

CHRISTOPHER G. WREN

February 2, 2021

Justices of the Supreme Court of Wisconsin
16 East State Capitol
Post Office Box 1688
Madison, Wisconsin 53701-1688

To the Justices of the Court:

I write to address Rule Petition 20-07, which proposes creation of court rules governing electronic filing in the court of appeals and this court. Mainly, I write regarding the portions of the proposed rules dealing with bookmarks, hyperlinks, the meaning of “word,” the formatting and content of briefs, and the official appellate record, all as set forth in [Appendix A to the petition](#):

- ◆ 809.01(3) – defining “[b]ookmark”¹
- ◆ 809.01(16) – defining “[h]yperlink”²
- ◆ 809.01(35) – defining “[w]ord”³
- ◆ 809.801(8) – dealing with formatting and content
- ◆ 809.801(9) – dealing with the official record

As background, I retired nearly three years ago after a career as an Assistant Attorney General with the Criminal Appeals Unit of the Wisconsin Department of Justice.⁴ During that time, I filed hundreds of briefs in the Wisconsin appellate courts. As best I can reconstruct from my records and the Wisconsin Supreme Court and

¹ “‘Bookmark’ means an internal link allowing the reader to quickly navigate to different sections of a document.”

² “‘Hyperlink’ means an external link allowing the reader to quickly navigate to a source outside the document for information.”

³ “‘Word’ means a group consisting of one or more alphabetical characters with a space or punctuation mark preceding and succeeding the group.”

⁴ While at the Department, I served as the Department’s representative on the Wisconsin Court System Electronic Filing Committee, created in 2000 and “established to address the legal, policy, and operational issues related to the transition to and development of electronic filing in trial and appellate courts.” Wis. Ct. Sys. Elec. Filing Comm., *Wisconsin Court System Electronic Filing Committee Report 1* (2002). The committee issued its final report on December 18, 2002. The report addressed issues of privacy and access that underly policies precluding public online access to some e-filed documents, including appendices to appellate briefs and the e-filed records from circuit courts. *See id.* at 22-25. For the court’s convenience, a copy of the report accompanies this letter.

Court of Appeals Access website (WSCCA),⁵ I filed my first e-brief in the Wisconsin Court of Appeals on July 30, 2009,⁶ and my first e-brief in this court on October 10, 2012.⁷ An e-filed appendix accompanied some of my e-filed briefs.⁸

In general, I support the proposal regarding the inclusion of bookmarks in e-filed briefs. *See* Proposed Rule 809.801(8)(f).⁹ From the first brief I e-filed, I included bookmarks that tracked the structure of the brief, and I set the brief's properties so the brief would open with the bookmarks panel showing and with the magnification defaulting to a full-page view. I regarded the bookmarks as a navigational courtesy for someone who would read the brief online, especially briefs that approached the maximum length allowed by the rules. For the same reason, I also included bookmarks in e-filed appendices.

I disagree, however, with how the Proposed Rule characterizes bookmarks and their operation. Adobe's *Acrobat User Guide*¹⁰ provides this [explanation of bookmarks](#):

A *bookmark* is a type of link with representative text in the Bookmarks panel in the navigation pane. Each bookmark goes to a different view or page in the document. Bookmarks are generated automatically during PDF creation from

⁵ <https://wscca.wicourts.gov/caseSearch.xsl>

⁶ *State v. Michael B. Hoerig*, No. 2008AP2396-CR. E-filing went into effect on July 1, 2009. Earlier that year, the clerk's office scanned paper-filed briefs into nonsearchable PDF files. *See, e.g., State v. Mary A. Sidoff*, No. 2008AP1608-CR (paper brief filed on February 11, 2009).

⁷ *State v. Lamont L. Travis*, No. 2011AP685-CR.

⁸ *See, e.g., State v. Kelly M. Rindfleisch*, No. 2013AP362-CR (Wis. Ct. App.) (docket entry dated April 11, 2014, noting filing of separate appendix; see image at page 11, below); *State v. Eric Hainstock*, No. 2009AP2905 (Wis. Ct. App.) (brief filed on November 24, 2010; no docket notation about appendix; see image at page 12, below). Unlike for e-filed briefs, the WSCCA website does not make e-filed appendices available for downloading or online viewing.

⁹ "Electronically filed documents may include internal bookmarks that allow the reader to navigate quickly within a document, such as from the table of contents to the corresponding sections of a brief or from the table of contents to the corresponding documents in an appendix."

¹⁰ Adobe created the original portable document format (PDF) specification in the early 1990s. *See, e.g., Ernie Smith, Pretty Darn Fascinating*, TEDIUM (Feb. 27, 2018), <https://tedium.co/2018/02/27/pdf-file-format-history/>; PDF Association, *About the Portable Document Format* (undated), <https://www.pdf.a.org/about-us/the-portable-document-format/>; Prepressure, *The history of PDF* (updated through 2017), <https://www.prepressure.com/pdf/basics/history>.

the table-of-contents entries of documents created by most desktop publishing programs. These bookmarks are often tagged and can be used to make edits in the PDF.

Initially, a bookmark displays the page that was in view when the bookmark was created, which is the bookmark's *destination*. In Acrobat, you can set bookmark destinations as you create each bookmark. However, it is sometimes easier to create a group of bookmarks, and then set the destinations later.

In Acrobat, you can use bookmarks to mark a place in the PDF to which you want to return, or to jump to a destination in the PDF, another document, or a web page. Bookmarks can also perform actions, such as executing a menu item or submitting a form.

Adobe, *Acrobat User Guide: About bookmarks* (Aug. 11, 2020) (emphases in original), https://helpx.adobe.com/acrobat/using/page-thumbnails-bookmarks-pdfs.html#about_bookmarks. Thus, the proposed definition of "bookmark" as "an internal link allowing the reader to quickly navigate to different sections of a document" does not accurately describe a PDF bookmark. I suggest a definition along these lines: "'Bookmark' in a PDF document means a hyperlink displayed in the document's Bookmarks panel. Bookmarks usually serve to allow the reader to navigate quickly and conveniently within a document, but bookmarks can also link to destinations external to the document, such as another document or a web page."¹¹

In a similar vein, the definition of "hyperlink" as "an external link allowing the reader to quickly navigate to a source outside the document for information" misses the mark. The [World Wide Web Consortium](#) defines "hyperlink" broadly as "a link that is intended primarily for presentation to a human user."¹² Consistent with that definition, a hyperlink in a PDF file, like a PDF bookmark, can target either an internal location or an external location, regardless of whether the hyperlink points to a web page, an image, some text, an audio clip, a video file, or even an email address. Consequently, I suggest a definition along these lines: "'Hyperlink' means a link that takes the reader to a location within or external to the document."

¹¹ The term "bookmark" for PDF purposes differs from the way Microsoft uses the term when creating a document in Word. In Word, a bookmark, which the writer creates and names, serves as the destination for a cross-reference within the document, not to an external source. For instance, in footnote 8, above, the page numbers for the images were inserted as hyperlinks to named bookmarks located on the images' pages.

¹² This link might trigger a pop-up that purports to require entry of "credentials" to proceed to the destination webpage. Just click the "Cancel" button to proceed.

I also disagree with the language of Proposed Rule 809.801(8)(f): “Electronically filed documents may include internal bookmarks that allow the reader to navigate quickly within a document, such as from the table of contents to the corresponding sections of a brief or from the table of contents to the corresponding documents in an appendix.” Even under the original proposed definition of “bookmark” (see note 1, above), this explanation appears inconsistent.

A PDF bookmark does not create a direct link from a table of contents to a corresponding section of the brief or to an appendix document. To enable jumping directly from the table of contents to the corresponding location in the brief, the brief writer would manually insert a named bookmark in the target location in the word-processing document (see note 11, above, for the distinction between a PDF bookmark and a word-processing bookmark) and would then create a hyperlink in the table of contents that specifies the named bookmark as the link’s destination.

Linking directly from the table of contents of a brief (or from any other location in a brief) to a document in the appendix appears unworkable under the current operation of the court’s e-filing system. A hyperlink to a target location, whether an internal link to a location within a document (e.g., within a brief) or an external link to a location outside the document (e.g., within an appendix), requires a URL (or its functional equivalent) specifying the destination or target location. A brief writer could link to an appendix document while the appendix remains accessible to the writer in its original location, whether on the writer’s computer or on the computer’s network. But once the writer e-files the brief and appendix, the URL (or equivalent) originally linking the two documents will continue to point to the appendix’s original location on the writer’s computer or network, not to the e-filed appendix, which will acquire a different URL assigned by the court’s e-filing system. E-filing thus breaks the link between the documents. So, as a practical matter, the brief’s link to the appendix will not work for any reader of the e-filed brief other than, perhaps, the original writer or someone on the writer’s network.¹³ This break in the link amounts to a form of link rot.¹⁴

¹³ The link will also break for even the original writer if the target document gets moved from its original location to a different location (e.g., a different folder or directory) on the writer’s computer or network.

¹⁴ For explanations of link rot, see, e.g., Perma.cc, What is link rot? (undated), <https://perma.cc/docs#what-is-link-rot>; Technopedia, Link Rot (Dec. 5, 2017), <https://www.techopedia.com/definition/20414/link-rot>; The Arweave Project, Link Rot: The Web is Decaying (Feb. 22, 2019), <https://arweave.medium.com/link-rot-the-web-is-decaying-cc7d1c5ad48b>; Wikipedia, Link Rot (last updated Jan. 4, 2021) https://en.wikipedia.org/wiki/Link_rot; Wikipedia, Link

(footnote continues on next page)

Rot (last updated Dec. 29, 2020) (discussing link rot within Wikipedia), https://en.wikipedia.org/wiki/Wikipedia:Link_rot.

In 2014, Georgetown University Law School held a symposium titled “Link Rot Symposium.” Ironically, as of February 2, 2021, each of the substantive links on a [Georgetown Law Library website message](#) about obtaining video and “papers and other collateral material . . . made available at the symposium” led to a “Page Not Found” page – a typical notice that results when a link has rotted.

To address the problem of link rot, the [Library Innovation Lab](#) at the [Harvard Law Library](#) has developed and maintains a service called [Perma.cc](#) for creating permanent links and preserving the information (e.g., web page) associated with the link. As explained on the MIT Libraries website,

Perma.cc is a service that helps prevent link rot by preserving the content of web pages as they existed at the time the Perma.cc link was created. Perma.cc makes a copy of the target web page, deposits it into the Perma.cc collection, and returns a unique, citable URL that points to the preserved record.

Perma.cc is *not* a web archiving tool. Perma.cc doesn’t attempt to crawl web pages in full and only saves a copy of the single page that the user wants to cite as a PNG screenshot and a Web ARChive file (WARC).

MIT Libraries, About Perma.cc (undated), <https://libguides.mit.edu/c.php?g=695148&p=5854485#s-lg-box-wrapper-21822633> (emphasis in original).

Use of Perma.cc requires a subscription, either institutional or individual: “Anyone can sign up for a Perma.cc subscription by creating an [account](#), and it is free for anyone associated with a registrar organization. Academic libraries and courts can become registrars for free. Other organizations can become registrars for a monthly fee, and their users would have free access.” Perma.cc, User Guide FAQ (undated), <https://perma.cc/docs/faq#general>.

Perma.cc offers [browser add-ons or extensions](#) for Firefox, Chrome, and Microsoft Edge.

The Supreme Court of the United States recognizes the link-rot problem in connection with URL-based authorities cited in its opinions. The Court saves those authorities as PDF files and makes them available on its website:

Because some URLs cited in the Court’s opinions may change over time or disappear altogether, an attempt is made to capture, as closely as possible, the material cited in an opinion at the time of its release. Capture dates, when they appear on the material, may not match the “as visited” date contained in an opinion’s citation to that material.

Supreme Court of the United States, Online Sources Cited in Opinions at n.* (undated), https://www.supremecourt.gov/opinions/cited_urls/20.

The problem of broken hyperlinks between a brief and appendix has possible solutions. The court could allow filing a brief and appendix as a single PDF. In that way, a hyperlink from the brief to the appendix would operate as an internal link within a single document that e-filing would not break. However, this solution – the simplest from the viewpoint of hyperlinking – could sometimes (though likely not often) result in files that exceed the current file-size limit of 20 megabytes. But this solution would require abandoning the current policy of not allowing online access to e-filed appendices. In my view, the court should re-examine this access policy.¹⁵ Allowing the e-filing of a brief and appendix as a unitary document would usefully facilitate hyperlinked navigation between a brief and an appendix.

Alternatively, a writer could include the appendix as an attachment to the brief.¹⁶ Allowing this configuration would, like filing a unitary document, prevent breaking hyperlinks between the brief and the appendix. But the e-filing system strips any attachment from an e-filed brief. So, as with e-filing a brief and appendix as separate documents, e-filing a brief with an attached appendix would break any hyperlinks between the two documents once the e-filing system strips the attached appendix from the brief. And in any event, as with e-filing a brief and appendix as a unitary

¹⁵ The access restriction appears to rest on a notion that appendices might expose information that should be redacted (e.g., dates of birth, Social Security numbers, victims' names). Under pre-existing appellate-procedure requirements, however, an attorney filing an appendix must certify that the appendix complies with confidentiality requirements, a practice that continues under the proposed rules, *see* Proposed Rule 809.19(8g)(b)1. Moreover, if the clerk's office determines that an e-filed brief or appendix contains information the author should have redacted, the clerk's office will reject the document and require the re-filing of a compliant document.

In addition, denying online access to appendices undermines one of the key points of requiring appendices. As the appendix certification declares, an appendix "contains, at a minimum: . . . (4) portions of the record *essential* to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues." *Id.* (emphasis added). Denying online access to an appendix deprives the reader of the corresponding brief (and, perhaps, succeeding briefs or other documents) of material "essential to an understanding of the issues raised" – essentially, material by which the reader can judge the credibility of the author's factual and legal contentions.

¹⁶ The attachment feature appears as a paperclip icon in the navigation pane of a PDF file. "You can attach PDFs and other types of files to a PDF. If you move the PDF to a new location, the attachments move with it. Attachments may include links to or from the parent document or to other attachments." Adobe, *Acrobat User Guide: Add an attachment* (June 2, 2020), https://helpx.adobe.com/acrobat/using/links-attachments-pdfs.html#add_an_attachment.

document, e-filing a brief with an attached appendix could exceed the current file-size limitation and would conflict with the policy precluding online access to appendices.

Finally, because appendices consist largely of documents included in an e-filed appellate record, the author of a brief could, rather than hyperlink to an appellate-record document in an appendix, hyperlink directly to the same document in the e-filed appellate record. This solution, however, bumps up against the policy that shields the e-filed appellate record from access by anyone other than the parties to the appeal, including amici, intervenors, and guardians ad litem. So, although a hyperlink between a brief and an e-filed appellate-record document might function properly if a party clicked on the link, the hyperlink would likely not function for a nonparty clicking on the link.¹⁷

In my view, the court should remove this limitation of public access to e-filed appellate records and thus remove this impediment to the effective use of hyperlinks between (on one hand) e-filed appellate briefs and other e-filed appellate documents and (on the other hand) documents included in e-filed appellate records. Consequently, I suggest that the court modify the first sentence of Proposed Rule 809.801(9)(e), which now states: “The clerk of court shall make the public portions of the electronic record available for viewing at the clerk of court's office.” Instead, the court should provide something along this line: “The clerk of court shall make the public portions of the electronic record available for online viewing by the public regardless of the location of the person who wants to view the record.” Restricting public online access to e-filed appellate records as provided in the Proposed Rule, like the prevention of public (as well as parties’) online access to e-filed appendices, strikes me as imposing a pointless inefficiency.¹⁸

¹⁷ As a last-ditch alternative (or maybe as a first-ditch solution), a brief’s author could upload an appendix to an online document service (e.g., Dropbox, Scribd), create a link to the uploaded appendix, and then use that link for each hyperlink reference to the appendix. The link-rot problem would then manifest itself if the document service went out of business or restructured access to online documents in a way that changed links to uploaded documents.

The appellate rules, whether current or proposed, do not appear to preclude an attorney in possession of an e-filed appendix or a document in an e-filed appellate record from providing, through mechanisms outside the court’s e-filing system, access to those documents to anyone not involved in that appeal.

¹⁸ Although inefficiency has a bad reputation, an inefficiency can be (on one hand) useful or helpful or (on the other hand) pointless or harmful. For example, purely electronic voting

(footnote continues on next page)









Beyond matters relating to link rot and the lack of open online access to important e-filed appellate documents, the proposed rules contain another significant problem: the meaning of “word,” which the proposed rules define as “a group consisting of one or more alphabetical characters with a space or punctuation mark preceding and succeeding the group.” [Proposed Rule 809.01\(35\)](#).

In establishing whether a brief or other document complies with a word-count limitation, the court’s appellate rules have long relied on a word processor’s word count. The proposed rules continue that practice: “For purposes of the certification of length under this paragraph, counsel filing a brief may use the word count produced by a commercial word processor available to the general public. The word count shall include the words of any text included in the brief in the form of an image.” [Proposed Rule 809.19\(8g\)\(a\)2](#).¹⁹

The Proposed Rule’s definition of “word,” however, inadequately corresponds to how word processors typically count words. Most fundamentally, the proposed definition of “word” ignores numbers and other nonalphabetic characters as words or elements of a word. The inadequacy of the definition becomes even more evident when considering the character strings or individual characters in the following five columns:

offers many efficiencies; by comparison, paper ballots seem inefficient. But the greater certainty of accuracy afforded by paper ballots highlights the usefulness of any paper-ballot inefficiencies. Chatting with colleagues over coffee can look to gimlet-eyed bottom-liners as wasteful and inefficient, but those chats can provide participants with insights that trigger resolution of a problem that had previously seemed insoluble. In effect, coffee breaks can serve as useful inefficiencies.

¹⁹ A PDF file consists of one or more images. Presumably, this provision mainly seeks to prevent circumvention of the word-count limitation by inserting into a brief a PDF file that has not been processed through Acrobat’s (or an Acrobat clone’s) optical-character-recognition (OCR) function.

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Microsoft Word counts each of those strings or individual characters (including wingdings or dingbats) as one word, even though nothing in any of the columns (except, perhaps, the string “wicourts.com”) qualifies as a word under the Proposed Rule.

To illustrate the disparity more concretely in the context of a brief, Microsoft Word counts “Wis. Stat. § 809.01 (35)” as five words, “Wis. Stat. § 809.01(35)” as four words,

“Wis. Stat. §809.01(35)” as three words, and “Wis.Stat. §809.01(35)” as two words. Under the proposed definition of “word,” however, only “Wis. Stat.” and, seemingly, “Wis.Stat.” count as words – in each case, probably two words under the proposed definition but two words and one word, respectively, according to Microsoft Word. Consequently, any writer who cites an authority or creates a character string that contains anything other than alphabetical characters will produce a word count greater than the count the Proposed Rule’s definition would require.

The court should not approve the proposed definition of “word.” Instead, the court should approve a definition along these lines: “‘Word’ means either a single character immediately preceded or followed by a space or punctuation mark or a string of characters unbroken by a space.” As part of this definition (or as a separate definition), the court should add something along these lines: “‘Character’ includes a letter in the alphabet, a number, a symbol, a punctuation mark, or any ASCII- or Unicode-encoded symbol that a person could view on a printed page or electronic device.”²⁰

In summary, I urge the court to modify the definitions I have discussed above; to allow the filing of briefs and appendices as unitary documents; to make appendices e-filed as separate documents available online in the same way the court already makes briefs available; and to make e-filed appellate records publicly available online.

Thank you for your consideration of my comments. I hope you find them helpful.

Sincerely,

/s/ *Christopher G. Wren*

Christopher G. Wren

Wisconsin State Bar No. 1013313

²⁰ For a brief explanation of ASCII and a table of ASCII codes and symbols, visit, e.g., <https://www.ascii-code.com>, <https://coding.tools/ascii-table> or <https://theasciicode.com.ar>. For more information on Unicode, visit <https://www.unicode.org/consortium/newcomer.html> and <https://www.unicode.org/standard/WhatIsUnicode.html>. For a table or list of Unicode characters, visit https://en.wikipedia.org/wiki/List_of_Unicode_characters or <http://www.unicode.org/charts/>.

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04-11-2014

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2013AP362-CR
(Milwaukee County Cir. Ct. Case No. 2012CF438)

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

KELLY M. RINDFLEISCH,
Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING SUPPRES-
SION AND FROM A JUDGMENT OF CONVICTION
ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE DAVID A. HANSHER PRESIDING

**SUPPLEMENTAL APPENDIX TO BRIEF OF
PLAINTIFF-RESPONDENT STATE OF WISCONSIN**

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11-24-2010

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

**SUPPLEMENTAL
APPENDIX**

State v. Eric J. Hainstock
No. 2009AP2905-CR
Wisconsin Court of Appeals
District IV

Brief of Plaintiff-Respondent
State of Wisconsin
November 24, 2010



*Wisconsin Court System
Electronic Filing
Committee Report*

Date: December 18, 2002

Authored By:

Wisconsin Court System Electronic Filing Committee

The Wisconsin Court System Electronic Filing Committee was established to address the legal, policy, and operational issues related to the transition to and development of electronic filing in trial and appellate courts. In the fall of 2000, Director of State Courts, J. Denis Moran, appointed twenty members to serve on the committee, which consists of judges, district court administrators, clerks of court, register in probate, consolidated court automation programs staff, and attorneys representing offices of district attorney, attorney general, state public defender, and various law firms. The committee's charge includes:

- Determining which existing statutes and supreme court rules must be amended or clarified to facilitate electronic court filing. Recommend legislative or supreme court rules changes necessary to eliminate statutory and administrative barriers.
- Identifying and recommending possible changes to internal operating procedures, procedural rules, and business practices needed to transition from paper to electronic case files.
- Identifying current court processes and flow of information through the court system. Determine where workflow should be reengineered to create a more efficient system and to accommodate/facilitate electronic filing. Define workflow requirements that must be incorporated into the electronic filing solution.
- Identifying all written documents that are included in paper files, and recommending the manner in which the paper documents might be integrated with the electronic record.

The committee began meeting in January 2001 to identify business requirements of an electronic filing system. The Electronic Filing Committee has researched and discussed the topics set forth in this report, including document formats, an integrated case management system, interim rules for a pilot project, privacy concerns, filing times, fees, and signatures requirements. The committee has also reviewed the business practices of the courts including data gathering and data dissemination, internal routing of information, and the data elements of motions, orders, and decisions. The committee has identified business requirements for a statewide electronic filing system as they relate to each of these topics. Civil, criminal, and appellate subcommittees generated charts of workflow patterns and reviewed standard court forms. Committee members differentiated mandatory and optional fields of information on the standardized court forms. Appellate court staff compiled an extensive flowchart of the appellate process. The committee has forwarded the information on the court forms and appellate flowchart to CCAP staff. The committee submits this report.

In order to migrate toward a paperless court the committee emphasizes the need for an integrated case management system for the circuit courts, court of appeals, and supreme court and establishment of a document management system. The circuit courts case management system (CCAP case management system) and appellate court case management system (SCCA) must be compatible in order to allow the transfer of case information (i.e., transmittal of notice of appeal, record, remittitur). At the present time, the case management systems of the circuit court and court of appeals/supreme court are not compatible. The electronic filing system must be integrated with case management and document management systems. The integration of these three systems will allow a user to simply "click on" an entry in the list of docketed events to view the desired document. A link would take the user to the document requested. The electronic filing system must also be integrated with the circuit courts' (WCCA) and appellate courts' (WSCCA.i) public access systems. Commonality of systems is a prerequisite for the courts and of important interest to agencies and attorneys who practice in multiple jurisdictions and courts.

The electronic filing system is expected to eventually produce costs savings for the courts, lawyers, and litigants, while providing time savings and greatly increasing the speed with which documents can be sent to the court and opposing counsel and eliminating hurdles for remote filers. The system will benefit parties and lawyers by reducing the costs of printing, copying, mailing, courier services, travel, and storage associated with paper documents. Parties, lawyers, judges, and court staff will benefit from the ability to electronically access and search court files and dockets from remote locations. Access will be improved further because multiple users could view the same case file simultaneously and would have access 24 hours a day. The system will extend the range of services the courts can offer by providing remote access for viewing and filing of documents.

The electronic filing system will provide the ability to enhance the accuracy, consistency, and efficiency in record maintenance. Time and effort dedicated to data entry would be drastically reduced because information could be automatically extracted from the documents submitted. The use of standardized drop down lists attached to fields on submission screens would result in consistent docket entries. The amount of time spent by court staff searching for and handling case files will also be reduced.

The electronic filing system should encourage and facilitate working with electronic documents. The system must be user-friendly so as to increase access to courts rather than decrease access. We must avoid discouraging potential electronic filers by requiring technology they do not have or with which they are unfamiliar.

The committee recommends the adoption of national standards and guidelines for electronic filing. The National Consortium for State Court Automation Standards is developing technological standards for electronic filing processes and the Conference of Chief Justices (CCJ)/Conference of State Court Administrators (COSCA) is developing standards for public access to electronic court records. The following information provides some detail regarding the reports and their status.

The National Consortium for State Court Automation Standards (Consortium), a subgroup of the COSCA/NACM Joint Technology Committee, is developing court technology standards. See The Consortium for National Case Management Automation Functional Standards Project, located at <http://www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm>. Standards for electronic filing processes are being developed as part of this project. In July 2002 the Joint Technology Committee accepted the report of the Consortium and its Electronic Filing Standards Subcommittee. The July 12, 2002, report may be viewed at <http://www.ncsc.dni.us/ncsc/ctp/htdocs/pdfdocs/Standards%20for%20EF%20Processes%20to%20National%20Consortium%207-15-02.pdf>. The Joint Technology Committee adopted the Standards for Electronic Filing Process as "proposed standards," which were published and circulated for public comment. Upon expiration of the public comment period, the Consortium reviewed the comments and prepared a final report and recommendation to the Joint Technology Committee. On December 5, 2002, the Joint Technology Committee reviewed the report and recommendation, made revisions, and forwarded the report to COSCA and NACM for approval.

The Standards for Electronic Filing Processes do not address issues of public access to and privacy of electronic court documents and the standards that should govern the issues. These issues are discussed in a report entitled Public Access to Court Records: Guidelines for Policy Development by State Courts, which was developed by a Conference of Chief Justices/Conference of State Court Administrators. The Conference of Chief Justices and COSCA endorsed the report. The final version of the report is posted at <http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf>.

Finally, the committee analyzed the procedural rules and user manuals of the federal courts electronic filing system. Some committee members participated in a hands-on tutorial hosted by the staff of the U.S. Bankruptcy Court for the Western Division of Wisconsin. The federal district and bankruptcy courts continue to implement the Case Management/Electronic Case Files (CM/ECF) system. CM/ECF uses standard computer hardware, an Internet connection and a browser (i.e., Internet Explorer or Netscape Navigator), and accepts documents in Portable Document Format (PDF). The filer prepares a document using conventional word processing software and saves it as a PDF file. The filer logs onto the court's Web site with a court-issued password, fills out several screens or fields with case information, and submits the document to the court. The system automatically generates a notice verifying court receipt of the filing. Other parties in the case automatically receive an e-mail notification of the filing, which contains a link to the electronic copy of the document filed. Filings are accepted 24 hours a day, 7 days a week but local courts may determine whether 11:59 p.m. means "filed that day" or "filed on the next business day." The majority of federal courts have adopted the "filed that day" rule. The CM/ECF system for the federal appellate courts is expected to be ready in 2003.

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LIMITS ON THE ELECTRONIC FILING PILOT PROJECT:

The committee recommends the following be included in a pilot of an electronic filing system. These limitations will provide a controlled environment in which we can test procedures, respond quickly and efficiently, work closely with users, and monitor and analyze filings in more detail.

Court and Case Type(s):**1 Circuit Court and Court of Appeals.**

The participation of two courts in the pilot project will allow CCAP to test the transmittal of the notice of appeal, trial court record, and appellate decision from one court's case management system to another court's system. The implementation of a pilot in two courts recognizes the reality that attorneys have multi-court, multi-jurisdictional practices.

Civil cases.

The committee recommends that the pilot project be limited to civil cases. The committee notes the selection of the court(s) may dictate whether the civil cases should be limited to CV cases or may include other civil cases such as FA (family cases) or SC (small claims cases). The committee recommends that the issue of case type should be reviewed prior to implementation of a pilot project to determine the feasibility of including criminal cases.

In September 2001 the Judicial Conference of the United States adopted various policies that govern the electronic availability of federal court case file information. The Judicial Conference adopted a policy to make most civil case documents available electronically to the same extent the records are available at the clerk's office. The Conference agreed public remote electronic access to criminal cases should not be available at this time but agreed to review this policy within the next 2 years. See http://www.uscourts.gov/Press_Releases/jc901a.pdf In March 2002 the Judicial Conference approved creation of a pilot project to provide Internet access to criminal case files. See http://www.uscourts.gov/Press_Releases/pr031302jc.pdf

Filers:

The committee recommends that electronic filers in the pilot project should be limited to Wisconsin-licensed attorneys. This limitation on the participants of the pilot project will provide a controlled test group with which the court staff can work and provide education. The committee noted that a person who files electronically must be able to receive documents electronically.

Access:

The committee recommends that access to the electronic filing system be limited during the pilot project. External users should be limited to the attorneys participating in the pilot project. An attorney's access should be further limited to the case in which he or she is appearing as counsel of record. See Access, pp. 22-23.

Filing of a case-initiating document vs. Filing of a document in an existing case:

During the pilot project the electronic filing system must accept both case initiating documents as well as documents in an existing case. The electronic filing system should include a prompt for the filer asking "New or Existing case/appeal?" The committee agreed that all filings should be captured in electronic form at the earliest practicable time.

Phase-in implementation process:

The committee recommends that an electronic filing system be implemented in phases. The system should be rolled out in phases to courts, filers, and users, should gradually incorporate all case types, and should increasingly provide enhanced electronic accessibility and search functions. For example, phase 1 in the circuit courts would make electronic filing available to specific attorneys in certain counties filing civil cases, and in the appellate courts, electronic filing of XX-cases, habeas corpus cases, and writs would be excluded. Phase 2 would provide access to all attorneys licensed in Wisconsin and attorneys admitted pro hac vice for all case types. The final phase would provide access to pro se litigants. Each phase will present its own set of issues that will need to be addressed in a controlled venue to protect security and privacy concerns.

DOCUMENT FORMAT:

An application interface that will enable the case management system to interact with an electronic filing system is an essential business requirement. The electronic filing system must integrate the information contained in the electronically filed document into the court's case management system, compile and print the information in a form similar to motions, orders, and opinions currently used, and provide a viewable version of the document on screen. The integrated case management and electronic filing systems must support the transfer of data to and from circuit court and appellate court case management systems.

The committee recognizes the selection of a document format is a technical consideration but emphasizes its preference for an "XML-like" format that captures and extracts data quickly and accurately from the document to the case management system, provides extensive search capabilities, issue tracking, and consistency with filings. XML (extensible Markup Language) is the accepted standard for describing or tagging the content of data transmitted electronically (names of parties, telephone numbers, addresses, case numbers). XML enables the transfer of data among automated systems that utilize different hardware, software, operating systems, and applications.

The committee designates the following as business requirements of an electronic filing system:

- (1) Documents must be electronically filed in a format that is searchable, taggable, and renderable. The committee recognizes scanned documents that are electronically filed may not be searchable, at least initially.
- (2) Data should be extracted from the document and electronically integrated into the courts' automated case management systems. See Automatic population function, p. 9.

- (3) The information in the electronically filed document must be compiled and displayed on screen and printed in a form similar to those currently used. The system should be capable of printing a paper copy of an electronically filed document without the loss of content.
- (4) Data in designated fields must be shielded from public access in compliance with statutes requiring confidentiality.
- (5) An electronically filed document must upload quickly.
- (6) The document format must provide for the filing of larger textual filings such as an appellate brief.
- (7) The document format should not be affected by upgrades to other software programs.
- (8) The electronic filing system must allow for application software tools such as highlighting, underlining, and text notations that would allow court staff to work with an electronic document. For example, when reviewing a document on screen a law clerk needs the ability to make notes or highlight parts of an argument in a brief or motion. The solution should not be tied to word processing tools but needs to function in a similar manner.

SECURITY:

The electronic filing system must provide security of the data. The system must authenticate the identity of the filer and provide a secure signature mechanism.

The system must maintain the integrity of electronically transmitted data and documents. The system must ensure the document filed with the court is the same as the document sent by the filer. The system must ensure that the document is not modified after it has been entered into the court's database. The system must maintain the integrity of the case dockets and ensure effective control of the public record by the clerk of court or register in probate.

The system must provide mechanisms for quality assurance and quality control of the electronically filed documents and case management data by both the court and the filer.

The system must scan transmitted data for viruses prior to processing.

The system must protect the electronic filings from system and security failures. The system must incorporate controls to ensure that a catastrophic failure of a single system or system element does not result in loss of the sole copy of a document that is part of the court record.

The system must include a document storage component, a Data Management System (DMS), that is secure and separate from a back-up system. Electronic documents can be indexed, stored, and accessed through the DMS.

The system must create and maintain an audit trail/log of transactions. This function is most significant to the authentication and certification of documents. Court staff should be able to request a report of all transactions/filings made during a specific

date range. An attorney should be able to request a report showing all transactions he or she made within a date range or all transactions he or she has made on a specific case within a date range.

The system must provide the appropriate court staff with the ability to control the assignment and modification of security levels and access privileges.

REGISTRATION AND PASSWORD:

Other jurisdictions use a registration and password process to satisfy a signature requirement and as a means of security for electronic filing. See Signature, pp. 13-16.

Each user must register before being allowed to electronically file with a court.

Each user would receive one statewide computer-generated password to access and use the electronic filing system. A central authority would maintain a list of persons registered to participate in the electronic filing process and issue this unique identifier to be used statewide. A password would be provided to an individual, not an entity (law firm, legal assistance agency). Any login name and password required for electronic filing shall be used only by the attorney to whom the login name and password are assigned and by such agents, members and employees of that attorney's firm, as that attorney shall authorize.

The electronic filing system must provide a secure mechanism for the creation and distribution of passwords.

The registration process would require the receipt of specific information depending on the user:

An attorney registering to use the electronic filing system must provide his or her name (User Name), State Bar of Wisconsin member number, firm/organization name, mailing address, phone number, and email address. The system must also allow an attorney that is not licensed in Wisconsin but is proceeding on a pro hac vice status to register. A pro hac vice attorney will not provide a member number.

A pro se registrant must provide his or her name (User Name), mailing address, phone number, and email address. The system must issue to a pro se registrant an identification number to be used in place of a state bar member number. The password and identification number for a pro se registrant would expire 180 days after judgment if no further activity (i.e., docketed entry). The system should include a mechanism to purge pro se users from the electronic filing registration account.

The system must authenticate the identity of persons interacting with the electronic filing system.

In order for law firms to filter electronic filing documents and notices sent by the courts from other electronic correspondence, attorneys may need to register with an email

address that will be used exclusively for electronic filing and different from the email address provided to the State Bar of Wisconsin.

A password may be changed in the event an attorney believes the security of an existing password has been compromised, that a threat to the system exists, or the password has been lost. A procedure must be established to verify the identity of the person requesting a new password. CCAP has recommended that a new password be created and assigned rather than searching a database and providing the former password to the attorney.

All parties registered in the electronic filing system must have access to the data management system to view or retrieve filings. The committee proposes that access to view or retrieve documents be limited to that party's case during the pilot project.

LEVEL OF DISCRETION USED WHEN REVIEWING FILED DOCUMENT:

The electronic filing system must fully support both automatic population of the case management system and a review queue through which clerk staff would review data and documents prior to entry in the case management system.

The level of discretion exercised by clerks in reviewing filings will vary from court to court, document to document. Circuit court clerks prefer the system automatically populate the data from an electronically filed document into the related case management fields. Registers in probate and appellate court clerks prefer a review queue feature to allow discretion in reviewing documents before accepting/filing the document or populating the case management system with the data.

Automatic population function:

When the electronically filed document is automatically populated into the case management system, the electronic filing system must generate follow-up flags for certain entries and a report for the appropriate court staff to review. For example, when an attorney files a motion for a hearing, the system should generate a follow-up flag on a report so court staff may schedule a hearing.

Review queue function:

The system must have a review queue that consists of folders in which electronically filed documents subject to review would be held pending clerk staff review. The clerk staff must be able to select and review any document out of order of its receipt. For example, staff needs the ability to select and process an emergency motion for stay in an expedited manner. In addition, case-initiating documents for appeals filed by parties/attorneys need to be held until receipt of the transmittal from the circuit court, at which time the appellate court clerk may open a new appeal and assign a case number.

When a document is held in queue the electronic filing system must retain information regarding the time the document was received. For example, a filing may be received at 4:55 p.m. on Thursday. Court clerk staff may be unable to review and accept the document until Friday morning. The system must

recognize the filing date of the document as 4:55 p.m. on Thursday. In contrast, an appellate brief is submitted during business hours on a Monday but fails to comply with rules under Wis. Stat. ch. 809 because the brief does not contain a certification page pursuant to Wis. Stat. § 809.19(8)(d). On Tuesday the filer adds a certification page to the brief and the appellate court clerk staff accepts the brief on that date. The system must allow the court staff to enter a filing date of Tuesday for this brief.

ROUTING CAPABILITY:

The system must allow court staff to automatically distribute an electronic document or a batch of documents to specific internal work groups or to a specific staff person based on the document type or case status. Staff could distribute the documents via a notice with a link to the document.

Court staff must be able to forward documents without delay to each successive stage of case processing. Appellate court staff has created an extensive chart of the workflow pattern of the court of appeals and supreme court. The appellate flowchart has been forwarded to CCAP staff.

Electronically filed documents will be received at a central point in the clerk of court's office in order that multiple staff may have access to process filings. A tracking system is necessary to verify routing of documents and check their status.

RECEIPT AND ACKNOWLEDGMENT NOTICES AND VALIDATION PROCEDURES:

A receipt and acknowledgment notice are similar in that they serve as notice to the parties that a document has been received or filed. A receipt notifies the filer the central server of the courts' system has received the document. An acknowledgment notice confirms the document has been accepted and entered on the case record.

RECEIPT: The electronic filing system must forward a receipt to the filer that would confirm a central server has received the transaction.

Disclaimer: If the court clerk staff opts to hold the document in queue subject to review, the receipt must include a disclaimer that the document is subject to review before being filed. The disclaimer must state that electronic filing does not constitute service, and must cite the court's filing time rule for electronic documents. The interim rules for the pilot project should provide for a misdirected electronic notice from the clerk.

Service of Receipt: The party filing a document electronically is responsible for serving all parties. Court staff, however, must be able to serve court-generated documents on all parties registered in the electronic filing system. See Court-generated Documents, p. 21. The system must generate an error message to court staff when any court-generated document, receipt, or acknowledgment notice is unable to be delivered in order that staff can resolve the problem.

A tracking number must be associated with a receipt. The tracking number could consist of a series of numbers identifying the county, case number, date of filing, number of document filed in the case or on that date, and type of document filed.

The filer must be able to print the receipt and acknowledgment notice.

VALIDATION: The system must provide for different levels of validation for an electronically filed document. The electronic filing system conducts the first validation, and court staff conducts the next validation.

1st level of validation performed by the system:

The validation conducted by the electronic filing system would have two stages. At the first stage, the system would verify that the filer has completed all mandatory fields for that document type. Failure to complete a mandatory field would cause the system to reject the filing. At the second stage, the system would compare case information in the filing with that of the case management system and warn court clerk staff of any inconsistency.

Stage one:

Upon receipt of an electronically filed document, the system would verify the document contained the required data elements for that filing. The committee reviewed standard court forms and identified the fields that must be completed. An electronically filed document must include sufficient case management data to enable the automatic population of the court's case management system.

If the document contains all of the information for the mandatory fields, the system would receive the information at a central server and forward it to the designated court. The system must note the time of receipt for purposes of acceptance/filing later.

Fields identified as mandatory in several case-initiating circuit court forms include:

- a) name of court
- b) name of document being filed (drop down list of options)
- c) name of sender/filer
- d) name of party on whose behalf the filing is being made
- e) case number, if assigned
- f) class code
- g) case caption
- h) email address, telephone number, and bar number, if applicable

Appellate filings require the same information as well as the name of the county of origin, name and address of opposing party and counsel, date(s) of order(s) being appealed, and name(s) of circuit court judge(s).

Fields identified as mandatory in several noncase-initiating circuit court forms include:

- a) name of court
- b) name of document being filed (drop down list of options)
- c) name of sender/filer
- d) name of party on whose behalf the filing is being made
- e) case number
- f) case caption
- g) email address, telephone number, and bar number, if applicable

Appellate filings require the same information as well as specific parts of briefs as set forth in s. 809.19.

Rejection:

The system must reject the document for failure to include information in any one of the mandatory fields. Upon rejection the system would automatically send to the filer a rejection notice that sets forth the reasons. The system must check all mandatory fields before rejecting so the notice will identify all information that is needed or incomplete. If the document is rejected, the filer must be able to make corrections and resubmit.

Acceptance:

If the document passes the first level of validation, the system shall notify court clerk staff of the received document.

Stage two: The system would verify that the case information provided by the filer matches that of the clerk's case management system for that case (attorney, case number, case caption, etc.). The system would provide a warning to court clerk staff if there were any inconsistencies in the information and would inform the staff if the filing were being made on a closed case. This automatic comparison of case information cannot be a basis upon which the system could reject the document.

2nd level of validation conducted by court staff:

Court clerk offices may request different levels of discretion to review the document before the case information populates the case management system. A clerk's office may opt to have the case information automatically populate case management system or be held in queue for review and the case information manually added to the case management system. If the clerk's office opts for the latter, the system must provide an easy mechanism for staff to enter the data. This process may require a button by which the clerk can populate a split screen, or another form of technology that would not require the clerk to toggle between screens to enter the data.

Court clerk staff must have the capability to generate a report that would list all filings that the system and/or court clerk staff validated on a specific date or date range.

ACKNOWLEDGMENT: The committee members representing the appellate and probate courts prefer a two-tier notification system including a receipt, which indicates the system has received the document but that the document will not be filed until approved, if subject to review, and an acknowledgment, which notifies the party that the document has been filed.

An acknowledgment notice shall be issued upon filing. Filing will be defined by whether the clerk's office opts for automatic population of the case management system or a review and acceptance process. See Automatic population/Review queue functions, p. 9. If a filing is not subject to review, the document is deemed filed upon receipt of the information at a central server location. If a filing is subject to review to verify compliance with rules, the document is deemed filed upon acceptance by court staff. The date of filing of a document subject to review is the date of receipt if the document complies. See examples set forth under Review queue function, p. 9.

An acknowledgment notice shall include the identity of the receiving court, date and time of filing, name of document filed, the court assigned case number, short case caption, and a transaction or tracking number.

Upon filing, the system would affix information including the date, time, and court to the electronic document. This information must appear on a printed version of the document and be viewable on screen. A manual stamp currently affixes the date and court information.

Users must be able to print an acknowledgment notice.

SIGNATURE:

The committee does not recommend a particular technology for signatures on electronically filed documents. Numerous issues remain unresolved and hurdles exist involving the use of digital signatures. Therefore, many jurisdictions use a login/password mechanism to authenticate a filer and to comply with statutory signature requirements. The electronic filing systems in these jurisdictions issue a unique registration ID and a password to identify each filer. These courts have adopted rules defining the use of an ID and password as equivalent to a signature. The federal courts continue to use an ID and password system to constitute a legal signature until the digital signature technology standardizes.

Other jurisdictions have adopted rules addressing the validity of an electronically filed document:

- Use of the attorney's password/login to electronically file a pleading, affidavit or other document constitutes the attorney's signature for all purposes. See U.S. District Court, Western District of Missouri (Order dated Nov. 5, 1998).
- Use of the login and password required to submit documents electronically constitutes an attorney's signature for purposes of Fed. R. Bankr. P. 9011. See U.S. Bankruptcy Court, District of New Mexico (Misc. Order 99-359).

The following quote captures the current trend: "The bottom line for most courts is that digital signatures seem to be overkill (a higher bar than the current hard copy process) for most document submissions to the court. Most states and the federal courts are settling for ID's and passwords for user authentication." Annotated State of Washington Electronic Filing Technical Standards (Draft), para. 3. Electronic Signatures and Encryption, at <http://www.courts.wa.gov/efstandards/standards.cfm>

The Wisconsin Courts Electronic Signature Ad Hoc Committee focused on the Wisconsin Court System's readiness to deal with the procedural and legal barriers to the use of electronic signatures. See Electronic Signatures Ad Hoc Committee Report (July 12, 2000). The Signature Committee researched both enacted and pending legislation regarding electronic signatures. In 1997 the Wisconsin legislature enacted a digital signature law, Wis. Stat. §§ 137.04-137.06 (1997-98). 1997 Wis. Act 306, §§ 3-6. However, federal legislation, the Electronic Signatures in Global and National Commerce Act, which became effective on June 30, 2000, preempted Wisconsin's digital signature law. Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., ("E-Sign Act"). Subsequently legislation, known as the Uniform Electronic Transactions Act (UETA), was proposed that would have removed Wisconsin from the preemption; however, the legislature did not pass the act. The Department of Electronic Government (DEG) intends to support the introduction of UETA in the next legislative session. The current draft of UETA exempts notices provided by a court, court orders or judgments, and official court documents, including, but not limited to, briefs, pleadings, affidavits, memorandum decisions, and other writings, required to be executed in connection with court proceedings. Due to the uncertainty surrounding the adoption of UETA and the requirements imposed on electronic signatures under Wis. Stat. ch. 137, the committee recommends implementing a process and adopting an interim rule by which a user name and password would satisfy a signature requirement for an electronically filed document.

The committee designates the following as business requirements of an electronic filing system:

- (1) Signatures must be secure for filers, clerks, registers, and judges.
- (2) A Wisconsin licensed attorney must use 4 identifiers for his or her signature: login/user name, User ID and password as assigned by the electronic filing system, and State Bar of Wisconsin member number.
- (3) An attorney not licensed in Wisconsin proceeding on a case-by-case basis as a pro hac vice attorney must use 3 identifiers for his or her signature: login/user name, and User ID and password as assigned by the electronic filing system.
- (4) A pro se filer must use 3 identifiers for his or her signature: login/user name, and User ID and password as assigned by the electronic filing system.
- (5) Interim rules on signatures must be drafted and adopted. The Electronic Signature Committee compiled statutes and rules that could pose a barrier to electronic filing and cited them in appendices of its July 12, 2000 report. The Electronic Filing Committee has updated these appendices so the 1999-2000 version of the statutes is referenced. The co-chairs have retained these appendices.

The committee reworked the following rule of New York Uniform Civil Rules to serve as an example of an interim rule that could govern signatures on electronically filed documents. Pursuant to this rule the electronic filing system would need to issue both a User Identification Designation (User ID) and a password to a filer. These two system-generated identifiers would be used with the user's login name (User Name) to satisfy a signature requirement.

202.5b. Filing by Electronic Means

(f) **Signatures.** A pleading, motion, or other paper filed electronically shall be deemed to be signed by ~~a person~~ an individual (the "signatory") when the paper identifies the ~~person~~ individual as a signatory in compliance with paragraph (1), or (2), ~~or (3)~~. The filing or service shall bind the signatory as if the paper was physically signed, and shall function as the signatory's signature. Compliance with this rule shall constitute compliance with the signature requirement under Wis. Stat. § 802.05.

(1) In the case of a signatory who is a **Filing User**, such paper shall be deemed signed regardless of the existence of a physical signature on the paper, provided that such paper is filed using the Login Name, User ID and password of the signatory.

(2) In the case of a signatory who is **not a Filing User**, such as an affiant or a deponent, or who is a Filing User but whose User ID and password will not be utilized in the electronic filing of the paper, such paper must be physically signed by the signatory before it is filed. A Filing User who files such paper represents that he or she possesses the executed hard copy of such paper and agrees to produce it at the request of a party or the court.

~~(3) A party may add his or her signature to a filed paper by signing and filing a Certification of Signature for such paper in a form prescribed by the Chief Administrator. Such Certification shall provide the title, electronic filing index number, and date and time filed of the paper being so signed. . . .~~

(d) Filing Users, Passwords and Other Attorney Information

(1) An attorney admitted to practice in the State of ~~New York~~ Wisconsin, or admitted pro hac vice for purposes of an action, may register as a **Filing User** of the ~~USC~~ CCAP Internet Site.

A party to an action ~~subject to FBEM filing by electronic means~~ who is not represented by an attorney may register as a Filing User of the CCAP Internet Site for purposes of such action. The User ID and password issued to the party shall expire 180 days from judgment or the last activity on the case, whichever is later. Registration shall be ~~by paper~~ on a form prescribed by the ~~appropriate clerk~~ judicial conference pursuant to s. 758.18, stats., for the circuit courts, or by the clerk of the supreme court and court of appeals, which shall require identification of the action and the name, address, telephone number, and Internet e-mail address of the Filing User.

An attorney registering as a Filing User shall declare on the registration form that the attorney is admitted to the State Bar of ~~the New~~

~~York State Wisconsin~~ or admitted pro hac vice in the particular action. If, during the course of the action, an unrepresented party retains an attorney who appears on the party's behalf, the appearing attorney shall ask the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

(1) A Filing User shall be issued a User Identification Designation (User ID) and a password by the appropriate clerk upon registration. The utilization of a Login Name, User ID, password, and state bar number for the purposes of filing a pleading, motion, or other paper shall constitute a signature of the attorney-registrant of that password under Wis. Stat. § 802.05. ~~The clerk CCAP~~ shall maintain a confidential record of issued User IDs and passwords.

(e) Electronic Filing of Papers

~~(6) A Filing User seeking to file electronically any paper that requires a judge's signature shall also transmit such document in hard copy form to the court. Orders signed by a judge shall be filed in hard copy form, converted into electronic form by the appropriate clerk, and entered into the official record.~~

SUBMISSION OF FILINGS:

Filing a document in an existing case vs. Filing a case-initiating document:

The electronic filing system must provide a filer with the option to file a document in an existing case or to file a document, such as a complaint, petition, or notice of appeal, that will trigger the case management system to open a new case. If the filer is initiating a new case, the electronic filing system and case management system must interface to set up a new case, assign a case number, generate a case caption, create the appropriate docket entries, and identify the court, county, and parties and their attorneys. The systems must retain the current capability to incorporate an existing case, such as an IP-case for circuit court and a XX-case for court of appeals, into new case. In addition, the systems must recognize that the circuit court clerk's transmittal of a notice of appeal to the court of appeals clerk is the case-initiating filing for a direct appeal. The electronic filing system and case management systems must extract data sufficient to initiate a new case and the case management systems must be compatible to be able to share information in an efficient manner.

If the filer is submitting a document in an existing case, the system must be capable of routing a filing in one of two ways by either automatically docketing (i.e., populating) the case management system with the data in the document or forwarding the filing to a clerk review queue. See Automatic population/Review queue function, p. 9. When electronically filing a document in an existing case, the filer would type in the case number in the appropriate field. The system would automatically populate other fields of case information (case caption, party). Before electronically submitting the document the system should provide a prompt for the filer questioning whether the filer intends to submit a filing in "Case Number, Short Caption." This prompt, which should include both the case number and case caption, will allow the filer to review the case number and

caption and may prevent submission in an incorrect case where the filer has typed the incorrect case number. The prompt may also include the filer's email address and provide the filer with the ability to modify the address. If the filer chooses to change the address, a prompt must inform the filer that all subsequent notices will be forwarded to the new address. The filer should have the option to accept or cancel the process to change the address.

The electronic filing system should include a web-based form through which a filer submits a document. The screen must provide a series of fields through which the system will capture case information for purposes of populating the case management system. A filer will complete most fields will be completed by selecting from a drop down list of standardized selections. Court clerk staff shall have the ability to override the entry in a field where the filer has selected an incorrect entry (i.e., name of document being filed).

The manner in which a filer inputs information must be user friendly, readily accessible, and accommodate voluminous text documents. For example, an attorney writing a brief does not want to "cut and paste" portions of a brief into separately designated fields (i.e., table of authorities, statement of the case, etc.).

The system must include an issue identification mechanism, especially for appeals. As part of the submission process, either with case-initiating documents or briefs, an attorney would identify issues involved in the case. Court staff could modify these issues as the case progressed. Currently, issues on appeal are identified in the docketing statement, if required to be filed, and the appellate briefs but the tracking of issues must be maintained manually. There is a need from the bench and attorneys to determine if other cases are pending or have been recently filed on an issue and from the bar to search briefs filed on a specific issue.

The committee spent a considerable amount of time reviewing standard circuit court forms and appellate forms. Committee members differentiated mandatory fields of information from optional fields on the forms (case caption and number, county, etc.). The completed project and notes have been compiled by case types and forwarded to CCAP.

A filer must have a unique identifier by which the case and filings can be tracked both before and after a permanent case number is assigned. Assignment of a permanent case number may be delayed pending review by court clerk staff.

Self-contained documents or court record. Electronic documents may contain hyperlinks to other documents filed within the electronic court record for that case. Hyperlink references to external documents or remote websites should not be used in order to avoid problems with incompatibility, long-term stability, and to the same citation device.

FEES:

The electronic filing system must integrate a financial component to provide for the acceptance of filing fees, fines, and other financial obligations, including the processing of petitions to waive the filing fee.

The filing fees that are required on paper filings will apply to if the document is electronically filed; however, there should be no additional charges for use of the electronic filing system.

The system must accept electronic transactions for filing fees. The committee considered and discussed the following options:

- (1) Law firm establish an account with a specific court from which fees are debited as filings are received (Further research would need to be conducted to determine the impact of trust account requirements.).
- (2) Paypal (debit system that charges a processing fee).
- (3) Secure credit card transaction over the Internet.
- (4) Trust account held centrally.
- (5) Direct electronic funds transfer.

The committee rejected (1) and (2). With regard to (3), a credit or debit card authorization shall be filed with any document requiring filing fee but the authorization would be retained separately by the clerk and shall not be a part of the public court record.

The acceptance of certain documents electronically must be conditioned upon the simultaneous payment of a filing fee with the clerk's office. Other filings are conditioned on the subsequent payment of a filing fee.

The filing fee should be tied to a defined list of document types rather than case classifications. If a fee is required in order to file a document, the user must be prompted for payment. For example, the circuit court filing fee must be paid upon the filing of a case-initiating document; however, the filing fee for an appeal need not be paid in order to file and initiate an appeal.

The system must send an electronic receipt to the payor.

Access to the financial of the CCAP case management system must be restricted to designated court staff.

The system should provide a field in which an attorney can input client information in order that the attorney can track the financial information and input the information into the firm's billing process. This client information should appear on the receipt.

FILING TIMES:

The committee recommends that any rule governing the filing time of electronic documents should be consistent with local rules governing fax filing. Local fax rules provide that documents transmitted after normal business hours are considered filed the next business day:

Papers filed by facsimile transmission are considered filed when transmitted, except that papers filed by facsimile transmission completed after regular business hours of the clerk of courts office, are considered filed the next business day.

The committee notes that its recommendation for the electronic filing time differs from the standard proposed by the Electronic Filing Standards Subcommittee of the National Consortium for State Court Automation Standards. The proposed standard provides that "courts will accept electronically filed documents 24 hours per day, 7 days per week, except when the system is down for maintenance. Documents are deemed filed on the date they are actually filed, whether or not the clerk's office was open for business at the time of the filing."

The filing of some circuit court documents is contingent upon the payment of the filing fee. Any such document will not be deemed filed unless accompanied by a payment. See Fees, p. 18.

A document will be deemed filed when the court's central server receives the document. An exception to this rule is if the document is subject to review by court clerk staff, then the system will retain the filing date information and if the document passes review, it is filed as of the initial date the server received it, unless further correction by the filer is necessary. The central server should be deemed the location at which the court is responsible for electronically filed documents and system failures. See Automatic population/Review queue functions, p. 9.

SERVICE:

Upon receipt of a filing, the court should not be obligated to serve the document upon opposing counsel or other parties. The system may provide to the parties an electronic notice of activity on the case with a link to the online court records web page.

Each clerk and register's office would have a unique email address for purpose of electronic filing that would be easily distinguished by attorneys upon receipt of a notice or order.

The system must provide the ability to include in the service list for a specific case a person/entity who is not an attorney of record (i.e., in-house counsel; assistant attorney general on cases involving a constitutional issue).

An attorney who files any paper via the electronic filing system is held to have agreed to receive any and all subsequent notices, orders, or pleadings by electronic means in that case (with the ability to opt out). The system must provide a mechanism by which

an attorney may opt out of the electronic filing system.

The State of Wisconsin Law Library must receive electronic notice of the filing of all appellate briefs and have access to download nonconfidential briefs.

DOCUMENT AUTHENTICATION AND CERTIFICATION:

The adoption of interim rules may not sufficiently address the statutory requirement that an authenticated copy of a document be served. The electronic filing system must provide an authenticated version of an electronically filed summons, as well as other filings, that comply with Wis. Stat. § 801.09 and meet the definition of authentication of electronic documents as set forth in Wis. Stat. § 137.04.

Wis. Stat. § 801.09(4) states "There may be as many authenticated copies of the summons and the complaint issued to the plaintiff or counsel as are needed for the purpose of effecting service on the defendant. **Authentication** shall be accomplished by the clerk's placing a filing stamp indicating the case number on each copy of the summons and the complaint." (emphasis added).

Wis. Stat. § 137.04, the definitions section for Electronic Signatures, defines "Authenticate" as the meaning "to validate a document in such a manner that the identity of the person who originates the document is incontrovertible and the information contained in the document is identical to that originated by the person."

The system-generated version would need to display a court's "certification" or "authentication" stamp. A graphical image of the court seal may be sufficient; otherwise, an interim rule may expand the definition of a clerk's filing stamp to include an electronic imprint of a block of distinctive data.

The following are examples of statutes or rules that other jurisdictions have adopted to address the issue of service of an authenticated document:

- Upon electronic filing of a complaint, petition or other document that must be served with a summons, a trial court may electronically transmit a summons with the court seal and the case number to the party filing the complaint. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. (CA Code of Civil Proc. 1010.6(a)(5))
- A complaint that is filed and time-stamped electronically pursuant to this section may be converted into a printed form and served upon a defendant in the same manner as a complaint that is not filed electronically. (Nevada Revised Statutes 171.103(2))
- Electronic Issuance of Summons. . . . A printed version of such summons shall have the same force and effect as a summons issued

by the clerk on paper and under the seal of the court. (Los Angeles County Superior Court R. 18.00 (e))

Fees for authentication and certification of a document will be collected as a filing fee.

The electronic filing system must maintain an audit trail of the court staff member who authenticates or certifies a document and produce a report.

COURT-GENERATED DOCUMENTS OR COURT-INITIATED FILINGS:

The electronic filing system must accept and docket all filings initiated by the court such as orders, trial notices, decisions, opinions, etc. The system must accept the court document, route to the clerk's office if generated elsewhere, automatically populate the case management system or send it to a review queue, and electronically serve it upon parties registered with the electronic filing system. Upon serving the document, the system must inform clerk staff of those parties not registered so staff may forward the court document via regular mail. The electronic filing system should incorporate methods that take advantage of information and processes, such as automatic generation of appellate court orders, that are part of the existing case management systems to avoid duplicative data entry effort by court staff in creating documents.

Orders, judgments, notices of hearings, and other documents issued by the court should be created electronically rather than generating a hard copy of the court-generated document and scanning it into the electronic filing system.

Circuit court judges must be able to receive drafted orders from attorneys and have the ability to modify the drafts and issue the final version electronically. An attorney often prepares or is required to prepare an order for a judge's review and signature. The system must allow this "draft" order to be electronically filed with the clerk of court and then transmitted to the judge for review, any modification, and signature. The judge electronically files the final version with the clerk's office.

A court reporter must be able to electronically file a transcript. The different parts of a transcript must be differentiated much like a brief so that users may easily identify the index of witnesses and exhibits, certification page, case identification information including case caption, case number, county, type of hearing, testimony of each witness, name of the judge, and name of court reporter.

The trial court record must include an index of all filings. The electronic filing system should generate the index. Currently Wis. Stat. § 809.15(2) requires the circuit court clerk to paginate the record and compile it in chronological order. The index must include the title of each filing, the corresponding page number or link to the document, and the date on which the document was filed.

The court of appeals and supreme court judges and staff, as well as appellate counsel, must have access to the electronic version of the trial court record (i.e., docket

entries), index, and all documents filed.

The system must generate an error message to court staff when any court generated document, receipt, or acknowledgment notice is unable to be delivered in order that staff can resolve the problem.

The first document issued by the court in any case must include a statement about accommodations, which shall cite the Americans with Disabilities Act (ADA), and include the county/court's contact (phone number).

The system should recognize that transmissions to and from the court may be subject to the increasingly aggressive filtering systems that could prevent the receipt of filings and the delivery of court generated orders, opinions, as well as system generated receipt and acknowledgment notices.

PRIVACY:

Policies governing access to electronic court records must be adopted that balance public access, personal privacy, and public safety, and maintain the integrity of the judicial process. See Public Access to Court Records: Guidelines for Policy Development by State Courts, intro. (July 16, 2002), located at <http://www.courtaccess.org/modelpolicy/Guidelines16July2002.pdf>. The National Center for State Courts managed a project that developed policy guidelines on public access to electronically maintained court records. The draft policy, entitled Public Access to Court Records: Guidelines for Policy Development by State Courts, was disseminated for public comment in April 2002. See <http://www.courtaccess.org/modelpolicy>. The proposed guidelines were adopted by the Conference of Chief Justices and the Conference of State Court Administrators at their annual conference on July 28-August 1, 2002. See <http://www.courtaccess.org/modelpolicy/Guidelines16July2002.pdf>. The final version of the guidelines is posted at <http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf>

The committee defers to the Wisconsin Circuit Court Access' (WCCA) recommendations on privacy issues. The committee recommends that WCCA broaden its policies on disclosure of public information from CCAP over the Internet to govern the Wisconsin Supreme Court and Court of Appeals Case Access (WSCCA.i).

The committee notes the Judicial Council of California approved statewide rules on public access to electronic trial court procedures. The rules became effective July 1, 2002. Rules 2070 through 2076 are located under Title 5, Division VIb, Chapter 3, of the California Rules of Court. See <http://www.courtinfo.ca.gov/rules/2002/titlefive/>

ACCESS:

The electronic filing system must provide concurrent access to case information to multiple users, external and internal.

The system should accommodate and support multiple, simultaneous filings in a single submission for the same case. The system must provide the:

- (1) ability to file/serve in more than 1 court at the same time (Example: Statement on transcript filed with court of appeals and informational copy served on circuit court; notice of appeal filed with circuit court and informational copy served on court of appeals);
- (2) ability to file more than 1 document at the same time (Example: informational notice of appeal and docketing statement filed with court of appeals); and
- (3) ability to serve in more than 1 court and more than 1 document in at least one of those courts (notice of appeal filed in circuit court and served in court of appeals and docketing statement filed in court of appeals).

Judges and court staff must be able to retrieve electronic case information immediately and simultaneously.

Users filing documents must have remote access from home computers, laptops, and public locations.

A user must be able to view a document filed electronically by a single click of the mouse on the docket entry. The system cannot require a user to manually launch a separate application for document viewing.

The electronic filing system must maintain an electronic version of the trial court record that is easily searchable.

All documents filed electronically must be available in printed form. If the document format will allow, documents should be transferable to an archival media without loss of content or material alteration of appearance.

Court clerk staff must be able to maintain control over access, most specifically cases or documents that are deemed confidential by statute or order. Court staff must have the ability to designate the parties that are allowed access to a filing based on the document type and case classification. A checkbox mechanism where the clerk designates access as follows could accomplish this task: only judge and court staff, only one party side/attorney, parts of document sealed, etc.

Adequate public access to filed documents must be provided but should be implemented in phases. Access must be controlled to allow management of the system, especially during the pilot. The committee determined that the pilot should be limited to attorneys of record on each individual case. The committee notes that the State Law Library must have access during pilot for the purpose of monitoring and retrieving (non-confidential) briefs that have been filed. The committee emphasizes that the pilot should be limited to attorneys of record for purposes of security and management but that the electronic filing system should be rolled out to more users and the public quickly.

The electronic filing system and case management system must provide system-

generated reports for court staff. For example, statistical reports would include a report that would monitor and measure the time it takes to complete a process (i.e., time it takes to route a document through the various stages of the process with stages designated by different codes).

Attorneys would like to have a transaction report that would show all filings made within a date range.

CONFIDENTIAL DOCUMENTS:

The electronic filing system must provide different levels of security that will control access to documents deemed confidential by statute or court order or filed under seal. The type of document and the user will determine the level of access.

Appropriate security measures must be implemented and maintained by the electronic filing system to preserve the confidentiality of documents and files sealed by court order or deemed confidential by statute.

Different levels of security are necessary because the extent to which case file information is sealed will vary. For example, an entire case file may be confidential, or a few documents may be sealed, or certain data elements must remain confidential. The system must provide security on a broad as well as a narrow basis as illustrated by these examples:

Confidential Files: Parental consent case under Wis. Stat. § 48.375(7)(e) and § 809.105(12); paternity case file is confidential until adjudication under Wis. Stat. § 767.53(3); termination of parental rights case and adoption case under Wis. Stat. ch. 48; juvenile case under Wis. Stat. § 938.78; mental health act case under Wis. Stat. § 51.30(3); and protective service case under Wis. Stat. § 58.06(17).

Confidential Documents: Presentence investigation under Wis. Stat. § 972.15(4) and financial disclosure statement under Wis. Stat. § 767.27(3).

Confidential Data Elements: Social security number, credit card number, names of victims in sensitive crimes.

Different levels of security or access are necessary for users. The system must restrict a user's access to confidential documents so only the appropriate court official/staff or parties/attorneys involved in the case may view. Access rights could be based on the type of case, which is identified by code/classification; data field; name of document; or designation as confidential (as denoted by a checkbox to mark a document/file confidential following the issuance of a court order). The system must be flexible to allow access to an entire file, allow access to only certain documents or information in the file, and provide the ability to change the access rights to an entire file or any document at any time.

The electronic filing system must also allow a party/attorney to file a document under a temporarily sealed status pending the court's approval the party/attorney's motion to seal. The judge and court staff would have access to such a document. A presentence investigation report is an example of a document where defendant's counsel and court

staff have access to the information but the attorney general or district attorney must obtain the court's permission to view under Wis. Stat. § 972.15(4).

The system should prevent the downloading of any confidential document. In addition, a strongly worded advisory should be provided to external users regarding the downloading of confidential files. For example, "Anyone authorized to view this document is responsible for maintaining its confidentiality."

ACCOMMODATION OF PAPER:

The courts must accommodate paper filings. However, the number of mixed case files of paper and electronic filings should be kept to a minimum. In order to integrate a paper document into an electronic record the paper should be converted into an electronic version. The electronic filing system must accept a paper document that is scanned into an electronic format. The conversion will entail scanning the document and entering docketing information to identify the filing in the case management system. Court clerk staff may need to convert a paper document. This process must be quick and efficient and the amount of scanning and data entry to be performed by court clerk staff should be limited. Court staff will enter only limited information for docketing purposes so it is not foreseeable that the document will be searchable. Attorneys may be responsible for scanning paper filings such as exhibits, entering information about the filing, and filing electronically.

The electronic filing system must flag any case file in which a partial paper file and electronic file co-exist. The system must flag each document that is paper and denote by an easily identifiable symbol.

There must be a link to any scanned paper document for retrieval purposes.

SYSTEM FAILURES:

CCAP staff must notify, whenever possible, the filer and court staff if the electronic filing system is not operating.

The committee recommends that a party attempting to submit a document electronically should not bear the burden of a system failure. If a filer is unable to submit a document electronically due to a system failure and the filer files the documents on the next business day, the document shall be deemed timely if a deadline passed while the system was not operating. The committee reviewed local fax rules, Wis. Stat. § 801.15, and Dane County's rule 122 regarding a disruption in business operations. The rules and statute are set forth below. The fax rule places the burden on the filer; whereas, the statutory provision and Dane County rule do not place the risk of a system failure/office closure on the filer.

Local fax rules place the burden on the filer:

"The party transmitting the facsimile document is solely responsible for ensuring its timely and complete receipt. The circuit court, judge, or clerk is not responsible for errors or failures in transmission

that result in missing or illegible documents, or periods when a circuit court facsimile machine is not operational for any reason."

Wis. Stat. § 801.15 provides that a filing deadline that falls on a day on which the clerk's office is closed the deadline rolls to the next day the office is open for business.

"(1) (b) Notwithstanding ss. 985.09 and 990.001 (4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.

(2) (a) When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms. The 90-day period under s. 801.02 may not be enlarged. If the motion is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect. The order of enlargement shall recite by its terms or by reference to an affidavit in the record the grounds for granting the motion.

(b) The time within which a motion challenging the sufficiency of the evidence or for a new trial must be decided shall not be enlarged except for good cause. The order of extension must be made prior to the expiration of the initial decision period.

(c) The time for initiating an appeal under s. 808.04, for deciding motions after verdict under s. 805.16 (3), and for making motions for reconsideration under s. 805.17 (3) or for relief from judgment or order under s. 48.46 (2) or 806.07 may not be enlarged."

Dane County Circuit Court Rule 122 provides:

"In the event that normal business hours cannot be maintained or normal business cannot be conducted in the office of the clerk of court and/or the register in probate, any papers filed or fees paid on the next day business is conducted shall be deemed timely, if a deadline passed while the office was unable to conduct business. Halt of business operations or closure of the clerk's or register's office, for any reason other than total closure of county government, shall only be approved by the chief judge upon request by the clerk and/or register."

A user may experience a situation in which a document is submitted but the system fails to recognize it and fails to issue an error message notifying the filer. Procedural rules should be adopted to protect the filer.

If a failure occurs during the submission of a document to the central server location, a user must have the ability to pull back the information and resubmit.

DOCUMENT FILED IN ERROR:

The electronic filing system must provide both a filer and court clerk staff with a mechanism to correct the submission or entry of a filing.

Incorrect filing by party.

If a party electronically files an incorrect document in a case or files a document in the incorrect case, the party would contact the clerk's office to request a correction. If appropriate, the court clerk staff would make an entry indicating the document was filed in error. Guidelines would need to be established for when such an entry is appropriate and whether the incorrect document would be deleted or overridden by the correct document. If an incorrect document was filed in a case, then the party must refile the correct document. If the document was filed under the incorrect case number, then the clerk could have the ability to move the document to the correct case. The filer should file a document confirming the transfer of a filing from one case to another. A correcting entry would be made and electronic notification would be issued stating that the acknowledgment notice was in error. The date of filing would not be altered by the transfer of the document and docket entry to the correct case.

The system should provide a mechanism by which the filer would not need to completely recreate the document in order to resubmit. The committee briefly discussed the possibility of a process by which the document is created on a web-based form and the filer may save the document to his or her computer. The filer could simply repopulate using the saved document.

Incorrect entry by court clerk staff.

If court clerk staff enters a document in the wrong case or fails to catch that the party has entered the wrong case number on the submission, an entry would be made indicating the document was filed in error. The court clerk staff must have the ability to remove the entry and move the document to the correct case. A correcting entry would be made and electronic notification would be issued stating that the acknowledgment notice was in error. The date of filing would not be altered by the transfer of the document and docket entry to the correct case.

Once a filer completes the fields and selects the button to submit the document, the system must provide a prompt asking if the filer wants to file the document. The system must provide the filer with the option to cancel and recall the document to review or modify.

EDUCATION:

Education and training are essential to the success of implementing an electronic filing system. The system must provide on-line tutorials and a help option similar to those provided by the federal bankruptcy and district courts. An on-line user manual should be created that a user may download. Several jurisdictions have created these

tools and the committee recommends using these resources in creating the same for our electronic filing system.

The system must provide a process to inform registered users of court policy changes relative to electronic filing.

RULES:

The committee recommends the adoption of interim rules to govern an electronic filing pilot project. The adoption of interim rules allows flexibility to adapt procedures and amend any rule quickly to address issues as they arise. The committee compiled and analyzed rules of other state and federal courts. The co-chairs have retained copies of these rules for future reference.

Interim rules for the pilot project must address all topics and business requirements listed in this committee's report. In addition, interim rules should address the following:

- (1) Content standards for briefs and other filings (i.e., page limits, word count, paragraph numbers, page numbers). Electronic briefs must be paginated or contain numbered paragraphs for referencing purposes.
- (2) Rules requiring colored covers on filings should be exempted from electronic filing.
- (3) A printed copy of the court's digital file stamp should be equivalent to the court's mechanical file stamp.
- (4) A filer who has been provided with a unique identifier for purposes of filing documents electronically will be deemed to have filed any document submitted using that identifier.
- (5) Rules must identify and define when a document is deemed "received" and "filed."
- (6) Establish hours of availability of electronic filing process.
- (7) Identify remedy for failure of electronic filing system.
- (8) Identify procedure for correcting wrong entry in case management system.
- (9) The filer must maintain the original of an electronically filed document.
- (10) If the court adopts a rule allowing electronic service, another rule must establish the filing time. For example, service by electronic submission upon a person after 5:00 p.m. on any business day is effective the following business day.
- (11) The quality of any scanned document depends on the user and equipment; therefore, the interim rules must include a provision for an "unscannable" document or exhibit.
- (12) Sanction provision for multiple filings by pro se. The existing sanctions for frivolous filings may address this issue.

With regard to signature requirements on an electronically filed document, this committee relied on research conducted and compiled by the Electronic Signatures Ad Hoc Committee. The Signatures Committee had analyzed statutes and rules in an effort to determine what sections and rules must be amended or clarified in an effort to best

facilitate electronic filing in Wisconsin courts. That committee identified statutes that would inhibit the implementation of electronic filing such as those that require a signature to be handwritten, a paper to be filed, or a stamp or seal to be placed on a paper document as the means of authentication. The Electronic Filing committee has updated the lists of statutes and the co-chairs have retained a copy for future reference.

GLOSSARY:

CCAP	Wisconsin Consolidated Court Automation Programs is responsible for supporting the IT needs of the entire Wisconsin Court System, including the Supreme Court, Court of Appeals, Circuit Courts, Office of Lawyer Regulation, Board of Bar Examiners, Judicial Commission, State Law Library, and the offices of the Director of State Courts.
CM/ECF	Case Management / Electronic Case Filing system for the federal district and bankruptcy courts.
CMS	A case management system records and manages court cases, records, calendars, financial transactions, and other information.
COSCA	Conference of State Court Administrators, further information located at http://cosca.ncsc.dni.us/
DMS	A data management system manages, retrieves, and stores documents electronically.
E-Sign Act	Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.
IP-Case	An action filed by a prisoner relative to his or her incarceration. If the court determines, upon review, that the filing satisfies certain criteria, then a civil (CV) case number will be assigned; otherwise, the matter is closed.
NACM	National Association for Court Management, further information located at http://www.nacmnet.org/
PDF	Portable Document Format.
SCCA	Case management system for Wisconsin Supreme Court and Court of Appeals cases.
UETA	Uniform Electronic Transactions Act.
WCCA	Wisconsin Circuit Court Access is a website that provides public access to the records of the circuit courts. http://ccap.courts.state.wi.us/InternetCourtAccess/
WSCCA.i	Wisconsin Supreme Court and Court of Appeals Access is a website that provides public access to the status of appeals filed with the supreme court and court of appeals. http://www.courts.state.wi.us/wscca/
XML	EXtensible Markup Language is a standard syntax for describing elements used to mark up text.
XX-Case	A pre-appeal motion filed with the court of appeals before the initiation of an appeal or other proceeding, e.g., motion for an extension of time to file a notice of appeal in a criminal matter.

SOURCES:

Cohasset Associates, Inc., Proposed Technical Standards and Guidelines for Electronic Filing in the United States Courts, at http://www.cohasset.com/main/library/standards/electronic_filing/index.html

Fredric G. Levin & Andrew Z. Adkins III, Electronic Public Access to Court Records (White Paper) (Fall 1999), at <http://www.law.ufl.edu/lfi/projects/epa/>

Guidelines on the Public's Right of Access to Judicial Proceedings and Records, Massachusetts Supreme Court Judiciary/Media Steering Committee (March 2000), at <http://www.state.ma.us/courts/courtsandjudges/courts/supremejudicialcourt/pubacesstoc.html>

National Center for State Courts, A Guidebook for Electronic Court Filing (1998), at <http://www.ncsc.dni.us/NCSC/TIS/TIS99/electr99/Guidebook/HTML/EfileWest.htm>

Public Access to Court Records: Guidelines for Development by State Courts, The Joint Court Management Committee of the Conference of Chief Justices and the Conference of State Court Administrators, at <http://www.courtaccess.org/modelpolicy>

Standards for Electronic Filing Processes, Draft for Consideration by National Consortium for State Court Automation Standards and COSCA/NACM Joint Technology Committee (July 12, 2002), at www.ncsc.dni.us/ncsc/ctp/htdocs/standards.htm

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