

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL  
APPELLATE PROCEDURE COMMITTEE

Virtual Meeting

October 28, 2025

The Judicial Council Appellate Procedure Committee (“APC”) met virtually via Zoom.

Judicial Council members present: Chair Rachel Graham, Sarah Walkenhorst Barber, and Molly McNab.

Ad hoc committee members present: Sam Christensen, Caleb Gerbitz, Karla Keckhaver, Faun Moses, and Christina Plum.

Rule 809.109 working group members present: Michael Conway and Allison Welch.

**I. Call to Order.**

The meeting was called to order at 11:01 a.m. by Chair Graham. Everyone introduced themselves, as there were new working group members present.

**II. Approval of minutes.**

Mr. Gerbitz moved to approve the minutes for September 19, 2025. Mr. Christensen seconded the motion. The minutes were approved.

**III. Report on Judicial Council Meeting.**

Chair Graham reported that the Judicial Council is in the process of hiring a staff attorney; that position was approved by the legislature and governor this past summer. Ms. McNab is involved in the hiring process, and she reported that the staff attorney’s roles will include attending meetings of the APC and providing support to all of the Judicial Council committees.

Chair Graham said the Judicial Council committee that has been working on proposed revisions to the Rules of Evidence will soon have a petition for the supreme court. Significant revisions to the Rules will be proposed.

**IV. Update from working group reviewing implementation of WIS. STAT. RULE 809.109 to identify whether amendments are needed.**

Ms. Moses reported that she met with Mr. Conway and Ms. Welch to begin reviewing the implementation of RULE 809.109. Each of them will be talking to their constituencies (SPD, DOJ, and DHS, respectively).

Ms. Moses shared some initial thoughts. First, the fact that the notice of appeal cannot be extended is a challenge. However, Mr. Conway indicated that DOJ is not inclined to extend the time to file a notice of appeal. He also indicated that the fact the time to file a postdisposition motion can be extended indefinitely was not anticipated.

Several APC members offered reactions. It was observed that if the notice of appeal is not extended by rule, a party might consider filing a writ petition alleging ineffective assistance of counsel for filing a late notice of appeal and then seek the appointment of new counsel, both of which might slow the process. It was also noted that we do not have many cases that have completed briefing, so we may lack sufficient data to propose rule changes at this point.

The working group will continue its discussions and report at the next APC meeting.

**V. Update on special project idea addressing potential amendment of WIS. STAT. RULE 809.10(4).**

Mr. Gerbitz has revised the memo discussing this idea. APC members offered a few comments on it, and Mr. Gerbitz will make some additional revisions. Then, APC members may share it with their constituencies. Mr. Gerbitz also noted that it is possible the supreme court will address this issue with one of its pending cases.

**VI. Update on special project idea addressing potential amendment of the WIS. STAT. ch. 809 rules for requesting oral argument and publication.**

Ms. McNab said that the plan remains to wait until the staff attorney is on board to explore this further.

**VII. New business.**

Mr. Christensen, Clerk of the Supreme Court and Court of Appeals, provided several updates. His office is now fully staffed, and they have numerous new staff members. As for the eFiling system, there have been some growing pains with the introduction of two-factor authentication, especially where some attorneys had been having their support staff file documents on their behalf. Also, Mr. Christensen said there continue to be issues with district attorneys and guardians ad litem opting in. All of those issues are being addressed. Finally, disciplinary cases continue to be filed in paper in the supreme court, but at some point in the future, they will be set up for eFiling.

Mr. Gerbitz noted that at our last meeting, he suggested that in the future, the APC may want to consider suggestions to modify the Rules of Appellate Procedure suggested by Justice Dallet in *Morway v. Morway*. At today's meeting, it was decided that this could be part of a larger project on finality. Once the staff attorney is hired, we can explore that and potentially put together a project proposal to share with the Judicial Council.

**VIII. Next meeting discussion.**

The APC decided it would next meet virtually in late January 2026, and a poll with potential dates would be circulated. [Ultimately, after a date in January was selected, the meeting was rescheduled to February 4, 2026, so that the new Judicial Council staff attorney could attend.]

**IX. Adjournment.**

Ms. Keckhaver moved to adjourn, and Ms. McNab seconded the motion. The meeting adjourned at 12:10 p.m.