

Memorandum

STATE OF WISCONSIN COURT OF APPEALS



DATE: December 4, 2012

TO: Nancy Rottier

FROM: Jennifer Andrews, Chief Staff Attorney

SUBJECT: Proposed Legislation to Expedite All WIS. STAT. ch. 48 Appeals

In addition to a response you may receive from Chief Judge Brown about the Court of Appeals judges' reaction to placing appeals from all ch. 48 cases, except parental consent to an abortion cases, under the expedited procedure for termination of parental rights (TPR) appeals in WIS. STAT. RULE 809.107, I wanted to provide comments on the proposed statutory changes in the bill draft. Staff attorney Ken Fall assisted me in reviewing the draft and providing these comments. Included with this memo is a copy of the draft bill with handwritten changes and reference numbers as well as a marked up version of RULE 809.107 showing additional changes that may be appropriate. Below is an explanation of the suggested changes by reference number. This may be more than you were looking for in your request for comments but it doesn't hurt to point out some problems with the draft bill from the start.

(1) Because all parties to a ch. 48 case may have the right to appeal, the title provision in WIS. STAT. § 48.465(1) should not suggest that an appeal is limited to the "respondent" to the ch. 48 petition. Such a suggestion excludes a petitioner in ch. 48 matters brought by individuals rather than the county or state, *i.e.* a parent who files a TPR to terminate the rights of the other parent.

(2) Under RULE 809.107 a postdisposition motion is not filed until after a notice of appeal has been filed and the matter is remanded for such a motion under RULE 809.107(6)(am). It may be confusing to reference a postdisposition motion when the procedure in RULE 809.107 first requires a motion for remand filed in the court of appeals.

(3) See number (2), under RULE 809.107 a party does not directly file a postdisposition motion in the circuit court, rather the matter is remanded to the circuit court from the court of appeals for the purpose of hearing and deciding a postdisposition motion. The decision on the

postdisposition motion is not separately appealed but comes before the court of appeals under RULE 809.107(6)(am).

(4) See (2) and (3), the postdisposition motion is presented after a notice of appeal is filed. Although this sentence mimics the provision in WIS. STAT. § 974.02(2), and teaches what type of issues must first be presented to the circuit court via a postconviction/postdisposition motion, *see State v. Monje*, 109 Wis.2d 138, 153-54, 325 N.W.2d 695, 327 N.W.2d 641 (1982)(on reconsideration), RULE 809.107(6)(am) sets forth its own requirement for a postdisposition motion when “the appellant intends to appeal on any ground that may require postjudgment fact-finding.” Under this language a TPR appellant is not required to bring a postdisposition motion challenging the circuit court’s exercise of discretion in ordering termination. In other ch. 48 cases under the existing WIS. STAT. § 48.465(1), before filing the notice of appeal an appellant should raise by a postdisposition motion an issue that the circuit court erroneously exercised its discretion in the disposition. Putting all ch.48 cases under the language in RULE 809.107(6)(am) will require the appellate court to address claims of an erroneous exercise of discretion without the circuit court having first had an opportunity to address them. It is a change which shortens the path to appellate review of the circuit court’s exercise of discretion in a disposition in a ch. 48 case and probably within the intent of the act.

(5) It is inconsistent to say that the state’s appeal shall be filed in the manner for civil appeals under ch. 808 and 809 because now the appeal is fully governed by RULE 809.107.

Please note that the revision to this provision for the state’s appeal is a procedural change in non-TPR ch. 48 cases. Currently, because the state is not a “person” within the meaning of RULE 809.30 and does not proceed under that statute, in non-TPR ch. 48 cases the state appeals by simply filing a notice of appeal within forty-five days. In contrast, the state’s appeal in a TPR case when termination is denied is initiated by the filing of the notice of intent under RULE 809.107(2) within thirty days. The proposal to put all ch. 48 appeals under RULE 809.107 will be a change for appeals by the state in non-TPR cases as the state will now be required to file a notice of intent within thirty days. See number (15) below questioning whether the definition of “appellant” in RULE 809.107(1m) must be expanded.

(6) The word “final” should be inserted when you remove the phrase “terminating parental rights or denying termination of parental rights,” because by those are final orders by

operation of law. Without the word “final,” the provisions are too broad and could be read to permit an appeal from any order in a ch. 48 case, including orders that are now only reviewable by permissive appeal.

(7) Section 808.04(7m) presents itself as setting forth the time to appeal. The cross-reference to the type of ch. 48 cases in which the time to file the notice of appeal is extendable as provided in the proposed amended RULE 809.82(2)(b) should be carried over in this time to appeal provision to avoid confusion. Please note that all other deadlines under RULE 809.107 are extendable by the court of appeals.

(8) Without amendment to RULE 809.24(4) no motion for reconsideration will be permitted in any ch. 48 appeal under the proposed bill.

(9) RULE 809.107 is no longer limited to appeals by parents in TPR cases; it is not appropriate to use the term “client-parent” in the no-merit provision because in non-TPR ch. 48 appeals the appellant could be someone other than a parent (even though it is unlikely that the person would have appointed counsel and be entitled to a no-merit report).

(10) The court of appeals would ask that this language be removed as unnecessary because a WIS. STAT. § 971.17 proceeding only occurs in a criminal case and it otherwise creates confusion that any final adjudication in a criminal case can be appealed under RULE 809.30, when in fact RULE 809.30 applies only after a sentencing event in a criminal case for a first appeal as of right or where authorized by a specific statute, *i.e.* WIS. STAT. § 973.155(6) (pertaining to sentence credit). *See* RULE 809.30(2)(b).

(11) The reference to ch. 48 needs to be removed in this subsection as well.

(12) References to ch. 48 in the title and text of RULE 809.30(2)(fm) and text of RULE 809.30(2)(j) need to be deleted. However, note that there is no provision in RULE 809.107 for a child or juvenile in a ch. 48 case to be furnished with transcripts at no cost as provided currently in RULE 809.30(2)(fm).

(13) The note makes reference to allowing a petition for bypass in TPR appeals but RULE 809.62 has nothing to do with petitions for bypass; it concerns petitions for review.

(14) Added “of intent” to maintain consistency in the document label. *See* RULE 809.107(1m) and (2)(bm).

(15) The definition of appellant should include the district attorney, corporation counsel or other attorney authorized by law to represent the state in a case under ch. 48. *See* RULE 809.30(1)(e) from which a reference to ch. 48 is removed.

(16) Reference to a postdisposition motion should be changed because no postdisposition motion is allowed until after a notice of appeal is filed and after remand from the court of appeals. This section relates only to the filing of the notice of intent to pursue postdisposition or appellate relief.

(17) Language is added to indicate that attorney may seek to withdraw before the notice of intent to pursue postdisposition or appellate relief is filed. The language matches that in RULE 809.30(2)(a) now applicable to non-TPR ch. 48 cases.

(17a) Reference to person is problematic in the event the state intends to appeal. Later in the same section “person” is referred to as “the appellant.” Consistency is desired.

(18) The existing reference to WIS. STAT. § 48.235(1)(c) is only to a guardian ad litem appointed for a TPR appeal. The specific reference should be removed so there is no limitation on requiring service on a guardian ad litem appointed in other ch. 48 cases.

(19) The existing reference to WIS. STAT. § 48.427(3) appears to be error since that section has nothing to do with the appointment of a custodian. It appears that the reference should be to § 48.427(3m).

(20) This language is repetitive in light of RULE 809.107(2)(c).

(21) A more exact reference is provided. The word “person” should also be changed to “persons” since it refers back to a provision requiring service on more than one person.

(22) This is the mechanism by which an appellant files a postdisposition motion and the motion should be referred to as such for consistency. No provision is made in this subsection for what happens if an appellant is granted relief on the postdisposition but presumably an appellant would then voluntarily dismiss the appeal.

MS:ksm;

11/02/2012

1 AN ACT *to repeal* 808.04 (7) and 809.30 (1) (b) 2.; and *to amend* 48.465 (1), (2) and
2 (3), 808.04 (3), 808.04 (4), 808.04 (7m), 809.107 (title) and (1), 809.107 (5m),
3 809.30 (title), 809.30 (1) (a), 809.30 (1) (e), 809.30 (2) (a), ^{809.30(2)(fm)(title),} subchapter IV (title) of ^{809.30(2)(j)}
4 chapter 809 [precedes 809.01], 809.40 (title) and (1m), 809.62 (2r) (title) and 809.82 ⁽¹²⁾
5 (2) (b) of the statutes; **relating to:** appellate procedures for any case under chapter
6 48, other than a parental consent to abortion case.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Review of Permanency for Young Children in the Child Welfare System.

Background on Current Law

The Wisconsin Supreme Court has created, by court order, rules of appellate procedures. These appellate procedures specify what actions are required of the petitioner, respondent, clerk of courts, court reporter, and the state public defender (SPD), and when the actions must occur. The same appellate procedures that apply to an appeal of any case arising under the Criminal Code, Mental Health Act, Protective Services System, Juvenile Justice Code, or Sexually Violent Persons Commitment Code, also apply to most appeals arising under the Children's Code, with 2 exceptions. There is a separate set of expedited appellate procedures specifically applicable to an appeal in a termination of parental rights (TPR) case and another set of expedited procedures for an appeal in a parental consent to an abortion case.

Bill Draft

This draft makes the expedited appellate procedures for a TPR case applicable to any case in the Children's Code, except for a parental consent to an abortion case. The separate expedited appellate procedures specifically applicable only to a parental consent to an abortion case will still apply to such cases.

7 SECTION 1. 48.465 (1), (2) and (3) of the statutes are amended to read:

1 48.465 (1) ^① ~~APPEAL BY RESPONDENT. A motion for postdisposition relief from a final~~
2 ~~order or judgment by a person subject to this chapter shall be made in the time and manner~~
3 ~~provided in ss. 809.30 to 809.32 s. 809.107.~~ An appeal from a final order or judgment entered
4 under this chapter ^③ ~~or from an order denying a motion for postdisposition relief~~ by a person
5 subject to this chapter shall be taken in the time and manner provided in ss. 808.04 (3) 808.04
6 ^④ ~~(7m) and 809.30 to 809.32 809.107.~~ The person shall file a motion for postdisposition relief
7 ~~in circuit court before a notice of appeal is filed unless the grounds for seeking relief are~~
8 ~~sufficiency of the evidence or issues previously raised.~~

9 (2) APPEAL BY STATE. An appeal by the state from a final judgment or order under this
10 chapter may be taken to the court of appeals within the time ^{2nd manner} specified in s. 808.04 (4) ^⑤ ~~(7m)~~
11 ^{809.107} ~~and in the manner provided for civil appeals under chs. 808 and 809.~~

12 (3) EXCEPTIONS EXCEPTION. This section does not apply to a ~~termination of parental~~
13 ~~rights case under s. 48.43 or to a parental consent to abortion case under s. 48.375 (7).~~

NOTE: This SECTION amends various cross-references to ensure that the appellate procedures currently applicable only to TPR cases also apply to an appeal from any ch. 48 case other than a parental consent to abortion case.

14 SECTION 2. 808.04 (3) of the statutes is amended to read:

15 808.04 (3) Except as provided in ~~subs. sub.~~ (4) ~~and (7)~~, an appeal in a proceeding under
16 s. 971.17, a criminal case, or a case under ch. 48, 51, 55, 938, or 980 shall be initiated within
17 the time period specified in s. 809.30 (2) or 809.32 (2), whichever is applicable.

NOTE: This SECTION deletes the requirement that an appeal under ch. 48, stats., be initiated under the appellate procedural timeline currently required for these cases.

18 SECTION 3. 808.04 (4) of the statutes is amended to read:

1 808.04 (4) ~~Except as provided in sub. (7m), an~~ An appeal by the state in a proceeding
2 under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48, 938, or 980 shall be
3 initiated within 45 days of entry of the judgment or order appealed from.

NOTE: This SECTION eliminates the current requirement that if the state
appeals a case under ch. 48, that it initiate the appeal within 45 days
from when the case's judgment or order was entered.

4 SECTION 4. 808.04 (7) of the statutes is repealed.

5 SECTION 5. 808.04 (7m) of the statutes is amended to read:

6 808.04 (7m) ^{final} An appeal from a judgment or order-terminating parental rights or denying
7 ~~termination of parental rights under ch. 48, except for an appeal of an order for a parental~~
8 consent to abortion case under s. 48.375 (7), shall be initiated by filing the notice required by
9 s. 809.107 (2) within 30 days after the date of entry of the judgment or order appealed from.
10 Notwithstanding s. 809.82 (2) (a), this time period may not be enlarged unless the judgment
11 or order was entered as a result of a petition under s. ^{48.13, 48.133, or} 48.415 that was filed by a representative
12 of the public under s. 48.09. ^{48.839, or 48.90} An appeal from an order for a parental consent to abortion case
13 under s. 48.375 (7) shall be initiated under s. 809.105.

14 SECTION 6. 809.107 (title) and (1) of the statutes are amended to read:

15 809.107 (title) Appeals in ch. 48 proceedings related to termination of parental
16 rights.

17 (1) APPLICABILITY. This section applies to the appeal of an ^{final} ~~any~~ order or judgment under
18 ~~s. 48.43 ch. 48, except an order under s. 48.375 (7)~~, and supersedes all inconsistent provisions
19 of this chapter.

NOTE: SECTIONS 4, 5, and 6 make the current TPR appellate procedures
applicable to any appeal from a judgment or order under ch. 48, except
for an appeal of an order for a parental consent to abortion case.

COMMENT: Under s. 48.915, stats., "an appeal from a judgment granting or denying an adoption must be given preference". If the applicable appellate procedures for an adoption case are amended to be the same as TPR cases, is s. 48.915, stats., necessary or is it duplicative?

Also, s. 809.24 (4), stats., prohibits a party from filing a motion for reconsideration of a court of appeals decision if the decision is an appeal for a parental consent to abortion or for a TPR case. Should this prohibition also apply to a court of appeals decision issued for other ch. 48 case? 8

1 SECTION 7. 809.107 (5m) of the statutes is amended to read:

2 809.107 (5m) NO-MERIT REPORTS. A s. 809.32 no-merit report, response, and
3 supplemental no-merit report may be filed in an appeal from an any order or judgment
4 terminating parental rights under ch. 48 that is appealable under this section. The appointed 9
5 attorney shall file in the court of appeals and serve on the ~~client-parent~~ ^{appellant} the no-merit report
6 and certification within 15 days after the filing of the record on appeal. The appointed attorney
7 shall serve on the ~~client-parent~~ ^{appellant} a copy of the transcript and the record on appeal at the same
8 time that the no-merit report is served on the ~~client-parent~~ ^{appellant}. The ~~client-parent~~ ^{appellant} may file in the
9 court of appeals a response to the no-merit report within 10 days after service of the no-merit
10 report. Within 5 days after the response to the no-merit report has been filed in the clerk's
11 office, the clerk shall send a copy of the response to the appointed attorney. The attorney may
12 file a supplemental no-merit report and affidavit within 10 days after receiving the response
13 to the no-merit report.

NOTE: This SECTION clarifies that a no-merit report may be filed in an appeal from any order or judgment under ch. 48, except for a parental consent to abortion case. This SECTION does not make substantive changes to current law because a no-merit report may already be filed for any ch. 48 case other than a parental consent to abortion.

14 SECTION 8. 809.30 (title) of the statutes is amended to read:

1 **809.30 (title) Rule (Appeals in s. 971.17 proceedings and in criminal, ch. 48, 51, 55,**
2 **938, and 980 cases).**

3 **SECTION 9.** 809.30 (1) (a) of the statutes is amended to read:

4 809.30 (1) (a) "Final adjudication" means the entry of a final judgment or order by the
5 circuit court in a s. 971.17 proceeding, ~~in a criminal case~~, or in a ch. ~~48~~, 51, 55, 938, or 980
6 case, ~~other than a termination of parental rights case under s. 48.43 or a parental consent to~~
7 ~~abortion case under s. 48.375 (7).~~

NOTE: SECTIONS 8 and 9 remove references to all ch. 48 cases found in the title and in the types of final adjudications that are required to use the appellate procedures currently applicable to any ch. 48 case other than a TPR case or parental consent to abortion case.

8 **SECTION 10.** 809.30 (1) (b) 2. of the statutes is repealed.

9 **SECTION 11.** 809.30 (1) (e) of the statutes is amended to read:

10 809.30 (1) (e) "Prosecutor" means a district attorney, corporation counsel, or other
11 attorney authorized by law to represent the state in a criminal case, a proceeding under s.
12 971.17, or a case under ch. 48, 51, 55, 938, or 980.

NOTE: SECTIONS 10 and 11 eliminate the ability of any party, including the state, to appeal a ch. 48 order or judgment under the current appellate timeline. It does so by deleting references to ch. 48 cases in the definition of "person" and the definition of "prosecutor".

13 **SECTION 12.** 809.30 (2) (a) of the statutes is amended to read:

14 809.30 (2) (a) *Appeal procedure; counsel to continue.* A person seeking postconviction
15 relief in a criminal case; ~~a person seeking postdisposition relief in a case under ch. 48 other~~
16 ~~than a termination of parental rights case under s. 48.43 or a parental consent to abortion case~~
17 ~~under s. 48.375 (7);~~ or a person seeking postdisposition relief in a s. 971.17 proceeding or in
18 a case under ch. 51, 55, 938, or 980 shall comply with this section. Counsel representing the
19 person at sentencing or at the time of the final adjudication shall continue representation by

1 filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition
2 relief unless counsel is discharged by the person or allowed to withdraw by the circuit court
3 before the notice must be filed.

NOTE: This SECTION removes reference to all ch. 48 cases found in the
appellate procedures currently applicable to any ch. 48 case other than a
TPR case or parental consent to abortion case.

4 **(12) Deletion of ch. 48 needed in title and text of 809.30(2)(fm) & 809.30(2)(j)**
SECTION 13. Subchapter IV (title) of chapter 809 [precedes 809.01] of the statutes is
5 amended to read:

6 CHAPTER 809

7 SUBCHAPTER IV

8 APPEAL PROCEDURE IN COURT OF APPEALS

9 IN TERMINATION OF PARENTAL RIGHTS,

10 CH. CHS. 48 AND 799, TRAFFIC REGULATION, AND

11 MUNICIPAL ORDINANCE VIOLATION, AND

12 PARENTAL CONSENT TO ABORTION CASES

13 SECTION 14. 809.40 (title) and (1m) of the statutes are amended to read:

14 809.40 (title) Rule (~~Appeals in termination of parental rights, ch. chs. 48 and 799,~~
15 ~~traffic regulation, and municipal ordinance violation, and parental consent to abortion~~
16 ~~cases).~~

17 (1m) An appeal from an order denying a petition under s. 48.375 (7) is governed by the
18 procedures specified in s. 809.105, and an appeal from ~~an~~ ^{final} any other order or judgment under
19 ~~s. 48.43 ch. 48~~ is governed by the procedures specified in s. 809.107.

NOTE: This SECTION requires that the appellate procedures applicable to
any appeal from an order or judgment under ch. 48 filed with the court
of appeals, other than an appeal of a parental consent to abortion case,
are the appellate procedures currently applicable only to TPR cases.

1 SECTION 15. 809.62 (2r) (title) of the statutes is amended to read:

2 809.62 (2r) (title) APPLICATION TO ~~TERMINATION OF PARENTAL RIGHTS~~ CH. 48 CASES.

NOTE: This SECTION amends the title of a statute that authorizes a TPR ^{petition for review in} appeal to ~~bypass the court of appeals upon certification by the court of~~ ⁽¹³⁾ ~~appeals or the supreme court's own motion.~~

3 SECTION 16. 809.82 (2) (b) of the statutes is amended to read:

4 809.82 (2) (b) Notwithstanding par. (a), the time for filing a notice of appeal or
5 cross-appeal of a final judgment or order, other than in an appeal under s. 809.107 of a
6 judgment or order that was entered as a result of a petition under s. 48.13, 48.133, or 48.415
7 that was filed by a representative of the public under s. 48.09, 48.839, or 48.90 or an appeal
8 under s. 809.30 or 809.32, may not be enlarged.

NOTE: This SECTION clarifies that the time for filing a notice of appeal or
cross-appeal in a ch. 48 case may be enlarged.

9 SECTION 17. Initial applicability.

10 (1) APPELLATE PROCEDURES. This act first applies to a notice ^{of intent} to pursue postdisposition ⁽¹⁴⁾
11 relief under chapter 48 of the statutes filed on the effective date of this subsection.

NOTE: This SECTION specifies that the changes to the appellate
procedures listed in this draft first apply to cases in which a notice ^{of intent} to
pursue postdisposition relief for any ch. 48 case is filed on the effective
date of this draft.

12 (END)

Additions to Consider not
incorporated in draft bill.

809.107 Appeals in proceedings related to termination of parental rights.

(1) **APPLICABILITY.** This section applies to the appeal of an order or judgment under s. 48.43 and supersedes all inconsistent provisions of this chapter.

(1m) **DEFINITION.** In this section, "appellant" means a person who files a notice of intent to pursue postdisposition or appellate relief.

(2) **APPEAL OR POSTDISPOSITION ~~MOTION~~ RELIEF**

(am) *Appeal procedure; counsel to continue.* A person seeking postdisposition or appellate relief shall comply with this section. If the person desires to pursue postdisposition or appellate relief, counsel representing the person during circuit court proceedings ~~under s. 48.427~~ shall continue representation by filing a notice under par. (bm), unless sooner discharged by the person or by the circuit court, *or allowed to withdraw by the circuit court.*

or representative of the state (15)

(16)

(17)

(bm) *Notice of intent to pursue postdisposition or appellate relief.* An appellant ^(17a)
~~person~~ shall initiate an appeal under this section by filing, within
 30 days after the date of entry of the judgment or order appealed
 from, as specified in s. 808.04 (7m), a notice of intent to pursue
 postdisposition or appellate relief with the clerk of the circuit
 court in which the judgment or order appealed from was entered.
 Also within that time period, the appellant shall serve a copy of
 the notice of intent on the person representing the interests of the
 public, opposing counsel, the guardian ad litem appointed under
 s. 48.235 (1) ~~(e)~~ for the child who is the subject of the
 proceeding, the child's parent and any guardian and any ⁽¹⁸⁾
 custodian appointed under s. 48.427 (3) or 48.428 (2). ^{(3m)(19)} If the
~~record discloses that final adjudication occurred after the notice~~
~~of intent was filed, the notice shall be treated as filed after entry~~ ⁽²⁰⁾
~~of the judgment or order appealed from on the day of the entry~~
~~of the final judgment or order.~~ The notice of intent shall include
 all of the following:

1. The circuit court case name, number, and caption.
2. An identification of the judgment or order from which the
 appellant intends to seek postdisposition or appellate relief
 and the date on which the judgment or order was entered.
3. The name and address of the appellant and the appellant's trial
 counsel.
4. For an appellant other than the state, whether the trial counsel
 for the appellant was appointed by the state public defender
 and, if so, whether the appellant's financial circumstances
 have materially improved since the date on which the
 appellant's indigency was determined.
- 4m. Whether the appellant requests representation by the state
 public defender for purposes of postdisposition or appellate
 relief.
5. For an appellant other than the state, who does not request
 representation by the state public defender, whether the
 appellant will represent himself or herself or will be
 represented by retained counsel. If the appellant has retained
 counsel to pursue postdisposition or appellate relief, counsel's
 name and address shall be included.

(c) *Early notice of intent to pursue postdisposition or appellate relief.*
 If the record discloses that the judgment or order appealed from
 was entered after the notice of intent to pursue postdisposition or
 appellate relief was filed, the notice of intent shall be treated as
 filed after that entry and on the date of the entry.

(3) CLERK TO SEND MATERIALS. Within 5 days after a notice under
 sub. (2) (bm) is filed, the clerk of the circuit court shall do all of
 the following:

- (a) If the appellant requests representation by the state public
 defender for purposes of postdisposition or appellate relief, the
 clerk shall send to the state public defender's appellate intake
 office a copy of the notice of intent that shows the date on which
 the notice was filed, a copy of the judgment or order specified in
 the notice that shows the date on which the judgment or order
 was entered, a list of the court reporters for each proceeding in
 the action in which the judgment or order was entered, and a list

of those proceedings for which a transcript already has been filed with the clerk of circuit court.

- (b) If the appellant does not request representation by the state public defender, the clerk shall send or furnish to the appellant, if the appellant is appearing without counsel, or to the appellant's attorney, if one has been retained, a copy of the judgment or order specified in the notice that shows the date on which the judgment or order was entered, a list of the court reporters for each proceeding in the action in which the judgment or order was entered, and a list of those proceedings in which a transcript already has been filed with the clerk of circuit court.

(4) REQUEST FOR TRANSCRIPT AND CIRCUIT COURT CASE RECORD.

- (a) *State public defender appointment of counsel.* Within 15 days after the state public defender appellate intake office receives the materials from the clerk of circuit court under sub. (3) (a), the state public defender shall appoint counsel for the appellant and request a transcript of the reporter's notes and a copy of the circuit court case record.
- (b) *Person not represented by public defender.* An appellant who does not request representation by the state public defender for purposes of postdisposition or appellate relief shall request a transcript of the reporter's notes, and may request a copy of the circuit court case record within 15 days after filing the notice of intent under sub. (2) (bm). An appellant who is denied representation by the state public defender for purposes of postdisposition or appellate relief shall request a transcript of the reporter's notes, and may request a copy of the circuit court case record, within 30 days after filing a notice of intent under sub. (2) (bm).

(4m) FILING AND SERVICE OF TRANSCRIPT AND CIRCUIT COURT CASE RECORD. The court reporter shall file the transcript with the circuit court and serve a copy of the transcript on the appellant within 30 days after the transcript is requested. The clerk of circuit court shall serve a copy of the circuit court case record on the appellant within 30 days after the case record is requested, and shall indicate in the case record the date and manner of service.

(5) NOTICE OF APPEAL.

- (a) *Filing; and service of notice of appeal.* Within 30 days after the later of the service of the transcript or the circuit court case record, unless extended under s. 809.82, the appellant shall file a notice of appeal as provided in s. 809.10 and serve a copy of the notice on the persons required to be served under sub. (2) (bm).
- (am) *Notice of abandonment of appeal.* If the ~~person~~ ^{appellant} who filed a notice of intent to appeal under sub. (2) and requested a transcript and case record under sub. (4) decides not to file a notice of appeal, ~~that person~~ ^{the appellant} shall ~~notify the person~~ ^{notify the court} required to be served under sub. (2) ~~of this decision~~ ^{of this decision}, within 30 days after the service of the transcript and case record under sub. (4). 17a
- (b) *Transmittal of record by clerk.* The clerk of circuit court shall transmit the record to the court of appeals as soon as the record is prepared, but in no event more than 15 days after the filing of the notice of appeal. (bm) 21

- (c) *Requesting transcripts for other parties.* The appellant shall request a copy of the transcript of the reporter's notes of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 5 days after the filing of the notice of appeal.
- (d) *Statement on transcript.* The appellant shall file a statement on transcript with the clerk of the court of appeals, shall file a copy of the statement on transcript with the clerk of circuit court, and shall serve a copy of the statement on transcript on the other parties to the appeal within 5 days after the filing of the notice of appeal in the circuit court. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.
- (e) *Service of transcript on other parties.* The court reporter shall serve copies of the transcript on the parties indicated in the statement on transcript within 5 days after the date the appellant requested copies of the transcript under par. (c).
- (5m) NO-MERIT REPORTS. A s. 809.32 no-merit report, response, and supplemental no-merit report may be filed in an appeal from an order or judgment terminating parental rights. The appointed attorney shall file in the court of appeals and serve on the client-parent the no-merit report and certification within 15 days after the filing of the record on appeal. The appointed attorney shall serve on the client-parent a copy of the transcript and the record on appeal at the same time that the no-merit report is served on the client-parent. The client-parent may file in the court of appeals a response to the no-merit report within 10 days after service of the no-merit report. Within 5 days after the response to the no-merit report has been filed in the clerk's office, the clerk shall send a copy of the response to the appointed attorney. The attorney may file a supplemental no-merit report and affidavit within 10 days after receiving the response to the no-merit report.
- (6) SUBSEQUENT PROCEEDINGS IN COURT OF APPEALS; PETITION FOR REVIEW IN SUPREME COURT. Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:
- (a) *Appellant's brief-in-chief.* The appellant shall file a brief within 15 days after the filing of the record on appeal.
- (am) *Motion for remand.* If the appellant intends to appeal on any ground that may require postjudgment fact-finding, the appellant shall file a motion in the court of appeals, within 15 days after the filing of the record on appeal, raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the
- disposition
22

issue. If the court of appeals grants the motion for remand, it shall set time limits for the circuit court to hear and decide the issue, for the appellant to request transcripts of the hearing, and for the court reporter to file and serve the transcript of the hearing. The court of appeals shall extend the time limit under par. (a) for the appellant to file a brief presenting all grounds for relief in the pending appeal.

- (b) *Respondent's brief.* The respondent shall file a brief within 10 days after the service of the appellant's brief.
- (c) *Appellant's reply brief.* The appellant shall file within 10 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.
- (d) *Guardian ad litem's brief.* If the guardian ad litem appointed under s. 48.235 (1) ~~for~~ for the child who is the subject of the proceeding takes the position of the appellant, the guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal with the court of appeals. If the guardian ad litem takes the position of a respondent, the guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief.
- (e) *Decision.* Cases appealed under this section shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief or statement that a reply brief will not be filed.
- (f) *Petition for review.* A petition for review of an appeal in the supreme court, if any, shall be filed within 30 days after the date of the decision of the court of appeals. The supreme court shall give preference to a petition for review of an appeal filed under this paragraph.

History: 1993 a. 395; 1995 a. 275; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2005 a. 293; Sup. Ct. Order No. 05-07, 2006 WI 37, 287 Wis. 2d xix; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09.

NOTE: 1993 Wis. Act 395 contains explanatory notes.

Judicial Council Note, 2001: Titles and subtitles were added. Subsection (4) is amended to require that the person who files a notice of intent to appeal must request a copy of the circuit court case record within 15 days after filing the notice of intent to appeal. Subsection (4) also requires the clerk of the circuit court to serve a copy of the circuit court case record upon the person requesting it within 30 days after the date of the request. Former sub. (5) is recreated as subs. (5) (a) and (b).

Subsection (5) (c) requires the appellant to request a copy of the transcript for the other parties to the appeal, and to make arrangements to pay for those copies, within 5 days after filing the notice of appeal.

Subsection (5) (d) requires the appellant to file a statement on transcript within 5 days after filing the notice of appeal.

Subsection (5) (e) requires the court reporter to serve copies of the transcript on the other parties to the appeal within 5 days after the appellant requests the copies.

Subsection (5m) codifies *Brown County v. Edward C.T.*, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998), 98-0075, which extends the no-merit procedure to TPR cases.

Subsection (6) (am) provides a procedure for ineffective assistance of counsel claims and other claims that require fact-finding after the final

18