
**In re creation of a court rule governing
electronic filing in the circuit courts**

PETITION

The Director of State Courts hereby petitions this court to create a new rule implementing electronic filing in the Wisconsin circuit courts. This petition is brought at the request of the Consolidated Court Automation Program (CCAP) Steering Committee.

This rule is proposed as part of Wisconsin Statutes Chapter 801, the general rules of procedure and practice that govern commencement of action, service and filing, form of papers, time for filing, filing by facsimile, and similar matters. The provisions of Chapter 801 were adopted by the Supreme Court pursuant to its rulemaking authority under Wis. Stats. s. 751.12 and its administrative authority over all courts conferred by Article VII, s. 3 of the Wisconsin Constitution. An electronic filing rule can be created by the court under that same authority.

This petition is supported by the report of a special committee of the Director of State Courts, attached as Exhibit A, describing the genesis of the rule and the technology to be used. The language of the proposed rule is attached to this petition as Exhibit B. The notes accompanying the rule are intended to be published for guidance. Additional comments not intended for publication, addressing notarization and court official signatures, are found in italics.

Respectfully submitted this ____ day of _____, 2006.

A. John Voelker
Director of State Courts

Proposed Wis. Stats. 801.20, electronic filing.

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The Director of State Courts requests that new Wis. Stats. 801.20, Electronic Filing, be created to read:

(1) **Definitions.** In this section:

(a) “CCAP” means the Consolidated Court Automation Programs, an office of the Wisconsin Director of State Courts Office.

(b) “Clerk of court” means the official circuit court record keeper for the case in question, which may be the clerk of circuit court, juvenile clerk, or register in probate for that county.

(c) “Compromised” means inadvertently or improperly disclosed.

(d) “Document” means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing.

(e) 1. “Electronic filing system” means a web-based program established by CCAP for the purpose of filing documents with a circuit court and automatically integrating them into the CCAP case management system.

2. “Electronic filing” does not include submission by electronic mail, facsimile, floppy disks, or other electronic methods.

(f) “Electronic filing system administrator” means an individual appointed by CCAP to receive information and take action as necessary to run the electronic filing system.

(g) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign the document.

(h) “Initiating document” means a summons and complaint, petition, application, citation, criminal complaint, or any other document filed to commence a court action.

(i) “Traditional methods” means those methods of filing and serving documents, other than electronic filing, currently provided under Wisconsin statutes and local rules.

(2) Scope. (a) The Director of State Courts, through CCAP, shall implement an electronic filing system for the Wisconsin circuit courts.

(b) Use of the electronic filing system is voluntary. Parties or their attorneys may choose to participate in the electronic filing system or may request traditional service of paper documents.

(c) Any action that may be brought in circuit court may be brought using electronic filing, subject to the ability of the electronic filing system to accept the documents. This section does not guarantee anyone the right to file electronically.

(d) The procedures set forth in this section shall be interpreted in a manner consistent with existing procedural rules.

(3) Registration requirements. (a) The following users may register for access to the electronic filing system:

1. Licensed Wisconsin attorneys.
2. Attorneys appearing pursuant to SCR 10.03 (4).
3. Parties to an action who are not represented by an attorney.
4. Full-time employees authorized under s. 799.06 (2).

(b) Registered users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.

(c) Users shall register through the electronic filing system website by executing a user agreement governing the terms of use of the electronic filing system. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. By registering, users agree to file all documents electronically to the extent the electronic filing system can accept them.

(d) Upon completion of a properly executed user agreement, the electronic filing system shall assign to the user a confidential, secure access code. The access code shall be used only by the user to whom it is assigned and by any agents or employees that the user authorizes. Upon learning that the confidentiality of the access code has been compromised, the registered user shall immediately report it through the electronic filing system website.

(e) Registered users shall notify the electronic filing system within 10 days of any change in the information provided for registration. Attorneys shall notify the electronic filing system within 10 days of beginning representation of a formerly self-represented user.

(f) Nonresident attorneys may register following court approval of a motion to appear pro hac vice under SCR 10.03 (4).

(g) The same access code shall be used for all cases on which the user is an attorney or a party. The user's access code will expire 6 months from the last activity on any case for which the user is registered. The electronic filing system may reset access codes and electronic signatures as needed for administrative and security purposes.

(h) Registered users who wish to stop using ("opt out of") the electronic filing system must do so through the electronic filing system website. The electronic filing system will generate a notice to all parties that traditional service must be used for this party for future filings.

(i) The electronic filing system may provide a method for submitting reports by individuals who are not parties to the case, such as presentence investigators and social workers.

(4) Time and effect of electronic filing. (a) The electronic filing system is an agent of the circuit court for purposes of electronic filing, receipt, service, and retrieval of electronic documents.

(b) When a document is submitted by a party to the electronic filing system, the electronic filing system shall transmit it to the appropriate clerk of court in the county where the case is filed. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.

(c) The clerk of court may review the document to determine if the document should be accepted for filing.

1. If the clerk accepts the document, it shall be considered filed with the court at the time the original submission to the electronic filing system was complete. Upon acceptance, the electronic

filing system shall issue a confirmation with the date and time of the original submission to serve as proof of filing.

2. If the clerk rejects the document following review, the document will not become part of the court record and the filer will receive notification of the rejection. The filer may be required to refile the documents.

(d) The date of filing shall be determined by the regular designated business hours of the clerk of court. Any document submitted to the electronic filing system before the close of regular business hours shall be considered filed on that date, so long as it is subsequently accepted by the clerk upon review. A document submitted after the close of regular business hours shall be considered filed the next business day.

(e) Whenever a party has the right or duty to do some act within a prescribed period after the service of a document upon the party, 1 day shall be added to the prescribed period if the document is served through the electronic filing system between 5 p.m. and midnight.

(f) The calculation of time for reply under other statutes and rules is neither expanded nor contracted by this section.

(g) The electronic filing system will receive electronic filings 24 hours per day except when undergoing maintenance or repair.

Note

Sub. (4) is intended to be consistent with the rules for facsimile transmissions under ss. 801.15 and 801.16.

(5) Commencement of action. (a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and authenticate the document as provided under this section. The electronic filing system shall send a notice to the filer that the filing has been accepted and is available on the electronic filing system website.

(b) Initiating documents shall be served by traditional methods as provided by Wisconsin statutes and local rules, unless the responding party has consented in writing to accept electronic service or service by some other method. Initiating documents shall be served together with a notice to the responding party stating that the case has been electronically filed and giving instructions for how to use the electronic filing system if the responding party chooses to do so.

(c) A responding party or attorney for a responding party may register to use the electronic filing system as provided by this section. After registering to use the electronic filing system, the responding party or attorney must also register (“opt in”) as a user on the particular case. A notice indicating the new user will be sent to the other registered users on the case.

(6) Filing and service of subsequent documents. (a) Filing of documents other than initiating documents through the electronic filing system shall cause a notice of activity to be sent to the electronic mail account of the other registered users on that case. Registered users shall access filed documents through the electronic filing system website.

1. For documents that do not require personal service, the notice of activity is valid and effective service on the other registered users and shall have the same effect as traditional service of a paper document, except as provided in sub. (b).

2. Documents requiring personal service must be served by traditional methods as provided by Wisconsin statutes and local rules unless the responding party has consented in writing to accept electronic service or service by some other method.

(b) If a notice of activity sent to a registered user’s electronic mail account is rejected or returned undeliverable, the electronic filing system will automatically notify the filing party. The filing party must then serve the document on that user by traditional methods. The party whose electronic mail account rejected the notice will be treated as a nonregistered party until the party corrects the problem and re-registers with the electronic filing system.

(c) Unrepresented parties or attorneys who are not registered users shall be served by traditional methods. The clerk shall maintain a list indicating which unrepresented parties or attorneys are to be served electronically and which are to be served by traditional methods.

(d) An unrepresented party or attorney may submit a request to the clerk of court to begin electronic filing of documents at any time while the case is pending. The decision to allow electronic filing of documents after the case has been commenced is in the sole discretion of the clerk of court. If the request is granted, the requester shall register as provided by this section and shall send a notice to the other parties by traditional methods stating that the case has been electronically filed and giving instructions for how to use the electronic filing system if the other parties choose to do so.

(e) Subpoenas may be electronically generated consistent with s. 805.07 and ch. 885, and may bear the electronic signature of the issuing attorney or court official. Subpoenas shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

(f) Discovery materials may not be electronically exchanged through the electronic filing system, consistent with s. 804.01 (6).

Note

Sub. (6) does not apply the general rule that most documents are considered served when they are mailed. Although documents are considered filed when they are accepted by the clerk and posted to the electronic filing website, the parties are notified of the posting by a notice sent to a electronic mail accounts. Because electronic mail is not yet as reliable as the United States Post Office; this subsection requires the filing party to revert to traditional service if the electronic mail notice is returned as undeliverable.

(7) Payment of fees. (a) Registered users shall make any payment due to the clerk of court through the electronic filing system unless otherwise ordered by the court or unless special arrangements are made with the clerk of court. Documents that require payment of a fee are not considered filed until the fee is paid or a waiver of the fee is granted. The electronic filing system shall establish one or more methods for electronic payment.

(b) Users may submit a request for waiver of fees under s. 814.29 (1), using the form provided by the electronic filing system for that purpose.

(c) The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.

Note

Sub. (7) provides that most routine fees be paid electronically, including filing, motion, and docketing fees, fines and forfeitures, court costs, and court-ordered attorney fees. Larger fees and deposits, such as condemnation awards, may be paid by other methods if ordered by the court or agreed to by the clerk of court. Attorneys should consult the Rules of Professional Conduct, SCR 20:1.15(e), with respect to the restrictions on electronic transactions from trust accounts.

(8) Format and content of documents. (a) All electronically filed documents shall, to the extent practicable, be formatted in accordance with Wisconsin Statutes and local rules governing formatting of paper documents, including page limits.

(b) Registered users shall provide any case management information needed to transmit the document. The electronic filing system will reject the document for failure to include information in any one of the mandatory fields identified by the system.

(c) The electronic filing system may set limits on the length or number of exhibits. Exhibits rejected by the system for this reason may be filed by traditional methods.

Note

Under sub. (8), users should maintain the original of each electronically filed document in electronic form until final disposition of the case and expiration of all time for appeal.

(9) Official record. (a) Electronically filed documents have the same force and effect as documents filed by traditional methods.

(b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.

(c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and traditional formats. If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically scanned into the electronic filing system, the clerk shall maintain the document in paper format.

(d) Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(e) The clerk of court shall make the public portions of the electronic record available through the public access terminal located in the clerk's office. The clerk of court shall charge for copies of pages from the electronic record as provided by ss. 814.61 (10) and 814.66 (1) (h).

(f) Certified copies of an electronic record shall be available through the clerk of court's office by traditional methods, as provided by s. 889.08.

(g) Documents submitted by traditional methods will be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, notwithstanding SCR 72.03(3). If a document is filed by traditional methods, the submitting party shall file a copy of that document and not the original paper document. The court may

require the submitting party to produce the original paper document if validity of the signature or document is challenged.

Note

Sub. (9) requires parties filing documents by traditional methods, such as by hand delivery or by mail, to submit copies instead of original documents, to allow the clerk to eliminate the paper file. Discarding the paper copy is consistent with the rule governing facsimile copies, s. 801.16(2)(e), which provides that the faxed copy is the official record, and the original, if received, should be discarded. The rule does not require the submitting party to retain original paper documents. If there is likely to be a challenge to the validity of a signature or exhibit, parties may be well-advised to keep the original paper document. For a high-volume law practice, the economics may not support keeping paper originals when the remainder of the file is electronic, and parties may prefer to assume the risk of failure of proof.

SCR 72.03(3) provides that even when the clerk of court has electronically stored a court file, the clerk may not destroy the paper file until one year after entry of a final order in the case. In contrast, the electronic filing rule anticipates that there may not even be a paper file for the case, so the clerk should be allowed to discard the paper copy as soon as it is electronically scanned and the clerk has confirmed that the electronic copy is legible, complete, and properly saved to the file.

(10) Authentication. Electronic placement of the clerk's filing stamp and case number on each copy of an initiating document constitutes authentication under the Wisconsin Statutes and rules of court. An authenticated copy may be printed from the CCAP case management system by the clerk of court or from the electronic filing system by the filing party.

Note

Sub. (10) provides that electronic authentication satisfies the authentication requirements of Wisconsin Statutes, including ss. 801.02, 801.09(4), and 909.02(8). Statutory authentication requirements must be met upon filing of the summons and complaint in order to confer jurisdiction on the court. *American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis.2d 524, 534 (1992). The purpose of authentication is to give assurance by the clerk that copies served are true copies of filed documents and to provide the case number for future reference. *J.M.S. v. Benson*, 91 Wis.2d 526, 532 (Ct. App. 1979), *rev'd on other grounds*, 98 Wis.2d 406 (1980). The security

and verifiability provided by the electronic filing system satisfy the purposes of the authentication requirements under statutes and case law.

(11) Notarization and oaths. (a) If a law requires a signature or record be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. A physical or electronic image of a stamp, impression, or seal need not accompany the electronic signature.

(b) The electronic filing system may provide an electronic signature and notary seal for notaries public who hold valid appointments under ch. 137. Expiration or renewal of the electronic signature and notary seal shall be concurrent with the notary's commission with the Secretary of State. The Director of State Courts Office may enter into an agreement with the Secretary of State governing notarization within the court electronic filing system.

(c) Notaries public may register with the electronic filing system for authorization to notarize electronically filed documents. To register, notaries must be able to meet the technical requirements of the system. Upon receipt of a properly executed notary agreement, the system shall assign to the notary a confidential electronic signature and seal. The notary signature and seal shall be used only by the notary to whom it is assigned. Upon learning that the confidentiality of the signature and seal have been compromised, the registered notary shall immediately report it through the electronic filing system website.

(d) Other officers authorized by law to perform notarial acts may do so by application of their electronic signatures if those signatures are already provided through the electronic filing system under this section.

(e) The electronic signature and seal provided for notaries public by the electronic filing system satisfy the self-authentication requirements of s. 909.02.

Note

Sub. (11) is intended to satisfy the standards for electronic notarization set by Wis. Stats. s. 137.19 (the Uniform Electronic Transactions Act) and §706.25(2)(c) (the Uniform Real Property

Electronic Recording Act). The rule should be interpreted flexibly to the extent that technical standards for electronic notarization evolve.

The function of the notary is to witness the signature and to administer an oath when one is required. See ss. 706.07; 887.01; 887.03; *Kellner v. Christian*, 197 Wis.2d 183, 191 (1995). Notarial acts as defined by s. 706.07(1)(c) include the ability to administer oaths, take acknowledgments and verifications, and authenticate or certify documents. These functions may be performed not only by notaries public but also by a judge, clerk or deputy clerk of a court of record, or a court commissioner under s. 706.07(3). This section provides that the electronic signature of one of these officials may be applied to a certificate of notarial acts certifying that the function was performed.

This section does not require the submitting party to retain original paper documents or exhibits bearing the notary's seal and signature. If there is likely to be a challenge to the validity of the notarization, parties may be well-advised to keep the paper copies. The court may require a party to produce the original paper document if validity of the notarization is challenged.

Additional committee comment in support of this section:

Notarization is required on documents such as affidavits and small claims verifications so they can be relied upon as sworn evidence in court. Notarization is also required on a number of probate forms that are subsequently filed with the register of deeds. Since these documents can be electronically signed, they also need to be electronically notarized, to avoid printing the documents for the sole purpose of applying the notary seal and signature.

Electronic notarization in Wisconsin was approved in concept by the Uniform Electronic Transactions Act (UETA), 2003 Wisconsin Act 294, now s.137.19. The legislature also recently passed the Uniform Real Property Electronic Recording Act (URPERA), 2005 Wisconsin Act 421, now s. 15.01(4) and revised ch. 706, which authorizes electronic recording and notarization for real property instruments.

The technology for electronic notarization is still under development. The process for electronic recording of real property instruments is expected to rely on proprietary software purchased by banks and real estate firms; notarization will be performed by employees with notary commissions using an electronic signature incorporated in the software. The Secretary of State and Department of Administration may at some point provide Wisconsin notaries with a

electronic notary seal and signature for use in any type of electronic transaction, but a timetable for development has not been set.

Rather than wait for such a development or rely on expensive vendor software, CCAP will build an electronic notarization feature to be used by duly commissioned notaries within the electronic filing system, a “registered notary” category of users. The Secretary of State is currently creating a database of all Wisconsin notaries using the same XML technology as the electronic filing system. By linking to this database, the electronic filing system can validate the notary’s commission at the time the document is notarized. This system should work well for law offices, court offices, and litigants with notaries on staff. The committee recognizes that the system will not always be efficient for self-represented users, but traditional paper notarizations can be scanned in where necessary. CCAP will work with other state offices and the Wisconsin Register of Deeds Association to make sure court standards are compatible with the other systems as they are developed.

Although electronic notarization can be accomplished by the use of a single electronic signature and does not call for a separate electronic seal under s. 706.25, the committee decided that public comfort would be increased if an image of a seal was applied to make it clear on paper copies that the document has been notarized. The security features of the electronic filing system, not the picture, will reveal if a notary seal or signature has been tampered with.

No specific disciplinary provisions are provided for misuse of an electronic notary seal and signature. Notaries are subject to punishment for misconduct under s. 137.01(8), and attorneys and self-represented parties are subject to discipline under the signature provisions of this section.

(12) Signatures of registered users. (a) Registered users shall be provided with an electronic signature that can be executed by the user with the intent to sign a document. The electronic signature shall be treated as the registered user’s personal original signature for all purposes under Wisconsin statutes and court rules. Each document electronically signed shall bear that person’s name, mailing address, telephone number, and State Bar number if applicable. If a statute requires a signature at a particular location on a form, the person’s printed name shall be inserted.

(b) A summons and complaint, petition, or other initiating document that is electronically signed in compliance with this section bears a sufficient signature under s. 802.05.

(c) An electronic signature shall be used only by the user to whom it is assigned. Upon learning that the confidentiality of the electronic signature has been compromised, the registered user shall immediately report it through the electronic filing system.

(d) Attorneys are responsible for electronically filed documents to the same extent as for paper filings, with similar consequences for missing or improper signatures. Attorneys using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785, and are subject to discipline for any violation of a duty to the court under the Supreme Court Rules.

(e) Self-represented parties are responsible for electronically filed documents to the same extent as for paper filings, with similar consequences for missing or improper signatures. Self-represented parties using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.

(f) Documents containing signatures of third parties, such as affidavits, may be filed through the electronic filing system if a handwritten signature appears on the original document. The user shall submit a scanned copy of the signed document to the electronic filing system, and the court shall maintain the scanned signature as the official court record. The court may require the submitting party to produce the original paper document if validity of the signature is challenged.

(g) If a document bearing a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided by sub. (8).

Note

Sub. (12) adopts the definition of electronic signature appearing in ss. 137.11 (8) and 706.25(1)(d). Consistent with s. 137.15(4), it provides that if a law requires a signature, an electronic signature applied through the electronic filing system satisfies that requirement.

The Wisconsin legislature has affirmed the trend toward acceptance of electronic signatures in government records and commercial transactions. At the request of the Wisconsin Director of State Courts, 2003 Wisconsin Act 294 (the Uniform Electronic Transactions Act) exempted court filings from coverage in order to allow the court to develop its own technical and legal standards. This section now allows the electronic signing and filing of those documents described in s. 137.12 (2m), as well as all other documents filed with the court.

Compliance with this section satisfies the signature requirements of ss. 801.09(3), 802.05(1), and 805.07(4)(a), as well as all other statutes and rules relating to court documents. Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. *See Schaefer v. Riegelman*, 2002 WI 18, 250 Wis.2d 494, 512-513; *Novak v. Phillips*, 2001 WI App. 156, 246 Wis.2d 673, 680-81; *Jadair, Inc. v. U.S. Fire Insurance Co.*, 209 Wis.2d 187, 211-212 (1997). For registered users of the electronic filing system, the identification procedures, security, and personal accountability provided by these rules are deemed to satisfy the purposes of a handwritten signature and all other signature requirements.

The intent of this section is to make attorneys and self-represented parties responsible for electronic filings to the same extent they are responsible for paper filings. For that reason, the rule does not include a provision allowing attorneys to reveal their electronic signatures to office staff so the staff can apply the signature; the attorney must review each electronically filed document and apply his or her electronic signature personally. The courts and the Office of Lawyer Regulation have a range of sanctions and disciplinary measures that will serve as an adequate deterrent to any misuse of electronic signatures.

This section does not require the submitting party to retain original paper documents bearing handwritten signatures. If there is likely to be a challenge to the validity of the signature, the submitting party may be well-advised to keep the original document.

(13) Signatures of court officials. (a) If the signature of a court official is required on a document, the signature may be applied electronically. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a signature appears on a particular order, form, letter, or other document, the official's printed name shall be inserted.

(b) The electronic signature of a court official shall be used only by the official to whom it is assigned and by such designees as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized designee.

(c) A court official may delegate the use of his or her electronic signature to an authorized designee pursuant to the security procedures of the CCAP case management system. Upon

learning that the confidentiality of the electronic signature has been compromised, the court official shall immediately report it to CCAP.

Note

Sub. (13) provides electronic signatures for those court officials whose duties require them to sign documents in circuit court case files, including circuit court judges, clerks of circuit court, registers in probate, juvenile clerks, and circuit court commissioners appointed under s. 757.68 and SCR 75.02(1). Electronic signatures may also be provided for the chief justice and the director of state courts to use for assignment of judges pursuant to SCR 70.23 and 70.24. A district court administrator may be the designee of a chief judge for purposes of judicial assignment.

Under this section, court officials may allow an authorized staff member to apply the official's electronic signature at the official's specific direction. Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. No case has examined the signature requirements for court officials, and the reasoning behind previous decisions seems inapplicable. Each court official remains responsible for reviewing, revising and approving the document before the electronic signature is applied, and should be held accountable as if the document were signed personally.

Additional committee comment in support of this section:

The committee concluded that allowing court officials to delegate use of their electronic signatures will foster the use of electronic processes by judges and will allow each court to develop a system that works most efficiently for it. As long as the court official remains responsible for reviewing, revising and approving the document before his or her electronic signature is applied, the purpose for the signature is met.

The committee decided that no comment was needed with respect to the consequences that may follow if a court official's electronic signature is misused. With respect to an errant employee, the consequences are likely to include personnel action and criminal prosecution, just as with forgery of a paper signature. With respect to the affected case, the judge will need to vacate any order mistakenly or fraudulently entered and otherwise rectify the mistake. Since

judges already have the power and duty to do so if their signatures are forged on paper, no specific provisions are necessary for electronic signatures.

The user security procedures of the CCAP case management system will be applied to the signatures of authorized designees. Court officials will identify each authorized designee and record the effective date of authorization, and the expiration date if needed. Documents will be grouped into categories based on the type of document. The court official will identify which categories of documents each designee is authorized to sign, so that the system can block application of the official's signature outside the range of the designee's authority. Since current practices vary widely with respect to use of signature stamps and delegated signing powers, the committee decided that it was not advisable to make a centralized decision about which documents could or could not be signed by an authorized staff member.

For assignment of judges pursuant to SCR 70.23 and 70.24, the signature of the chief justice, the director of state courts, or the chief judge of a judicial district is required. These signatories may authorize designees to apply their signatures.

(14) Confidential information. (a) The confidentiality of electronic records is the same as for paper records. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record may release the information to any other person except as provided by law.

(b) If a document is made confidential by statute, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require registered users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not obligated to review documents to determine if confidential information is contained within them.

(c) If a registered user seeks court approval to make a document confidential, the registered user may electronically file the document under temporary seal pending court approval of the user's motion to seal.

(d) The electronic filing system will place a visible mark on documents identified as confidential.

Note

Sub. (14) provides that the electronic filing system shall protect those case types made confidential by statutes. Within an open case type, certain documents may be sealed by statute, such as presentence reports, financial disclosure forms, psychological evaluations, and certain health care records. This section places the burden on the submitting party to identify those documents as confidential. Confidential information may also be contained within an otherwise open document, such as a trade secret; the burden is on the filing party to move to seal those documents. As an added protection, the electronic filing system will mark confidential documents in a way that will be visible on the computer screen and when the documents are printed.

(15) Technical failures. (a) A registered user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:

1. If the failure is caused by the court electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.

2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as filing of paper documents, with similar consequences for missed deadlines.

(b) This section shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

Note

Sub. (15) addresses technical failures of the court's electronic filing system or the user's electronic systems. Technical failures may include an error in the transmission of the document to the electronic filing system or to a served party, a failure to process the document upon receipt by the electronic filing system, or erroneous exclusion of a party from the service list by the electronic filing system.

Correction of technical failures should generally be allowed in order to encourage the use of the electronic filing system. Correction should be automatic where the user can demonstrate that the problem was caused by the court's electronic filing system. The electronic filing system will generate a report if needed for a user to document the problem. Where the failure is caused by the user's electronic systems (such as electronic mail, word processing, or a database program)

or by external forces (such as problems with the user's Internet service provider or power outages), the court has the discretion to correct the problem. The court should consider what consequences would follow a missed deadline for traditional filings, caused by forces such as malfunctioning equipment or traffic delays. The committee considered limiting the court's discretion to correct technical errors in the filing of initiating documents, where untimely filing is a jurisdictional issue, but decided against creating a bright-line rule because of occasional exceptions such as *St. John's Home of Milwaukee v. Continental Casualty Co.*, 147 Wis.2d 764, 788-89 (Ct. App. 1988) and *Granado v. Sentry Ins.*, 228 Wis.2d 794, 799 (Ct. App. 1999).

**Report on Electronic Filing in the Wisconsin Circuit Courts
With a Proposed Rule of Procedure & Practice
December 2006**



This report is submitted to the Wisconsin Director of State Courts in support of a new rule of procedure and practice to implement electronic filing in the circuit courts. The rule provides the procedural structure for the voluntary exchange of electronic documents between courts, attorneys and self-represented litigants. The technology for this project represents a significant advance over the electronic filing systems used by other courts. The system is fully integrated with the existing CCAP case management system and is expected to create significant efficiencies for court offices and litigants. The electronic filing system is designed to be phased in over time, eventually becoming available for all types of circuit court cases.

This report is the work of a committee appointed by the Director of State Courts, at the request of the CCAP Steering Committee, and charged with drafting the statutes and rules necessary to implement electronic filing in the circuit courts. Committee members were the Hon. Gerald Ptacek, Racine County Circuit Court, chair; Jean Bousquet, Chief Information Officer, CCAP; Margaret Carlson, Chief Staff Attorney, Court of Appeals; James Day, Attorney, Rausch, Sturm; Kristine Deiss, Washington County Clerk of Circuit Court; Gail Gentz, Kenosha County Clerk of Circuit Court; Kathleen A. Johnson, Office Manager, Kohn Law Firm, S.C.; Sally Lunde, Waukesha County Register in Probate; Kelly Mattingly, Attorney Manager, Janesville Office of the State Public Defender; Hon. Richard Niess, Dane County Circuit Court; Andrea Olson, CCAP Software Development Supervisor; John Plous, Kenosha County Circuit Court Commissioner; James Smith, Senior Administrator, Milwaukee County Clerk of Circuit Court; Marcia Vandercook, Circuit Court Legal Advisor, Office of Court Operations; Hon. Mary Wagner, Kenosha County Circuit Court; and David Wambach, Jefferson County District Attorney.

Overview. Some form of electronic filing of court documents is available in a number of state courts, federal district and bankruptcy courts.¹ These systems generally consist of attorneys posting a PDF version of the document on a court electronic filing website. That form of electronic filing has proved to be efficient, secure and cost-effective, and is already streamlining the way courts handle documents.

The system proposed here is the next generation of electronic filing and represents an exciting step toward a more robust technology. The Wisconsin courts already have one of the country's most sophisticated case management systems, created and maintained by the Consolidated Court Automation Programs (CCAP). The electronic filing system is fully integrated with the case management system, allowing it to exchange data directly with the filer. Rather than use PDF files alone, this system uses Extensible Markup Language (XML) to insert data within PDF files. Information is extracted from the document and automatically entered into the case management database; new information is sent back to the filer in the same fashion.

CCAP has been operating this system as a pilot project since March 2005. The two counties participating in the pilot project have already seen a reduction in time spent on data entry, creation of paper files, and transportation of files between offices, as well as reduced costs for copying and mailing. The electronic filing system has performed well enough that it can be extended to cover other counties and additional types of cases as soon as funding and programming resources become available. Some additional data entry on the part of the firms is still necessary to file the complaints. Software is not yet available to export data directly from the case management systems of the firms into the electronic filing system.

The pilot project has been operating under an interim rule adopted by order of the Supreme Court, geared to the procedures of small claims debt collection actions. A broader permanent rule is needed to provide procedures for the full range of circuit court cases. This rule will guide courts in use of the new technology and allow attorneys and self-represented litigants to proceed with confidence in the system. In drafting this rule, this committee has attempted to change existing procedures and practices as little as possible. It concludes that four key processes must be made electronic: filing and service, recordkeeping, signatures, and notarization. Additional protections are provided for confidential documents. The rule is laid out later in this report.

Development of the electronic filing system has taken many hours of programming and testing. To expand the system beyond the pilot project, the Director of State Courts has included a request for ongoing funding in the court's budget proposal for 2007-09, to be phased in over several years. Eventually electronic filing will become available in the appellate courts as well.

Groundwork. Electronic filing has been under discussion in Wisconsin for several years. In 2001-02, the Wisconsin Court Electronic Filing Committee recommended that CCAP develop an electronic filing system that could be fully integrated with the case management systems of the circuit and appellate courts, making it a significant technological advance over the electronic

¹ For an overview of court electronic filing projects, see the National Center for State Courts at <http://www.ncsconline.org/WC/Education/ElFileGuide.htm>. Court rules are collected by the American Bar Association at <http://www.abanet.org/tech/ltrc/research/efiling/rules.html>.

filing systems of other courts.² That committee identified certain obstacles to implementation in the court's case management systems and in existing statutes and court procedures.³ It also foresaw significant benefits to courts and litigants from electronic filing:

The electronic filing system is expected to eventually produce costs savings for the courts, lawyers, and litigants, while providing time savings and greatly increasing the speed with which documents can be sent to the court and opposing counsel and eliminating hurdles for remote filers. The system will benefit parties and lawyers by reducing the costs of printing, copying, mailing, courier services, travel, and storage associated with paper documents. Parties, lawyers, judges, and court staff will benefit from the ability to electronically access and search court files and dockets from remote locations. Access will be improved further because multiple users could view the same case file simultaneously and would have access 24 hours a day. The system will extend the range of services the courts can offer by providing remote access for viewing and filing of documents.

The electronic filing system will provide the ability to enhance the accuracy, consistency, and efficiency in record maintenance. Time and effort dedicated to data entry would be drastically reduced because information could be automatically extracted from the documents submitted. The use of standardized drop down lists attached to fields on submission screens would result in consistent docket entries. The amount of time spent by court staff searching for and handling case files will also be reduced.

Since this report was filed, court processes have become increasingly automated. Interfaces have been created to allow electronic filing of State Patrol citations, unemployment compensation warrants, and criminal complaints. Automated systems send conviction information to the Department of Justice and driver license actions to the Department of Transportation. A new court website helps self-represented litigants fill out forms for family cases. Many clerks of court scan case files to save storage space and reduce the time spent handling paper records. Electronic filing and service of court documents, complete with electronic signatures, is the next logical step in automation.

Pilot project. In 2004, CCAP proposed an electronic filing pilot project involving a single case type, two counties, a limited number of volunteer law firms, and existing funding. Small claims collections practice was chosen because it is high volume, fairly routine, and largely forms-based. A working group of the CCAP Steering Committee wrote an interim court rule to guide the courts, litigants, and CCAP as the technical challenges were worked out. The Supreme Court approved the interim rule and pilot project to run from March 2005 to March 2006, with a later extension of time to July 2007.⁴

² The report is found at <http://www.wicourts.gov/about/pubs/supreme/docs/efilingreport.pdf>.

³ The first electronic filing committee recommended that CCAP create an integrated case management system for the circuit and appellate courts, and these systems have since been completely rewritten.

⁴ The interim rule is found at <http://www.wicourts.gov/services/public/docs/efileinterim.pdf>.

The first case was filed in Washington County in March 2005 by the Milwaukee firm of Rausch, Sturm, Israel & Hornik. The Kohn Law Firm began to participate in November 2005. As of October 2006, the two firms had filed 338 small claims actions in Washington County and 476 in Kenosha County. The clerks of circuit court in both counties have created all-electronic files by scanning in any paper documents received, and the circuit court commissioners handling the cases have accessed those files electronically. Although defendants and their attorneys have the option of electronically filing and serving their answers and subsequent documents, only two defendants have done so as of October 2006.

The promise foreseen by the first electronic filing committee has been substantially fulfilled by the pilot project. The electronic filing system has worked well from the perspective of the clerks of circuit court and court commissioners. Cost savings have been realized because staff are not required to create paper court files, manually enter case information into the CCAP case management system, mail circuit court forms to the law firms, or receive and file paper documents for these cases. The accuracy of case management data has been enhanced.

On the law firm side, enhancements have been added to allow firms to pay the filing fee electronically, allow attorneys to review the complaints more efficiently, give the firms access to the electronic documents through the court Web site, and add small claims forms that are less frequently filed. However, the participating law firms are currently performing redundant data entry by keying information about each document into the electronic filing system website. This redundancy can be eliminated as interested vendors create software to export the law firm's case management data directly to the electronic filing system. CCAP does not have the resources to create and support this technology for lawyers, but it will provide all the information necessary for vendors to develop and support this technology.

Electronic filing process. The electronic filing system uses a special website established for the purpose of receiving and posting electronically filed documents. An electronically filed document is sent to the website and transferred to the clerk of circuit court via a secure encrypted channel, and a confirmation of receipt is returned to the party filing the document. The clerk accesses the new document through the CCAP case management system and reviews it to make sure it is properly filed with the court.

Upon acceptance, the document is converted into a permanent and authenticated digital format and is posted to the electronic filing website. The identifying information needed by the court is extracted from the document and automatically entered into the case management database. A notice of activity is generated and sent by e-mail to all the registered users on the case, who may view the new posting on the website. Electronic documents will have the same format and appearance as traditional documents.

The ability to file and receive papers electronically is available only to lawyers and self-represented litigants who go through a registration process. Registered users are assigned a confidential access code that allows them to be identified by the system, as well as an electronic

signature for use in signing documents.⁵ Litigants who choose not to participate may continue to file and receive paper documents by traditional means. Paper documents are scanned into the case management system by the clerk to create a completely electronic file.

Security and reliability are paramount considerations for any electronic filing system. CCAP is confident that it can guarantee the authenticity and integrity of electronically filed documents through the use of digital signature technology.⁶ By digitally signing a document at the moment it is accepted by court staff, and by storing that document in a secure database, CCAP will be able to maintain original documents in the case management system without fear of alteration.

The needs of self-represented litigants have been kept in mind since the inception of the pilot project. The electronic filing website allows a small claims litigant to generate small claims forms and responsive pleadings. It has been developed at the same time as the court's pro se family website and will eventually have many of the self-help features of the family website. The family website has been structured so it can easily provide electronic filing.

Registered users will view documents through the electronic filing website and will have viewing rights only for cases on which they are attorneys or parties. Because each user is individually registered, the system can recognize if the user has the right to access a case file or view a particular document. The public may view electronically filed documents on the public access terminals located in the office of each clerk of court, just as the public now goes to the clerk's office to view the paper file. Printed copies and certified copies are provided by the clerk's office in the traditional way.

Electronically filed documents will not be available for viewing on the public WCCA website. Although electronic filing has the potential to allow public Internet access to all non-confidential documents filed in the courts, this question has policy implications far beyond the scope of electronic filing and must be considered as a separate issue.

Technical aspects. Traditional electronic filing systems are designed to support the exchange of an electronic document's *appearance*, to ensure that a document (such as a Word or PDF document) can be read by a human recipient. These systems can be viewed as an advanced and efficient replacement for the United States Postal Service. However, reading a document is not the only concern of a modern enterprise: information also needs to be entered into a law firm's case management database and into the CCAP case management system. These systems need raw data about the document's *content*: names, addresses, case numbers, case class codes, hearing dates, etc.

⁵ An *electronic* signature is not an image of a handwritten signature; it is a method verifying that the document was created from a particular user's secure account. Visually, it appears as "/s/ John Smith" or "Electronically signed by John Smith".

⁶ A *digital* signature is not a signature at all; it is a method of encrypting information. Digital signatures use what is known as "public key cryptography," which employs an algorithm using two different but mathematically related "keys." The digital signature is permanently appended to the electronic document to assure the recipient that the document or file came from the person who sent it, and has not been altered since it was signed.

The Wisconsin electronic filing system provides the ability to exchange an electronic document's *content* while fully preserving the document's intended *appearance*. It does this by separating each document into two distinct parts. The document's contents are governed by an XML file (Extensible Markup Language), which identifies the raw data contained in the document and assigns it to the proper field in the recipient's database. The document's appearance is governed by an XSLT file (Extensible Stylesheet Language Transformations), which provides the formatting information needed to make the document look the way the party intends. CCAP will publish the formatting details that will allow law firms or vendors to develop systems for extracting the necessary data from their case management system for transmission to the case management system. The pleadings generated in this fashion will look and print exactly as they do now, but the redundant data entry that accompanies every pleading will be eliminated.

Implementation and funding. The pilot project has been designed, developed and supported using existing CCAP staff and current funding. In order to use XML technology, CCAP spent many hours programming the forms and procedures the courts use for small claims cases and adding new features. Many technical problems have been solved during the pilot project, including registration, electronic signatures, and on-line payments.

However, additional funding is needed to expand beyond the pilot project. More forms and procedures will be required as the system grows to accommodate family, probate, criminal, juvenile, and civil cases. A process for electronic notarization must be developed. Programming will be required to accommodate the needs of law firms, improve existing interfaces with other justice agencies, and make the system more accessible to self-represented users. There will be ongoing costs for maintenance, enhancements, and customer support.

To ensure that the courts have adequate resources to support these technology needs, the 2007-09 court system budget proposes that \$1 of the current \$12 justice information systems surcharge revenues be deposited to the CCAP appropriation rather than to the state general fund. The court system budget also proposes that the court be given authority to establish an electronic filing convenience fee by rule at a later date. Under this proposal, the circuit court electronic filing program will be phased in over several years, becoming available for the different types of cases as resources permit. Counties will be added when the clerks of court and judges are ready to make the commitment to working with electronic case files. Eventually electronic filing will become available in the appellate courts as well.

Proposed rule. This committee reviewed the existing statutes and rules of procedure and practice that apply to filing of different types of actions. It reviewed the work of the first electronic filing committee, the interim rule, the rules of other state and federal courts, the writings of various court technology experts, and the experience gained through the pilot project.⁷ It met six times to draft and refine the statute proposed here. It concluded that very few

⁷ The proposed rule is built on the interim rule governing the pilot project (2005); the report of the Wisconsin Court System Electronic Filing Committee (2002); Lexis/Nexis Guide to Model Rules for Electronic Filing & Service (2003); COSCA/NACM Standards for Electronic Filing Processes (2002); ABA Standards Relating to Court Organization: Court Use of Electronic Filing Processes, (2004); National Notary Association Model Notary Act (2002); and rules and orders from a number of other courts.

changes are needed to clear the way for implementation of electronic processes, and all such changes can be contained in a single procedural rule.

The committee proposes that the most appropriate place for such a rule would be in Chapter 801 of the Wisconsin Statutes, the general rules of procedure and practice that govern most types of circuit court cases in the absence of specific provisions. This chapter covers summons and complaint, commencement of action, service and filing, form of papers, time for filing, and filing by facsimile. The provisions of this chapter were adopted by the Supreme Court pursuant to its rulemaking authority under Wis. Stats. s. 751.12 and its administrative authority over all courts conferred by Article VII, s. 3 of the Wisconsin Constitution. An electronic filing statute can be added by the court under that same authority.

This committee has attempted to make as few changes as possible from current practices and procedures. Changes are necessary in four key areas to achieve the efficiency that is the hallmark of electronic filing. The fifth change provides added protection for confidential documents.

1. Electronic filing and service: Users must submit documents meeting the technical requirements of the system. Unless personal service is required, documents are served through the electronic filing system on the other registered users.
2. Electronic recordkeeping: Clerks must be allowed to maintain electronic files rather than paper ones. Parties filing paper documents must submit copies rather than original pleadings and exhibits so the clerk can keep an electronic record rather than a paper one.
3. Electronic signatures: Attorneys, self-represented parties and court officials must be allowed to use secure, confidential electronic signatures rather than handwritten ones.
4. Electronic notarization. Notaries must have electronic signatures and seals so that paper documents are not generated for the sole purpose of notarizing them.
5. Confidential documents: The filing party must identify confidential documents and note confidential information contained within an otherwise open document.

These changes are addressed more fully in the discussion following the rule sections below. Several of the sections are followed by comments intended for publication, to help courts and litigants interpret the intent of the section. Two sections, notarization and court official signatures, have additional committee commentary in italics. These comments are not intended for publication; they address why the committee made particular recommendations and how certain programming issues will be handled.

Conclusion. The transition from the current paper filing system to a partly or fully electronic filing system will be a gradual process, and the courts may never be completely paperless. But the benefits of electronic filing are already clear: efficient document handling, fewer data entry errors, and enhanced access to case information can all be realized if a fully functional electronic filing system is implemented. This rule will enable the Wisconsin court system to continue improving court processes through carefully designed automation.