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## 101: How to Speed the Appeals Process

Although a faster appeal will not likely change the ultimate outcome, many clients will appreciate receiving the court of appeals' decision, positive or negative, as quickly as possible. Learn what types of appeals may be eligible and how to proceed when seeking an expedited appeal using Wis. Stat. Section 809.17.

### KIMBERLY ALDERMAN & CHELSEY SUZANNE DAHM

It is not uncommon for a year or more to pass between the conclusion of a case at the trial level and the final opinion being handed down by the Wisconsin Court of Appeals. To shorten this typical timeframe, any party to a qualified case may seek to expedite the appeal pursuant to Wis. Stat. section 809.17. Thanks to relaxed briefing requirements and shortened filing deadlines, expedited appeals are often concluded in half the time it takes to litigate a standard appeal.



### What Types of Appeals Can Be Expedited?

An appeal brought in the Wisconsin Court of Appeals is eligible for the expedited appeals program unless the category of case is specifically excluded. The following types of appeals are specifically excluded based on the statute they are brought under:

- Criminal appeals, *except* those arising under chapter 48, 51, 55, or 938;<sup>1</sup>
- Pro se appeals;
- No-merit appeals;<sup>2</sup>
- Appeals in proceedings related to parental consent for performance of an abortion;<sup>3</sup>
- Appeals in proceedings related to termination of parental rights;<sup>4</sup>
- Appeals from an order entered on a motion for postconviction relief;<sup>5</sup>and
- Appeals in chapter 799, traffic regulation, and municipal ordinance violation cases.<sup>6</sup>

Additionally, cases not automatically excluded from the expedited appeal program via statute may be excluded based on the nature of the particular case. Cases that are not good candidates for expedited appeals include those that present more than three issues and those for which the briefs cannot be adequately written in 15 or fewer pages. Moreover, an appeal will not be expedited unless all parties agree that it should be.

### How do I Ask the Court of Appeals to Expedite an Appeal?

Represented parties must file the notice of appeal and an original and one copy of a docketing statement with the court of appeals. The sole purpose of the docketing statement is to assist the court of appeals in determining whether a particular case is eligible to be expedited.

If the court finds that an appeal is a candidate for an expedited schedule, it may hold a presubmission conference. All attorneys of record must attend this conference: failure to attend may result in dismissal of the appeal under Wis. Stat. section 809.19. At this conference, the parties and the court will make the following determinations:

- Whether the matter can be adequately briefed within the limitations provided by Wis. Stat. section 809.19;

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- Whether the submission and decision of the appeal can be expedited by a reduced briefing schedule, summary disposition, or other expedited means permitted under the rules of appellate procedure;
- What the issues for appeal are, as well as the standard of review for each;
- Whether the issues on appeal can be narrowed;
- Whether the transcripts and record can be reduced and a statement in lieu of a portion of the record or a transcript can be agreed on under Wis. Stat. section 809.15(5);
- Whether the court is likely to ask for oral argument and whether a published opinion is likely to result in the appeal;
- Whether joint briefing by multiple parties is practical;
- Whether opposing counsel may be able to reach a settlement; and
- Whether the processing of the appeal can be simplified or expedited in any other way.

### What Happens When an Appeal is Expedited?

If the parties and the court agree at the presubmission conference that a case should be expedited, the court will issue an expediting order. This order will set the new deadlines for filing briefs, as well as the length limitations.



**Kimberly Alderman**,  
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Briefs filed in appeals expedited under Wis. Stat. section 809.17 are not subject to the strict formatting requirements of normal briefs. Specifically, they are not required to contain the following items required by Wis. Stat. section 809.19: 1) a table of contents; 2) a table of cases; 3) a statement concerning oral argument and publication; and 4) a cover.

### Considerations for Trial Attorneys

If a client is interested in having his or her case considered for the expedited appeals program, it is important that trial counsel explain the limits participation will impose. It may be important to the client to argue more than three distinct issues. Further, if the case is complicated, the page limitations may not allow adequate space to fully analyze the issues involved.

Trial counsel should review the file as soon as possible after the judgment is issued to identify potential issues for appeal. This is especially important as to the docketing statement, because it outlines the arguments that will be made on appeal and is the appropriate vehicle through which to request the expedited schedule.

### Endnotes

<sup>1</sup> Wis. Stat. § 809.40(1).

<sup>2</sup> Wis. Stat. § 809.32.

<sup>3</sup> Wis. Stat. § 809.105.

<sup>4</sup> Wis. Stat. § 809.107.

<sup>5</sup> Wis. Stat. § 974.06(7).

<sup>6</sup> Wis. Stat. § 809.40(1).

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