

Procedures for Expedited Appeals

Wisconsin Court of Appeals Internal Operating Procedures (2009) - Section VII

2021 Note: The Internal Operating Procedures for the Wisconsin Court of Appeals include Section VII, relating to Expedited Appeals. In the future, the Internal Operating Procedures will be formally revised to reflect changes to Wis. STAT. ch. 809 that took effect on July 1, 2021, as a result of mandatory eFiling in the Court of Appeals. In the meantime, the following reproduces Section VII, adding to it a 2021 Update concerning changes in the filing of the docketing statement. See VII(2), below.

VII. EXPEDITED APPEALS

(1) Eligible Cases.

All appeals in the Court of Appeals shall be eligible for the expedited appeals program except for the following: (1) appeals brought under Wis. STAT. [RULE] 809.105; (2) appeals brought under Wis. STAT. [RULE] 809.107; (3) no merit appeals brought under Wis. STAT. RULE 809.32; (4) appeals brought under Wis. STAT. § 974.06(7); (5) appeals in which a party represents himself or herself; and (6) appeals brought under Wis. STAT. RULES 809.30 or 809.40(1) except for cases arising under chs. 48, 51, 55, or 938.

(2) Docketing Statement.

(a) In all eligible cases, the appellant shall file in the Court of Appeals an original and one copy of a completed docketing statement and serve one copy of the completed docketing statement on each respondent. The completed docketing statement shall be submitted along with the notice of appeal sent to the Court of Appeals by the appellant, pursuant to Wis. STAT. RULE 809.10(1)(a). The respondent need not fill out a docketing statement but may file a response as outlined in paragraph (2)(e). Filing of the docketing statement with Court of Appeals constitutes certification of service on the respondents. Wis. STAT. RULE[] 809.80(2) and [§] 801.14(4). The respondents must therefore be provided with a completed docketing statement by the appellant.

2021 Update: the docketing statement must be filed electronically in the circuit court when the notice of appeal is filed in the circuit court. See Wis. STAT. RULE 809.10(1)(d). Electronic filers in the circuit court are served through the electronic filing system, but paper parties must be served using traditional methods. See RULE 809.10(1)(h). The docketing statement, Form AP-027, is available online at <https://www.wicourts.gov/forms1/appeals.jsp?Category=59>.

(b) The statement must be fully filled out and must accurately describe the jurisdictional facts, nature of trial court proceedings, issues on appeal, and standards of review applicable to those issues. Failure to include any matter in the docketing statement does not constitute a waiver. The court may, however, impose sanctions on counsel or appellant if it appears that available information has been withheld. Wis. STAT. RULE 809.83(2). The appellant must attach to the docketing statement a copy of the judgment or

order appealed from and any findings of fact, conclusions of law or memorandum decision or opinion upon which the order or judgment is based.

(c) Failure to file a docketing statement within the time set forth above will be grounds for sanctions, including dismissal of the appeal, under WIS. STAT. RULE 809.83(2).

(d) A motion for extension of time within which to file the docketing statement will be granted only for the most compelling reasons. Counsel who filed the notice of appeal is responsible for insuring that the docketing statement is timely filed in this court even if new counsel will actually handle the appeal. Only one docketing statement may be filed for each notice of appeal; if there is more than one appellant, appellants must consult and decide jointly who is responsible for filing the single docketing statement.

(e) Respondent, within 7 days of receipt of the docketing statement, may file an original and one copy of a single-page response if respondent strongly disagrees with appellant's statement of the case or the issues on appeal. The response must be sent to all other counsel. If respondent believes there is a jurisdictional defect, respondent should file a motion to dismiss. Multiple respondents should consult on the nature of the response to appellant's docketing statement and, if they decide to file a response, file only one response.

(f) Respondent must file a separate docketing statement if a cross-appeal is filed. The prior paragraph applies to appellants who are also cross-respondents. Cross-appellants and cross-respondents are subject to the same above provision as are appellants and respondents.

(g) If a docketing statement indicates a jurisdictional defect, the Presiding Judge may direct the parties by order to address the question of jurisdiction in a specific form and time period.

(3) Time Limits for Records and Briefs.

Unless ordered otherwise by the court, the time for designating, ordering, preparing, serving and filing the transcripts, preparing and filing the record, and filing the briefs established by the Rules of Appellate Procedure, ch. 809, shall not be affected by the provisions of these procedures.

(4) Presubmission Conference.

(a) In any eligible case, the court may, at its option, require counsel to attend, either by telephone or in person, a presubmission conference with a senior staff attorney of the court designated as a conference attorney.

(b) All attorneys of record are required to participate in the conference unless they notify the conference attorney that they are waiving their briefing rights. Failure to attend the conference may result in the imposition of sanctions pursuant to WIS. STAT. RULE 809.83(2). The purposes of a conference are to determine: (a) whether the appeal can be adequately briefed in fewer than the maximum number of pages permitted by WIS. STAT. RULE 809.19; (b) whether the submission and decision of the appeal can be expedited by a reduced briefing schedule, by summary disposition, or by other expedited means permitted under the Rules of Appellate Procedure; (c) what the issues are on appeal and the standards of review for those issues; (d) whether it is possible to narrow the issues on appeal; (e) whether the transcripts and record can be reduced and whether a statement in lieu of a portion of the record or a transcript can be agreed upon under WIS. STAT. RULE 809.15(5); (f) whether oral argument and/or a published opinion is likely to result in the appeal; (g) whether joint briefing by multiple parties is practical;

(h) whether opposing counsel, after having an opportunity to discuss the case, may be able to reach a settlement; and (i) whether the processing of the appeal can be simplified or expedited in any other way.

(c) The ultimate objectives of the conference will be to reduce the time between the filing of the notice of appeal and the decision of the Court of Appeals while, at the same time, permitting the Court of Appeals to address its increasing workload and to reduce the expense of appeals to the litigants while providing alternative methods for expediting appeals. An order will be entered by the Presiding Judge upon recommendation of the conference attorney after the conference incorporating any matters resolved or identified at the conference.

(d) Conferences must be attended by counsel with responsibility for the appeal and authority to make decisions about any aspect of the appeal covered by these procedures. If lead counsel cannot attend, that attorney must: (1) appoint a substitute attorney to attend the conference; (2) delegate to the attending attorney the broadest feasible authority to narrow the appeal or agree on case processing matters; and (3) be available at the time of the conference. The parties to an appeal may be required to attend a conference. When the business office of counsel is not in the vicinity of the conference site, or for any other reason, the court may, at its option, hold any conference by telephone conference call.

(e) The conference date will be set by telephone with written confirmation or in a written notice informing counsel that a conference will be held. Unless counsel already has a directly conflicting court date, a request to alter the date will be disfavored. If a scheduled conference unavoidably conflicts with any counsel's schedule, he or she is obliged to contact all opposing counsel to determine alternative dates before contacting the conference attorney's secretary to reschedule.

(f) All matters discussed at the conference are completely confidential and will not be disclosed by the conference attorney except as embodied in the conference attorney's recommendation to the Presiding Judge for an order concerning further proceedings in the appeal or to the judge reviewing a request for reconsideration.

(g) The costs of preparing and filing a docketing statement are not taxable.

(h) In a case in which, after review of the docketing statement, the court finds a conference unnecessary or inappropriate, the court may on its own motion issue an order limiting the length of briefs, requiring joint briefing, setting the schedule for filing the record and briefs, or regulating any other aspect of the appeal that could be handled at a conference. WIS. STAT. RULES 809.20, 809.21(1) and 809.82(2).

(i) Any order issued by a Presiding Judge upon the recommendation of the conference attorney is subject to reconsideration upon filing of an appropriate motion within 5 days of the date of the order.

(j) If the case is expedited per agreement reached at the presubmission conference, the clerk's office will not send notice of receipt of briefs or notice of submission. The timing and length of briefs will be detailed in the order expediting the case.