

# Implementation of Mandatory Electronic Filing

## REPORT OF THE CHIEF JUDGES' SUBCOMMITTEE ON eFILING IMPLEMENTATION

OCTOBER 3, 2014



### Overview

The Wisconsin circuit courts have had voluntary electronic filing (eFiling) since 2008 for civil, family and small claims cases. However, the volume of filings remains very low and litigants and courts have not yet seen any increased efficiency as a result of eFiling. At the request of the Director of State Courts, the Committee of Chief Judges appointed a subcommittee to consider how use of eFiling might be increased.<sup>1</sup>

The Chief Judges have concluded that in order to see the benefits of an eFiling system, all court files must be electronic and most litigants will have to file electronically. The national experience is that the best results come from making eFiling mandatory for all attorneys. Accordingly, the committee has proposed that the current voluntary rule, Wis. Stat. 801.17, become a mandatory one.

The new rule incorporates an implementation plan based on the experience of other state trial courts. Training and technology will be rolled out county-by-county over a three-year period. At the end of that period, all circuit court files will be electronic, and all attorneys and high-volume filing agents will be required to file electronically. Self-represented litigants may participate on a voluntary basis. If self-represented litigants choose to file and receive filings on paper, the clerk of court will image their filings and place them in the electronic record.

As of September 2014, almost every state court in the country is actively moving toward eFiling. In 13 states, a statewide eFiling system has been implemented by the trial courts for one or more case types. In 27 states, eFiling is a pilot phase or in the process of implementation. In 4 states eFiling is available only in the appellate courts, in 4 states there are one or more county eFiling systems, and in 2 states the idea is still under discussion.

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<sup>1</sup> The subcommittee consisted of Chief Judge Robert Wirtz, chair, Chief Judges William Foust and Randy Koschnick, District Court Administrators Jon Bellows, Patrick Brummond, and Beth Perrigo, and Chief Information Officer Jean Bousquet. The subcommittee was staffed by Circuit Court Legal Advisor Marcia Vandercook.

## **Why a mandatory rule?**

Subcommittee members visited the federal district court in Madison, studied eFiling in other state courts, and used the services of a technology consultant provided by the National Center for State Courts. They learned that eFiling courts find it is a significant improvement over paper, leading to considerable efficiency and cost savings. Among other benefits, electronic records decrease data entry, improve the speed with which information can be retrieved and shared, reduce staff time and storage costs, and improve storage security. These benefits apply to both courts and law firms.

To achieve these efficiencies, eFiling must be the norm and not the exception. Of the 13 states where a statewide system is available, 11 have made it mandatory for attorneys. eFiling has been mandatory in some federal courts for at least 20 years. NCSC technology consultant Larry Murphy, former CIO of the Iowa court system, summarized his findings:

The best recommendable practice from a nationwide standpoint is to make eFiling mandatory after the pilot phase of the project, to obtain a better return on the investment in developing the eFiling system. Once the eFiling system has passed a user acceptance test, most court rules provide for eFiling to be mandatory. It should be noted that the court rules in mandatory usage states have been vetted by the public, judges and attorneys. Wisconsin should move in the direction of becoming a mandatory usage state sooner rather than later.

The Wisconsin Supreme Court approved the voluntary eFiling rule in 2008, following a three-year pilot project. The technology was developed in-house by the Consolidated Court Automation Programs (CCAP) and is currently available for small claims, family and civil cases. However, the voluntary rule has left it up to the clerk of circuit court and the judges of each county whether to make the technology available. As of September 2014, only 26 of 72 counties have done so. The number of cases filed from 2009-2013 was less than 1% of the cases filed statewide for those three case types. Voluntary participation has not resulted in the volume that would make eFiling worthwhile.

## **Implementation plan**

The new rule is proposed as Wis. Stat. 801.18, to be submitted as a petition to the Wisconsin Supreme Court in fall 2014. The rule applies to both new cases and new filings in open cases. It requires eFiling by all attorneys in all types of cases. For small claims actions filed under Wis. Stat. 799.06, the rule requires eFiling by agents who act on behalf of an entity that files 10 or more actions in a county per year (typically hospitals, debt collection firms, and property management companies). Self-represented litigants may participate on a voluntary basis.

The rule requires that each clerk of court and register in probate have all open files imaged by the time eFiling becomes mandatory in that county. The official court record, including transcripts, will be kept electronically.

The implementation plan follows the rollout currently underway in the Iowa state courts. If this rule is adopted by the Wisconsin Supreme Court, the program will be rolled out county by county across the state over a three-year period. As tentatively proposed, the earliest counties will become mandatory January 2016 and the last will be implemented by December 2018. The order will be determined by the Director of State Courts and the CCAP Steering Committee based on county readiness. The date each county will become mandatory will be identified months in advance with publicity and outreach in coordination with bar. CCAP staff will provide training for judges and court staff, attorneys and law office staff, local agency staff including child support, law enforcement and corporation counsel and other frequent users of the court system. Online instructions and phone support will be available.

### **Building on existing technologies**

The Wisconsin courts have long been leaders in court technology. The CCAP electronic case management system became available to the Wisconsin circuit courts in 1992, and the Wisconsin Circuit Court Access website (WCCA) has been online since 1999. The fact that CCAP has developed its technology in-house rather than through a vendor has enabled it to be exceptionally flexible and responsive to the needs of its users, and that flexibility will continue to be an advantage as eFiling is further developed.

eFiling is only a part of the movement toward electronic files. Internally, clerks of circuit court and registers in probate have been imaging paper files at a rapid rate. An increasing number of judges and court commissioners are reviewing case files electronically, using electronic signatures on orders, and managing their cases with judicial dashboard tools. Externally, CCAP has worked in partnership with other agencies to allow filing of electronic citations by the state patrol, DNR wardens, and local law enforcement agencies. Electronic interfaces for exchange of case information have been established with district attorneys and with the departments of transportation, justice, revenue, workforce development, and corrections.

Incorporating the electronic capabilities of law offices is the next logical development in this progression. In addition to filing by the private bar, pilot projects are proceeding in 2014 for eFiling of criminal cases and child support paternity cases.

### **Advantages for users**

eFiling is already familiar to attorneys who practice in federal court and in some other states. Many law offices are highly automated, and electronic documents and communication methods are routine. The State Bar of Wisconsin offers advice and training to members seeking to improve the efficiency of their practices through technology. Large filing agents such as debt collection firms, utilities and hospitals already use automated case management systems and electronic files.

eFiling users will be able to view the complete court file for each of their cases, from any computer, at any hour, and will be able to view documents as soon as they are filed. Attorneys may delegate access to staff in order to view the court file, prepare pleadings, and pay filing fees. Attorneys may also allow clients access to view the court file if they so choose. The routine costs

of copying, mailing and delivery services will be substantially reduced for many law offices. Other courts have found that after the transition period, attorneys and staff members are satisfied with the new technology.

Self-represented litigants and agents who appear on behalf of an entity filing fewer than 10 actions a year (typically landlords and small business owners) will not be required to participate in the eFiling system. However, CCAP will work with interested groups to make the system as user-friendly as possible, to maximize the number of self-represented litigants who participate voluntarily. The proposed rule provides that a small claims complaint may be verified through a sworn statement, rather than in front of a notary, to make it easier to file electronically.

For the court system, the advantages are numerous. Clerks will see reductions in the time spent on data entry, imaging, moving and storing files, and mailing. The complete court file will be available at any time to multiple users: at the public access terminal in the clerk's office, in the judge's chambers, to the judicial assistant, and in the law offices of the attorneys on the case. Cost savings may take the form of fewer staff or better use of staff time on higher-level functions. The subcommittee studied the eFiling system used by the federal district court and was impressed by the enthusiasm of the judges and staff there. As the magistrate judge succinctly put it: "I can't imagine going back to paper."

### **Paying for eFiling**

Many state courts have purchased case management and eFiling systems from private vendors. The fact that CCAP developed its case management technology in-house rather than through a vendor has enabled it to be exceptionally flexible and responsive to the specific needs of Wisconsin court users, as well as highly cost-effective. Those advantages will carry over into the eFiling system.

Compared with the cost of vendor-supported systems in other states, eFiling costs for users in Wisconsin are expected to compare very favorably. In 2008, the legislature created Wis. Stat. 758.19(4m), allowing the Director of State Courts to establish and charge fees for eFiling. The current fee is \$5 per case for each attorney or self-represented litigant, paid when the attorney or party enters the case. Filing fees may be paid by credit card (with a 2.75% bank fee) or by e-check (\$2.50 bank fee per transaction). No charge is made for subsequent filings. By comparison, the vendors in several other states charge multiple times over the course of litigation for various pleadings or groups of pleadings: Michigan charges \$5, Arizona and New Mexico \$6, Colorado \$6-\$6.85. In addition, some vendors charge to serve pleadings on the other eFiling parties: Michigan charges \$3 for service, New Mexico \$4, Arizona \$6, Colorado \$6-\$7.50. Unlike the one-time cost in Wisconsin, filing and service costs in other states continue as the litigation progresses.

Because the volume of eFiling cases has been so low, the filing fee has not been enough to pay for expansion of the system. The Wisconsin court system is seeking legislative start-up funding to hire the necessary programmers and analysts, buy equipment, and train users during the county-by-county rollout. The system will be enhanced to accept all case types, interact with law office case management systems, and add user-friendly features. Once all counties are up and

running, the eFiling fee will be used to respond to changes in law and practice, add enhancements, and provide ongoing user support.

The chief judges subcommittee discussed a number of options for funding the electronic filing system besides the user fee. Options included: (1) raising the filing fee in civil and family cases; (2) raising the costs assessed against defendants in criminal and civil forfeiture cases; (3) imposing a fee for filing on paper instead of electronically; (4) requesting an ongoing appropriation from the legislature; and (5) assessing an annual fee on attorneys. Each of these options had its drawbacks, and the subcommittee concluded that continuing to rely on the eFiling user fee is the option with the best chance of success. Another suggestion was to use the efficiencies created by eFiling to offset the cost, but this idea is complicated by the way circuit courts are funded: all of the costs for eFiling programming, hardware and support are borne by CCAP at the state level, while the efficiencies will be spread across the justice system, including in the clerk of court offices funded by the counties.

Another possibility for offsetting the cost of the eFiling system is through the online sale of non-confidential court documents. The federal court PACER system makes all non-confidential documents available online for a per-page cost to view and print. Other state courts partially support their automation programs by making non-confidential documents available in various ways: by page view, by subscription, and by sale of packaged reports. The subcommittee concluded that online document sales represent a significant policy issue needing further study. The eFiling report and rule do not address this issue, and the rule makes no changes to case information as it displays on the court's WCCA website.

### **Substantive changes to the current rule**

Both the 2008 eFiling rule and the new rule try to minimize substantive changes to Wisconsin law unless needed for use of the technology. The main substantive changes in the new rule are:

1. Subd. (3)(a) requires eFiling by all attorneys and by agents filing 10 or more small claims actions per year.
2. Subd. (4)(e) provides that documents filed by 11:59 p.m. on the day they are due are considered to be timely filed. The fax rule for the circuit court is similarly amended.
3. Subd. (9)(c) requires the clerk of court to keep the court record in electronic format.
4. Subd. (9)(h) requires non-electronic parties to submit copies of documents, not originals.
5. Subd. (9)(L) requires an administrative record to be submitted electronically.
6. Subd. (11)(e) allows verification of a small claims complaint without notarization.
7. Subd. (12) allows an attorney to delegate the use of his or her electronic signature to a staff member and holds the attorney responsible for all documents filed through the eFiling system. The use of a separate PIN signature is no longer required. This provision will apply statewide on [January 1, 2016] so a uniform technology can be used.
8. Subd. (15) sets out procedures for eFiling of transcripts.
9. Amendments to the criminal statutes allow electronic transmission of search warrant applications and electronic signing and filing of criminal complaints.

## **Related amendments to other rules**

The rule petition requests amendments to other rules and statutes for full implementation of electronic filing.

1. 801.15(5)(b): For notices served by the electronic filing system between 5 p.m. and midnight, 1 day shall be added to the prescribed period for reply, consistent with application of the fax rule.
2. 801.16(2)(f): The fax rule is amended to allow filing by 11:59 p.m. This extension of time is intended to give paper parties the advantage of the same extra few hours that eFiling parties now have.
3. 808.075(1): For technical failures on the part of the eFiling system or the user's system, the circuit court may grant relief pending appeal.
4. 967.12 and 968.02: District attorneys may participate in eFiling through a direct interface between the district attorney information technology Protect system and the eFiling system. Electronic signatures may be provided by the Protect system.
5. 968.12: Electronic transmission and electronic signatures are authorized for search warrants.
6. SCR 70.42: Definition of electronic signature is made consistent with definition used in 801.18(2).
7. SCR 72.03: If a documentary exhibit is a copy and not the original, the clerk may scan it and incorporate it into the case file rather than store it separately as an exhibit.

## **Review process**

These revisions to the eFiling rule have been reviewed by the Committee of Chief Judges, CCAP Steering Committee, the Planning and Policy Advisory Committee (PPAC) Planning Subcommittee, and the full PPAC Committee. CCAP set up a vendor booths at the state bar conference in June and will offer another in October. The proposed rule was circulated to bar committees over the late summer and early fall and comments sought from a number of interested groups. The State Bar published articles on eFiling in the September *Inside Track* and the October 2014 *Wisconsin Lawyer*. The report and rule are posted on the court system website with an invitation to submit comments. A rule petition will be filed with the Wisconsin Supreme Court in fall 2014, with a request that it be heard in spring 2015.

## **Relation to redaction rule petition**

Many state courts have rules requiring parties to redact pleadings for reasons of privacy and identity theft, by removing financial account numbers and personal identifiers like social security numbers. Some of these courts link their redaction rule to their eFiling rule, with the goal of making electronic records free of this information. A subcommittee of the CCAP Steering Committee has drafted a redaction rule that has been circulating at the same time as the eFiling rule. If adopted, it will become effective on the same schedule, and training will be provided at the same time.

## Conclusion

The Wisconsin courts have made many advances in electronic records management, but other states have gone further by requiring eFiling. CCAP is now ready to take that step. The chief judges believe that the Wisconsin bar, circuit court judges and clerks of court are ready to take that step as well.

Questions about this rule may be directed to Marcia Vandercook, Circuit Court Legal Advisor, [marcia.vandercook@wicourts.gov](mailto:marcia.vandercook@wicourts.gov), or to Jean Bousquet, Chief Information Officer, [jean.bousquet@wicourts.gov](mailto:jean.bousquet@wicourts.gov).

### Links:

- circuit court eFiling website  
<http://www.wicourts.gov/ecourts/efilecircuit.htm>
- report of NCSC eFiling consultant Larry Murphy  
<http://www.wicourts.gov/ecourts/efilecircuit.htm>
- 2006 Wisconsin Electronic Filing report  
<http://www.wicourts.gov/supreme/docs/0608petitionamend.pdf>
- COSCA Policy Paper on Managing 21<sup>st</sup> Century Court Records  
<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/12012013-Standards-Maintaining-Managing-21st-Century-Court-Records.ashx>
- National Center for State Courts Electronic Filing Rules and Web Sites  
<http://www.ncsc.org/Topics/Technology/Electronic-Filing/State-Links.aspx>

## APPENDIX A: PROPOSED eFILING RULE AMENDMENTS

### Chapter 801 Civil Procedure – Commencement of Action and Venue

#### **CURRENT 801.17** Title changed to: **Voluntary Electronic filing.**

*Note: Content of the current voluntary eFiling rule will remain the same until the end of the implementation period. After all counties have implemented mandatory electronic filing, this rule can be repealed.*

**Comment:** The provisions of this section remain applicable until use of the electronic filing system is required for a particular county under s. 801.18. After that time, parties shall comply with the filing requirements of s. 801.18.

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NEW 801.18 is created to read:

#### **801.18 Mandatory electronic filing.**

##### **(1) Effective date; applicability.**

(a) The director of state courts shall implement an electronic filing system for the Wisconsin circuit courts. Except as provided in subd. (d), the requirements of this section shall govern the filing of documents in all types of actions in circuit court after use of the electronic filing becomes mandatory in a particular county.

(b) Mandatory use of the electronic filing system shall be phased in according to a schedule set by the director. The schedule may proceed county by county and may require or exempt electronic filing for certain case types or certain filers. The first phase of mandatory electronic filing shall begin no earlier than [January 1, 2016] and shall continue as established by the director until the system has been implemented in all counties, which shall be no later than [December 31, 2018].

(c) On the date that electronic filing becomes mandatory in a county, all attorneys and high-volume filing agents, as defined in subd. (3), shall be required to use the electronic filing system for all new filings in that county. Electronic filing shall be required for all new actions brought in circuit court and for all new documents submitted in previously filed cases, except as otherwise provided in this rule. Prior to that time, those users may choose to file actions and documents by voluntary electronic filing under s. 801.17 or by traditional methods.

(d) Beginning on [January 1, 2016], the electronic filing system shall use a uniform signature technology statewide. As of that date, signatures applied in accordance with the procedures of subd. (12) shall be considered valid and effective signatures. Attorneys may delegate to staff members the authority to submit documents to the electronic filing system under the attorney's supervision, as provided in subd. 12(d) beginning on that date.

(e) Parties not represented by an attorney and low-volume filing agents, as defined in subd. (3), may use the electronic filing system on a voluntary basis as provided in this rule. Parties who choose not to eFile are still subject to certain provisions of this rule.

(f) The procedures in this rule shall be interpreted in a manner consistent with existing procedural rules. This rule is not intended to limit the director's approval of new technologies that accomplish the same functions.

(g) The judges of the circuit court, the clerk of circuit court, the register in probate, and all court staff shall cooperate and assist with the implementation of electronic filing in each county.

(h) This section does not address other documents required by law to be filed with court officials that are not filed in an action before the court. The electronic filing system may provide a way for these documents to be electronically filed with the appropriate custodian, or they may be submitted by traditional methods.

(i) This rule does not apply to filing of documents or transcripts with the court of appeals or supreme court.

**Comment:** Subd. (1) provides that the mandatory use of electronic filing will be implemented largely on a geographic basis. The director of state courts will designate the order and timing of county participation after evaluating the readiness of the county and the logistical support available for the implementation. The director may delay implementation of certain case types or exempt participation by certain filers. The director will set the schedule after consultation with the steering committee that oversees the work of the circuit court automated information system.

One provision of this rule will become effective immediately so the technology can be uniform statewide: the PIN signature used under current s. 801.17(12)(c) will no longer be required in any county, and attorneys may delegate to staff members the authority to submit documents to the electronic filing system under the attorney's supervision.

All open cases will be converted to an electronic format by the time electronic filing is mandated in that county. Mandatory electronic filing will apply to both new cases and new documents filed in old cases. This will allow both the court and the parties to more quickly reap the benefits of all-electronic files rather than persist for years with both paper and electronic court records.

Conversion to electronic files is an enormous change for parties, attorneys, and the court system. Good-faith efforts and cooperation will promote a smooth transition to the new system.

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

(a) "Clerk of court" means the official circuit court recordkeeper for the case in question, which may be the clerk of circuit court, juvenile clerk, or register in probate for that county.

(b) “Converted” means that all documents in a paper case file have been imaged by the clerk of court and the case file is available to accept filings via the electronic filing system.

(c) “Director” means the Wisconsin director of state courts.

(d) "Document" means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing in an action. For purposes of electronic filing, a document includes the metadata associated with the filing.

(e) 1. "Electronic filing system" means an internet-accessible system established by the director for the purpose of filing documents with a circuit court, automatically integrating them into the court case management system, and electronically serving them on the parties.

2. "Electronic filing" includes only those electronic methods specifically approved by the director.

3. The director may enter into an agreement with any state agency to allow electronic filing through a direct connection between the court case management system and the agency’s automated information system. Parties using a direct connection are subject to the requirements of this rule.

(f) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the document. For purposes of the electronic filing system, a document is electronically signed if it is submitted by a user or court official through the electronic filing system and bears the name of the user in the place where a signature would otherwise appear. “Electronic signature” includes only those signature technologies specifically approved by the director.

(g) “Filing agent” means a person authorized under s. 799.06(2) to appear on behalf of another. A “high-volume filing agent” is one described by subd. (3)(a)3.

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

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

(j) "User" means an individual who has registered to use the electronic filing system under subd. (3). Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups. Users may be mandatory or voluntary, as provided in subd. (3).

**Comment:** Subd. (2)(e) provides that the director may work with state agencies to facilitate electronic filing via new or existing electronic connections. Parties filing through these connections are subject to the requirements of this section.

### **(3) Registration requirements.**

**(a) Mandatory users.** The following individuals shall register for access to the electronic filing system and shall use it for all actions and proceedings in circuit court:

- 1.** Licensed Wisconsin attorneys.
- 2.** Attorneys appearing under SCR 10.03 (4).
- 3.** Persons authorized under s. 799.06(2) who appear on behalf of an entity filing 10 or more actions a year in the county where the action is being filed.

**(b) Voluntary users.** Parties who are not subject to subd. (a) may voluntarily register to use the electronic filing system.

**(c) Paper parties.** A voluntary party who does not choose to participate in the electronic filing system shall file, serve, and receive paper documents by traditional methods.

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

**(e) Upon completion of a properly executed user agreement, the electronic filing system shall provide the user with a confidential, secure access code. The access code shall be used only by that user and by any agents or employees that the user authorizes. Upon learning that the confidentiality of the access code has been inadvertently or improperly disclosed, the user shall immediately report that fact through the electronic filing system.**

**(f) Users shall notify the electronic filing system within 10 days of any change in the information provided for registration. Attorneys shall notify the electronic filing system within 10 days of beginning representation of a formerly self-represented user. Entities appearing by a filing agent under s. 799.06(2) shall notify the electronic filing system within 10 days of any change in the identity of a filing agent.**

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

**(h) After registering to use the electronic filing system, a user must also register as an attorney or party on any previously filed cases in which the user still intends to participate. The same access code shall be used for all cases on which the user is an attorney or a party. The electronic filing system may reset access codes as needed for administrative and security purposes.**

**(i) Voluntary users who wish to stop using the electronic filing system in a particular case must notify the electronic filing system or the clerk of court. The electronic filing system shall indicate that traditional methods must be used for this party for future filings and service.**

(j) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case. It may also provide a method for professionals and agencies associated with the case to receive information and file reports.

**Comment:** Subd. (3)(a) distinguishes between two types of filers for purposes of mandatory participation in the electronic filing system. Under s. 799.06(2), certain employees, agents and LLC members may be authorized to file on behalf of an organization in small claims proceedings. This group of persons includes both high-volume filers like utility companies and hospitals and low-volume filers like small businesses and individual landlords. This section requires the high-volume filers to use the electronic filing system and allows small filers to participate voluntarily like self-represented parties.

Subd. (3)(j) recognizes that there are persons who occasionally file documents in cases where they are not parties, such as witnesses seeking protective orders, intervenors, amicus curiae, and crime victims under ch. 950. There are also many professionals and agencies regularly providing case-related services to the court, such as presentence investigators and social workers. To the extent that it is feasible and resources allow, the director may provide a means for filing documents and exchange of information in these situations.

#### **(4) Time and effect of electronic filing.**

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

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

(c) If the clerk accepts a document for filing, it shall be considered filed with the court on the date and the time of the original submission, as recorded by the electronic filing system. Upon acceptance, the electronic filing system shall issue a confirmation to serve as proof of filing. Where personal service is not required, the confirmation shall also serve as proof of service on the other users.

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

(e) A document is considered filed on a particular day if the submission is completed by 11:59 p.m., as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk upon review. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules and court orders.

**Comment:** Subd. (4)(c) provides that where personal service is not required, submission of a document to the electronic filing system is considered service on the other electronic users. Just as service through the post office is considered complete upon dropping a properly addressed envelope into a mailbox, service using the electronic filing system is complete upon properly transmitting the document.

Subd. (4)(e) is a substantive change to law and practice. Currently, paper filings must arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. *Northern Air Services v. Link*, 2011 WI 75. However, the most common if not universal practice among courts that mandate electronic filing is to use the entire calendar day as the filing period; this is also the practice recommended to the Wisconsin courts by the consultant provided by National Center for State Courts. This rule gives a party an extra few hours to file on the last day a document is due but does not affect the calculation of time otherwise. If a party files a document or the court signs an order on a day when the clerk's office is closed, it is considered filed on the next day the clerk's office is open, except as provided by other statutes and rules or by court order.

For consistency, a change to the circuit court fax rule is also recommended. Paper parties should be given the advantage of the same extra hours by providing that pleadings received before midnight will be considered filed that day.

## **(5) Commencement of action.**

**(a)** A user seeking to initiate an action shall first register with the electronic filing system as provided in subd. (3). The user shall then file an initiating document in the county where the action is to be commenced and provide the additional information requested by the electronic filing system to open a case.

**(b)** If a filing fee is required, the clerk of court may reject the document unless it has been submitted as provided in subd. (7)(b). At the written or oral request of the filer, the clerk of court may reject the document for filings made in error, if the request is made before the clerk has accepted the document.

**(c)** If the clerk of court accepts an initiating document for filing, the clerk shall assign a case number and authenticate the document as provided in subd. (10). The case shall then be available through the electronic filing system. If the clerk rejects an initiating document, the filer shall be notified of the rejection.

**(d)** Initiating documents shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method. Initiating documents shall be served together with a notice to the responding party stating that the case has been electronically filed and instructions for how to use the electronic filing system.

**(e)** A responding party who is a mandatory user shall register to use the electronic filing system as provided by this section. A responding party who is a voluntary user may choose to register.

After registering to use the electronic filing system, the user shall also register as a user on the particular case. The electronic filing system will note the new user on the case.

**Comment:** Subd. (5) does not change the substantive law about when personal service is required for purposes of commencing the action and obtaining jurisdiction over the defendant or respondent.

**(6) Filing and service of subsequent documents.**

**(a)** Filing of documents other than initiating documents through the electronic filing system shall generate a notice of activity to the other users who are users on the action. Users shall access filed documents through the electronic filing system. For documents that do not require personal service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document, except as provided in (b).

**(b)** Subsequent documents requiring personal service shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.

**(c)** Paper parties shall be served by traditional methods. The electronic case record shall indicate which users are to be served electronically and which are to be served by traditional methods.

**(d)** Paper parties shall file documents with the court by traditional methods. The clerk of court shall image the documents and enter them into the electronic filing system promptly. The notice of activity generated by the entry shall constitute service on the users to the case. Paper parties must serve other paper parties by traditional methods.

**(e)** If a notice sent to a user is returned undeliverable, the electronic filing system shall automatically notify the filing party. The filing party shall then serve the document on that user by traditional methods. That user shall be treated as a paper party until the party corrects the problem and reregisters with the electronic filing system.

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

**(g) 1.** Prior to the time electronic filing is mandated in a county, all mandatory users shall register as electronic users on each case in that county for which they continue to appear. Mandatory users who do not register for a case will not receive notices of activity or service of documents.

**2.** For all cases that are in open status prior to the time electronic filing is mandated in a particular county, the clerk shall send a notice by traditional methods to each unregistered party stating that the case has been converted to electronic filing. Mandatory users shall

promptly register for these cases unless the attorney informs the court that the attorney no longer represents the party.

3. For all cases that are in closed status prior to the time electronic filing is mandated, no action is required until there is a subsequent filing or the court initiates further activity on the case.
  - a. A mandatory user who initiates electronic activity on a closed case shall register as an user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly register as a user in the case or shall notify the court that the user is no longer appearing on behalf of the party.
  - b. A voluntary user who chooses to initiate electronic activity on a closed case shall register as an user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly register as a user in the case or shall notify the court that the user is no longer appearing on behalf of the party.
  - c. Service on a voluntary user shall include a notice stating that the case has been converted to electronic filing and giving instructions for how to use the electronic filing system if the party chooses to do so.

**Comment:** Subd. (6) provides that the electronic filing system now serves as the means of delivery between users for subsequent documents, the kind that were previously served by mail or delivery. Paper parties will continue to be served by traditional methods for both initiating and subsequent documents.

Subd. (6)(g) outlines how mandatory electronic filing will be initiated in each county. For cases that are in open status at the time electronic filing becomes mandatory, the clerk will work with attorneys and high-volume filing agents to register as users on their open cases. Voluntary users will be provided with instructions on how to participate in the electronic filing system if they choose.

For cases that are in closed status, no action is required unless there is further activity on the case. Where post-judgment activity takes place, the first party to initiate electronic activity in the case must serve any unregistered parties by traditional methods. Mandatory users must then register as users on the case.

#### **(7) Payment of fees.**

- (a) Users shall make payments due to the clerk of court through the electronic filing system unless otherwise ordered by the court or unless arrangements are made with the clerk of court. The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.
- (b) A document that requires payment of a fee is not considered filed until the fee is paid, a waiver of the fee is granted, or other arrangements for payment are made. The user may submit a

motion for waiver of filing fees under s. 814.29 (1), using a form provided by the court for that purpose.

(c) Users shall be charged a fee for use of the electronic filing system, as provided by s. 758.19 (4m) and determined by the director of state courts. The fee is a recoverable cost under 814.04(2). The electronic filing fee shall not be waived by the court except in accordance with policies set by the director of state courts.

**Comment:** Subd. (7)(a) provides that filing fees shall be paid through the electronic filing system unless other arrangements are made. Payment of fines and forfeitures are currently paid through separate websites. Other fees and deposits, such as guardian ad litem fees and condemnation awards, may be paid by other methods if ordered by the court or agreed to by the clerk of court. Attorneys should consult the Rules of Professional Conduct with respect to the restrictions on electronic transactions from trust accounts.

Subd. (7)(c) recognizes that the electronic filing fee is essential to development and maintenance of the electronic filing system and should be charged in a uniform manner statewide under policies set by the director.

#### **(8) Format and content of filings.**

(a) The director shall make information about the technical requirements of the electronic filing system readily available to the public. Users are responsible for keeping up with these requirements and providing the necessary equipment, software, communication technology, and staff training.

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

(c) Users shall format the appearance of all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including page limits.

(d) The electronic filing system may set limits on the length or number of documents. Documents rejected by the system for this reason shall be filed and served by traditional methods. Leave of court may be granted for traditional filing and service in appropriate cases.

**Comment:** Subd. (8)(a) recognizes that the electronic filing system will become more sophisticated and user-friendly over time. Users should expect a number of changes during the initial years of electronic filing. Information about upcoming changes and any new requirements for equipment, software, formatting, connectivity, security and staff training will be made available to the public.

#### **(9) Official record.**

**(a)** Electronically filed documents have the same force and effect as documents filed by traditional methods. The electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.

**(b)** The duties of the clerk of court under ss. 59.40, 851.72, 851.73, and all other statutes, court rules and procedures may be fulfilled through proper management of electronic documents as provided in this rule.

**(c)** For all new cases filed on or after the date that electronic filing becomes mandatory in a county, the clerk of court shall maintain the official court record in electronic format only. Documents filed by traditional methods shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to SCR 72.03 (3). Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

**(d)** On the date that electronic filing becomes mandatory in a county as provided in subd. (1), the clerk of court shall have converted all cases that are in open status to electronic format. If a document is filed in a case in closed status, the clerk shall file the document electronically and convert that case to electronic format within a reasonable time. If conversion of the case would be unusually burdensome, the clerk may maintain the record in paper format with the permission of the court.

**(e)** The clerk of court shall make the public portions of the electronic record available through a public access terminal located in the clerk's office. The clerk shall make nonpublic portions of the electronic record available for viewing by authorized persons.

**(f)** The clerk of court may provide either paper or electronic copies of pages from the court record. The clerk shall charge the per-page fee set by ss. 814.61 (10) and 814.66 (1) (h) for electronic court records.

**(g)** Certified copies of an electronic record may be obtained from the clerk of court's office by traditional methods, as provided by s. 889.08. The electronic system may also make available a process for electronic certification of the court record. The seal of the court may be applied electronically. No use of colored ink or an impressed seal is required.

**(h)** Except as provided in subd. (i), parties filing by traditional methods shall file a copy of any document and not the original paper document. The court may require the submitting party to produce the original paper document in any case if authenticity of document is challenged. If the court inspects the original paper document, it shall be retained as an exhibit as provided in SCR 72.03(4).

**(i)** Wills and codicils.

**1.** A will for safekeeping filed under s. 853.09 may not be electronically filed. The original will shall be filed with the court.

**2.** A person submitting a will to the court under s. 856.05 shall file the original paper copy in the proper court. The clerk of court shall image the will and create an electronic case file.

The clerk of court shall maintain the paper copy in a separate file for the time period provided by SCR 72.01.

**(j)** Pleadings may be submitted during a court proceeding by traditional methods. Pleadings submitted in court shall be imaged and entered into the court record by the clerk of court.

**(k)** For documentary exhibits, parties shall submit a copy of the exhibit and not the original. The clerk of court shall image documentary exhibits and enter them into the court record. Copies of documentary exhibits so imaged may be discarded after 48 hours as provided in SCR 72.03(3). If inspection of the original document is necessary to the court proceeding, the court may order that the original document be produced. Any original document so produced shall be retained as an exhibit as provided in SCR 72.03(4).

**(L)** An administrative agency submitting a record for judicial review in compliance with s. 227.55 shall image the administrative record and submit it electronically using a method provided by the electronic filing system. The electronic record shall be the official record in the circuit court. If inspection of an original document is necessary to the court proceeding, the court may order that the original document be produced.

**Comment:** Subd. (9) provides that court case files must be kept electronically. Mandatory users are required to file all documents electronically, with only a few exceptions. Paper documents submitted by voluntary users will be converted to electronic format by the clerk of court. Because any paper submitted will be discarded after it is imaged, parties should not submit original documents to the court.

Similarly, the rule does not require the parties to retain original paper documents. If there is likely to be a challenge to the validity of a document or exhibit, parties may be well-advised to keep the original document. For a high-volume law practice, the economics may not support keeping paper originals when the remainder of the file is electronic, and parties may prefer to assume the risk of failure of proof.

Subd. (9)(i) provides that the original copy of a paper will shall be submitted to the court. Wills filed for safekeeping under s. 856.03 will not be opened and imaged except as provided in that section. Wills filed under 856.05 will be imaged and an electronic case file created; the clerk of court will keep the original paper copy as well.

Subd. (9)(k) allows most documents submitted in court as exhibits to be scanned and made part of the electronic record, rather than retained in paper format. If the court requires that the original document be produced for inspection, it will retained pursuant to the supreme court rule governing scanning of exhibits.

Subd. (9)(L) requires an agency submitting an administrative record for review to electronically file a imaged copy of the record.

**(10) Authentication.** Electronic placement of the clerk's filing stamp and case number on each copy of an initiating document constitutes authentication under the statutes and court rules. An

authenticated copy may be printed from the case management system by the clerk of court or from the electronic filing system by the filing party.

**Comment:** Subd. (10) provides that electronic authentication satisfies the authentication requirements of Wisconsin Statutes, including ss. 801.02, 801.09 (4), and 909.02 (8). Statutory authentication requirements must be met upon filing of the summons and complaint in order to confer jurisdiction on the court. *American Family Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 534 (1992).

The purpose of authentication is to give assurance by the clerk that copies served are true copies of filed documents and to provide the case number for future reference. *J.M.S. v. Benson*, 91 Wis. 2d 526, 532 (Ct. App. 1979), *rev'd on other grounds*, 98 Wis. 2d 406 (1980). The security and verifiability provided by the electronic filing system satisfy the purposes of the authentication requirements under statutes and case law.

### **(11) Notarization and oaths.**

**(a)** Notaries public who hold valid appointments under ch. 137 may register with the electronic filing system for authorization to notarize electronically filed documents. To register, notaries must be able to meet the technical requirements of the electronic filing system. Upon receipt of a properly executed notary agreement, the electronic filing system shall provide the notary a confidential access code to use as an electronic signature and seal. The notary signature and seal shall be used only by the notary to whom it is assigned. Upon learning that the confidentiality of the access code has been inadvertently or improperly disclosed, the notary shall immediately report that fact through the electronic filing system.

**(b)** Court officials authorized by law to perform notarial acts may do so by application of their electronic signatures if those signatures are already provided through the electronic filing system.

**(c)** A document may be notarized, acknowledged, verified, or made under oath if the electronic signature of the authorized person is attached to or logically associated with the document, together with all other information required to be included by law. The person's signature shall follow the format "Electronically signed by /s/", followed by the name and title of the signatory. Where applicable, the electronic filing system shall provide an electronic image of a stamp to accompany the electronic signature. The electronic signature and seal provided by the electronic filing system satisfy the self-authentication provisions of s. 909.02.

**(d)** Documents notarized by traditional methods may be filed through the electronic filing system if a handwritten signature and physical seal appear on the original document. The user shall submit an imaged copy of the notarized document to the electronic filing system, and the court shall maintain the imaged document as the official court record. The court may require the submitting party to produce the original paper document if the authenticity of the notarization is in question.

**(e)** Notwithstanding s. 706.07(8)(c), an electronically filed complaint under s. 799.22 may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney to a written

oath attesting that the facts of the complaint are true, without swearing to the oath in front of a notarial officer.

**(f)** The director in his or her discretion may approve the use of other notary technologies if the technologies will work with the existing electronic filing system.

**Comment:** Subd. 11(a) incorporates the standards for electronic notarization set by ss. 137.19 (the Uniform Electronic Transactions Act) and 706.25 (2) (c) (the Uniform Real Property Electronic Recording Act). The intent of this section is to allow notaries public to perform traditional notarial functions using electronic technology. Attorneys who are notaries can use the same electronic signature for both functions, as can court officials performing notarial functions under s. 706.07(3).

Subd. (11)(d) makes a substantive change to the law governing small claims complaints by eliminating the need for an electronically filed small claims complaint to be verified in front of a notary. Instead, it may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney to a written oath or affidavit attesting to the facts of the complaint. This change has been made to encourage the use of electronic filing by self-represented parties. The identification procedures and personal accountability provided by these rules satisfy the purposes of traditional oath and notarization procedures.

Currently only the notary signature and seal provided by the electronic filing system may be used for electronic notarization. Other industries, primarily banking and real estate, are also developing electronic notary technology. The rule allows the director to approve the use of such a technology if it will work with the electronic filing system.

## **(12) Signatures of users.**

**(a)** A document requiring the signature of a user shall be deemed to have been signed by the user when it is electronically filed through the court electronic filing system. The signature shall use the format "Electronically signed by /s/", followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. This signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules.

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

**(c)** Each electronically filed document shall bear that person's name, mailing address, telephone number, and state bar number if applicable.

**(d)** An attorney may delegate the authority to submit documents to the electronic filing system to a person under the attorney's supervision. Any document requiring the attorney's signature is deemed to have been signed by the attorney if submitted to the electronic filing system by an authorized delegate. Every attorney is responsible for all documents submitted by an authorized delegate.

(e) Attorneys are responsible for electronically filed documents to the same extent as for paper filings. Attorneys using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785, and are subject to discipline for any violation of a duty to the court under the supreme court rules.

(f) Self-represented parties and filing agents under s. 799.06 are responsible for electronically filed documents to the same extent as for paper filings. Self-represented parties and filing agents using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.

(g) Users may submit documents without electronic signatures in the following situations:

1. A joint petition in an action for divorce or legal separation may be electronically filed if it bears the handwritten signature of one party and the electronic signature of the other or the handwritten signatures of both parties.
2. A stipulation will be considered signed by multiple persons if it bears the handwritten signatures of all signatories or if it bears the printed name of each signatory and contains a representation by the filing party that the filing party has consulted with the signatories and all have agreed to sign the document.
3. The court may agree to accept a document with the handwritten signature of a user and direct that it be made part of the electronic record by the clerk of court.

(h) For paper parties, every document requiring a signature shall be signed using a handwritten signature. If a document requiring a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided by subd. (9).

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

(j) The director in his or her discretion may approve the use of other signature technologies to the extent that they work with the existing electronic filing system.

**Comment:** Subd. (12)(a) and (d) represent a substantive change to the 2008 electronic filing rule and to current law and practice. Since 2008, electronic filing in Wisconsin has used two processes to identify the lawyer or self-represented party who signs a document: a username and password, which allows users into the system, and a PIN that acts as the signature, to be applied personally by the attorney or self-represented party. Application of a separate PIN signature is an extra step compared to other states and the federal courts, where the username and password are sufficient.

The 2008 eFiling committee chose to impose this extra step because of Wisconsin case law regarding improperly signed pleadings. Appellate decisions have reasoned that the statutes require counsel's personal signature to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. See *Schaefer v. Riegelman*, 2002 WI 18, 250 Wis. 2d 494, 512-13; *Jadair, Inc. v. U.S. Fire Insurance Co.*, 209 Wis. 2d 187, 211-12 (1997).

The new rule supersedes this line of cases and provides that any document submitted through the electronic filing system is considered signed by the individual who holds the account. The rules in other electronic filing jurisdictions provide that attorneys and self-represented parties are responsible for everything submitted from their accounts. This provision will become effective statewide on [January 1, 2016] so a uniform signature technology can be applied across the state.

Compliance with this section is intended to satisfy the signature requirements of ss. 801.09 (3), 802.05 (1), and 805.07 (4) (a), as well as all other statutes and rules relating to court documents. For users of the electronic filing system, the identification procedures, security, and personal accountability provided by the rules are deemed to satisfy the purposes of a handwritten signature and all other signature requirements. The courts and the Office of Lawyer Regulation have a range of sanctions and disciplinary measures that will serve as an adequate deterrent to any abuse of electronic signatures.

### **(13) Signatures of court officials.**

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

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

(c) A court official may delegate the use of his or her electronic signature to an authorized staff pursuant to the security procedures of the court case management system. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly disclosed, the court official shall immediately report that fact to the consolidated court automation programs. Court officials shall safeguard the security of their electronic signatures and exercise care in delegation.

**Comment:** Subd. (13) provides electronic signatures for those court officials whose duties require them to sign documents in circuit court case files, including circuit court judges, clerks of circuit court, registers in probate, juvenile clerks, and circuit court commissioners appointed under s. 757.68 and SCR 75.02 (1).

Under this section, court officials may allow an authorized staff member to apply the official's electronic signature at the official's specific direction. Each court official remains responsible for approving the document before the electronic signature is applied, and should be held accountable as if the document were signed personally. The electronic signature shall be applied in accordance with the provisions of SCR 70.42.

**(14) Confidential information.**

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

(b) Users shall comply with the requirements of s. 801.19 regarding redaction of protected information and identification of confidential material in filed documents.

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

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

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

**Comment:** Subd. (14) provides that the electronic filing system shall protect those case types and individuals documents made confidential by law or sealed by court order. The electronic filing system will provide user security measures to allow access only to authorized persons.

Proposed s. 801.19 requires that all persons filing document with the circuit court must review and redact certain protected information about individuals, such as personal identifiers and financial account numbers. It requires the filing party to identify any materials deemed confidential by law and to submit a motion to seal if a court order is required. The redaction rule is intended to work in concert with the electronic filing rule so that all electronic documents are free of protected information. The electronic filing system will mark confidential documents in a way that will be visible on the computer screen and when the documents are printed.

**(15) Transcripts.**

(a) The original transcript of any proceeding produced under SCR 71.04 shall be electronically filed with the circuit court in accordance with procedures established by the director. This rule does not alter the requirements governing timelines, format or costs established by s. 814.69,

SCR 71.04, or any other statutes, rules and procedures. This rule does not alter the requirements for filing transcripts with the supreme court or court of appeals.

**(b)** The electronic filing system shall note that the transcript has been prepared and filed with the court. At the time the transcript is filed, the court reporter shall indicate which users have made arrangements for payment; these users will be given access to the electronic transcript. Access to an electronic copy of the transcript through the electronic filing system shall serve as a duplicate copy under s. 757.57(5) and SCR 71.04(6). Upon the request of a user who has made arrangements for payment, a single paper copy of the transcript shall be provided without additional charge. If at a later date another user makes arrangements for payment, the court reporter shall notify the electronic filing system that the additional party may now view the transcript. No party shall be granted access to view the transcript unless the court reporter has notified the system or the court has so ordered.

**(c)** The court reporter shall notify any paper parties by traditional methods that the transcript has been prepared. The court reporter shall serve a paper copy of the transcript by traditional methods on any paper party who has made arrangements for payment. A court reporter may by agreement make the transcript available in another format.

**(d)** Where notice to the clerk of the supreme court and court of appeals is required, the court reporter shall provide notice by traditional methods until directed otherwise by the supreme court or court of appeals.

**(e)** A transcript when filed under this rule becomes a part of the court file. The transcript shall be made available to the public in accordance with the statutes and rules governing court records and any court orders.

**(f)** Under SCR 71.04(10)(b), a court reporter may certify that the transcript is a verbatim transcript of the proceedings by applying the court reporter's signature in the same manner as provided in subd. (12)(a) and then electronically filing the transcript.

**(g)** A court reporter shall electronically file with the circuit court any sentencing transcript prepared under s. 973.08(2). Payment shall be made as provided by SCR 71.04(5) and s. 973.08(2). The electronic filing system may provide a method to electronically transmit the transcript to the Department of Corrections as provided in s. 973.08(5).

**(h)** A court reporter shall electronically file an original unredacted transcript with the circuit court. Parties shall comply with the requirements of s. 801.19(4) [*the proposed redaction rule*] regarding identification and redaction of protected information in the transcript. If redaction is ordered, a court reporter shall electronically file a complete copy of the redacted transcript as provided in s. 801.19(4).

**(i)** Court reporter notes that are required to be stored under SCR 71.03, SCR 72.01(47), and Rule of Trial Court Administration 7 shall continue to be stored in their original medium.

**Comment.** Subd. (15) provides that transcripts of court proceedings shall be filed and incorporated into the circuit court record electronically. The director's office will provide access for court reporters to electronically file transcripts and serve them on the parties who are registered users. The director will provide access for court reporters to view the electronic court record while preparing the transcript, including confidential information.

This rule is not intended to change the arrangements for payment made between court reporters and parties. Users will receive service of the transcript via the electronic filing system and will be able to view it electronically when the court reporter notifies the system that payment has been arranged. Upon request, the court reporter will provide a single paper copy to each user who has paid for the transcript; otherwise paper copies for users are not required. Paper parties will continue to receive notices and transcripts on paper. Voluntary arrangements may be made to provide the transcript in other formats.

This rule is not intended to change any requirements applicable to proceedings before the supreme court and court of appeals.

#### **(16) Technical failures.**

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

**1.** If the failure is caused by the court electronic filing system, the court may make a finding of fact that the user submitted the document to the court in a timely manner by tendering it to the electronic filing system. The court may enter an order permitting the document to be deemed filed or served on the date and time it was first attempted to be transmitted electronically or may grant other relief as appropriate.

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

**(b)** A motion for relief due to technical failure shall be made on the next day the office of the clerk of court is open. The document that the user attempted to file shall be filed separately and any filing fee due shall be paid at that time.

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

**Comment:** Subd. (16) addresses technical failures of the court's electronic filing system and the user's electronic systems. Court technical failures may include an error in the transmission of the document to the electronic filing system or to a served party, a failure to process the document upon receipt, or erroneous exclusion of a party from the service list by the electronic filing system. User technical failures may include problems with the user's internet service provider, credit card, office hardware or software, or loss of electrical power.

This rule provides guidance for courts dealing with the rare, but probably inevitable, circumstance of the electronic filing system not being available or not functioning as intended. Where the user can demonstrate that the problem was caused by the court's electronic filing system, the circuit court may make a finding of fact that the document is deemed filed or served on the date and time that filing was attempted. The electronic filing system will generate a report for the user to document the problem.

Where the failure is caused by the user's own electronic systems or by external forces, the court should consider what consequences would follow a missed deadline for traditional filings caused by similar forces. Relief may be provided to the extent provided by s. 801.15 and other applicable statutes, court rules, and case law. Where the technical failure was not caused by the court electronic filing system, this rule does not provide for relief from jurisdictional deadlines.

Regardless of the cause, the user shall submit a motion for relief on the next business day, along with the document to be filed and any filing fee.

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## Related amendments

S. 801.15(5) is amended to read:

### **801.15 Time.**

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party:

(a) If the notice or paper is served by mail, 3 days shall be added to the prescribed period.

(b) If the notice or paper is served by facsimile transmission or by the electronic filing system and such transmission is completed between 5 p.m. and midnight, 1 day shall be added to the prescribed period.

S. 801.16 is amended to read:

### **801.16 Filing**

(2)(f) ~~Papers~~ Documents filed with the circuit court by facsimile transmission completed after regular business hours of the clerk of circuit court's office are considered filed the next business day ~~are considered filed on a particular day if the submission is made by 11:59 p.m., as recorded by the court facsimile machine. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules and court orders.~~

**Comment:** Subd. (2)(f) is a substantive change to circuit court law and practice. Fax filings currently must arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. The mandatory electronic

filing rule, s. 801.18(6)(c), allows any filing made before midnight to be considered filed on that day. Parties not using the electronic filing system are given the advantage of the same extra hours by amending the date provisions of the fax rule.

S. 808.075 is amended to read:

**808.075 Permitted court actions pending appeal.**

(1) In any case, whether or not an appeal is pending, the circuit court may act under ss. 801.18(16), 804.02 (2), 805.15, 805.16, 805.17 (3), 806.07, 806.08, 806.15 (2), 806.24 (4), 808.07 (1) and (2) and 809.12.

S. 809.80 is amended to read:

**809.80 Rule (Filing and service of papers).**

(3) FILING OF PAPERS; USE OF MAIL.

(a) *All filings — general rule.* Except as provided in pars. (b) to (e), filing is not timely unless the clerk receives the paper documents within the time fixed for filing. Filing may be accomplished by hand delivery, mail, or by courier. Filing by facsimile is permitted only as set forth in s. 801.16 (2)(a)-(e); documents completing transmission after regular business hours of the clerk are considered filed the next business day.

**Comment:** Subd. (3)(a) is amended to maintain the time for filing by facsimile in the appellate courts as the regular business hours of the clerk of the supreme court and court of appeals.

NEW s. 967.12 is created to read:

**967.12 Electronic filing.** S. 801.18 shall govern the filing of documents in criminal actions after use of the electronic filing for criminal cases becomes mandatory in a particular county. Electronic filing may be made through a direct connection between the court case management system and the automated information system used by district attorneys.

S. 968.02 is amended to read:

**968.02 Issuance and filing of complaints.**

(1) Except as otherwise provided in this section, a complaint charging a person with an offense shall be issued only by a district attorney of the county where the crime is alleged to have been committed. A complaint is issued when it is approved for filing by the district attorney. The approval shall be in the form of ~~a written endorsement~~; the signature of a district attorney on the complaint as provided in s. 801.18(12).

S. 968.12 (3) is amended as follows:

**968.12 Search warrant.**

**(3) WARRANT UPON ORAL TESTIMONY.**

(a) *General rule.* A search warrant may be based upon sworn oral testimony communicated to the judge by telephone, radio or other means of electronic communication, under the procedure prescribed in this subsection.

(b) *Application and issuance.*

**1. Duplicate originals.** The person who is requesting the warrant ~~shall~~ may prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the warrant be modified. ~~(c) Issuance.~~ If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. ~~The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit.~~

**2. Electronic transmission.** The person who is requesting the warrant may sign his or her own name on the warrant and transmit it to the judge. The judge may modify the warrant. If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by signing the warrant and entering on the face of the warrant the exact time when the warrant was ordered to be issued. The judge shall immediately transmit the signed warrant to the person who requested it.

(c) The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit. *moved from above*

NEW S. 968.12(5) is created to read:

**(5) SIGNATURES.** In this section, a person requesting a warrant and a judge issuing a warrant may sign by using an electronic signature, a handwritten signature, or a handwritten signature that is electronically imaged.

SCR 70.42(1)(b) is amended to read:

**SCR 70.42 Electronic signatures.**

**(1) DEFINITIONS.** In this rule:

**(b)** "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. For purposes of the electronic filing system, a document is electronically signed if it is issued by a court official through the court case management system and bears the name of the

court official in the place where a signature would otherwise appear. “Electronic signature” includes only those signature technologies specifically approved by the director.

~~SCR 70.42(1)(e) is created to read:~~

~~(e) “Signature,” for a document that is electronically filed or issued by the court or clerk, means either an electronic signature applied to an electronic document or a handwritten signature that is subsequently imaged.~~

SCR 72.03 (3) and (4) are amended to read:

**SCR 72.03 Destruction of original court record after microfilming or electronically or optically storing.**

(3) Any record of a court that has been electronically or optically stored and preserved in accordance with SCR 72.05 may be destroyed in accordance with SCR 72.02(1) and (2) 48 hours after the record has been electronically or optically stored. A clerk of circuit court is not required to provide notice of destruction to the State Historical Society of Wisconsin when the record has been electronically or optically stored. Notice of destruction to the State Historical Society of Wisconsin is required when the electronically or optically stored record will be destroyed once the retention period under SCR 72.01 has expired.

~~(4) Provided that they have been offered to the proffering party. Exhibits, as defined in SCR 72.01(45) and (46), of a documentary nature that are electronically or optically stored may be destroyed after 48 hours if the exhibit submitted to the court is a copy and not the original document. If the exhibit the court has received is an original document, the exhibit may be destroyed 180 days after entry of a final order or judgment, provided that it has been offered to the proffering party, unless the time for appeal has been extended under ss. 809.107, 809.30, or 809.32, stats. In the event of an extension, electronically or optically stored exhibits the exhibit may be destroyed 30 days after the post-termination or post-conviction deadline has expired.~~