

SUPREME COURT OF WISCONSIN

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In the Matter of the Amendment  
of Rules of Appellate Procedure;  
Wis. Stat. § (Rule) 809.23(4) --  
Requests for Publication of Court  
of Appeals Opinions

ORDER  
No. 96-10

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The court held a public hearing March 18, 1997 on the petition of the Court of Appeals seeking the amendment of Wis. Stat. § (Rule) 809.23(4) to exclude from requests permitted for publication of Court of Appeals opinions that are unreported or not recommended for publication opinions by one court of appeals judge and per curiam opinions on issues other than appellate jurisdiction or procedure. The amendment would also establish a procedure for requests to have per curiam opinions that do not address issues of appellate jurisdiction or procedure withdrawn, authored and recommended for publication.

The court has considered the petition, the revised petition filed March 6, 1997, the presentations at the public hearing, and the material filed with the court in the matter.

IT IS ORDERED that, effective July 1, 1997, the rules of appellate procedure are amended as follows:

1. 809.23(4) of the statutes is repealed and recreated to read:

(4) REQUEST FOR PUBLICATION. (a) Except as provided in par. (b), any person may at any time file a request that an opinion not recommended for publication or an unreported opinion be published in the official reports.

(b) No request may be made for the publication of an opinion that is a decision by one court of appeals judge under s. 752.31(2) and (3) or that is a per curiam opinion on issues other than appellate jurisdiction or procedure.

(c) A person may request that a per curiam opinion that does not address issues of appellate jurisdiction or procedure be withdrawn, authored and recommended for publication. That request shall be filed within 20 days of the date of the opinion and shall be decided by the panel that decided the appeal.

**COURT OF APPEALS NOTE, 1997:** A request under this paragraph does not affect the time under sec. (Rule) 809.62 for filing a petition for review. As in the case of reconsideration of a Court of Appeals decision or opinion, withdrawal of an opinion renders that opinion a nullity. Accordingly, a petition for review of that opinion filed prior to its withdrawal is of no effect, except that the petitioner may incorporate it by reference in a petition for review of the opinion subsequently issued in the appeal or proceeding.

(d) A copy of any request made under this subsection shall be served under s. 809.80 on the parties to the

appeal or other proceeding in which the opinion was filed. A party to the appeal or proceeding may file a response to the request within 5 days after the request is filed.

**COURT OF APPEALS NOTE, 1997:** The Court of Appeals recognizes that many of its opinions are issued as per curiam opinions that should not be published under sec. (Rule) 809.23(1)(b)5, Stats. This amendment establishes a procedure whereby a person may request that a per curiam opinion be withdrawn, authored and recommended for publication. The amendment also expressly states that an opinion issued by a single judge of the Court of Appeals under sec. 752.31(2) and (3), Stats., will not be published.

IT IS FURTHER ORDERED that the notes of the Court of Appeals are not adopted but shall be printed for information purposes.

IT IS FURTHER ORDERED that these amendments of the rules of appellate procedure shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 17<sup>th</sup> day of April, 1997.

BY THE COURT:

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Marilyn L. Graves, Clerk