

In re

PROPOSED AMENDMENTS TO
WIS. STAT. RULE 809.19, WIS. STAT. RULE 809.32
and WIS. STAT. RULE 809.80
relating to the Electronic Filing of Appellate
Briefs and No-Merit Reports.

PETITION

The Court of Appeals respectfully petitions the Supreme Court to create WIS. STAT. RULES 809.19(8)(a)4., 809.19(12), 809.19(13), 809.32(1)(fm), and 809.80(5), and to amend WIS. STAT. RULE 809.80(3). This petition is directed to the Supreme Court's rule-making authority under WIS. CONST. art. VII, sec. 3(1) and WIS. STAT. § 751.12. The Court of Appeals further respectfully requests that the Court publish the Comment to proposed ss. 809.19(12) and (13).

The goal of this petition is to increase judicial efficiency in the Court of Appeals by requiring appellate counsel to file an electronic copy of all appellate briefs and no-merit reports. The proposed rule changes also permit, but do not require, the filing of an electronic copy of the appendix.

This petition proposes a system for electronic filing of appellate briefs and no-merit reports as an initial step toward electronic filing at the appellate level. Under the proposed rules, attorneys will be required to file an electronic copy of all briefs and no-merit reports filed on appeal. Self-represented parties are excluded from this requirement but are not precluded from filing an electronic copy of a brief. The filing of an electronic appendix is optional for attorneys and self-represented parties alike. The system also enables attorneys to file briefs enhanced with internal links (such as a table of contents

with links to locations in the brief) or external links (to websites containing cases or statutes cited in the brief).

Under the proposed rules, electronic copies of appellate briefs, no-merit reports, and appendices will be filed using the web-based interface developed by the Consolidated Court Automation Programs (CCAP) for e-filing in Wisconsin's circuit courts. A rule authorizing and governing the implementation of the CCAP e-filing system was adopted by the Supreme Court as WIS. STAT. § 801.17 (effective July 1, 2008).

The CCAP e-filing system requires a filer to register and acquire a unique password for use in verifying his or her identity and for the creation of an electronic signature. The proposed rules require briefs to be filed in text-searchable Portable Document Format (PDF); appendices may be filed in non-text searchable PDF. Users will log on to the system, complete an electronic transmittal form with information about the case and the document, and then upload the document. A confirmation of receipt will be sent to the user. When the document is received by the clerk's office, it will be reviewed by a clerk's office employee. If the brief is accepted, information from the transmittal form will be automatically entered into the appellate courts' case management system (SCCA) and the document will be associated with the appropriate case in SCCA. The electronic brief, no-merit report, or appendix can then be accessed by judges and other court personnel through SCCA.

The proposed rules represent an important step toward electronic filing in the appellate courts. The availability of briefs, no-merit reports, and appendices in electronic form will enable Court of Appeals judges to view these case materials on their

computers, to search for specific terms, to jump to a location within a brief, to copy text, to link to cited cases and statutes, and to take advantage of the portability and ease of transmission of electronic files.

For these reasons, the Court of Appeals respectfully requests that the Supreme Court adopt the following rules.

SECTION 809.19(8)(a)4. of the statutes is created to read:

809.18(8) NUMBER, FORM AND LENGTH OF BRIEFS AND APPENDICES.

(a) *Number.*

1. A person shall file either 22 copies of a brief or appendix in the supreme court or the number that the court directs and shall serve 3 copies on each party.

2. Except as provided in subd. 3 and s. 809.43, person shall file either 10 copies of a brief or appendix in the court of appeals or the number that the court directs and shall serve 3 copies on each party.

3. Except as provided in s. 809.43, a person who is found indigent under s. 814.29(1) and who is not represented by counsel shall file 5 copies of a brief or appendix in the court of appeals and shall serve one copy on each party. A prisoner who has been granted leave to proceed without prepayment of fees under s. 814.29(1m) and who is not represented by counsel shall file 5 copies of a brief or appendix in the court of appeals and shall serve one copy on each party.

4. In addition to the copies required in subd. 1, 2, and 3, all parties represented by counsel shall file one electronic copy of the brief as provided in s. 809.19(12) and may file one electronic copy of the appendix as provided in s. 809.19(13).

SECTION 809.19(12) of the statutes is created to read:

809.19(12) ELECTRONIC BRIEFS. (a) *General Rule.* In addition to paper briefs filed under s. 809.19(8), counsel for any party, guardian ad litem, or person filing a brief under s. 809.19(7), shall file with the court the same brief in electronic form. Notwithstanding s. 801.17(9), the paper copy of the brief remains the official court record. An appendix to the electronic brief may be filed in accordance with s. 809.19(13); the appendix should not be included with the electronic brief. A self-represented party is not required to file an electronic brief, but may do so as provided for in this subsection.

(b) *Process.* Counsel filing an electronic brief shall use the electronic filing system set forth in s. 801.17.

(c) *Format.* The electronic brief shall be in text-searchable Portable Document Format (PDF).

(d) *Filing.* The electronic brief shall be electronically transmitted on the same date that the paper brief is filed under s. 809.80(3)(b).

(e) *Corrections.* If corrections are required to be made to a paper brief, a corrected electronic brief shall be filed.

(f) *Certification.* In addition to the form and length certification required by s. 809.19(8)(d), counsel must certify that the text of the electronic brief is identical to the text of the paper brief.

SECTION 809.19(13) of the statutes is created to read:

809.19(13) ELECTRONIC APPENDIX. (a) *General Rule.* In addition to the paper appendix filed under s. 809.19(2) or s. 809.19(3)(b), counsel may file with the court the same appendix in electronic form. Notwithstanding s. 801.17(9), the paper copy of the appendix remains the official court record. A self-represented party is not required to file an electronic appendix, but may do so as provided for in this subsection.

(b) *Process.* Counsel filing an electronic appendix shall use the electronic filing system set forth in s. 801.17.

(c) *Format.* An electronic appendix shall be in Portable Document Format (PDF). An electronic appendix shall be filed as a separate document or documents; it should not be included with the electronic brief.

(d) *Filing.* An electronic appendix shall be electronically transmitted on the same date that the paper appendix is filed under s. 809.80(3)(b).

(e) *Corrections.* If corrections are required to be made to a paper appendix, a corrected electronic appendix shall be filed.

(f) *Certification.* In addition to the certification required by s. 809.19(2)(b) and s. 809.19(3)(b), counsel shall certify that the content of the electronic appendix is identical to the content of the paper appendix.

COMMENT TO SECTIONS 809.19(12) AND 809.19(13)

An electronic brief required under s. 809.19(12) and an electronic appendix requested under s. 809.19(13) are in addition to and not a replacement for the paper brief and appendix required by s. 809.19. The filing requirement is satisfied only when the requisite number of paper copies of the brief and appendix and the electronic brief are filed. If an attorney is unable for good cause to comply with the requirement of an electronic brief, a motion for relief may be filed.

The filing of an electronic appendix is encouraged, but not required. These rules do not provide for total electronic filing at the appellate level. Accordingly, the paper copies of appellate briefs and appendices constitute the official court record.

An electronic brief shall be submitted as a text-searchable Portable Document Format (PDF) document. Text-searchable PDF documents must be created by electronically converting the original word processing file to PDF. PDF documents created by scanning paper documents do not comply with this requirement. An electronic appendix may be a non-text-searchable PDF document created by scanning.

Electronic briefs may be enhanced with internal links (such as a table of contents with links to locations in the brief) or external links (links to websites containing the text of cases or statutes cited in the brief). External links in an electronic brief shall not require a password for access to the case or statute. No enhancement to an electronic brief shall alter the text of the brief.

All electronic briefs shall be submitted in a single electronic file. The file containing the electronic brief *shall not* contain the appendix or any other document or material. An electronic appendix containing more than 200 pages may be split into smaller electronic files.

Sample electronic brief certification form:

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Signed:....

Signature

Sample electronic appendix certification form:

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(13)

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of s. 809.19(13). I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Signed:....
Signature

SECTION 809.32(1)(fm) of the statutes is created to read:

809.32(1)(fm) *Filing of electronic copy of no-merit report and supplemental no-merit report.* In addition to the paper copies of the no-merit report required under this

rule and the optional supplemental no-merit report, the attorney shall file with the court the same no-merit report and supplemental no-merit report, if any, in electronic form, using the procedure set forth in s. 809.19(12). The attorney shall certify that the text of the electronic report is identical to the text of the paper report.

SECTION 809.80(5) of the statutes is created to read:

809.80(5) FILING OF ELECTRONIC BRIEFS OR NO-MERIT REPORTS. (a) *General Rule.*

The electronic brief, electronic no-merit report, or electronic supplemental no-merit report required to be filed under s. 809.19(12) or s. 809.32(1)(fm) shall be transmitted to the clerk for filing on or before the date that the paper copy of the document is filed. Failure to transmit the electronic document on or before the date that the paper document is filed may result in the document being considered untimely.

(b) *Clerk review.* The clerk shall review the electronic brief, electronic no-merit report, or electronic supplemental no-merit report to determine if the document should be accepted for filing.

1. If the clerk accepts the document, it shall be considered filed with the court at the time the original submission to the electronic filing system was complete.

Upon acceptance, the electronic filing system shall issue a confirmation with the date and time of the original submission to serve as proof of filing.

2. If the clerk rejects the document following review, the filer will receive notification of the rejection. The filer may be required to refile the document.

SECTION 809.80(3) of the statutes is amended to read:

809.80(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 papers 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. ~~Electronic filing, other than filing by facsimile as set forth in s. 801.16, is not permitted unless otherwise ordered by the supreme court.~~

Respectfully submitted on ____, 2008.

Richard S. Brown
Chief Judge, Wisconsin Court of Appeals