

FEB 15 2019

STATE OF WISCONSIN

CLERK OF SUPREME COURT  
OF WISCONSIN

IN THE SUPREME COURT

In Re Petition for the Creation of a Pilot Project and  
Interim Court Rule Governing Electronic  
Filing in the Court of Appeals and Supreme Court

MEMORANDUM

19- 02

Sheila T. Reiff, Clerk of the Supreme Court and Court of Appeals, submits this memorandum in support of the administrative rule petition asking the court to authorize a Pilot Project and adopt an Interim Rule to facilitate, in collaboration with the Consolidated Court Automation Programs (CCAP), the Court of Appeals, and the Supreme Court, the development and testing of procedures to permit exclusive electronic filing of documents in the Court of Appeals and Supreme Court ("the Pilot Project").

This petition reflects the next stage in the process to implement electronic filing at all levels of the Wisconsin court system. CCAP has identified appellate e-filing as a top priority in 2019. See 2019 CCAP Annual Plan dated January 29, 2019 at 1. This Pilot Project will continue the transition to electronic filing at the appellate level. Once development of a statewide mandatory appellate e-filing framework is complete and any necessary modifications to supreme court rules, are identified, CCAP will implement and train appellate court and Clerk of Supreme Court/Court of Appeals staff as well as attorneys statewide.

Traditionally, when the court approves a pilot project it approves interim rules to authorize the project and provide a framework for implementation of the project. The court has previously used interim rules to govern pilot projects, such as in the e-filing project, which culminated in the electronic circuit court filing petition, S. Ct. Order 14-03, 2016 WI 29 (issued Apr. 28, 2016, eff. July 1, 2016), and the business court pilot project, S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017). Interim rules are intended to be readily revised so they flexibly meet the needs of the project as it develops.

In 2005, the court adopted an interim rule to govern the then nascent circuit court electronic filing project. (Tab 1). These rules were rather detailed. At the time, there was no framework for electronic filing, so the Circuit Court E-filing Pilot Project sought to anticipate questions and procedures that would be needed and encountered. Eleven years later, in 2016, this court formally adopted a circuit court electronic filing rule. See S. Ct. Order 14-03, 2016 WI 29 (issued Apr. 28, 2016, eff. July 1, 2016).<sup>1</sup> A comparison of these rules is telling. The rules adopted in 2016 had evolved considerably since those proposed in the interim rule, reflecting a wealth of understanding and technological developments that accrued over the term of the project.

Unlike the project that started in 2005, we are not starting from scratch. Many of the court's rules have already been amended to permit electronic filing. A framework for appellate e-filing already exists as well; presently appellate e-filing supplements paper filing. Effective July

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<sup>1</sup>Effective the same date, the court adopted rules to permit electronic transmission of records from the circuit court to the appellate court, in lieu of a paper record. See Rule Order 15-02, 2015 WI 102 (issued Nov. 25, 2015, eff. July 1, 2016).

1, 2009, this court adopted rules to permit electronic filing of appellate briefs and no-merit reports. See S. Ct. Order 08-15 & 08-18, 2009 WI 4 (issued Jan. 6, 2009, eff. July 1, 2009). The court created Wis. Stats. §§ 809.19(8)(a)4., 809.19(12), 809.19(13), 809.32(1)(fm), 809.62(4)(b), (c), and (d), 809.80(3), and 809.80(5) authorizing appellate electronic filing.

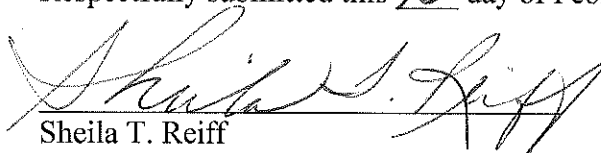
For these reasons, the proposed Interim Rule for this Pilot Project is quite simple as it will be possible to implement this Pilot Project by building on many already existing rules, with certain exceptions to excuse required compliance with certain procedural rules, such as rules that require multiple paper copies.

It is anticipated that the Pilot Project will commence by inviting certain frequent appellate filers, such as private law firms, the Office of the State Public Defender, and the Attorney General's Office, to participate in and provide feedback on the Pilot Project. In terms of funding the Pilot Project, CCAP intends to divert some funds from other projects toward this initiative. The Pilot Project would authorize a \$20 per party appellate e-filing fee for each case electronically filed as part of the Pilot Project, consistent with the fee that the court adopted for circuit court e-filing. See Wis. Stat. § 758.19(4m).<sup>2</sup> This fee will help support development and ongoing maintenance of the appellate e-filing system. Approval will be sought before any fee increase or additional electronic filing surcharge is imposed.

The Pilot Project and Interim Rule will permit technological changes and modifications of existing procedures as reasonably necessary to implement exclusively electronic filing in the Court of Appeals and Supreme Court. The Pilot Project may require modifications to the following court rules addressing the official record; registration requirements; timing and effect of electronic filing; electronic service; format and content of documents; confidential information; payment of filing fees; signatures; authentication and certified copies; system and user filing errors.

There will, of course, be legal questions that arise as this Pilot Project develops. It will be necessary to evaluate the court rules that tie filing deadlines to the hours of the Clerk's Office or require that a document be "physically received" in the Clerk's Office. Upon successful completion of the Pilot Project, permanent changes to the rules will be developed and submitted to the court in a formal administrative rule petition.

Respectfully submitted this <sup>th</sup> 15 day of February, 2019.



Sheila T. Reiff  
Clerk of the Supreme Court and Court of Appeals

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<sup>2</sup> There are exceptions for parties that are Wisconsin state & local governmental units and for indigent parties who have obtained a waiver of costs and fees under Wis. Stat. § 814.29(1).

# SUPREME COURT OF WISCONSIN

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In the matter of the creation of an interim  
court rule governing a pilot project for  
electronic filing of circuit court papers

**FILED**

**FEB 25, 2005**

Cornelia G. Clark  
Clerk of Supreme Court  
Madison, WI

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On September 16, 2004, the court held a hearing on a petition filed by the Director of State Courts, requesting authorization for a pilot project to develop and test an electronic filing system for circuit court papers. The petition requests this court to adopt interim rules providing the legal procedures needed to effect electronic filing in small claims actions for collection of debt. The proposed rules are intended to provide guidance to litigants and courts as the technical challenges are worked out. The proposed rules are temporary and applicable only to those lawyers, litigants and counties invited to participate in the pilot project.

IT IS ORDERED that the following Interim Rules for the Electronic Filing Pilot Project shall be in effect from March 1, 2005, until March 1, 2006, or until further order of the court.

## **Interim Rules for Electronic Filing Pilot Project**

### **A. Purpose and application of interim rules.**

The Director of State Courts, through the Consolidated Court Automation Programs (CCAP), shall implement a pilot project to develop and test an electronic filing system (also known as "e-filing") in the Wisconsin circuit courts. This rule should be applied without prejudice to any person using the electronic

filing system in good faith, consistent with the conduct of a pilot project.

**B. Scope, effective dates.**

(1) "Electronic filing" refers to filing of papers through a web-based system set up by CCAP for this purpose; it does not include submission via e-mail, fax, floppy disks, or other electronic means.

(2) The pilot project will begin on March 1, 2005, and end on March 1, 2006. The time may be extended by order of the Supreme Court upon the recommendation of the Director of State Courts.

(3) CCAP shall appoint an e-filing administrator to act as provided by this rule. The CCAP e-filing administrator shall determine the counties invited to participate in the pilot project. The first phase of the pilot project shall be limited to small claims actions for collection of debt and subsequent enforcement actions.

(4) Attorneys for plaintiffs may participate in the e-filing system by invitation of the CCAP e-filing administrator. Parties who are not represented by counsel and attorneys for other parties may choose to participate in the e-filing system or may request traditional service of hard-copy papers. E-filing will be accepted in new cases only.

(5) The pilot project may be expanded to include other case types, by order of the Supreme Court upon the recommendation of the Director of State Courts. This rule is subject to revision by order of the Supreme Court as the pilot project progresses.

**C. Official record.**

(1) For cases included in this pilot project, registered users may issue, file, and serve all papers electronically, subject to the provision of these rules. "Papers" include

pleadings, notices, motions, orders, paper exhibits, briefs, judgments, writs of execution, and other documents.

(2) For papers that have been e-filed, the electronic version constitutes the official record, and e-filed papers have the same force and effect as papers filed by traditional means. No hard copy of an e-filed paper shall be sent to the court. The e-filing system is an agent of the court for purposes of electronic filing, receipt, service, and retrieval of electronic papers.

(3) The clerk of circuit court may maintain the official court record in electronic format or in a combination of electronic and traditional formats. Papers submitted by traditional means will be scanned and made part of the electronic record. Any official court record containing electronically filed papers must meet the operational standards set by SCR 72.05 for electronic records.

(4) If exhibits are submitted, the clerk may maintain the exhibits by traditional means or by electronic means where appropriate.

#### **D. Registration requirements.**

(1) The following users may register for access to the electronic filing system: (a) licensed Wisconsin attorneys; (b) pro hac vice attorneys; (c) parties to an action who are not represented by an attorney; and (d) full-time employees authorized under Wis. Stats. § 799.06(2). Registered users shall be individuals, not law firms, agencies, corporations, or other groups.

(2) Users shall register on the court website with an e-filing administrator designated by CCAP. To register, users must have the capability to produce electronic papers meeting the technical requirements of the system. Registered users shall

access the electronic filing system through a web-based system set up by CCAP for this purpose.

(3) Upon receipt of a properly executed user agreement, the administrator shall assign to the user a confidential, secure log-in sequence. The log-in sequence shall be used only by the user to whom it is assigned and by such agents and employees as the user may authorize. No user shall knowingly permit his or her log-in sequence to be used by anyone other than his or her authorized agents and employees. Upon learning that the confidentiality of a log-in sequence has been compromised, the registered user shall immediately notify the e-filing administrator.

(4) Registered users shall notify the e-filing administrator within 10 days of any change in name, mailing address, fax number, or e-mail address. Attorneys shall notify the e-filing administrator within 10 days of beginning representation of a formerly self-represented user.

(5) For parties to an action who are not represented by an attorney, the log-in sequence will expire six months from judgment or the last activity on the case, whichever is later. The CCAP administrator may reset log-in sequences as needed.

(6) Nonresident attorneys may be assigned a log-in sequence upon court approval of a motion to appear pro hac vice under SCR 10.03(4).

**E. Time and effect of electronic filing.**

(1) Any pleading electronically filed shall be considered filed with the court when the transmission to the e-filing system is complete, subject to acceptance by the clerk of circuit court. Upon completion of filing, the e-filing system shall issue a confirmation that includes the date and time of receipt that will serve as proof of filing. The filer shall

maintain the electronic original of any electronically filed paper.

(2) The clerk of circuit court may review the papers to determine if they are properly filed with the court. In the event that the clerk of court rejects the papers following review, the papers will not become part of the court records and the filer will receive notification of the rejection. Users may be required to refile the papers.

(3) Any paper electronically filed before the close of the regular business day at the clerk of court's office shall be deemed to be filed on that date, so long as it is accepted by the clerk upon review. Any paper electronically filed after the close of the regular business day shall be considered filed the next day, as determined by the regular business hours of the clerk of circuit court's office. The e-filing system will accept e-filings 24 hours per day except when down for maintenance.

(4) The calculation of time for reply under other statutes and rules is neither expanded nor contracted by this rule.

**F. Electronic service.**

(1) A complaint, petition, or other paper that must be served with a summons, and the summons, shall bear the electronic signature of the attorney or self-represented party, as defined in §J of this rule. The court shall assign a case number and a return date, and return the summons and complaint to the filer with the clerk's electronic filing stamp. The electronic filing stamp shall constitute authentication, as provided by sec. K of this rule.

(2) Once completed by the clerk of court, an authenticated copy of the summons and complaint may be printed from the e-filing website by the attorney or self-represented party, or from the CCAP case management system by the clerk. The summons

and complaint shall be served upon the defendant(s) as provided by §799.12 and local rule.

(3) Subpoenas may be issued electronically consistent with §805.07 and ch. 885 and served by traditional means. The subpoena shall bear the signature of the attorney or other official as defined in sec. J of this rule.

(4) After proper service of the summons and complaint, transmission of subsequent electronic papers through the e-filing system shall cause a notice of activity to be sent to the other registered users on that case. This notice shall be considered as valid and effective service and shall have the same effect as service of a hard-copy document. Service shall be deemed complete when the transmission to the e-filing system is completed. The e-filing system shall issue a confirmation that includes the date and time of transmission to serve as proof of service.

(5) Other than service of a summons or subpoena, users who register with the e-filing system are deemed to consent to receive service electronically. Registered recipients of e-filed papers shall access their papers through the e-filing system. Users who wish to opt out of the e-filing system must notify the e-filing administrator.

(6) A party may agree to accept service of a summons and complaint or a subpoena by electronic means.

(7) Nonregistered recipients shall be served by traditional means. The clerk shall maintain a list of parties to the case indicating which parties are to be served electronically and which parties are to be served in the traditional manner.

(8) Parties who wish to exchange discovery materials electronically shall not do so through the e-filing system, consistent with §804.01(6).



**G. Format and content of papers.**

(1) All e-filed pleadings shall, to the extent practicable, be formatted in accordance with the rules governing formatting of paper pleadings, including page limits.

(2) The e-filing system will require all users to provide case management information to transmit the paper. The e-filing system may reject the paper for failure to include information in any one of the mandatory fields identified by the system.

(3) Paper pleadings submitted by nonregistered parties must be of sufficient graphical quality to be legible when electronically scanned into the e-filing system.

(4) Electronic pleadings shall be self-contained and shall not contain hyperlinks to external papers or websites. Hyperlinks to papers filed in the case are permitted.

(5) Registered users shall maintain the original of an electronic document in electronic form until final disposition of the case and expiration of all time for appeal.

**H. Confidential information.**

(1) The confidentiality of electronic records is the same as for paper records. The e-filing system will permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record shall release the information to any other person unless provided by law.

(2) Papers made confidential by statute shall be identified by the filing party. The e-filing system shall make the paper available only to registered users and only as provided by law.

(3) Papers containing personally identifiable information as defined in §19.62(5) shall be so designated by the party filing the papers. If a paper is designated as containing personally identifiable information, only registered users for the case may access the paper electronically. The document will remain

available for public inspection at the courthouse unless otherwise sealed by the court. The clerk will not review each paper for redaction.

(4) For information not made confidential by statute or court policy, users may e-file papers under temporary seal pending court approval of the user's motion to seal.

(5) During the pilot project, electronic access to view or retrieve papers shall be limited to those registered users who are parties and attorneys on the case.

**I. Payment of filing fees.**

(1) Registered users shall pay statutory fees for e-filed papers electronically through the e-filing system. For circuit court filings, papers requiring payment of a filing fee or other fee are not considered filed until the fee is paid or a waiver of the fee is granted.

(2) The e-filing administrator may establish methods for payment of a filing fee by debit card, credit card, electronic fund transfer, or other means. The clerk of court may provide for establishment of a payment account, monthly billing, or other means. Authorization for payment and other financial records shall be kept separately by the clerk of circuit court and shall not be part of the public record.

(3) Users may use the e-filing system to request waiver of filing fees or other fees under §814.29, using the form provided by the court for that purpose.

**J. Signatures.**

(1) Every paper electronically filed or served shall be deemed to be signed by the registered user. Each paper shall bear that person's name, mailing address, telephone number, and bar number if applicable. Where a statute requires a signature

at a particular location on a form, the person's typewritten name shall be inserted.

(2) The combination of name and log-in sequence shall be treated as the user's personal original signature for all purposes under this rule and other statutes and rules governing civil procedure. Compliance with this rule shall constitute compliance with the handwritten signature requirement under Wis. Stats. §801.09(3), §802.05(1)(a) & (c), and §805.07(4)(a). The court acknowledges the line of cases requiring strict compliance with these statutes in order to confer jurisdiction. The court concludes that electronic signatures may be used for the purposes of this pilot project. For registered users of the e-filing system, the identification procedures, security, and personal accountability provided by these rules are deemed to satisfy the purposes of the handwritten signature requirement and other signature requirements.

(3) Attorneys and self-represented parties who use an electronic signature through the e-filing system are deemed to consent to discipline for filing of frivolous pleadings under §802.05(1) and to contempt procedures under ch. 785.

(4) An electronically filed complaint may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney, in the same manner as par. (2), to a written oath attesting that the facts of the complaint are true. Registered users may also electronically file affidavits supported by a written oath. The court acknowledges that verifications and affidavits ordinarily require a signature and an oath taken in the presence of a notary public or other official authorized to take oaths. See Wis. Stats. §706.07; §887.01; §887.03; Kellner v. Christian, 197 Wis.2d 183, 191 (1995). For the purposes of this pilot project, the court concludes that the electronic signature of a party or attorney

may be applied to a written oath or affidavit outside the presence of a notary public or other official. For registered users of the e-filing system, the written oath, identification procedures and personal accountability to the court provided by these rules are deemed to satisfy the purposes of the oath and notarization procedures ordinarily used for paper processes.

(5) Papers containing signatures of third parties (such as affidavits and depositions) may be filed through the e-filing system if a handwritten signature appears on the original document, the user submits an imaged copy of the signed document to the court, and the user retains the original document. The court shall maintain the imaged signature as part of the court record. This practice shall be deemed to comply with §802.05(1)(c) and §910.01(4), regarding duplicate signatures, and for all other purposes under the rules and statutes governing civil procedure.

(6) The signatures of judicial officers and clerks of court shall also be applied electronically. The electronic signature of a court official shall be used only by the user to whom it is assigned and by such agents and employees as the user may authorize.

**K. Authentication and certification.**

(1) The e-filing system shall place the clerk's electronic stamp on papers accepted for e-filing. The electronic stamp is the equivalent of the clerk's placing the filing stamp and serves as authentication under §801.09(4). The electronic stamp shall be applied when the paper has been accepted by the e-filing system and a case number has been assigned. An authenticated copy may then be printed from the CCAP case management system by the clerk of court or from the e-filing system by the filing party. Compliance with this rule shall

constitute compliance with the authentication requirements of Wis. Stats. §801.09(4) and §909.02(4). The court acknowledges the line of cases requiring strict compliance with these statutes in order to confer jurisdiction upon filing of the summons and complaint. The court concludes that for the purposes of this pilot project, the security and verifiability provided by the electronic filing system are deemed to satisfy the purposes of the authentication requirements under statutes and case law.

(2) Presence of this stamp also indicates that the paper is a true copy of the record on file in the clerk of court's office under §909.02(4), as certified by the clerk of courts. The fee for certified copies under §814.61(10) does not apply to electronic certification.

**L. System or user filing errors.**

(1) If electronic filing or service does not occur because of (a) an error in the transmission of the paper to the e-filing system or served party which was unknown to the sending party, (b) a failure to process the electronic paper when received by the e-filing system, (c) erroneous exclusion of a party from the service list, or (d) other technical problems experienced by the filer, the clerk of circuit court or e-filing administrator may correct the problem. Where the technical failure does not affect timely filing or jurisdiction, the time for response shall be calculated from the time the paper is correctly transmitted.

(2) Where the technical failure prevents timely filing or affects jurisdiction, the issue shall come before the court upon notice and opportunity to be heard. The court may upon satisfactory proof enter an order permitting the paper to be filed as of the date and time it was first attempted to be sent electronically. This rule shall be applied without undue

prejudice to any person using the e-filing system in good faith during the pilot project.

Dated at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_,  
2005.

BY THE COURT:

Shirley S. Abrahamson  
Chief Justice of the Supreme Court