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**In re creation of a court rule authorizing  
use of electronic signatures by court officials**

**PETITION**

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The Director of State Courts petitions this court to create a supreme court rule authorizing the use of electronic signatures by court officials. This petition is brought pursuant to the court's rulemaking authority under Wis. Stats. s. 751.12 and its administrative authority over all courts conferred by Article VII, s. 3 of the Wisconsin Constitution. This request is supported by the CCAP Steering Committee and the Records Management Committee. It is consistent with the electronic filing petition but is intended to stand independently.

Electronic signature technology has been developed by the Consolidated Court Automation Program (CCAP) as part of the court electronic filing pilot project. To use the technology, a court official logs onto the case management system, using his or her regular user name and password, and brings up a form or order to be reviewed. When the document is ready to be signed, the court official indicates approval of the document, causing the official's name to appear on the signature line of the document. Court commissioners and clerks of circuit court have been applying electronic signatures to small claims judgments and orders as part of the electronic filing pilot project since April 2005, without any problem or objection.

**Signing case-related documents.** This petition requests that electronic signatures be approved for use by court officials outside the context of electronic filing. The technology can apply an electronic signature to any order or form generated by the CCAP case management system or the Supreme Court/Court of Appeals (SCCA) case management system. This petition requests that electronic signatures be made available to circuit court judges, clerks of circuit court, registers in probate, juvenile clerks, and court commissioners appointed under Wis. Stats. 757.68 and SCR 75.02(1), and to the Supreme Court, Court of Appeals, and the Clerk of the Supreme and Appellate Courts, to sign documents for case purposes. Electronic signatures will not necessarily be used for every electronic document, but they will be extremely useful for the common orders and forms that are generated many times a day.

**Signing administrative documents.** The same signature can also be used by CCAP users outside the CCAP and SCCA case management systems to sign electronic documents for administrative purposes. Documents such as certifications of pending cases, requests for judicial assignment, and interpreter reimbursements will no longer need to be faxed in order to preserve a signature, and their information may be stored electronically in lieu of paper copies. This petition requests electronic signatures for the court officials listed above, plus the Director of State Courts and his designees. Such signatures will be authorized for

administrative documents to the extent that programming resources are available and the business need is shown.

**Electronic signature statutes.** In 2003 Wisconsin Act 294, the Wisconsin legislature approved the use of electronic signatures in government records and commercial transactions by adopting provisions of the Uniform Electronic Transactions Act (UETA). Wis. Stats. s. 990.01(38) defines a “signature” to include handwriting, the personal mark of one unable to write, and an electronic signature.<sup>1</sup> The heart of UETA appears at s. 137.15:

Legal recognition of electronic records, electronic signatures, and electronic contracts.

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

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<sup>1</sup> Wis. Stats. s. 990.01, construction of laws; words and phrases:

(38) Signature. If the signature of any person is required by law it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the person's request and in the person's presence, or, subject to any applicable requirements under subch. II of ch. 137, the electronic signature of the person.

Wis. Stats. 137.11(8) defines “electronic signature” as “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 record.”

(3) If a law requires a record to be in writing, an electronic record satisfies that requirement in that law.

(4) If a law requires a signature, an electronic signature satisfies that requirement in that law.

At the request of the Wisconsin Director of State Courts, the UETA legislation exempted court filings from coverage to let the court develop its own technical and legal standards for court documents.<sup>2</sup> The proposed rule now authorizes court officials to use electronic signatures on those documents

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<sup>2</sup> The uniform version of UETA does not have an exemption for court documents. To provide one, Senate Amendment 3 to 2003 AB 755 used language from an earlier uniform act, the Electronic Signatures in Global and National Commerce Act (E-Sign), 15 USC 7001. As a result, Wis. Stats. s. 137.12(2m) provides:

(2m) This subchapter does not apply to any of the following records or any transaction evidenced by any of the following records:

- (a) Records governed by any law relating to adoption, divorce, or other matters of family law.
- (b) Notices provided by a court.
- (c) Court orders.
- (d) Official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings.

This language was intended to respect the separation of powers by having the court develop its own standards; it was not intended to preclude use of electronic signatures on court documents.

described in Wis. Stats. s. 137.12 (2m), as well as any other documents signed by the court.<sup>3</sup>

The electronic signature feature developed by CCAP meets the security and verifiability standards of UETA and meets national standards in commercial and government practice. CCAP has received many requests for a signature technology from judges and clerks of circuit court. Enabling this feature will expedite the work of the courts without detriment to the security of the signature or the integrity of court documents.

**Signing by designees.** Under the proposed rule, a court official's electronic signature is identified with the official personally and can only be applied through programs provided by CCAP. This rule also allows designees to apply an official's electronic signature when authorized to do so through the user security procedures of the case management system.<sup>4</sup> In the clerk's office, a deputy clerk can be designated to sign those documents that are sent out many times a day, such as small claims summonses, notices of entry of judgment, and satisfactions.

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<sup>3</sup> This proposed rule does not authorize electronic signatures for attorneys or self-represented parties; that issue is addressed only in the proposed electronic filing rule.

<sup>4</sup> Within the existing user security system, court officials will identify each authorized designee, the effective date of authorization, and the expiration date if needed. Documents will be grouped into categories based on the type of document. The court official will identify which categories of documents each designee is authorized to sign, so that the system can block application of the official's signature outside the range of the designee's authority.

For judges, the technology represents a more secure and controllable version of a signature stamp. Since current practices vary widely with respect to signature stamps and delegated signing powers, this rule allows each court to develop a system that works most efficiently for it and encourages the use of electronic processes by judges.

Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. *See Schaefer v. Riegelman*, 2002 WI 18, 250 Wis.2d 494, 512-513; *Novak v. Phillips*, 2001 WI App. 156, 246 Wis.2d 673, 680-81; *Jadair, Inc. v. U.S. Fire Insurance Co.*, 209 Wis.2d 187, 211-212 (1997). No case has examined the signature requirements for court officials, and the reasoning behind these cases seems inapplicable. Under this rule, the court official remains responsible for reviewing, revising and approving the document before his or her electronic signature is applied. The court official should be held accountable as if the document had been signed personally and should be expected to take corrective action for any misuse of the signature.

Accordingly, the Director requests that a new section of SCR 70 be created as follows:

**SCR 70. \_\_ Electronic Signatures.**

(1) As used in this rule, “court official” means a circuit court judge, clerk of circuit court, register in probate, juvenile clerk, court commissioner appointed under s. 757.68 and SCR 75.02(1), justice of the Supreme Court, judge of the Court of Appeals, and the Clerk of the Supreme and Appellate Courts. “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.

(2) Secure electronic signatures may be provided by the Consolidated Court Automation Program (CCAP) for use by court officials who sign electronic documents. The electronic signature shall be treated as the court official’s personal original signature for all purposes under Wisconsin statutes and court rules. An electronic signature may be used on all court documents, including those documents described in Wis. Stats. s. 137.12(2m). The official’s printed name shall be inserted in place of a handwritten signature.

(3) A court official may delegate the use of his or her electronic signature to an authorized designee, using the security procedures of the CCAP case management system or the Supreme Court/Court of Appeals

(SCCA) case management system. A court official is responsible for any use of his or her electronic signature by an authorized designee.

(4) An electronic signature shall be used only by the official to whom it is assigned and by such designees as the official may authorize. Upon learning that the confidentiality of the electronic signature has been compromised, the court official shall immediately report it to CCAP.

(5) Court officials may use their electronic signatures for administrative purposes. If the signature of a court official is required on a document, an electronic signature satisfies that requirement. Electronically signed documents may be stored electronically for the proper retention period.

(6) Electronic signatures may be provided to the Director of State Courts and such employees as the Director may designate for administrative purposes. At the discretion of the Director, an employee may be provided with his or her own electronic signature if appropriate for the conduct of official business. The electronic signature shall be treated as the person's original signature.

(7) The chief justice, chief judges and Director of State Courts may use their electronic signatures for the assignment of judges pursuant to SCR 70.23 and 70.24. A district court administrator may be the designee of the chief judges for purposes of judicial assignment.



Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2006.

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A. John Voelker  
Director of State Courts