

453 Charles Ln.
Madison, WI 53711
February 27, 2015

Clerk of the Supreme Court
Attn: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

Dear Clerk of Court:

Please accept the following as my comments on petition number 14-03, regarding mandatory e-filing in circuit courts. I am a licensed Wisconsin attorney. I offer these two comments in my personal capacity, not as an employee or representative of any entity.

My first comment concerns proposed Rule 801.18(3)(a). In its current form, the rule appears to require *all* Wisconsin attorneys to register for access to the electronic filing system, regardless of whether they intend to participate in circuit court litigation. Subsection (3)(a) provides that certain listed individuals "shall register for access to the electronic filing system and shall use it for all actions and proceedings in circuit court." The first type of listed individual is: "Licensed Wisconsin attorneys."

As written, sub. (3)(a) appears to compel two separate acts. The first act is to register for access to the system, and the second act is to use that system for all actions and proceedings in circuit court. This language may not accurately reflect the intent of the petitioner. If it does not, further discussion from me may not be required to explain why the proposal should be amended. However, if registration by all Wisconsin attorneys *is* intended, I oppose that requirement for the reasons that follow.

Proposed Rule 801.18(3)(d) requires persons registering for the system to execute a user agreement. I do not see why attorneys who are not involved in circuit court litigation should be required to execute a contract agreeing to the terms of a system they will not be using. As an example of a problem such a requirement might cause, the user agreement may incorporate the following content of the above proposed rule: "To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system." Attorneys who are not involved in circuit court litigation should not be required to have this capability. Such a requirement could be an unreasonable burden for lawyers who work where personal use of workplace computers is limited, if those lawyers would now be required to create a separate,

personal method by which they can “produce, file, and receive electronic documents.”

My second comment is about the requirement that attorneys use electronic filing even when representing *only themselves* in circuit court. For private practitioners, this requirement may be easily met by the personal use of law firm technology and support staff for self-representation. However, attorneys for governments, corporations, or other employers that restrict personal use of workplace technology and staff are, as a group, situated more like other self-represented parties. Some self-represented parties who are not attorneys will have the personal technical ability to use electronic filing, but some will not, and therefore the rule appears to allow *all* self-represented parties to use traditional methods. Similarly, even though some self-representing attorneys may have the ready ability to use electronic filing, for others it may be a more significant burden.

Amending the rule to allow traditional filing by self-representing attorneys seems unlikely to impose a significant burden on the court system or opposing parties. I expect that attorneys would still be only a tiny portion of the self-representing population using traditional filing, as compared to the relatively large number of self-represented parties who will probably continue to use traditional filing in case types such as small claims, traffic, and family.

Accordingly, I suggest that the proposed rule be amended to limit its applicability to attorneys representing themselves. One way to do that might be to amend proposed Rule 801.18(3)(a)1. to add language such as the following italicized material: “Licensed Wisconsin attorneys, *other than those who are representing themselves.*” It would also be possible, if considered necessary, to add some kind of requirement that self-representing attorneys who do not want to use electronic filing must certify or state by affidavit that they lack ready personal access to the required technology or skills.

Beyond these comments, I take no position on the petition. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Fall". The signature is written in black ink and is positioned above the printed name.

Kenneth Fall