

FILING A
PETITION FOR REVIEW

A GUIDE TO SEEKING REVIEW
IN THE
WISCONSIN SUPREME COURT

2011

TABLE OF CONTENTS

	Page
INTRODUCTION	3
WHAT IS A PETITION FOR REVIEW?	3
FILING YOUR PAPERS	4
FILING BY FAX AND E-MAIL	4
WHEN CAN I FILE A PETITION FOR REVIEW?	5
TIME LIMITS FOR FILING.....	5
WHAT SHOULD MY PETITION CONTAIN?	6
THE FORM AND APPEARANCE OF A PETITION	8
COPIES AND FEES.....	8
CONFIDENTIALITY.....	11
THE OTHER SIDE’S RESPONSE TO YOUR PETITION	12
THE COURT’S DECISION ON YOUR PETITION.....	12
FILING YOUR BRIEFS.....	12
FILING MOTIONS	13
SAMPLE FORMS	
Petition for review	
Certification of Mailing or Third-Party Commercial Delivery	
Motion	

INTRODUCTION

This is a simplified guide to the Wisconsin Rules of Appellate Procedure and is intended primarily for people who are not lawyers and lawyers with limited appellate experience. This handbook is not intended to replace the Rules of Appellate Procedure and should not be cited as legal authority. You must rely on the rules and case law as legal authority. The Rules of Appellate Procedure are contained in Chapter 809 of the Wisconsin Statutes, which is available at www.legis.state.wi.us/statutes/Stat0809.pdf. You may also want to consult the Supreme Court's Internal Operating Procedures (IOPs), which are published periodically and are available at www.wicourts.gov/sc/IOPSC.pdf. This handbook reflects the rules and case law as they exist on **January 1, 2011**. The rules and case law are always subject to change, and should be consulted for changes.

WHAT IS A PETITION FOR REVIEW?

A petition for review is a document that asks the Supreme Court to review what happened in the Court of Appeals. The Supreme Court's jurisdiction is entirely discretionary, meaning that the court only takes certain cases. The Supreme Court grants review of fewer than 10 percent of the petitions for review that are filed.

The Supreme Court's primary function is not to correct errors that might have occurred in the lower courts, but instead to develop the law.¹ Therefore, the Supreme Court ordinarily does not grant review to determine, for example, if evidence was sufficient to support a conviction² or whether the lower courts properly excluded or included certain evidence.³

¹ State v. Mosely, 102 Wis.2d 636, 307 N.W.2d 200 (1981).

² Winkie, Inc. v. Heritage Bank, 99 Wis.2d 616, 299 N.W.2d 829 (1981)

³ Hagenkord v. State, 100 Wis.2d 452, 302 N.W.2d 421 (1981)

FILING YOUR PAPERS

Except for briefs, all papers are considered “filed” when they are received by the clerk.⁴

All documents submitted to the court must be filed with:

By mail:

Clerk, Wisconsin Supreme Court
P.O. Box 1688
Madison, WI 53701-1688

Delivery:

Clerk, Wisconsin Supreme Court
110 E. Main Street, Suite 215
Madison, WI 53703

Attorneys filing appellate briefs, no-merit reports, petitions for review, and responses are required to file an electronic version using the courts’ eFiling system; these electronic copies are filed in addition to the paper copies. Self-represented litigants can file these documents electronically, but are not required to by the Supreme Court Rules. Filing an electronic version of an appendix is optional for both attorneys and self-represented litigants.

A copy of all documents filed with the court must be served (mailed or hand-delivered) on all other parties to the appeal. All papers filed with the court must be 8½ x 11 inches.⁵

FILING BY FAX OR E-MAIL

Petitions for review may not be filed by fax or by e-mail.

⁴ Rule 809.80(3)(a), Stats.

⁵ Rule 809.81(1), Stats.

WHEN CAN I FILE A PETITION FOR REVIEW?

You may petition the Supreme Court only if:

You are a party to the case.

You lost in the Court of Appeals.

You have a final decision from the Court of Appeals.

There are a few rules about who may file a petition for review, and when that document may be filed.

First, only a party to a case (a person or entity actually involved in the case) may seek review of the lower court ruling.

Second, you must have lost in the Court of Appeals.⁶ If you won, you cannot seek review in the Supreme Court -- even if you disagree with some aspect of the Court of Appeals' decision.

Third, you must have a final decision from the Court of Appeals before you come to the Supreme Court.⁷ An order by the Court of Appeals denying or granting a petition for permissive appeal under Wisconsin Statutes section 808.03(2) (find this law at www.legis.state.wi.us/statutes/Stat0808.pdf), is not reviewable in the Supreme Court.⁸

TIME LIMITS FOR FILING

A petition for review must be filed with the clerk of the Supreme Court within 30 days of the date of the Court of Appeals' decision, or if a timely motion for reconsideration has been filed with the Court of Appeals, within 30 days of the Court of Appeals' decision on the motion.⁹ A petition for review is considered filed when it is physically received in the clerk's office. Office hours are 7:45 a.m. to 5:00 p.m.¹⁰ This rule is strictly enforced. The 30-day period for filing a petition for review cannot be extended. If a petition for review is not filed within 30 days

⁶ Neely v. State, 89 Wis.2d 755, 279 N.W.2d 225 (1979)

⁷ In Interest of A.R., 85 Wis.2d 444, 270 N.W.2d 581 (1978)

⁸ State v. Whitty, 86 Wis.2d 380, 272 N.W.2d 842 (1978)

⁹ Sec.808.10, Rule 809.62(1), Stats.

¹⁰ St. John's Home v. Continental Casualty Co., 150 Wis. 2d 37, 4441 N.W. 2d 219 (1989).

of the Court of Appeals' decision, the court lacks subject matter jurisdiction over the case and the petition must be dismissed.¹¹

The person filing the petition for review is solely responsible for the vagaries of mail delivery. You assume the risk of late delivery if you choose to file your petition by mail.¹²

If you are confined in an institution (Wis. Stat. § 809.30(3)) and are acting as your own attorney, the 30-day deadline for filing a petition for review is tolled on the date that you deliver a correctly-addressed petition to the proper prison authorities for mailing,¹³ provided that you file a certification or affidavit setting forth the date on which the petition was delivered to the proper institution authorities for mailing.¹⁴

WHAT'S IN A PETITION FOR REVIEW?

Strict rules govern the length, appearance and contents of a petition for review. First, your petition must contain all of the following information:

- (a) A statement of the issues presented for review and an explanation of how these issues were raised in the Court of Appeals and how the Court of Appeals decided the issues;
- (b) A table of contents;
- (c) A short statement of the reasons that the case merits Supreme Court review. This might include the criteria that the case meets or, in the absence of any of the criteria, a concise statement of other important reasons for review;
- (d) A description of the nature of the case and a description of what occurred in the trial court and Court of Appeals, including the end result in both courts. You should also include a statement of those facts not included in the opinion of the Court of Appeals that you believe are relevant to the issues presented for review, with appropriate references to the trial court record to show how these issues were handled there; and
- (e) For each of the issues you have presented for review under (a), an argument as to why the issue merits Supreme Court review. These arguments should be arranged in the order of the statement of issues presented. All of your arguments in support of the petition must be included in the petition. A separate memorandum in support of the petition is not permitted.

¹¹ First Wis. Nat. Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).

¹² Gunderson v. State, 106 Wis. 2d 611, 318 N.W.2d 779 (1982)

¹³ State ex rel. Nichols v. Litscher, 2001 WI 119, 247 Wis. 2d 1013, 635 N.W.2d 292.

¹⁴ Rule 809.80(3)(d), Stats.

Does your case present a significant question of law?

Does it demonstrate a need for a new or changed policy?

Will it help to develop, clarify or harmonize the law?

- (f) An appendix containing these items, in the following order:
1. The decision and opinion of the Court of Appeals;
 2. Judgments, orders, findings of fact, case law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition; and
 3. Any other portions of the record necessary for an understanding of the petition.

You should take care in compiling the appendix. It must include the Court of Appeals' decision in your case as well as pertinent judgments or orders from the circuit court that will help explain the background of the case. While other portions of the record may also be included in the appendix if necessary for an understanding of the petition for review, it is not necessary to attach copies of the entire record. Do not include materials in an appendix that were not part of the record presented in the Court of Appeals.

As we have mentioned, Supreme Court review is granted only when special and important reasons are presented. The following, while not controlling or exclusive, are criteria that the court will consider in deciding whether to grant a petition for review:

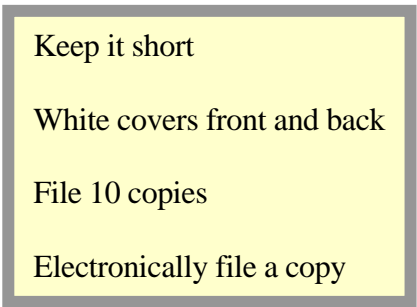
- (a) A real significant question of federal or state constitutional law is presented;
- (b) The petition for review demonstrates a need for the Supreme Court to consider establishing, implementing or changing a policy within its authority;
- (c) A decision by the Supreme Court will help develop, clarify or harmonize the law, and
 1. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation; or
 2. The question presented is a novel one, the resolution of which will have statewide impact; or
 3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme Court.

- (d) The Court of Appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the Supreme Court or other Court of Appeals' decisions.
- (e) The Court of Appeals' decision is in accord with opinions of the Supreme Court or the Court of Appeals but due to the passage of time or changing circumstances, such opinions are ripe for re-examination.

It is not necessary to repeat all of the above criteria in the petition for review. Rather, you should explain which criteria might apply to your case and why you believe the case requires Supreme Court review.

THE FORM AND APPEARANCE OF A PETITION

As we have mentioned, your petition for review must adhere to certain rules of length and appearance: (1) It should be as short as possible and may not exceed 35 pages in length if a



Keep it short
White covers front and back
File 10 copies
Electronically file a copy

monospaced font is used (these are fonts, such as Courier 12, in which each letter or character is given the same amount of room, so that an “l” and a “d”, for example, will both take identical space) or 8,000 words if a proportional serif font is used (these are fonts that vary the space given each character; for example, Times New Roman 13 and CG Times 13). The appendix does not count in the page limit total. (2) It must have white front and back covers.

FILING YOUR PETITION: COPIES AND FEES

You must file 10 copies of your petition for review with the clerk of the Supreme Court. Attorneys are required to electronically file one copy of the petition for review; self-represented litigants may electronically file one copy. A sample petition for review form is attached. When you file your petition, you must pay the \$195 filing fee, which is not refundable. If you believe you cannot afford the fee, you should ask the person who helps you in the Office of the Clerk of the Supreme Court to send you an affidavit of indigency, which you must complete and return. The clerk of the Supreme Court will determine whether you are indigent by applying section 814.29 of the

Wisconsin Statutes and the monetary guidelines established by the court. Section 814.29, which is available at www.legis.state.wi.us/statutes/Stat0814.pdf, says that you may be found indigent if you are receiving public assistance such as aid to families with dependent children, medical assistance, supplemental security income, food stamps, and certain benefits for veterans. If you do not receive public assistance, an analysis of your ability to pay will be conducted based upon the federal poverty guidelines and taking into account the size of your household, your income, expenses, assets and debts.

If you are a prisoner, you may request a waiver of the filing fee – but you must first meet the definition of “prisoner” in the Wisconsin Statutes. Prisoners who meet this definition and who request a waiver of the prepayment of the filing fee must follow the procedures in section 814.29(1m) of the Wisconsin Statutes, available at <http://www.legis.state.wi.us/statutes/Stat0814.pdf>.

Defining ‘prisoner’

Under section 801.02(7)(a)2, available at www.legis.state.wi.us/statutes/Stat0801.pdf, a prisoner is any person who is “incarcerated, imprisoned or otherwise detained by a law enforcement officer” EXCEPT:

- a. a person committed under Chapter 980, the Sexually Violent Persons law;
- b. a person seeking relief from a judgment or order terminating parental rights;
- c. a person seeking relief from a judgment of conviction or a sentence of a court. This includes an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under rules 809.30 or 809.40, which are available at www.legis.state.wi.us/statutes/Stat0809.pdf, or under Wisconsin Statutes sections 973.19 or 974.06, which are available at www.legis.state.wi.us/statutes/Stat0973.pdf.
- d. a person seeking discretionary review under Rule 809.50 of a non-final order that was entered in a Chapter 980 (Sexually Violent Persons Law) proceeding or in a case specified under Rule 809.30 or 809.40;
- e. a person who is not serving a sentence for the commission of a crime but who is detained, admitted or committed under:

Chapter 51 (the State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act, available at www.legis.state.wi.us/statutes/Stat0051.pdf) or

Chapter 55 (the Protective Service System Act, available at www.legis.state.wi.us/statutes/Stat0055.pdf) or

Section 971.14(2) or (5) of the Wisconsin Statutes, which covers competence to stand trial and is available at www.legis.state.wi.us/statutes/Stat0971.pdf.

If you are a prisoner, you may request that the clerk of the Supreme Court send the affidavit of indigency designed specifically for use by prisoners. You should complete it and return it to the clerk. You must also submit a certified copy of your prison trust fund account for the six months leading up

to your request¹⁵ AND a copy of a written authorization to the Department of Corrections to forward payments to the court from the prisoner's account when required.¹⁶ A form authorization may also be obtained from the clerk of the Supreme Court. If the trust fund information is not provided to the court, the petition for review will be dismissed without prejudice.¹⁷ The court may also dismiss the petition for review if the written authorization is not provided.¹⁸

Upon review of the affidavit of indigency and the trust fund account statement, the court will determine the amount of the initial filing fee according to the requirements of the law.

CONFIDENTIALITY

If you are filing a petition for review in a case that is required by law to be confidential (for example, appeals under Chapters 48, 938, 51 and 55, and paternity cases), you should not include an individual's complete name in any document filed with the court. You must refer to individuals only by their first name and first initial of their last name. This includes the petition for review and briefs.¹⁹ If you include portions of the record in an appendix to a brief, the portions should be reproduced so that only the first name and first initial of the last name is shown.²⁰ Please also note that an individual filing a notice of appeal or brief in a confidential case must include a complete signature on these documents.

¹⁵ Sec. 814.29(1m)(b)2, Stats.

¹⁶ Sec. 814.29(1m)(c)2, Stats.

¹⁷ Sec. 814.29(1m)(g), Stats.

¹⁸ A prisoner need not submit the trust fund account information if he or she is in imminent danger of serious physical harm. A special affidavit of indigency should be requested from the clerk of the Supreme Court.

¹⁹ Rule 809.81(8), Stats.

²⁰ Rule 809.19(2), Stats.

THE OTHER SIDE’S RESPONSE TO YOUR PETITION FOR REVIEW

The opposing side need not respond to your petition, but if it chooses to do so, it must respond within 14 days of service of the petition. The response should be as short as possible and may not exceed 35 pages in a monospaced font or 8,000 words in a proportional serif font. The appendix is not counted in this total. The response must have white front and back covers and 10 copies must be filed with the clerk of the Supreme Court. Attorneys are also required to electronically file one copy of the response; self-represented litigants may electronically file one copy.

THE COURT’S DECISION ON YOUR PETITION FOR REVIEW

There are seven justices on the Wisconsin Supreme Court. At least three of them must vote “yes” in order to grant your petition for review. The court meets in closed session in its conference room in the Capitol at least once a month between September and June in order to consider petitions for review, but this does not mean that your petition will be taken up during the same month it is filed. In fact, you likely will not receive notification of the court’s action on your petition for several months.

Whether the court decides to grant or deny your petition, you and the other parties to the case will receive a written order notifying you of the court’s decision. In some cases, the order also may explain that the court has decided to limit the issues to be considered on review – so, for example, if you presented three issues and the court concluded that just one of those met its criteria, then it would explain that in the order and ask that you limit your briefing and arguments to that one issue. You must abide by the court’s decision with regard to the issues that are to be briefed. You also cannot raise or argue issues not set forth in the petition unless ordered otherwise by the court.

BRIEFING

If the Supreme Court grants your petition for review, the order informing you of this fact will also set out the briefing schedule. Normally, you (the petitioner) must file a brief within 30 days after the date the petition for review is granted, and then the respondent (the party who is

opposing you) must file a brief within 20 days after your brief is filed. Finally, you may file a reply brief within 10 days after the respondent's brief is filed.

If the Clerk's Office receives your brief or appendix without a certification or affidavit of mailing attached, the date of filing will be the date on which it was received by the clerk. The date of mailing cannot be established by the date shown on a postage meter.

You must file 22 copies of your brief with the Supreme Court and serve the other party or parties with three copies each. While the general rule is that a paper is "filed" when it is received by the clerk, a different rule applies to briefs or appendices.

A brief or appendix will be considered timely filed if, on or before the filing deadline, it is correctly addressed and either:

- (1) mailed first-class, with postage pre-paid, through the U.S. Postal Service or by another class that is as quick or quicker, or
- (2) given to a commercial delivery service for delivery to the clerk within three calendar days.²¹

If you are mailing in your brief or appendix, be sure to note that these will be considered filed only if a certification or affidavit setting forth the date and manner by which it was mailed or delivered to the commercial carrier is attached to it.²² (See sample certification form at end of this handbook).²³ The date of mailing cannot be established by the date shown on a postage meter.²⁴

MOTIONS

A motion is a written request asking the court to make a special ruling in your case. Either the petitioner or the respondent may file a motion with the court. You should file nine copies of

²¹ Rule 809.80(3)(b), Stats.

²² Rule 809.80(4)(a), Stats.

²³ Rule 809.80(4)(b), Stats.

²⁴ Rule 809.80(4)(c), Stats.

your motion with the Supreme Court and you must serve a copy of the motion on the other parties in the case. Your motion should state the reasons why you are making a particular request.²⁵ For example, if you need more time to file your brief, tell the court how much time you need and the reason you need an extension. The court will inform you of its decision by mailing you and the other parties in the case an order granting or denying your motion. Do not submit a proposed order. A sample motion form is attached.

SAMPLE FORMS

Petition for review

Certification of Mailing or Certification of Third-Party Commercial Delivery

Motion

²⁵ Rule 809.14, Stats.

**STATE OF WISCONSIN
SUPREME COURT
Case No. _____**

_____ (*party designation, for example appellant or respondent*)

v.

_____ (*party designation, for example appellant or respondent*)

PETITION FOR REVIEW

Name: _____
State Bar No., if applicable _____
Address: _____
Telephone No.: _____

**TABLE OF CONTENTS TO
PETITION FOR REVIEW**

TABLE OF AUTHORITIES.....
ISSUES PRESENTED FOR REVIEW
BRIEF STATEMENT OF CRITERIA FOR REVIEW.....
STATEMENT OF FACTS AND OF THE CASE.....
ARGUMENT.....
CONCLUSION.....
CERTIFICATION OF FORM AND LENGTH
CERTIFICATION OF ELECTRONIC FILING
APPENDIX.....

PETITION FOR REVIEW

_____ (*name*) _____, (*party designation, for example appellant*) hereby petitions the Supreme Court of the State of Wisconsin, pursuant to Wis. Stat. § 808.10 and Wis. Stat. § (Rule) 809.62 to review the decision or order of the Court of Appeals, District _____, in _____, (*case caption*) case no. _____, filed on _____. (*date of Court of Appeals decision or order*)

ISSUES PRESENTED FOR REVIEW

The issues presented for review are: (*describe issues in list format*)

[For example: 1. Does the forced ingestion of laxatives at the direction of the police in order to obtain a package swallowed by a person constitute a search for purposes of the Fourth Amendment to the United States Constitution?]

The Court of Appeals decided the issues as follows:

[Set forth the Court of Appeals decision on each issue.]

The reasons the Supreme Court should grant review are:

[Refer to criteria in Wis. Stat. § (Rule) 809.62 and explain why the criteria are satisfied by the issues presented.]

For example: The Court should grant review because the issue described above presents a novel question of constitutional law that the Wisconsin Appellate Court have not previously considered. Resolution of these issues by the Supreme Court is necessary to provide guidance to the lower courts and law enforcement regarding the limits that law enforcement officials must observe in attempting to recover evidence of a drug crime.

STATEMENT OF FACTS AND OF THE CASE

[Set forth a statement of the case, including a description of the nature of the case, including a description of the nature of the case.]

and

[Set forth the procedural status of the case leading up to the filing of this petition for review; the dispositions in the trial court and Court of Appeals.]

and

[Set forth a statement of any facts not included in the Court of Appeals' decision or order that are relevant to the issues presented for review.]

ARGUMENT

[Set forth an argument expanding on the reasons why the Supreme Court should grant the petition for review.]

Date: _____

_____ (Signature, State Bar No. if applicable)

_____ (Address)

_____ (Telephone No.)

CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of appeals by first-class mail, or other class of mail that is at least as expeditious, on _____ (date of mailing). I further certify that the petition for review or appendix was correctly addressed and postage was pre-paid.

Date: _____

Signature _____

OR

CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on _____ (date of delivery to carrier), this petition for review or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: _____

Signature _____

NOTE: You may also file an affidavit of mailing or delivery, setting forth the same information. See § 809.80(4) Wis. Stats.

STATE OF WISCONSIN, SUPREME COURT

For Official Use

_____))
 _____,))
 _____))
 (party designation) _____))
 _____))
 -vs- _____))
 _____))
 _____,))
 _____))
 (party designation) _____))

Motion for

Case No. _____

(Name of party making motion) _____, the [choose one] Petitioner Respondent,

moves the court, pursuant to (specify statute or rule under which motion is made) _____,

as follows: _____

Date: _____

Signature of Filing Attorney or Party	Telephone Number
Name Printed or Typed	State Bar Number (if applicable)
Address	

This completed form must be *filed* with the clerk of the Supreme Court, and copies must be served upon opposing counsel and/or parties.