without also submitting a physical paper copy. The appellate electronic filing rule, s. 809.801 (4) (ar), extends the time of filing until 11:59 p.m. for documents filed through the eFiling system. Taken together, these two provisions supersede the decision in *St. John's Home v. Continental Casualty Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam, holding that a petition for review must be physically received by 5:00 p.m. on the 30th day following the filing of the court of appeals decision to invoke the supreme court's appellate jurisdiction.

Sub. (6) is amended to avoid the implication that the respondent in a petition for cross–review may not raise issues other than those identified in the petition for review, consistent the language of sub. (3m) (b).

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).

"Decision" under sub. (1) [now sub. (1g)] means the result, disposition, or mandate reached by a court, not the opinion. Neely v. State, 89 Wis. 2d 755, 279 N.W.2d 255 (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).

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 of Milwaukee v. Continental Casualty Co., 150 Wis. 2d 37, 441 N.W.2d 219 (1989).

Citation to an unpublished court of appeals decision to show conflict between districts for purposes of sub. (1) (d) [now sub. (1r) (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, ss. 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. State ex rel. 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 State ex rel. Brown v. Bradley, 2003 WI 14, 259 Wis. 2d 630, 658 N.W.2d 427, 01–3324.

Petitions for Review by the Wisconsin Supreme Court. Karch. 1979 WLR 1176.

Discretionary review by the Wisconsin Supreme Court. Wilson & Pokrass. WBB Feb. 1983.

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. City of 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 shall be served on each party and proposed respondent by traditional methods as provided in s. 809.80 (2). 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.

(1m) The clerk of court shall docket the petition upon receipt of the items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, and send the notice to the parties by traditional methods.

(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; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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]

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: A proceeding under this section is a new action that must be served on the respondents by the initiating parties using traditional methods.

809.71 Rule (Supervisory writ). (1) 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. The petition shall be served on each party and proposed respondent, and if applicable, upon the originating court or tribunal, by traditional methods as provided in s. 809.80 (2). A person seeking a supervisory 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.

(2) The clerk of court shall docket the petition upon receipt of the items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, transmit the notice of docketing to the clerk of circuit court if applicable, and send the notice to the parties by traditional methods.

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. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

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]

NOTE: Sup. Ct. Order No. 20−07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Supervisory writs do not always arise from a pending case through which the parties can be served electronically. A proceeding under this section is a new action that must be served on the respondents by the initiating parties using traditional methods.

A party requesting a supervisory writ under this section must demonstrate that: 1) an appeal is an inadequate remedy; 2) grave hardship or irreparable harm will result; 3) the duty of the trial court is plain, and it acted or intends to act in violation of that duty; and 4) the request for relief is made promptly and speedily. State ex rel. DNR v. Court of Appeals, 2018 WI 25, 380 Wis. 2d 354, 909 N.W.2d 114, 16−1980.

The term "supervisory writ" is both: 1) the general term used in petitioning the court of appeals to exercise its constitutional supervisory authority and in petitioning the supreme court to exercise its constitutional superintending authority; and 2) a new writ the supreme court devised independent of the traditional common law writs. State ex rel. CityDeck Landing LLC v. Circuit Court, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18−0291.

When the circuit court in this case ordered the arbitration of a private dispute stayed until the court could decide an insurance coverage dispute, the plaintiff fulfilled all four criteria for the supreme court to issue a supervisory writ under this section. State ex rel. CityDeck Landing LLC v. Circuit Court, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18−0291.

SUBCHAPTER VIII

MISCELLANEOUS PROCEDURES IN COURT OF APPEALS AND SUPREME COURT

809.80 Rule (Filing and service of documents by traditional methods). (1) FILING BY TRADITIONAL METHODS. A person who is not an electronic filing user, as defined in s. 809.01 (33), shall file a paper copy of any document 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) SERVICE BY TRADITIONAL METHODS. (a) In this subsection, "service by traditional methods" means service in the manner provided in s. 801.14 (1), (2), (2m), and (4) of any document required or authorized under these rules to be filed in a trial or appellate court.

(bm) A party initiating a proceeding under s. 809.51, 809.70 or 809.71 shall serve a petition and memorandum on all parties by traditional methods.

(c) Except as provided in par. (bm), a paper party may initiate a proceeding in the appellate courts without serving electronic filing users by traditional methods. The clerk of the circuit or appellate court shall promptly enter filed documents into the electronic filing system and generate a notice of docketing. Service on electronic filing users shall be as provided in s. 809.10, 809.11, 809.14, 809.32, 809.50, 809.60, or 809.62.

(d) A paper party may file subsequent documents in the appellate courts without serving electronic filing users by traditional methods. The clerk of the circuit or appellate court shall image the documents and promptly enter the documents into the electronic filing system. The notice of activity generated by the entry shall constitute service on the electronic filing users in the case as provided in ss. 801.18 (6) (d) and 809.801 (6) (d).

(e) Paper parties shall be served by traditional methods. Paper parties shall serve other paper parties by traditional methods.

(3) TIME OF FILING BY TRADITIONAL METHODS. (a) *All filings — general rule.* Except as provided in pars. (b) to (e), filing by traditional methods 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 (2) (a) to (f) and the rules and directives governing facsimile filing in the court of appeals and supreme court. Documents completing transmission after 11:59 p.m. central time are considered filed the next business day the clerk's office is open.

(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 FILED BY TRADITIONAL METHODS. (a) When a brief or appendix is filed by mail or commercial carrier in accordance with s. 809.80 (3) (b), the person filing the document shall include 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 included, 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 included, 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) CLERK REVIEW. The clerk may review a document for compliance with rule requirements relating to form, including caption, format, length, and confidentiality, to determine if the electronic document should be accepted for filing. If the clerk rejects the document following review, the filer shall receive notification of the rejection. The filer may be required to resubmit the document.

(6) PRINTING SPECIFICATIONS. When paper copies of briefs or appendices in cases are required to be filed or served, the briefs or appendices shall be printed, typed, duplicated or reproduced by a process that produces a clear, black image of the text on white paper, in conformity with this chapter.

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 Sup. Ct. Order No. 08–18, 2009 WI 4, 311 Wis. 2d xxix; Sup. Ct. Order No. 13–10, 2014 WI 45, 354 Wis. 2d xliii; Sup. Ct. Order No. 14–03, 2016 WI 29, 368 Wis. 2d xiii; Sup. Ct. Order No. 14–03A, 2016 WI 80, 370 Wis. 2d xxxiii; Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21.

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 expeditious, 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).

NOTE: Sup. Ct. Order No. 14–03 states that "the Comments to the statutes and to the supreme court rules created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2016: Subd. (3) (a) is amended to maintain the time for filing by facsimile in the appellate courts as the regular business hours of the clerk of the supreme court and court of appeals.

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Section 809.80 adds the term "traditional methods" to refer to forms of filing and service such as hand–delivery and mail, describes how paper parties may file their documents, and outlines the standards that paper briefs must meet for format, printing, and proof of mailing. This is distinguished from electronic filing and service, which are addressed in s. 809.801.

Sub. (2) does not require a paper party to provide service of a filed document on an electronic party. Because the clerk will be scanning all paper documents submitted by paper parties, electronic filing users will automatically receive notification of new paper documents without the need for traditional service. The current provision regarding service on the attorney general in certain cases has been moved to s. 809.802.

Under sub. (3), documents faxed by 11:59 pm are considered filed the same day. This gives paper parties the same filing hours as electronic parties. The appellate courts place a number of restrictions on filing by fax with respect to length, type of document, and payment of applicable fees. Persons wishing to file by fax should consult the clerk's office for guidance.

Since 2009, the appellate clerk has reviewed electronic briefs to make sure that rule requirements relating to form have been met. Under sub. (5), the clerk's review includes review of all filed documents, both paper and electronic. The same review is applied to electronic documents under s. 809.801 (4) (b).

809.801 Rule (Appellate electronic filing).

(1) DEFINITIONS. The definitions in s. 809.01 apply in this section.

(2) EFFECTIVE DATE; APPLICABILITY. (a) At the direction of the supreme court, the director shall implement an electronic filing system for the Wisconsin supreme court and court of appeals. The requirements of this section shall govern the electronic filing of documents in all types of actions and proceedings in the appellate courts.

(b) At the direction of the supreme court, mandatory use of the electronic filing system shall be phased in according to a schedule set by the director until the system has been fully implemented. Information about the transition schedule shall be made readily available to the public in advance of its application.

(c) Subject to the schedule in par. (b), mandatory users shall be required to use the appellate court electronic filing system for all new filings covered by the schedule. Electronic filing shall be required for all new actions and proceedings brought in the court of appeals and the supreme court, and for all new documents submitted in previously filed cases, except as otherwise provided in this section.

(e) Electronic filing is limited to methods specifically approved by the director. The director may enter into an agreement with any state agency to allow electronic filing through a custom data exchange between the court case management system and the agency's automated information system. Parties using a custom data exchange are considered mandatory users and are subject to the requirements of this section.

(f) The procedures in this section shall be interpreted in a manner consistent with existing procedures. This section is not intended to limit the director's approval of new technologies that accomplish the same functions.

(g) All judicial officers, the clerk of court, and all court staff shall cooperate and assist with the implementation of electronic filing.

(h) This section does not apply to documents required by law to be filed with court officials that are not filed in an action before the court. These documents may be filed by traditional methods unless otherwise required.

(k) The procedures under this section are intended to be consistent with the procedures governing electronic filing and service in the circuit courts under s. 801.18. The circuit and appellate court electronic filing and service rules shall be interpreted consistently to the extent practicable.

(3) REGISTRATION REQUIREMENTS. (a) The following individuals shall register for access to the electronic filing system prior to filing documents:

1. Licensed Wisconsin attorneys.

2. Attorneys appearing under SCR 10.03 (4).

3. High–volume filing agents.

(b) Parties who are not subject to par. (a) may voluntarily register to use the electronic filing system.

(c) Except as otherwise provided, a party not subject to par. (a) who does not choose to participate in the electronic filing system under par. (b) shall file, serve, and receive paper documents by traditional methods.

(d) All users shall register through the electronic filing system by executing a user agreement governing the system's terms of use. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. The electronic filing system shall make information on the technical requirements for filing readily available. By registering, users agree to electronically file all documents to the extent the electronic filing system can accept them. Users shall promptly provide notice through the electronic filing system of any change in the information provided for registration.

(e) Upon completion of a properly executed user agreement under par. (d), the electronic filing system shall provide the user with a confidential, secure authentication procedure for access to the electronic filing system. This authentication procedure shall be used only by that user and by any agents or employees that the user authorizes. The same authentication procedure shall be used for all cases on which the user is an attorney or a party. The electronic filing system may reset authentication procedures as needed for administrative and security purposes. Upon learning that the confidentiality of the authentication procedure has been inadvertently or improperly disclosed, the user shall immediately report that fact through the electronic filing system.

(f) After registering to use the electronic filing system, a user shall also opt in as an attorney or party on any case in which the user intends to participate. Users shall promptly opt in or out on each case upon beginning or ending appearance as an attorney or as a party. Filing agents appearing under par. (a) or (b) shall promptly opt in or out upon any change in the identity of a filing agent. Mandatory users who do not opt in on a case will not receive notices of activity or service of documents.

(g) Attorneys appearing under SCR 10.03 (4) shall register following court approval of a motion to appear *pro hac vice*.

(i) Voluntary users who wish to opt out of a particular case shall use the "opt out" feature of the electronic filing system or notify the clerk of court. The electronic filing system shall indicate that traditional methods must be used for this party for future filings and service.

(j) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case. It may also provide a method for professionals and agencies associated with the case to receive information and file reports.

(4) TIME AND EFFECT OF ELECTRONIC FILING. (a) The electronic filing system is an agent of the appellate courts for purposes of filing, receipt, service, and retrieval of electronic documents. The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

(am) A document is considered filed on a particular day if the submission is completed by 11:59 p.m. central time, as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review. Documents filed after 11:59 p.m. are considered filed the next day the clerk's office is open. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.

(b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate clerk of court. The clerk may review documents for compliance with rule requirements relating to form, including caption, case number, format, length, and confidentiality, to determine if the documents should be accepted for filing.

(c) If the clerk of court accepts a document for filing, it shall be considered filed with the court at the date and time of the original submission, as recorded by the electronic filing system. The electronic filing system shall issue a notice of activity to serve as proof of filing. When personal service or traditional service is not required, the notice of activity shall constitute service on the other users in the case.

(cm) If the clerk rejects the document following review, the user shall receive notification of the rejection. The user may be required to resubmit the document.

(5) COMMENCEMENT OF ACTION OR PROCEEDING; FILING OF INITIATING DOCUMENTS. (a) *Original actions, writs, and other matters commenced in the appellate courts.* A user seeking to initiate an action or proceeding in an appellate court under s. 757.85 (5), 809.51, 809.70, or 809.71 shall first register with the electronic filing system as provided in sub. (3). The user shall then file an initiating document in the appellate court and provide the additional information requested by the electronic filing system. At the written or oral request of the filer, the clerk of court may reject the document for filings made in error, if the request is made before the clerk of court has accepted the document. Initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(b) *Petitions for review and petitions to bypass.* A user seeking review by the supreme court under s. 809.60 or 809.62 shall file an initiating document in the supreme court. At the written or oral request of the filer, the clerk may reject the document for filings made in error, if the request is made before the clerk has accepted the document. Service shall be as provided in s. 809.60 (1) (b) or s. 809.62 (1m) (a) 2.

(c) *Appeals from circuit court.* A user seeking to initiate an appeal under s. 809.10, 809.103, 809.104, 809.105, 809.107, 809.30, 809.32, or 809.40 shall file a notice of appeal in the circuit court case appealed from as provided in that section. The clerk of circuit court shall transmit the notice of appeal to the clerk of the court of appeals. The docketing statement, motions under s. 809.41 (1) or (4), and statement on transcript, where applicable, shall also be filed with the clerk of circuit court and transmitted to the clerk of the court of appeals. Service shall be as provided in s. 809.10 (1) (h).

(d) *Petitions for leave to appeal.* A user seeking leave to appeal under s. 809.50 shall file a petition in the court of appeals and provide the additional information requested by the electronic filing system. At the written or oral request of the filer, the clerk of the court of appeals may reject the document for filings made in error, if the request is made before the clerk has accepted the document. Service shall be as provided in s. 809.50 (1m).

(e) *Motions prior to appeal.* A user moving the court for an order or other relief under s. 809.14 (5) before a notice of appeal is filed shall file an initiating document in the court of appeals and provide the additional information requested by the electronic filing system. At the written or oral request of the filer, the clerk of the court of appeals may reject the document for filings made in error, if the request is made before the clerk has accepted the document. Service shall be as provided in s. 809.14 (5) (b).

(f) *Respondent to opt in.* A mandatory user who represents a responding party shall register to use the electronic filing system as provided under sub. (3) (d). After registering to use the electronic filing system, the user shall opt in on the case as provided in sub. (3) (f).

(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS. (a) The electronic filing system shall generate a notice of activity to the other users in the case when documents other than initiating documents are filed. Users shall access filed documents through the appellate electronic filing system. For documents that do not

require personal or traditional service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document.

(b) If a document requires personal or traditional service, it shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(c) Paper parties shall be served by traditional methods. The electronic filing system shall indicate which parties are to be served electronically and which are to be served by traditional methods.

(d) Paper parties shall file documents with the court by traditional methods. The clerk of court shall image the documents and enter the imaged documents into the electronic filing system promptly. The notice of activity generated by the entry shall constitute service on the users in the case. Paper parties shall serve other paper parties by traditional methods.

(e) An electronic notification that cannot be successfully delivered to a user shall be returned to the clerk of court. If the clerk cannot contact the user to update the information, the user shall be treated as a paper party until the problem is corrected.

(f) For cases that were originally filed by traditional methods, all of the following apply:

1. Subject to the schedule in sub. (2) (b), all mandatory users shall opt in on each case for which they continue to appear. Mandatory users who do not opt in on a case do not receive notices of activity or service of documents.

2. For all cases that are in open status at the time electronic filing is mandated, the clerk of court shall send a notice by traditional methods to each party who has not opted in stating that the case has been converted to electronic filing. Mandatory users shall promptly opt in on these cases unless the user informs the court that the user is no longer appearing on behalf of the party.

3. For all cases that were in closed status prior to the time electronic filing was mandated, no action is required until there is a subsequent filing or the court initiates further activity on the case, subject to all of the following:

a. A mandatory user who wishes to file on a closed case shall opt in on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly opt in on the case or shall notify the court that the user is no longer appearing on behalf of the party.

b. A voluntary user who wishes to file electronically in a closed case shall opt in as a user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly opt in on the case or shall notify the court that the user is no longer appearing on behalf of the party.

c. Service on a party who might be a voluntary user shall include a notice stating that the case has been converted to electronic filing and giving instructions for how to use the electronic filing system if the party chooses to do so.

(7) PAYMENT OF FEES. (a) Users shall make payments due to the clerk of court by check or through the court electronic payment system, unless otherwise ordered by the court or unless arrangements are made with the clerk of court. The court electronic payment system shall deposit the fees due to the clerk of court in the clerk's account.

(b) A user may submit a petition or motion for waiver of costs and fees under s. 814.29 (1) or (1m) using a form provided by the court for that purpose. If a document is submitted with a petition or motion for waiver, it shall be considered filed with the court on the date and time of the original submission if the waiver is subsequently granted by the court or other arrangements for payment are made.

(8) FORMAT AND CONTENT OF FILINGS. (a) The director shall make information about the technical requirements of the electronic filing system readily available to the public. Users are responsible for keeping up with these requirements and providing the necessary equipment, software, communication technology, and staff training.

(b) Users shall provide any case management information needed to file documents. The electronic filing system shall reject a document for failure to include information in any one of the mandatory fields identified by the system.

(c) Users shall format the appearance of all electronically filed documents in accordance with statutes and appellate court rules governing formatting of paper documents, including page limits.

(d) The electronic filing system may set limits on the length or number of documents. Leave of court may be granted for traditional filing and service in appropriate cases. If a brief or appendix cannot be electronically filed as a single document due to the size limitations of the system, the user shall contact the clerk of court for assistance.

(e) Electronically filed appendices, exhibits, and affidavits shall be filed in portable document format. All other electronically filed documents shall be filed in text–searchable portable document format.

(f) Electronically filed documents may include bookmarks that allow the reader to navigate quickly within a document, such as from the table of contents to the corresponding sections of a brief or from the table of contents to the corresponding documents in an appendix.

(g) Electronically filed documents may include hyperlinks that allow the reader to jump directly to another location in the document or to an external source of information, such as a published case or statute posted on the Internet. External hyperlinks shall be used only in accordance with security procedures set by the court.

(h) Users shall format electronically filed documents to leave a blank space 2 inches by 2 inches square at the top right corner of the first page to accommodate the court file stamp.

(9) OFFICIAL RECORD. (a) Electronically filed documents have the same force and effect as documents filed by traditional methods. The electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.

(b) The duties of the clerk of court under this chapter and all other statutes, court rules, and procedures may be fulfilled through proper management of electronic documents as provided in this section. The requirements of statutes and rules that refer to paper copies, originals, mailing, and other traditional methods may be satisfied by transmission of documents through the electronic filing system.

(c) Subject to the schedule in sub. (2) (b), the clerk of court shall maintain the official court record only in electronic format for all cases commenced after that date. Documents filed by traditional methods shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to SCR 72.03 (3). Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(d) If a document is filed in a case in closed status, the clerk of court shall file the document electronically and convert that case to electronic format within a reasonable time. If conversion of the case would be unusually burdensome, the clerk of court may maintain the record in paper format with the permission of the court.

(e) The clerk of court shall make the public portions of the electronic record available for viewing at the clerk of court's office. The clerk of court shall make nonpublic portions of the electronic record available for viewing by authorized persons.

(f) The clerk of court may provide either paper or electronic copies of pages from the court record. The clerk of court shall charge the per–page fee set by s. 809.25 (2) for electronic court records.

(g) Certified copies of an electronic record may be obtained from the clerk of court's office by traditional methods, as provided

by s. 889.08. The electronic system may also make available a process for electronic certification of the court record. The seal of the court may be applied electronically. No use of colored ink or an impressed seal is required.

(h) Parties filing by traditional methods shall file a copy of any document and not the original paper document. The court may require the submitting party to produce the original paper document if authenticity of document is challenged. If the court inspects the original paper document, it shall be retained as an exhibit as provided in SCR 72.03 (4).

(L) For documentary exhibits submitted directly to the supreme court or court of appeals, parties shall submit a copy of the exhibit and not the original. The clerk of court shall image each documentary exhibit and enter the imaged document into the court record. Copies of documentary exhibits so imaged may be discarded as provided in SCR 72.03 (3). If inspection of the original document is necessary to the court proceeding, the court may order that the original document be produced. Any original document so produced shall be retained as an exhibit as provided in SCR 72.03 (4).

(m) When an action or proceeding requires a record to be submitted by a party directly to the court, the record shall be imaged and electronically submitted using a method provided by the electronic filing system. The electronic record shall be the official record in the action or proceeding. If inspection of an original document is necessary to the court proceeding, the court may order that the original document be produced.

(11) NOTARIZATION AND OATHS. (a) Notaries public who hold valid appointments under ch. 140 may issue certificates of notarial acts for electronically filed documents as provided in this section.

(b) Court officials authorized by law to perform notarial acts may do so by application of their electronic signatures provided through the electronic filing system.

(c) Unless specifically required by statute or court rule, electronically filed documents are not required to be notarized.

(d) Documents notarized by traditional methods may be filed through the electronic filing system if a handwritten signature and physical seal appear on the original document. The user shall submit an imaged copy of the notarized document to the electronic filing system, and the court shall maintain the imaged copy as the official court record. The court may require the submitting party to produce the original paper document if the authenticity of the notarization is in question.

(f) The director, in his or her discretion, may approve the use of an electronic notary technology compatible with the existing electronic filing system.

(12) SIGNATURES OF USERS. (a) To be considered electronically signed, a document must be submitted by or on behalf of a user through the electronic filing system. A document requiring the signature of a user shall bear either an electronic signature or a handwritten signature applied to a document before it is imaged. An electronic signature shall state "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. Either form of signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules.

(b) An initiating document that is signed in compliance with par. (a) bears a sufficient signature under s. 802.05.

(c) Each electronically filed document shall bear that person's name, mailing address, electronic mail address, telephone number, and state bar number if applicable. Users shall notify the electronic filing system of any change in this information, consistent with sub. (3) (d).

(d) An attorney may delegate the authority to submit documents to the electronic filing system to a person under the attorney's supervision. Any document requiring the attorney's signature is deemed to have been signed by the attorney if submitted to the electronic filing system and signed as provided in par. (a). Every attorney is responsible for all documents so submitted.

(e) Every attorney is responsible for electronically filed documents to the same extent as for paper filings. Attorneys using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785, and are subject to discipline for a violation of any duty to the court under the supreme court rules.

(f) Self–represented parties and filing agents under s. 799.06 are responsible for electronically filed documents to the same extent as for paper filings. Self–represented parties and filing agents using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.

(fm) An electronically filed certification required by this chapter may be signed by applying the user's signature as provided in par. (a).

(g) A stipulation will be considered signed by multiple persons if it bears the handwritten signatures of all signatories or if it bears the printed name of each signatory and contains a representation by the filing party that the filing party has consulted with the signatories and all have agreed to sign the document. This paragraph does not apply to the signature requirements of s. 809.107 (2) (bm) 6., (5) (a), and (6) (f), where a signature is required from the appellant or petitioner, other than the state, on whose behalf the document is filed.

(h) For paper parties, every document requiring a signature shall be signed using a handwritten signature. If a document requiring a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided under sub. (9) (h).

(i) Documents containing handwritten signatures of third parties, such as affidavits, may be filed through the electronic filing system if a handwritten signature appears on the original document. The user shall submit an imaged copy of the signed document to the electronic filing system, and the court shall maintain the imaged document as the official court record. The court may require the submitting party to produce the original paper document if validity of the signature is challenged.

(j) The director, in his or her discretion, may approve the use of other signature technologies to the extent that they work with the existing electronic filing system.

(13) SIGNATURES OF COURT OFFICIALS. (a) If the signature of a court official is required on a document, an electronic signature applied through the court case management system may be used. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a handwritten signature would be located on a particular order, form, letter, or other document, the official's printed name shall be inserted.

(b) The electronic signature of a court official shall be used only by the official to whom it is assigned and by such delegates as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized delegate.

(c) A court official may delegate the use of his or her electronic signature to an authorized staff member pursuant to the security procedures of the court case management system. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly disclosed, the court official shall immediately report that fact to the consolidated court automation programs. Court officials shall safeguard the security of their electronic signatures and exercise care in delegation.

(14) CONFIDENTIAL INFORMATION. (a) The confidentiality of an electronic record is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or

paper copy thereof, may release the information to any other person except as provided by law.

(b) Parties shall exercise care with respect to redaction of protected information, as defined in s. 801.19 (1), identification of confidential material, and sealing of filed documents.

(c) If a document is confidential, it shall be identified as confidential by the submitting party when it is filed. The clerk of court is not required to review documents to determine if confidential information is contained within them.

(d) If a user seeks court approval to seal a document, the user may electronically file the document under temporary seal pending court approval of the user's motion to seal.

(e) If the clerk notes that a document has been identified as confidential or sealed, the electronic filing system shall place a visible mark on the document to identify it as confidential or sealed.

(f) An amicus party may, in the court's discretion, be granted access to confidential, redacted, or sealed portions of the court record upon motion to the court and a showing of good cause.

(15) TRANSCRIPTS. (a) A transcript filed in the circuit court shall be electronically transmitted to the clerk of the court of appeals when made part of the record on appeal.

(b) The transcript of any proceeding originating in the court of appeals or supreme court shall be electronically filed by the court reporter in accordance with procedures developed by the director. The clerk shall note in the court record that the transcript has been prepared and filed with the court.

(c) Arrangements for payment of the court reporter, access to the transcript, and service shall be as directed by the court.

(d) Any notice to the clerk of the supreme court and court of appeals filed under s. 809.11 (7) (a) or 809.32 (5) or any motion filed under s. 809.11 (7) (c) shall be electronically filed. The court reporter shall serve paper parties by traditional methods.

(e) A transcript, when filed under this section, becomes a part of the court file. The transcript shall be made available to the public in accordance with the statutes and rules governing court records and any court orders.

(f) A court reporter may certify that the transcript is a verbatim transcript of the proceedings by applying the court reporter's signature in the same manner as provided in sub. (12) (a) and then electronically filing the transcript.

(16) TECHNICAL FAILURES. (a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:

1. If the failure is caused by the court electronic filing system, a user may move the court for relief on the basis that the user attempted to file the document with the court in a timely manner by submitting it to the electronic filing system. The court may enter an order permitting the document to be deemed filed or served on the date and time the user first attempted to submit the document electronically or may grant other relief as appropriate.

2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Users are responsible for timely filing of electronic documents to the same extent as filing of paper documents.

(b) A motion for relief due to technical failure shall be made on the next day the office of the clerk of court is open. The document that the user attempted to file shall be filed separately and any fees due shall be paid at that time.

(c) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

History: Sup. Ct. Order No. 20–07, 2021 WI 37, filed 4–23–21, eff. 7–1–21; 2021 a. 240 s. 30.

NOTE: Sup. Ct. Order No. 20–07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Although proposed s. 809.801 is new, the numbering reflects an effort to stay parallel with the section numbering of the circuit court eFiling rule, s. 801.18.

Section 809.801 is built on the template of the circuit court electronic filing rule, s. 809.18, with respect to structure, language, and procedure. There are no major differences between the two systems with respect to how electronic filing works. Sub.(2) (k) provides that the two rules "shall be interpreted consistently to the extent practicable".

At the direction of the supreme court, subs. (2) (b) and (c) provide for the use of an implementation schedule to govern the availability of electronic filing according to the type of proceeding involved and the type of court.

Sub. (3) (a) mandates that three types of filers participate in the electronic filing system. An exception for attorneys representing themselves was included in the circuit court electronic filing rule but is eliminated here. Experience has shown that electronic filing is straightforward to use, with minimal technical impediments and expense.

Subs. (3) (d) and (f) require electronic filing users to promptly opt in and opt out from the cases where they are representing parties or participating as litigants. Users are required to keep their contact information up to date to receive electronic service.

Under sub. (3) (j), persons filing documents in cases where they are not parties, such as amicus curiae, may register to use the electronic filing system and file a document.

Sub. (4) (am) provides that filing occurs when the document is submitted to the electronic filing system as long as it is accepted by the clerk at a later time. Extending the filing day to 11:59 p.m. is consistent with the circuit court electronic filing rule and federal court electronic filing rules. This supersedes the decision in *St. John's Home v. Continental Casualty Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam, requiring filing to occur only within the office hours of the clerk. This gives a user an extra few hours to file on the last day a document is due but does not otherwise affect the calculation of time. If a user submits a document or the court issues an order on a day when the clerk's office is closed, it is considered filed on the next day the clerk's office is open, except as provided by other statutes and rules, or by court order.

Since 2009, the appellate clerk has reviewed electronic briefs to make sure that rule requirements relating to form have been met. Together with s. 809.80 (5), subd. (4) (b) provides that the clerk may review all types of documents, both paper and electronic.

Sub. (4) (c) is consistent with s. 809.80 (2) (d), which provides that a document filed by a paper party will be served on the electronic users when the clerk scans and dockets the document and a notice of activity is generated.

Sub. (5) addresses how the first document or group of documents should be filed in each type of appellate proceeding.

Sub. (6) (a) provides that the electronic filing system now serves as the means of delivery between users for documents filed after the case is initiated. Electronic filing users will receive a notice of activity letting them know that a new document has been filed in the proceeding. Paper parties will continue to be served by traditional methods for both initiating and subsequent documents.

Sub. (6) (e) provides that if an email to a party is returned as undeliverable, the clerk will attempt to locate the party and correct the problem. The other parties must serve that party by traditional methods in the meantime.

Sub. (6) (f) outlines how mandatory electronic filing will be initiated on previously filed cases. The clerk will work with attorneys to opt in on their open cases and will provide voluntary users with instructions on how to participate in the electronic filing system if they choose.

Sub. (8) (a) requires electronic filing users to keep their hardware, software, and staff training up to date with the minimum requirements set by the court.

Under former s. 809.18 (12), the supreme court required that briefs, no−merit reports, and petitions for review be submitted in text−searchable portable document format (PDF). Sub. (8) (e) broadens this requirement to include most documents submitted to the court, including motions, writs and petitions. Appendices, exhibits, and affidavits must be submitted in portable document format but are not required to be text−searchable.

Sub. (8) (g) provides for the permissive use of external hyperlinks to sources of information such as published cases and statutes posted on the Internet. Hyperlinks come with a small amount of risk for the introduction of malicious software into the electronic filing system and into law office case management systems. For that reason, hyperlinks may be used only in accordance with guidance posted by the court, and the court may limit the sites that users may link to. The use of hyperlinks is not required.

Sub. (9) provides that appellate court case files going forward will be kept electronically. Mandatory electronic filing users are required to file all documents electronically, with only a few exceptions. The documents submitted by paper parties will be imaged and converted to electronic format by the clerk of court. Because any paper submitted will be discarded after it is imaged, parties should not submit original documents to the court.

Sub. (12) (a) is amended to clarify the required format of an electronic signature. Handwritten signatures continue to be used despite the availability of electronic signatures and are permitted as long as the document is imaged and submitted through the electronic filing system. Either form of signature provides the level of accountability to client and court called for by the appellate rules. Compliance with this section

is intended to satisfy the signature requirements of ss. 802.05 (1) and 809.19 (1) (h), as well as all other statutes and rules relating to court documents.

Sub. (12) (fm) is added to permit the use of electronic signatures for certifying briefs, appendices, and no−merit reports as to length, confidentiality, and client counseling.

Sub. (12) (g) responds to a recent legislative change requiring the signature of both counsel and parents on the notice of appeal in proceedings for termination of parental rights. A representation that all signatories have agreed to sign the document cannot be used in lieu of the parents' signatures in this situation.

Sub. (14) (b) refers to circuit court requirements regarding confidential, redacted, and sealed documents. Documents added to the circuit court record since 2016 should already be in compliance with ss. 801.19 to 809.21.

Sub. (15) (a) notes that circuit court transcripts are generally not filed directly with the appellate court. Transcripts are electronically transmitted by the clerk of circuit court as part of the record on appeal.

When transcripts are filed directly with the appellate court, sub. (15) (c) provides that arrangements for payment, copies and service shall be as directed by the court.

809.802 Rule (Service on the state in certain proceedings). (1) Any document 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 document 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 of a decision of the court of appeals in a misdemeanor case shall be served on the attorney general.

(2) Where service on the attorney general is required under sub. (1), the clerk of the court of appeals shall opt in the attorney general as an attorney for the state and provide the notice of docketing to the attorney general through the appellate electronic filing system. For the attorney general, receipt of the notice of docketing provides access to the proceeding and constitutes service of the initiating document and other documents filed with the initiating documents.

History: Sup. Ct. Order No. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

NOTE: Sup. Ct. Order No. 20−07 states that "the Comments to the statutes created pursuant to this order are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Comment, 2021: Former s. 809.80 (2) is recreated as sub. (1). The requirement to serve the attorney general under this section applies to both traditional and electronic modes of service. Sub. (2) describes the mechanism the clerk will use to assure service on the attorney general in cases where the other electronic parties are served with initiating documents through the circuit court electronic filing system or when the attorney general did not participate in a proceeding before a petition for review was filed.

809.81 Rule (Form of papers). The format of a document filed in the court must conform to the following requirements unless expressly provided otherwise in these rules:

(1) SIZE. Formatted to fit 8.5 by 11 inch paper.

(3) STYLE. Produced using either a monospaced or a proportional serif font. If handwriting is used, the text must be legibly printed and not include cursive writing, except the person's signature.

(4) SPACING AND MARGINS. Double−spaced with a minimum of a 1.25−inch margin on the right and left sides, and a minimum of a 1−inch margin on the top and bottom.

(5) PAGINATION. Paginated at the center of the bottom margin using Arabic numerals with sequential numbering starting at "1" on the first page.

(6) APPEARANCE. Any process that produces a clear, black image on a white background. Carbon copies may not be filed. Imaged documents should be scanned at a resolution sufficient to ensure legibility.

(7) BINDING. Pages must be secured together at the top left corner.

(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 one or more initials or other appropriate pseudonym or designation.

(9) CAPTIONS. Except as provided in s. 809.81 (8) or when "petitioner" has been substituted for an individual's name in the caption in an appeal from a domestic abuse protective order or harassment injunction, or when the clerk has given notice of a different caption, 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 (1993); Sup. Ct. Order No. 93−20, 179 Wis. 2d xxv (1993); 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. 14−01, 2015 WI 21, filed 3−2−15, eff. 7−1−15; Sup. Ct. Order No. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

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 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.

(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; 2017 a. 258; Sup. Ct. Order No. 20−07, 2021 WI 37, filed 4−23−21, eff. 7−1−21.

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 post−conviction 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. Circuit Court, 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 State ex rel. 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*, 2004 WI 84, 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, 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, 348 Wis. 2d 593, 834 N.W.2d 432, 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 percent 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 sub. (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. Township of Levis, 176 Wis. 2d 252, 500 N.W.2d 339 (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 (Continuation, appearance, substitution or withdrawal of counsel). (1) APPOINTED 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 or as allowed under sub. (3), (4), or (5) (b).

(2) NONADMITTED COUNSEL. (a) Counsel not admitted to practice law in Wisconsin but admitted pro hac vice in the circuit court case shall provide the clerk with a copy of the circuit court's order admitting counsel pro hac vice and then may appear before the court in association with counsel admitted to practice law and in good standing in Wisconsin. Wisconsin counsel shall sign every document filed in the court and shall be present in person in all proceedings unless excused by the court.

(b) Counsel not admitted to practice law in Wisconsin may move the court for pro hac vice admission and shall state by affidavit that counsel is admitted to practice law and is in good standing to practice law in another jurisdiction and that counsel has complied with SCR 10.03 (4). If the motion is granted, counsel may appear before the court in association with counsel admitted to practice law and in good standing in Wisconsin. Wisconsin counsel shall sign every document filed in the court and shall be present in person in all proceedings unless excused by the court.

(c) For good cause the court may revoke the privilege granted herein of any counsel admitted pro hac vice to appear in any proceeding.

(3) NOTICE OF LIMITED APPEARANCE. If an attorney's scope of representation is limited, notices under s. 802.045 of limited appearance and of termination of limited appearance shall be filed with the court and served on the client and all parties. Upon the filing of the notice of termination of limited appearance, the clerk shall enter the withdrawal of counsel on the court docket without a court order.

(4) SUBSTITUTION OF COUNSEL. (a) *Applicability.* This subsection does not apply to counsel appointed for a person under s. 809.107 or 809.30 (2) (e) or ch. 977 or by the circuit court for postconviction, postcommitment, or postdisposition proceedings under s. 809.107, 809.30, or 809.32.

(b) *Substitution by mutual consent.* 1. An attorney for a party to an appeal or other appellate court proceeding may withdraw upon the party's consent by filing a notice of withdrawal signed by the party and withdrawing counsel and accompanied by a notice of substitution of counsel signed by substitute counsel. The notice of substitution of counsel must provide the substitute attorney's name, mailing address, electronic mail address, if any, and telephone number. Upon the filing of a notice of withdrawal and notice of substitution of counsel, the clerk shall enter the substitution on the court docket without a court order.

2. Substitution of counsel without the signature of withdrawing counsel may be allowed for good cause shown and upon such terms as shall be just.

(c) *Entry of appearance by members or employees of law firms, professional corporations, legal assistance clinics, and agencies.* The entry of an appearance as attorney of record by an attorney who is a member or an employee of a law firm, professional corporation, legal assistance clinic, or agency representing a party to the appeal or other appellate court proceeding shall relieve other members or employees of the same law firm, professional corporation, legal assistance clinic, or agency from the necessity of filing a notice of withdrawal and substitution of counsel. Upon entry of such appearance, the clerk shall enter the substitution of counsel on the court docket without a court order unless the entry of appearance indicates that the attorneys will serve as co−counsel.

(5) WITHDRAWAL OF COUNSEL. (a) *Applicability.* This subsection does not apply to counsel appointed for a person under s. 809.107 or 809.30 (2) (e) or ch. 977 or by the circuit court for postconviction, postcommitment, or postdisposition proceedings under s. 809.107, 809.30, or 809.32.

(b) *Withdrawal by consent.* Other than in an appeal under s. 809.107 or 809.30, an attorney for a party to an appeal or other appellate court proceeding may withdraw as counsel of record upon the party's consent by filing a notice of withdrawal signed by the party indicating consent. The notice shall indicate the party's last known address unless disclosure of the address would

violate a standard of professional responsibility. Upon the filing of a notice of withdrawal indicating the party's consent, the clerk shall enter the withdrawal on the court docket without a court order.

(c) *Withdrawal by motion.* An attorney desiring to withdraw as counsel of record for a party to an appeal or other appellate court proceeding who is unable to obtain the party's consent under par. (b), or in an appeal under s. 809.107 or 809.30, must file a motion to withdraw. The motion shall be filed in the court in which the appeal or other appellate court proceeding is pending.

(d) *Referral for appointment of counsel by the state public defender.* If the appeal or other appellate court proceeding is one in which the client may be eligible for the appointment of counsel under s. 809.107 or 809.30 (2) (e) or ch. 977, and if the client requests representation by the state public defender, the attorney shall serve a copy of the motion to withdraw on the appellate division intake unit in the Madison appellate office of the state public defender and refer the client to the appellate division intake office for indigency determination and the possible appointment of counsel. When a client is referred to the state public defender, within 20 days after receipt of a motion to withdraw filed and served under par. (e), the state public defender shall notify the court in which the motion was filed of the status of the determination of the client's indigency and whether the state public defender will appoint counsel.

(e) *Content of motion to withdraw as counsel.* A motion to withdraw as counsel must include all of the following items:

1. The client's name and last known address, unless disclosure of the address would violate a standard of professional responsibility.

2. A statement that at least 14 days before the motion was filed the client was notified in person, by mail, by electronic mail, or by phone of all of the following information:

a. Counsel's intent to withdraw.

b. Of the right to object to the motion within 11 days after service of the motion.

c. That unless the client retains or obtains new counsel, the client is personally responsible for keeping the court and the other parties informed where notices, briefs, or other papers may be served and complying with all court orders and time limitations established by the rules of appellate procedure or by court order, and that if the client fails or refuses to comply with court orders and established time limitations, the client may suffer possible dismissal, default or other penalty.

d. The date of any pending deadline or required filing in the appeal or other appellate proceeding.

e. If the client is not a natural person, that the client must be represented by counsel unless the appeal is taken from a small claims case.

3. When referral to the state public defender is required under par. (d), a statement that the referral was made and the date it was made.

4. A statement that the motion was served on the client, all parties to the appeal, and the appellate division intake unit in the Madison appellate office of the state public defender when referral to the state public defender is required under par. (d).

5. If counsel was unable to give the client the notice required under subd. 2., a statement that attempts to give notice have failed and an explanation of what good faith efforts counsel made to satisfy the notice requirement.

6. The reasons for withdrawal under SCR 20:1.16 and the facts relevant to the reasons or factors in the withdrawal determination under par. (f), unless an explanation of the reasons and facts would violate a standard of professional responsibility.

(f) *Factors in withdrawal determination.* The court may approve withdrawal under appropriate terms and conditions. The court may consider the following factors in deciding the attorney's motion to withdraw:

1. Whether the client has been given reasonable notice and opportunity to obtain substitute counsel.

2. Complexity of the case, the length of time the attorney has served as counsel of record, and preparatory work completed.

3. The amount of fees paid or owed.

4. Whether the request is made to manipulate the appellate process.

5. Whether the attorney–client relationship is irrevocably broken.

6. Prejudice to any party.

7. Delay caused by the withdrawal of counsel of record.

8. Whether the office of the state public defender will appoint counsel.

9. Such other factors as the court may determine to be relevant.

(g) *Time tolled.* The filing of a motion to withdraw under this section automatically tolls the time for performing an act required by the rules of appellate procedure or court order from the date the motion was filed until the date motion is disposed of by order. The time for filing a petition for review under s. 808.10 is not tolled.

(h) *Motion not necessary.* Upon the filing of a petition for review by a self–represented person or new counsel, the clerk shall enter the withdrawal of counsel or substitution of counsel on the court docket without a court order.

(6) CLIENT'S FILE. The withdrawing attorney shall surrender to the client or successor counsel the papers and property to which the client is entitled within 14 days of counsel's receipt of the client's or successor counsel's request, unless the court orders otherwise.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 151 Wis. 2d xxv (1989); Sup. Ct. Order No. 20–05, 2021 WI 25, filed 3–9–21, eff. 7–1–21; 2021 a. 240 s. 30.

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).

NOTE: Sup. Ct. Order No. 20–05 states that "the Judicial Council Note to Wis. Stat. § 809.85 is not adopted but will be published and may be consulted for guidance in interpreting and applying the rule."

Judicial Council Note, 2021: Subsection (5)(a) is not intended to supersede Rule 809.30(4), which governs the withdrawal of appointed counsel. Subsection (6) is consistent with SCR 20:1.16(d) and only adds a time limit in which counsel must act. Subsection (6) allows the court to defer the surrender of papers and property to the client when the appointment of new counsel is anticipated.

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.

809.86 Rule (Identification of victims and others in briefing, petitions for review, and responses to petitions for review). (1) DECLARATION OF POLICY.

By enacting this rule, the supreme court intends to better protect the privacy and dignity interests of crime victims. It requires appellate briefs, petitions for review, and responses to petitions for review to identify crime victims by use of identifiers, as specified in sub. (4), unless there is good cause for noncompliance. The rule protects the identity of victims in appellate briefs, petitions for review, and responses to petitions for review that the courts make available online.

(2) APPLICABILITY. This section applies to appeals in the following types of cases:

(a) Section 971.17 proceedings.

(b) Criminal cases.

(c) Chapter 938 cases.

(d) Chapter 980 cases.

(e) Certiorari review of decisions or orders entered by the department of corrections, the department of health services, or the parole commission in a proceeding or case specified in pars. (a) to (d).

(f) Collateral challenges to judgments or orders entered in a proceeding or case specified in pars. (a) to (e).

(3) DEFINITION. In this section, "victim" means a natural person against whom a crime, other than a homicide, has been com-

mitted or alleged to have been committed in the appeal or proceeding. "Victim" does not include the person convicted of or alleged to have committed a crime at issue in the appeal or proceeding.

(4) BRIEFS, PETITIONS FOR REVIEW, AND RESPONSES TO PETITIONS FOR REVIEW. In an appeal specified under sub. (2), the briefs of the parties, petitions for review, and responses to petitions for review shall not, without good cause, identify a victim by any part of his or her name but may identify a victim by one or more initials or other appropriate pseudonym or designation.

(5) PROTECTIVE ORDER. For good cause, the court may make any order necessary to protect the identity of a victim or other person, or to excuse compliance with this section.

History: Sup. Ct. Order No. 14−01, 2015 WI 21, filed 3−2−15, eff. 7−1−15; 2017 a. 365 s. 111; Sup. Ct. Order No. 19−19, 2020 WI 6, 390 Wis. 2d xiii.

NOTE: Sup. Ct. Order No. 14−01 states, "The Judicial Council Note to Wis. Stat. § (RULE) 809.86 is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

Judicial Council Note, 2015: Proposed s. 809.86 addresses victim privacy concerns that result from public access to searchable documents posted on the Wisconsin Supreme Court and Court of Appeals access website. The proposed rule is intended to protect victims' constitutional and statutory rights to be treated with fairness, dignity, courtesy, sensitivity, and respect for their privacy. *See* Wis. Const. Article I, section 9m; Wis. Stat., s. 950.01. Specifically, the rule protects the identity of victims in appellate briefs that the courts make available online. The rule does not extend to other appellate filings, including appendices, because these documents are not currently posted electronically.

The proposed rule is not a rule of confidentiality or privilege. It is not intended to limit a defendant's right to a public trial, to limit the availability of any potential appellate argument or remedy, or to affect laws regarding public records or open court records that are available in the clerks of courts offices.

The rule is intended to address only matters in which the state has alleged or proved that a party in the appeal or proceeding has committed criminal conduct against one or more victims in the matter. Accordingly, sub. (2) is limited to matters in which victims of crime are most frequently referenced and identified as victims or alleged victims.

Subsection (3) provides a definition of a "victim" that includes an alleged victim. In some appeals, a party's position will be that there was in fact no victimization, and nothing in this proposed rule is intended to limit arguments to that effect.

The privacy issues addressed by the rule do not extend to a deceased victim in the same manner. Therefore, subsection (3) permits the victim of a homicide to be recognized in an appellate brief.

Subsection (4) prohibits the use of any part of a victim or alleged victim's name except initials. Subsection (4) does not prescribe or limit the use of other pseudonyms for victims, as long as they maintain sensitivity and respect for victims.

Subsection (5) allows an appellate court to make any necessary order to further protect the identity of victims or to protect the identity of other persons not otherwise covered by the rule. It also allows the court to excuse compliance with this section.

Comment, 2020: By S. Ct. Order 19−19, 2020 WI 6 (issued Jan. 29, 2020, eff. July 1, 2020) the court extended the privacy protections of this rule to petitions for review and responses to petitions for review, so that they may be posted on the Wisconsin Supreme Court and Court of Appeals case access website, along with appellate briefs, in a manner that respects victim privacy concerns.