

# Implementation of Mandatory Electronic Filing

## REPORT OF THE CHIEF JUDGES' SUBCOMMITTEE ON eFILING IMPLEMENTATION AUGUST 2014



### Overview

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

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

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

### Why a mandatory rule?

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

To achieve these efficiencies, eFiling must be the norm and not the exception. Most state courts that have eFiling have mandated it, and it has been mandatory in some federal courts for at least

20 years.<sup>1</sup> NCSC technology consultant Larry Murphy, former CIO of the Iowa court system, summarized his findings:

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

The Wisconsin Supreme Court approved the voluntary eFiling rule in 2008, following a three-year pilot project. The technology was developed in-house by the Consolidated Court Automation Programs (CCAP) and is currently available for small claims, family and civil cases. However, the voluntary rule has left it up to the clerk of circuit court and the judges of each county whether to make the technology available. As of May 2014, only 24 of 72 counties were participating. The number of cases filed from 2009-2013 has been less than 1% of the cases filed statewide for those three case types. The committee has concluded that voluntary participation has not resulted in the volume that would make eFiling worthwhile.

### **Implementation plan**

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

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

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<sup>1</sup> The last federal jurisdiction to adopt electronic filing did so in 2012. Electronic filing was available in 12 states as of 2013, plus a number of larger counties and judicial districts across the country. Nine of those states have mandatory participation by attorneys for at least one case type: Colorado, Delaware, Florida, Iowa, Kansas, Missouri, North Dakota, Texas, and Utah. There were 3 voluntary participation states: Hawaii, Tennessee and Wisconsin. Several other states were in a pilot phase: Minnesota, Nebraska, Oregon, and Virginia.

## **Building on existing technologies**

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

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

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

## **Advantages for users**

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

eFiling users will be able to view the complete court file for each of their cases, from any computer, at any hour, and will be able to view documents as soon as they are filed. Attorneys may delegate access to staff in order to view the court file, prepare pleadings, and pay filing fees. Attorneys may also allow clients access to view the court file if they so choose. The routine costs of copying, mailing and delivery services will be substantially reduced for many law offices. Other courts have found that after the transition period, attorneys and staff members are satisfied with the new technology.

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

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

### **Paying for eFiling**

Compared with the cost of vendor-supported systems in other states, eFiling costs for users in Wisconsin compare very favorably. The current eFiling fee is \$5 per case for each attorney or self-represented litigant, paid when the case begins. Filing fees may be paid by credit card (with a 2.75% bank fee) or by e-check (\$2.50 bank fee per transaction). By comparison, the vendors in several other states charge every time a pleading or group of pleadings is filed: Arizona \$13, Michigan \$10, Texas and Virginia \$2. Utah charges \$5 per filing and \$26 per attorney per month. Arkansas charges \$20 per case plus a \$100 attorney registration fee.

Because the volume of eFiling cases has been so low, the filing fee has not been enough to pay or needed expansion of the system. The committee has concluded that legislative start-up funding is needed to offset the cost of building the system and providing the initial training. Once the system is implemented, the eFiling fee should be combined with the credit card fee and set high enough to be self-sustaining. Ongoing funding from the fee is required due to the dynamic nature of the system – there will always be new statutes and practices to adapt to, new users to support, new hardware to incorporate, and new features to add.

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

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

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

1. Subd. (3)(a) requires eFiling by all attorneys and by agents filing 10 or more small claims actions per year.

2. Subd. (4)(c) provides that documents filed by 11:59 p.m. on the day they are due are considered to be timely filed.
3. Subd. (9)(b) requires the clerk of court to keep the court record in electronic format.
4. Subd. (9)(g) requires non-electronic parties to submit copies of documents, not originals.
5. Subd. (11)(d) allows verification of a small claims complaint without notarization.
6. Subd. (12) allows an attorney to delegate the use of his or her electronic signature to a staff member and holds the attorney responsible for all documents filed through the eFiling system. The use of a separate PIN signature is no longer required.
7. Subd. (15) sets out procedures for eFiling of transcripts.
8. An amendment to the fax rule provides that self-represented parties may file by fax until 11:59 p.m. on the day a document is due.
9. Amendments to the criminal statutes allow electronic transmission of search warrant applications and electronic signing and filing of criminal complaints.

### **Review process**

Revisions to the eFiling rule were reviewed by the Committee of Chief Judges, CCAP Steering Committee, and Planning and Policy Advisory Committee (PPAC) Planning Subcommittee in June and July 2014. CCAP had a vendor booth at the state bar conference in June. The rule will be reviewed by the full PPAC committee in August and circulated to bar committees over the late summer and early fall. Comments will also be sought from a number of interested groups. A rule petition will be filed with the Wisconsin Supreme Court in fall 2014, with a request that it be heard in spring 2015.

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

### **Conclusion**

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

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

**Appendices and links:**

- appendix A– proposed Wis. Stat. 801.18
- appendix B – report from NCSC consultant Larry Murphy
- link: circuit court eFiling website  
<http://www.wicourts.gov/ecourts/efilecircuit.htm>
- link: 2006 Wisconsin Electronic Filing report  
<http://www.wicourts.gov/supreme/docs/0608petitionamend.pdf>
- link: COSCA Policy Paper on Managing 21<sup>st</sup> Century Court Records  
<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/12012013-Standards-Maintaining-Managing-21st-Century-Court-Records.ashx>
- link: National Center for State Courts Electronic Filing Rules and Web Sites  
<http://www.ncsc.org/Topics/Technology/Electronic-Filing/State-Links.aspx>

## APPENDIX A: PROPOSED EFILEING RULE AMENDMENTS

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

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

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

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

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NEW 801.18 is created to read:

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

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

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

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

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

(d) Parties not represented by an attorney and low-volume filing agents, as defined in subd. (3), may use the electronic filing system on a voluntary basis as provided in this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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



2. "Electronic filing" does not include electronic methods not approved by the director.
3. The director may enter into an agreement with any state agency to allow electronic filing through a direct connection between the court case management system and the agency's automated information system. Parties using a direct connection are subject to the requirements of this rule.

(f) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the document. For purposes of the electronic filing system, a document is electronically signed if it is submitted by a registered user through the electronic filing system and bears the name of the user in the place where a signature would otherwise appear. The signature shall follow the format provided in subd. (12). "Electronic signature" does not include any signature technology not specifically approved by the director.

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

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

(i) "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the electronic filing system and allows small filers to participate voluntarily like self-represented parties.

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

#### **(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. The electronic submission of a document consistent with this rule constitutes the filing of the document. The electronic filing system shall issue a confirmation when submission to the electronic filing system is complete, which shall be the official filing date and time of the document.

**(b)** An electronic filing can be made at any time of day and on any day of the week, including holidays and weekends, except when the electronic filing system is undergoing maintenance or repair. The expanded availability of time to file shall not affect the calculation of time for reply under other statutes, rules and court orders.

**(c)** A document is considered filed on a particular day if the submission is made by 11:59 p.m., as recorded by the electronic filing system. A document filed at 12:00 a.m. or later is considered filed on the next day the clerk of court's office is open.

**Comment:** Subd. (4)(c) 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. The fax rule, s. 801.16(2)(f), provides the same. However, the most common if not universal practice among courts that mandate electronic filing is to use the entire calendar day as the filing period; this is also the practice recommended to the Wisconsin courts by the consultant provided by National Center for State Courts.

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

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

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

(b) If a filing fee is required, the clerk of court may reject the document if it has been submitted without the required filing fee, a motion to waive the filing fee, or other arrangements for payment. At the written or oral request of the filer, the clerk of court may also reject the document for filings made in error, if the request is made before the clerk has accepted the document.

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

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

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

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

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

(a) Documents other than initiating documents shall be filed with the court and served on the other registered users through the electronic filing system. Users shall access filed documents through the electronic filing system. For documents that do not require personal service, filing a document through the electronic filing system constitutes valid and effective service on all registered users and has the same effect as traditional service of a paper document.

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

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

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

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

(f) 1. Prior to the time electronic filing is mandated in a county, all mandatory users shall register as electronic users on each case in that county for which they continue to appear.

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

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

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

b. A voluntary user who chooses to initiate electronic activity on a closed case shall register as an electronic 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.

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

(h) The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court. Discovery materials that are not filed with the court through the electronic filing system may be exchanged electronically between the parties by mutual consent, consistent with s. 804.01.

**Comment:** Subd. (6) provides that the electronic filing system now serves as the means of delivery between registered users for subsequent documents, the kind that were

previously served by mail or messenger. Paper parties will continue to be served by traditional methods for both initiating and subsequent documents.

Subd. (6)(f) provides that mandatory users must register as users on their open cases. After the mandatory users have been given the opportunity to register, the clerk will notify any unregistered parties. Any remaining mandatory users will be directed to register promptly. 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 at the time electronic filing becomes mandatory in that county, 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. Service by a mandatory user on a voluntary user must include instructions on how to participate in the electronic filing system if the voluntary user so chooses.

#### **(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)** Documents that require payment of a fee are not considered filed until the fee is paid, a waiver of the fee is granted, or other arrangements for payment are made. The user may submit a motion for waiver of filing fees under s. 814.29 (1), using a form provided by the court for that purpose.

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

**Comment:** Subd. (7)(a) provides that filing fees shall be paid through the electronic filing system, including filing, jury, motion, and docketing fees. Payment of fines and forfeitures, court costs, and court-ordered attorney fees may be paid through separate websites. Larger fees and deposits, such as condemnation awards, may be paid by other methods if ordered by the court or agreed to by the clerk of court. Attorneys should consult the Rules of Professional Conduct with respect to the restrictions on electronic transactions from trust accounts.

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

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

(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 the document. The electronic filing system shall reject the document for failure to include information in any one of the mandatory fields identified by the system.

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

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

(e) Papers and exhibits submitted during a court proceeding may be handled by traditional methods. Parties shall submit a copy of any paper exhibit and not the original unless the authenticity of the exhibit is in question. The clerk of court shall image paper exhibits and enter them into the court record during or after the court proceeding. Paper exhibits so imaged may be discarded after 48 hours as provided in SCR 72.03(3), rather than retained under SCR 72.01(45), (46) and (48).

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

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

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

(b) For all new cases filed on or after the date that electronic filing becomes mandatory in a county, the clerk of court shall maintain the official court record in electronic format only. Documents filed by traditional methods shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to SCR 72.03 (3). If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically imaged and entered into the electronic filing system, the clerk shall maintain the document in paper format. Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(c) On the date that electronic filing becomes mandatory in a county as provided in subd. (1), the clerk of court shall have converted all cases that are in open status to electronic format. If a

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

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

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

(f) 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.

(g) Except as provided in subd. (h), parties filing by traditional methods shall file a copy of any document and not the original paper document. The court may require the submitting party to produce the original paper document in any case if authenticity of document is challenged.

(h) The original paper copy of a will for safekeeping under s. 856.03 shall be submitted to the court.

(i) The electronic filing system may provide a method for an administrative agency to transmit an electronic copy of the record submitted for judicial review under s. 227.55. If the administrative record is submitted in paper format, the clerk of court shall image the record and return the original to the agency unless otherwise ordered by the court. The electronic copy of the record shall be the official record in the circuit court.

**Comment:** Subd. (9) provides that court case files must be kept electronically. Mandatory users are required to file all documents electronically, with only a few exceptions. Paper documents submitted by voluntary users will be converted to electronic format by the clerk of court. Any paper copies received will be discarded after 48 hours, as provided by SCR 72.03 (3). Because any paper submitted will be discarded after it is converted, parties should not submit original documents to the court.

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

Wills filed for safekeeping under s. 856.03 shall be submitted only on paper and will not be opened and imaged except as provided in that section.



**(10) Authentication.** Electronic placement of the clerk's filing stamp and case number on each copy of an initiating document constitutes authentication under the statutes and court rules. An authenticated copy may be printed from the consolidated court automation program case management system by the clerk of court or from the electronic filing system by the filing party.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A document electronically filed through the court electronic filing system shall be deemed to have been signed by the registered user. This signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules. A summons and complaint, petition, or other initiating document that is signed in compliance with this section bears a sufficient signature under s. 802.05.

(b) Each document shall bear that person's name, mailing address, telephone number, and state bar number if applicable. For an electronically filed document, the signature shall use the format "Electronically signed by /s/", followed by the name of the signatory.

(c) An attorney may delegate the use of his or her electronic signature to an authorized designee. Every attorney is responsible for any use of his or her electronic signature by an authorized designee.

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

(e) 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.

(f) Registered 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 handwritten signatures and direct that it be made part of the electronic record by the clerk of court.

(g) Paper parties shall sign documents using handwritten signatures. If a document requiring a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided by subd. (9).

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

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

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

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

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

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

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

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

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

**(c)** A court official may delegate the use of his or her electronic signature to an authorized designee 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 delegating the electronic signature.

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

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

**(14) Confidential information.**

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

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

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

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

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

**Comment:** Subd. (14) provides that the electronic filing system shall protect those case types and individuals documents made confidential by law or sealed by court order.

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

**(15) Transcripts.**

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

rules and procedures. This rule does not alter the requirements for filing transcripts with the supreme court or court of appeals.

**(b)** The electronic filing system shall note that the transcript has been prepared and filed with the court. At the time the transcript is filed, the court reporter shall indicate which registered users have made arrangements for payment, and the electronic filing system will allow these parties to view the electronic transcript. If at a later date another registered user makes arrangements for payment, the court reporter shall notify the electronic filing system that the additional party may now view the transcript. Upon request, the court reporter shall also provide a single paper copy of the transcript to a registered user who has made arrangements for payment. No party shall be granted access to view the transcript unless the court reporter has notified the system or the court has so ordered.

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

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

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

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

**(g)** A court reporter shall electronically file any sentencing transcript prepared under s. 973.08(2) with the circuit court. The clerk of court may electronically transmit the transcript to the Department of Corrections as provided in s. 973.08(5).

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

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

**Comment.** Subd. (15) provides that transcripts of court proceedings shall be filed and incorporated into the circuit court record electronically. The director's office will provide access for court reporters to electronically file transcripts and serve them on the parties who

are registered users. The director will provide access for court reporters to view the electronic court record while preparing the transcript, including confidential information.

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

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

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

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

1. If the failure is caused by the court electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.
2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as filing of paper documents, with similar consequences for missed deadlines. A new filing shall be made at the earliest opportunity.

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

**Comment:** Subd. (16) addresses technical failures of the court's electronic filing system or the user's electronic systems. Correction of technical failures should generally be allowed where the user can demonstrate that the problem was caused by the court's electronic filing system. The electronic filing system will generate a report if needed for a user to document the problem. As the electronic document management system may not always be available due to system maintenance or technical difficulties, filers should not wait until the last moment to file documents electronically. Some deadlines are jurisdictional and cannot be extended. The filer must ensure, by whatever means necessary, a document is timely filed to comply with jurisdictional deadlines. A technical failure, including a failure of the electronic filing system, will not excuse a failure to comply with a jurisdictional deadline.

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.

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## Related amendments

S. 801.16 is amended to read:

### **801.16 Filing**

(2)(f) Papers filed by facsimile transmission ~~completed after regular business hours of the clerk of circuit court's office are considered filed the next business day~~ are considered filed on a particular day if the submission is made by 11:59 p.m., as recorded by the court facsimile machine. A document filed at 12:00 am or later is considered filed on the next day the clerk of court's office is open. The expanded availability of time to file shall not affect the calculation of time for reply under other statutes, rules and court orders.

**Comment:** Subd. (2)(f) is a substantive change to law and practice. Fax filings currently must arrive at the office of the clerk of court before the end of the regular business day in order to be considered filed on that day. The mandatory electronic filing rule, s. 801.18(6)(c), proposes to allow any filing made before midnight to be considered filed on that day. Paper parties can be given the advantage of the same extra hours by amending the date provisions of the fax rule to match the electronic filing rule.

NEW s. 967.12 is created to read:

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

S. 968.02 is amended to read:

### **968.02 Issuance and filing of complaints.**

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

S. 968.12 (3) is amended as follows:

### **968.12 Search warrant.**

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

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



(b) Application and issuance.

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

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

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

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

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

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

**SCR 70.42 Electronic signatures.**

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

**(b)** "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. For purposes of the electronic filing system, a document is electronically signed if it is issued by a court official through the court case management system and bears the name of the court official in the place where a signature would otherwise appear. "Electronic signature" does not include any signature technology not specifically approved by the director.

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.

## APPENDIX B



### **Improving E-Filing Adoption Rates**

#### **Practices from Other State Courts and Recommendations for Wisconsin**

**Larry Murphy, NCSC consultant  
January 10, 2013**

#### **Background:**

Wisconsin has implemented an Electronic Filing System which works in conjunction with their implemented case management system. The E-Filing system is voluntary and is fee based. The E-Filing system is currently in use in 18 out of 72 counties of varying sizes. The fee is \$5.00 for the first filing by each party. There is an additional bank fee of \$2.50 for an electronic check or 2.65% of credit card handling costs. The E-Filing system does not include initial Service of Process. The system handles Civil, Small Claims, and Family law case types.

Court rules have been adopted to enable the use of Electronic Filing. However, the rules do not provide for filing outside of the normal court hours. There still remain requirements for Notarization. The rules make some provisions for self represented individuals.

The Wisconsin E-Filing system has a low adoption rate thus far and they would like to improve upon its usage. They have made limited efforts so far to market the E-Filing system to the attorneys or others.

#### **Request:**

The Director of State Courts Office requested technical assistance on other state best practices and how to gain greater participation from the practicing attorneys and the public.

The National Center for State Courts (NCSC) was asked to make contact with other states and provide some feedback on established practices which will potentially enable greater use of E-Filing in Wisconsin. NCSC was also asked to make several recommendations toward developing strategies which will serve to further increase adoption of the E-Filing system.

#### **Conclusion and Summary of Other States' Experiences with E-Filing:**

NCSC notes the following in regards to the Wisconsin E-Filing adoption effort:

- NCSC recommends review of the current E-Filing access policy to allow for 24 x 7 (24 hours, 7 days a week) filing of electronic documents with the court. Doing so will

provide a greater incentive for attorneys to use E-Filing, and will also increase access to the court.

- The Wisconsin State Fee of \$5.00 is not significant as related to the cost of an individual going to the courthouse to file or to make copies of documents for filing. An analysis should be prepared to review the annual cost of operating and supporting E-Filing to ensure the court's financial position. The credit card fee may be a barrier that should be reviewed periodically.
- The court should develop a marketing plan for E-Filing in Wisconsin. The plan will need to include all groups of attorneys who are active within the legal community. These plans also need to be blended and synergized with a training and support strategy for the attorneys, which will serve to increase their proficiency in adopting electronic filing. Marketing and outreach efforts also need to include the legal secretaries and paralegals who work in Wisconsin. Further, outreach efforts should include collection companies and other large filers with the Court.
- With the statewide deployment of E-Filing, there is an obvious requirement to train and support a new group of users for the E-Filing system. Strategies will need to be designed to provide ongoing training and support (help desk) not only for the attorneys, but also for the legal secretaries and paralegals. The support considerations should include the other large filers with the Court.
- Attorneys represent a large segment of the new users to the E-Filing system. The Wisconsin Courts should consider sending staff to attend the attorneys' annual Continuing Legal Education (CLE) conferences. Information should be included in the attorneys' and State Bar's listservs and periodic newsletters. Descriptions of how to obtain training and support need to be part of these ongoing events and communication opportunities.
- Judges represent a significant part of the E-Filing experience. Significant efforts should be made to enable the use of electronic documents by judges. Wisconsin should ensure that the judges are well trained and have the necessary support to make electronic workflow and use of electronic documents part of their everyday work experience. An examination of how judges currently use paper information in their daily work should be conducted as well. Court staff and administrators should identify and work with a selected group of judges to develop solutions for ongoing use of electronic documents, and to ensure adequate training and ongoing support.
- Wisconsin should also recognize the needs of various user groups as the E-Filing system is deployed. There should be regular sessions with these groups to provide training, to share ideas on how to improve the usability of the product, to share enhancement

recommendations for the E-Filing system, and to provide a forum for user feedback. These user groups should include the following:

- Attorneys
  - Judges
  - Legal secretaries and paralegals
  - Large court filers (collection companies, corporate landlords)
  - State agencies, prosecutors, public defenders, etc.
  - Public access
- Wisconsin is currently a voluntary usage state. The best recommendable practice from a nationwide standpoint is to make E-Filing mandatory after the pilot phase of the project. to obtain a better return on the state's investment in developing the E-Filing system. Once the E-Filing system has passed a user acceptance test, most court rules provide for E-Filing to be mandatory. It should be noted that the court rules in mandatory usage states have been vetted by the public, judges and attorneys. Wisconsin should move in the direction of becoming a mandatory usage state sooner rather than later. The states with mandatory use of E-Filing have adopted strategies to reduce the use of paper and paper files in a timely manner.
  - Another best practice involves periodic or annual reviews of the perceived and actual barriers to E-Filing adoption. Courts work to identify barriers, conceive solutions and to develop strategies intended to improve the use of E-Filing overall. This iterative improvement requires constant effort on the part of the court to improve its delivery of the E-Filing services to its customers.
  - The Court should develop strategies for large filers so they are encouraged to become ongoing and active users of the E-Filing system. Companies such as collection agencies and corporate landlords would be the prime targets for these strategies.
  - Self-represented customers of the court must also be considered in regards to the deployment of E-Filing. States with successful implementations have expended a great degree of effort to provide nearly the same access and benefits for pro se individuals using E-Filing. These states have employed work groups to develop strategies which assist in the development of E-Filing for self-represented individuals.

These recommendations are provided with the intention of improving overall electronic access in a realistic and cost-efficient manner. The National Center for State Courts supports and encourages your efforts to provide greater access to the courts in Wisconsin.

## **Interviews by Larry Murphy, NCSC consultant, with CIOs of Utah, Missouri, Iowa**

### **Utah Experience with E-Filing**

Utah took a multi-vendor approach to the attorney's filing interface. Currently we have three vendors certified to provide e-filing services for all civil filings state wide. We rely heavily on the vendor's marketing practices. Utah's case record is now paperless (no paper case files) statewide. The Judicial Council has mandated e-filing for all attorneys effective April 1, 2013.

#### **1) Marketing strategies for judges and bar?**

We make sure we have a presence at all state wide bar association meetings, and the systems analyst for the bar is a member of our planning groups. The bar has offered us space in their monthly newsletter. We also meet regularly with the family, defense, and other bars to make sure we are responsive to their needs. State and local bar associations have offered CLE credits for e-filing presentations. At the local level, each district meets with their local association usually monthly.

As for judges, we have a working group of judges that direct us in the development of applications that are designed to support their view of the case record rather than rely on the clerk's view of the record.

#### **2) Why has your state decided to make E-Filing mandatory and what were repercussions or consequences?**

Several independent initiatives came together to create an environment that was favorable to an e-filing mandate. These included: 1) the creation of the electronic case record, 2) the reorganization of the clerical support structure resulting in cross trained clerical teams designed to support judges, 3) reformation of the discovery process based on the amount in controversy, and 4) renewed emphasis and application of case management principals to ensure timely resolution.

Our electronic conversion team evaluated the impact on the structure of support services and estimated an annual savings of 13-18% of clerical operations, mostly at the front counter. Positions for the front counter were frozen as vacancies occurred and now require justification to fill the vacant slots. The savings are monitored and will be applied to upgrade the salaries of the clerks to better reflect their new duties and educational requirements under our personnel system. In 5 months, savings have produced enough on-going revenue to allow a 1% raise for all clerks. We anticipate additional savings through the remaining fiscal year.

#### **3) Do you charge a fee? and can you provide information your fee structure.**

Utah does not charge a fee. Electronic filings have the same costs as paper filings. Utah does not charge a convenience fee for credit card processing. Each vendor charges a fee for their service base on their value added. The AOC does not monitor vendor fees.

#### **4) Do you have any useful ideas that increase participation or adoption?**

In my opinion, e-filing serves as a strategy to promote communications between litigants, with the court sitting in the middle of those conversations - recording the events, ensuring due process, monitors case progression, and schedules events that require judicial intervention. Our system was designed to enhance this litigant communication by providing electronic access to all documents from all litigants who are a party to a case at no charge. The system supports notice but also provides courtesy notifications of events that occur on a case. The case management system schedules events and notifies the parties of future events based on case progression rules established by the discovery reforms. For self-represented litigants, the system informs them of the procedures they must follow for resolution and the time lines for actions to occur, e.g.; service, answer, schedule, etc.

#### **5) What is your state's implementation strategy for deployment statewide?**

Utah is a unified system. All courts use the same case/document management system. The e-filing system serves as a single gateway for all filings statewide.

#### **6) What kind of training and support do you provide judges?**

I mentioned the judge's work group. That group has designed a judge's view of the case management system designed specifically to meet the needs of judges. Their view includes applications for in-chambers and in-courtroom activities. We have published FAQs and video training for clerks and judges on our Intranet. Video training is included whenever new features are added to the system. Judicial support teams are trained to provide direct individual support for a judge. Training these support teams seems to provide the best support for a judge.

#### **7) What kind of training and support do you provide attorneys?**

Because Utah uses vendors, we don't train attorneys on the filing interface. We do provide training on procedures and requirements inherent in an electronic filing environment. We publish through the bar but also provide attorney FAQs and training videos. Documents can be viewed at [www.utcourts.gov/efiling](http://www.utcourts.gov/efiling) and a sample video can be viewed at: [http://www.utcourts.gov/efiling/training/eFiling\\_Tips\\_for\\_Attorneys.htm](http://www.utcourts.gov/efiling/training/eFiling_Tips_for_Attorneys.htm)

#### **8) What efforts does your state provide for training and support for self-represented individuals?**

Self-represented litigants are not required to file electronically, but can do so using the court's Online Court Assistance Program (OCAP). An interview process creates the necessary documents for a filing. They can be printed to file at the courthouse. They can be saved on-line then retrieved for e-filing at the courthouse. Or, they can be e-filed directly from OCAP. Litigants can use OCAP to view case status, be informed of the next step in the process, and they receive notification of events filed by other parties on their case. OCAP includes a case progression engine based on case type.

**9) Does your state allow 24 x 7 filing and docketing of E-Filed documents?**

Yes.

**10) Did E-Filing change the workload of the Clerk of Court? Is so how?**

Yes. An analysis of workload predicts a reduced demand for over-the-counter services and therefore reduced personnel dedicated to that function. Over-the-counter personnel are now trained to provide better support for self-represented litigants. Our weighted caseload system was modified to incorporate the impact of electronic filing on workload.

**11) How is your E-Filing project funded?**

Utah's e-filing system is supported by the General Fund.

**Missouri Experience with E-Filing**

**1) Marketing strategies for judges and bar?**

For the judges, we developed eBench to meet the needs of the electronic document. Since many of our courts are scanning documents, the judges can now see those documents on eBench. This is option available to all judges statewide if they choose to. Therefore when eFiling becomes available to that court, the judge may already be using eBench and many not have to make many changes for eFiling.

For the bar, it is a benefit for both a cost and time perspective. Although we do have some attorneys that do not like the change that eFiling has brought. We have a attorney focus group that we use to get input on features of the system and we have polled that members of the bar. We have gone to the bar meetings and conferences to educate them on the system and to help them register. Also, our help desk will take questions from the attorneys (in the month of November 2012, we answered 800+ questions from attorneys). We provide as much notice as possible for system outages and enhancements. We send many messages about what is going on with the project.

**2) Why has your state decided to make E-Filing mandatory and what were repercussions or consequences?**

The eFiling system is mandatory for those courts that have implemented the system. The court determines what case type(s) and schedule of implementation – it is a phased approach by case type.

**3) Do you charge a fee?**

There is no additional fee for eFiling.

**4) Do you have any useful ideas that increase participation or adoption?**

Although the system is only implemented in 6 courts currently, we have over 10,000 attorneys registered. This is due to a few reasons, one, the first court we implemented was the Supreme Court and they required all attorneys that had a cases or a party on the case at the Supreme Court to be registered. All notices are done via the system. Another reason, we deployed electronic notification system statewide (all courts), not just the eFiling courts. This allows the attorneys to receive notices from the court via email, however the attorney have to be a registered eFiler to get the notice. This is an optional service that we added to help get the attorneys use to the system.

**5) What is your state's implementation strategy for deployment statewide?**

We plan to roll out 25 courts in 2013 and continue at that pace until we are statewide. We have 114 counties plus the City of St. Louis, so it will take us a few years to roll out statewide.

**6) What kind of training and support do you provide judges?**

There is specific training for the judges on eBench and case viewing. This is done via CBT's, video's and Instructor based training.

**7) What kind of training and support do you provide attorneys?**

We have provided several regional classes and allowed the attorneys to get CLE credit for attending the sessions. We have also provided videos, How to's on our website. We have also had articles in the attorney specific publications (e.g. Lawyers Weekly).

**8) What efforts does your state provide for training and support for self-represented individuals?**

At this time there is no pro se filing in the system.

**9) Does your state allow 24 x 7 filing and docketing of E-Filed documents?**

The system is available for filings during non-traditional business hours. This system does come down for back-ups once a day, so it is close to 24 x 7.

**10) Did E-Filing change the workload of the Clerk of Court? Is so how?**

Yes, there has been a shift in workflow to accommodate eFiling. The clerks are more data quality focused than data entry. There has been a shift in resources for areas of the court depending on the need. The workflow aspect is very court and case type specific and should be considered with the implementation of eFiling. (there could be a long discussion on this topic)

**11) How is your E-Filing project funded?**



Currently we are utilizing existing funds (re-allocated) to implement the project. Some courts are providing local funding for additional monitors, scanners, etc., but we do not have dedicated funding for eFiling at this time.

## **Iowa Experience with E-Filing**

### **1) Marketing strategies for judges and bar?**

Iowa's system is mandatory by county as we implement in the county. We currently have 5 done and plan on 25-30 in 2013. Marketing began with attendance at state and local bar meetings about 7 years ago. We continue to attend the state bar meetings and when requested attend the local bar meetings in the counties.

A judge design team worked with us to develop the outline for the Judicial Interface which judges use both on the bench and in chambers. Judges provide direct feedback during training or on implementation for changes / enhancements which are vetted with other judges prior to actual implementation.

### **2) Why has your state decided to make E-Filing mandatory and what were repercussions or consequences?**

The Supreme Court elected to make the system mandatory and take the system across the state versus having counties living in dual worlds. In consultation with the National Center, state bar groups, judicial officers, and clerks they decided on the mandatory system and have been very steadfast in their support ever since. There is some blowback from users (internal and external) at implementation particularly when they feel they had no input. Typically we are finding these users after implementation are satisfied with the system.

### **3) Do you charge a fee? and can you provide information your fee structure?**

No additional fees are charged for e-Filing.

### **4) Do you have any useful ideas that increase participation or adoption?**

I believe that the training model we are using (approximately a 4 week footprint in each county) for internal and external users increases participation as well as satisfaction. We train Law Enforcement, Prosecutors, private attorneys, agents (e.g. Landlord reps), some self-represented if they show up and of course all internal staff. This training model takes longer to completely implement, but leaves the users better prepared for the electronic system. We also provide a 24 x 7 helpdesk for external filer use and our own internal helpdesk for internal users. The external helpdesk refers those items dealing with some registration issues or possible legal issues back to our internal helpdesk and we work with the end users from there.

### **5) What is your state's implementation strategy for deployment statewide?**

We are currently implementing by judicial sub-district. We have changed from implementation of a single county at a time to 2 to 3 smaller counties at once which moves things along much faster.

**6) What kind of training and support do you provide judges?**

We provide training on the Judicial Interface both during the training cycle in a county or counties as well as by subdistrict, district or individually when requested in some cases.

**7) What kind of training and support do you provide attorneys?**

We provide both training on the Rules for Electronic Filing and the application most typically during the training cycle in a county or counties. We also provide online videos (just getting more of these on line now) as well as online powerpoints and online documentation.

**8) What efforts does your state provide for training and support for self-represented individuals?**

Most of the time this is provided by clerk staff as the users come to the counter to file papers. Self represented filers can use the online documentation as well.

**9) Does your state allow 24 x 7 filing and docketing of E-Filed documents?**

Filers can now file 24x7 on their cases; however docketing is mostly done during normal weekday business hours. District 3 is providing judicial officer staff support on weekends and holidays who work the files required for initial appearances.

**10) Did E-Filing change the workload of the Clerk of Court? Is so how?**

Yes. At this point we estimate about 80-90% of the data entry for Civil cases is handled by the filer. Criminal cases still require quite a bit of data entry, but we are in the process of automating more of this as well. We have reports from several counties that they are now able to keep up with the filings and "complete a day's work in a day's time" usually within 3 to 4 months after implementation. How is accomplished not only by the data provided by the filers, but removing the necessity of creating and managing the paper file.

**11) How is your E-Filing project funded?**

Through tech funds not the general fund. One tech fund receives a set amount each year. The second fund amount is based on the Branch's total collections; when the limit is reached then the follow on dollars are put in the fund up to an amount set by the Legislature. The Legislature has also provided an additional funding amount for FY13 and FY14 in one time funds to assist the court in implementation of EDMS.