

**SUPREME COURT OF WISCONSIN**

## NOTICE

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No. 06-08

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**In the matter of the Creation of a Court Rule  
Governing Electronic Filing in the Circuit  
Courts**

**FILED****MAY 1, 2008**

David R. Schanker  
Clerk of Supreme Court  
Madison, WI

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On December 6, 2006, A. John Voelker, Director of State Courts, filed a petition asking this court to create a new rule implementing electronic filing in the Wisconsin circuit courts. On December 21, 2007, the petitioner filed an amended petition which reflects programming changes necessitated by budget considerations. A public hearing on the amended petition was conducted on April 8, 2008.

At the ensuing administrative conference, the court voted to adopt the petition unanimously, as modified, with the exception of sub. (9) (c). Justice Butler dissented from the adoption of that portion of the rule which permits the immediate destruction of paper copies of filed documents after scanning by the circuit court clerk, sub. (9) (c). Finally, the court ruled that the effective date of this rule shall be July 1, 2008.

Therefore,

IT IS ORDERED that effective July 1, 2008:

**SECTION 1.** 801.17 of the statutes is created to read:

**801.17 Electronic filing. (1) DEFINITIONS.** In this section:

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

(b) "Document" means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing. For purposes of this rule, a document includes the transmittal page submitted with the filing.

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

2. "Electronic filing" does not include submission by electronic mail, facsimile, floppy disks, or other electronic methods.

(d) "Electronic filing system administrator" means an individual appointed by the director of state courts to receive information and take action as necessary to run the electronic filing system.

(e) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a

document, that can be executed or adopted by the user with the intent to sign the document.

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

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

(h) "Transmittal page" means a page generated by the electronic filing system containing the case management information necessary to transmit and file a document.

(i) "User" means an individual who has registered to use the electronic filing system under section (3).

**(2) SCOPE.** (a) The director of state courts shall implement an electronic filing system for the Wisconsin circuit courts.

(b) Use of the electronic filing system is voluntary. Parties or their attorneys may choose to participate in the electronic filing system on a case-by-case basis. Parties or attorneys who choose not to participate shall file, serve, and receive paper documents by traditional methods.

(c) Any action that may be brought in circuit court may be brought using electronic filing, subject to the ability of the electronic filing system to accept the documents. This section does not guarantee anyone the right to file electronically.

(d) The procedures in this section shall be interpreted in a manner consistent with existing procedural rules.

(3) REGISTRATION REQUIREMENTS. (a) The following individuals may register for access to the electronic filing system:

1. Licensed Wisconsin attorneys.
2. Attorneys appearing under SCR 10.03 (4).
3. Parties to an action who are not represented by an attorney.
4. Full-time employees authorized under s. 799.06 (2).

(b) Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.

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

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

(e) Users shall notify the electronic filing system within 10 days of any change in the information provided for registration. Attorneys shall notify the electronic filing system within 10 days of beginning representation of a formerly self-represented user.

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

(g) The same access code shall be used for all cases on which the user is an attorney or a party. The user's access code shall expire 6 months from the last activity on any case for which the user is registered. The electronic filing system may reset access codes and electronic signatures as needed for administrative and security purposes.

(h) Users who wish to stop using the electronic filing system in a particular case must notify the director of state courts through the electronic filing system. The electronic filing system shall generate a notice to all parties that traditional methods must be used for this party for future filings and service.

(i) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case, such as witnesses seeking protective orders, intervenors, and amicus curiae. It may also provide a method for submitting reports by individuals who are not parties to the case, such as presentence investigators and social workers.

**(4) TIME AND EFFECT OF ELECTRONIC FILING.** (a) The electronic filing system is an agent of the circuit court for purposes of

electronic filing, receipt, service, and retrieval of electronic documents.

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

(c) The clerk of court may review the document to determine if the document should be accepted for filing. If the clerk accepts the document, the document shall be considered filed with the court at the time the original submission to the electronic filing system was complete. Upon acceptance, the electronic filing system shall issue a confirmation with the date and time of the original submission to serve as proof of filing. If the clerk rejects the document, the document shall not become part of the court record and the filer shall receive notification of the rejection. The filer may be required to refile the document.

(d) The date the document is considered filed shall be determined by the regular designated business hours of the clerk of court. Any document submitted to the electronic filing system before the close of regular business hours shall be considered filed on that date, so long as it is subsequently accepted by the clerk upon review. A document submitted after the close of regular business hours shall be considered filed

the next business day. The electronic filing system shall note the date and time the document is submitted.

(e) Whenever a party has the right or duty to do some act within a prescribed period after the service of a document on the party, one day shall be added to the prescribed period if the document is served through the electronic filing system between 5 p.m. and 12 midnight.

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

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

**(5) COMMENCEMENT OF ACTION.** (a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and authenticate the document as provided in sub. (10). The electronic filing system shall send a notice to the filer that the filing has been accepted and is available through the electronic filing system website.

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

(c) A responding party or attorney for a responding party may register to use the electronic filing system as provided by this section. After registering to use the electronic filing system, the responding party or attorney shall also register as a user on the particular case. A notice indicating the new user will be sent to the other users on the case.

**(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS.** (a) Filing of documents other than initiating documents through the electronic filing system shall cause a notice of activity to be sent to the electronic mail account of the other users who are parties to the action. Users shall access filed documents through the electronic filing system.

(b) For documents that do not require personal service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document, except as provided in sub. (d).

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

(d) If a notice of activity sent to a user's electronic mail account is rejected or returned undeliverable, the electronic filing system shall automatically notify the filing party. The filing party shall then serve the document on that user by traditional methods. The user whose electronic mail account rejected the notice shall be treated as a nonregistered



party until the party corrects the problem and reregisters with the electronic filing system.

(e) Unrepresented parties or attorneys who are not users shall be served by traditional methods. The clerk shall maintain a list indicating which unrepresented parties or attorneys are to be served electronically and which are to be served by traditional methods.

(f) An unrepresented party or attorney may submit a request to the clerk of court to begin electronic filing of documents after commencement of the case. The decision to allow electronic filing of documents after the case has been commenced is in the sole discretion of the clerk of court. If the request is granted, the requester shall register under this section and shall send a notice to the other parties by traditional methods stating that the case has been electronically filed and shall include instructions for how to use the electronic filing system if the other parties choose to do so.

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

(h) The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court. Discovery materials that are not filed

with the court through the electronic filing system may be exchanged electronically between the parties by mutual consent, consistent with s. 804.01.

**(7) PAYMENT OF FEES.** (a) Users shall make any payment due to the clerk of court through the electronic filing system unless otherwise ordered by the court or unless special arrangements are made with the clerk of court. Documents that require payment of a fee are not considered filed until the fee is paid or a waiver of the fee is granted. The electronic filing system shall establish one or more methods for electronic payment.

(b) Users may submit a request for waiver of fees under s. 814.29 (1), using a form provided by the electronic filing system for that purpose.

(c) The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.

(d) Users may be charged a convenience fee for use of the electronic filing system, as provided by s. 758.19 (4m).

**(8) FORMAT AND CONTENT OF DOCUMENTS.** (a) To the extent practicable, the user shall format all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including page limits.

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

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

(d) Users shall maintain the original of each electronically filed document in electronic form until final disposition of the case and expiration of all time for appeal.

**(9) OFFICIAL RECORD.** (a) Electronically filed documents have the same force and effect as documents filed by traditional methods.

(b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.

(c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and nonelectronic formats. Documents filed by traditional methods shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, notwithstanding SCR 72.03 (3). If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically scanned into the electronic filing system, the clerk shall maintain the document in paper format.

(d) Any official court record containing electronically filed documents must meet the operational standards set by SCR 72.05 for electronic records.

(e) The clerk of court shall make the public portions of the electronic record available through a public access terminal located in the clerk's office. The clerk of court shall charge for copies of pages from the electronic record under ss. 814.61 (10) and 814.66 (1) (h).

(f) Certified copies of an electronic record shall be obtainable from the clerk of court's office by traditional methods, as provided by s. 889.08.

(g) If a document is filed by traditional methods, the submitting party shall file a copy of that document and not the original paper document. The court may require the submitting party to produce the original paper document if validity of the signature or document is challenged.

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

**(11) NOTARIZATION AND OATHS.** (a) If a document is required to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the

notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the document. A physical or electronic image of a stamp, impression, or seal need not accompany the electronic signature. The electronic signature and notary seal may be applied to the document's transmittal page.

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

(c) Documents notarized by traditional methods may be filed through the electronic filing system if a handwritten signature and physical seal appear on the original document. The user shall submit a scanned copy of the notarized document to the electronic filing system, and the court shall maintain the scanned document as the official court record. The court may

require the submitting party to produce the original paper document if validity of the notarization is challenged.

(d) Other officers authorized by law to perform notarial acts may do so by application of their electronic signatures if those signatures are already provided through the electronic filing system.

(e) The electronic signature and seal provided for notaries public by the electronic filing system satisfy the self-authentication provisions of s. 909.02.

**(12) SIGNATURES OF USERS.** (a) Users shall be provided with an electronic signature that can be executed by the user with the intent to sign a document. The electronic signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules. Each document electronically signed shall bear that person's name, mailing address, telephone number, and state bar number if applicable. If a statute requires a signature at a particular location on a form, the user shall insert the user's printed name and an indication that the document has been electronically signed. The electronic signature may be applied to the document's transmittal page.

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

(c) An electronic signature shall be used only by the user to whom it is assigned. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly

disclosed, the user shall immediately report that fact through the electronic filing system.

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

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

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

(g) If a document bearing a signature is filed by traditional methods, the filing party shall file a copy of that document and not the original paper document, as provided by sub. (9).

**(13) SIGNATURES OF COURT OFFICIALS.** (a) If the signature of a court official is required on a document, an electronic

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

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

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

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



thereof, may release the information to any other person except as provided by law.

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

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

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

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

1. If the failure is caused by the court electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.

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

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

**SECTION 2.** The following Comment to Wis. Stat. § 801.17 is not adopted but will be published and may be consulted for guidance in interpreting and applying the statute.

Comment, 2008

Sub. (4) is intended to be consistent with the rules for facsimile transmissions under ss. 801.15 and 801.16.

Sub. (6) does not apply the general rule that most documents are considered served when they are mailed. Although documents are considered filed when they are accepted by the clerk and posted to the electronic filing website, the parties are notified of the posting by a notice sent to an electronic mail account. Because electronic mail is not yet as reliable as the United States Post Office, this subsection requires the filing party to revert to traditional service if the electronic mail notice is returned as undeliverable.

Sub. (6) (f) provides that the clerk of court may allow an existing case to be converted to electronic filing upon the request of a party, but the clerk is not required to do so.

Sub. (7) provides that most routine fees be paid electronically, including filing, motion, and docketing fees, fines and forfeitures, court costs, and court-ordered attorney fees. Larger fees and deposits, such as condemnation awards, may be paid by other methods if ordered by the court or agreed to by the clerk of court. Attorneys should consult the Rules of Professional Conduct, SCR 20:1.15 (e), with respect to the restrictions on electronic transactions from trust accounts.

Sub. (9) requires parties filing documents by traditional methods, such as by hand delivery or by

mail, to submit copies instead of original documents, to allow the clerk to eliminate the paper file. Discarding the paper copy is consistent with the rule governing facsimile copies, s. 801.16 (2) (e), which provides that the faxed copy is the official record, and the original, if received, should be discarded. The rule does not require the submitting party to retain original paper documents. If there is likely to be a challenge to the validity of a signature or exhibit, parties may be well-advised to keep the original paper document. For a high-volume law practice, the economics may not support keeping paper originals when the remainder of the file is electronic, and parties may prefer to assume the risk of failure of proof.

SCR 72.03 (3) provides that even when the clerk of court has electronically stored a court file, the clerk may not destroy the paper file until one year after entry of a final order in the case. In contrast, the electronic filing rule anticipates that there may not even be a paper file for the case, so the clerk should be allowed to discard the paper copy as soon as it is electronically scanned and the clerk has confirmed that the electronic copy is legible, complete, and properly saved to the file.

Sub. (10) provides that electronic authentication satisfies the authentication requirements of Wisconsin Statutes, including ss. 801.02, 801.09 (4), and 909.02 (8). Statutory authentication requirements must be met upon filing of the summons and complaint in order to confer jurisdiction on the court. American Family Mut. Ins. Co. v. Royal Ins. Co., 167 Wis. 2d 524, 534 (1992). The purpose of authentication is to give assurance by the clerk that copies served are true copies of filed documents and to provide the case number for future reference. J.M.S. v. Benson, 91 Wis. 2d 526, 532 (Ct. App. 1979), rev'd on other grounds, 98 Wis. 2d 406 (1980). The security and verifiability provided by the electronic filing system satisfy the purposes of the authentication requirements under statutes and case law.

Sub. (11) is intended to satisfy the standards for electronic notarization set by ss. 137.19 (the Uniform Electronic Transactions Act) and 706.25 (2) (c) (the Uniform Real Property Electronic

Recording Act). The rule should be interpreted flexibly to the extent that technical standards for electronic notarization evolve.

The function of the notary is to witness the signature and to administer an oath when one is required. See ss. 706.07; 887.01; 887.03; Kellner v. Christian, 197 Wis. 2d 183, 191 (1995). Notarial acts as defined by s. 706.07 (1) (c) include the ability to administer oaths, take acknowledgments and verifications, and authenticate or certify documents. The intent of this section is to allow notaries to perform traditional notarial functions using alternate technology, and to make them responsible for electronic notarization to the same extent they are responsible for traditional notarization. These functions may be performed not only by notaries public but also by a judge, clerk or deputy clerk of a court of record, or a court commissioner under s. 706.07 (3). This section provides that the electronic signature of one of these officials may be applied to a certificate of notarial acts certifying that the function was performed.

This section does not require the submitting party to retain original paper documents or exhibits bearing the notary's seal and signature. If there is likely to be a challenge to the validity of the notarization, parties may be well-advised to keep the paper copies. The court may require a party to produce the original paper document if validity of the notarization is challenged.

Sub. (12) adopts the definition of electronic signature appearing in ss. 137.11 (8) and 706.25 (1) (d). Consistent with s. 137.15 (4), it provides that if a law requires a signature, an electronic signature applied through the electronic filing system satisfies that requirement.

The Wisconsin legislature has affirmed the trend toward acceptance of electronic signatures in government records and commercial transactions. At the request of the Wisconsin Director of State Courts, 2003 Wisconsin Act 294 (the Uniform Electronic Transactions Act) exempted court filings from coverage in order to allow the court to develop its own technical and legal standards. This section now allows the electronic signing and filing of those

documents described in s. 137.12 (2m), as well as all other documents filed with the court.

Compliance with this section satisfies the signature requirements of ss. 801.09 (3), 802.05 (1), and 805.07 (4) (a), as well as all other statutes and rules relating to court documents. Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. See Schaefer v. Riegelman, 2002 WI 18, 250 Wis. 2d 494, 512-13; Novak v. Phillips, 2001 WI App 156, 246 Wis. 2d 673, 680-81; Jadair, Inc. v. U.S. Fire Insurance Co., 209 Wis. 2d 187, 211-12 (1997). For users of the electronic filing system, the identification procedures, security, and personal accountability provided by these rules are deemed to satisfy the purposes of a handwritten signature and all other signature requirements.

The intent of this section is to make attorneys and self-represented parties responsible for electronic filings to the same extent they are responsible for paper filings. For that reason, the rule does not include a provision allowing attorneys to reveal their electronic signatures to office staff so the staff can apply the signature; the attorney must review each electronically filed document and apply his or her electronic signature personally. The courts and the Office of Lawyer Regulation have a range of sanctions and disciplinary measures that will serve as an adequate deterrent to any misuse of electronic signatures.

This section does not require the submitting party to retain original paper documents bearing handwritten signatures. If there is likely to be a challenge to the validity of the signature, the submitting party may be well-advised to keep the original document.

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

for the chief justice and the director of state courts to use for assignment of judges pursuant to SCR 70.23 and 70.24. A district court administrator may be the designee of a chief judge for purposes of judicial assignment.

Under this section, court officials may allow an authorized staff member to apply the official's electronic signature at the official's specific direction. Appellate decisions have reasoned that counsel's personal signature is necessary to confer jurisdiction on the court, to assure that the pleadings are well-grounded in law and fact, and to prevent the unauthorized practice of law. No case has examined the signature requirements for court officials, and the reasoning behind previous decisions seems inapplicable. Each court official remains responsible for reviewing, revising and approving the document before the electronic signature is applied, and should be held accountable as if the document were signed personally. The electronic signature shall be applied in accordance with the provisions of SCR 70.42.

Sub. (14) provides that the electronic filing system shall protect those case types made confidential by statutes. Within an open case type, certain documents may be sealed by statute, such as presentence reports, financial disclosure forms, psychological evaluations, and certain health care records. This section places the burden on the submitting party to identify those documents as confidential. Confidential information may also be contained within an otherwise open document, such as a trade secret; the burden is on the filing party to move to seal those documents. As an added protection, the electronic filing system will mark confidential documents in a way that will be visible on the computer screen and when the documents are printed.

Sub. (15) addresses technical failures of the court's electronic filing system or the user's electronic systems. Technical failures may include an error in the transmission of the document to the electronic filing system or to a served party, a failure to process the document upon receipt by the electronic filing system, or erroneous exclusion of a party from the service list by the electronic filing system.

Correction of technical failures should generally be allowed in order to encourage the use of the electronic filing system. Correction should be automatic where the user can demonstrate that the problem was caused by the court's electronic filing system. The electronic filing system will generate a report if needed for a user to document the problem. Where the failure is caused by the user's electronic systems (such as electronic mail, word processing, or a database program) or by external forces (such as problems with the user's Internet service provider or power outages), the court has the discretion to correct the problem. The court should consider what consequences would follow a missed deadline for traditional filings, caused by forces such as malfunctioning equipment or traffic delays. The committee considered limiting the court's discretion to correct technical errors in the filing of initiating documents, where untimely filing is a jurisdictional issue, but decided against creating a bright-line rule because of occasional exceptions such as St. John's Home of Milwaukee v. Continental Casualty Co., 147 Wis. 2d 764, 788-89 (Ct. App. 1988) and Granado v. Sentry Ins., 228 Wis. 2d 794, 799 (Ct. App. 1999).

IT IS ORDERED that notice of the creation of Wis. Stat. § (Rule) 801.17 be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 1st day of May, 2008.

BY THE COURT:

David R. Schanker  
Clerk of Supreme Court

¶1 LOUIS B. BUTLER, JR., J. (*Concurring in part, dissenting in part.*). I dissent from the adoption of sub. (9) (c) of this rule on the grounds that sub. (9) (c) permits the immediate destruction of paper copies of filed documents after scanning by the circuit court clerk, resulting in a completely paperless system, which is inconsistent with the prudent management of Wisconsin's judicial records. I join in the adoption of the remainder of the rule.



