

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

Nos. 08-15 and 08-18

In the matter of the petition to create Wis. Stat. §§ (Rule) 809.19(8)(a)4., 809.19(12), 809.19(13), 809.32(1)(fm), 809.80(5) and amend Wis. Stat. § (Rule) 809.80(3) relating to the electronic filing of appellate briefs and no-merit reports.

FILED

JAN 6, 2009

David R. Schanker
Clerk of Supreme Court
Madison, WI

In the matter of the petition to create Wis. Stat. § (Rule) 809.80(5) and amend Wis. Stat. § (Rule) 809.62(4) relating to the electronic filing of petitions for review and responses.

On June 19, 2008, the Wisconsin Court of Appeals, by Chief Judge Richard S. Brown, petitioned this court to create Wis. Stat. §§ (Rule) 809.19(8)(a)4., 809.19(12), 809.19(13), 809.32(1)(fm), 809.80(5) and amend Wis. Stat. § (Rule) 809.80(3) relating to the electronic filing of appellate briefs and no-merit reports.

On July 14, 2008, David R. Schanker, Clerk of the Supreme Court, petitioned this court to create Wis. Stat. § (Rule) 809.80(5) and amend Wis. Stat. § (Rule) 809.62(4) relating to the electronic filing of petitions for review and responses. The court held a public hearing on October 28, 2008, on the

petitions. Upon consideration of matters presented at the public hearing and submissions made in response to the proposed amendments, the court voted to adopt the petition. The effective date of the amendments adopted herein will be July 1, 2009. Therefore,

IT IS ORDERED that effective July 1, 2009:

SECTION 1. 809.19 (8) (a) 4. of the statutes is created to read:

809.19 **(8)** (a) 4. In addition to the copies required in subs. 1., 2., and 3., all parties represented by counsel shall file one electronic copy of each brief as provided in s. 809.19 (12) and may file one electronic copy of each appendix as provided in s. 809.19 (13).

SECTION 2. 809.19 (12) of the statutes is created to read:

809.19 **(12)** ELECTRONIC BRIEFS. (a) *General Rule.* An attorney filing a brief under these rules shall file with the court a copy of the brief in electronic form. A self-represented party is not required to file an electronic copy of the brief, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the brief remains the official court record.

(b) *Process.* Attorneys and self-represented parties filing an electronic brief shall use the electronic filing system under s. 801.17.

(c) *Format.* The electronic brief shall be in text-searchable Portable Document Format (PDF).

(d) *Filing.* The date on which the paper brief is filed under s. 809.80 (3) (b) shall be the official date of filing of the brief. The electronic copy of the brief shall be electronically transmitted on or before the date that the paper brief is filed under s. 809.80 (3) (b). An electronic copy of a brief submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date, provided it is subsequently accepted by the clerk upon review. An electronic brief submitted after the close of regular business hours shall be considered transmitted the next business day.

(e) *Corrections.* If corrections are required to be made, both the paper and electronic copies shall be corrected.

(f) *Certification.* In addition to the form and length certification required under s. 809.19 (8) (d), attorneys and self-represented parties shall certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

(g) *Motion for relief.* An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper brief. An attorney shall show good cause why it is not feasible to file a copy of the brief electronically.

SECTION 3. 809.19 (13) of the statutes is created to read:

809.19 (13) ELECTRONIC APPENDIX. (a) *General Rule.* An attorney filing an appendix under these rules may file with the court a copy of the appendix in electronic form. A self-represented party is not required to file an electronic copy of the appendix, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the appendix remains the official court record.

(b) *Process.* Attorneys and self-represented parties filing an electronic appendix shall use the electronic filing system under s. 801.17.

(c) *Format.* An electronic appendix shall be in Portable Document Format (PDF). An electronic appendix shall be filed as a document or documents separate from the brief.

(d) *Filing.* The date on which the paper appendix is filed under s. 809.80 (3) (b) shall be the official date of filing of the appendix. The electronic copy of the appendix shall be electronically transmitted on or before the date that the paper appendix is filed under s. 809.80 (3) (b). An electronic copy of an appendix submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date, provided it is subsequently accepted by the clerk upon review. An electronic appendix submitted after the close of regular business hours shall be considered transmitted the next business day.

(e) *Corrections.* If corrections are required to be made, both the paper and electronic copies shall be corrected.

(f) *Certification.* In addition to the certification required under s. 809.19 (2) (b) and (3) (b), attorneys and self-represented parties shall certify that the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

SECTION 4. The following Comment to Wis. Stat. §§ (Rule) 809.19 (12) and 809.19 (13) is not adopted but will be published and may be consulted for guidance in interpreting and applying the statute.

Comment, 2008

An electronic brief required under s. 809.19(12) and an electronic appendix requested under s. 809.19(13) are in addition to and not a replacement for the paper brief and appendix required under s. 809.19. The filing requirement is satisfied only when the requisite number of paper copies of the brief and appendix and the electronic brief are filed.

The filing of an electronic appendix is encouraged, but not required. These rules do not provide for total electronic filing at the appellate level. Accordingly, the paper copies of appellate briefs and appendices constitute the official court record.

An electronic brief shall be submitted to the court as a text-searchable Portable Document Format (PDF) document. "PDF" is a universal file format that preserves the fonts, formatting, pagination, and graphics of a source document. A text-searchable brief is created by electronically converting the original word processing file to a PDF document. An electronic appendix may be submitted as a non-text-searchable PDF document. A non-text-searchable appendix is created by scanning the paper document to create a PDF document.

Electronic briefs may be enhanced with internal links (such as a table of contents with links to locations in the brief) or external links (links to websites containing the text of cases or statutes cited in the brief). External links in an electronic brief shall not require a password for access to the

case or statute. No enhancement to an electronic brief shall alter the text of the brief.

All electronic briefs shall be submitted in a single electronic file. The file containing the electronic brief **shall not** contain the appendix or any other document or material. An electronic appendix containing more than 200 pages may be split into smaller electronic files.

Sample electronic brief certification form:

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Signed
Signature

Sample electronic appendix certification form:

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(13)

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of s. 809.19(13). I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Signed
Signature

SECTION 5. 809.32 (1) (fm) of the statutes is created to read:

809.32 (1) (fm) *Electronic no-merit report and supplemental no-merit report.* An attorney filing a no-merit report or the optional supplemental no-merit report under this rule shall file with the court a copy of the no-merit report and supplemental no-merit report, if any, in electronic form, using the procedure under s. 809.19 (12). The date on which the paper no-merit report or supplemental no-merit report is filed shall be the official date of filing of the no-merit report or supplemental no-merit report. The electronic copy of the no-merit report and supplemental no-merit report shall be electronically transmitted on or before the date that the paper no-merit report and supplemental no-merit report is filed. An electronic copy of a no-merit report or supplemental no-merit report submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date. An electronic no-merit report or supplemental no-merit report submitted after the close of regular business hours shall be considered transmitted the next business day. The attorney shall certify that the text of the electronic copy of the report is identical to the text of the paper copy of the report. Notwithstanding s. 801.17 (9), the paper copy of the no-merit report or supplemental no-merit report remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper no-merit report or supplemental no-

merit report. An attorney shall show good cause why it is not feasible to file a copy of the report electronically.

SECTION 6. 809.62 (4) of the statutes is renumbered 809.62 (4) (a).

SECTION 7. 809.62 (4) (b), (c), and (d) of the statutes are created to read:

809.62 **(4)** (b) *Electronic petition for review.* An attorney filing a petition for review under this rule shall file with the clerk of the supreme court a copy of the petition for review or response in electronic form using the procedure under s. 809.19 (12) and may file a copy of an appendix to the petition for review or response in electronic form using the procedure under s. 809.19 (13). A self-represented party is not required to file an electronic copy of the petition for review or response, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the petition for review or response remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper petition for review. An attorney shall show good cause why it is not feasible to file a copy of the petition of review electronically.

(c) *Effect of electronic filing.* Except as provided in s. 809.80 (3) (e), the date on which the clerk receives the paper copies of the petition for review shall be the official date of filing of the petition for review. Transmitting the electronic

copy of a petition for review does not satisfy the filing requirements of this section.

(d) *Timing of electronic filing.* The electronic copy of the petition for review and response shall be electronically transmitted on or before the date that the paper petition for review and response is filed.

SECTION 8. The following Comment to Wis. Stat. §§ (Rule) 809.62 (4) is not adopted but will be published and may be consulted for guidance in interpreting and applying the statute.

Comment, 2008

The electronic copy of a petition for review, response, or appendix is in addition to and not a replacement for the paper copies required under this rule. The filing requirement is satisfied only when the requisite number of paper copies is filed; the transmittal of an electronic copy does not satisfy requirements for a timely filing. A petition for review shall be physically received in the clerk's office within 30 days of the date of the decision of the court of appeals to invoke this court's appellate jurisdiction. St. John's Home v. Continental Casualty Co., 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam.

SECTION 9. 809.80 (3) (a) of the statutes is amended to read:

809.80 **(3)** (a) FILING OF PAPERS; USE OF MAIL. (a) *All filings - general rule.* Except as provided in pars. (b) to (e), filing is not timely unless the clerk receives the ~~papers~~ paper documents within the time fixed for filing. Filing may be accomplished by hand delivery, mail, or by courier. Filing by facsimile is permitted only as set forth in s. 801.16. ~~Electronic filing, other than filing by facsimile as set forth in s. 801.16, is not permitted unless otherwise ordered by the supreme court.~~

SECTION 10. 809.80 (5) of the statutes is created to read:

809.80 (5) ELECTRONIC BRIEFS AND NO-MERIT REPORTS. (a) *Clerk review.* 1. The clerk shall review the electronic copy of the brief, no-merit report, or supplemental no-merit report to determine if the electronic document should be accepted for filing.

2. If the clerk accepts the electronic copy of the brief, no-merit report, or supplemental no-merit report under subd. 1., the electronic copy shall be considered transmitted to the court at the time the original transmission to the electronic filing system was complete. Upon acceptance of the electronic copy, the electronic filing system shall issue a confirmation with the date and time of the original transmission. The confirmation receipt shall serve as proof of the electronic transmission only. The filing date for the document remains the date on which the paper document is filed.

3. If the clerk rejects the electronic copy of the document following review under subd. 1., the filer will receive notification of the rejection. The filer may be required to resubmit the electronic copy of the document.

(b) *Effect of noncompliance.* Failure to transmit the electronic copy of the brief, no-merit report, or supplemental no-merit report on or before the date that the paper document is filed may result in the document being considered untimely, in the absence of leave of the court.

IT IS ORDERED that notice of the creation of Wis. Stat. §§ (Rule) 809.19(8)(a)4., 809.19(12), 809.19(13), 809.32(1)(fm),

and 809.80(5), and the amendment of Wis. Stat. §§ (Rule) 809.62(4) and 809.80(3) be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 6th day of January, 2009.

BY THE COURT:

David R. Schanker
Clerk of Supreme Court

