# CHAPTER 808

## APPEALS AND WRITS OF ERROR

808.01 Definitions.
808.02 Writ of error.
808.03 Appeals to the court of appeals.
808.04 Time for appeal to the court of appeals.
808.05 Bypass.
808.07 Relief pending appeal.
808.075 Permitted court actions pending appeal.
808.08 Further proceedings in trial court.
808.09 Reversal, affirmance or modification of judgment.
808.10 Review by the supreme court.
808.11 Printing specifications.

**808.01 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)** "Appellate court" means the supreme court under ch. 751 or the court of appeals under ch. 752.

**History:** 1977 c. 187; 1991 a. 189.

A party that accepts the benefits of a judgment does not waive the right to take an appeal which does not involve a reversal of that part of the judgment under which the benefit was received. Estreen v. Bluhm, 79 Wis. 2d 142, 255 N.W.2d 473.

**808.02 Writ of error.** A writ of error may be sought in the court of appeals.

**History:** 1977 c. 187.

**808.03 Appeals to the court of appeals. (1)** APPEALS AS OF RIGHT. A final judgment or a final order of a circuit 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, order or disposition that disposes of the entire matter in litigation as to one or more of the parties, whether rendered in an action or special proceeding, and that is one of the following:

(a) Entered in accordance with s. 806.06 (1) (b) or 807.11 (2).

(b) Recorded in docket entries in ch. 799 cases.

(c) Recorded in docket entries in traffic regulation cases prosecuted in, or following a decision in a municipal court, appealed to, circuit court if a person convicted of a violation may be ordered to pay a forfeiture.

(d) Recorded in docket entries in municipal ordinance violation cases prosecuted in, or following a decision in a municipal court, appealed to, circuit court.

**(2)** APPEALS BY PERMISSION. A judgment or order not appealable as a matter of right under sub. (1) may be appealed to the court of appeals in advance of a final judgment or order upon leave granted by the court if it determines that an appeal will:

(a) Materially advance the termination of the litigation or clarify further proceedings in the litigation;

(b) Protect the petitioner from substantial or irreparable injury; or

(c) Clarify an issue of general importance in the administration of justice.

**(3)** REVIEW OF AN ORDER DENYING SUPPRESSION OR EXCLUSION OF EVIDENCE. (a) An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a juvenile may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon an admission or a plea of no contest to the allegations in the petition.

(b) An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint.

**History:** 1977 c. 187; 1979 c. 192; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1995 a. 139, 224; 1997 a. 35; 2009 a. 27; 2015 a. 12.

**Cross−reference:** See s. 767.217 (2) for appeals involving child support and maintenance.

**Judicial Council Note, 1979:** Sub. (1) 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 s. 808.03 (1) 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. [Bill 396−S]

**Judicial Council Note, 1986:** Sub. (1) is amended to clarify that docket entries in small claims and other ch. 799 cases may be final orders from which an appeal may be taken as of right. See 1979 Judicial Council Note to sub. (1). [Re Order eff. 7−1−86]

An appeal cannot be taken from an order before it is entered. Ramsthal Advertising Agency v. Energy Miser, Inc. 90 Wis. 2d 74, 279 N.W.2d 491 (Ct. App. 1979).

The test to determine whether a decision is a final order or judgment is whether the trial court contemplated that any additional formal document would be entered with respect to the matter covered in the decision. Frederick v. City of Janesville, 92 Wis. 2d 685, 285 N.W.2d 655 (1979).

A pretrial order denying a motion to dismiss a 2nd trial on double jeopardy grounds is a final order appealable under sub. (2). State v. Jenich, 94 Wis. 2d 74, 288 N.W.2d 114 (1980).

An order waiving jurisdiction over a juvenile is appealable under sub. (2). State ex rel. A. E. v. Green Lake County Cir. Ct. 94 Wis. 2d 98, 288 N.W.2d 125 (1980).

Under s. 808.03 (2), both the prosecution and defense may seek permissive appeal of nonfinal orders. State v. Rabe, 96 Wis. 2d 48, 291 N.W.2d 809 (1980).

An order denying a motion to dismiss for lack of personal jurisdiction is appealable by permission under s. 808.03 (2). Heaton v. Independent Mortuary Corp. 97 Wis. 2d 379, 294 N.W.2d 15 (1980).

Orders relating to venue are appealable by permission under sub. (2). Aparacor, Inc. v. DILHR, 97 Wis. 2d 399, 293 N.W.2d 545 (1980).

An order enjoining a town from conducting an incorporation referendum under s. 60.81 terminated the only matter in litigation with respect to the town, although ch. 66 incorporation proceedings had not been finally determined by the order. In re Incorporation of Town of Fitchburg, 98 Wis. 2d 635, 299 N.W.2d 199 (1980).

A court order setting aside an administrative order and remanding the case to the administrative agency disposed of the entire matter in litigation and was appealable as of right. Bearns v. DILHR, 102 Wis. 2d 70, 306 N.W.2d 22 (1981).

When a counterclaim for abuse of process, severed for trial, was not yet determined, a judgment dismissing the complaint was not appealable under sub. (1). Brownsell v. Klawitter, 102 Wis. 2d 108, 306 N.W.2d 41 (1981).

An order for a new trial is not appealable as of right. Wick v. Mueller, 105 Wis. 2d 191, 313 N.W.2d 799 (1982).

The last document in litigation should indicate on its face that for purposes of appeal it is a final order or judgment and that no subsequent document is contemplated. Radoff v. Red Owl Stores, Inc. 109 Wis. 2d 490, 326 N.W.2d 240 (1982).

The trial court did not have jurisdiction to award attorney fees after the filing of a notice of appeal of another issue. Hengel v. Hengel, 120 Wis. 2d 522, 355 N.W.2d 846 (Ct. App. 1984).

A court commissioner's order under s. 757.69 (1) dismissing a criminal proceeding was not a "final order" under sub. (1). State v. Trongeau, 135 Wis. 2d 188, 400 N.W.2d 12 (Ct. App. 1986).

An appellate court has no jurisdiction to review the denial of a postconviction motion if there is no final written order denying the motion on file in the clerk of court's office. State v. Malone, 136 Wis. 2d 250, 401 N.W.2d 563 (1987).

A criminal defendant's right to appeal continues after death, regardless of the cause of death. State v. McDonald, 144 Wis. 2d 531, 424 N.W.2d 411 (1988).

A judgment resolving the merits of a 42 USC 1983 action is final and appealable under sub. (1) although the issues of attorney fees remains unresolved. ACLU v. Thompson, 155 Wis. 2d 442, 455 N.W.2d 268 (Ct. App. 1990).

The circuit court's retained jurisdiction in board of review certiorari actions under s. 70.47 (13) does not affect the finality of an order for appeal purposes. Steenberg v. Town of Oakfield, 157 Wis. 2d 674, 461 N.W.2d 148 (Ct. App. 1990).

An appeal of an oral revocation order under s. 343.305 (10) may not be taken under sub. (1). State v. Borowski, 164 Wis. 2d 730, 476 N.W.2d 316 (Ct. App. 1991).

When an appeal is taken as a matter of right, only the final document need be reduced to writing. Nonfinal rulings need not be reduced to writing to be eligible for review under an appeal of a subsequent final order. Jacquart v. Jacquart, 183 Wis. 2d 372, 515 N.W.2d 539 (Ct. App. 1994).

Like a judgment of foreclosure and sale in the case a mortgage, a judgment of strict foreclosure of a land contract is a final judgment that must be appealed from within the time required under s. 808.04. Hackman v. Behm, 207 Wis. 2d 437, 558 N.W.2d 905 (Ct. App. 1996), 95−3315.

An order on the merits of an action is final for purposes of appeal even though a request for litigation expenses is pending. Laube v. City of Owen, 209 Wis. 2d 12, 561 N.W.2d 785 (Ct. App. 1997), 96−2717.

A party may waive the right to appeal in a civil case if the party has caused or induced a judgment to be entered or has stipulated to the entry of judgment. By stipulating to the entry of a conditional judgment, a party could not obtain a mandatory appeal of an interlocutory order. Cascade Mountain, Inc. v. Capitol Indemnity Corp. 212 Wis. 2d 265, 569 N.W.2d 45 (Ct. App. 1997), 96−2562. See also Dyer v. Law, 2007 WI App 137, 302 Wis. 2d 207, 733 N.W.2d 328, 06−2957.

Absconding from a juvenile treatment center was a rejection by the juvenile of the legitimate means afforded for challenging the court order and resulted in the forfeiture of the right to appeal. State v. Lamontae D.M. 223 Wis. 2d 503, 589 N.W.2d 415 (Ct. App. 1998), 98−1700.

The event that triggers the appeal period for a traffic regulation case is the recording of the disposition in the circuit court docket and not the entry of a separate judgment or order in the office of the clerk of circuit court. City of Sheboygan v. Flores, 229 Wis. 2d 242, 598 N.W.2d 307 (Ct. App. 1999), 99−0954.

The court of appeals shall grant all petitions for interlocutory appeal arising from a circuit court summary judgment order denying a state official's claim of qualified immunity under 42 USC 1983 if the order is based on an issue of law. Whether to grant such a petition is discretionary when it arises from a motion to dismiss. Powell v. Cooper, 2001 WI 10, 241 Wis. 2d 153, 622 N.W.2d 265, 98−0012.

In the family law context, an order resolving the merits of a child support dispute, but not an attorney's fee issue, is final within the meaning of sub. (1). Campbell v. Campbell, 2003 WI App 8, 259 Wis. 2d 676, 659 N.W.2d 106, 02−0426.

A circuit court order is a final order when: 1) it disposes of the entire matter in litigation under substantive law, and 2) the circuit court considered it to be the last document it would enter in the litigation. Contardi v. American Family Insurance Co. 2004 WI App 104, 273 Wis. 2d 509, 684 N.W.2d 139, 03−2284.

When an order or a judgment is entered that disposes of all of the substantive issues in the litigation, as to one or more parties, as a matter of law, the circuit court intended it to be the final document for purposes of appeal, notwithstanding the label it bears or subsequent actions taken by the circuit court. If an order for judgment meets this criterion, it is a final order. Any historic distinction between an order and a judgment is not dispositive. Harder v. Pfitzinger, 2004 WI 102, 274 Wis. 2d 324, 682 N.W.2d 398, 03−1817.

An order granting a plea withdrawal is not final because it plainly anticipates further proceedings in the criminal case. Accordingly, the state was not obligated to file an appeal within the 45−day time period and its failure to do so was not waiver. State v. Williams, 2005 WI App 221, 287 Wis. 2d 748, 706 N.W.2d 355, 04−1985.

A document constitutes the final document for purposes of appeal when it: 1) has been entered by the circuit court, 2) disposes of the entire matter in litigation as to one or more parties, and 3) states on the face of the document that it is the final document for purposes of appeal. When a document would otherwise constitute the final document, but for not including a finality statement, courts will construe the document liberally in favor of preserving the right to appeal. Tyler v. The Riverbank, 2007 WI 33, 299 Wis. 2d 751, 728 N.W.2d 686, 05−2336.

Deciding a case in the sense of merely analyzing legal issues and resolving questions of law does not dispose of an entire matter in litigation as to one or more parties. The court must act by explicitly dismissing or adjudging the entire matter in litigation as to one or more parties. In order to "dispose" of the matter under sub. (1), a memorandum decision must contain an explicit statement either dismissing or adjudging the entire matter in litigation as to one or more parties. Wambolt v. Illinois Farmers Insurance Company, 2007 WI 35, 299 Wis. 2d 723, 728 N.W.2d 670, 05−1874.

Effective September 1, 2007, final orders and judgments shall state that they are final for purposes of appeal. A document does not fulfill this requirement with a particular phrase or magic words, but must make clear on its face, that it is the document from which appeal may follow as a matter of right under sub. (1). Absent such a statement, appellate courts should liberally construe ambiguities to preserve the right of appeal. Wambolt v. Illinois Farmers Insurance Company, 2007 WI 35, 299 Wis. 2d 723, 728 N.W.2d 670, 05−1874.

Under *Wambolt*, neither the label of the document nor the circuit court's subsequent action (e.g., entering a judgment) is dispositive of the document's finality. An order may meet the finality criteria, notwithstanding the presence in the order of a reference to a future judgment or the entry of that judgment. Ecker Brothers v. Calumet County, 2008 WI App 81, 312 Wis. 2d 244, 752 N.W.2d 356, 07−2109.

A trial court order remanding a case to an administrative agency was not a final order within the meaning of sub. (1) when it did not contain an explicit statement adjudicating the entire matter in litigation as to any party and it scheduled a hearing upon "return" from the agency for the purpose of reviewing the issues identified for consideration on remand. Citizens For U, Inc. v. DNR, 2010 WI App 21, 323 Wis. 2d 767, 780 N.W.2d 194, 08−2537.

A traffic forfeiture case qualifies as having been "prosecuted in circuit court," within the meaning of sub. (1) (c) when the case has been appealed to the circuit court following an earlier municipal court decision. It follows that a docket entry of the case's disposition constitutes a final appealable judgment under sub. (1) (c). Village of McFarland v. Zetzman, 2012 WI App 49, 340 Wis. 2d 700, 811 N.W.2d 822, 11−1440.

The prevailing party's claim for an award of attorney fees due under a contract does not affect the finality of a judgment or order that disposes of the entire matter in litigation as to one or more of the parties. There is no distinction between a claim for attorney fees based on a contract as opposed to one based on a statute. When the recovery of attorney fees is authorized by a statute or a contract, the attorney fees are litigation "disbursements and fees allowed by law" as set forth in s. 814.04 (2). McConley v. T. C. Visions, Inc. 2016 WI App 74, ___ Wis. 2d ___, ___ N.W.2d ___, 16−0671.

Wisconsin Court of Appeals Appellate Jurisdiction. Klein and Leavell. Wis. Law. Sept. 1991.

Interlocutory Appeals in Wisconsin. Towers, Arnold, Tess−Mattner & Levenson. Wis. Law. July 1993.

Understanding the New Rules of Appellate Procedure. Stephens. Wis. Law. July 2001.

How to Appeal Mid−Litigation Decisions. Alderman. Wis. Law. Dec. 2014.

**808.04 Time for appeal to the court of appeals. (1)** INITIATING AN APPEAL. An appeal to the court of appeals must be initiated within 45 days of entry of a final judgment or order appealed from if written notice of the entry of a final judgment or order is given within 21 days of the final judgment or order as provided in s. 806.06 (5), or within 90 days of entry if notice is not given, except as provided in this section or otherwise expressly provided by law. Time limits for seeking review of a nonfinal judgment or order are established in s. 809.50.

**(1m)** An appeal by a record subject under s. 19.356 shall be initiated within 20 days after the date of entry of the judgment or order appealed from.

**(2)** An appeal under s. 227.60 or 799.445 shall be initiated within 15 days after entry of judgment or order appealed from.

**(3)** Except as provided in subs. (4) and (7), an appeal in a proceeding under s. 971.17, a criminal case, or a case under ch. 48, 51, 55, 938, or 980 shall be initiated within the time period specified in s. 809.30 (2) or 809.32 (2), whichever is applicable.

**(4)** Except as provided in sub. (7m), an appeal by the state in a proceeding under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48, 938, or 980 shall be initiated within 45 days of entry of the judgment or order appealed from.

**(6)** When a party to an action or special proceeding dies during the period allowed for appeal, the time to appeal is the time permitted by law or 120 days after the party's death, whichever is later. If no personal representative qualifies within 60 days after the party's death, any appellant may have a personal representative appointed under s. 856.07 (2).

**(7)** An appeal by a party other than the state from a judgment or order granting adoption shall be initiated by filing the notice required by s. 809.30 (2) (b) within 40 days after the date of entry of the judgment or order appealed from. Notwithstanding s. 809.82 (2) (a), this time period may not be enlarged.

**(7m)** An appeal from a judgment or order terminating parental rights or denying termination of parental rights shall be initiated by filing the notice required by s. 809.107 (2) within 30 days after the date of entry of the judgment or order appealed from. Notwithstanding s. 809.82 (2) (a), this time period may not be enlarged unless the judgment or order was entered as a result of a petition under s. 48.415 that was filed by a representative of the public under s. 48.09.

**(8)** If the record discloses that the judgment or order appealed from was entered after the notice of appeal or intent to appeal was filed, the notice shall be treated as filed after that entry and on the day of the entry.

**History:** 1977 c. 187; 1979 c. 32 s. 92 (9), (14); 1979 c. 89, 221; 1981 c. 152; 1981 c. 314 ss. 130, 146; 1983 a. 183, 219; 1983 a. 491 s. 23; 1985 a. 182 s. 57; Sup. Ct. Order, 130 Wis. 2d xi, xix (1986); Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1989 a. 56 s. 259; 1989 a. 192; 1991 a. 39; Sup. Ct. Order, 168 Wis. 2d xix (1992); 1993 a. 395; 1995 a. 77, 275; 1997 a. 133; Sup. Ct. Order No. 00−02, 2001 WI 39, 242 Wis. 2d xxvii; 2003 a. 47; 2005 a. 293, 434; 2009 a. 26.

**NOTE: 2003 Wis. Act 47 contains explanatory notes.**

**Cross−reference:** See s. 809.50 for time to file permissive appeals.

**Judicial Council Note, 1983:** Sub. (2) requires expedited initiation of appeals in recall and eviction cases as well as cases in which the validity of a state law is attacked in federal district court. Sub. (3) references the appeal deadline for criminal, juvenile, mental commitment and protective placement appeals. Sub. (4) references the appeal deadline for appeals by the state in criminal and children's code cases. [Bill 151−S]

**Judicial Council Note, 1986:** The amendment to sub. (1) clarifies the time limit for notice of entry by cross−referencing s. 806.06 (5). [Re Order eff. 7−1−86]

**Judicial Council Note, 1986:** Subs. (3) and (4) are amended by removing references to a repealed statute. Sub. (7) requires a party other than the state to commence an appeal from a judgment or order terminating parental rights or granting an adop-

tion by filing notice of intent to pursue relief in the trial court within 40 days after entry. It also prohibits enlargement of this time by the court of appeals. [Re Order eff. 7−1−87]

**Judicial Council Note, 1992:** Subsection (8) is analogous to Rule (4) (a) (2) of the Federal Rules of Appellate Procedure. It is intended to avoid the delay, confusion and prejudice which can result from dismissing appeals solely because they are filed before the judgment or order appealed from is entered. Appeals from judgments or orders which have not been entered are still dismissable. [Re Order effective July 1, 1992]

**Judicial Council Note, 2001:** The word "final" has been inserted before "judgment or order" in sub. (1). The amendment specifies that the 45− or 90−day time limit applies in appeals from final orders and the 14−day time limit in s. 809.50 applies to appeals from nonfinal orders. [Re Order No. 00−02 effective July 1, 2001]

Notice under sub. (1) may not be given before judgment is entered. Sub−Zero Freezer Co. v. Manhattan Life Insurance Co. 90 Wis. 2d 76, 279 N.W.2d 492 (Ct. App. 1979).

When a written notice of entry of judgment showed the incorrect date of entry, the time to appeal was not shortened under sub. (1). Mock v. Czemierys, 113 Wis. 2d 207, 336 N.W.2d 188 (Ct. App. 1983).

To shorten the appeal period under sub. (1), a formal, captioned, and signed notice of entry of judgment stating the date of entry must be filed and served on an opposing party within 21 days of the entry date. Soquet v. Soquet, 117 Wis. 2d 553, 345 N.W.2d 401 (1984).

The date stamped on the judgment did not control as to the date of actual filing. Matter of Estate of Ristau, 144 Wis. 2d 421, 424 N.W.2d 203 (1988).

A summary contempt proceeding is not "prosecuted by the state" and appeal is pursuant to sub. (1). Matter of Contempt in State v. Simmons, 150 Wis. 2d 178, 441 N.W.2d 308 (Ct. App. 1989).

Under sub. (1), notice of entry of judgment must be given within 21 days of the entry of the judgment, not of its signing, consistent with s. 806.06 (5). Linnmar, Inc. v. First Enterprises, 161 Wis. 2d 706, 468 N.W.2d 753 (Ct. App. 1991).

If a motion for reconsideration is filed under s. 805.17 (3), the 45−day time for appeal under sub. (1) applies beginning upon disposal of the motion. Salzman v. DNR, 168 Wis. 2d 523, 484 N.W.2d 337 (Ct. App. 1992).

Strict compliance with the procedures for providing notice of entry of judgment is required. Notice of entry of judgment is ineffective if it was mailed to an incorrect address. Nichols v. Conlin, 198 Wis. 2d 287, 542 N.W.2d 194 (Ct. App. 1995), 95−2776.

Proceedings under ch. 980 are civil and not criminal. State v. Brunette, 212 Wis. 2d 139, 567 N.W.2d 647 (Ct. App. 1997), 96−2351.

When a judge normally presides in one county but is assigned by substitution to a case filed in another county, the filing and entry for appeal purposes occur when the document comes into the possession of the clerk of court in the county in which the case was commenced. State v. Williams, 230 Wis. 2d 50, 601 N.W.2d 838 (Ct. App. 1999), 98−3338.

Sub. (8) is applicable to appeals under s. 66.0703 as the result of the application of s. 801.02 (2), which makes chs. 801 to 847 applicable in all special proceedings. Mayek v. Cloverleaf Lakes Sanitary District #1, 2000 WI App 182, 238 Wis. 2d 261, 617 N.W.2d 235, 99−2895.

An attorney who is sanctioned by the circuit court for misconduct in a client's case must file his or her own notice of appeal in order to challenge the sanction and may not intervene in the client's appeal if the notice of appeal deadline has been missed. Absent the attorney's filing of a notice of appeal, the court of appeals lacks jurisdiction to consider a challenge to a sanction for the attorney's misconduct. Ziebell v. Ziebell, 2003 WI App 127, 265 Wis. 2d 664, 666 N.W.2d 107, 02−2552.

A circuit court order is a final order when: 1) it disposes of the entire matter in litigation under substantive law, and 2) the circuit court considered it to be the last document it would enter in the litigation. Contardi v. American Family Insurance Co. 2004 WI App 104, 273 Wis. 2d 509, 684 N.W.2d 139, 03−2284.

The proper framework in which to examine the finality of the orders in this case issued by the circuit court over the course of postjudgment proceedings following remittitur was by focusing on whether the orders resulted in the immediate transfer of title to property. If an order led to such a result, it was a final order for purpose of appeal and the time for review was immediate. Orlando Residence, Ltd. v. Nelson, 2013 WI App 81, 348 Wis. 2d 565, 834 N.W.2d 416, 12−1528.

**808.05 Bypass.** The supreme court may take jurisdiction of an appeal or any other proceeding pending in the court of appeals if:

**(1)** It grants direct review upon a petition to bypass filed by a party;

**(2)** It grants direct review upon certification from the court of appeals prior to the court of appeals hearing and deciding the matter; or

**(3)** It, on its own motion, decides to review the matter directly.

**History:** 1977 c. 187.

**808.07 Relief pending appeal. (1)** EFFECT OF APPEAL. An appeal does not stay the execution or enforcement of the judgment or order appealed from except as provided in this section or as otherwise expressly provided by law.

**(2)** AUTHORITY OF A COURT TO GRANT RELIEF PENDING APPEAL. (a) During the pendency of an appeal, a trial court or an appellate court may:

1. Stay execution or enforcement of a judgment or order;

2. Suspend, modify, restore or grant an injunction; or

3. Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment subsequently to be entered.

(am) During the pendency of an appeal, the trial court may hear and determine a motion filed under s. 806.07.

(b) Except as provided in s. 655.27 (5) (a) 3., relief under this subsection may be conditioned upon the filing of an undertaking in the trial court.

**(2m)** LIMIT ON UNDERTAKING. (a) During the pendency of an appeal of a judgment in any civil action, the court shall set the amount of the undertaking to be furnished by all appellants collectively in order to stay the execution of the judgment during appellate review, but the undertaking shall not exceed $100,000,000.

(b) Notwithstanding par. (a), if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid payment of a judgment, a court may enter any order necessary to protect the appellee and may require the appellant to post a bond in an amount not to exceed the amount of the judgment.

**(3)** UNDERTAKING FOR COSTS. An undertaking for costs is not required unless specifically required by statute, or, except as provided in s. 655.27 (5) (a) 3., by the trial court acting in its discretion.

**(4)** PROCEEDINGS AGAINST A SURETY. A surety on an undertaking is subject to the jurisdiction of the trial court and irrevocably appoints the clerk of that court as the surety's agent for service of any papers affecting his or her liability on the undertaking. A person may seek to enforce the surety's liability by filing a motion in the action or proceeding in the trial court in which the undertaking was filed.

**(5)** PUBLIC OFFICIALS. A person or agency suing or being sued in an official public capacity is not required to execute an undertaking as a condition for relief under this section unless, except as provided in s. 655.27 (5) (a) 3., required by the court in its discretion.

**(6)** SURETIES ON UNDERTAKINGS. A surety shall file with the undertaking an affidavit that the surety has a net worth in property within this state not exempt from execution which exceeds the amount of the undertaking, except as provided in s. 632.17 (2). The respondent may by motion object to the sufficiency of a surety within 14 days after service of a copy of the undertaking.

**History:** 1977 c. 187; 1979 c. 32; 1979 c. 110 s. 60 (9); 1983 a. 158, 219; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1985 a. 332; Sup. Ct. Order No. 00−02, 2001 WI 39, 242 Wis. 2d xxvii; 2003 a. 105.

**Judicial Council Note, 1986:** Sub. (2) (am) carries forward the authority of trial courts to hear and determine motions for relief from judgment during the pendency of an appeal. Authority of the appellate court to hear and determine such motions under prior sub. (2) (a) 4. has been repealed. [Re Order eff. 7−1−86]

**Judicial Council Note, 2001:** Sub. (6) is the first of fifteen statutes scattered throughout the rules in which a 10−day deadline is being changed to a 14−day deadline. Also, 7−day deadlines are being changed to 11−day deadlines. Many of the current deadlines in ch. 809 are either 7 or 10 days and are affected by s. 801.15 (1) (b), which excludes "Saturdays, Sundays and holidays" from time periods "less than 11 days." Additionally, many time periods in ch. 809 run from the service of a document, and under s. 801.15 (5) (a), when a document is served by mail, 3 days are added to the prescribed period. The interplay of s. 801.15 and ch. 809 causes many of the time periods in ch. 809 to be substantially longer than the number of days specified in the Rules. The varying time periods have made calculation of the court's deadlines difficult.

The proposed amendment of all of the 7−day or 10−day deadlines to 11 and 14 days, respectively, will remove the impact of s. 801.15 (1) (b) on the Rules of Appellate Procedure. However, there will be little adverse impact on the time actually given to parties. The proposed change will greatly facilitate the court's calculation of deadlines. If circumstances demand a different time period, the court may set an appropriate deadline under s. 809.82 (2) (a). [Re Order No. 00−02 effective July 1, 2001]

A postjudgment order of the circuit court denying a motion under sub. (2) (a) 4. [now sub. (2) (am)] is not reviewable on appeal from the judgment. Chicago & North Western Railroad. v. LIRC, 91 Wis. 2d 462, 283 N.W.2d 603 (Ct. App. 1979).

Under sub. (1) and s. 808.075 (1), a circuit court has authority to confirm a sheriff's sale even though an appeal of the judgment of foreclosure and sale is pending. Community National Bank v. O'Neill, 157 Wis. 2d 244, 458 N.W.2d 385 (Ct. App. 1990).

A stay pending appeal is appropriate when the moving party: 1) makes a strong showing that it is likely to prevail on the appeal; 2) shows that unless the stay is granted it will suffer irreparable harm; 3) shows that there will be no substantial harm to the other parties; and 4) shows that there will be no harm to the public interest. State v. Gudenschwager, 191 Wis. 2d 432, 529 N.W.2d 225 (1995).

The *Gudenschwager* factors do not provide adequate guidance for granting a stay pending appeal when the judgment sought to be stayed is solely a money judgment. The court must consider: 1) the likelihood of success on appeal; 2) the need to ensure collectibility of the judgment if the appeal is unsuccessful; 3) whether the appellant, if successful, will be able to recover; and 4) the harm to the respondent if the judgment is not paid until the completion of an unsuccessful appeal. Scullion v. Wisconsin Power & Light Co. 2000 WI App 120, 237 Wis. 2d 498, 614 N.W.2d 565, 98−3221.

Even if a statutory lis pendens under s. 840.10 is dissolved, common law lis pendens applies and a purchaser who is a party to the relevant litigation takes the property subject to the outcome of the litigation, including appeals. This section does not affect that result. Gaugert v. Duve, 2001 WI 83, 244 Wis. 2d 691, 628 N.W.2d 861, 98−3004.

In some cases, executions may be stayed, tolling interest, and in other cases, a court may decline such a request for stay. There is no substantial conflict in these differing results. Estate of Matteson v. Matteson, 2008 WI 48, 309 Wis. 2d 311, 749 N.W.2d 557, 05−2607.

**808.075 Permitted court actions pending appeal.** **(1)** In any case, whether or not an appeal is pending, the circuit court may act under ss. 801.18 (16), 804.02 (2), 805.15, 805.16, 805.17 (3), 806.07, 806.08, 806.15 (2), 806.24 (4), 808.07 (1) and (2), and 809.12.

**(2)** In a case appealed under s. 809.30, the circuit court retains the power to act on all issues until the notice of appeal has been filed with the clerk of the circuit court, except that the circuit court may not act upon any motion to extend a time limit that is specified in s. 809.30. Thereafter, the circuit court may act only as provided in subs. (1) and (4).

**(3)** In a case not appealed under s. 809.30, the circuit court retains the power to act on all issues until the record has been transmitted to the court of appeals. Thereafter, the circuit court may act only as provided in subs. (1) and (4).

**(4)** The circuit court may act as to the following despite the pendency of an appeal:

(a) In a case under ch. 48:

1. Review of actions by a guardian under s. 48.023.

2. Review of nonsecure custody orders under s. 48.207.

3. Review of secure detention orders under s. 48.208 and secure detention status reviews under s. 48.209 (1) (e).

4. Hearing for child held in custody under s. 48.21 or an adult expectant mother of an unborn child held in custody under s. 48.213.

5. Hearing upon involuntary removal under s. 48.305.

6. Revision of dispositional order under s. 48.363.

7. Extension of dispositional order under s. 48.365, unless s. 48.368 applies.

8. Review of permanency plan under s. 48.38 (5).

9. Release of confidential information under s. 48.396 or 48.78.

10. Revision of guardianship order under s. 48.977 (6).

11. Termination of guardianship under s. 48.977 (7), including removal of a guardian.

12. Rescission of a guardianship order under s. 48.978 (2) (L) 4., (m) 2. or (n) or (3) (d) 3. or 4., (j) 2. or 3. or (k) 2. or 3.

(b) In a case under ch. 51:

1. Disposition, modification and extension of commitment under s. 51.20 (13).

2. Reexamination of commitment under s. 51.20 (16).

3. Enforcement of patient rights under s. 51.61.

4. Commitment, conditional release, recommitment and discharge under s. 971.17 of a person found not guilty by reason of mental disease or defect.

(c) In a case under ch. 55:

1. Protective placement review under s. 55.18, modification under s. 55.16, or termination under s. 55.17.

2. Hearing required upon transfer under s. 55.15.

3. Enforcement of patient's rights under s. 55.23.

(d) In a case under ch. 767:

1. Revision of orders for legal custody or periods of physical placement under s. 767.41, 767.451, 767.461, or 767.481.

2. Issuance or modification of orders for visitation rights under s. 767.43.

3. Annual adjustment of child or family support under s. 767.553.

4. Revision of judgment or order for child support, maintenance payments or family support payments under s. 767.59 or 767.89.

5. Order for temporary maintenance, temporary child support or for suit money, counsel fees and disbursements in the appellate court under s. 767.273.

6. Property division, where the court has expressly or impliedly reserved jurisdiction, provided the court does not revise or modify its final division of property.

7. Vacation or modification of judgment under s. 767.35 (6).

8. Revocation of judgment under s. 767.35 (7).

9. Enforcement of payments under s. 767.77, 767.805 (4), or 767.89.

10. Enforcement of orders under s. s. 767.78, 767.805 (4), or 767.89.

11. Enforcement or modification of assignments under s. 767.513 or 767.75.

12. Enforcement or modification of account transfers under s. 767.76.

13. Determination of charges and issuance of repayment orders under s. 767.71.

(e) In a case under chs. 701 or 853 to 879:

1. Any matter, unless the appellate court directs the trial court not to act on specific issues or the trial court declines to act because the matter directly affects the issues on appeal.

(f) In a case under ch. 54:

1. Review a bond under s. 54.46 (4) or 54.852 (9).

2. Release of deposited funds under s. 54.46 (4) (b) 3.

3. Order for visitation under s. 54.56.

4. Appointment of successor guardian under s. 54.54 (1).

5. Approval of guardian's exercise of marital property rights under s. 54.20 (2) (h).

6. Approval of management of property under s. 54.19 or 54.20.

7. Direction for use of estate for benefit of wards under s. 54.19 (4).

8. Examination of annual accounts and assets under ss. 54.62 and 54.66.

9. Removal of guardian under s. 54.68 (4) (d).

10. Determination of petitions for instructions to guardian.

11. Termination of guardianship under s. 54.64.

12. Restoration of specific legal rights under s. 54.64 (2) (c).

13. Authorization of purchase of a home for a ward under s. 54.852 (15) (a).

(fn) In a case under ch. 938:

2. Review of nonsecure custody orders under s. 938.207.

3. Review of secure detention orders under s. 938.208 and secure detention status reviews under s. 938.209 (1) (a) 5.

4. Hearing for juvenile held in custody under s. 938.21.

5. Hearing upon involuntary removal under s. 938.305.

6. Revision of dispositional order under s. 938.363.

7. Extension of dispositional order under s. 938.365, unless s. 938.368 applies.

8. Review of permanency plan under s. 938.38 (5).

9. Release of confidential information under s. 938.396 or 938.78.

(g) In a criminal case:

1. Release on bond under s. 809.31 or 969.01 (2).

2. Modification or revocation of bond under s. 969.01 (2) (e) or 969.08.

3. Imposition of sentence upon revocation of probation under s. 973.10 (2) (a).

4. Determination of sentence credit under s. 973.155.

5. Modification of a condition of probation or extension of probationary term under s. 973.09 (3) (a).

6. Modification of sentence.

7. Commitment, conditional release, recommitment and discharge under s. 971.17 of a person found not guilty by reason of mental disease or defect.

(h) Commitment, supervised release, recommitment, discharge, and postcommitment relief under s. 980.10, 2003 stats., or ss. 980.06, 980.08, 980.09 (4), and 980.101 of a person found to be a sexually violent person under ch. 980.

**(5)** Notwithstanding the limitations of this section, any party may petition the appellate court for remand to the circuit court for action upon specific issues.

**(6)** In addition to sub. (5), the appellate court may remand the record to the circuit court for additional proceedings while the appeal is pending.

**(7)** Upon completion of an action taken by the circuit court under sub. (1), (4), (5) or (6) of this section, the clerk shall send a copy of the judgment or order to the appellate court.

**(8)** If an appellate court remands the record to the circuit court for additional proceedings under sub. (5) or (6), the appellate court, in the pending appeal, may review the judgment or order that the circuit court enters following remand. If any party is aggrieved by the judgment or order of the circuit court, the party shall file in the appellate court a written statement of objections to the judgment or order within 14 days after the record is returned to the clerk of the appellate court. A party that files a statement of objections need not file an additional notice of appeal or cross−appeal.

**History:** Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 86; 1993 a. 16, 446, 479, 481; 1995 a. 38, 73, 77, 275; 1997 a. 35, 191, 292, 296, 334; 1999 a. 9; Sup. Ct. Order No. 00−02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; 2005 a. 264, 387, 434; 2005 a. 443 ss. 263, 265; Sup. Ct. Order No. 14−03, 2016 WI 29, filed 4−28−16, eff. 7−1−16; s. 35.17 correction in (1).

**Judicial Council Note, 1988:** In In re Marriage of Hengel v. Hengel, 120 Wis. 2d 522, 355 N. W. 2d 846 (Ct. App. 1984), the court of appeals held that since there is no specific statutory exception, the trial court had no competence to enter an order requiring the husband to contribute to his wife's attorney's fees for representation in the trial court after a notice of appeal had been filed. Section 808.075 is created to specify the actions that may be taken in circuit court after a notice of appeal has been filed in cases appealed under s. 809.30 and after transmittal of the record to an appellate court in other cases.

Matters affecting trusts and estates have historically been treated as a series of special proceedings, and the trial court is charged with ongoing supervision and administrative duties affecting such matters. Because of the ongoing involvement of the trial court, sub. (4) (e) reserves full competence to act, unless it is determined that competence should be restricted as to specific issues. [Re Order effective Jan. 1, 1989]

**Judicial Council Note, 2001:** The second sentence in sub. (2) is a codification of *State v. Harris*, 149 Wis. 2d 943, 440 N.W.2d 364 (1989). Subsection (8) is intended to clarify procedure following a remand and to eliminate an additional notice of appeal or cross−appeal. The obligations of a person filing a statement of objections are the same as those of a cross−appellant. [Re Order No. 00−02 effective July 1, 2001]

Under s. 808.07 (1) and sub. (1), a circuit court has authority to confirm a sheriff's sale even though appeal of judgment of the foreclosure and sale is pending. Community National Bank v. O'Neill, 157 Wis. 2d 244, 458 N.W.2d 385 (Ct. App. 1990).

An indigent in a civil case is entitled to waiver of transcript fees on appeal if the trial judge finds that the indigent has arguable reason to believe that he or she is entitled to redress on appeal. State ex rel. Girouard v. Jackson County Circuit Court, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

When the court of appeals remands an appeal to the trial court for a *Girouard* determination, the court of appeals has jurisdiction to review the trial court decision without need for filing a 2nd notice of appeal. State v. Jacobus, 167 Wis. 2d 230, 481 N.W.2d 642 (Ct. App. 1992).

**808.08 Further proceedings in trial court.** When the record and remittitur are received in the trial court:

**(1)** If the trial judge is ordered to take specific action, the judge shall do so as soon as possible.

**(2)** If a new trial is ordered, the trial court, upon receipt of the remitted record, shall place the matter on the trial calendar.

**(3)** If action or proceedings other than those mentioned in sub. (1) or (2) is ordered, any party may, within one year after receipt of the remitted record by the clerk of the trial court, make appropriate motion for further proceedings. If further proceedings are not so initiated, the action shall be dismissed except that an extension of the one−year period may be granted, on notice, by the trial court, if the order for extension is entered during the one−year period.

**History:** 1977 c. 187.

"Further proceedings" under s. 801.58 (7) and sub. (3) have the same definition. State ex rel. Ondrasek v. Calumet Circuit Court, 133 Wis. 2d 177, 394 N.W.2d 912 (Ct. App. 1986).

A "specific action" under sub. (1) is one that requires no exercise of discretion by the trial court. "Further proceedings" under sub. (3) are those requiring the exercise of discretion by the trial court. State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679, 97−3452.

In the absence of a remand order in the mandate line or some other clear directive from the appellate court ultimately deciding the appeal, a trial court whose judgment or final order has been affirmed by the appellate court on the merits has no authority to reopen the case for an amended complaint. Tietsworth v. Harley−Davidson, Inc. 2007 WI 97, 303 Wis. 2d 94, 735 N.W.2d 418, 04−2655.

**808.09 Reversal, affirmance or modification of judgment.** Upon an appeal from a judgment or order an appellate court may reverse, affirm or modify the judgment or order as to any or all of the parties; may order a new trial; and, if the appeal is from a part of a judgment or order, may reverse, affirm or modify as to the part appealed from. In all cases an appellate court shall remit its judgment or decision to the court below and thereupon the court below shall proceed in accordance with the judgment or decision.

**History:** 1977 c. 187.

The court of appeals may not direct a circuit court to enter a judgment of conviction of a lesser included offense when the jury verdict of guilty on the greater offense is reversed for insufficiency of evidence and the jury was not instructed on the lesser included offense. State v. Myers, 158 Wis. 2d 356, 461 N.W.2d 777 (1990).

The court of appeals has authority to grant a summary judgment motion that was denied by the trial court. Interest of Courtney E. 184 Wis. 2d 592, 516 N.W.2d 422 (1994).

In the absence of a remand order in the mandate line or some other clear directive from the appellate court ultimately deciding the appeal, a trial court whose judgment or final order has been affirmed by the appellate court on the merits has no authority to reopen the case for an amended complaint. Tietsworth v. Harley−Davidson, Inc. 2007 WI 97, 303 Wis. 2d 94, 735 N.W.2d 418, 04−2655.

Unless the supreme court explicitly states otherwise, a court of appeals opinion overruled by the supreme court no longer retains any precedential value. Blum v. 1st Auto & Casualty Insurance Co. 2010 WI 78, 326 Wis. 2d 729, 786 N.W.2d 78, 08−1324.

**808.10 Review by the supreme court. (1)** PETITION FOR REVIEW; TIME LIMIT. A decision of the court of appeals is reviewable by the supreme court only upon a petition for review granted by the supreme court. Except as provided in sub. (2) and ss. 809.32 (5) and 809.62 (1m), the petition for review shall be filed in the supreme court within 30 days of the date of the decision of the court of appeals.

**(2)** TOLLING PENDING COURT OF APPEALS RECONSIDERATION. If a motion for reconsideration is filed in the court of appeals under s. 809.24 (1) within 20 days after the date of a decision of the court of appeals, the 30−day time period to file the petition for review starts on the date the court of appeals determines the motion for reconsideration by filing an order denying the motion for reconsideration or an amended decision.

**History:** 1977 c. 187; 1979 c. 192; 2009 a. 25.

**Judicial Council Note, 1979:** 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. [Bill 396−S]

"Decision" under this section is the final decision disposing of the case. In Interest of A. R. 85 Wis. 2d 444, 270 N.W.2d 581 (1978).

If a petition is not received by the clerk of the supreme court within 30 days, the court loses subject matter jurisdiction. The objection is not subject to waiver and will be raised on the court's own motion. First Wisconsin National Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).

Untimely service of a petition filed under this section does not affect jurisdiction, but the opposing party may move to dismiss under s. 809.83 (2). State v. Rhone, 94 Wis. 2d 682, 288 N.W.2d 862 (1980).

The 30−day deadline for receipt of a petition for review is tolled on the date that a pro se prisoner delivers a correctly addressed petition to the proper prison authorities for mailing. State ex rel. Nichols v. Litscher, 2001 WI 119, 247 Wis. 2d 1013, 635 N.W.2d 292, 00−0853. See also, Brown v. Bradley, 2003 WI 14, 259 Wis. 2d 630, 658 N.W.2d 427, 01−3324.

Unless the supreme court court explicitly states otherwise, a court of appeals opinion overruled by the supreme court no longer retains any precedential value. Blum v. 1st Auto & Casualty Insurance Co. 2010 WI 78, 326 Wis. 2d 729, 786 N.W.2d 78, 08−1324.

Petitions for review by the Wisconsin supreme court. 1979 WLR 1176.

**808.11 Printing specifications.** Briefs and appendices in cases before the supreme court shall be printed, typed, duplicated or reproduced clearly on paper of permanent quality, and in conformity with such rules as the court may prescribe with regard to organization, binding, color of print, and size of print, paper and margin.

**History:** 1975 c. 160; 1977 c. 187 s. 83; Stats. 1977 s. 808.11.