

**STATE OF WISCONSIN
IN THE SUPREME COURT**

In the Matter of proposed rules relating to appellate court proceedings from orders entered pursuant to WIS. STAT. § 971.14 regarding pretrial competency rulings in criminal cases

PETITION 23-___

For the reasons set forth in the accompanying supporting memorandum, the petitioner, the Wisconsin Judicial Council, respectfully petitions the court to create WIS. STAT. RULE 809.109 and amend RULES 809.10(1)(d) and 809.801(5)(c) of the Rules of Appellate Procedure to establish a procedure for appeals from orders entered pursuant to WIS. STAT. § 971.14, which governs competency proceedings in criminal cases. This petition is filed pursuant to the Court's rulemaking authority under WIS. STAT. § 751.12.

PETITION

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

Section 1. Section 809.109 of the statutes is created to read:

(1) APPLICABILITY. This section applies to the appeal of an order under s. 971.14 and supersedes all inconsistent provisions of this chapter.

(2) APPEAL OR POSTDISPOSITION MOTION.

(a) *Appeal procedure; counsel to continue.* A person seeking postdisposition or appellate relief shall comply with this section. If the person desires to pursue postdisposition or appellate relief, counsel representing the person during circuit court proceedings under s. 971.14 shall continue representation by filing a notice under par. (b) unless sooner discharged by the person or by the circuit court.

(b) *Notice of intent to pursue postdisposition or appellate relief.* Within 14 days of the entry of an order under s. 971.14 determining competency to proceed or ordering the involuntary administration of medication, the person shall file in the circuit court and serve on the prosecutor, any other party, and the department of health services, a notice of intent to pursue postdisposition or appellate relief. If the record discloses that entry of the order occurred after the notice of intent was filed, the notice shall be treated as filed after entry of the order appealed from on the day of the entry of the final order. The notice of intent shall include all of the following:

1. The circuit court case name, number, and caption.
2. An identification of the order from which the person intends to seek postdisposition or appellate relief and the date on which the order was entered.
3. The name and address of the person and the person's trial counsel.
4. Whether the person requests representation by the state public defender for purposes of postdisposition or appellate relief.
5. For a person who does not request representation by the state public defender, whether the person will proceed without counsel or will be represented by retained counsel. If the person has retained counsel to pursue postdisposition or appellate relief, counsel's name and address shall be included.

(c) *Clerk to send materials.* Within 5 days after a notice under par. (b) is filed, the clerk of the circuit court shall do all of the following:

1. If the person requests representation by the state public defender for purposes of postdisposition or appellate relief, the clerk shall send to the state public defender's appellate intake office a copy of the notice of intent that shows the date on which the notice was filed, a copy of the order specified in the notice that shows the date on which the order was entered, a list of the court reporters for each proceeding under s. 971.14 in the action in which the order was entered, and a list of those proceedings for which a transcript already has been filed with the clerk of circuit court.
2. If the person does not request representation by the state public defender, the clerk shall send or furnish to the person, if the person is appearing without counsel, or to the person's attorney, if one has been retained, a copy of the order or order specified in the notice that shows the date on which the order was entered, a list of the court reporters for each proceeding in the action in which the order was entered, and a list of those proceedings in which a transcript already has been filed with the clerk of circuit court

(d) *State public defender appointment of counsel; request for transcript and circuit court case record.* Within 15 days after the state public defender appellate intake office receives the materials from the clerk of circuit court under par. (c) the state public defender shall appoint counsel for the person and request a transcript of the court reporter's verbatim record, if not ordered under par. (f)1., and a copy of the circuit court case record.

(e) *Person not represented by public defender.* A person who does not request representation by the state public defender for purposes of postdisposition or appellate relief shall request a transcript of the court reporter's verbatim record, and may request a copy of the circuit court case record within 15 days after filing the notice of intent under par. (b). A person who is denied representation by the state public defender for purposes of postdisposition or appellate relief shall request a transcript of the court reporter's verbatim record, and may request a copy of the circuit court case record, within 30 days after filing a notice of intent under par. (b).

(f) *Filing and service of transcript and circuit court case record.*

1. If involuntary medication is ordered under s. 971.14, the subject of the order or counsel representing the person shall within 3 days of involuntary medication being ordered, request the transcript of any portion of the proceedings relating to the involuntary medication order. The court reporter shall file the transcript with the circuit court and serve copies on the parties within 14 days of the request.

2. Except transcripts requested under par. 1., the court reporter shall file the transcript with the circuit court and serve a copy of the transcript on the person within 30 days after the transcript is requested; within 10 days after the request for a transcript of postdisposition proceedings brought under par. (g), the court reporter shall file the transcript with the circuit court and serve a copy on the parties entitled to a copy. The clerk of circuit court shall serve a copy of the circuit court case record on the person within 30 days after the case record is requested, and shall indicate in the case record the date and manner of service.

(g) *Notice of appeal, postdisposition motion.* The person shall file in the circuit court a notice of appeal or motion seeking postdisposition relief within 30 days after the later of the service of the transcript or circuit court case record. A notice of appeal filed under this section shall conform to the requirements set forth in 809.10. The appeal shall be initiated and docketed in accordance with ss. 809.10 and 809.11.

(h) *Order determining postdisposition motion.* Unless an extension is requested by a party or the circuit court and granted by the court of appeals, the circuit court shall determine by an order the person's motion for postdisposition relief within 30 days after the filing of the motion or the motion is considered to be denied and the clerk of circuit court shall

immediately enter an order denying the motion. The person shall file a motion for postdisposition relief in the circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

- (i) *Appeal from order.* The person shall file in the circuit court a notice of appeal from the order and, if necessary, from the order of the circuit court on the motion for postdisposition relief within 5 days of the entry of the order on the postdisposition motion. A notice of appeal filed under this section shall conform to the requirements set forth in s. 809.10. The appeal shall be initiated and docketed in accordance with ss. 809.10 and 809.11.
- (j) *Notice of abandonment of appeal.* If a person who filed a notice of intent to seek postdisposition relief under par. (b) and requested a transcript and case record under pars. (d) or (e) decides not to file a notice of appeal, the person shall notify the circuit court, prosecutor, and the Department of Health Services of the decision, within 30 days after the service of the transcript and case record under par. (f)2.
- (k) *Requesting transcripts for other parties.* The appellant shall request a copy of the transcript of the court reporter's verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 5 days after the filing of the notice of appeal.
- (L) *Statement on transcript.* Within 5 days after filing the notice of appeal, the appellant shall file a statement on transcript with the clerk of circuit court, who shall transmit the statement on transcript to the clerk of the court of appeals within 3 days after its filing. The statement on transcript shall either designate the portions of the transcript that have been requested by the appellant or contain a statement by the appellant that a transcript is not necessary for prosecution of the appeal. If a transcript is necessary for prosecution of the appeal, the statement on transcript shall also contain a statement by the court reporter that the appellant has requested copies of the transcript or designated portions thereof for each of the other parties; that the appellant has made arrangements to pay for the original transcript and for all copies for other parties; the date on which the appellant requested the transcript and made arrangements to pay for it; and the date on which the transcript must be served on the parties.
- (m) *Service of transcript on other parties.* The court reporter shall serve copies of the transcript on the parties indicated in the statement on transcript within 5 days after the date the appellant requested copies of the transcript under par. (k).

(3) APPEAL BY STATE; APPOINTMENT OF COUNSEL. The State may appeal an order entered under s. 971.14 by filing a notice of appeal within 14 days after entry of the judgment or order. If the person who is the subject of the case or proceeding claims to be indigent, the court shall refer the

person to the state public defender for the determination of indigency and the appointment of legal counsel under ch. 977.

(4) NO-MERIT REPORTS. A s. 809.32 no-merit report, response, and supplemental no-merit report may be filed in an appeal from an order entered under s. 971.14. The appointed attorney shall file in the court of appeals and serve on the appellant the no-merit report and certification within 15 days after the filing of the record on appeal. The appointed attorney shall serve on the appellant a copy of the transcript and the record on appeal at the same time that the no-merit report is served on the appellant. The appellant may file in the court of appeals a response to the no-merit report within 10 days after service of the no-merit report. The attorney may file a supplemental no-merit report and affidavit within 10 days after receiving the response to the no-merit report.

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

- (a) *Appellant's brief-in-chief.*** The appellant shall file a brief within 15 days after the filing of the record on appeal.
- (b) *Respondent's brief.*** The respondent shall file a brief within 15 days after the service of the appellant's brief.
- (c) *Appellant's reply brief.*** The appellant shall file a reply brief, or a statement that a reply brief will not be filed, within 11 days after service of the respondent's brief.
- (d) *Decision.*** Cases appealed under this section shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief or statement that a reply brief will not be filed.
- (e) *Petition for review.*** A petition for review of an appeal in the supreme court, if any, shall be filed within 30 days after the date of the decision of the court of appeals. The supreme court shall give preference to a petition for review of an appeal filed under this paragraph.

(6) CONFIDENTIAL PARTY DESIGNATION. For appeals under this section, the notice of appeal and any other filed documents shall refer to the appellant by one or more initials or other appropriate pseudonym or designation.

(7) STAY PENDING POSTDISPOSITION PROCEEDING AND APPEAL.

- (a) *Automatic stay.*** The involuntary administration of medication ordered for purposes of restoring competency pursuant to s. 971.14 shall be automatically stayed for 14 days.
- (b) *Notice of motion to continue stay.*** If a notice of intent to pursue postdisposition or appellate relief is filed under sub. (2)(b), the person may file in the court of appeals a

notice of motion to continue the stay under par. (a) pending postdisposition proceedings and appeal.

1. The stay is continued upon filing the notice in par. (b), and continues until the motion is decided by the court;
2. The moving party shall file a memorandum in support of the motion for stay within 11 days after service of the transcript in sub. (2)(f)1.
3. The respondent shall file a response within 11 days after service of the memorandum.
4. The court shall decide the motion for stay of the medication order within 14 days after the response is filed.

Section 2. AMENDMENT TO CH. 809 RULES.

Section 809.10(1)(d) of the statutes is amended to read:

(d) *Docketing statement.* The person shall file in the circuit court a completed docketing statement on a form prescribed by the court of appeals. The docketing statement shall accompany the notice of appeal. Docketing statements need not be filed in appeals brought under s. 809.105, 809.107, 809.32, 809.109, or 974.06 (7), in cases under ch. 980, or in cases in which a party represents himself or herself. Docketing statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the state or defendant in permissive appeals in criminal cases pursuant to s. 809.50, except that docketing statements shall be filed in cases arising under ch. 48, 51, 55, or 938. proceedings in the appeal are governed by the procedures for civil appeals and the procedures under subch. VI, except as follows:

Section 809.10(1)(d) of the statutes is amended to read:

(c) *Appeals from circuit court.* A user seeking to initiate an appeal under s. 809.10, 809.103, 809.104, 809.105, 809.107, 809.109, 809.30, 809.32, or 809.40 shall file a notice of appeal in the circuit court case appealed from as provided in that section. The clerk of circuit court shall transmit the notice of appeal to the clerk of the court of appeals. The docketing statement, motions under s. 809.41 (1) or (4), and statement on transcript, where applicable, shall also be filed with the clerk of circuit court and transmitted to the clerk of the court of appeals. Service shall be as provided in s. 809.10 (1) (h).

Section 3. PROPOSED JUDICIAL COUNCIL NOTE.

Following the newly created s. 809.109, a Judicial Council Note is created to read:

JUDICIAL COUNCIL NOTE: This section provides a uniform, organized and expedited handling of appeals from orders under s. 971.14. Such appeals are unique in that the underlying

case is criminal, but the nature of the appeal involves the defendant's mental health and is deemed a special civil proceeding. Further, the competency orders are final for purposes of appeal, even though the criminal case has not been resolved. *See State v. Scott*, 2018 WI 74, ¶31, 382 Wis. 2d 476, 914 N.W.2d 141.

The unique nature of these appeals, including the short timeline within which the State must restore a defendant to competency per s. 971.14(5)(a)1., supports an expedited procedure for handling these appeals. Section 809.109 also codifies miscellaneous aspects of court decisions. To the extent that any provision of this section is inconsistent with preexisting case authority, this rule governs. For example, this section creates a limited automatic stay of involuntary medication orders in the prejudgment context, even though case law no longer requires an automatic stay. *See State v. Green*, 2022 WI 30, ¶36, 401 Wis. 2d 542, 973 N.W.2d 770.

Respectfully submitted this 12th day of October, 2023

Wisconsin Judicial Council

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