

Appellate eFiling Petition 20-07
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Amendments to ch. 809

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SUBCHAPTER I DEFINITIONS

809.01 Rule (Definitions) is repealed and recreated to read:

809.01 Rule (Definitions). In this chapter:

- (1) "Appeal" means a review in an appellate court by appeal or writ of error authorized by law of a judgment or order of a circuit court.
- (2) "Appellant" means a person who files a notice of appeal.
- (3) "Bookmark" means an internal link allowing the reader to quickly navigate to different sections of a document.
- (4) "Clerk of court" or "clerk" means the clerk of the supreme court and court of appeals.
- (5) "Co-appellant" means a person who files a notice of appeal in an action or proceeding in which a notice of appeal has previously been filed by another person and whose interests are not adverse to that person.
- (6) "Converted" means that all documents in a paper case file have been imaged by the clerk of court and the case file is available to accept filings via the electronic filing system.
- (7) "Court" means the court of appeals or, if the appeal or other proceeding is in the supreme court, the supreme court.
- (8) "Cross-appellant" means a respondent who files a notice of cross-appeal or a respondent who files a statement of objections under s. 808.075 (8).
- (9) "Director" means the director of state courts.
- (10) "Docketing" means receiving a document and entering its receipt into the court record. A new matter is "docketed" when the clerk accepts an initiating document and creates a new case.
- (11) "Document" means a pleading, notice of appeal, petition, writ, form, notice, motion, order, affidavit, exhibit, brief, judgment, opinion, or other filing in an action or proceeding.
- (12) "Electronic filing system" means an Internet-accessible system established by the supreme court for the purpose of filing documents in an appellate court, automatically integrating them into the court case management system, and electronically serving them on the parties.
- (13) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the document. To be considered electronically

signed, a document must be submitted by or on behalf of a user through the electronic filing system. An electronic signature shall state "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. "Electronic signature" includes only those signature technologies specifically approved by the director.

(14) "Filing agent" means a person authorized under s. 799.06 (2) to appear on behalf of another.

(15) "High-volume filing agent" means a person authorized under s. 799.06 (2) who appears on behalf of an entity filing 10 or more actions per calendar year in the circuit courts of this state.

(16) "Hyperlink" means an external link allowing the reader to quickly navigate to a source outside the document for information.

(17) "Imaged document" means an electronic copy of a document originally created or submitted on paper.

(18) "Initiating document" means a notice of appeal, petition, complaint, certification from the court of appeals, pre-appeal motion, or any other document filed to commence an action or proceeding in the appellate court.

(19) "Mandatory user" means a user who is subject to s. 809.801 (3) (a).

(20) "Monospaced font" means a font in which each character uses an equal amount of horizontal space.

(21) "Notice of activity" means a notice sent by the electronic filing system to alert the parties that there has been a new user, filing or activity on the case.

(22) "Notice of docketing" means a notice sent by clerk after an appeal or other appellate court proceeding has been initiated that identifies the assigned appellate case number, caption, and court, and that includes relevant information and instructions about the case.

(23) "Opt in" means to agree to receive electronic service and file electronic documents on a particular case, after first registering for access to the electronic filing system.

(24) "Opt out" means to cease participation as a voluntary user or to indicate withdrawal from the case as an attorney.

(25) "Paper party" means a party not subject to s. 809.801 (3) (a) who chooses not to participate in the electronic filing system.

(26) "Portable document format" means a universal file format that preserves the fonts, formatting, pagination, and graphics of a source document.

(27) "Proportional font" means a font in which the horizontal space used by a character varies.

(28) "Registration" means entering into an agreement to access the electronic filing system prior to filing documents under s. 801.18 (3) (d) or 809.801 (3) (d).

(29) "Respondent" means a person adverse to the appellant or co-appellant.

(30) "Serif font" means a font that has short ornaments or bars at the upper and lower ends of the main strokes of the characters.

(31) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.

(32) "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.

(33) "User" means an individual who has registered to use the electronic filing system. Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.

(34) "Voluntary user" means a party not subject to s. 809.801 (3) (a) who voluntarily registers to use the electronic filing system under s. 809.801 (3) (b).

(35) "Word" means a group consisting of one or more alphabetical characters with a space or punctuation mark preceding and succeeding the group.

Committee explanatory note:

Electronic filing terminology has been added to the existing definitions of s. 809.01 and the section repealed and recreated due to extensive renumbering. The eFiling terms are taken from the circuit court eFiling rule or conform to current usage. The term "electronic signature" now includes the format requirements of s. 809.801 (12) (a). The term "transmit" is limited to the transfer of documents between the clerk of the circuit court and the appellate clerk and does not include electronic filing by the parties.

Comment Proposed for Publication, 2021

The definitions of s. 809.01 have been broadened to incorporate electronic filing terminology.

SUBCHAPTER II CIVIL APPEAL PROCEDURE IN COURT OF APPEALS

809.10 Rule (Initiating the appeal).

(1) NOTICE OF APPEAL.

(a) Filing. A person shall initiate an appeal by filing a notice of appeal with the clerk of the circuit court in which the judgment or order appealed from was entered. The clerk of the circuit court may not refuse to accept a notice of appeal for failure to pay the appellate court filing fee required by s. 809.25 (2) (a).

(b) Content. The notice of appeal shall include all of the following:

1. The circuit court case name and number.
2. An identification of the judgment or order from which the person filing the notice intends to appeal and the date on which it was entered.
3. A statement of whether the appeal arises in one of the types of cases

specified in s. 752.31 (2).

4. A statement of whether the appeal is to be given preference in the circuit court or court of appeals pursuant to statute.
 5. If the appeal is under s. 809.30 or 809.32, a statement of the date of service of the last transcript or copy of the circuit court case record if no postconviction motion is filed, the date of the order deciding postconviction motions, or the date of any other notice-of-appeal deadline that was established by the court of appeals.
 6. If counsel is appointed under ch. 977, a copy of the order appointing counsel.
- ~~(c) *Copies of the notice.* At the same time that the person files the notice of appeal, the person shall send a copy of the notice of appeal to the clerk of the court of appeals.~~
- (d) *Docketing statement.* The person shall ~~send~~ file with the ~~court of appeals~~ circuit court ~~an original and one copy of~~ a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany ~~the court of appeals' copy of~~ the notice of appeal. ~~The person shall send a copy of the completed docketing statement to the other parties to the appeal.~~ Docketing statements need not be filed in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under ch. 980, or in cases in which a party represents himself or herself. Docketing statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under chs. 48, 51, 55, or 938.
- (e) *Time for filing.* The notice of appeal must be filed within the time specified by law. The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.
- (f) *Error in content not jurisdictional defect.* An inconsequential error in the content of the notice of appeal is not a jurisdictional defect.
- ~~(g) *Motions under s. 809.41 (1) or (4).* A motion for an order or other relief under s. 809.41 (1) (a) or (4), if any, shall be filed in the circuit court and shall accompany the notice of appeal.~~
- ~~(h) *Service.* For electronic filing users in the circuit court case, receipt of the notice of appeal, docketing statement, and motions filed under s. 809.41 (1) or (4) through the circuit court electronic filing system under s. 801.18 shall constitute service of the documents. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The appellant shall serve paper parties in the circuit court by traditional methods.~~
- ~~(i) *Filing in court of appeals.* Subject to s. 809.12, other than the notice of appeal, docketing statement, appellant's motion under 809.41 (1) or (4), if any, and statement on transcript under s. 809.11 (4) (b), which shall be~~

filed in the circuit court, all subsequently filed documents in an appeal shall be filed in the court of appeals.

- (2) MULTIPLE APPEALS.
 - (a) *Joint and co-appeals.* If 2 or more persons are each entitled to appeal from the same judgment or order entered in the same action or proceeding in the trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may, after filing separate notices of appeal, proceed as a single appellant. If the persons do not file a joint appeal or elect to proceed as a single appellant, or if their interests are such as to make joinder impracticable, they shall proceed as appellant and co-appellant, with each co-appellant to have the same procedural rights and obligations as the appellant.
 - (b) *Cross-appeal.* A respondent who seeks a modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the period established by law for the filing of a notice of appeal, or 30 days after the filing of a notice of appeal, whichever is later. A cross-appellant has the same rights and obligations as an appellant under this chapter.
- (3) CONSOLIDATED APPEALS IN SEPARATE CASES. The court may consolidate separate appeals in separate actions or proceedings in the trial court upon its own motion, motion of a party, or stipulation of the parties.
- (4) MATTERS REVIEWABLE. An appeal from a final judgment or final order brings before the court all prior nonfinal judgments, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed and ruled upon.

Committee explanatory note:

Under current ss. 809.10 and 809.11, an appellant files the notice of appeal in the circuit court case, but files several accompanying documents (docketing statement, statement on transcript, and optional motion for 3-judge panel) in the court of appeals. Under the proposed rule, the appellant will file the notice of appeal and the two or three accompanying documents in the circuit court. Since most of the parties to the appeal are already involved in the litigation, this mechanism will allow all the documents to be served through circuit court eFiling without the need for service of paper copies. In felony appeals, the attorney general is not a party to the circuit court case, but becomes a party on appeal by virtue of current s. 809.80 (2) (b). The clerk of the court of appeals will opt the attorney general in as an attorney for the state and will serve the attorney general through the appellate eFiling system, as provided in proposed s. 809.802.

As amended, proposed ss. 809.10 and 809.11 do the following:

- The notice of appeal and accompanying documents will be filed and served in the circuit court case.
- Electronic filing users will be considered served when they receive the document through the circuit court eFiling system. Non-electronic filing users (“paper parties”) will continue to be served by traditional methods such as postal mail and hand-delivery.
- The proposed rule codifies the current practice where the clerk creates a “notice of docketing” to let the parties know the appeal has been filed and provides the case number. The appellate clerk will serve the notice of docketing on the electronic parties in the circuit court case, advising them to “opt in” to the court of appeals case.
- The appellate clerk will serve the notice of docketing on the attorney general and opt the attorney general in as an attorney for the state; the attorney general will access the documents through the appellate eFiling system.
- Subsequent documents will be filed and served via the appellate court eFiling system.
- Requirements for duplicate filing in the circuit court and appellate court will be eliminated.
- Sub. (1) (g) adds a specific reference to s. 809.41 to make it clear that these optional motions should be filed in the circuit court and transmitted to the court of appeals with the notice of appeal and docketing statement.

Comments Proposed for Publication, 2021

Sub. (1) (a) adds a provision codifying *Douglas v. Dewey*, 147 Wis. 2d 328, 338, 433 N.W.2d 243 (1989), holding that payment of the appellate filing fee under s. 809.25 (2) (a) 1. is not a prerequisite to filing a notice of appeal.

To facilitate the adoption of electronic filing and service, three documents will be filed and served in the circuit court case either with the notice of appeal or shortly thereafter: docketing statement, statement on transcript, and optional motions under s. 809.41 (1) and (4). Circuit court electronic filing users are served when they receive these documents through the circuit court eFiling system. When the attorney general is made a party by operation of s. 809.802 (1), the attorney general will be served through the appellate eFiling system. Subsequent documents will be filed and served via the appellate eFiling system.

809.103 Appeals in proceedings related to prisoners.

- (1) In this section, “prisoner” has the meaning given in s. 801.02 (7) (a) 2.
- (2) The appellate court shall notify the department of justice by a procedure developed by the director of state courts in cooperation with the department

of justice when the appellate court rules that an appeal or supervisory writ proceeding brought by a prisoner meets any of the following conditions:

- (a) Is frivolous, as determined under s. 802.05 (2) or 895.044.
 - (b) Is used for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.
 - (c) Seeks review of a denial of monetary damages from a defendant who is immune from such relief.
 - (d) There is no ground upon which relief may be granted.
- (3) A prisoner is not relieved from paying the full filing fee related to an appeal or supervisory writ proceeding if the appellate court dismisses the appeal or supervisory writ proceeding for one of the reasons listed in sub. (2).

809.104 Appeal of decisions relating to electronics and information technology manufacturing zone.

- (1) APPLICABILITY. This section applies to the appeal of a judgment or order vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an electronics and information technology manufacturing zone designated under s. 238.396 (1m) and supersedes all inconsistent provisions of this chapter.
- (2) APPEAL AS OF RIGHT.
- (a) Notwithstanding s. 808.03 (1), an appeal from a judgment or order of the trial court vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an electronics and information technology manufacturing zone designated under s. 238.396 (1m) may be taken to as a matter of right and is governed by this section.
 - (b) A party may initiate an appeal under this section by filing a notice of appeal with the clerk of the trial court in which the order or judgment appealed from was entered and shall specify in the notice of appeal the order or judgment appealed from. The docketing statement required under s. 809.10(1) (d) shall be filed in the circuit court and shall accompany the notice of appeal. The appellant shall pay the filing fee with the notice of appeal. The clerk of the circuit court shall transmit to the court of appeals, within 3 days ~~of~~after the filing of the notice of appeal, the docketing statement, a copy of the notice of appeal, ~~the filing fee~~, and a copy of the circuit court record of the case maintained under s. 59.40 (2) (b) or (c).
 - (bm) The clerk of the court of appeals shall file the appeal upon receipt of the items referred to in ~~this paragraph~~ par. (b). The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. The clerk shall serve the notice of docketing on paper parties by traditional methods.

- (c) The appellant shall request a copy of the transcript of the court reporter's verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 5 days after the filing of the notice of appeal under par. (b).
- (d) Within 5 days after filing of the notice of appeal in the circuit court, The the appellant shall file a statement on transcript with the clerk of the court of appeals, shall file a copy of the statement on transcript with the clerk of the circuit court, and shall serve a copy of the statement on transcript on the other parties to the appeal within 5 days after the filing of the notice of appeal in the circuit court under par. . circuit court, who shall transmit the statement on transcript to the court of appeals within 3 days after its filing. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for the other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.
- (dm) For electronic filing users in the circuit court case, receipt of the notice of appeal, docketing statement, and statement on transcript through the circuit court electronic filing system shall constitute service of the documents. The appellant shall serve the notice of appeal, docketing statement and statement on transcript on paper parties by traditional methods.
- (e) The court reporter shall serve copies of the transcript on the parties indicated in the statement on transcript within 5 days after the date the appellant requested copies of the transcript under par. (c).
- (f) Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:
1. The appellant shall file a brief within 15 days after the filing of the record on appeal.
 2. The respondent shall file a brief within 10 days after the service of the appellant's brief.
 3. The appellant shall file within 10 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.
 4. Within 3 days of receipt of the appellant's reply brief or statement that a reply brief will not be filed under subd. 3., the court of appeals shall

certify the appeal to the supreme court under s. 809.61.

5. The supreme court shall give preference to a certification from the court of appeals under this section. If the supreme court refuses to take jurisdiction of the appeal certified to it by the court of appeals under this section, the appeal shall continue in the court of appeals as though the certification had not been made.
- (3) STAY PENDING APPEAL. Any judgment or order of a circuit court vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an electronics and information technology manufacturing zone designated under s. 238.396 (1m) shall be stayed automatically upon the filing of an appeal as provided under this section. Any party to the proceeding may apply to the appellate court in which the case is pending at the time to request that the stay be modified or vacated.

Committee explanatory note:

The changes to this section are consistent with the procedural changes for general appeals proposed in ss. 809.10 and 809.11. This section was created by the legislature in 2017. It was amended by this court in 2019 to update terminology relating to digital court reporting.

809.105 Appeals in proceedings related to parental consent prior to performance of abortion.

- (1) APPLICABILITY. This section applies to the appeal of an order under s. 48.375 (7) and supersedes all inconsistent provisions of this chapter.
- (2) INITIATING AN APPEAL. Only a minor may initiate an appeal under this section. The minor shall initiate the appeal by filing, or by a member of the clergy filing on the minor's behalf, a notice of appeal with the clerk of the trial court in which the order appealed from was entered and shall specify in the notice of appeal the order appealed from. ~~At the same time, the minor or member of the clergy shall notify the court of appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of the court of appeals. The clerk of the trial court shall assist the minor or member of the clergy in sending a copy of the notice of appeal to the clerk of the court of appeals.~~ The minor may use the name "Jane Doe" instead of her name on the notice of appeal and all other papers filed with the court of appeals.
- (3) PERFECTING THE APPEAL.
 - (a) *Fee.* No fee for filing an appeal in the court of appeals under this section may be required of a minor or of a member of the clergy who files an appeal under this section on behalf of the minor.
 - (b) *Forwarding to court of appeals.* The clerk of the trial court shall 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).
- (c) *Filing-Docketing in court of appeals.* The clerk of the court of appeals shall ~~file~~ docket the appeal immediately upon receipt of the items specified in par. (b). The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. The clerk shall serve the notice of docketing on paper parties by traditional methods.
- (d) *Statement on transcript.* A minor or member of the clergy may not be required to file a statement on transcript in an appeal under this section.
- (4) RECORD ON APPEAL. The record in an appeal under this section consists of the following:
- (a) The petition.
 - (b) Proof of service of the notice of hearing.
 - (c) The findings of fact, conclusions of law and final order of the trial court.
 - (d) Any other order made that is relevant to the appeal and the documents upon which that other order is based.
 - (e) Exhibits, 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 document filed in the trial court that the minor requests to have included in the record.
 - (g) The notice of appeal.
 - (h) A transcript of the court reporter's verbatim record.
 - (i) The certificate of the clerk.
 - (j) If the trial court appointed a guardian ad litem under s. 48.235 (1) (d), a letter written to the court of appeals by the guardian ad litem indicating his or her position on whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of an abortion is in the minor's best interests.
- (5) TRANSCRIPT OF COURT REPORTER'S VERBATIM RECORD. At the time that a minor or member of the clergy files a notice of appeal, the minor or member of the clergy shall make arrangements with the reporter for the preparation of a transcript of the court reporter's verbatim record of the proceedings under s. 48.375 (7). The reporter shall file the transcript with the trial court within 2 calendar days after the notice of appeal is filed. The county of the court that held the proceeding under s. 48.375 (7) shall pay the expense of transcript preparation under this subsection.

- (6) VOLUNTARY DISMISSAL. A minor may dismiss an appeal under this section by filing a notice of dismissal in the court of appeals.
- (7) BRIEFS. Briefs are not required to be filed in appeals under this section.
- (8) ASSIGNMENT AND ADVANCEMENT OF CASES. The court of appeals shall take cases appealed under this section in an order that ensures that a judgment is made within 4 calendar days after the appeal has been filed in the court of appeals. The time limit under this subsection may be extended with the consent of the minor and her counsel, if any, or the member of the clergy who initiated the appeal under this section, if any.
- (8m) ORAL ARGUMENT. If the court of appeals determines that a case appealed under this section is to be submitted with oral argument, the oral argument shall be held in chambers or, on motion of the minor through her counsel or through the member of the clergy who filed the appeal under this section, if any, or on the court of appeals' own motion, by telephone, unless the minor through her counsel or the member of the clergy demands that the oral argument be held in open court.
- (9) COSTS. The court of appeals may not assess costs against a minor or member of the clergy in an appeal under this section.
- (10) REMITTITUR.
- (a) A judgment by the court of appeals under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the court of appeals reverses a trial court order denying a petition under s. 48.375 (7), the court of appeals shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the court of appeals granting the minor's petition. If the court of appeals affirms the trial court order, it shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a copy of the order of the court of appeals denying the petition and shall also notify the minor by her counsel or the member of the clergy who initiated the appeal under this section on behalf of the minor, if any, that she may, under sub. (11), file a petition for review with the supreme court under s. 809.62. The court of appeals shall pay the expenses of service of notice under this subsection. The clerk of the court of appeals shall transmit to the trial court the judgment and opinion of the court of appeals and the record in the case filed under sub. (4), within 31 days after the date that the judgment and opinion of the court of appeals are filed. If a petition for review is filed under sub. (11), the transmittal shall be made within 31 days after the date that the supreme court rules on the petition for review.
- (b) Counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall immediately, upon notification

under par. (a) that the court of appeals has granted or denied the petition, notify the minor. If the court of appeals has granted the petition, counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order of the court of appeals to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the copy in the minor's medical record.

(11) PETITION FOR REVIEW IN SUPREME COURT.

- (a)** Only a minor or the member of the clergy who initiated the appeal under this section, if any, may initiate a review of an appeal under this section. The petition for review of an appeal in the supreme court shall contain:
- 1.** A statement of the issues presented for review and how the issues were decided by the trial court and court of appeals.
 - 2.** A brief statement explaining the reason for appeal to the supreme court.
 - 3.** The judgment and opinion of the court of appeals, and the findings of fact, conclusions of law and final order of the trial court that were furnished to the court of appeals. The court of appeals shall provide a copy of these papers to the minor, if any, the member of the clergy who initiated the appeal under this section, if any, her counsel or her guardian ad litem, if any, immediately upon request.
 - 4.** A copy of any other document submitted to the court of appeals under sub. (4).
- (b)** The supreme court shall decide whether or not to grant the petition for review and shall decide the issue on review within the time specified in par. (c).
- (c)** The supreme court shall, by court rule, provide for expedited appellate review of cases appealed under this subsection because time may be of the essence regarding the performance of the abortion.
- (cm)** If the supreme court determines that a case reviewed under this subsection is to be submitted with oral argument, the oral argument shall

be held in chambers or, on motion of the minor through her counsel or through the member of the clergy who initiated the appeal under this section, if any, or on the supreme court's own motion, by telephone, unless the minor through her counsel or the member of the clergy demands that the oral argument be held in open court.

- (d) A judgment or decision by the supreme court under this section is effective immediately, without transmittal to the trial court, as an order either granting or denying the petition. If the supreme court reverses a court of appeals order affirming a trial court order denying a petition under s. 48.375 (7), the supreme court shall immediately so notify the minor by personal service on her counsel, if any, or on the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the supreme court granting the minor's petition. If the supreme court affirms the order of the court of appeals, it shall immediately so notify the minor by her counsel or by the member of the clergy who initiated the appeal under this section, if any. The clerk of the supreme court shall transmit to the trial court the judgment, or decision, and opinion of the supreme court and the complete record in the case within 31 days after the date that the judgment, or decision, and opinion of the supreme court are filed. The supreme court shall pay the expense of service of notice under this subsection.
- (e) Counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall immediately, upon notification under par. (d) that the supreme court has granted or denied the petition, notify the minor. If the supreme court has granted the petition, counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order of the supreme court to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, if any, or the member of the clergy who initiated the appeal under this section, if any, shall hand deliver a certified copy of the order to an agent of the corporation, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this paragraph shall place the order in the minor's medical record.

- (12) CONFIDENTIALITY AND ANONYMITY. All proceedings in the court of appeals and the supreme court that are brought under this section shall be conducted in a confidential manner, and the minor may use the name "Jane Doe" instead of her name on all papers filed with either court. The identity of the minor involved and all records and other papers pertaining to an appeal shall be kept confidential, except as provided in s. 48.375 (7) (e).
- (13) CERTAIN PERSONS BARRED FROM PROCEEDINGS. No parent, or guardian or legal custodian, if one has been appointed, or foster parent, if the minor has been placed in a foster home, and the minor's parent has signed a waiver granting the department of children and families, a county department under s. 46.215, 46.22, or 46.23, or the foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, as defined in s. 48.375 (2) (b), of any minor who has initiated an appeal under this section may attend or intervene in any proceeding under this section.

Committee explanatory note:

The changes to this section are consistent with the procedural changes for general appeals proposed in ss. 809.10 and 809.11. This section was created by the legislature in 1991 and has been modified by both the legislature and the supreme court since then. In 2016, the court amended the rule to permit the clerk of circuit court to transmit the record on appeal to the appellate court electronically.

809.107 Appeals in proceedings related to termination of parental rights.

- (1) APPLICABILITY. This section applies to the appeal of an order or judgment under s. 48.43 and supersedes all inconsistent provisions of this chapter.
- (1m) DEFINITION. In this section, "appellant" means a person who files a notice of intent to pursue postdisposition or appellate relief.
- (2) APPEAL OR POSTDISPOSITION MOTION.
- (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.
- (bm) *Notice of intent to pursue postdisposition or appellate relief.* A person shall initiate an appeal under this section by filing, within 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 pursue postdisposition or appellate relief with the clerk of the circuit court in which the judgment or order appealed from was entered. Also within that time period, the 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). If the record discloses that final adjudication occurred after the notice of intent was filed, the notice shall be treated as filed after entry of the judgment or order appealed from on the day of the entry of the final judgment or order. The notice of intent shall include all of the following:
1. The circuit court case name, number, and caption.
 2. An identification of the judgment or order from which the appellant intends to seek postdisposition or appellate relief and the date on which the judgment or order was entered.
 3. The name and address of the appellant and the appellant's trial counsel.
 4. For an appellant other than the state, whether the trial counsel for the appellant was appointed by the state public defender and, if so, whether the appellant's financial circumstances have materially improved since the date on which the appellant's indigency was determined.
 - 4m. Whether the appellant requests representation by the state public defender for purposes of postdisposition or appellate relief.
 5. For an appellant other than the state, 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. If the appellant has retained counsel to pursue postdisposition or appellate relief, counsel's name and address shall be included.
 6. For an appellant other than the state, the signature of the appellant on whose behalf the notice of intent is filed. Appellant's counsel, if any, shall also sign the notice, but may not sign in lieu of the appellant.
- (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.
- (3) 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 appellant requests representation by the state public defender for purposes of 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 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 appellant does not request representation by the state public

defender, the clerk shall send or furnish to the appellant, if the appellant is appearing without counsel, or to the appellant's attorney, if one has been retained, a copy of the judgment or order specified in the notice 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.

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

(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 court reporter's verbatim record and a copy of the circuit court case record.

(b) Person not represented by public defender. 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 court reporter's verbatim record, 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 court reporter's verbatim record, 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 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 appellant within 30 days after the case record is requested, and shall indicate in the case record the date and manner of service.

(5) NOTICE OF APPEAL.

(a) Filing; 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 appellant shall file a notice of appeal as provided in s. 809.10 and serve a copy of the notice on the persons required to be served under sub. (2) (bm). For an appellant other than the state, the appellant on whose behalf the notice of appeal is filed shall sign the notice. Appellant's counsel, if any, shall also sign the notice of appeal, but may not sign in lieu of the appellant. Within 3 days after the filing of the notice of appeal, the clerk of circuit court shall transmit to the court of appeals, the notice of appeal and a copy of the circuit court record of the case maintained pursuant to s. 59.40 (2) (b) or (c).

(ag) Docketing in court of appeals. The clerk of the court of appeals shall docket the appeal upon receipt of the notice of appeal. The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. The clerk shall serve the notice of docketing on paper parties by traditional methods.

(am) *Notice of abandonment of appeal.* If the person who filed a notice of intent to appeal under sub. (2) and requested a transcript and case record under sub. (4) decides not to file a notice of appeal, that person shall notify the person required to be served under sub. (2) of this decision, within 30 days after the service of the transcript and case record under sub. (4).

(b) *Transmittal of record by clerk.* The clerk of circuit court shall transmit the record to the court of appeals as soon as the record is prepared, but in no event more than 15 days after the filing of the notice of appeal.

(c) *Requesting transcripts for other parties.* The appellant shall request a copy of the transcript of the court reporter's verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 5 days after the filing of the notice of appeal.

(d) *Statement on transcript.* Within 5 days after filing the notice of appeal in the circuit court, the appellant shall file a statement on transcript with the clerk of ~~the court of appeals, shall file a copy of the statement on transcript with the clerk of circuit court, and shall serve a copy of the statement on transcript on the other parties to the appeal within 5 days after the filing of the notice of appeal in the circuit court.~~ circuit court, who shall transmit the statement on transcript to the clerk of the court of appeals within 3 days after its filing. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.

(dm) For electronic filing users in the circuit court case, receipt of the notice of appeal and statement on transcript through the circuit court electronic filing system shall constitute service. The appellant shall serve the notice of appeal and statement on transcript on paper parties by traditional methods.

(e) *Service of transcript on other parties.* The court reporter shall serve copies of the transcript on the parties indicated in the statement on transcript within 5 days after the date the appellant requested copies of the transcript under

par. (c).

(5m) NO-MERIT REPORTS. A s. 809.32 no-merit report, response, and supplemental no-merit report may be filed in an appeal from an order or judgment terminating parental rights. The appointed attorney shall file in the court of appeals and serve on the client-parent the no-merit report and certification within 15 days after the filing of the record on appeal. The appointed attorney shall serve on the client-parent a copy of the transcript and the record on appeal at the same time that the no-merit report is served on the client-parent. The client-parent may file in the court of appeals a response to the no-merit report within 10 days after service of the no-merit report. ~~Within 5 days after the response to the no-merit report has been filed in the clerk's office, the clerk shall send a copy of the response to the appointed attorney.~~ The attorney may file a supplemental no-merit report and affidavit within 10 days after receiving the response to the no-merit report.

(6) SUBSEQUENT PROCEEDINGS IN COURT OF APPEALS; PETITION FOR REVIEW IN SUPREME COURT. Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:

(a) *Appellant's brief-in-chief.* The appellant shall file a brief within 15 days after the filing of the record on appeal.

(am) *Motion for remand.* If the appellant intends to appeal on any ground that may require postjudgment fact-finding, the appellant shall file a motion in the court of appeals, within 15 days after the filing of the record on appeal, raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue. If the appellant is not represented by counsel, the appellant shall file any motion under this paragraph within 45 days after the filing of the record on appeal. The appellant's counsel or, if the appellant is not represented by counsel, the appellant, shall file an affidavit in support of the motion stating with specificity the reasons that postjudgment fact-finding is necessary. The person signing the affidavit shall in the affidavit affirm under s. 802.05 (2) that, to the best of his or her knowledge, information, and belief, remand is warranted and is not being sought to cause unnecessary delay. If the court of appeals grants the motion for remand, it shall set time limits for the circuit court to hear and decide the issue, for the appellant to request transcripts of the hearing, and for the court reporter to file and serve the transcript of the hearing. The court of appeals shall extend the time limit under par. (a) for the appellant to file a brief presenting all grounds for relief in the pending appeal.

(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.
- (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.
 - (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.
 - (e) *Decision.* Cases appealed under this section shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief or statement that a reply brief will not be filed.
 - (f) *Petition for review.* A petition for review of an appeal in the supreme court, if any, shall be filed within 30 days after the date of the decision of the court of appeals. For a petitioner other than the state, the petitioner on whose behalf the petition for review is filed shall sign the petition. Petitioner's counsel, if any, shall also sign the petition for review, but may not sign in lieu of the petitioner. The supreme court shall give preference to a petition for review of an appeal filed under this paragraph.

Committee explanatory note:

The changes to this section are consistent with the procedural changes for general appeals proposed in ss. 809.10 and 809.11. This section was created by the legislature in 1993 and has been modified by both the legislature and the supreme court since then.

809.11 Rule (Items to be filed and transmitted).

- (1) FEE. The appellant shall pay the filing fee ~~with the notice of appeal to the clerk of the court of appeals when the notice of appeal is filed. Payment may be made by check or through the court electronic payment system, unless arrangements are made with the clerk of court or otherwise ordered by the court. An appellant may file with the court of appeals a petition or motion for waiver of the filing fee under s. 814.29 (1) or (1m), using a form provided by the court for that purpose.~~
- (2) TRANSMITTAL OF NOTICE OF APPEAL. The clerk of the circuit court shall

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 appellant's docketing statement, the appellant's motion filed under s. 809.41(1) or (4) if any, the filing fee, and ~~a copy of~~ the circuit court record of the case maintained pursuant to s. 59.40 (2) (b) or (c).

(3) FILING-DOCKETING IN COURT OF APPEALS.

(a) The clerk of the court of appeals shall ~~file-docket~~ the appeal upon receipt of the items referred to in sub. (2), create a notice of docketing, and transmit the notice of docketing to the clerk of circuit court.

(b) For electronic filing users in the circuit court case, receipt of the notice of docketing through the circuit court electronic filing system shall constitute service of the notice of docketing and notification that the court of appeals proceeding has been commenced. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on the paper parties by traditional methods.

(4) REQUESTING TRANSCRIPTS AND FILING STATEMENT ON TRANSCRIPT.

(a) The appellant shall request a copy of the transcript of the court reporter's verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 14 days after the filing of the notice of appeal.

(b) The appellant shall file a statement on transcript with ~~the clerk of the court of appeals, shall file a copy of the statement on transcript with~~ the clerk of the circuit court, ~~and shall serve a copy of the statement on transcript on the other parties to the appeal~~ within 14 days after the filing of the notice of appeal in the circuit court. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. The clerk of circuit court shall transmit the statement on transcript to the court of appeals within 3 days after its filing. If a transcript that is not yet filed in the circuit court is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.

(c) For electronic filing users in the circuit court case, receipt of the statement on transcript through the circuit court electronic filing system shall constitute service. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The

appellant shall serve the statement on transcript on paper parties by traditional methods.

- (5) ADDITIONAL PORTIONS OF TRANSCRIPT. Within 14 days after filing of a statement on transcript as required under sub. (4), any other party may file in the court of appeals a designation of additional portions to be included in the transcript and serve a copy of the designation on the appellant. Within 14 days after the filing of such a designation, the appellant shall file in the circuit court the statement required by sub. (4) (b) covering the other party's designation. If the appellant fails or refuses to request the designated portions, the other party, within 14 days of the appellant's failure or refusal, may request the portions by filing a statement on transcript in the circuit court or move the circuit court for an order requiring the appellant to request the designated portions.
- (6) CROSS-APPEALS. Subsections (4) and (5) apply to cross- appellants.
- (7) REPORTER'S OBLIGATIONS.
- (a) *Service of transcript copies.* The reporter shall serve copies of the transcript on the parties to the appeal, file the transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the transcript has been filed and served within 60 days after the date on which the transcript was requested and arrangements were made for payment under sub. (4). If additional portions of the transcript are requested under sub. (5), the reporter shall serve copies of the additional portions of the transcript on the parties to the appeal, file the additional portions of the transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the additional portions of the transcript have been filed and served within 60 days after the date on which the additional portions were requested and arrangements were made for payment. If supplementation or correction of the record is ordered under s. 809.14 (3) (b), the reporter shall serve copies of the supplemental or corrected transcript on the parties to the appeal, file the supplemental or corrected transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the supplemental or corrected transcript has been filed and served within 20 days after the order for supplementation or correction is entered or within the time limit set by order of the court.
- (b) *Return of statement regarding transcript arrangements.* The reporter shall sign and send to the appellant, within 5 days after receipt, the statement regarding transcript arrangements and filing required under sub. (4) (b).
- (c) *Extensions.* A reporter may obtain an extension for filing the transcript only by motion, showing good cause, that is filed in the court of appeals and served on all parties to the appeal, the clerk of the circuit court and the district court administrator.
- (d) *Sanctions.* If a reporter fails to timely file a transcript, the court of appeals

may declare the reporter ineligible to act as an official court reporter in any court proceeding and may prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

Committee explanatory note:

Together with s. 809.10, this section addresses how documents in appeals are filed, served, and transmitted between courts.

- The filing fee, if applicable, is paid directly to the clerk of the court of appeals and not through the clerk of circuit court, as was sometimes the practice before the electronic payment system was created. A provision is added to clarify that the appellant may request a fee waiver, which is currently unstated.
- “Filing” is changed to “Docketing” in par. (3) because technically the notice of appeal was filed in the circuit court case. New language has been added to describe and name the procedures the clerk currently follows in creating the case in the court of appeals. This section again provides electronic service of the notice of docketing on the parties below and on the attorney general, with traditional service for paper parties.

Comments Proposed for Publication, 2021

Sub. (3) codifies the clerk’s practice of sending a notice of docketing to inform the parties that the appeal has been filed and providing the case number. The appellate clerk serves the notice of docketing on the electronic parties in the circuit court case, advising them to opt in to the court of appeals case. The appellate clerk also serves the notice of docketing on the attorney general and opts in the attorney general as an attorney for the state.

To facilitate the adoption of electronic filing and service, sub. (4) requires that the statement on transcript be filed and served in the circuit court case. The statement on transcript must be filed within 14 days of filing the notice of appeal, the docketing statement under s. 809.10 (1) (d), and motions made under s. 809.10 (1) (g), if any.

809.12 Rule (Motion for relief pending appeal). A person seeking relief under s. 808.07 shall file a motion in the trial court unless it is impractical to seek relief in the trial court. A motion in the court must show why it was impractical to seek relief in the trial court or, if a motion had been filed in the trial court, the reasons given by the trial court for its action. A person aggrieved by an order of the trial court granting the relief requested may file a motion for relief from the order with the court. A judge of the court may issue an ex parte order granting temporary relief pending a ruling by the

court on a motion filed pursuant to this rule. A motion filed in the court under this section must be filed in accordance with s. 809.14.

809.13 Rule (Intervention). A person who is not a party to an appeal may file in the court of appeals a petition to intervene in the appeal. A party may file a response to the petition within 11 days after service of the petition. The court may grant the petition upon a showing that the petitioner's interest meets the requirements of s. 803.09 (1), (2), or (2m).

809.14 Rule (Motions).

(1) A party ~~seeking moving the appellate court for~~ 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. Except as provided in sub. (1m), any other party may file a response to the motion within 11 days after service of the motion.

(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.

(2) A motion for a procedural order may be acted upon without a response to the motion. A party adversely affected by a procedural order entered without having had the opportunity to respond to the motion may move for reconsideration of the order within 11 days after service of the order.

(3)

(a) The filing of a motion seeking an order or other relief which may affect the disposition of an appeal or the content of a brief, ~~or~~ a motion seeking consolidation of appeals, a motion for extension of time to file a statement on transcript, or a motion relating to production of transcripts, automatically tolls the time for performing an act required by these rules from the date the motion was filed until the date the motion is disposed of by order.

(b) The filing of a motion to supplement or correct the record automatically tolls the time for performing an act required by these rules from the date the motion was filed until the date the motion is disposed of by order. If a motion to correct or supplement the record is granted, time limits for performing an act required by these rules shall be tolled from the date on which the motion was filed until the date on which the supplemental or corrected record return is ~~filed~~transmitted to the appellate clerk, except that the time for preparation of supplemental or corrected transcripts is governed by s. 809.11 (7) (a).

(c) The ~~moving party shall serve~~clerk of the appellate court shall transmit to the clerk of circuit court ~~with a copy of~~ any motion filed in the appellate court of appeals under this subsection.

(4) Subsection (3) does not apply in an appeal under s. 809.105.

(5) (a) Any motion for an order or other relief made under sub. (1) before a notice of appeal is filed shall be made in the court of appeals. The clerk of the court of appeals shall assign a pre-appeal case number, create a notice that the case has been docketed, and transmit a copy of the notice of docketing and pre-appeal motion to the clerk of circuit court.

(b) For electronic filing users in the circuit court case, receipt of the notice of docketing and the pre-appeal motion through the circuit court electronic filing system provides access to the pre-appeal proceeding and constitutes service of the pre-appeal motion. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional methods. The movant shall serve the pre-appeal motion on paper parties by traditional methods.

(c) Subsequent pre-appeal motions arising out of the same circuit court case shall be filed and docketed in the same pre-appeal proceeding. The clerk shall transmit a copy of the motions to the clerk of circuit court.

Committee explanatory note:

Proposed sub. (3) identifies those motions needed by both the appellate and circuit court and provides for cross-copying to the other court without duplicate filing by the litigants.

Proposed sub. (5) codifies the existing process for filing motions prior to appeal, which the clerk designates as “XX cases”. Pre-appeal motions are typically motions for extension of time to pursue post-conviction relief or motion for extension of time for appointing counsel. The first pre-appeal motion is filed as a new action in the court of appeals and transmitted to the circuit court, providing service on the electronic parties. Subsequent motions are also transmitted to the circuit court.

Comments Proposed for Publication, 2021

Sub. (3) identifies those motions needed by both the appellate and circuit court and provides for cross-copying to the other court, without duplicate filing by the litigants.

Sub. (5) codifies the existing process for filing motions prior to appeal. The first motion prior to appeal is filed as a new action in the court of appeals and transmitted to the circuit court, providing service on the electronic parties. Subsequent motions are also transmitted to the circuit court.

809.15 Rule (Record on appeal).

- (1) COMPOSITION OF RECORD.
- (a) The record on appeal consists of the following unless the parties stipulate to the contrary:
1. The initiating document by which the action or proceeding was commenced;
 2. Proof of service of summons or other process;
 3. Answer or other responsive pleading;
 4. Instructions to the jury;
 5. Verdict, or findings of the court, and order based thereon;
 6. Opinion of the court;
 7. Final judgment;
 8. Order made after judgment relevant to the appeal and documents upon which the order is based;
 9. Exhibits 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 document filed in the court requested by a party to be included in the record;
 11. Notice of appeal;
 12. Bond or undertaking;
 13. Transcript of court reporter's verbatim record;
 14. Certificate of the clerk.
- (b) The clerk of the circuit court may request by letter permission of the court to substitute a photocopy for the actual paper or exhibit filed in the circuit court. A photocopy does not include a document that the clerk of the circuit court has electronically scanned into the court record as permitted under SCR 72.05.
- (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.
- (d) If the record includes the redacted version of any document, it shall also contain the unredacted version if submitted to the circuit court. The unredacted version shall be marked as confidential.
- (e) If the record includes a sealed document, the document shall be marked as sealed.
- (2) COMPILATION AND APPROVAL OF THE RECORD. The clerk of circuit court shall assemble the record in the order set forth in sub. (1) (a), identify each record item by its circuit court document number, date of filing, and title ~~each document~~, and prepare a list of the numbered documents. The clerk shall use the document number assigned in the circuit court as the record number on appeal. ~~If the record is in an electronic format, the~~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 documents constituting the record.

(3) DEFECTIVE RECORD. A party who believes that the record, including the transcript of the court reporter's verbatim record, is defective or that the record does not accurately reflect what occurred in the circuit court may move the court in which the record is located to supplement or correct the record. Motions under this subsection may be heard under s. 807.13.

(4) PROCESSING THE RECORD.

(a) *Transmittal of the record.* The clerk of the circuit court shall electronically 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.

(b) *Late transcript.* If the reporter fails to file the transcript within the time limit specified in the statement on transcript, the clerk of circuit court shall transmit the record not more than 90 days after the filing of the notice of appeal, unless the court of appeals extends the time for filing the transcript of the court reporter's verbatim record. If the court extends the time for filing the transcript of the court reporter's verbatim record, the clerk of circuit court shall transmit the record within 20 days after the date that the transcript is filed.

(c) *Supplementation or correction of record.* Notwithstanding pars. (a) and (b), if a motion to supplement or correct the record is filed in circuit court, the clerk of circuit court may not transmit the record until the motion is determined. The clerk of the circuit court shall transmit to the clerk of the court of appeals a copy of any motion to supplement or correct the record that is filed in circuit court ~~shall be sent to the clerk of the court of appeals.~~ The circuit court shall determine, by order, the motion to supplement or correct the record within 14 days after the filing or the motion is considered to be denied and the clerk of circuit court shall immediately enter an order denying the motion and shall transmit the

record to the court of appeals within 20 days after entry of the order. If the circuit court grants the motion, the clerk of circuit court shall transmit the supplemented or corrected record to the court of appeals within 20 days after entry of the order or filing of the supplemental or corrected record in the circuit court, whichever is later.

- (4m) NOTICE OF FILING OF RECORD. 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.
- (5) AGREED STATEMENT IN LIEU OF RECORD. The parties may file in the court within the time prescribed by sub. (4) an agreed statement of the case in lieu of the record on appeal. The statement must:
- (a) Show how the issues presented by the appeal arose and were decided by the trial court; and
 - (b) Recite sufficient facts proved or sought to be proved as are essential to a resolution of the issues presented.

Committee explanatory note:

Provisions are added to sub. (1) to reflect circuit court rules regarding redacted, confidential, and sealed records adopted in 2016. These rules address how redacted and sealed documents should be handled in the court record transmitted to the court of appeals, ss. 801.19 (2) (i) and 801.21 (9).

Since late 2018, the circuit court case management software has been assigning a document number to each item in the circuit court record as it is filed. This numbering system has proven very useful. Under proposed sub. (2), the clerk will use the same numbering on appeal. This will make it easier for parties to refer to documents and will prevent confusion from stamping a document with two different numbers.

Comments Proposed for Publication, 2021

In 2016 the court adopted ss. 809.19 (2) (i) and 801.21 (9) relating to redaction and sealing of certain court documents. Sub. (1) addresses transmittal to the court of appeals of a record that contains redacted or sealed documents.

In 2018 the circuit court case management software began assigning a document number to each item in the circuit court record as it is filed. Sub. (2) requires the record index to use the same numbering on appeal. This will

facilitate identification of documents and minimize confusion that may arise when a document is stamped with two different numbers by the circuit and appellate courts. If a circuit court record item is not included in the record on appeal, this will appear as a numbering gap in the index to the record.

809.17 Rule (Expedited appeals program, voluntary alternative dispute resolution and presubmission conference).

- (1) In order to minimize appellate delay and reduce its backlog, the court of appeals may develop an expedited appeals program. The program may involve mandatory completion of docketing statements by appellant's counsel and participation in presubmission conferences at the direction of the court, but participation in the court's accelerated briefing and decision process is voluntary. The rules and procedures governing the program shall be set forth in the court of appeals' internal operating procedures.
- (2) The court of appeals may require all attorneys of record in any appeal to participate in a presubmission conference, either by telephone or in person, with an officer of the court. An attorney of record with no direct briefing interest in the appeal may waive his or her participation in the conference by written notice to the court.
- (2m) The court of appeals may establish an appellate mediation program and make and enforce all rules necessary for the prompt and orderly dispatch of the business of the program. Participation in the appellate mediation program is voluntary, but the program may involve mandatory participation in the presubmission conferences at the direction of the court. Only those cases in which a docketing statement is required to be filed under s. 809.10 (1) (a) are eligible for participation in the appellate mediation program. The parties to the appeal shall pay the fees of a mediator providing services under the program, unless those fees are waived or deferred by the court. The rules and procedures governing the program shall be set forth in the court of appeals' internal operating procedures.

809.18 Rule (Voluntary dismissal).

- (1) An appellant may dismiss a filed appeal by filing a notice of dismissal in the court or, if the appeal is not yet filed, in the circuit court. The dismissal of an appeal by the appellant or by agreement of the parties or their counsel does not affect the status of a lower court decision, the status of a cross-appeal, or the right of a respondent to file a cross-appeal.
- (2) If the parties compromise or otherwise settle the entire matter in litigation prior to the issuance of the decision of the court of appeals, the appellant shall immediately inform the court in writing, signed by all parties, that the matter has been compromised or settled. Upon receipt of such information, the court shall dismiss the appeal in accordance with sub. (1).

809.19 Rule (Briefs and appendix).

- (1) BRIEF OF APPELLANT. The appellant shall file a brief within 40 days of the filing in the court of the record on appeal. The brief must contain:
- (a) A table of contents with page references of the various portions of the brief, including headings of each section of the argument, and a table of cases arranged alphabetically, statutes and other authorities cited with reference to the pages of the brief on which they are cited.
 - (b) A statement of the issues presented for review and how the trial court decided them.
 - (c) A statement with reasons as to whether oral argument is necessary and a statement as to whether the opinion should be published and, if so, the reasons therefor.
 - (d) A statement of the case, which must include: a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record.
 - (e) An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the appellant, the reasons therefor, with citations to the authorities, statutes and parts of the record relied on as set forth in the Uniform System of Citation and SCR 80.02.
 - (f) A short conclusion stating the precise relief sought.
 - (g) Reference to an individual by one or more initials or other appropriate pseudonym or designation rather than by his or her full name when the record is required by law to be confidential or as required under s. 809.86. In an appeal from a domestic abuse protective order or harassment injunction in which "petitioner" has been substituted for an individual's name in the caption, reference to that individual shall be made only as "petitioner".
 - (h) The signature of the attorney who files the brief; or, if the party who files the brief is not represented by an attorney, the signature of that party. If the brief was prepared with the drafting assistance of an attorney under s. 802.05 (2m), the brief must contain a statement that "This document was prepared with the assistance of a lawyer."
 - (i) Reference to the parties by name, rather than by party designation, throughout the argument section, unless "petitioner" must be substituted for the party's name under par. (g).

Committee explanatory note:

Sub. (1) (g) addresses cases in which an individual seeks a restraining order or harassment injunction as protection against domestic abuse or

violence. 18 U.S.C. 2265 (d) prohibits making public on the Internet any information that would reveal the identity or location of the party seeking protection. In Wisconsin, the clerk directs the parties to designate the party seeking protection solely as “petitioner” in the case caption and the briefs. Adding this requirement to the rule is consistent with current practice and federal requirements. It is an exception to par. (i), which otherwise requires reference to the parties by name and not by party designation. A similar change is made to s. 809.81 (9) regarding the caption.

(2) APPENDIX.

(a) *Contents.* The appellant's brief shall ~~include~~ be filed with a short appendix containing, at a minimum, the findings or opinion of the circuit court, 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, and a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b). If the appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix shall also contain the findings of fact and conclusions of law, if any, and final decision of the administrative agency. The appendix shall include a table of contents: indicating, for each record item included in the appendix, the title, page of the appendix on which the record item begins, and the circuit court document number. The table of contents shall also contain the citation of any unpublished opinion included in the appendix.

(ae) Form. The appendix shall be filed as a single document separate from the brief. Each document shall be imaged at a resolution sufficient to ensure legibility.

(am) Confidentiality. If the record is required by law to be confidential, the portions of the record included in the appendix shall be reproduced using one or more initials or other appropriate pseudonym or designation 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.

~~(b) Certification. An appellant's counsel shall append to the appendix a signed certification that the appendix meets the content requirements of par. in the following form:~~

~~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. 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. or ; and 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 one or more initials or other appropriate pseudonym or designation 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~~

Committee explanatory note:

Since late 2018 the circuit court case management software has assigned a document number to each item in the circuit court record as it is filed. This numbering system has proven useful and the parties in the circuit court often refer to key documents by their document numbers. As provided in sub. (2) (a), maintaining the same numbering on appeal will make it easier for parties to refer to documents and will prevent confusion from stamping a document with two different numbers. There may be gaps in the numbering if some items are not chosen for the record on appeal.

Sub. (2) (ae) requires the appendix to be filed as a single document. In the event of a very large appendix that cannot be electronically filed as a single document due to the size limitations of the system, s. 809.801 (8) directs the user to contact the clerk for assistance. The capacity for the size of a document that can be uploaded has recently been upgraded.

Certification of the appendix has been moved to new sub. (8g).

(3) RESPONDENT'S BRIEF.

(a)

1. The respondent shall file a brief within the later of any of the following:
 - a. Thirty days after the date of service of the appellant's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail.
 - b. Thirty days after the date on which ~~the court accepts~~ the appellant's brief for filing is filed.

- c. Thirty days after the date on which the record is filed in the office of the clerk.
 2. The brief must conform with sub. (1), except that the statement of issues and the statement of the case may be excluded.
 3. Within the time limits for filing a respondent's brief, a party who has been designated as a respondent may file a statement with the court that it will not be filing a brief because its interests are not affected by the issues raised in the appellant's brief or because its interests are adequately represented in another respondent's brief.
- (b) The respondent may file with ~~his or her~~the respondent's brief a supplemental appendix as a separate document. If the record is required by law to be confidential, the supplemental appendix must comply with the confidentiality requirements under sub. (2) (~~am~~). Any supplemental appendix shall include a table of contents that conforms with sub. (2) (a) and a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); ~~and a signed certification that the appendix complies with the confidentiality requirements under sub. in a form substantially similar to the confidentiality provision under sub. (2) (b).~~ Each document to be included in the appendix shall be imaged at a resolution sufficient to ensure legibility.

Committee explanatory note:

Currently, sub. (3) (a) provides that a response brief is due 30 days after the date on which the court accepts the appellant's brief for filing. This wording sometimes causes confusion as to whether the acceptance date is the same as the filing date. The proposed rule changes the language to calculate the due date of the response based on the filing of the brief, service of the brief, or filing of the record, whichever is latest.

For electronic parties, the date of acceptance and date of service will be the same: entry of the new document into the court record will trigger a notice of activity to the electronic parties, thus serving them. For example:

- Brief eFiled at 4:30 p.m., accepted at 4:45 p.m., notice of activity sent at 4:45 p.m. Filing, acceptance and service occur on the same date for electronic parties.
- Brief eFiled at 6:30 p.m., accepted at 8:00 a.m. the next day. Filing occurs on day 1, acceptance and service on day 2. Acceptance and service will occur on the same date for electronic parties.

For paper briefs, filing is complete either upon mailing (when filed with proof of the mailing date) or when received by the clerk's office under s. 809.80 (4) (b). Service is complete upon mailing under s. 801.14 (2).

- (4) REPLY BRIEF.
- (a) The appellant shall file a reply brief, or a statement that a reply brief will not be filed, within the later of:
 - 1. Fifteen days after the date of service of the respondent's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail; or
 - 2. Fifteen days after the date on which ~~the court accepts~~ the respondent's brief for filings filed.
 - (b) The reply brief under par. (a) shall comply with sub. (1) (e) and (f). 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 reply brief.
- (5) CONSOLIDATED, JOINT, AND MULTIPLE PARTY APPEALS.
- (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.
 - (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.
- (6) CROSS-APPEAL. Briefing in a cross-appeal shall be as follows:
- (a) An appellant-cross-respondent shall file a brief titled "Appellant's Brief" within the time specified by, and in compliance with, the requirements of subs. (1) and (2).
 - (b)
 - 1. A respondent-cross-appellant shall file a brief titled "Combined Brief of Respondent and Cross-Appellant" within the later of any of the following:
 - a. Thirty days after the date of service of the appellant-cross-respondent's brief, and 3 additional days under s. 801.15 (5) (a) if

service is accomplished by mail.

b. Thirty days after the date on which ~~the court accepts~~ the appellant-cross-respondent's brief for filing is filed.

c. Thirty days after the date on which the record is filed in the office of the clerk.

2. ~~The front and back covers of the combined brief shall be red.~~ The respondent portion of the combined brief shall comply with the requirements of this section for a respondent's brief, including the length limitation for such a brief set forth in sub. (8) (c) 1. The cross-appellant portion of the combined brief shall comply with the requirements of subs. (1) and (2) for an appellant's main brief, including the length limitation for such a brief set forth in sub. (8) (c) 1., except that the requirements of sub. (1) (c) and (d) may be omitted, the cross-appellant portion of the combined brief shall be preceded by a ~~blank blue~~white cover page titled "Cross-Appellant's Brief", and a signature shall be required only at the conclusion of the cross-appellant portion of the combined brief.

(c)

1. An appellant-cross-respondent shall file a brief titled "Combined Brief of Appellant and Cross-Respondent" within the later of:

a. Thirty days after the date of service of the respondent-cross-appellant's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail; or

b. Thirty days after the date on which ~~the court accepts~~ the respondent-cross-appellant's brief for filing is filed.

2. ~~The front and back covers of the combined brief shall be gray.~~ The appellant portion of the combined brief shall comply with the requirements of sub. (4) for a reply brief, including the length limitation for such a brief set forth in sub. (8) (c) 2. The cross-respondent portion of the combined brief shall comply with the requirements of sub. (3) for a respondent's brief, including the length limitation for such a brief set forth in sub. (8) (c) 1., except that the requirement of sub. (1) (c) may be omitted, the cross-respondent portion of the combined brief shall be preceded by a ~~blank red~~white cover page titled "Cross-Respondent's Brief", and a signature shall be required only at the conclusion of the cross-respondent portion of the combined brief.

(d) A respondent-cross-appellant shall file either a reply brief titled "Reply Brief of Cross-Appellant" in the form required by sub. (4) for reply briefs, or a statement that a reply brief will not be filed, within the later of:

1. Fifteen days after the date of service of the appellant-cross-respondent's brief, and 3 additional days under s. 801.15 (5) (a) if service is accomplished by mail; or

2. Fifteen days after the date on which ~~the court accepts~~ the appellant-

cross-respondent's brief ~~for filing~~ is filed.

- (e) Each part of a combined brief shall comply with the form and length certification requirements of sub. ~~(8)-(d)~~ (8g).
- (f) A respondent-cross-appellant must comply with the same appendix rules as an appellant under subs. (2) (a), (2) (am), and ~~(b8g)~~, except that a respondent-cross-appellant shall not be required to include materials that are contained in the appellant's appendix.
- (g) Subsection (5) applies to appeals involving multiple appellants-cross respondents or respondents-cross appellants.

~~(8m)~~ (6m) **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.

(7) NONPARTY BRIEFS.

- (a) A person not a party may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person is desirable.
- (b) If the brief will support or oppose a petition under s. 809.62 or 809.70, the brief shall accompany the motion and shall be filed within the time permitted for the opposing party to file a response to the petition. 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.
- (c) Except as provided in par. (b), the motion shall be filed not later than 14 days after the respondent's brief is filed, and the brief shall be filed within the time specified by the court.
- (d) A nonparty brief shall comply with sub. (1) (e) and (f). 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.

Committee explanatory note:

Electronic filing includes a feature for non-party filing that allows anyone individuals who are not parties to upload a document for the clerk to review and accept or reject, just as if it came in the mail. The clerk may include those persons for later electronic service where appropriate. ~~This Non-party filing~~ is also addressed in s. 809.801(3) (j).

(8) NUMBER, FORM, PAGINATION, AND LENGTH OF BRIEFS AND APPENDICES.

(a) *Number.*

- ~~1. A person shall file either 22 copies of a brief or appendix in the supreme court or the number that the court directs and shall serve 3 copies on each party.~~
- ~~2. Except as provided in subd. 3 and s. 809.43, a person shall file either 10 copies of a brief or appendix in the court of appeals or the number that the court directs and shall serve 3 copies on each party.~~
- ~~3. Except as provided in s. 809.43, a person who is found indigent under s. 814.29 (1) and who is not represented by counsel shall file 5 copies of a brief or appendix in the court of appeals and shall serve one copy on each party. A prisoner who has been granted leave to proceed without prepayment of fees under s. 814.29 (1m) and who is not represented by counsel shall file 5 copies of a brief or appendix in the court of appeals and shall serve one copy on each party.~~
- ~~4. In addition to the copies required in subds. 1., 2., and 3., and, all parties represented by counsel shall file one electronic copy of each brief as provided in s. and may file one electronic copy of each appendix as provided in s.~~

1. For electronic filing users, each brief or appendix shall be filed and served using the electronic filing system as provided in s. 809.801 (6) (a). The filing party shall serve one copy of the brief and appendix on each paper party by traditional methods.
2. A paper party shall file, serve, and receive paper documents by traditional methods as provided in s. 809.80. A paper party shall file one copy of each brief or appendix with the court and serve one copy on every other paper party by traditional methods.

(b) *Form.* A brief ~~and~~ or appendix must conform to the following specifications:

- ~~1. Produced~~ Created by a ~~duplicating or copying~~ process that produces a clear, black image ~~of the original~~ on a white paper background. Cover pages shall be white. Briefs shall be produced by using either a monospaced font or a proportional serif font. Carbon copies may not be filed.
- ~~2. Produced on~~ Formatted to fit 8-1/2 by 11 inch paper.
- The use of word processors or typewriters is encouraged but not required.

- ~~b. If a monospaced font is used: 10 characters per inch; double-spaced; a 1.5 inch margin on the left side and a one inch margin on all other sides.~~
 - ~~c. If a proportional serif font is used: proportional serif font, minimum printing resolution of 200 dots per inch, minimum 13 point body text, 11 point for block quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. Italics may not be used for normal body text but Italics may be used only for citations, headings, emphasis and foreign words; bold may be used only for citations, headings, and emphasis. Line spacing in body text must be between 1.15 and 1.5 lines or an equivalent line spacing; additional space between paragraphs is permitted but not required. Block quotes and footnotes must be single-spaced.~~
 - ~~d. If handwriting is used: the text must be legibly printed and not include cursive writing, except the person's signature.~~
 - ~~e. Margins must be a minimum of a 1.25 inch margin on the right and left sides and a minimum of a 1 inch margin on the top and bottom.~~
- ~~4. Securely bound only on the left side with heavy strength staples or by means of velobinding or the "perfect" ("hot glue") binding method, with pagination at the center of the bottom margin. A brief may be bound by another method if authorized in writing by the clerk of the court. The pages of paper documents must be secured together at the top left corner.~~

~~(bm) *Page numbers.* A brief or appendix must have page numbers centered in the bottom margin using Arabic numerals with sequential numbering starting at "1" on the cover.~~

~~(c) *Length.*~~

- ~~1. For a brief filed by a party under sub. (1), (2), (5), or (6) (a), (b), or (c), or by a guardian ad litem under sub. (6m), Those those portions of a party's or a guardian ad litem's the brief referred to in sub. (1) (d), (e) and (f) shall not exceed 50 pages if a monospaced font or handwriting is used, or 11,000 words if a proportional serif font is used.~~
- ~~2. Appellant's For a reply brief filed under sub. (4) or (6) (c) or (d), those portions referred to in sub. (4) (b) or a brief filed under sub. (7) shall not exceed 13 pages if a monospaced font or handwriting is used, or 3,000 words if a proportional serif font is used.~~
- ~~3. For a brief filed under sub. (7), those portions of the brief referred to in sub. (1) (e) and (f) shall not exceed 13 pages if a monospaced font or handwriting is used, or 3,000 words if a proportional serif font is used.~~

~~(d) *Form and length certification.* Counsel shall append to the brief and appendix a signed certification that the brief and appendix meet the form and length requirements of pars. and in the following form:~~

~~I hereby certify that this brief conforms to the rules contained in s. 809.32 for a brief and appendix produced with a [monospaced] [proportional serif] font. The length of this brief is [pages] [words].~~

~~Signed:~~

~~Signature~~

~~For purposes of the certification and length requirements of this subsection, counsel may use the word count produced by a commercial word processor available to the general public.~~

Committee explanatory note:

Number: Under the proposed rule, electronic filing users will file briefs and appendices electronically and will no longer file multiple paper copies with the court. Other users will be served electronic copies through the electronic filing system. Paper parties will file one paper copy of each brief and appendix with the court; this will be scanned into the court file by the clerk and served on the users electronically. Paper parties will be served one paper copy of each document by traditional methods. The requirement to file a separate electronic copy in addition to a paper copy is eliminated.

Form: A number of changes have been made to form, although the overall appearance of documents will remain generally the same.

- References to the number of characters per inch size and 2-point leading have been updated to use the language of font size and line spacing familiar from word processing programs.
- Standards for handwritten briefs have been added, along with a statement of the court's authority to review briefs for legibility, which is a particular problem with documents written in cursive. These provisions are adapted from other state court rules and federal rules on habeas petitions. This language is also added to the no-merit response page limits in s. 809.32 (1) (e) and to s. 809.81 (3) regarding style.
- Margins are required so that scanned documents will include all the words.
- A simple method of securing the pages together is requested by the clerk of court to make filed documents easier to take apart and scan. This is also appropriate given the limited number of printed copies needed for the paper parties.

Pagination: Beginning pagination on the first page will make it easier to use electronic documents by matching the page number to the page header applied by the eFiling system, so documents will not have two different page numbers.

Length: Allowable page counts and word limits for the various kinds of briefs are sometimes hard to decipher in the current rules, so sub. (8) (c) has been rewritten for clarification. At present there are no page limits specific to handwritten briefs, so the proposed rule adds page limits equal to the monospaced page limits, based on the average number of words per page found in handwritten briefs currently on file.

(8g) CERTIFICATIONS.

(a) Briefs: certification regarding form and length.

1. Counsel shall submit with the brief a signed certification that the brief meets the form and length requirements of sub. (8) (b), (bm), and (c) in the following form:

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm) and (c) for a brief. The length of this brief is [pages] [words].

Signed:

Signature

2. For purposes of the certification of length under this paragraph, counsel filing a brief may use the word count produced by a commercial word processor available to the general public. The word count shall include the words of any text included in the brief in the form of an image.

(b) Appendices: certification regarding contents and confidentiality.

1. An appellant's counsel shall submit with the appendix a signed certification that the appendix meets the content requirements of sub. (2)(a) and (am) in the following form:

CERTIFICATION BY ATTORNEY

I hereby certify that filed with 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 one or more initials or other appropriate pseudonym or designation 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

2. Counsel filing a supplemental appendix shall submit it with a signed certification that the appendix complies with the confidentiality requirements under sub. (2) (am) in a form substantially similar to the confidentiality provision under subd. 1.
- (c) Combined certifications. Certification of a brief under par. (a) and certification of an appendix or supplemental appendix under par. (b) may be combined in a single document for signature.
- (d) Electronic signature. For electronic filing users, a certification may be electronically signed in accordance with s. 809.801 (12) (a).

Committee explanatory note:

Proposed sub. (8g) consolidates certification of the brief, appendix, and supplemental appendix into a single section. The language of the certifications for brief and appendix is largely unchanged. The two certifications may be combined into a single document for signature. Electronic filing users will certify using their electronic signatures. New language is added to provide that if an image contains a quotation or other excerpt that functions as text, the words contained in image must be included on the word count.

- (9) BRIEF COVERS. Each brief or appendix shall have a white front ~~and back~~ cover. The front cover shall contain the name of the court, the caption and number of the case, the court and judge appealed from, the title of the document, and the name and address of counsel filing the document. Except as provided in s. 809.81 (8) and (9), 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. ~~The covers of the appellant's brief shall be blue; the respondent's, red; a combined respondent cross-appellant's, red with a blue divider page; a combined reply cross-respondent's, gray with a red divider page; a guardian ad litem's, yellow; a person other than a party, green; the reply brief, gray; and the appendix, if separately printed, white. In the event the supreme court grants a petition for review of a decision of the court of appeals, the covers of the briefs of each party shall be the same color as the cover of that party's briefs filed in the court of appeals.~~ In the supreme court, "petitioner" shall be added to the party designation of the petitioner, and the respondent's party designation shall remain the same as in the court of appeals.

Committee explanatory note:

A requirement for color covers does not add anything to the reading experience in the context of electronic documents. For the convenience of the judges and justices, the judicial dashboard will provide a band across the top of the screen using the traditional colors for each type of brief.

- (10) CITATION OF SUPPLEMENTAL AUTHORITIES. If pertinent authorities decided after briefing come to the attention of a party or a nonparty under sub. (7) or a guardian ad litem under sub. ~~(8m)~~(6m) after the party's or nonparty's or guardian ad litem's brief has been filed, or after oral argument but before decision, the party, nonparty, or guardian ad litem may promptly advise the clerk of the court, by letter, and serve a copy of that letter on all parties to the appeal. If the new authority is a decision of the Wisconsin court of appeals, the authority is considered decided for purposes of this subsection on the date of an order for publication issued under s. 809.23 (2). The letter shall do the following:
- (a) Set forth the citations for the authority.
 - (b) Identify the page of the brief or the point that was argued orally to which the citations pertain.
 - (c) For each authority that is cited, briefly discuss the proposition that the authority supports.
- (11) RESPONSE TO SUPPLEMENTAL AUTHORITIES. A response to the letter under sub. (10) may be filed within 11 days after service of that letter. The response shall briefly discuss the reason why each authority does not support the stated proposition, unless the proposition is not disputed.
- ~~(12) ELECTRONIC BRIEFS:~~
- ~~(e) Corrections. If corrections are required to be made, both the paper and electronic copies shall be corrected.~~
 - ~~(f) Certification. In addition to the form and length certification required under s. 809.19 (8) (d), attorneys and self-represented parties shall certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.~~
 - ~~(g) Motion for relief. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper brief. An attorney shall show good cause why it is not feasible to file a copy of the brief electronically.~~
- ~~(13) ELECTRONIC APPENDIX:~~
- ~~(a) General rule. An attorney filing an appendix under these rules may file with the court a copy of the appendix in electronic form. A self-represented party is not required to file an electronic copy of the appendix, but may do so as provided for in this subsection.~~

- ~~Notwithstanding s. 801.18 (9), the paper copy of the appendix remains the official court record.~~
- ~~(b) *Process.* Attorneys and self-represented parties filing an electronic appendix shall use the electronic filing system under s. 801.18.~~
- ~~(c) *Format.* An electronic appendix shall be in Portable Document Format (PDF). An electronic appendix shall be filed as a document or documents separate from the brief.~~
- ~~(d) *Filing.* The date on which the paper appendix is filed under s. 809.80 (3) (b) shall be the official date of filing of the appendix. The electronic copy of the appendix shall be electronically transmitted on or before the date that the paper appendix is filed under s. 809.80 (3) (b). An electronic copy of an appendix submitted to the electronic filing system before the close of regular business hours shall be 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 shall be considered transmitted the next business day.~~
- ~~(e) *Corrections.* If corrections are required to be made, both the paper and electronic copies shall be corrected.~~
- ~~(f) *Certification.* In addition to the certification required under s. 809.19 (2) (b) and (3) (b), attorneys and self-represented parties shall certify that the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.~~

Committee explanatory note:

Sub. (12) and (13) will be repealed. Electronic filing users will file all briefs and appendices electronically, without the need for additional paper copies.

Comments Proposed for Publication, 2021

Sub. (1) (g) addresses cases in which an individual seeks a restraining order or harassment injunction as protection against domestic abuse or violence. 18 U.S.C. 2265 (d) prohibits making public on the Internet any information that would reveal the identity or location of the party seeking protection. In Wisconsin, parties should designate the party seeking protection solely as “petitioner” in the case caption and the briefs. Adding this requirement to the rule is consistent with current practice and federal requirements. It is an exception to par. (i), which otherwise requires reference to the parties by name and not by party designation. A similar change is made to s. 809.81 (9) regarding the caption.

Since late 2018, the circuit court case management software has been assigning a document number to each item in the circuit court record as it is

filed. Sub. (2) (a) provides that the same number will be used in the record index for the appeal. This will make it easier for parties to refer to documents and will prevent confusion from stamping a document with two different numbers.

Sub. (2) (ae) requires the appendix to be filed as a single document. In the event of a very large appendix that cannot be electronically filed as a single document due to the size limitations of the system, s. 809.801 (8) directs the user to contact the clerk of court for assistance.

Sub. (3) (a) provides that the events used for calculation of the time for a response brief are filing of the brief, service of the brief, and filing of the record. When the clerk accepts a filed document, the clerk's entry of the new document into the court record will trigger a notice of activity to the electronic parties, thus serving them. Thus, for electronic parties the filing and service of the brief will often be the same day. For briefs submitted after the business hours of the clerk's office, the clerk will enter the document into the court record the next business day, so the filing date will be different than the date of electronic service. The calculation of time for parties served by paper remains as provided in s. 809.80 (4) (b) and 801.14 (2).

Sub. (8) (a) provides that electronic filing users no longer need to file multiple paper copies of briefs with the court. A notice of activity to users is generated when the clerk enters the brief into the court record, allowing the other electronic parties to access the brief electronically. Paper parties file one paper copy of each brief and appendix with the court, which the clerk will scan and make part of the record.

Sub. (8) (b) makes a number of changes to form, while maintaining the overall appearance of the documents. Standards for handwritten briefs have been added, along with a statement of the court's authority to review briefs for legibility. Margins are required so that scanned documents will include all the words.

Sub. (8) (bm) requires pagination using Arabic numerals beginning on the first page of each document. This will match the page number to the page header applied by the eFiling system, avoiding the confusion of having two different page numbers.

Sub. (8) (c) is reorganized to clarify allowable page counts and word limits for the various kinds of briefs. Page limits specific to handwritten briefs have been added, based on the average number of words per page found in handwritten briefs currently on file.

Sub. (8g) addresses certification of the brief, appendix, and supplemental appendix in a single section. Certifications may be combined into a single document for signature. Electronic filing users will certify using their electronic signatures.

809.20 Rule (Assignment and advancement of cases). The court may take cases under submission in such order and upon such notice as it determines. A party may file a motion to advance the submission of a case either before or after the briefs have been filed. The motion should recite the nature of the public or private interest involved, the issues in the case and how delay in submission will be prejudicial to the accomplishment of justice.

809.21 Rule (Summary disposition).

- (1) The court upon its own motion or upon the motion of a party may dispose of an appeal summarily.
- (2) A party may file at any time a motion for summary disposition of an appeal. Section 809.14 governs the procedure on the motion.

809.22 Rule (Oral argument).

- (1) The court shall determine whether a case is to be submitted with oral argument or on briefs only.
- (2) The court may direct that an appeal be submitted on briefs only if:
 - (a) The arguments of the appellant:
 1. Are plainly contrary to relevant legal authority that appear to be sound and are not significantly challenged;
 2. Are on their face without merit and for which no supporting authority is cited or discovered; or
 3. Involve solely questions of fact and the fact findings are clearly supported by sufficient evidence; or
 - (b) The briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant.
- (3) The court shall determine the amount of time for oral argument allowed to each party in a case either by general or special order.
- (4) On motion of any party or its own motion, the court may order that oral argument be heard by telephone.

809.23 Rule (Publication of opinions).

- (1) CRITERIA FOR PUBLICATION.
 - (a) While neither controlling nor fully measuring the court's discretion, criteria for publication in the official reports of an opinion of the court

include whether the opinion:

1. Enunciates a new rule of law or modifies, clarifies or criticizes an existing rule;
 2. Applies an established rule of law to a factual situation significantly different from that in published opinions;
 3. Resolves or identifies a conflict between prior decisions;
 4. Contributes to the legal literature by collecting case law or reciting legislative history; or
 5. Decides a case of substantial and continuing public interest.
- (b) An opinion should not be published when:
1. The issues involve no more than the application of well-settled rules of law to a recurring fact situation;
 2. The issue asserted is whether the evidence is sufficient to support the judgment and the briefs show the evidence is sufficient;
 3. The issues are decided on the basis of controlling precedent and no reason appears for questioning or qualifying the precedent;
 4. The decision is by one court of appeals judge under s. 752.31 (2) and (3);
 5. It is a per curiam opinion on issues other than appellate jurisdiction or procedure;
 6. It has no significant value as precedent.
- (2) **DECISION ON PUBLICATION.** The judges of the court of appeals who join in an opinion in an appeal or other proceeding shall make a recommendation on whether the opinion should be published. A committee composed of the chief judge or a judge of the court of appeals designated by the chief judge and one judge from each district of the court of appeals selected by the court of appeals judges of each district shall determine whether an opinion is to be published.
- (3) **CITATION OF UNPUBLISHED OPINIONS.**
- (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).
 - (b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.
 - (c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.
- (4) **REQUEST FOR PUBLICATION.**

- (a) Except as provided in par. (b), any person may at any time file a request that an opinion not recommended for publication or an unreported opinion be published in the official reports.
- (b) No request may be made for the publication of an opinion that is a decision by one court of appeals judge under s. 752.31 (2) and (3) or that is a per curiam opinion on issues other than appellate jurisdiction or procedure.
- (c) A person may request that a per curiam opinion that does not address issues of appellate jurisdiction or procedure be withdrawn, authored and recommended for publication. That request shall be filed within 20 days of the date of the opinion and shall be decided by the panel that decided the appeal.
- (d) A copy of any request made under this subsection shall be served ~~under s. 809.80~~ on the parties to the appeal or other proceeding in which the opinion was filed. A party to the appeal or proceeding may file a response to the request within 5 days after the request is filed.

809.24 Rule (Reconsideration).

- (1) Except as provided in sub. (4), a party may file a motion for reconsideration in the court of appeals within 20 days after the date of a decision issued pursuant to s. 752.41 (1). The motion must state with particularity the points of law or fact alleged to be erroneously decided in the decision and must include supporting argument. No separate memorandum in support of the motion is permitted unless subsequently ordered by the court. The court may order a response before issuing an amended decision. No response to the motion is permitted unless ordered by the court. The motion and any response shall not exceed 5 pages if a monospaced font or handwriting is used, or 1,100 words if a proportional serif font is used.
- (2) In response to a motion for reconsideration, the court shall issue an amended decision or the court shall issue an order denying the motion.
- (3) Nothing in this section prohibits the court from reconsidering a decision on its own motion at any time prior to remittitur if no petition for review is filed under s. 809.62 or, if a petition for review is filed, within 30 days after filing the petition for review.
- (4) No motion for reconsideration of a court of appeals decision issued under s. 809.105 or 809.107 is permitted.

809.25 Rule (Costs and fees).

- (1) COSTS.
 - (a) Costs in a civil appeal are allowed as follows unless otherwise ordered by the court:
 - 1. Against the appellant before the court of appeals when the appeal is dismissed or the judgment or order affirmed.

2. Against the respondent before the court of appeals when the judgment or order is reversed.
 3. Against the petitioner before the supreme court when the judgment of the court of appeals is affirmed by the supreme court.
 4. Against the respondent before the supreme court when the judgment of the court of appeals is reversed by the supreme court and the costs in the court of appeals are canceled and may be taxed by the supreme court as costs against another party.
 5. In all other cases as allowed by the court.
- (b) Allowable costs include:
1. Cost of printing and assembling the number of copies ~~and of~~ briefs and appendices required by the rules to be served by traditional methods, not to exceed the rates generally charged in Dane County, Wisconsin, for offset printing of camera-ready copy and assembling;
 2. Fees charged by the clerk of the court, including the electronic filing fee;
 3. Cost of the preparation of the transcript of testimony or for appeal bonds;
 4. Fees of the clerk of the trial court for preparation of the record on appeal;
 5. Other costs as directed by the court.
- (c) A party seeking to recover costs in the court shall file a statement of the costs within 14 days of the filing of the decision of the court. An opposing party may file, within 11 days after service of the statement, a motion objecting to the statement of costs.
- (d) Costs allowed by the court are taxed by the clerk of the court of appeals irrespective of the filing by a party of a petition for review in the supreme court. In the event of review by the supreme court, costs are taxed by the clerk of the supreme court as set forth in pars. (a) and (b). The clerk of the supreme court shall include in the remittitur the costs allowed in the court. The clerk of circuit court shall enter the judgment for costs in accordance with s. 806.16.
- (2) FEES.
- (a) The clerk of the court shall charge the following fees:
1. For filing an appeal, cross-appeal, petition for review, petition to bypass, or other proceeding, \$195.
 2. For making a copy of a record, paper, or opinion of the court and comparing it to the original, 40 cents for each page.
 3. For comparing for certification of a copy of a record, entry or paper, when the copy is furnished by the person requesting its certification, 25 cents for each page.
 4. For a certificate and seal, \$1, except for an attorney's certificate of good standing, \$3.

5. A fee for use of the appellate electronic filing system, as provided in s. 758.19 (4m) and established by the supreme court. The fee is a recoverable cost under this section. The electronic filing fee shall not be charged to Wisconsin state or local government units.

- (b) The state is exempt from payment of the fees set forth in par. (a) 1. to 4., except that the clerk is not obligated to supply the state with free copies of opinions.
- (c) The clerk of the court of appeals may refuse to file, record, certify, or render any other service without prepayment or waiver of the fees established by this section.

(3) FRIVOLOUS APPEALS.

- (a) If an appeal or cross-appeal is found to be frivolous by the court, the court shall award to the successful party costs, fees, and reasonable attorney fees under this section. A motion for costs, fees, and attorney fees under this subsection shall be filed no later than the filing of the respondent's brief or, if a cross-appeal is filed, no later than the filing of the cross-respondent's brief. This subsection does not apply to appeals or cross-appeals under s. 809.107, 809.30, or 974.05.
- (b) The costs, fees and attorney fees awarded under par. (a) may be assessed fully against the appellant or cross-appellant or the attorney representing the appellant or cross-appellant or may be assessed so that the appellant or cross-appellant and the attorney each pay a portion of the costs, fees and attorney fees.
- (c) In order to find an appeal or cross-appeal to be frivolous under par. (a), the court must find one or more of the following:
 - 1. The appeal or cross-appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.
 - 2. The party or the party's attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

Committee explanatory note: The appellate electronic filing fee is imposed under the same circumstances as the circuit court electronic filing fee. It may be waived for indigent parties and their attorneys, using the procedures and criteria as courts apply to waiver of other costs and fees. The electronic filing fee is not charged to a Wisconsin governmental unit such as the district attorney, public defender and appointed counsel, court-appointed counsel, child support agency, attorney general, or county and municipal attorney. The fee will be used to support eFiling software development, equipment, technology infrastructure, and customer support.

809.26 Rule (Remittitur).

- (1) The clerk of the court of appeals shall transmit to the circuit court the judgment and decision or order of the court and the record in the case filed pursuant to s. 809.15 31 days after the filing of the decision or order of the court, or as soon thereafter as practicable. If a petition for review is filed pursuant to s. 809.62, the transmittal is stayed until the supreme court rules on the petition. If a motion for reconsideration is filed under s. 809.24, the transmittal is stayed until the court files an order denying the motion, or files an amended decision or order, and the subsequent expiration of any period for filing a petition for review.
- (2) If the supreme court grants a petition for review of a decision of the court of appeals, the supreme court upon filing its decision shall transmit to the trial court the judgment and opinion of the supreme court and the complete record in the case unless the case is remanded to the court of appeals with specific instructions.

**SUBCHAPTER III
APPEAL PROCEDURE IN COURT OF APPEALS
IN S. 971.17 PROCEEDINGS AND IN CRIMINAL
AND CH. 48, 51, 55, 938, AND 980 CASES**

809.30 Rule (Appeals in s. 971.17 proceedings and in criminal, ch. 48, 51, 55, 938, and 980 cases).

- (1) DEFINITIONS. In this subchapter:
 - (a) "Final adjudication" means the entry of a final judgment or order by the circuit court in a s. 971.17 proceeding, in a criminal case, or in a ch. 48, 51, 55, 938, or 980 case, other than a termination of parental rights case under s. 48.43, a guardianship proceeding under s. 48.9795, or a parental consent to abortion case under s. 48.375 (7).
 - (b) "Person" means any of the following:
 1. A defendant seeking postconviction relief in a criminal case.
 2. A party, other than the state, seeking postdisposition relief in a case under ch. 48, other than a termination of parental rights case under s. 48.43, a guardianship proceeding under s. 48.9795, or a parental consent to abortion case under s. 48.375 (7).
 3. A party, other than the state, seeking postdisposition relief in a case under ch. 938.
 4. A subject individual or ward seeking postdisposition relief in a s. 971.17 proceeding or a case under ch. 51, 55, or 980.
 5. Any other person who may appeal under ss. 51.13 (5), 51.20 (15), or 55.20.
 - (c) "Postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m) or (9g), 973.19, 973.195, 973.198, 974.06, or 974.07 (2). In a ch.

- 980 case, the term means an appeal or a motion for postcommitment relief under s. 980.038 (4).
- (d) "Postdisposition relief" means an appeal or a motion for relief under this subchapter from a circuit court's final adjudication.
 - (e) "Prosecutor" means a district attorney, corporation counsel, or other attorney authorized by law to represent the state in a criminal case, a proceeding under s. 971.17, or a case under ch. 48, 51, 55, 938, or 980.
 - (f) "Sentencing" means the imposition of a sentence, a fine, or probation in a criminal case. In a ch. 980 case, the term means the entry of an order under s. 980.06.
- (2) APPEAL; POSTCONVICTION OR POSTDISPOSITION MOTION.
- (a) *Appeal procedure; counsel to continue.* A person seeking postconviction relief in a criminal case; a person seeking postdisposition relief in a case under ch. 48 other than a termination of parental rights case under s. 48.43, a guardianship proceeding under s. 48.9795, or a parental consent to abortion case under s. 48.375 (7); or a person seeking postdisposition relief in a s. 971.17 proceeding or in a case under ch. 51, 55, 938, or 980 shall comply with this section. Counsel representing the person at sentencing or at the time of the final adjudication shall continue representation by filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition relief unless counsel is discharged by the person or allowed to withdraw by the circuit court before the notice must be filed.
 - (b) *Notice of intent to pursue postconviction or postdisposition relief.* Within 20 days after the date of sentencing or final adjudication, the person shall file in circuit court and serve on the prosecutor and any other party a notice of intent to pursue postconviction or postdisposition relief. If the record discloses that sentencing or final adjudication occurred after the notice of intent was filed, the notice shall be treated as filed after sentencing or final adjudication on the day of the sentencing or final adjudication. The notice shall include all of the following:
 1. The case name and number.
 2. An identification of the judgment or order from which the person intends to seek postconviction or postdisposition relief and the date on which the judgment or order was entered.
 3. The name and address of the person and his or her trial counsel.
 4. Whether the person's trial counsel was appointed by the state public defender and, if so, whether the person's financial circumstances have materially improved since the date on which his or her indigency was determined.
 5. Whether the person requests the state public defender to appoint counsel for purposes of postconviction or postdisposition relief.
 6. Whether a person who does not request the state public defender to appoint counsel will represent himself or herself or will be represented

by retained counsel. If the person has retained counsel to pursue postconviction or postdisposition relief, counsel's name and address shall be included.

- (c) *Clerk to send materials.* Within 5 days after a notice under par. (b) is filed, the clerk of circuit court shall:
1. If the person requests representation by the state public defender for purposes of postconviction or postdisposition relief, send to the state public defender's appellate intake office a copy of the notice that shows the date on which it was filed or entered, a copy of the judgment or order specified in the notice that shows the date on which it was filed or 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 has been filed with the clerk of circuit court.
 2. If the person does not request representation by the state public defender, send or furnish to the person, if appearing without counsel, or to the person's attorney if one has been retained, a copy of the judgment or order specified in the notice that shows the date on which it was filed or 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 has been filed with the clerk of circuit court.
- (d) *Indigency redetermination.* Except as provided in this paragraph, whenever a person whose trial counsel is appointed by the state public defender files a notice under par. (b) requesting public defender representation for purposes of postconviction or postdisposition relief, the prosecutor may, within 5 days after the notice is served and filed, file in the circuit court and serve upon the state public defender a request that the person's indigency be redetermined before counsel is appointed or transcripts are requested. This paragraph does not apply to a child who is entitled to be represented by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by counsel under s. 51.60 (1), 55.105, or 980.03 (2) (a).
- (e) *State public defender appointment of counsel; transcript and circuit court case record request.* Within 30 days after the state public defender appellate intake office receives the materials from the clerk of circuit court under par. (c), the state public defender shall appoint counsel for the person and request a transcript of the court reporter's verbatim record and a copy of the circuit court case record, except that if the person's indigency must first be determined or redetermined the state public defender shall do so, appoint counsel, and request transcripts and a copy of the circuit court case record within 50 days after the state public defender appellate intake office receives the material from the clerk of circuit court under par. (c).
- (f) *Person not represented by public defender; transcript and circuit court case record*

request. A person who does not request representation by the state public defender for purposes of postconviction or postdisposition relief shall request a transcript of the court reporter's verbatim record, and may request a copy of the circuit court case record, within 30 days after filing a notice under par. (b). A person who is denied representation by the state public defender for purposes of postconviction or postdisposition relief shall request a transcript of the court reporter's verbatim record, and may request a copy of the circuit court case record, within 90 days after filing a notice under par. (b).

(fm) *Transcript and circuit court case record request in chs. 48 and 938 proceedings.*

A child or juvenile who has filed a notice of intent to pursue relief from a judgment or order entered in a ch. 48 or 938 proceeding shall be furnished at no cost a transcript of the proceedings or as much of the transcript as is requested, and may request a copy of the circuit court case record. To obtain the transcript and circuit court case record at no cost, an affidavit must be filed stating that the person who is legally responsible for the child's or juvenile's care and support is financially unable or unwilling to purchase the transcript and a copy of the circuit court case record.

(g) *Filing and service of transcript and circuit court case record.*

1. The clerk of circuit court shall serve a copy of the circuit court case record on the person within 60 days after receipt of the request for the circuit court case record.
2. The court reporter shall file the transcript with the circuit court and serve a copy of the transcript on the person within 60 days of the request for the transcript. Within 20 days after the request for a transcript of postconviction or postdisposition proceedings brought under sub. (2) (h), the court reporter shall file the original with the circuit court and serve a copy of that transcript on the person. The reporter may seek an extension under s. 809.11 (7) for filing and serving the transcript.

(h) *Notice of appeal, postconviction or postdisposition motion.* The person shall file in circuit court and serve on the prosecutor and any other party a notice of appeal or motion seeking postconviction or postdisposition relief within 60 days after the later of the service of the transcript or circuit court case record. The person shall file a motion for postconviction or postdisposition relief before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised. A postconviction or postdisposition motion under this section may not be accompanied by a notice of motion and is made when filed. A notice of appeal filed under this section shall conform to the requirements set forth in s. 809.10. The appeal shall be initiated and docketed in accordance with ss. 809.10 and 809.11.

(i) *Order determining postconviction or postdisposition motion.* Unless an extension is requested by a party or the circuit court and granted by the

court of appeals, the circuit court shall determine by an order the person's motion for postconviction or postdisposition relief within 60 days after the filing of the motion or the motion is considered to be denied and the clerk of circuit court shall immediately enter an order denying the motion.

- (j) *Appeal from judgment and order.* The person shall file in circuit court and serve on the prosecutor and any other party a notice of appeal from the judgment of conviction and sentence or final adjudication and, if necessary, from the order of the circuit court on the motion for postconviction or postdisposition relief within 20 days of the entry of the order on the postconviction or postdisposition motion. A notice of appeal filed under this section shall conform to the requirements set forth in s. 809.10. The appeal shall be initiated and docketed in accordance with ss. 809.10 and 809.11. Appeals in cases under chs. 48, 51, 55, and 938 are subject to the docketing statement requirements of s. 809.10 (1) (d) and may be eligible for the expedited appeals program in the discretion of the court.
- (k) *Transmittal of record.* Except as otherwise provided in ss. 809.14 (3) and 809.15 (4) (b) and (c), the clerk of circuit court shall transmit the record on appeal to the court of appeals as soon as prepared but in no event more than 40 days after the filing of the notice of appeal. Subsequent proceedings in the appeal are governed by the procedures for civil appeals.
- (L) *Appeals under s. 974.06 or 974.07.* An appeal under s. 974.06 or 974.07 is governed by the procedures for civil appeals.
- (3) **APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL.** In a case in which the state of Wisconsin, the representative of the public, any other party, or any person who may appeal under s. 51.13 (5), 51.20 (15), or 55.20 appeals and the person who is the subject of the case or proceeding is a child or claims to be indigent, the court shall refer the person who is the subject of the case or proceeding to the state public defender for the determination of indigency and the appointment of legal counsel under ch. 977.
- (4) **MOTION TO WITHDRAW AS APPOINTED COUNSEL.**
 - (a) If postconviction, postdisposition, or appellate counsel appointed for the person under ch. 977 seeks to withdraw from the case, counsel shall serve a motion to withdraw upon the person and upon the appellate division intake unit in the Madison appellate office of the state public defender. If the motion is filed before the notice of appeal is filed, the motion shall be filed in circuit court. If the motion is filed after a notice of appeal has been filed, the motion shall be filed in the court of appeals. Service of the motion to withdraw on the state public defender is not required when the motion is filed by an assistant state public defender or when a no-merit report is filed with the motion.
 - (b) Within 20 days after receipt of the motion under par. (a), the state public

defender shall determine whether successor counsel will be appointed for the person and shall notify the court in which the motion was filed of the state public defender's determination.

- (c) Before determining the motion to withdraw, the court shall consider the state public defender's response under par. (b) and whether the person waives the right to counsel.
- (d) When the motion to withdraw is filed in circuit court, appointed counsel shall prepare and serve a copy of the order determining counsel's motion to withdraw upon the person and the appellate division intake unit in the Madison appellate office of the state public defender within 14 days after the court's determination.

809.31 Rule (Release on bond pending seeking postconviction relief).

- (1) A defendant convicted of a misdemeanor or felony who is seeking relief from a conviction and sentence of imprisonment or to the intensive sanctions program and who seeks release on bond pending a determination of a motion or appeal shall file in the trial court a motion seeking release.
- (2) The trial court shall promptly hold a hearing on the motion of the defendant, determine the motion by order and state the grounds for the order.
- (3) Release may be granted if the court finds that:
 - (a) There is no substantial risk the appellant will not appear to answer the judgment following the conclusion of postconviction proceedings;
 - (b) The defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice;
 - (c) The defendant will promptly prosecute postconviction proceedings; and
 - (d) The postconviction proceedings are not taken for purposes of delay.
- (4) In making the determination on the motion, the court shall take into consideration the nature of the crime, the length of sentence and other factors relevant to pretrial release.
- (5) The defendant or the state may seek review of the order of the circuit court by filing a motion in the court of appeals under s. 809.14. The party seeking review must attach to its motion a copy of the judgment of conviction or other final judgment or order, the circuit court order regarding release pending appeal, the circuit court statement of reasons for the decision regarding release pending appeal, and the transcript of any release proceedings in the circuit court or a statement explaining why no transcript is available. The party filing the motion shall request a transcript of the court reporter's verbatim record for any proceeding in the circuit court regarding release pending appeal for all parties to the appeal and make arrangements to pay for the transcript within 7 days after the entry of the circuit court order regarding release pending appeal. Within 7 days after the date on which the transcript was requested and arrangements were made for payment, the reporter shall serve copies of the transcript on the parties to the appeal, file

the transcript with the circuit court, and notify the clerk of the court of appeals and the parties to the appeal that the transcript has been filed and served. The motion shall be filed within 21 days after the entry of the circuit court order. The opposing party may file a response within 14 days after the filing of the motion.

- (6) The court ordering release shall require the defendant to post a bond in accordance with s. 969.09 and may impose other terms and conditions. The defendant shall file the bond in the trial court.

809.32 Rule (No merit reports).

(1) NO-MERIT REPORT, RESPONSE, AND SUPPLEMENTAL NO-MERIT REPORT.

(a) *No-merit report.* If an attorney appointed under s. 809.30 (2) (e) or ch. 977 concludes that a direct appeal on behalf of the person would be frivolous and without any arguable merit within the meaning of *Anders v. California*, 386 U.S. 738 (1967), and the person requests that a no-merit report be filed or declines to consent to have the attorney close the file without further representation by the attorney, the attorney shall file with the court of appeals ~~3 copies of~~ a no-merit report. The no-merit report shall identify anything in the record that might arguably support the appeal and discuss the reasons why each identified issue lacks merit. The no-merit report shall comply with the form requirements of s. 809.19 (8) (b) and (bm). The no-merit report shall not exceed shall not exceed 50 pages if a monospaced font or handwriting is used, or 13,000 words if a proportional serif font is used. The no-merit report shall be submitted with a signed certification setting forth the word count or page count of the report.

(b) *Counseling and notification.*

1. Prior to the filing of a no-merit report, the attorney shall discuss with the person all potential issues identified by the attorney and the person, and the merit of an appeal on these issues. The attorney shall inform the person that he or she has 3 options:
 - a. To have the attorney file a no-merit report;
 - b. To have the attorney close the file without an appeal; or
 - c. To have the attorney close the file and to proceed without an attorney or with another attorney retained at the person's expense.
2. The attorney shall inform the person that a no-merit report will be filed if the person either requests a no-merit report or does not consent to have the attorney close the file without further representation by the attorney. The attorney shall inform the person that if a no-merit report is filed the attorney will serve a copy of the transcripts and the circuit court case record upon the person at the person's request. The attorney shall inform the person that, if the person chooses to proceed with an appeal or chooses to have the attorney close the file without an appeal, the attorney will forward the attorney's copies of the transcripts and circuit

court case record to the person at the person's request. The attorney shall also inform the person that the person may file a response to the no-merit report and that the attorney may file a supplemental no-merit report and affidavit or affidavits containing facts outside the record, possibly including confidential information, to rebut allegations made in the person's response to the no-merit report.

- (c) *Certification by attorney.* The attorney shall ~~append to~~include with the no-merit report a signed certification that the attorney has complied with the length requirement of par. (a) and the client-counseling and client-notification requirements of par. (b). Certification of a brief under par. (a) and certification of client counseling and client notification under par. (b) may be combined in a single document for signature. The certification may be electronically signed by the attorney in accordance with s. 809.801 (12) (a). The certification shall be in the following form:

CERTIFICATION BY ATTORNEY

I hereby certify that I have discussed with my client all potential issues identified by me and by my client and the merit of an appeal on these issues, and I have informed my client that he/she must choose one of the following 3 options: 1) to have me file a no-merit report; 2) to have me close the file without an appeal; or 3) to have me close the file and to proceed without an attorney or with another attorney retained at my client's expense. I have informed my client that a no-merit report will be filed if he/she either requests a no-merit report or does not consent to have me close the file without further representation. I have informed my client that the transcripts and circuit court case record will be forwarded at his/her request. I have also informed my client that he/she may file a response to the no-merit report and that I may file a supplemental no-merit report and affidavit or affidavits containing matters outside the record, possibly including confidential information, to rebut allegations made in my client's response to the no-merit report.

I further certify that this no-merit report conforms to the length limit set out in s. 809.32 (1) (a). The length of this report is ...[pages] [words].

Signed:....

Signature

- (d) *Service of copy of no-merit report, transcript, and circuit court case record.* The attorney shall serve a copy of the no-merit report on the person and shall file a statement in the court of appeals that service has been made upon the person. The attorney shall also serve upon the person a copy of the transcript and circuit court case record within 5 days after receipt of a request for the transcript and circuit court case record from the person and shall file a statement in the court of appeals that service has been made on

the person.

- (e) *Response to no-merit report.* The person may file a response to the no-merit report within 30 days after service of the no-merit report. The response shall not exceed 50 pages if a monospaced font or handwriting is used, or 13,000 words if a proportional serif font is used. If the response is handwritten, the text must be legibly printed and not include cursive writing or script, except for the person's signature. The response shall comply with the form requirements of s. 809.19 (8) (b) and (bm). If the person files a response, ~~the clerk shall, within 5 days after the filing of the response, send a copy of the response to~~ the attorney who filed the no-merit report shall receive a copy of the response through the electronic filing system.
- (f) *Supplemental no-merit report.* If the attorney is aware of facts outside the record that rebut allegations made in the person's response, the attorney may file, within 30 days ~~after receipt~~ of the person's response, a supplemental no-merit report and an affidavit or affidavits, including matters outside the record. The supplemental report and affidavit or affidavits shall be served on the person, and the attorney shall file a statement in the court of appeals that service has been made upon the person.

~~(fm) *Electronic no-merit report and supplemental no-merit report.* An attorney filing a no-merit report or the optional supplemental no-merit report under this rule shall file with the court a copy of the no-merit report and supplemental no-merit report, if any, in electronic form, using the procedure under s. 809.19 (12). The date on which the paper no-merit report or supplemental no-merit report is filed shall be the official date of filing of the no-merit report or supplemental no-merit report. The electronic copy of the no-merit report and supplemental no-merit report shall be electronically transmitted on or before the date that the paper no-merit report and supplemental no-merit report is filed. An electronic copy of a no-merit report or supplemental no-merit report submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date. An electronic no-merit report or supplemental no-merit report submitted after the close of regular business hours shall be considered transmitted the next business day. The attorney shall certify that the text of the electronic copy of the report is identical to the text of the paper copy of the report. Notwithstanding s. 801.18 (9), the paper copy of the no-merit report or supplemental no-merit report remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper no-merit report or supplemental no-merit report. An attorney shall show good cause why it is not feasible to file a copy of the~~

- ~~report electronically.~~
- (g) *Remand for fact-finding prior to decision.* If the person and the attorney allege disputed facts regarding matters outside the record, and if the court determines that the person's version of the facts, if true, would make resolution of the appeal under sub. (3) inappropriate, the court shall remand the case to the circuit court for an evidentiary hearing and fact-finding on those disputed facts before proceeding to a decision under sub. (3).
- (2) NOTICE OF APPEAL, STATEMENT ON TRANSCRIPT, SERVICE OF COPIES.
- (a) The attorney also shall file in circuit court a notice of appeal of the judgment of conviction or final adjudication and of any order denying a postconviction or postdisposition motion. The notice of appeal shall be identified as a no-merit notice of appeal and shall state the date on which the no-merit ~~report~~ notice of appeal is due and whether the due date is calculated under ~~subdpar. (a)1.~~ or ~~(b)2.~~ The clerk of circuit court shall transmit the record in the case to the court pursuant to s. 809.15. With the no-merit notice of appeal, the ~~The~~ attorney also shall file in the circuit court a statement on transcript complying with the requirements of s. 809.11 (4), except that copies of the transcript need not be provided to other parties. All ~~papers~~ documents filed with the court under this subsection, except the transcript, shall be served on the state in accordance with s. ~~809.80 (2)~~ 809.802 and on any other party. The no-merit ~~report~~ notice of appeal, and statement on transcript must be filed within whichever of the following is later:
- ~~(a)1.~~ One hundred eighty days after the service upon the person of the transcript and circuit court case record requested under s. 809.30 (2) (e).
- ~~(b)2.~~ Sixty days after the entry of the order determining a postconviction or postdisposition motion.
- (b) The clerk of circuit court shall transmit the no-merit notice of appeal and the statement on transcript to the court of appeals within 3 days of filing. The clerk of the court of appeals shall docket the no-merit appeal upon receipt. The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court.
- (c) For electronic filing users in the circuit court case, receipt of the no-merit notice of appeal and statement on transcript through the circuit court electronic filing system shall constitute service of the documents. Receipt of the notice of docketing shall constitute service and notification that the no-merit appeal has been commenced in the court of appeals. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional means.
- (d) The no-merit report shall be filed in the court of appeals within 14 days after the date on which the record is filed in the office of the clerk of the court of appeals. Service on electronic users shall be through the appellate

electronic filing system. The attorney shall serve the no-merit report on paper parties by traditional means.

- (3) DECISION ON NO-MERIT REPORT. In the event that the court of appeals determines that further appellate proceedings would be frivolous and without any arguable merit, the court of appeals shall affirm the judgment of conviction or final adjudication and the denial of any postconviction or postdisposition motion and relieve the attorney of further responsibility in the case. The attorney shall advise the person of the right to file a petition for review to the supreme court under s. 809.62.
- (4) NO-MERIT PETITION FOR REVIEW.
 - (a) *Petition and supplemental petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is of the opinion that a petition for review in the supreme court under s. 809.62 would be frivolous and without any arguable merit, the attorney shall advise the person of the reasons for this opinion and that the person has the right to file a petition for review. If requested by the person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f), and the person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e). The person's supplemental petition shall not exceed 35 pages if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used.
 - (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and supplemental petition shall both be filed within 30 days after the date of the decision or order of the court of appeals.
 - (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may file a response to the petition and supplemental petition as provided in s. 809.62 (3) within 14 days after the service of the supplemental petition.
- (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR RECONSIDERATION.
 - (a) *Petition.* If a motion for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition or a supplemental petition in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.
 - (b) *Supplemental petition.* If a motion for reconsideration in the court of appeals under s. 809.24 (1) is denied and a petition for review was filed before the motion for reconsideration was filed, and if the time for filing a supplemental petition under this subsection had not expired when the motion for reconsideration was filed, the supplemental petition may be filed within 14 days after the filing of the order denying the motion for reconsideration or within the time remaining to file the supplemental petition at the time that the motion for reconsideration was filed, whichever is greater.
 - (c) *Notice affirming, withdrawing, or amending pending petition or supplemental*

petition. If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review or a supplemental petition for review under this section prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition or supplemental petition, a notice withdrawing the pending petition or supplemental petition, or an amendment to the pending petition or supplemental petition within 14 days after the date of the filing of the court of appeals' amended decision.

- (d) *Responses.* If a motion for reconsideration is denied and a petition for review or a supplemental petition had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition or supplemental petition had not expired when the motion for reconsideration was filed, a response to the petition or the supplemental petition may be filed within 14 days of the order denying the motion for reconsideration. If a supplemental petition is filed under par. (b), the responding party may file a response to the supplemental petition within 14 days after service of the supplemental petition. After the petitioning party files the notice affirming or withdrawing the pending petition or supplemental petition or an amendment to the pending petition or supplemental petition under par. (c), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response to the notice or amendment may be an affirmation of the responding party's earlier response or a new response.

Committee explanatory note:

The no-merit notice of appeal and no-merit report can be filed electronically in the same way as appeals. Currently, the due dates for the no-merit notice of appeal, statement on transcript, and no-merit report are all on the same day. Attorneys frequently seek extensions of time to file the no-merit report until an appellate case number is assigned and the record is filed, in order to provide proper record citations in the no-merit report. Separating the due dates by allowing 14 days before filing the no-merit report will eliminate the need for many extension motions. It will also allow the no-merit report to be electronically filed in the court of appeals rather than on paper or via the circuit court case.

The response to a no-merit report is frequently handwritten, single-spaced, sometimes in pencil. A page limit is added to improve counsel's ability to file a supplemental no-merit report within the required 30-day time limit and the court's ability to read the document. The page limit is equal to the page limit

for a brief in chief to allow full discussion of all potential issues. The word or page count, handwriting provisions, and form requirements are consistent with the changes made to s. 809.19 (8) (b), (bm), and (c).

Comments Proposed for Publication, 2021

Page limits are added for the no-merit report, the response to the no-merit report, and the supplemental no-merit petition for review. In sub. (1) (e), adding a page limit for the response to the no-merit report is intended to improve counsel's ability to file a supplemental no-merit report within the required 30-day time limit. The page limit is equal to the page limit for a brief in chief to allow full discussion of all potential issues.

Sub. (2) (b) and (c) provide for electronic filing, transmission, and service of documents under this section consistent with ss. 809.10 and 809.11.

Sub. (2) (d) separates the due date of the no-merit notice of appeal and statement on transcript from the due date for no-merit report. This will facilitate the use of proper record citations in the no-merit report and avoid the need for motions for extension.

SUBCHAPTER IV APPEAL PROCEDURE IN COURT OF APPEALS IN TERMINATION OF PARENTAL RIGHTS, CH. 799, TRAFFIC REGULATION, MUNICIPAL ORDINANCE VIOLATION, AND PARENTAL CONSENT TO ABORTION CASES

809.40 Rule (Appeals in termination of parental rights, ch. 799, traffic regulation, municipal ordinance violation, and parental consent to abortion cases).

- (1m) An appeal from an order denying a petition under s. 48.375 (7) is governed by the procedures specified in s. 809.105, and an appeal from an order or judgment under s. 48.43 is governed by the procedures specified in s. 809.107.
- (2) An appeal to the court of appeals from a judgment or order in a ch. 799, traffic regulation or municipal ordinance violation case must be initiated within the time period specified in s. 808.04, and is governed by the procedures specified in ss. 809.01 to 809.26 and 809.50 to 809.85, unless a different procedure is expressly provided in ss. 809.41 to ~~809.43~~809.42.
- (3) Any civil appeal to the court of appeals under sub. (2) is subject to the docketing statement requirement of s. 809.10 (1) (d) and may be eligible for the expedited appeals program in the discretion of the court.

809.41 Rule (Motion for 3-judge panel or hearing in county of origin).

(1) MOTION FOR 3-JUDGE PANEL.

~~(a) If an appellant or a petitioner requesting the court of appeals to exercise its supervisory jurisdiction or its original jurisdiction to issue prerogative writs or its appellate jurisdiction to grant petitions for leave to appeal desires the matter to be decided by a 3-judge panel, the appellant or petitioner shall file a motion for 3-judge panel with the copy of the notice of appeal required by s. 809.10 (1) (a), or with the petition requesting the court to exercise its supervisory, original, or appellate jurisdiction, a motion for a 3-judge panel. Service of the appellant's motion shall be as provided by s. 809.10 (1) (h).~~

~~(b) If a petitioner requesting the court of appeals to exercise its supervisory jurisdiction or its original jurisdiction to issue prerogative writs desires the matter to be decided by a 3-judge panel, the petitioner shall file a motion for 3-judge panel in the court of appeals with the petition requesting the court to exercise its supervisory or original jurisdiction. Service of the petitioner's motion shall be provided by traditional methods.~~

~~(c) If a petitioner requesting the court of appeals to exercise its appellate jurisdiction to grant petitions for leave to appeal desires the matter to be decided by a 3-judge panel, the petitioner shall file a motion for a 3-judge panel in the circuit court with the petition for leave to appeal. Service of the petitioner's motion shall be provided as in s. 809.50 (1).~~

~~(d) Any If any other party desires the matter to be decided by a 3-judge panel, the party must file in the court of appeals a motion under this rule for a 3-judge panel within 14 days after service of the notice of appeal or with the response to the petition.~~

~~(e) The failure to file a motion under this rule section waives the right to request the matter to be decided by a 3-judge panel.~~

~~(f) A motion for a 3-judge panel in a case in which the state is a party shall also be served upon the attorney general. If the motion is filed with a petition for leave to appeal, service on the attorney general shall be provided as in s. 809.50 (1m). The attorney general may file a response to the motion within 11 days after service.~~

(2) DECISION ON MOTION FOR 3-JUDGE PANEL. The chief judge may change or modify his or her decision on a motion that the matter be decided by a 3-judge panel at any time prior to a decision on the merits of the appeal or petition.

(3) THREE-JUDGE PANEL ON COURT'S OWN MOTION. Whether or not a motion for a 3-judge panel has been filed, the chief judge may order that an appeal or petition be decided by a 3-judge panel at any time prior to a decision on the merits of the appeal or petition.

(4) MOTION FOR HEARING IN COUNTY OF ORIGIN. If an appellant desires that the appeal be heard in the county where the case or action originated under s.

752.31 (3), the appellant shall file in the circuit court, with ~~the copy of~~ the notice of appeal required by s. 809.10 (1) (a), a motion requesting a hearing in the county of origin. Service of the appellant's motion shall be as provided in s. 809.10 (1) (h). If anyAny other party desires the matter to be heard must file a motion requesting a hearing in the county of origin, the party must file in the court of appeals a motion within 14 days after service of the notice of appeal. The failure to file a motion under this subsection waives the right to request the appeal be heard in the county where the case or action originated.

Committee explanatory note:

The motions addressed by this section may accompany direct appeals, petitions for leave to appeal, petitions for writs, or original jurisdiction matters. Under the proposed rule, motions in appeals and leave to appeal proceedings will be electronically served; supervisory writs and original jurisdiction proceedings will still use traditional service. This section has been reorganized to reflect the different modes of service.

Comment Proposed for Publication, 2021

The motions addressed by this section may accompany direct appeals, petitions for leave to appeal, petitions for writs, or original jurisdiction matters. This section provides that motions in appeals and leave to appeal proceedings will be electronically served, while supervisory writs and original jurisdiction proceedings will use traditional service. This section is reorganized to reflect the different modes of service.

809.42 Rule (Waiver of oral argument). The appellant and respondent in an appeal under s. 752.31 (2) may waive oral argument, subject to approval of the court.

~~809.43 Rule (Number of briefs).~~

~~(1) A person shall file 10 copies of a brief and appendix in the court of appeals, or the number that the court directs, and shall serve 3 copies on each party. If the opposing party is not represented by counsel, only one copy need be served on that party.~~

~~(2) A person who is found indigent under s. 814.29 and who is not represented by counsel shall file 3 copies of a brief and appendix in the court of appeals and shall serve one copy on each party. A prisoner who has been granted leave to proceed without prepayment of fees under s. 814.29 (1m) and who is not represented by counsel shall file 3 copies of a brief or appendix in the court of appeals and shall serve one copy on each party.~~

SUBCHAPTER V
DISCRETIONARY JURISDICTION PROCEDURE IN COURT OF APPEALS

809.50 Rule (Appeal from judgment or order not appealable as of right).

(1) A person shall seek leave of the court to appeal a judgment or order not appealable as of right under s. 808.03 (1) by filing with the court of appeals within 14 days after the entry of the judgment or order a petition and supporting memorandum, if any. The petition and memorandum combined may not exceed 35 pages if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used. The petition shall contain:

- (a) A statement of the issues presented by the controversy;
- (b) A statement of the facts necessary to an understanding of the issues;
- (c) A statement showing that review of the judgment or order immediately rather than on an appeal from the final judgment in the case or proceeding will materially advance the termination of the litigation or clarify further proceedings therein, protect a party from substantial or irreparable injury, or clarify an issue of general importance in the administration of justice; and
- (d) A copy of the judgment or order sought to be reviewed.

(1m) The clerk of the court of appeals shall docket the petition upon receipt of the items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, and transmit the notice and petition to the clerk of the circuit court. For electronic filing users in the circuit court case, receipt of the notice of docketing and the petition through the circuit court electronic filing system provides access to the appellate proceeding and constitutes service of the petition. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional methods. The petitioner shall serve the petition on paper parties by traditional methods.

(2) An opposing party in circuit court shall file a response with supporting memorandum, if any, within 14 days after the service of the petition. The response and memorandum combined may not exceed 35 pages if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used. Costs and fees may be awarded against any party in a petition for leave to appeal proceeding.

(3) If the court grants leave to appeal, the procedures for appeals from final judgments are applicable to further proceedings in the appeal. The entry of the order granting leave to appeal has the effect of the filing of a notice of appeal. The court may specify the issue or issues that it will review in the appeal. If the court grants leave to appeal, the petitioner shall file a docketing statement in the court of appeals if required by s. 809.10 (1) (d), identifying

the issues to be reviewed in the appeal. The docketing statement shall be filed within 11 days after the date of the order granting the petition for leave to appeal.

- (4) A person filing a petition or response under this section shall ~~append to file with the petition or response a certification setting forth the word count or page count of the document as provided in sub. (1) or (2). a statement identifying whether the petition is produced with a monospaced font or with a proportional serif font. If produced with a proportional serif font, the person shall set forth the word count of the petition.~~

Committee explanatory note:

A petition for leave to appeal may be filed in the court of appeals and served through the circuit court case in the same manner as a pre-appeal motion under s. 809.14 (5), because the parties to the case are present in the circuit court case. Where the state needs to be added as a party, the attorney general is served through the appellate eFiling system.

Comment Proposed for Publication, 2021

A petition for leave to appeal may be filed in the court of appeals and served through the circuit court case in the same manner as a pre-appeal motion under s. 809.14 (5). Where the state needs to be added as a party, the attorney general is served through the appellate electronic filing system.

809.51 Rule (Supervisory writ and original jurisdiction to issue prerogative writ).

- (1) A person may request the court to exercise its supervisory jurisdiction or its original jurisdiction to issue a prerogative writ over a court and the presiding judge, or other person or body, by filing a petition and supporting memorandum. The petition shall be served on each party and proposed respondent, and, if applicable, upon the originating court or tribunal, by traditional methods as provided in s. 809.80 (2). The petition and memorandum combined may not exceed 35 pages if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used. The petitioner shall name as respondents the court and judge, or other person or body, and all other parties in the action or proceeding. The petition shall contain:
- (a) A statement of the issues presented by the controversy;
 - (b) A statement of the facts necessary to an understanding of the issues;
 - (c) The relief sought; and
 - (d) The reasons why the court should take jurisdiction.

(1m) The clerk of the court of appeals shall docket the petition upon receipt of the

items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, transmit the notice of docketing to the clerk of circuit court, and send the notice of docketing to the respondents by traditional methods.

- (2) The court may deny the petition ex parte or may order the respondents to file a response with a supporting memorandum, if any, and may order oral argument on the merits of the petition. The response and memorandum combined may not exceed 35 pages if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used. The respondents shall respond with supporting memorandum within 14 days after service of the order. A respondent may file a letter stating that he or she does not intend to file a response, but the petition is not thereby admitted.
- (3) The court, upon a consideration of the petition, responses, supporting memoranda and argument, may grant or deny the petition or order such additional proceedings as it considers appropriate. Costs and fees may be awarded against any party in a writ proceeding.
- (4) A person filing a petition or response under this section shall ~~append to file with the petition~~ or response a certification setting forth the word count or page count of the document as provided in sub. (1) or (2).~~a statement identifying whether the petition is produced with a monospaced font or with a proportional serif font. If produced with a proportional serif font, the person shall set forth the word count of the petition.~~

Committee explanatory note:

Traditional methods of service (as opposed to electronic service) are retained for writs and original actions under s. 809.51 because there is not necessarily a pending case through which the parties can be served electronically. A proceeding under this section is a new action that must be served on the respondents by the initiating parties.

Comment Proposed for Publication, 2021

Unlike an appeal from a circuit court proceeding, writs and original actions do not necessarily arise from a pending case through which the parties can be served electronically. A proceeding under this section is a new action that must be served on the respondents by traditional methods.

809.52 Rule (Temporary relief). A petitioner may request in a petition filed under s. 809.50 or 809.51 that the court grant temporary relief pending disposition of the petition. The court or a judge of the court may grant temporary relief upon the terms and conditions it considers appropriate.

**SUBCHAPTER VI
APPELLATE PROCEDURE IN SUPREME COURT**

809.60 Rule (Petition to bypass).

(1)

(a) A party may file with the supreme court a petition to bypass the court of appeals pursuant to s. 808.05 no later than 14 days following the filing of the respondent's brief under s. 809.19 or response. The petition must include a statement of reasons for bypassing the court of appeals.

(b) The clerk shall docket the petition to bypass in the supreme court and notify the parties that the petition has been filed. For electronic filing users in the court of appeals proceeding, the notice of activity constitutes service of the petition and provides notification that the proceeding is pending before the supreme court. The clerk shall serve the notice of docketing on paper parties by traditional methods. The petitioner shall serve the petition for bypass on paper parties by traditional methods.

- (2) An opposing party may file a response to the petition within 14 days after the service of the petition.
- (3) The filing of the petition stays the court of appeals from taking under submission the appeal or other proceeding.
- (4) The supreme court may grant the petition upon such conditions as it considers appropriate.
- (5) Upon the denial of the petition by the supreme court the appeal or other proceeding in the court of appeals continues as though the petition had never been filed.

Committee explanatory note:

Although petitions to bypass and petitions for review are filed as new cases in the supreme court, they continue litigation conducted in the court of appeals. The clerk maintains a single continuous record as the case moves from the court of appeals to the supreme court. Similar to direct appeals, the eFiling parties can be electronically served with the initiating petition in the already-existing litigation.

Comment Proposed for Publication, 2021

Sub. (1) provides that when a petition to bypass is filed, electronic filing users will be served through the electronic filing system.

809.61 Rule (Bypass by certification of court of appeals or upon motion of supreme court). The supreme court may take jurisdiction of an appeal or

other proceeding in the court of appeals upon certification by the court of appeals or upon the supreme court's own motion. The supreme court may refuse to take jurisdiction of an appeal or other proceeding certified to it by the court of appeals.

809.62 Rule (Petition for review).

(1g) DEFINITIONS. In this section:

- (a) "Adverse decision" means a final order or decision of the court of appeals, the result of which is contrary, in whole or in part, to the result sought in that court by any party seeking review.
- (b) "Adverse decision" includes the court of appeals' denial of or failure to grant the full relief sought or the court of appeals' denial of the preferred form of relief.
- (c) "Adverse decision" does not include a party's disagreement with the court of appeals' language or rationale in granting a party's requested relief.

(1m) GENERAL RULE; TIME LIMITS.

(a)

- 1.** A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to s. 808.10. The clerk shall docket the petition for review in the supreme court and notify the parties that the petition has been filed.
 - 2.** For electronic filing users in the court of appeals proceeding, the notice of activity constitutes service of the petition and provides notification that the petition is pending before the supreme court. Where service on the attorney general is required by s. 809.802 (1), service shall be made as provided in s. 809.802 (2). The clerk shall serve the notice of docketing on paper parties by traditional methods. The petitioner shall serve the petition for review on paper parties by traditional methods.
- (b) If a motion for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition for review in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.
 - (c) If a motion for reconsideration is denied and a petition for review had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition had not expired when the motion for reconsideration was filed, a response to the petition may be filed within 14 days of the order denying the motion for reconsideration.
 - (d) If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition, a notice withdrawing the pending petition, or an amendment to the pending petition within 14 days after the date of the filing of the court of

- appeals' amended decision.
- (e) After the petitioning party files a notice affirming or withdrawing the pending petition or an amendment to the pending petition under par. (d), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response may be an affirmation of the responding party's earlier response or a new response.
- (1r) CRITERIA FOR GRANTING REVIEW.** Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:
- (a) A real and significant question of federal or state constitutional law is presented.
 - (b) The petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority.
 - (c) A decision by the supreme court will help develop, clarify or harmonize the law, and
 1. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation; or
 2. The question presented is a novel one, the resolution of which will have statewide impact; or
 3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court.
 - (d) The court of appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the supreme court or other court of appeals' decisions.
 - (e) The court of appeals' decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.
- (2) CONTENTS OF PETITION.** Except as provided in s. 809.32 (4), the petition must contain:
- (a) A statement of the issues the petitioner seeks to have reviewed, the method or manner of raising the issues in the court of appeals and how the court of appeals decided the issues. The statement of issues shall also identify any issues the petitioner seeks to have reviewed that were not decided by the court of appeals. The statement of an issue shall be deemed to comprise every subsidiary issue as determined by the court. If deemed appropriate by the supreme court, the matter may be remanded to the court of appeals.
 - (b) A table of contents.
 - (c) A concise statement of the criteria of sub. (1r) relied upon to support the

petition, or in the absence of any of the criteria, a concise statement of other substantial and compelling reasons for review.

- (d) A statement of the case containing a description of the nature of the case; the procedural status of the case leading up to the review; the dispositions in the circuit court and court of appeals; and a statement of those facts not included in the opinion of the court of appeals relevant to the issues presented for review, with appropriate citation to the record.
- (e) An argument amplifying the reasons relied on to support the petition, arranged in the order of the statement of issues presented. All contentions in support of the petition must be set forth in the petition. A memorandum in support of the petition is not permitted.
- (f) As a separate document, an~~An~~ appendix containing, in the following order:
 1. The decision and opinion of the court of appeals.
 2. The judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition.
 3. Any other portions of the record necessary for an understanding of the petition.
 4. A copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b).

(2m) INAPPLICABLE TO PARENTAL CONSENT TO ABORTION CASES. Subsection (2) does not apply to a petition for review of an appeal that is governed by s. 809.105. A petition governed by that section shall comply with s. 809.105 (11).

(2r) APPLICATION TO TERMINATION OF PARENTAL RIGHTS CASES. This section applies to petitions for review of an appeal under s. 809.107, except as provided in s. 809.107 (6) (f).

(3) RESPONSE TO PETITION. Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14 days after the service of the petition. 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 response. If filed, the response may contain any of the following:

- (a) Any reasons for denying the petition.
- (b) Any perceived defects that may prevent ruling on the merits of any issue in the petition.
- (c) Any perceived misstatements of fact or law set forth in the petition that have a bearing on the question of what issues properly would be before the court if the petition were granted.
- (d) Any alternative ground supporting the court of appeals result or a result less favorable to the opposing party than that granted by the court of appeals.
- (e) Any other issues the court may need to decide if the petition is granted, in which case the statement shall indicate whether the other issues were raised before the court of appeals, the method or manner of raising the

issues in the court of appeals, whether the court of appeals decided the issues, and how the court of appeals decided the issues.

(3m) PETITION FOR CROSS-REVIEW.

- (a) *When required; time limit.*** A party who seeks to reverse, vacate, or modify an adverse decision of the court of appeals shall file a petition for cross-review within the period for filing a petition for review with the supreme court, or 30 days after the filing of a petition for review by another party, whichever is later.
- (b) *No cross-petition required.***
1. A petition for cross-review is not necessary to enable an opposing party to defend the court of appeals' ultimate result or outcome based on any ground, whether or not that ground was ruled upon by the lower courts, as long as the supreme court's acceptance of that ground would not change the result or outcome below.
 2. A petition for cross-review is not necessary to enable an opposing party to assert grounds that establish the party's right to a result that is less favorable to it than the result or outcome rendered by the court of appeals but more favorable to it than the result or outcome that might be awarded to the petitioner.
- (c) *Rights and obligations of parties.*** A party seeking cross-review has the same rights and obligations as a party seeking review under ch. 809, and any party opposing a petition for cross-review has the same rights and obligations as a party opposing review.

(4) FORM AND LENGTH REQUIREMENTS.

- ~~**(a)** The petition for review and response, if any, shall conform to s. 809.19 (8) (b), (bm), and (d8g) as to form, pagination, and certification. The petition shall be as short as possible, and may not exceed 35 pages in length if a monospaced font or handwriting is used, or 8,000 words if a proportional serif font is used, exclusive of appendix. The petition for review and the response shall have white front and back covers, and a party shall file 10 copies with the clerk of the supreme court. The first page of the petition for review shall be a white cover page that includes the proper case caption, including the case number, and shall bear the title "Petition for Review." The first page of the response shall be a white cover page that includes the proper case caption, including the case number, and shall bear the title "Response to Petition for Review."~~
- ~~**(b) *Electronic petition for review.*** An attorney filing a petition for review under this rule shall file with the clerk of the supreme court a copy of the petition for review or response in electronic form using the procedure under s. 809.19 (12) and may file a copy of an appendix to the petition for review or response in electronic form using the procedure under s. 809.19 (13). A self-represented party is not required to file an electronic copy of the petition for review or response, but may do so as provided for in this subsection. Notwithstanding s. 801.18 (9), the paper copy of the petition~~

~~for review or response remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper petition for review. An attorney shall show good cause why it is not feasible to file a copy of the petition of review electronically.~~

~~(c) *Effect of electronic filing.* Except as provided in s. 809.80 (3) (e), the date on which the clerk receives the paper copies of the petition for review shall be the official date of filing of the petition for review. Transmitting the electronic copy of a petition for review does not satisfy the filing requirements of this section.~~

~~(d) *Timing of electronic filing.* The electronic copy of the petition for review and response shall be electronically transmitted on or before the date that the paper petition for review and response is filed.~~

(4m) COMBINED RESPONSE AND PETITION FOR CROSS-REVIEW. When a party elects both to submit a response to the petition for review and to seek cross-review, the first page shall be a white cover page that includes the proper case caption and case number, and shall bear the title its submission shall be titled "Combined Response and Petition for Cross-Review." The time limits set forth in sub. (3m) shall apply. The response portion of the combined document shall comply with the requirements of subs. (3) and (4). The cross-review portion of the combined document shall comply with the requirements of subs. (2) and (4), except that the requirement of sub. (2) (d) may be omitted. The cross-review portion shall be preceded by a blank white cover. A signature shall be required only at the conclusion of the cross-review portion of the combined document.

(5) EFFECT ON COURT OF APPEALS PROCEEDINGS. Except as provided in s. 809.24, the filing of the petition stays further proceedings in the court of appeals.

(6) CONDITIONS OF GRANT OF REVIEW. The supreme court may grant the petition or the petition for cross-review or both upon such conditions as it considers appropriate, including the filing of additional briefs. If a petition or petition for cross-review is granted, the parties-petitioner or cross-petitioner cannot raise or argue issues not set forth in the petition or petition for cross-review unless ordered otherwise by the supreme court. The supreme court may limit the issues to be considered on review. If the issues to be considered on review are limited by the supreme court and do not include an issue that was identified in a petition or petition for cross-review and that was left undecided by the court of appeals, the supreme court shall remand that issue to the court of appeals upon remittitur, unless that issue has become moot or would have no effect.

Committee explanatory note:

Under the proposed rule, an electronic filing user may electronically file a petition for review with the court without also submitting a physical paper copy. Note the interaction of this section with proposed s. 809.801 (4) (ar), which extends the time of filing until 11:59 p.m. for documents filed through the eFiling system. Taken together, these two provisions supersede this court's decision in *St. John's Home v. Continental Casualty Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam, holding that a petition for review must be filed by 5:00 p.m. on the 30th day following the filing of the court of appeals decision to invoke this court's appellate jurisdiction.

Current sub. (6), conditions of grant of review, is confusing when read together with sub. (3m) (b), petition for cross-review. While sub. (3m) (b) allows a respondent to raise issues other than those identified in the petition for review, sub. (6) says that "parties" cannot raise issues not set forth in the petition. The proposed amendment reconciles the language of the two subsections by clarifying that it is the petitioner or cross-petitioner who cannot raise a new issue. This is consistent with current supreme court practice and with the court's current form grant order, which states: "The petitioner may not raise or argue issues not set forth in the petition for review or cross petition for review unless otherwise ordered by the court."

Comments Proposed for Publication, 2021

Under sub. (1m), an electronic filing user may electronically file a petition for review with the court without also submitting a physical paper copy. The appellate electronic filing rule, new s. 809.801 (4) (ar), extends the time of filing until 11:59 p.m. for documents filed through the eFiling system. Taken together, these two provisions supersede the decision in *St. John's Home v. Continental Casualty Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam, holding that a petition for review must be physically received by 5:00 p.m. on the 30th day following the filing of the court of appeals decision to invoke the supreme court's appellate jurisdiction.

Sub. (6) is amended to avoid the implication that the respondent in a petition for cross-review may not raise issues other than those identified in the petition for review, consistent the language of sub. (3m) (b).

809.63 Rule (Procedure in supreme court). When the supreme court takes jurisdiction of an appeal or other proceeding, the rules governing procedures in the court of appeals are applicable to proceedings in the supreme court unless otherwise ordered by the supreme court in a particular case.

809.64 Rule (Reconsideration). A party may seek reconsideration of the

judgment or opinion of the supreme court by filing a motion under s. 809.14 for reconsideration within 20 days after the date of the decision of the supreme court.

SUBCHAPTER VII ORIGINAL JURISDICTION PROCEDURE IN SUPREME COURT

809.70 Rule (Original action).

- (1) A person may request the supreme court to take jurisdiction of an original action by filing a petition which may be supported by a memorandum. The petition shall be served on each party and proposed respondent by traditional methods as provided in s. 809.80 (2). The petition must contain all of the following:
 - (a) A statement of the issues presented by the controversy.
 - (b) A statement of the facts necessary to an understanding of the issues.
 - (c) A statement of the relief sought.
 - (d) A statement of the reasons why the court should take jurisdiction.
- (1m) The clerk of court shall docket the petition upon receipt of the items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, and send the notice to the parties by traditional methods.
- (2) The court may deny the petition or may order the respondent to respond and may order oral argument on the question of taking original jurisdiction. The respondent shall file a response, which may be supported by a memorandum, within 14 days after the service of the order.
- (3) The court, upon a consideration of the petition, response, supporting memoranda and argument, may grant or deny the petition. The court, if it grants the petition, may establish a schedule for pleading, briefing and submission with or without oral argument.

Committee explanatory note:

Traditional methods of service are retained for writs and original actions under ss. 809.70 and 809.71, because there is not necessarily a pending case through which the parties can be served electronically. Proceedings under these sections are new actions that must be served on the respondents by the initiating parties. Note that pending Rule Petition 20-03 regarding redistricting proposes amendments to s. 809.70.

Comment Proposed for Publication, 2021

Original actions do not always arise from a pending case through which the parties can be served electronically. A proceeding under this section is a new

action that must be served on the respondents by the initiating parties using traditional methods.

809.71 Rule (Supervisory writ).

- (1)** A person may request the supreme court to exercise its supervisory jurisdiction over a court and the judge presiding therein or other person or body by filing a petition in accordance with s. 809.51. The petition shall be served on each party and proposed respondent, and if applicable, upon the originating court or tribunal, by traditional methods as provided in s. 809.80
- (2)** A person seeking a supervisory writ from the supreme court shall first file a petition for a supervisory writ in the court of appeals under s. 809.51 unless it is impractical to seek the writ in the court of appeals. A petition in the supreme court shall show why it was impractical to seek the writ in the court of appeals or, if a petition had been filed in the court of appeals, the disposition made and reasons given by the court of appeals.
- (2)** The clerk of court shall docket the petition upon receipt of the items referred to in sub. (1). The clerk shall assign a case number, create a notice that the petition has been docketed, and send the notice to the parties by traditional methods.

Comment Proposed for Publication, 2021

Supervisory writs do not always arise from a pending case through which the parties can be served electronically. A proceeding under this section is a new action that must be served on the respondents by the initiating parties using traditional methods.

**SUBCHAPTER VIII
MISCELLANEOUS PROCEDURES IN COURT OF APPEALS
AND SUPREME COURT**

809.80 Rule (Filing and service of papersdocuments by traditional methods).

- (1)** FILING BY TRADITIONAL METHODS. A person who is not an electronic filing user as provided in s. 809.01 (33) shall file any papera paper copy of any document required to be filed by these rules with the clerk of the court unless a different place of filing is expressly required or permitted by statute or rule. The clerk of the court is located at 110 E. Main Street, Madison, Wisconsin 53703. The mailing address for the clerk of the supreme court and the court of appeals is P.O. Box 1688, Madison, Wisconsin 53701-1688.

Committee explanatory comment:

This section now pertains to how paper parties will file, serve, and be served.

Proposed revisions to s. 809.80 rename current methods of service as “traditional methods,” describe how paper parties may file their documents, and outline the standards paper briefs must meet for format, printing, and proof of mailing. Electronic filing and service are addressed in proposed s. 809.801.

(2) SERVICE BY TRADITIONAL METHODS.

- (a) In this subsection, “service by traditional methods” means service in the manner A person shall serve and file a copy of any paper required or authorized under these rules to be filed in a trial or appellate court as provided in s. 801.14 (1), (2), (2m), and (4) of any document required or authorized under these rules to be filed in a trial or appellate court.
- ~~(b) Any paper required or authorized to be served on the state in appeals and other proceedings in felony cases in the court of appeals or supreme court shall be served on the attorney general unless the district attorney has been authorized under s. 978.05 (5) to represent the state. Any paper required or authorized to be served on the state in appeals and other proceedings in misdemeanor cases decided by a single court of appeals judge under s. 752.31 (2) and (3) shall be served on the district attorney. Every petition for review by the supreme court of a decision of the court of appeals in a misdemeanor case shall be served on the attorney general.~~
- (bm) A party initiating a proceeding under s. 809.51, 809.70 or 809.71 shall serve a petition and memorandum on all parties by traditional methods.
- (c) Except as provided in par. (bm), a paper party may initiate a proceeding in the appellate courts without serving electronic filing users by traditional methods. The clerk of the circuit or appellate court shall promptly enter filed documents into the electronic filing system and generate a notice of docketing. Service on electronic filing users shall be as provided in s. 809.10, 809.11, 809.14, 809.32, 809.50, 809.60, or 809.62.
- (d) A paper party may file subsequent documents in the appellate courts without serving electronic filing users by traditional methods. The clerk of the circuit or appellate court shall image the documents and promptly enter the documents into the electronic filing system. The notice of activity generated by the entry shall constitute service on the electronic filing users in the case as provided in ss. 801.18 (6) (d) and 809.801 (6) (d).
- (e) Paper parties shall be served by traditional methods. Paper parties shall serve other paper parties by traditional methods.

Committee explanatory note:

Because the clerk will be scanning all paper documents submitted by paper parties, the electronic filing users will automatically receive notification of new paper documents without the need for paper service. The current

provision regarding service on the attorney general has been moved to s. 809.802.

- (3) ~~FILING OF PAPERS; USE OF MAIL~~ TIME OF FILING BY TRADITIONAL METHODS.
- (a) *All filings – general rule.* Except as provided in pars. (b) to (e), filing by traditional methods is not timely unless the clerk receives the paper documents within the time fixed for filing. Filing may be accomplished by hand delivery, mail, or by courier. Filing by facsimile is permitted only as set forth in s. 801.16 (2) (a) to ~~(e)~~ (f) and the rules and directives governing facsimile filing in the court of appeals and supreme court. Documents completing transmission after ~~regular business hours of the clerk~~ 11:59 p.m. central time are considered filed the next business day the clerk's office is open.
- (b) *Brief or appendix – general rule.* Except as provided in par. (c), a brief or appendix is timely filed if, on or before the last day of the time fixed for filing, it is correctly addressed and:
1. Deposited in the United States mail for delivery to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage pre-paid; or
 2. Delivered to a 3rd-party commercial carrier for delivery to the clerk within 3 calendar days.
- (c) *Pro se brief or appendix from person confined in institution – special rule.* A pro se brief or appendix from a person confined in an institution is timely filed if the brief or appendix is correctly addressed and delivered to the proper institution authorities for mailing on or before the last day of the time fixed for filing. A confined person who mails a brief or appendix under this subsection shall also file a certification or affidavit setting forth the date on which the document was delivered to the proper institution authorities for mailing.
- (d) *Petition for review – general rule.* Except as provided in par. (e), a petition for review is timely filed only if the clerk actually receives the petition within the time fixed for filing.
- (e) *Pro se petition for review from person confined in institution – special rule.* The 30-day time limit for the clerk's receipt of a pro se petition for review filed by a person confined in an institution is tolled on the date that the confined person delivers a correctly addressed petition to the proper institution authorities for mailing. The confined person shall also file a certification or affidavit setting forth the date on which the petition was delivered to the proper institution authorities for mailing.

Committee explanatory note:

Documents faxed by 11:59 pm will be considered filed the same day. This gives paper parties the same extra time to file as electronic parties. Note that the appellate courts place a number of restrictions on filing by fax and do not accept fax filing of petitions for review, documents requiring a filing fee, and documents over 15 pages in length. Parties wishing to file by fax should consult the clerk's office for guidance.

- (4) PROOF OF FILING DATE FOR BRIEF OR APPENDIX FILED BY TRADITIONAL METHODS.
- (a) When a brief or appendix is filed by mail or commercial carrier in accordance with s. 809.80 (3) (b), the ~~attorney or~~ person filing the document shall append-include a certification or affidavit setting forth the date and manner by which the document was mailed or delivered to a 3rd-party commercial carrier.
 - (b) If a certification or affidavit is appende dincluded, the clerk's office shall consider the brief or appendix filed on the date of mailing or delivery set forth in the certification or affidavit. If no certification or affidavit is appende dincluded, the date of filing shall be the date on which the brief or appendix is received by the clerk's office.
 - (c) The date shown on a postage meter does not establish that the document was mailed on that date.
- (5) ~~ELECTRONIC BRIEFS AND NO-MERIT REPORTS~~ CLERK REVIEW.
- ~~(a) Clerk review.~~
 - ~~1. The clerk shall may review the electronic copy of the brief, no-merit report, or supplemental no-merit report a document for compliance with rule requirements relating to form, including caption, format, length, and confidentiality to determine if the electronic document should be accepted for filing.~~
 - ~~2. If the clerk accepts the electronic copy of the brief, no-merit report, or supplemental no-merit report under subd. 1., the electronic copy shall be considered transmitted to the court at the time the original transmission to the electronic filing system was complete. Upon acceptance of the electronic copy, the electronic filing system shall issue a confirmation with the date and time of the original transmission. The confirmation receipt shall serve as proof of the electronic transmission only. The filing date for the document remains the date on which the paper document is filed.~~
 - ~~3. If the clerk rejects the electronic copy of the document following review under subd. 1., the filer will shall receive notification of the rejection. The filer may be required to resubmit the electronic copy of the document.~~
 - ~~(b) Effect of noncompliance. Failure to transmit the electronic copy of the brief, no-merit report, or supplemental no-merit report on or before the date that the paper document is filed may result in the document being considered untimely, in the absence of leave of the court.~~

(6) PRINTING SPECIFICATIONS. When paper copies of briefs and appendices in cases are required to be filed or served, the briefs and appendices shall be printed, typed, duplicated or reproduced by a process that produces a clear, black image of the text on white paper, in conformity with this chapter.

Committee explanatory note:

The appellate clerk currently reviews submitted documents to make sure that rule requirements relating to form have been met; the clerk does not review for substance. Although the current rule refers only to review of electronic briefs, the clerk's office routinely reviews all documents, however submitted, to make sure that minimal formal standards are met. The proposed language includes review of all types of documents, both paper and electronic. The clerk may reject the document and require its correction and resubmission. The same change is made to s. 809.801 (4) (b) regarding review of electronic documents. This change is not proposed to the circuit court rule because the circuit court clerks do not employ the same level of review before accepting filings. Par. (6) incorporates s. 808.11 with respect to the appearance of printed copies.

Comments Proposed for Publication, 2021

Section 809.80 adds the term "traditional methods" to refer to forms of filing and service such as hand-delivery and mail, describes how paper parties may file their documents, and outlines the standards that paper briefs must meet for format, printing, and proof of mailing. This is distinguished from electronic filing and service, which are addressed in new s. 809.801.

Sub. (2) does not require a paper party to provide service of a filed document on an electronic party. Because the clerk will be scanning all paper documents submitted by paper parties, electronic filing users will automatically receive notification of new paper documents without the need for traditional service. The current provision regarding service on the attorney general in certain cases has been moved to s. 809.802.

Under sub. (3), documents faxed by 11:59 pm are considered filed the same day. This gives paper parties the same filing hours as electronic parties. The appellate courts place a number of restrictions on filing by fax with respect to length, type of document, and payment of applicable fees. Persons wishing to file by fax should consult the clerk's office for guidance.

Since 2009, the appellate clerk has reviewed electronic briefs to make sure that rule requirements relating to form have been met. Under sub. (5), the

clerk's review includes review of all filed documents, both paper and electronic. The same review is applied to electronic documents under s. 809.801 (4) (b).

809.801 Rule (Appellate electronic filing).

(1) DEFINITIONS. The definitions in s. 809.01 apply in this section.

Committee explanatory note:

Although proposed s. 809.801 is new, the numbering reflects an effort to stay parallel with the section numbering of the circuit court eFiling rule, s. 801.18.

(2) EFFECTIVE DATE; APPLICABILITY.

(a) At the direction of the supreme court, the director shall implement an electronic filing system for the Wisconsin supreme court and court of appeals. The requirements of this section shall govern the electronic filing of documents in all types of actions and proceedings in the appellate courts.

(b) At the direction of the supreme court, mandatory use of the electronic filing system shall be phased in according to a schedule set by the director until the system has been fully implemented. Information about the transition schedule shall be made readily available to the public in advance of its application.

(c) Subject to the schedule in par. (b), mandatory users shall be required to use the appellate court electronic filing system for all new filings covered by the schedule. Electronic filing shall be required for all new actions and proceedings brought in the court of appeals and the supreme court, and for all new documents submitted in previously filed cases, except as otherwise provided in this section.

(e) Electronic filing is limited to methods specifically approved by the director. The director may enter into an agreement with any state agency to allow electronic filing through a custom data exchange between the court case management system and the agency's automated information system. Parties using a custom data exchange are considered mandatory users and are subject to the requirements of this section.

(f) The procedures in this section shall be interpreted in a manner consistent with existing procedures. This section is not intended to limit the director's approval of new technologies that accomplish the same functions.

(g) All judicial officers, the clerk of court, and all court staff shall cooperate and assist with the implementation of electronic filing.

- (h) This section does not apply to documents required by law to be filed with court officials that are not filed in an action before the court. These documents may be filed by traditional methods unless otherwise required.
- (k) The procedures under this section are intended to be consistent with the procedures governing electronic filing and service in the circuit courts under s. 801.18. The circuit and appellate court electronic filing and service rules shall be interpreted consistently to the extent practicable.

Committee explanatory note:

Proposed s. 809.801 is built on the template of the circuit court rule, s. 809.18, and is intended to be parallel in structure, language, and procedure. There are no major differences between the two systems with respect to how eFiling works. The two rules “shall be interpreted consistently to the extent practicable”. The goal is to provide a consistent experience for filers in terms of the applicable rules and the technology.

Subs. (2) (b) and (c) allow the use of an implementation schedule to govern the availability of electronic filing according to the type of proceeding involved and the type of court. This will enable the court to gradually roll out the use of electronic filing as programming, scanning, and training are completed. In August 2020, the Court of Appeals began voluntary eFiling in Court of Appeals District III, and rolled it out to the other three districts month by month over the fall. The appellate eFiling system now accepts voluntary filings for any matter that may be filed in the Court of Appeals, including civil and criminal appeals, no-merit appeals, pre-appeal motions, writs, and discretionary appeals.

On a date the court selects, the implementation schedule may be expanded to include voluntary electronic filing of supreme court cases. Programming is currently beginning for electronic filing of petitions to bypass, petitions for review, motions for reconsideration, original actions, supervisory writs, and judicial disciplinary proceedings under s. 757.91.

Proceedings in the court of appeals and in the supreme court may be made mandatory for attorneys as early as the effective date of the court’s order, requested for July 1, 2021. CCAP anticipates that the electronic filing system will be ready for mandatory filing of most proceedings on the effective date. Attorney disciplinary matters under SCR ch. 22 and bar admission matters under SCR ch. 40 may become mandatory at a later date.

(3) REGISTRATION REQUIREMENTS.

- (a) The following individuals shall register for access to the electronic filing system prior to filing documents:
1. Licensed Wisconsin attorneys.
 2. Attorneys appearing under SCR 10.03 (4).
 3. High-volume filing agents.
- (b) Parties who are not subject to par. (a) may voluntarily register to use the electronic filing system.
- (c) Except as otherwise provided, a party not subject to par. (a) who does not choose to participate in the electronic filing system under par. (b) shall file, serve, and receive paper documents by traditional methods.
- (d) All users shall register through the electronic filing system by executing a user agreement governing the system's terms of use. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. The electronic filing system shall make information on the technical requirements for filing readily available. By registering, users agree to electronically file all documents to the extent the electronic filing system can accept them. Users shall promptly provide notice through the electronic filing system of any change in the information provided for registration.
- (e) Upon completion of a properly executed user agreement under par. (d), the electronic filing system shall provide the user with a confidential, secure authentication procedure for access to the electronic filing system. This authentication procedure shall be used only by that user and by any agents or employees that the user authorizes. The same authentication procedure shall be used for all cases on which the user is an attorney or a party. The electronic filing system may reset authentication procedures as needed for administrative and security purposes. Upon learning that the confidentiality of the authentication procedure has been inadvertently or improperly disclosed, the user shall immediately report that fact through the electronic filing system.
- (f) After registering to use the electronic filing system, a user shall also opt in as an attorney or party on any case in which the user intends to participate. Users shall promptly opt in or out on each case upon beginning or ending appearance as an attorney or as a party. Filing agents appearing under s. 809.801 (3) (a) or (b) shall promptly opt in or out upon any change in the identity of a filing agent. Mandatory users who do not opt in on a case will not receive notices of activity or service of documents.
- (g) Attorneys appearing under SCR 10.03 (4) shall register following court approval of a motion to appear *pro hac vice*.
- (i) Voluntary users who wish to opt out of a particular case shall use the "opt out" feature of the electronic filing system or notify the clerk of court. The

electronic filing system shall indicate that traditional methods must be used for this party for future filings and service.

(j) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case. It may also provide a method for professionals and agencies associated with the case to receive information and file reports.

Committee explanatory note:

Sub. (3)(a) mandates that three types of filers participate in the electronic filing system.

- Licensed Wisconsin attorneys are required to use electronic filing wherever it is available. The current circuit court rule contains an exception for attorneys who are representing themselves, but the new appellate and circuit court rules propose to remove that exception. Experience has shown that electronic filing is straightforward to use, with minimal technical impediments or expense.
- Attorneys appearing *pro hac vice* sign up to use the electronic filing system after approval of their application to appear.
- In small claims proceedings, organizations may authorize certain employees and agents to file on behalf of the organization under s. 799.06(2). These organizations include both high-volume filers like utility companies and hospitals and low-volume filers like small stores and individual landlords. This section requires high-volume filers to use the electronic filing system and allows low-volume filers to participate voluntarily like self-represented parties.

Subs. (3) (d) and (f) require electronic filing users to promptly opt in and opt out from the cases where they are representing parties or participating as litigants. They are also required to keep their contact information up to date to receive electronic service.

Sub. (3) (j) recognizes that there are persons who may file documents in cases where they are not parties, such as amicus curiae. Electronic filing includes a feature called “nonparty filing” that allows anyone to upload a document for the clerk to review and accept or reject, just as if it came in the mail. The clerk may include those persons in later electronic distributions where appropriate.

(4) TIME AND EFFECT OF ELECTRONIC FILING.

(a) The electronic filing system is an agent of the appellate courts for purposes of filing, receipt, service, and retrieval of electronic documents. The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

- (am) A document is considered filed on a particular day if the submission is completed by 11:59 p.m. central time, as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review. Documents filed after 11:59 p.m. are considered filed the next day the clerk's office is open. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.
- (b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate clerk of court. The clerk may review documents for compliance with rule requirements relating to form, including caption, case number, format, length, and confidentiality, to determine if the documents should be accepted for filing.
- (c) If the clerk of court accepts a document for filing, it shall be considered filed with the court at the date and time of the original submission, as recorded by the electronic filing system. The electronic filing system shall issue a notice of activity to serve as proof of filing. When personal service or traditional service is not required, the notice of activity shall constitute service on the other users in the case.
- (cm) If the clerk rejects the document following review, the user shall receive notification of the rejection. The user may be required to resubmit the document.

Committee explanatory note:

Sub. (4) (am) provides that filing occurs when the document is submitted to the eFiling system, so long as it is accepted by the clerk at a later time. Extending the filing day to 11:59 p.m. is consistent with the circuit court electronic filing rule and federal court electronic filing rules. Note that this change would supersede the case law interpretation of ss. 808.04 and 808.10 requiring filing to occur only within the office hours of the clerk. This provision gives a user an extra few hours to file on the last day a document is due but does not otherwise affect the calculation of time. If a user submits a document or the court signs an order on a day when the clerk's office is closed, it is considered filed on the next day the clerk's office is open, except as provided by other statutes and rules, or by court order.

Sub. (4) (b) provides for permissive review of documents for compliance with rules relating to form, such as format, length, and confidentiality. This same review is provided under s. 809.80 (5) for paper documents. The clerk's review is subject to court directives on when documents should be accepted or rejected. This change is not proposed to the circuit court eFiling rule

because the review provided by circuit court clerks is directed to different issues.

Sub. (4) (c) is consistent with new s. 809.80 (2) (d), which provides that a document filed by a paper party will be served on the electronic users when the clerk scans and docket the document and a “notice of activity” is generated. See the explanatory note to s. 809.19 (3) (a) and (4) (a) for how this section interacts with the briefing schedule.

(5) COMMENCEMENT OF ACTION OR PROCEEDING; FILING OF INITIATING DOCUMENTS.

(a) Original actions, writs, and other matters commenced in the appellate courts. A user seeking to initiate an action or proceeding in an appellate court under s. 757.85 (5), 809.51, 809.70, or 809.71 shall first register with the electronic filing system as provided in sub. (3). The user shall then file an initiating document in the appellate court and provide the additional information requested by the electronic filing system. At the written or oral request of the filer, the clerk of court may reject the document for filings made in error, if the request is made before the clerk of court has accepted the document. Initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(b) Petitions for review and petitions to bypass. A user seeking review by the supreme court under s. 809.60 or 809.62 shall file an initiating document in the supreme court. At the written or oral request of the filer, the clerk may reject the document for filings made in error, if the request is made before the clerk has accepted the document. Service shall be as provided in s. 809.60 (1) (b) or s. 809.62 (1m) (a) 2.

(c) Appeals from circuit court. A user seeking to initiate an appeal under s. 809.10, 809.103, 809.104, 809.105, 809.107, 809.30, 809.32, or 809.40 shall file a notice of appeal in the circuit court case appealed from as provided in that section. The clerk of circuit court shall transmit the notice of appeal to the clerk of the court of appeals. The docketing statement, motions under s. 809.41 (1) or (4), and statement on transcript, where applicable, shall also be filed with the clerk of circuit court and transmitted to the clerk of the court of appeals. Service shall be as provided in s. 809.10 (1) (h).

(d) Petitions for leave to appeal. A user seeking leave to appeal under s. 809.50 shall file a petition in the court of appeals and provide the additional information requested by the electronic filing system. At the written or oral request of the filer, the clerk of the court of appeals may reject the document for filings made in error, if the request is made before the clerk has accepted the document. Service shall be as provided in s. 809.50 (1m).

(e) Motions prior to appeal. A user moving the court for an order or other relief under s. 809.14 (5) before a notice of appeal is filed shall file an initiating

document in the court of appeals and provide the additional information requested by the electronic filing system. At the written or oral request of the filer, the clerk of the court of appeals may reject the document for filings made in error, if the request is made before the clerk has accepted the document. Service shall be as provided in s. 809.14 (5) (b).

(f) Respondent to opt in. A mandatory user who represents a responding party shall register to use the electronic filing system as provided under sub. (3) (d). After registering to use the electronic filing system, the user shall opt in on the case as provided in sub. (3) (f).

Committee explanatory comment:

Sub. (5) addresses how the first document or group of documents should be filed in each type of appellate proceeding. Docketing, accompanying documents, and service are all addressed in their specific sections.

(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS.

(a) The electronic filing system shall generate a notice of activity to the other users in the case when documents other than initiating documents are filed. Users shall access filed documents through the appellate electronic filing system. For documents that do not require personal or traditional service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document.

(b) If a document requires personal or traditional service, it shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(c) Paper parties shall be served by traditional methods. The electronic filing system shall indicate which parties are to be served electronically and which are to be served by traditional methods.

(d) Paper parties shall file documents with the court by traditional methods. The clerk of court shall image the documents and enter the imaged documents into the electronic filing system promptly. The notice of activity generated by the entry shall constitute service on the users in the case. Paper parties shall serve other paper parties by traditional methods.

(e) An electronic notification that cannot be successfully delivered to a user shall be returned to the clerk of court. If the clerk cannot contact the user to update the information, the user shall be treated as a paper party until the problem is corrected.

(f) For cases that were originally filed by traditional methods, all of the following apply:

1. Subject to the schedule in sub. (2) (b), all mandatory users shall opt in on each case for which they continue to appear. Mandatory users who

do not opt in on a case do not receive notices of activity or service of documents.

2. For all cases that are in open status at the time electronic filing is mandated, the clerk of court shall send a notice by traditional methods to each party who has not opted in stating that the case has been converted to electronic filing. Mandatory users shall promptly opt in on these cases unless the user informs the court that the user is no longer appearing on behalf of the party.
3. For all cases that were in closed status prior to the time electronic filing was mandated, no action is required until there is a subsequent filing or the court initiates further activity on the case, subject to all of the following:
 - a. A mandatory user who wishes to file on a closed case shall opt in on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly opt in on the case or shall notify the court that the user is no longer appearing on behalf of the party.
 - b. A voluntary user who wishes to file electronically in a closed case shall opt in as a user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly opt in on the case or shall notify the court that the user is no longer appearing on behalf of the party.
 - c. Service on a party who might be a voluntary user shall include a notice stating that the case has been converted to electronic filing and giving instructions for how to use the electronic filing system if the party chooses to do so.

Committee explanatory comment:

Sub. (6) (a) provides that the electronic filing system now serves as the means of delivery between users for subsequent documents, the kind that were previously served by mail or delivery. Electronic filing users will receive a notice of activity letting them know that a new document has been filed in the proceeding. Users may choose to receive the notice of activity in several ways: by an email sent to the user, by an email sent to the user's staff member, or by logging into the eFiling website and checking for notifications. Paper parties will continue to be served by traditional methods for both initiating and subsequent documents.

Sub. (6) (e) provides that if an email to a party is returned as undeliverable, the clerk will attempt to locate the party and correct the problem. The other parties must serve that party by traditional methods in the meantime.

Sub. (6) (f) outlines how mandatory electronic filing will be initiated on previously filed cases. For cases that are in open status at the time electronic filing becomes mandatory, the clerk will work with attorneys to opt in on their open cases. Parties who are not yet registered but who might be voluntary users will be provided with instructions on how to participate in the electronic filing system if they choose.

(7) PAYMENT OF FEES.

(a) Users shall make payments due to the clerk of court by check or through the court electronic payment system, unless otherwise ordered by the court or unless arrangements are made with the clerk of court. The court electronic payment system shall deposit the fees due to the clerk of court in the clerk's account.

(b) A user may submit a petition or motion for waiver of costs and fees, including the electronic filing fee, under ss. 814.29 (1) or (1m), using a form provided by the court for that purpose. If a document is submitted with a petition or motion for waiver, it shall be considered filed with the court on the date and time of the original submission if the waiver is subsequently granted by the court or other arrangements for payment are made.

(c) Users shall be charged a fee for use of the electronic filing system, as provided under ss. 758.19 (4m) and 809.25 (2) (a) 5. and established by the supreme court. The fee is a recoverable cost under s. 809.25 (1) (b) 2. The electronic filing fee shall not be charged to Wisconsin state or local government units.

Committee explanatory note:

The appellate electronic filing fee will be imposed under the same circumstances as the circuit court electronic filing fee. It may be waived for indigent parties and their attorneys, using the same procedure and criteria as courts apply to waiver of other costs and fees. The electronic filing fee is not charged to a Wisconsin governmental unit such as the district attorney, public defender and appointed counsel, court-appointed counsel, child support agency, attorney general, or county and municipal attorney.

(8) FORMAT AND CONTENT OF FILINGS.

(a) The director shall make information about the technical requirements of the electronic filing system readily available to the public. Users are responsible for keeping up with these requirements and providing the necessary equipment, software, communication technology, and staff training.

- (b) Users shall provide any case management information needed to file documents. The electronic filing system shall reject a document for failure to include information in any one of the mandatory fields identified by the system.
- (c) Users shall format the appearance of all electronically filed documents in accordance with statutes and appellate court rules governing formatting of paper documents, including page limits.
- (d) The electronic filing system may set limits on the length or number of documents. Leave of court may be granted for traditional filing and service in appropriate cases. If a brief or appendix cannot be electronically filed as a single document due to the size limitations of the system, the user shall contact the clerk of court for assistance.
- (e) Electronically filed appendices, exhibits, and affidavits shall be filed in portable document format. All other electronically filed documents shall be filed in text-searchable portable document format.
- (f) Electronically filed documents may include internal bookmarks that allow the reader to navigate quickly within a document, such as from the table of contents to the corresponding sections of a brief or from the table of contents to the corresponding documents in an appendix.
- (g) Electronically filed documents may include external hyperlinks that allow the reader to jump directly to a source of information, such as a published case or statute posted on the Internet. Hyperlinks shall be used only in accordance with security procedures set by the court.
- (h) Users shall format electronically filed documents to leave a blank space 2 inches by 2 inches square at the top right corner of the first page to accommodate the court file stamp.

Committee explanatory note:

Sub. (8) (a) requires electronic filing users to keep their hardware, software, and staff training up to date with the minimum requirements set by CCAP. To date, these requirements have been well within the technology needed to run a law office. In the event that a very large brief or appendix that cannot be electronically filed as a single document due to the size limitations of the system, the user may contact the clerk of court for assistance. The system's size capacity has recently been increased.

Since 2009, the court has required that briefs, no-merit reports, and petitions for review be submitted in text-searchable portable document format (PDF), under current s. 809.18 (12). Modern word-processing technology includes the ability to easily convert a document to text-searchable PDF, so the proposed rule expands that requirement to include most documents submitted to the court, including motions, writs and petitions. Appendices

and exhibits are not necessarily produced by the same technology and are therefore not required to be text-searchable. The requirement for PDF appendices comes from current s. 809.18 (13).

Sub. (8) (f) provides for the permissive use of internal bookmarks allowing the reader to move quickly between parts of a document. The use of bookmarks is not required.

The 2009 rule governing electronic briefs allowed the use of external hyperlinks to sources of information such as published cases and statutes posted on the Internet, and sub. (8) (g) continues to allow this under certain conditions. Hyperlinks come with a small amount of risk for the introduction of malicious software into the electronic filing system and into law office case management systems. For that reason, hyperlinks may be used only in accordance with guidance posted by the court, and the court may limit the sites that users may link to. The use of hyperlinks is not required.

(9) OFFICIAL RECORD.

- (a) Electronically filed documents have the same force and effect as documents filed by traditional methods. The electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.
- (b) The duties of the clerk of court under this chapter and all other statutes, court rules, and procedures may be fulfilled through proper management of electronic documents as provided in this section. The requirements of statutes and rules that refer to paper copies, originals, mailing, and other traditional methods may be satisfied by transmission of documents through the electronic filing system.
- (c) Subject to the schedule in sub. (2) (b), the clerk of court shall maintain the official court record only in electronic format for all cases commenced after that date. Documents filed by traditional methods shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to SCR 72.03 (3). Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.
- (d) If a document is filed in a case in closed status, the clerk of court shall file the document electronically and convert that case to electronic format within a reasonable time. If conversion of the case would be unusually burdensome, the clerk of court may maintain the record in paper format with the permission of the court.
- (e) The clerk of court shall make the public portions of the electronic record available for viewing at the clerk of court's office. The clerk of court shall

- make nonpublic portions of the electronic record available for viewing by authorized persons.
- (f) The clerk of court may provide either paper or electronic copies of pages from the court record. The clerk of court shall charge the per-page fee set by s. 809.25 (2) for electronic court records.
- (g) Certified copies of an electronic record may be obtained from the clerk of court's office by traditional methods, as provided by s. 889.08. The electronic system may also make available a process for electronic certification of the court record. The seal of the court may be applied electronically. No use of colored ink or an impressed seal is required.
- (h) Parties filing by traditional methods shall file a copy of any document and not the original paper document. The court may require the submitting party to produce the original paper document if authenticity of document is challenged. If the court inspects the original paper document, it shall be retained as an exhibit as provided in SCR 72.03 (4).
- (L) For documentary exhibits submitted directly to the supreme court or court of appeals, parties shall submit a copy of the exhibit and not the original. The clerk of court shall image each documentary exhibit and enter the imaged document into the court record. Copies of documentary exhibits so imaged may be discarded as provided in SCR 72.03 (3). If inspection of the original document is necessary to the court proceeding, the court may order that the original document be produced. Any original document so produced shall be retained as an exhibit as provided in SCR 72.03 (4).
- (m) When an action or proceeding requires a record to be submitted by a party directly to the court, the record shall be imaged and electronically submitted using a method provided by the electronic filing system. The electronic record shall be the official record in the action or proceeding. If inspection of an original document is necessary to the court proceeding, the court may order that the original document be produced.

Committee explanatory note:

Sub. (9) provides that going forward, court case files will be kept electronically. Mandatory users are required to file all documents electronically, with only a few exceptions. The documents submitted by paper parties will be scanned and converted to electronic format by the clerk of court. Because any paper submitted will be discarded after it is imaged, parties should not submit original documents to the court.

(11) NOTARIZATION AND OATHS.

- (a) Notaries public who hold valid appointments under ch. 140 may issue certificates of notarial acts for electronically filed documents as provided in this section.
- (b) Court officials authorized by law to perform notarial acts may do so by application of their electronic signatures provided through the electronic filing system.
- (c) Unless specifically required by statute or court rule, electronically filed documents are not required to be notarized.
- (d) Documents notarized by traditional methods may be filed through the electronic filing system if a handwritten signature and physical seal appear on the original document. The user shall submit an imaged copy of the notarized document to the electronic filing system, and the court shall maintain the imaged copy as the official court record. The court may require the submitting party to produce the original paper document if the authenticity of the notarization is in question.
- (f) The director, in his or her discretion, may approve the use of an electronic notary technology compatible with the existing electronic filing system.

Committee explanatory note:

Notarized documents are needed for fee waiver applications, habeas petitions, and proof of mailing under the mailbox rule, s. 809.80 (4).

(12) SIGNATURES OF USERS.

- (a) To be considered electronically signed, a document must be submitted by or on behalf of a user through the electronic filing system. A document requiring the signature of a user shall bear either an electronic signature or a handwritten signature applied to a document before it is imaged. An electronic signature shall state "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. Either form of signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules.
- (b) An initiating document that is signed in compliance with par. (a) bears a sufficient signature under s. 802.05.
- (c) Each electronically filed document shall bear that person's name, mailing address, electronic mail address, telephone number, and state bar number if applicable. Users shall notify the electronic filing system of any change in this information, consistent with sub. (3) (d).
- (d) An attorney may delegate the authority to submit documents to the electronic filing system to a person under the attorney's supervision. Any document requiring the attorney's signature is deemed to have been signed by the attorney if submitted to the electronic filing system and

- signed as provided in par. (a). Every attorney is responsible for all documents so submitted.
- (e) Every attorney is responsible for electronically filed documents to the same extent as for paper filings. Attorneys using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785, and are subject to discipline for a violation of any duty to the court under the supreme court rules.
- (f) Self-represented parties and filing agents under s. 799.06 are responsible for electronically filed documents to the same extent as for paper filings. Self-represented parties and filing agents using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.
- (fm) An electronically filed certification required by this chapter may be signed by applying the user's signature as provided in par. (a).
- (g) A stipulation will be considered signed by multiple persons if it bears the handwritten signatures of all signatories or if it bears the printed name of each signatory and contains a representation by the filing party that the filing party has consulted with the signatories and all have agreed to sign the document. This paragraph does not apply to the signature requirements of s. 809.107 (2) (bm) 6., (5) (a), and (6) (f), where a signature is required from the appellant or petitioner, other than the state, on whose behalf the document is filed.
- (h) For paper parties, every document requiring a signature shall be signed using a handwritten signature. If a document requiring a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided under sub. (9).
- (i) Documents containing handwritten signatures of third parties, such as affidavits, may be filed through the electronic filing system if a handwritten signature appears on the original document. The user shall submit an imaged copy of the signed document to the electronic filing system, and the court shall maintain the imaged document as the official court record. The court may require the submitting party to produce the original paper document if validity of the signature is challenged.
- (j) The director, in his or her discretion, may approve the use of other signature technologies to the extent that they work with the existing electronic filing system.

Committee explanatory note:

Sub. (12) (a) tightens the definition of signature used by the current circuit court rule to remove any suggestion that a document is considered signed if it is simply submitted through the system. This is consistent with the definition provided in s. 809.01; the same changes have been made to s. 801.18 (1) (f) and

801.18 (12) (a). Handwritten signatures are sometimes used where multiple attorneys wish to sign the brief. Either form of signature provides the level of accountability to client and court called for by these rules. Compliance with this section is intended to satisfy the signature requirements of ss. 802.05 (1) and 809.19 (1) (h), as well as all other statutes and rules relating to court documents.

Sub. (12) (fm) is added to permit the use of electronic signatures for certifying briefs, appendices, and no-merit reports as to length, confidentiality, and client counseling.

Sub. (12) (g) responds to a recent legislative change to s. 809.107 regarding proceedings for termination of parental rights, requiring the signature of both counsel and parents on the notice of intent to pursue postdisposition relief, notice of appeal, and petition for review. A representation that all signatories have agreed to sign the document cannot be used in lieu of the parents' signatures in this situation.

(13) SIGNATURES OF COURT OFFICIALS.

(a) If the signature of a court official is required on a document, an electronic signature applied through the court case management system may be used. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a handwritten signature would be located on a particular order, form, letter, or other document, the official's printed name shall be inserted.

(b) The electronic signature of a court official shall be used only by the official to whom it is assigned and by such delegates as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized delegate.

(c) A court official may delegate the use of his or her electronic signature to an authorized staff member pursuant to the security procedures of the court case management system. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly disclosed, the court official shall immediately report that fact to the consolidated court automation programs. Court officials shall safeguard the security of their electronic signatures and exercise care in delegation.

Committee explanatory note:

By tradition, most documents issued by the appellate courts are not signed by the justices or judge; they are issued unsigned by the clerk of the supreme court and court of appeals.

(14) CONFIDENTIAL INFORMATION.

- (a) The confidentiality of an electronic record is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.**
- (b) Parties shall exercise care with respect to redaction of protected information as defined by s. 801.19 (1), identification of confidential material, and sealing of filed documents.**
- (c) If a document is confidential, it shall be identified as confidential by the submitting party when it is filed. The clerk of court is not required to review documents to determine if confidential information is contained within them.**
- (d) If a user seeks court approval to seal a document, the user may electronically file the document under temporary seal pending court approval of the user's motion to seal.**
- (e) If the clerk notes that a document has been identified as confidential or sealed, the electronic filing system shall place a visible mark on the document to identify it as confidential or sealed.**
- (f) An amicus party may, in the court's discretion, be granted access to confidential, redacted, or sealed portions of the court record upon motion to the court and a showing of good cause.**

Committee explanatory note:

Sub. (14) (a) makes it clear that there is no difference in confidentiality between electronic and paper documents.

Sub. (14) (b) refers to circuit court requirements regarding redacted, confidential, and sealed documents. Documents contained in the circuit court record should already be in compliance with these rules:

- s. 801.19 instructs parties to omit or redact five specific numbers before filing: social security, tax ID, financial account numbers, driver license or state ID, and passport.
- s. 801.20 requires parties to identify if a document is confidential by law.
- s. 801.21 provides a procedure for making motions to seal.

The circuit court case management system is able to identify documents as “confidential” or “sealed” and to restrict access accordingly.

While similar issues may arise with respect to the record in original actions and disciplinary proceedings, these circuit court rules are not readily adaptable to the appellate context because the practice is form-specific and motion-heavy. Par. (b) is included to bring these concerns to the parties' attention and to recognize the court's authority to address them. A more specific rule may be developed at a later date if needed.

Sub. (14) (c) places the burden on the parties to identify any confidential documents filed. The clerk will review for confidentiality but is not liable for failure to do so.

With respect to sealed documents, sub. (14) (d) does not add a specific procedure but notes that the eFiling system includes a way to file a document under temporary seal. Whether access to documents should be granted to an amicus under sub. (14) (e) is a decision that should be tailored to each case.

(15) TRANSCRIPTS.

- (a) A transcript filed in the circuit court shall be electronically transmitted to the clerk of the court of appeals when made part of the record on appeal.
- (b) The transcript of any proceeding originating in the court of appeals or supreme court shall be electronically filed by the court reporter in accordance with procedures developed by the director. The clerk shall note in the court record that the transcript has been prepared and filed with the court. Arrangements for payment of the court reporter, access to the transcript, and service shall be as directed by the court.
- (d) Any notice to the clerk of the supreme court and court of appeals filed under s. 809.11 (7) (a) or 809.32 (5) or any motion filed under s. 809.11 (7) (c) shall be electronically filed. The court reporter shall serve paper parties by traditional methods.
- (e) A transcript when filed under this section becomes a part of the court file. The transcript shall be made available to the public in accordance with the statutes and rules governing court records and any court orders.
- (f) A court reporter may certify that the transcript is a verbatim transcript of the proceedings by applying the court reporter's signature in the same manner as provided in sub. (12) (a) and then electronically filing the transcript.

Committee explanatory note:

Sub. (15) (a) notes that circuit court transcripts are generally not filed directly with the appellate court. Transcripts will be electronically transmitted by the clerk of circuit court as part of the record on appeal.

Sub. (15) (b) refers to the programming provided by CCAP for court reporters to upload transcripts to an appellate case when needed. Transcripts for OLR, BBE and Judicial Commission hearings may be filed with the appellate court, either as part of a hearing record or directly filed by the court reporter. A notice to the parties will be sent when the transcript is filed.

While the circuit court electronic filing rule provides extensive treatment of court reporter billing practices and service of electronic copies of transcripts, this level of detail is not necessary in the appellate court rule. Arrangements for payment, copies, and service shall be as directed by the court.

(16) TECHNICAL FAILURES.

(a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:

1. If the failure is caused by the court electronic filing system, a user may move the court for relief on the basis that the user attempted to file the document with the court in a timely manner by submitting it to the electronic filing system. The court may enter an order permitting the document to be deemed filed or served on the date and time the user first attempted to submit the document electronically or may grant other relief as appropriate.

2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Users are responsible for timely filing of electronic documents to the same extent as filing of paper documents.

(b) A motion for relief due to technical failure shall be made on the next day the office of the clerk of court is open. The document that the user attempted to file shall be filed separately and any fees due shall be paid at that time.

(c) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

Committee explanatory note:

Sub. (16) addresses technical failures of the court's electronic filing system and the user's own technology. Court technical failures may include a mechanical failure to process the document upon receipt or erroneous exclusion of a user from the service list by the electronic filing system. User technical failures may include problems with the user's Internet service provider, payment, office equipment or software, or loss of electrical power.

This subsection provides guidance for courts dealing with the rare, but probably inevitable, circumstance of the electronic filing system not being available or not functioning as intended.

- Where the user can demonstrate that the problem was caused by the court's electronic filing system, the court may direct that the document be considered filed or served on the date and time that filing was attempted. The electronic filing system will generate a report for the user to document the problem.
- Where the failure is caused by the user's own electronic systems or by external forces, the court should consider what consequences would follow a missed deadline for traditional filings caused by similar forces.

Regardless of the cause, the user shall submit a motion for relief on the next business day, along with the document to be filed and any filing fee.

Comments Proposed for Publication, 2021

Section 809.801 is built on the template of the circuit court electronic filing rule, s. 809.18, with respect to structure, language, and procedure. There are no major differences between the two systems with respect to how electronic filing works. Sub. (2) (k) provides that the two rules “shall be interpreted consistently to the extent practicable”.

At the direction of the supreme court, subs. (2) (b) and (c) provide for the use of an implementation schedule to govern the availability of electronic filing according to the type of proceeding involved and the type of court.

Sub. (3) (a) mandates that three types of filers participate in the electronic filing system. An exception for attorneys representing themselves was included in the circuit court electronic filing rule but is eliminated here as experience has shown that electronic filing is straightforward to use, with minimal technical impediments and expense.

Subs. (3) (d) and (f) require electronic filing users to promptly opt in and opt out from the cases where they are representing parties or participating as litigants. Users are required to keep their contact information up to date to receive electronic service.

Under sub. (3) (j), persons filing documents in cases where they are not parties, such as *amicus curiae*, may register to use the electronic filing system and file a document.

Sub. (4) (am) provides that filing occurs when the document is submitted to the electronic filing system as long as it is accepted by the clerk at a later time.

Extending the filing day to 11:59 p.m. is consistent with the circuit court electronic filing rule and federal court electronic filing rules. This supersedes the decision in *St. John's Home v. Continental Casualty Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam, requiring filing to occur only within the office hours of the clerk. This gives a user an extra few hours to file on the last day a document is due but does not otherwise affect the calculation of time. If a user submits a document or the court issues an order on a day when the clerk's office is closed, it is considered filed on the next day the clerk's office is open, except as provided by other statutes and rules, or by court order.

Since 2009, the appellate clerk has reviewed electronic briefs to make sure that rule requirements relating to form have been met. Sub. (4) (b) provides that the clerk may review all types of documents, both paper and electronic.

Sub. (4) (c) is consistent with new s. 809.80 (2) (d), which provides that a document filed by a paper party will be served on the electronic users when the clerk scans and docketed the document and a notice of activity is generated.

Sub. (5) addresses how the first document or group of documents should be filed in each type of appellate proceeding.

Sub. (6) (a) provides that the electronic filing system now serves as the means of delivery between users for documents filed after the case is initiated. Electronic filing users will receive a notice of activity letting them know that a new document has been filed in the proceeding. Paper parties will continue to be served by traditional methods for both initiating and subsequent documents.

Sub. (6) (e) provides that if an email to a party is returned as undeliverable, the clerk will attempt to locate the party and correct the problem. The other parties must serve that party by traditional methods in the meantime.

Sub. (6) (f) outlines how mandatory electronic filing will be initiated on previously filed cases. The clerk will work with attorneys to opt in on their open cases and will provide voluntary users with instructions on how to participate in the electronic filing system if they choose.

Sub. (7) imposes a fee for appellate electronic filing under the same circumstances as the circuit court electronic filing fee. It may be waived for indigent parties and their attorneys, using the same procedures and criteria used for waiver of other costs and fees. The electronic filing fee is not charged to a Wisconsin governmental unit such as the district attorney, public

defender and appointed counsel, court-appointed counsel, child support agency, attorney general, or county and municipal attorney.

Sub. (8) (a) requires electronic filing users to keep their hardware, software, and staff training up to date with the minimum requirements set by the court.

Under former s. 809.18 (12), the supreme court required that briefs, no-merit reports, and petitions for review be submitted in text-searchable portable document format (PDF). Sub. (8) (e) broadens this requirement to include most documents submitted to the court, including motions, writs and petitions. Appendices, exhibits, and affidavits must be submitted in portable document format but are not required to be text-searchable.

Sub. (8) (g) provides for the permissive use of external hyperlinks to sources of information such as published cases and statutes posted on the Internet. Hyperlinks come with a small amount of risk for the introduction of malicious software into the electronic filing system and into law office case management systems. For that reason, hyperlinks may be used only in accordance with guidance posted by the court, and the court may limit the sites that users may link to. The use of hyperlinks is not required.

Sub. (9) provides that appellate court case files going forward will be kept electronically. Mandatory electronic filing users are required to file all documents electronically, with only a few exceptions. The documents submitted by paper parties will be imaged and converted to electronic format by the clerk of court. Because any paper submitted will be discarded after it is imaged, parties should not submit original documents to the court.

Sub. (12) (a) is amended to clarify the required format of an electronic signature. Handwritten signatures continue to be used despite the availability of electronic signatures and are permitted as long as the document is scanned and submitted through the electronic filing system. Either form of signature provides the level of accountability to client and court called for by the appellate rules. Compliance with this section is intended to satisfy the signature requirements of ss. 802.05 (1) and 809.19 (1) (h), as well as all other statutes and rules relating to court documents.

Sub. (12) (fm) is added to permit the use of electronic signatures for certifying briefs, appendices, and no-merit reports as to length, confidentiality, and client counseling.

Sub. (12) (g) responds to a recent legislative change requiring the signature of both counsel and parents on the notice of appeal in proceedings for

termination of parental rights. A representation that all signatories have agreed to sign the document cannot be used in lieu of the parents' signatures in this situation.

Sub. (14) (b) refers to circuit court requirements regarding confidential, redacted, and sealed documents. Documents added to the circuit court record since 2016 should already be in compliance with ss. 801.19 to 809.21.

Sub. (15) (a) notes that circuit court transcripts are generally not filed directly with the appellate court. Transcripts are electronically transmitted by the clerk of circuit court as part of the record on appeal.

When transcripts are filed directly with the appellate court, sub. (15) (c) provides that arrangements for payment, copies and service shall be as directed by the court.

809.802 Rule (Service on the state in certain proceedings).

(1) Any document required or authorized to be served on the state in appeals and other proceedings in felony cases in the court of appeals or supreme court shall be served on the attorney general unless the district attorney has been authorized under s. 978.05 (5) to represent the state. Any document required or authorized to be served on the state in appeals and other proceedings in misdemeanor cases decided by a single court of appeals judge under s. 752.31 (2) and (3) shall be served on the district attorney. Every petition for review of a decision of the court of appeals in a misdemeanor case shall be served on the attorney general.

(2) Where service on the attorney general is required under sub. (1), the clerk of the court of appeals shall opt in the attorney general as an attorney for the state and provide the notice of docketing to the attorney general through the appellate electronic filing system. For the attorney general, receipt of the notice of docketing provides access to the proceeding and constitutes service of the initiating document and other documents filed with the initiating documents.

Committee explanatory note:

Sub. (1) has been moved here from current s. 809.80 (2) because the requirement to serve the attorney general under this section applies to both traditional and electronic modes of service. Sub. (2) describes the mechanism the clerk will use to assure service on the attorney general in cases where the other electronic parties are served with initiating documents through the circuit court electronic filing system or when the

attorney general did not participate in a proceeding before a petition for review was filed.

Comment Proposed for Publication, 2021

Former s. 809.80 (2) is recreated as sub. (1). The requirement to serve the attorney general under this section applies to both traditional and electronic modes of service. Sub. (2) describes the mechanism the clerk will use to assure service on the attorney general in cases where the other electronic parties are served with initiating documents through the circuit court electronic filing system or when the attorney general did not participate in a proceeding before a petition for review was filed.

809.81 Rule (Form of papers). ~~A paper~~The format of a document filed in the court must conform to the following requirements unless expressly provided otherwise in these rules:

- (1) SIZE. 8-1/2 x 11 inches.
- ~~(2) NUMBER OF COPIES. Five copies in the court of appeals, 9 copies in the supreme court, and 3 copies of a motion filed under s. 809.14 in the court of appeals if the appeal or other proceeding is one of the types of cases specified in s. 752.31 (2).~~
- (3) STYLE. Produced using either a monospaced or a proportional serif font. If handwriting is used, the text must be legibly printed and not include cursive writing, except the person's signature.
- (4) SPACING AND MARGINS. Double-spaced with a minimum of a ~~1.51.25~~ inch margin on ~~each of the 4 sides~~the right and left sides, and a minimum of a 1 inch margin in the top and bottom.
- (5) PAGINATION. Paginated at the center of the bottom margin using Arabic numerals with sequential numbering starting at "1" on the first page.
- (6) ~~COPYING PROCESS~~APPEARANCE. Any ~~duplicating or copying~~ process that produces a clear, black image on a white paper background. Carbon copies may not be filed. Imaged documents should be scanned at a resolution sufficient to ensure legibility.
- (7) BINDING. ~~Bound or stapled~~ Pages must be secured together at the top left corner.
- (8) CONFIDENTIALITY. 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 one or more initials or other appropriate pseudonym or designation.
- (9) CAPTIONS. Except as provided in s. 809.81 (8) or when "petitioner" has been substituted for an individual's name in the caption in an appeal from a domestic abuse protective order or harassment injunction, or when the clerk has given notice of a different caption, the caption of any document

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. In the supreme court, "petitioner" shall 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.

Committee explanatory note:

The changes made in this section are consistent with the format changes in s. 809.19. The overall appearance of the pages, whether read on paper or on a screen, should not change dramatically.

809.82 Rule (Computation and enlargement of time).

- (1) COMPUTATION. In computing any period of time prescribed by these rules, the provisions of s. 801.15 (1) and (5) apply.
- (2) ENLARGEMENT OR REDUCTION OF TIME.
 - (a) Except as provided in this subsection, the court upon its own motion or upon good cause shown by motion, may enlarge or reduce the time prescribed by these rules or court order for doing any act, or waive or permit an act to be done after the expiration of the prescribed time.
 - (b) Notwithstanding par. (a), the time for filing a notice of appeal or cross-appeal of a final judgment or order, other than in an appeal under s. 809.107 or an appeal under s. 809.30 or 809.32, may not be enlarged.
 - (c) The court may not enlarge the time prescribed for an appeal under s. 809.105 without the consent of the minor and her counsel.
 - ~~(d) A copy of any motion to enlarge time limits under this subsection shall be served on the clerk of circuit court.~~
 - (e) Notwithstanding par. (a), the time for filing a motion for reconsideration under s. 809.24 may not be enlarged.

Committee explanatory note:

The motions that the circuit court may need are addressed in s. 809.14 (3) and (5).

809.83 Rule (Penalties for delay or noncompliance with rules).

- (1) DELAY; EXTRA COSTS AND DAMAGES.
 - (a) If the court finds that an appeal was taken for the purpose of delay, it may award any of the following:
 1. Double costs.
 2. A penalty in addition to interest not exceeding 10 percent on the amount of the judgment affirmed.

3. Damages occasioned by the delay.
4. Reasonable attorney fees.

(b) A motion for costs, penalties, damages and fees under this subsection shall be filed no later than the filing of the respondent's brief or, if a cross-appeal is filed, the cross-respondent's brief.

(2) NONCOMPLIANCE WITH RULES. Failure of a person to comply with a court order or with a requirement of these rules, other than the timely filing of a notice of appeal or cross-appeal, does not affect the jurisdiction of the court over the appeal but is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.

809.84 Rule (Applicability of rules of civil procedure). An appeal to the court is governed by the rules of civil procedure as to all matters not covered by these rules unless the circumstances of the appeal or the context of the rule of civil procedure requires a contrary result.

809.85 Rule (Counsel to continue). An attorney appointed by a lower court in a case or proceeding appealed to the court shall continue to act in the same capacity in the court until the court relieves the attorney.

809.86 Rule (Identification of victims and others in briefing, petitions for review, and responses to petitions for review).

(1) DECLARATION OF POLICY. By enacting this rule, the supreme court intends to better protect the privacy and dignity interests of crime victims. It requires appellate briefs, petitions for review, and responses to petitions for review to identify crime victims by use of identifiers, as specified in sub. (4), unless there is good cause for noncompliance. The rule protects the identity of victims in appellate briefs, petitions for review, and responses to petitions for review that the courts make available online.

(2) APPLICABILITY. This section applies to appeals in the following types of cases:

(a) Section 971.17 proceedings.

(b) Criminal cases.

(c) Chapter 938 cases.

(d) Chapter 980 cases.

(e) Certiorari review of decisions or orders entered by the department of corrections, the department of health services, or the parole commission in a proceeding or case specified in pars. (a) to (d).

(f) Collateral challenges to judgments or orders entered in a proceeding or case specified in pars. (a) to (e).

(3) DEFINITION. In this section, "victim" means a natural person against whom a crime, other than a homicide, has been committed or alleged to

have been committed in the appeal or proceeding. "Victim" does not include the person convicted of or alleged to have committed a crime at issue in the appeal or proceeding.

- (4) BRIEFS, PETITIONS FOR REVIEW, AND RESPONSES TO PETITIONS FOR REVIEW. In an appeal specified under sub. (2), the briefs of the parties, petitions for review, and responses to petitions for review shall not, without good cause, identify a victim by any part of his or her name but may identify a victim by one or more initials or other appropriate pseudonym or designation.
- (5) PROTECTIVE ORDER. For good cause, the court may make any order necessary to protect the identity of a victim or other person, or to excuse compliance with this section.