

## **New Procedures in Termination of Parental Rights (TPR) Appeals**

**2005 WI Act 293** first applies to TPR cases in which the judgment was granted under Wis. Stat. § 48.43 on or after April 21, 2006 and provides that:

- A GAL shall be appointed for an incompetent parent [§ 48.235 (1) (g)];
- Representation at the trial level continues through the filing of the notice of intent; and judgments are subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 [§ 48.43 (6) (a)];
- Notice of intent and notice of appeal deadlines may be extended for cause [§§ 808.04 (7m) & 809.82 (2) (b)];
- The circuit court must provide written notification to the parent of the time limits for appeal. The person must sign the notification of time limits document and counsel must file a copy of the signed document [§ 48.43 (6m)];
- A prematurely filed notice of intent will be deemed timely and filed on the date the judgment is entered [§ 808.04 (8)];
- If the person who filed a notice of intent “decides not to file a notice of appeal, that person shall notify the [state, opposing counsel, GAL] of this decision, within 30 days after the service of the transcript and case record” [§ 809.107 (5) (am)] (see “Information for Attorneys Regarding the Notice of Abandonment of a TPR Appeal” below); and
- Collateral attack must occur within one year after the time for filing a direct appeal or after the appeal has been decided, whichever is later [§ 48.43 (6) (c)].

Substantive changes in TPR law effectuated by Act 293 are not summarized here. Text of the act is available at <http://www.legis.state.wi.us/2005/data/acts/05Act293.pdf>.

**Supreme Court Rules Order No. 05-06 (2006 WI 37)**, effective July 1, 2006:

- sets forth trial counsel’s responsibility to file a notice of intent to pursue post-disposition relief in § 809.107 (2) (am),
- states that a prematurely filed notice of intent will be deemed timely and filed on the date the judgment is entered in § 809.107 (2) (c),
- sets a time limit for appointment of counsel that is consistent with current SPD practice [§ 809.107 (4) (a)],
- sets a time limit within which transcripts and court records must be requested by persons not represented by the SPD [§ 809.107 (4) (b)],
- requires clerks and court reporters to enter dates necessary for calculation of time limits (date of filing transcript, date of mailing for court record) in the case record or judgment roll [§ 809.107 (4m)],
- requires clerks to notify parties if a transcript is already on file [§ 809.107 (3)], and
- shortens the time period for a response to a motion [§ 809.14 (1) and (1m)].

Unofficial drafts of the statutes, as revised by Act 293 and Order No. 05-06, are available from the Revisor of Statutes at <http://www.legis.state.wi.us/rsb/stats.html>.

## Information for Attorneys Regarding the Notice of Abandonment of a TPR Appeal

Newly created § 809.107 (5) (am) states:

*Notice of Abandonment of Appeal.* If the person who filed a notice of intent to appeal under sub. (2) and who requested a transcript and case record under sub. (4) decides not to file a notice of appeal, that person shall notify the person required to be served under sub. (2) of this decision, within 30 days after the service of the transcript and case record under sub. (4).

*The person* means the parent whose rights were terminated -- your client. The decision whether to appeal is the client's to make.

*Decides not to file a notice of appeal* means that your client actually decided not to appeal. If your client has disappeared or refuses to make a decision, you can not represent to the court that she or he decided not to file a notice of appeal. Because the time to file a notice of appeal can be extended, this is not a decision that can be made by default. Counsel could file a notice indicating that counsel has decided not to file an appeal, but that does not mean that the client abandoned the appeal or intended to abandon the appeal.

*When to file the Notice of Abandonment* is also problematic. A literal reading of the statute suggests that the notice of abandonment need only be filed if the decision not to appeal is made within 30 days after receipt of the transcript and court record. If the legislative intent was to have a Notice of Appeal or a Notice of Abandonment of Appeal filed in every case, we must interpret the statute to allow a Notice of Abandonment to be filed within the time limit for filing a Notice of Appeal. The time limit for filing a Notice of Appeal may be extended by a remand for fact-finding under § 809.107 (6) (am) or by an order granting an enlargement of the time limit under §§ 809.107 (5) and 809.82 (2).

If the circuit court sets a hearing on the status of the appeal, counsel should review SCR 20:1.6 before appearing.

Please contact the Attorney Managers in the Appellate Division offices in Madison (608-266-3440) or Milwaukee (414-227-4891) to discuss any problem you encounter while trying to apply the rule to the circumstances in your case.