

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. 17-05

**In re Wisconsin Statutes §§ 809.107
and 809.19**

FILED**NOV 9, 2017**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On May 4, 2017, Attorney April M. Southwick filed this rule petition on behalf of the Wisconsin Judicial Council. The petition asks the court to amend Wis. Stats. §§ 809.107 and 809.19 to clarify some ambiguity in the current rules of appellate procedure relating to the size, number, and timing of briefs in multiparty cases, including cases involving guardians ad litem.

The court discussed this petition at open administrative rules conference on June 21, 2017 and voted to schedule a public hearing. On September 6, 2017, a letter was sent to interested persons seeking input.

The court conducted a public hearing on November 6, 2017. Jennifer D. Andrews, Chief Staff Attorney for the Wisconsin Court of Appeals, presented the petition to the court on behalf of the Judicial Council. Diane M. Fremgen, Clerk of the Supreme Court and Court of Appeals, also appeared and spoke in favor of the petition.

At the ensuing closed rules conference, the court discussed the petition and voted unanimously to grant the petition and revise the rules as requested by the petitioner.

IT IS ORDERED that:

SECTION 1. 809.107 (6) (b) of the statutes is amended to read:

809.107 **(6)** (b) *Respondent's brief.* The respondent shall file a brief within 10 days after the service of the later of the appellant's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the appellant.

SECTION 2. 809.107 (6) (c) of the statutes is amended to read:

809.107 **(6)** (c) *Appellant's reply brief.* The appellant shall file within 10 days after the service of the later of the respondent's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the respondent, a reply brief or statement that a reply brief will not be filed.

SECTION 3. 809.107 (6) (d) of the statutes is amended to read:

809.107 **(6)** (d) *Guardian ad litem's brief.* If the guardian ad litem appointed under s. 48.235 (1)(c) for the child who is the subject of the proceeding takes the position of the appellant, the guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal with the court of appeals. If the guardian ad litem takes the position of a respondent, the guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief. If the guardian ad litem chooses not to participate in an appeal, the guardian ad litem shall file with the court a statement of reasons for not participating under s. 48.235 (7) within 15 days of the filing of the notice of appeal.

SECTION 4. 809.19 (5) (title) of the statutes is amended to read:

809.19 **(5)** (title) CONSOLIDATED, ~~AND JOINT,~~ AND MULTIPLE PARTY APPEALS.

SECTION 5. 809.19 (5) of the statutes is renumbered 809.19 (5)(a) and amended to read:

809.19 **(5)** (a) Each appellant in consolidated appeals or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. Appellants and co-appellants represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single appellant.

SECTION 6. 809.19 (5)(b) to (d) of the statutes are created to read:

809.19 **(5)** (b) In appeals involving more than one respondent, including consolidated cases, each respondent may file a separate brief or a joint brief with another respondent. Respondents represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single respondent.

(c) When multiple appellants' briefs have been filed, only a single respondent's brief is allowed by each respondent or by respondents filing a joint brief. When multiple respondents' briefs have been filed, only a single reply brief is allowed by an appellant or co-appellant or by appellants and co-appellants who filed a joint brief.

(d) If separate briefs are filed by multiple appellants or co-appellants, the time for filing and serving the respondent's brief shall not commence until all briefs on behalf of all appellants and co-appellants have been filed. If separate briefs are filed by

multiple respondents, the time for filing and serving the reply brief shall not commence until all briefs on behalf of all respondents have been filed.

SECTION 7. 809.19 (6)(g) of the statutes is created to read:

809.19 **(6)**(g) Subsection (5) applies to appeals involving multiple appellants-cross respondents or respondents-cross appellants.

SECTION 8. 809.19 (8m) of the statutes is amended to read:

809.19 **(8m)** GUARDIAN AD LITEM BRIEF. If the guardian ad litem chooses to participate in an appeal and takes the position of an appellant, the guardian ad litem's brief shall be filed within 40 days after the filing in the court of the record on appeal. If the guardian ad litem chooses to participate in an appeal and takes the position of a respondent, the guardian ad litem's brief shall be filed within 30 days after service of the appellant's brief. In an appeal related to the termination of parental rights, a guardian ad litem shall follow the filing procedures set forth under s. 809.107(6)(d). If an unpublished opinion is cited under s. 809.23(3)(a) or (b), a copy of the opinion shall be provided in an appendix to the brief. If the guardian ad litem chooses not to participate in an appeal of an action or proceeding, the guardian ad litem shall file with the court a statement of reasons for not participating within 20 days after the filing of the appellant's brief. The time for filing and serving the brief due after the guardian ad litem's brief shall not commence until all briefs of the parties in the position taken by the guardian ad litem have been filed.

IT IS FURTHER ORDERED that these amendments to Wis. Stat. §§ 809.107 and 809.19 are effective July 1, 2018 and shall apply to appeals filed on or after the effective date of this 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 9th day of November, 2017.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

