

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 14-03

Field Code Changed

In the matter of the Petition to Create Wisconsin Statute § 801.18

FILED

DRAFT

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

1 On October 31, 2014, the Committee of Chief Judges
 2 ("Committee"), a committee of the Director of State Courts Office,
 3 filed an administrative rule petition asking this court to create a
 4 rule, Wis. Stat. § 801.18, to mandate electronic filing by attorneys
 5 and high-volume small claims filers in circuit court proceedings and
 6 to effectuate the transition from paper case files to all electronic
 7 files in the circuit courts. To accomplish this, the petition also
 8 proposed amendment and/or creation of other rules to reflect the
 9 proposed adoption of mandatory electronic filing, including the
 10 following: Wis. Stat. § 48.022 (Electronic filing), Wis. Stat.
 11 § 801.15 (Time), Wis. Stat. § 801.16 (Filing), Wis. Stat. § 808.075
 12 (Permitted court actions pending appeal), Wis. Stat. § 809.80 (Filing
 13 and service of papers), Wis. Stat. § 938.022 (Electronic filing),
 14 Wis. Stat. § 967.12 (Electronic filing), Wis. Stat. § 968.02
 15 (Issuance and filing of complaints), Wis. Stat. § 968.12 (Search
 16 warrant), SCR 70.42 (Electronic signatures), and SCR 72.03

1 (Destruction of original court record after microfilming or
2 electronically or optically storing).

3 The court discussed the petition at open rules conference on
4 November 17, 2014, and voted to schedule a public hearing. On
5 December 29, 2014, a letter was sent to interested persons, seeking
6 input. Comments were received from the Office of the State Public
7 Defender, the State Bar, the Wisconsin Counties Association, the
8 Honorable Joseph G. Sciascia, Attorney Kenneth Fall, the Department
9 of Children and Families, and the Wisconsin Clerks of Circuit Court
10 Association. The Committee submitted a minor amendment to the
11 petition on February 25, 2015.

12 A public hearing was held on March 17, 2015. The Honorable
13 Robert J. Wirtz and the Honorable Randy R. Koschnick presented the
14 petition to the court. The court also heard oral testimony from the
15 Honorable John R. Storck; Theresa Russell, Washington County Circuit
16 Court Clerk; David Callender, Wisconsin Counties Association; Devon
17 Lee, State Public Defender; and Jean Bousquet, CCAP Director.

18 After extensive discussion at the ensuing open administrative
19 conference, the court voted to discuss the matter again at an open
20 conference in June 2015.

21 On May 21, 2015, the Committee filed a letter advising the court
22 that it was exploring alternative models with reduced start-up costs
23 and requesting that the court postpone any follow-up conference on
24 the rule petition until further notice. The court agreed.

25 On December 23, 2015, the Committee filed an amended petition.
26 Rather than a county-by-county rollout funded by the legislature as
27 contemplated by the original petition, the amended petition proposed

1 a case type-by-case type rollout funded largely by user fees and
2 reallocation of CCAP resources. The target completion date for all
3 case types is December 31, 2019.

4 A letter to interested parties was sent on January 4, 2016,
5 seeking input on the amended petition. The court received numerous
6 written comments on the amended petition.

7 The State Bar of Wisconsin, by its president Ralph Cagle,
8 expressed the Board of Governors' unanimous support for the amended
9 petition. The court also received written comments from the
10 Honorable Joseph G. Sciascia; the Wisconsin Clerks of Circuit Court
11 Association, by its president Carlo Esqueda; Professor Marsha
12 Mansfield, Director of the Economic Justice Institute at the
13 University of Wisconsin Law School; Bill Girdner, Editor for
14 Courthouse News Service; the Wisconsin Creditors' Rights Association,
15 by Attorneys Jason Hermersmann and James Kachelski; the Wisconsin
16 Access to Justice Commission, by its president, James A. Gramling,
17 Jr.; and Justice Shirley S. Abrahamson. The Committee submitted a
18 letter responsive to these comments.

19 The court subsequently received written comments from the
20 Honorable Eugene Harrington; additional comments from Justice
21 Abrahamson (attaching data prepared by Dane County Clerk Carlo
22 Esqueda); additional comments from Justice Abrahamson (attaching
23 information she received from Richard Schauffler, Director of
24 Research Services at the National Center for State Courts); comments
25 submitted jointly by Judge Storck and Robert Barrington, Dodge County
26 District Attorney Office; comments from David A. Pifer, Legal Action
27 of Wisconsin; John Ebbott, Retired Executive Director of Legal Action

1 of Wisconsin; Kimberly Walker, Executive Director, Legal Aid Society
2 of Milwaukee; the Wisconsin Counties Association; and additional
3 information from CCAP.

4 A public hearing was conducted on February 23, 2016. Chief
5 Judge Robert J. Wirtz, Fond du lac County Circuit Court, Judge
6 Richard Sankovitz, Milwaukee County Circuit Court, and Chief Judge
7 Randy R. Koschnick, Jefferson County Circuit Court presented the
8 petition to the court. The court heard testimony from Carla
9 Robinson, Jefferson County Clerk of Circuit Court; Attorney Robert J.
10 Dreps, on behalf of the Wisconsin Newspaper Association, the
11 Milwaukee Journal Sentinel, the Wisconsin State Journal, and
12 Courthouse News Service; Attorney Robert G. Barrington, Dodge County
13 District Attorney's Office; Lynn Hron, Dodge County Clerk of Circuit
14 Court; and Attorney Katherine Koespell.

15 The court discussed the matter in open administrative
16 conference. Justice Abrahamson informed the court that she had
17 requested some additional data from CCAP. The court voted
18 unanimously to adopt the petition, subject to certain changes
19 discussed at the hearing and pending its receipt and consideration of
20 additional information requested from CCAP.

21 On March 10, 2016, a draft order, marked to reflect proposed
22 changes from the language set forth in the amended petition was
23 posted on the court rules website and provided to the court for its
24 consideration and review. On March 8, 2016, CCAP provided the court
25 with additional information.

26 The court discussed the matter on March 17, 2016 and voted [
27].

1 IT IS ORDERED that effective July 1, 2016:

2 **Section 1.** 48.022 of the statutes is created to read:

3 **48.022 Electronic filing.** Section 801.18 governs the electronic
4 filing of documents under this chapter.

5 **Section 2.** 801.15(5)(b) of the statutes is amended to read:

6 **801.15 (5)** (b) If the notice or paper is served by facsimile
7 transmission or by the electronic filing system under s. 801.18 and
8 such transmission is completed between 5 p.m. and midnight, 1 day
9 shall be added to the prescribed period.

10 **Section 3.** 801.16(2)(f) of the statutes is amended to read:

11 **801.16 (2)** (f) Prior to the time electronic filing becomes
12 mandatory as provided in s. 801.18(2)(b), documents-Papers filed with
13 the circuit court by facsimile transmission completed after regular
14 business hours of the clerk of circuit court's office are considered
15 filed the next business day. on a particular day if the submission is
16 made by 11:59 p.m. Central Time, as recorded by the court facsimile
17 machine. The expanded availability of time to file shall not affect
18 the calculation of time under other statutes, rules and court orders.

19 **Section 4.** A Comment to 801.16(2)(f) of the statutes is created
20 to read:

21 **Comment**

22 Sub. (2)(f) is a substantive change to circuit court law and
23 practice. Under prior law, fax filings must-were required to arrive
24 at the office of the clerk of court before the end of the regular
25 business day in order to be considered filed on that day. The-In
26 contrast, the mandatory electronic filing statute, s. 801.18(4)(e),
27 allows any filing made before midnight to be considered filed on that

1 day. After ~~mandatory electronic filing goes into effect~~ July 1, 2016,
2 parties who ~~are not required to~~ do not use the electronic filing system
3 are given the advantage of the ~~same extraextended filing~~ hours.

4 **Section 5.** 801.17 of the statutes is repealed.

5 **Section 6.** 801.18 of the statutes is created to read:

6 **801.18** (title) **Electronic filing.**

7 **(1)** DEFINITIONS. In this section:

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

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

15 (c) "Director" means the director of state courts.

16 (d) "Document" means a pleading, form, notice, motion, order,
17 affidavit, paper exhibit, brief, judgment, writ of execution, or
18 other filing in an action.

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

24 (f) "Electronic signature" means an electronic sound, symbol, or
25 process attached to or logically associated with a record and
26 executed or adopted by a person with the intent to sign the document.
27 For purposes of the electronic filing system, a document is

1 | electronically signed if it is submitted by or on behalf of a user or
2 court official through the electronic filing system and bears the
3 name of the user in the place where a signature would otherwise
4 appear. "Electronic signature" includes only those signature
5 technologies specifically approved by the director.

6 (g) "Filing agent" means a person authorized under s. 799.06(2)
7 to appear on behalf of another.

8 (h) "High-volume filing agent" means a person authorized under
9 s. 799.06(2) who appears on behalf of an entity filing 10 or more
10 actions a year in the county where the action is being filed.

11 (i) "Imaged document" means an electronic copy of a document
12 originally created or submitted on paper.

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

16 (k) "Mandatory user" means a user who is subject to sub. (3)(a).

17 | (L) "Paper party" means a party who is not subject to sub.
18 (3)(a) who chooses not to participate in the electronic filing system
19 as described in sub. (3)(c).

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

23 (n) "User" means an individual who has registered to use the
24 electronic filing system under sub. (3). Users of the electronic
25 filing system shall be individuals, not law firms, agencies,
26 corporations, or other groups.

1 (o) "Voluntary user" means a user-party who is not subject to
2 sub. (3) (a) who voluntarily registers to use the electronic filing
3 system under sub. (3) (b).

4 **(2) EFFECTIVE DATE; APPLICABILITY.**

5 (a) The director of state courts shall implement an electronic
6 filing system for the Wisconsin circuit courts. The requirements of
7 this section shall govern the electronic filing of documents in all
8 types of actions and proceedings in circuit court.

9 (b) Mandatory use of the electronic filing system shall be
10 phased in according to a schedule set by the director until the
11 system has been fully implemented. The director shall make
12 information about the transition schedule readily available to the
13 public in advance of its application.

14 (c) Subject to the schedule set by the director ~~in~~under par.
15 (b), mandatory users shall be required to use the electronic filing
16 system for all new filings covered by the schedule. Electronic filing
17 shall be required for all new actions brought in circuit court and
18 for all new documents submitted in previously filed cases, except as
19 otherwise provided in this section.

20 (d) After ~~the effective date of this section~~July 1, 2016 and
21 prior to the date that electronic filing becomes mandatory under par.

22 (b), users-parties may choose to electronically file actions and
23 documents under the provisions of this statute or may continue to
24 file by traditional methods.

25 (e) Electronic filing is limited to methods specifically
26 approved by the director. The director may enter into an agreement
27 with any state agency to allow electronic filing through a custom

1 data exchange between the court case management system and the
2 agency's automated information system. Parties using a custom data
3 exchange are considered mandatory users and are subject to the
4 requirements of this section.

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

9 (g) The judges of the circuit court, the clerk of court, and all
10 court staff shall cooperate and assist with the implementation of
11 electronic filing.

12 (h) This section does not address documents required by law to
13 be filed with court officials that are not filed in an action before
14 the court. These documents may be filed by traditional methods unless
15 otherwise required by the director of state courts.

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

18 (j) Prior to the effective date of this section, the director
19 may require that electronic filing be mandatory in one or more pilot
20 counties for purposes of testing and improving the mandatory
21 electronic filing system.

22 **(3) REGISTRATION REQUIREMENTS.**

23 (a) Subject to the schedule set by the director ~~in par- under~~
24 sub. (2)(b), the following individuals shall register for access to
25 the electronic filing system prior to filing documents in circuit
26 court:

1 1. Licensed Wisconsin attorneys, other than those who are
2 representing only themselves.

3 2. Attorneys appearing under SCR 10.03(4).

4 3. High-volume filing agents.

5 (b) Parties who are not subject to par. (a) may voluntarily
6 register to use the electronic filing system.

7 (c) A party not subject to par. (a) who does not choose to
8 participate in the electronic filing system under par. (b) shall
9 file, serve, and receive paper documents by traditional methods.

10 (d) All users shall register through the electronic filing
11 system by executing a user agreement governing the system's terms of
12 use. To register, users must have the capability to produce, file,
13 and receive electronic documents meeting the technical requirements
14 of the electronic filing system. The electronic filing system shall
15 make information on the technical requirements for filing readily
16 available. By registering, users agree to electronically file all
17 documents to the extent the electronic filing system can accept them.

18 (e) Upon completion of a properly executed user agreement under
19 par. (d), the electronic filing system shall provide the user with a
20 confidential, secure authentication procedure for access to the
21 electronic filing system. This authentication procedure shall be used
22 only by that user and by any agents or employees that the user
23 authorizes. Upon learning that the confidentiality of the
24 authentication procedure has been inadvertently or improperly
25 disclosed, the user shall immediately report that fact through the
26 electronic filing system.

1 (f) Users shall notify the electronic filing system within 10
2 business days of any change in the information provided for
3 registration. Attorneys shall notify the electronic filing system
4 within 10 business days of beginning representation of a formerly
5 self-represented party. Entities appearing by a filing agent shall
6 notify the electronic filing system within 10 business days of any
7 change in the identity of a filing agent.

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

10 (h) After registering to use the electronic filing system, a
11 user shall also register as an attorney or party on any previously
12 filed cases in which the user intends to continue to participate. The
13 same authentication procedure shall be used for all cases on which
14 the user is an attorney or a party. The electronic filing system may
15 reset authentication procedures as needed for administrative and
16 security purposes.

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

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

26 **(4) TIME AND EFFECT OF ELECTRONIC FILING.**

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

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

9 (c) If the clerk of court accepts a document for filing, it
10 shall be considered filed with the court at the date and time of the
11 original submission, as recorded by the electronic filing system.
12 Upon acceptance, the electronic filing system shall issue a
13 confirmation to serve as proof of filing. When personal service is
14 not required, the confirmation shall also serve as proof of service
15 on the other users in the case.

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

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

25 **(5) COMMENCEMENT OF ACTION.**

26 (a) A user seeking to initiate an action shall first register
27 with the electronic filing system as provided in sub. (3). The user

1 shall then file an initiating document in the county where the action
2 is to be commenced and provide the additional information requested
3 by the electronic filing system to open a case.

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

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

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

21 (e) A mandatory user who represents a responding party shall
22 register to use the electronic filing system as provided by this
23 section. After registering to use the electronic filing system, the
24 user shall also register as a user on the particular case. The
25 electronic filing system will note the new user on the case.

26 **(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS.**

1 (a) The electronic filing system shall generate a notice of
2 activity to the other users in the case when documents other than
3 initiating documents are filed. Users shall access filed documents
4 through the electronic filing system. For documents that do not
5 require personal service, the notice of activity is valid and
6 effective service on the other users and shall have the same effect
7 as traditional service of a paper document, except as provided in
8 par. (b).

9 (b) If a document other than an initiating document requires
10 personal service, it shall be served by traditional methods unless
11 the responding party has consented in writing to accept electronic
12 service or service by some other method.

13 (c) Paper parties shall be served by traditional methods. The
14 electronic case record shall indicate which ~~users~~ parties are to be
15 served electronically and which are to be served by traditional
16 methods.

17 (d) Paper parties shall file documents with the court by
18 traditional methods. The clerk of court shall image the documents and
19 enter the imaged documents into the electronic filing system
20 promptly. The notice of activity generated by the entry shall
21 constitute service on the users in the case. Paper parties must serve
22 other paper parties by traditional methods.

23 (e) If a notice sent to a user is returned undeliverable, the
24 electronic filing system shall automatically notify the ~~filing~~
25 party user who filed the document. The filing ~~party~~ user shall then
26 serve the document on that ~~user~~ party by traditional methods. That

1 | user-party shall be treated as a paper party until the party corrects
2 the problem and reregisters with the electronic filing system.

3 (f) For cases that were originally filed by traditional methods:

4 1. Subject to the schedule set by the director in par. (2) (b),
5 all mandatory users shall register as electronic users on each case
6 for which they continue to appear. Mandatory users who do not
7 register for a case will not receive notices of activity or service
8 of documents.

9 2. For all cases that are in open status at the time electronic
10 filing is mandated, the clerk of court shall send a notice by
11 traditional methods to each unregistered party stating that the case
12 has been converted to electronic filing. Mandatory users shall
13 promptly register for these cases unless the user informs the court
14 that the user is no longer appearing on behalf of the party.

15 3. For all cases that are in closed status prior to the time
16 electronic filing is mandated, no action is required until there is a
17 subsequent filing or the court initiates further activity on the
18 case, subject to all of the following:

19 a. A mandatory user who initiates electronic activity on a
20 closed case shall register as a user on the case and shall serve any
21 paper parties by traditional methods. Any mandatory user so served
22 shall promptly register as a user in the case or shall notify the
23 court that the user is no longer appearing on behalf of the party.

24 b. A voluntary user who chooses to initiate electronic activity
25 on a closed case shall register as a user on the case and shall serve
26 any paper parties by traditional methods. Any mandatory user so
27 served shall promptly register as a user in the case or shall notify

1 the court that the user is no longer appearing on behalf of the
2 party.

3 c. Service on a party who might be a voluntary user shall
4 include a notice stating that the case has been converted to
5 electronic filing and giving instructions for how to use the
6 electronic filing system if the party chooses to do so.

7 **(7) PAYMENT OF FEES.**

8 (a) Users shall make payments due to the clerk of court through
9 the electronic filing system unless otherwise ordered by the court or
10 unless arrangements are made with the clerk of court. The electronic
11 filing system shall deposit the fees due to the clerk of court in the
12 clerk's account.

13 (b) A document that requires payment of a fee is not considered
14 filed until the fee is paid, a waiver of the fee is granted, or other
15 arrangements for payment are made. The user may submit a petition or
16 motion for waiver of filing costs and fees, including the electronic
17 filing fee, under s. 814.29(1), using a form provided by the court
18 for that purpose. If a document is submitted with a petition or
19 motion for waiver ~~of the filing fee,~~ it shall be considered filed
20 with the court on the date and time of the original submission, ~~so~~
21 long as if the ~~fee~~ waiver is subsequently granted by the court or
22 other arrangements for payment are made.

23 (c) Users shall be charged a fee for use of the electronic
24 filing system, as provided under s. 758.19(4m) and ~~determined~~
25 established by the director of state courts. The fee is a recoverable
26 cost under s. 814.04(2). The electronic filing fee shall not be
27 charged to Wisconsin state and local government units. The electronic

1 ~~filing fee shall not be waived by the court except in accordance with~~
2 ~~policies set by the director.~~

3 **(8) FORMAT AND CONTENT OF FILINGS.**

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

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

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

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

20 **(9) OFFICIAL RECORD.**

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

25 (b) The duties of the clerk of court under ss. 59.40, 851.72,
26 851.73, and all other statutes, court rules, and procedures may be
27 fulfilled through proper management of electronic documents as

1 provided in this section. The requirements of statutes and rules that
2 refer to paper copies, originals, mailing, and other traditional
3 methods may be satisfied by transmission of documents through the
4 electronic filing system.

5 (c) Subject to the schedule set by the director in sub. (2)(b),
6 the clerk of court shall maintain the official court record only in
7 electronic format ~~only~~ for all ~~new~~ cases commenced after that date.
8 Documents filed by traditional methods shall be electronically imaged
9 and made part of the official record. The clerk of court may discard
10 the paper copy pursuant to SCR 72.03(3). Any official court record
11 containing electronically filed documents must meet the operational
12 standards set by SCR 72.05 for electronic records.

13 (d) If a document is filed in a case in closed status, the clerk
14 of court shall file the document electronically and convert that case
15 to electronic format within a reasonable time. If conversion of the
16 case would be unusually burdensome, the clerk of court may maintain
17 the record in paper format with the permission of the court.

18 (e) The clerk of court shall make the public portions of the
19 electronic record available for viewing at the clerk of court's
20 office. The clerk of court shall make nonpublic portions of the
21 electronic record available for viewing by authorized persons.

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

26 (g) Certified copies of an electronic record may be obtained
27 from the clerk of court's office by traditional methods, as provided

1 by s. 889.08. The electronic system may also make available a process
2 for electronic certification of the court record. The seal of the
3 court may be applied electronically. No use of colored ink or an
4 impressed seal is required.

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

11 (i) Notwithstanding the other provisions of this section+
12 ~~1. A. a~~ will deposited for safekeeping under s. 853.09 may not be
13 electronically filed. The original paper will shall be deposited with
14 the court.

15 ~~2.(j) Notwithstanding the other provisions of this section, a-A~~
16 person submitting a will to the court under s. 856.05 shall file the
17 original paper will in the proper court. The register in probate
18 shall image the will and create an electronic case file. The register
19 in probate shall maintain the paper copy of a will in a separate file
20 for the time period provided by SCR ch. 72.

21 ~~(+k)~~ Pleadings may be submitted during a court proceeding by
22 traditional methods. Pleadings submitted in court shall be imaged and
23 the imaged copy entered into the court record by the clerk of court.

24 ~~(+L)~~ For documentary exhibits, parties shall submit a copy of
25 the exhibit and not the original. The clerk of court shall image each
26 documentary exhibit and enter the imaged ~~copy-document~~ into the court
27 record. Copies of documentary exhibits so imaged may be discarded as

1 provided in SCR 72.03 (3). If inspection of the original document is
2 necessary to the court proceeding, the court may order that the
3 original document be produced. Any original document so produced
4 shall be retained as an exhibit as provided in SCR 72.03(4).

5 (Em) An administrative agency submitting a record for judicial
6 review in compliance with s. 227.55 shall image the administrative
7 record and submit the imaged copy electronically using a method
8 provided by the electronic filing system. The electronic record shall
9 be the official record in the circuit court. If inspection of an
10 original document is necessary to the court proceeding, the court may
11 order that the original document be produced.

12 **(10) AUTHENTICATION.**

13 Electronic placement of the court filing stamp and the case
14 number on each copy of an initiating document constitutes
15 authentication under the statutes and court rules. An authenticated
16 copy may be printed from the case management system by the clerk of
17 court or from the electronic filing system by the filing partyuser.

18 **(11) NOTARIZATION AND OATHS.**

19 (a) Notaries public who hold valid appointments under ch. 137
20 may issue certificates of notarial acts for electronically filed
21 documents as provided in this section.

22 (b) Court officials authorized by law to perform notarial acts
23 may do so by application of their electronic signatures provided
24 through the electronic filing system.

25 (c) Unless specifically required by statute or court rule,
26 electronically filed documents are not required to be notarized.

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

9 (e) Notwithstanding s. 706.07(8)(c), an electronically filed
10 complaint under s. 799.22 may be verified by applying the electronic
11 signature of the plaintiff or the plaintiff's attorney to a written
12 oath attesting that the facts of the complaint are true, without
13 swearing to the oath in front of a notarial officer.

14 (f) The director, in his or her discretion, may approve the use
15 of an electronic notary technology compatible with the existing
16 electronic filing system.

17 **(12) SIGNATURES OF USERS.**

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

1 (b) A summons and complaint, petition, or other initiating
2 document that is signed in compliance with par. (a) bears a
3 sufficient signature under s. 802.05.

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

7 (d) An attorney may delegate the authority to submit documents
8 to the electronic filing system to a person under the attorney's
9 supervision. Any document requiring the attorney's signature is
10 deemed to have been signed by the attorney if submitted to the
11 electronic filing system ~~through use of the attorney's confidential~~
12 ~~authentication procedure~~ and signed as provided in par. (a). Every
13 attorney is responsible for all documents so submitted.

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

20 (f) Self-represented parties and filing agents under s. 799.06
21 are responsible for electronically filed documents to the same extent
22 as for paper filings. Self-represented parties and filing agents
23 using the electronic filing system are subject to sanctions under s.
24 802.05 and contempt procedures under ch. 785.

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

1 1. A joint petition in an action for divorce or legal separation
2 may be electronically filed if it bears the handwritten signature of
3 one party and the electronic signature of the other or the
4 handwritten signatures of both parties.

5 2. A stipulation will be considered signed by multiple persons
6 if it bears the handwritten signatures of all signatories or if it
7 bears the printed name of each signatory and contains a
8 representation by the filing party that the filing party has
9 consulted with the signatories and all have agreed to sign the
10 document.

11 3. The court may agree to accept a document with the handwritten
12 signature of a user and direct that it be made part of the electronic
13 record by the clerk of court.

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

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

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

4 **(13) SIGNATURES OF COURT OFFICIALS.**

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

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

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

24 **(14) CONFIDENTIAL INFORMATION.**

25 (a) The confidentiality of an electronic record is the same as
26 for the equivalent paper record. The electronic filing system may
27 permit access to confidential information only to the extent provided

1 by law. No person in possession of a confidential electronic record,
2 or an electronic or paper copy thereof, may release the information
3 to any other person except as provided by law.

4 (b) Users—Parties shall comply with the requirements of ss.
5 801.19 - 801.21 regarding redaction of protected information,
6 identification of confidential material, and sealing of filed
7 documents.

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

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

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

19 **(15) TRANSCRIPTS.**

20 (a) The original transcript of any proceeding produced under SCR
21 71.04 shall be electronically filed with the circuit court in
22 accordance with procedures established by the director. This rule
23 does not alter the requirements governing timelines, format or costs
24 established by s. 814.69, SCR 71.04, or any other statutes, rules,
25 and procedures. This section does not alter the requirements for
26 filing transcripts with the supreme court or court of appeals.

1 (b) The electronic filing system shall note that the transcript
2 has been prepared and filed with the court. Upon receiving payment or
3 making arrangements for payment, the court reporter shall indicate
4 which users may have access to the electronic transcript. Access to
5 an electronic copy of the transcript through the electronic filing
6 system shall serve as a duplicate copy under s. 757.57(5) and SCR
7 71.04(6). Upon the request of a user who is entitled to view the
8 transcript, a single paper copy of the transcript shall be provided
9 without additional charge. No party-user shall be granted access to
10 view the transcript unless the court reporter has notified the system
11 or the court has so ordered.

12 (c) The court reporter shall notify any paper parties by
13 traditional methods that the transcript has been prepared. The court
14 reporter shall serve a paper copy of the transcript by traditional
15 methods on any paper party who has made arrangements for payment or
16 who is entitled to be served with a copy. A court reporter may by
17 agreement make the transcript available in another format.

18 (d) When notice to the clerk of the supreme court and court of
19 appeals is required, the court reporter shall provide notice by
20 traditional methods until directed otherwise by the supreme court or
21 court of appeals.

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

26 (f) Under SCR 71.04(10)(b), a court reporter may certify that
27 the transcript is a verbatim transcript of the proceedings by

1 applying the court reporter's signature in the same manner as
2 provided in sub. (12)(a) and then electronically filing the
3 transcript.

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

10 (h) A court reporter shall electronically file an original
11 unredacted transcript with the circuit court. Parties shall comply
12 with the requirements of s. 801.19(4) and s. 801.21(8), regarding
13 redaction and sealing of protected information in the transcript. If
14 redaction is ordered, a court reporter shall electronically file a
15 complete copy of the redacted transcript as provided in s. 801.19(4).

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

19 **(16) TECHNICAL FAILURES.**

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

23 1. If the failure is caused by the court electronic filing
24 system, the court may make a finding of fact that the user submitted
25 the document to the court in a timely manner by tendering it to the
26 electronic filing system. The court may enter an order permitting the
27 document to be deemed filed or served on the date and time ~~it was the~~

1 | user first attempted to ~~be transmitted~~ transmit the document
2 electronically or may grant other relief as appropriate.

3 2. If the failure is not caused by the court electronic filing
4 system, the court may grant appropriate relief from non-
5 jurisdictional deadlines upon satisfactory proof of the cause. Users
6 are responsible for timely filing of electronic documents to the same
7 extent as filing of paper documents.

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

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

15 **Section 7.** A Comment to s. 801.18(2) of the statutes is created
16 to read:

17 **Comment**

18 Sub. (2) provides that the mandatory use of electronic filing
19 will be implemented according to a schedule determined by the
20 director of state courts. The director will designate the order and
21 timing of implementation after evaluating the resources available for
22 | programming, the readiness of the ~~users~~ persons affected, and the
23 logistical support available for implementation. The director may
24 advance or delay implementation of certain case types, may require or
25 exempt participation by certain filers, and may require other
26 conditions as necessary. The director will set the schedule after

1 consultation with the steering committee that oversees the work of
2 the consolidated court automation programs.

3 All open cases will be converted to an electronic format.
4 Mandatory electronic filing will apply both to new cases and to new
5 documents filed in old cases. This will allow both the court and the
6 parties to more quickly reap the benefits of all-electronic files
7 rather than persist for years with both paper and electronic court
8 records.

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

12 **Section 8.** A Comment to 801.18(3) of the statutes is created to
13 read:

14 **Comment**

15 Sub. (3)(a) distinguishes between non-attorney filers for
16 purposes of mandatory participation in the electronic filing system.
17 Under s. 799.06(2), certain employees, agents, and LLC members may be
18 authorized to file on behalf of an organization in small claims
19 proceedings. This group of persons includes both high-volume filers
20 like utility companies and hospitals and low-volume filers like small
21 businesses and individual landlords. This section requires the high-
22 volume filers to use the electronic filing system and allows small
23 filers to participate voluntarily like self-represented parties.

24 Sub. (3)(j) recognizes that there are persons who occasionally
25 file documents in cases where they are not parties, such as witnesses
26 seeking protective orders, intervenors, amicus curiae, and crime
27 victims under ch. 950. There are also many professionals and agencies

1 regularly providing case-related services to the court, such as
2 presentence investigators and social workers. To the extent that it
3 is feasible and resources allow, the director may provide a means for
4 filing documents and exchange of information in these situations.

5 **Section 9.** A Comment to 801.18(4) of the statutes is created to
6 read:

7 **Comment**

8 Sub. (4)(c) provides that where personal service is not
9 required, submission of a document to the electronic filing system is
10 considered service on the other electronic users. Just as service
11 through the post office is considered complete upon dropping a
12 properly addressed envelope into a mailbox, service using the
13 electronic filing system is complete upon properly transmitting the
14 document.

15 Sub. (4)(e) is a ~~substantive~~ change to law and practice.
16 Currently, paper filings must arrive at the office of the clerk of
17 court before the end of the regular business day in order to be
18 considered filed on that day. Northern Air Services v. Link, 2011 WI
19 75, 336 Wis. 2d 1, 804 N.W.2d 458. However, the most common if not
20 universal practice among courts that mandate electronic filing is to
21 use the entire calendar day as the filing period; this is also the
22 practice recommended to the Wisconsin courts ~~by a consultant provided~~
23 by the National Center for State Courts. This provision gives a ~~party~~
24 user an extra few hours to file on the last day a document is due but
25 does not otherwise affect the calculation of time. If a ~~party~~ user
26 files a document or the court signs an order on a day when the
27 clerk's office is closed, it is considered filed on the next day the

1 clerk's office is open, except as provided by other statutes and
2 rules, or by court order.

3 For consistency, ~~a change to~~ the circuit court fax statute, s.
4 801.16 (2) (f), is also ~~recommended~~ amended. For a document that can be
5 filed by facsimile, Paper-paper parties should beare given the
6 advantage of the ~~same~~ extraextended filing hours by providing that
7 pleadings received before midnight will be considered filed that day.

8 **Section 10.** A Comment to 801.18(5) of the statutes is created
9 to read:

10 Sub. (5) does not change the substantive law about when personal
11 service is required for purposes of commencing the action and
12 obtaining jurisdiction over the defendant or respondent.

13 **Section 11.** A Comment to 801.18(6) of the statutes is created
14 to read:

15 **Comment**

16 Sub. (6)(a) provides that the electronic filing system now
17 serves as the means of delivery between users for subsequent
18 documents, the kind that were previously served by mail or delivery.
19 Paper parties will continue to be served by traditional methods for
20 both initiating and subsequent documents.

21 Sub. (6)(f) outlines how mandatory electronic filing will be
22 initiated on previously filed cases. For cases that are in open
23 status at the time electronic filing becomes mandatory, the clerk
24 will work with attorneys and high-volume filing agents to register as
25 users on their open cases. Parties who are not yet registered but who
26 might be voluntary users will be provided with instructions on how
27 to participate in the electronic filing system if they choose.

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

6 **Section 12.** A Comment to 801.18(7) of the statutes is created
7 to read:

8 **Comment**

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

17 Sub. (7)(b) provides that the electronic filing fee may be
18 waived for indigent parties and their attorneys, using the same
19 procedure and criteria that courts apply to waiver of other costs and
20 fees. If the court denies the waiver, the court may allow time to
21 submit the fee for the filing to be considered filed on the date when
22 it was first submitted.

23 Sub. (7)(c) ~~recognizes that the electronic filing fee is~~
24 ~~essential to development and maintenance of the electronic filing~~
25 ~~system and should be charged in a uniform manner statewide under~~
26 ~~policies set by the director of state courts.~~ provides that the
27 electronic filing fee will not be charged to a Wisconsin governmental

1 unit such as the district attorney, public defender and appointed
2 counsel, court-appointed counsel, child support agency, Attorney
3 General, or county and municipal attorney.

4 **Section 13.** A Comment to 801.18(8) of the statutes is created
5 to read:

6 **Comment**

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

13 **Section 14.** A Comment to 801.18(9) of the statutes is created
14 to read:

15 **Comment**

16 Sub. (9) provides that court case files must be kept
17 electronically. Mandatory users are required to file all documents
18 electronically, with only a few exceptions. ~~Paper~~ dDocuments
19 submitted by ~~voluntary users~~ paper parties will be converted to
20 electronic format by the clerk of court. Because any paper submitted
21 will be discarded after it is imaged, parties should not submit
22 original documents to the court.

23 Similarly, this section does not require the parties to retain
24 original paper documents. If there is likely to be a challenge to the
25 validity of a document or exhibit, parties may be well-advised to
26 keep the original document. For a high-volume practice, the economics
27 may not support keeping paper originals when the remainder of the

1 file is electronic, and parties may prefer to assume the risk of
2 failure of proof.

3 Sub. (9)(k) allows most documents submitted in court as exhibits
4 to be imaged and made part of the electronic record, rather than
5 retained in paper format. If the court requires that the original
6 document be produced for inspection, it will be retained pursuant to
7 the supreme court rule governing imaging of exhibits.

8 Sub. (9)(L) requires an agency submitting an administrative
9 record for review to file an electronic copy of the record.

10 **Section 15.** A Comment to 801.18(10) of the statutes is created
11 to read:

12 **Comment**

13 Sub. (10) provides that electronic authentication satisfies the
14 authentication requirements of Wisconsin Statutes, including ss.
15 801.02, 801.09(4), and 909.02(8). Statutory authentication
16 requirements must be met upon filing of the summons and complaint in
17 order to confer jurisdiction on the court. American Family Mut. Ins.
18 Co. v. Royal Ins. Co., 167 Wis. 2d 524, 534, 481 N.W.2d 629 (1992).

19 The purpose of authentication is to give assurance by the clerk
20 of court that copies served are true copies of filed documents and to
21 provide the case number for future reference. J.M.S. v. Benson, 91
22 Wis. 2d 526, 532, 283 N.W.2d 465 (Ct. App. 1979), rev'd on other
23 grounds, 98 Wis. 2d 406 (1980). The security and verifiability
24 provided by the electronic filing system satisfy the purposes of the
25 authentication requirements under statutes and case law.

26 **Section 16.** A Comment to 801.18(11) of the statutes is created
27 to read:

1 **Comment**

2 Sub. (11)(e) makes a ~~substantive~~ change to the law governing
3 small claims complaints by eliminating the need for an electronically
4 filed small claims complaint to be verified in front of a notary.
5 Instead, it may be verified by applying the electronic signature of
6 the plaintiff or the plaintiff's attorney to a written oath or
7 affidavit attesting to the facts of the complaint. This change has
8 been made to encourage the use of electronic filing by self-
9 represented parties. The identification procedures and personal
10 accountability provided by this section satisfy the purposes of
11 traditional oath and notarization procedures.

12 **Section 17.** A Comment to 801.18(12) of the statutes is created
13 to read:

14 **Comment**

15 Sub. (12)(a) and (d) represent a ~~substantive~~ change to the 2008
16 electronic filing statute and to current law and practice. Since
17 2008, electronic filing in Wisconsin has used two processes to
18 identify the lawyer or self-represented party who signs a document: a
19 username and password combination, which allows users into the
20 system, and a personal identification number (PIN), which acts as the
21 signature and is applied personally by the attorney or self-
22 represented party. Application of a separate PIN signature is an
23 extra step compared to other states and the federal courts, where the
24 username and password are sufficient.

25 The 2008 eFiling committee chose to impose this extra step
26 because of Wisconsin case law regarding improperly signed pleadings.
27 Appellate decisions have reasoned that the statutes require that

1 attorneys personally sign a summons and complaint to confer
2 jurisdiction on the court. The personal signature requirement exists
3 to assure that the pleadings are well-grounded in law and fact, as an
4 "essential protection" against an invalid claim, and to prevent the
5 unauthorized practice of law. See Schaefer v. Riegelman, 2002 WI 18,
6 250 Wis. 2d 494, 512-13, 639 N.W.2d 715; Jadair, Inc. v. U.S. Fire
7 Insurance Co., 209 Wis. 2d 187, 211-12, 785 N.W.2d 698 (1997).

8 The new statute supersedes this line of cases and provides that
9 any document submitted through the electronic filing system is
10 considered signed if the document represents that it has been
11 electronically signed by the attorney or self-represented party~~by the~~
12 ~~individual who holds the account~~. The statutes and rules in other
13 electronic filing jurisdictions provide that attorneys and self-
14 represented parties are responsible for everything submitted ~~from~~
15 their accounts to the electronic filing system.

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

26 **Section 18.** A Comment to 801.18(13) of the statutes is created
27 to read:

1 **Comment**

2 Sub. (13) provides electronic signatures for those court
3 officials whose duties require them to sign documents in circuit
4 court case files, including circuit court judges, clerks of circuit
5 court, registers in probate, juvenile clerks, and circuit court
6 commissioners appointed under s. 757.68 and SCR 75.02 (1).

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

14 **Section 19.** A Comment to 801.18(14) of the statutes is created
15 to read:

16 **Comment**

17 Sub. (14) provides that the electronic filing system shall
18 protect those case types and individual documents made confidential
19 by law or sealed by court order. The electronic filing system will
20 provide user security measures to allow access only to authorized
21 persons.

22 s. 801.19 requires that all persons filing documents with the
23 circuit court must review and redact certain protected information
24 about individuals, such as personal identifiers and financial account
25 numbers. S. 801.20 - 801.21 require the filing party to identify any
26 materials deemed confidential by law and to submit a motion to seal
27 if a court order is required. These statutes are intended to work in

1 concert with the electronic filing statute so that all electronic
2 documents are free of protected information. The electronic filing
3 system will mark confidential documents in a way that will be visible
4 electronically and when the documents are printed.

5 **Section 20.** A Comment to 801.18(15) of the statutes is created
6 to read:

7 **Comment**

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

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

25 This section is not intended to change any requirements
26 applicable to proceedings before the supreme court and court of
27 appeals.

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Section 21. A Comment to 801.18(16) of the statutes is created to read:

Comment

Sub. (16) addresses technical failures of the court's electronic filing system and the user's electronic systems. Court technical failures may include a failure to process the document upon receipt or erroneous exclusion of a party-user from the service list by the electronic filing system. User technical failures may include problems with the user's internet service provider, payment, office equipment or software, or loss of electrical power.

This section 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 section does not provide for relief from jurisdictional deadlines.

1 management system and the automated information system used by
2 district attorneys.

3 **Section 26.** 967.12 of the statutes is created to read:

4 **967.12 Electronic filing.** Section 801.18 shall govern the
5 electronic filing of documents in criminal actions. Electronic filing
6 may be made through a custom data exchange between the court case
7 management system and the automated information system used by
8 district attorneys.

9 **Section 27.** 968.02(1) of the statutes is amended to read:

10 **968.02(1)** Except as otherwise provided in this section, a
11 complaint charging a person with an offense shall be issued only by a
12 district attorney of the county where the crime is alleged to have
13 been committed. A complaint is issued when it is approved for filing
14 by the district attorney. The approval shall be in the form of a
15 written endorsement on the complaint or the electronic signature of
16 the district attorney as provided in s. 801.18(12).

17 **Section 28.** 968.12(3) (b) (title) is amended to read:

18 **968.12(3) (b)** (title) *Application and issuance.*

19 968.12(3) (b) is renumbered 968.12(3) (b)1. and amended to read:

20 1. 'Duplicate originals.' The person who is requesting the
21 warrant ~~shall~~ may prepare a duplicate original warrant and read the
22 duplicate original warrant, verbatim, to the judge. The judge shall
23 enter, verbatim, what is read on the original warrant. The judge may
24 direct that the warrant be modified. ~~(c) Issuance.~~ If the judge
25 determines that there is probable cause for the warrant, the judge
26 shall order the issuance of a warrant by directing the person
27 requesting the warrant to sign the judge's name on the duplicate

1 original warrant. In addition, the person shall sign his or her own
2 name on the duplicate original warrant. The judge shall immediately
3 sign the original warrant and enter on the face of the original
4 warrant the exact time when the warrant was ordered to be issued. The
5 ~~finding of probable cause for a warrant upon oral testimony shall be~~
6 ~~based on the same kind of evidence as is sufficient for a warrant~~
7 ~~upon affidavit.~~

8 **Section 29.** 968.12(3)(b)2. of the statutes is created to read:

9 **968.12(3)(b)2.** 'Electronic transmission.' The person who is
10 requesting the warrant may sign his or her own name on the warrant
11 and transmit it to the judge. The judge may modify the warrant. If
12 the judge determines that there is probable cause for the warrant,
13 the judge shall order the issuance of a warrant by signing the
14 warrant and entering on the face of the warrant the exact time when
15 the warrant was ordered to be issued. The judge shall immediately
16 transmit the signed warrant to the person who requested it.

17 **Section 30.** 968.12(3)(c) is amended to read:

18 **968.12(3)(c)** ~~Issuance. If the judge determines that there is~~
19 ~~probable cause for the warrant, the judge shall order the issuance of~~
20 ~~a warrant by directing the person requesting the warrant to sign the~~
21 ~~judge's name on the duplicate original warrant. In addition, the~~
22 ~~person shall sign his or her own name on the duplicate original~~
23 ~~warrant. The judge shall immediately sign the original warrant and~~
24 ~~enter on the face of the original warrant the exact time when the~~
25 ~~warrant was ordered to be issued. Probable cause. The finding of~~
26 ~~probable cause for a warrant upon oral testimony shall be based on~~

1 the same kind of evidence as is sufficient for a warrant upon
2 affidavit.

3 **Section 31.** 968.12(5) of the statutes is created to read:

4 **968.12(5) SIGNATURES.** In this section, a person requesting a
5 warrant and a judge issuing a warrant may sign by using an electronic
6 signature, a handwritten signature, or a handwritten signature that
7 is electronically imaged.

8 **Section 32.** SCR 70.42(1)(b) is amended to read:

9 **SCR 70.42**

10 **(1)(b)** "Electronic signature" means an electronic sound, symbol,
11 or process attached to or logically associated with a document and
12 executed or adopted by a person with the intent to sign the document.
13 For purposes of the electronic filing system under s. 801.18, stats.,
14 a document is electronically signed if it is issued by a court
15 official through the court case management system and bears the name
16 of the court official in the place where a signature would otherwise
17 appear. "Electronic signature" includes only those signature
18 technologies specifically approved by the director.

19 **Section 33.** SCR 70.42(1)(c) is created to read:

20 (c) "Signature," for a document that is electronically filed or
21 issued by the court or clerk, means either an electronic signature
22 applied to an electronic document or a handwritten signature that is
23 subsequently imaged.

24 **Section 34.** SCR 72.03(4) is amended to read:

25 **SCR 72.03 (4)** ~~Provided that they have been offered to the~~
26 ~~proffering party.~~ Exhibits specified in SCR 72.01(45) and (46) of a
27 documentary nature that are electronically or optically stored may be

1 destroyed after 48 hours if the exhibit submitted to the court is a
2 copy and not the original document. If the exhibit the court has
3 received is an original document, the exhibit may be destroyed 180
4 days after entry of a final order or judgment, provided that it has
5 been offered to the proffering party, unless the time for appeal has
6 been extended under ss. 809.107, 809.30, or 809.32, stats. In the
7 event of an extension, ~~electronically or optically stored exhibits~~
8 the exhibit may be destroyed 30 days after the post-termination or
9 post-conviction deadline has expired.

10 IT IS FURTHER ORDERED that the Comments to the statutes and to
11 the supreme court rules created pursuant to this order are not
12 adopted, but will be published and may be consulted for guidance in
13 interpreting and applying the rule.

14 IT IS FURTHER ORDERED that the director of state courts, in the
15 course of his or her usual duties under s. 758.19, make periodic
16 reports to this court on implementation and maintenance of the
17 electronic filing system, including establishment of the electronic
18 filing fee at a level sufficient to meet the ongoing costs of the
19 electronic filing program and services.

20 IT IS FURTHER ORDERED that the rules adopted pursuant to this
21 order shall take effect on July 1, 2016 and mandatory use of the
22 electronic filing system shall be phased in according to a schedule
23 set by the director.

24 IT IS FURTHER ORDERED that notice of the above amendments be
25 given by a single publication of a copy of this order in the official
26 publications designated in SCR 80.01, including the official

1 publishers' online databases, and on the Wisconsin court system's web
2 site. The State Bar of Wisconsin shall provide notice of this order.

3 Dated at Madison, Wisconsin, this ____ day of _____, 2016.

4
5 BY THE COURT:

6
7 Diane M. Fremgen
8 Clerk of Supreme Court
9

10
11

DRAFT

DRAFT