

Date: December 14, 2004

To: Representative Suzanne Jeskewitz
Chairperson, Special Committee on Adoption and Termination of
Parental Rights Law

From: Joseph Ehmann
First Assistant State Public Defender, Madison Appellate

Subject: Judicial Council Appellate Procedure Committee Requests

The Judicial Council Appellate Procedure Committee, of which I am a member, has asked that I request this Committee to consider making the following TPR statutory and procedural changes.

1. Request that the Records Management Committee create a form similar to the CR 233 that would require a person subject to TPR proceedings to be advised of appeal time limits and indicate on the form at the time that the final judgment is entered whether the person intends to pursue an appeal. This should be coupled with statutory language creating an obligation for the court to advise the person of the relevant appeal information and for counsel to complete and file the form on the date the judgment is entered.
2. Amend Chapter 48 to add: Counsel representing a person during circuit court proceedings shall continue representation by filing a Notice of Intent under Rule 809.107(2) unless sooner discharged by the person or the circuit court.
3. Amend Wis. Stat. § 977.07(1)(c) as follows:

977.07 Determination of Indigency.

(1)...

(c) For all referrals made under ss. 809.107, 809.30, 974.06(3)(b) and 974.07, except a referral of a child who is entitled to representation by counsel under s. 48.23 or 938.23, a representative of the state public defender shall determine indigency. For referrals made under ss. 809.107, 809.30 and 974.06(3)(b), except a referral of a child who is entitled to representation by counsel under s. 48.23 or 938.23, the representative of the state public defender may, unless a request for redetermination has been filed under s. 809.30(2)(d) or the ~~defendant's~~ person's request for representation states that his or her financial circumstances have materially

improved, rely upon a determination of indigency made for purposes of trial representation under this section.

4. Amend Wis. Stat. 808.04 as follows:¹

808.04 Time for appeal to the court of appeals.

...

(8) If the record discloses that the judgment or order appealed from was entered after the notice of appeal or notice of intent to appeal was filed, the notice ~~of appeal~~ shall be treated as filed after such entry and on the day thereof.

¹ The Judicial Council Committee had originally addressed this issue in 2003 Senate Bill 364 by proposing a change to § 808.04(7m). Upon consideration of the draft (WLC: 0028/1) language from this committee, the Judicial Council Appellate Procedure Committee supports the change to § 808.04(8) proposed by this committee with the caveat that the words “of appeal” be stricken to clarify that the second clause refers to both a notice of appeal and a notice of intent to appeal.