

APPELLATE PRACTICE CHECKLIST OUTLINE

Considerations for Briefs

I. Brief Covers.

- A. Each brief or appendix must have a front and back cover. (Wis. Stat. § 809.19(9)) Front and back covers should be card stock paper.
- B. Color of Brief Covers (front and back) (Wis. Stat. §809.19(9)).
 - 1. Appellant’s initial brief: blue.
 - 2. Respondent’s brief: red.
 - 3. Combined respondent-cross-appellant’s brief: red front and back cover. Must be a blank blue divider page in front of the cross-appellant portion of the brief. (Wis. Stat. § 809.19(6)(b),(9)).
 - 4. Appellant’s Reply brief: gray.
 - 5. Combined reply brief of appellant-cross-respondent’s brief: gray front and back cover. Must be a blank red divider page in front of the cross-respondent’s portion of brief. (Wis. Stat. § 809.19(6)(c), 9)).
 - 6. Appendix, if separately bound from the brief: white.
 - 7. Guardian ad litem’s brief: yellow.
 - 8. Non-party brief (e.g., amicus brief): green.
- C. In the Wisconsin Supreme Court, the cover of the brief of each party shall be the same color as the cover of that party’s brief filed in the Wisconsin Court of Appeals. (Wis. Stat. §809.19(9)).

II. Caption (Wis. Stat. §809.19, §809.81).

- A. After the appeal is filed, the Wisconsin Court of Appeals issues a notice of filing of appeal and circuit court record. That notice sets forth the caption that must be used in the case. (The official caption can also be seen by looking up your appeal on <http://wscca.wicourts.gov> and clicking on the “Long Caption” button.) (Wis. Stat. §809.19(9), §809.81(9)).
- B. For disagreements with the official caption, the court must be immediately notified in writing. (Wis. Stat. § 809.81(9)).
- C. The caption must appear on all brief covers, appendix covers (if bound separately), and motions, exactly as set forth in the official caption (or the clerk’s office will reject the brief). Wis. Stat. § 809.81(9) “requires parties to use the complete case caption. Parties shall not abridge the caption by use of ‘et al’ or similar phrases.” (Wis. Stat. § 809.19, Judicial Council Note, 2001).

- D. “Subsection (9) is created to clarify that the same caption should be used on all documents filed in an appellate case, and specifies that caption.” (Wis. Stat. §809.81, Judicial Council Note, 2002).
- E. Except as provided in Wis. Stat. § 809.81(8), the caption “shall include the full name of each party in the circuit court and shall designate each party so as to identify each party’s status in the circuit court and in the appellate court (if any).” (Wis. Stat. § 809.81(9)).
- F. Confidential Captions – “Every notice of appeal or other document that is filed in the court and that is required by law to be confidential shall refer to individuals only by their first name and the first initial of their last name.” (Wis. Stat. §809.81(8)). The confidentiality measures should continue throughout the brief and redactions made as necessary in the appendix.

III. Binding (Wis. Stat. §809.19(8)(b)(4)).

- A. Securely bound on the left side only.
- B. Bound with “heavy strength staples” or “velobinding” or “perfect” (“hot glue”) binding method.
- C. Pagination at the bottom margin of pages.

IV. Tables.

- A. Table of Contents (Wis. Stat. § 809.19(1)(a)) should have page references for:
 - 1. statement of the issues;
 - 2. a statement of whether oral argument is necessary;
 - 3. a statement of whether publication should occur;
 - 4. a statement of the case,;
 - 5. the argument section, including each section heading of the argument, which heading optimally should be a sentence summarizing each argument not simply a short phrase; and
 - 6. the conclusion.
- B. Table of Authorities (Wis. Stat. §809.19(1)(a)) should contain the following:
 - 1. page references for each case;
 - 2. cases arranged alphabetically;
 - 3. page references for each statute cited; and

4. page references for each “other authority” cited.

V. Statement of Issues for Review (Wis. Stat. § 809.19(1)(b)).

- A. Identify issues raised in the appeal.
- B. State the circuit court’s decision for each issue raised.

VI. Statements on Oral Argument & Publication (Wis. Stat. §809.19(1)(c)).

- A. Statement on Oral Argument explains whether oral argument is necessary.
- B. Statement on Publication explains whether publication is requested and the reasons for that request.

VII. Statement of Case (Wis. Stat. § 809.19(1)(d)).

- A. States procedural background leading to appeal, including:
 1. Description of nature of case;
 2. Procedural background including the case’s disposition in the circuit court.
- B. Statement of facts relevant to the issues raised for review, along with references to the record.

VIII. Argument (Wis. Stat. § 809.19(1)(e)).

- A. Arranged in order of the issues presented.
- B. Argument on each issue.
 1. One-sentence summary of argument;
 2. Contention of party, including:
 - a. reasons;
 - b. citations to authorities, statutes (see Uniform System of Citation & SCR 80.02);
 - c. citations to court record; those citations should include citations to the pages of the record, but may also include the appendix pages: R doc#: page #, App. page # (if reproduced in appendix);
 - d. citation to parties by name not party designation (Wis. Stat. §809.19(1)(i)).

IX. Conclusion (Wis. Stat. § 809.19(1)(f)).

- A. Short; and
- B. State precise relief sought.

X. Signature (Wis. Stat. § 809.19(h)).

- A. Signature by attorney or party filing brief must be included as well as state bar number.
- B. Signing attorney should be admitted to practice (pro hac vice, at a minimum).
- C. Only a single signature is required at the end of a combined brief.

XI. Form and Length Requirements (Wis. Stat. 809.19 (8)(b),(c)).

- A. Form:
 - 1. Monospaced (e.g., Courier):
 - a. 10 characters per inch;
 - b. double-spaced;
 - c. left margin of 1.5 inches, other sides have margin of 1 inch.
 - 2. Proportional (e.g., Times New Roman):
 - a. proportional serif font;
 - b. minimum printing resolution of 200 dots per inch;
 - c. 13 point body text, 11 point for quotes and footnotes;
 - d. leading of minimum 2 points;
 - e. max. of 60 characters per full line of body text;
 - f. italics, if used—only for citations, headings, emphasis, and foreign words.
 - 3. Length:
 - a. Monospaced (e.g., Courier): up to 50 pages for appellant's brief-in-chief and respondent's brief; 13 pages for appellant's reply brief;
 - b. Proportional (e.g., Times New Roman): up to 11,000 words for appellant's brief-in-chief and respondent's brief; 3,000 words for appellant's reply brief.

XII. Form and Length Certification (§ 809.19(8)(d)).

A. The certification is bound with the brief (note: not a separate captioned document).

B. The certification language conforms to Wis. Stat. § 809.19(8)(d):

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

C. The certification is signed by counsel.

D. The certification is optimally reflected in the table of contents.

XIII. Appendix (Wis. Stat. § 809.19(2)).

A. Form of Appendix

1. Appendix must be printed on 8 1/2 x 11-inch paper. (Wis. Stat. §809.19(8)(b));
2. If bound with the brief, the appendix must include a page to distinguish it from the brief;
3. If bound separately, the appendix must have a formal cover page in the same form as the brief cover;
4. Appendix covers are white. (Wis. Stat. §809.19(9)).

B. Contents of Appendix (Wis. Stat. § 809.19(2)(a))

1. Appendix should include a table of contents with a specific description of each document and cross-references to corresponding record entries;
2. Include findings or opinions of the circuit court;
3. Include “limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court’s reasoning regarding those issues” or the rationale of the lower court;
4. If appealing an administrative decision, the appendix must include:
 - a. The final decision of the agency; and;
 - b. Any findings of fact or conclusions of law made by the agency;
5. Include copies of any unpublished opinions cited under Wis. Stat. §809.23(3)(a) or (b);

6. If the record is required to be confidential, the appendix must reproduce documents using first name and first initial of last name rather than full name and must contain a notation indicating the alteration. Redactions should be done as necessary to maintain the confidentiality of documents in the appendix;
7. Page numbers at bottom of each page with party designation are recommended (e.g., P-App. 101, R-App. 101).

XIV. Certification as to Appendix (Wis. Stat. § 809.19(2)(b)).

- A. The certification should be appended to the appendix.
- B. The certification should be signed by counsel.
- C. The certification (for brief of appellant) contains language required under Wis. Stat. §809.19(2)(b):

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

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

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

Signed: [signature]

- D. The certification is optimally reflected in the table of contents (of the brief, if appendix is bound with the brief; or of the appendix, if appendix bound separately).
- E. The certification is true and accurate.
- F. When the respondent elects to file a supplemental appendix, the certification should state that the appendix complies with the confidentiality requirement.

XV. Mailing Certification or Affidavit (Wis. Stat. § 809.80 (3)(b) & (4)).

- A. The date the paper brief is filed is the official date of filing the paper brief. (Wis. Stat. §809.19(12)(d)) Make sure it is either delivered to the clerk’s office before close of business on the due date or placed in the mail and postmarked on the due date or given to a third-party commercial carrier for delivery within three business days.
- B. Include a certification or affidavit when relying on the “mailbox rule” and using the United States mail or a third-party commercial carrier for timeliness.
- C. Must be signed by the attorney or person filing.
- D. Must state the date by which the brief and/or appendix was mailed or delivered to a third-party commercial carrier.
- E. Must state the manner by which the brief and/or appendix was mailed or delivered to a third-party commercial carrier.
- F. When certificate or affidavit appended, the brief and/or appendix is filed on the date of mailing or delivery as stated in certificate or affidavit.

XVI. Number of Paper Copies Required for Filing and Service.

- A. Court of Appeals.
 - 1. Ten (10) paper copies of the brief and the appendix are filed with the clerk. (Wis. Stat. § 809.19(8)(a)(2));
 - 2. Three (3) paper copies of the brief and the appendix are served on each party. (Wis. Stat. § 809.19(8)(a));
 - 3. Exceptions:
 - a. If a party is indigent and pro se, or is pro se prisoner who has been granted leave to appeal without prepayment of fees, then five (5) paper copies of the brief and the appendix are filed with the clerk and one (1) paper copy of the brief and the appendix is served on each party. (Wis. Stat. § 809.19(8)(a)(3))
 - b. If the appeal is a termination of parental rights, ch. 799, traffic regulation, municipal ordinance violation, or parental consent to abortion case, and the opposing party is pro se, then only one (1) paper copy of the brief and the appendix is served on that party. (Wis. Stat. § 809.43(1))
 - c. If the appeal is a termination of parental rights, ch. 799, traffic regulation, municipal ordinance violation, or parental consent to abortion case, and a party is indigent and pro se, or is a pro se prisoner who has been granted leave to appeal without prepayment of fees, then three (3) paper copies of the brief and the appendix are filed with the clerk and

one (1) paper copy of the brief and the appendix is served on each party.
(Wis. Stat. §809.43(2))

- B. Supreme Court.
 - 1. Twenty-two (22) paper copies of the brief and the appendix or the number that the court orders are filed with the clerk. (Wis. Stat. § 809.19(8)(a))
 - 2. Three (3) paper copies of the brief and the appendix are served on each party. (Wis. Stat. § 809.19(8)(a))

XVII. Electronic Brief Requirements (Wis. Stat. § 809.19(12)).

- A. Although the paper brief remains the official brief of record, an electronic brief is required for all types of briefs, except for pro se litigants. (Wis. Stat. §809.19(12)(a))
- B. Review Wis. Stat. §809.17 and make sure you are registered for electronic filing with the Wisconsin Court System. (Wis. Stat. § 809.19(12)(b)) The same registration covers cases before all courts in the Wisconsin Court System. (Note: Registration with the federal courts venued in Wisconsin or the United States Court of Appeals for the Seventh Circuit does not constitute registration with the Wisconsin Court System).
- C. The electronic brief must be in text-searchable Portable Document Format (PDF). Convert your brief from Word or WordPerfect to PDF. Scanning a brief is insufficient as scanned documents are not text-searchable. (Wis. Stat. §809.19(12)(c))
- D. Submit the electronic brief on or before the date the paper brief is filed. Any electronic brief submitted after the close of regular business hours is deemed to have been transmitted on the next business day. (Wis. Stat. §809.19(12)(d))
- E. Do not upload the brief and appendix as a single document. “The brief” means solely the brief. If you include an appendix in the same PDF, it will be rejected. If desired, the appendix should be separately uploaded.
- F. Electronic briefs are reviewed by court staff and should not be considered accepted until you receive a notice from the clerk confirming acceptance.
- G. Always indicate that you want to be notified via email that the brief has been accepted for filing.
- H. If corrections are required for your brief, either because you noted an error or because you receive a dreaded call from a staff attorney or clerk, both paper and electronic briefs must be resubmitted. (Wis. Stat. §809.19(12)(e))
- I. An electronic brief certification is required in addition to the form and length certification under Wis. Stat. §809.19(8)(d). (Wis. Stat. §809.19(12)(f))
 - 1. The certification states that the text of the electronic brief is identical to the text of the paper brief. (Wis. Stat. §809.19(12)(f))

2. Sample certification:

CERTIFICATION REGARDING ELECTRONIC BRIEF
PURSUANT TO SECTION 809.19(12)(f), STATS.

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

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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

s_____
Attorney or self-represented party

- J. If you truly lack the technical ability to comply with the electronic brief requirements, you may move the court for relief pursuant to Wis. Stat. §809.14, and present good cause as to why it is not feasible for you to file a brief electronically. (Wis. Stat. §809.19(12)(g))

XVIII. ELECTRONIC APPENDIX (OPTIONAL) (Wis. Stat. §809.19(13)).

- A. The filing of an electronic copy (one) of an appendix is optional for both attorneys and self-represented parties. (Wis. Stat. § 809.19(8)(a)(4))
- B. The optional electronic appendix is filed in addition to the paper appendix required under the appellate rules, and the paper appendix remains the official court document. (Wis. Stat. § 809.19(8)(a)(4), (13)(a))
- C. The electronic appendix must be in Portable Document Format (PDF). (Wis. Stat. § 809.19(13)(c)) According to the 2008 Comments, an electronic appendix may be submitted as a non-text-searchable PDF document (as opposed to an electronic brief, which must be text-searchable), which is created by scanning the paper document to create a PDF document.
- D. A party must certify that the content of the electronic appendix is identical to the content of the paper appendix. (Wis. Stat. § 809.19(13)(f))
- E. A party filing an electronic appendix must use the electronic filing system under Wis. Stat. § 801.17, and the electronic appendix must be filed as a separate document from the brief. (Wis. Stat. § 809.19(13)(b)&(c))
- F. The date on which the *paper* appendix is filed is the official date of the filing of the appendix. The electronic appendix must be electronically transmitted on or before the date that the paper appendix is filed. An electronic appendix submitted to the electronic filing system before the close of regular business hours is considered transmitted on that

date, provided it is subsequently accepted by the clerk upon review. An electronic appendix submitted after the close of regular business hours is considered transmitted the next business day. (Wis. Stat. §809.18(13)(d))

- G. If corrections are required to be made, both the paper and electronic appendices shall be corrected. (Wis. Stats. § 809.19(13)(e))

XIX. Citation of Unpublished Opinions (Wis. Stat. § 809.23(3)).

- A. Citation of unpublished opinions is allowed only for one of these permissible purposes:

1. Under Wis. Stat. § 809.23(3)(a) :
 - a. to support a claim of claim preclusion (any opinion);
 - b. to support a claim of issue preclusion (any opinion);
 - c. as law of the case (any opinion); or
2. Under Wis. Stat. §809.23(3)(a) for its persuasive value, *but only if it is*
 - a. an unpublished opinion issued on/after July 1, 2009; *and*
 - b. it is authored by a member of a three-judge panel; or by a single judge under Wis. Stat. §752.31(2), i.e. when the case is:
 - i. under ch. 799; *or*
 - ii. a municipal ordinance violation case; *or*
 - iii. involves violations of traffic regulations, as defined in s. 345.20 (1) (b); *or*
 - iv. nonmoving traffic violations, as defined in s. 345.28 (1); *and*
cases under s. 343.305 and ch. 351, *or*
cases under chs. 51 or 55, *or*
cases under chs. 48 and 938, *or*
a misdemeanor, *or*
cases involving civil forfeitures, *or*
cases involving contempt of court under ch. 785

- B. “When citing an unpublished opinion in a pleading or brief before any court, a party should include the case caption, docket number, unpublished designation, paragraph number, court, and date. For example, *Marquez v. Herbeck*, No. 2012AP552, unpublished slip op., ¶ 19 (WI App Sept. 11, 2011).”
<http://www.wicourts.gov/opinions/appeals2.htm> (April 2012).

- C. A copy of the unpublished opinion is filed and served with the brief in which opinion is cited. (Wis. Stat. §809.23(3)(c))

Additional Considerations for Response, Reply, and Nonparty Briefs

A respondent's brief need not contain the statement of issues section and, given that, need not list it in the table of contents. (Wis. Stat. §809.19(3)(a)(2))

A respondent's brief need not contain the statement of the case and, given that, need not list it in the table of contents. (Wis. Stat. §809.19(3)(a)(2))

The respondent may, but is not required, to file a supplemental appendix. (Wis. Stat. §809.19(3)(b)) The supplemental appendix must comply with the confidentiality requirements. The supplemental appendix should also include a table of contents, any unpublished opinions, and a signed certification that there has been compliance with the confidentiality requirements. (Wis. Stat. §809.19(3)(b))

A reply brief need only contain an argument and conclusion. (Wis. Stat. §809.19(4)(b))

Tables are *not required* for reply briefs or nonparty briefs, but are permitted.

Copies of any unpublished opinion must be filed and served with the brief in which the opinion is cited. (Wis. Stat. §809.23(3)(c)) In a reply or nonparty brief, a copy of the unpublished opinion must be included in an appendix to the reply or nonparty brief. (Wis. Stat. §809.19(4)(b), §809.19(7)(b))

Additional Considerations for Petitions for Review

In the Supreme Court, "petitioner" must be added to the designation of a party filing a petition for review. The designation of a party responding to a petition for review shall remain the same as in the court of appeals. (Wis. Stat. § 809.81(9))

A petition for review must contain a statement of the issues sought to be reviewed, the way in which the issues were raised below, and the outcome of those issues. The petition for review also should state the issues sought to be reviewed that were not decided below. (Wis. Stat. §809.62(2)(a))

A petition for review must contain a table of contents; a "concise" statement of criteria relied upon to support granting of review or the "other substantial and compelling reasons for review"; a statement of the case; and argument (arranged in the order of the issues presented for review). (Wis. Stat. §809.62(2)(b),(c),(d),(e))

The petition for review response, if filed, should include the reasons for denying the petition; "any perceived defects" that prevent a resolution on the merits; misstatements of law or fact relevant to the issues presented; alternate grounds supporting the decision by the court of appeals or a decision less favorable to other party than that granted by the court of appeals; and any other issues the court would need to decide if the petition were granted. (Wis. Stat. §809.62(3))

If filing a petition for review, the appendix must include:

- a. The decision and opinion of the court of appeals;
- b. All judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary to understand the petition and provide the rationale of the lower courts;
- c. All other portions of the record necessary to understand the petition; and

- d. Any unpublished opinion cited under Wis. Stat. §809.23(3)(a), (b). (Wis. Stat. §809.62(2)(f))

The petition for review and the response to petition for review have white front and back covers. (Wis. Stat. §809.62(4))

The petition should be as short as possible, but not to exceed thirty-five (35) pages if monospaced font is used or 8,000 words if proportional serif font is used. (Wis. Stat. §809.62(4))

Ten (10) paper copies of the petition for review or response must be filed with the clerk of the Wisconsin Supreme Court. (Wis. Stat. §809.62(4)(a)) The paper copy is the official record. An electronic copy must be filed as well unless a self-represented party. (Wis. Stat. §809.62(4)(b)).

The petition for review (except for pro se) is only timely filed when the clerk of the Wisconsin Supreme Court receives the paper copy of the petition *within* the time for filing. (Wis. Stat. §809.80(3)(d))