



**Guide to
WISCONSIN APPELLATE
PROCEDURE
for the
SELF-REPRESENTED
LITIGANT**

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and Court of Appeals
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Important Notes

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

The Guide to Wisconsin Appellate Procedure for the Self-Represented Litigant is based upon the Wisconsin Rules of Appellate Procedure in effect as of July 1, 2021, when the Rules were significantly amended. As of July 1, attorneys are required to use the Wisconsin court electronic filing system in the Court of Appeals.

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

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

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

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

Samuel Christensen

Clerk of the Wisconsin Supreme Court
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1. FREQUENTLY ASKED QUESTIONS ABOUT THE APPELLATE PROCESS

Q. What is an appeal?

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

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

Q. What is a judgment or order?

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

A judgment that does not resolve all the issues in the case is referred to as a “nonfinal judgment.” In order to appeal a nonfinal judgment, an Appellant must request permission to appeal. See “Permissive Appeals” in Section 3 of this Guide.

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

¹ An exception to the rule that the judgment or order must be in writing and entered by the clerk of circuit court exists for final dispositions in small claims, traffic regulation, or municipal ordinance violations prosecuted in circuit court. An appeal in one of these types of cases may be taken only from a final disposition of the case recorded in the circuit court clerk’s case record entries, and the time for appeal begins to run when the entry is made. 808.03(1).

Q. Who can appeal?

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

Q. What types of courts are there?

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

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

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

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

Q. How much does it cost to appeal?

A. The filing fee to open a case in the Court of Appeals is \$195.² This filing fee is due once the Notice of Appeal is filed in the circuit court. Payment should be mailed to the Clerk of the Court of Appeals or electronically paid through the clerk's ePayment website. The eFiling fee is not charged by the Court of Appeals or Supreme Court.

If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. If approved, you will be exempt from payment of the filing fee. See "Applying for Indigent Status" in Section 4.E. of this Guide.

If a transcript is requested, there are fees that the Court Reporter will charge to prepare the transcript for the Court. Even if a party is granted indigent status, the Court Reporter, in some circumstances, can still charge to prepare the transcript. The circuit court can explain those costs.

There is also a \$15 transmittal fee payable to the circuit court clerk to prepare and transmit the record to the Court of Appeals. There may be costs involved with preparing documents for the Court as well as getting copies made for service on parties to the appeal that are entitled to a paper copy.

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

A. Although the circuit court can appoint an attorney to represent a party on appeal under certain circumstances (e.g., criminal cases), the Court of Appeals and Supreme Court generally do not appoint attorneys.

If you are financially unable to hire an attorney for a criminal or termination of parental rights case, contact the State Public Defender's office. If you do not qualify for a public defender, a motion can be filed in the circuit court asking for indigent status or the appointment of counsel in a criminal case or termination of parental rights case. Contact the circuit court to determine what is necessary for this procedure and if it is possible to obtain court-appointed counsel for your case. Circuit courts generally do not appoint attorneys in civil cases.

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

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

² 809.25(2).

may also be able to give a referral. For further information, visit the State Bar of Wisconsin website at www.wisbar.org.

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

A. Yes, there are significant differences prior to the start of the briefing period. Compare Section 4.A. and 4.B. of this Guide.

Q. Can I file and serve documents using the appellate eFiling system?

A. Yes, any self-represented party may register for eFiling in the circuit court and Court of Appeals. Attorneys representing parties to an appeal are required to register and file through eFiling beginning on July 1, 2021.

If you would like to use eFiling, please visit the Wisconsin Court System website <https://www.wicourts.gov/ecourts/efileappellate/index.jsp>. You should follow the directions on the website and instructions from the clerk of the appellate court to opt in to electronic filing.

If you choose to participate in eFiling, you will no longer receive paper notices or orders from the court or paper documents from opposing parties. Instead, you will receive an email telling you a new document is available for viewing online. One benefit of participating in eFiling is that you receive immediate notice that something has happened in your case instead of waiting several days for papers to arrive in the mail.

For documents that do not require traditional service, notice through the eFiling system is considered to be service on the other eFiling parties. With certain exceptions, after filing a document with the clerk of court, you do not have to separately serve eFiling parties with the document. The notice of activity generated by the eFiling system acts as the proof of service on the other eFiling parties.

Service on “paper parties” (those who do not eFile) must still be accomplished by traditional methods such as mail, personal delivery, or email if the party has previously agreed to accept service by email. In other words, if any party to the case is not an eFiler, you must provide them with one paper copy of anything you file with the Court. Everyone (eFilers and non-eFilers) must serve paper parties (non-eFilers) with one paper copy. For more information on service, see the appellate rules, Chapters 808 and 809.

The Wisconsin Supreme Court has not set a date to begin mandatory eFiling. Parties to a Supreme Court case should file and serve documents using paper processes until further notice.³

³ The Interim Rules regarding electronic filing in the Supreme Court can be viewed at <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=378648>.

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

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

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

A. Except for permissive appeals, the circuit court must be finished with your case before you can appeal.⁴ The circuit court is finished when it issues a final judgment or a final order.⁵ The Notice of Appeal is filed in the circuit court clerk's office. It tells the circuit court that you are going to appeal the circuit court's judgment and contains information about your case.⁶ A Notice of Appeal Form is in the Appendix at the end of this Guide. The circuit court clerk will transmit your Notice of Appeal to the Court of Appeals. The following is more information on filing the Notice of Appeal (and other required documents) in specific types of cases:

Civil cases. In a civil case, you have 45 days from the entry of final judgment or final order to file a document called a Notice of Appeal if you have received written notice of the entry of the final judgment or final order within 21 days.⁷ If no written notice has been given by the opposing party (or, in small claims cases, by the clerk of court) you have 90 days.

Small Claims Eviction cases. In a small claims eviction case, you have 15 days from the entry of final judgment or order to file a Notice of Appeal.⁸ (Note: in eviction actions, an order for judgment for restitution of the premises is appealable even though other claims, such as for monetary damages, may be unresolved.) Other small claims cases have the same deadlines as regular civil cases. For all small claims cases, the final judgment or order appealed from is the docket entry.⁹

⁴ Another exception: contempt determinations are special proceedings that must be appealed right away even if the rest of your case has not been decided. See *In re Commitment of Alger*, 2015 WI 3, ¶29, 360 Wis. 2d 193, 212, 858 N.W.2d 346.

⁵ 808.03(1).

⁶ 809.10(1).

⁷ 808.04(1). Written notice of entry of judgment or order is a formal, captioned and signed notice stating the correct date of entry of judgment or order. It must be served on the opposing parties within 21 days of entry and filed with the circuit court. In small claims cases, the notice of entry of judgment or order is provided by the clerk of court pursuant to 799.24(1) and *Mock v. Czemierys*, 113 Wis. 2d 207, 210, 336 N.W.2d 188 (Ct. App. 1983).

⁸ 799.445; 808.04(2).

⁹ 808.03(1).

Criminal cases. In a criminal case, you have 20 days after the date of sentencing or final judgment to file a Notice of Intent to Pursue Postconviction or Postdisposition Relief.¹⁰ Within 5 days after you file this Notice of Intent, the circuit court will send either to the State Public Defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of Court Reporters who worked on your trial or hearings (also called the “proceedings”), and a list of the proceedings in your case for which a transcript has been filed with the circuit court. Please note that the Notice of Intent is not the same as a Notice of Appeal; both must ultimately be filed if you want to appeal your conviction. See “How to Initiate a Criminal Appeal” in Section 4 of this Guide.

Termination of Parental Rights cases. Termination of parental rights (“TPR”) cases are expedited cases, meaning that they are moved through the appeals process more quickly than other cases. In a TPR case, a Notice of Intent to Appeal must be filed within 30 days after the entry of final judgment,¹¹ and a Notice of Appeal must be filed within 30 days after the transcript or circuit court case record has been served.¹² If a parent is represented by an attorney, the parent must personally sign the notice of appeal separate from the electronic signature applied by the attorney.¹³

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

A. The Notice of Appeal must contain all of the following information: (1) the case name and number of the circuit court proceedings; (2) a description of the judgment or order appealed from, including the date it was entered; (3) a statement whether the appeal is one of the types specified in 752.31(2) (small claims actions, municipal ordinance violations, violations of traffic regulations, cases under chs. 48, 51, 55, or 938, contempt, misdemeanors, and cases involving civil forfeitures);¹⁴ and (4) a statement whether the appeal is one of those to be given preference in the circuit court or court of appeals by statute. A Notice of Appeal Form is in the Appendix at the back of this Guide. Note: The Notice of Appeal must be signed by the filing party. If you are participating in eFiling, you should sign the notice of appeal using a signature line that says “Electronically signed by” and then type your name.¹⁵ Alternatively, you may sign the document by hand and then scan and upload the signed document.

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

A. If a Motion to Reconsider, to Vacate, or to Modify (or any other postjudgment motion) is filed in the circuit court, the Notice of Appeal is still due 45 days from the entry of final judgment or 90 days if you have not received written notice of the entry of the final

¹⁰ 809.30(2). Note: 809.30 also applies to appeals in 971.17 proceedings and ch. 48, 51, 55, 938, and 980 cases.

¹¹ 809.107(2).

¹² 809.107(5).

¹³ 809.107(2)(bm)6. and (5)(a).

¹⁴ These types of cases are decided by a single judge rather than by three judges. If you wish to have this type of case decided by a three-judge panel, you must file a motion under 809.41(1).

¹⁵ 801.18(1)(f).

judgment from the opposing party. No additional time is granted while the Motion to Reconsider is being considered by the circuit court.

There is one exception for motions for reconsideration where the action was tried to the circuit court without a jury under 805.17. In those cases, if the circuit court grants the motion for reconsideration and amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the circuit court denies the motion, the time for initiating an appeal begins when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within 90 days after entry of judgment the court does not decide the motion, the motion is considered denied and the time for initiating an appeal begins 90 days after the judgment.¹⁶

Q. Do I need to file a Docketing Statement?

A. The purpose of a Docketing Statement is primarily to ask the Court of Appeals to examine whether or not the case is eligible to be expedited.¹⁷ A Docketing Statement does not need to be filed by a self-represented party.¹⁸ For more information on expedited (also known as “fast-track” cases), please see 809.17 and 809.10(1)(d).

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

A. If you want to manage and file documents in your appeal electronically, please visit the Wisconsin Court System website and look for eFiling: Appellate. You should follow the directions on the website and instructions from the clerk of the appellate court to opt in to electronic filing. Remember, if you choose to participate in eFiling, you will no longer receive paper copies of any court orders or filings by other parties.

After you file your Notice of Appeal, you have 14 days to file a “Statement on Transcript” with the circuit court clerk.¹⁹ The circuit court clerk will transmit your Statement on Transcript to the Court of Appeals.

Q. What is a Statement on Transcript?

A. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. A Statement on Transcript Form is in the Appendix at the back of this Guide. If your case was decided entirely on briefs or other written documents and no hearing was held, you will not need a transcript. If you want to refer to statements made in court, you must request a transcript and make arrangements with the Court Reporter to pay for it.

If you request a transcript, you must communicate with the Court Reporter preparing the transcript to make arrangements for the filing and service of the transcript

¹⁶ 805.17(3).

¹⁷ 809.17; 809.10(1)(d).

¹⁸ 809.10(1)(d).

¹⁹ 809.11(4).

and payment of the transcript fee.²⁰ You must do this before filing the Statement on Transcript. If the Court Reporter has not yet filed the transcript in the circuit court clerk's office at that time, the Court Reporter must complete the Court Reporter's portion of the Statement on Transcript indicating when the transcript will be filed, sign the document, and return it to you. (If you are unable to contact the Court Reporter and are unable to get the Court Reporter to sign the Statement on Transcript, you may request an extension of time to file your statement by filing a motion with the Court of Appeals.) You then file the Statement on Transcript with the clerk of the circuit court.

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

A. In most cases, the Court Reporter has 60 days after the date on which the transcript was requested and arrangements were made for payment.²¹ By that deadline, the Court Reporter must serve copies of the transcript on the parties to the appeal, file the transcript with the circuit court, and notify the Clerk of the Court of Appeals that the transcript has been filed and served.

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

In termination of parental rights cases, the Court Reporter must file the transcript within 30 days.²²

Q. What is the Record on Appeal?

A. The Record on Appeal is a compilation of the original documents filed with the circuit court.²³ It also includes the transcript if one was prepared. It is the job of the clerk of the circuit court to assemble the Record on Appeal.²⁴ The circuit court clerk will create an index that references each document by the document number assigned when the document was filed in the circuit court. The index may have gaps in the numbering because not all documents filed in the circuit court are included in the appellate record. At least 10 days before the due date for filing the Record on Appeal in the court, the circuit court clerk notifies the parties that the record is ready for inspection. You then have the right to inspect the record to determine if it accurately reflects what happened in the circuit court. If you believe it is defective in some way, you can file a motion asking the circuit court to supplement or correct the record.

²⁰ For information on seeking a waiver of transcript costs due to indigency, see *State ex rel. Girouard v. Circuit Court for Jackson Cnty.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

²¹ 809.11(7).

²² 809.107(4m).

²³ The filing of the Record on Appeal, which triggers the deadline for filing the Appellant's brief, is not the same as the "Notice of Appeal and Circuit Court Docket Entries" (previously known as the "Notice of Appeal and Circuit Court Record"), which is a notice sent by the Clerk of the Court of Appeals shortly after the notice of appeal is filed.

²⁴ 809.15.

The circuit court clerk electronically transmits the Record on Appeal to the Court of Appeals within 20 days of the date of the filing of the last transcript requested by the Statement on Transcript (or within 20 days of the filing of the Statement on Transcript if there is to be no transcript or all necessary transcripts were previously filed). Any documents or exhibits that are part of the record and that are not maintained electronically will be sent separately to the Court of Appeals.

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

A. The next step for the Appellant is the preparation and filing of the Brief of Appellant, which is due 40 days after the filing of the Record on Appeal.²⁵

Q. What is a brief?

A. A brief is a document prepared by each of the parties explaining to the Court what happened in the circuit court, and why that party believes the circuit court's judgment or order should be changed or remain the same. The brief is a party's chance to argue its case to the judges. Because most cases do not have an oral argument, the brief is very important. There are very specific requirements for the form and contents of a brief. See Section 6 of this Guide (Briefs) and Rule 809.19(1).

Q. When do I file my brief?

A. The Brief of Appellant (the brief by the party who is appealing) is due 40 days after the filing of the Record on Appeal (except in Termination of Parental Rights cases, which have shorter deadlines).²⁶ The Brief of Respondent is due 30 days after the date of service of the Brief of Appellant. For eFiling parties, the date of service is the date the clerk sends an electronic notice to the parties telling them the brief has been filed. For paper parties, 3 days are added because the service is accomplished by mail.²⁷

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

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

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

A. An Appendix is a compilation of documents selected from the Record on Appeal that are essential to the Court's understanding of the issues raised on appeal. A party (usually the Appellant) prepares the Appendix and files it with the party's brief. The Appendix must include a table of contents indicating, for each record item included in the Appendix, the title, the page of the Appendix on which the record items begins, and the

²⁵ 809.19(1).

²⁶ The briefing deadlines for termination of parental rights cases are found in 809.107(6).

²⁷ 809.19(3).

circuit court document number.²⁸ The Appendix includes documents filed by the parties in the circuit court as well as judgments or orders issued by the judge in the circuit court. The Appendix can include only materials that are part of the Record on Appeal.

NOTE: When a Brief and Appendix are filed by an attorney, the attorney must certify that the Appendix meets certain content requirements and that the Brief and Appendix are within certain length and confidentiality requirements. A combined certification must be reproduced exactly as set out in the Rules.²⁹ A sample Appellant's certification is in the Appendix to this Guide. Self-represented litigants are not required to provide the certification form.

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

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

Q. What happens after the Appellant submits its brief?

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

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

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

The Reply Brief is due 15 days after service of the Brief of Respondent. For paper parties, 3 days are added because the service is accomplished by mail.³⁰

Q. Are there different types of appeals?

A. Yes. Most appeals are regular direct appeals. There are also permissive appeals. See Section 3: Types of Appeals.

²⁸ 809.19(2)(a), (3)(b).

²⁹ 809.19(8g).

³⁰ 809.19(3).

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

A. No. No trial or hearing takes place in an appeal and no new evidence is presented. The parties make their arguments to the appellate court in writing. Occasionally, the appellate court may order the parties to participate in an oral argument. This is where each party gets a short time, usually 30 minutes, to argue its case in front of a panel of three judges.³¹

Q. Who decides a Court of Appeals case?

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

Q. Who decides a Supreme Court case?

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

Q. How will my case be decided?

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

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

A. The Court will issue its decision in a document called an opinion, and it is provided to the parties in the case. In the opinion the Court explains the facts of the case, discusses the parties’ arguments, and outlines a rationale for its decision. At the end of the opinion, the Court explains whether or not it agrees with the circuit court or believes the circuit court made some type of error. When the Court agrees with the decision of the circuit court, the opinion will say, “affirmed.” If the Court disagrees with the circuit court, the opinion may say, “reversed” or “reversed and remanded.” If the case is reversed and

³¹ 809.22.

remanded, the Court explains why it thinks the decision was wrong, and it gives instructions to the circuit court to modify its result or rehear the case.

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

A. The Court will decide the issues based on the briefs that you file. Any request presented to the Court while the appeal is pending, such as requests for extensions of deadlines, must be in the form of a Motion. See Section 5 of this Guide (Motions). Do not send letters to the Court requesting assistance with a matter related to your case. Make any request in the form of a Motion that conforms to the Appellate Rules.

Q. When are my documents considered filed?

A. A document submitted through the electronic filing system is considered “filed” on the day of submission, up until 11:59 p.m. central time, so long as it is subsequently accepted by the clerk. A document submitted after midnight will be considered filed on the next business day the clerk’s office is open.

Paper documents are considered “filed” when they are received by the Clerk of the Court of Appeals and Supreme Court by mail. A paper Brief and/or Appendix can be considered “filed” when it is mailed or sent by Federal Express, UPS, or another commercial carrier, as long as several conditions are met. First, the document must be mailed on or before the filing deadline. If a commercial carrier is used, it must be scheduled for delivery within 3 calendar days. Second, the paper Brief and/or Appendix must have attached to it a certification or affidavit setting forth the date and manner by which it was mailed or delivered to a commercial carrier.³²

Rule for Incarcerated or Institutionalized Persons. If you are confined to an institution, your paper Brief and/or Appendix is considered timely if it is correctly addressed and delivered to the proper institution authorities for mailing on or before the filing deadline. You must also attach a certification or affidavit setting forth the date on which it was delivered to the proper institution authorities for mailing.³³

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

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

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

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

³² 809.80 (filing and service of documents by traditional methods).

³³ 809.80(3)(c).

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

A. You have two options.

First, you can file a Motion for Reconsideration, which asks the Court of Appeals to review your case again. A Motion for Reconsideration must be filed within 20 days after the date of the Court of Appeals decision. The time to file a motion for reconsideration cannot be extended.³⁴ This motion needs to explain why, based on previous cases, statutes, or policy, you think the decision of the Court of Appeals was made in error.³⁵

Second, you can file a Petition for Review in the Wisconsin Supreme Court.³⁶ A Petition for Review must be filed within 30 days after the date of the Court of Appeals decision, or, if a Motion for Reconsideration has been timely filed in the Court of Appeals, within 30 days of the Court of Appeals decision on the motion.³⁷ See 808.10. The time to file a Petition for Review cannot be extended. A Petition for Review requires an additional filing fee of \$195. This petition asks the Supreme Court to look at the decision of the circuit court and Court of Appeals. Like a Brief, the Petition for Review has very specific requirements as to its form and content.³⁸ The Wisconsin Supreme Court has the discretion to decide which cases it will consider. Thus, when a party files a Petition for Review, the Court may decide not to hear the case. The Court does not automatically grant a Petition for Review.

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

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

³⁴ 809.82(2)(e).

³⁵ 809.24.

³⁶ 809.62.

³⁷ 808.10.

³⁸ 809.62.

2. THE CLERK'S OFFICE AND AVAILABLE RESOURCES

Clerk's Office

The office of the Clerk of the Supreme Court and Wisconsin Court of Appeals is open 8:00 a.m. to 5:00 p.m., Monday through Friday, except on State holidays.

All documents for the Court of Appeals and Supreme Court must be filed with the Clerk's office, either by the eFiling system, mail, or hand-delivery. We accept some filings by facsimile (fax).³⁹ Petitions under 809.50 and 809.51, Petitions for Review, and indigency applications may NOT be filed by facsimile.

Effective July 1, 2021, an attorney is required to electronically file all documents using the eFiling system. Self-represented litigants can choose to participate in eFiling, but they are not required to do so. The appellate court eFiling web page, <https://www.wicourts.gov/ecourts/efileappellate/efileappeals.htm>, provides further instruction. We do not accept filings by email unless ordered by the Court.

Mailing Address

P.O. Box 1688
Madison, WI 53701-1688

Delivery Address (for couriers and commercial carriers such as UPS and FedEx):
110 East Main Street, Suite 215
Madison, WI 53703

Phone:

(608) 266-1880

Fax:

(608) 267-0640

³⁹ If the document is filed by fax, it should not also be mailed to the Clerk's Office. Documents completing transmission after 11:59 PM are considered "filed" the next business day. 809.80(3)(a). For more information on the Facsimile (Fax) Rule for the Supreme Court and Court of Appeals, see <https://www.wicourts.gov/courts/appeals/docs/faxrules.pdf>.

Resources

Chapter 809. The Wisconsin Appellate Rules, Chapter 809, are available here: <https://docs.legis.wisconsin.gov/statutes/statutes/809.pdf>

Clerk's website. The website for the Clerk of the Supreme Court and Court of Appeals has helpful links concerning eFiling, the payment of filing fees, the Wisconsin Rules of Appellate Procedure, and forms for appeals.

The Clerk's main website is: <https://www.wicourts.gov/courts/offices/clerk.htm>

The Appellate court eFiling website is:
<https://www.wicourts.gov/ecourts/efileappellate/efileappeals.htm>

The link for paying Supreme Court filing fees is available here:
<https://www.wicourts.gov/services/payment/paymentsc.htm>

The link for paying Court of Appeals filing fees is available here:
<https://www.wicourts.gov/services/payment/paymentac.htm>

Court website. The Wisconsin Court System maintains a website with self-help resources for the public: <https://www.wicourts.gov/services/public/selfhelp/>

Court of Appeals and Supreme Court online case search. This can be used to check the status of an appeal online: <http://wscca.wicourts.gov/index.xsl>

State Bar of Wisconsin Appellate Help Desk. Volunteer lawyers work at this help desk two days a week. They explain rules and provide legal information for civil appeals only; they cannot assist with criminal appeals or federal appeals. To seek assistance, leave a message at (414) 671-9041 or fill out the online form available at: <https://www.wisbar.org/forPublic/INeedaLawyer/AppellateHelpDesk/Pages/Appellate-Help-Desk.aspx>

State Law Library. The library's website, <https://wilawlibrary.gov/>, provides many helpful links, including this list of organizations that provide legal assistance: <https://wilawlibrary.gov/topics/assist.php>

Wisconsin Statutes and Constitution. <http://www.legis.state.wi.us/rsb/stats.html>

3. TYPES OF APPEALS

Regular Direct Appeals

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

Permissive Appeals

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

The procedure for filing a permissive appeal is different from a regular appeal because you must ask the Court of Appeals for permission to appeal before the appeal can proceed.⁴⁰ If you want to appeal a nonfinal order or judgment, you must file a petition within 14 days after the entry of the order or judgment. The petition may be accompanied by a supporting memorandum. The petition and memorandum combined may not exceed 35 pages or 8,000 words. The requirements of the petition are set out in 809.50. For more information on permissive appeals, see Section 4.D. of this Guide.

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

⁴⁰ 809.50.

4. INITIATION OF AN APPEAL

A. HOW TO INITIATE AN APPEAL IN A CIVIL CASE

Civil appeal procedures apply to civil, small claims, family, paternity, probate, guardianship, adoption, non-criminal traffic, forfeiture, municipal ordinance violation cases and Wis. Stat. § 974.06 appeals.

First, you must file a Notice of Appeal. You have 45 days from the entry of final judgment to file the Notice of Appeal if you have received written notice of the entry of the final judgment or final order within 21 days.⁴¹ If no written notice has been given, you have 90 days. You file the Notice of Appeal in the circuit court clerk's office. The Notice of Appeal tells the circuit court and the other parties to the case that you are going to appeal the circuit court's decision and contains information about your case.⁴² A Notice of Appeal Form is in the Appendix at the back of this Guide.

Paying the Filing Fee. When you file your Notice of Appeal in the circuit court, you must pay the \$195.00 filing fee to the Clerk of the Court of Appeals.⁴³ If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See "Applying for Indigent Status" in Section 4.E. of this Guide.

Second, you must file a Statement on Transcript with the circuit court clerk.⁴⁴ You have 14 days to do this after filing your Notice of Appeal. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. A Statement on Transcript Form is in the Appendix at the back of this Guide. If your case was decided entirely on briefs or other written documents, you may not need a transcript. If you want to refer to statements made in court, you must request a transcript and make arrangements with the Court Reporter to pay for it.

Service on the other parties. When you file the Notice of Appeal in the circuit court, attorneys and other parties who use eFiling will be served the Notice of Appeal and Statement on Transcript through the circuit court eFiling system.⁴⁵ Once the Clerk creates a new case in the Court of Appeals, the eFiling parties will be served documents through the appellate eFiling system. With certain exceptions, after filing a document with the clerk of court, you do not have to separately serve eFiling parties with the document. The notice

⁴¹ 808.04(1).

⁴² 809.10(1).

⁴³ If you are participating in eFiling, you will see a link to the clerk's website where you can pay your filing fees. Both eFilers and non-eFilers may send a check to the appellate clerk's office or call the clerk for information on how to pay. If you are filing in person, you may also give a check to the clerk of circuit court if the check is made out to the Clerk of the Court of Appeals.

⁴⁴ 809.11(4).

⁴⁵ If you have chosen to file a Docketing Statement (which is not required for self-represented parties under 809.10(1)(d)), that document will also be served through the circuit court eFiling system.

of activity generated by the eFiling system acts as the proof of service on the other eFiling parties.

Service on “paper parties” (those who do not eFile) must still be accomplished by traditional methods such as mail, personal delivery, or email if the party has previously agreed to accept service by email. In other words, if any party to the case is not an eFiler, you must provide them with one paper copy of anything you file with the Court. Everyone (eFilers and non-eFilers) must serve paper parties (non-eFilers) with one paper copy. For more information on service, see the appellate rules.

If you request a transcript, you must communicate with the Court Reporter preparing the transcript to make arrangements for the filing and service of the transcript and payment of the transcript fee.⁴⁶ You must do this before filing the Statement on Transcript. If at that time the Court Reporter has not yet filed the transcript in the circuit court clerk’s office, the Court Reporter must complete the Court Reporter’s portion of the Statement on Transcript indicating when the transcript will be filed and must sign the Statement on Transcript and return it to you. You then file the Statement on Transcript with the clerk of the circuit court.

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

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

B. HOW TO INITIATE AN APPEAL IN A CRIMINAL CASE AND OTHER CASES UNDER RULE 809.30

The appeal procedures outlined in Rule 809.30 apply to felonies, misdemeanors, mental commitments, protective placements, and juvenile cases.

First, you must file a Notice of Intent to Pursue Postconviction or Postdisposition Relief with the clerk of circuit court. A Notice of Intent Form is in the Appendix at the back of this Guide. You have 20 days after the date of sentencing or final adjudication to do this.⁴⁷ Within 5 days after you file this Notice of Intent, the circuit court will send either to the State Public Defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of Court Reporters who worked on your trial or hearings

⁴⁶ For information on seeking a waiver of transcript costs due to indigency, see *State ex rel. Girouard v. Circuit Court for Jackson Cnty.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

⁴⁷ 809.30(2).

(also called the “proceedings”), and a list of the proceedings in your case for which a transcript has been filed with the circuit court.

Second, you must request a copy of the circuit court transcript(s) from the Court Reporter(s) and make arrangements to pay for the transcripts.⁴⁸ You may request a copy of the circuit court case record from the circuit court clerk. If you have not requested representation by the State Public Defender on appeal, you must request a copy of the circuit court transcript(s) within 30 days after filing your Notice of Intent to Pursue Postconviction or Postdisposition Relief. You may also request a copy of the circuit court case record at this time. If you have been denied representation by the State Public Defender, you have 90 days to request a copy of the circuit court transcript(s) and the circuit court case record.

Once you have requested the circuit court case record, the clerk of the circuit court has 60 days to serve upon you a copy of the circuit court case record. The Court Reporter must file the transcript with the circuit court and serve a copy upon you within 60 days of the request for the transcript. Within 20 days after the request for a transcript of postconviction or postdisposition proceedings, the Court Reporter must file the transcript and serve you with a copy.

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

After the circuit court rules on your Motion for Postconviction or Postdisposition Relief (if you filed one), you have 20 days to file a Notice of Appeal in the circuit court.

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

Paying the Filing Fee. When you file your Notice of Appeal in the circuit court, you must pay the \$195.00 filing fee to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See “Applying for Indigent Status” in Section 4.E. of this Guide.

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

⁴⁸ For information on seeking a waiver of transcript costs due to indigency, see *State ex rel. Girouard v. Circuit Court for Jackson Cnty.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

Service on the other parties. When you file the Notice of Appeal or Motion for Postconviction or Postdisposition Relief in the circuit court, attorneys and other parties who use eFiling will be served the Notice of Appeal and Statement on Transcript through the circuit court eFiling system. Once the Clerk creates a new case in the Court of Appeals, the eFiling parties will be served documents through the appellate eFiling system. The Clerk of the Court of Appeals will serve the Attorney General’s office with the Notice of Appeal if that is required.⁴⁹ With certain exceptions, after filing a document with the clerk of court, you do not have to separately serve eFiling parties with the document. The notice of activity generated by the eFiling system acts as the proof of service on the other eFiling parties.

Service on “paper parties” (those who do not eFile) must still be accomplished by traditional methods such as mail, personal delivery, or email if the party has previously agreed to accept service by email. In other words, if any party to the case is not an eFiler, you must provide them with one paper copy of anything you file with the Court. Everyone (eFilers and non-eFilers) must serve paper parties (non-eFilers) with one paper copy. For more information on service, see the appellate rules.

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

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

First, you must file a Notice of Intent to Pursue Postdisposition or Appellate Relief with the circuit court clerk within 30 days after the entry of final judgment.⁵⁰ A Notice of Intent Form is in the Appendix at the back of this Guide. A parent must sign the Notice of Intent even when the parent is represented by counsel.⁵¹

Within 5 days after you file this Notice of Intent, the circuit court will send either to the State Public Defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of Court Reporters who worked on your trial or hearings (also called the “proceedings”), and a list of the proceedings in your case for which a transcript has already been filed with the circuit court.

Second, you must request a copy of the circuit court transcript(s) from the Court Reporter(s) and make arrangements to pay for the transcripts.⁵² You may request a copy of the circuit court case record from the circuit court clerk. If you have not requested representation by the State Public Defender on appeal, you must request a copy of the circuit court transcript within 15 days after filing your Notice of Intent to Pursue Postconviction or Postdisposition Relief. You may also request a copy of the circuit court case record at this time. If you have been denied representation by the State Public

⁴⁹ 809.30(2)(j), 809.802.

⁵⁰ 809.107(2).

⁵¹ 809.107(2)(bm)6.

⁵² For information on seeking a waiver of transcript costs due to indigency, see *State ex rel. Girouard v. Circuit Court for Jackson Cnty.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

Defender, you have 30 days to request a copy of the circuit court transcript and the circuit court case record.

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

Third, you must file a Notice of Appeal in the circuit court within 30 days after the later of service of the transcript or the circuit court case record. A parent must sign the Notice of Appeal even when the parent is represented by counsel.⁵³

Paying the Filing Fee. When you file your Notice of Appeal in the circuit court, you must pay the \$195.00 filing to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See “Applying for Indigent Status” in Section 4.E. of this Guide.

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

Service on the other parties. The Notice of Intent and the Notice of Appeal must be served on the person representing the interests of the public, opposing counsel, the guardian ad litem, the child’s parent, and any guardian and appointed custodian. When you file these documents in the circuit court, attorneys and other parties who use eFiling will be served the notices through the circuit court eFiling system. Once the Clerk creates a new case in the Court of Appeals, the eFiling parties will be served documents through the appellate eFiling system. With certain exceptions, after filing a document with the clerk of court, you do not have to separately serve eFiling parties with the document. The notice of activity generated by the eFiling system acts as the proof of service on the other eFiling parties.

Service on “paper parties” (those who do not eFile) must still be accomplished by traditional methods such as mail, personal delivery, or email if the party has previously agreed to accept service by email. In other words, if any party to the case is not an eFiler, you must provide them with one paper copy of anything you file with the Court. Everyone (eFilers and non-eFilers) must serve paper parties (non-eFilers) with one paper copy. For more information on service, see the appellate rules.

⁵³ 809.107(5)(a).

D. HOW TO INITIATE A PERMISSIVE APPEAL

If you wish to appeal a nonfinal judgment or order, you must file a petition and supporting memorandum with the Court of Appeals asking for permission to appeal.⁵⁴ You must file this petition and memorandum within 14 days after the entry of the nonfinal judgment or order.

The Clerk of the Court of Appeals will transmit a copy of the petition and supporting memorandum to the clerk of circuit court and the eFiling parties will be served with the petition. You must serve the petition and supporting memorandum on any paper party (those who do not eFile).

The petition and memorandum combined may not exceed 35 pages or 8,000 words. The requirements of the petition, set out in 809.50, are that the petition must contain a statement of the issues, a statement of the facts necessary to understanding the issues, a statement showing that immediate review of the issues is necessary, and a copy of the judgment or order you wish the court to review.

The filing fee of \$195.00 must be paid at the time the petition is filed.

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

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

E. APPLYING FOR INDIGENT STATUS

If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status, under which you will be exempt from payment of the filing fee and certain other costs.⁵⁵ Determinations of indigency are made by the Clerk of the Court of Appeals and Supreme Court based on the criteria in 814.29 and the monetary guidelines established by the Court of Appeals.

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

If you are incarcerated, you must file the Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency with the Clerk of the Court of Appeals when the Notice of Appeal is filed. The Clerk’s Office will send you this form upon request; it is also attached to this Guide. You must also submit a certified copy of your prison trust fund account for the prior six months and a copy of a written authorization to the Department

⁵⁴ 809.50.

⁵⁵ 814.29.

of Corrections to forward payments to the court from your account.⁵⁶ Note: A prisoner who believes that he or she is in imminent danger of physical harm does not need to submit the trust fund account information. In such cases, a special form of the Prisoner's Petition for Waiver of Fees/Costs must be filed.

Costs of the Transcript. If you believe you are indigent and would like the transcript to be prepared at no cost to you, you will need to file a Motion for Waiver of the Cost of Preparing the Transcript.⁵⁷ This motion must be filed in the circuit court when you file your Notice of Appeal.

⁵⁶ 814.29(1m).

⁵⁷ For information on seeking a waiver of transcript costs due to indigency, see *State ex rel. Girouard v. Circuit Court for Jackson Cnty.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

5. MOTIONS

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

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

The filing of a motion that may affect the disposition of an appeal or the content of a brief, a motion seeking consolidation of appeals, a motion for an extension of time to file a statement on transcript, or a motion relating to production of transcripts automatically tolls the time (i.e., stops the running of the time limit) for performing an act required by the rules.⁵⁸ The time is stopped from the date the motion is filed until the date the motion is disposed of by the court. Check the Rules of Appellate Procedure or contact the Clerk's Office to determine if a particular motion tolls a time limit.

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

Motion for Extensions of Time

Motions for extensions of time can be filed in most cases to enlarge the time permitted to do any act, or to waive or permit an act to be done after the expiration of the deadline. The time for filing a Notice of Appeal or notice of cross-appeal in a civil case, including an appeal from the denial of a 974.06 motion, may not be enlarged. The time for filing a Notice of Appeal may be enlarged in a criminal case, in TPR cases, or in a case involving parental consent prior to performance of an abortion, where certain circumstances exist. The time for filing a Motion for Reconsideration or a Petition for Review may not be enlarged.

Motion to Supplement or Correct the Record

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

⁵⁸ 809.14(3)(a).

Motion to Consolidate Appeals

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

Motion to File Oversized Documents/Briefs

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

Motion for Relief Pending Appeal

An appeal does not stay the execution or enforcement of the judgment or order appealed from. If you want the circuit court to stay its order or judgment, suspend, modify, restore, or grant an injunction, or make any order appropriate to preserve the existing state of affairs, you may file a motion in the circuit court requesting relief pending appeal.⁵⁹ If it is impractical to first seek such relief in the circuit court, you may file a motion with the Court of Appeals asking for relief. In such a motion, you must show why it was impractical to seek relief in the circuit court. If a motion had been filed in the circuit court and was denied, you may file a motion in the Court of Appeals, setting forth the reasons given by the circuit court for its action and arguing why the circuit court should have granted the relief requested.

⁵⁹ 809.12, 808.07.

6. BRIEFS

A. Brief of Appellant

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

Please note that you may not discuss facts in your brief not presented to the circuit court. Also, in your brief you should refer to parties by their names and not by party designation (“Plaintiff,” “Defendant,” “Respondent,” etc.). One exception is in an appeal from a domestic abuse protective order or harassment injunction; if “Petitioner” has been substituted for an individual’s name in the caption, reference to that individual shall be made only as “Petitioner.” A crime victim should be referred to by one or more initials or other appropriate pseudonym or designation.⁶⁰

Confidentiality. If the case you are appealing is required by law to be confidential (for example, appeals under chapters 48, 938, 51, 55, and paternity cases), you should not include an individual’s complete name in any document filed with the Court. You must refer to individuals only by one or more initials or other appropriate pseudonym or designation. This includes the Notice of Appeal and briefs. If you include portions of the record in an appendix to a brief, you must black out letters so that only the initials of an individual are shown. For instance: “P L is the litigant.”

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

Contents. The brief must contain the following sections:⁶¹

1. A Table of Contents with page references to the sections of the brief.
2. A Table of Authorities with page references to where cases, statutes, and other authorities are cited.
3. A statement of the issues presented for review.
4. A statement as to whether oral argument is necessary (and if so, why) and a statement as to whether the opinion should be published (and if so, why).

⁶⁰ 809.86.

⁶¹ 809.19(1).

5. A statement of the case, which must include a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the circuit court; and a statement of facts relevant to the issues presented for review, with appropriate reference to the record.
6. An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one-sentence summary of the argument. The argument must set out your contentions and the reasons for them, with citations to authorities and parts of the Record on Appeal.
7. A short conclusion stating exactly what you are asking the Court of Appeals to do.
8. For attorneys, a signed certificate of word/page count.

You must conform to the Rules of Appellate Procedure, and in writing your Brief you are advised to be as neat, concise, and organized as possible. **The following are some suggestions with regard to the main substantive sections of the Brief:**

Statement of Issues

- This section describes each of the issues you want to present to the Court. There can be several issues, or there can be just one. This section is very important, and you should take your time formulating the issues you will be presenting to the Court.
- As a general rule, you should keep the number of issues on appeal to a minimum. Most appeals present no more than two or three issues to the Court.
- The clearest way to write issues is to begin with the general area of law at issue, proceed to more specific areas of the law, and then incorporate the facts of your case and policies that should be followed.

Statement of Case

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

Statement of Facts

- State the facts relevant to the issues you have presented and the arguments you have made. The facts must be chronological and should not list what each person said word for word. This section should state the events that occurred that caused the case to come about in the first place.

- You may only refer to facts that were presented in evidence or documents filed in the circuit court. Each of the facts must have a source in the Record on Appeal – that is, either in sworn testimony in the transcript or in documents that were filed with the circuit court. Each fact that you state should be followed by a reference to where it can be found in the Record on Appeal. If you are quoting a statement made by a witness, for example, you would write the quote in the brief followed by the page number in the Record on Appeal. To cite to a page in the record, write “R25:43-45” (meaning Record Item 25, pages 43-45 of the Record).
- Do not repeat the material you already covered in the statement of the case section of the brief.

Argument

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

Conclusion

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

Form and Length, and Certification by Attorneys

- The Brief of Appellant may not exceed 50 pages if a monospaced font or handwriting is used or 11,000 words if a proportional font is used.

- A Brief filed by an attorney must include a certification that the Brief meets the form and length requirements. See the “Form and Length Certification” form at the back of this Guide. Self-represented litigants are not required to provide this certification.

B. Brief of Respondent

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

C. Reply Brief

The Appellant’s Reply Brief is due to be filed 15 days after the service of the Brief of Respondent (plus 3 days from the date of mailing if the Brief of Respondent is served by mail). A Reply Brief is not required, but if you fail to refute issues raised in the Respondent’s brief, those issues may be deemed conceded. If you choose not to file a Reply Brief, it is helpful to the Court if you file a statement indicating that you do not intend to file a Reply Brief.

No new issues can be raised in the Reply Brief that were not presented in the Brief of Appellant or the Brief of the Respondent. Therefore, it is important to make sure the Brief of Appellant covers everything you want presented to the Court. The Reply Brief must be signed by the person filing it.

D. Cross-Appeal Briefs

Briefing in a cross-appeal shall be as follows:

1. An Appellant-Cross Respondent shall file a brief titled “Appellant’s Brief.” The Appellant’s brief must be filed no later than forty (40) days after the filing of the Record.
2. A Respondent-Cross-Appellant shall file a brief titled “Combined Brief of Respondent and Cross-Appellant.” The combined brief of the Respondent and Cross Appellant is due 30 days after the service of the Appellant’s brief (plus 3 days from the date of mailing if the Appellant-Cross Respondent brief is served by mail).
3. An Appellant-Cross-Respondent shall file a brief titled “Combined Brief of Appellant and Cross-Respondent.” The combined brief of Appellant and Cross-Respondent is due 30 days after the service of the Respondent-Cross-Appellant brief

(plus 3 days from the date of mailing if the Respondent-Cross-Appellant brief is served by mail).

4. A Respondent-Cross-Appellant shall file either a reply brief titled “Reply Brief of Cross-Appellant,” or a statement that a reply brief will not be filed. The brief or statement is due 15 days from the service of the combined brief of the Appellant and Cross-Respondent.

E. Checklist for Briefs

Requirement and Rule	√
Paper size should be formatted to fit 8 ½ x 11 paper. Use black letters on a white background. (809.19(8)(b))	
Typeface must be either a monospaced font or a proportional serif font. If it is monospaced, the type must be 10 characters per inch and double spaced. If it is a proportional serif font, the body text must be 13-point and the quotes and footnotes 11-point. If handwritten, it must be legible printing and not cursive, except for your signature. Use a minimum 1.25 inch margin on right and left sides and 1 inch margin on the top and bottom. (809.19(8)(b))	
Front Cover must include (809.19(9)): <ul style="list-style-type: none"> • Court name (Court of Appeals or Supreme Court) • Case caption (the names of the parties involved) • Case number on appeal • Title of the document (i.e., Brief of Appellant) • Circuit court case number and circuit court judge’s name • Name, address and telephone numbers of the person submitting the brief 	
White covers on all Briefs in Court of Appeals (809.19(8)(b)1., 809.19(9))	
The table of authorities should go in the following order: <ul style="list-style-type: none"> • cases listed in alphabetical order • constitutional citations • statutes, listed in ascending order by number 	
All pages must be numbered at the bottom starting with the cover. (809.19(8)(b), (bm))	
A paper brief must be secured at the top left corner using a staple or clip. (809.19(8)(b)4.)	
Page limits (809.19(8)(c)): <ul style="list-style-type: none"> • Brief of Appellant - 50 pages (monospaced or handwritten) or 11,000 words (proportional font) • Brief of Respondent - 50 pages or 11,000 words • Reply Brief - 13 pages or 3,000 words 	
The Appellant must file 1 copy of a brief and 1 copy of a separate appendix. A Respondent must file 1 copy of a brief and, if a separate appendix is filed, 1 copy of that separate appendix.	

All briefs filed by an attorney must have a <u>signed</u> certification of word/page count (809.19(8g)).	
Serve any party who is not an eFiling party with 1 copy of the brief and 1 copy of the separate appendix.	

7. APPENDICES

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

You must include a Table of Contents indicating, for each record item included in the appendix, the title, the 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.⁶² You may number each page of the Appendix consecutively in the center at the bottom of the page starting with the cover page. In your Brief, you may refer to a document in the Appendix by noting: App., p. 6, but you are also encouraged to include a reference to the Record on Appeal number.

If you include portions of the record in an appendix to a brief in a case that is required by law to be confidential (for example, appeals under chapters 48, 938, 51 and 55 and paternity cases), the portions should be reproduced so that only one or more initials of an individual is shown.⁶³ In other words, you must black out letters so that only the initials of an individual are shown.⁶⁴ For instance: "P L is the litigant." You must also include a notation that portions of the record have been reproduced to preserve confidentiality.

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

Certification. If a Brief and Appendix are filed by an attorney, the attorney must include a certification that the appendix meets certain content requirements.⁶⁵ The required certification must be written exactly as it is set out in the rule, and it must be signed.

Separate document. The Appendix should not be attached to the Brief, but it is filed at the same time as your Brief. The Appendix should have a white cover that lists all of the same information as the cover of the brief.

⁶² 809.19(2)(a).

⁶³ 809.19(2)(am).

⁶⁴ 809.19(2)(am).

⁶⁵ 809.19(8g)(b).

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

Checklist for Appendix

Requirements (809.19)	√
Copies shall be formatted to fit 8 ½ x 11 inch paper. Use black letters on a white background. (809.19(8)(b))	
Table of Contents	
All pages should be numbered at the bottom consecutively starting with the cover.	
Front Cover, which must be white, must include: <ul style="list-style-type: none"> • Court name (Court of Appeals or Supreme Court) • Case caption (the names of the parties involved) • Case number in Court of Appeals • Title of the document (i.e., Appellant's Appendix) • Circuit court case number and circuit court judge's name • Name, address and telephone numbers of the person submitting the brief 	
Judgment being appealed	
Jury verdict (if applicable)	
Any instruction not included in the Brief of Appellant or the transcript of the instruction when arguing about the instruction or refusal to give an instruction	
Portion of transcript that contains the rationale for the circuit court's decision	
Pleadings or other documents from the circuit court record that are necessary to the appeal	
Certification	
File as a separate document from the Brief using a white cover	

8. SUMMARY OF DEADLINES AND COPIES TO BE FILED

Document	Deadline
<p>Notice of Appeal</p>	<p><u>In Civil Cases:</u></p> <p>Notice of Appeal is due 45 days from date of final judgment/order (or 90 days if no written notice of judgment/order is filed by the opposing party).</p> <p><u>In Criminal Cases, as well as in cases under Ch. 48 (Children’s Code) other than termination of parental rights cases, Ch. 51 (Mental Health Act), Ch. 55 (Protective Services), and Ch. 938 (Juvenile Justice Code):</u></p> <p>Notice of Intent to Pursue Postconviction or Postdisposition Relief is due 20 days after date of sentencing or final adjudication.</p> <p>Notice of Appeal is due 60 days after the later of service of the last transcript or record if no Motion for Postconviction or Postdisposition Relief has been filed.</p> <p>If a Motion for Postconviction or Postdisposition Relief has been filed, the Notice of Appeal is due 20 days after the circuit court has entered an order on the motion.</p> <p><u>In Termination of Parental Rights Cases:</u></p> <p>Notice of Intent to Pursue Postdisposition or Appellate Relief is due 30 days after entry of final judgment. Notice of Appeal is due 30 days after the later of service of the transcript or record.</p> <p><u>In Permissive Appeals:</u></p> <p>No Notice of Appeal is filed. Within 14 days after the entry of the nonfinal judgment or order, you must file a Petition for Leave to Appeal and Supporting Memorandum asking the Court of Appeals for permission to appeal.</p>
<p>Statement on Transcript</p>	<p>14 days after filing of Notice of Appeal in the circuit court, except in termination of parental rights cases, where the Statement on Transcript is due 5 days after the Notice of Appeal is filed.</p>

Brief and Appendix of Appellant	40 days from date of filing of the Record on Appeal with the Clerk of the Court of Appeals. (Shorter deadlines apply in termination of parental rights cases.)
Brief of Respondent	30 days from date Brief of Appellant filed (plus 3 extra days if Brief of Appellant is served by mail). (Shorter deadlines apply in termination of parental rights cases.)
Reply Brief	15 days from the date the Brief of Respondent filed (plus 3 extra days if Brief of Respondent served by mail). (Shorter deadlines apply in termination of parental rights cases.)
Motion for Reconsideration	20 days from the date of the decision of the Court of Appeals.
Petition for Review	30 days from the date of the Court of Appeals' decision or date the Court of Appeals decides the motion for reconsideration.
Response to Petition for Review	14 days from service of Petition for Review (plus 3 extra days from date of mailing if Petition for Review served by mail)

**Number of Copies to be Filed
(not including service copies for non-eFilers):**

Document	Number of Copies
Notice of Appeal	1 copy filed in circuit court
Statement on Transcript	1 copy filed in circuit court
Motions	1 copy in the appropriate court
Briefs and Appendices	1 copy in Court of Appeals
Petition for Review	10 paper copies in Supreme Court, unless copy requirement is waived

9. MOTIONS FOR RECONSIDERATION AND PETITIONS FOR REVIEW

Motion for Reconsideration

A losing party to an appeal in the Court of Appeals may file a Motion for Reconsideration.⁶⁶ This motion asks the Court of Appeals to reconsider its decision. A Motion for Reconsideration in the Court of Appeals must be filed within 20 days of the Court's decision. **Note:** This deadline cannot be extended. The Motion for Reconsideration can be no longer than 5 pages if a monospaced font or handwriting is used or 1,100 words if a proportional font is used.

The motion must state specifically why you believe the Court of Appeals was wrong. You must say what points of law or fact you think were erroneously decided, and you must include supporting argument. A Motion for Reconsideration should not be viewed as a second opportunity to argue the case, but should be used only when the Court of Appeals has made a factual or legal error in its decision. No response to a Motion for Reconsideration is permitted unless ordered by the Court.

Petition for Review in Supreme Court

A party may file a Petition for Review from an adverse decision issued by the Court of Appeals.⁶⁷ A Petition for Review must be filed (i.e., physically received) with the Supreme Court Clerk within 30 days of the Court of Appeals decision, or, if a Motion for Reconsideration has been filed in the Court of Appeals, within 30 days of the Court of Appeals decision on the motion. See 808.10.

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

A \$195.00 filing fee is due at the time of the filing of a Petition for Review. This fee can be waived due to indigency. See "Applying for Indigent Status" in Section 4.E. of this Guide.

⁶⁶ 809.24. Note: No Motion for Reconsideration may be filed in an appeal related to parental consent prior to performance of an abortion or in a termination of parental rights case. See 809.24(4).

⁶⁷ 809.62.

The Wisconsin Supreme Court has not set a date to begin mandatory eFiling. Parties to a Supreme Court case should file and serve documents using paper processes until further notice.⁶⁸

For more information, see the Appellate Rules and the Supreme Court's publication, Filing a Petition for Review, available from the Clerk's Office and on-line at <https://www.wicourts.gov/publications/guides/docs/seekingreviewbooklet.pdf>.

⁶⁸ The Interim Rules regarding electronic filing in the Wisconsin Supreme Court can be viewed at <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=378648>.

10. NO-MERIT APPEALS

If an attorney appointed by the State Public Defender or the circuit court in a criminal case or a termination of parental rights case concludes that a direct appeal on your behalf would be frivolous and without any arguable merit, the attorney must file a no-merit report with the Court of Appeals. Although typically employed in criminal cases, the no-merit procedure is applicable in other proceedings involving appointed counsel, such as termination of parental rights cases.⁶⁹ A no-merit report identifies any issues that might support the appeal and discusses why these issues lack merit—that is, why they are unlikely to succeed in convincing the appeals court to reverse the circuit court’s ruling. The legal standards for no-merit reports are derived from a U.S. Supreme Court case, *Anders v. California*, 386 U.S. 738 (1967).⁷⁰

Before filing a no-merit report, an attorney must discuss with you all potential issues for appeal (identified by either the attorney or you) and the merit of each issue. The attorney must inform you that you have three options:

(1) to have the attorney file the no-merit report;

(2) to have the attorney close the file without an appeal; and

(3) to have the attorney close the file and to proceed without an attorney or with another attorney retained at your expense.⁷¹

The attorney must also inform you of several other things. First, the attorney must tell you that if you choose option (1), or if you do not consent to the attorney closing the file and withdrawing from representing you, the attorney will file the no-merit report.

Second, the attorney must tell you that if a no-merit report is filed (or if you choose to proceed with an appeal or to have the attorney close the file without an appeal), he or she will provide you with a copy of the transcripts and circuit court record, if you so request.

Third, the attorney must tell you that you may file a response to the no-merit report. If you file a response, the attorney may file a reply to your response (a “supplemental no-merit report”) and affidavit or affidavits containing facts outside the record, possibly including confidential information, to rebut the allegation made in your response.⁷²

⁶⁹ 809.32(1).

⁷⁰ 809.32(1)(a).

⁷¹ 809.32(1)(b)1.

⁷² 809.32(1)(b)2.

Response to No-Merit Report

You may file a response to the no-merit report within 30 days after service of the no-merit report. The response cannot exceed 50 pages if handwritten or 13,000 words in a proportional serif font is used.⁷³ If you file a response, the attorney who filed the no-merit report will receive a copy of the response and may file a supplemental no-merit report within 30 days to address the issues you have raised.⁷⁴

No-Merit Notice of Appeal

Even if your attorney plans to file a no-merit report, the attorney must file a notice of appeal in the circuit court. The notice of appeal must be identified as a no-merit notice of appeal and must state the date on which the no-merit notice of appeal is due and how that deadline was calculated.⁷⁵ The no-merit report must be filed in the court of appeals within 14 days after the date on which the Record on Appeal is filed in the Court of Appeals.⁷⁶

Decision of the Court of Appeals

If the Court of Appeals agrees with the no-merit report that further appellate proceedings would be frivolous and without any arguable merit, the Court will affirm the judgment of the circuit court and relieve the attorney of further responsibility in the case. If this occurs, the attorney must inform you of your right to file a Petition for Review to the Supreme Court.⁷⁷

No-Merit Petition for Review

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

The Petition for Review and supplemental petition must be both filed within 30 days after the date of the decision or order of the Court of Appeals unless the Supreme Court has granted an extension of the deadline for filing the supplemental petition. An opposing party may file a response to the petition and supplemental petition within 14 days after service of the supplemental petition.

⁷³ 809.32(1)(e).

⁷⁴ 809.32(1)(e).

⁷⁵ 809.32(2).

⁷⁶ 809.32(2).

⁷⁷ 809.32(3).

11. WRITS

Petition for Supervisory Writ

A party can file a Petition for Supervisory Writ, which asks the Court of Appeals or the Supreme Court to order a court, a circuit court judge, or another person or agency to do something or refrain from doing something. The request is made by filing a Petition and supporting memorandum. The most common supervisory writs are writ of mandamus and writ of prohibition.⁷⁸

The Petition must name as Respondents the court and judge or other person or body and all other parties in the circuit court action or proceeding. The Petition must be served on the Respondents by traditional methods such as mail, personal delivery, or email if a Respondent has previously agreed to accept service by email.⁷⁹ In addition, the Petition must set out a statement of the issues, a statement of the facts necessary to an understanding of the issues, the relief sought, and the reasons why the court should take jurisdiction.

If a party's Petition for Supervisory Writ is denied by the Court of Appeals, the party may seek review in the Supreme Court. Denial of a supervisory writ by the Court of Appeals is generally reviewed via a Petition for Review, not a new supervisory writ, and thus must follow the deadline for filing a Petition for Review. If a party wishes to file a Petition for Supervisory Writ directly with the Supreme Court, bypassing the Court of Appeals, the party must show why it was impractical to seek the writ in the Court of Appeals.⁸⁰

The Petition and memorandum may not exceed 35 pages or 8,000 words (if a proportional font is used). The Petition for Supervisory Writ—whether it is filed by an attorney or a self-represented litigant—must also contain a signed certification of word count.⁸¹ It is important to note that the Petition for Supervisory Writ may not be eFiled. Instead, it must be filed and served using traditional methods. Filing a Petition for Supervisory Writ with the Clerk of the Court of Appeals is not sufficient to serve other parties. The filing fee of \$195.00 must be submitted with the Petition for Supervisory Writ. This fee can be waived due to indigency. See “Applying for Indigent Status” in Section 4.E. of this Guide.

⁷⁸ See *State ex rel. Dressler v. Circuit Court for Racine Cnty.*, 163 Wis. 2d 622, 630, 472 N.W.2d 532 (Ct. App. 1991).

⁷⁹ 809.51(1); 809.80(2).

⁸⁰ 809.71.

⁸¹ 809.51.

Petition for Habeas Corpus

A person can file a petition for a writ of habeas corpus in some circumstances, such as when the person wants to allege that appellate counsel provided ineffective assistance on appeal.⁸² A petition for habeas corpus must be notarized.⁸³

A Petition for Habeas Corpus is filed using the same procedures that are used for filing a Petition for Supervisory Writ. Therefore, the Petition and memorandum may not exceed 35 pages or 8,000 words (if a proportional font is used), and the Petition must also contain a signed certification of word count.

It is important to note that the Petition for Habeas Corpus may not be eFiled. Instead, it must be filed and served using traditional methods. Filing the Petition with the Clerk of the Court of Appeals is not sufficient to serve other parties.

The filing fee of \$195.00 must be submitted with the Petition, but this fee can be waived due to indigency. See “Applying for Indigent Status” in Section 4.E. of this Guide.

⁸² See *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). Note: “[A] *Knight* petition [filed in the court of appeals] is not the proper vehicle for seeking redress of the alleged deficiencies of postconviction counsel.” *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 679, 556 N.W.2d 136 (Ct. App. 1996). Instead, allegations that postconviction counsel provided ineffective assistance, such as by failing to file a postconviction motion alleging trial counsel ineffectiveness, “should be raised in the [circuit] court either by a petition for habeas corpus or a motion under [Wis. STAT.] § 974.06.” See *Rothering*, 205 Wis. 2d at 681.

⁸³ *State ex rel. Santana v. Endicott*, 2006 WI App 13, ¶11, 288 Wis. 2d 707, 709 N.W.2d 515.

12. MISCELLANEOUS PROCEDURES

Recovering Costs in the Court of Appeals

If you are the Appellant and the Court of Appeals reverses the circuit court's judgment or order, you may recover certain of your appeal costs from the Respondent.⁸⁴ If you are the Respondent and the Court of Appeals dismisses the appeal or affirms the circuit court's judgment or order, you may recover certain of your costs from the Appellant. The Court of Appeals may decide not to award costs to either side if the circuit court's order is affirmed in part and reversed in part. Recoverable costs include:

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

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

A prisoner who has received permission to commence an appeal or other action without paying costs or fees may later be required to pay the unpaid costs or fees out of his or her prison account if he or she loses on appeal.⁸⁵

If the Court of Appeals finds that an appeal or cross-appeal is frivolous, it shall award to the successful party costs, fees, and reasonable attorney fees. A motion for costs and fees for a frivolous appeal must be filed no later than the filing of the Brief of Respondent or, in a cross-appeal, the Brief of the Cross-Respondent.⁸⁶

⁸⁴ 809.25.

⁸⁵ 814.29(3)(b).

⁸⁶ 809.25(3).

Voluntary Dismissal

An Appellant may dismiss his or her own appeal at any time prior to a decision without approval of the Court or the Respondent. If you decide to voluntarily dismiss your appeal, file a notice of dismissal in the Court of Appeals. The notice of voluntary dismissal will not affect a cross-appeal that has been filed by the Respondent.⁸⁷

Publication

Any person may at any time request publication of an unpublished Court of Appeals' opinion. The request must be served on the parties and should state how the criteria for publication are satisfied.⁸⁸ The Court does not publish opinions in one-judge appeals, per curiam opinions on issues other than appellate jurisdiction or procedure, or summary disposition orders.

If the Court releases a per curiam opinion that you believe should be published, you may request that the Court withdraw the opinion and reissue it as an authored opinion that is recommended for publication.⁸⁹ This request must be filed within 20 days after the date of the opinion. You must send a copy of your request to all parties to the appeal.⁹⁰

Sanctions

Failure to comply with any of the Rules of Appellate Procedure, or any order of the Court, may subject you to sanctions, including monetary penalties or dismissal of your appeal.⁹¹

Petitions to Bypass the Court of Appeals

A party can ask the Supreme Court to bypass the Court of Appeals, which means the appeal would be heard directly by the Supreme Court.⁹² The petition cannot be filed until the Respondent's brief is filed, and the petition it must be filed within 14 days of the Respondent's brief. The petition must include a statement of reasons for bypassing the Court of Appeals. The opposing party may file a response within 14 days after service of the petition.

⁸⁷ 809.18.

⁸⁸ 809.23.

⁸⁹ 809.23(4)(c).

⁹⁰ 809.23(4)(d).

⁹¹ 809.83(2).

⁹² 809.60.

Original Actions in the Supreme Court

The Wisconsin Supreme Court has the exclusive authority to hear original actions, which means the case is commenced in the Supreme Court. Generally, for the court to grant a petition for leave to commence an original action, the case must be of great importance to the people of the state, must require relief that cannot adequately be provided by a lower court, and must require a speedy and authoritative determination. Because the Supreme Court is not a fact-finding court, cases that involve fact disputes are very rarely appropriate candidates for an original action. The Supreme Court does not exercise its original jurisdiction solely to expedite the judicial process, for the convenience of the parties, or to prevent multiple lawsuits.⁹³

⁹³ *Petition of Heil*, 230 Wis. 428 (1939).

13. GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

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

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

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

Court Record – See “Docket.”

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

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

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

Docket Entries – List of proceedings in a case and documents that have been filed with the circuit court clerk’s office and the date on which they were filed. Also referred to as the “Court Record,” which is not the same as the “Record on Appeal.” For small claims, traffic regulation, and municipal ordinance violation cases, the docket entry serves as the final order or judgment appealed from.

Electronic Filing – A system for filing court documents through an Internet website. Attorneys are required to use the electronic filing system. Self-represented parties may use it if they choose.

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

Final Order or Judgment – An appeal as of right can be taken only from a final order or judgment; an order or judgment is final if it disposes of the entire matter in litigation as to one or more of the parties.⁹⁴

Indigent – Someone who is unable to afford to pay the fees related to a case. A party must make a motion in the circuit court, the Court of Appeals, and/or the Supreme Court asking to be declared indigent. See “Applying for Indigent Status” in Section 4.E. of this Guide.

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

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

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

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

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

⁹⁴ See WIS. STAT. § 808.03(1); *Wambolt v. West Bend Mut. Ins. Co.*, 2007 WI 35, ¶34, 299 Wis. 2d 723, 728 N.W.2d 670.

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

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

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

Order – For purposes of seeking relief in the Court of Appeals, a written decision by a court that resolves a matter and/or directs the parties to do something. It can be a final or non-final order.

Paper party – A party who is not required to participate in eFiling and who chooses not to participate in the eFiling system.

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

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

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

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

Prohibition – A restraint. A party may file a petition for writ of prohibition asking the Wisconsin Court of Appeals to order a judge or circuit court not to do something.

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

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

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

Respondent – The party who is adverse to the appellant. This party generally wants the Court of Appeals to agree with the decision of the circuit court.

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

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

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

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

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

14. APPENDIX: FORMS

The following forms are attached to this Guide for your convenience. These forms and additional forms are available as Word and PDF documents at this website:

<https://www.wicourts.gov/forms1/index.htm>

- CA-120: Notice of Appeal
- CA-110: Notice of Intent to Seek Postconviction or Postdisposition Relief
- CA-100: Notice of Intent to Seek Postconviction or Appellate Relief (TPR cases)
- CA-130: Statement on Transcript
- CA-170: Motion (general)
- CA-150: Brief Cover (Includes: Form and Length Certification; Appendix Certification; and Certification of Mailing (or Third-Party Commercial Delivery))
- CA-160: Motion for Relief Pending Appeal
- AP-010: Petition for Waiver of Fees/Costs – Affidavit of Indigency
- AP-011: Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency
- AP-012: Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency (Allegation of Imminent Danger)
- AP-013: Authorization to Withhold Money from Trust Fund Accounts
- AP-027: Docketing Statement