

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. 05-07

**In the matter of Proposed Amendments to Wis.
Stat. ss. 809.107 and 809.14**

FILED**MAY 1, 2006**

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On June 22, 2005, the Judicial Council filed a petition proposing certain amendments to Wis. Stat. ss. 809.107 and 809.14 of the Rules of Appellate Procedure relating to appeal procedures in termination of parental right (TPR) cases. A public hearing on the matter was conducted on November 14, 2005. The State Bar of Wisconsin supported the petition. At the hearing, the petitioner advised the court of pending legislation, 2005 A.B. 521, generally consistent with the petition, and withdrew certain language from the petition to ensure consistency with the pending legislation. See also Comments of Wisconsin District Attorneys Association filed October 26, 2005.

At the ensuing open administrative conference the court voted unanimously to adopt the petition with the changes proffered by the petitioner, but held the matter in abeyance

pending resolution of the pending legislation. On April 10, 2006, the governor signed 2005 A.B. 521 into law, thereby enacting 2005 Wisconsin Act 293 (the Act), which generally became effective April 21, 2006, except as noted in s. 71 of the Act. Accordingly, effective July 1, 2006, Wis. Stat. ss. 809.107 and 809.14 of the Rules of Appellate Procedure are amended as follows:

Section 1. 809.107 (1m) of the statutes is created to read:

809.107 (1m) DEFINITION. In this section, "appellant" means a person who files a notice of intent to pursue postdisposition or appellate relief.

Section 2. 809.107 (2) (title) of the statutes is repealed and recreated to read:

809.107 (2) APPEAL OR POSTDISPOSITION MOTION.

Section 3. 809.107 (2) (am) of the statutes is created to read:

809.107 (2) (am) *Appeal procedure; counsel to continue.* A person seeking postdisposition or appellate relief shall comply with this section. If the person desires to pursue postdisposition or appellate relief, counsel representing the person during circuit court proceedings under s. 48.427 shall continue representation by filing a notice under par. (bm), unless sooner discharged by the person or by the circuit court.

Judicial Council Note 2006 to Rule 809.107 (2) (am):

The creation of s. 809.107 (2) (am) requires counsel representing a parent who wants to appeal the TPR disposition to file a notice of intent to pursue postdisposition or appellate relief. Trial counsel's representation continues until the notice of intent is filed.

Section 4. 809.107 (2) of the statutes is renumbered 809.107 (2) (bm) and amended to read:

809.107 (2) (bm) ~~INITIATING THE APPEAL.~~ Notice of intent to pursue postdisposition or appellate relief. A person shall initiate an appeal under this section by filing, within ~~the time~~ 30 days after the date of entry of the judgment or order appealed from, as specified in s. 808.04 (7m), a notice of intent to ~~appear~~ pursue postdisposition or appellate relief with the clerk of the ~~trial~~ circuit court in which the judgment or order appealed from was entered. Also within that time period, the ~~person~~ appellant shall serve a copy of the notice of intent on the person representing the interests of the public, opposing counsel, the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding, the child's parent and any guardian and any custodian appointed under s. 48.427 (3) or 48.428 (2). The notice of intent shall include all of the following:

~~(a)~~1. The circuit court case name, number, and ~~court~~ caption.

~~(b)~~2. An identification of the judgment or order from which the ~~person filing the notice intends to appear~~ appellant

intends to seek postdisposition or appellate relief and the date on which ~~it~~ the judgment or order was ~~granted or~~ entered.

~~(e)3.~~ The name and address of the ~~person filing the notice of intent to appeal and the person's~~ appellant and the appellant's trial counsel.

~~(d)4.~~ For ~~a person~~ an appellant other than the state, whether the trial counsel for the ~~person filing the notice of intent to appeal~~ appellant was appointed by the state public defender and, if so, whether the ~~person's~~ appellant's financial circumstances have materially improved since the date on which the ~~person's~~ appellant's indigency was determined.

~~(e)5.~~ For ~~a person~~ an appellant other than the state, whether the person filing the notice of intent to appeal who does not request representation by the state public defender, whether the appellant will represent himself or herself or will be represented by retained counsel or requests the state public defender to appoint counsel for the appeal. If the ~~person~~ appellant has retained counsel to pursue postdisposition or appellate relief, ~~the~~ counsel's name and address shall be included.

Section 5. 809.107 (2) (bm) 4m. of the statutes is created to read:

809.107 (2) (bm) 4m. Whether the appellant requests representation by the state public defender for purposes of postdisposition or appellate relief.

Judicial Council Note 2006 to Rule 809.107 (2) (bm) :

Subsection 809.107 (2) (bm) contains the substance of former sub. (2). The amendment adds the case number to the content requirements for the notice of intent. Subsection (2) (bm) 2. deletes a reference to the date on which the judgment or order was granted because the time limits in s. 808.04 (7m) commence on the date the judgment or order was entered.

Section 6. 809.107 (2) (c) of the statutes is created to read:

809.107 (2) (c) *Early notice of intent to pursue postdisposition or appellate relief.* If the record discloses that the judgment or order appealed from was entered after the notice of intent to pursue postdisposition or appellate relief was filed, the notice of intent shall be treated as filed after that entry and on the date of the entry.

Judicial Council Note 2006 to Rule 809.107 (2) (c) :

The amendment to s. 809.107 (2) (c) addresses the practical concern that arises when a notice of intent is filed before the final judgment or order is entered. Similar to § 808.04(8), the amendment allows the filing date of the notice of intent to be deemed the date that the judgment or order was entered, and thereby preserves appellate jurisdiction.

Section 7. 809.107 (3) of the statutes is amended to read:

809.107 (3) ~~DUTIES OF CLERK OF TRIAL COURT.~~ CLERK TO SEND MATERIALS.

Within 5 days after a notice under sub. (2) (bm) is filed, the clerk of the circuit court shall do all of the following:

(a) If the ~~person filing the notice of intent to appeal~~ appellant requests representation by the state public defender for purposes of ~~the appeal,~~ postdisposition or appellate relief, the clerk shall send to the state public defender's appellate intake office a copy of the notice of intent that shows the date on which the notice was filed, a copy of the judgment or order specified in the notice ~~and~~ that shows the date on which the judgment or order was entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings for which a transcript already has been filed with the clerk of circuit court.

(b) If the ~~person filing the notice of intent to appeal~~ appellant does not request representation by the state public defender, ~~for purposes of the appeal,~~ the clerk shall send or furnish to the ~~person~~ appellant, if the ~~person~~ appellant is appearing without counsel, or to the ~~person's~~ appellant's attorney, if one has been retained, a copy of the judgment or order specified in the notice ~~and~~ that shows the date on which the judgment or order was entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings in which a transcript already has been filed with the clerk of circuit court.

Judicial Council Note 2006 to Rule 809.107(3):

To facilitate compliance with the time limits in this section, the amendment requires the clerk to send a copy of the

judgment or order that shows the date on which it was entered and a list of transcripts already on file to the state public defender's intake office, or to the person if appearing without counsel, or to retained counsel.

Section 8. 809.107(4) (title) of the statutes is amended to read:

809.107 (4) ~~TRANSCRIPT~~ REQUEST FOR TRANSCRIPT AND CIRCUIT COURT CASE RECORD.

Section 9. 809.107 (4) is renumbered 809.107 (4) (b) and amended to read:

809.107 (4) (b) Person not represented by public defender.
~~A person filing a notice of intent to appeal under sub. (2) An~~
appellant who does not request representation by the state
public defender for purposes of postdisposition or appellate
relief shall request a transcript of the reporter's notes, and
may request a copy of the circuit court case record within 15
days after filing the notice of intent under sub. (2) (bm). An
appellant who is denied representation by the state public
defender for purposes of postdisposition or appellate relief
shall request a transcript of the reporter's notes, and may
request a copy of the circuit court case record, within 30 days
after filing a notice of intent under sub. (2) (bm).

(4m) FILING AND SERVICE OF TRANSCRIPT AND CIRCUIT COURT CASE RECORD.

The court reporter shall file the transcript with the circuit court and serve a copy of the transcript on the ~~person filing the notice of intent to appeal~~ appellant within 30 days after the transcript is requested. The clerk of circuit court shall

serve a copy of the circuit court case record on the ~~person~~ appellant within 30 days after the ~~court~~ case record is requested, and shall indicate in the case record the date and manner of service.

Section 10. Section 809.107 (4) (a) of the statutes is created to read:

809.107 (4) (a) *State public defender appointment of counsel.* Within 15 days after the state public defender appellate intake office receives the materials from the clerk of circuit court under sub. (3) (a), the state public defender shall appoint counsel for the appellant and request a transcript of the reporter's notes and a copy of the circuit court case record.

Judicial Council Note 2006 to Rule 809.107(4) and (4m):

New s. 809.107 (4) (a) codifies existing practice and establishes a time limit for the state public defender to appoint counsel and request transcripts and circuit court case records. The public defender's time limit commences on the date that the public defender's office receives the materials from the circuit court clerk, rather than on the date the notice of intent is filed, so as to reduce the number of extension motions that must be filed when the clerk does not timely send the materials under sub. (3) (a).

The amendment to s. 809.107 (4) (b) clarifies the procedure applicable to persons who are not represented by the state public defender and creates time limits applicable to a person who has applied for and has been denied public defender

representation. In the latter case, the rule provides an additional 15 days for the person to obtain private counsel and request a copy of the transcript and case record. The time limit is set at 30 days because 15 days will have expired while the public defender's office determines whether the person is eligible for appointed counsel. This time limit commences on the date the notice of intent was filed, rather than the date of the public defender's determination because that determination does not appear in the case record.

Subsection (4m) includes the last two sentences of former sub. (4). Subsection (4m) also creates a new requirement for the circuit court clerk to indicate the date and manner of service in the case record. The new requirement is necessary because the notice of appeal time limit is measured from the date of service of the case record or transcript, whichever is later.

Section 11. 809.107 (5) (title), (a), (b) (title), (c) (title), and (e) (title) of the statutes are amended to read:

809.107 (5) NOTICE OF APPEAL; ~~TRANSMITTAL OF RECORD.~~ (a) ~~Filing~~ copy and service of notice of appeal. Within 30 days after the later of the service of the transcript or the circuit court case record, unless extended under s. 809.82, ~~the person filing a notice of intent to appeal under sub. (2)~~ appellant shall file a notice of appeal as provided in s. 809.10~~(1)~~ and serve a copy of the notice on the persons required to be served under sub. (2) (bm).

(b) Transmittal of record by clerk.

(c) *Requesting transcripts for other parties.*

(e) *Service of transcript on other parties.*

Judicial Council Note 2006 to Rule 809.107 (5):

The amendment to s. 809.107 (5) (a) clarifies that the time limit for filing a notice of appeal commences 30 days from the later of the service of the transcript or case record. Persons contemplating filing a notice of appeal are better able to assess grounds for relief after reviewing both the transcripts and the circuit court case record.

Section 12. 809.14 (1) of the statutes is amended to read:

809.14 (1) A party seeking an order or other relief in a case shall file a motion for the order or other relief. The motion must state the order or relief sought and the grounds on which the motion is based and may include a statement of the position of other parties as to the granting of the motion. A motion may be supported by a memorandum. ~~Any~~ Except as provided in sub. (1m), any other party may file a response to the motion within 11 days after service of the motion.

Section 13. 809.14 (1m) of the statutes is created to read:

809.14 (1m) If a motion is filed in an appeal under s. 809.107, any other party may file a response to the motion within 5 days after service of the motion.

Judicial Council Note 2006 to Rule 809.14(1) and (1m):

The amendment to s. 809.14 (1) and the creation of s. 809.14 (1m) to establish a shorter response time to appellate motions should advance the ultimate resolution of TPR appeals.

IT IS ORDERED that the Judicial Council Notes to these rules are not adopted but shall be printed for information purposes.

IT IS FURTHER ORDERED that notice of this amendment of 809.107 and creation of 809.14 (1m) be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 1st day of May, 2006.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court

