

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 15-02

**In the Matter of the Amendment of Rules of
Appellate Procedure, Wis. Stat. §§ 809.01,
809.105, 809.11, and 809.15**

FILED

NOV 25, 2015

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On June 23, 2015, Diane Fremgen, Clerk of the Wisconsin Supreme Court and Court of Appeals, filed a rule petition asking the court to amend certain sections of Wis. Stat. ch. 809 related to the transmitting and keeping of appellate records in an effort to permit and facilitate the use of electronic records in appellate matters.

Letters were sent to interested persons, seeking input, on August 10, 2015. Comments were received from the Wisconsin State Bar's Appellate Practice Section and from the Wisconsin Clerks of Circuit Court Association (WCCCA), both in support of the petition.

The court conducted a public hearing on the petition on Tuesday, October 13, 2015. Ms. Fremgen presented the petition. Jenny Andrews, Chief Staff Attorney for the Wisconsin Court of Appeals, Carlo Esqueda, President of the WCCCA, and Jake Wittwer, Chair of the State Bar Appellate Practice Section Board, all spoke in favor of the petition. During the hearing, the court raised several questions or

concerns, including requesting comment on the petition from the Wisconsin Court Reporters Association; whether some terms used throughout the proposed rule, such as "clerk, "trial court," and "retained," are sufficiently clear and consistent; which matters are subject to the proposed changes as of the effective date; and what issues, if any, other states have encountered with implementing the use of electronic appellate records. The petitioner submitted a letter on November 3, 2015, responsive to these questions and confirming that the Wisconsin Court Reporters Association does not oppose the petition. The letter included an appendix containing some additional proposed changes based on the court's questions.

At open administrative rules conference on November 16, 2015, the court discussed this petition. The court noted the petitioner's letter and the amended proposal submitted by the petitioner. The court then voted unanimously to adopt the petition, as amended.

IT IS ORDERED that, effective July 1, 2016:

SECTION 1. 809.01 (9) and (10) of the Rules of Appellate Procedure, Wisconsin Statutes, are created to read:

809.01 **(9)** "Traditional methods" means those methods of filing, serving, and transmitting documents, other than electronic filing or transmittal, provided under statutes and local rules.

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

SECTION 2. 809.105 (3) (b) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

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

SECTION 3. A Comment to 809.105(3) of the statutes is created to read:

Comment

Effective July 1, 2016, the Wisconsin Supreme Court amended the Rules of Appellate Procedure to permit the clerk of circuit court to transmit the record to the appellate court electronically. The amendment applies to record transmittals due on or after July 1, 2016.

SECTION 4. 809.105 (4) (d), (e), and (f) of the Rules of Appellate Procedure, Wisconsin Statutes, are amended to read:

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

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

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

SECTION 5. 809.11 (Title) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

809.11 Rule (Items to be filed and ~~forwarded~~ transmitted).

SECTION 6. 809.11 (2) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

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

SECTION 7. 809.15 (1) (a) 1. of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

809.15 **(1)** (a) 1. The ~~paper~~ initiating document by which the action or proceeding was commenced;

SECTION 8. 809.15 (1) (a) 8., 9., and 10. of the Rules of Appellate Procedure, Wisconsin Statutes, are amended to read:

809.15 **(1)** (a) 8. Order made after judgment relevant to the appeal and ~~papers~~ documents upon which the order is based;

9. Exhibits ~~material to the appeal~~ whether or not received in evidence, including photographs, video recordings, audio recordings and computer media such as discs or flash drives, except that physical evidence, models, charts, diagrams, and photographs exceeding 8.5 x 11 inches in size shall not be included unless requested by a party to be included in the record;

10. Any other ~~paper~~ document ~~or exhibit~~ filed in the court requested by a party to be included in the record;

SECTION 9. 809.15 (1) (c) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

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

SECTION 10. 809.15 (2) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

809.15 **(2)** The clerk of circuit court shall assemble the record in the order set forth in sub. (1) (a), identify by number, date of filing, and title each paper document, and prepare a list of the numbered ~~papers~~ documents. If the record is in an electronic format, the clerk shall also include in the list of numbered documents a list of exhibits not electronically maintained that are part of the record on appeal. At least 10 days before the due date for filing the record in the court, the clerk of the circuit court shall notify in writing each party appearing in the circuit court that the record has been assembled and is available for inspection. The clerk of the circuit court shall include with the notice the list of the ~~papers~~ documents constituting the record.

SECTION 11. 809.15 (4) (a) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

809.15 **(4)** (a) The clerk of the circuit court shall transmit the record to the court of appeals within 20 days after the date of the filing of the transcript designated in the statement on transcript or within 20 days after the date of the filing of a

statement on transcript indicating that no transcript is necessary for prosecution of the appeal, unless the court extends the time for transmittal of the record or unless the tolling provisions of s. 809.14(3) extend the time for transmittal of the record. If additional portions of the transcript are requested under s. 809.11(5), the clerk of the circuit court shall transmit the record to the court of appeals within 20 days after the date of the filing of the additional portions of the transcript. If the record is transmitted electronically, the clerk of the circuit court shall transmit by traditional methods any original documents or exhibits not electronically maintained.

SECTION 12. 809.15 (4m) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

809.15 **(4m)** The clerk of the court of appeals shall notify the clerk of circuit court and all parties appearing in the circuit court of the date on which the record was filed. When the record is transmitted electronically and the clerk of the circuit court must transmit original documents or exhibits not electronically maintained by traditional methods, the date on which the record was filed is the date the electronic transmission and index was received by the clerk of the court of appeals.

SECTION 13. A Comment to 809.15 of the statutes is created to read:

Comment

Effective July 1, 2016, the Wisconsin Supreme Court amended the Rules of Appellate Procedure to permit the clerk of circuit court to transmit the record to the appellate court electronically. The

amendment applies to record transmittals due on or after July 1, 2016.

IT IS FURTHER ORDERED that the rule adopted pursuant to this order shall apply to record transmittals due on or after the effective date of this rule.

IT IS FURTHER ORDERED that the Comments to Wis. Stat. §§ 809.105(3) and 809.15 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 25th day of November, 2015.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

