

Guide to

# **APPELLATE PROCEDURE**

for the

# **SELF-REPRESENTED**



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and Court of Appeals**

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The Guide to Appellate Procedure for the Self-Represented is not legal advice and cannot be cited as legal authority. This guide is not intended to replace or to be a substitute for the Wisconsin Rules of Appellate Procedure, and should be used in conjunction with the Rules. Anyone considering initiating an appeal may wish to seek legal counsel.

This *Guide to Appellate Procedure for the Self-Represented* is based upon the Wisconsin Rules of Appellate Procedure in effect as of January 1, 2008.



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RICHARD S. BROWN  
CHIEF JUDGE

Dear Friend:

The goal of this *Guide* is to provide general information to assist individuals in understanding the appeals process and to help non-lawyers with the basic steps and procedures for filing an appeal in the Wisconsin Court of Appeals and Supreme Court. This *Guide* focuses primarily on appeals to the Court of Appeals (the intermediate-level court which hears criminal and civil appeals from Wisconsin's circuit courts), but also deals with some types of cases heard by the Supreme Court.

The Frequently Asked Questions section is intended to be an introduction to concepts related to the appeals process. The question and answer format provides definitions of terms and general information about deadlines, fees, and the options available at the various stages of an appeal. Subsequent sections provide contact information for the Clerk's Office, links to useful Web sites, information on types of appeals and how to get your appeal started, more detail regarding the requirements of Briefs, Appendices, and Motions, and checklists for use in preparing these documents. There is a glossary of terms associated with appeals, and several of the most commonly used forms are appended to this *Guide* for your convenience.

Please keep in mind that this *Guide* is not a substitute for legal counsel or a thorough understanding of the Wisconsin Rules of Appellate Procedure. It is not and does not purport to be a complete explanation of all aspects of Wisconsin appellate procedure; such an explanation would require a much longer and more complex document than this *Guide*. If you have comments or questions about this *Guide* or about appellate procedure, please do not hesitate to contact the Clerk's Office at [clerk@wicourts.gov](mailto:clerk@wicourts.gov) or (608) 266-1880.

This *Guide* is indebted to and builds upon *A Citizen's Guide to Filing an Appeal in the Wisconsin Court of Appeals*, created in 1991 by attorneys Bobbie Klein and Laura Dulski. I would like to thank Margaret Carlson, Chief Staff Attorney for the Wisconsin Court of Appeals, for her review of this *Guide* and thoughtful comments.

The Clerk's Office is dedicated to serving the citizens of Wisconsin, and we hope that this *Guide* is a useful tool for navigating the complex appeals process.

David R. Schanker  
Clerk of the Wisconsin Supreme Court  
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# FREQUENTLY ASKED QUESTIONS ABOUT THE APPELLATE PROCESS

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## Q. **What is an appeal?**

- A. If you go to court, and you are not satisfied with the court’s judgment or order, you are entitled to appeal that judgment or order to the Court of Appeals. An appeal asks the Court of Appeals to look at what the circuit court did to determine if the circuit court made the right decision or followed the correct procedure. Unless the appeal is an “appeal by permission” (explained below), it must be a final judgment or order from the circuit court.

An individual or party who appeals a circuit court judgment or order is called an “Appellant” in the Court of Appeals. The individual or party who must respond to the appeal (most often the opposing party in the circuit court) is called the “Respondent.”

## Q. **What is a judgment or order?**

- A. A “judgment” is a ruling made by a circuit court judge. It usually comes at the end of a case and usually favors one of the parties. The judgment, sometimes referred to as an “order,” often requires one or both of the parties to do something. The judgment is usually in writing and explains why the court ruled the way it did. Many civil cases end when one party asks for summary judgment. A motion for summary judgment filed by one of the parties asks the judge to rule in its favor *prior to* a trial. If the circuit court grants summary judgment resolving all the issues in the case in favor of one party, the other party can appeal that decision.

A judgment that does *not* resolve all the issues in the case is referred to as a “nonfinal judgment.” In order to appeal a nonfinal judgment, an appellant must request permission to appeal. See “Permissive Appeals” in Section III of this *Guide*.

An order or judgment must be in writing and must be “entered” (that is, filed in the office of the circuit court clerk) before the Court of Appeals has jurisdiction to review it. The date of entry is the date the document is filed with the circuit court clerk. With a few exceptions, an appeal from an *oral* judgment or order will be dismissed.<sup>1</sup>

## Q. **Who can appeal?**

- A. With few exceptions, any party who is dissatisfied with the result in the circuit court has the right to appeal, with or without the assistance of an attorney. The process of an appeal is complicated, time-consuming, and difficult, however, and the assistance of an attorney is recommended. No special treatment is given to parties who represent themselves. Like attorneys, a self-represented party (also known as a *pro se* party) must comply with the requirements of the Wisconsin Rules of Appellate Procedure.

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<sup>1</sup> An exception to the rule that the judgment or order must be in writing and entered exists for final dispositions in small claims, traffic regulation or municipal ordinance violations prosecuted in circuit court. An appeal in one of these types of cases may be taken from a disposition of the case recorded in the circuit court clerk’s case record entries, and the time for appeal begins to run when the entry is made.

**Q. What types of courts are there?**

A. In sixty-six of Wisconsin's seventy-two counties, there is a circuit court that serves that county's residents. In the other six counties, one circuit court serves two counties (Buffalo/Pepin, Florence/Forest, and Shawano/Menominee). Some counties have several courts, with some hearing criminal cases and others hearing civil cases or small claims cases. The next level above the circuit court is the Wisconsin Court of Appeals. If you are unhappy with the final judgment in the circuit court, you may appeal the judgment to the Court of Appeals. The next level above the Court of Appeals is the Wisconsin Supreme Court. If you are unhappy with the judgment of the Court of Appeals, you may ask the Wisconsin Supreme Court to look at your case.

**Q. What is the difference between a criminal case and a civil case?**

A. A criminal case is where a person is charged with violating one of Wisconsin's criminal laws. In a criminal case, the State of Wisconsin, represented by the District Attorney (also referred to as the Prosecutor), may bring the accused person to trial. In a criminal case, the State is the plaintiff and the accused person is the defendant (because that person must *defend* himself or herself against the accusation). If the defendant is found guilty, the defendant may appeal that judgment to the Court of Appeals.

A civil case is where individuals, groups of individuals, or companies (called parties or litigants) are in conflict and ask the court to resolve that conflict. Civil cases can involve disputes over contracts, automobile accidents, injuries, divorce, child custody, and many other issues. If any party to the case is unhappy with the court's ruling in the case, that party can appeal the court's final ruling to the Court of Appeals.

**Q. How much does it cost to appeal?**

A. The filing fee to open a case in the Court of Appeals is \$195.<sup>2</sup> This filing fee is due once the Notice of Appeal is filed in the circuit court. It can be paid in the circuit court or it can be sent to the Clerk of the Court of Appeals. A copy of the Notice of Appeal must be sent to the Clerk of the Court of Appeals along with the \$195 filing fee. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status, under which you will be exempt from payment of the filing fee. See "Applying for Indigent Status" in Section IV of this *Guide*.

If a Transcript is requested, there are fees that the Court Reporter will charge to prepare the transcript for the Court. Even if a party is granted indigent status, the court reporter, in some circumstances, can still charge to prepare the transcript. The circuit court can explain those costs. There are also costs involved with preparing documents for the Court as well as getting copies made. Most filings in the Court of Appeals require multiple copies—as many as ten in the case of briefs. Thus, there are expenses for copying documents in addition to the filing fee, the cost of copying portions of the Record on Appeal, and the cost of preparing any transcripts in the case.

**Q. Can the Court of Appeals or Supreme Court appoint an attorney to represent me?**

A. No. The circuit court can appoint an attorney to represent a party on appeal in a criminal case under certain circumstances. The Court of Appeals and Supreme Court generally do not appoint attorneys. Circuit courts generally do not appoint attorneys in civil cases. If you are financially unable to hire an attorney, a motion can be filed in the circuit court asking for indigent status and/or

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<sup>2</sup> 809.25(2).

the appointment of counsel in a criminal case. Contact the circuit court to determine what is necessary for this procedure and if it is possible to obtain court-appointed counsel in your particular kind of case.

**Q. If I choose to get an attorney to represent me, can the Clerk's office recommend a good lawyer?**

A. No. The Clerk cannot recommend a particular lawyer. The State Bar of Wisconsin has a lawyer referral and information service where you can get names of attorneys specializing in a particular area of law. The State Bar can only provide names of attorneys, but cannot recommend an attorney. The State Bar lawyer referral and information service can be reached at (800) 362-9082 (outside the Madison area) or (608) 257-4666 (in Madison or outside Wisconsin). You may also contact the State Bar to get the phone number for a local bar association, which may also be able to give a referral. For further information, visit the State Bar of Wisconsin Web site at [www.wisbar.org](http://www.wisbar.org).

**Q. Is there any difference between the way civil and criminal cases are handled on appeal?**

A. Yes, there are significant differences prior to the start of the briefing period. Please see Section IV: Initiation of an Appeal in the Court of Appeals.

**Q. Where can I find the rules for filing an appeal?**

A. You can access the appellate rules on the State of Wisconsin Web site. The Internet address for the rules is: <http://www.legis.state.wi.us/statutes/Stat0809.pdf>. In addition, most public libraries have the Wisconsin Statutes, which contain the appellate rules in Chapters 809 and 808.

**Q. What is the first thing I should do if I want to appeal the circuit court's judgment?**

A. Except for permissive appeals, the circuit court must be finished with your case before you can appeal. The circuit court is finished when it issues a final judgment or a final order.<sup>3</sup>

**Civil cases.** In a civil case, you have 45 days from the entry of final judgment or final order to file a document called a Notice of Appeal if you have received written notice of the entry of the final judgment or final order within 21 days.<sup>4</sup> If no written notice has been given, you have 90 days. The Notice of Appeal is filed in the circuit court clerk's office, and copies must be sent to the Clerk of the Court of Appeals and to all other parties in the case. The Notice of Appeal tells the circuit court that you are going to appeal the circuit court's judgment and contains information about your case.<sup>5</sup> A Notice of Appeal Form is in the Appendix at the back of this *Guide*.

**Small Claims Eviction cases.** In a small claims *eviction* case, you have 15 days from the entry of final judgment or order to file a Notice of Appeal.<sup>6</sup> [Note: in eviction actions, an order for judgment for restitution of the premises is appealable even though other claims (such as for monetary damages) may be unresolved.] Other small claims cases have the same deadlines as regular civil

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<sup>3</sup> 808.03(1).

<sup>4</sup> 808.04(1). Written notice of entry of judgment or order is a formal, captioned and signed notice stating the correct date of entry of judgment or order. It must be served on the opposing parties within 21 days of entry and filed with the circuit court.

<sup>5</sup> 809.10(1).

<sup>6</sup> 799.445; 808.04(2).

cases.

**Criminal cases.** In a criminal case, you have twenty days after the date of sentencing or final judgment to file a Notice of Intent to Pursue Postconviction or Postdisposition Relief.<sup>7</sup> Within 5 days after you file this Notice of Intent, the circuit court will send either to the state public defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of court reporters who worked on your trial or hearings (also called the “proceedings”), and a list of the proceedings in your case for which a transcript has been filed with the circuit court. Please note that the Notice of Intent is **not** the same or a substitute for filing the Notice of Appeal. See “How to Initiate a Criminal Appeal” in Section IV of this *Guide*.

**Termination of Parental Rights cases.** Termination of parental rights (“TPR”) cases are *expedited* cases, meaning that they are moved through the appeals process more quickly than other cases. In a TPR case, a Notice of Intent to Appeal must be filed within 30 days after the entry of final judgment,<sup>8</sup> and a Notice of Appeal must be filed within 30 days after the transcript or circuit court case record has been served.<sup>9</sup>

**Q. What does the Notice of Appeal need to contain?**

A. The Notice of Appeal must contain all of the following information: (1) the case name and number of the circuit court proceedings; (2) a description of the judgment or order appealed from, including the date it was entered; (3) a statement whether the appeal is one of the types specified in 752.31(2) (small claims actions, municipal ordinance violations, violations of traffic regulations, cases under chs. 48, 51, 55, or 938, contempt, misdemeanors, and cases involving civil forfeitures);<sup>10</sup> and (4) a statement whether the appeal is one of those to be given preference in the circuit court or court of appeals by statute. A Notice of Appeal Form is in the Appendix at the back of this *Guide*. **Note:** The Notice of Appeal must be signed by the filing party.

**Q. If I file a Motion to Reconsider in the circuit court, when is my Notice of Appeal due?**

A. If a Motion to Reconsider, to Vacate, or to Modify (or any other postjudgment motion) is filed in the circuit court, the Notice of Appeal is still due 45 days from the entry of final judgment or 90 days if you have not received written notice of the entry of the final judgment. No additional time is granted while the Motion to Reconsider is being considered by the circuit court, with the exception of actions tried by the court without a jury under 805.17. In those circumstances, if the court grants the motion and amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the court denies the motion, the time for initiating an appeal begins when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within 90 days after entry of judgment the court does not decide the motion, the motion is considered denied and the time for initiating an appeal begins 90 days after the judgment.<sup>11</sup>

**Q. Do I need to file a Docketing Statement?**

A. The purpose of a Docketing Statement is primarily to ask the Court of Appeals to examine whether or not the case is eligible to be expedited.<sup>12</sup> A Docketing Statement does **not** need to be filed by a

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<sup>7</sup> 809.30(2).

<sup>8</sup> 809.107(2).

<sup>9</sup> 809.107(5).

<sup>10</sup> These types of cases are decided by a single judge rather than by three judges. If you wish to have this type of case decided by a three-judge panel, you must file a motion under 809.41(1).

<sup>11</sup> 805.17(3).

<sup>12</sup> 809.17; 809.10(1)(d).

*self-represented* party.<sup>13</sup> For more information on *expedited* or *fast-track* cases, please see 809.17 and 809.10(1)(d).

**Q. What do I do after I file my Notice of Appeal?**

- A. After you file your Notice of Appeal, you have 14 days to file a “Statement on Transcript” with the Clerk of the Court of Appeals and the circuit court clerk.<sup>14</sup>

**Q. What is a Statement on Transcript?**

- A. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. A Statement on Transcript Form is in the Appendix at the back of this *Guide*. If your case was decided entirely on briefs or other written documents, you will not need a transcript. If you want to refer to statements made in court, you must request a transcript and make arrangements with the court reporter to pay for it.

**If you request a transcript**, you must communicate with the court reporter preparing the transcript to make arrangements for the filing and service of the transcript. You must do this *before* filing the Statement on Transcript. If the court reporter has not yet filed the transcript in the circuit court clerk’s office at that time, the court reporter must complete the court reporter’s portion of the Statement on Transcript indicating when the transcript will be filed. [If you are unable to contact the court reporter and are unable to get the court reporter to sign the Statement on Transcript, you may request an extension of time to file your statement.] You then file the Statement on Transcript with the Clerk’s Office and the clerk of the circuit court, and serve it on the other parties. Please keep in mind that the *original* of the Statement on Transcript is filed with the appellate Clerk’s Office and *copies* of the statement are filed with the clerk of the circuit court and served on the parties.

**Q. How long does the Court Reporter have to prepare and file the Transcript?**

- A. In most cases, the Court Reporter has 60 days after the date on which the transcript was requested and arrangements were made for payment.<sup>15</sup> By that deadline, the Court Reporter must serve copies of the transcript on the parties to the appeal, file the transcript with the circuit court, and notify the Clerk of the Court of Appeals that the transcript has been filed and served.

In cases where a motion for postconviction or postdisposition relief has been heard by the circuit court, the court reporter must file the transcript within 20 days after the date on which the transcript was requested.

**Q. What is the Record on Appeal?**

- A. The Record on Appeal is a compilation of the original documents filed with the circuit court. It also includes the transcript, if one was prepared. It is the job of the clerk of the circuit court to assemble the Record on Appeal.<sup>16</sup> At least 10 days before the due date for filing the Record on Appeal in the court, the circuit court clerk notifies the parties that the record is ready for inspection. You then have the right to inspect the record to determine if it accurately reflects what happened in the circuit court. If you believe it is defective in some way, you can file a motion asking the circuit court to supplement or correct the record.

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<sup>13</sup> 809.10(1)(d).

<sup>14</sup> 809.11(4).

<sup>15</sup> 809.11(7).

<sup>16</sup> 809.15.

The circuit court clerk sends the Record on Appeal to the Court of Appeals within 20 days of the date of the filing of the transcript (or within 20 days of the filing of the Statement on Transcript if there is to be no transcript or all necessary transcripts were previously filed).

**Q. What happens after the Record on Appeal is filed?**

- A. The next step for the Appellant is the preparation and filing of the Appellant's Brief, which is due 40 days after the filing of the Record on Appeal.<sup>17</sup>

**Q. What is a brief?**

- A. A brief is a document prepared by each of the parties explaining to the Court what happened in the circuit court, and why that party believes the circuit court's judgment or order should be changed or remain the same. The brief is a party's chance to argue its case to the judges. Because most cases do not have an oral argument, the brief is very important. There are very specific requirements for the form and contents of a brief. See Section VI: Briefs in this *Guide* and Rule 809.19(1).

**Q. When do I file my brief?**

- A. The Appellant's Brief (the brief by the party who is appealing) is due 40 days after the filing of the Record on Appeal (except in Termination of Parental Rights cases; see below). The Respondent's Brief is due 30 days after the date of service of the Appellant's Brief, with 3 days added if the service is accomplished by mail.<sup>18</sup>

**Q. What do I do if I can't file my brief within the time limit?**

- A. If you cannot file your brief within the time limit, you can file a Motion for Extension of Time to File Brief. In this motion, you explain to the Court why you need additional time and for how long. Generally, Motions for Extension of Time ask for an extension of between seven and thirty days. If the case involves issues of adoption or termination of parental rights, the Court will not usually grant extensions of time.

**Q. What is an Appendix and when do I file it?**

- A. An Appendix is a compilation of documents selected from the Record on Appeal that are essential to the Court's understanding of the issues raised on appeal. A party (usually the Appellant) prepares the Appendix and attaches it to the back of the party's brief. The Appendix must include a table of contents. It includes documents filed by the parties in the circuit court as well as judgments or orders issued by the judge in the circuit court.

**NOTE:** The Brief and Appendix must include two certifications. First, you must certify that the Appendix meets certain content requirements.<sup>19</sup> Second, you must certify that the Brief and Appendix are within certain length requirements.<sup>20</sup> These certifications must be reproduced exactly as they are set out in the Rules. A sample appellant's certification is in the Appendix to this *Guide*.

**Q. Can I present new evidence to the Court of Appeals or Supreme Court that was not given to the circuit court?**

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<sup>17</sup> 809.19(1).

<sup>18</sup> 809.19(3).

<sup>19</sup> 809.19(2)(b).

<sup>20</sup> 809.19(8)(d).

A. No. Parties in an appeal are not permitted to offer any evidence that was not presented in the circuit court. The Court decides the case strictly on the basis of the record in the circuit court.

**Q. What happens after the Appellant submits its brief?**

A. The Respondent has thirty (30) days from the filing of the Appellant's Brief to file its answer brief. This brief is the chance for the winning party in the circuit court to respond to the issues presented by the Appellant in its brief.

**Q. Does the party filing the appeal have a chance to respond to the Respondent's Brief?**

A. Yes. The Appellant may file a Reply Brief. This brief allows the Appellant the opportunity to respond to the arguments made by the Respondent. The Reply Brief is limited to issues that were raised in the Appellant's Brief or a response to issues raised in the Respondent's Brief. The Appellant cannot bring up new issues in the Reply Brief that were not presented in the Appellant's Brief. If you choose *not* to file a Reply Brief, you should file a written statement informing the court that a reply brief will not be filed.

The Reply Brief is due 15 days after service of the Respondent's Brief, plus three days from the date of mailing *if* you received the Respondent's Brief in the mail.

**Q. Are there different types of appeals?**

A. Yes. Most appeals are regular direct appeals. There are also permissive appeals. See Section III: Types of Appeals.

**Q. Do I get a court hearing in a Court of Appeals case?**

A. No. No trial or hearing takes place in an appeal and no new evidence is presented. The parties make their arguments to the appellate court in writing. Occasionally, the appellate court may order the parties to participate in an oral argument. This is where each party gets a short time, usually 30 minutes, to argue its case in front of a panel of three judges.<sup>21</sup>

**Q. Who decides a Court of Appeals case?**

A. When all the documents necessary for an appeal have been filed, the case is submitted to the judges who will decide the appeal. Most cases are assigned to a panel of three judges. Certain cases, however, are decided by one judge. These cases include any case under the Children's Code (Ch. 48 of the Wisconsin Statutes), the Mental Health Act (Ch. 51), Protective Services (Ch. 55), small claims actions (Ch. 799), the Juvenile Justice Code (Ch. 938), traffic cases, municipal ordinance violation cases, misdemeanor cases, civil forfeitures, and contempt cases.

**Q. Who decides a Supreme Court case?**

A. There are seven justices who serve on the Wisconsin Supreme Court. In most cases, the justices all participate in deciding the case, and one justice is chosen to write the opinion. See the Wisconsin Supreme Court's publication, *Filing a Petition for Review*, for further information.

**Q. How will my case be decided?**

A. Once all the parties have filed briefs with the Court of Appeals, the case is sent to the Court for a decision. The judges carefully review all of the circuit court records, including the transcript, and

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<sup>21</sup> 809.22.

review the briefs and appendices submitted by the parties. The judges will decide the case, applying the appropriate legal standards using previous cases and statutes as a guide. Please note that judges cannot be contacted directly about a case.

**Q. How will I know what decision the Court makes?**

A. The Court will issue its decision in a document called an opinion, and it is mailed to the parties in the case. In the opinion the Court explains the facts of the case, discusses the parties' arguments, and outlines a rationale for its decision. At the end of the opinion, the Court explains whether or not it agrees with the circuit court or believes the circuit court made some type of error. When the Court agrees with the decision of the circuit court, the opinion will say, "affirmed." If the Court disagrees with the circuit court, the opinion may say, "reversed" or "reversed and remanded." If the case is reversed or remanded, the Court explains why it thinks the decision was wrong, and it gives instructions to the circuit court to modify its result or rehear the case.

**Q. How do I ask the Court to do something or ask the Court to order the circuit court to do something?**

A. Any request presented to the Court must be in the form of a Motion. See Section V: Motions. Do not send letters to the Court requesting assistance with a matter related to your case. Make any request in the form of a Motion that conforms to the Appellate Rules.

**Q. When are my documents considered filed?**

A. Most documents are considered "filed" when they are received by the Clerk of the Court of Appeals and Supreme Court. However, a Brief and/or Appendix can be considered "filed" when it is mailed or sent by Federal Express, UPS, or another commercial carrier, as long as several conditions are met. First, the document must be mailed on or before the filing deadline. If a commercial carrier is used, it must be for delivery within three days. Second, the Brief and/or Appendix **must** have attached to it a certification or affidavit setting forth the date and manner by which it was mailed or delivered to a commercial carrier.

**Rule for Incarcerated or Institutionalized Persons.** If you are confined to an institution, your Brief and/or Appendix is considered timely if it is correctly addressed and delivered to the proper institution authorities for mailing on or before the filing deadline. You **must** also attach a certification or affidavit setting forth the date on which it was delivered to the proper institution authorities for mailing.

**Q. If my due date for a filing falls on a weekend or holiday, what happens?**

A. If the due date falls on a weekend or holiday, the document to be filed is due on the next business day the Clerk's office is open. Therefore, if the due date for your brief falls on a Saturday, the brief is due the following Monday.

**Q. How long will it take for the Court to make a decision?**

A. The Court considers cases in the order in which they are submitted to the Court. The Clerk's Office has no way to know in advance when a particular case will be decided.

**Q. What can I do if I do not like the decision of the Court of Appeals?**

A. You have two options.

First, you can file a **Motion for Reconsideration**, which asks the Court of Appeals to review your case again. A Motion for Reconsideration must be filed within 20 days after the date of the Court of Appeals decision. This motion would need to explain why, based on previous cases, statutes, or policy, you think the decision of the Court of Appeals was made in error.<sup>22</sup>

Second, you can file a **Petition for Review** in the Wisconsin Supreme Court.<sup>23</sup> A Petition for Review must be filed within 30 days after the date of the Court of Appeals decision. A Petition for Review requires an additional filing fee of \$195. This petition asks the Supreme Court to look at the decision of the circuit court and Court of Appeals. Like a Brief, the Petition for Review has very specific requirements as to its form and content. See 809.62. The Wisconsin Supreme Court has the discretion to decide which cases it will consider. Thus, when a party files a Petition for Review, the Court may decide not to hear the case. It is not automatically accepted. The filing of a Motion for Reconsideration in the Court of Appeals does **not** stay the deadline for filing a Petition for Review.

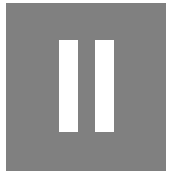
**Q. What happens if my Petition for Review is denied? Can I appeal to the federal courts?**

- A. Once the Wisconsin Supreme Court issues an opinion, the losing party may attempt to take the case to the United States Supreme Court. There are time limits and filing requirements for this process. Please contact the clerk's office for the United States Supreme Court at 202-479-3014 for information on how to file documents. The U.S. Supreme Court takes an extremely limited number of cases each year.

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<sup>22</sup> 809.24.

<sup>23</sup> 809.62.



# GENERAL INFORMATION ABOUT CLERK/INTERNET RESOURCES

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The Clerk's office is open 7:15 a.m. to 5:00 p.m., Monday through Friday, except on State holidays. All documents for the Court of Appeals and Supreme Court must be filed with the Clerk's office, either by mail or hand-delivery. We accept some filings by facsimile (fax).<sup>24</sup> [Briefs, Petitions for Review, and indigency applications may **not** be filed by facsimile.] We do **not** accept filings by email. Documents are file-stamped the date they are received, with the exception of Briefs and Appendices that meet the requirements of 809.80.

## Mailing Address

110 East Main Street, Suite 215  
P.O. Box 1688  
Madison, WI 53701-1688

## Delivery Address (for 3<sup>rd</sup> Party Carriers)

110 East Main Street, Suite 215  
Madison, WI 53703

Phone: (608) 266-1880

Fax: (608) 267-0640

## Court/Clerk Web sites

- The Clerk of the Court of Appeals and Supreme Court.  
<http://www.wicourts.gov/about/organization/offices/clerk.htm>
- Wisconsin Appellate Rules.  
<http://www.legis.state.wi.us/statutes/Stat0809.pdf>
- The Court of Appeals and Supreme Court on-line case search. Use this Web site to check the status of your case online.  
<http://wscca.wicourts.gov/index.xsl>

## Wisconsin Statutes and Constitution

- <http://www.legis.state.wi.us/rsb/stats.html>

## Legal Research Web sites

- Barger on Legal Writing — *Tips for writing appellate briefs.*  
<http://www.ualr.edu/cmbarger/persuasive.html>
- Cornell Law School, Legal Information Institute — *Provides information about legal topics as well as links to state statutes and state constitutions.*  
<http://www.law.cornell.edu>
- Find Law — *Provides information about legal topics by subject matter and jurisdiction.*  
<http://www.findlaw.com>
- LLRX.com — *Provides articles on specific legal topics and links to resources.*  
<http://www.llrx.com>
- The Virtual Chase: Legal Research on the Internet — *Provides links to various resources.*  
<http://www.virtualchase.com>

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<sup>24</sup> Please note that when filing by fax, you must send the required number of copies by fax. If the document is filed by fax, it should *not* also be mailed to the Clerk's Office. Documents completing transmission after 5:00 PM are considered "filed" the next business day. 801.16(2)(c).



# TYPES OF APPEALS

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## Regular Direct Appeals

A regular direct appeal is an appeal from a final judgment or order of a circuit court to the Court of Appeals. Regular direct appeals can be criminal or civil.

## Permissive Appeals

A permissive appeal is an appeal from a judgment or order issued by the circuit court **before the case is finished**. This type of decision is called a “nonfinal judgment” or “nonfinal order.” It often involves an order relating to evidence or a procedural matter.

The procedure for filing a permissive appeal is different from a regular appeal because you must ask the Court of Appeals for permission to appeal before the appeal can proceed.<sup>25</sup> If you want to appeal a nonfinal order or judgment, you must file a petition within 14 days after the entry of the order or judgment. The petition may be accompanied by a supporting memorandum. The petition and memorandum combined may not exceed 35 pages or 8,000 words. The requirements of the petition are set out in 809.50.

Please note that like regular direct appeals, a permissive appeal does not stay the circuit court proceedings while it is pending. If you wish to have your circuit court proceedings stayed, you must file a separate motion with the circuit court.

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<sup>25</sup> 809.50.

# IV INITIATION OF AN APPEAL

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## A HOW TO INITIATE AN APPEAL IN A CIVIL CASE

First, you must file a Notice of Appeal. You have 45 days from the entry of final judgment to file the Notice of Appeal if you have received written notice of the entry of the final judgment or final order within 21 days.<sup>26</sup> If no written notice has been given, you have 90 days. You file the Notice of Appeal in the circuit court clerk's office, and copies must be sent to the Clerk of the Court of Appeals and to all other parties in the case. The Notice of Appeal tells the circuit court that you are going to appeal the circuit court's decision and contains information about your case.<sup>27</sup> A Notice of Appeal Form is in the Appendix at the back of this *Guide*.

**Paying the Filing Fee.** You must pay the \$195.00 filing fee when you file your Notice of Appeal in the circuit court or when you send a copy of your Notice of Appeal to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See page 15 below.

Second, you must file a "Statement on Transcript" with the Clerk of the Court of Appeals and with the circuit court clerk.<sup>28</sup> You must also serve a copy on all other parties to the appeal. You have 14 days to do this after filing your Notice of Appeal. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. A Statement on Transcript Form is in the Appendix at the back of this *Guide*. If your case was decided entirely on briefs or other written documents, you may not need a transcript. If you want to refer to statements made in court, you must request a transcript and make arrangements with the court reporter to pay for it.

**If you request a transcript,** you must communicate with the court reporter preparing the transcript to make arrangements for the filing and service of the transcript. You must do this *before* filing the Statement on Transcript. If at that time the court reporter has not yet filed the transcript in the circuit court clerk's office, the court reporter must complete the court reporter's portion of the Statement on Transcript indicating when the transcript will be filed. You then file the Statement on Transcript with the Clerk's Office and the clerk of the circuit court, and serve it on the other parties. Please keep in mind that the *original* of the Statement on Transcript is filed with the appellate Clerk's Office and *copies* of the statement are filed with the clerk of the circuit court and served on the parties.

The court reporter has 60 days to file the transcript with the circuit court and to serve copies of the transcript on the parties to the appeal. The court reporter must also notify the Clerk of the Court of Appeals and the parties that the transcript has been filed.

The circuit court clerk must then transmit the Record on Appeal, including any transcripts, to the Clerk of the Court of Appeals within 20 days of the filing of the transcript (or within 20 days of the filing of a Statement on Transcript indicating that there is no transcript necessary to the appeal). The Clerk of the Court of Appeals must notify all parties of the date on which the Record on Appeal was filed. The Appellant's Brief will be due 40 days from this date.

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<sup>26</sup> 808.04(1).

<sup>27</sup> 809.10(1).

<sup>28</sup> 809.11(4).

## B

### HOW TO INITIATE AN APPEAL IN A CRIMINAL CASE<sup>29</sup>

First, you must file a Notice of Intent to Pursue Postconviction or Postdisposition Relief. A Notice of Intent Form is in the Appendix at the back of this *Guide*. You have 20 days after the date of sentencing or final judgment to do this.<sup>30</sup> Within 5 days after you file this Notice of Intent, the circuit court will send either to the state public defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of court reporters who worked on your trial or hearings (also called the “proceedings”), and a list of the proceedings in your case for which a transcript has been filed with the circuit court. **[Note:** All requests to extend the deadlines for the various steps in a criminal appeal must be directed to the Court of Appeals, not the circuit court, even if the deadline precedes the filing of a Notice of Appeal.]

Second, if you have not requested representation by the state public defender on appeal, you must request a copy of the circuit court transcript within 30 days after filing your Notice of Intent to Pursue Postconviction or Postdisposition Relief. You may also request a copy of the circuit court case record at this time. If you have been **denied** representation by the state public defender, you have 90 days to request a copy of the circuit court transcript and the circuit court case record.

The clerk of the circuit court has 60 days to serve upon you a copy of the circuit court case record (or 20 days after order on a postconviction motion). The court reporter must file the transcript with the circuit court and serve a copy upon you within 60 days of the request for the transcript.

Third, you must file a Notice of Appeal *or* a Motion for Postconviction or Postdisposition Relief with the circuit court and serve a copy on the prosecutor and any other party within 60 days after the later of service of the transcript or the circuit court case record. A Motion for Postconviction or Postdisposition Relief must be filed before a Notice of Appeal can be filed unless the grounds for seeking relief are insufficiency of the evidence or issues previously raised. The circuit court must rule on this motion within 60 days of filing, or it will be considered denied.

After the circuit court rules on your Motion for Postconviction or Postdisposition Relief (if you filed one), you have 20 days to file a Notice of Appeal in the circuit court. The Notice of Appeal must also be served on the prosecutor, the Clerk of the Court of Appeals, and any other party in the case.

**Paying the Filing Fee.** You must pay the \$195.00 filing fee when you file your Notice of Appeal in the circuit court or when you send a copy of your Notice of Appeal to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See page 15 below.

The clerk of the circuit court must file your Record on Appeal with the Clerk of the Court of Appeals within 40 days of the filing of the Notice of Appeal. When the Record on Appeal has been filed, the Appellant’s Brief becomes due within 40 days.

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<sup>29</sup> The rules for the initiation of a criminal appeal also apply to appeals under ch. 48 (the Children’s Code), ch. 51 (the Mental Health Act), ch. 55 (Protective Services), ch. 938 (Juvenile Justice Code), and some cases under ch. 980 (sexually violent person commitments).

<sup>30</sup> 809.30(2).

## C

### HOW TO INITIATE AN APPEAL IN A TERMINATION OF PARENTAL RIGHTS CASE

Termination of parental rights (“TPR”) cases are *expedited* cases, meaning that they are moved through the appeals process more quickly than other cases.

First, you must file a Notice of Intent to Pursue Postdisposition or Appellate Relief with the circuit court clerk within 30 days after the entry of final judgment.<sup>31</sup> A Notice of Intent Form is in the Appendix at the back of this *Guide*. A copy of the Notice of Intent must be served on the person representing the interests of the public, opposing counsel, the guardian ad litem, the child’s parent, and any guardian and appointed custodian.

Within 5 days after you file this Notice of Intent, the circuit court will send either to the state public defender (if you have requested that they represent you) or to you a copy of the circuit court judgment, a list of court reporters who worked on your trial or hearings (also called the “proceedings”), and a list of the proceedings in your case for which a transcript has been filed with the circuit court.

Second, if you have not requested representation by the state public defender on appeal, you must request a copy of the circuit court transcript within 15 days after filing your Notice of Intent to Pursue Postconviction or Postdisposition Relief. You may also request a copy of the circuit court case record at this time. If you have been **denied** representation by the state public defender, you have 30 days to request a copy of the circuit court transcript and the circuit court case record.

The clerk of the circuit court has 30 days from the date the court case record was requested to serve upon you a copy of the circuit court case record. The court reporter must file the transcript with the circuit court and serve a copy upon you within 30 days of the request for the transcript.

Third, you must file a Notice of Appeal within 30 days after the later of service of the transcript or the circuit court case record and serve a copy on the Clerk of the Court of Appeals, the person representing the interests of the public, opposing counsel, the guardian ad litem, the child’s parent, and any guardian and appointed custodian.

**Paying the Filing Fee.** You must pay the \$195.00 filing fee when you file your Notice of Appeal in the circuit court or when you send a copy of your Notice of Appeal to the Clerk of the Court of Appeals. If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status. See page 15 below.

The clerk of the circuit court must file your Record on Appeal with the Clerk of the Court of Appeals within 15 days of the filing of the Notice of Appeal. When the Record on Appeal has been filed, the Appellant’s Brief becomes due within 15 days. The Clerk’s Office sends notice to all parties to the appeal, informing them that the Record on Appeal has been filed.

## D

### HOW TO INITIATE A PERMISSIVE APPEAL

If you wish to appeal a nonfinal judgment or order, you must file a petition and supporting memorandum asking the Court of Appeals for permission to appeal.<sup>32</sup> You must file this petition

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<sup>31</sup> 809.107(2).

<sup>32</sup> 809.50.

and memorandum within 14 days after the entry of the nonfinal judgment or order. The petition and memorandum combined may not exceed 35 pages or 8,000 words. The requirements of the petition, set out in 809.50, are that the petition must contain a statement of the issues, a statement of the facts necessary to understanding the issues, a statement showing that immediate review of the issues is necessary, and a copy of the judgment or order you wish the court to review. The **filing fee** of \$195.00 must be paid at the time the petition is filed.

Any opposing party in circuit court must file a response with supporting memorandum, if any, within 14 days after the service of the petition. The response is subject to the same length limitations as the petition.

If the Court of Appeals grants the petition, the procedures applicable to final judgments apply. The order granting permission (or “leave”) to appeal has the effect of the filing of a Notice of Appeal.

## **E** APPLYING FOR INDIGENT STATUS

If you believe that because of poverty, you are unable to pay the filing fee, you may apply for indigent status, under which you will be exempt from payment of the filing fee and certain other costs.<sup>33</sup> Determinations of indigency are made by the Clerk of the Court of Appeals and Supreme Court based on the criteria in 814.29 and the monetary guidelines established by the Court of Appeals.

In order to apply for indigent status, you must file a Petition for Waiver of Fees/Costs – Affidavit of Indigency at the time that you file your Notice of Appeal with the Clerk of the Court of Appeals. A form for the Petition is attached to this *Guide*.

**If you are incarcerated**, you must file the Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency when the Notice of Appeal is filed. The Clerk’s Office will send you this form upon request; it is also attached to this *Guide*. You must also submit a certified copy of your prison trust fund account for the prior six months *and* a copy of a written authorization to the Department of Corrections to forward payments to the court from your account.<sup>34</sup> Note: A prisoner who believes that he or she is in imminent danger of physical harm does not need to submit the trust fund account information. In such cases, a special form of the Prisoner’s Petition for Waiver of Fees/Costs must be filed.

Costs of the Transcript. If you believe you are indigent and would like the transcript to be prepared at no cost to you, you will need to file a Motion for Waiver of the Cost of Preparing the Transcript. This motion must be filed in the circuit court when you file your Notice of Appeal.

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<sup>33</sup> 814.29.

<sup>34</sup> 814.29(1m).

# V MOTIONS

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A motion is the procedure by which a party asks the Court to do something or to permit one of the parties to do something.<sup>35</sup> Parties filing a motion need to be specific about what they want the Court to do and give reasons why the Court should grant their request. A motion may be supported by a memorandum.

The other party may file a response or opposition to a Motion within 11 days of service of the motion. In a TPR case, any other party may file a response to the motion within 5 days after service.

The filing of a motion that may affect the disposition of an appeal or the content of a brief, or a motion seeking consolidation of appeals, automatically tolls the time (i.e., stops the running of the time limit) for performing an act required by the rules. The time is stopped from the date the motion is filed until the date the motion is disposed of by the court. Check the Rules of Appellate Procedure or contact the Clerk's Office to determine if a particular motion tolls a time limit.

The following are examples of motions that are filed with the Court.

## **Motion for Extensions of Time**

Motions for extensions of time can be filed in most cases to enlarge the time permitted to do any act, or to waive or permit an act to be done after the expiration of the deadline.<sup>36</sup> The time for filing a Notice of Appeal or notice of cross-appeal in a civil case may not be enlarged. The time for filing a Notice of Appeal may be enlarged in a criminal case, in some TPR cases, or in a case involving parental consent prior to performance of an abortion, where certain circumstances exist. The time for filing a Motion for Reconsideration or a Petition for Review may not be enlarged.

## **Motion to Supplement or Correct the Record**

If a party believes that the Record on Appeal needs to be supplemented or corrected, that party can file a Motion to Supplement or Correct the Record.<sup>37</sup> The motion must be filed with the Clerk of the Court of Appeals and served on the circuit court clerk and the other parties if the record is already on file with the Court of Appeals. If the Record is still at the circuit court, the motion must be filed in the circuit court. If a motion to correct or supplement the record is granted, time limits are tolled from the date on which the motion was filed until the date on which the supplemental or corrected record return is filed, except that the time for preparation of supplemental or corrected transcripts is governed by 809.11(7)(a).

## **Motion to Consolidate Appeals**

Multiple parties or issues may be consolidated for the purpose of appeal upon the filing and granting of a motion to consolidate appeals.<sup>38</sup> The Motion should be filed as early in the process as possible to enable the court to rule on the Motion and help facilitate the process of filing briefs in a timely manner.

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<sup>35</sup> 809.14.

<sup>36</sup> 809.82(2).

<sup>37</sup> 809.14(3)(b).

<sup>38</sup> 809.10(3).

## **Motion to File Oversized Documents/Briefs**

The Court has imposed word and page limitations for a number of different filings.<sup>39</sup> If a party wishes to exceed the page and word limits, a Motion must be filed with the Court prior to the filing of the document/brief. Such motions are granted only in extraordinary circumstances.

## **Motion for Relief Pending Appeal**

An appeal does **not** stay the execution or enforcement of the judgment or order appealed from.<sup>40</sup> If you want the circuit court to stay its order or judgment, suspend, modify, restore, or grant an injunction, or make any order appropriate to preserve the existing state of affairs, you may file a motion in the circuit court requesting relief pending appeal.<sup>41</sup> If it is impractical to seek such relief in the circuit court, you may file a motion with the Court of Appeals asking for relief. In such a motion, you must show why it was impractical to seek relief in the circuit court. If a motion had been filed in the circuit court and was denied, you may file a motion in the Court of Appeals, setting forth the reasons given by the circuit court for its action.

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<sup>39</sup> 809.19(8)(c), for example.

<sup>40</sup> 808.07(1).

<sup>41</sup> 809.12.

## Appellant's Brief

A brief is where you make your argument to the Court explaining why you think the decision the circuit court made was wrong. The brief is the most important document you will file in your case. The focus of the brief should be on the law and the facts. The brief should explain how the law should apply to the facts. It should not be used to personally attack the opposing party or the judge who made the decision. The purpose of the brief is to convince the appellate court that the circuit court made a specific error or errors in law, fact, or procedure that affected the outcome of your case.

Please note that you may not discuss facts in your brief not presented to the circuit court. Also, in your brief you should refer to parties by their names and *not* by party designation ("plaintiff," "defendant," "respondent," etc.).

**Deadline:** The Appellant's Brief must be filed no later than 40 days after the filing of the Record on Appeal with the Clerk of the Court of Appeals.

**Contents:** The brief must contain the following sections:

1. A Table of Contents with page references to the sections of the brief.
2. A Table of Authorities with page references to where cases, statutes, and other authorities are cited.
3. A statement of the issues presented for review.
4. A statement as to whether oral argument is necessary (and if so, why) and a statement as to whether the opinion should be published (and if so, why).
5. A statement of the case, which must include a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the circuit court; and a statement of facts relevant to the issues presented for review, with appropriate reference to the record.
6. An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one-sentence summary of the argument. The argument must set out your contentions and the reasons for them, with citations to authorities and parts of the Record on Appeal.
7. A short conclusion stating exactly what you are asking the Court of Appeals to do.
8. A signed certificate of word/page count.

You must conform to the Rules of Appellate Procedure, and in writing your Brief you are advised to be as neat, concise, and as organized as possible.

The following are some suggestions with regard to the main substantive sections of the Brief:

### Statement of Issues

- This section describes each of the issues you want to present to the Court. There can be several issues, or there can be just one. This section is very important, and you should take your time formulating the issues you will be presenting to the Court.
- As a general rule, you should keep the number of issues on appeal to a minimum. Most appeals present no more than two or three issues to the Court.

- The clearest way to write issues is to begin with the general area of law at issue, proceed to more specific areas of the law, and then incorporate the facts of your case and policies that should be followed.<sup>42</sup>

### Statement of Case

- The statement must describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and how the circuit court addressed these issues.
- The purpose of this section is to inform the Court about the legal steps taken in the controversy between the two parties. This includes explaining, concisely, the history of the case in chronological order. Let the Court know what happened to the case in the circuit court.

### Statement of Facts

- State the facts relevant to the issues you have presented and the arguments you have made. The facts must be chronological and should not list what each person said word for word. This section should state the events that occurred that caused the case to come about in the first place.
- You may only refer to facts that were presented in evidence in the circuit court. Each of the facts must have a source in the Record on Appeal – that is, either in sworn testimony in the transcript or in documents that were filed with the circuit court. Each fact that you state should be followed by a reference to where it can be found in the Record on Appeal. If you are quoting a statement made by a witness, for example, you would write the quote in the brief followed by the page number in the Record on Appeal (or in the Appendix, which is made up of material from the Record on Appeal). To cite to a page in the record, write “R: 25-23” (meaning Item 25, page 23 of the Record).
- Do not repeat the material you already covered in the statement of the case section of the brief.

### Argument

- This section covers the reasons why the party feels the circuit court made a mistake.
- Give each argument a heading. The heading should be a succinct, clear, and accurate statement of the argument you make below.
- Your argument must be backed up with case law, statutes, etc. that support your argument.
- Be clear. Analyze the law in a fair way.
- Incorporate the facts of the case and analyze those facts with the applicable law.
- The Court may disregard any argument based on facts that are not referenced to the Record on Appeal.
- Organize each separate argument. Make sure the arguments are easy to read and understand.

### Conclusion

- The conclusion should include a precise statement of the relief sought.
- Tell the Court exactly what you are asking it to do. This statement should be very short and to the point.
- After the conclusion, put a line for your signature, and sign the brief.

### Certificate of Word/Page Count

- The Brief must include a certification that the Brief and Appendix meet the form and length requirements. The Appellant’s Brief may not exceed 50 pages if a monospaced font is used or 11,000 words if a proportional font is used. See the “Form and Length Certification” form at the back of this *Guide*.

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<sup>42</sup>This idea was suggested by Professor Henry Weihofen. See Henry Weihofen, *Legal Writing Style*, 246-59 (2d ed. 1980).

- The Certification must be signed and must state: “I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a [monospaced] [proportional serif] font. The length of this brief is \_\_\_\_\_ [pages] [words].”

## **Respondent’s Brief**

The Respondent’s Brief is due thirty (30) days after the filing of the Appellant’s Brief (plus 3 days from the date of mailing if the Appellant’s Brief is served by mail). This brief is a response to the brief filed by the party who is appealing. This is the Respondent’s opportunity to respond to the arguments made by the Appellant and to explain why the decision in the circuit court was correct. The Respondent’s Brief can omit the statement of issues and the statement of the case if the Respondent agrees with the statements made by the Appellant.<sup>43</sup> Aside from omitting portions the Respondent agrees with, the Brief should meet the same requirements as the Appellant’s Brief. The Respondent should refer to cases, statutes, or other materials that support the decision of the circuit court. The Respondent’s Brief must be signed by the person filing it.

## **Reply Brief**

The Appellant’s Reply Brief is due to be filed fifteen (15) days after the filing of the Respondent’s Brief (plus 3 days from the date of mailing if the Respondent’s Brief is served by mail). A Reply Brief is not required. No new issues can be raised in the Reply Brief that were not presented in the Appellant’s Brief, and you should not repeat what was said in that brief. Therefore, it is important to make sure the Appellant’s Brief covers everything you want presented to the Court. The Reply Brief must be signed by the person filing it.

## **Confidentiality**

If you are appealing 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 Notice of Appeal and briefs.<sup>44</sup> 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.<sup>45</sup>

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<sup>43</sup> 809.81(3)(a)(2).

<sup>44</sup> 809.81(8).

<sup>45</sup> 809.19(2)(a).

## Checklist for Briefs

Requirement and Rule	√
Paper size of 8 ½ x 11, white paper (809.19(8)(b))	
Typeface must be either a monospaced font or a proportional serif font. If it is monospaced, the type must be 10 characters per inch and there must be a 1.5 inch margin on the left side and 1 inch on all other sides. If it is a proportional serif font, the body text must be 13-point and the quotes and footnotes 11-point. (809.19(8)(b))	
<p>Front Cover must include (809.19(9)):</p> <ul style="list-style-type: none"> <li>• Court name (Court of Appeals or Supreme Court)</li> <li>• Case number on appeal</li> <li>• Circuit court case number and circuit court judge's name</li> <li>• Case caption (the names of the parties involved)</li> <li>• Title of the document (i.e., Brief of Appellant)</li> <li>• Name, address and telephone numbers of the person submitting the brief</li> </ul>	
<p>Color cover of the Briefs in Court of Appeals (809.19(9)):</p> <ul style="list-style-type: none"> <li>• Appellant's Brief is blue</li> <li>• Respondent's Brief is red</li> <li>• Reply Brief is gray</li> </ul>	
<p>The table of authorities should go in the following order:</p> <ul style="list-style-type: none"> <li>• cases listed in alphabetical order</li> <li>• constitutional citations</li> <li>• statutes, listed in ascending order by number</li> </ul>	
All pages must be numbered at the bottom. (809.81(5))	
The brief must be securely bound only on the left side. (809.19(8)(b))	
<p>Page limits (809.19(8)(c)):</p> <ul style="list-style-type: none"> <li>• Appellant's Brief - 50 pages (monospaced) or 11,000 words (proportional font)</li> <li>• Respondent's Brief - 50 pages or 11,000 words</li> <li>• Reply Brief - 13 pages or 3,000 words</li> </ul>	
<p>The Appellant must file 10 copies of a brief or appendix in the Court of Appeals and must serve 3 copies on each party. A person found indigent or a prisoner granted leave to proceed without prepayment of fees and not represented by counsel must file 5 copies of a brief or appendix and serve 1 copy on each party. (809.19(8)(a)) In 1-judge cases under 809.40, a person found indigent or a prisoner granted leave to proceed without prepayment of fees and not represented by counsel must file 3 copies of a brief or appendix and serve 1 copy on each party.</p>	
All briefs must have a <i>signed</i> certificate of word/page count (809.19(8)(d))	
Serve the other parties a copy of the brief	

# VII

## APPENDICES

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The Appendix is a compilation of relevant circuit court record entries, the findings or opinion of the circuit court, and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning. The Appendix is used by the Court of Appeals to help it learn what happened in the circuit court, and it assists the Court in reaching a decision.

You must include a Table of Contents. You may number each page of the Appendix consecutively in the center at the bottom of the page. That way, in your Brief, you may refer to a document in the Appendix by noting: App., p. 6.

If the record is required by law to be confidential – as in a case involving minors – the portions of the record included in the appendix must be reproduced using the first names and last initials instead of the full names of persons. In that case, you must also include a notation that portions of the record have been reproduced to preserve confidentiality.

You can make copies of your documents you have in your personal files, or you can contact the circuit court clerk to get copies of motions and pleadings. The circuit court clerk will charge you to make copies. It may be helpful to check the Docket from the circuit court to determine if you have copies of all of the motions and pleadings necessary to complete your appendix. You can only put documents in your appendix that were filed in the circuit court by either of the parties or orders/judgments issued by the circuit court judge.

**Certification.** The Appendix must contain a certification that the appendix meets certain content requirements.<sup>46</sup> The required certification must be written in your Appendix exactly as it is set out in the rule, and it must be signed.

The Appendix should be bound with the Brief at the back of the Brief, unless it is too large, in which case it should be bound separately. If the Appendix is bound separately, it should have a **white cover**.

The Appendix is filed when you file your Brief. If it is separately bound, the Appendix should have a cover that lists all of the same information as the cover of the brief.

**Respondent's Appendix.** The Respondent can file an Appendix if he or she feels the materials in the Appellant's Appendix are not sufficient for the Court of Appeals to make a decision. The Respondent's Appendix should be prepared under the same rules as the Appellant's Appendix, but should only include items not included in the Appellant's Appendix.

### Confidentiality

If you include portions of the record in an appendix to a brief in a case that is required by law to be confidential (for example, appeals under chapters 48, 938, 51 and 55 and paternity cases), the portions should be reproduced so that only the first name and first initial of the last name is shown.<sup>47</sup>

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<sup>46</sup> 809.19(2)(b).

<sup>47</sup> 809.19(2)(a).

## Checklist for Appendix

<b>Requirements (809.19)</b>	√
Copies shall be 8 ½ x 11 inch white paper	
Table of Contents	
All pages should be numbered at the bottom consecutively	
Front Cover must include: <ul style="list-style-type: none"> <li>• Court name (Court of Appeals or Supreme Court)</li> <li>• Case number in Court of Appeals</li> <li>• Circuit court case number and circuit court judge's name</li> <li>• Case name (the names of the parties involved)</li> <li>• Title of the document (i.e., Appellant's Appendix)</li> <li>• Name, address and telephone numbers of the person submitting the brief</li> </ul>	
Docket or Court Record (Chronological Case Summary) from circuit court	
Judgment being appealed	
Jury verdict (if applicable)	
Any instruction not included in Appellant's Brief or the transcript of the instruction when arguing about the instruction or refusal to give an instruction	
Portion of transcript that contains the rationale for the circuit court's decision	
Pleadings or other documents from the circuit court record that are necessary to the appeal	
Certification	
Bound at the back of the Brief or, if too large, separately from the Brief (with white cover)	



# MOTION FOR RECONSIDERATION AND PETITION FOR REVIEW

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## **Motion for Reconsideration**

A losing party to an appeal may file a Motion for Reconsideration.<sup>48</sup> This motion asks the Court of Appeals to reconsider its decision. A Motion for Reconsideration in the Court of Appeals must be filed within 20 days of the Court's decision. **Note:** This deadline *cannot* be extended. The Motion for Reconsideration can be no longer than 5 pages if a monospaced font is used or 1,100 words if a proportional font is used.

The motion must state specifically why you believe the Court of Appeals was wrong. You must say what points of law or fact you think were erroneously decided, and you must include supporting argument. A Motion for Reconsideration should not be viewed as a second opportunity to argue the case, but should be used only when the Court of Appeals has made a factual or legal error in its decision.

No response to a Motion for Reconsideration is permitted unless ordered by the Court.

## **Petition for Review**

A party may file a Petition for Review from an adverse decision issued by the Court of Appeals.<sup>49</sup> A Petition for Review must be filed with the Supreme Court Clerk within 30 days of the Court of Appeals opinion. The filing of a Motion for Reconsideration in the Court of Appeals does **not** stay the deadline for filing a Petition for Review.

The Supreme Court has discretion whether or not to accept the case for review. Review will be granted only when special and important reasons are presented. See 809.62(1) for information regarding the Supreme Court's criteria in considering review.

A \$195.00 filing fee is due at the time of the filing of a Petition for Review. This fee can be waived due to indigency. See "Applying for Indigent Status" in Section IV of this *Guide*.

For more information, see the Appellate Rules and the Supreme Court's publication, *Filing a Petition for Review*, available from the Clerk's Office and on-line at [www.wicourts.gov](http://www.wicourts.gov).

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<sup>48</sup> 809.24. No Motion for Reconsideration may be filed in an appeal related to parental consent prior to performance of an abortion.

<sup>49</sup> 809.62.



# WRITS AND ORIGINAL ACTIONS

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## Writs

A party can ask the Court of Appeals or the Supreme Court to order a court, a circuit court judge, or any other person or agency to do or to refrain from doing something. This type of request is called a “Petition for Supervisory Writ” and the request is made by filing a petition and supporting memorandum. The petition and memorandum may not exceed 35 pages or 8,000 words (if a proportional font is used). The Petition must also contain a *signed* certificate of word count.<sup>50</sup>

The filing fee of \$195.00 must be submitted with the Petition for Supervisory Writ. This fee can be waived due to indigency. See “Applying for Indigent Status” in Section IV of this *Guide*.

The Petition must name as respondents the court and judge or other person or body and all other parties in the action or proceeding. In addition, the Petition must set out a statement of the issues, a statement of the facts necessary to an understanding of the issues, the relief sought, and the reasons why the court should take jurisdiction.

If a party’s Petition for Supervisory Writ is denied by the Court of Appeals, the party may file a writ in the Supreme Court. In that case, the party must show the disposition made by the Court of Appeals and the reasons for it. If a party wishes to file a Petition for Supervisory Writ directly with the Supreme Court, bypassing the Court of Appeals, the party must show why it was impractical to seek the writ in the Court of Appeals.<sup>51</sup>

## Original Actions

The Wisconsin Supreme Court has the exclusive authority to hear original actions. An original action is often a complaint against a circuit court and a circuit court judge (and sometimes a circuit court clerk), asking the Supreme Court to direct that circuit court, judge, or clerk to take certain action or refrain from taking certain action.<sup>52</sup> The original jurisdiction of the Supreme Court can also be invoked when there is a showing made that a citizen is wrongfully deprived of his or her liberty or a franchise grantable only by the state has been usurped, abused or forfeited, among other circumstances. Generally, a case must be of great importance to the people of the state, must require relief that cannot adequately be provided by a lower court, and must require a speedy and authoritative determination. The court does not accept a case on original jurisdiction solely to expedite the judicial process, for the convenience of the parties, or to prevent multiple lawsuits.<sup>53</sup>

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<sup>50</sup> 809.51.

<sup>51</sup> 809.71.

<sup>52</sup> 809.70.

<sup>53</sup> *Petition of Heil*, 230 Wis. 428 (1939).



# DEADLINES/ NUMBER OF COPIES

## Deadlines:

Document	Deadline
<b>Notice of Appeal</b>	<p><b>In Civil Cases:</b> The <i>Notice of Appeal</i> is due 45 days from date of final judgment/order (90 days if no written notice of judgment/order is given).</p> <p><b>In Criminal Cases (and cases under Ch. 48 (Children’s Code), Ch. 51 (Mental Health Act), Ch. 55 (Protective Services), and Ch. 938 (Juvenile Justice Code)):</b> The <i>Notice of Intent to Pursue Postconviction or Postdisposition Relief</i> is due 20 days after date of sentencing or final judgment. The <i>Notice of Appeal</i> is due 60 days after the later of service of the transcript or record if no <i>Motion for Postconviction or Postdisposition Relief</i> has been filed. If a <i>Motion for Postconviction or Postdisposition Relief</i> has been filed, the <i>Notice of Appeal</i> is due 20 days after the circuit court has entered an order on the motion.</p> <p><b>In Termination of Parental Rights Cases:</b> The <i>Notice of Intent to Pursue Postdisposition or Appellate Relief</i> is due 30 days after entry of final judgment. The <i>Notice of Appeal</i> is due 30 days after the later of service of the transcript or record</p> <p><b>In Permissive Appeals:</b> No <i>Notice of Appeal</i> is filed. Within 14 days after the entry of the nonfinal judgment or order, you must file a <i>Petition and Supporting Memorandum</i> asking the Court of Appeals for permission to appeal.</p>
<b>Statement on Transcript</b>	14 days after filing of Notice of Appeal in the circuit court.
<b>Appellant’s Brief and Appendix</b>	40 days from date of filing of the Record on Appeal with the Clerk of the Court of Appeals.
<b>Respondent’s Brief</b>	30 days from date Appellant’s Brief filed (plus 3 extra days if Appellant’s Brief served by mail).
<b>Reply Brief</b>	15 days from the date the Respondent’s Brief filed (plus 3 extra days if Respondent’s Brief served by mail).
<b>Motion for Reconsideration</b>	20 days from the date of the decision of the Court of Appeals.
<b>Petition for Review</b>	30 days from the date of the decision of the Court of Appeals.
<b>Response to Petition for Review</b>	14 days from service of Petition for Review (plus 3 extra days from date of mailing if Petition for Review served by mail)

**Number of Copies to be *Filed* (not including service copies):**

<b>Document</b>	<b>Number of Copies</b>
<b>Notice of Appeal</b>	1 copy filed in circuit court and 1 copy served on Court of Appeals
<b>Motions</b>	5 copies in Court of Appeals <i>unless</i> it is a one-judge case under 752.31, in which case 3 copies; 9 copies in the Supreme Court
<b>Statement on Transcript</b>	1 copy in Court of Appeals and 1 copy in circuit court
<b>Briefs and Appendices</b>	10 copies in Court of Appeals unless ruled indigent, in which case 5 copies (3-judge cases) or 3 copies (1-judge cases)
<b>Petition for Review</b>	10 copies in Supreme Court



# MISCELLANEOUS PROCEDURES

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## Recovering Costs in the Court Of Appeals

If you are the appellant and the Court of Appeals reverses the circuit court's judgment or order, you may recover your appeal costs from the respondent.<sup>54</sup> If you are the respondent and the Court of Appeals dismisses the appeal or affirms the circuit court's judgment or order, you may recover your costs from the appellant. The Court of Appeals may decide not to award costs to either side if the circuit court's order is affirmed in part and reversed in part. Recoverable costs include:

- (1) Cost of printing and assembling the number of copies and appendices required by the rules, not to exceed the rates generally charged in Dane County, Wisconsin for offset printing of camera-ready copy and assembling;
- (2) Fees charged by the clerk of the court;
- (3) Cost of the preparation of the transcript of testimony or for appeal bonds;
- (4) Fees of the clerk of the circuit court for preparation of the record on appeal; and
- (5) Other costs as directed by the court.

To recover costs, you must file a statement of costs no later than 14 days after the court issues its final decision in the appeal and serve the other side with a copy.

A prisoner who has received permission to commence an appeal or other action without paying costs or fees may later be required to pay the unpaid costs or fees out of his or her prison account if he or she loses on appeal.<sup>55</sup>

If the Court of Appeals finds that an appeal or cross-appeal is frivolous, it shall award to the successful party costs, fees and reasonable attorney fees. A motion for costs and fees for a frivolous appeal must be filed no later than the filing of the respondent's brief or, in a cross-appeal, the cross-respondent's brief.<sup>56</sup>

## Voluntary Dismissal

An appellant may dismiss his or her own appeal at any time prior to a decision without approval of the court or the respondent. If you decide to voluntarily dismiss your appeal, file a notice of dismissal in the Court of Appeals. If the appeal has not yet been docketed in the Court of Appeals, file the notice of voluntary dismissal in the circuit court. The notice of voluntary dismissal will not affect a cross-appeal that has been filed by the respondent.<sup>57</sup>

## Publication

Any person may at any time request publication of an unreported Court of Appeals opinion. The request must be served on the parties and should state how the criteria for publication are satisfied.<sup>58</sup> The Court does not publish opinions in one-judge appeals, per curiams on issues other than appellate jurisdiction or procedure, or summary disposition orders.

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<sup>54</sup> 809.25.

<sup>55</sup> 814.29(3)(b).

<sup>56</sup> 809.25(3).

<sup>57</sup> 809.18.

<sup>58</sup> 809.23.

If the Court releases a per curiam opinion that you believe should be published, you may request that the court withdraw the opinion and reissue it as an authored opinion that is recommended for publication.<sup>59</sup> This request must be filed within 20 days after the date of the opinion. You must send a copy of your request to all parties to the appeal.<sup>60</sup>

## **Sanctions**

Failure to comply with any of the Rules of Appellate Procedure, or any order of the Court, may subject you to sanctions, including monetary penalties or dismissal of your appeal.<sup>61</sup>

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<sup>59</sup> 809.23(4)(c).

<sup>60</sup> 809.23(4)(d).

<sup>61</sup> 809.83(2).



# GLOSSARY OF TERMS

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**Adversary** – The opponent in a case or the other party to a case.

**Appeal** – A review by an appellate court of what happened in a circuit court to determine if errors occurred and if the errors are significant enough to require some form of relief to the party that raised the error or errors.

**Appellant** – The party appealing a decision. This is the party was dissatisfied with the circuit court judgment and wants the Court of Appeals to reverse or modify the judgment or order.

**Appellant's Brief** – The initial brief. The Appellant's brief sets out the history of the case, explains to the Court of Appeals the error the circuit court made in its decision, and argues why the Court should reverse that decision.

**Appendix** – A document prepared by the Appellant containing documents filed by the parties in the circuit court as well as judgments or orders issued by the judge in the circuit court. It is filed at the same time as the Appellant's brief. The Respondent may also file an Appendix with its brief.

**Brief** – A written presentation of arguments. The Appellant argues why the judgment or order of the circuit court was made in error; the Respondent argues why the circuit court's judgment or order was correct.

**Certificate of Service** – A statement saying how and when you served a document on a party. The rules require that you send a copy of any document or brief that you file with the court to each opposing party. This is sometimes called a Proof of Service. Both terms mean the same thing.

**Circuit court** – The county court where a case starts; the court that decides the facts and law in the case; sometimes referred to as the "trial court."

**Citation** – A reference to legal authority, which includes cases that have already been decided by a Court ("case law"), statutes, or the state or federal constitution. This term can also refer to a document in the appendix or the transcript in the case.

**Civil case** – A case to protect the private right of a person or compel some type of solution in a dispute between parties. These cases usually involve money damages or equitable relief (e.g., injunction or specific performance).

**Court of Appeals** – The intermediate level court in Wisconsin. The Court of Appeals hears appeals of cases that have taken place in the circuit court.

**Court Record Events** – See "Docket."

**Criminal case** – A case dealing with a violation of Wisconsin's criminal laws.

**Decision** – The written decision of the court, including the reasons for the decision and the facts on which the decision was based.

**Defendant** – The person being sued or the person charged with a crime in a criminal case.

**Docket** – List of proceedings in a case and documents that have been filed with the circuit court clerk's office and the date on which they were filed. Also referred to as the "Court Record Events," which is not the same as the "Record on Appeal."

**File-stamped** – A document that has the official stamp of a clerk's office indicating the date on which a document was accepted for filing.

**Final Judgment** – The judgment of the circuit court is final if it disposes of the entire matter in litigation as to one or more parties. A document constitutes the final document for purposes of appeal when it satisfies each of the following conditions: (1) it has been entered by the circuit court, (2) it disposes of the entire matter in litigation as to one or more parties; and (3) it states on the face of the document that it is the final document for purposes of appeal.<sup>62</sup>

**Indigent** – Someone who is unable to afford to pay the fees related to a case. A party must make a motion in the circuit court, the Court of Appeals, and/or the Supreme Court asking to be declared indigent. See “Applying for Indigent Status” in Section IV of this *Guide*.

**Indigent Status** – The status given to a party without the financial resources to pay the court fees, and to whom the court grants permission to proceed without paying all the fees.

**Judgment** – A ruling made by a circuit court judge in a civil or criminal case. It can be a final judgment or order or a non-final judgment or order.

**Jurisdiction** – The authority or power the court has to act or hear a case and make a decision.

**Litigants** – Parties to a case. The persons involved in a lawsuit.

**Mandamus** – A command. A party may file a petition for writ of mandamus asking the Wisconsin Court of Appeals to order a judge or circuit court to do something.

**Motion** – The procedure by which a party asks the appellate court to do something or to permit one of the parties to do something. For example, a party may ask the court for an extension of time to prepare a brief.

**Movant** – The party asking the court for something. This is usually done in the form of a motion to the Court.

**Notice of Appeal** – A document filed in the circuit court that lets the court know that you are appealing the court’s judgment. The filing of the Notice of Appeal starts the appeal and triggers appellate jurisdiction.

**Order** – A written or oral decision by a court that resolves a matter and/or directs the parties to do something.

**Permissive Appeal** – An appeal that is filed before the circuit court has entered its final order in the case; also referred to as a “discretionary appeal.”

**Plaintiff** – The party who starts a lawsuit, or in criminal cases, the prosecutor acting on behalf of the State of Wisconsin.

**Postconviction Relief** – The procedure where a defendant in a criminal case can argue that the conviction or sentence was made in violation of the Constitution, that the court which sentenced the defendant was without the authority to do so, or that the sentence imposed exceeds the maximum sentence in the statute, among other things. A Motion for Postconviction Relief is filed in the circuit court and the final order can be appealed to the Court of Appeals.

**Precedent** – A previously decided case that is recognized as binding on future cases that have similar facts and/or legal issues.

**Pro se** – A person, not represented by an attorney, who is representing himself or herself in a case.

**Record on Appeal** – The papers and motions filed in the circuit court, including orders issued by the judge, and the transcript, if any, of hearings or trials conducted in the case.

**Reply Brief** – This is a brief in response to the Respondent’s Brief. The brief is limited to issues that were raised in the Appellant’s Brief or a response to issues raised in the Respondent’s Brief.

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<sup>62</sup> Gerald Tyler v. The RiverBank, 728 N.W.2d 686, 299 Wis. 2d 751 (2007).

Respondent – The party who won in the circuit court. This party generally wants the Court of Appeals to agree with the decision of the circuit court.

Respondent's Brief – The Respondent's response to the Appellant's brief. The Respondent's brief sets out the Respondent's argument that the circuit court's decision is correct.

Stay – A court order which temporarily suspends court proceedings or the effect of a judgment. Initiating an appeal does **not** stay enforcement of a circuit court judgment.

Supreme Court – The highest court in the State of Wisconsin. The Supreme Court consists of seven justices. The Court also hears all cases involving attorney admission and discipline and original actions. Once a case has been decided by the Court of Appeals, parties may file a Petition for Review asking the Supreme Court to hear the case. The Court has the discretion to decide whether or not to take these cases.

Table of Authorities – A listing of all the legal cases, statutes and secondary authority used in the brief and the page(s) on which each authority was cited.

Transcript – Written version of everything that was said at the trial or hearings in the case.

Writ – An extraordinary remedy that can be sought from the Wisconsin Court of Appeals or Supreme Court. A writ can be sought to compel a person to do something or to stop doing something. Writs are usually sought to compel the circuit court to perform a duty or obligation that it is required to do. This option should be used when there is no other legal remedy to solve the problem.

# XIII SAMPLE FORMS

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The following sample forms are linked to this *Guide* for your convenience.

- [CA-120: Notice of Appeal](#)
- [CA-110: Notice of Intent to Seek Postconviction or Postdisposition Relief](#)
- [CA-100: Notice of Intent to Seek Postconviction or Appellate Relief \(TPR cases\)](#)
- [CA-130: Statement on Transcript](#)
- [CA-170: Motion \(general\)](#)
- [CA-150: Brief Cover](#)
  - Includes: [Certification of Mailing \(or Third-Party Commercial Delivery\) Form and Length Certification](#)
  - [Appendix Certification](#)
- [CA-160: Motion for Relief Pending Appeal](#)
  
- [Petition for Waiver of Fees/Costs – Affidavit of Indigency](#)
- [Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency](#)
- [Prisoner’s Petition for Waiver of Fees/Costs – Affidavit of Indigency \(Allegation of Imminent Danger\)](#)
- [Authorization to Withhold Money from Trust Fund Accounts](#)