

*WISCONSIN COURT OF APPEALS*

**INTERNAL OPERATING PROCEDURES**



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# WISCONSIN COURT OF APPEALS

## INTERNAL OPERATING PROCEDURES

### INTRODUCTION

The Court of Appeals uses these internal operating procedures for processing, considering, and disposing of matters pending before the court pursuant to applicable statutes and rules. *In the interests of the orderly and efficient administration of justice, the court, in its discretion, may direct that a different or modified procedure be followed as to any particular matter pending before the court. These procedures may be periodically modified as experience and necessity dictate.* The constitutional and statutory provisions with reference to the Court of Appeals mandate that it function as a single court under a Chief Judge and not as four separate courts.

#### ***I. CHIEF JUDGE***

The Chief Judge is responsible for the administration of the court.

##### **I-A. DEPUTY CHIEF JUDGE**

(SCR 70.37)

The Chief Judge of the Court of Appeals shall appoint a Deputy Chief Judge to serve under the Chief Judge. The Deputy Chief Judge shall serve at the pleasure of the Chief Judge. The Deputy Chief Judge shall provide assistance to the Chief Judge in administrative areas requiring the participation by a judicial officer. The Chief Judge may delegate any of the Chief Judge's duties and authority as Chief Judge to the Deputy Chief Judge.

##### **I-B. ADMINISTRATIVE ASSISTANT TO THE CHIEF JUDGE**

The administrative assistant to the Chief Judge performs the duties assigned by the Chief Judge. Those duties consist, in part, of communicating and implementing orders and directives of the Chief Judge made in the discharge of his or her administrative duties and responsibilities.

The administrative assistant to the Chief Judge shall cooperate with the clerk, the chief deputy clerk, the chief staff attorney of the Court of Appeals, and the fiscal officer of the Supreme Court to efficiently dispose of the court's work.

## ***II. PRESIDING JUDGE***

Each Presiding Judge is responsible for the management of the case flow of appeals and proceedings originating in the district in which the Judge presides. The Presiding Judge supervises and control the preparation of all appeals and proceedings coming before his or her district.

The Presiding Judge is appointed by the Chief Judge for a two-year term, commencing August 1 of odd numbered years.

With the approval of the Chief Judge, the Presiding Judge may temporarily assign a law clerk and/or a judge's secretary to another judge if necessary to efficiently dispose of the district's workload.

The Presiding Judge exercises continuous leadership in management of the court's case assignment and processing system and initiates development of policy concerning the court's internal operations. The Presiding Judge schedules the screening, preargument, oral argument, decision, opinion and motions conferences, and assigns cases for disposition and opinion pursuant to Article VI. The Presiding Judge also directs the cases and other matters to be considered at the conferences and further directs the administrative assistant as to the assignment of cases for disposition.

The Presiding Judge supervises any staff attorney assigned to a district who is not a member of the central staff.

Whenever possible, Presiding Judges conduct the work of the panel in a manner that will make one judge available within the district during normal court hours.

## ***III. CLERK***

The clerk shall perform the duties of the office prescribed by law and shall perform such additional duties prescribed by the court or the Chief Judge and shall aid the Chief Judge in the performance of his or her administrative responsibilities.

The clerk is responsible for the constant monitoring and supervision over cases from the time of appeal or commencement of proceedings until ultimate disposition. The clerk docket and monitors to assure the prompt, proper, and timely compliance with the appellate procedure. The clerk's office informs a staff attorney for each district of those cases which the appellants have identified as being entitled by statute or rule to be given preference by the court. Noncompliance with the appellate procedure is referred to a staff attorney for appropriate action.

The clerk has custody of the records and papers of the court and shall not permit any original record or paper to be taken from the custody of employees of the Court of Appeals, except

as authorized by the orders or instructions of the Supreme Court, the Chief Justice, the Court of Appeals, its Chief Judge or a Presiding Judge.

The clerk files and docket the decisions and opinions of the court. Upon filing, the clerk, through a district secretary, notifies parties as to the court's decision and releases the opinions to the parties.

The clerk docket and issues all orders of the court. Other than routine or delinquency notices or orders, all orders contain the name or names of the deciding judge or judges but are not authored by a judge or judges.

The clerk gathers statistics with respect to the business of the court and supplies them to the Chief Judge, Presiding Judges, the chief staff attorney, and, as requested, the director of state courts, and to such other judges of the Court of Appeals who request them.

The clerk shall cooperate with the chief staff attorney and the administrative assistant to the Chief Judge to efficiently dispose of the court's work.

### III-A. CHIEF DEPUTY CLERK

The chief deputy clerk performs such duties as are assigned by the clerk and, in the absence of the clerk, performs all of the duties of the clerk. The chief deputy clerk shall cooperate with the clerk, the chief staff attorney, and the administrative assistant to the Chief Judge to efficiently dispose of the court's work.

## ***IV. CENTRAL LEGAL STAFF***

Central staff attorneys serve the court as a whole; their responsibilities are institutional. Their primary function is to provide professional assistance as house counsel to the judges in efficiently, expeditiously, and effectively processing matters pending before the court to and through the decision-making stages. The central legal staff is headed by the chief staff attorney.

### IV-A. CHIEF STAFF ATTORNEY

The chief staff attorney performs the duties assigned by the court and the Chief Judge. Under the supervision of the Chief Judge, (s)he supervises and directs the work of the central staff attorneys, assigns staff attorneys to the appeals and proceedings originating in a specified district, and equalizes the workloads of the staff attorneys.

The chief staff attorney is the legal advisor to the clerk of the court. He or she assists the clerk in establishing procedures for: docketing and monitoring appeals and proceedings; record storage, handling and transmittal; taxing costs; filing opinions and decisions; and gathering court statistics.

To the extent feasible, within one week after an appeal record is transmitted to the court, the chief staff attorney endeavors to determine whether the court has jurisdiction. If he or she believes that the court is without jurisdiction or if an examination of the record raises a doubt as to whether the court has jurisdiction, he or she will immediately contact the Presiding Judge or motions judge of the appropriate district. The court may issue an order advising the parties of the jurisdictional problem and request that the parties submit memoranda addressing the issue in a specific form and time period. If jurisdiction is clearly lacking, the court may immediately dismiss the appeal.

The chief staff attorney is not assigned to a particular district but shall, consistent with the time necessary to discharge his or her duties as chief staff attorney, assist with the staff workload of the various districts as deemed necessary by the chief staff attorney or as directed by the Chief Judge.

The chief staff attorney constantly monitors the work of the central staff attorneys to assure that it is expeditiously performed and that governing criteria are uniformly applied.

The chief staff attorney reviews the opinions not recommended for publication by the panels to determine whether they should be recommended for publication. The chief staff attorney prepares his or her recommendations and suggestions and submits them to the publication committee. In the interests of establishing a unified appellate system, doctrinal inconsistencies in panel decisions are immediately reported to the Chief Judge to the end that the Chief Judge may be informed.

The chief staff attorney shall cooperate with the clerk, the chief deputy clerk, and the administrative assistant to the Chief Judge to efficiently dispose of the court's work.

#### IV-B. CENTRAL STAFF ATTORNEYS

Central staff attorneys are the staff attorneys who work under the supervision of the chief staff attorney in the central office located in Madison. Each central staff attorney has the initial responsibility for staff work performed for the district to which he or she is assigned and performs such staff work for other districts as assigned by the chief staff attorney.

Central staff attorneys perform such additional work as assigned by the chief staff attorney. Central staff attorneys regularly prepare (for appeals and proceedings assigned to them) memoranda and recommendations with respect to: requests for extension of time; motions (procedural or substantive); requests that an appeal be heard by a three-judge panel; supervisory writs; petitions for leave to appeal; motions for relief pending appeal; and inmate petitions. Central staff attorneys also prepare drafts of orders, no merit and per curiam opinions.

Central staff attorneys shall advise the Chief Judge and the Presiding Judges of the existence of pending appeals or proceedings within one panel or the several panels that afford the prospect of doctrinal inconsistency when such cases come to their attention.

#### IV-C. DISTRICT STAFF ATTORNEYS

District staff attorneys are staff attorneys located in a district office rather than the Madison central office. They are supervised by the Presiding Judge of their district. District staff attorneys perform research and prepare drafts of per curiam opinions and orders for their respective panels. District staff attorneys also prepare memoranda and recommendations regarding motions and petitions in the event the matter can be handled more expeditiously in the district office. District staff attorneys also administer the expedited appeals program in their respective districts under the supervision of the Chief Judge and the Presiding Judge. In addition, they shall perform such other tasks as are assigned by the Presiding Judge.

#### V. *LAW CLERKS*

A law clerk serves as a personal professional assistant to a particular judge and performs such tasks as are assigned by that judge. A law clerk may be temporarily assigned to another judge by the Presiding Judge, with the approval of the Chief Judge, for a short duration or for a particular matter. A law clerk's work normally includes legal research, memorandum drafting, citation checking, editorial work, and opinion review.

#### VI. *DECISIONAL PROCESS*

##### (1) Screening.

Screening is the procedure whereby each case is examined briefly, prior to its being considered on the merits, by the deciding judges for the purpose of routing it through the appropriate decisional process. Following filing of briefs, the Presiding Judge schedules a screening conference for members of the panel. At conference, a case is routed for: (1) summary disposition; (2) submission on briefs, without oral argument; (3) oral argument; (4) consolidation or consideration on the same calendar; or (5) certification to the Supreme Court. One-judge appeals are identified and assigned by the Presiding Judge. Screening conferences may be conducted immediately prior to or in conjunction with the decision conference. Expedited appeals conferences are held within 7 day of receipt of the final briefs.

With respect to determining whether briefs are adequate or whether oral argument is to be called, the court applies the oral argument criteria, WIS. STAT. RULE 809.22, after analyzing the briefs and considering the parties' statements regarding oral argument, WIS. STAT. RULE 809.19(1)(c). Whenever the workload of the panel permits, it favors oral argument. For oral argument cases, parties may be limited to specific areas or directed to discuss matters omitted or not adequately discussed in briefs. The court may limit the length of argument.

Cases identified for summary disposition by the court on its own motion, WIS. STAT. RULE 809.21(1), are decided by the panel, upon review of the briefs and the record, following screening, and assigned to staff attorneys for preparation of an order implementing the court's decision. The order will identify the case, the deciding judges, the ultimate result or disposition, and the reasons

for the result. A draft order is submitted to the panel for final decision. If the panel decides that the case should not be disposed of summarily, the case is routed for decision on briefs.

A case may be disposed of summarily by order if the panel unanimously agrees on the decision; unanimously agrees the issues involve no more than the application of well-settled rules of law or the issues are decided on the basis of unquestioned and controlling precedent or the issues relate to sufficiency of evidence or trial court discretion and the record clearly shows sufficient evidence or no abuse of discretion; and the issues may be resolved by merely stating the reasons for the decision without a detailed analysis. In addition, any appeal or other proceeding may be disposed of summarily if requested by the parties, if necessary for the sound and efficient administration of justice, or if otherwise required in the interests of justice.

Appeals or other proceedings decided by one Court of Appeals judge may be disposed of summarily under this procedure.

Joint or simultaneous calendaring and consolidating of cases where appropriate may be ordered by the Presiding Judges so as to lessen the potential for conflict. Cases that require the making of new law or that present major issues of public policy may be considered for certification.

If a judge determines that (s)he should be disqualified, the Presiding Judge advises the Chief Judge so that another judge or a reserve judge may be assigned.

## (2) Assignment of Cases to Submission Calendars.

The Presiding Judge organizes a submission calendar or calendars as promptly and frequently as the case flow permits. Except in unusual circumstances, cases will be calendared for submission or oral argument within 45 days of receipt of the last brief. The calendars are balanced as well as possible to achieve speedy submission of cases that do not require oral argument, and at the same time avoid undesirable delay in the orderly submission of cases requiring oral argument. At the direction of the Presiding Judge, a designated secretary assigns cases to the calendars for disposition. When possible, and without undue delay in civil cases, preference is given to expedited and criminal appeals and appeals required by statute to be given preference. Cases not given preference are placed upon the calendar in the order that they are ready for submission.

Oral argument cases may be withheld from calendaring as necessary for limited periods to efficiently calendar cases to be heard in locations required by WIS. STAT. §§ 752.15, 752.17 and 752.19.

For oral arguments, the notice provides the date, place and time; the length; and any special instructions relating to the oral argument.



(3) Motions and Petitions for Leave to Appeal.

(a) The motions judge is the judge designated by the Presiding Judge to hear motions. In the event the motions judge is not available, any other judge may consider a motion. The Presiding Judge may designate himself or herself to act as the motions judge.

(b) Motions are filed with the clerk. Motions for procedural orders may be acted upon without response. Motions for procedural orders which usually do not adversely affect the opposing party, such as to file a brief in excess of the maximum number of pages, may be acted upon directly by the clerk, in consultation with the chief staff attorney. As necessary, the clerk or the chief staff attorney will consult the motions judge of the appropriate panel. The opposing party may be invited to file a response. A party adversely affected by the granting of a procedural motion without a response may move for reconsideration. WIS. STAT. RULE 809.14(2).

(c) The motions judge may act on all motions, except those that reach the merits or preclude the merits from being reached, which can only be acted on by the panel. The motions judge may direct that any motion be acted on by the panel. The panel considers motions that reach the merits, that preclude the merits from being reached, or that have been referred by the motions judge. The panel considers these motions at regularly scheduled or specially called motions conferences. Motions conferences may be by telephone and may include the staff attorney. The panel may direct that a motion be heard at oral argument. As provided in IOP VI(12)(b), any motion in a one-judge appeal, including one which reaches the merits or which precludes the merits from being reached, shall be decided by the motions judge.

(d) Procedural motions for which responses have been invited, procedural motions adversely affecting the opposing party, motions for reconsideration of procedural orders, and all substantive motions, together with responses and supporting and opposing memoranda and papers, are reviewed by a staff attorney. The staff attorney discusses the motions with the motions judge. Staff attorneys prepare motions memoranda or oral presentations with recommendations and a proposed order for each motion to be submitted to the panel and for any other motion as directed by the motions judge. Staff attorneys will usually draft all orders following the court's decision.

(e) *Petition for Leave to Appeal.* WIS. STAT. § 808.03(2); RULE 809.50. Petitions for leave to appeal are filed with the clerk. Staff attorneys review all petitions, responses, and supporting memoranda and prepare motions memoranda analyzing the request. The papers and memoranda are circulated to the deciding judges for consideration at a motions conference. As provided in IOP VI(12)(b), a petition for leave to appeal in a one-judge appeal shall be decided by one court of appeals judge. Any requests for temporary relief must be included with the petition. Parties seeking temporary relief should petition a specific judge of the appropriate panel, pursuant to WIS. STAT. RULE 809.52, only when immediate (less than 24-hour) relief is required. For all other situations, staff attorneys advise the Presiding Judge of the request for temporary relief. The Presiding Judge, or his or her designee, may grant the relief upon the terms and conditions deemed appropriate. Staff attorneys draft the implementing order to be issued by the clerk. This procedure is intended to

assure efficient court operations, efficient consideration of the petitions, and the least expensive procedure for the parties and their attorneys.

(f) *Motions for Relief Pending Appeal.* Motions for relief pending appeal are decided by the motions judge, unless the relief requested reaches the merits, in which event the motion is decided by the panel. If relief is requested pending consideration of the motion, staff attorneys advise the Presiding Judge. The presiding Judge, or his or her designee, may grant the relief upon terms and conditions deemed appropriate. Staff attorneys draft the implementing order to be issued by the clerk. Parties seeking relief pending consideration of the motions should only approach a specific judge of the panel if immediate (less than 24-hour) relief is required.

(g) *Petitions to Intervene.* Petitions to intervene are referred to staff attorneys, who will advise the motions judge. The motions judge may act on the petition or direct that it be considered by the panel. Staff attorneys prepare motions memoranda for each petition to be submitted to the panel and for any other petition as directed by the motions judge.

(h) *Delinquency Proceedings.* If any item required to be filed by the Rules of Appellate Procedure is not filed, the clerk will issue a delinquency notice informing the parties that unless the item or a motion seeking an extension of time showing good cause is filed within a specified time, in the case of a filing by the appellant, the appeal will be subject to dismissal or, in the case of a filing by the respondent, the appeal would be submitted for summary disposition, including possible summary reversal. If the party does not comply with the delinquency notice, in the event of a filing by appellant, the court may consider the appropriate sanction under WIS. STAT. RULE 809.83(2), including dismissal; in the event of a filing by the respondent, the appeal is submitted for summary disposition. If, in response to the delinquency notice, a motion for extension of time or other response is filed, the clerk may grant a limited extension if good cause is shown or submit the motion to staff attorneys for presentation to the motions judge. If the motion for extension of time is denied, the appeal will either be dismissed or submitted for summary disposition.

#### (4) Submission.

(a) Upon calendaring, the clerk delivers any pertinent papers not previously delivered to the panel. The case record and briefs are delivered prior to screening.

(b) Each judge who is to participate in deciding an appeal reads the briefs and becomes familiar with the record, the parties' contentions, and the principal authorities relevant to the questions presented.

(c) If a case is to be orally argued, each judge familiarizes himself/herself with the case before the preargument conference. The panel confers in advance of argument to identify the issues needing exploration and to plan its questioning of counsel. If not already specified in the notice of oral argument, the Presiding Judge, or other member of the panel, may suggest to counsel at the opening of the argument the matters to which the panel desires argument to be directed.

At oral argument, parties must limit their argument to issues or questions specifically noticed to them by the court. If the court has not limited the scope of the argument, the parties are expected to supplement and clarify arguments submitted in the briefs. Parties should discuss any developments in the law subsequent to the filing of their briefs. At the close of oral argument, attorneys who requested oral argument are expected to have justified that request.

Tentative decision conferences are held as soon as possible following oral arguments.

(d) On briefs cases are decided by the panel at a decision conference scheduled by the Presiding Judge. The parties will be notified when the cases are taken under submission.

(e) Tentative decisions can be revised, altered, or reversed throughout the decisional process until an opinion is filed.

(f) At the request of any member of the panel or of a party, oral arguments will be preserved by tape recordings. A judge who is to participate in the decision-making process, but who is unable to attend oral arguments, shall listen to the tape recording of the arguments prior to participation in the decision conference.

(g) The process by which a tentative decision is formulated may appropriately vary from these provisions but all participating judges should join in formulating the opinion. Every decision names the judges who participated in it. Decisional conferences are held by personal attendance. However, when the judges are separately headquartered, they may appropriately exchange views by memoranda or telephone, unless the complexity of the matter under consideration makes those forms of communication inadequate.

(h) The judge responsible for the panel's opinion or memorandum is assigned at the decision conference and preparation of the opinion or memorandum commenced as soon as possible. The average time for rendering a decision should not exceed 40 days, and the maximum time for any case, except one of extraordinary complexity, should not exceed 70 days. Variation from the standard is permitted when necessary to accommodate special problems in individual cases and fluctuations in the flow of the panel's work.

(i) After a tentative decision is reached, the case is assigned by lot to a judge for the writing of an opinion. In the event the opinion is assigned to a judge representing the minority view, the opinion will be reassigned by lot to a member of the majority. After the tentative decision is reached, if the panel unanimously agrees on the decision and unanimously agrees that the resulting opinion should not be published pursuant to the criteria of WIS. STAT. RULE 809.23(1)(b) or that the resulting opinion will address and clarify solely an issue of appellate jurisdiction or procedure, the case may be assigned for a per curiam opinion. Such a case will be assigned by lot to a judge who will be responsible for the per curiam opinion.

(5) Opinions.

(a) *Form.* The panel's decision and opinion is given in a form appropriate to the complexity and importance of the issues presented in the case. In cases involving new or unsettled questions of general importance, a full written opinion reciting the facts, the questions presented, and analysis of pertinent authorities and principles is rendered. Cases not involving such questions are decided by memorandum or per curiam opinion. A memorandum or per curiam opinion may reduce or omit the statement of facts and give only the reasons for the decision with a minimal analysis of the reasoning. Every decision is supported, at minimum, by a citation of the authority or statement of grounds upon which it is based. When the trial court's decision was based upon a written opinion or a statement upon the record of its grounds for decision that adequately express the panel's view of the law, the panel may incorporate the trial court's opinion or statement of grounds, or make reference thereto, and affirm on the basis of that opinion. All judges participating in a decision are identified in the opinion but do not sign the opinion. Immediately preceding the opinion writer's name, the opinion will read: "Before \_\_\_\_\_, P.J., \_\_\_\_\_ and \_\_\_\_\_, JJ." As examples: "Before Cane, C.J., Hoover, P.J., and Peterson, J."; "Before Nettesheim, P.J., Brown and Snyder, JJ."; "Before Vergeront, P.J., Wedemeyer, J., and William Eich, Reserve Judge."

(b) The assigned judge writes and circulates to the panel a proposed opinion based on the tentative decision. Judges are responsible for the preparation of all opinions.

(c) The panel reviews the proposed opinion. If all the deciding judges concur, the opinion becomes final. If a deciding judge thinks changes are necessary or disagrees with the decision, (s)he informs the opinion writer, preferably prior to opinion conference. The opinion writer may accept some or all of the suggestions. If substantial changes are made, the rewritten version is circulated.

(d) The deciding judges shall confer to consider unapproved opinions. Only those parts of the proposed opinion that produced differences among the judges are discussed. If a further rewriting is required, the opinion is recirculated and reconsidered.

(e) Following a written request from the author of an opinion, judges shall either approve of the opinion or file their dissent or concurrence within 5 days. Dissenting and concurring opinions are circulated to all the deciding judges.

(f) For a case assigned for a per curiam opinion, the judge assigned to the case supervises the preparation of the proposed opinion. The judge may rely on staff attorneys for assistance in drafting the opinion. If all three deciding judges agree with the disposition and reasons therefor, the per curiam opinion is released. As with authored opinions, judges are responsible for the preparation of all opinions.

(g) Each district shall designate a specific day of the week for release of its decisions and opinions. Unanimous opinions are filed with the clerk upon completion. Majority opinions, concurrences, and dissents are filed with the clerk together, following the 5-day period for preparing concurrences and dissents. All opinions and decisions are released to the parties and the public on

the release day. The clerk, through a district secretary, notifies the parties as to the court's decision and releases opinions to the parties.

Before release, the decisions and opinions are delivered to the clerk along with a tentative list of the decisions and opinions to be released. The tentative opinion list is made available to the public upon receipt by the clerk but in no event will the list be made available more than 5 days before actual release. The clerk docket and files the opinions on the indicated release dates.

(h) A panel or judge may appropriately render oral opinions from the bench in cases that are orally argued. Oral decision should be made only if the panel or judge making the decision is thoroughly acquainted with the briefs and record before argument and has the opportunity to defer decision if there is any doubt about the decision or the propriety of it being rendered orally. The oral decision shall be recorded, transcribed, and filed as the written decision, pursuant to WIS. STAT. § 752.41(1).

(i) When desirable for the purpose of maintaining doctrinal consistency, the proposed opinion draft may be circulated to members of another panel considering or about to consider a similar case. Opinions are promptly delivered to each member of the publication committee.

(j) A decision other than affirmance, or reversal with directions to render judgment for the appellant, states what course of action is to be followed in the court below and the rules to be applied therein so far as they are within the issues decided.

#### (6) Reconsideration.

When a party files a motion for reconsideration under WIS. STAT. RULE 809.24(1), the clerk's office shall send a copy of the motion to the judge who wrote the opinion or to the supervising judge. The clerk's office shall also submit the motion to a staff attorney who will be responsible for coordinating the disposition of the motion.

The court may order that a response to the motion be filed. The court may either amend the underlying decision or order or issue an order denying the motion for reconsideration. In every instance, the court will issue an appropriate order.

#### (7) Publication.

(a) The opinion writer may make a recommendation to the deciding judges whether the opinion should be published. The deciding judges shall make a final recommendation to the publication committee regarding publication. The panel's recommendation regarding publication is inserted following the decision as the final line on the panel's opinion. A copy of the filed opinion with the panel's publication recommendation is distributed to the Chief Judge, the judges designated by each panel to sit on the publication committee, and the chief staff attorney.

(b) The judge selected by the Court of Appeals judges of each district shall represent that district on the publication committee. The judge is expected to consult with the judges of the district regarding publication prior to the publication conference.

(c) The chief staff attorney, after consultation with the staff attorneys, may prepare a memorandum analyzing the publication position taken by the parties in their briefs, potentially conflicting opinions from other panels, and recent applicable pronouncements by the United States and Wisconsin Supreme Courts. Publication memoranda are distributed to the publication committee.

(d) The Chief Judge or his or her designee calls a monthly publication conference at which the publication committee makes a determination as to which opinions should be published. At the conference, the committee considers all opinions reviewed under this procedure to date. Opinions are published upon a majority vote of the committee.

(e) After the publication decision is made, the court issues an appropriate publication order. The publication order will name the judges who made the publication decision. Opinions for publication are delivered to the court's publication clerk for processing to the official reporters and the State Bar of Wisconsin. By definition, the court's summary disposition orders and memorandum opinions are within the nonpublication criteria of WIS. STAT. RULE 809.23(1) because they speak for the court and are unsigned. For this reason the court's publication orders will not include summary disposition orders and memorandum opinions.

#### (8) Remittitur.

Following the decision and the filing of the opinion, the district office returns the record to the clerk. The clerk remits the record pursuant to WIS. STAT. RULE 809.26. In the event that the Court of Appeals decides to reconsider the case, the clerk returns the record as needed to the district office. Prior to remitting, the clerk taxes costs and fees pursuant to WIS. STAT. RULE 809.25.

#### (9) Remand from Supreme Court.

When the Supreme Court remands a case to the Court of Appeals for further proceedings, the matter is referred to the appropriate panel of judges. The panel may direct that oral arguments be heard or may proceed to consider the Supreme Court's opinion and take the necessary action at a regularly or specially called conference.

#### (10) Petitions for Supervisory Writs and Original Jurisdiction Prerogative Writs.

(a) Petitions and supporting memoranda for supervisory writs and original jurisdiction prerogative writs are filed with the clerk. Any requests for temporary relief must be included with the petition. The clerk delivers the petition and supporting memoranda to the staff attorney for the appropriate district. The staff attorney reviews the petition and reports to the motions judge for the appropriate district. The motions judge may order that a response be filed and/or that temporary

relief be granted. The staff attorney prepares the appropriate order to be issued by the clerk. When a response is ordered, the order shall set forth the time by which the response must be filed. The order may also specify the terms and conditions of any temporary relief granted. The court may also deny a petition ex parte. If the petition is filed in a three-judge appeal, the decision to deny a petition ex parte shall be made by a three-judge panel. As provided in IOP VI(12)(b), a petition for supervisory writ or an original jurisdiction prerogative writ filed in a one-judge appeal shall be decided by one court of appeals judge.

(b) Responses are filed with the clerk. The clerk delivers the response and any supporting documents and memoranda to the staff attorneys. The staff attorneys analyze the issues raised in the petition and submit to the panel a petition memorandum describing the nature of the issue. The memorandum, together with all the petition papers, is delivered to the panel prior to the court's consideration. The panel acts on the petition at a motion conference. The panel may direct that the petition be heard at oral argument. The staff attorney drafts an appropriate order implementing the court's decision, to be approved by the panel and issued by the clerk.

(c) Parties seeking temporary relief should petition a specific judge of the appropriate panel, pursuant to WIS. STAT. RULE 809.52, only when immediate (less than that 24-hour) relief is required. For all other situations, parties should file their request with the clerk. The central staff attorney assigned to the district reviews the request and reports it to the Presiding Judge, or his or her designee, as described above. This procedure is intended to assure efficient court operations, efficient consideration of the petitions, and the least expensive procedure for the parties and their attorneys.

#### (11) No Merit Reports.

If a no merit report is submitted without the certification required by WIS. STAT. RULE 809.32(1)(c), the clerk's office shall not accept the report for filing. The clerk's office shall inform the attorney of the omission and request the submission of an amended no merit report. If an amended no merit report is not filed within the time set of the clerk, the matter will be submitted to the staff attorney office for further action.

A staff attorney reviews the no merit report, the defendant's response, if one is filed by the defendant, the supplemental no merit report, if any, and the case record. The staff attorney submits to the appropriate judge or panel an independent recommendation as to whether the no merit report should be accepted, held in abeyance pending further action, or rejected. If the staff attorney recommends to accept the no merit report and if the judge or panel accepts the recommendation, the staff attorney will draft a proposed per curiam opinion or summary order affirming the matters appealed from and relieving the attorney of further responsibility on appeal. If the staff attorney recommends that the no merit report be held in abeyance pending further action or that the report be rejected, the staff attorney will draft the appropriate proposed order to implement the recommendation. The proposed opinion or order is circulated to the deciding judge or panel for consideration and approval. No merit reports are only accepted upon a unanimous vote of the deciding judges.

If a defendant files a response to a no merit report, and the attorney does not file a supplemental no merit report under WIS. STAT. RULE 809.32(1)(f), the court may order the attorney to do so, if appropriate under the facts of the case and necessary to the court's disposition of the appeal.

(12) One-Judge Appeals.

(a) For appeals of cases specified in WIS. STAT. § 752.31(1), a motion for a three-judge panel or for the appeal to be heard in the county of origin must be filed as required by WIS. STAT. RULE 809.41. Upon receipt, the clerk will notify the parties that the motion will be held in abeyance until the last brief has been filed. After the last brief has been filed, the clerk shall submit the motion and a copy of the briefs to a staff attorney. The staff attorney shall review the motion and briefs, and consult with a panel for the district in which the motion is filed. The panel shall determine whether the appeal warrants consideration by a three-judge panel. The staff attorney shall communicate the panel's determination to the Chief Judge who directs that an order be issued either granting or denying the motion. If the motion is granted, the clerk notifies a district secretary of the appropriate panel, and the appeal proceeds under the procedures for three-judge appeals. As with three-judge appeals, the clerk will notify the parties of the date of submission.

(b) Motions and petitions in appeals of cases specified in WIS. STAT. § 752.31(2) are decided by one Court of Appeals judge.

(13) Indigency.

If a person seeking to proceed in the Court of Appeals claims to be indigent, that claim will be accepted if an indigency determination as to that person has been previously made in the Court of Appeals or in the circuit court, except that if the court of appeals has reason to believe that the person's circumstances have materially changed since his or her last indigency determination, the court may request that the person complete a new affidavit of indigency. In addition, the court of appeals may request that the person complete a new affidavit of indigency if more than one year has passed since the person last filed an affidavit of indigency with the court of appeals. If no indigency determination has been previously made, the clerk sends the person an affidavit of indigency to be completed and returned. The affidavit is accompanied by a form order requiring completion and filing of the affidavit within 10 days of the date of the order or, failing which, ordering the dismissal of the proceeding.

The clerk makes indigency determinations based upon monetary guidelines established by the court. If the person is determined to be indigent, the clerk issues an order waiving payment of the filing fee in the proceeding. If the affidavit of indigency is incomplete or is not credible, the clerk issues an order stating that the affidavit of indigency is incomplete or is not credible, or the reasons for which the affidavit is deemed incredible, stating that the affidavit is not approved, and requiring the person either to pay the appropriate filing fee or submit a credible and completed affidavit within five days of the date of the order, failing which the proceeding will be dismissed.



If the clerk determines on the basis of a complete and credible affidavit that a person is not indigent, the clerk issues an order directing the person to pay the appropriate filing fee in the proceeding. If the person does not respond to a court order concerning indigency, the clerk assigns the matter to a staff attorney for review and reporting to the court, with recommendations for the disposition thereof.

## ***VII. EXPEDITED APPEALS***

### **(1) Eligible Cases.**

All appeals in the Court of Appeals shall be eligible for the expedited appeals program except for the following: (1) appeals brought under WIS. STAT. § 809.105; (2) appeals brought under WIS. STAT. § 809.107; (3) no merit appeals brought under WIS. STAT. RULE 809.32; (4) appeals brought under WIS. STAT. § 974.06(7); (5) appeals in which a party represents himself or herself; and (6) appeals brought under WIS. STAT. RULES 809.30 or 809.40(1) except for cases arising under chs. 48, 51, 55, or 938.

### **(2) Docketing Statement.**

(a) In all eligible cases, the appellant shall file in the Court of Appeals an original and one copy of a completed docketing statement and serve one copy of the completed docketing statement on each respondent. The completed docketing statement shall be submitted along with the notice of appeal sent to the Court of Appeals by the appellant, pursuant to WIS. STAT. RULE 809.10(1)(a). The respondent need not fill out a docketing statement but may file a response as outlined in paragraph (2)(e). Filing of the docketing statement with Court of Appeals constitutes certification of service on the respondents. WIS. STAT. RULES 809.80(2) and 801.14(4). The respondents must therefore be provided with a completed docketing statement by the appellant.

(b) The statement must be fully filled out and must accurately describe the jurisdictional facts, nature of trial court proceedings, issues on appeal, and standards of review applicable to those issues. Failure to include any matter in the docketing statement does not constitute a waiver. The court may, however, impose sanctions on counsel or appellant if it appears that available information has been withheld. WIS. STAT. RULE 809.83(2). The appellant must attach to the docketing statement a copy of the judgment or order appealed from and any findings of fact, conclusions of law or memorandum decision or opinion upon which the order or judgment is based.

(c) Failure to file a docketing statement within the time set forth above will be grounds for sanctions, including dismissal of the appeal, under WIS. STAT. RULE 809.83(2).

(d) A motion for extension of time within which to file the docketing statement will be granted only for the most compelling reasons. Counsel who filed the notice of appeal is responsible for insuring that the docketing statement is timely filed in this court even if new counsel will actually handle the appeal. Only one docketing statement may be filed for each notice of appeal; if

there is more than one appellant, appellants must consult and decide jointly who is responsible for filing the single docketing statement.

(e) Respondent, within 7 days of receipt of the docketing statement, may file an original and one copy of a single-page response if respondent strongly disagrees with appellant's statement of the case or the issues on appeal. The response must be sent to all other counsel. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. Multiple respondents should consult on the nature of the response to appellant's docketing statement and, if they decide to file a response, file only one response.

(f) Respondent must file a separate docketing statement if a cross-appeal is filed. The prior paragraph applies to appellants who are also cross-respondents. Cross-appellants and cross-respondents are subject to the same above provision as are appellants and respondents.

(g) If a docketing statement indicates a jurisdictional defect, the Presiding Judge may direct the parties by order to address the question of jurisdiction in a specific form and time period.

### (3) Time Limits for Records and Briefs.

Unless ordered otherwise by the court, the time for designating, ordering, preparing, serving and filing the transcripts, preparing and filing the record, and filing the briefs established by the Rules of Appellate Procedure, ch. 809, shall not be affected by the provisions of these procedures.

### (4) Presubmission Conference.

(a) In any eligible case, the court may, at its option, require counsel to attend, either by telephone or in person, a presubmission conference with a senior staff attorney of the court designated as a conference attorney.

(b) All attorneys of record are required to participate in the conference unless they notify the conference attorney that they are waiving their briefing rights. Failure to attend the conference may result in the imposition of sanctions pursuant to WIS. STAT. RULE 809.83(2). The purposes of a conference are to determine: (a) whether the appeal can be adequately briefed in fewer than the maximum number of pages permitted by WIS. STAT. RULE 809.19; (b) whether the submission and decision of the appeal can be expedited by a reduced briefing schedule, by summary disposition, or by other expedited means permitted under the Rules of Appellate Procedure; (c) what the issues are on appeal and the standards of review for those issues; (d) whether it is possible to narrow the issues on appeal; (e) whether the transcripts and record can be reduced and whether a statement in lieu of a portion of the record or a transcript can be agreed upon under WIS. STAT. RULE 809.15(5); (f) whether oral argument and/or a published opinion is likely to result in the appeal; (g) whether joint briefing by multiple parties is practical; (h) whether opposing counsel, after having an opportunity to discuss the case, may be able to reach a settlement; and (i) whether the processing of the appeal can be simplified or expedited in any other way.

(c) The ultimate objectives of the conference will be to reduce the time between the filing of the notice of appeal and the decision of the Court of Appeals while, at the same time, permitting the Court of Appeals to address its increasing workload and to reduce the expense of appeals to the litigants while providing alternative methods for expediting appeals. An order will be entered by the Presiding Judge upon recommendation of the conference attorney after the conference incorporating any matters resolved or identified at the conference.

(d) Conferences must be attended by counsel with responsibility for the appeal and authority to make decisions about any aspect of the appeal covered by these procedures. If lead counsel cannot attend, that attorney must: (1) appoint a substitute attorney to attend the conference; (2) delegate to the attending attorney the broadest feasible authority to narrow the appeal or agree on case processing matters; and (3) be available at the time of the conference. The parties to an appeal may be required to attend a conference. When the business office of counsel is not in the vicinity of the conference site, or for any other reason, the court may, at its option, hold any conference by telephone conference call.

(e) The conference date will be set by telephone with written confirmation or in a written notice informing counsel that a conference will be held. Unless counsel already has a directly conflicting court date, a request to alter the date will be disfavored. If a scheduled conference unavoidably conflicts with any counsel's schedule, he or she is obliged to contact all opposing counsel to determine alternative dates before contacting the conference attorney's secretary to reschedule.

(f) All matters discussed at the conference are completely confidential and will not be disclosed by the conference attorney except as embodied in the conference attorney's recommendation to the Presiding Judge for an order concerning further proceedings in the appeal or to the judge reviewing a request for reconsideration.

(g) The costs of preparing and filing a docketing statement are not taxable.

(h) In a case in which, after review of the docketing statement, the court finds a conference unnecessary or inappropriate, the court may on its own motion issue an order limiting the length of briefs, requiring joint briefing, setting the schedule for filing the record and briefs, or regulating any other aspect of the appeal that could be handled at a conference. WIS. STAT. RULES 809.20, 809.21(1) and 809.82(2).

(i) Any order issued by a Presiding Judge upon the recommendation of the conference attorney is subject to reconsideration upon filing of an appropriate motion within 5 days of the date of the order.

(j) If the case is expedited per agreement reached at the presubmission conference, the clerk's office will not send notice of receipt of briefs or notice of submission. The timing and length of briefs will be detailed in the order expediting the case.

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