

# Memorandum

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STATE OF WISCONSIN  
SUPREME COURT



*DATE:* February 9, 2016  
*TO:* Comment for filing with Rule Petition 14-03  
*FROM:* Shirley S. Abrahamson  
*SUBJECT:* Rule Petition 14-03

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I begin my comment by first thanking the Chief Circuit Court Judges for their work on the original and amended mandatory e-filing petition and the persons and entities who filed comments. As you know, a hearing is scheduled for February 23, 2016.

To prepare for the hearing, I had a transcript prepared of the first hearing on March 17, 2015. I am attaching it to this comment to refresh everyone's recollection of the hearing and the court's discussion and action.

At the March 17, 2015 hearing, Justice Ann Walsh Bradley and I favored adopting the petition. Five justices did not. At that time, the fiscal plan and roll-out plan for implementation of the mandatory e-filing was set forth in the budget papers.

Chief Judge Wirtz's letter dated December 22, 2015, accompanying the petition, is very informative and helpful. It states that "CCAP and the Director of State Courts have now developed a plan for CCAP to build the e-filing system using existing resources." Commentators have referred to a "plan" that has been communicated to them.

As of this date, no plan (fiscal or roll-out) appears in the materials filed with the court for the February hearing. I will be seeking information about the plan at the hearing and anticipate that the petitioners—the Chief Circuit Court Judges—and others (including staff) will provide it.

Although a fee of \$40 (up from the original proposed \$7) is to be charged for each case, no estimates are given of the amount of revenue expected (from e-filing in each type of case or the total) and no estimates are given of the costs for equipment or staff or other expenses to make the e-filing work.

Chief Judge Wirtz's letter explains that many of CCAP's resources will be "diverted from CCAP software development," but that "essential functions will be maintained." I will be asking, what are the diversions and what are the essential functions? Will the \$40 filing fee be used to pay to implement the first types of cases to be e-filed? To implement e-filing of new case types? To maintain the e-filing system in the future? To support CCAP generally?

For many years now, the court has objected to legislative attempts to increase filing fees or surcharges; the court system has viewed them as raising access to justice concerns. The court system's legislative liaison, Nancy Rottier, probably has a file on our communications on this topic. How does Rule Petition 14-03 comport with our longstanding position with the legislature?

Again, I want to thank the Chief Circuit Court Judges for their work and the commentators who have filed comments. I look forward to the hearing and learning more about the fiscal and

roll-out plans being proposed, as well as the comments about other issues raised.

This comment and attachment should be posted to the court website on Rule Petition 14-03 for public viewing.

cc (via e-mail): Chief Circuit Court Judges  
Jean Bousquet  
Interim Director of State Courts J. Denis Moran  
Nancy Rottier  
James Gramling, Access to Justice Commission  
Julie Rich  
Diane Fremgen  
Carrie Janto  
All commentators

**Rules Hearing & Open Administrative Conference**  
**Rule Petition 14-03**  
**E-Filing**  
**March 17, 2015**

**(Wisconsin Eye video, part 1 - hearing)**

**SSA:** Rules Hearing on 14-03, In re Creation of Wis. Stat. § 801.18, relating to mandatory electronic filing in circuit court and conversion to electronic circuit court records. I have here the following lineup. We have the Honorable Robert Wirtz of Fond du Lac County who will make an introduction. We have on this seven-minute video demonstration of the system created by CCAP. It's a little embarrassing on this hearing on technology that we couldn't get our technological act together to show the video, but each of the justices was sent this video demonstration of e-filing, and did you have one out in the foyer? There was a demonstration available to those who wanted to see it previously. The court system does have a very elaborate technology center, but it's quite old at the moment and out of service and probably can be replaced by a little computer, but it's a whole room full of equipment. But anyway, that's where we are. So Judge Wirtz, you are without the video demonstration. Other presenter will be Judge Randy Koschnick, and then my appearances are shown as Judge Storck; Theresa Russell, who's the circuit court clerk of Washington County; David Callender, Wisconsin Calendar Association; Devon Lee, legal counsel, State Public Defender's Office. Does anyone else want to make an appearance today? If you change your mind and you do want to appear, when the Marshal shows up, which she is right on cue, if you give her your name, we'll add it, but at the moment no one has been added. And generally, Judge Wirtz, after the appearances we give the, and it can be either you or Judge Koschnick, can make a response if you wish. Right? And you can decide at that time who will do it. So, we will begin with you, Judge Wirtz.

**Judge Wirtz:** Good afternoon, Chief Justice and Justices of the Supreme Court. I am Robert Wirtz, from Fond du Lac. I am the chair of the chief judges' e-filing committee, and have filed a petition with you today. The chief judges' e-filing committee has been working for approximately two years on the subject of the benefits of e-filing to the court system as a whole. Our considered opinion and the result of our work is that mandatory e-filing is necessary to realize the efficiencies of e-filing, and as a result you have the petition that you have before you, and I'm here to urge you to adopt a mandatory rule with regard to e-filing. I have brought three speakers here today: Judge Koschnick, he will speak to you about the substance of the rule and answer whatever questions that you have in that regard. Judge Storck is here because Dodge County has their own experience with going paperless and e-filing, and he will tell you about his personal experiences with that conversion and what they're doing. And Theresa Russell, who is the Clerk of Courts from Washington County, will give you the perspective of the clerks of court and the efficiencies that they may realize. As the Chief indicated, we had a seven-minute or so video that I believe has now been sent to you separately because we don't have it now, and that

should also help you as well. And with that overview, I'll turn it over to Judge Koschnick to discuss the substance of the rule.

**Judge Koschnick:** Good afternoon, Justices. Thank you for giving our petition your consideration this afternoon. I'm Randy Koschnick, circuit court judge from Jefferson County, Chief Judge of the Third Judicial District, and I'm here on behalf of the entire Committee of Chief Judges. Judge Wirtz and I serve on the e-filing committee. I'm here to tell you that all 10 chief judges unanimously support adoption of the petition that we have filed today, which calls for a mandatory e-filing rule. Basically, the chief judges believe that e-filing is inevitable. We think it's best to progress into the world of e-filing in a methodical, well-thought-out manner. We've done a lot of outreach. I've spoken to the county bar association, the public defender's offices, we've talked to the child support folks, the counties association, the court reporters—and tried to get input into what it is that we're proposing, to make sure we've considered concerns that all the various stakeholders may have. From my personal experience, Jefferson County decided to go electronic as of January 1st of this year. All four judges said let's just try to go without the paper files, and it's been a tremendously positive experience for all of us.

**PDR:** Is this for everyone that uses the court system or just for lawyers, or—in Jefferson County?

**Judge Koschnick:** The rule covers the circuit courts throughout the state of Wisconsin, and it's for all lawyers—

**PDR:** No, I just want to know about your experience in Jefferson County, that you went paperless, and what my question is, is it for everyone that uses the courts, or just for lawyers?

**Judge Koschnick:** In Jefferson County, actually just the judges went paperless, so I no longer look at paper files on my bench. The litigants are still primarily paper files.

**PDR:** OK. Gotcha. Thank you.

**Judge Koschnick:** Right, but that's an important clarification. Thank you, Justice Roggensack.

**SSA:** So you scanned in the documents for the judges?

**Judge Koschnick:** Yes. Yes. So when I came in to work the first working day of this year, instead of the normal pile of files I had, I had two sheets of paper. That was my docket for the morning and my docket for the afternoon.

**AWB:** Didn't that make you nervous?

**Judge Koschnick:** It did. [laughter] Experimenting with it before then, and all four judges agreed, let's just jump in and see how it goes without trying to do a slow transition, and one thing you don't want to have is one foot in the paper world and one foot in the electronic world. That's the least efficient of the three alternatives—all electronic, all paper, or half and half. And it did make me a little bit nervous, but I really liked it. And so I got on the bench, I had my calendar on the computer screen, each case number is a hypertext link they call it, you click on it, you have the minutes, you have the pleadings, you have any other documents that have been filed, and I found it to be very efficient. My secretary also said on that first day, she said, you know, I spent an hour, typically, putting your files together for the next day, and today it took me five minutes. So we instantly realized one hour, and it's been that on average, one hour per day that she does not—no longer spends putting files together. They're all in the electronic format. On occasion she'd have to go downstairs and try to find the file. Maybe the bookkeeper has it or a lawyer's looking at it. But with electronic filing, multiple people can access the same file at the same time from different locations. And so it's been a very positive experience for us in Jefferson County. Question?

**SSA:** One of the commentators said that they had a hard time finding a particular file or a particular document because there's no table of contents or—to do that. And when I watched the video today, it—they said on the video, this lovely voice—

**AWB:** Yes, I thought it was quite good.

**SSA:** —it was one of our own staff people at CCAP, by the way. It's just marvelous. Don't let anyone know, because they'll steal her from us for her voice. Anyway, it said you could do a search, so if you wanted a partic—that's what it said; is that true?

**Judge Koschnick:** It is, and I think the letter you're referring to may be from Judge Sciascia from Dodge County?

**SSA:** I can't remember which one, but that was a comment and that really struck me as difficult because when I sit here, I have to have all these—

**Judge Koschnick:** Right.

**SSA:** —little yellow stickers or whatever telling me where something is.

**Judge Koschnick:** Right, and Judge Storck's going to address that directly—

**SSA:** OK, good.

**Judge Koschnick:** —because it's his county, and actually those were some difficulties with a previous version. Dodge County has been a pilot county, and they've worked out some of those concerns since that letter was written.

**SSA:** All right, thank you.

**Judge Koschnick:** Another significant experience for me was when the e-filing committee went to the federal court here in Madison, the Western District federal court for Wisconsin. We met with Magistrate Judge Crocker and some of the other—some of the staff that work there, and they all told us that they were skeptical and concerned about change before the federal courts went electronic, and it's my understanding now that all the federal courts in the country are mandatory e-filing courts. And Judge Crocker said that none of them would ever dream of going back. They've become so accustomed to it, they've appreciated the efficiencies, the ease with which you can search documents by certain words, bring up, you know, certain portions of documents based on the date it was filed or the contents of the text, and so that was when I like to say I was converted from a skeptic to a believer because these folks really seem to be convinced that this was the right way to go. I also—the committee has also been considering the fact that the rest of the world is really going electronic. I went to see my doctor recently, he had my medical records on his laptop. He typed in the prescription and sent it to the pharmacy. Medical records are electronic, most of us I think use e-mail as a regular method of communication and so e-filing really is just bringing us into the current, I think, state of affairs. Most businesses use electronic data generation, storage, and communication, and those are all three different dimensions of e-filing. There are many benefits, clerks for example, in my county the clerk of court was running out of space. We had to invest in a new filing system where the file shelves would move back and forth, because we had—were running out of room in the storage area. This really resolves those storage concerns, because you can store many documents of course in a very small piece of electronic equipment. And so there are efficiencies to be realized all around. We did consult with the National Center for State Courts for some assistance, and they helped us do a survey of what other states are doing. There are different models. What we're proposing is a system run by CCAP. CCAP I think is recognized nationwide as a premier court electronic system and we're proud of that, and the committee believes it's best to keep e-filing administered by CCAP. Some states go with private vendors. So some states will say, well, we don't charge a fee, or we don't have this expense. Well, that's true, but the users have to negotiate with the private vendor, the private company or maybe multiple vendors in some states, to negotiate those prices. And we believe, the committee believes that by keeping it administered by CCAP we can be more responsive to the needs of Wisconsin courts and litigants, and also control those costs. One thing I want to point out too is we're not recommending any substantive changes. We're trying to keep the substance of the law the same as it currently exists. There are questions, for example, about what would be made

public on CCAP that's not public now. None of that would change. What's available to the general public on CCAP would be the same under e-filing. The difference would be if you are a party or a lawyer on a case, you have access to the entire court file on your home or office computer. So you can see all of the briefs and transcripts and court minutes, anything available at the courthouse would be available to you on your home computer.

**SSA:** That's different than the federal system. Federal system, I think everybody can see everything.

**Judge Koschnick:** That's right. For the most private parties, or nonparties, rather, can pay to download documents from any case, and technologically Wisconsin could do that, if the court made the decision we wanted to change some of the access rules after considering all of the privacy implications, we could flip a switch in Madison—a little more complicated than that—but we could sell, in essence, access to whatever documents we wanted to the general public. The committee felt, however, it would be best to go piecemeal: First consider the question of whether we should have a mandatory e-filing system, and then perhaps in the future examine whether we should change policies concerning what's publicly available and what's not.

**SSA:** Yeah. You said "mandatory system." The way this is set up, it doesn't mean if this court should adopt this proposal, even with amendments that you proposed, that everybody would have to go on electronic filing tomorrow, or even on an effective date of a year from now. As I understand this proposal, the Director of State Courts would roll it in, and my understanding is that the roll-out of it would not be forced on a particular county, but like CCAP was originally, volunteer counties would go first and it would be rolled out as it could be, depending on what the financing was.

**Judge Koschnick:** That's correct, Justice Abrahamson. We're proposing a three-year roll-out, the Director of State Courts decides which counties go first, and the director would presumably consider things such as which counties are ready, willing, and able to go, so Dodge County, for example, Jefferson County, want to be at the front of the line, we're ready to embrace it, and we'd like to be involved as soon as possible. Counties who are more reluctant might wait until the 35th or 36th month of the roll-out.

**SSA:** Or if we didn't have money it might be the 48th month.

**Judge Koschnick:** It could be, yes. The amount of money available—

**SSA:** The way it's set up. The way this is set up.



**Judge Koschnick:** Right. Right. The model we're proposing has a beginning point, and we realize that finances are an issue that needs to be considered. But under our proposal, if we were able to fund it the way we'd like to fund it, it'd be a 36-month roll-out. Importantly, CCAP is going to send staff people to every county before that county rolls out. So if your county's going to go to mandatory e-filing, let's say in October, CCAP would be there in August and/or September, meeting with judges, lawyers, private parties, bar associations, law offices, other people who would use the system, to provide training to ensure a smooth roll-out.

**SSA:** As they did when they rolled out the original CCAP and various other items in the CCAP system.

**Judge Koschnick:** Yes, very similar to that.

**AWB:** It appeared to me, Your Honor, that one of the rationales for just having the availability for litigants or the attorneys on the case as opposed to the federal system, where—the PACER system where you can get access to any filing for a fee—that I heard from your comments that in part that was so that we deal with these privacy issues kind of one step at a time. Perhaps I read too much into your comment, but that's what I thought you were suggesting, at least in part. My question is this: Are there privacy issues that we should be alerted to as we discuss this?

**Judge Koschnick:** Not that I'm aware of. We've written the rule so we're only changing the way it's done physically, so to speak, from a piece of paper to an electronic record, so when a—let's say a member of the public who's not a party wants to view a court file, there are some things you can see and some things you can't see. When they go to the clerk of court's office under this hypothetical, and they ask for the file, instead of being given a paper file they're being led to a public access computer, and they can see the same documents on the computer that they could see if they were given the file. So if it's a mental health file with confidential medical records for example, those would be sealed on the computer just as they're sealed in the paper file. Access on CCAP by non-e-filers or nonparties would remain unchanged under this petition.

**SSA:** So it's really CCAP with e-filing.

**Judge Koschnick:** Yes.

**SSA:** In the sense that on CCAP you don't see the documents; you see a description of the filing.

**Judge Koschnick:** That's right, for nonparties. The judges have been given J-dash and access from home and other locations, so if I'm in Waukesha County for example, for whatever reason I need to access a Jefferson County file, as long as I have a CCAP computer I can pull the

Jefferson County file and see all of the documents and transcripts and so forth. Same thing from home, if you're working from home on a case, that's all available to you.

**PDR:** How do we protect against someone hacking into our system and getting confidential information about, oh, things like juveniles and what's been going on, commitments of one type or another? I just got a notice that they got my health care records from who's servicing my health care account, so I think that's a concern that I have for others before we put more electronically.

**Judge Koschnick:** Well, that is an understandable concern. No system is 100% secure. CCAP has state-of-the-art authentication and security protocols in place. There are risks with paper files. You could have somebody right now in the courthouse, an employee for example—

**PDR:** I—I—I agree, it's just that electronic access, if you can get in, exposes you to a whole lot more than getting a file from the clerk of courts in, in an office.

**Judge Koschnick:** Right. Well, all I can tell you is that CCAP has state-of-the-art security protocols, the same types of protocols that are used by law enforcement agencies and national security agencies that have safeguards in place, but yes, nothing is 100% secure. In my opinion, however, the electronic record system that we're proposing is more secure than a paper system.

**AWB:** How so?

**Judge Koschnick:** Well, for one thing, with an electronic system, if somebody does get in, you can tell who accessed it or how it was done. With a paper file, if it's missing, it's just, it's just gone. And we do have, for example, when you're an e-filer, you, you know, you have a PIN as a lawyer, for example, that you can authorize subordinates in your office to use, but the rule says that the lawyer is responsible for anything that he or she does on the e-file system with his or her PIN as well as anything that anybody else does using their PIN. So the ethical obligation to make sure that PIN is not used improperly is the same.

[fire alarm goes off; court takes a break]

**SSA:** Please be seated. Judge Koschnick, you were in mid-sentence, maybe mid-word, but frankly, I can't remember.

**Judge Koschnick:** Yes, I just have a few more points and then I'll be done and ready for any questions you may have. My first point is this: If that had been an actual fire, your paper files would have been destroyed.

[laughter]

**AWB:** Who told you to say that?

**AKZ:** Was that a demonstration?

**SSA:** I have to tell you, we had an electrical fire in the courthouse in Milwaukee. The papers were OK, the computer system was not.

**Judge Koschnick:** I actually talked to Jean Bousquet who's here, head of CCAP, about that, and she tells me that every electronic record at CCAP is stored on five different servers—

**SSA:** That's right, and they were able to bring it all back up on the weekend, and in business in Milwaukee on Monday morning.

**Judge Koschnick:** Now it's almost instantaneous. Two servers are in the home county, the other three are in different locations throughout the state, and so if the county goes down, if their servers both go down in the home county, you call CCAP and they can redirect your traffic to Madison and you have a reconnection within minutes. I also asked Ms. Bousquet about the security issue I think Justice Roggensack had asked about, and what Ms. Bousquet explained to me is there's really not a significant change as far as security is concerned. Since WCCA went online in '99, people have had Internet access to our system. And we've had confidential records in the system, juvenile records and mental health records, so all we're doing with e-filing is giving lawyers and parties one additional way to file something, but we're not increasing any vulnerability that hasn't existed since '99—

**PDR:** Well, if all the records are electronically available, and if someone can get into the system, you are, because juvenile records now are obviously confidential, but if someone could get into the system, and say they wanted to know about this young girl or this young boy and they found their stuff in the system, if they can hack in, if it's electronic they can get it, where the clerk is not going to give it to them.

**Judge Koschnick:** Well, that's true, but my point is that they'd have the same availability, vulnerability now as we have since '99, and there've been no break-ins since '99. The same potential vulnerability exists from a computer security point of view—

**PDR:** It may be as good as it can get. I bring it up only because it seems like everybody in the world is getting hacked into these days, so I was kind of curious.

**Judge Koschnick:** It's a security, they do regular vulnerability checks, they have a consultant on staff who keeps tabs on those things.

**PDR:** OK. Thank you.

**Judge Koschnick:** Sure.

**SSA:** Circulates its—

**DTP:** Can I follow up on that?

**Judge Koschnick:** Yes.

**DTP:** You've had this for judges since the first of the year in Jefferson County.

**Judge Koschnick:** Yes.

**DTP:** Now, have you sentenced any felons?

**Judge Koschnick:** Yes.

**DTP:** And are there any PSIs in those cases?

**Judge Koschnick:** Yes.

**DTP:** How do you access a PSI?

**Judge Koschnick:** Everything's electronic, so when the PSI—I think it's filed in paper form now, the clerk scans it, and when it's scanned I'm notified on my judicial dashboard that a new document has been filed, presentence, I won't go read it if it's a notice, but if it's a presentence, something like that, I'll just click on the link, and bring it up, and I can read it on my computer. Once or twice, if it's complicated, I've printed it out and written notes in the margins. You can still do that if you'd—if you'd like, but it's available electronically like any other document in the file.

**DTP:** Now, as I understood the presentation that was given to us, one of the advantages of this system is that judges in other counties can look at files, say in Jefferson County. Now, let's say Judge Storck wants to look at the file in a case where you have a PSI. Is he going to be able to access the PSI?

**Judge Koschnick:** Well, first of all, I know that CCAP can set rules and restrictions for all those questions. Electronically, yes, it's feasible. If for some reason the court system wanted to have a rule that prevented a judge in Dodge County from looking at a PSI in Jefferson County, we could put that into the system. On the other hand, if we wanted to make it available to him, we could do that as well. Nothing would change as far as the law is concerned with this petition being granted. So I think presentences are, you know, if they're part of the public file now, yes, they'd be available to Judge Storck over the Internet connection.

**DTP:** He's going to be able to look at the PSI.

**Judge Koschnick:** Yes, if it's publicly—I'm not sure if PSIs are kept—I think they're open records in the court file, but I'm not sure. But if it's an open record now, yes, Judge Storck would be able to look at my presentence investigation through his J-dash.

**SSA:** But if it's closed and confidential, that remains closed and confidential on electronic filing.

**Judge Koschnick:** That's right.

**DTP:** Well, I have to say, when we get the record up here, at least I am very reluctant to open a PSI. Am I alone?

**AWB:** I think maybe the PSIs are closed, I think. The clerks may know better than I, but I'm quite sure they're closed documents.

**Judge Koschnick:** If it's closed, it'd be the same with e-filing or without. There'd be restricted access. Only the judge assigned to the case would have access. A few exceptions, like as the chief judge I think can access any judge's files in the district, but that'd be a special rule, but it'd be the same rule as we have now without e-filing. If you're allowed to have access now with the paper filing system, you'll be allowed to have access electronically on the e-filing system. So that's an example of a substantive rule we're not proposing any changes to.

**AKZ:** So sealed documents would be sealed electronically just like they are now in a paper file.

**Judge Koschnick:** Yes. That's right, and you bring to mind, Justice Ziegler, another good example. If you have like a corporate secret, trade secret case, the lawyer can file it under seal temporarily, and it remains confidential until the judge looks at it and makes a determination as to whether it should be kept sealed in the court file or made part of the public court record. So there are those restrictions available, just like we have restrictions now. Sometimes something's

filed now in a closed envelope with a cover letter that says, “Judge, this is confidential. I’d like to keep it confidential. Please make a decision.” You can do the same thing electronically.

**DTP:** Is—what does a person have—have to have to get into one of these files? Is it—for example, you must have a password. If somehow I had that password, could I get into everything you had?

**Judge Koschnick:** You’d have to have both a password and access to a CCAP computer. Or get into my house. CCAP gave me a program on my home computer called Remote Access, but that is only good [unintelligible] judges for certain computers. So if you were to break into my house and get access to my home computer and had my password and knew how to do it, you could access my files that way. Or if you’re in the courthouse and you have access to a computer, a CCAP computer other than a public access computer, and you had my password, you could do the same thing.

**DTP:** OK, but I thought the presentation said that iPhones, get all these files from iPhones.

**Judge Koschnick:** Well, if you’re—there’s a difference between a judge, who has access to all of his or her files electronically, and an e-filing party. An e-filing party has a password that gives them access to the cases where they are a party. And yes, that party could access the same records on their iPhone as they could on their office computer or at a—any other computer, because they have the password for their case only.

**DTP:** OK, so if I had your password, but I didn’t have your iPhone, I couldn’t get into a file. Is that right?

**Judge Koschnick:** You have my password as a judge?

**DTP:** Yeah. After all—talking about all this security, I mean, I have been a victim of identity theft, so I’m a rather—rather sensitive about this, and I suspect they might have gotten it off my iPhone. I don’t know.

**Judge Koschnick:** I don’t believe that you could use a judge password to get access to the judge’s files off his iPhone. I haven’t tried that on my smartphone. I’ve only accessed court records electronically from CCAP computers in courthouses or from my home computer. A litigant would be different, because a litigant who e-filed would only have access to those files where he or she is a party or a lawyer. I have not tried and I don’t think I could get access to my judge files through my phone.

**DTP:** I—I thought the thing that I looked at this noon showed iPhones.

**Judge Koschnick:** Ms. Bousquet assures me that I'm correct.

**DTP:** OK. That's right?

**Judge Koschnick:** [inaudible]

**DTP:** OK. How do we know—for example, Judge Wirtz here is going to get up, maybe talk about Fond du Lac County—how much money is necessary for Fond du Lac County to come on board here, and what is that money going to be used for?

**Judge Koschnick:** Well, as far as the money is concerned, we've given you a starting point to talk about finances. We don't make the decision about the budget, the court makes that decision, but our beginning point for conversation is \$2.1 million to roll it out statewide, including CCAP people training on the ground in each county, and additional scanners and monitors for each county to be able to use it, that's the roll-out cost. Thereafter there'd be a per-case fee, currently \$5, under our proposal it'd be around \$6, that could vary, that—authority to set that fee is already in the statutes, by the way. That's not in the rule because we have separate statutory authority, the Director of State Courts does, to set that e-filing fee. But our best estimate right now is \$2.1 million for the roll-out, a one-time cost, and then \$6 per case per party for unlimited access to that party's case. It also is essentially a shift in workload from the counties to the state, you see, as filings are made electronically the clerks of court spend a lot less time doing data entry. Right now when a lawsuit is filed on paper, a clerk has to type in all the information on the court computer—party name, date of birth, address. When it's filed electronically, those fields are already filled in on his or her screen when that is filed. So it's actually going to reduce workload for county support staff, including clerks of courts and judicial assistants. If anything, there's going to be more work required by CCAP to provide support for users of the system and maintain the electronic system. So it's, I think it's a benefit to the counties if it's implemented the way we're recommending. And I'd like to close by saying what we're asking you to do is approve the petition, we'd like to keep the effective date as proposed, January 1, 2016, leave the end date open, because that's affected by the funding that's available. But we'd like you to adopt the petition as submitted. If there are issue you have in conversation that need to be addressed, we're happy to work on those. It's a work in progress, so we're more than happy to continue to work with the court and other interested parties to fine-tune it to meet everybody's needs.

**SSA:** Judge Koschnick?

**Judge Koschnick:** Yes.

**SSA:** Suppose we have little if any money. We don't—the governor did not put the \$2.1 million into the budget. If I were a betting person, I'd bet the legislature's not going to do that either, so we're going to have to pick up the money in a variety of places and maybe much more slowly than planned. So if that were true, that there's no sign of money at the moment, why would we adopt these rules anyway?

**Judge Koschnick:** Well, we see it as being two major steps. One is philosophically, do you want to adopt a rule that allows us to move forward with e-filing, and if so, how are we going to pay for it? The Chief Judges believe e-filing is inevitable, and there are a number of other financing available. I don't want to go into all the details now, but some states for example have gone with a private vendor, little or no public money.

**SSA:** Well, if you had a private vendor, would you need these kinds of rules?

**Judge Koschnick:** To make it mandatory, yes.

**SSA:** Well, to make it work with the private vendors you'd have to tell them what to do that would ultimately be the same across the state, I would think.

**Judge Koschnick:** That's true.

**SSA:** And I would think that if you had a county who's willing to put up funds for e-filing, that we ought to have rules in place so we start them out on the right foot, and if we have to do it one at a time we do it one at a time, but they all have the same rules so we can put them all together later. That's what I think

**Judge Koschnick:** That's true. You have to have it be consistent between counties, at least after the roll-out transition period. Many lawyers practice in multiple counties; it would be nice to have one system for filing throughout the state, yes.

**SSA:** And you're trying to do, to be paperless, and I assume that if we were ready to help your county be paperless, you'd put in these rules. These rules would be effective. I mean, right now you're scanning. You're doing it kind of self-help, do-it-yourself—

**Judge Koschnick:** Right.

**SSA:** —e-filing, right?

**Judge Koschnick:** Right.



**SSA:** But if you were going to go really electronically without scanning, there should be a set of rules that govern it.

**Judge Koschnick:** Yeah. We'd probably develop a local county rule if we decided to make our county go paperless e-filing ahead of the state, but we really believe it's vitally important to have CCAP running the operation, and the state statute, state rule is the best way to do it.

**SSA:** Not have 72 county rules.

**Judge Koschnick:** Right.

**SSA:** Thank you. Are there any other questions?

**PDR:** Yeah. Have you done a survey of each county and know whether they say yea or nay? Put me at the top of the list, the bottom of the list, or take me off your list?

**Judge Koschnick:** Well, not each county per se, but the Clerk of Courts Association for example is unanimous in support, the State Bar is in support, the public defenders here, they're in support, the Counties Association is represented here, I believe they have a letter of support—

**PDR:** Yeah, I see all the entities. I'm just wanting to know if there was contact made with particular counties, the judges and clerk of court for that county.

**Judge Koschnick:** No, I think the chief judge committee serves that function of speaking for the judges. I've talked to the judges in my district—

**PDR:** OK.

**Judge Koschnick:** —and they're generally more supportive, some more than others, some have concerns, but they're all willing to go along. I think they all realize it's inevitable. So I think the chief judges have sort of that, that voice of the judges.

**PDR:** I see. OK. Thank you.

**NPC:** Judge Koschnick, was there any opposition to the mandatory nature of the rules?

**Judge Koschnick:** There've been a few negative comments. We did some inter—I did some interviews with the State Bar, they put it in their monthly newsletter, they put it in their e-mail, on their website. There were a few negative comments, but actually fewer than I expected. A handful of negative comments basically saying, you know, why make it mandatory when

voluntary isn't catching on, but we expect—I actually expected to have more resistance than I did. Most people embraced it. I think most practitioners—practitioners are actually more accepting than judges, in my experience. So I think most practitioners realize it's something that's inevitable, and they want to go that way. A lot of the younger practitioners especially ask why they have to file things in paper, why can't they just submit an e-mail to the court, for example. That's a common question from the younger lawyers.

**MJG:** Judge Koschnick, were there any—in any parts of the discussions amongst the Chief Judges, was there consideration of the fact that with the procedural posture, so to speak, we're in with the budget, that there may be some delay even if members are in favor in concept of e-filing? That, that this court would have to—that there would be some lag time while the court reviews what the budget is actually going to be, how much would be available, and under the anticipated, from what it looks like, nothing's final, but from what it looks like we'll be getting a block grant and we'll have to make some choices. And was there discussion among the Chief Judges about an expectation that there may very well be a lag time even if the entire court, hypothetically, were in favor of this?

**Judge Koschnick:** Yes, there was, Justice Gableman, and the Chief Judges and the CCAP staff are more than happy to work with the court. If the court were to say, we've got half the money, we can either roll it out, tell us what we can do with that. Maybe we lengthen the time period of the roll-out, things of that nature. Yes, we expect—we had to start somewhere, so what we're proposing is a beginning point, here's the rule, if money was not an issue, here's how I'd like to do it. Realize money is an issue and we're certainly able to work within whatever financial resources are available.

**MJG:** Have the Chief Judges triaged—well, “triage” is a little strong word—prioritized, say if the entire what you said, \$2.1 million roughly, isn't available for—I have no idea when or if it will be available—but some other, some portion of it is, is there some selection process that you have in place, or that you discussed, about which counties or which areas of the state might be in the best position to both implement it as well as to benefit from its use?

**Judge Koschnick:** To answer directly, the petition puts that decision making authority in the Director of State Courts, and we assume that he or she would use criteria such as those that you have suggested, Justice Gableman. Counties who are willing and eager to go online first would be the first that would be likely to be selected.

**MJG:** And it would be likely that once the Director's position is filled, that he or she would consult with the Chief Judges to get their ideas.

**Judge Koschnick:** Yes, I would expect that, and we're ready, willing, and able to assist in that regard.

**MJG:** Thank you.

**SSA:** I don't know if this was one of the points of Justice Gableman's question, but there was discussion of not having this rule hearing today in light of the fact that the governor did not put the \$2.1 million into the budget. And the decision was made by the Chief Judges to go ahead with the rule hearing. That was their druthers, because you don't need the \$2.1 million on the table now or in the near future. There's a reason to have these rules in place if and when you're ready to proceed.

**Judge Koschnick:** That's right. So the rule first, whether it's wise to adopt it or not, that's one of the reasons we're suggesting a beginning date, but an open end on the final ending.

**SSA:** That's right.

**MJG:** Judge Koschnick, since the Chief Justice quite accurately placed her unknowingness of any point that I was trying to make, to be clear—

**AWB:** What?

**MJG:** —I am not trying to make a point. [to AWB] You—I'm sorry, Justice?

**AWB:** Go ahead, go ahead.

**MJG:** You watch the tape, Justice Bradley, and then you have that reaction. Or listen more carefully. [AWB clears throat] Yes?

**AWB:** Are you finished, Justice Gableman?

**MJG:** No, I'm not.

**SSA:** Well, then proceed.

**MJG:** Maybe you ask the justice seated to your right to comport herself. Judge Koschnick—

**SSA:** Maybe we need to take a time out. OK. All right?

**PDR:** Colleagues, come on. Let Michael ask his—

**SSA:** Exactly.

**PDR:** —Justice Gableman ask his question and let's proceed. Please, Michael.

**SSA:** Let's do that, shall we?

**MJG:** To be clear, I reject the idea that there was any point. I reject any implication that there was any point of my question other than to find out whether the Chief Judges understand that we don't know what the state of the budget is, whether they have contingency plans. So that anyone who's interested knows, I had no point or even memory of the fact that there was discussion about whether this—I was anticipating that this would, this hearing would be held, so there was no point, Judge Koschnick, just to be clear.

**Judge Koschnick:** Thank you.

**AWB:** Help me with this, if you can. I understand, then, that's it's really the position, unanimously of the Chief Judges, that we go forward and adopt this rule, you know, this rule dealing with a number of things like signatures of court officials, the rule dealing with confidential information, the provisions regarding permitted court actions pending appeal and all the other subheadings, and the determination of when it would start and how it would roll out is yet to be finalized. Would that be accurate, or not? What's—how would you respond to that, Judge?

**Judge Koschnick:** Yes, with one clarification concerning my position. We'd like you to have the start date be January 1st of 2016. The Director of State Courts under the rule decides which counties actually go mandatory on which dates. So that doesn't force anything to happen. It simply is the beginning point, and after that point in time, if the Director determines that funds are available and the county is appropriate to go online, then he or she could establish that actual date.

**AWB:** A couple of times you've responded with you want a beginning date and then beyond that. What happens if the court says "no money" and so we push back the beginning date? What's the consequence, if any, of pushing back that date?

**Judge Koschnick:** Well, the beginning date simply says the Director has authority to make a county go online, mandatory, at some point in the future. So that wouldn't need to be changed. There could be no end date. Conceivably you could enact the rule with the beginning date 1/1/16, and decide never to make any county go online. We still have the voluntary e-filing statute, I think it's 801.17, which will remain in effect until all the counties go mandatory e-filing

under 801.18. So those two statutes would coexist until the entire state is mandatory. So there's no downside to adopting the rule with a beginning date established but the end date left open.

**SSA:** And there may be no county after January 1, 2016 for a while that would be able to go on, for any number of reasons, but—

**Judge Koschnick:** Right. Right.

**SSA:** —the rule's in place.

**Judge Koschnick:** Right, so we can work on the technical aspects of the rule that maybe need to be tweaked while that financial decision is being made.

**SSA:** Did you read—have you had the opportunity to read the comments that have been received about this?

**Judge Koschnick:** Yes.

**SSA:** Is there any comment that you'd like to respond to?

**Judge Koschnick:** Well, I found the comments to be, by and large, very supportive. There are a few relatively minor issues we could deal with. I'm happy to deal with any one you have in mind, but one lawyer, for example, said he, he's a licensed attorney, he doesn't actually file lawsuits, maybe he's a clerk somewhere, he shouldn't be required to register.

**SSA:** That's Mr. Fall—

**Judge Koschnick:** Yes.

**SSA:** —I think, Attorney Fall.

**Judge Koschnick:** It should take him less than five minutes to register, it doesn't cost him anything, we think it would take more time and effort to write an exception for lawyers in that narrow category that it would be to say, go online, when you sign up for your CLEs, this is a very similar procedure, just register with the system.

**SSA:** And Eloise Anderson, the Secretary of the Department of Children and Families, had some comments for high-volume filers, which include both government agencies and large private firms, and said, "We request that judges and court commissioners be provided with the software that would enable them to edit PDF documents." And I—my little note to myself says,

“How much would that cost?” So, we talked about that at a meeting recently, and it didn’t seem that that was a very high-cost for being able to do it. And I don’t know whether that’s being considered as within that scope.

**Judge Koschnick:** Yes, that’s included in our current proposal and cost structure. If a lawyer wants to submit a proposed order for a judge to consider signing, that’s filed as a Word document rather than a PDF document so the judge can change the wording of the order on his or her computer, and then when the judge electronically signs it, it automatically converts it to a PDF and it’s permanently stored. But we’d only allow—I think the plan is to only allow proposed orders and other documents that the judge may want to modify to be filed in Word, because the PDF is preferable for security and authentication purposes, as I understand it.

**PDR:** Counselor, as I—or Judge, I’m sorry—as I read the rule about the start-up date, it says that mandatory electronic filing shall begin no earlier than January 1, 2016, and what I’m looking at is subsection 801.18(2), subsection (b), and so if you see where I am, my question is this: If we adopted the rule as drafted, but inserted with a specified go-forward date after the court can consider the budget and kind of figure out how this goes together, would that still be acceptable, do you think, to you and to the Chief Judges?

**Judge Koschnick:** Yes.

**PDR:** Thank you.

**SSA:** So how would it read?

**PDR:** Well, you know I don’t think it’s good for me to draft at the, at the bench here, but it does say mandatory electronic filing shall begin no earlier—no earlier than January 1st. It doesn’t say it has to begin January 1st. And—and I think all of us have some concerns about how we’re going to put this together, even if we love e-filing, with whatever money that we, we have. And so, you know, if we could add some phrase, and we have wonderful staff, Julie, who I’m sure could help us if the court decides this is a good thing to do, could add a phrase that the court would give notice on the date that it should go forward or on the date that it should actually commence.

**Judge Koschnick:** Right. What we have envisioned is a county-by-county determination, and implementation, so when the Director of State Courts says Jefferson County will become mandatory e-filing on January 1, 2016, that would be the rule for Jefferson County. That accomplishes the same thing.

**SSA:** Jefferson County might have the money to do it, and, and want CCAP to come in and do it for them.

**PDR:** Well—

**SSA:** Right?

**PDR:** Well, if we're looking at a uniform rule, I'm just looking at uniformity throughout the state, and I'm not anxious to particularize it. That we will leave to the Director of State Courts. But I'm just trying to look at something that will make people comfortable with our budget money and give those who prefer e-filing a rule to proceed upon if money, when and if money doesn't stand in our way. That's fine, you answered enough of my questions.

**Judge Koschnick:** OK.

**PDR:** Thank you.

**SSA:** Justice Prosser.

**DTP:** We're working off the original petition 14-03.

**Judge Koschnick:** Yes. We filed one addendum, I think a week or two ago, with some clarifications of some minor points. It was a letter from Judge Wirtz.

**DTP:** OK. Other than that letter, are you asking us to adopt this petition word for word?

**Judge Koschnick:** Other than the end date of December 31, 2018, yes.

**PDR:** And that's also in sub (2)(b), that same paragraph.

**Judge Koschnick:** That's correct. Yes.

**PDR:** So just take out after "counties," "which shall be no later than December 31, 2018," just strike that—

**Judge Koschnick:** Right.

**PDR:** —is what you're asking.

**Judge Koschnick:** To be determined. Yes.

**PDR:** OK. Thank you.

**AWB:** One of the things, Your Honor, that you commented on earlier was how efficient this was for your judicial assistant. We heard that you could—what took an hour to arrange the files now can be done in five minutes. One of the things that crossed my mind when I was listening to both the short e-filing video that we were given and reading the materials is the 11:59 deadline, unlike when we have cases that talk about the close of the clerk’s office, and later than that, too bad, so sad. And I can see the benefits of this to a large variety of stakeholders. One of the questions that comes to my mind is those poor assistants and paralegals and secretaries in law offices around the state that now, rather than rushing to get something out in the 5:00 mail or 7:00 by FedEx, or I don’t know what, but getting it to the courthouse really by 5:00, I guess I should be saying. Now it’s in the local counties, you have until 11:59. Any thought given to that part of the stakeholders, and any concern about the rationale, why is it 11:59? I know the National Center said that, but why 11:59? Why not the close of business?

**Judge Koschnick:** Right now of course it is close of business, typically 4:30, and I recall being a practitioner, as I’m sure you do, preparing documents that were due that day and driving down to the courthouse at 4:15. We’re trying to accommodate lawyers and other parties, so they have more time to file their pleadings. A number of jurisdictions including the federal courts, I think, have gone with 11:59 pm or midnight deadlines for filing and I haven’t seen any negative feedback from support staff complaining about having to work more hours. We see it as giving more flexibility to users of the court system, and a benefit to help induce people to support the change.

**AWB:** I guess the only rationale that I saw for 11:59 was that’s what the National Center for State Courts had in their documents, 11:59.

**Judge Koschnick:** I think the way I see it is that right now it’s 4:30 pm because that’s when the courthouse is closed and people go home. Since that’s no longer a restriction, we might as well give the person the benefit of the full day to file their papers.

**SSA:** It’s just a 24/7, right?

**Judge Koschnick:** Yes. And you can access your file from home if you’re a party or a litigant, and read the brief and the transcripts and you have access, you don’t have to wait for the courthouse to open Monday morning to go see your file.

**SSA:** And instead of filing it at 4:30 or 5:00, you file at 11:59 if the date is—whatever today’s date is.



**Judge Koschnick:** That's right.

**AWB:** [laughing] I don't know if we sent notice to the paralegal association for this petition hearing, but—

**Judge Koschnick:** They can come in later, too, they can come in at noon instead of 7:00, maybe. Well, if there aren't any other questions, then Judge Storck has a few brief comments on his experience in Dodge County. Thank you very much, Justices.

**SSA:** Thank you, Judge Koschnick. Judge Storck?

**Judge Storck:** Thank you, Judge Koschnick. Chief Justices, Justices of the Wisconsin Supreme Court, it's my privilege to be here in support of a petition that I feel strongly about. I'm a judge in Dodge County, presiding judge, and we've been e-filing since 2012. This last year that we've e-filed over 2,000 cases. I want to tell you that when this bill—when this rule is passed and implemented, I believe it's going to be the largest increase in the efficiency of the courts of the State of Wisconsin since CCAP began in 1992. I want to tell you that e-filing works. E-filing is efficient, it saves money, and it is a system that is relatively easy to use. As Judge Koschnick indicated, we live in an electronic world. We have electronic banking, electronic medical records, businesses rely on electronics, we have electronics that we use to communicate. Our courts, despite the 2008 rule that was voluntary, continues to be a paper-based system. We file paper, we file paper, we file paper, we receive paper, we have to send out paper. There are youth today who don't know how to address an envelope and put a stamp on it. But we mail most of our things out. I think it is—

**PDR:** A lot of them don't know how to write in a way that you can read it, too, because they teach keyboard, not penmanship.

**Judge Storck:** That's right. Well, don't look at my penmanship, mine is almost the same way. But I think it is time for a change. It's time to set a goal, that we need to adopt a change. And, you know, as circuit court judges, as courts, we require individuals to make changes all the time. We look at evidence-based practices and we set goals for people: this is how we want you to change. And I think that's what this rule is. It is our goal to change from a paper-based system to an electronic system. Now, before I talk about what happens in Dodge County, I want to tell you that it's important to keep separate three different concepts. And I think even today they've been mingled somewhat. We have—we talked about a scanning system. That is separate from what we're talking about today. We have a paperless system. That really is separate from what we have today. And then we have an e-filing system, and e-filing is what we're really talking about today.

So what are those systems? I want to start with scanning. In Dodge County, we started scanning in 2009. And we scanned, and by scanning what happens is you create an electronic record. But with scanning, you receive the paper document, you scan it through the scanner, the clerk has to label it, the clerk has to put in all the information, enter everything, because all you get is a piece of paper, you have to return the paper, you have to send out the paper notices. The judges can utilize that electronically scanned document on their dashboard. That electronically scanned document is subject to all of the same security concerns as with an e-filing system. But the scanning system gives some efficiencies, but it doesn't give the same efficiencies that the e-filing system has. Now, a scanning system does not have to be a paperless system. It can be, but let's talk about a paperless system.

What a paperless system is, is when the courts utilize scanned documents that are received in paper, and they may also use some e-filing documents, and what they do is, to the extent that they receive paper, they use the Supreme Court Rule that was passed in, I believe it was January 2013, that permits them to destroy the paper in 48 hours. And so with a paperless system, you literally have a system where there is no paper file. And the judges then are required to use the electronic file. But that doesn't mean that the judges have to go paperless, and there's been some questions about what do you do if you have, you know, a hearing where you have multiple documents. You can still print it out. And so, even a paperless system is really paper on demand. Now, we've been able to move from a—we started the first file type in 2011, with small claims paperless. As of 2014, all of our file types are paperless. And that paperless system, when I talk saying "paperless," it means that we literally scan all the documents in all the file types, and the paper goes away. We have substantial increases in efficiency with that. In that, because we don't have a paper file, the clerk doesn't have to go to the filing cabinet and file it, there's no files brought up to the judges, nobody's looking for a file. The—you have savings as far as creating files, but you have the expense of scanning, and you can't do things electronically, in other words, I can't e-sign a scanned document. We can't send out those documents in scanned cases, we have to mail them out. And so you—you're not using the full efficiency of that electronic document system.

Then let's look at e-filing. Finally with e-filing, we have all of the efficiencies wrapped in one. What happens? There is no document that is sent in. When the attorney is e-filing, of course as you saw in the video, they send it in electronically. They send that with all of the information with that electronically. And so the clerk doesn't have to label the document, doesn't have to guess what it is. The attorney will initially determine what it is. The clerk doesn't have to enter in all that information. The clerk doesn't need to open a file, much like the paperless system. They can if they want to, I suppose they could print everything out. But the beauty of the e-filing system is that when you have e-filing parties, the court sends a notice by clicking a button and it goes out to them instantaneously by e-mail. When a document is, is filed in the e-filing system, it goes out to all of the e-filing parties instantaneously. That doesn't happen in a

scanning system. It doesn't happen in a paperless system that is based on scanning. It does happen in a paperless system that is based on e-filing. So I just wanted to try to differentiate those three types of systems because it's important to realize that we're looking at the e-filing with this. We're still going to have courts that are starting a scanning system, maybe they're going paperless with a scanning system, but it's still not an efficient system.

So how does it work? Well, I'm going to just talk about what happens in a criminal case in Dodge County. The DA will prepare a summons and complaint. It'll be filed electronically, it's filed with all the data. The clerk pulls that into the court record. It instantly—once they pull it in, it instantaneously goes to the file, it doesn't have to go in a stack and wait to be scanned. A copy is printed off for the defendant, because of course the defendant needs a paper copy. And then when we have criminal defense attorneys such as Katherine Koepsell, who is here from Dodge County in support of this, when a new document is filed in that file, she instantaneously gets the document. And we don't have to send her anything, because it automatically goes out to her. That's what e-filing is really all about. So, I do want to tell you that when we started going from a paper-based system to a system that was not paper-based, and we started with the scanning in 2009, we didn't start with the judges until 2011, some of the clerks were very hesitant. They didn't want to do it. In fact, one clerk admitted years later that she wanted to tell me where to go when I said this is when we're going to do it and when we're going to start it. But today, they love it. And much like Judge Koschnick indicates, our JAs have more time, our clerks have more time. In fact, Lynn Hron will tell you that because of the use of electronic records and the number of e-filed cases we now have, the Clerk of Courts of Dodge County is down almost two clerks, and she's not going to replace them. Because you don't need them. The county is saving a lot of money. And I do believe that with the use of the dashboard and with the e-filing, that judges who are properly trained will find that it's much faster to find the documents than it is to do it in a paper file. But that doesn't mean that in all files they need to go paperless. In fact, I want to tell you that I've been using the electronic file for three years, I like it, but that doesn't mean that I always go without paper. I had a four-hour sentencing just yesterday, had a PSI that was 26 pages in length. I pressed "print" and I got a 26-page presentence because I wanted to refer to certain pages during the sentencing. If I have a case where there's four different complaints, and, you know, they're going to be pleading to one, amending this one, and, you know, it's a problem, I'll sometimes print out the four complaints.

**SSA:** How many screens to you have?

**Judge Storck:** I have two screens, and—I have two screens both in the courtroom and also in, in the—in my chambers. I think it is very important to have two screens, and there are ways you can manipulate it so you can have actually four documents in a row. But, you know, when you're moving fast in a hearing, sometimes you do want that piece of paper and you can print that out if you want. Chief Justice, you asked about the letter that was received about, you know,

the difficulty of finding something in the file. I wish that Judge Sciascia had talked to me about that before he sent the letter, because after the letter I went to him and I said, “Joe, do you know about the search feature on the dashboard?” And he says, “No, I’ve never, I’ve never used that,” and I showed him how the search feature works. And then I said, “Judge, Joe, do you realize that the document you attached, the complaint about how it was labeled was a 2011 scanning, and that’s before we started using it with judges.” And, you know, the system we have today is much improved from what we had then. And we realized in 2011 when the judges started using it that we needed to have better labeling of the documents. In fact, Judge Sciascia had been at my seminar that I gave, where I talked to everybody about how important it was to make sure that the documents were appropriately labeled. We now appropriately label our documents.

**SSA:** How do you find that on the e-filing? How do you label it so you can find it?

**Judge Storck:** OK, there are—what happens is, is you can pull up a label for the document. It may say “order,” but then there’s right underneath that, there’s what’s called additional text. And so, rather than just the clerk entering it when they scan it as an order, they’ll put on the bottom, “order to modify child support.”

**SSA:** OK.

**Judge Storck:** So that you know that this is the child support. And the other thing is that really is something that encourages you to adopt this e-filing rule because it’s the scanning, and the clerk deciding what it is, that sometimes causes a problem, when hopefully the attorney will have a better idea as to what this document really is.

**PDR:** Have you had—do you have, like most counties or the ones that have talked to me, a lot of pro se folks filing domestic matters, either divorce or things relating to—they aren’t covered by this.

**Judge Storck:** No, they’re not.

**PDR:** So, if you scan their documents in so the judge has them, and you have an attorney on one side and a pro se on the other, how do you handle that combination? In regard to sending notices, in regard to a variety of things you talked about?

**Judge Storck:** Yeah, what happens is, CCAP has a system that, if you have an attorney on one side and pro se on the other, and the attorney is e-filing, of course you need, of course today they have to opt in, but under the mandatory they would be an e-filer. CCAP will send the notice electronically to the attorney. CCAP will automatically print out a notice for the other party.

And so then we know that this party you need to save a, you need to send a—you need to send a copy of something to them.

**PDR:** So the judge's clerk would know then, because there'd be a document printed out in the judge's chambers—

**Judge Storck:** Right.

**PDR:** —that this order needs to get mailed, but the other one's already gone.

**Judge Storck:** Mm-hm

**PDR:** OK, thanks.

**Judge Storck:** One of the individuals—a follow-up to that is that one of the problems with the private bar, and I think one of the reasons we need to go to a mandatory system, is if you're an attorney right now in a case where there are four different attorneys—and Katherine Koepsell and I have talked about this and Katherine is here in support of this—when you file something in e-filing and you're an e-filer, it automatically goes out to all of the other individuals who've opted in. But if there are four different attorneys, you have to somehow keep track of the fact that, you know, I need to send one to Attorney Smith, because they're not an e-filing party. And Attorney Jones is, so they get theirs, and this Attorney Mack is not, so I've got to send them one. And so you're doing both electronically, through filing it with the court it goes automatically, and on paper. And so here you're working a dual system. And that's difficult for an e-filer. A mandatory system would solve that.

**PDR:** And what's the platform electronically that you have to use in order to be able to e-file?

**Judge Storck:** I think it's any internet connection, because it's really a—I probably should refer this to Jean Bousquet—but I think that if you can get on the internet, I mean, you go to a web page. So you need to have a web page, and here again in talking to Katherine Koepsell, as an attorney she told me that they didn't need to make any investment in additional equipment or hardware. They do need to be able to file both in Word, so they would need a Word, which is pretty standard—

**PDR:** And PDF.

**Judge Storck:** —and they need to be able to file with a PDF. So they do need some scanning capability, and—yeah.

**PDR:** Thank you.

**MJG:** Judge Storck.

**Judge Storck:** Yes, Justice.

**MJG:** Not just based on the comments of Judge Koschnick, but I want to let you know I am, I am favorably inclined towards electronic filing and have been, have been for some time. In addition to the many good reasons that Judge Koschnick and yourself have listed out, I think it's inevitable. I think with the prevalence of electronic means of communication in our—in all strata of our society, all ages, it's simply, it's simply a matter of time, and we might as well start as soon as we can. But we on the court are currently in the process of searching for a new Director of State Courts, and do you understand that most of us on this court are going to have to rely on whoever is the next Director of State Court to become so familiar with the budget that they can advise us, especially under the new scheme proposed by the governor and under consideration by the legislature of the block grant, of first of all, do we have the money? Second of all, if we don't, are cuts going to have to be made in other areas so that we can implement it, and third, if we don't have all the money to implement it statewide, what can we do to kind of prioritize it? What would make most sense?

**Judge Storck:** Well, certainly you'd want to go with those counties that are, I believe first that are fairly far along with the scanning and familiar with the system, because of course those counties would need less training, they be more prepared. You know, when I look at the CCAP roll-out, you know, the CCAP roll-out started many years ago and it finally ended, what, six, seven, eight years ago, not even that, when we finally completed all 72 counties. So you've got to start somewhere. But the other thing that I think is important to think about with the money is that when you're asking anybody for money, I think you need to be able to tell them it works, here's how we're using it, it's a proven commodity in a number of counties, we want to expand it, we know that the clerks in the counties that are using it believe that they're saving money. And as a business you need to be able to say this is a good investment because we're going to save more money than what it's going to cost to implement it in the state. I strongly believe that. I think until you actually have some up and running, that you're not going to be able to really prove it.

**MJG:** Certainly you don't—you don't have to sell me so hard. [laughter] I don't need a new set of floor mats. But—

**Judge Storck:** You can tell I'm passionate about it. I'm sorry, I don't—

**MJG:** —but there is—but have you considered, you have obviously considered the fact that this court may very well have to wait until the appointment of a new Director of State Courts who can serve as a guide for most members of this court in the intricacies of and the realities of our budget.

**Judge Storck:** I certainly understand that.

**MJG:** Thank you.

**Judge Storck:** Thank you.

**SSA:** Judge, I'm a little confused here. Do we need to have money in had to adopt these rules? Or can we adopt these rules, and then if there's a means and a way to get into electronic filing, we have the rules in place?

**Judge Storck:** If you have the rules in place, it's a means to get into—

**SSA:** That's right. We don't need a dime to adopt these rules.

**Judge Storck:** Although I think you will need some money to build a framework—

**SSA:** Absolutely. But we don't need any money to adopt the rules. And these rules do not require that any county—or they don't require the Director to put any county into mandatory e-filing at any time.

**Judge Storck:** Correct.

**SSA:** Cannot do it before January 2016. Doesn't have to do it thereafter. Right?

**Judge Storck:** Correct.

**SSA:** These are—I'm trying to think of an analogy of getting it ready. I suppose that maybe the closest analogy, which is not one that's very good for me because it's out of my field of expertise is if I am going to think about making clothes, I might have my machine at home threaded. But I'm not—I didn't—I've already got the machine. And if I can—

**Judge Storck:** And when you can—when you can afford some cloth, you'll make some clothes.

**SSA:** That's right. When I can afford the cloth, I'll make some clothes. That's why I say it's out of my jurisdiction. But I need to get, maybe have a sample, and that this is the sample.

**Judge Storck:** The rule does have some provisions in it that I think are going to help with the current e-filing that's going on—

**SSA:** That's what I'm driving at. Go ahead.

**Judge Storck:** —and those, those rules would include the change in the requirement for small claims to be notarized, the change in the notarization rule, the, the 11:59 rule, so that would be standardized. So I think it does bring some standardization to what is being done.

**SSA:** Right. But nothing necessarily will have to be accomplished under these rules. They can be dormant.

**Judge Storck:** Right.

**SSA:** Until there's sufficient funds or wherewithal.

**Judge Storck:** Mm-hm

**SSA:** That doesn't stop us from—would not stop us from adopting, because they're dormant, right?

**Judge Storck:** Absolutely.

**SSA:** But if and when you've got the wherewithal, you can start using them. I mean, that's how I see it, and if I'm—that's how I would vote or not vote on this, but I get a little confused when I keep hearing this emphasis on money, because I don't see that—hey listen, the money has already been spent on all this paper.

**Judge Storck:** OK, just one final thing that I wanted to say, and that is that there are three individuals that, from Dodge County that felt strongly enough to accompany me here today and I just want to quickly introduce them. First of all we have Katherine Koepsell, and I hope they're—they're over here, I'm sorry—Katherine Koepsell, Katherine is a partner with the QSB law firm in Dodge County, she was our earliest e-filer, she's an advocate of it, and she would encourage the passage of mandatory e-filing. And then we have Bob Barrington. Bob Barrington is a managing attorney at the Dodge County Attorneys—District Attorneys office, he was the one who really was the inspiration for Dodge County, he took their office completely paperless in 2009, and he did that with very little money. He showed us the advantage of using the electronic files. He's also a member of the Board of Governors of the State Bar and supported it there. And Bob's here in favor of it, and he has e-filed successfully in the last year



1,700 files, so he can attest to the fact that it works. And finally we have Lynn Hron, our Clerk of Courts. Lynn has been a proponent of first scanning and then going paperless and e-filing, and she will also attest to the fact that it works, and we've e-filed over 2,600 cases so far.

**SSA:** Judge Storck, I was going to ask if any of them would like to speak for themselves.

**Judge Storck:** Pardon? I'm sorry.

**SSA:** I would like to ask if any one of them would like to speak for themselves. It's a long trip down, [laughter] long trip home, now's the time.

**Judge Storck:** [inaudible] Attorney Barrington to pass up the opportunity to say something [laughter]—

**SSA:** Pardon me? Well, he looks like he'd be willing. Counsel?

**Attorney Barrington:** Chief Justice, Justices, I'd simply like to say that until this mandatory rule is put in place, my office can't take the next step to become more efficient. We have invested heavily in scanning equipment that I don't believe that we really need to have in the future. My office—Judge Storck said very little money to implement it. We spent zero state funds, we spent less than \$1,000 of county funds in order to implement this system. We have, since the implementation, completely eliminated any overtime in our office, and we've cut our paper and printing budget by more than 70%.

**SSA:** So if this rule were put into effect, you might be able to do without a lot of state money.

**Attorney Barrington:** Exactly.

**SSA:** That's the point of my repeatedly asking what's the matter of putting it in whether or not we have a dime.

**Attorney Barrington:** We have saved, primarily—actually primarily the County of Dodge, we've saved Dodge County a lot of money.

**SSA:** Well, I care about the county, too.

**Attorney Barrington:** Thank you.

**SSA:** Justice Prosser.

**DTP:** I'm interested as a former DA, years and years ago, exactly how you practice law. Let's say we have a felony case. Do you have a computer, or I mean a—yeah, a small computer on the table as you're there, and the public defender—

**SSA:** In the courtroom, right? That's what you're talking about.

**DTP:** In the courtroom, yeah. At the counsel table, does everybody have a computer?

**Attorney Barrington:** The Department of Administration, through the DAIT, provides every district attorney and assistant district attorney with a laptop. We take our laptops to court. We don't take any files to court. We have instant access to every file in our office 24/7. One of the nice things is that when we go down, and perhaps we have 35 or 40 cases that are going to be called right in a row, the secretary upstairs in our office has simultaneous access to the same file that I've just finished. She doesn't have to wait for me, and I'm sure you remember taking piles of files back up, putting them on her desk, and she has to go through each one but can't start until the session's over. She's working the files as I'm finishing them in court because we all have access to all the files all the time. It's extremely efficient.

**DTP:** Your Honor, I move for admission of Exhibit—well, how does that work?

**Attorney Barrington:** Depending upon what it is, and if we are—if it's an actual exhibit, we would print it out, we would hand it to the clerk—court clerk, we would have it marked, and we would move it. However, motions, things that are part of our daily practice, we would, for instance, send a motion to the court in a PDF format, it would be accompanied by an MS Word document that the judge can sign. When the judge signs it currently, he'd have to sign it—well, actually currently you can electronically sign it, so there is no more paper. And it—we get a message from CCAP saying that the order has been signed and that it's now available in our file.

**Judge Storck:** Justice, if I could follow up on that, that exhibit would be scanned by the clerk, we are required to—

**SSA:** In the courtroom.

**Judge Storck:** Pardon?

**SSA:** In the courtroom.

**Judge Storck:** Actually, in a—they take it downstairs to scan.

**SSA:** OK.

**Judge Storck:** They'd scan that, so we'd have a scanned copy in the file, and we are, under the file—the document retention policy, to keep that for a period of time after the appeal process, the hard copy. So that would be one exception where we keep that piece of paper.

**DTP:** Your Honor, I would like the jury to be able to see Exhibit 12.

**Judge Storck:** Well, in our courtroom, we have a large screen and an elmo, and we put it on an elmo and they'd be able to see it up on the screen, and—

**DTP:** In the jury room?

**Judge Storck:** Oh, in the jury room. Well, with the jury room, we'd actually send them the piece of paper. So the exhibits are—

**DTP:** It isn't paperless after all!

**Judge Storck:** It's not paperless. [laughter] Paper on demand.

**Attorney Barrington:** Paper on demand.

**SSA:** But in the courtroom you'd show it on a screen. Do the indivi—do the jurors have individual screens? In some courtrooms they do.

**Judge Storck:** Yes. [inaudible]

**Attorney Barrington:** And I'm an instructor at MATC in the paralegal program. In our new electronic courtroom out there we've outfitted the jury room with a large screen. It certainly is something that could be done in circuit courts as well.

**PDR:** How does the public defender interface with this? Are they able to do things in a paperless format in Dodge County?

**Attorney Barrington:** They actually have started to do the proposed orders in Microsoft Word. That's been relatively recent. I believe there's someone here from the State Public Defender's Office that's going to address the court—

**PDR:** Good.

**Attorney Barrington:** —and might be able to answer your questions more specifically.

**SSA:** Devon Lee. Legal counsel. He's the fourth witness today. Go ahead.

**DTP:** May I ask one other question? As a very technically challenged person, I have had the experience of going to courthouses and asking to see a file. Suppose I went to the Dodge County Courthouse. I would like to see the file in, a current file, or one, two months ago. What do I have to do?

**Judge Storck:** Justice, what would occur is, we have, in Dodge County we have three public access computers. When we did go paperless and with e-filing, we installed one extra one, so we went from two to three because we anticipated that there would be additional demand. And so you'd sit down at one of those computers, you can easily go to an icon, and pull up all of the documents. The press loves it, because, you know, they can sit down at this screen, they can get all their documents. It used to be that we had to put out stacks of files that they wanted to look at. Now they just look at them on the computer,<sup>1</sup> and the clerks will assist you if for some reason you can't find the document. They'll assist you in finding it.

**SSA:** Any print copies?

**Judge Storck:** They can print copies, and—

**SSA:** Right from that computer?

**Judge Storck:** —what is unique, you can pull out the documents, you can put it in a queue, and you can print them out. They don't print out right there, they print out behind the counter in the clerk of court's office, and you go, you can give them cash or credit card and you can get your copies.

**SSA:** That's why they print behind the counter—

**Judge Storck:** They print behind the counter—

**SSA:** —so you can get paid.

**Judge Storck:** You have—you have to pay.

**SSA:** Which would be true under the old paper system, too.

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<sup>1</sup> Audio and video between here and the next asterisk are missing from the Wisconsin Eye website. This portion was transcribed from the court's audio file.

**Judge Storck:** It would be, if you had a scanning system where you had electronic documents, but that's right, it's the same charge whether it's a paper system or if it's the electronic document.

**SSA:** Counsel, you've been very helpful. Thank you.

**Attorney Barrington:** OK, thank you.

**Judge Storck:** And—

**SSA:** We've got two other people from Dodge.

**Lynn Hron:** Thank you for letting me, letting me speak this afternoon. I'll just be brief. Theresa Russell is going to speak on behalf of the Clerk of Court Association, so I won't take any of her thunder away. I'll just tell you very briefly, I've been in the clerk of courts office for more than 30 years. When I started, our record keeping was those old, big books. We wrote in the big books. Then we started typing on docket cards. Then we got a word processor, and then a computer and CCAP, which was met with some mixed acceptance when we got CCAP. Not everybody was on board when CCAP first started, much like e-filing. There's a lot of questions about e-filing just like there was CCAP, but CCAP has become our—our go-to system, our court management system. We use it every day. Thousands of people use it every day. Recently I heard a quote that said, "When you reach the top of a mountain, you look for the next mountain." I think the mandatory e-filing rule\* is the next mountain. We've come far, but we can go farther. I think we need that little extra push to go a little farther. Thank you very much. Unless you have a question.

**SSA:** Thank you.

**Lynn Hron:** But like I said, Theresa is here on our behalf. Yes, ma'am. Thank you.

**SSA:** That's good. Any questions?

**DTP:** It's unfair that we have a witness who's so eloquent—[laughter]

**SSA:** That's why I called on her. [laughter] Thank you very much. And we have a, an attorney, Kassel [sic].

**Attorney Koepsell:** Good afternoon, Chief Justice and Justices. Thank you for giving me the opportunity to speak. I'm not as eloquent as Lynn Hron, but—

**SSA:** You're doing fine.

**Attorney Koepsell:** Thank you. From a practitioner's perspective, the appeal of e-filing has been the efficiency of being able to focus on the practice of law, rather than the practical considerations of whether something gets mailed out, the delay of waiting for it to come back to the courthouse or me taking it over to the courthouse. And I think that not having a mandatory e-filing rule removes that efficiency. It forces me, as Judge Storck mentioned, to focus on making sure that all the parties have notice, whether they're an electronic filer, whether they're not, then I have to mail it, and the multiple documents from the clerk's office. It's one foot in the e-filing world and one foot in the paper world, which forces our office to keep two separate filing systems. It's the least efficient option. So I encourage you to adopt the rule as presented.

**SSA:** I was at a table with some lawyers and I said, well, it might cost \$5 or \$6 for any case that you would file. And there was this sticker shock at 5 bucks, or 6. And I said, how do you get to the—this was in Milwaukee. I said, what do you do to file in the courthouse? And the lawyer said, we hire a delivery service. And I said, how much is that? And that's \$16 a file. So after we finished the conversation, \$6 looked cheap. And I don't know, in Dodge County do people bring in their filings? Do they mail them in? Do they FedEx them in? What do you do?

**Attorney Koepsell:** We either—

**SSA:** Are you right in Juneau?

**Attorney Koepsell:** I am located in Mayville and Beaver Dam—

**SSA:** [inaudible] be from Mayville. Go ahead.

**Attorney Koepsell:** We either drop things in Juneau or we mail them in. And the way I sell my clients on electronic filing is saying, look, you're paying me to go over there, I'm paying my assistant to go over there, or we're paying for two rounds of mailing, to go to the courthouse and then for the clerk to mail it back. It only takes a few filings for that cost to be made up.

**SSA:** Thank you.

**Attorney Koepsell:** Thank you.

**SSA:** Thank you, Counsel.

**Judge Storck:** Well, thank you. I think the State of Wisconsin is ready for mandatory e-filing. Thank you.

**DTP:** Could I ask one, one last question?

**SSA:** Justice Prosser.

**DTP:** In the proposed appropriation of \$2.1 million, how much of that goes to CCAP?

**Judge Storck:** I'd have to defer that question to somebody else, because I really wasn't part of the Chief Judges' organization that came up with the \$2.1 million. I really don't know. I would assume that a large portion of that would need to go to CCAP, because they're really the ones who is going to—they were going to build a framework, and they were going to do the training. But I don't absolutely know.

**SSA:** There's hardware, software, and then there are positions, temporary positions of consultants being used there, as well as probably their own staff.

**Judge Storck:** OK. Thank you.

**SSA:** Thank you. Thank you, John Storck.

**Judge Storck:** I was going to introduce Theresa Russell, I forgot.

**SSA:** OK.

**Judge Storck:** Theresa Russell is the Clerk of Court in Washington County. She also is the vice-president of the Wisconsin Clerks Association.

**SSA:** And was at the PPAC meeting.

**Theresa Russell:** That's correct. Good afternoon, Justices, Chief Justice. I'm pleased to be here to represent the clerks of court of Wisconsin and for this opportunity to speak to you today. Washington County was a pilot county for scanning files in 2004, and for e-filing in 2008. We have seen slow and steady growth, and recently have had more interest in e-filing. The clerks are at varying levels of readiness. There are 29 counties doing e-filing and 14 counties that are paperless. There are also counties that haven't started scanning at all. In February, at judicial education for the clerks, there was a panel of fellow clerks who spoke of the value of going paperless. The information they provided was very good, and the clerks have asked for continued training and further discussions in this area. There is a plan to provide a working session in June so we can work together in creating a plan for each of our counties. Although this may not be an easy transition for anyone, including the clerks of court, the members of the

Wisconsin Clerks of Circuit Court Association voted unanimously to support the petition. Some of the exciting things e-filing has to offer is a reduction in the time spent on data entry. On a standard divorce filing, for example, the clerk saves a minimum of five minutes per filing. In our county, we have about 16 open case files every year, and that includes every case type. The time savings would allow for better use of a clerk's time. Clerks would be more focused on data quality, rather than on data entry. Clerks can also work on other projects or duties as assigned. I can't promise staff savings, but two counties have stated that their vacancies are not being filled. Files that would normally be sent out of county can be viewed by the assigned judge on their judicial dashboard. There's no need to transport files from one county to the next. For those customers at the counter, quick access to the file is available in our lobby. Court reporters can view any cases that are also available to the public at their workstation or laptop by asking the clerk for a temporary access code. Confidential cases can be accessed by customers at a public access terminal, and court reporters at a CCAP workstation, by using a temporary access code as well. Regarding cost to the county, wi-fi is helpful, but it's not necessary. But it does increase a lawyer's efficiency in the courtroom. Many counties have installed it already for the convenience of the bar, litigants, and other agencies. Wi-fi was installed at the courthouse in Washington County in 2012, for a cost of \$2,600. We do see that we need more access points, so we will be installing more this year. CCAP does allocate a certain number of scanners to each county. If a county would like more scanners, they are welcome to purchase those on their own. E-filing does save valuable square footage that would have been used for storage. Some counties do pay for off-site storage. The cost of shelving, file folders, labels, and postage are also reduced. In my case, the annual cost of file folders in 2014 was \$150. Previous years, it was over \$3,000. We have also saved over 370 linear feet of file space by maintaining files electronically. As you know, this is a Badger county and state. Compare that to a football field, and we are saving more file space compared to a football field.

I want to share with you that some of the judges in Washington County do have concerns about e-filing and have shared those concerns with myself and others. I took some time to candidly speak to each one of them. Their stance is not as black-and-white as I had believed. All of them felt that mandatory e-filing is coming, and they can see working with all case types except criminal. Their main concerns are with processing the large number of criminal cases that are stacked on their calendar on any given day. Most of them feel very strongly that paper works best in these circumstances, and they find that that is the most efficient way for them to work. The rule does not force anyone to go completely paperless. Although the official court record will be kept electronically, judges who want to work from paper can do so. For judges who want to use the new technology, there will be ample training support, and opportunities to give input regarding the software. Upon the prompting of our presiding judge, Jean from CCAP and two of her staff came to Washington County to sit in court with them. Jean and her staff did some brainstorming with some of the judges and staff, and came up with some really good ideas on how to design the software to work for our judges. The judges were happy to be part of this



process, and were glad they were able to give input. Now we are anxiously waiting to what CCAP has in store for us. We also have more training scheduled for the judges in April so they can learn more of the features of the judicial dashboard and become more comfortable with using it. After speaking to some members of the Washington County Bar Association, CCAP was able to provide training for them in January. I have heard nothing but good things from the attorneys who are e-filing, and I'm excited to say that our e-filings have increased by 120% since that training.

**AWB:** That was in January?

**Theresa Russell:** That was in January. In addition to training, my staff, judges, commissioner, and I are working on educating ourselves. We're going to different counties that are paperless and watching them in action. Training is essential to the roll-out of mandatory e-filing. CCAP staff continues to offer training to anyone who is interested. It also removes some of that fear that's associated with something new. I would like to comment on information provided to the court by Carlo Esqueda, the president of the Wisconsin Clerks of Circuit Court Association and Clerk of Court of Dane County, who's also here today. He provided research published by the National Center of State Courts in partnership with the New Hampshire judicial branch, which notes that jurisdictions that implement e-filing report voluntary or permissive participation levels peak at 15%, while under mandatory rules of participation, that goes up to 97%. In order to create a more efficient court system, I feel it is necessary to make e-filing mandatory. I want to thank you for considering this petition that's in front of you today.

**SSA:** Thank you, Ms. Russell. And when you, we were at the PPAC meeting on the budget where the e-filing issue came up, there was a discussion of how the system was working in your county for, I think it was child support, if I remember it correctly.

**Theresa Russell:** Yes.

**SSA:** And there was a discussion between you and someone from the child support entity about this. I wonder if you can refresh my recollection on that and where we are now.

**Theresa Russell:** Yes. So Washington County was the pilot county for the child support portion of the e-filing, so it was with paternity cases, and we worked with the child support agency, CCAP worked very closely with them. They did slow down their filings. They had some concerns about it, and then CCAP was able to use some of those concerns and implement new features in the software, and now the other counties that are online are benefiting from the issues that we had in Washington County.

**SSA:** So there was ability to tweak to meet issues as they came along.

**Theresa Russell:** That's correct. That's part of being a pilot county. You're going to work out the bugs. Yes.

**SSA:** That's good.

**Theresa Russell:** Thank you.

**SSA:** Any questions for Ms. Russell? Thank you very much. Judge Koschnick?

**Judge Koschnick:** [inaudible] if I could, I've consulted with legal counsel. [laughter]

**PDR:** That's always good.

**AWB:** You do have the right to remain silent, however. [laughter]

**Judge Koschnick:** OK.

**SSA:** You know, once you take the podium, you're up for grabs.

**Judge Koschnick:** I understand.

**SSA:** Go ahead.

**Judge Koschnick:** If you adopt the rule as we're proposing it today, there would be one change in the law that would pertain to (2)(d), signatures. The signature provision says that a lawyer may delegate authority to a subordinate to use the attorney's password. That would be a change for all e-filed cases statewide, so it would apply to voluntary e-filed cases. It would also allow the attorney to use just the PIN, rather than the current procedure of the password and the PIN. And that would take effect whenever you decide to have the rule take effect, before even any county was required to come online. I wanted to clarify that. (2)(d).

**SSA:** No charge. No money passes hands on this one.

**Judge Koschnick:** Pardon me?

**SSA:** There's no cost, no fiscal effect of what you just said.

**Judge Koschnick:** That's right.

**SSA:** OK, thank you.

**Judge Koschnick:** Thank you.

**SSA:** All right, I'm up to David Callender, Wisconsin Counties Association. Mr. Callender?

**David Callender:** Thank you, Chief Justice and fellow Justices. I'm David Callender. I'm a government affairs associate for the Wisconsin Counties Association. My comments will be very brief. You already have my written statement. Basically, from the standpoint of the Counties Association and from the standpoint of Wisconsin counties, we are supportive of the effort to get e-filing in all of our counties, and we recognize that there is a need for a mandate in that respect, that if there is not at some point some requirement that counties participate in this, that there—this simply will not come to pass. That said, we have also been very supportive of the court's budget request for additional state funding for this, and that is the area that we have a concern. I think it's a concern that was echoed in the statement that you received from the Clerk of Courts Association and from the State Bar Association relating to the need for funding for this. And again, we recognize that there may be some long-term benefits in terms of efficiencies, additional cost reductions, but at the same time, where we have this transitional period, where we're moving from an electronic system—or from a paper-based system to an electronic system there may be some start-up costs, which, again, the court is very familiar in terms of the constraints that counties are operating under and the commitments that counties are already making to funding the circuit court system. So that's—

**SSA:** You don't want us to take it from the block grant to counties.

**David Callender:** We would prefer not. [laughter]

**SSA:** I just wanted it clarified.

**David Callender:** I'm sorry?

**SSA:** I just wanted it clarified.

**David Callender:** Yes, exactly. We, we know there are already a number of draws on the block grant as it is, and that certainly in the courts, in the actual courts budget, the budget request to the governor, there was a significantly increase in funding for circuit courts, which unfortunately the governor chose not to include in his document.

**SSA:** Same funding as last year.

**David Callender:** Yes.

**SSA:** Without a lapse.

**David Callender:** Yeah. And again, I think the court has done a very good job in terms of recognizing the fiscal commitments that counties make in terms of operating the circuit court system, and the overmatch that we provide in terms of funding the justice system. So again, we just ask that you not add to our burden. Thank you.

**PDR:** So you're supportive as long as the court finds the money someplace else, essentially.

**David Callender:** Basically. And as long as we essentially keep an open-ended implementation.

**PDR:** Sure.

**David Callender:** So that if we do have the money at the county level, and obviously we've had counties that have made that commitment—again, we appreciate the flexibility to be able to do it that way, so, yeah, as long as we have an open-ended and as long as there's some—when we have counties that actually need the little push to get over there, that that's, that there is funding available to them.

**SSA:** Justice Prosser.

**DTP:** Do you know, David, the \$2. [sic] million that was requested, do you know what the breakdown would be of what goes to the counties and what goes to CCAP? I mean, do you have any idea? Let's take, just hypothetically, Fond du Lac County. How much money do they need in order to, to really jump into this?

**David Callender:** That's been the difficulty, actually, in terms of trying to, trying to come up with a fiscal estimate on this, really. I've made some informal inquiries of the clerks of court, you know, how much do you think it's going to cost, and I think that's something where I haven't been able to nail that down, and so in terms of the actual request, I'm not sure, I would have to defer to the folks that actually put the request together.

**SSA:** I think we might ask that of Ms. Bousquet, of how much of the \$2.2 million, after Mr. Lee, Devon Lee testifies.

**AWB:** It's a woman.

**SSA:** Ms. Lee. How much of that \$2.2 goes to the county and how much goes to hardware, software, and your employees and consultants. That's the question. Right.

**David Callender:** And I think, just to add, I think given the uncertainty that we see right now in terms of the governor's proposal for the block grant and the implementation of that, I think that adds to our uncertainty in terms of the situation in implementing e-filing. I think if we knew that, you know, we were going to have the same formula for the circuit court support payments, that we knew that the payments would be made on Janu—or on July 1st and January 1st, we knew what the schedule and the appropriations were going to be, I think that would diminish some of the anxiety that we have on—

**SSA:** But you don't know because that whole area has been repealed.

**David Callender:** Right.

**SSA:** So you're now just at the discretion of the court.

**David Callender:** Right. And of course we always, you know, we, we have a wonderful relationship with the court. We know that the court appreciates the work that the counties do on this, and would move expeditiously in terms of implementing a schedule and making those payments, but again, it is one of those things where it gives us a certain amount of anxiety when we face the unknown.

**MJG:** It might give the court a certain amount of anxiety, too. [laughter]

**SSA:** All right. Any other questions? All right. Thank you, Mr. Callender.

**David Callender:** Thank you.

**SSA:** And I want to say that, and Mr. Callender knows, that the county association and the court system have cooperated on any number of ventures and we always talk. We may not always agree, but we always talk.

**David Callender:** Indeed. Thank you.

**SSA:** Mr. Callender. Devon Lee. Legal counsel, State Public Defender. Hi.

**Attorney Lee:** Good afternoon, Chief Justice.

**SSA:** Half the time I say "Mr." and half "Ms." Thank you.

**Attorney Lee:** That's all right. The State Public Defender has already filed a letter in support of this petition—

**SSA:** Yep.

**Attorney Lee:** —so I appreciate the opportunity to come and provide some additional remarks this afternoon. The State Public Defender continues to support the e-filing petition, with the understanding that our agency would be exempt from the filing fees. And we want to thank Judge Koschnick's leader—for his leadership on this issue, as he has made clear both publicly and in subsequent conversations with us that he feels strongly about exempting the Public Defender's Office from the filing fees. It's the State Public Defender's understanding that the Director of State Courts, knowing that there isn't actually a Director right now, but my understanding is that it's that office's intent to establish policies under rules—under (7)(c) of the rule that would exempt the State Public Defender and I believe other state agencies from paying the filing fee. So in addition to the cost issue, I want to provide you with just one other area I guess of concern for the State Public Defender, and that is technology. The State Public Defender is not known for its technological advancements, and so we would need to work very carefully with our justice partners in implementing the e-filing. You've heard a little bit about Dodge County and how the State Public Defender is working in Dodge County with e-filing. We are currently able to e-mail Word documents, which is different I think from the ability to actually participate fully in e-filing. And just to give you an example, we are currently installing Windows 7 in our offices. We have 38 offices throughout the state. We cover 72 counties, many of which are still running on outdated software. So as we sort of get up to speed on that, we hope that at some point we'll be able to participate in the e-filing. According to the memo submitted by Judge Wirtz, the plan would be to roll out e-filing county by county with significant notice. And I want mention only that that would be very important to us, because while we work to update our software and our hardware, that would enable us to prioritize particular counties if we have time to do that. We will unlikely be in a position of having our attorneys have laptops or tablets or any other technology in the courtroom, unlike some of the other jurisdictions you've heard about today, but e-filing would still be a huge advantage for our attorneys and allow for efficiency, again for some of the same reasons that you've already heard today, in terms of being able to access files remotely, be able to file motions and other things remotely. Some of our offices cover multiple counties, and so rather than traveling around, it sort of—it, you know, we would recognize a cost savings there. If we don't have adequate notice for which county is coming up, there is section (2)(b) of the petition, which allows certain parties or agencies to be exempted from the e-filing requirement, and we would probably have to rely on that section for—to not have to e-file, but we would rather not do so. And so with that being said, we are enthusiastic supporters of e-filing. I believe as Justice Gableman said, it's inevitable, and I think Justice Prosser mentioned some fear of technology, and let me assure you

I share that. But like other things, like e-mail, like accessing our other records, banking records, health records online, I think in some point in the near future we'll get to the point where this seems as natural as everything else that we do. So again, we appreciate the opportunity to come share our thoughts today, and we look forward to e-filing with the concerns that I've shared with you.

**PDR:** You referred to section (2) and I thought you said (d) but I don't see how—

**Attorney Lee:** It's (b). Sorry, (2)(b), as in "boy."

**PDR:** "B" like "baby," gotcha. OK, thank you very much.

**DTP:** You want to be exempt from filing fees, public defenders. And you talked about other state agencies, so I assume district attorneys, for example, would not have a filing fee. Is that right?

**Attorney Lee:** I believe there was a user fee for some litigants, but I believe that the district attorney's office also would be exempted from user fees.

**SSA:** They have the adequate computer and data ability that they don't need to be exempt. They're already tied in. That's my understanding from the district attorneys.

**Attorney Lee:** OK.

**SSA:** And from Mr. Barrington. Am I right?

**Attorney Barrington:** Right, we have [inaudible] with the CCAP system whereby we populate their database.

**SSA:** That's right. And my understanding from Kelli Thompson, who spoke at the PPAC budget meeting where we went through the e-filing, was their computer system is antiquated. It dated back to the year 2000, and that they could not take on these electronic filing with their present system. They did make a request to update their technology, but it is my understanding from Ms. Thompson that the governor did not include that in the budget. Is that right?

**Attorney Lee:** That is correct. We are, we are still able to update some software and some hardware, but we—right. Funding is obs—it's, you know, we will be able to update or software and hardware adequately for e-filing without, I think, exceptional cost to us.

**SSA:** Given enough notice and you would do it in the order in which we put in e-filing, so that it all meshed. And that raised the question, since they were not, they were not able to deal with it directly as the DAs were of paying money when they were short of money for technology and short of money for paying court reporters for transcripts. So a filing fee with us for e-filing was not palatable, if I might say that, and Ms. Bousquet did push the pencil and figured out how much extra everyone else would have to pay to cover not only the public defender, but should there be other government entities that had situation and it went from, and I'll just round out the numbers, \$5 to \$6, and Ms. Bousquet will change—will repair my mistakes when she arrives here at the podium. But that's where it was left, that there would be no charge as long as—couldn't pay it, and we'd hope that you would have gotten the technology, would have resolved a lot of other problems for you and us, but that's what we decided to do.

**DTP:** So, are all public litigants tax-exempt from the fee?

**Attorney Lee:** I'm sorry, can you repeat the question?

**DTP:** Are all litigants who are governmental entities exempt from the fee?

**Attorney Lee:** That, I'm—I'm probably not the right person to answer that question. My understanding—and maybe Judge Koschnick can clarify—my understanding was that not only the State Public Defender but that other state agency litigants would be exempted from the user fees.

**Judge Koschnick:** That's correct. All government parties. DAs, city attorney, public defender, child support, all of them.

**SSA:** But some because they already have the system. That is, they don't need anything. Others because they're public entities and they don't have the money.

**Judge Koschnick:** Right.

**DTP:** How does that apply to private bar people who are appointed by the Public Defender?

**Attorney Lee:** I believe it would apply to any litigant represented by the State Public Defender, and that would include, under chapter 977, people represented by both our staff attorneys and by our private bar attorneys.

**DTP:** How does—say Annette Ziegler is representing, has an appointment as a private bar public defender, but she also has some high rollers. How do you distinguish which case is which?



**Attorney Lee:** What we've done in other situations, for example, we share records with Department of Corrections that a—were free, we share without a cost right now. And the way that we do that under those same circumstances, because our private bar attorneys have both private pay cases and our cases, is we submit or we have them submit the order appointing counsel. And so the order appointing counsel indicates that it is an appointment under chapter 977 made by the State Public Defender and that that is an indigent defendant. And I imagine we would do something similar to that. When the attorney is filing something online, there would be some requirement that they either already have the order appointing counsel in the file, or that we would create something that would allow the court to see that.

**DTP:** What about situations where you have private bar attorneys acting as public defenders, but they're from a different county than the county that they're representing. Let's take Jefferson County, that's where the case is, but someone is from Green County. What happens there? They have to file in Jefferson County?

**Attorney Lee:** There you would have—

**DTP:** Without the training?

**Attorney Lee:** I'm sorry?

**DTP:** Even without the training? I mean, attorneys are going to be trained to do this.

**Attorney Lee:** Yes. So I think, if I understand your question, it's how would an attorney from one county complete e-filing in another county, in a case in another county?

**DTP:** Yes.

**Attorney Lee:** I'll share a secret about myself, and that is that I am the least technologically savvy person, probably that you'll ever meet. So I have no idea. That's the short answer. [laughter]

**AWB:** "I have no idea." So there. Next question. [laughter]

**Attorney Lee:** Let me, let me venture a guess, which is that I think it probably doesn't matter what county you're in. My guess is that you are going to have the ability to e-file in multiple counties based on your own personal information, like for me as an attorney with this bar number, with this PIN number, with my e-filing number, I can—I imagine I can file in multiple counties, and in fact we'll have to do that, because we have staff attorneys who cover multiple

counties up north and we have private bar attorneys who cover multiple counties in the state as well.

**SSA:** Sounds as if the computer will be smart enough to work it out.

**Attorney Lee:** Yes. I hope so.

**SSA:** Smarter than we are.

**Attorney Lee:** Smarter than me certainly. Thank you.

**SSA:** Any other questions? Does anyone wish to appear? Ms. Bousquet, I'd like you to appear, if you would. I don't think this was your plan. Nor mine.

**Jean Bousquet:** Not my plan.

**SSA:** But at least two questions have come up, that—and there may be more that are stimulated. One was, if we had gotten or if we will get the \$2.1 million, who gets that large sum of money?

**Jean Bousquet:** So the \$2.1 million would go completely to CCAP.

**SSA:** That's what I thought.

**Jean Bousquet:** That was used for hardware for the counties, that we were going to put desktop scanners into a lot of different offices to help the counties convert their paper records into electronic records in preparation for e-filing. We were also going to provide dual-screen monitors, so the judges talked about having four different documents up at one time and being able to work through the court record. Train the judges as we're moving forward prior to e-filing, so they knew how to work in the electronic record with the electronic documents. Another portion of the money was to purchase three contract programmers to assist us with enabling the CCAP e-filing program statewide and for all case types. So as they said, we have e-filing for civil, family, small claims, paternity and criminal. There's many more case types that we would need to enable, so we would need programming staff to help us do that. And then finally we had eight analyst staff, and those are the people that are really the boots on the ground. They would go out and train the judges, the clerk staff, the different agency filers, private attorneys, and the bar.

**SSA:** What—what will be the, as best you can guesstimate, the increased cost to the county if the county went mandatory under these rules?

**Jean Bousquet:** If we were to do the implementation that we plan to do, it would be very minimal. Some counties do purchase additional scanners, because they want more scanners available to staff than what we currently allocate. Those scanners cost about \$300 each, so those are fairly cheap to purchase on their own. The other cost is wi-fi in the courtroom. We think that it may not be mandatory in every courtroom, but it would be a good feature that they have, so that the attorneys would have access to the internet and their records. Theresa Russell said it was about I think \$2,500 for Washington County to put their wi-fi in. So that would be an expense for the county.

**SSA:** As I counted up, it would be less than \$3,000. Most probably.

**Jean Bousquet:** Sure.

**SSA:** The \$2,500 plus putting in maybe two scanners. Maybe I would up it to \$4,000.

**Jean Bousquet:** Yeah, it could be a little bit more, and counties, large counties like Dane and Milwaukee counties, wi-fi would take considerably more money than Washington just because they'd have to go through many—so many different floors and courtrooms, their wi-fi would have to be a little bit more robust. So their cost would be higher.

**SSA:** And that would be the principal cost then.

**Jean Bousquet:** Correct. It's basically a one-time cost.

**PDR:** You mentioned eight people, three contract programmers and eight other staff for training. Are all of those people going to be paid out of the \$2.1 million? I thought the eight people were in addition to the \$2.1 million.

**Jean Bousquet:** All of the, the three staff—or the three contract staff, the eight analyst staff and all the hardware make up the \$2.1 million.

**PDR:** OK, so everything that you need comes out of \$2.1 million?

**Jean Bousquet:** Correct.

**SSA:** Because they're—everyone is temporary on this one.

**Jean Bousquet:** Pardon?

**SSA:** The staff is temporary—

**Jean Bousquet:** The staff is temporary.

**SSA:** —with a two-year commitment for the staff.

**Jean Bousquet:** Correct.

**SSA:** And then you're hoping that the maintenance can be done with the filing fee.

**Jean Bousquet:** Correct.

**SSA:** As I understand the plan.

**Jean Bousquet:** Correct.

**SSA:** All right. The next—go ahead.

**DTP:** I sort of had a completely different vision of how this would work. Let's say we come up with \$300,000 somewhere. We would be saying, OK, Dodge County is way ahead here, so somehow we're going to fund Dodge County, and they're so eager in Fond du Lac County, we're going to fund them. But how—how do you do this step by step, county by county, if there's no money for you?

**Jean Bousquet:** So, the option that we put forward, we need the \$2.1 million in order to do the implementation that we proposed. There's other ways that we could look at implementing e-filing, and I think we'd have to go back and study that a little bit. The other judges had talked about that we could use a vendor system, and that's something we could study, but we would also have to look at what the costs would be to filers if we did that, because they would go up. We could also look at enabling the current case types statewide for the 31 counties that are currently participating and make those mandatory. So there's different options for implementation, but I think we really would need to go back and study them. A county would really have a hard time going forward on its own, because currently CCAP writes the program for e-filing. That program currently can't accept all case types. So until that programming is done, no county can go fully on e-filing using the current CCAP system.

**PDR:** You have people on your staff who are currently capable of doing the programming for e-filing?

**Jean Bousquet:** Yes.

**PDR:** OK, so you're asking for three additional as a statewide roll-out, but if it didn't go statewide right away, do you have staff that could carry this forward?

**Jean Bousquet:** If we used our staff that we currently have, we would have to reallocate them from the work that they do for the circuit courts, for the judicial dashboard enhancements and document scanning improvements and things for the clerks staff, and move that to the e-filing program.

**PDR:** OK, but you could move people around. You also have some vacancies, don't you.

**Jean Bousquet:** We currently have three vacancies that we are trying to move forward on hiring.

**PDR:** OK, well, as you're thinking about moving forward on hiring, are you thinking about folks that could handle what may need to be done for e-filing?

**Jean Bousquet:** For one of those positions we are, yes. One of them is a programmer that could do that type of work.

**PDR:** Not the other two?

**Jean Bousquet:** No. The other two are needed in other areas within the operation.

**DTP:** As I understand it, your revenues are already down. And what problems are—is that creating, and how does it relate to what we're talking about here?

**Jean Bousquet:** I would have a hard time wanting to fund the CCAP—or the e-filing program out of the CCAP program revenues and staff we have right now, because our revenues are down 24% for the last year, and going into this fiscal year they are remaining that low. We have had to make some really tough decisions about what hardware should we delay in upgrading, we've changed some of our equipment replacement time frames, we've really done a lot of new technology initiatives as wisely as we could, to make things basically make—make do with what we have for money going forward. But again, part of what we done—we've done is put off some of those purchases that we are going to need to make. So we're looking at making enhancements where we can get the same amount of technology out of less dollars. But at this point we really have very few places that we can go that we can keep making those kinds of returns on investment.

**DTP:** So really, you need more money to be made whole where you are now, without taking on a lot of these responsibilities.

**Jean Bousquet:** I think it would be dangerous to ask us to do it without having the revenue there, or some way to fund this or to implement it in a way that it is more taken care of not inside of the CCAP budget at this point.

**SSA:** Now, the governor's budget plans that, that you, CCAP would get approximately \$750,000. Now this comes from surcharges and cetera, so that's a guesstimate because we don't know how many—the surcharges will be and whether anybody's going to pay, and if so, how many of them will pay. And one of the things that were discussed in the meeting between the governor's representatives and the court, and I think Chief Judges, but at least with the court, was that that \$750,000, and I think it was per year but Jean, correct—

**Jean Bousquet:** Mm-hm.

**SSA:** —it was per year, could be used—that's a million and a half, so I mean, that's half, or almost—more than half what you wanted—could be used at least as a starter for CCAP, but that I was told by you, and this is what I advised the Legislative Fiscal Bureau, that can't plan that way because you need that basic money, whatever it turns out to be, to just cover your ordinary, usual, continuing business needs. I mean, that's—because your revenue is decreasing every year and the, quote, carryover keeps going down, and it doesn't look as if it's going to change.

**Jean Bousquet:** Correct.

**SSA:** So that we can't plan on using any—really any significant part of the \$750,000 if you see it at all.

**Jean Bousquet:** Yeah, I would advise against that. Again, if you look at what we've been operating under for our balances and how they've gone down the last five years, it's been really difficult to keep a beginning balance where we feel comfortable that there's money in the bank to pay the bills and to recover the different hardware and replace it on time so that systems aren't down. I mean, we've been very lucky that the CCAP systems are up and we've been able to recover disasters in different counties. But every year when we are underfunded, that puts some of those response times and our abilities at risk.

**PDR:** So you would prefer, then, that we not do e-filing if we can't also find \$2.1 million.

**Jean Bousquet:** I would love that we do e-filing. I think that the committee needs to look at other options that we can make that happen. I just think it's important not to think that we can get it out of CCAP's base budget.

**PDR:** Well, my question, though, to you was, if we can't find \$2.1 million, then you would prefer that we not implement this mandatory e-filing?

**Jean Bousquet:** I think that we may have to look at other options where it won't cost \$2.1 million, is what I'm saying.

**PDR:** OK.

**Jean Bousquet:** If we made the time frame longer, or we come up with different ways to do implementations, we should still go forward with e-filing if we can.

**PDR:** That might be able to give us some different proposals to look at, other than the ones we have so far.

**Jean Bousquet:** Mm-hm.

**PDR:** OK. Thank you.

**SSA:** I'll ask you the same question I've asked them. Regardless of the money at the moment, you want these rules in place, that was my understanding—

**Jean Bousquet:** Yes.

**SSA:** —from you and from the Chief Judges.

**Jean Bousquet:** Yes. I think we have good momentum on e-filing—

**SSA:** The answer is yes?

**Jean Bousquet:** Yes.

**SSA:** OK. I had another question that came up here, I asked about the amount of money. And the other question that came up was fees by government or public entities. What's the plan on that?

**Jean Bousquet:** Well, the plan is that none of the government filers would pay the e-filing fee. So that would be local municipal courts, local agencies, county agencies, and state agencies. They would all be exempt.

**SSA:** And that would push up your guesstimate of the private bar paying, what per filing?

**Jean Bousquet:** Right. So we're—

**SSA:** And it's per case filing, not per unit filing, not per document filing.

**Jean Bousquet:** Right, it's per case. We currently charge \$5 per case. We took out all of the government filers, recalculated, and were able to set a \$5.75 per case charge.

**SSA:** I rounded that out to \$6.

**Jean Bousquet:** Mm-hm.

**DTP:** Does this apply to municipal courts, too?

**Jean Bousquet:** No. No, CCAP does not have any systems in municipal courts, so we don't really have any interaction with them, so no.

**DTP:** Well, I know in my home county, say the city of Appleton, it does not have a municipal court. All the municipal cases come into circuit court. So it would apply to them.

**Jean Bousquet:** Correct. So any filings in circuit court, it would apply to. So a city attorney would need to e-file through the e-filing system.

**DTP:** Do you see this as applying to municipal courts someday?

**Jean Bousquet:** I don't know.

**SSA:** They don't have CCAP at all. So they don't have our computers, because they're not—they are part of the state, but they're paid for, the municipal courts are paid for by the municipality, right?

**Jean Bousquet:** Mm-hm.

**SSA:** So they don't have our computers. They may have computers, right? But they're on the city system.

**Jean Bousquet:** Right.

**SSA:** So if we're going to do e-filing, we'd have to start at the baseline of computers, and CCAP meaning the basic data, financials, et cetera, and then e-filing. I mean, by now we have that down pat, I think, so you might put them all in at one time rather than pilot it through the



municipal courts, but maybe you'd have to pilot it, but they're not on CCAP at all. Which is not to say they might not want to be, right?

**Jean Bousquet:** Someday, with funding. Again, that—that's another project, I think.

**SSA:** That's huge, because there are roughly, what number did we learn? At least 250?

**AWB:** 250, that was—round—or it was even 270, I think, yeah.

**SSA:** Rounded out, or even more than that, yeah. Those are the two questions that I heard and marked down during the conversation. Are there any other questions you'd like to ask Ms. Bousquet? "BUS-ket" is the way you pronounce it.

**Jean Bousquet:** I say "BOS-ket," you can say it however you want. [laughter]

**SSA:** And we had this discussion about whose family name it is and how the family pronounces it, and which side of the family. Thank you very much, Ms. Bousquet. OK, are there—anyone else wants to make an appearance? If not, then we can hear a final word, if you wish, from either Judge Wirtz or Judge Koschnick. Your choice. Flip the coin, coin flip.

**Judge Koschnick:** Thank you for your interest, Justices, in this petition. I'd just like to reiterate that the Chief Judges are unanimous, the committee has been working on this for about two years, we've been working hard on it, putting a lot of thought into it, we're confident that this rule is the appropriate way to implement e-filing and step into the future, which is inevitable upon us. So thank you for your time and your consideration.

**SSA:** Judge Koschnick, ordinarily I keep a list of what people have said should be changed and revised and things that come up, and I did not hear, although I discussed with you several of them, and you did file a change, and the Legislative Reference Bureau, to whom we always send these proposals, had a suggestion about the definitions and having substantive matters in them. I looked at them and it sort of escaped me, but I'd be happy to look at them again, and if you have any comments of any changes that you think had to be made—

**Judge Koschnick:** Other statutes?

**SSA:** Of the rules proposal, that should be made before they are adopted, if they are adopted. Do you have any changes that you want to be made? No.

**Judge Koschnick:** No. The rule as proposed, with the exceptions we talked about today, removing the end date and the clarifications which are really typographical in nature from Judge Wirtz submitted a week or two ago.

**SSA:** Thank you. Any other questions? Judge—

**DTP:** Why don't we let Judge Wirtz speak as well.

**Judge Wirtz:** The one technical clarification that was added, which I think has been referred to as the letter that I sent to the court, and that was to clear up the idea that if someone submits a document and asks for a fee waiver because they're indigent, that the time of filing would relate back to the date of filing, even though the judge granted the fee waiver subsequently. So if the judge subsequently grants the fee waiver, the date of filing is the date of filing, not the date the judge approves the fee waiver—

**SSA:** I read that one.

**Judge Wirtz:** —That was the only technical clarification. Other than that, as Judge Koschnick indicated, the request is that the rule be approved as a mandatory e-filing, to realize the efficiencies of it, and this is the considered opinion of many people who have worked on this. Thank you very much.

**SSA:** Thank you. I, on behalf of the court, want to thank Judges Wirtz and Koschnick for chairing and leading in the discussion, and for their efforts in vetting this rule in various venues so that it was appropriately tweaked to gather the support that it got. I want to thank Judge Storck and his three colleagues from Dodge County for appearing. Always thank the Wisconsin County Association for their aid and assistance, and I want to thank the Public Defender's Office, who worked very hard on this petition, and met with the Chief Judges and attempted to come to a conclusion about the fee, which was really a basic issue in August on this petition. So thanks to all, and thank you to our staff, Jean Bousquet, for all her hard work and her understanding of this, Marcia Vandercook for her efforts in working with the Chief Judges and if I left anyone out, so be it.

**PDR:** I have a request, even though—and I should have asked Jean Bousquet when she was up. I wonder if I could recall her for just one questions. I had it on my initial notes and then I'm writing so much here I forgot to go back and look.

**SSA:** Absolutely.

**PDR:** My question to you is this. As you put together e-filing, have you or CCAP generally in the criminal area, got a coordinated defendant number with Department of Corrections, so that we can go back and forth on sentencing and what our courts are doing?

**Jean Bousquet:** Yes, we actually received grant funding, I believe last year—

**PDR:** OK.

**Jean Bousquet:** —the DAIT system, so Protect, which is the DAs' case management system—

**PDR:** OK.

**Jean Bousquet:** —DOJ, and CCAP all received funding, and what the funding was for is to take the SID, which stands for State Identification Number—

**PDR:** Exactly.

**Jean Bousquet:** —and share that between DOJ and the DA, and then once the DA has that, they will send that document, the complaint and all the data that they need to send us, and the SID information so that we can populate the CCAP case management system. That same SID already goes to the Department of Correction, so all of the criminal justice systems will have that same number for each defendant.

**PDR:** I think DOC has had an identifying number for a long time, but our problem has been the courts haven't used the same identifier.

**Jean Bousquet:** Right. And they had a DOC ID, so now everybody's going to use a statewide identification number, so every person will have one number in all the systems.

**PDR:** Good. Do you know when that will be implemented?

**Jean Bousquet:** Our part is done, the DAIT part is done, DOJ had more work to do on that, and they're—they said they were a year off at least six months ago, and they get a little behind on some of their grant projects—

**PDR:** OK. All right.

**Jean Bousquet:** —I'm not exactly sure where they are on that one.

**PDR:** OK, good. Thank you so much.

**SSA:** Who funded it, Jean?

**Jean Bousquet:** It was the NIC grant.

**SSA:** Thank you. All right, I'll take the chance. This ends the hearing. [laughter] All right. We close the hearing on 14-03, In re creation of Wis. Stat. 801.18 relating to mandatory electronic filing in the circuit court and conversion to electronic circuit court records. We concluded that the court's magic hour is 5:30, but it's 4:51, so the court will be back in about 10 minutes and see what we can do in a half-hour. We are adjourned in hearing. We will be back for a open rules conference.

\* \* \* \*

**(Wisconsin Eye video, part 2 – open conference)**

**SSA:** . . . petition, and we concluded a hearing on 14-03 relating to electronic filing. You have a petition before you with the Wirtz amendment. Did the Legislative Reference Bureau do anything other than say they thought the definitions were—had substance in them? Did they tell us where it had substance in them?

**Julie Rich:** Yes. The Legislative Reference Bureau had a couple of very minor technical proposed changes. I've spoken with Marcia Vandercook, and they don't have an issue with minor things like changing "paragraph" to "section" and things like that. The reference was in proposed (e)2. and (e)3., which the LRB recommended be removed from section (1) to section (2). It's my understanding that the committee doesn't think it's necessary but doesn't oppose it, either.

**SSA:** OK, just give that to me again. What's the numbers?

**JR:** So if you look on the original petition—

**SSA:** I am.

**JR:** —on page 2—

**SSA:** All right.

**JR:** —sub (e), the electronic filing system. Sub (e) 2. and 3.

**SSA:** Right. These are in the definitions

**JR:** And the LRB made the point that this language is arguably more substantive than definitional, and might be more appropriately placed in sub 2. They do not think the language should be removed from the petition or revised, simply moved. And my understanding is the committee, the petitioners don't really think that's necessary, but don't strongly oppose it.

**SSA:** That's (e)1., 2., and 3.?

**JR:** It's (e)2. and 3.

**SSA:** Not (e)1.

**JR:** Correct.

**SSA:** OK. Just (e)2. and 3. All right. And they would move that to?

**JR:** In subsection (2).

**SSA:** And that is on . . . there's a subsection (2) on page 3.

**JR:** I'm looking at my LRB comments to give you the exact placement.

**SSA:** Yeah, because it's not there because that's the effective date.

**JR:** The LRB simply says, "Could it be moved to part (2), sub 2?" And so we would have to find an appropriate placement for that.

**SSA:** I don't disagree as to subsections 2. and 3. I would disagree about 1., and you have to take out the number 1 there.

**JR:** Yes.

**SSA:** OK. All right. What else has to be changed?

**JR:** The court is already aware of the amendment put forward by the committee, which would request a clarification in the timing of indigency filings, to ensure that if an individual seeks a fee waiver, if it is approved, that the filing date relates back, which of course is consistent with what happens with paper filings. I think it was actually quite clear to begin with; this makes it

extremely clear, so I think it's a good change. The only other change I would request the court consider was Staff Attorney Ken Fall from the court of appeals, who wrote in his individual capacity, not as a court of appeals staff member, did make the observation that in sub (3)(a), the rule as drafted requests all licensed attorneys register for e-filing.

**AWB:** Register what?

**JR:** For e-filing.

**SSA:** E-filing. That's on page 5.

**JR:** Correct. And his point is that many licensed attorneys in Wisconsin will never file in circuit court, and that perhaps this rule could be very easily amended to say "attorneys who will be filing in circuit court." Because it's a "shall," so if you have a licensed attorney who doesn't register, they're technically in violation of the rule. And I don't think we want to create that situation. So I would recommend a very minor editing change, and my understanding from speaking to Marcia Vandercook is that the committee's comfortable with that as well.

**SSA:** Well, something should be done because I'm a licensed attorney. I don't practice law, but I'm a licensed attorney.

**JR:** And I think initially the thought was, apparently the system for doing this is the same as what's used for CLE, so the assumption was, oh, well, that's very easy, they can just use CLE, but of course all of you know, court staff have judicial education so we're not subject to the same CLE registration and filing requirements, so . . . but again, I think that's a very minor, ministerial change and easy to make.

**PDR:** How would it read, Julie?

**JR:** I would absolutely want to run it by them, but my thought was, if I can turn to page 3—

**SSA:** I'm on 5 now.

**PDR:** It's on page 5, is that where you are?

**JR:** I'm sorry, page 5. Yes. "Licensed Wisconsin attorneys who will be filing documents in the circuit court" or something along those lines. I would absolutely want to check it with the petitioners to make sure they're comfortable with the language, but again, I think it should be a relatively easy change to make. And one other request that was made—

**SSA:** Just a minute, Julie. Dave, you—

**DTP:** What is SCR 10.03(4)?

**JR:** Those are the State Bar rules, and—may I ask where you are? I don't know what SCR 10.03 sub—

**DTP:** Right under “licensed Wisconsin—”

**JR:** Oh, that's pro hac vice. Pro hac vice. And then one other suggestion, which does not require a change to the text of the rule but was raised, and I think there's consensus that it's a good suggestion, I believe it was Department of Children and Families indicated that it would be useful to have a procedure by which they could go in and delete access for former employees. And I imagine any number of agencies would like to have that capability, and I think that's something—my understanding is that CCAP is more than happy to work with them to develop that technology. That's not something that would require any change to the text of the rule to implement. But that was a suggestion that was made by one of the interested parties that is very worthwhile

**SSA:** That was in Secretary Anderson's comments. I missed that, but I am concerned about a paragraph I read about PDF, moving from PDF to Word if I remember it properly.

**JR:** That was another suggestion that was made, and my understanding again is that CCAP is willing to work with them technologically. The orders are submitted in Word format, so that they can be edited, and then as you heard, when a judge signs the order electronically, it is converted to PDF so that it cannot then be altered, the text can't be altered by anyone. Just—pretty cool, actually, if you think about it.

**SSA:** Well, we had this discussion at a staff meeting about, that they could—the printer here has a way of changing it from one to the other, but that it can also be attached to each of our computers.

**JR:** Yes. In fact, it's probably on most of our printers, and—

**SSA:** And maybe computers—

**PDR:** We can't do it on our computers today.

**SSA:** I know. I know, but that's what I'm saying, that's what they may need.

**JR:** They may need that. I think they're actually looking for the opportunity to edit PDF text, and I don't know if that's something that is presently available on all of our systems. We can certainly convert Word and PDF.

**SSA:** OK, well, that will have to be looked into.

**JR:** Yes.

**SSA:** It's not—what shall I say—it's not solely an e-filing issue.

**JR:** It is not solely an e-filing issue, and it's also not an issue that requires any change to the text of the rule. It's more a facility of implementation.

**SSA:** We should make a list of that, Julie, so that assuming—[Julie holds up list]—thank you, assuming that it's passed, that we take care of these, what I call peripheral issues. All right, anything else that we have to know? Dave Prosser.

**DTP:** Should we amend the rules involving pro hac vice so that these people get some sort of explicit notice?

**JR:** My understanding is that because this rule includes lawyers who are registered pro hac vice, that they are then—they are automatically part of the system, because they will also be required to file electronically once—if the rule's approved and goes into effect, and then they will receive notice. So I believe—I don't think it's going to require any amendment to the pro hac vice rule for this to be implemented.

**DTP:** How will they receive notice?

**JR:** Well, because they will have to register—so, at present, as you recall, a couple of weeks ago in fact, the court approved amendments to the pro hac vice order that would enable OLR to begin electronic registration and filing of pro hac vice, which is a project that they are working on, and that would enable the entire process to be streamlined, really, from start to finish, where a lawyer from another seeks admission pro hac vice, can file their application electronically, submit it to the circuit court who can approve it, and then with that approval the lawyer is then authorized on a temporary basis to practice law and can then go ahead and file. And they would be subject to the e-filing but they would register the same way as any other lawyer who—under the rule. And my think—and my understanding—I don't know the specifics of the technical processing, but I assume they would get some kind of temporary password for the duration of the case or what have you, so that they could participate in the e-filing system.



**DTP:** I didn't—I'm not sure I quite understood. Do they get notice that they must register if they are pro hac vice?

**JR:** So you're ask—if I'm understanding—I think—I was thinking you were asking a different question. Is the question you're asking, should we change the rule to make it clear that pro hac vice attorneys need—

**DTP:** Simply—all the things that people have to do to become pro hac vice, now they have to do one additional thing—

**JR:** I see what you're saying.

**DTP:** —[inaudible] make sure they know that.

**SSA:** Well, how do—

**AKZ:** Don't they always have local counsel?

**SSA:** Pardon me?

**AKZ:** They have local counsel—

**SSA:** How do the other—

**AKZ:** —their local counsel would have—

**JR:** They do.

**AKZ:** —all of this implemented, so I don't know that someone who is admitted pro hac vice would have to duplicate that effort, right?

**SSA:** Look, how do people, how do lawyers that are licensed in this state get notice that we're going to get the electronic filing and that they've got to get PIN numbers or identification numbers or whatever?

**JR:** They read the rule.

**SSA:** Pardon me?

**JR:** It's in the rule, and—

**SSA:** Well, there's going to be education and training—

**JR:** —they're subject to the rule, and—

**SSA:** —so I'm not sure—so, I hear your question as saying, Dave, do we have to do something special for pro hac vice rather than what we do for all the other lawyers in the state. Is that right?

**DTP:** It just seems to me, your concern, Julie, was some people are never going to use this system.

**JR:** Correct.

**DTP:** And let's be fair to those people. Here are people that may not come from a state that has this kind of e-filing.

**JR:** That is correct.

**DTP:** It should just be fair notice, is all I'm saying.

**JR:** I have a suggestion. The OLR has a very detailed question-and-answer web page, on the OLR web page. So if you were to go and Google "Wisconsin" and "pro hac vice," you would pull up the Office of Lawyer Regulation's question and answer, which has very detailed questions. For example, when Justice Crooks suggested that if you are moving the admission of a bar applicant, you shouldn't have to pay a fee for pro hac vice admission to move a person. And so that's on there. That's an example, to clarify that people like that aren't required to pay a fee. That would be a very easy place to put this, to put people on notice that if the rule passes and is adopted, that the lawyer admitted pro hac vice should check with the county to see if e-filing, and then it could cite to the e-filing rule.

**SSA:** Could have a notice right at the bottom of whatever form they file for pro hac vice that says some counties or all counties or check the county because there may be e-filing, whether it's mandatory or voluntary, there may be e-filing, so just could have a little notice on the bottom of it. Is that what you were thinking, Dave? Something like that? Yeah. Could put it in any number of places. And if this passes, I would strongly urge the Bar to put on various information materials that they put out that, check for e-filing in the particular county and what you have to do to get on the system. I mean, they would phrase it a little differently, but that's what the phrase would be. OK?

**DTP:** [to Julie] Do you have to do this, too?

**JR:** Well, as drafted—

**DTP:** Everyone at the table has to do this?

**JR:** Register for e-filing? Well, if you make the change that Attorney Fall recommended, no, you would not. Not unless you were going to file in circuit court.

**PDR:** Most attorneys do not practice in court. They never go to court. And just the volume—I mean, my older daughter's a transactional lawyer. She never goes to court, she never does anything in court. If she needs something done, she hires a lawyer that, that's what that lawyer does, proceeds in court. So I think there are a lot of lawyers that have a business practice, and they really don't come to court. So they wouldn't be included if you make this change, is that right?

**JR:** That's my understanding.

**AWB:** I would assume that you should give attention to filing documents with the circuit court. What about the appellate court?

**SSA:** It's not covered by this rule.

**PDR:** Not covered by this rule, supreme court and court of appeals are not covered.

**JR:** I think as this is a circuit court rule I would agree with that, at this point. It's something that, to bear in mind if—

**AWB:** How does that intersect, do you think, with pro hac vice?

**JR:** My understanding is that pro hac vice, once admitted, continues through the course of the representation up through the appellate courts.

**AWB:** Yes, but if it just starts in the appellate court, then what happens?

**JR:** Then we don't have e-filing, so we don't have the—we don't have this system, necessarily, so I don't think you would have the same technical requirements.

**AWB:** Yeah, the only reason I get into that is because the attorneys appearing under 10.03(4), and I understand this applies to the circuit court, but just take a look at that—

**JR:** I will.

**AWB:** —and see how they fit together—

**JR:** OK.

**AWB:** —the 10.03(4) and—

**SSA:** You have to be careful; that may not be totally up to date. [referring to book AWB is looking at]

**AWB:** Yes, I know that.

**SSA:** OK.

**AWB:** Most of the change is in dollars and cents, however.

**SSA:** All right. All right. Any other comments? Well, I note the changes, and I note the—what I call the peripheral questions, and I think we should put pro hac vice in that peripheral too, and notice. All right.

**PDR:** There were also some changes suggested before us today, and I think the first one that I wrote down is (2)(b), and in the last sentence of (2)(b) there should be a period put after the word “counties,” so that you would eliminate “which shall be no later than December 31, 2018.” So that would come out, and then also the statement of commencement says electronic shall begin no earlier than January 1st. It doesn’t say it has to be done by January 1st of 2016, and since money is tied up with how we’re going to do this and when we’re going to do it and if we’re going to do it, I’d like Julie to draft some language that gives the court some flexibility about when this would begin. And that would be in (2)(b), and then I look at (2)(d), and I think the introductory phrase “Beginning on January 1, 2016” in (2)(d), and then at the very end it says “beginning on January 1, 2016,” I think those two may—we may think about taking those out.

**SSA:** They don’t cost any money, do they?

**AWB:** That’s what the—that’s what the people who appeared said, it didn’t cost any money.

**PDR:** It’s not a matter of—we’re talking about when electronic e-filing begins, and this is talking about using uniform signature technology statewide.

**SSA:** This does not require that it begin on January 1, 2016.

**PDR:** Well, section (d) says, “Beginning on January 1, 2016, the electronic filing system shall use a uniform signature technology statewide.” OK, so, it does, unless—

**JR:** I think you’re both right. My understanding is that the electronic signature requirement would commence on January 1, 2016—

**PDR:** That’s right. And I’m not sure that it’s—

**JR:** I’m—

**PDR:** —wise to have some pieces coming in, some pieces not coming in, to me that doesn’t make a lot of sense, to be honest with you.

**SSA:** It can come in under the voluntary system as I understand. And have it, have this filing. As I have read this, this gives the Director of State Courts the decision as to when they’re going to roll this out, if they’re going to roll this out. We could adopt this and it could never get rolled out for any number of reasons. And I don’t think we should do anything that would stop us having a system for rules for electronic filing. I don’t think this requires that any county do that. It doesn’t require that the Director of State Courts do it at any particular time, but he’s—he/she is to do it before January 2016, and my understanding was that was so people could be educated and have an opportunity to see if they really want to be brought into that system. Now where’s the provision that says that “the Director of State Courts shall”?

**JR:** It’s (a), (2)(a) that you’re thinking about.

**AWB:** (2)(a) and (2)(b) are read together, and that gives the flexibility that you’re talking about, Chief, when you read them together.

**SSA:** Right. [reading] Mandatory use shall be phased in according to a schedule set by the director. (2)(b). The schedule may proceed county by county and may require or exempt electronic filing for certain types. The first shall begin no earlier—it doesn’t say it shall begin on, or after—no earlier, and continue as established by the Director until the system has been implemented in all counties, and you’re absolutely right, Patience, we take out the tail end, which is what Judge Koschnick said, because you don’t know how long it will take to roll this out. But—and there’s another provision you need in here the makes it very clear that it’s up to the Director’s Office as to how this gets rolled out and when. So it’s not—it says it’s mandatory. It’s mandatory if it comes to fruition.

**JR:** Except for the electronic signature requirement.

**SSA:** Yes, but that they said they could do that—would do that under the voluntary, too.

**JR:** My understanding is that it would facilitate the voluntary—

**SSA:** Right.

**JR:** —because it takes out a layer of the technology that has been cumbersome for people

**SSA:** That's right, and it doesn't cost anything. That's my understanding of that. And—

**PDR:** Also—

**SSA:** —if I'm wrong, then we should get that clarified.

**PDR:** Also—

**SSA:** Later.

**PDR:** Are you finished? I'm sorry. I don't mean to interrupt you.

**SSA:** Yes. Mm-hm.

**PDR:** The State Public Defender also wanted a statement of exemption for the State Public Defender, and I think they suggested it might go in (2)(b) after the first sentence, or it might go in . . . I think they suggested (7)(c), that's what I wrote down, and that's just my notes, and—but I think we should consult with them and see what works best for them—

**SSA:** Well—

**PDR:** —and where that might be put in.

**AWB:** (2)(b) is what they talked about.

**SSA:** You know, we should not—

**PDR:** 'Cause they don't want to get charged the fee—

**AKZ:** Fees are in (7).

**PDR:** That's right, the fees are in (7). And that's—that's why they brought it up, and then as she was talking, it was suggested that it might also be exempted in (2)(b). I don't know where it should go, because I was just listening to what was said today, but I think we should talk with them and see where they think it will work best for their, you know, their use of this system, and then get some language and stuff that they think is OK before we—

**SSA:** It's not only—

**PDR:** —decide what to do.

**SSA:** It's not only the public defender. It's all of the governmental entities.

**PDR:** Well, then that should be written in, too, so we know what it applies to.

**SSA:** That's what I'm—I agree with that.

**JR:** In that instance, would it be permissible to consult with the petitioners about some language, because they've had the conversations with the various agencies—

**PDR:** Sure.

**JR:** —and where it would be most appropriate? My understanding is as well that they might make the recommendation that that go in the Director's policies that are to be developed.

**SSA:** Yes. And there's a provision, and I think it's statutory, that authorizes the Director to charge fees, and that the Director could then do that under the rules and regulations as to who would be exempt, because that is the understanding under which this rule has been presented today. And it's not limited to the Public Defender. It's—it also covered the child support. There's no need to deal with it in the DA's office because that's—they not pay—they're not going to pay fees anyway because it goes to them because of their data system.

**PDR:** I thought—I thought the Public Defender's Office was concerned about the fees, but also concerned about being pulled in when they weren't ready to be pulled in in a particular county, because they cover so many counties and their ability varies, they don't have the laptops that the DAs have to use in court, and the other things. So I'm just concerned that we not work a hardship on them when we're trying [inaudible].

**SSA:** They asked that they be given notice when a particular county was going to be ready for this, so they could prepare their staff and their technology.

**JR:** So I will follow up to find some suggestions on the best way to protect the SPD and the agencies.

**SSA:** There may be others, in terms of the fees. The only ones that discussed the technology and the need for notice is the State Public Defenders. Anything else? Dave.

**DTP:** By taking out “which shall be no later than December 31, 2018,” I’d just like on the record, that does not change this to a voluntary system.

**SSA:** No. What it does is give this, the roll-out, more time. So there is no requirement here as I read this that it has to begin in 2016 and there’s no requirement that it end, the roll-out end at a particular time. And the reason that—well, it was never to be required that it had to begin on 2016, it was always within the Director’s discretion, as I understood this rule. And the reason for the latter date of when it would end fit in with our two-year funding and roll-out generally, so it would be about two and a half years, the way this was going to be set up.

**MJG:** It’s—it’s after 5:30 and I do have an appointment, so—

**SSA:** OK. Maybe we could have a motion, since we’re so close, I hope.

**AWB:** I move that we approve the petition subject to the exceptions that were stated here today. One is a technical clarification, Judge Wirtz talked about that in his letter, if someone asks for a fee waiver the time of filing date goes back to the actual filing date, not the date this it was granted. Another request is that we change the end—that we remove the language giving the end date of 2018. Also I understand there are no objections to removing (e) 2. and (e)3., Julie, as we had discussed—

**SSA:** Moving them elsewhere.

**AWB:** Moving them elsewhere, that’s correct. Also, with regard to what is on page 5 of the petition, I understand, and we just had that discussion with regard to (3)(a)., we’re going to address licensed Wisconsin attorneys, additional language will be added, and the February 4, 2015 letter of State Public Defender Kelli Thompson also sets forth the concerns with regard to the State Public Defender, and those concerns will be honored. And those concerns were raised at least in part not just for the SPD but also to all state agencies as set forth in that February 4, 2015 letter. And I think with regard to the text, that is it for the changes—

**SSA:** And notice, the PD asked for notice be given as they go into the counties.

**AWB:** That’s correct. I don’t know if that was a textual change, though—



**SSA:** I don't know.

**AWB:** —I didn't understand that to be. I understood that to be an implementation for the Director. So, with those textual changes, I move the approval of the petition In re the Creation of Wis. Stat. 801.18 relating to mandatory electronic filing in circuit courts and conversion to electronic circuit court records. 14-03.

**SSA:** Is there a second? I'll second it.

**AKZ:** Would you be willing to accept a friendly amendment? I—my only concern, and maybe it's not one that will come to fruition, but we are in a time where we don't have any idea what our budget is going to be, and we don't have any idea where this money is going to come from. And to pass a rule that is hollow doesn't make sense. To pass a rule that's meaningful does make sense. So the amendment would be to try to pass it with the provision that funding would be first established and approved by the court.

**AWB:** I want to be friendly, but I wouldn't accept that amendment.

**AKZ:** That's fine.

**AWB:** I think we go in different directions on this and that, you know—

**AKZ:** Fair enough. I just thought I'd throw that out there, because that's my concern and I don't want to spend undue time talking about it.

**AWB:** I mean, several witnesses in a row, in response to a question of, can this be implemented without any money attached to it, so we set up the structure, we set up the, what was it, the sewing machine, got used as the analogy, and so I think we can pass this without having— regardless of money. Judge Storck was asked that, Judge Koschnick was asked that—

**AKZ:** [inaudible] \$2.5 million dollars—

**AWB:** In fact, in response—

**MJG:** \$2.1 million dollars.

**AKZ:** [inaudible]

**AWB:** —in response to the question of the Chief to Judge Storck with regard to the fiscal impact, he asked—he said absolutely there would be no need to have the money before this could be passed. And, you know, the other judges said the same thing. So I understand your concern, and I—and I know in the past both you and Justice Roggensack have voiced those concerns, you voiced those concerns when we voted I think in November about having a, you know, a public hearing. There’s just a different approach and a different sense on this. I think this is ready to go, I think the time has come to pass it, not necessarily the time to fund it, but the time has come to pass it.

**MJG:** And I—once there’s a vote taken on this motion, this motion which I’ll be voting against, I would move to table this matter until such time as we do have a Director of State Courts and this—the entirety of the court may be fully advised as to the financial implications for the court, what cuts, if any, are going to have to be made in other areas in order to pay the approximate \$2.1 or \$2.5 million when we do not know what our budget will be as of yet. While the governor has made a proposal, the legislature has yet to—as far as I know, they have not approved it, and they have not voted against it. So I think it only prudent to wait until we understand what the financial results for this court will be before we vote on a program that, if implemented, could cost the taxpayers of this state over \$2 million. So that would be my competing motion, assuming Justice Bradley’s motion does not pass.

**NPC:** Justice Bradley, let me ask you this: Do you think that by going ahead today with this that we send some kind of a message to the legislature that, hey, we’ll find the 2.1 million? Is there that danger in going this far today?

**AWB:** No—

**AKZ:** I’ll tell you, I think so, which is in part why I said we ought to be careful, just to act like we have an extra \$2.1 million sitting around to fund this, because we don’t know what we do or don’t have.

**AWB:** So—

**AKZ:** And Ann’s response is there is no fiscal impact. We hear different things.

**AWB:** And I think—I think we can state loudly and clearly today, and tomorrow, and the next day, that his passes without need—regardless of money, that we know we have financial matters to discuss, budgetary issues to resolve, but putting this in place has been requested by, with the same knowledge, all 10 of our Chief Judges unanimously support this. And the clerk of circuit courts, quite frankly, some of the people that are really on the ground having to deal with this, they say in their letter, not just that they support it, that they *strongly* support it, and

unanimously. So I listen to them and there's strong, unanimous support from both of the organizations that I think we do and need to rely on. I don't think this requires one—a commitment of us to fund this at all at any particular date. As set forth, it will not be effective before 2016, but I'm not sure when it will become effective, and we can say that loudly and clearly, because each of the witnesses, Judge Koschnick and—I can't—I have to look at my notes for Judge Wirtz—but Judge Storck and Judge Koschnick were strong on that and unequivocal, in my mind. So that's just the way that I see it.

**SSA:** The county association, too.

**AWB:** And the county association also, that's right.

**MJG:** The county association seemed most concerned that they don't have to pay anything.

**SSA:** Exactly.

**MJG:** Which is a totally understandable response. But Justice Crooks, sir, I—I appreciated your question, I just, unless I may have missed something, sir, I did not hear a response to your question in what Justice Bradley said. And if you did, I'd be interested in knowing what your understanding—

**AKZ:** I did.

**MJG:** What?

**AKZ:** The answer was the same as it was to me when I made the friendly amendment. Her answer is there is zero fiscal impact, there is no money—

**MJG:** So it doesn't send a message to the legislature that we are going down the road spending \$2.1 million—

**AKZ:** Right, because it isn't 2.1. It's zero.

**MJG:** It's zero. OK. Sure.

**SSA:** And Jean Bousquet made it very clear [MJG laughing] that if there were to be funding, it would have to be looked at for alternatives to legislative funding. [MJG laughing] We didn't even go in to the legislature and ask for the \$2.1 million in our response to governor—

**MJG:** [laughing] This may be why we're not taken very seriously when we ask the legislature for money.

**SSA:** Anyway, I think your answer to your question is, this hearing is loud and clear that it cannot, at the moment be funded, unless the legislature does fund it, which looks unlikely, and that this is a setup so that if and when we can decide to fund it, and there are other alternatives like private vendors, which are being used in other states, I would hate us to do that, but the point of the matter is, there are ways—other ways of funding. They may not be as good, we may not want them, we may never fund it until the legislature does give money. But this is a procedure by which counties who can fund it themselves, and there are counties that are doing that, that we have a uniform system that can be used by everyone.

**NPC:** I think this is an excellent proposal, but I'm troubled by what we've gone through the last couple of years with the legislature and the governor on lapses, I'm troubled by the fact that we have as part of this block grant proposal serious questions in regard to court reporters, serious questions in regard to the future of the State Law Library, and while I certainly think this is an excellent proposal, well thought out and something that certainly will be adopted in the future, I'm concerned. I'm concerned about what messages we may be sending. So that's what I'm trying to express.

**SSA:** Mm-hm. Well, we have messages to many stakeholders, and the message I would send to the Chief Judges, the message I would send to our staff, the message I would send to the judges and clerks across the state is that e-filing is here. The question is whether we are going to join it and when, and what steps we take. And to me, this is a small but significant step, and we should take it. But I certainly understand—I think I understand your sense, but I totally differ. And the message I think that we send to the governor and to the legislature is that this court system understands the responsibilities to the people of this state to run an effective, efficient, modern court, and that includes electronic filing. And if we have to go small steps at a time because we don't have the money, we go small steps at a time. But we are forward-looking and we understand the core values of this institution.

**MJG:** At the risk of stating the obvious, we do not have and we will never have an unlimited amount of money at our disposal. I do not understand this inexplicable rush. This is the first time I can recall some members of the court staying past 5:30 to even entertain a motion. I'm happy to miss the appointment that I made some time ago because it's an important matter, and I think—I appreciate what the Chief Justice says about sending messages, but I also note that I am going to guess that this matter is not the only matter of concern for Chief Judges for our state, the clerks of courts for our state, the circuit court judges of our state, or the staff. We are going to have some type of limited pool of money, which we are going to have to allocate in a fiscally responsible way. You—I keep hearing in response, "This doesn't cost anything. This doesn't

cost anything.” Well, it does, if a Director of State Court decides to implement it. And it will cost something, why would we pass, as Justice Ziegler says, a hollow motion? Why on earth would we do that? Why not? What is a couple of more months when we apparently have survived over 150 years in this state with paper filings? [AWB laughing] And I don’t hear— Justice Bradley, please enlighten me as to the humor of my statement. I—go ahead. You’re laughing at what I’m saying, so—

**AKZ:** You know what, it’s five to six—

**AWB:** Yeah, Mike, just continue.

**MJG:** Yes, you’re right, Ann, you just go ahead and—

**AKZ:** I mean, in part, that’s why Pat Roggensack sent out the e-mail saying why make all these people come here when you have no idea what our budget is, and that’s why I said why make all these people come here when you have no idea what our budget is. I mean, we’ve heard the— and the answer was, let’s hear them out, let’s hear what they have to say, getting the information can’t harm anything, we’ve done that, we’re in a good position, they did a great job, I appreciate their time, it’s a worthy cause, there are a lot of things that are worthy causes and we just met with one this morning. We have a lot of things on our plate and we’re going to have to figure out how the pie gets divided up. And if this is the best and highest use, it should go to this. If there’s extra somewhere that we don’t know about, maybe this is where it should go first. But right now it’s premature. What we have, we have received a lot of good information from people who have devoted a lot of time and attention, they’ve done a great job with this. A really good job. It’s not to say it’s not a good idea or that it won’t pass. But I—I’d be shocked if the people in this room don’t understand the idea that you need to know whether or not you can fund something before you mandate it.

**MJG:** Well, as Justice Ziegler so aptly points out, it is close to 6 o’clock. I would call the question.

**SSA:** Does anyone else have anything to say? Dave?

**DTP:** Yes. When is the next open administrative conference?

**SSA:** Dave, I think we have one more scheduled, in March, is it?

**Julie Rich:** April—

**SSA:** April?

**Julie Rich:** —I believe it's the 22nd or the 24th, but we have a—it's only a half day and there's a public hearing—

**SSA:** That's right.

**Julie Rich:** —on redaction.

**SSA:** Right. And that's a full day.

**Julie Rich:** There'll be very limited discussion time because you have bar admissions.

**SSA:** So, this is a—we should be able to do it now. Unfortunately you had to stay late again last night and didn't leave until about a quarter to six, but can we finish this?

**DTP:** Chief, it seems to me this is such an important matter—

**SSA:** I agree.

**DTP:** —that the court should really not be divided on it.

**SSA:** Pardon me? Divided?

**DTP:** The court should not be divided on it or send signals that it's divided. I have spoken with Jean Bousquet about the fact that CCAP is in an extremely vulnerable position without taking on e-filing. And it seems to me in some ways we thought that this wasn't a bad budget. That there were some things that we had to work on. But it seems to me clearer today that we're going to have to do more for CCAP and more to get some additional money so that we can truly go forward on this.

**SSA:** To go forward on other things, too, Dave.

**DTP:** Well, yes, but I mean, I would set this as a very high priority. So the signal that I want to send is that in principle, I'm 100% for this program. And, number two, that the court has to be fully engaged in coming up with some additional revenue for CCAP and for this program so that it's some kind of a pace we can implement. I sort of wish we could just table a motion I'd really like to vote for right now so that we're not divided, but that we're absolutely going to come back and bite the bullet on this, and work in the interim to get some money. I can't imagine that intelligent members of the legislature, if they listened to this debate, and knew the situation,

wouldn't understand that we don't want to send the signal that we have the money, because we don't have the money. But it is vitally important that we go forward.

**SSA:** That's right. And that's the point of the motion, that's why it was put on for today, and that's what Jean Bousquet said, and that—she was consulted before we put it on, and consulted as to whether it could and should be adopted even though we didn't have the money, and she thought it was important, as well as the Chief Judges. So I would like to see a court which is not divided, either, and frankly I don't understand this constant emphasis on it because—on money because the whole concept and the whole discussion over and over and over again today was that we needed a baseline, and that would be good for those counties that might be ready, it would be good maybe for certain lines of cases, but, you know, hey, vote as you see fit, and if you think it would help bring—

**DTP:** We have a half day, what day?

**SSA:** We have a half day, but I think we have some hearings—

**PDR:** 23rd or 22nd, around in there I think.

**Julie Rich:** Yes.

**NPC:** She said the 24th.

**PDR:** 24th, is it?

**DTP:** Could I ask the members of the court, could we set another date for this specific issue if it doesn't pass?

**SSA:** You know, we—

**AKZ:** That's why I made the friendly amendment, just so you know, because it really would make people feel like, I was here, I was heard, they think it's a good cause, they just need to find the funding. And it was rejected, so I don't know what to do with that because frankly, Dave, unless we know where we'll get the funding from, you know, we heard Jean say it can't come from her. You know, a lot of people want programs funded. I don't know where it comes from. At least I don't know yet. We don't even have a Director of State Courts yet. If we know for sure we'll have that person by the next time we have a hearing, and that person is up to speed on the budget, and where we're going to find the extra money, and that's not needed for anything that's a cause that we have to fund that's more important, then I think we're good to go.

**PDR:** See, I think e-filing is a great idea. I think this whole thing is premature. And I tried to keep us from getting to this point and having the public hearing because I think it's premature, not for the idea but for putting it together as part of our court system. You know, we won't know from the legislature probably until June what money we're actually going to get, OK? And we've got counties out there who are biting their fingernails because we owe them a payment July 1st, we don't know how much money we have, there's no longer the funding—

**SSA:** We don't owe them a payment.

**PDR:** —there's no longer the funding, so there are too many questions about the budget that we need to look at, and we don't have a Director of State Courts right now to help us proceed through all of that, but we have great staff. So I just think this is all very, very premature. I will be voting against the motion. I am not against e-filing. I am against the motion at this time. So I have to vote no on that.

**MJG:** Pat, if I didn't vote in favor of your motion to continue this matter, I apologize, not just to you, but to the people who went out of their way and took time and took the trouble to be here and to speak, because in my estimation, until we know the financial impact on other programs the speakers care about and other people affected by the court system care about, I believe it would be irresponsible to vote in favor of the motion. And so I would agree with Justice Ziegler in regard to the need for a Director of State Courts who has under statutory rule the obligation to prepare a budget, and the fact that we do not know what our budget will be for the next biennium, and I agree with Justice Roggensack that this discussion was premature.

**DTP:** I don't think this discussion is premature. I do not think it is premature, because if you're not willing to put yourself out there on good ideas, we will not be the court system we ought to be—

**SSA:** Amen.

**DTP:** —and we will not move the legislature to give us some more money.

**SSA:** Absolutely.

**DTP:** Now, it is absolutely clear that we have to get some more money from the legislature.

**SSA:** I agree.

**AKZ:** Well then, if the legislature funds this program, can we pass it with that caveat?



**PDR:** No. I'm not going to do that, Annette. I don't know what the legislature's going to do, and I don't know how we're going to fit together the block grants, if we get it the way the governor's budget says. We have a lot of work to do. Just to pull a thread out of the sky? It's a wonderful idea. I think we'll eventually get to e-filing, but—

**AKZ:** I meant if they added a line item for e-filing.

**PDR:** No.

**AKZ:** I mean, the likelihood of that is probably not—

**DTP:** If you make a motion, I'll second it.

**PDR:** Well, we have a motion pending and the question should get called on it. It's way after 6, and we'll have to take this discussion up another day.

**SSA:** Dave, we've got a rule hearing but I think it's a short day, and it's already scheduled. In May, the court meets zero days. I have several days for rules in June, and have gotten pushback on getting any open days and any oral argument days if there are any left that are open, the court refuses to use for, any opinion or oral argument days for this. So I think the answer is that it's not likely that this can be discussed before September.

**MJG:** I would ask that the question be called.

**SSA:** Is there any other discussion? All right, there is a motion to adopt—

**AKZ:** [inaudible]

**PDR:** Annette, please let her finish what she's talking about.

**SSA:** There's a motion to adopt this rule petition with the changes that were set forth by Julie and then summarized by Ann Walsh Bradley. There's been a full discussion, so there's a vote. Those in favor will raise their hands. The vote in favor is two, Justices 1 and 2, Abrahamson and Bradley. Those opposed, raise your hands. That's five, that's Justices 3, 4, 5, 6, and 7, Crooks, Prosser, unwillingly—

**DTP:** I want to move—

**SSA:** —Roggensack, Ziegler, and Gableman. You've voted and now you have the right to move to reconsider. Is that what you're going to move?

**DTP:** No, I'm not going to move to reconsider, but I am going to move that the Chief Justice be directed to set an open administrative conference later, before June 30, to take up the issue of e-filing.

**SSA:** I would be very happy to do that. I will set it for a day that is on our calendar so that all of the justices will be there. Since there is no date in May and I have a sense that the April dates are taken, but I will look at that. It may be in early June, Dave. If—

**DTP:** Well, I'd say it probably has to be June, because we really won't have any sense at all what the budget is—

**SSA:** I understand that, too,

**DTP:** —but we have been sort of paralyzed here by a lack of adequate funding, and we simply have to overcome this problem. And if we don't schedule another open administrative conference to deal with this, there will be not—there won't be enough effort to overcome this problem.

**SSA:** Well, I'll tell you. I am, as I said, and as I have done in prior years, meeting with leadership as well as every member on Joint Finance. I'm talking about e-filing and I'm talking about all the matters that we had, and we're proceeding on. I will, unless I hear otherwise at the table, I will set a date in June, and the subject will be e-filing.

**AKZ:** What we don't need is another repeat of today, where, you know, we don't know the answer, and we come out here and spin our wheels again. Because this was particularly unproductive for the last 45 minutes.

**MJG:** It is also particularly uncustomary for when one justice indicates that he or she relied on the 5:30 closing, that we go 40 minutes over. In fact, it's unprecedented, as far as I can remember. Good evening, everyone.

**AWB:** Dave, that was a motion?

**PDR:** I don't think you need to have a motion.

**SSA:** I think you do, because otherwise I have been unable to get an agreement, and I get an—

**DTP:** Chief, let's not vote on a motion.

**SSA:** All right.

**DTP:** If you try to set a date for an open administrative conference, and the rest of the court doesn't go—I mean, when we have some idea what the budget is.

**AKZ:** It has to be on a rule date, David.

**DTP:** What?

**AKZ:** For starters, it has to be on a rule date. Otherwise, it's contrary to the rules.

**Julie Rich:** There are two in June

**DTP:** Then I [inaudible] changing my vote.

**PDR:** My only concern about having it on in June is that we have a Director of State Courts, that we have hired that can help us with the budget before then. Otherwise, David, I'm very much in favor of what you propose. I would like to come back. I would like to come back with someone who has the authority to act on the court under the rules that we're looking at, someone who has a thorough understanding of the budget and how we'll act to allocate whatever pie we're going to get. And if we have a Director of State Courts on board, and it's the person I hope we're going to hire, I think June would be a good idea. So anyway, that's how I feel about it all.

**SSA:** I will set a June date. Whoever shows, shows. We've been here before with only a—less than a quorum. Is that your position, Dave?

**DTP:** Fine.

**SSA:** OK. Julie, we'll talk in the morning about a date so that we get it set early so it happens.