Proposed Wisconsin Rules of Appellate Practice and Procedure

State of Wisconsin Judicial Council Appellate Practice and Procedure Committee

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The Judicial Council, created by Section 257.13 of the Wisconsin Statutes, in furtherance of its statutory responsibilities to "...study the rules of pleading, practice and procedure, and advise the supreme court as to changes which will, in the council's judgment, simplify procedure and promote a speedy determination of litigation upon its merits," presents proposed Rules of Appellate Practice and Procedure for promulgation by this Court under Section 251.18.

Then Chief Justice Horace W. Wilkie of this Court in a letter to the Judicial Council dated January 27, 1976 requested the Council to form a special committee on appellate practice and procedure with members of the Committee to be appointed by the Council and the Court. The Committee was to prepare a general revision of statutes and rules governing appeals to this Court and, in preparing such recommendations, review the recommendations of the National Center for State Courts for revising Wisconsin's appellate practice and procedure.

The Judicial Council Appellate Practice and Procedure Committee was formed in February, 1976 and consisted of seven members appointed by the Judicial Council and eight by this Court. The Judicial Council members are: Milwaukee Attorney Francis R. Croak, Chairman; Columbia County Judge Daniel C. O'Connor, Milwaukee Attorney Robert L. Habush, Circuit Court Judge Robert F. Pfiiffer, and Wausau Attorney Richard J. Weber. The Judicial Council also named Mr. Glenn
M. Anderson, Executive Secretary of the Wisconsin Federation of Cooperations, as a non-lawyer public representative and Mr. William L. Gansner as a representative of the Attorney General's office. Committee members appointed by this Court are: Milwaukee Attorney Irvin B. Charne; retired Supreme Court Chief Justice George R. Currie; Wisconsin Public Defender Howard B. Eisenberg; Milwaukee Attorney Laurence C. Hammond, Jr.; Milwaukee Attorney David L. Walther; Green Bay Attorney John C. Whitney, and Janesville Attorney John C. Wickhem. Justice Nathan S. Heffernan of the Court was named as an ex officio member.

Mr. Robert J. Martineau, Executive Officer of the Wisconsin Supreme Court, and Madison Attorney Richard L. Olson acted as Reporters to the Committee. The Committee met monthly through December, 1976.

Attached to this petition are proposed Rules of Appellate Practice and Procedure as prepared by the Appellate Practice and Procedure Committee and approved by the statutory membership of the Judicial Council at a meeting on December 17, 1976. A similar set of recommendations pertaining to substantive law changes to appellate practice and procedure are being presented to the Wisconsin Legislature simultaneously with the petition to this Court. Both the proposed rules and proposed statutory changes contain a January 1, 1978 effective date.

Explanatory notes prepared by the Appellate Practice and Procedure Committee and approved by the Judicial Council follow each major provision in the proposed Rules. If this Court gives favorable consideration to the petition, the Judicial Council requests that the order adopting the Rules of Appellate Practice and Procedure also adopt the Appendix at the end of the Rules which contains necessary renumbering provisions and a cross-reference table.

The Judicial Council and the members of the Appellate Practice and Procedure Committee feel that the proposed Rules contained in the petition would, if adopted by this Court, be a substantial improvement in appellate practice in Wisconsin.

Members of the Judicial Council and Appellate Practice and Procedure Committee are prepared to appear at a public
hearing established pursuant to Section 251.18 for consideration of this petition.

JUDICIAL COUNCIL

The Honorable Gary B. Schlosstein
Chairman

January 31, 1977

Richard R. Malmgren
Executive Secretary
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RULES OF SUPREME COURT PROCEDURE
DEFINITIONS

809.01 Rule: Definitions

(1) "Appeal" means a review in the Supreme Court by appeal or writ of error authorized by law of a judgment or order of an inferior court.

(2) "Appellant" means a person who files a notice of appeal.

(3) "Respondent" means a person adverse to the appellant or co-appellant.

(4) "Cross-appellant" means a respondent who files a cross-appeal.

(5) "Co-appellant" means a person who files a notice of appeal in an action or proceeding in which a notice of appeal has previously been filed by another person and whose interests are not adverse to that person.

Judicial Council Committee's Note:

The definitions reflect some of the changes incorporated into the rules. The term "appeal" applies both to an appeal authorized by statute and the writ of error guaranteed by Section 21 of Article I of the Constitution. The objective of these rules is to provide the same procedure for appeals and writs of error. Historically, the review authorized by a writ of error was limited to questions of law, while both the law and the facts could be reviewed on appeal. The Wisconsin Supreme Court does not distinguish between its power in appeals and in writs of error. Although under the former procedure appeals were normally used in civil cases and writs of error in criminal cases, the only differences between them were in nomenclature and method of initiating the review process. There is no reason to retain the formalistic differences between them.

The definitions of the parties to the appeal are intended to change the former statute, section 817.10, under which the party first appealing was the appellant, and all other parties were respondents. This often resulted in a party with interests identical to the appellant being labeled a respondent, while two parties opposed to each other were both labeled respondents. Under this section the party first appealing is the appellant, parties appealing from the same judgment or order not opposed to the appellant are co-appellants, and parties adverse to the appellant or co-appellant are respondents. The terms "plaintiff in error" and "defendant in error" previously used in connection with writs of error are no longer used.
CIVIL APPEAL PROCEDURE

809.10 Rule: Initiating the Appeal

(1) Notice of Appeal

(a) Filing - An appellant shall initiate an appeal by filing a notice of appeal with the clerk of the court in which the judgment or order appealed from was entered. The appellant shall specify in the notice of appeal the judgment or order appealed from.

(b) Time for Filing - The notice of appeal must be filed within the time specified by law. The filing of a timely notice of appeal is necessary to give the Supreme Court jurisdiction over the appeal.

(2) Multiple Appeals

(a) Joint and Co-Appeals - If two or more persons are each entitled to appeal from the same judgment or order entered in the same action or proceeding in the trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may, after filing separate notices of appeal, proceed as a single appellant. If the persons appeal from different judgments or orders, or do not file a joint appeal or elect to proceed as a single appellant, or if their interests are such as to make joinder impracticable, they shall proceed as appellant and co-appellant(s), with each co-appellant to have the same procedural rights and obligations as the appellant.

(b) Cross-Appeal - A respondent who seeks a modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the period established by law for the filing of a notice of appeal, or thirty (30) days after the filing of a notice of appeal, whichever is later.

(3) Consolidated Appeals in Separate Cases

The Supreme Court may consolidate separate appeals in separate actions or proceedings in the trial court upon its own motion, motion of a party, or stipulation of the parties.

(4) Matters Reviewable

An appeal from a final judgment or final order brings before the Supreme Court all prior nonfinal judgments, orders, and rulings adverse to the appellant and favorable to the respon-
dent made in the action or proceeding not previously appealed and ruled upon.

Judicial Council Committee’s Notes:

Subsection (1)(a) establishes the same procedure for initiating a review by the Supreme Court whether it be the statutory appeal or constitutional writ of error. Both are begun by filing a notice of appeal in the trial court. The prior procedure under which a person could obtain a writ of error from the Supreme Court and then file it in the trial court at his leisure is eliminated. It is important to recognize that the right to seek review in the Supreme Court as established by the Constitution is not abolished, but the procedure for seeking that review is made uniform with that for filing an appeal.

The second sentence of subsection (b) is designed to change the law as declared in former section 817.11(4), and the decisions of the Supreme Court interpreting former section 269.59(1), under which the Supreme Court was vested with subject matter jurisdiction when an appealable order was entered. Under former section 817.11(4), the notice of appeal was necessary only to confer personal jurisdiction which could have been waived. The court often had to decide whether the respondent by some conduct, such as signing a stipulation or receiving a brief, had waived any objection to personal jurisdiction. The result was that a judgment of a trial court in Wisconsin was never completely final because even after the expiration of the time for an appeal a party could still appeal, and if the respondent failed to object or take some step that could be considered as participating in the appeal prior to objecting, the Supreme Court was able to review the judgment. This section conforms Wisconsin practice to that in the federal system and most other states.

Subsection (2)(a) provides that appellants whose interests are substantially identical may proceed jointly or separately. See Rule 3(b), Federal Rules of Appellate Procedure (FRAP). If they do not wish to proceed jointly, or their interests are not the same, or if they are not appealing from the same judgment or order, the subsequent appeal should be docketed with the first appeal, but the second person appealing has the same procedural rights, such as filing of briefs, as the first appellant. The respondent has separate briefing rights as to each appellant and co-appellant filing a separate brief. It is anticipated under this section that all appeals arising out of the same case filed within the same appeal period will be considered in a single appeal and not be treated as separate cases in the Supreme Court.
Subsection (2)(b) - The respondent who desires to challenge a judgment or order must file a notice of cross-appeal. Notices of review are abolished. Under former section 817.12, it was very difficult to ascertain when a notice of review or cross-appeal was appropriate. Requiring a notice of cross-appeal in each instance eliminates this confusion. The respondent is given a minimum of thirty (30) days after the filing of the notice of appeal to determine whether to file a cross-appeal. As was the case under former section 817.12, a respondent loses the right to cross-appeal if the cross-appeal is not filed within the specified time.

Subsection (3) - Appeals from judgments or orders in separate cases in the trial court are docketed as separate appeals in the Supreme Court. If appropriate, these cases can be consolidated after docketing by order of the Supreme Court. Rule 3(b), FRAP.

Subsection (4) - The provision of former section 817.34 that an appeal from a final judgment brings before the court for review all of the prior orders entered in the case is continued. This does not apply, however, to any prior final order or judgment which could have been appealed as of right under section 808.02(1). Thus a judgment dismissing a co-defendant from a case must be appealed immediately and cannot be reviewed when judgment is rendered in the plaintiff's claim against the other defendants. Nonfinal orders and judgments that are appealed and ruled upon by the Supreme Court are, of course, not subject to further review upon appeal of the final judgment. This section is also limited to those orders made in favor of the named respondents to prevent the possibility of the court reviewing an order in favor of a person not a party to the appeal.

A change is made in prior law in that an interlocutory judgment, section 806.01(2), which previously must have been appealed within the statutory period from the entry of the interlocutory judgment, Richter v. Standard Manufacturing Co., 224 Wis. 109, 271 N.W. 51 (1937), is not reviewable by the Supreme Court upon an appeal of the final judgment. The objective is to have only one appeal in each case, absent unusual circumstances which would justify an appeal from a nonfinal order under section 808.02(2).

809.11 Rule: Perfecting the Appeal

(1) Items to be Filed With Notice of Appeal

The Appellant shall file with the notice of appeal the fee for docketing an appeal with the Supreme Court.
(2) **FORWARDING TO SUPREME COURT**

The clerk of the trial court shall forward to the Supreme Court, within three (3) days of the filing of notice of appeal, a copy of the notice of appeal, the Supreme Court docketing fee, and a copy of the court record (docket entries) of the case in the trial court maintained pursuant to section 59.39(2) or (3), Stats.

(3) **DOCKETING IN SUPREME COURT**

The clerk of the Supreme Court shall docket the appeal upon receipt of the items referred to in sub. (2).

(4) **STATEMENT ON TRANSCRIPT**

The appellant shall file with the clerk of the Supreme Court, within ten (10) days of the filing of the notice of appeal in the trial court, a statement that a transcript is not necessary for prosecution of the appeal or a statement by the court reporter that the transcript or designated portions thereof have been ordered, arrangements have been made for the payment of the cost of the transcript, the date on which the transcript was ordered and arrangements made for payment, and the date on which the transcript is due.

**Judicial Council Committee’s Note:**

This section requires the forwarding of the notice of appeal, filing fee, and trial court docket entries immediately, the record to be forwarded when the transcript is completed. This will permit early notice to the Supreme Court of the pendency of the appeal and will permit it to monitor the appeal during the period when the record and transcript are being prepared.

Another purpose of this section is to expedite the appellate process by requiring the appellant to order the transcript, if one is necessary, within ten (10) days of the filing of the notice of appeal. The filing of the statement of the reporter that the transcript has been ordered and arrangements made for payment for it will prevent any delay resulting from counsel not ordering the transcript immediately.

Docket entries are required by section 59.39(2) and (3). In order to comply with this section, the docket entries will have to be kept.
809.12 Rule: Motion for Relief Pending Appeal

A person seeking relief under section 808.04, Stats., shall file a motion in the trial court. The person may file a motion for relief in the Supreme Court if it is impractical to seek relief in the trial court or if the trial court has failed to give the relief requested. A motion in the Supreme Court must show why it was impractical to seek relief in the trial court or the reasons given by the trial court for its action. A person aggrieved by an order of the trial court granting the relief requested may file a motion for relief with the Supreme Court. A justice of the Supreme Court may issue an ex parte order granting temporary relief pending a ruling by the court on a motion filed pursuant to this section. A motion filed in the Supreme Court under this section must be filed in accordance with section 809.14.

Judicial Council Committee's Note:

Section 809.12 details the procedure for seeking temporary relief pending appeal. It follows generally the prior unwritten procedure and Rule 8(a), FRAP.

809.13 Rule: Intervention

A person not a party to an appeal may file in the Supreme Court a petition to intervene in the appeal. The Supreme Court may grant the petition upon a showing that the petitioner's interest meets the requirements of section 803.09(1) or (2), Stats.

Judicial Council Committee's Note:

The former rules did not expressly authorize intervention in the Supreme Court. This void is filled by making the intervention rule in the Rules of Civil Procedure applicable to proceedings in the Supreme Court.

809.14 Rule: Motions

(1) A party or other person seeking an order or other relief in a docketed case shall file a motion for the order or other relief. Only an original and one copy of the motion must be filed. The motion must state the order or relief sought and the grounds on which the motion is based and may include a statement of the position of other parties as to the granting of the motion. A motion may be supported by a memorandum. Any other party may file a response to the motion within seven (7) days after service of the motion.
(2) A motion for a procedural order may be acted upon without a response to the motion. A party adversely affected by a procedural order entered without having had the opportunity to respond to the motion may move for reconsideration of the order within seven (7) days of service of the order.

(3) The filing of a motion seeking an order or other relief which may affect the disposition of an appeal or the content of the record or a brief automatically enlarges the time for performing an act required by these rules for a period co-extensive with the time between the filing of the motion and its disposition.

Judicial Council Committee's Note:

The motion procedure under former section 251.71 is continued except that the time for replying to a motion is reduced from ten (10) to seven (7) days. A response is not required before action can be taken on a procedural order because these orders include matters previously handled by letter request or which usually do not adversely affect the opposing party. If an opposing party is adversely affected by a procedural order, he has the right to request the court to reconsider it. Procedural orders include the granting of requests for enlargement of time, to file an amicus brief, or to file a brief in excess of the maximum established by the rules. This section is based on Alabama Rules of Appellate Procedure, Rule 27. Subsection (3) modifies the prior practice under which the filing of any motion stayed any due date until twenty (20) days after the motion was decided. This could result in an unintentional shortening of the time in which a brief had to be filed. It could also result in an unnecessary delay if a ruling on the motion would not affect the outcome of the case, the issues to be presented to the court, or a brief or the record.

Rule: Record on Appeal

(1) COMPOSITION OF RECORD

(a) The record on appeal consists of the following unless the parties stipulate to the contrary:

1. The paper by which the action or proceeding was commenced
2. Proof of service of summons or other process
3. Answer or other responsive pleading
4. Instructions to the jury
5. Verdict, or findings of the court, and order based thereon
6. Opinion of the court
7. Final judgment
8. Order made after judgment relevant to the appeal and orders papers upon which the order is based
9. Exhibits material to the appeal whether or not received in evidence
10. Any other paper or exhibit filed in the trial court requested by a party to be included in the record
11. Notice of appeal
12. Bond or undertaking
13. Transcript of reporter's notes
14. Certificate of the clerk

(b) The clerk of the trial court may request by letter permission of the Supreme Court to substitute a photocopy for the actual paper or exhibit filed in the trial court.

(2) Compilation and Approval of the Record

The clerk of the trial court shall assemble the record in the order set forth in sub. (1)(a), identify by number or letter each paper, and prepare a list of the numbered or lettered papers. At least ten (10) days prior to the due date for filing the record in the Supreme Court, the clerk shall notify in writing each party appearing in the trial court that the record has been assembled and is available for inspection. The clerk shall include with the notice the list of the papers constituting the record.

(3) Transmittal of the Record

The clerk of the trial court shall transmit the record to the Supreme Court within ninety (90) days of the filing of the notice of appeal unless the Supreme Court enlarges the time for the transmittal of the record or the preparation of the transcript of the reporter's notes. The clerk of the Supreme Court shall notify the clerk of the trial court and all parties appearing in the trial court of the date of the filing of the record.

(4) Defective Record

A party who believes the record, including the transcript of the reporter's notes, is defective or does not accurately reflect
what occurred in the trial court may move the court in which
the record is located to correct the record.

(5) AGREED STATEMENT IN LIEU OF RECORD

The parties may file in the Supreme Court an agreed state-
ment of the case in lieu of the record on appeal. The statement
must:
(a) show how the issues presented by the appeal arose and
were decided by the trial court, and
(b) recite sufficient facts proved or sought to be proved as
are essential to a resolution of the issues presented.

Judicial Council Committee's Note:

Subsection (1) substantially embodies former section
251.25. It also permits the filing of a photocopy instead of the
original record but only with the approval of the Supreme
Court, changing to some extent prior section 251.27. Under
this section the parties can stipulate to exclude some items
from the record, but this should be done before the clerk
assembles the record.

Subsections (2) and (3) - The responsibility for having the
record assembled and transmitted to the Supreme Court is
transferred from the appellant to the clerk of the trial court.
It is not necessary to have the attorneys present at the pagin-
ation of the record. The federal procedure set forth in Rule
11(b), FRAP, under which the clerk assembles the record and
then notifies the parties so that they can inspect the record
prior to it being sent to the Supreme Court is adopted. Also
adopted is the federal procedure of the clerk preparing a list
of all the papers in the record. The former system of number-
ing each page in the record consecutively is abandoned for the
simpler practice of assigning a letter or number to each docu-
ment and using its internal page reference. Thus the refer-
ence to the third page of the first document would be A-3 and
to the fifth page of the second document B-5.

Subsections (4) and (5) - The provisions of former sections
251.30 and 251.28 are included in these sections.

809.16 Rule: Transcript of Reporter's Notes

(1) Within ten (10) days of the filing of the notice of ap-
peal, the appellant shall make arrangements with the reporter
for the preparation of a transcript of the reporter's notes of the
proceedings and file in the Supreme Court and serve on the
respondent a designation of the portions of the reporter's notes
that have been ordered. The respondent may file and serve on
the appellant, within ten (10) days of receipt of the appellant’s
notice, a designation of additional portions to be included in
the transcript. If the appellant refuses to order the designated
portions, the respondent may order the portions or apply to the
trial court for an order requiring the appellant to do so.

(2) Subsection (1) applies to a cross-appeal.

(3) The reporter shall file the transcript with the trial
court and notify the clerk of the Supreme Court and the parties
to the appeal within sixty (60) days of the date the transcript
was ordered and arrangements made for payment.

(4) A reporter may obtain an extension for filing the tran-
script only by motion showing good cause filed in the Supreme
Court and served on all parties to the appeal.

(5) If a reporter fails to file timely a transcript, the Su-
preme Court may declare a reporter ineligible to act as an
official court reporter in any court proceeding and prohibit the
reporter from performing any private reporting work until the
overdue transcript is filed.

Judicial Council Committee’s Note:

Subsections (1) and (2) - The procedure in Rule 10(b),
FRAP, for the ordering of the transcript is combined with
former section 817.118. A time limit is placed on ordering the
transcript to prevent the failure to do so from being a cause
of delay in the appellate process.

Subsections (3), (4), and (5) - The reporter is given sixty
(60) days from the date the transcript is ordered in which to
complete the transcript, a reduction of up to thirty (30) days
from the total time allowed in former section 817.115. The
obligation is placed on the reporter rather than the appellant
to obtain an extension for filing the transcript because this
is a matter not in the control of the appellant. The applica-
tion for an extension is filed in the Supreme Court rather
than the trial court because of the primary concern of the
Supreme Court with cases pending before it and because of
the natural reluctance of the trial judge to deny a request
made by his own appointee.

The power of the Supreme Court to impose sanctions
upon a court reporter for failing to file a transcript on time is
expressly recognized. These sanctions were among those rec-
ommended in 1971 by a special committee appointed by the
Supreme Court to study the problem of delayed transcripts.
The provisions of former section 817.117, detailing the procedure for approval of the transcript, are eliminated in favor of the federal procedure which treats the correction of the transcript the same as correction of any other part of the record. Thus, correction of any alleged error in the transcript will be made under section 809.15(4).

**809.17 Rule: Presubmission Conference**

The Supreme Court may establish a procedure for an officer of the court to meet with the parties for the purpose of discussing an agreed disposition of the case, simplification of issues, content of the record, or such other matters as may aid in the disposition of the appeal. The court may enter an order incorporating the agreement of the parties.

**Judicial Council Committee’s Note:**

The court adopted procedures for presubmission conferences in September, 1976, 73 Wis. 2d xxiii, 246 N.W.2d LXXX. These procedures can continue to be used under this section.

**809.18 Rule: Voluntary Dismissal**

An appellant may dismiss an appeal by filing a notice of dismissal. The notice must be filed in the Supreme Court or, if not yet docketed in the court, in the trial court. The dismissal of an appeal does not affect the status of a cross-appeal or the right of a respondent to file a cross-appeal.

**Judicial Council Committee’s Note:**

An appeal may be dismissed by the appellant at any time prior to a court decision on the appeal without approval of the court or the respondent. This changes the former procedure and modifies Rule 42, FRAP. The section specifically protects a respondent who has or intends to file a cross-appeal, and for this reason the appellant is authorized to dismiss the appeal at will.

**809.19 Rule: Briefs and Appendix**

(1) **Brief of Appellant**

The appellant shall file a brief within forty (40) days of the filing in the Supreme Court of the record on appeal. The brief must contain:
(a) A table of contents with page references of the various portions of the brief including headings of each section of the argument and a table of cases, alphabetically arranged, statutes and other authorities cited with reference to the pages of the brief on which they are cited.

(b) A statement of the issues presented for review and how the trial court decided them.

(c) A statement as to whether oral argument is necessary and, if so, the reasons therefor and a statement as to whether the opinion should be published and, if so, the reasons therefor.

(d) A statement of the case, which must include: a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record.

(e) An argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one-sentence summary of the argument and is to contain the contentions of the appellant, the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on as set forth in the Uniform System of Citation.

(f) A short conclusion stating the precise relief sought.

(2) Appendix

The appellant shall include in his brief a short appendix to include relevant docket entries in the trial court, the findings or opinion of the trial court, and limited portions of the record essential to an understanding of the issues raised.

(3) Respondent's Brief

(a) The respondent shall file a brief within thirty (30) days of the service of the appellant's brief. The brief must conform with sub. (1), except that the statement of issues and the statement of the case may be excluded.

(b) The respondent may file with his brief a supplemental appendix in conformity with sub. (2).

(4) Reply Brief

The appellant shall file within fifteen (15) days of the service of the respondent's brief a reply brief or notify the clerk that a reply brief will not be filed.
(5) Consolidated and Joint Appeals

Each appellant in consolidated appeals or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. A joint brief must not exceed the page allowance for a single appellant.

(6) Cross-Appeal

The parties in a cross-appeal have the same briefing rights as the parties in an appeal. A party in a cross-appeal may include the brief on the cross-appeal with the brief on the original appeal but shall not exceed the separate page limitations for each portion of the brief.

(7) Amicus Curiae

A person not a party may by motion request permission to file a brief as amicus curiae. The motion must identify the interest of the person and state why a brief of an amicus curiae is desirable. The brief must be filed and served on all parties not later than ten (10) days prior to the date of oral argument or, if submitted on briefs, the first day of the week at which the case is assigned for submission.

(8) Number, Form, and Length of Briefs and Appendices

(a) Number - A person filing a brief or appendix shall file thirty (30) copies or such other number as the court may direct and serve three (3) copies on each party.

(b) Form - A brief and appendix must conform to the following specifications:
   1. Produced by standard typographic printing or by a duplicating or copying process of a typewritten original that produces a clear, black image on white paper. Carbon copies must not be filed.
   2. Produced on 8 1/2 by 11 inch paper.
   3. Typeset: Twelve (12) point type with two (2) point lead, printed portion seven (7) by four and one-quarter (4 1/4) inches centered in the page.

   Typewritten: Pica, ten (10) spaces per inch, type; double spaced; two (2) inch margins on left side with one and one-half (1 1/2) inch margin on other three sides.

   4. Bound on the left side only with staple or tape, with pagination at the center of the bottom margin.

   (c) Length
1. Appellant’s or respondent’s brief: Forty (40) pages if typeset, fifty (50) pages if typewritten;
2. Appellant’s reply or amicus curiae’s brief: Ten (10) pages if typeset, thirteen (13) pages if typewritten.

(9) Each brief or appendix must have a cover to contain the name of the court, the caption and number of the case, the court and judge appealed from, the title of the document, and the name and address of counsel filing the document. The cover of the appellant’s brief must be blue; the respondent’s red; the amicus curiae, green; the reply brief, gray; and the appendix, if separately printed, white.

Judicial Council Committee’s Note:

Subsection (1) - The format for briefs established in former section 251.34 is generally followed except that the requirement of a synopsis of the argument in the table of contents is eliminated. Former section 251.34(1) required the synopsis and gave 200 Wis. 530 as an illustration. The synopsis was no longer included in most briefs and, if it was, often was very lengthy and served no real purpose. It is replaced in the table of contents by a shorter, one sentence summary of each section of the argument portion of the brief. New statements pertaining to the need for oral argument and whether the opinion in the case will set precedent and thus should be published are added. The purpose of the latter is to assist the court in screening cases for oral argument or submission on briefs.

Subsection (2) - The lengthy appendix with the narrative of testimony required by former section 251.34(5) is replaced with the system used in the United States Court of Appeals for the Seventh Circuit. Under this system the original record serves as the primary evidence of what occurred in the trial court. The appendix becomes a very abbreviated document with only those items absolutely essential to an understanding of the case. It is designed to be nothing more than a useful tool to the members of the court. The failure to include some item in the appendix has no effect on the ability or willingness of the court to consider any matter in the record. This change, combined with the elimination of the requirement of printed briefs, should reduce the cost of an appeal.

Subsection (5) - Each appellant in a case has the right to file a separate brief and need not share a brief with co-appellants.

Subsection (6) - The parties to a cross-appeal can file the
same briefs as the parties to the main appeal. Thus the cross-appellant can file a forty (40) page brief as cross-appellant in addition to his forty (40) page brief as respondent. The cross-appellant can also combine both briefs in a single brief but is limited to the page limits on each section of brief. A cross-appellant filing a thirty (30) page brief as respondent is still limited to a forty (40) page brief as cross-appellant.

Subsection (7) - The practice under former section 251.40 is modified to require the request to file an amicus curiae brief be made by motion rather than by letter. Rule 29, FRAP. The motion should indicate the interest of the amicus and why a brief by the amicus is desirable.

Subsections (8) and (9) - In addition to briefs produced by the standard typographical process, briefs produced by a mimeograph or photocopy process from typewritten copy may also be filed. The principal objective is to reduce the cost of an appeal to the Supreme Court. The specifications for the printed and typewritten pages are designed to result in briefs of approximately an equal number of words no matter which process is used. The paper size of 8 1/2 x 11 is specified for the sake of uniformity and ease of handling.

Colors for covers are specified to permit easy identification of the briefs.

809.20 Rule: Assignment and Advancement of Cases

The Supreme Court may take cases under submission in such order and upon such notice as it determines. A party may file a motion to advance the submission of a case either before or after the briefs have been filed. The motion should recite the nature of the public or private interest involved, the issues in the case, and how delay in submission will be prejudicial to the accomplishment of justice.

Judicial Council Committee's Note:

This section incorporates the present unwritten procedure for having the submission of a case advanced. It also specifies the factors that may affect the advancement of a case.

809.21 Rule: Summary Disposition

(1) The court upon its own motion or upon the motion of a party may dispose of an appeal summarily with or without written opinion.

(2) A party may file at any time a motion for summary
disposition of an appeal. Section 809.14 governs the procedure on the motion.

Judicial Council Committee's Note:

The basic concept in former section 251.54 of allowing the Supreme Court to dispose of appeals summarily is continued, but section 809.21 specifically authorizes a motion for this purpose. Such a motion was often used under prior procedure, but the rules did not expressly authorize it.

809.22 Rule: Oral Argument

(1) The Supreme Court shall determine whether a case is to be submitted with oral argument or on briefs only.

(2) The Supreme Court may direct that an appeal be submitted on briefs only if

(a) the arguments of the appellant
  1. are plainly contrary to relevant legal authority that appear to be sound and are not significantly challenged, or
  2. are on their face without merit and for which no supporting authority is cited or discovered, or
  3. involve solely questions of fact and the fact findings are clearly supported by sufficient evidence; or

(b) the briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant.

(3) The Supreme Court shall determine the amount of time for oral argument allowed to each party in a case either by general or special order.

Judicial Council Committee's Note:

The Supreme Court has for a number of years scheduled some cases for submission on briefs only without oral argument in an effort to accommodate its burgeoning caseload. The criteria by which the court decides whether a case is to have oral argument have never been formally adopted. This section is a statement of those criteria. Counsel should address these criteria in their briefs in discussing the question of the need for oral argument. See subsection 809.19(1)(c). Flexibility is provided by this section as to the length of oral argument in order to meet the needs of an individual case. It may be appropriate, for example, to have an oral argument
for the sole purpose of allowing the court to ask questions of counsel.

809.23 Rule: Publication of Opinions

(1) Decision on Publication
The Supreme Court shall determine whether the opinion in a case is to be published.

(2) Criteria for Publication
(a) An opinion should be published in the official reports when it:
   1. enunciates a new rule of law or a modification of an old rule;
   2. applies an established rule of law to a factual situation significantly different from that in published opinions;
   3. resolves a conflict between prior decisions of the court;
   4. is not the unanimous opinion of the court;
   5. decides a case of substantial public interest.
(b) An opinion should not be published when:
   1. the issues involve no more than the application of well-settled rules of law to a recurring fact situation;
   2. the issue asserted is whether the evidence is sufficient to support the judgment, and the briefs show the evidence is sufficient;
   3. the disposition of the appeal is clearly controlled by a prior holding of the Supreme Court or a higher court, and no reason appears for questioning or qualifying the holding.
(3) An unpublished opinion is of no precedential value and for this reason may not be cited in any court of this state as precedent or authority, except to support a claim of res judicata, collateral estoppel, or law of the case.
(4) A person may at any time file a motion in the Supreme Court to have an unreported opinion published in the official reports.

Judicial Council Committee’s Note:
As with section 809.22 on oral argument, a former practice of the court is written into this section and formal criteria established for it. The trend toward nonpublication of opinions is nationwide and results from the explosion of appellate court opinions being written and published. Many studies of the problem have concluded that unless the number of opin-
ions published each year is reduced legal research will become inordinately time-consuming and expensive. Some argue that even accepting the premise that a court may properly decide not to publish an opinion this should not prevent that opinion from being cited as precedent since in common law practice any decision of a court is by its nature precedent. Others argue that a court may try to hide what it is doing in a particular case by preventing the publication of the opinion in the case.

There are several reasons why an unpublished opinion should not be cited: (1) the type of opinion written for the benefit of the parties is different from an opinion written for publication and often should not be published without substantial revision; (2) if unpublished opinions could be cited, services that publish only unpublished opinions would soon develop forcing the treatment of unpublished opinions in the same manner as published opinions thereby defeating the purpose of nonpublication; (3) permitting the citation of unpublished opinions gives an advantage to a person who knows about the case over one who does not; (4) an unpublished opinion is not new authority but only a repeated application of a settled rule of law for which there is ample published authority.

If it is desirable to reduce the number of published opinions, the only alternative to having some opinions unpublished is to decide cases without written opinions. This would be far worse because it would compound the problems of nonpublication and at the same time take away from the parties the benefit of a written opinion.

As a safeguard against any mistakes as to nonpublication, this section adopts the procedure of the United States Court of Appeals for the Seventh Circuit in permitting a person to request that an unpublished opinion be published.

809.24 Rule: Costs and Fees

(1) Costs

(a) Costs are allowed as follows unless otherwise ordered by the Supreme Court:

1. Against the appellant when the appeal is dismissed or the judgment or order affirmed.
2. Against the respondent when the judgment or order is reversed.
3. In all other cases as allowed by the court.
Allowable costs include:
1. Cost of printing and assembling the number of copies of briefs and appendices required by the rules, not to exceed the rates generally charged in Dane County, Wisconsin, for offset printing of camera-ready copy and assembling.
2. Fees charged by the clerk of the Supreme Court.
3. Cost of the preparation of the transcript of testimony or for appeal bonds.
4. Fees of the clerk of the trial court for preparation of the record on appeal.
5. Other costs as directed by the Supreme Court.

A party seeking to recover costs in the Supreme Court shall file a statement of the costs within fourteen (14) days of the filing of the decision of the Supreme Court. An opposing party has seven (7) days in which to file a motion objecting to the statement of costs.

The clerk shall tax and include in the remittitur the costs allowed in the Supreme Court. The clerk of the trial court shall docket the judgment for costs in accordance with section 806.16, Stats.

Fees

The clerk of the Supreme Court shall charge the following fees:
1. For filing an appeal, cross-appeal, or other proceeding, $25.
2. For making a copy of a record, paper, or opinion of the court, and comparing it to the original, 40 cents for each page.
3. For comparing for certification of a copy of a record, entry or paper, when the copy is furnished by the person requesting its certification, 10 cents for each page.
4. For comparing a photographic reproduction of an original record, entry or paper, when furnished by the person requesting its certification, 5 cents for each page.
5. For a certificate and seal, $1.
6. For an admission to the bar and certificate under seal, $18.

The state is exempt from payment of the fees set forth in sub. (a)1 to 5, except that the clerk is not obligated to supply the state with free copies of opinions.

The clerk may refuse to file, docket, record, certify, or render any other service without prepayment of the fees established by this section.
Judicial Council Committee's Note:

Most of the provisions of former sections 251.23 and .90 are retained. The major change is to provide that execution for costs in the Supreme Court is to be had in the trial court in accordance with section 806.16 rather than in the Supreme Court. The Judicial Council did not review the adequacy of the fees and thus made no recommendations on them. It is suggested, however, that many of the fees appear to be out of date and should be revised. This should be done in connection with a general review of fees in all courts.

809.25 Rule: Remittitur

The clerk of the Supreme Court shall transmit to the trial court the judgment and opinion of the Supreme Court and the record in the case filed pursuant to section 809.15 twenty-one (21) days after the filing of the decision of the Supreme Court. If a motion for reconsideration is filed, the transmittal is stayed until the court rules on the motion.

Judicial Council Committee's Note:

Former section 817.35 is embodied in this section except that the time for issuance of the remittitur is reduced from sixty (60) to twenty-one (21) days.

809.26 Rule: Reconsideration

A party may seek reconsideration of the judgment or opinion by the Supreme Court by filing a motion for reconsideration in accordance with sub. 809.14(1) within twenty (20) days of the filing of the decision of the Supreme Court.

Judicial Council Committee's Note:

Section 809.26 replaces former sections 251.65, 251.67 to .69, which provided for motions for rehearing. The necessity for the filing of briefs on a motion for reconsideration as required by former section 251.67 is eliminated. The matter will be considered on the motion and supporting and opposing memoranda as with any other motion. The term "reconsideration" is used rather than rehearing because in a case decided without oral argument there has been no initial hearing.
DISCRETIONARY JURISDICTION

809.30 Rule: Appeal From a Judgment Or Order Not Appealable as of Right

(1) A person shall seek leave of the Supreme Court to appeal a judgment or order not appealable as of right under section 808.02(1), Stats., by filing within ten (10) days of the entry of the judgment or order a petition and supporting memorandum, if any. The petition must contain:
   (a) a statement of the issues presented by the controversy;
   (b) a statement of the facts necessary to an understanding of the issues;
   (c) a statement showing that review of the judgment or order immediately rather than on an appeal from the final judgment in the case or proceeding will materially advance the termination of the litigation or clarify further proceedings therein; protect a party from substantial and irreparable injury; or clarify an issue of general importance in the administration of justice.

(2) An opposing party in the trial court shall file a response with supporting memorandum, if any, within ten (10) days of the service of the petition.

(3) If the court grants leave to appeal a nonfinal order, the procedures for appeals from final judgments are applicable to further proceedings in the appeal.

Judicial Council Committee’s Note:

Section 808.02(1) makes only final judgments and final orders appealable as of right. All other judgments and orders are appealable only in the discretion of the Supreme Court. This section provides the procedure for asking the court to permit the appeal of a nonfinal order. The issue of whether the court should hear the appeal is presented to the court by petition with both parties given the opportunity of submitting memoranda on the question. The standards on which nonfinal judgments or orders should be reviewed immediately are set forth in section 808.02(2) and are taken from the American Bar Association’s Standards of Judicial Administration, Standards Relating to Appellate Courts, section 3.12(b).

809.31 Rule: Original Action

(1) A person may request the Supreme Court to take juris-
diction of an original action by filing a petition and supporting memorandum. The petition must contain:

(a) a statement of the issues presented by the controversy;
(b) a statement of the facts necessary to an understanding of the issues;
(c) the relief sought; and
(d) the reasons why the court should take jurisdiction.

(2) The court may deny the petition or may order the respondent to respond and may order oral argument on the question of taking original jurisdiction. The respondent shall file a response with a supporting memorandum, if any, within ten (10) days of the service of the order.

(3) The court, upon a consideration of the petition, response, supporting memoranda, and argument, may grant or deny the petition. The court, if it grants the petition, may establish a schedule for pleading, briefing, and submission with or without oral argument.

809.32 Rule: Supervisory Writ

(1) A person may request the Supreme Court to exercise its supervisory jurisdiction over a court and the judge presiding therein or other person or body by filing a petition and supporting memorandum. The petitioner shall name as respondents the court and judge or other person or body and all other parties in the action or proceeding. The petition must contain:

(a) a statement of the issues presented by the controversy;
(b) a statement of the facts necessary to an understanding of the issues;
(c) the relief sought; and
(d) the reasons why the court should take jurisdiction.

(2) The court may deny the petition or may order the respondents to file a response with a supporting memorandum, if any, and may order oral argument on the merits of the petition. The respondents shall respond with supporting memoranda within ten (10) days of service of the order. A respondent may file a letter stating that he does not intend to file a response, but the petition is not thereby admitted.

(3) The court, upon a consideration of the petition, responses, supporting memoranda, and argument, may grant or deny the petition or order such additional proceedings as it considers appropriate.
809.33 Rule: Temporary Relief

A petitioner may request in a petition filed pursuant to section 809.30, 809.31 or 809.32 that the court grant temporary relief pending disposition of the petition. The Supreme Court may grant temporary relief upon the terms and conditions it considers appropriate.

Judicial Council Committee's Notes:

Sections 809.31 through .33 incorporate into the rules for the first time the procedures to be followed when the court is asked to exercise its original or supervisory jurisdiction. For an excellent discussion of original and supervisory jurisdiction of the Supreme Court and the distinction between them, see the opinion by Justice Wickhem in Petition of Heil, 230 Wis. 428, 284 N.W. 42 (1939). To a large degree the procedures specified in 201 Wis. 123, 229 N.W. 643 (1930) are followed, but some of the features of Rule 21, FRAP, are included.

There are a number of changes, however, from prior procedures. In supervisory jurisdiction cases the parties in the action or proceeding in the trial court must be made respondents in the Supreme Court because they in most cases are the real parties in interest. Usually the judge whose order is being challenged has no direct interest in the outcome and should not be forced to appear but may, of course, do so. The Attorney General must also be served in certain cases such as declaratory judgments involving the constitutionality of a statute or arising under Chapter 227, the administrative procedure act.

The petition must be filed with the clerk rather than being submitted ex parte to the chief justice or justice of the court. By virtue of the requirement that the petition be filed, it must previously have been served on opposing parties as required by section 809.50. The initial action of the court will be to direct the respondents to answer the petition rather than to issue an order to show cause why the relief requested should not be granted.

The procedure is the same for both types of jurisdiction except that in an original jurisdiction matter the issue initially presented to the court is whether it should take original jurisdiction of the case, with the merits of the case to be heard later. In a supervisory jurisdiction matter the issue before the court is whether the relief requested should be granted. In cases in which time is of the essence, such as election cases,
the court may, pursuant to section 809.52(2)(b), reduce the time for the respondent to answer the petition. Temporary relief can also be granted when appropriate.

The procedures to be followed in invoking the court's original jurisdiction over discipline of attorneys or judges is governed by the Rules on Discipline of Attorneys and the Rules establishing the procedures of the Judicial Commission.
809.40 Rule: Appeals in Criminal, Juvenile, Youthful Offender, and Mental Commitment Cases

1. Criminal Cases

(a) An appeal by a defendant in a criminal case must be taken in accordance with this section.

(b) The trial judge shall inform the defendant at the time of sentencing of the right to appeal or seek other postconviction relief, the time limits on seeking the relief, and, if indigent, the right to court-appointed counsel in those proceedings.

(c) If the defendant is indigent and wishes to have the court appoint counsel to represent him in seeking postconviction relief, the defendant shall notify the trial court in writing or in open court within forty-five (45) days of the date of sentencing. The trial court, upon being satisfied of the defendant's indigency, shall appoint counsel for the defendant and at the same time shall direct the court reporter to prepare the transcript of notes of the proceedings in the case.

(d) A defendant who desires to appeal or seek other postconviction relief without counsel or with retained counsel shall order a transcript of the reporter's notes within forty-five (45) days of sentencing.

(e) The court reporter shall serve the transcript on the defendant within forty (40) days of the ordering of the transcript. The reporter may seek an extension under section 809.16(4) for serving the transcript.

(f) The defendant shall file a notice of appeal or motion seeking postconviction relief within twenty-one (21) days of the service on him of the transcript.

(g) The trial court shall determine by an order the defendant's motion for postconviction relief within sixty (60) days of its filing or the motion is considered to be denied.

(h) The defendant shall file an appeal from the judgment of conviction and sentence and, if necessary, from the order of the trial court on the motion for postconviction relief within ten (10) days of the filing of the order on the postconviction motion or seventy (70) days of the filing of the motion for postconviction relief if the trial court fails to rule on the motion.

(i) Subsequent proceedings in the appeal are governed by the procedures for civil appeals.
RULES OF APPELLATE PROCEDURE

(2) JUVENILE DELINQUENCY, YOUTHFUL OFFENDER, OR MENTAL COMMITMENT APPEALS

An appeal from a determination of juvenile delinquency, a commitment under Chapter 54, Stats., or a commitment under section 51.20, Stats., is governed by the procedures established by sub. (1).

Judicial Council Committee's Note:

Many changes are made in prior practice in criminal cases and in juvenile, youthful offender, and mental commitment cases. Under the former procedure counsel, usually the State Public Defender appointed by the Supreme Court, was required to order a transcript, wait for its preparation, review it, present to the trial court by a post-trial motion any issues which the defendant desired to raise on appeal even if the issue had been presented to and decided by the court during the trial [see State v. Charette, 51 Wis. 2d 531, 187 N.W.2d 203 (1971) and State v. Wuensch, 69 Wis. 2d 467, 230 N.W.2d 665 (1975)], and after the court ruled on the motion, appeal both the original conviction and the denial of the post-trial motion to the Supreme Court. Often a year or more elapsed between the sentencing of the defendant and the docketing of his appeal in the Supreme Court. This delay, combined with the delay in the Supreme Court caused by its backlog, often resulted in an appeal not being decided by the Supreme Court until two or three years after conviction.

The procedures in this section are designed to expedite the entire process by putting time limits on each step and by eliminating the necessity of each issue being presented twice to the trial court.

The term “postconviction relief,” as used in this section, includes new trial, reduction of sentence, and any other type of relief which the trial court is authorized to give, other than under section 974.06.

Trial courts in appointing appellate counsel should follow the practice of the Supreme Court and appoint the State Public Defender in all cases except when the State Public Defender is unable to represent the defendant because of a conflict of interest or other reason.

Extensions of time for taking various steps under this section can be extended by the Supreme Court under section 809.52.

The same procedure is made applicable to juvenile, youthful offender, and mental commitment appeals because
different counsel, usually the State Public Defender, is appointed in most cases.

809.41 Rule: Release on Bond Pending Seeking Postconviction Relief

(1) A defendant convicted of a felony who is seeking relief from a conviction and sentence of imprisonment and who seeks release on bond pending a determination of a motion or appeal shall file in the trial court a motion seeking release.

(2) The trial court shall promptly hold a hearing on the motion of the defendant, determine the motion by order, and state the grounds for the order.

(3) Release may be granted if the court finds that:
   (a) there is no substantial risk the appellant will not appear to answer the judgment following the conclusion of postconviction proceedings;
   (b) the defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice;
   (c) the defendant will promptly prosecute postconviction proceedings; and
   (d) the postconviction proceedings are not taken for purposes of delay.

(4) In making the determination on the motion, the court shall take into consideration the nature of the crime, the length of sentence, and other factors relevant to pretrial release.

(5) The defendant or the state may seek review of the order of the trial court by filing a petition for review in the Supreme Court. The procedures in section 809.30 govern the petition.

(6) The court ordering release shall require the defendant to post a bond in accordance with section 969.09, Stats., and may impose other terms and conditions. The defendant shall file the bond in the trial court.

Judicial Council Committee's Note:

Former section 969.09 provided for release on bond pending appeal and the conditions of the bond. Former section 969.01(2) provided for bond in felony cases after conviction in the discretion of the trial court or by the Supreme Court or a justice thereof. Neither the statutes nor case law, however, established the standards for release or indicated
whether the Supreme Court was reviewing the action of the trial court or acting de novo. This section is intended to meet these deficiencies. The standards for release are those included in the American Bar Association Criminal Justice Standards, Criminal Appeals, section 2.5.
MISCELLANEOUS MATTERS

809.50 Rule: Service of Papers
A person shall serve a copy of any paper required or authorized under these rules to be filed in court upon all other parties to the proceeding in the manner provided in sections 801.14(2) and (4), Stats.

Judicial Council Committee’s Note:
The prior requirement of an affidavit of service is eliminated. The provision of the Rules of Civil Procedure that the filing of a paper is a certification that the paper has been served is adopted.

809.51 Rule: Form of Papers
A paper filed in the Supreme Court must conform to the following requirements unless expressly provided otherwise in these rules:

1. Size
8 1/2” x 11”

2. Number of Copies
Eight (8)

3. Typewritten

4. Spacing and Margins
Double spaced with 1 1/2 inch margin on all four sides.

5. Pagination
Paginated at the center of the bottom margin.

6. Copying Process
Any duplicating or copying process that produces a clear, black image on white paper. Carbon copies may not be filed.

7. Binding
Bound or stapled at the left margin.

Judicial Council Committee’s Note:
The 8 1/2 x 11 letter size paper is adopted as the standard
size for all papers to be filed in the Supreme Court in place of using both 8 1/2 x 14 and 8 1/2 x 11. A standard size paper simplifies records management. There is a national trend away from legal size paper.

809.52 Rule: Computation and Enlargement of Time

(1) Computation

In computing any period of time prescribed by these rules, the provisions of Section 801.15, Stats., apply.

(2) Enlargement or Reduction of Time

The Supreme Court, upon its own motion or upon good cause shown by motion, may enlarge or reduce the time prescribed by this chapter or Supreme Court order for doing any act, or waive or permit an act to be done after the expiration of the prescribed time, except the filing of a notice of appeal or cross-appeal.

Judicial Council Committee’s Note:

Subsection (1) - The provisions of the Rules of Civil Procedure as to computation of time are adopted for appeals to avoid any problems resulting from a lack of uniformity.

Subsection (2) continues the first sentence of former section 251.45. It eliminates the second sentence of that section permitting the attorneys by stipulation to extend the time for filing briefs if the extension does not interfere with the assignment of the case because this procedure interferes with the ability of the court to monitor cases pending before it and because it is not always certain when a case will be on an assignment. The Supreme Court considers that its deadlines as to briefs and other actions in the court should have priority over all matters except previously scheduled trials in circuit and county courts and deadlines set by a federal court. Requests for extensions are not, consequently, looked upon with favor by the court.

809.53 Rule: Penalties for Delay or Noncompliance With Rules

(1) Delay

Extra Costs and Damages. If the Supreme Court finds that an appeal was taken for the purpose of delay, it may award (1) double costs; (2) a penalty in addition to interest not exceeding
10 percent on the amount of the judgment affirmed; (3) damages occasioned by the delay; and (4) reasonable attorneys fees.

(2) Noncompliance with Rules

Failure of a person to comply with a requirement of this chapter, other than the filing of a notice of appeal or cross-appeal, does not affect the jurisdiction of the Supreme Court over the appeal but is ground for dismissal of the appeal, summary reversal, striking of a paper, imposition of a fine or costs on a party or counsel, or such other action as the Supreme Court considers appropriate.

Judicial Council Committee’s Note:

Former sections 251.22, 251.23, 251.51, 251.56, 256.57, 251.73, 251.77 and 251.89, providing for specific penalties for delay and for certain rule violations, are replaced. In the event of a rule violation, the court is authorized to take such action as it considers appropriate. If the court finds an appeal was taken for purposes of delay, it can impose one or more of the four types of penalties specified in subsection (1).

809.54 Rule: Applicability of Rules of Civil Procedure

An appeal to the Supreme Court is governed by the Rules of Civil Procedure as to all matters not covered by these rules unless the circumstances of the appeal or the context of the rule requires a contrary result.

809.55 Rule: Counsel or Guardian Appointed in Trial Court

An attorney or guardian ad litem appointed by a court in a case or proceeding appealed to the Supreme Court shall continue to act in the same capacity in the Supreme Court until the Supreme Court relieves the attorney or guardian.

Judicial Council Committee’s Note:

Section 809.55 continues former section 251.88.

EFFECTIVE DATE

These rules apply to all appeals, writs of error, supervisory writs, and original jurisdiction cases pending or commenced on or after January 1, 1978, except:

(1) Sections 809.01, 809.10, 809.11, 809.15, 809.16, 809.18
and 809.40 apply only to actions or proceedings in which review in the Supreme Court by appeal or writ of error is sought on or after January 1, 1978;

(2) Section 809.19 applies only to appeals, writs of error, supervisory writs, and original jurisdiction cases; (a) commenced on or after January 1, 1978; or (b) pending in the Supreme Court on January 1, 1978, in which the appellant's, plaintiff in error's, or petitioner's principal brief is due to be filed by February 9, 1978.

APPENDIX

Section 1. 251.235 Rule to 251.244 Rule are renumbered 256.835 Rule to 256.844 Rule.

Judicial Council Committee's Note: These rules concerning judicial administrative districts are renumbered to be in Chapter 256, concerning general court provisions, for better placement in the statutes.

Section 2. 251.25 Rule to 251.93 Rule are repealed.

Judicial Council Committee's Note: These rules are replaced by new Chapters 808 and 809 of the statutes.

Section 3. Chapter 809 of the statutes, concerning arrest and bail, is renumbered Chapter 818.

Judicial Council Committee's Note: Chapter 809 is renumbered to make room for the new rules of Supreme Court procedure. Chapters 808 and 809 replace ss. 251.25 Rule to 251.93 Rule and Chapter 817 of the statutes.

Section 4. Cross-reference Changes. In the sections of the statutes listed in column A, the cross-references shown in column B are changed to the cross-references shown in column C.
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