In the Supreme Court of Wisconsin

IN THE MATTER OF AMENDING WIS. STAT. § 809.12
RELATING TO APPELLATE REVIEW OF MOTIONS FOR RELIEF PENDING APPEAL

PETITION

For the reasons set forth in the accompanying memorandum, the petitioners, Caleb R. Gerbitz and James M. Sosnoski, respectfully petition the Wisconsin Supreme Court to amend Wis. Stat. § (Rule) 809.12 to clarify the standard of review for a decision on a motion for a stay pending appeal. The court has authority to amend § (Rule) 809.12 pursuant to its authority under Wis. Stat. § 751.12 and article VII, section 3 of the Wisconsin Constitution. The petitioners urge the court amend Wis. Stat. § (Rule) 890.12 as follows:

809.12. Motion for relief pending appeal

(1) A person seeking relief under s. 808.07 shall file a motion in the trial court unless it is impractical to seek relief in the trial court. A motion in the court must show why it was impractical to seek relief in the trial court or, if a motion had been filed in the trial court, 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 from the order with the court.

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A judge of the court may issue an ex parte order granting temporary relief pending a ruling by the court on a motion filed pursuant to this rule. A motion filed in the court under this section must be filed in accordance with s. 809.14.

(2) If a person aggrieved by the trial court's decision to grant or deny a motion filed pursuant to this rule seeks appellate review of the trial court's determination, the court shall review the trial court's decision for an erroneous exercise of discretion, but it shall independently review the trial court's legal determinations.

Dated: January 23, 2023

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Respectfully submitted,

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