

APPENDIX TO PETITION 14-03

STATE OF WISCONSIN

IN THE SUPREME COURT

**In re creation of Wis. Stat. 801.18,
relating to mandatory electronic filing in circuit court
and conversion to electronic circuit court records**

**AMENDED
PETITION
14-03**

The Committee of Chief Judges, a committee of the Director of State Courts Office, hereby petitions the Supreme Court to create new Wis. Stat. § 801.18. This statute provides for an orderly transition from paper case files in the circuit courts to all-electronic files, and mandates electronic filing by attorneys and high-volume small claims filers.

The proposed eFiling rule is divided into the following sections:

- (1) Definitions.
- (2) Effective date; applicability.
- (3) Registration requirements.
- (4) Time and effect of electronic filing.
- (5) Commencement of action.
- (6) Filing and service of subsequent documents.
- (7) Payment of fees.
- (8) Format and content of filings.
- (9) Official record.
- (10) Authentication.
- (11) Notarization and oaths.
- (12) Signatures of users.
- (13) Signatures of court officials.
- (14) Confidential information.
- (15) Transcripts.
- (16) Technical failures.

The petition includes related amendments to other statutes, rules, and cross-references.

Respectfully submitted this ____ day of _____, 2015.

Judge Robert J. Wirtz
On behalf of the Committee of Chief Judges
Director of State Courts Office

TEXT OF THE PROPOSED RULE

Section 1. 801.17 of the statutes is repealed effective June 30, 2016.¹

Section 2. Effective July 1, 2016, new s. 801.18 of the statutes is created to read:

801.18 (title) Electronic filing.

(1) DEFINITIONS. In this section:

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

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

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

(d) “Document” means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing in an action.²

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

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

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

¹ Rather than require practitioners to follow different eFiling rules for different case types, this amendment applies the new statute to both voluntary and mandatory eFiling.

² Reference to metadata deleted as unnecessary and potentially confusing.

³ Moved to par. (2) (e) at the suggestion of the Legislative Reference Bureau (LRB).

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

(i) “Imaged document” means an electronic copy of a document originally created or submitted on paper.⁴

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

(k) “Mandatory user” means a user who is subject to sub. (3) (a).

(L) “Paper party” means party who is not subject to sub. (3) (a) who chooses not to participate in the electronic filing system as described in sub. (3) (c).

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

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

(o) “Voluntary user” means a user who is not subject to sub. (3) (a) who voluntarily registers to use the electronic filing system under sub. (3) (b).

(2) EFFECTIVE DATE; APPLICABILITY.

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

(b) Mandatory use of the electronic filing system shall be phased in according to a schedule set by the director until the system has been fully implemented. The director shall make information about the transition schedule readily available to the public in advance of its application.⁵

(c) Subject to the schedule set by the director in par. (b), mandatory users shall be required to use the electronic filing system for all new filings covered by the schedule. Electronic filing shall be required for all new actions brought in circuit court and for all

⁴ Word used throughout and needed to be defined.

⁵ All implementation dates will be set by this schedule. This gives the director complete flexibility to implement counties, case types, and user groups as they become ready and resources allow.

new documents submitted in previously filed cases, except as otherwise provided in this section.⁶

(d) After the effective date of this section and prior to the date that electronic filing becomes mandatory under par. (b), users may choose to electronically file actions and documents under the provisions of this statute or may continue to file by traditional methods.

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(e) Electronic filing is limited to methods specifically approved by the director. The director may enter into an agreement with any state agency to allow electronic filing through a custom data exchange between the court case management system and the agency's automated information system. Parties using a custom data exchange are considered mandatory users and are subject to the requirements of this section.⁹

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

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

(h) This section does not address documents required by law to be filed with court officials that are not filed in an action before the court. These documents may be filed by traditional methods unless otherwise required¹¹ by the director of state courts.

(i) This section does not apply to filing of documents or transcripts with the court of appeals or supreme court.¹²

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

⁶ LRB advises that the proper reference is "this section" rather than "this rule". This change has been made throughout.

⁷ This section is no longer necessary now that both voluntary and mandatory electronic filing are covered by the same rule.

⁸ Repeated in sub. (3) (b).

⁹ Moved here from sub. (1) (e). The term "direct connection" has been changed to "custom data exchange".

¹⁰ LRB suggests using the term "clerk of court" throughout to be consistent with the definition in sub. (1) (a).

¹¹ Clarification made to address an ambiguity pointed out by LRB.

¹² Added to allow testing in a few pilot counties.

Comment: Sub. (2) provides that the mandatory use of electronic filing will be implemented according to a schedule determined by the director of state courts. The director will designate the order and timing of implementation after evaluating the resources available for programming, the readiness of the users affected, and the logistical support available for implementation. The director may advance or delay implementation of certain case types, may require or exempt participation by certain filers, and may require other conditions as necessary. The director will set the schedule after consultation with the steering committee that oversees the work of the consolidated court automation programs.

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

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

(3) REGISTRATION REQUIREMENTS.

(a) Subject to the schedule set by the director in par. (2) (b), the following individuals shall register for access to the electronic filing system prior to filing documents in circuit court:¹³

1. Licensed Wisconsin attorneys, other than those who are representing themselves.¹⁴
2. Attorneys appearing under SCR 10.03 (4).
3. High-volume filing agents.

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

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

(d) All users shall register through the electronic filing system by executing a user agreement governing the system's terms of use. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. The electronic filing system shall make information on the technical requirements for filing readily available. By registering,

¹³ Reworded to clarify that registration is required only for attorneys who file cases; non-practicing attorneys do not need to register.

¹⁴ This change was requested in a letter from Kenneth Fall, March 2, 2015.

users agree to electronically file all documents to the extent the electronic filing system can accept them.

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

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

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

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

(i) Voluntary users who wish to stop using the electronic filing system in a particular case must notify the electronic filing system or the clerk of court. The electronic filing system shall indicate that traditional methods must be used for this user¹⁵ for future filings and service.

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

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

¹⁵ Clarification suggested by LRB.

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

(4) TIME AND EFFECT OF ELECTRONIC FILING.

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

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

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

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

(e) A document is considered filed on a particular day if the submission is completed by 11:59 p.m. Central Time,¹⁶ as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders.

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

Sub. (4) (e) is a substantive change to law and practice. Currently, paper filings must arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. *Northern Air Services v. Link*, 2011 WI 75, 336 Wis. 2d 1, 804 N.W.2d 458. However, the most common if not

¹⁶ To forestall any arguments.

universal practice among courts that mandate electronic filing is to use the entire calendar day as the filing period; this is also the practice recommended to the Wisconsin courts by a consultant provided by the National Center for State Courts. This provision gives a party an extra few hours to file on the last day a document is due but does not otherwise affect the calculation of time. If a party files a document or the court signs an order on a day when the clerk's office is closed, it is considered filed on the next day the clerk's office is open, except as provided by other statutes and rules, or by court order.

For consistency, a change to the circuit court fax statute, s. 801.16, is also recommended. Paper parties should be given the advantage of the same extra hours by providing that pleadings received before midnight will be considered filed that day.

(5) COMMENCEMENT OF ACTION.

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

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

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

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

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

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

(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS.

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

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

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

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

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

(f) For cases that were originally filed by traditional methods:¹⁷

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

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

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

¹⁷ Introductory phrase added for clarity.

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

b. A voluntary user who chooses to initiate electronic activity on a closed case shall register as a user on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly register as a user in the case or shall notify the court that the user is no longer appearing on behalf of the party.

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

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

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

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

(7) PAYMENT OF FEES.

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

(b) A document that requires payment of a fee is not considered filed until the fee is paid, a waiver of the fee is granted, or other arrangements for payment are made. The user may submit a petition or motion for waiver of filing fees under s. 814.29 (1), using a form provided by the court for that purpose. If a document is submitted with a petition or motion for waiver of the filing fee, it shall be considered filed with the court on the date

and time of the original submission, so long as the fee waiver is subsequently granted by the court.¹⁸

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

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

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

(8) FORMAT AND CONTENT OF FILINGS.

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

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

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

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

Comment: Sub. (8) (a) recognizes that the electronic filing system will become more sophisticated and user-friendly over time. Users should expect a number of changes during the initial years of electronic filing. Information about upcoming

¹⁸ This change was requested by letter of the Chief Judges on February 25, 2015.

changes and any new requirements for equipment, software, formatting, connectivity, security, and staff training will be made available to the public.

(9) OFFICIAL RECORD.

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

(b) The duties of the clerk of court under ss. 59.40, 851.72, 851.73, and all other statutes, court rules, and procedures may be fulfilled through proper management of electronic documents as provided in this section. The requirements of statutes and rules that refer to paper copies, originals, mailing, and other traditional methods may be satisfied by transmission of documents through the electronic filing system.

(c) Subject to the schedule set by the director in sub. (2) (b), the clerk of court shall maintain the official court record in electronic format only for all new cases.¹⁹ Documents filed by traditional methods shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to SCR 72.03 (3). Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(d) ²⁰If a document is filed in a case in closed status, the clerk of court shall file the document electronically and convert that case to electronic format within a reasonable time. If conversion of the case would be unusually burdensome, the clerk of court may maintain the record in paper format with the permission of the court.

(e) The clerk of court shall make the public portions of the electronic record available for viewing at²¹ the clerk of court's office. The clerk of court shall make nonpublic portions of the electronic record available for viewing by authorized persons.

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

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

¹⁹ Better wording.

²⁰ Unnecessary.

²¹ Less technology dependent.

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

(i) Notwithstanding the other provisions of this section:

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

2. A person submitting a will to the court under s. 856.05 shall file the original paper will in the proper court. The register in probate shall image the will and create an electronic case file. The register in probate shall maintain the paper copy of a will in a separate file for the time period provided by SCR ch. 72.

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

(k) For documentary exhibits, parties shall submit a copy of the exhibit and not the original. The clerk of court shall image each documentary exhibit²² and enter the imaged copy into the court record. Copies of documentary exhibits so imaged may be discarded as provided in SCR 72.03 (3). If inspection of the original document is necessary to the court proceeding, the court may order that the original document be produced. Any original document so produced shall be retained as an exhibit as provided in SCR 72.03 (4).

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

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

Similarly, this section does not require the parties to retain original paper documents. If there is likely to be a challenge to the validity of a document or exhibit, parties may be well-advised to keep the original document. For a high-

²² Clarification suggested by LRB.

volume practice, the economics may not support keeping paper originals when the remainder of the file is electronic, and parties may prefer to assume the risk of failure of proof.

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

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

(10) AUTHENTICATION.

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

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

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

(11) NOTARIZATION AND OATHS.

(a) Notaries public who hold valid appointments under ch. 137 may issue certificates of notarial acts for electronically filed documents as provided in this section.²³

²³ Proposed sub. (11) is substantively amended from the original petition. The steps taken to simplify the technology for attorney signatures made electronic notary signatures unduly complicated. Other state courts have also been unable to develop a reasonable technology for electronic notarization. In Minnesota, the courts have responded by minimizing the notary requirements for electronically filed documents. Minnesota Court Rules, General Rule of Practice 14.04 (c) states that unless specifically required by court rule, electronically filed documents are not required to be notarized.

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

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

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

(e) Notwithstanding s. 706.07 (8) (c), an electronically filed complaint under s. 799.22 may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney to a written oath attesting that the facts of the complaint are true, without swearing to the oath in front of a notarial officer.²⁴

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

Comment:

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

(12) SIGNATURES OF USERS.

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

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

²⁴ A similar approach is taken by Minnesota Rule 14.04 (d).

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

(d) An attorney may delegate the authority to submit documents to the electronic filing system to a person under the attorney's supervision. Any document requiring the attorney's signature is deemed to have been signed by the attorney if submitted to the electronic filing system through use of the attorney's confidential authentication procedure.. Every attorney is responsible for all documents so submitted.

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

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

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

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

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

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

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

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

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

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

The 2008 eFiling committee chose to impose this extra step because of Wisconsin case law regarding improperly signed pleadings. Appellate decisions have reasoned that the statutes require that attorneys personally sign a summons and complaint to confer jurisdiction on the court. The personal signature requirement exists to assure that the pleadings are well-grounded in law and fact, as an “essential protection” against an invalid claim, and to prevent the unauthorized practice of law. See *Schaefer v. Riegelman*, 2002 WI 18, 250 Wis. 2d 494, 512-13, 639 N.W.2d 715; *Jadair, Inc. v. U.S. Fire Insurance Co.*, 209 Wis. 2d 187, 211-12, 785 N.W.2d 698 (1997).

The new statute supersedes this line of cases and provides that any document submitted through the electronic filing system is considered signed by the individual who holds the account. The statutes and rules in other electronic filing jurisdictions provide that attorneys and self-represented parties are responsible for everything submitted from their accounts.²⁵

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

(13) SIGNATURES OF COURT OFFICIALS.

(a) If the signature of a court official is required on a document, an electronic signature may be used. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a

²⁵ No longer necessary.

handwritten signature would be located on a particular order, form, letter, or other document, the official's printed name shall be inserted.

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

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

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

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

(14) CONFIDENTIAL INFORMATION.

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

(b) Users shall comply with the requirements of ss. 801.19 – 801.21 regarding redaction of protected information, identification of confidential material, and sealing of filed documents.²⁶

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

²⁶ Updated references to the new redaction rules created by petition 14-04, also effective on July 1, 2016.

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

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

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

S. 801.19 requires that all persons filing documents with the circuit court must review and redact certain protected information about individuals, such as personal identifiers and financial account numbers. S. 801.20 – 801.21 require the filing party to identify any materials deemed confidential by law and to submit a motion to seal if a court order is required. These statutes are intended to work in concert with the electronic filing statute so that all electronic documents are free of protected information. The electronic filing system will mark confidential documents in a way that will be visible electronically and when the documents are printed.

(15) TRANSCRIPTS.

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

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

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

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

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

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

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

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

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

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

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

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

(16) TECHNICAL FAILURES.

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

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

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

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

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

Comment: 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 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.

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

Related amendments

Section 3.²⁷ 48.022 of the statutes is created to read:

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

Section 4. 801.15 (5) (b) of the statutes is amended to read:

801.15 Time.

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

Section 5. 801.16 (2) (f) of the statutes is amended to read:

801.16 Filing

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

Comment: Sub. (2) (f) is a substantive change to circuit court law and practice. Until electronic filing becomes mandatory, fax filings must arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. The mandatory electronic filing statute, s. 801.18 (4) (e), allows any filing made before midnight to be considered filed on that day. After mandatory electronic filing goes into effect, parties who are not required to use the electronic filing system are given the advantage of the same extra hours.

Section 6. 808.075 (1) of the statutes is amended to read:

808.075 Permitted court actions pending appeal.

²⁷ In the final order, the statute sections affected will be listed in numerical order.

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

Section 7. 809.80 (3) (a) of the statutes is amended to read:

809.80 Rule (Filing and service of papers).

(3) FILING OF PAPERS; USE OF MAIL.

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

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

Section 8. 938.022 of the statutes is created to read:

938.022 Electronic filing. Section 801.18 shall govern the electronic filing of documents under this chapter. Electronic filing may be made through a custom data exchange between the court case management system and the automated information system used by district attorneys.

Section 9. 967.12 of the statutes is created to read:

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

Section 10. 968.02 (1) of the statutes is amended to read:

968.02 Issuance and filing of complaints.

(1) Except as otherwise provided in this section, a complaint charging a person with an offense shall be issued only by a district attorney of the county where the crime is alleged to have been committed. A complaint is issued when it is approved for filing by the district attorney. The approval shall be in the form of a written endorsement on the complaint or the electronic signature of the district attorney as provided in s. 801.18 (12).²⁸

²⁸ Reworded to stay closer to the current statute.

Section 11. 968.12 (3) (b) (title) is amended to read:

968.12 Search warrant.

(3) WARRANT UPON ORAL TESTIMONY.

(b) (title) *Application and issuance.*

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

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

Section 12. 968.12 (3) (b) 2. of the statutes is created to read:

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

Section 13. 968.12 (3) (c) is amended to read:

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

Section 14. 968.12 (5) of the statutes is created to read:

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

Section 15. SCR 70.42(1)(b) is amended to read:

SCR 70.42 Electronic signatures.

(1) DEFINITIONS. In this rule:

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

Section 16. SCR 70.42 (1) (c) is created to read:

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

Section 17. SCR 72.03 (4) is amended to read:

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

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