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Executive Director

February 19, 2016

Wisconsin Supreme Court
Clerk of the Supreme Court
110 East Main Street, Suite 215
Madison, WI 53701-1688

RECEIVED
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CLERK OF SUPREME COURT
OF WISCONSIN

Re: Comment on Rules Petition 14-03

Dear Honorable Justices:

I write on behalf of the Legal Aid Society of Milwaukee, Inc., celebrating its 100th year of serving the legal needs of Milwaukee County's poorest residents, in general support of Petition 14-03. The Court and the Committee of Chief Judges are to be commended for their conscientious efforts to develop a fair and efficient e-filing system. The Amended Petition, along with Judge Wirtz's February 10, 2016 response to comments filed by the Wisconsin Access to Justice Commission, the UW Clinics, the State Public Defender and others, reflects a sincere effort to create a cost effective system, while minimizing barriers to *pro se* parties and those represented by means-tested poverty programs, as well as low-income litigants represented by *pro bono* counsel.

We appreciate Judge Wirtz's clarifications and the Director of State Courts' February 10, 2016 draft guidelines, which both endorse the immediate acceptance of initial e-filings by low-income parties whose filings include a form CV-410 fee waiver request. Accordingly, we urge that the proposed procedure be reflected in the text of the Rule, with minor additional clarifications discussed below. By allowing non-commercial *pro se* filers to file non-electronically, and by streamlining the filing process for indigent parties covered by Wis. Stat. 814.29 (defining indigency for purposes of court fees)¹, the Rule

¹ Wis. Stat. §814.29(1)(a) provides that those who, because of poverty, are unable to pay the costs of an action may "commence, prosecute or defend any action or special proceeding...without being required to pay any service or fee" upon order of the court based on a finding of poverty. §814.29(1)(d) in turn requires the court to make a finding of poverty if the party's affidavit demonstrates...2. That the person is represented by an attorney through a legal services program for indigent persons, including without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency." The Judicial Commission's prescribed affidavit & petition for fee waiver (form CV-410) provides for waiver, categorically, based

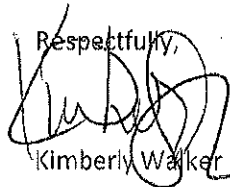
addresses our primary concerns for barriers that would affect low income parties and non-profit legal assistance providers.

We ask, however, that the Court further clarify that initial pleadings, accompanied by a fee waiver request, be deemed filed at the time the pleadings are filed if accompanied by form CV-410/§814.29 fee waiver, *regardless of whether the §814.29 fee waiver is granted*. Under the current non-electronic procedure in Milwaukee County, a fee waiver is either granted or denied prior to filing the pleadings, when the party requests the Chief Judge's approval on form CV-410. Under the proposed Rule, pleadings filed with a fee waiver will be considered filed on the day they were submitted, but are deemed filed on the submission date only *"as long as the fee waiver is subsequently granted by the court."* See Amended Petition §7(b)(emphasis added). While we would expect that cases filed by the Legal Aid Society et al. would have fee waivers routinely granted, based on Wis. Stat. §814.29(1)(d)2, there should be certainty for all parties as to the effective date of filing. Under the current proposed Rule, a party will be in a filing "limbo," not knowing when, or whether, his or her pleadings will be considered filed, depending on whether the waiver is eventually approved.

This problem could easily be resolved, consistent with the "Principles and Best Practices for Access-Friendly Court Electronic Filing" ("Best Practices") which were filed with Judge James A. Gramling's January 25, 2016 comments on behalf of the Wisconsin Access to Justice Commission. See Best Practices, pages 10-14(attached hereto for reference). In particular, a requirement for an automatic waiver for means-tested legal aid entities could be incorporated into the Rule, in accordance with the categorical waiver for clients of such entities, reflected in §814.29(1)(d)2. For all other putative indigent filers, however, the Rule should provide that the pleadings are deemed to be filed at the time the pleadings and fee waiver are submitted. In the event a requested fee waiver is denied, the party can be required to pay the fee, at a time and in a manner specified by the reviewing court, so that no party is prejudiced as to the effective filing date of a pleading, as a result of having requested a fee waiver.

We thank you once again for your careful efforts to make e-filing sensitive to the needs of low income litigants, and we appreciate your taking time to consider our requested clarifications for the proposed Rule.

Respectfully,



Kimberly Walker
Executive Director

on receipt of any of several means-tested benefits, including "[l]egal representation from a civil legal services program or a volunteer attorney program based on indigency." See Section 1 of Form CV-410, a copy of which is attached hereto.