

STATE OF WISCONSIN

SUPREME COURT

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In re:

WISCONSIN STATUTES §§ 809.107 AND 809.19

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**PETITION OF WISCONSIN JUDICIAL COUNCIL
FOR AN ORDER AMENDING WIS. STATS.
§§ 809.107 AND 809.19**

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ON BEHALF OF THE WISCONSIN JUDICIAL COUNCIL

May 4, 2017

The Wisconsin Judicial Council respectfully petitions the Wisconsin Supreme Court to amend WIS. STATS. §§ 809.107 and 809.19.

This petition is directed to the Supreme Court's rule-making authority under WIS. STAT. § 751.12.

PETITION

The Judicial Council respectfully requests that the Supreme Court adopt the following:

SECTION 1. 809.107 (6) (b) of the statutes is amended to read:

809.107 (6) (b) *Respondent's brief.* The respondent shall file a brief within 10 days after the service of the later of the appellant's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the appellant.

SECTION 2. 809.107 (6) (c) of the statutes is amended to read:

809.107 (6) (c) *Appellant's reply brief.* The appellant shall file within 10 days after the service of the later of the respondent's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the respondent, a reply brief or statement that a reply brief will not be filed.

SECTION 3. 809.107 (6) (d) of the statutes is amended to read:

809.107 (6) (d) *Guardian ad litem's brief.* If the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding takes the position of the appellant, the guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal with the court of appeals. If the guardian ad litem takes the position of a respondent, the guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief. If the guardian ad litem chooses not to participate in an appeal, the guardian ad litem shall file with the court a statement of reasons for not participating under s. 48.235 (7) within 15 days of the filing of the notice of appeal.

SECTION 4. 809.19 (5) (title) of the statutes is amended to read:

809.19 (5) (title) CONSOLIDATED, JOINT, AND MULTIPLE PARTY APPEALS.

SECTION 5. 809.19 (5) of the statutes is renumbered 809.19 (5) (a) and amended to read:

809.19 (5) (a) Each appellant in consolidated appeals or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. Appellants and co-appellants represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single appellant.

SECTION 6. 809.19 (5) (b) to (d) of the statutes are created to read:

809.19 (5) (b) In appeals involving more than one respondent, including consolidated cases, each respondent may file a separate brief or a joint brief with another respondent. Respondents represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single respondent.

(c) When multiple appellant's briefs have been filed, only a single respondent's brief is allowed by each respondent or by respondents filing a joint brief. When multiple respondent's briefs have been filed, only a single reply brief is allowed by an appellant or co-appellant or by appellants and co-appellants who filed a joint brief.

(d) If separate briefs are filed by multiple appellants or co-appellants, the time for filing and serving the respondent's brief shall not commence until all briefs on behalf of all appellants and co-appellants have been filed. If separate briefs are filed by multiple respondents, the time for filing and serving the reply brief shall not commence until all briefs on behalf of all respondents have been filed.

SECTION 7. 809.19 (6) (g) of the statutes is created to read:

809.19 (6) (g) Subsection (5) applies to appeals involving multiple appellants-cross respondents or respondents-cross appellants.

SECTION 8. 809.19 (8m) of the statutes is amended to read:

809.19 (8m) **GUARDIAN AD LITEM BRIEF.** If the guardian ad litem chooses to participate in an appeal and takes the position of an appellant, the guardian ad litem's brief shall be filed within 40 days after the filing in the court of the record on appeal. If the guardian ad litem chooses to participate in an appeal and takes the position of a respondent, the guardian ad litem's brief shall be filed within 30 days after service of the appellant's brief. In an appeal related to the termination of parental rights, a guardian ad litem shall follow the filing procedures set forth under s. 809.107(6)(d). If an unpublished opinion is cited under s. 809.23(3) (a) or (b), a copy of the opinion shall be provided in an appendix

to the brief. If the guardian ad litem chooses not to participate in an appeal of an action or proceeding, the guardian ad litem shall file with the court a statement of reasons for not participating within 20 days after the filing of the appellant's brief. The time for filing and serving the brief due after the guardian ad litem's brief shall not commence until all briefs of the parties in the position taken by the guardian ad litem have been filed.

Dated May 4, 2017.

RESPECTFULLY SUBMITTED,

WISCONSIN JUDICIAL COUNCIL



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Appendix 1

After the effective date, the amended subsections would read as follows:

809.107. Appeals in proceedings related to termination of parental rights

(6) SUBSEQUENT PROCEEDINGS IN COURT OF APPEALS; PETITION FOR REVIEW IN SUPREME COURT. Subsequent proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:

(a) *Appellant's brief-in-chief*. The appellant shall file a brief within 15 days after the filing of the record on appeal.

(am) *Motion for remand*. If the appellant intends to appeal on any ground that may require postjudgment fact-finding, the appellant shall file a motion in the court of appeals, within 15 days after the filing of the record on appeal, raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue. If the court of appeals grants the motion for remand, it shall set time limits for the circuit court to hear and decide the issue, for the appellant to request transcripts of the hearing, and for the court reporter to file and serve the transcript of the hearing. The court of appeals shall extend the time limit under par. (a) for the appellant to file a brief presenting all grounds for relief in the pending appeal.

(b) *Respondent's brief*. The respondent shall file a brief within 10 days after the service of the later of the appellant's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the appellant.

(c) *Appellant's reply brief*. The appellant shall file within 10 days after the service of the later of the respondent's brief or the guardian ad litem's brief, if the guardian ad litem takes the position of the respondent, a reply brief or statement that a reply brief will not be filed.

(d) *Guardian ad litem's brief*. If the guardian ad litem appointed under s. 48.235(1)(c) for the child who is the subject of the proceeding takes the position of the appellant, the guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal with the court of appeals. If the guardian ad litem takes the position of a respondent, the guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief. If the guardian ad litem chooses not to participate in an appeal, the guardian ad litem shall file with the court a statement of reasons for not participating under s. 48.235 (7) within 15 days of the filing of the notice of appeal.

(e) *Decision.* Cases appealed under this section shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief or statement that a reply brief will not be filed.

(f) *Petition for review.* A petition for review of an appeal in the supreme court, if any, shall be filed within 30 days after the date of the decision of the court of appeals. The supreme court shall give preference to a petition for review of an appeal filed under this paragraph.

809.19. Briefs and appendix.

(5) CONSOLIDATED, JOINT, AND MULTIPLE PARTY APPEALS. (a) Each appellant in consolidated appeals or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. Appellants and co-appellants represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single appellant.

(b) In appeals involving more than one respondent, including consolidated cases, each respondent may file a separate brief or a joint brief with another respondent. Respondents represented by the same counsel shall file a joint brief. A joint brief must not exceed the page allowance for a single respondent.

(c) When multiple appellant's briefs have been filed, only a single respondent's brief is allowed by each respondent or by respondents filing a joint brief. When multiple respondent's briefs have been filed, only a single reply brief is allowed by an appellant or co-appellant or by appellants and co-appellants who filed a joint brief.

(d) If separate briefs are filed by multiple appellants or co-appellants, the time for filing and serving the respondent's brief shall not commence until all briefs on behalf of all appellants and co-appellants have been filed. If separate briefs are filed by multiple respondents, the time for filing and serving the reply brief shall not commence until all briefs on behalf of all respondents have been filed.

(6) **CROSS-APPEAL.** Briefing in a cross-appeal shall be as follows:

(a) An appellant-cross-respondent shall file a brief titled "Appellant's Brief" within the time specified by, and in compliance with, the requirements of subs. (1) and (2).

(b)1. A respondent-cross-appellant shall file a brief titled "Combined Brief of Respondent and Cross-Appellant" within the later of any of the following:

a. Thirty days after the date of service of the appellant-cross-respondent's brief, and 3

additional days under s. 801.15(5)(a) if service is accomplished by mail.

b. Thirty days after the date on which the court accepts the appellant- cross-respondent's brief for filing.

c. Thirty days after the date on which the record is filed in the office of the clerk.

2. The front and back covers of the combined brief shall be red. The respondent portion of the combined brief shall comply with the requirements of this section for a respondent's brief, including the length limitation for such a brief set forth in sub. (8)(c)1. The cross-appellant portion of the combined brief shall comply with the requirements of subs. (1) and (2) for an appellant's main brief, including the length limitation for such a brief set forth in sub. (8)(c)1., except that the requirements of sub. (1)(c) and (d) may be omitted, the cross-appellant portion of the combined brief shall be preceded by a blank blue cover, and a signature shall be required only at the conclusion of the cross-appellant portion of the combined brief.

(c)1. An appellant-cross-respondent shall file a brief titled "Combined Brief of Appellant and Cross-Respondent" within the later of:

a. Thirty days after the date of service of the respondent-cross- appellant's brief, and 3 additional days under s. 801.15 (5)(a) if service is accomplished by mail; or

b. Thirty days after the date on which the court accepts the respondent- cross-appellant's brief for filing.

2. The front and back covers of the combined brief shall be gray. The appellant portion of the combined brief shall comply with the requirements of sub. (4) for a reply brief, including the length limitation for such a brief set forth in sub. (8)(c) 2. The cross-respondent portion of the combined brief shall comply with the requirements of sub. (3) for a respondent's brief, including the length limitation for such a brief set forth in sub. (8)(c)1., except that the requirement of sub. (1)(c) may be omitted, the cross-respondent portion of the combined brief shall be preceded by a blank red cover, and a signature shall be required only at the conclusion of the cross-respondent portion of the combined brief.

(d) A respondent-cross-appellant shall file either a reply brief titled "Reply Brief of Cross-Appellant" in the form required by sub. (4) for reply briefs, or a statement that a reply brief will not be filed, within the later of:

1. Fifteen days after the date of service of the appellant-cross- respondent's brief, and 3 additional days under s. 801.15(5)(a) if service is accomplished by mail; or

2. Fifteen days after the date on which the court accepts the appellant- cross-respondent's brief for filing.

(e) Each part of a combined brief shall comply with the form and length certification requirements of sub. (8)(d).

(f) A respondent-cross-appellant must comply with the same appendix rules as an appellant under sub. 2(a) and (b), except that a respondent-cross-appellant shall not be

required to include materials that are contained in the appellant's appendix.

(g) Subsection (5) applies to appeals involving multiple appellants-cross respondents or respondents-cross appellants.

(8m) GUARDIAN AD LITEM BRIEF. If the guardian ad litem chooses to participate in an appeal and takes the position of an appellant, the guardian ad litem's brief shall be filed within 40 days after the filing in the court of the record on appeal. If the guardian ad litem chooses to participate in an appeal and takes the position of a respondent, the guardian ad litem's brief shall be filed within 30 days after service of the appellant's brief. In an appeal related to the termination of parental rights, a guardian ad litem shall follow the filing procedures set forth under s. 809.107(6)(d). If an unpublished opinion is cited under s. 809.23(3) (a) or (b), a copy of the opinion shall be provided in an appendix to the brief. If the guardian ad litem chooses not to participate in an appeal of an action or proceeding, the guardian ad litem shall file with the court a statement of reasons for not participating within 20 days after the filing of the appellant's brief. The time for filing and serving the brief due after the guardian ad litem's brief shall not commence until all briefs of the parties in the position taken by the guardian ad litem have been filed.