

Memorandum

STATE OF WISCONSIN
DIRECTOR OF STATE COURTS



Via Electronic Mail

DATE: December 14, 2012

TO: Melissa Schmidt and Margit Kelly
Legislative Council Staff Attorneys for the Special Committee on Permanency for
Young Children in the Child Welfare System

FROM: Nancy Rottier, Legislative Liaison

SUBJECT: Suggestions Relating to WLC 0031/1, Expedited Appellate Procedures for
Chapter 48 Cases

Thank you for the opportunity to present a response and suggestions regarding the Special Committee's draft legislation (WLC 0031/1) affecting appeals of CHIPS cases. Judge Richard Brown, Chief Judge of the Court of Appeals, surveyed the other Court of Appeals judges about its impact and solicited suggestions from the judges.

In addition, Jennifer Andrews, Chief Staff Attorney for the Court of Appeals, has prepared an extensive memo about the draft, including several suggested changes. I have attached a copy of Attorney Andrews's memo and bill draft revisions to this one.

After consulting with the Court of Appeals, Judge Brown indicated there would be little impact to the court's workload if all other chapter 48 cases regarding children are expedited. These cases are mostly one-judge appeals and are usually decided quickly. As our October 24, 2012 memo to the study committee indicated, data shows there are very few CHIPS appeals.

One change that would result from adoption of this proposal is that the Court of Appeals will be asked to remand when a ch. 48 appeal requires a postdisposition motion to preserve an issue for appeal. That is the current TPR procedure. But, because the number of cases is small, the extra motions are not likely to significantly impact the court's workload.

Judge Brown also suggested the committee consider changing the draft to make it clear that the Court of Appeals has the power to extend the time for decision, on its own motion, for good cause shown, just as it has for TPRs. He said this is rarely used by the court, but there are occasions when the time for decision must be extended. He cited an example of a TPR with an issue of such importance to the law that it should be published in the official reports so as to have precedential value. That change requires the court to

have a three-judge panel instead of a single judge deciding the case, a more time-consuming process since briefs must be sent to two other judges who must then review the briefs and record. Plus, the panel has to meet and decide the issue. This is a rare circumstance, but it does occur.

If you require more information, please do not hesitate to contact me. Thank you again for allowing us to comment on this proposed legislation.

Attachment

Cc: Chief Judge Richard Brown
Attorney Jennifer Andrews
John Voelker, Director of State Courts
Michelle Jensen-Goodwin, CCIP