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Hon. Randy R. Koschnick
Director of State Courts

Sheila T. Reiff
Clerk of Supreme Court

February 19, 2021

Wisconsin Supreme Court
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: Petition 20-07, Appellate Electronic Filing

Honorable Justices of the Supreme Court:

On behalf of the Appellate eFiling Committee, I am writing in response to several comments on the proposed rules for appellate eFiling. We will be happy to elaborate further at the hearing on March 17.

1. Improving three definitions

The court has received a detailed letter from former Assistant Attorney General Christopher Wren, who practiced in the Department of Justice criminal appeals unit for many years. Mr. Wren suggests that the proposed rule needs more precise definitions of the words "bookmark", "hyperlink", and "word." The committee has considered these suggestions and has integrated some aspects of them into the proposed definitions. The committee offers the following amendments to the definitions proposed on pages 3-5 of Appendix A:

809.01 (3) "Bookmark" means ~~an internal link~~ a hyperlink allowing the reader to quickly navigate to different sections of a document.

809.01 (16) "Hyperlink" means ~~an external~~ a link allowing the reader to quickly navigate to a ~~source outside the document for information~~ location within or external to the document.

809.01 (35) "Word" means a group consisting of one or more ~~alphabetical characters~~ letters, numbers or symbols with a space or punctuation mark preceding and succeeding the group.

Committee explanatory note: Although the definitions suggested in Mr. Wren's letter reflect the way the technology works today across the broad spectrum of possible uses, the committee notes that the definitions in the appellate rules are generally short and tailored to the context of the chapter. The committee, in consultation with CCAP, recommends simpler definitions relevant to filing briefs and appendices, and capable of withstanding changes in technology so that frequent amendments are not required. In the eFiling system, "bookmarks" are best understood as internal to a document. "Hyperlinks" may be internal or external, but how the system incorporates them may change as technology develops. The committee agrees that the most practical definition of "word" is one that corresponds to the way words are counted by a word processor, consistent with proposed s. 809.19 (8g) (a) 2. on page 40, renumbering current s. 809.19 (8) (d).

Parallel amendments should be made to proposed s. 809.801 (8), regarding the format and content of electronically filed documents, on page 89:

809.801 (8) (f) Electronically filed documents may include ~~internal~~ bookmarks that allow the reader to navigate quickly within a document, such as from the table of contents to the corresponding sections of a brief or from the table of contents to the corresponding documents in an appendix.

809.801 (8) (g) Electronically filed documents may include ~~external~~ hyperlinks that allow the reader to jump directly to another location in the document or to an external a source of information, such as a published case or statute posted on the Internet. External hyperlinks ~~Hyperlinks~~ shall be used only in accordance with security procedures set by the court.

2. Displaying the appendix on the WSCCA website

As part of his consideration of hyperlinks, Mr. Wren notes that it would be advantageous to allow hyperlinks between the brief and the appendix. He recognizes that this suggestion is difficult to implement under the current court policy making the brief but not the appendix available to the public on the WSCCA website. He suggests that if this court were to amend that policy, the

brief and appendix could be submitted as a single document and litigants could then insert links between them.

The policy considerations behind online display of court documents are complex and closely tied to the court's existing policies and rules regarding confidentiality and victim privacy. The committee deemed its task to be the facilitation of eFiling, with no more change to other policies and procedures than necessary. Accordingly, the committee proposed no amendments affecting the public display of documents on the court website. The committee in fact codified the existing practice of requiring a brief and its appendix to be submitted as separate documents, consistent with the existing policy. See proposed s. 809.19 (2) (ae) on p. 31 of Appendix A.

The Appellate eFiling Committee agrees that hyperlinks between the brief and the appendix would be useful to judges and attorneys alike. The committee also recognizes the utility of hyperlinks to outside sources, such as cases and articles published online, and the proposed rule allows for them in s. 809.801 (8) (g), above. However, external links come with technical obstacles and security concerns that need to be addressed, which is why the committee added the caveat that external hyperlinks "shall be used only in accordance with security procedures set by the court."

CCAP will continue to look into the best way to work with internal and external hyperlinks. The technical specifications for eFiling are posted on the court's eFiling website and can be updated with further guidance on hyperlinks as the procedures are developed.

3. Technical corrections from the drafting subcommittee

Since filing the petition, two members of the drafting subcommittee have pointed out sections that should be revised:

a. Clarifying how the attorney general will access transcripts

Most eFiling parties receive their access to transcripts through the circuit court case, as provided by s. 801.18 (15) (b). The attorney general does not appear for the state in a criminal case until a felony is appealed or a petition for review is filed for a misdemeanor, by operation of proposed s. 809.802 on page 101, renumbering current s. 809.80 (2). Because the attorney general is not an eFiling

party in the circuit court, court reporters currently consider the attorney general a "paper party" to be served with paper transcripts. This is now unnecessary because the attorney general can access electronic transcripts through the appellate eFiling system.

The attorney general's office does not want to receive the paper copies and would like to clarify that court reporters are relieved of that burden. The committee requests that the following language be added at the very end of s. 809.11 (7) (a) on page 23 of Appendix A:

(7) Reporter's obligations.

(a) *Service of transcript copies.* Where service of a transcript on the attorney general is required by operation of s. 809.802 (1), access to an electronic copy of the transcript through the appellate electronic filing system shall constitute service of the transcript.

b. Requesting a 3-judge panel with a petition for leave to appeal

A petition for leave to appeal is filed in the court of appeals under s. 809.50 (1). If a party wishes to move for a 3-judge panel in connection with that petition, that motion should also be filed in the court of appeals, not the circuit court. The petition contains a drafting error in this respect that should be corrected. The committee requests the following amendment to proposed s. 809.41 (1) (c) on page 62 of Appendix A:

809.41 (1) (c) If a petitioner requesting the court of appeals to exercise its appellate jurisdiction to grant petitions for leave to appeal desires the matter to be decided by a 3-judge panel, the petitioner shall file a motion for a 3-judge panel in the ~~circuit~~ court of appeals with the petition for leave to appeal. Service of the petitioner's motion shall be provided as in s. 809.50 (1).

4. Expediting petitions for waiver of filing fees and eFiling fees

The State Bar of Wisconsin has submitted a letter expressing support for the adoption of appellate eFiling, with the unanimous approval of the Board of Governors and support from various practice sections. The state bar looks forward to cost and time savings from the elimination of paper filings and mail and delivery costs.

The state bar's letter notes certain concerns were raised on behalf of indigent legal services and tribal governments that fall outside the scope of this petition. Legal services organizations have reported circuit court delays in processing petitions for waiver of filing fees and eFiling fees under Wis. Stat. s. 814.29, including difficulties finding notary services during the pandemic. The Indian Law Section has also reported difficulty obtaining fee waivers when the tribal government itself is indigent.

These issues impact access to justice and merit consideration, but the committee agrees that they are beyond the scope of this petition. Finding a solution will require analysis of how s. 814.29 is applied in circuit court and which entities are affected, and should include the participation of a wider range of interests. We appreciate the state bar's willingness to continue addressing these issues outside the context of this petition.

We look forward to speaking with the court on March 17.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheila T. Reiff". The signature is fluid and cursive, with the first name being the most prominent.

Sheila T. Reiff

Clerk of the Supreme Court and Court of Appeals
on behalf of the Appellate eFiling Committee