

1979 Senate Bill 396

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CHAPTER 192, Laws of 1979

AN ACT to amend 752.31 (2) (intro.) and (3), 808.03 (1) and 808.10 of the statutes, relating to procedure in cases before the court of appeals.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 752.31 (2) (intro.) and (3) of the statutes are amended to read:

752.31 (2) (intro.) Appeals to or other proceedings in the court of appeals in the following types of cases shall be heard decided as specified in sub. (3):

(3) A case specified under sub. (2) shall be heard decided by one court of appeals judge, except that any party on appeal or other proceeding in the court of appeals may move in writing to the chief judge of the court of appeals that the case be heard decided by a 3-judge panel. The chief judge may grant or deny the request ex parte. Any appeal which is heard decided by a single court of appeals judge shall be heard in the county where the case or action originated if any party so requests.

NOTE: Subsection (2) of s. 752.31 is amended to clarify that the judge in those cases in which a single court of appeals judge determines the case also has the authority to issue any necessary writs required in the case. The term "other proceedings" includes petitions for supervisory writs and original jurisdiction prerogative writs. Subsection (2) has also been amended to clarify that, in cases decided by a single court of appeals judge, the case is decided by the judge rather than heard. Some single-judge appeals are not heard as oral argument may not take place in the case.

Subsection (3) of s. 752.31 is amended to clarify that a single-judge appeal is decided rather than heard by the judge. The prior statutory provision that, upon a timely request, a case specified in sub. (2) shall actually be heard in the county where the case or action originated remains unchanged.

Language has also been added to sub. (3) to clarify that the procedure to request the chief judge of the court of appeals to have a single-judge case be decided by a 3-judge panel also applies to other proceedings in the court of appeals, which may include petitions for supervisory writs and original jurisdiction prerogative writs.

SECTION 2. 808.03 (1) of the statutes is amended to read:

808.03 (1) APPEALS AS OF RIGHT. A final judgment or a final order of a circuit court or county court may be appealed as a matter of right to the court of appeals unless otherwise expressly provided by law. A final judgment or final order is a judgment or order entered in accordance with s. 806.06 (1) (b) or 807.11 (2) or a disposition recorded in docket entries in traffic regulation cases and municipal ordinance violation cases prosecuted in circuit court which disposes of the entire matter in litigation as to one or more of the parties, whether rendered in an action or special proceeding.

NOTE: This subsection is amended to modify the statutory definition of the final judgment or final order that may be appealed as a matter of right to the court of appeals. Most types of cases decided in circuit court have a final judgment or order entered with the office of clerk of court. Because of the volume of traffic regulation and municipal ordinance violation cases prosecuted in circuit court, the prevailing custom in Wisconsin counties is to only record the dispositions of those cases in docket entries. Requiring counties to meet the present statutory requirement in subsection (1) of s. 808.03 for the entry of a final judgment or order in all cases for purposes of having an appealable matter is unnecessarily burdensome and costly.

The term "traffic regulation cases" refers to only those traffic violation cases in which the penalty is a civil forfeiture.

SECTION 3. 808.10 of the statutes is amended to read:

808.10 Review by the supreme court. A decision of the court of appeals is reviewable by the supreme court only upon a petition to appeal for review granted by the supreme court. The petition to appeal for review shall be filed in the supreme court within 30 days of the date of the decision of the court of appeals.

NOTE: This section is amended to more properly describe the function of the supreme court in reviewing decisions of the court of appeals. The supreme court decides whether to accept jurisdiction of a case from the court of appeals after a petition to review, not a petition to appeal, is filed with the supreme court. See s. 809.62.

SECTION 4. **Effective date.** This act takes effect on July 1, 1980.
