

**SM-33B INSTRUCTION TO BE USED ON DENIAL OF A
POSTCONVICTION MOTION UNDER § 974.06**

[WITHDRAWN]

COMMENT

SM-33B was originally published in 1974 and revised in 1980 and 1981. It was withdrawn by the Committee in October 1991.

The Committee withdrew this special material for several reasons: giving such advice is not required by case law or statute; appellate procedure is sufficiently technical that it is difficult to give complete and accurate information to a defendant; and, probably because of the preceding reasons, the advice was apparently rarely, if ever, used.

The situation addressed by this special material is even more complex because the § 974.06 motion is considered civil in nature. § 974.06(6) Thus, the relevant rules are as follows:

- § 809.30(2)(L) provides that appeals under § 974.06 are governed by the procedures for civil appeals.
- § 808.04(1) states the general rule for civil appeals: 45 or 90 days, depending on whether written notice of the order denying relief was received.
- § 808.04(5) provides a special 120-day rule for "a person imprisoned on a criminal sentence against whom a civil final judgment or order is rendered."