



Patience Drake Roggensack  
Chief Justice

# Supreme Court of Wisconsin

OFFICE OF THE CLERK  
110 E. MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY Users: Call WI TRS at 1-800-947-3529; request (608) 266-1880  
Fax (608) 267-0640  
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J. Denis Moran  
Director of State Courts

Diane M. Fremgen  
Clerk of Supreme Court

November 3, 2015

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

Re: Petition 15-02, Electronic Appellate Records

Honorable Justices of the Supreme Court:

I am writing to follow up on matters discussed during the October 13, 2015 public hearing on Petition 15-02, Electronic Appellate Records.

At the hearing a question arose on whether the rule petition affects court reporters and the manner in which they are paid for transcripts. Under WIS. STAT. RULE 809.11(4)(a), when an appeal is filed, the appellant is required to make arrangements with the court reporter for preparation of the transcripts and pay for the transcripts and copies for parties to the appeal. The requested rule changes to permit electronic appellate records does not affect court reporters because it only deals with the record as created in the circuit court after the court reporter has been paid for transcripts and the transcripts are filed.

As requested, I contacted Sheri Pointek, President of the Wisconsin Court Reporter Association (WCRA), Karla Sommer, Past President of (WCRA) and Lori Lynn Baldauf, Treasurer of WCRA, provided them with a copy of the petition, and asked them

to respond with any concerns. After review of the petition, Ms. Pointek and I spoke over the phone. She confirms that WCRA would not have a problem with Petition 15-02 as it does not affect current practice for court reporters.

I was also requested at the hearing to check with other states using electronic appellate records and garner information about what, if any, problems they have experienced. Many states use electronic appellate records but there is a variety of methods that are used to provide that record to the appellate court. Some states require the clerk of the circuit court to upload documents to a specific appellate court portal, others require record documents to be scanned and provided to the appellate court on disks. None of the information I received from other states suggests changes to Petition 15-02 are necessary.

At the hearing Justice Abrahamson asked whether the term “clerk” as used in WIS. STAT. RULE 809.15(2), should be clarified to read “clerk of the circuit court.” I agree that the existing provision should be modified to use the term “clerk of the circuit court” throughout and to be consistent with the rest of RULE 809.15. This change should be reflected in section 9 of the petition.

Justice Abrahamson also raised whether, in the new language proposed for WIS. STAT. Rule 809.15(4m), it is appropriate to refer to exhibits not in electronic format as electronically “maintained” rather than “retained.” Although the term “retained” was selected as consistent with the language proposed in Petition 14-03, Electronic Circuit Court Filings, that petition has not been adopted. The current voluntary e-filing statute, WIS. STAT. § 801.17(9)(c), requires the circuit court clerk to “maintain the official court record” in appropriate formats. At this time, it would be appropriate for RULE 809.15 to use similar terminology and reflect that the electronic records are “maintained” by the

clerk of the circuit court. This change should be reflected in sections 9, 10, and 11 of the petition.

Justice Abrahamson also noted that section 5 of the petition changes the reference to “clerk of the trial court,” in WIS. STAT. RULE 809.11(2) to “clerk of the circuit court,” and she questioned whether the same change should be made in WIS. STAT. RULE 809.105(3)(b) and 809.105(4)(f), as affected by sections 2 and 3 of the petition. Currently RULE 809.11(2) refers to the “clerk of the trial court” and other parts of the provision, specifically RULE 809.11(4)(b), (7)(c), refer to the “clerk of the circuit court.” The change in section 5 was proposed to make RULE 809.11 internally consistent. It has no substantive effect.

Currently WIS. STAT. RULE 809.105 refers to the “trial court” and “clerk of the trial court” throughout. If changes are made to sections 2 and 3 of the petition to change references to the “clerk of the circuit court,” many other provisions in RULE 809.105 must be changed to make the rule internally consistent.

Attached is appendix A reflecting what changes should be made to the existing petition to use the term “clerk of the circuit court” throughout WIS. STAT. RULE 809.15(2), and the terminology that the clerk of the circuit court electronically “maintains” record items. Attached is appendix B reflecting what additional sections would have to be added to the petition order to make RULE 809.105 consistent in referring to the “circuit court” rather than “trial court.”

Finally, the appropriate effective date language was discussed at the hearing. I submit that the appropriate effective date language would be: “IT IS FURTHER ORDERED that the rule adopted pursuant to this order shall apply to record

transmittals due on or after the effective date of this rule.” The effective date need not be tied to the commencement of appeals because the record is due after an appeal is commenced.

Although it is no longer possible for the rule changes to have an effective date of January 1, 2016, I respectfully ask the Court to adopt Petition 15-2 at the November 16, 2015 administrative conference with an effective date of July 1, 2016. As I indicated at the hearing, the necessary computer programing should be in place by January 1, 2016, and with the Court’s approval of the petition, in 2016 we could begin a pilot program to receive electronic appellate records. Thank you for consideration of this additional information related to Petition 15-02.

Respectfully Submitted,

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Diane M. Fremgen, Clerk of the Wisconsin  
Supreme Court and Court of Appeals, Petitioner

APPENDIX A

Changes to existing petition to add clerk of the circuit court in WIS. STAT.  
RULE 809.15(2), and maintained terminology.

**SECTION 9.** 809.15(2) of the Rules of Appellate Procedure, Wisconsin

Statutes, is amended to read:

The clerk of circuit court shall assemble the record in the order set forth in sub. (1)(a), identify by number, date of filing, and title each ~~paper~~ document, and prepare a list of the numbered ~~papers~~ documents. If the record is in an electronic format, the clerk of the circuit court shall also include in the list of numbered documents a list of exhibits not electronically maintained that are part of the record on appeal. At least 10 days before the due date for filing the record in the court, the clerk of the circuit court shall notify in writing each party appearing in the circuit court that the record has been assembled and is available for inspection. The clerk of the circuit court shall include with the notice the list of the ~~papers~~ documents constituting the record.

**SECTION 10.** 809.15(4)(a) of the Rules of Appellate Procedure, Wisconsin

Statutes, is amended to read:

The clerk of the circuit court shall transmit the record to the court of appeals within 20 days after the date of the filing of the transcript designated in the statement on transcript or within 20 days after the date of the filing of a statement on transcript indicating that no transcript is necessary for prosecution of the appeal, unless the court extends the time for transmittal of the record or unless the tolling provisions of s. 809.14(3) extend the time for transmittal of the record. If additional portions of the transcript are requested under s.

809.11(5), the clerk of the circuit court shall transmit the record to the court of appeals within 20 days after the date of the filing of the additional portions of the transcript. If the record is transmitted electronically, the clerk of the circuit court shall transmit by traditional methods any original documents or exhibits not electronically maintained.

**SECTION 11.** 809.15(4m) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

The clerk of the court of appeals shall notify the clerk of circuit court and all parties appearing in the circuit court of the date on which the record was filed. When the record is transmitted electronically and the clerk of the circuit court must transmit original documents or exhibits not electronically maintained by traditional methods, the date on which the record was filed is the date the electronic transmission and index was received by the clerk of the court of appeals.

#### APPENDIX B

Required additions to the petition to change all references in WIS. STAT. RULE 809.105 to the circuit court. Sections 4-11 of the petition would have to be renumbered.

**SECTION 2.** 809.105(2) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

Only a minor may initiate an appeal under this section. The minor shall initiate the appeal by filing, or by a member of the clergy filing on the minor's behalf, a notice of appeal with the clerk of the ~~trial~~ circuit court in which the order appealed from was

entered and shall specify in the notice of appeal the order appealed from. At the same time, the minor or member of the clergy shall notify the court of appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of the court of appeals. The clerk of the ~~trial~~ circuit court shall assist the minor or member of the clergy in sending a copy of the notice of appeal to the clerk of the court of appeals. The minor may use the name "Jane Doe" instead of her name on the notice of appeal and all other papers filed with the court of appeals.

**SECTION 3.** 809.105(3) (b) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

The clerk of the ~~trial~~ circuit court shall ~~forward~~ transmit to the court of appeals within 3 calendar days after the filing of the notice of appeal a copy of the notice of appeal and a copy of the ~~trial~~ circuit court case record maintained as provided in s. 59.40 (2) (b), using the name "Jane Doe" instead of the minor's name, and the record on appeal, assembled as provided in sub. (4).

**SECTION 4.** 809.105(4) (d), (e), (f), and (j) of the Rules of Appellate Procedure, Wisconsin Statutes, are amended to read:

(d) Any other order made that is relevant to the appeal and the ~~papers~~ documents upon which that other order is based.

(e) Exhibits ~~material to the appeal~~, whether or not received in evidence, including photographs, video recordings, audio recordings, computer media such as disks or flash drives, except that physical evidence, models, charts, diagrams, and photographs exceeding 8 ½ x 11 inches in size shall not be included unless requested by the minor to be included in the record.

(f) Any other ~~paper document or exhibit~~ document or exhibit filed in the trial court that the minor requests to have included in the record.

(j) If the ~~trial~~ circuit court appointed a guardian ad litem under s. 48.235 (1) (d), a letter written to the court of appeals by the guardian ad litem indicating his or her position on whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance of inducement of an abortion is in the minor's best interests.

**SECTION 5.** 809.105(10) (a) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

A judgment by the court of appeals under this section is effective immediately, without transmittal to the ~~trial~~ circuit court, as an order either granting or denying the petition. If the court of appeals reverses a ~~trial~~ circuit court order denying a petition under s. 48.375 (7), the court of appeals shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the court of appeals granting the minor's petition.. If the court of appeals affirms the ~~trial~~ circuit court order, it shall immediately so notify the minor by personal service on her counsel or the member of the clergy who initiated the appeal under this section, if any, of a copy of the order of the court of appeals denying the petition and shall also notify the minor by her counsel or the member of the clergy who initiated the appeal under this section on behalf of the minor, if any, that she may, under sub. (11), file a petition for review with the supreme court under s. 809.62. The court of appeals shall pay the expenses of service of notice under this subsection. The clerk of the court of appeals shall transmit to the ~~trial~~ circuit court the judgment and opinion of the court of appeals and the record in the case filed under sub. (4), within 31 days after the

date that the judgment and opinion of the court of appeals are filed. If a petition for review is filed under sub. (11), the transmittal shall be made within 31 days after the date that the supreme court rules on the petition for review.

**SECTION 6.** 809.105(11) (a) 3. of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

The judgment and opinion of the court of appeals, and the findings of fact, conclusions of law and final order of the ~~trial~~ circuit court that were furnished to the court of appeals. The court of appeals shall provide a copy of these papers to the minor, if any, the member of the clergy who initiated the appeal under this section, if any, her counsel or her guardian ad litem, if any, immediately upon request.

**SECTION 7.** 809.105(11) (d) of the Rules of Appellate Procedure, Wisconsin Statutes, is amended to read:

A judgment or decision by the supreme court under this section is effective immediately, without transmittal to the ~~trial~~ circuit court, as an order either granting or denying the petition. If the supreme court reverses a court of appeals order affirming a ~~trial~~ circuit court order denying a petition under s. 48.375 (7), the supreme court shall immediately so notify the minor by personal service on her counsel, if any, or on the member of the clergy who initiated the appeal under this section, if any, of a certified copy of the order of the supreme court granting the minor's petition. If the supreme court affirms the order of the court of appeals, it shall immediately so notify the minor by her counsel or by the member of the clergy who initiated the appeal under this section, if any. The clerk of the supreme court shall transmit to the ~~trial~~ circuit court the judgment, or decision, and opinion of the supreme court and the complete record in the case within 31 days after the

date that the judgment, or decision, and opinion of the supreme court are filed. The supreme court shall pay the expense of service of notice under this subsection.