

# *Memorandum*

STATE OF WISCONSIN  
DIRECTOR OF STATE COURTS



## **Via Electronic Mail**

*DATE:* October 24, 2012

*TO:* Members of the Special Committee on Permanency for Young Children in the Child Welfare System

*FROM:* Nancy Rottier, Legislative Liaison

*SUBJECT:* Appellate Filings for Child in Need of Protection or Services (CHIPS) and Termination of Parental Rights (TPR) Cases

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Thank you for the opportunity to present information on CHIPS and TPR circuit court cases that are appealed. This information is provided in response to questions and discussions about the appellate process that occurred during the study committee's earlier meetings. This memorandum provides an overview of the appellate process and information contained in the Wisconsin Supreme Court and Court of Appeals statewide database for the time period 2007 – 2010. We have worked with the Clerk of the Supreme Court and Court of Appeals to assemble the data.

### **Appellate Process**

After the circuit court issues a final order in a matter, a party has the right to appeal the decision to the Court of Appeals. This appeal as of right is contained in § 808.03(1) of the statutes. In instances where there are several related children, the cases may be consolidated for the court to hear and decide the cases together. In most cases, the Court of Appeals will review the circuit court matter and issue a decision. A party may appeal the Court of Appeals decision to the Supreme Court by filing a petition for review. In a small number of cases, the Court of Appeals will ask the Supreme Court to decide a question of law that only the Supreme Court may decide; this process is called “certification.” The Supreme Court has discretion on which petitions for review or certifications it accepts.

There is a special statutory scheme under Wis. Stats. § 809.107 for all TPR appeals. Timeframes for each step of the appellate process are shortened to ensure the appeal is expedited. Both the National Council of Juvenile and Family Court Judges (NCJFCJ) and the American Bar Association (ABA) have created proposed appellate timelines to ensure an appeal in a TPR proceeding lasts no more than 150-175 days. As the chart

below demonstrates, the timeframes within Wis. Stats. § 809.107 are shorter than or are close to the best practices parameters at each stage of the appeal. One notable exception is that in Wisconsin, the filing of a Notice of Intent to Pursue Post-Disposition or Appellate Relief starts the appeals process. The appellant must then request the record and file the Notice of Appeal within 30 days of receipt of the record. Under the NCJFCJ and ABA proposed timelines, the Notice of Appeal is the first document filed to start the appellate process, followed by a request for the record.

### **Chart 1: Comparison of TPR Appellate Timeframes**

Event	Wisconsin	NCJFCJ	ABA
File Notice of Intent to Pursue Post-Disposition or Appellate Relief	Filed 30 days within entry of TPR order; 15-30 days to then request transcript/record	N/A	N/A
File Notice of Appeal	Filed and served upon clerk within 30 days of service of record	30 days from receipt of TPR order	10 days from receipt of TPR order
Record transmittal	30 days from request to send to appellant	30 days to send to appellate court	20 days to send to appellate court
Statement on Transcript/Record on Appeal	Appellant files statement 5 days after filing notice of appeal; circuit court clerk must file record within 15 days of notice of appeal	N/A	N/A
Appellant's brief	15 days after record on appeal is filed	20 days	20 days
Reply/Respondent's brief	10 days	10 days	15 days
Appellant's reply brief	10 days after receiving reply brief or statement that reply brief will not be filed	N/A	N/A
Hearing for oral argument	Not addressed in statute	30 days	20 days
Judgment/Decision	30 days after reply brief	30 days from briefs or hearing	90 days from briefs or hearing

Wis. Stats. § 809.107 applies only to TPR appeals and does not apply to any CHIPS appeals. However, all appeals in the Court of Appeals are eligible for the expedited appeals program under Wis. Stats. § 809.17 as long as they meet certain criteria. Chapter 48 appeals may be heard through the expedited appeals program. See Wis. Stats. §§ 809.17 and 809.30. Chart 2 contains the number of CHIPS appeals decided on an expedited basis for 2007 through 2010.

### **Statewide Data: Appeals to the Court of Appeals and Supreme Court**

#### **Chart 2: Total Number of CHIPS Appeals and Expedited CHIPS Appeals**

The chart below contains the number of CHIPS cases by calendar year where a party filed a Notice of Appeal with the Court of Appeals. Note that sibling groups are counted as separate cases in the data, even when the appeals for the siblings were consolidated. The third column lists the number of cases decided on an expedited basis. A review of the data also indicates that the Supreme Court did not accept any petitions for review in CHIPS appeals between 2007 and 2010.

	<b>CHIPS Appeals Filed</b>	<b>CHIPS Appeals Decided on an Expedited Basis</b>
<b>2007</b>	8	0
<b>2008</b>	10	1
<b>2009</b>	10	2
<b>2010</b>	12	0

In 1995, legislation was adopted to eliminate the right of parents to an appointed attorney in CHIPS cases if they could not otherwise afford legal representation. After the 1995 legislative change, some counties, including Milwaukee County, continued to provide attorneys to parents in CHIPS cases at county expense where the parent could not otherwise afford an attorney.

Under Wis. Stats. § 48.23(2), any parent has the right to representation in an involuntary TPR proceeding. It should also be noted that if a person whose parental rights have been terminated is present in court when the order terminating those rights is granted, that person must be informed in writing of the right and timeframe to file an appeal of a TPR. See Wis. Stats. § 48.43(6m). No similar notification requirement of the appeals process exists in CHIPS matters.

In reviewing the data on CHIPS appeals several years before and after the legislative change that removed the right to representation in CHIPS matters, no clear pattern has emerged to show consistently more CHIPS appeals filed when parents had the right to representation or consistently less CHIPS appeals filed after the right was removed.

### **Chart 3: Total Number of TPR Appeals**

The chart below contains the number of TPR cases by calendar year where a party filed a Notice of Appeal with the Court of Appeals for review. Note that sibling groups are counted as separate cases in the data, even when the appeals for the siblings were consolidated. The Supreme Court has accepted approximately one case per year by petition for review or certification for each year listed below.

	<b>TPR Appeals Filed</b>
<b>2007</b>	94
<b>2008</b>	127
<b>2009</b>	119
<b>2010</b>	129

If you require more information, please do not hesitate to contact me. I hope this information is responsive to your request regarding appeals in CHIPS and TPR circuit court cases in Wisconsin.