

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 02-01

In the matter of amendment of
Wis. Stat. ch. 809 and Supreme
Court Rule 71.04

FILED

OCT 31, 2002

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

The court held a public hearing on September 26, 2002, on the petition and addenda filed by the Judicial Council seeking the amendment to Chapter 809, Rules of Appellate Procedure, and Supreme Court Rule 71.04, governing court reporters. The court has considered the presentation made at the public hearing.

IT IS ORDERED that, effective January 1, 2003, Wis. Stat. chapter 809 is amended as follows:

SECTION 1. Section 809.10 (1) (d) of the statutes is amended to read:

809.10 **(1)** (d) *Docketing statement.* The person shall send the court of appeals 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), 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 809.40 (1)~~ or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that ~~a docketing statement~~ statements shall be filed in cases arising under ch. 48, 51, 55, or 938.

Judicial Council Note, 2002: See also related changes in ss. 809.40 (3) and 809.50 (3). Prior to 2001 WI 39, effective 7/1/01, s. 809.10 (1) provided that docketing statements were not required in "criminal cases or in cases in which a party appears pro se." State's appeals in criminal cases were inadvertently omitted from the list of statutory references that replaced "criminal cases" in the prior statute. Subsection (1) (d) is amended to clarify that docketing statements are not required in state's appeals in criminal cases. The amendment also clarifies that docketing statements are not required in permissive appeals in criminal cases, but are required in other permissive appeals.

SECTION 2. Section 809.11 (4) (b) of the statutes is amended to read:

809.11 **(4)** (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 ~~ordered~~ 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 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.

Judicial Council Note, 2002: Subsection (4) (b) is amended for consistency in terminology and to clarify that the court reporters' statement regarding transcript arrangements, sometimes referred to as the court reporters' certification, is required only for a transcript that has not been filed in circuit court when the statement on transcript is filed, consistent with the clerk of the court of appeals' interpretation and enforcement practices.

SECTION 3. Section 809.11 (5) of the statutes is amended to read:

809.11 **(5)** Within 14 days after filing of a statement on transcript as required under sub. (4), any other party may file 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 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 or move the circuit court for an order requiring the appellant to request the designated portions.

Judicial Council Note, 2002: Subsection (5) is amended to create a time limit for the completion of the transcript ordering process. If the appellant does not request the preparation of the additional portions of transcript that have been designated by another party within 14 days of the designation, the other party may either request the preparation of the portions from the reporter or move the circuit court for an order requiring the appellant to request the designated portions. This revision creates a 14-day time period for the other party to take action to obtain the additional portions of the record.

SECTION 4. Section 809.11 (7) (a) of the statutes is amended to read:

809.11 (7) (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.

Judicial Council Note, 2002: Subsection (7) (a) is amended to clarify the time limits for the preparation of additional portions of the transcript requested under § 809.11 (5), and to require the court reporter to notify the clerk of the court of appeals and the parties to the appeal when a transcript is filed and served.

SECTION 5. Section 809.11 (7) (b) of the statutes is amended to read:

809.11 **(7)** (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) ~~(a)~~ (b).

Judicial Council Note, 2002: Subsection (7) (b) is amended to correct the cross-reference to the rule in sub. (4) (b) that requires the reporter to file a statement regarding transcript arrangements.

SECTION 6. Section 809.11 (7) (c) of the statutes is amended to read:

809.11 **(7)** (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.

Judicial Council Note, 2002: Subsection (7) (c) is amended to require a court reporter who files a motion to extend the time within which to prepare a transcript to serve a copy of the motion on the clerk of the circuit court and the district court administrator. Early notice that a reporter has requested additional time to prepare a transcript will enable the clerk and the district court administrator to provide workload relief to the reporter if deemed appropriate.

SECTION 7. Section 809.15 (4) of the statutes is amended to read:

809.15 **(4)** PROCESSING THE RECORD. (a) *Transmittal of the record.* 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 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.

SECTION 8. Sections 809.19 (3) (a) 1. (intro) and a. of the statutes are amended to read:

809.19 (3) RESPONDENT'S BRIEF. (a) 1. (intro.) 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, ~~or~~.

SECTION 9. Section 809.19 (3) (a) 1. c. of the statutes is created to read:

809.19 (3) (a) 1. c. Thirty days after the date on which the record is filed in the office of the clerk.

SECTION 10. Sections 809.19 (6) (b) 1. (intro) and a. of the statutes are amended to read:

809.19 (6) (b) 1. (intro.). 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, ~~or~~.

SECTION 11. Section 809.19 (6) (b) 1. c. of the statutes is created to read:

809.19 (6) (b) 1. c. Thirty days after the date on which the record is filed in the office of the clerk.

Judicial Council Note, 2002: Occasionally an appellant's brief is filed before the record is filed with the appellate court clerk, especially in cases involving pro se appellants. The amendments to subs. (3) and (6) (b) 1 conform to current practice by establishing the due date for the respondent's brief or respondent-cross-appellant's brief as the latest of thirty days after date of service of the appellant's brief (plus three days if service is by mail), thirty days after the date on which the court accepts the appellant's brief or appellant-cross-

respondent's brief for filing, or thirty days after the date on which the record is filed in the office of the clerk.

SECTION 12. Section 809.19 (9) of the statutes is amended to read:

809.19 (9) BRIEF COVERS. Each brief or appendix shall have a 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), 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.

Judicial Council Note, 2002: Subsection (9) is amended to conform to the party designations used by the clerk's office when a petition for review is granted.

SECTION 13. Sections 809.24 (1), (2), (3), and (4) of the statutes are amended to read:

(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 ~~or order~~ 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 ~~or order~~ 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. ~~An amended decision or order will not be issued unless a response is ordered by the court.~~ The motion and any response shall not exceed 5 pages if a monospaced font 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 order~~, or the court shall issue an order denying the motion.

(3) Nothing in this section prohibits the court from reconsidering a decision ~~or order~~ 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 ~~or order~~ issued under s. 809.105 is permitted.

Judicial Council Note, 2002: The reference to an "order" of the court of appeals is deleted. Prior to 2001 WI 39, s. 809.24 applied to a "decision" of the court. To clarify that a summary disposition order was subject to reconsideration under s. 809.24, a reference to "order" was added by 2001 WI 39. That amendment created confusion as to whether procedural orders issued by the court during the pendency of an appeal could be reconsidered under s. 809.24. However, reconsideration of procedural orders is available under s. 809.14. To eliminate the confusion created by 2001 WI 39, a reference to s. 752.41 (1) was added and "order" was deleted. See ***In Interest of A.R.***, 85 Wis. 2d 444, 446, 270 N.W.2d 581 (1978) ("decision" as used in s. 752.41 (1) is the final decision disposing of the appeal).

The amendment also eliminates the requirement that the court of appeals order a response to a motion for reconsideration prior to amending a decision. Often a motion for reconsideration will bring the court's attention to a minor factual misstatement that may be corrected without the benefit of a response. The court of appeals retains the option to order that a response be filed, if it determines that a response will assist the court.

SECTION 14. Section 809.26 (1) of the statutes is amended to read:

809.26 (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 ~~within~~ 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.

Judicial Council Note, 2002: Subsection (1) is amended to permit the clerk of courts some flexibility in the 31-day remittitur deadline to accommodate workload fluctuation. By Supreme Court Order 00-02, 2001 WI 39, "within" was added immediately preceding "31 days." The Judicial Council had not intended to suggest changing the substance of existing time parameters for remittitur, when it petitioned for that amendment, but merely proposed the additional word for ease of reading. Since that amendment, it has been argued that the addition of "within" permits remittitur prior to the expiration of the 31-day period. However, the 31-day period coincides with the time limit for filing a petition for review. Absent stipulation among the parties that no petition for review will be filed, remittitur should not occur before the expiration of the petition for review deadline.

SECTION 15. SUBCHAPTER III (title) of chapter 809 [precedes 809.30] of the statutes is amended to read:

SUBCHAPTER III
~~FELONY~~ APPEAL PROCEDURE IN COURT OF APPEALS
IN CRIMINAL AND CH. 48, 51, 55, AND 938 CASES

Judicial Council Note, 2002: The terminology throughout s. 809.30 is amended to clarify that persons seeking to appeal final judgments or orders in criminal, ch. 48 (child or unborn child in need of protection or services, guardianship or adoption), 51 (civil commitment), 55 (protective placement), and 938 (delinquency or juvenile justice) cases must comply with this rule. Prior language referred to all such persons as defendants and to all appeal proceedings as "postconviction," and was confusing to parties and practitioners.

SECTION 16. Section 809.30 (title) of the statutes is amended to read:

809.30 (title) Rule (Appeals in ~~felony~~, criminal, ch. 48, 51, 55, and 938 cases).

SECTION 17. Section 809.30 (1) of the statutes is repealed and recreated to read:

809.30 **(1)** DEFINITIONS. In this subchapter:

(a) "Final adjudication" means the entry of a final judgment or order by the circuit court in a ch. 48, 51, 55, or

938 case, other than a termination of parental rights case under s. 48.43 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 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 case under ch. 51 or 55.

5. Any other person who may appeal under ss. 51.13 (5), 51.20 (15) or 55.06 (18).

(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), 302.113 (9g), 973.19, 973.195, 974.06 or 974.07 (2).

(d) "Postdisposition relief" means an appeal or a motion for postdisposition relief from a circuit court's final adjudication.

(e) "Prosecutor" means a district attorney, corporation counsel, or other attorney authorized by law to prosecute a criminal case or a case under ch. 48, 51, 55, or 938.

(f) "Sentencing" means the imposition of a sentence, a fine, or probation in a criminal case.

SECTION 18. Section 809.30 (2) (title) of the statutes is amended to read:

809.30 **(2)** (title) APPEAL OR; POSTCONVICTION OR POSTDISPOSITION MOTION BY DEFENDANT.

SECTION 19. Section 809.30 (2) (a) of the statutes is amended to read:

809.30 **(2)** (a) *Appeal procedures; counsel to continue.* A ~~defendant~~ person seeking postconviction relief in a felony 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 or a parental consent to abortion case under s. 48.375 (7); or a person seeking postdisposition relief in a case under ch. 51, 55, or 938 shall comply with this section. Counsel representing the ~~defendant~~ person at sentencing or at the time of the final adjudication shall continue representation by filing a notice under par. (b) if the ~~defendant~~ person desires to pursue postconviction or postdisposition relief unless counsel is sooner discharged by the defendant person or allowed to withdraw by the trial circuit court before the notice must be filed.

SECTION 20. Section 809.30 (2) (b) (intro.) of the statutes is amended to read:

809.30 **(2)** (b) *Notice of intent to pursue postconviction or postdisposition relief.* (intro.) Within 20 days after the date of sentencing or final adjudication, the ~~defendant~~ person shall

file in circuit court and serve on the ~~district attorney~~ prosecutor and any other party a notice of intent to pursue postconviction or postdisposition relief. The notice shall include all of the following:

SECTION 21. Section 809.30 (2) (b) 2. of the statutes is amended to read:

809.30 **(2)** (b) 2. An identification of the judgment or order from which the ~~defendant~~ person intends to seek postconviction or postdisposition relief and the date ~~it~~ on which the judgment or order was ~~granted or~~ entered.

SECTION 22. Section 809.30 (2) (b) 3. of the statutes is amended to read:

809.30 **(2)** (b) 3. The name and address of the ~~defendant~~ person and ~~the defendant's~~ his or her trial counsel.

SECTION 23. Section 809.30 (2) (b) 4. of the statutes is amended to read:

809.30 **(2)** (b) 4. Whether ~~defendant's~~ the person's trial counsel was appointed by the state public defender and, if so, whether the ~~defendant's~~ person's financial circumstances have materially improved since the date ~~the defendant's~~ on which his or her indigency was determined.

SECTION 24. Section 809.30 (2) (b) 5. of the statutes is amended to read:

809.30 **(2)** (b) 5. Whether the ~~defendant~~ person requests the state public defender to appoint counsel for purposes of postconviction or postdisposition relief.

SECTION 25. Section 809.30 (2) (b) 6. of the statutes is amended to read:

809.30 **(2)** (b) 6. Whether a ~~defendant~~ 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 ~~defendant~~ person has retained counsel to pursue postconviction or postdisposition relief, counsel's name and address shall be included.

SECTION 26. Section 809.30 (2) (c) 1. of the statutes is amended to read:

809.30 **(2)** (c) 1. If the ~~defendant~~ 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.

SECTION 27. Section 809.30 (2) (c) 2. of the statutes is amended to read:

809.30 **(2)** (c) 2. If the ~~defendant~~ person does not request representation by the state public defender, send or furnish to the ~~defendant,~~ person, if ~~the defendant is~~ appearing without counsel, or to the ~~defendant's~~ 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.

SECTION 28. Section 809.30 (2) (d) of the statutes is amended to read:

809.30 **(2)** (d) *Indigency redetermination.* Except as provided in this paragraph, whenever a ~~defendant~~ 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 ~~district attorney~~ prosecutor may, within 5 days after the notice is served and filed, file in the ~~trial~~ circuit court and serve upon the state public defender a request that the ~~defendant's~~ person's indigency be redetermined before counsel is appointed or transcripts are ~~ordered~~ requested. This paragraph does not apply to a child or juvenile who is entitled to be represented by counsel under s. 48.23 or 938.23.

SECTION 29. Section 809.30 (2) (e) of the statutes is amended to read:

809.30 **(2)** (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 ~~defendant~~ person and request a transcript of the reporter's notes and a copy of the circuit court case record, except that if the ~~defendant's~~ 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).

SECTION 30. Section 809.30 (2) (f) of the statutes is amended to read:

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

SECTION 31. Section 809.30 (2) (fm) (title) of the statutes is amended to read:

809.30 **(2)** (fm) Transcript and circuit court case record request in ch. 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 ~~it~~ 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.

SECTION 32. Section 809.30 (2) (g) of the statutes is amended to read:

809.30 **(2)** (g) 1. The clerk of circuit court shall serve a copy of the circuit court case record on the ~~defendant~~ 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 ~~defendant~~ person within 60 days of the request for the transcript. Within 20 days ~~of~~ after the request for the 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 ~~defendant~~ person. The reporter may seek an extension under s. 809.11 (7) for filing and serving the transcript.

SECTION 33. Section 809.30 (2) (h) of the statutes is amended to read:

809.30 **(2)** (h) Notice of appeal ~~or~~, postconviction or postdisposition motion. The ~~defendant~~ person shall file in circuit court and serve on the ~~district attorney~~ 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.

Judicial Council Note, 2002: Amended sub. (2) (h) provides a cross-reference to the statutory section governing the requirements of a notice of appeal. The requirement of a motion for postconviction or postdisposition relief on grounds other than sufficiency of the evidence or issues previously raised is consistent with § 974.02 (2).

SECTION 34. Section 809.30 (2) (i) of the statutes is amended to read:

809.30 **(2)** (i) Order determining postconviction or postdisposition motion. Unless an extension is requested by ~~the defendant~~ a party or the circuit court and granted by the court of appeals, the circuit court shall determine by an order the ~~defendant's~~ 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.

Judicial Council Note, 2002: Prior to 2001 WI 39, effective 7/1/01, this rule did not specify who could request an extension of time for a circuit court to decide a postconviction motion. Sub. (2) (i) is amended to permit the circuit court, the state, the defendant, or any other party to request an extension of time for the circuit court to decide a postconviction or postdisposition motion.

SECTION 35. Section 809.30 (2) (j) of the statutes is amended to read:

809.30 **(2)** (j) *Appeal from judgment and order.* The ~~defendant~~ 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 ~~trial~~ 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. Appeals in cases under ch. 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.

Judicial Council Note, 2002: Subsection (2) (j) is amended for clarification and consistency, and to cross-reference s. 809.10, which contains the requirements governing a notice of appeal. In a criminal case, the prosecutor who represented the state in the circuit court should be served with a copy of the notice of appeal.

SECTION 36. Section 809.30 (2) (k) of the statutes is amended to read:

809.30 **(2)** (k) *Transmittal of record.* Except as otherwise provided in ~~ss.~~ ss. 809.14 (3) (b) 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 ~~by the defendant.~~ Subsequent proceedings in the appeal are governed by the procedures for civil appeals.

SECTION 37. Section 809.30 (3) of the statutes is amended to read:

809.30 **(3)** APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL. In a case in which the state of Wisconsin, the representative of the public, ~~or any other party,~~ or any person who may appeal under ss. 51.13 (5), 51.20 (15) or 55.06 (18) appeals and the defendant or subject individual 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.

SECTION 38. Section 809.30 (4) (a) of the statutes is amended to read:

809.30 **(4)** MOTION TO WITHDRAW AS APPOINTED COUNSEL ~~FOR DEFENDANT.~~ (a) If postconviction, postdisposition, or appellate counsel has been appointed for the defendant person under ch. 977 ~~and~~ seeks to withdraw ~~as~~ from the appointed counsel case, counsel shall serve a motion to withdraw upon the ~~defendant~~

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.

Judicial Council Note, 2002: The amendment to sub. (4) (a) clarifies that the rule requiring service on the state public defender appellate division is applicable only to postconviction, postdisposition, and appellate appointments. Rule 809.30 (4), 2001 WI 39, effective 7/1/01, is designed to assure that courts acting on motions to withdraw have knowledge of the state public defender's position with respect to appointing successor counsel. Subsection (4) (a) is amended to reflect that withdrawal motions filed by state public defender staff attorneys already contain that information and that the issue of appointment of successor counsel is irrelevant to the court's determination when a no-merit report is filed.

SECTION 39. Sections 809.30 (4) (b), (c), and (d) of the statutes are amended to read:

809.30 **(4)** (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 ~~defendant~~ 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 ~~defendant~~ 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 ~~defendant~~ 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.

SECTION 40. Section 809.31 (5) of the statutes is amended to read:

809.31 **(5)** The defendant or the state may seek review of the order of the circuit court by filing a motion ~~with~~ 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 proceeding in the circuit court or a statement explaining why no transcript is available. The party filing the motion shall request a transcript of the reporter's notes 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 ~~14~~ 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.

Judicial Council Note, 2002: Subsection (5) is amended to establish time limits within which a party must request a transcript of the reporter's notes of any circuit court proceeding concerning release pending postconviction relief or appeal, and within which the reporter must file and serve the transcript, and to require the party seeking relief from the circuit court order to request, and make arrangements to pay for, a copy of the transcript for all parties. The amendment also enlarges the time within which a party must file a motion in the court of appeals to allow time to review the transcript before deciding to file a motion.

SECTION 41. Section 809.32 (1) (a) of the statutes is amended to read:

809.32 **(1)** (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 ~~defendant~~ person would be frivolous and without any arguable merit within the meaning of **Anders v. California**, 386 U.S. 738 (1967), and the ~~defendant~~ 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.

SECTION 42. Section 809.32 (1) (b) 1. (intro.) of the statutes is amended to read:

809.32 (1) (b) 1. (intro.) Prior to the filing of a no-merit report, the attorney shall discuss with the ~~defendant~~ person all potential issues identified by the attorney and the ~~defendant~~ person, and the merit of an appeal on these issues. The attorney shall inform the ~~defendant~~ person that ~~the~~ ~~defendant~~ he or she has 3 options:

SECTION 43. Section 809.32 (1) (b) 1. c. of the statutes is amended to read:

809.32 (1) (b) 1. c. To have the attorney close the file and to proceed without an attorney or with another attorney retained at the ~~defendant's~~ person's expense.

SECTION 44. Section 809.32 (1) (b) 2. of the statutes is amended to read:

809.32 (1) (b) 2. The attorney shall inform the ~~defendant~~ person that a no-merit report will be filed if the ~~defendant~~ 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 ~~defendant~~ 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 ~~defendant~~ person at the ~~defendant's~~ person's request. The attorney shall inform the ~~defendant~~ person that, if the ~~defendant~~ person chooses to proceed with an appeal or ~~that if~~ ~~the~~ ~~defendant~~ 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 ~~defendant~~ person at the ~~defendant's~~ person's request. The

attorney shall also inform the ~~defendant~~ person that the ~~defendant~~ 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 ~~defendant's~~ person's response to the no-merit report.

SECTION 45. Section 809.32 (1) (c) (form) of the statutes is amended to read:

809.32 **(1)** (c) (form)

CERTIFICATION BY ATTORNEY

I hereby certify that I have discussed with ~~the defendant~~ my client all potential issues identified by me and by ~~the defendant~~ my client and the merit of an appeal on these issues, and I have informed ~~the defendant~~ my client that ~~the defendant~~ 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 ~~the defendant's~~ my client's expense. I have informed ~~the defendant~~ my client that a no-merit report will be filed if ~~the defendant~~ he/she either requests a no-merit report or does not consent to have me close the file without further representation. I have informed ~~the defendant~~ my client that the transcripts and circuit court case record will be forwarded at ~~the defendant's~~ his/her request. I have also informed ~~the defendant~~ my client that ~~the defendant~~ 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 ~~facts~~ matters outside the record, possibly including confidential information, to rebut allegations made in ~~the defendant's~~ my client's response to the no-merit report.

Signed: ...

Signature: ...

SECTION 46. Sections 809.32 (1) (d) and (e) of the statutes are amended to read:

809.32 **(1)** (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 ~~defendant~~ person and shall file a statement in the court of appeals that service has been made upon the ~~defendant~~ person. The attorney shall also serve upon the ~~defendant~~ person a copy of the transcript and circuit court case record within ~~14~~ 5 days after receipt of a request for the transcript and circuit court case record from the ~~defendant~~ person and shall file a statement in the court of appeals that service has been made on the ~~defendant~~ person.

(e) *Response to no-merit report.* The ~~defendant~~ person may file a response to the no-merit report within 30 days after service of the no-merit report. If the ~~defendant~~ 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.

Judicial Council Note, 2002: When a no-merit report is filed, 809.32 (1) (e) gives the person 30 days after the service of the no-merit report to file a response. The time limit in sub. (1) (d) is amended to adjust the time within which the attorney must send copies of the transcript and circuit court

case record because five days should be sufficient time for the attorney to make copies and send them to the person. The amendment is intended to avoid delay that may occur if the person is not served with the record in time to utilize it in preparing a response to the no-merit report.

SECTION 47. Sections 809.32 (1) (f) and (g) of the statutes are amended to read:

809.32 **(1)** (f) *Supplemental no-merit report.* If the attorney is aware of facts outside the record that rebut allegations made in the ~~defendant's~~ person's response, the attorney may file, within 30 days after receipt of the ~~defendant's~~ person's response, a supplemental no-merit report and an affidavit or affidavits, including ~~facts~~ matters outside the record. The supplemental report and affidavit or affidavits shall be served on the ~~defendant~~ person, and the attorney shall file a statement in the court of appeals that service has been made upon the ~~defendant~~ person.

(g) *Remand for fact-finding prior to decision.* If the ~~defendant~~ person and the attorney allege disputed facts regarding matters outside the record, and if the court determines that the ~~defendant's~~ 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).

SECTION 48. Section 809.32 (2) of the statutes is amended to read:

809.32 **(2)** NOTICE OF APPEAL, STATEMENT ON TRANSCRIPT, SERVICE OF COPIES. 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 is due and whether the due date is calculated under par. (a) or (b). The clerk of circuit court shall transmit the record in the case to the court pursuant to s. 809.15. The attorney also shall file 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 filed with the court under this subsection, except the transcript, shall be served on the state in accordance with s. 809.80 (2) (b) 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) One hundred eighty days after the service upon the ~~defendant~~ person of the transcript and circuit court case record requested under s. 809.30 (2) (e).

(b) Sixty days after the entry of the order determining a postconviction or postdisposition motion.

SECTION 49. Section 809.32 (3) of the statutes is amended to read:

809.32 **(3)** DECISION ON NO-MERIT REPORT. In the event that the court of appeals ~~finds~~ 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 ~~defendant~~ person of the right to file a petition for review to the supreme court under s. 809.62.

SECTION 50. Section 809.32 (4) of the statutes is amended to read:

809.32 **(4)** NO-MERIT PETITION FOR REVIEW. 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 ~~defendant~~ person of the reasons for this opinion and that the ~~defendant~~ person has the right to file a petition for review. If requested by the ~~defendant~~ person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the ~~defendant~~ person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e). 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. An opposing party may file a response to the petition and supplemental petition within 14 days after the service of the supplemental petition.

SECTION 51. Subchapter IV (title) of chapter 809 [precedes 809.40] of the statutes is amended to read:

CHAPTER 809
SUBCHAPTER IV
CHAPTERS APPEAL PROCEDURE IN COURT OF APPEALS
IN TERMINATION OF PARENTAL RIGHTS, CH. 48, 51, 55 AND 799,
TRAFFIC REGULATION, MUNICIPAL ORDINANCE VIOLATION

AND MISDEMEANOR PARENTAL CONSENT TO ABORTION CASES ~~APPEAL~~
~~PROCEDURE IN COURT OF APPEALS~~

SECTION 52. Section 809.40 (title) of the statutes is amended to read:

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

SECTION 53. Section 809.40 (1) of the statutes is repealed.

Judicial Council Note, 2002: Sub. (1) is repealed to eliminate confusing cross-references to appeal procedures under Subchapter III. Appeals under former sub. (1) were and are governed by the procedures in s. 809.30-.32.

SECTION 54. Section 809.40 (1m) of the statutes is amended to read:

809.40 **(1m)** ~~Subsection (1) does not apply to an~~ An appeal from an order denying a petition under s. 48.375 (7), ~~which~~ is governed by the procedures specified in s. 809.105, ~~or to~~ and an appeal from an order or judgment under s. 48.43, ~~which~~ is governed by the procedures specified in s. 809.107.

SECTION 55. Section 809.40 (3) of the statutes is amended to read:

809.40 **(3)** Any civil appeal to the court of appeals under sub. ~~(1)~~ ~~or~~ (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.

SECTION 56. Section 809.50 (3) of the statutes is amended to read:

809.50 **(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 filing 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 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.

Judicial Council Note, 2002: Subsection (3) is amended to clarify the docketing statement requirements following the grant of a petition for leave to appeal a non-final order.

SECTION 57. Section 809.62 (4) is amended to read:

809.62 **(4)** The petition for review and response, if any, shall conform to s. 809.19 (8) (b) and (d) as to form and certification, shall be as short as possible, and may not exceed 35 pages in length if a monospaced font is used or 8,000 words if a proportional serif font is used, exclusive of appendix. The petition for review and response shall have a white front and back cover covers, and a party shall file 10 copies with the clerk of the supreme court.

SECTION 58. Sections 809.80 (3) and (4) of the statutes are created to read:*

809.80 **(3)** FILING OF PAPERS; USE OF MAIL. (a) *All filings - general rule.* Except as provided in par. (b) -(e), filing is not timely unless the clerk receives the papers within the time

* Chief Justice Abrahamson and Justice Bradley dissent to the adoption of Wis. Stat. § 809.80 (3) (b).

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. Electronic filing, other than filing by facsimile as set forth in s. 801.16, is not permitted unless otherwise ordered by the supreme court.

(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 third-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.

(4) PROOF OF FILING DATE FOR BRIEF OR APPENDIX. (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 a certification or affidavit setting forth the date and manner by which the document was mailed or delivered to a third-party commercial carrier.

(b) If a certification or affidavit is appended, 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 appended, 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.

Judicial Council Note, 2002: Subsections (3) through (4) are new, and are taken largely from the Federal Rules of Appellate Procedure, Rule 25. Under the former rules, a brief

was not filed until the clerk physically received it, regardless of when the brief may have been mailed. Because a party outside the Madison area had to allow time for postal or courier delivery, briefing periods were often adversely affected merely to ensure that a brief was actually received by the clerk before the expiration of the filing deadline.

Subsection (3) (a) retains the general rule that a document is not filed until it is received by the clerk. Filing may be accomplished in person, by mail, or by courier or common carrier. Electronic filing of papers, other than filing by facsimile, is not permitted unless otherwise ordered by the supreme court. See s. 801.16(2) addressing rules governing facsimile filing. The supreme court and the court of appeals have adopted local rules governing facsimile filing.

However, sub. (3) (b) creates a mailbox rule for briefs and appendices only. For briefs and appendices, filing will be considered timely if, on or before the deadline, the brief or appendix is correctly addressed and either: (a) deposited in the United States mail for delivery by first-class mail, or other class of mail at least as expeditious, postage pre-paid, or (b) delivered to a commercial delivery service for delivery within 3 calendar days. When a brief or appendix is mailed or sent by commercial courier, subsection (4) requires that the party also file a certification or affidavit of mailing stating the date and manner of mailing or delivery.

Subsection (3) (c) addresses pro se briefs and appendices filed by confined persons. For confined persons, a brief or appendix will be timely filed if, on or before the deadline, the brief or appendix is correctly addressed and delivered to the proper institution authorities for mailing. In order for the brief or appendix to be timely filed under sub. (3) (c), a certification or affidavit must be filed stating the date on which the brief or appendix was delivered to the proper institution authorities for mailing. The important point is that the pro se confined person must follow the institution rules or practices as to outgoing mail - whether they require placing mail in the hands of certain institution authorities, depositing mail in a designated receptacle, or some other procedure. See ***State ex rel. Nichols v. Litscher***, 2001 WI 119 ¶ 32 n. 6, 247 Wis. 2d 1013, 1028 n. 6, 635 N.W.2d 292.

Subsection (3) (d) reiterates the long-standing rule that a petition for review filed with the clerk of the supreme court must actually be received by the clerk on or before the last day of the filing period. The time limit for filing a petition for

review cannot be extended. The timely filing of a petition for review is necessary to invoke the supreme court's appellate jurisdiction. See **First Wis. Nat'l Bank of Madison v. Nicholaou**, 87 Wis. 2d 360, 274 N.W.2d 704 (1979). The mailbox rule for briefs and appendices created in sub. (3) (b) does not apply to the filing of a petition for review under s. 809.62.

Subsection (3) (e) expands the coverage of the rule tolling the time limit for the clerk's receipt of a pro se petition for review from a prisoner on the date the prisoner delivers a correctly addressed petition to the proper prison authorities, as established in **State ex rel. Nichols v. Litscher**, *supra*. to include petitions for review from all pro se confined persons. Subsection (3) (e) also adds a requirement for filing of a certification or affidavit setting forth the date on which the petition for review was delivered to the proper institution authorities for mailing. The important point is that in order to trigger tolling, the pro se confined person must follow the institution rules or practices as to outgoing mail - whether they require placing mail in the hands of certain institution authorities, depositing mail in a designated receptacle, or some other procedure. See **State ex rel. Nichols v. Litscher**, *supra*.

SECTION 59. Section 809.81 (9) of the statutes is created to read:

809.81 (9) CAPTIONS. Except as provided in s. 809.81 (8), 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.

Judicial Council Note, 2002: Subsection (9) is created to clarify that the same caption should be used on all documents filed in an appellate case, and specifies that caption. Captions on pleadings and other documents filed pursuant to this rule are consistent with the current s. 809.19 (9) requirement governing captions on briefs.

SECTION 60. Section 809.82 (2) (b) of the statutes is amended to read:

809.82 **(2)** (b) Notwithstanding the provisions of 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. 809.30 or s. 809.32 ~~or 809.40(1)~~ may not be enlarged.

IT IS FURTHER ORDERED that effective January 1, 2003, Supreme Court Rule 71.04 is amended as follows:

SECTION 61. Section 71.04 (4) of the Supreme Court Rules is amended to read:

71.04 **(4)** Except when requested by a party or by a guardian ad litem appointed in the proceedings, ~~Reporters'~~ reporters' notes or other verbatim record of proceedings under ch. 48, 767, and 938 of the statutes shall be transcribed only upon order of the court.

Judicial Council Note, 2002: SCR 71.04 (4) is amended to allow the parties to proceedings, and guardians ad litem appointed in the proceedings, under ch. 48, 767, and 938 of the statutes to obtain transcripts without obtaining a court order authorizing the court reporter to prepare the transcript. The rule requires non-parties to the action or proceeding to obtain a court order before transcripts can be prepared. The amendment protects the privacy interests of the parties to such proceedings, and promotes more efficient use of resources by the courts, the court reporters, counsel and the parties. The amendment also harmonizes the rule with existing statutes and case law. Section 809.30 (2) (fm) provides that any child or juvenile pursuing post-judgment relief in a ch. 48 or 938 proceeding "shall be furnished at no cost" the transcript or record of the proceeding. Section 967.06 provides that in "any" public defender case, the public defender may request the applicable court reporter or circuit court clerk to prepare and transmit any transcript or court record and that the request "shall be complied with." *State ex rel. S.M.O. v. Resheske*, 110 Wis. 2d 447, 454, 329 N.W.2d 275, 277-78 (Ct. App. 1982), holds that s. 967.06 "takes precedence" over general confidentiality

provisions in the statutes and creates a clear duty to prepare and transmit the transcript when requested pursuant to the statute.

IT IS FURTHER ORDERED that the Judicial Council's Notes, submitted with the petition and addenda, are not adopted but shall be printed for informational purposes.

IT IS FURTHER ORDERED that notice of this amendment of Wisconsin Statutes Chapter 809 and SCR 71.04 be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 31st day of October, 2002.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court

