Writing Petitions for Review

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I. **Step One: Make sure your case meets the technical prerequisites for review and is filed <u>on time</u>.** Filing a petition for review requires that the decision of the Court of Appeals be adverse to the party filing the petition and that the decision be a final decision.

A. Only adverse decisions of the Court of Appeals are proper subjects for review. Wis. Stats. §§808.10, 809.62(1g). To be adverse, the result or disposition itself must be adverse to the petitioning party. *Id*. §809.62(1g)(a). Partial denial of the relief sought or the failure of the court of appeals to grant the preferred form of relief is sufficient to make a decision adverse. *Id*. §809.62(1g)(b). Disagreement with the language of the decision below or with the court's rationale for granting the relief you sought below does not make a decision adverse. *Id*. §809.62(1g)(c); *see also Neely v. State*, 89 Wis.2d 755, 758, 279 N.W.2d 255 (1979).

B. The adverse decision must be a final order or decision of the Court of Appeals. Wis. Stats. §809.62(1g)(a).

C. To be subject to review, the action of the Court of Appeals must be a decision and involve a written opinion or order. *Henderson v. Rock Co. Dept. of Soc. Servs.*, 85 WIs.2d 244, 446, 270 N.W.2d 581 (1978).

1. A court of appeals denial of leave to appeal is not subject to review. *Id*.

2. An order granting or denying leave to appeal a nonfinal order also is not subject to review, although the decision on the merits itself is subject to review. *See Aparacor, Inc. v. DILHR*, 97 Wis.2d 399, 403-04, 293 N.W.2d 545 (1980).

   a. A court of appeals denial of leave to appeal is not subject to review. *Id*.;

   b. A court of appeals denial of a stay is not subject to review. *In Interest of A.R.*, 85 Wis.2d 444, 270 N.W.2d 581 (1978).

C. A petition for review is timely if it is filed within 30 days of the decision below. Wis. Stats. §§808.01, 809.62(1m); *First Wisconsin National. Bank of Madison v. Nicholaou*, 87 Wis.2d 360, 274 N.W.2d 704 (1979). This deadline is **not** extendable because the Court loses subject matter jurisdiction after thirty days. *St. John's Home v. Continental Cas. Co.*, 150 Wis.2d 37, 43, 441 N.W.2d 219 (1989).

1. A petition is not considered filed until it is **physically** received in the clerk's office in Madison. *Gunderson v. State*, 106 Wis.2d 611, 318 N.W.2d 779 (1982). Office hours are 7:15 a.m. to 5:00 p.m. This rule is strictly enforced.

   a. A petition for review may not be filed by facsimile or by email. *Waupaca Co. DHHS v. Phillip J.E.*, 2007AP1074-AC (unpublished order)

   b. The date of electronic filing is **not** the date of filing for deadline purposes. Wis. Stats. (Rule) 809.62(4)(c).

2. A petition due on a weekend or legal holiday is not due until the following workday. *Id*. §801.15(1)(b).

3. This time is tolled for incarcerated, *pro se* petitioners only from the time they deliver the petition to prison authorities for mailing and provided they file a certification or affidavit setting forth the date on which the petition was delivered to the proper institution authorities for mailing. *State ex rel. Nichols v. Litscher*, 2001 WI 119, 247 Wis.2d 1013, 635 N.W.2d 292.

4. The filing of a motion for reconsideration in the court of appeals does **not** toll the 30-day filing requirements for petitions for review.

5. A $195 filing fee must accompany the petition for review, Wis. Stats. §809.25(2)(a)1, although the state is exempt from this requirement, *id*. (2)(b), as are people who have been determined to be indigent. Wis. Sup. Ct. Internal Operating Procedures L2.

   a. A person for whom an indigency determination has been made in the Court of Appeals need not submit a new affidavit of indigency to be considered indigent for purposes of a petition for review. *Id*.

b. Clients of the State Public Defender are considered to be indigent.

6. The petition for review must be electronically filed with the clerk of courts in text-searchable PDF format. Wis. Stats. (Rule) 809.62(4)(b); 809.19(12)(c).

a. The electronic copy may be filed **on or before** the filing date of the paper copy. Wis. Stats. (Rule) 809.62(4)(d).

b. An electronic copy of an appendix submitted to the electronic filing system before the close of regular business hours shall be considered transmitted on that date, provided it is subsequently accepted by the clerk upon review. An electronic copy submitted after the close of regular business hours shall be considered transmitted the next business day. Wis. Stats. (Rule) 809.19(12)

c. Note that an attorney "who lacks the technological capability to comply with this subsection" may file a motion under Wis. Stats. (Rule) 809.14 for relief from the electronic filing requirement. The motion is to be filed at the same time as the filing of the paper copies of the petition for review. Wis. Stats. (Rule) 809.62(4)(b).

II. Step Two: Think beyond your own case. Less than 10 percent of petitions for review are granted. Convincing the Wisconsin Supreme Court to hear your case generally requires thinking beyond your own case. The advocate's key job in the petition for review is to convince the Wisconsin Supreme Court that his or her case is a good vehicle for the Court to use to teach something about the law that would not otherwise be clear or to establish a new policy.

A. The primary function of the Wisconsin Supreme Court "is that of law defining and law development." *Cook v. Cook*, 208 Wis.2d 166, 189, 560 N.W.2d 246 (1997).

B. Wisconsin Statutes §809.62(1r) provides criteria that the Wisconsin Supreme Court will consider but these criteria are not controlling. They are only guidelines.

1. The grant of review is a matter of discretion.

2. Think about whether you have a significant constitutional issue, whether your case involves the need for policy or a change in policy, whether your case presents a novel and important question of law, whether the circumstances that gave rise to your issue are likely to recur, and whether there is disagreement within the appellate courts on what the law is.

III. **Step Three: Explain your case in its broader context.** One way to avoid the trap of simply repeating your arguments and staying with the narrow confines of your own case is to begin by drafting the reasons for granting review.

A. Cite the guideline which applies, Wis. Stats. (Rule) 809.62(2)(c), but do not just cite the guideline that applies!

1. If your issue is recurring, cite other cases or other sources (such as newspaper articles or scholarly articles) that demonstrate that the issue is frequent and hot.

2. If your issue is novel, explain what implications it has in other setting or in other areas of law. Give hypothetical examples.

3. If there is a split on the question, demonstrate the split. Citation to unpublished cases, regardless of date of their publication, is permissible to demonstrate a conflict between districts for purposes of seeking review. *State v. Higginbotham*, 162 Wis.2d 978, 996-997, 471 N.W.2d 24 (1991). See what other jurisdictions are doing and, if they are also split, show that as well with citations to those cases.

4. If you are arguing that there is a need for a change in policy, make sure you explain what the old policy is and what has changed that makes it unwise to continue the existing policy.

B. The five "guidelines" set forth in Wis. Stats. (Rule) 809.62(1r) are:

1. A real and significant question of federal or state constitutional law is presented.

2. The petition for review demonstrates a need for the supreme court to consider establishing implementing, or changing a policy within its authority.

3. A decision by the supreme court will help develop, clarify, or harmonize the law, and

i. The case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation;

ii. The question presented is a novel one, the resolution of which will have statewide impact; or

iii. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court.

4. The court of appeals' decision is in conflict with controlling opinions of the U.S. Supreme Court or the supreme court or with other court of appeals' decision.

5. The court of appeals decision is in accord with the opinions of the supreme court or the court of appeals, but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

C. If none of the guidelines are present, write a statement of any other substantial or compelling reasons for review. Wis. Stats. (Rule) 809.62(2)(c).

IV. **Step Four: Make sure your statement of the issues presented clearly relates to your reasons the Court should grant review. Remember that issues of law have a much greater chance of getting a petition granted than a petition that raises issues of fact or involve the use of discretion.**

Too often, practitioners will explain why their case is important but then draft their statements of issues either so broadly or so narrowly that the Court cannot see how this case will serve the purpose you claim it will.

A. If your petition for review is granted, you will not be able to raise any issues that were not identified in your petition for review unless the Court orders otherwise (and you should not wait for that to happen). Wis. Stats. (Rule) 809.62(6).

1. If the court of appeals has not decided all of your issues, you must raise those unaddressed issues in your petition for review or they may be deemed to be waived. *State v. Johnson*, 153 Wis.2d 121, 124, 449 N.W.2d 845 (1990).

B. Typically, issues are stated as questions and are approximately one sentence in length. Avoid long lists of issue statements. Note that the statement of an issue "shall be deemed to comprise every

subsidiary issue as determined by the court." Wis. Stats. §809.62(2)(a).

C. You must also tell the Court how the circuit court and the court of appeals resolved the issue. Wis. Stats. (Rule) 809.62(2)(a).

V. **Step Five: Make your headings explain why review should be granted and for what issue. Draft your argument.** When you write your argument, you should be elaborating on the reasons that support granting review. Although you may wish to show that the court below was wrong, that alone is not very compelling. Your argument should show error below but it also should be drafted to emphasize how setting that error right will serve broader purposes. You will need to discuss the merits but you also want to focus on the reasons the Court should grant review.

A. Make sure that you speak of what happened in the circuit court as well as the Court of Appeals. Doing so often can help you explain that broader context.

B. Consider an introductory paragraph for each section of your argument that clearly identifies the reason for granting review, the issue, and the key facts. Consider the paragraph a way to highlight why the Court should grant review.

VI. **Step Six: Make sure that the form and contents of your petition meet the requirements.** Strict rules govern the length, appearance, and contents of a petition for review. If you feel you need to exceed the length requirements, you may file a motion requesting an extension of the page limit but this should be very rarely done.

A. Check your contents.

1. You must have a table of contents. Wis. Stats. §809.62(2)(b). You need not have a table of authorities although many people include one.

2. You must have a statement of the issues. Wis. Stats. §809.62(2)(a).

3. You must have a statement of reasons for granting review. Wis. Stats. §809.62(2)(c).

4. You must have a statement of the case. Wis. Stats. §809.62(2)(d). You can separate out the facts and also have a statement of facts.

a. Making your statement of the case lengthy and convoluted may very well hurt the likelihood of review being granted in your case. A long and involved statement of the case often suggests that the issues may be unique to your case.

   i. Please note that you must include the procedural status of the case. Wis. Stats. §809.62(2)(a).

   ii. You also must include the disposition in the circuit court as well as in the court of appeals. *Id*.

b. Making your statement of facts lengthy and convoluted similarly will hurt the likelihood of a grant of review. It suggests the case is highly fact-specific.

c. If possible, adopt the facts as the Court of Appeals saw them. If the facts appear undisputed (or largely undisputed), you increase the chance of review because you increase the chance that your issues will be seen as legal issues. The rules require only that your statement include any facts "not included in the opinion of the court of appeals relevant to the issues presented." Wis. Stats. §809.62(2)(d). Make sure that you cite to the record to establish these additional facts.

d. If you are filing a petition for review in a case that is required by law to be confidential (for example, appeals under Chapters 48, 938, 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 petition for review and briefs. If you include portions of the record in an appendix to the petition for review (or brief), the portions should be reproduced so that only the first name and first initial of the last name is shown.

5. You must have an argument section. Please note that the argument must be arranged in the order of the statement of issues presented. Wis. Stats. §809.62(2)(e).

6. You should have a conclusion. Your conclusion should **not** be that the Court of Appeals was wrong. The Supreme Court is not an "error correcting" court. You should explain that the Court should grant review and briefly (one-sentence) reiterate why.

7. You must have an appendix. Wis. Stats. (Rule) 809.62(2)(f). Your appendix consists of (in this order):

   a. the decision of the Court of Appeals

   b. relevant judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit order

   c. any other portions of the record which are needed to understand the petition.

E. Check the formatting issues.

1. Your covers should be white. Wis. Stats. §809.62(4).

2. Consider your font. Wis. Stats. §§809.19(8)(b), 809.62(4).

   a. If in proportional serif font (such as Times):

      i. it may not be more than 8,000 words long, not including the appendix

      ii. use 13 point body text and 11 point for quotes.

      iii. you must have a minimum leading (or spacing) of 2 points but you can have more.

      iv. you must have a maximum of 60 characters per full line of body text which generally is met if your side margins are 2 inches

   b. If in monospaced fond (such as Courier)

      i. it may not be longer than 35 pages, not including the appendix

      ii. use a size of ten characters per inch

      iii. double-space it.

      iv. use a 1.5 inch margin on the left side and a 1.0 inch margin on all other sides.

3. Italics can only be used for citations, headings, emphasis, and foreign words. Wis. Stats. §§809.19(8)(b), 809.62(4).

4. Make sure the petition is securely bound on the left side only. Heavy strength staples are allowed by rule. Wis. Stats. §§809.19(8)(b), 809.62(4).

5. Make sure you have the proper certifications, including the certification for form and length, Wis. Stats. (Rule) 809.62(4)(a), and the certification concerning electronic filing, *id*. 809.19(12)(f).

VII. **Step Seven: Await the response or cross-petition.**

A. The opposing party may file a response to your petition within fourteen days after service of the petition for review.

B. If the opposing party seeks modification of an adverse decision, the party may file a petition for cross-review either within the original thirty days for filing a petition for review or within thirty days after the filing by another party of a petition for review, whichever is later. Wis. Stats. §809.62(3m)(a).

1. A cross-petition is not necessary if you want to defend the result or outcome in the court of appeals on a different ground than that used by the court of appeals even if the lower courts did not rule on that ground. *Id*. §809.62(3m)(b)(1).

2. A cross-petition is not necessary if you want to assert grounds that establish your right to a result which is less favorable to you that the outcome below but more favorable than the outcome or result which could be awarded to the petitioner. *Id*. §809.62(3m)(b)(2).

C. The statutes do not provide for filing a reply to the response. In the unusual situation in which the response raises a completely new and unexpected issue or completely misstates material and key facts or law, a petitioner may file a motion seeking leave to file a reply, accompanied by the reply. ***This situation should be rare and the reply should be extremely brief.***

VIII. **Step Eight: Await a decision from the Wisconsin Supreme Court to see if the Court will grant review.** Three justices must agree to hear your case for the petition to be granted. Wis. Sup. Ct. Internal Operating Procedures III. B. 1.

A. After the petition is filed, it is assigned to a court commissioner for analysis. Under the Internal Operating Procedures, the court commissioner has fifty days to prepare and circulate a memorandum to the court which contains an analysis of the petition and a recommendation for the granting or denial of the petition. The memorandum may also recommend submission on briefs without oral argument. The court commissioner then circulates to each justice of the Wisconsin Supreme Court the memorandum, the petition for review, any responses, and an agenda sheet at least two weeks prior to the conference and the justices of the Court review the material.

B. At least once each month, the court holds a conference at which each court commissioner reports on the petitions for review to be considered at that conference. The chief justice will state the name of the case and ask if any member objects to the recommendation.

   1. If there is no objection to the recommendation, the court commissioner's recommendation is accepted. If any justice objects to the recommendation or wishes to discuss it, a discussion ensues. Following discussion, the court decides whether to grant or deny the petition and whether to schedule it for oral argument. A petition may be held until a subsequent conference to permit additional research or consideration. In fact, you likely will not receive notification of the Court's action on your petition for several months.

C. If review is denied, a one-page order will be issued. If review is granted, the court commissioner will prepare an order setting forth the decision to grant review. If there is any limitation of issues, the order will set out those limitations. The order also will set out the briefing schedule.

Examples of "Reasons for Granting Review" from Some Successful Petitions for Review

(Drafted by Ellen Henak)

Example 1 (from September of 2006):

Reasons for Granting Review

This case raises the question what a defendant must allege with regard to his own understanding of the nature of the crime to receive an evidentiary hearing on his claim that his plea was not knowing, intelligent, and voluntary. This commonly recurring legal question has constitutional roots. *See Boykin v. Alabama*, 395 U.S. 238 (1969); *State v. Hampton*, 2004 WI 107, 274 Wis.2d 379, 390, 683 N.W.2d 14. Answering it involves law that the majority characterized as "highly complex and too often counter-intuitive," *see* App. 123, and resulted in an opinion recommended for publication which the dissent criticized as "only add[ing] to the confusion," *see* App. 132.

A guilty plea has constitutional implications. The constitution requires that a guilty plea be knowing and voluntary. *Boykin v. Alabama*, 395 U.S.238, 242-43 (1969). A defendant must have "a full understanding of the charges against him," *State v. Bangert*, 131 Wis.2d 246, 257, 389 N.W.2d 12 (1986), including, when relevant, an understanding of party-to-a-crime liability, *see State v. Brown*, 2006 WI 100 ¶55, __ Wis.2d __, 716 N.W.2d 906. Because guilty pleas resolve the overwhelming majority of cases, *see*, e.g, Alshuler, The Trial Judge's Role in Plea Bargaining, Part I, 76 Colum. L. Rev. 1059 n.1 (1969), "[t]aking pleas is an increasingly important and complex state in a criminal proceeding and is the source of frequent litigation." *Hampton*, 274 Wis.2d at 390. One of the common areas for litigation is whether the allegations made in a postconviction motion are sufficient to require a trial court to grant an evidentiary hearing. *See, e.g., Brown*, 2006 WI 100; *Hampton*, 274 Wis.2d 379; *State v. Bentley*, 201 Wis.2d 303, 548 N.W.2d 50 (1996).

In *Hampton*, 274 Wis.2d at 388, the defendant alleged that he did not understand that the trial court was not bound by the prosecutor's recommendation. This Court held that the allegation was sufficiently non-conclusory to warrant an evidentiary hearing. Id. at 406. As this Court stated,

> that the defendant did not understand is, admittedly, conclusory; but the allegation raises a question of *fact* and perhaps law that requires resolution.

> The allegation that a defendant did not understand something is qualitatively different from the allegation of a legal conclusion such as "counsel's performance was deficient and resulted in prejudice to the defendant" or "the defendant's plea was not voluntary." These *legal* conclusions cry out for supporting facts, and these supporting facts must be alleged to satisfy the defendant's burden for an evidentiary hearing.

Id. at 406-407 (emphasis in original).

The dispute here is whether *Hampton* applies. The majority of the Court of Appeals held that *Hampton* applied only to *Bangert* claims and Mr. Howell's claim was a *Bentley*[1] claim. App. 112. The dissent reasoned that *Hampton* applied because Mr. Howell's claim was a *Bangert* claim and because, in any event, *Hampton* applied to *Bentley* claims.

This case therefore presents the specific questions whether all postconviction motions seeking plea withdrawal must be characterized as either *Bangert* claims or *Bentley* claims, if so, how to characterize those claims, and whether the pleading requirements concerning the defendant's lack of understanding of the nature of the crime vary by claim. The facts relevant to resolving this issue are not in dispute. This Court should grant review to clarify this recurring legal question, *see* Wis. Stats. (Rule) 809.62(1)(a) & (c)(3), and because, assuming both Mr. Howell and the dissent are correct, the decision of lower court is in conflict with this Court's decision in *Hampton*, *see* Wis. Stats. (Rule) 809.62(1)(d), and publication of the lower court's decision will create significant confusion.

Example 2 (from February of 2004):

REASONS FOR GRANTING REVIEW

Under certain circumstances, Wisconsin Statutes Chapter 980 allows people found to be sexually violent persons to be placed on supervised release. *See* Wis. Stats. §§980.06(2)(b), 980.08. Unfortunately, as the Assistant Attorney General indicated at oral argument in the Court of Appeals, the state was and is unable to implement court orders for supervised release in Milwaukee County. *See* App.133 (Schudson, J., dissenting). As numerous other cases have indicated, *State v Sprosty*, 227 Wis.2d 315, 595 N.W.2d 692 (1999); *State v. Keding*, 214

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[1] *See State v. Bentley*, 201 Wis.2d 303, 548 N.W.2d 50 (1996) (ineffective assistance of counsel claim).

Wis.2d 363, 571 N.W.2d 450 (Ct. App.1997); *State v. Castillo*, 205 Wis.2d 592, 556 N.W.2d 425 (Ct. App.1996), *rev. dismissed as improvidently granted*, 213 Wis.2d 488, 570 N.W.2d 44 (1997), the problem also occurs statewide.

In Milwaukee, the state currently is confronting the problem in the trial courts. In *State v. Billy Morford*, Milwaukee Co. Case No. 96CF966242, the trial court, granted Morford's petition for supervised release on November 27, 2002. More than two years later, Morford is only in a temporary placement. Similarly, in *State v. Robert Carney*, Milwaukee Co. Case No. 98CI000018, the trial court granted Carney's petition for supervised release on November 13, 2002. Two years later, no placement has been found. It is unlikely any acceptable supervised release plan will be developed in those or future cases because "the statutory mandate requires basic 'halfway house resources' which are not available to the subjects of Chapter 980...." R104:12; *see* David Doege, *Judge Orders Release of Child Molester*, Mil. J. Sentinel, November 28, 2002, at 3B.

This case therefore presents the real, significant , and recurring constitutional question of statewide impact whether the unavailability of supervised release placements causes Chapter 980 to be unconstitutional as applied. *See* Wis. Stats. (Rule) 809.62(1)(a),. (c)(2) & (3).

This case also presents the question whether a presumption of constitutionality attaches when a statute is challenged as applied. When a statute is challenged directly, courts must presume the constitutionality of the statute and must indulge every presumption favoring the validity of the statute. *See State v. Post*, 197 Wis.2d 279, 541 N.W.2d 115 (1995), *cert. denied sub nom Schmidt v. Wisconsin*, 521 U.S. 1118 (1997). When the challenge is to the application of a statute, this Court has not applied this presumption of unconstitutionality. *See, e.g., State v. Dodson*, 219 Wis.2d 65, 580 N.W.2d 181 (1998); *State v. Pulizzano*, 155 Wis.2d 633, 456 N.W.2d 325 (1990); *State v. Miller*, 202 Wis.2d 56, 549 N.W.2d 235 (1996). Nevertheless, the Court of Appeals applied such a presumption in deciding this case. App.126.

This issue is a real and significant question of constitutional law, *see* Wis. Stats. (Rule) 809.62(1)(a), and is a question of law which is likely to recur unless resolved by this Court, *id*. 809.62(1)(c)(3). This Court also should take review of this issue because the Court of Appeals' decision is in conflict with opinions of this Court. *Id*. 809.62(1)(d).

This Court also should take review to decide whether *State v. Morford*, 2004 WI 5, 655 N.W.2d 546, 259 Wis.2d 480 applies retroactively. In *Morford*, this Court held that Wisconsin Statutes §980.08(6m) and not §806.07(1)(h) "governs granting relief for the State from a chapter 980 committee's supervised release when the committee is confined in an institution awaiting placement on supervised release." Because the issue in *Morford* was moot, *see id*. at ¶6, this Court had no opportunity to consider this aspect.

Motions for reconsideration by the state have been common. *See Morford*, 2004 WI 5 at ¶10 (noting that the issue has arisen at least four times in published cases since 1996). This Court therefore should grant review of this novel issue of law to develop the law because its resolution will have statewide impact and is likely to recur unless resolved by this Court. Wis. Stats. (Rule) 809.62(1)(c)(2) & (3).

Example 3 (from August of 2006):

Reasons for Granting Review

This case involves the failure of Illinois to comply with its obligations under the Interstate Agreement on Detainers and presents the purely legal question of the effect of that failure on Mr. Townsend's Wisconsin case. The question is a particularly vexing one which resulted in both a majority opinion and a dissent in the Court of Appeals. Given the number of governmental bodies which have enacted the Agreement, the situation presented in this case is likely to recur. This Court therefore should grant review to resolve the recurring legal question of the remedy when a sending state under the Agreement fails to comply with its notice provisions to the defendant. *See* Wis. Stats. (Rule) 809.062(1)(c)(3).

Almost all states and the federal government are signatories to the Interstate Agreement on Detainers, *see* Meadows, *Interstate Agreement on Detainers and the Rights It Created*, 18 Akron Law Review 691, 693 (Spring 1985), including Wisconsin and its border states. 730 ILCS 5/3-8-9; Iowa Code §821.1; Mich. Stats. Ann. §780.601; Minn. Stats. §629.294;Wis. Stats. §976.05. This Agreement provides a procedure for getting a defendant who is a prison in one state to another state in which he has a pending case. *See, e.g.,* Wis. Stats. §976.05.

The Agreement is intended "to encourage the expeditious and orderly disposition of [outstanding charges] and determination of the proper status of any

and all detainers." *See* Wis. Stats. § 976.05(1). Wisconsin and other states entered into the Agreement because "the party states" found that proceedings in such circumstances "cannot properly be had in the absence of cooperative procedures." *See id.*

Accordingly, the Agreement creates two different procedures for speedy resolution of cases. The Article IV procedure allows prosecutors from a receiving state to make "a written request for temporary custody" to resolve charges. *Id.* §976.05(4) If prosecutors make such a request and the governor of the sending state does not disapprove within 30 days, then the receiving state is "entitled to have [the defendant]…made available," *id.* §976.05(4)(a), and a trial must commence within 120 days of the arrival of the defendant in the receiving state, *id.* §976.05(4)(c). If the trial does not commence in time, the Agreement requires dismissal of the charges with prejudice.

The Article III procedure at issue in this case applies after a state lodges a detainer and requires an official in the state which has custody of the defendant to "promptly inform [the defendant] of the source and contents of any detainer…and of [his] right to make a request for final disposition." *Id.* §976.05(3)(c). If the defendant requests final disposition, the trial must begin within 180 days or the Agreement requires dismissal of the charges with prejudice. *Id.* 976.05 (3)(d).

Unfortunately, the proximity of Illinois to Wisconsin and the problems within the Illinois prison system make recurrence of the situation at bar likely. As the trial court noted, "[t]he evidentiary hearings [in this case] only illuminated one thing that both sides agree upon; that the organization of the Illinois prison system, specifically in Cook County is a state of total disarray." R58:5. In addition, notification mistakes have happened across the country. *See, e.g., United States v. Reed*, 910 F.2d 621 (9th Cir. 1990); *Schofs v. Warden, FCI, Lexington*, 509 F. Supp. 78, 82 (E.D. Ky. 1981); *People v. Lincoln*, 601 P.2d 641, 644 (Colo. 1979); *State ex rel. Garner v. Gray***,** 55 Wis. 2d 574, 583, 201 N.W.2d 163 (1972).

Selected Statues Relevant to Writing Petitions for Review

809.62 Rule (Petition for review).

(1g) DEFINITIONS. In this section:

(a) "Adverse decision" means a final order or decision of the court of appeals, the result of which is contrary, in whole or in part, to the result sought in that court by any party seeking review.

(b) "Adverse decision" includes the court of appeals' denial of or failure to grant the full relief sought or the court of appeals' denial of the preferred form of relief.

(c) "Adverse decision" does not include a party's disagreement with the court of appeals' language or rationale in granting a party's requested relief.

(1m) GENERAL RULE; TIME LIMITS. (a) A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to s. 808.10.

(b) If a motion for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition for review in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.

(c) If a motion for reconsideration is denied and a petition for review had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition had not expired when the motion for reconsideration was filed, a response to the petition may be filed within 14 days of the order denying the
motion for reconsideration.

(d) If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition, a notice withdrawing the pending petition, or an amendment to the pending petition within 14 days after the date of the filing of the court of appeals'
amended decision.

(e) After the petitioning party files a notice affirming or withdrawing the pending petition or an amendment to the pending petition under par. (d), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response may be an affirmation of the responding party's earlier response or a new response.

NOTE: Sub. (1m) is shown as repealed and recreated eff. 11−1−09 by 2009Wis. Act 25. Prior to 11−1−09 it reads:

(1m) GENERAL RULE; TIME LIMIT. A party may file with the supreme court apetition for review of an adverse decision of the court of appeals pursuant to s. 808.10 within 30 days of the date of the decision of the court of appeals.

(1r) CRITERIA FOR GRANTING REVIEW. Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:

(a) A real and significant question of federal or state constitutional law is presented.

(b) The petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority.

(c) A decision by the supreme court will help develop, clarify or harmonize the law, and

1. The case calls for the application of a new doctrine rather than merely the application of well−settled principles to the factual situation; or

2. The question presented is a novel one, the resolution of which will have statewide impact; or

3. The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court.

(d) The court of appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the supreme court or other court of appeals' decisions.

(e) The court of appeals' decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

NOTE: Sub. (1) (a) to (e) were renumbered to s. 809.63 (1r) (a) to (e) by Sup. Ct. Order 04−08 and renumbered to pars. (a) to (e) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(2) CONTENTS OF PETITION. Except as provided in s. 809.32 (4), the petition must contain:

(a) A statement of the issues the petitioner seeks to have reviewed, the method or manner of raising the issues in the court of appeals and how the court of appeals decided the issues. The statement of issues

shall also identify any issues the petitioner seeks to have reviewed that were not decided by the court of appeals. The statement of an issue shall be deemed to comprise every subsidiary issue as determined by the court. If deemed appropriate by the supreme court, the matter may be remanded to the court of appeals.

(b) A table of contents.

(c) A concise statement of the criteria of sub. (1) [sub. (1r)] relied upon to support the petition, or in the absence of any of the criteria, a concise statement of other substantial and compelling reasons for review.

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(d) A statement of the case containing a description of the nature of the case; the procedural status of the case leading up to the review; the dispositions in the circuit court and court of appeals; and a statement of those facts not included in the opinion of the court of appeals relevant to the issues presented for review,

with appropriate citation to the record.

(e) An argument amplifying the reasons relied on to support the petition, arranged in the order of the statement of issues presented. All contentions in support of the petition must be set forth in the petition. A memorandum in support of the petition is not permitted.

(f) An appendix containing, in the following order:

1. The decision and opinion of the court of appeals.

2. The judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition.

3. Any other portions of the record necessary for an understanding of the petition.

(2m) INAPPLICABLE TO PARENTAL CONSENT TO ABORTION CASES. Subsection (2) does not apply to a petition for review of an appeal that is governed by s. 809.105. A petition governed by that section shall comply with s. 809.105 (11).

(2r) APPLICATION TO TERMINATION OF PARENTAL RIGHTS CASES. This section applies to petitions for review of an appeal under s. 809.107, except as provided in s. 809.107 (6) (f).

(3) RESPONSE TO PETITION. Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14 days after the service of the petition. If filed, the response may contain any of the following:

NOTE: Sub. (3) (intro.) is shown as amended eff. 11−1−09 by 2009 Wis. Act 25. Prior to 11−1−09 it reads:

(3) RESPONSE TO PETITION. Except as provided in s. 809.32 (4), an opposing party may file a response to the petition within 14 days after the service of the petition. If filed, the response may contain any of the following:

(a) Any reasons for denying the petition.

(b) Any perceived defects that may prevent ruling on the merits of any issue in the petition.

(c) Any perceived misstatements of fact or law set forth in the petition that have a bearing on the question of what issues properly would be before the court if the petition were granted.

(d) Any alternative ground supporting the court of appeals result or a result less favorable to the opposing party than that granted by the court of appeals.

(e) Any other issues the court may need to decide if the petition is granted, in which case the statement shall indicate whether the other issues were raised before the court of appeals, the method or manner of raising the issues in the court of appeals, whether the court of appeals decided the issues, and how the court of appeals decided the issues.

(3m) PETITION FOR CROSS−REVIEW. (a) When required; time limit. A party who seeks to reverse, vacate, or modify an adverse decision of the court of appeals shall file a petition for cross−review within the period for filing a petition for review with the supreme court, or 30 days after the filing of a petition for review by another party, whichever is later.

(b) No cross−petition required. 1. A petition for cross−review is not necessary to enable an opposing party to defend the court of appeals' ultimate result or outcome based on any ground, whether or not that ground was ruled upon by the lower courts, as long as the supreme court's acceptance of that ground would not change the result or outcome below.

2. A petition for cross−review is not necessary to enable an opposing party to assert grounds that establish the party's right to a result that is less favorable to it than the result or outcome rendered by the court of appeals but more favorable to it than the result or outcome that might be awarded to the petitioner.

(c) Rights and obligations of parties. A party seeking cross−review has the same rights and obligations as a party seeking review under ch. 809, and any party opposing a petition for cross−review has the same rights and obligations as a party opposing review.

(4) FORM AND LENGTH REQUIREMENTS. (a) The petition for review and response, if any, shall conform to s. 809.19 (8) (b) and (d) as to form and certification, shall be as short as possible, and may not exceed 35 pages in length if a monospaced font is used or 8,000 words if a proportional serif font is used, exclusive of appendix. The petition for review and the response shall have white front and back covers, and a party shall file 10 copies with the clerk of the supreme court.

(b) Electronic petition for review. An attorney filing a petition for review under this rule shall file with the clerk of the supreme court a copy of the petition for review or response in electronic form using the procedure under s. 809.19 (12) and may file a copy of an appendix to the petition for review or response in electronic form using the procedure under s. 809.19 (13). A self−represented party is not required to file an electronic copy of the petition for review or response, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the petition for review or response remains the official court record. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper petition for review. An attorney shall show good cause why it is not feasible to file a copy of the petition of review electronically.

(c) Effect of electronic filing. Except as provided in s. 809.80 (3) (e), the date on which the clerk receives the paper copies of the petition for review shall be the official date of filing of the petition for review. Transmitting the electronic copy of a petition for review does not satisfy the filing requirements of this section.

(d) Timing of electronic filing. The electronic copy of the petition for review and response shall be electronically transmitted on or before the date that the paper petition for review and response is filed.

(4m) COMBINED RESPONSE AND PETITION FOR CROSS−REVIEW. When a party elects both to submit a response to the petition for review and to seek cross−review, its submission shall be titled "Combined Response and Petition for Cross−Review." The time limits set forth in sub. (3m) shall apply. The response portion of the combined document shall comply with the requirements of subs. (3) and (4). The cross−review portion of the combined document shall comply with the requirements of subs. (2) and (4), except that the requirement of sub. (2) (d) may be omitted. The cross−review portion shall be preceded by a blank white cover. A signature shall be required only at the conclusion of the cross−review portion of the combined document.

(5) EFFECT ON COURT OF APPEALS PROCEEDINGS. Except as provided in s. 809.24, the filing of the petition stays further proceedings in the court of appeals.

(6) CONDITIONS OF GRANT OF REVIEW. The supreme court may grant the petition or the petition for cross−review or both upon such conditions as it considers appropriate, including the filing of additional briefs. If a petition is granted, the parties cannot raise or argue issues not set forth in the petition unless ordered otherwise by the supreme court. The supreme court may limit the issues to be considered on review. If the issues to be considered on review are limited by the supreme court and do not include an issue that was identified in a petition and that was left undecided by the court of appeals, the supreme court shall remand that issue to the court of appeals upon remittitur, unless that issue has become moot or would have no effect.

809.19 (Rule) (Briefs and appendix)

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(12) ELECTRONIC BRIEFS. (a) *General rule.* An attorney filing a brief under these rules shall file with the court a copy of the brief in electronic form. A self−represented party is not required to file an electronic copy of the brief, but may do so as provided for in this subsection. Notwithstanding s. 801.17 (9), the paper copy of the brief remains the official court record.

(b) *Process.* Attorneys and self−represented parties filing an electronic brief shall use the electronic filing system under s. 801.17.

(c) *Format.* The electronic brief shall be in text−searchable Portable Document Format (PDF).

(d) *Filing.* The date on which the paper brief is filed under s. 809.80 (3) (b) shall be the official date of filing of the brief. The electronic copy of the brief shall be electronically transmitted on or before the date that the paper brief is filed under s. 809.80 (3).

(b). An electronic copy of a brief submitted to the electronic filing system before the close of regular business hours shall be considered by the clerk upon review. An electronic brief submitted after the close of regular business hours shall be considered transmitted the next business day.

(e) Corrections. If corrections are required to be made, both the paper and electronic copies shall be corrected.

(f) Certification. In addition to the form and length certification required under s. 809.19 (8) (d), attorneys and self−represented parties shall certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

(g) Motion for relief. An attorney who lacks technological capability to comply with this subsection may file a motion under s. 809.14 for relief from the electronic filing requirements at the time the attorney files the paper brief. An attorney shall show good cause why it is not feasible to file a copy of the brief electronically.