

STATE OF WISCONSIN
SUPREME COURT

In re:

PROPOSED AMENDMENTS TO WIS. STAT. §§ 809.107 and 809.14

**PETITION OF JUDICIAL COUNCIL FOR AMENDMENTS TO §§ 809.107
and 809.14 OF THE RULES OF APPELLATE PROCEDURE**

The Judicial Council petitions this Court for an order pursuant to WIS. STAT. § 751.12, adopting these proposed amendments to sections 809.107 and 809.14, Rules of Appellate Procedure. The proposed amendments, governing appeal procedures in termination of parental right (TPR) cases: (1) address the responsibility of trial counsel to file a notice of intent; (2) place time limits within the rule and note when they cannot be extended; (3) create a self-executing process to preserve jurisdiction when the notice of intent is filed before the judgment or order is entered; (4) establish a time limit for the state public defender to appoint counsel; (5) establish time limits for persons denied state public defender representation; (6) require clerks and court reporters to indicate dates essential to time limit calculation in the case record; (7) require clerks to advise if transcripts are already on file; (8) shorten the time limit for a response to a motion; and (9) divide and subtitle many of the subsections to help practitioners and parties locate particular provisions.

The proposed amendments are explained in the comments to the text supplied by the Judicial Council Appellate Procedure Committee. The Judicial Council petitions this Court to order publication of the comments as Judicial Council Committee Notes to the adopted amendments.

The Judicial Council further petitions the Court to direct the Wisconsin Court Records Management Committee to create a form similar to CR-233 (used in criminal cases), that would require the circuit court to notify a person subject to TPR proceedings of appeal time limits and require the person to indicate on the form at the end of the dispositional hearing whether the person intends to pursue postdisposition relief.

I. SECTION 809.107 of the statutes is amended to read:

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.

(2) ~~INITIATING THE APPEAL.~~ APPEAL OR POSTDISPOSITION MOTION. (a) 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. (b), unless sooner discharged by the person or by the circuit court.

JUDICIAL COUNCIL COMMITTEE NOTE TO RULE 809.107(2)(a):

The amendment to § 809.107(2)(a) requires counsel representing a parent who wants to appeal the TPR disposition to file a notice of intent to pursue postdisposition or appellate relief. Trial counsel's representation continues until the notice of intent is filed.

(b) Notice of intent to pursue postdisposition or appellate relief. A person shall initiate an appeal under this section by filing, within ~~the time~~ 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 ~~appeal~~ pursue postdisposition or appellate relief with the clerk of the ~~trial~~ circuit court in which the judgment or order appealed from was entered. This time period may not be enlarged. Also within that time period, the person 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)(c) for the child who is the subject of the proceeding, the child's parent and any guardian and any custodian appointed under s. 48.427(3) or 48.428 (2). The notice of intent shall include all of the following:

(a) 1. The circuit court case name, number, and ~~court~~ caption.

~~(b)~~ 2. An identification of the judgment or order from which the person ~~filing the notice intends to appeal~~ intends to seek postdisposition or appellate relief and the date on which it was ~~granted or~~ entered.

(c) 3. The name and address of the person ~~filing the notice of intent to appeal~~ and ~~the person's~~ his or her trial counsel.

~~(d)~~ 4. For a person other than the state, whether the trial counsel for the person filing the notice of intent ~~to appeal~~ was appointed by the state public defender and, if so, whether the person's financial circumstances have materially improved since the date on which ~~the person's~~ his or her indigency was determined.

5. Whether the person requests representation by the state public defender for purposes of postdisposition or appellate relief.

~~(e) 6.~~ For a person other than the state, whether ~~the person filing the notice of intent to appeal~~ a person who does not request representation by the state public defender will represent himself or herself or will be represented by retained counsel or requests the state public defender to appoint counsel for the appeal. If the person has retained counsel to pursue postdisposition or appellate relief, the counsel's name and address shall be included.

JUDICIAL COUNCIL COMMITTEE NOTE TO RULE 809.107(2)(b):

Subsection 809.107(2)(b) contains the substance of former sub. (2)(a). The amendment adds the case number to the content requirements for the notice of intent and specifies that the time period for filing a notice of intent cannot be enlarged. Subsection (2)(b)2. deletes a reference to the date on which the judgment or order was granted because the time limits in s. 808.04(7m) commence on the date the judgment or order was entered.

(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 such entry and on the date the judgment or order was entered.

JUDICIAL COUNCIL COMMITTEE NOTE TO RULE 809.107(2)(c):

The amendment to § 809.107(2)(c) addresses the practical concern that arises when a notice of intent is filed before the final judgment or order is entered. Similar to § 808.04(8), the amendment allows the filing date of the notice of intent to be deemed the date that the judgment or order was entered, and thereby preserves appellate jurisdiction.

(3) ~~DUTIES OF CLERK OF TRIAL COURT.~~ CLERK TO SEND MATERIALS. Within 5 days after a notice under sub. (2)(b) is filed, the clerk of the circuit court shall:

(a) If the person ~~filing the notice of intent to appeal under sub. (2)~~ requests representation by the state public defender for purposes of ~~the appeal~~ postdisposition or appellate relief, send to the state public defender's appellate intake office a copy of the notice that shows the date on which it was entered, a copy of the judgment or order specified in the notice ~~and~~ that shows the date on which it 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 person ~~filing the notice of intent to appeal~~ does not request representation by the state public defender ~~for purposes of the appeal,~~ send or furnish to the person, if ~~the person is~~ appearing without counsel, or to the person's attorney, if one has been retained, a copy of the judgment or order specified in the notice ~~and~~ that shows the date on which it 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.

JUDICIAL COUNCIL COMMITTEE NOTE TO RULE 809.107(3):

To facilitate compliance with the time limits in this section, the amendment requires the clerk to send a copy of the judgment or order that shows the date on which it was entered and a list of transcripts already on file to the state public defender's intake office, or to the person if appearing without counsel, or to retained counsel.

(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 person 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. A person ~~filing a notice of intent to appeal under sub. (2)~~ 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 under sub. (2)(b). A person 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 under sub. (2)(b).

(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 person filing the notice of intent to ~~appeal~~ pursue postdisposition or appellate relief 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 person filing the notice of intent ~~to appeal~~ within 30 days after the ~~court~~ case record is requested, and shall indicate in the case record the date and manner of service.

JUDICIAL COUNCIL COMMITTEE NOTE TO RULE 809.107(4) and (4m):

New § 809.107(4)(a) codifies existing practice and establishes a time limit for the state public defender to appoint counsel and request transcripts and circuit court case records. The public defender's time limit commences on the date that the public defender's office receives the materials from the circuit court clerk, rather than on the date the notice of intent is filed, so as to reduce the number of extension motions that must be filed when the clerk does not timely send the materials under sub. (3)(a).

The amendment to § 809.107(4)(b) clarifies the procedure applicable to persons who are not represented by the state public defender and creates time limits applicable to a person who has applied for and has been denied public defender representation. In the latter case, the rule provides an additional 15 days for the person to obtain private counsel and request a copy of the

transcript and case record. The time limit is set at 30 days because 15 days will have expired while the public defender's office determines whether the person is eligible for appointed counsel. This time limit commences on the date the notice of intent was filed, rather than the date of the public defender's determination because that determination does not appear in the case record.

Subsection (4m) is the last two sentences of former sub. (4). Subsection (4m) also creates a new requirement for the circuit court clerk to indicate the date and manner of service in the case record. The new requirement is necessary because the notice of appeal time limit is measured from the date of service of the case record or transcript, whichever is later.

(5) NOTICE OF APPEAL; ~~TRANSMITTAL OF RECORD~~. (a) *Filing; ~~copy~~ and service of notice of appeal.* Within 30 days after the later of the service of the transcript or the circuit court case record, the person filing a notice of intent to appeal under sub. (2)(b) shall file a notice of appeal as provided in s. 809.10(4) and serve a copy of the notice on the persons required to be served under sub. (2)(b). This time period may not be enlarged.

(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.

(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 portion 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).

JUDICIAL COUNCIL COMMITTEE NOTE TO RULE 809.107(5):

The amendment to § 809.107(5)(a) clarifies that the time limit for filing a notice of appeal commences 30 days from the *later* of the service of the transcript or case record. Persons

contemplating filing a notice of appeal are better able to assess grounds for relief after reviewing both the transcripts and the circuit court case record.

II. SECTION 809.14(1) of the statutes is amended to read:

809.14 Rule (Motions).

(1) A party seeking an order or other relief in a case shall file a motion for the order or other relief. The motion must state the order or relief sought and the grounds on which the motion is based and may include a statement of the position of other parties as to the granting of the motion. A motion may be supported by a memorandum. Except as provided in sub. (1m), ~~Any~~ other party may file a response to the motion within 11 days after service of the motion.

809.14(1m) of the statutes is created to read:

(1m) If a motion is filed in an appeal under s. 809.107, any other party may file a response to the motion within 5 days after service of the motion.

RESPECTFULLY SUBMITTED

JUDICIAL COUNCIL

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