

Committee Name:
Senate Committee –
Judiciary, Corrections and Privacy
(SC–JCP)

Appointments

03hr_SC–JCP_Appt_pt00

Committee Hearings

03hr_SC–JCP_CH_pt00

Committee Reports

03hr_SC–JCP_CR_pt00

Clearinghouse Rules

03hr_SC–JCP_CRule_03–

Executive Sessions

03hr_SC–JCP_ES_pt00

Hearing Records

03hr_ab0000

03hr_sb0364

Misc.

03hr_SC–JCP_Misc_pt00

Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00



STATE OF WISCONSIN
SUPREME COURT
P. O. BOX 1688
MADISON, WISCONSIN 53701

CHAMBERS OF
DAVID T. PROSSER, JR., JUSTICE

STATE CAPITOL, 16 EAST
(608) 266-1882

To: Members of the Committee on Judiciary, Corrections and Privacy
Senator David Zien, Chairperson
Senator Scott Fitzgerald
Senator Cathy Stepp
Senator Tim Carpenter
Senator Spencer Coggs

From: Justice David T. Prosser, Jr.

Date: February 16, 2004

Re: Senate Bill 364

This memo is to request your support and prompt passage of Senate Bill 364. The bill is the product of work by the Judicial Council and its Appellate Practice Section.

In 2000 the Judicial Council petitioned the Supreme Court for rule changes affecting appellate practice. The Supreme Court approved most of the Council's recommendations, but it concluded that the Wisconsin legislature ought to be asked to make certain statutory changes. That is why this bill is in your court.

Please note Sections 5 and 6 of the bill. These sections affect petitions for review to the Supreme Court. As you know, a party may appeal an adverse decision in circuit court to the court of appeals. When the court of appeals issues its decision, the losing party may move the court of appeals for reconsideration, or it may file a request to be heard in the Supreme Court, e.g., a petition for review.

There are overlapping time deadlines for these two maneuvers. These overlapping deadlines create confusion and unnecessary or duplicative paperwork. Senate Bill 364 corrects this problem by tolling the time limit for filing a petition for review when a party has filed a motion for reconsideration.

Legislative action to fix the problem would be appreciated by the judiciary and the Wisconsin bar.

Many thanks.

David Prosser



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MEMORANDUM

To: Senate Committee on Judiciary, Corrections & Privacy
From: **Children & the Law Section**
Criminal Law Section
State Bar of Wisconsin
Date: February 17, 2004
Re: Senate Bill 364

The **Children & the Law** and **Criminal Law Sections** of the State Bar of Wisconsin strongly support Senate Bill 364, which relates to appellate procedure.

The Children & the Law Section consists of attorneys who have a special interest in laws that affect children, such as county corporation counsel, guardians ad litem, prosecutors and public defenders. After reviewing the proposed legislation, this diverse membership unanimously concluded that SB 364 clears up a murky appeal area, and it encourages juveniles to admit to a delinquency petition rather than go to trial just to preserve a right to appeal a suppression motion. Furthermore, the Section can conceive of no potential downside, as this legislation will substantially streamline juvenile proceedings.

The Criminal Law Section includes prosecutors, defense attorneys and judges who practice criminal law at the local, state and federal levels. The Section supports SB 364 because it will create efficiencies in practice and procedure. In addition, the proposal will provide some workload relief to our criminal justice system by eliminating unnecessary procedures in the courts and by making appellate procedure in State Public Defender (SPD) cases more uniform, without sacrificing substantive rights.

**BOTH SECTIONS CONCUR WITH THIS JUDICIAL COUNCIL REQUEST, AND
URGE THE COMMITTEE TO ACT FAVORABLY ON SENATE BILL 364.**

For more information contact:

Debra Sybell, Government Relations Coordinator, at (608) 250-6128 or dsybell@wisbar.org

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Testimony in Support of 2003 SB 364
Senate Committee on Judiciary, Corrections & Privacy
February 17, 2004
Marla J. Stephens
Chair, Wisconsin Judicial Council

Introduction.

Good morning Senators Zien, Fitzgerald, Stepp and ^{COGGS} Carpenter. I am Marla Stephens, the current chairperson of the Wisconsin Judicial Council, and I am urging you to pass SB 364 to revise several rules of appellate procedure. As you know, Sen. Zien sponsored this bill at the request of the Council. (Introduce other members of committee who are present in support of the bill.)

Background.

Beginning in 1997, the Judicial Council's Appellate Procedure Committee¹ solicited and reviewed suggestions for changes to the appellate rules governing criminal, civil commitment, protective placement, children's code and juvenile justice code appeals. After numerous drafts of proposals were circulated among advisory committee members² for comment, the full Council approved a comprehensive proposal to amend the rules of appellate procedure contained in Chapters 808 and 809 of the statutes. The Council asked the Wisconsin Supreme Court to exercise its rulemaking authority to effect these changes in February 2000. In April 2001, the court granted the Council's petition³, with three exceptions. During the hearings on the petition, the justices indicated that three proposals were more appropriate for legislation than rulemaking, because they seek to modify appellate court jurisdiction. Those three proposals are the subject of SB 364. They would:

Make appeals in ch. 980 (sexually violent person commitment) and § 971.17 (not guilty by reason of mental disease or defect commitment) proceedings subject to the unified appeal procedures in Rules 809.30-.32.

Bill secs. 3, 4, 7-10, 13, 14, 22 and 25.

Current law requires appeals in ch. 980 cases to proceed under the civil rules. The Judicial Council petitioned for a rule change allowing these appeals to proceed under the unified appeal procedure, set forth in WIS. STAT. §§ 809.30-.32, which governs other appeals (under ch. 48, 51, 55 and 938 and in criminal cases) in which a person has the right to appointed counsel. Wisconsin's unified appeal procedure requires that all issues be raised in the first appeal as of right. This change is needed because the civil appeal rules do not provide a procedure for raising issues that are not apparent on the record of the court proceedings. This results in ineffective assistance of counsel claims and other collateral attacks (writs and § 974.06 motions) upon the judgments because appellate attorneys are confused about how to raise issues outside the record, do it incorrectly, and consequently waive the issues on direct appeal.

Although current case law⁴ establishes that § 971.17 proceedings are subject to the unified appeal procedures in §§ 809.30-.32, the rules and statutes do not reflect this. These changes will promote efficiency for the parties, courts and practitioners by eliminating successive appeals and remands, by clarifying the appropriate procedures in ch. 980 cases and by incorporating the case law to give fair notice of the appropriate procedures in § 971.17 proceedings.

The language proposed in sections 3, 4, 7-10, and 13-14 amends §§ 808.04(3) and (4) and 809.30(1) and (2) and is based on the Judicial Council's petition. Bill sections 22 and 25, creating §§ 971.17(7m) and 980.061, are offered at this time to assist the courts, the practitioners and the parties in these cases by alerting them to the correct procedures.

Toll the time limit for filing a petition for review in the supreme court while a motion for reconsideration is pending in the court of appeals.

Bill secs. 5, 6, and 16-20.

The bill revises §§ 808.10, 809.62(1) and 809.32(4) and creates §§ 808.10(2), 809.32(5) and 809.62(1m).

Under current law, a person seeking supreme court review of a court of appeals decision has 30 days to file a petition for review in the supreme court. At the Council's request, the supreme court created Rule 809.24 to allow a person to file a motion for reconsideration in the court of appeals. The reconsideration rule was necessary to correct errors in the court of appeals decision that likely would not merit supreme court review, and was consistent with the court of appeals' internal operating procedures. The supreme court could not, however, toll the 30-day time limit for filing the petition for review while the motion for reconsideration was pending. This is so because the 30-day time limit for filing a petition for review established by current § 808.10 is jurisdictional and cannot be extended by the court. *See First Wis. Nat. Bank of Madison v. Nicholaou*, 87 Wis. 2d 360, 365-66, 274 Wis. 2d 704 (1979). Only the legislature can effect changes in the supreme court's jurisdiction.

Sections 5 and 6 of this bill, amending current § 808.10, toll the time for filing or responding to a petition for review in the supreme court while a timely motion for reconsideration of the same decision or order is pending in the court of appeals. Sections 6 and 16-20 establish time frames for filing a petition, supplemental petition, or amendment to a pending petition in the supreme court following resolution of a motion for reconsideration. They are intended to avoid unnecessary duplication of effort for the parties and the appellate courts, and minimize unnecessary expense.

Sections 16-20 of the bill also create cross-references within the petition for review rules, §§ 809.32(4) and 809.62, to the proposed time limit tolling provision, and are offered to alert practitioners, parties and the courts to the change in the time limit for filing a petition for supreme court review.

Allow suppression of evidence issues to be raised on appeal in ch. 48 and 938 cases following an admission to a petition.

Bill secs. 1, 2 and 21:

Under current law, a person cannot appeal from an order denying a motion to suppress evidence or a motion challenging the admissibility of a statement in ch. 48 and 938 cases unless the person proceeds with a trial.

Current law also provides a statutory exception to this waiver rule for criminal cases in Wis. Stat. § 971.31(10), which allows defendants to appeal suppression rulings following a guilty or no contest plea. Rulings on suppression issues often determine the merit or outcome of a case. (If the evidence is admissible, the state has a case. If the evidence is suppressed, the state has no case.)

In order to avoid unnecessary trials, the Council recommends the creation of §§ 48.297(8), 808.03(3) and 938.297(8) to allow suppression appeals following an admission, a consent or a plea of no contest to the allegations in a petition filed under ch. 48 and 938.

Conclusion.

All three proposals were approved by the Judicial Council after reaching consensus among its members: a supreme court justice, circuit court and appellate court judges, the Attorney General's representative, district attorneys, the State Public Defender's representative, the Director of State Courts, the Revisor of Statutes, the chairs of the State Senate and Assembly Judiciary Committees, representatives of the law schools, representatives from the State Bar of Wisconsin, and citizens appointed by the Governor.

For background, I have provided each of you with an overview of the rule changes that took effect in July 2001 in an article I wrote for the Wisconsin Lawyer. It refers to these proposals in the "Summary of Pending Proposals" section on page 49. You may also be interested in the sidebar on p. 49, which details the consensus built around this comprehensive appellate procedure revision. These proposals were drafted and reviewed by advisory committee members representing the constituencies that would be affected by the changes – the clerk of the supreme court and court of appeals, a supreme court commissioner, the Wisconsin Department of Justice Legal Services Division, the Wisconsin State Public Defender Appellate Division, the Wisconsin Association of Criminal Defense Lawyers, Wisconsin Manufacturers & Commerce, the Milwaukee Bar Association's Court of Appeals Bench & Bar Committee, the Wisconsin District

Attorneys Association, the Milwaukee County Deputy District Attorney, and the Appellate Practice and Criminal Law Sections of the State Bar.

On behalf of the Judicial Council, I urge you to advance these proposals through legislation. They reflect the core mission of the Judicial Council – to study and propose efficiencies in practice and procedure to the supreme court and the legislature – and are the missing pieces necessary to make the comprehensive revision function properly.

Individual institutional workloads (courts, SPD, DOJ, DAs) are increasing as budgets decrease. These changes could give a bit of a workload relief, by eliminating unnecessary procedures in circuit and appellate courts, and by making appellate procedure more uniform, without sacrificing any substantive rights.

Thank you.

¹ The Judicial Council Appellate Procedure Committee members included the Hon. Ted E. Wedemeyer, Jr., Presiding Judge, Court of Appeals, District I, co-chair; Marla J. Stephens, Director, Wisconsin Public Defender Appellate Division, co-chair; Mary E. Burke, Assistant Attorney General, Wisconsin Department of Justice Criminal Appeals Unit; and Margaret Carlson, Chief Staff Attorney, Court of Appeals.

² Advisory committee members, who drafted, reviewed or suggested changes in the rules, were: Shelley A. Grogan, Judicial Clerk to Judge Wedemeyer; Hon. Daniel P. Anderson, Judge, District II Court of Appeals; Marilyn L. Graves, Clerk of Supreme Court and Court of Appeals; Cornelia G. Clark, Clerk of Supreme Court and Court of Appeals; Joseph M. Wilson, Supreme Court Commissioner; Matthew J. Frank, Administrator, Wisconsin Department of Justice Legal Services Division; Kenneth Lund, Deputy First Assistant, Wisconsin Public Defender Appellate Division; Keith A. Findley, University of Wisconsin Law School; Robert R. Henak, Henak Law Offices, S.C., for the Wisconsin Association of Criminal Defense Lawyers; Patrick K. Stevens, Wisconsin Manufacturers & Commerce; Lynn R. Laufenberg, Laufenberg Law Offices; Charles H. Barr, Croen & Barr, for Milwaukee Bar Association Bench & Bar Court of Appeals Committee; Thomas McAdams, Assistant District Attorney for Milwaukee County, for Wisconsin District Attorney's Association; Robert D. Donohoo, Deputy District Attorney for Milwaukee County; Werner E. Scherr, Kasdorf, Lewis & Sweitlik, S.C.; Thomas M. Olson, S.C., The Law Center; Elizabeth Ewald Herrick, Attorney at Law; and Donald L. Romundson, Godfrey & Kahn, S.C., for the Appellate Practice Section, State Bar of Wisconsin. The Judicial Council gratefully acknowledges their contributions.

³ Order No. 00-02, 2001 WI 39.

⁴ *State v. Mahone*, 127 Wis. 2d 364, 381 n.7 (Ct.App. 1985).

Understanding the New Rules of Appellate Procedure

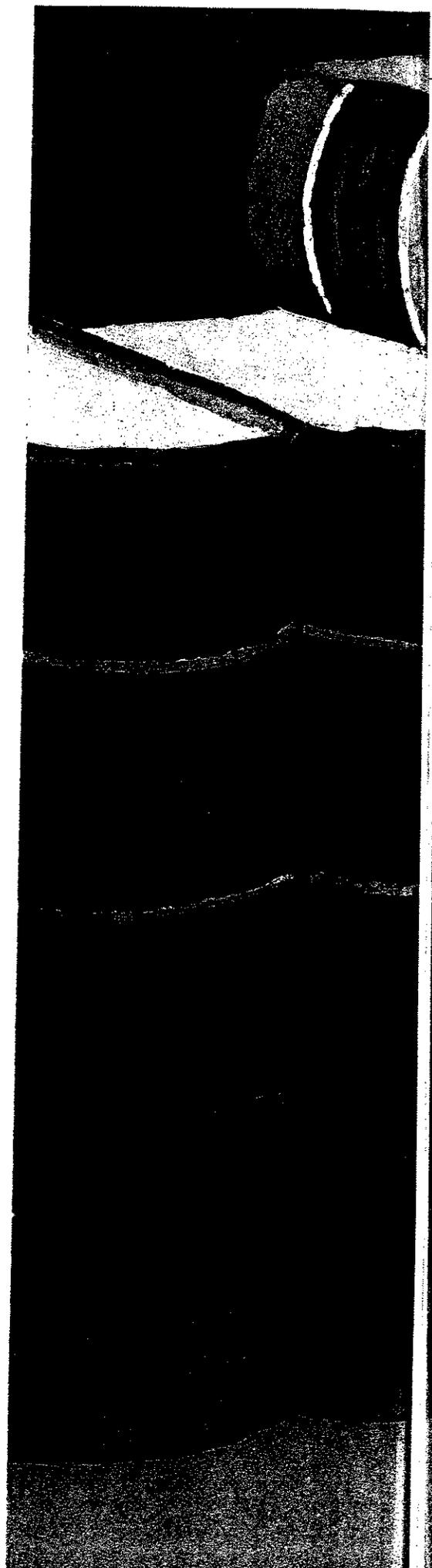
On July 1, 2001, the amended rules of appellate procedure take effect. Rules applying to all appeals address time limits, defects in notice of appeal, ADR, and remand and reconsideration of a court of appeals opinion or order, among others. New rules also apply to termination of parental rights appeals, Rule 809.30 appeals, and no-merit procedures.

by Marla J. Stephens

On April 30, 2001, the Wisconsin Supreme Court entered an order amending the rules of appellate procedure upon the petition of the Wisconsin Judicial Council.¹ Beginning in 1997, the Judicial Council's Appellate Procedure Committee solicited and reviewed suggestions for changes to the appellate rules. Following numerous drafts, the Council unanimously approved the rule change petition that was filed with the court in February 2000.

To make the rules easier to find and understand, subsections and titles were created and unnecessary language was deleted. In addition, case law affecting appellate procedure was incorporated into the rules. Judicial Council Notes explaining the changes are contained in the order for informational purposes.

This article summarizes the amendments to existing rules and high-



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lights the new rules that are effective on July 1, 2001. Changes that apply to all appeals are noted first, followed by changes to the rules governing termination of parental rights appeals and the rules governing criminal, civil commitment, protective placement, children's code, and juvenile justice code appeals. Finally, the article discusses the status of several proposals in the Judicial Council's petition that are still pending.

Rules 808 and 809: Changes that Apply to All Appeals

Time limits. Most time limits that were seven days are now 11 days, and most time limits that were 10 days are now 14 days.² The new time limits remove the impact of section 801.15(5)(a) of the Wisconsin Statutes (when calculating time limits of less than 11 days, Saturdays, Sundays, and holidays are excluded) and assist the court in automating its calculations of accurate deadlines.³ The time limits in sections 809.105 (parental consent to abortion appeal) and 809.107 (termination of parental rights appeal) have not been enlarged.

Defect in notice of appeal. An inconsequential error in the content of the notice of appeal is not a jurisdictional defect.⁴ This rule codifies existing case law.⁵

Transcript preparation time limits and requests. Former sections 809.11(4) and 809.16 contained the rules governing requests for and preparation of transcripts. Former rule 809.16 has been repealed, and its contents now can be found in rule 809.11(4)-(7). The appellant now has 14 days after filing the notice of appeal to request transcripts for the other parties to the appeal and to file and serve the statement on transcript.⁶ A court reporter has five days within which to sign and return to the appellant a certification that the appellant has requested transcripts for the other

parties to the appeal and arranged to pay for the copies.⁷ Within 14 days of the filing of the statement on transcript, any other party to the appeal may file and serve a designation of additional transcripts to be included in the record on appeal. The appellant then must file a supplemental statement on transcript, or the other party may move the circuit court for an order requiring the appellant to do so. These requirements also apply to a cross-appellant.⁸ Court reporters have 60 days to file and serve the transcripts identified in the appellant's statement on transcript and 20 days to file and serve transcripts following a request or order for supplementation.⁹ Sections 809.11(4)-(7) do not apply in parental consent to abortion and termination of parental rights appeals.¹⁰

Alternative dispute resolution in the court of appeals. The court of appeals is authorized to establish an appellate mediation program. Participation in the program is voluntary, but participation in presubmission conferences may be mandatory. Only cases in which a docketing statement is required under section 809.10(1)(d) are eligible to participate in the program. Mediation is therefore not available in appeals brought under sections 809.105 (parental consent to abortion), 809.107 (termination of parental rights), 809.32 (no merit report), or in criminal cases. The parties to the appeal shall pay the fees of a mediator providing services under the program, unless the fees are waived or deferred by the court. The rules and procedures governing the program shall be set forth in the court of appeals internal operating procedures.¹¹ Any form of alternative dispute resolution, as defined in section 802.12(1), may be used.

Time limits tolled pending resolution of motions. The following motions toll the time for performing any

act under the rules of appellate procedure from the date the motion is filed until the date the motion is decided by an order: a motion seeking an order affecting the disposition of an appeal or the content of a brief, a motion seeking to supplement or correct the record on appeal, and a motion seeking consolidation of cases.¹² If a motion to supplement or correct the record is filed in circuit court, the clerk of circuit court may not transmit the record until the motion has been decided. The motion to supplement or correct the record is deemed denied if not decided within 14 days after it is filed.¹³ If a motion to supplement or correct the record is granted, time limits continue to be tolled until the supplemental record return is filed.¹⁴ A copy of any motion to supplement or correct the record filed in circuit court must be served on the clerk of the court of appeals.¹⁵ The clerk of circuit court must be served with a copy of any motion filed under section 809.14 in the court of appeals because the motion tolls time limits.¹⁶

Number of briefs. The number of briefs to be filed in the supreme court remains at 22, the number of briefs to be filed in the court of appeals remains at 10, and the number of copies of briefs that must be served on the other parties to the appeal remains at three.¹⁷ An indigent party appearing without an attorney, or a prisoner appearing without an attorney allowed to proceed without prepayment of fees under section 814.29(1m) (Prisoner Litigation Reform Act), must file five briefs in the court of appeals and serve one copy on the other parties in a three-judge appeal, and must file three briefs in the court of appeals and serve one copy on the other parties in a one-judge appeal.¹⁸

Brief covers. Brief captions must include the names of all parties in the circuit court and indicate the status of the party in the circuit court and the appellate court, if any.¹⁹ For example, supreme court briefs should state party designations from the circuit court, court of appeals, and supreme court, if applicable: Jane Doe, Defendant-Appellant-Petitioner.

Confidentiality. If a person is entitled to confidentiality under the law, the person must be identified by first name and last initial in all documents filed with the court.²⁰ The subjects of proceedings under chapters 48 (Children's Code), 51 (civil commitment), 55 (protective placement), 938 (Juvenile Justice Code), and in paternity cases are entitled to confidentiality. Different confidentiality and anonymity requirements apply in parental consent to abortion appeals.²¹

Signature on briefs. An attorney who files a brief must sign it. If an attorney does not represent a party, that party must sign the brief.²²

References to parties within the brief. Parties must be referred to by name throughout the argument section, not by their status on appeal or their party designation.²³

Reply briefs. Reply briefs must contain citations to the record and a conclusion.²⁴

Authorized methods of brief binding. Velobinding is added to stapling and hot glue (or "perfect" binding) as an authorized binding method. The clerk of court must authorize any other binding method before the brief is filed.²⁵

Time limits for respondent's brief and reply brief. The respondent's brief must be filed within the later of: 30 days after service of the appellant's brief, plus three days if service is by mail; or 30 days after the appellant's brief is accepted for filing by the clerk of the court of appeals.²⁶ The appellant's reply brief is due on the later of: 15 days after service of the respondent's brief, plus three days if service is by mail; or 15 days after the respondent's brief is accepted for filing by the clerk.²⁷

Briefing cross-appeals. The cross-appeal briefing requirements have been rewritten for clarification.²⁸

Limitation of issues in appeal of nonfinal order. If a petition for leave to appeal a nonfinal order is granted, the court of appeals may specify the issue or issues it will review.²⁹

Citation of supplemental author-

ity. If new authority is issued after briefing or after oral argument, but before decision, a party may notify the court by sending a letter to the clerk with a copy to the other parties to the appeal. The letter must state the citation for the new authority, identify the page of the brief or point of oral argument to which it pertains, and briefly discuss the proposition that the authority supports. If the new authority is a court of appeals opinion, it is considered issued on the date that publication of the opinion is ordered.³⁰ A response letter may be sent to the clerk, with copies to the other parties to the appeal, within 11 days after the supplemental authority letter is served. The response letter must briefly discuss why the supplemental authority does not support the stated proposition.³¹

Objections to circuit court judgment or order entered after remand. If an appellate court remands the record to the circuit court for action upon specific issues, or for additional proceedings while the appeal is pending, the appellate court, in the pending appeal, may review the judgment or

order that the circuit court entered following the remand. A party must file in the appellate court a written statement of objections to the circuit court judgment or order within 14 days after the record is returned to the appellate court. A party that files a written statement of objections need not file a notice of appeal or cross-appeal.³² The obligations of a person filing a statement of objections are the same as those of a cross-appellant.³³ The statement of objections should advise the court whether and how the issues have changed after the remand.

Reconsideration of a court of appeals opinion or order. A party may file a motion for reconsideration in the court of appeals within 20 days after the date of a decision or order. The motion must state with particularity the points of law or fact alleged to be erroneously decided and must include a supporting argument. No response to the motion may be filed unless ordered by the court. An amended decision or order will not be issued unless the court first orders a response. The motion and

(continued on page 46)

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(from page 17)

any response shall not exceed five pages in monospaced font or 1,100 words in proportional serif font.³⁴ In response to a motion for reconsideration, the court shall either issue an amended decision or order, or the court shall issue an order denying the motion.³⁵ The court also may reconsider a decision or order on its own motion at any time prior to remittitur if no petition for review is filed, or within 30 days after a petition for review is filed in the supreme court.³⁶ No motion for reconsideration is permitted in a section 809.105 (parental consent to abortion) case.³⁷ The time limit for filing a motion for reconsideration may not be enlarged.³⁸ Remittitur is stayed pending resolution of the motion for reconsideration.³⁹ Warning: the time limit for filing a petition for review in the supreme court is not tolled by filing a motion for reconsideration.

Petition for review. Both the petition for review and the response to the petition for review must have white covers. Ten copies of each must be filed with the clerk of the supreme court.⁴⁰

Sanctions. The court of appeals may sanction a party who violates an order of the court.⁴¹

Termination of Parental Rights (TPR) Appeals

Transcript and circuit court case record request, transcript preparation, notice of appeal, and transmittal of record. The circuit court case record and the transcript of the reporter's notes must be requested by a person who files a Notice of Intent to Appeal within 15 days after filing the Notice of Intent to Appeal. The transcript must be served on that person and filed in circuit court, and the circuit court case record must be served on that person, within 30 days after the request.⁴² The person must file and serve a notice of appeal within 30 days after service of the transcript.⁴³ The clerk of circuit court must transmit the record on appeal to the court of appeals within 15 days after the notice of appeal is filed.⁴⁴

Statement on transcript. The appellant must request copies of the transcript for the other parties to the appeal, and make arrangements to pay for the copies, within five days after filing the notice of appeal.⁴⁵ The appellant's statement on transcript, containing the court reporter's certification that the appellant ordered transcript copies for the other parties to the appeal and made arrangements to pay for the copies, must be filed in the court of appeals and served on the other parties to the appeal and the clerk of the circuit court within five days after filing the notice of appeal.⁴⁶ The court reporter must serve copies of the transcript on the other parties to the appeal within five days after the appellant's request.⁴⁷

No-merit procedure. A no-merit report, response to no-merit report, and supplemental no-merit report under section 809.32 may be filed in a TPR appeal. The no-merit time limits track the briefing time limits in section 809.107(6). The appointed attorney must file the no-merit report and certification, and serve copies of the no-merit report, certification, and the record on appeal on the client-parent within 15 days after the record on appeal is filed. The client-parent may file a response to the no-merit report within 10 days after service of the no-merit report. Within five days after a response to the no-merit report is filed, the clerk of the court of appeals must send a copy of the response to the appointed attorney. The appointed attorney may file a supplemental no-merit report and affidavits within 10 days after receiving the response to the no-merit report.⁴⁸

Ineffective assistance of counsel claims, and other claims requiring post-judgment fact-finding. If the appellant intends to appeal on any ground that requires fact-finding after entry of the final judgment or order in the circuit court, the appellant must file a motion in the court of appeals raising the issue and asking the court to retain jurisdiction over the appeal and remand the case to the circuit court to hear and decide the issue. The motion must be filed within 15 days after the record on

appeal is filed. If the court of appeals grants the motion, it shall set time limits for the circuit court to hear and decide the issue, for the appellant to request a transcript of the remand proceedings, and for the court reporter to file and serve the transcript of the remand proceedings, and extend the time limit for the appellant to file a brief presenting all grounds for relief in the pending appeal.⁴⁹

Rule 809.30 Appeals

Time limit for state public defender's appointment of counsel and requests for circuit court case record and transcript. The state public defender must appoint counsel and request a transcript of the reporter's notes and a copy of the circuit court case record within 30 or 50 days after the state public defender receives from the clerk of the circuit court a file-stamped copy of the notice of intent to pursue postconviction relief, a file-stamped copy of the judgment or order specified in the notice of intent, a list of court reporters for the circuit court proceedings, and a list of any transcripts in the circuit court file. The state public defender must appoint counsel within 30 days after receipt of the clerk's materials if indigence does not need to be redetermined, and within 50 days after receipt of the clerk's materials if indigence must be determined or redetermined.⁵⁰

Time limit for person denied state public defender representation to request circuit court case record and transcript. A person who is denied representation by the state public defender must request a transcript of the reporter's notes, and may request a copy of the circuit court case record, within 90 days after filing the notice of intent to pursue postconviction relief.⁵¹

Service of circuit court case record and transcript. The clerk of circuit court must serve a copy of the circuit court case record, and the court reporter must file and serve the transcript, within 60 days of a request to do so.⁵²

Notice of appeal. The notice of

appeal must state the last date of service of the copy of the transcript or the circuit court case record if no postconviction motion is filed, the date of the order determining the postconviction motion, or the date of any other notice of appeal deadline that was set by the court of appeals.⁵³ A copy of the order appointing counsel must be attached if counsel was appointed by the state public defender.⁵⁴

Postconviction motion. A notice of motion should not be filed with a postconviction motion.⁵⁵ A postconviction motion is deemed denied if it is not determined by the circuit court within 60 days after it is filed, unless the court of appeals extends the time limit for decision at the request of the defendant or the circuit court.⁵⁶

Motion to withdraw as appointed counsel. An attorney appointed by the state public defender who seeks to withdraw from the case must file a motion to withdraw and serve a copy of the motion on the client and on the state public defender appellate intake unit in the Madison appellate office. The motion must be filed in the circuit court if no notice of appeal has been filed. If a notice of appeal has been filed, the motion must be filed in the court of appeals.⁵⁷ Within 20 days after the motion is served, the state public defender must determine whether successor counsel will be appointed for the client, and notify the court of its determination.⁵⁸

Before granting the motion to withdraw, the court shall consider the state public defender's determination and whether the client waives the right to counsel.⁵⁹ Ordinarily, a disagreement between the client and appointed counsel about the merits of an appeal will not present grounds for withdrawal.⁶⁰ When the motion to withdraw is filed in circuit court, the attorney must prepare and serve a copy of the order determining the motion to withdraw upon the client and the appellate intake unit in the Madison appellate office of the state public defender. The order must be served within 14 days after the circuit court decides the motion to

withdraw.⁶¹ The withdrawal procedure is not intended to change existing law concerning when a withdrawal motion is required.⁶²

Review of circuit court order determining release from custody pending appeal. The defendant or the state may seek review of a circuit court order concerning release on bond pending seeking postconviction relief or pending appeal. The motion must be filed within 14 days after the entry of the

circuit court order. The party seeking review must attach to the motion: a copy of the judgment of conviction or other final judgment or order, a copy of the order regarding release, the circuit court's statement of reasons for its release decision, and the transcript of any release proceedings in the circuit court or a statement explaining why no transcript is available. The opposing party may file a response to the motion within 14 days after the motion is filed.⁶³

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No-merit Procedures

When applicable. The no-merit procedures are required only on direct appeal. A no-merit report must be filed when the client requests a no-merit report or when the client declines to consent to have the appointed attorney close the file without further representation by the attorney.⁶⁴

Notice of appeal, statement on transcript, and no-merit report. The notice of appeal must be identified as a no-merit notice of appeal and must state the date on which the no-merit report is due and how the date has been calculated.⁶⁵ The no-merit notice of appeal, statement on transcript, and no-merit report must be filed either 180 days after the last transcript is received,⁶⁶ or 60 days after the entry of an order determining a postconviction motion.⁶⁷ Copies of the transcript are not required for the other parties to the appeal. Copies of the notice of appeal and statement on transcript must be served on the state.⁶⁸

Copies of transcript and circuit court case record for client. If a no-merit report is filed, the attorney must serve copies of the transcript and the circuit court case record on the client within 14 days after receiving a request from the client for the copies. The

attorney must file a statement in the court of appeals that service of the copies has been made upon the client.⁶⁹

Client counseling and notification requirements, certification of compliance. Before filing a no-merit report, the attorney must discuss with the client all potential issues identified by the attorney and by the client, and the merit of an appeal on these issues. The attorney must inform the client that the client has three options: to have the attorney file a no-merit report, to have the attorney close the file without an appeal, or to have the attorney close the file and to proceed with an appeal without an attorney or with another attorney retained at the client's expense.⁷⁰

The attorney must inform the client that a no-merit report will be filed if the client requests it or if the client does not consent to have the attorney close the file without further representation by the attorney. The attorney must inform the client that, if a no-merit report is filed, the attorney will serve a copy of the transcripts and the circuit court case record on the client if the client so requests. The attorney must inform the client that, if the client chooses to proceed with an appeal or if the client chooses to have the attorney close the

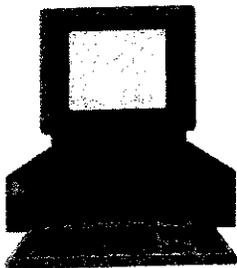
file without an appeal, the attorney will forward the attorney's copies of the transcripts and the circuit court case record to the client if the client so requests.⁷¹

The attorney must inform the client that the client may file a response to the no-merit report, and that if the client files a response, 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 in the client's response to the no-merit report.⁷² Finally, the attorney must append to the no-merit report a signed certification that the attorney has complied with these counseling and notification requirements. A form for the certification is contained in the new rule.⁷³

Response to no-merit report. If a client files a response to the no-merit report, the clerk of the court of appeals shall, within five days after the response is filed, send a copy of the response to the attorney.⁷⁴

Supplemental no-merit report. If the attorney is aware of facts outside the record that rebut allegations in the client's response to the no-merit report, the attorney may file a supplemental no-merit report and affidavit or affidavits including facts outside the record. A supplemental no-merit report and affidavit or affidavits must be filed and served on the client within 30 days after the attorney receives a copy of the client's response to the no-merit report. The attorney must file a statement in the court of appeals that service has been made upon the client.⁷⁵

Remand to circuit court for fact-finding prior to decision. If the client and the attorney allege disputed facts regarding matters outside the record, and if the court of appeals determines that the client's version of the facts, if true, would raise an arguably meritorious issue for appeal, the court of appeals must remand the case to the circuit court for an evidentiary hearing and fact-finding on the disputed facts before deciding whether to accept or reject the no-merit report.⁷⁶



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Summary of Pending Proposals

Appeal in chapter 980 (sexually violent person commitment) and section 971.17 (not guilty by reason of mental disease or defect commitment) proceedings. The Judicial Council petitioned for a rule change allowing these appeals to proceed under the criminal appellate rules set forth in sections 809.30-32 of the Wisconsin Statutes, which govern other appeals (under chapters 48, 51, 55, and 938, and in criminal cases) in which the state public defender provides representation. The supreme court determined that this proposal exceeds its rule making authority, and the Judicial Council has requested legislation to enact this proposal. The Council's request for legislation would affect sections 808.04(3) and (4), 809.30(1) and (2), and 809.40(1) and create sections 971.17(7m) and 980.061. The supreme court has taken this proposal under advisement pending legislative action.

Suppression issues in chapter 48 and 938 cases. The Judicial Council petition requested a rule allowing suppression of evidence issues to be raised on appeal following an admission to a petition in a chapter 48 or 938 case. Under current law, these issues are waived by the entry of an admission and must be preserved by taking the case to trial. The proposal would extend the exception to the waiver rule in criminal cases to cases under the children's and juvenile justice codes. The supreme court determined that this proposal exceeds its rule making authority, and the Judicial Council has requested legislation to enact it. The legislation request would create section 809.40(4). The supreme court has taken this proposal under advisement pending legislative action.

Tolling the time limit for filing a petition for review in the supreme court while a motion for reconsideration is pending in the court of appeals. The Judicial Council petition proposed a rule that would toll the time limit for filing a petition for review until the court of appeals disposes of a timely filed motion for reconsideration of its

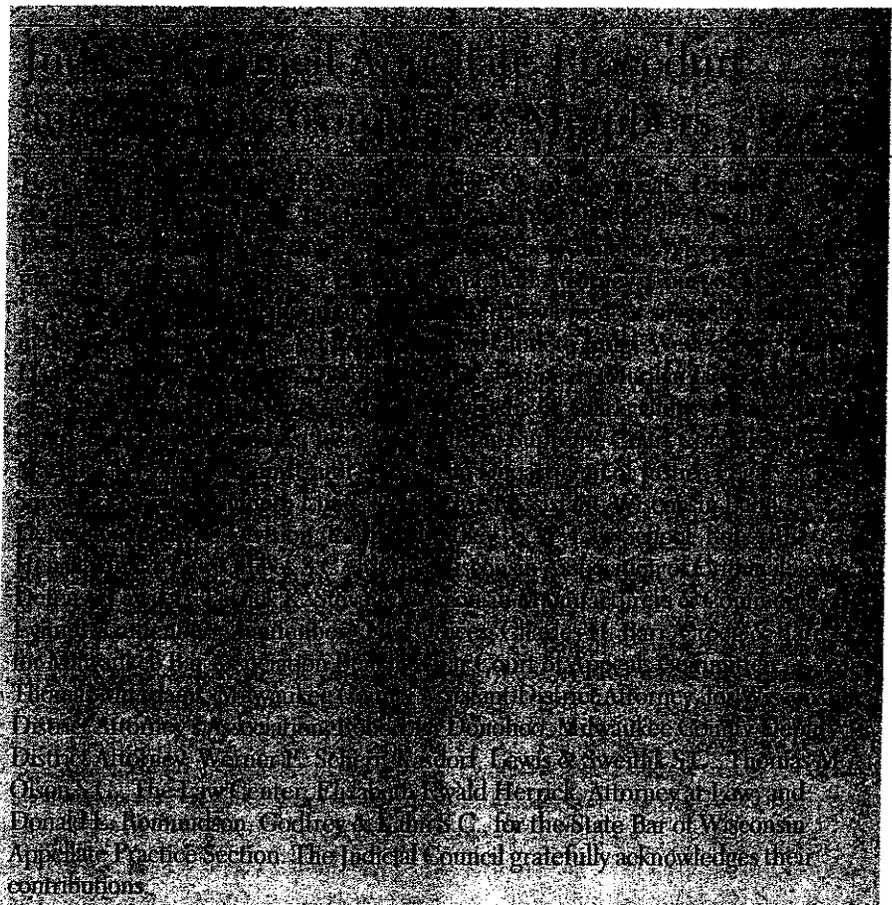
opinion or order. The supreme court determined that this proposal exceeds its rule making authority, and the Judicial Council has requested legislation to enact it. The legislation request proposes amendments to sections 808.10, 809.62(1), and 809.32(4) and the creation of section 808.10(2). The supreme court also has taken this proposal under advisement pending legislative action.

Mailbox rule - briefs deemed filed upon mailing. The supreme court has deferred a decision on this Judicial Council proposal until it decides *State ex rel. Nichols v. Litscher*, case no. 00-0853-W (Issue: Should Wisconsin adopt a "mailbox rule" whereby a petition for review from a pro se prisoner would be deemed filed when the petition is delivered to the prison authorities for mailing?). The Council's petition proposed the creation of sections 809.80(3)(b)-(5): A brief would be

timely filed if, on or before the last day for filing, the brief was deposited in the U.S. mail for first class delivery or more expeditious means, or if the brief was dispatched to a third-party commercial carrier for delivery to the clerk within three calendar days. An affidavit of mailing or dispatch would be required. A brief from a person in an institution would be timely filed if, on or before the last day for filing, it was deposited in the institution's internal mail system. An affidavit or certification of mailing would be required. The proposed rule would not apply to petitions for review.

Endnotes

- ¹Order No. 00-02, 2001 WI 39, <www.wisbar.org/wislawmag/archive/jun01/scto.html>.
- ²Wis. Stat. §§ 808.07(6) (motion objecting to sufficiency of surety for undertaking costs due 14 days after service of copy of undertaking), 809.11(4) and (5) (appellant's request for copies of transcript for other parties to appeal



and statement on transcript due 14 days after filing notice of appeal), 809.13 (party's response to petition for leave to intervene in appeal due 11 days after service of petition), 809.14(1) and (2) (response to motion seeking an order or other relief due 11 days after service of motion, and motion for reconsideration of procedural order due 11 days after service of order), 809.19(7)(c) (nonparty motion requesting permission to file brief due 14 days after filing of respondent's brief), 809.25(1)(c) (motion objecting to statement of costs due 11 days after service of statement), 809.32(4) (response to no-merit petition for review due 14 days after service of supplemental petition), 809.41(1) and (4) (respondent's motion for three-judge panel due 14 days after service of notice of appeal or with the response to a petition for leave to appeal a nonfinal order, attorney general may file response to motion for three-judge panel within 11 days after service in any case in which the state is a party, respondent's motion for hearing in county of origin due 14 days after service of notice of appeal), 809.50(1) and (2) (petition for leave to appeal nonfinal judgment or order due 14 days after entry of judgment or order, opposing party's response to petition due within 14 days after service of petition), 809.51(2) (response to request for court to exercise supervisory jurisdiction or original jurisdiction to issue a prerogative writ), 809.60(1) and (2) (petition to bypass court of appeals and response to same), 809.62(3) (response to petition for review), 809.70(2) (response to petition requesting that supreme court take jurisdiction over original action due 14 days after service of court order to file response).

³¹Wisconsin Judicial Council Note, 2001 following Wis. Stat. §§ 808.07(6).

³²Wis. Stat. § 809.10(1)(f).

³³*Northridge Bank v. Community Eye Care Ctr.*, 94 Wis. 2d 201, 203, 287 N.W.2d 810, 811 (1980), and *Carrington v. St. Paul Fire & Marine Ins. Co.*, 169 Wis. 2d 211, 217 n.2, 485 N.W.2d 267, 269 n.2 (1992).

³⁴Wis. Stat. § 809.11(4)(a) and (b).

³⁵Wis. Stat. § 809.11(7)(b).

³⁶Wis. Stat. §§ 809.11(5) and 809.11(6).

³⁷Wis. Stat. § 809.11(7)(a).

³⁸Wis. Stat. §§ 809.105 and 809.107.

³⁹Wis. Stat. § 809.17(2m).

⁴⁰Wis. Stat. § 809.14(3)(a) and (b).

⁴¹Wis. Stat. § 809.15(4)(c).

⁴²Wis. Stat. § 809.14(3)(b).

⁴³Wis. Stat. § 809.15(4)(c).

⁴⁴Wis. Stat. §§ 809.14(3)(c) and 809.82(2)(d).

⁴⁵Wis. Stat. § 809.19(8)(a)1. and 2.

⁴⁶Wis. Stat. §§ 809.19(8)(a)3. and 809.43(2).

⁴⁷Wis. Stat. § 809.19(9).

⁴⁸Wis. Stat. § 809.81(8).

⁴⁹Wis. Stat. § 809.105(12).

⁵⁰Wis. Stat. § 809.19(1)(h).

⁵¹Wis. Stat. § 809.19(1)(i).

⁵²Wis. Stat. § 809.19(4).

⁵³Wis. Stat. § 809.19(8)(b)4.

⁵⁴Wis. Stat. § 809.19(3)(a).

⁵⁵Wis. Stat. § 809.19(4)(a).

⁵⁶Wis. Stat. § 809.19(6).

⁵⁷Wis. Stat. § 809.50(3).

⁵⁸Wis. Stat. § 809.19(10).

³¹Wis. Stat. § 809.19(11).

³²Wis. Stat. § 808.075(8).

³³See Judicial Council Note, 2001 to Wis. Stat. § 808.075.

³⁴Wis. Stat. § 809.24(1).

³⁵Wis. Stat. § 809.24(2).

³⁶Wis. Stat. § 809.24(3).

³⁷Wis. Stat. § 809.24(4).

³⁸Wis. Stat. § 809.82(2)(e).

³⁹Wis. Stat. § 809.26(1).

⁴⁰Wis. Stat. § 809.62(4).

⁴¹Wis. Stat. § 809.83(2).

⁴²Wis. Stat. § 809.107(4).

⁴³Wis. Stat. § 809.107(5)(a).

⁴⁴Wis. Stat. § 809.107(5)(b).

⁴⁵Wis. Stat. § 809.107(5)(c).

⁴⁶Wis. Stat. § 809.107(5)(d).

⁴⁷Wis. Stat. § 809.107(5)(e).

⁴⁸Wis. Stat. § 809.107(5m).

⁴⁹Wis. Stat. § 809.107(6)(am).

⁵⁰Wis. Stat. § 809.30(3)(c).

⁵¹Wis. Stat. § 809.30(3)(f).

⁵²Wis. Stat. §§ 809.30(2)(g) and 967.06.

⁵³Wis. Stat. § 809.10(1)(b)5.

⁵⁴Wis. Stat. § 809.10(1)(b)6.

⁵⁵Wis. Stat. § 809.30(2)(h).

⁵⁶Wis. Stat. § 809.30(2)(i).

⁵⁷Wis. Stat. § 809.30(4)(a).

⁵⁸Wis. Stat. § 809.30(4)(b).

⁵⁹Wis. Stat. § 809.30(4)(c).

⁶⁰See Judicial Council Note, 2001 following Wis. Stat. § 809.30(4):
Judicial Council Note, 2001:

...
Subsection (4) establishes a procedure for making and determining motions to withdraw by appointed counsel. This rule does not change existing law concerning when a withdrawal motion is necessary. See e.g. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 622-24, 516 N.W.2d 362 (1994).

Often motions to withdraw are the result of a disagreement between appointed counsel and the defendant, sometimes inaccurately called a "conflict," about the existence of a meritorious issue for appeal, or about the manner in which any such issue should be raised. It is counsel's duty to decide what issues in a case have merit for an appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). Postconviction counsel is entitled to exercise reasonable professional judgment in winnowing out even arguable issues in favor of others perceived to be stronger. *Id.* Counsel's failure to raise an issue on direct appeal may prevent the defendant from raising it in a subsequent section 974.06 collateral review proceeding, absent "sufficient reason." *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

The rules of appellate procedure require that a defendant choose whether to proceed with the assistance of appointed counsel or proceed pro se. *State v. Redmond*, 203 Wis. 2d 13, 552 N.W.2d 115 (Ct. App. 1996). A defendant has neither the right to appointed counsel of choice nor the right to insist that a particular issue be raised. *Oimen v. McCaughtry*, 130 F.2d 809 (7th Cir. 1997). "The defendant may terminate appellate

counsel's representation and proceed pro se or the defendant may allow postconviction relief to continue based on counsel's brief and then seek relief on the grounds of ineffective assistance of appellate counsel." *State v. Debra A.E.*, 188 Wis. 2d 111, 137-39, 523 N.W.2d 727 (1994). On ineffective assistance of appellate counsel claims, the court will determine whether counsel's choice of issues met the objective standard of reasonableness. *Gray v. Greer*, 778 F.2d 350 (7th Cir. 1985).

The state public defender will not appoint successor counsel where a defendant disagrees with the legal conclusions of appointed counsel or when a defendant wants a second opinion as to the merits of an appeal. To do so would unduly delay the disposition of the appeal, and would be contrary to the interests of justice. Wis. Admin. Code § PD 2.04.

If a defendant elects to waive counsel and proceed pro se, the court must find that the defendant has been provided with clear warnings with respect to forfeiture of the right to counsel and the dangers of self-representation. *State v. Cummings*, 199 Wis. 2d 721, 546 N.W.2d 406 (1996).

⁶¹Wis. Stat. § 809.30(4)(d).

⁶²See Judicial Council Note, 2001 following Wis. Stat. § 809.30(4) and *State ex rel. Flores v. State*, 183 Wis. 2d 587, 622-24, 516 N.W.2d 362 (1994).

⁶³Wis. Stat. § 809.31(5).

⁶⁴Wis. Stat. § 809.32(1)(a).

⁶⁵Wis. Stat. § 809.32(2).

⁶⁶Wis. Stat. § 809.32(2)(a).

⁶⁷Wis. Stat. § 809.32(2)(b).

⁶⁸Wis. Stat. § 809.32(2).

⁶⁹Wis. Stat. § 809.32(1)(d).

⁷⁰Wis. Stat. § 809.32(1)(b)1.

⁷¹Wis. Stat. § 809.32(1)(b)2.

⁷²*Id.* Also see Judicial Council Note, 2001 following Wis. Stat. § 809.32:
Judicial Council Note, 2001:

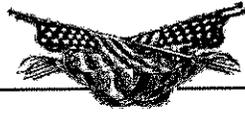
...
Subsection (1) (f) was created to allow the attorney to reply to the defendant's response to a no-merit report. The rule allows the attorney to file a supplemental no-merit report and affidavit(s) disclosing information that is outside the record and relevant to the attorney's no-merit determination without violating confidentiality rules. The supplemental report and affidavit procedure is in accordance with SCR 20:1.6 (c) (1), which allows disclosures of otherwise confidential communications "to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services had been used"; SCR 20:1.6 (c) (2), which allows disclosures "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client ... or to respond to allegations in any proceeding concerning the lawyer's representation of the client"; and SCR 20:3.3, which requires candor toward the tribunal.

⁷³Wis. Stat. § 809.32(1)(c).

⁷⁴Wis. Stat. § 809.32(1)(e).

⁷⁵Wis. Stat. § 809.32(1)(f).

⁷⁶Wis. Stat. § 809.32(1)(g).



STATE SENATOR DAVE ZIEN

CHAIRPERSON
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
 VICE CHAIRPERSON
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
 MEMBER
 COMMITTEE ON SENATE ORGANIZATION
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
 SENTENCING COMMISSION
 COUNCIL ON TOURISM
 JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

SB 364

MEMORANDUM

TO: Senator Scott Fitzgerald, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: February 23, 2004 (hand delivered 11:00am)

RE: Paper Ballot (5 pages)

Please consider the following items and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 1:00pm Tuesday, February 24, 2004.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 70

Relating to: notification of the state regarding a medical malpractice claim.

By Senator Risser; cosponsored by Representatives Johnsrud, Berceau, J. Lehman, Boyle and Colon.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 70 be recommended for PASSAGE:

Aye No

Senate Bill 364

Relating to: appellate procedure.

By Senator Zien, by request of Wisconsin Judicial Council.

Please consider the following motion:



- Moved by Senator Zien that SENATE BILL 364 be recommended for PASSAGE:

Aye X No _____

Senate Bill 416

Relating to: failure to pay for tickets at recreational attractions and providing penalties.

By Senators Welch and Kanavas; cosponsored by Representatives Hines, Musser, Krawczyk, Ladwig, Townsend, Stone, Albers, Bies and Gunderson.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 416 be recommended for PASSAGE:

Aye X No _____

Assembly Bill 294

Relating to: using digital recordings of a child's testimony.
By Representatives Boyle, Bies, Musser, Turner, Berceau, Lassa and Albers; cosponsored by Senator Jauch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 294 be recommended for CONCURRENCE:

Aye X No _____

Assembly Bill 651

Relating to: parental liability for acts of their minor child, recovery of damages for certain criminal actions, increasing the jurisdictional amount in small claims court, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, and revocation of fish and game approvals for which payment is made by worthless checks.

By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 651 be recommended for CONCURRENCE:

Aye X No _____

Berkos, Daniel

Of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DANIEL BERKOS be recommended for CONFIRMATION:

Aye X No _____

Brennan, James

Of Milwaukee, as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JAMES BRENNAN be recommended for CONFIRMATION:

Aye X No _____

Hogan, John

Of Rhinelander, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOHN HOGAN be recommended for CONFIRMATION:

Aye X No _____

Miller, Michael R.

Of West Bend, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MICHAEL R. MILLER be recommended for CONFIRMATION:

Aye X No _____

Morales, Joe

Of Racine, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOE MORALES be recommended for CONFIRMATION:

Aye X No _____

Neville, Dallas S.

Of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DALLAS S. NEVILLE be recommended for CONFIRMATION:

Aye X No _____

Pepper, Pamela

Of Shorewood, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of PAMELA PEPPER be recommended for CONFIRMATION:

Aye X No _____

Thorn, Ellen

Of West Salem as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of ELLEN THORN be recommended for CONFIRMATION:

Aye X No _____

Wettersten, Nancy

Of Madison, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of NANCY WETTERSTEN be recommended for CONFIRMATION:

Aye X No _____

Xiong, Mai Neng

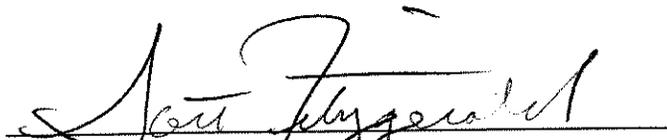
Of Wausau, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

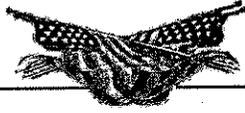
- Moved by Senator Zien that the appointment of MAI NENG XIONG be recommended for CONFIRMATION:

Aye X No _____

Signature



Senator Scott Fitzgerald



STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
 VICE CHAIRPERSON
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
 MEMBER
 COMMITTEE ON SENATE ORGANIZATION
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
 SENTENCING COMMISSION
 COUNCIL ON TOURISM
 JUDICIAL COUNCIL

MEMORANDUM

TO: Senator Tim Carpenter, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: February 23, 2004 (hand delivered 11:00am)

RE: Paper Ballot (5 pages)

Please consider the following items and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 1:00pm Tuesday, February 24, 2004.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 70

Relating to: notification of the state regarding a medical malpractice claim.

By Senator Risser; cosponsored by Representatives Johnsrud, Berceau, J. Lehman, Boyle and Colon.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 70 be recommended for PASSAGE:

Aye No

Senate Bill 364

Relating to: appellate procedure.

By Senator Zien, by request of Wisconsin Judicial Council.

Please consider the following motion:



- Moved by Senator Zien that SENATE BILL 364 be recommended for PASSAGE:

Aye ✓ No

Senate Bill 416

Relating to: failure to pay for tickets at recreational attractions and providing penalties.

By Senators Welch and Kanavas; cosponsored by Representatives Hines, Musser, Krawczyk, Ladwig, Townsend, Stone, Albers, Bies and Gunderson.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 416 be recommended for PASSAGE:

Aye ✓ No

Assembly Bill 294

Relating to: using digital recordings of a child's testimony. By Representatives Boyle, Bies, Musser, Turner, Berceau, Lassa and Albers; cosponsored by Senator Jauch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 294 be recommended for CONCURRENCE:

Aye ✓ No

Assembly Bill 651

Relating to: parental liability for acts of their minor child, recovery of damages for certain criminal actions, increasing the jurisdictional amount in small claims court, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, and revocation of fish and game approvals for which payment is made by worthless checks.

By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 651 be recommended for CONCURRENCE:

Aye _____ No

Berkos, Daniel

Of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DANIEL BERKOS be recommended for CONFIRMATION:

Aye No _____

Brennan, James

Of Milwaukee, as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JAMES BRENNAN be recommended for CONFIRMATION:

Aye No _____

Hogan, John

Of Rhinelander, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOHN HOGAN be recommended for CONFIRMATION:

Aye No _____

Miller, Michael R.

Of West Bend, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MICHAEL R. MILLER be recommended for CONFIRMATION:

Aye No

Morales, Joe

Of Racine, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOE MORALES be recommended for CONFIRMATION:

Aye No

Neville, Dallas S.

Of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DALLAS S. NEVILLE be recommended for CONFIRMATION:

Aye No

Pepper, Pamela

Of Shorewood, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of PAMELA PEPPER be recommended for CONFIRMATION:

Aye No

Thorn, Ellen

Of West Salem as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of ELLEN THORN be recommended for CONFIRMATION:

Aye ✓ No

Wettersten, Nancy

Of Madison, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of NANCY WETTERSTEN be recommended for CONFIRMATION:

Aye ✓ No

Xiong, Mai Neng

Of Wausau, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MAI NENG XIONG be recommended for CONFIRMATION:

Aye ✓ No

Signature *Tim Carpenter*
Senator Tim Carpenter



STATE SENATOR DAVE ZIEN

CHAIRPERSON
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
 VICE CHAIRPERSON
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
 MEMBER
 COMMITTEE ON SENATE ORGANIZATION
 COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
 COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
 SENTENCING COMMISSION
 COUNCIL ON TOURISM
 JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Spencer Coggs, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: February 23, 2004 (hand delivered 11:00am)

RE: Paper Ballot (5 pages)

Please consider the following items and vote on the motions below. **Return this ballot to Senator Dave Zien, Room 15 South, no later than 1:00pm Tuesday, February 24, 2004.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 70

Relating to: notification of the state regarding a medical malpractice claim.

By Senator Risser; cosponsored by Representatives Johnsrud, Berceau, J. Lehman, Boyle and Colon.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 70 be recommended for PASSAGE:

Aye X No _____

Senate Bill 364

Relating to: appellate procedure.

By Senator Zien, by request of Wisconsin Judicial Council.

Please consider the following motion:



- Moved by Senator Zien that SENATE BILL 364 be recommended for PASSAGE:

Aye X No _____

Senate Bill 416

Relating to: failure to pay for tickets at recreational attractions and providing penalties.

By Senators Welch and Kanavas; cosponsored by Representatives Hines, Musser, Krawczyk, Ladwig, Townsend, Stone, Albers, Bies and Gunderson.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 416 be recommended for PASSAGE:

Aye X No _____

Assembly Bill 294

Relating to: using digital recordings of a child's testimony. By Representatives Boyle, Bies, Musser, Turner, Berceau, Lassa and Albers; cosponsored by Senator Jauch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 294 be recommended for CONCURRENCE:

Aye X No _____

Assembly Bill 651

Relating to: parental liability for acts of their minor child, recovery of damages for certain criminal actions, increasing the jurisdictional amount in small claims court, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, and revocation of fish and game approvals for which payment is made by worthless checks.

By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 651 be recommended for CONCURRENCE:

Aye _____ No X _____

Berkos, Daniel

Of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DANIEL BERKOS be recommended for CONFIRMATION:

Aye X _____ No _____

Brennan, James

Of Milwaukee, as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JAMES BRENNAN be recommended for CONFIRMATION:

Aye X _____ No _____

Hogan, John

Of Rhinelander, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOHN HOGAN be recommended for CONFIRMATION:

Aye X _____ No _____

Miller, Michael R.

Of West Bend, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MICHAEL R. MILLER be recommended for CONFIRMATION:

Aye X No _____

Morales, Joe

Of Racine, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOE MORALES be recommended for CONFIRMATION:

Aye X No _____

Neville, Dallas S.

Of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DALLAS S. NEVILLE be recommended for CONFIRMATION:

Aye X No _____

Pepper, Pamela

Of Shorewood, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of PAMELA PEPPER be recommended for CONFIRMATION:

Aye X No _____

Thorn, Ellen

Of West Salem as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of ELLEN THORN be recommended for CONFIRMATION:

Aye X No _____

Wettersten, Nancy

Of Madison, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of NANCY WETTERSTEN be recommended for CONFIRMATION:

Aye X No _____

Xiong, Mai Neng

Of Wausau, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MAI NENG XIONG be recommended for CONFIRMATION:

Aye X No _____

Signature *Spencer Coggs*
Senator Spencer Coggs



STATE SENATOR DAVE ZIEN

CHAIRPERSON
 COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
 VICE CHAIRPERSON
 COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
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 SENTENCING COMMISSION
 COUNCIL ON TOURISM
 JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Cathy Stepp, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: February 23, 2004 (hand delivered 11:00am)

RE: Paper Ballot (5 pages)

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Senate Bill 70

Relating to: notification of the state regarding a medical malpractice claim.

By Senator Risser; cosponsored by Representatives Johnsrud, Berceau, J. Lehman, Boyle and Colon.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 70 be recommended for PASSAGE:

Aye No

Senate Bill 364

Relating to: appellate procedure.

By Senator Zien, by request of Wisconsin Judicial Council.

Please consider the following motion:



- Moved by Senator Zien that SENATE BILL 364 be recommended for PASSAGE:

Aye ✓ No

Senate Bill 416

Relating to: failure to pay for tickets at recreational attractions and providing penalties.

By Senators Welch and Kanavas; cosponsored by Representatives Hines, Musser, Krawczyk, Ladwig, Townsend, Stone, Albers, Bies and Gunderson.

Please consider the following motion:

- Moved by Senator Zien that SENATE BILL 416 be recommended for PASSAGE:

Aye ✓ No

Assembly Bill 294

Relating to: using digital recordings of a child's testimony. By Representatives Boyle, Bies, Musser, Turner, Berceau, Lassa and Albers; cosponsored by Senator Jauch.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 294 be recommended for CONCURRENCE:

Aye ✓ No

Assembly Bill 651

Relating to: parental liability for acts of their minor child, recovery of damages for certain criminal actions, increasing the jurisdictional amount in small claims court, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, and revocation of fish and game approvals for which payment is made by worthless checks.

By Representatives Montgomery, Olsen, Musser, Hines, LeMahieu, Hahn, Gard, Vrakas, Rhoades, Grothman, Bies, Townsend, McCormick, Hundertmark, Owens, Krawczyk, J. Fitzgerald, Kestell, Suder, Albers, Powers, Gunderson and Gielow; cosponsored by Senators Stepp, Kanavas, Schultz, Lassa, Welch, Breske, Hansen, Roessler and Cowles.

Please consider the following motion:

- Moved by Senator Zien that ASSEMBLY BILL 651 be recommended for CONCURRENCE:

Aye ✓ No

Berkos, Daniel

Of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DANIEL BERKOS be recommended for CONFIRMATION:

Aye ✓ No

Brennan, James

Of Milwaukee, as a member of the Public Defender Board, to serve for the term ending May 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JAMES BRENNAN be recommended for CONFIRMATION:

Aye ✓ No

Hogan, John

Of Rhinelander, as a member of the Public Defender Board, to serve for the term ending May 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOHN HOGAN be recommended for CONFIRMATION:

Aye ✓ No

Miller, Michael R.

Of West Bend, as a member of the Judicial Commission, to serve for the term ending August 1, 2005.

Please consider the following motion:

- Moved by Senator Zien that the appointment of MICHAEL R. MILLER be recommended for CONFIRMATION:

Aye ✓ No

Morales, Joe

Of Racine, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of JOE MORALES be recommended for CONFIRMATION:

Aye ✓ No

Neville, Dallas S.

Of Eau Claire, as a member of the Judicial Commission, to serve for the term ending August 1, 2004.

Please consider the following motion:

- Moved by Senator Zien that the appointment of DALLAS S. NEVILLE be recommended for CONFIRMATION:

Aye ✓ No

Pepper, Pamela

Of Shorewood, as a member of the Public Defender Board, to serve for the term ending May 1, 2006.

Please consider the following motion:

- Moved by Senator Zien that the appointment of PAMELA PEPPER be recommended for CONFIRMATION:

Aye ✓ No

