

Perfecting Appeals in WI Public Defender Cases

The following summary is intended to provide trial attorneys information relevant to perfecting appeals in case types for which the SPD appoints counsel. In the most common scenario after sentencing or final adjudication, the trial attorney initiates an appeal by filing a notice of intent to pursue postconviction (or postdisposition) relief (NOI). In some cases, though, an appeal is initiated by filing an administrative appeal (followed by a writ of certiorari and then notice of appeal) or a notice of appeal (NOA), or, for permissive appeals, a petition for leave to appeal a non-final order. No appeal can proceed until a written judgment or order has been entered. When you have filed the paperwork to initiate an appeal, you must email a copy of the NOI, NOA or petition, and an Appellate Questionnaire, to SPD appellate intake staff at madisonappintake@opd.wi.gov. Note, too, that after an appeal has commenced, the circuit court retains jurisdiction for certain matters listed in Wis. Stat. § 808.075 (e.g. sentence credit, restitution, a stay, or release on bond), which remain trial counsel’s responsibility.

Case Type	Method of Appeal	Procedure
Criminal Conviction	NOI	<p>Appeal is commenced by filing notice of intent to pursue postconviction within 20 days after the date of sentencing or final adjudication. <i>See</i> Wis. Stat. Rule 809.30 (2) (a). Contents of the NOI must comply with Rule 809.30 (2) (b) and state the date on which the order or judgment from which the appeal is being taken was entered, whether the defendant requests SPD representation for appeal, whether trial counsel was appointed by the SPD and whether the person’s financial circumstances have changed. Trial counsel should email a copy of the NOI and an SPD Appellate Questionnaire, to Madison Appellate intake staff at madisonappintake@opd.wi.gov after the NOI is filed. Trial counsel should also prepare to forward the trial file to successor counsel once an appellate attorney is appointed. After the NOI is filed the clerk will send SPD Appellate intake staff materials necessary to move the case forward.</p> <p>When an SPD client timely requests an appeal and an NOI is not timely filed, trial counsel must e-file in the court of appeals a motion to enlarge the time for filing NOI. <i>See</i> Rule 809.82(2). Anytime counsel files an NOI after the deadline, counsel should also file an extension motion.</p>
Ch. 938 Juvenile	NOI	Same as for criminal conviction, except NOI to pursue <u>postdisposition</u> relief, and for “juvenile,” not “defendant.”

Disposition

Juvenile Waiver (or reverse waiver)	Petition for Leave to Appeal	Appeal of a juvenile waiver is a permissive (interlocutory) appeal under § 808.03 (2). <i>See State ex rel. A.E. v. Green Lake County Cir. Ct.</i> , 94 Wis. 2d 98 (1980) (Per curiam S. Ct. opinion “urge[s]” the court of appeals to accept review in such cases). Same as other permissive appeals—Petition must be filed within 14 days after entry of the order being appealed. Rule 809.50(1). When a petition is filed, you must forward a copy to SPD Madison Appellate intake staff immediately, and let intake staff know when the court rules on the petition.
CHIPS	NOI	<i>See</i> “Juvenile Disposition” above—NOI within 20 days after entry of final order.
Termination of Parental Rights	NOI	An NOI to pursue postdisposition relief must be filed within 30 days after the date of entry of judgment or order being appealed. § 808.04(7m). The NOI must contain your client’s written (not electronic) signature . <i>See</i> Rule 809.107 (2) (bm)(6).
Ch. 51 Commitment/ Forced Meds. or Ch. 55 Protective Placement	NOI	Notice of intent to seek <u>postdisposition</u> relief within 20 days of entry of final order, otherwise same as “Criminal Conviction” above. Unless a commitment order and order for forced medication or treatment are imposed at the same time, they must be appealed separately. SPD does not provide legal services in competency proceedings under § 54.34 unless guardianship is coupled with a petition/order for protective placement or services.
NGI	NOI	Initial NGI order, NOI to seek <u>postdisposition</u> relief, otherwise same as “Criminal Conviction” above—NOI to seek postdisposition relief filed within 20 days after entry of final NGI order. The same applies for appeal from denial of petition for conditional release or termination under Wis. Stat. §§ 971.17 (4) or (5).
Competency/ forced meds. § 971.14	NOA	A forced medication order to restore a defendant to competency to stand trial is appealed by filing a notice of appeal. Counsel should also move to stay the order. An appeal from the denial of a motion to stay the medication order pending appeal is also appealed by filing an NOA.

Denial of Judicial Substitution	Petition, to Chief Judge; then writ.	Appeal must first be made by petition to the chief judge of the administrative district. <i>See</i> Wis. Stat. §§ 801.58 (2) & 971.20 [§ 938.29 in juvenile cases]. Review of an adverse decision by the chief judge occurs by supervisory writ filed in the court of appeals. <i>State ex rel. Mateo D.O. v. Circuit Court</i> , 2005 WI App 85, ¶¶ 1, 10, 15; 280 Wis. 2d 575.
Interlocutory or Permissive Appeal	Petition for Leave to Appeal	Appeals from all non-final judgments or orders are appealed by filing a petition for leave to appeal a non-final order. It is trial counsel’s responsibility to file a petition for leave to appeal. <i>See</i> Wis. Stat. §§ 808.03 (2) & 809.50. The petition must be filed in the court of appeals within 14 days after the entry of the written order from which the appeal is being taken. If the petition for leave to appeal is denied, generally the decision is not subject to further review. If the petition is granted, counsel must contact the Madison Appellate office Intake Unit immediately . The SPD Appellate Division will appoint an attorney for the appeal if the matter is timely referred to SPD Appellate intake staff. Trial counsel remains responsible for the appeal unless or until an SPD Appellate Division attorney is appointed.
Probation or Parole Revocation	Admin. Appeal; Certiorari; NOA	Trial counsel is responsible for representation through final hearing, administrative appeal, and writ of certiorari in the circuit court. If a writ is denied, the appeal is governed by the rules of civil procedure, and is initiated by filing an NOA, not NOI, within 90 days of the entry of the final written order determining the petition for the writ (unless written notice of entry of final judgment is entered within 21 days of the final order, in which case NOA must be filed within 45 days). This deadline is not extendable. There is no right to SPD representation for an appeal of an order denying a petition for writ of certiorari. Do not file a notice of appeal from the order denying a revocation certiorari petition unless you are directed by the Appellate Division to do so , or you will be responsible for litigating the appeal yourself. Requests to appoint counsel to appeal in Milwaukee and Walworth County cases should be sent to the Milwaukee Appellate Office, all others should be sent to the Madison Appellate Office Intake Unit.

Because of the short time limits, trial counsel whose client wants to appeal should immediately forward to the appropriate appellate office all documents relevant to the appointment decision, including the revocation warrant and summary, the ALJ’s decision, the administrative appeal decision, the writ of certiorari, any brief filed on the writ, the circuit court order deciding the writ, and any other information helpful to the appointment decision. Trial counsel should also inform the Appellate Office whether a written notice of entry of final judgment was entered.

Sentencing After Parole or Probation Revocation	NOI	Same as “Criminal Conviction” above—NOI filed within 20 days after entry of sentencing order. Only sentencing issues may be raised in an SAR appeal. <i>See State v. Drake</i> , 184 Wis. 2d 396, 515 N.W.2d 923 (Ct. App. 1994).
Extended Supervision Revocation/ Reconfinement (TIS cases)	Admin. Appeal; Certiorari; NOA	Appeal of an Extended Supervision revocation or of a reconfinement decision following Extended Supervision revocation occurs by means of administrative appeal, writ of certiorari, and NOA—same as “Parole or Probation Revocation” above.
Ch. 980 SVP Proceeding	NOI	Same as “Criminal Conviction” – NOI filed within 20 days after entry of final order. Wis. Stat. § 980.038 (4). Persons committed under ch. 980 have the right to appellate counsel to appeal from the denial of a petition for supervised release [§ 980.08] or petition for discharge [§ 980.09]. Such appeal is initiated by filing an NOI.
State’s Appeal	NOA (Refer to Appellate)	Under circumstances listed in § 974.05 and Chs. 48 and 938, the state must file an NOA within 45 days after the entry of the order or judgment it wants to appeal. <i>See</i> § 808.04(4). In TPR, NOI within 30 days. <i>See</i> §808.04(7m). In all state appeals trial counsel should contact the Madison Appellate office Intake Unit immediately , and email a copy of the state’s NOA and a copy of the written order from which the appeal is being taken.
Section 974.06 Motion	NOA	Appeals from orders denying collateral postconviction motions filed pursuant to § 974.06 are civil appeals. NOA must be filed within 90 days of entry of the order denying the motion (45 days if notice of entry of judgment is properly filed and served). This deadline is not extendable. While there is no right to SPD representation for § 974.06 litigation, in rare circumstances the SPD will make a

discretionary appointment. Requests for a discretionary appointment for collateral postconviction litigation should be sent to the Attorney Manager in the appropriate appellate office (Milwaukee Appellate for Milwaukee and Walworth County cases and Madison Appellate for all other cases).

**Sentence
Modification
Motion**

NOA

SPD-appointed postconviction/appellate counsel may file a sentence modification motion as part of the direct appeal under Rule 809.30, and an adverse ruling is appealable by filing an NOA within 20 days of entry of the written order denying the motion. *See* Rule 809.30 (2) (j).

Sentence modification motions filed at any other time are governed by civil appeal rules—NOA filed within 90 days of entry of final order (45 days if notice of entry of judgment is properly entered and served). *See* § 808.04.

Note: A sentence modification motion filed pursuant to § 973.19 waives a defendant’s right to a direct appeal of the conviction. *See* Wis. Stat. § 973.19(5). It is difficult to imagine a scenario where filing a § 973.19 sentence modification motion would be a wise course of action.

Contempt

NOI
or
NOA

Contempt that is “prosecuted by the state” may be appealed by filing a NOI under Rule 809.30 within 20 days of entry of the contempt order. *See* § 785.03 (3). But, SPD may not provide legal services for contempt involving alleged failure to pay a forfeiture to a county or municipality. *See* § 977.05(6).

Summary contempt (a punitive sanction imposed by the court for contempt occurring in the court’s presence) is not “prosecuted by the state.” Appeals from summary contempt orders are civil appeals governed by the non-extendable deadlines of § 808.04 (NOA filed within 90 days of entry of final order). For summary contempt appeals where the client is the subject of the contempt order, you should email a copy of the contempt order to the Madison Appellate intake staff as soon as practicably possible. If *you* are the subject of the contempt order, you should inform your supervisor and work with the Office of Legal Counsel in the SPD Madison Administrative office.

**Sentence
Credit**

NOI

If sentence credit was requested, the credit issue was properly preserved and credit was denied before the entry of

the judgment of conviction, the credit issue can be raised on direct appeal by filing NOI within 20 days after sentencing. *See* “Criminal Convictions” above. If sentence credit is determined after an NOI has been filed, appeal of the credit issue will be included in the pending appeal of the underlying criminal case. If sentence credit is sought at any other time under § 973.155, appeal is commenced by filing NOI within 20 days of entry of the order denying the credit motion. *See* § 973.155(6).

Review of Release Pending Appeal Order Motion It is trial counsel’s responsibility, in appropriate cases, to request release pending appeal from the circuit court and to seek review of orders denying release in the court of appeals. Review is accomplished under Rule 809.14 by filing a motion and supporting memorandum in the court of appeals within 21 days after the entry of the circuit court order regarding release. A detailed list of filing requirements is found in Rule 809.31 (5).

Appeal to Wisconsin Supreme Court PFR An appeal to the Wisconsin Supreme Court from an adverse court of appeals decision is a permissive appeal, accomplished by filing a petition for review (PFR) in the supreme court. The PFR must be filed within 30 days of the date of the decision of the court of appeals. *See* Rule 809.62. **This is deadline can not be extended.** It is the responsibility of counsel who provided representation in the court of appeals to file the petition for review. If no issue of arguable merit exists that fits the review criteria [*See* Rule 809.62], counsel must inform client of the no-merit petition for review option and file the partial petition if the client so requests. *See* Rule 809.32 (4).

Appeal to United States Supreme Court Certiorari Appeal to the United States Supreme Court is accomplished by filing a Writ of Certiorari in the U.S. S. Ct. within 90 days after the entry of the Wisconsin Supreme Court decision to be appealed. There is no right to counsel for such writs. The Appellate Division makes a discretionary decision to appoint in each case. Requests for discretionary appointment should be sent to the Attorney Manager in the appropriate appellate office (Milwaukee Appellate for Milwaukee and Walworth County cases and Madison Appellate for all other cases).

Extraordinary Writs/Collateral The types of extraordinary writs and collateral review procedures available in certain circumstances are too

Review

numerous and diverse to cover in detail in this document. All such litigation in SPD cases requires a separate discretionary appointment of counsel. Questions should be directed to the Trial or Appellate Division Directors or Regional Attorney Managers.

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