

STATE OF WISCONSIN
IN THE SUPREME COURT

**In re creation of court rules governing electronic filing
in the Court of Appeals and Supreme Court
and amendments to circuit court electronic filing**

Petition 20-07

MEMORANDUM IN SUPPORT

The Appellate eFiling Committee, a committee convened by the Clerk of the Supreme Court and Court of Appeals, respectfully petitions the Supreme Court to approve the use of an expanded electronic filing system for the appellate courts and to amend the rules of appellate procedure in order to implement the system. This petition is made pursuant to the court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

The subject matter of this petition falls within the power of this court to regulate pleading, practice, and procedure in judicial proceedings in all courts, for the purposes of simplifying the same and promoting the speedy determination of litigation upon its merits. Wis. Stat. § 751.12; *In the Matter of E.B.*, 111 Wis. 2d 175, 183, 300 N.W.2d 584 (1983). Although the procedural changes requested by this petition are numerous, the changes do not abridge, enlarge, or modify the substantive rights of any litigant. This petition falls within the power of this court to manage the administrative business of the courts, maintain court records, and regulate the practice of law.¹

¹ This Court has approved a number of petitions gradually increasing the use of electronic records in litigation and in court administration. See, for example, Petition 15-02 (electronic appellate records), Petition 14-03 (circuit court electronic filing), Petition 11-02 (electronic filing of bar applications), Petition 08-18

The core provisions of the appellate eFiling rule are proposed as new Wis. Stat. § 809.801. In addition, the Appellate eFiling Committee has concluded that electronic filing terminology and procedure can and should be integrated into the Rules of Appellate Procedure, Wis. Stat. ch. 809, and so amendments are proposed throughout the chapter. Chapter 809 may be amended by either court rule or legislation, although legislative amendments have been few.

Amendments are also proposed to the circuit court eFiling rule, Wis. Stat. § 801.18, to update the rule and keep it consistent with the appellate eFiling rule whenever possible. A few related amendments are proposed to circuit court statutes. These statutes may be amended by either court rule or legislation.

BACKGROUND

In April 2019, this Court authorized the clerk to work with the Consolidated Court Automation Programs (CCAP) on a pilot project to expand eFiling in the Court of Appeals and Supreme Court. Since 2009 the Wisconsin appellate courts have required attorneys file an electronic copy of each brief in addition to paper copies, with the option to file an electronic copy of the appendix. The purpose of the pilot project is to expand this limited mechanism to a comprehensive system of filing and service like that used in the Wisconsin circuit courts. Since 2016, attorneys in the circuit courts are required to file all documents electronically. Documents are served electronically on the other eFiling parties, and the clerks keep the court record in electronic format.

Beginning with the Court of Appeals, CCAP worked with the clerk's office and the Court of Appeals judges and staff attorneys to understand the business needs of the Court of Appeals and to consider how the eFiling system will interact with the existing Supreme Court/Court of Appeals case management system (SCCA). Using the same technology successfully

(electronic filing of petitions for review), and Petition 08-15 (electronic filing of appellate briefs and no-merit reports).

employed by the circuit courts, CCAP expanded the documents that can be filed and added the means to serve them on the other eFiling users. CCAP also created an electronic “judicial dashboard” for Court of Appeals judges and staff attorneys to view and manage electronic case files, and provided training.

The clerk’s office began by testing a limited number of civil and criminal appeals from each district of the Court of Appeals. In August 2020, the system was ready for widespread use. The clerk rolled it out for voluntary participation starting in District III, and Districts II, IV and I followed through the summer and fall.

The appellate eFiling system now accepts filings for any matter that may be filed in the Court of Appeals, including civil and criminal appeals, no-merit appeals, pre-appeal motions, writs, and discretionary appeals. New proceedings may be initiated electronically and new documents may be filed in cases that were originally filed on paper. The system is available for use by all lawyers and self-represented parties who choose to use it.

In each case with a voluntary participant, the clerk’s office converts the case to an electronic format by scanning the paper court record, enabling the parties to file electronically on the case, and maintaining all new filings in electronic form. Parties who choose not to participate in the pilot project go on filing and receiving paper copies by traditional methods.

Also in 2019, the clerk assembled a committee of judges, practitioners and court staff to guide the pilot project, make recommendations for procedural changes, and draft the rule changes necessary to use eFiling on a permanent basis.² This committee met five times over the course of a year to review

² Members of the Appellate eFiling Committee are Chief Justice Roggensack; Court of Appeals Chief Judge Neubauer; Court of Appeals Judges Donald, Reilly, Stark, and Blanchard; attorneys James Goldschmidt (Quarles & Brady), Eric Pearson (Foley & Lardner), Winn Collins (Department of Justice), and Katie York (State Public Defender); Supreme Court Commissioners Nancy Kopp, Julie Rich, and David Runke; Court of Appeals Chief Staff Attorney Jennifer Andrews; Chief Information Officer Jean Bousquet; and Clerk of the Supreme Court and Court of Appeals Sheila Reiff. Marcia Vandercook, who worked on the circuit court eFiling

progress and discuss the proposed rule. The committee formed a drafting subcommittee that met nine times to develop detailed recommendations for rule changes. The committee approved the proposed rule changes for submission to this court on October 30, 2020.

During the fall of 2020, the committee's recommendations and an overview of the proposed rule were shared with the court Planning and Policy Advisory Committee (PPAC), the State Bar of Wisconsin Appellate Practice Section, and the State Bar Board of Governors. The complete proposed rule was circulated for comment to the Appellate Practice Section, the Department of Justice, the State Public Defender, the Wisconsin District Attorneys Association, and the Wisconsin Association of Criminal Defense Lawyers. The Committee of Chief Judges reviewed proposed changes to the circuit court eFiling rule and discussed the changes to the appellate rule that affect circuit court. The CCAP Steering Committee received regular reports on the progress of the pilot project.

OVERVIEW OF PROPOSED eFILING RULE CHANGES

The core changes needed to implement eFiling in the appellate courts are found in proposed Wis. Stat. § 809.801. This section is built on the template of the circuit court rule, § 801.18, and is intended to be parallel in structure, language, and procedure. There are no major differences between the two systems with respect to how eFiling works. In § 809.801 (2) (k), the proposed rule states that “the circuit and appellate court electronic filing and service rules shall be interpreted consistently to the extent practicable”. The goal is to provide a consistent experience for filers in terms of the applicable rules and the technology.

In addition to creating this rule, the Appellate eFiling Committee concluded that it would be desirable to integrate electronic filing terminology and procedure throughout the Rules of Appellate Procedure, Wis. Stat. ch. 809. Amended procedures are proposed to take full advantage of the efficiencies

rule as a legal advisor, coordinated drafting of the new appellate rule and provided staff support for the committee.

that electronic records have to offer. While most of the changes in this petition are suggested to facilitate the adoption of electronic filing, the petition also includes a limited number of procedural improvements, language clarifications, and updates in line with new laws. The amendments to ch. 809 are found in Appendix A to this petition.

Consistent with the circuit court rule, under proposed § 809.801:

- eFiling will become mandatory for attorneys on a schedule to be set by this court, with a proposed effective date of July 1, 2021
- eFiling will be available for all documents, not just briefs and appendices
- self-represented litigants may eFile voluntarily or use paper copies
- the clerk will keep all documents in electronic format
- documents will be considered timely if they are electronically filed by 11:59 p.m. on the day they are due
- electronic filers will serve and be served through the eFiling system by receiving a notice of activity each time a new document is filed
- electronic filers may use electronic signatures to sign documents
- attorneys may delegate the authority to submit documents to a person under the attorney's supervision
- a \$20 fee per case per filer will apply after eFiling becomes mandatory
- no changes are proposed to public accessibility of filed documents

The other proposed revisions of chapter 809 provide:

- the notice of appeal and its accompanying documents will be served electronically using the circuit court eFiling system
- provisions requiring duplicate filings in the circuit courts and Court of Appeals will be eliminated
- self-represented parties who choose not to eFile will file and serve single plain-paper copies
- the record on appeal will use the circuit court document numbers
- printing and service of briefs and appendices will be eliminated except for copies served on self-represented parties
- briefs will be paginated by Arabic numerals starting on the first page

- current requirements for document appearance will be updated (margins, fonts, spacing)
- page limits and word counts for briefs will be added where needed for consistency
- legibility standards will be added for scanned documents and for handwritten briefs
- certifications for briefs and appendices may be signed as a single document
- eFiling users will be required to stay up to date with the court's technical and security requirements
- electronic briefs may include bookmarks and hyperlinks to take advantage of the conveniences that electronic documents provide

SPECIFIC CHANGES TO THE RULES OF APPELLATE PROCEDURE

The proposed changes to Wis. Stat. ch. 809 are attached to this petition as Appendix A. Most of the changes are related to implementation of electronic filing. A few changes are suggestions and clarifications that arose in the course of discussion as simple improvements to the rules.

The most notable proposals are:

1. *Definitions.* [repealed and re-created § 809.01] The electronic filing definitions of § 801.18(1) have been modified to suit the appellate context and merged with the existing appellate definitions of § 809.01, so that eFiling terminology can be used throughout the chapter. New definitions have been added and existing definitions have been clarified.

2. *Electronically serving the notice of appeal and accompanying documents.* [§§ 809.10 - 809.11] Now that attorneys are used to electronic filing in the circuit courts, both appellants and respondents would like any appeal to be electronic from its initiation, so attorneys can receive documents electronically and integrate them into their own electronic case management systems. The proposed rule makes this possible by changing how three documents are filed.

Currently, an appellant files the notice of appeal in the circuit court case using circuit court eFiling. At or near the same time, the appellant must file three other documents in the Court of Appeals (docketing statement, statement on transcript, and an optional motion for 3-judge panel). Because the Court of Appeals clerk doesn't have the notice of appeal yet and the respondent hasn't had the chance to "opt in" as an electronic party, those two or three documents have to be served on paper.

Under the proposed rule, the appellant will file the notice of appeal and the accompanying documents in the circuit court, thus serving all the electronic parties below through the circuit court eFiling system. Duplicate filings in the circuit court and Court of Appeals will be eliminated. The clerk of circuit court will transmit the documents to the Court of Appeals, where they will be docketed and the appeal case created. Subsequent documents will be filed directly in the Court of Appeals.

The proposed rule also codifies the appellate clerk's practice of sending a notice of docketing telling the parties that the appeal has been filed and providing the case number; this notice will now also prompt the parties to opt into the appeal electronically. Non-eFiling users ("paper parties") will continue to be served by traditional methods such as mail.

Similar changes will be made to provisions governing other types of appeals, §§ 809.104 - 809.107, 809.30, and 809.32.

3. Electronically serving the Attorney General where required by law. [§§ 809.10, 809.11, 809.30, 809.32, 809.62, 809.80(2) renumbered as § 809.802] In felony appeals, the attorney general is not present in the circuit court case but becomes a party on appeal by operation of current § 809.80 (2). Under the proposed rule, the clerk of the Court of Appeals will opt in the Attorney General as an attorney for the State and will serve the notice of docketing on the Attorney General through the appellate eFiling system. This will give the Attorney General access to the initiating documents and all subsequent filings through the appellate eFiling system. The same process will be used to add the Attorney General to misdemeanor petitions for review, also required by current § 809.80 (2).

4. *Paying or waiving the filing fee.* [§ 809.11 (1)]. The proposed rule clarifies that the filing fee in an appeal is no longer paid via the clerk of circuit court; it is now paid directly to the clerk of the Court of Appeals via check, online, or by other arrangement. The rule adds a cross-reference to the current process for requesting a fee waiver due to indigency. It codifies case law requiring the clerk of circuit court to file and forward a notice of appeal to the Court of Appeals even if the filing fee is not paid.

5. *Codifying the process for filing motions prior to appeal.* [new § 809.14 (5)] This proposed section codifies the existing process for filing motions prior to appeal. Pre-appeal motions are typically procedural motions, such as motions for extension of time to pursue post-conviction relief or to appoint counsel. Under this proposal, the first pre-appeal motion is filed as a new action in the Court of Appeals, and subsequent motions are filed in the same Court of Appeals case. The appellate clerk will transmit a notice of docketing and the pre-appeal motion to the circuit court, providing service on the electronic parties, and the Attorney General will be served through the appellate court electronic filing system. As always, paper parties will receive paper copies.

6. *Continuing the use of circuit court document numbers in the record on appeal.* [§§ 809.15 (2), 809.19 (2)] Since late 2018, the circuit court case management software has assigned a document number to each item in the circuit court record as it is filed. This numbering system has proven useful, and litigants often refer to key documents by their document numbers. Maintaining the same numbering on appeal will make it easier for parties to refer to documents and will prevent the confusion that can occur when documents are stamped with two different numbers. If some circuit court record items are not included in the record on appeal, the numbering will have some gaps.

7. *Using the date the brief is filed rather than the date the clerk accepts the brief as a triggering event for the due date of a responsive brief.* [§§ 809.19 (3) (a) 1., (4) (a) 2., 809.19 (6) (c) 2. and (d) 2.] Currently the rule provides that a response brief is due 30 days after the date on which the court “accepts” the appellant’s brief for filing. This wording sometimes causes confusion as to

whether the acceptance date is the same as the filing date. The proposed rule changes the language to calculate the due date of the response based on the filing of the brief, service of the brief, or filing of the record, whichever is latest. For electronic parties, the date of acceptance and date of service will be the same: entry of the new document into the court record will trigger a notice of activity to the electronic parties, thus serving them. For example:

- Brief eFiled at 4:30 pm, accepted and served at 4:45 pm. Filing, acceptance and service occur on the same date for electronic parties.
- Brief eFiled at 6:30 pm, accepted and served at 8:00 am the next day. Filing occurs on day 1, acceptance and service on day 2 for electronic parties.

For paper briefs, filing is complete either upon mailing (when filed with proof of the mailing date) or when received by the clerk's office under § 809.80 (4) (b). Service is complete upon mailing under § 801.14 (2).

8. Eliminating the requirement to file multiple copies of paper briefs. [§§ 809.19 (8) (a), (12) and (13), 809.32 (1) (fm), 809.43, 809.62 (4) (b)] Electronic filing users will file briefs and appendices electronically and will no longer file any paper copies with the court. Other electronic filing users will be notified when the briefs and appendices are filed and will be able to download them into their own case management systems.

Paper parties will file one paper copy of each brief and appendix with the court, which the clerk will scan into the court file; the electronic parties will be notified and will access the documents online. When paper parties are on the receiving end, they will be served one paper copy by traditional methods such as mail. Judges and staff will be able to make paper copies as needed. Filing a separate electronic copy will no longer be needed.

9. Eliminating requirements for colored brief covers and bindings. [§§ 809.19 (6) (b), 809.19 (8) (b) 1. and (b) 4., 809.19 (9)] The first page of an electronic brief will be a plain white page with the cover information required by § 809.19 (9). Sections in combined briefs will be separated by white cover pages with appropriate titles. Paper copies served by or on paper parties will be printed on plain white paper and secured at the top left corner. When reading briefs

online, judges and justices will see a band across the top of each brief with its traditional cover color.

10. *Updating brief typography provisions to use more familiar word processing terminology.* [§§ 809.19 (8) (b) 3., 809.81 (3)] The current rule language about “2-point leading” and “characters per inch” has been updated to use the language of font size and line spacing familiar from word processing programs. Minimum margins have also been set for all briefs.³

11. *Changing how documents are paginated to make it easier to use electronic briefs.* [new §§ 809.19 (8) (bm), 809.81 (3)] Briefs filed in PDF format are easiest to use if the page numbers used by the parties are the same as the page header applied by the electronic filing system. A change is proposed to begin numbering with the cover page as page 1, using Arabic numerals throughout. This will avoid having two different page numbers on a page.

12. *Clarifying page limits and word counts for briefs and no-merits; setting page limits and legibility standards for handwritten briefs.* [§§ 809.19 (8) (c), 809.32 (1), 809.50] Under the current rules, page counts and word limits are sometimes missing or hard to find, so limits have been added where they are missing and re-organized where they were unclear. For handwritten briefs, the proposal adds page limits equivalent to the page limits for monospaced briefs (generally produced with typewriters), based on the average number of words per page found in briefs currently on file. In the interest of legibility, it also requires that handwritten documents use printed letters rather than script.

13. *Using electronic signatures to sign certifications of form, length and compliance with attorney-client notification requirements; combining certifications.* [§§ 809.19 (2) (b) and (3) (b), new § 809.19 (8g), § 809.32 (1) (c)] Like the circuit court

³ For guidance on visual presentation of legal briefs in the era of word processing and screen reading, the Committee appreciates the assistance of two members of the Appellate Practice Section, Joseph S. Diedrich (Husch Blackwell) and Professor Melissa Love Koenig (Marquette Law School), who offered suggestions for updates and provided an advance copy of their article *Gain the Upper Hand with Good Typography*, Wisconsin Lawyer, October 2020.

rule, the proposed appellate rule provides that attorneys and self-represented parties may apply electronic signatures through the electronic filing system to satisfy the signature requirements of all statutes and rules relating to court documents. The rule adds the ability for attorneys to electronically sign the certifications of length, confidentiality, and no-merit client counseling required by the appellate rules. When certifying a brief and an appendix, the filer may combine the certifications and sign them as a single document.

14. *Applying the eFiling fee to appellate proceedings.* [new §§ 809.25 (2) (a) 5. and 809.801 (7)]. The proposed rule extends the eFiling fee to electronic filings in the appellate courts. The fee (currently \$20 per party per case in the circuit courts) is proposed to take effect in the appellate courts when eFiling becomes mandatory. As in the circuit courts, the eFiling fee will not be charged to Wisconsin governmental units such as the district attorney, public defender and appointed counsel, court-appointed counsel, child support agency, attorney general, or county and municipal attorney, and it will be waived for indigency whenever the filing fee is waived. The proceeds will be credited to the existing eFiling account and will be used to support eFiling software development, equipment, technology infrastructure, and customer support.

15. *Separating due date of the no-merit notice of appeal from due date of the no-merit report.* [§ 809.32 (2) (a)] The due dates for the no-merit notice of appeal, statement on transcript, and no-merit report are currently all the same. Attorneys frequently seek extensions of time to file the no-merit report until an appellate case number is assigned and the record is filed, in order to provide proper record citations in the report. Separating the due dates will eliminate the need for many extension motions. It will also allow the no-merit report to be electronically filed in the Court of Appeals rather than on paper or via the circuit court case.

16. *Electronically filing motions for 3-judge panel and hearing in county of origin.* [§ 809.41 (1) and (4)] These motions may accompany either direct appeals, petitions for leave to appeal, writs, or original jurisdiction matters. This section has been reorganized to reflect the different modes of service so that

electronic service can be used in situations where the appeal or motion is a continuation of litigation in circuit court.

17. *Eliminating paper service of petitions for leave to appeal.* [§ 809.50] A petition to appeal a judgment not appealable of right is filed as a new case in the Court of Appeals but, like a direct appeal, it continues litigation begun in the circuit court. Electronic service is possible using the same process as motions prior to appeal under #5 above.

18. *Retaining traditional service requirements for writs, original actions, and judicial disciplinary proceedings.* [§§ 757.85 (5), 809.51, 809.70, and 809.71] Proceedings under these sections are new actions that must be served on the respondents by the initiating parties. Traditional service is retained for these proceedings because there is not necessarily a pending proceeding where the parties can receive electronic service. The proposed rules do not address the electronic filing of proceedings initiated under SCR chs. 22 (lawyer regulation) and ch. 40 (bar admissions); these will continue to be filed traditionally until a later date.

19. *Eliminating paper service of petitions to bypass and petitions for review.* [§§ 809.60 and 809.62] Although petitions to bypass and petitions for review are filed as new cases in the Supreme Court, they continue litigation conducted in the Court of Appeals. The clerk maintains a single continuous record as the case moves from the Court of Appeals to the Supreme Court. Just as the electronic parties in appeals can be served with initiating documents through the existing circuit court proceeding, the electronic parties in a petition to bypass or a petition for review can be electronically served with the initiating document in the existing Court of Appeals litigation.

20. *Resolving conflicting language relating to conditions of grant of review.* [§ 809.62 (6)] The rule on conditions of grant of review, § 809.62 (6), is confusing when read together with § 809.62 (3m) (b), petition for cross-review. While sub. (3m) (b) allows a respondent to raise issues other than those identified in the petition for review, sub. (6) says that “parties” cannot raise issues not set forth in the petition. The proposed

amendment reconciles the language of the two sections by clarifying that it is the petitioner or cross-petitioner who cannot raise a new issue. This is consistent with the court's practice and its current form grant order, which states: "The petitioner may not raise or argue issues not set forth in the petition for review unless otherwise ordered by the court."

21. *Stating how paper parties will file, serve, and be served* [new §§ 809.80 (5) and 809.801 (4)] Not all parties will use the eFiling system; many self-represented parties will continue filing paper pleadings and briefs. Proposed revisions to § 809.80 rename current methods of service as "traditional methods," describe how paper parties may file their documents, and outline the standards paper briefs must meet for format, printing, and proof of mailing. Although existing requirements regarding cover colors, binding, and multiple copies are eliminated, the overall appearance of the pages will remain the same.

22. *Providing that the clerk may review both paper and electronic documents.* [new §§ 809.80 (5) and 809.801 (4)] Currently, §§ 809.19 (12) and (13) allow the clerk to review and potentially reject electronic briefs and appendices for failure to meet court standards relating to form, such as caption, case number, format, length, and confidentiality. The proposed rule expands this provision to allow permissive review of all filed documents, both paper and electronic. This is consistent with the clerk's current practice, particularly in the Court of Appeals. Language is added to describe the type of review the clerk provides.

23. *Requiring users to keep their contact information current in the eFiling system.* [§§ 809.801 (3) (d) and (f)] Keeping attorney contact information current is essential to providing electronic service. The circuit court rule currently requires users to update the eFiling system within 10 days of any change in the information provided for registration (name, email, phone, and State Bar number), and requires attorneys to opt in promptly when pending paper cases are converted to eFiling. Proposed changes to both the circuit and appellate rules require that any change in registration information or any change in representation be reported promptly.

24. *Establishing technical requirements for electronic filing users.* [§ 809.801 (8)] Electronic filing users are required to keep their hardware, software, connectivity, and staff training up to date with the minimum requirements set by CCAP. These requirements do not exceed the ordinary technology needed to run a contemporary law office. Filed documents will generally be submitted in text-searchable PDF format. Users must leave a blank upper right corner on the first page of a filed document to accommodate the court electronic filing stamp.

25. *Allowing the use of hyperlinks and bookmarks.* [§ 809.801 (8) (f) and (g)] External hyperlinks allow the reader to jump to sources of information, such as published cases and statutes posted on the Internet. To avoid the introduction of malicious software, hyperlinks may be used only in accordance with guidance posted by the court, and the court may limit the sites that users may link to. Electronically filed documents may also 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. The use of hyperlinks and bookmarks is not required.

26. *Allowing handwritten signatures in addition to electronic signatures.* [§ 809.801 (12) (a)] Despite the availability of electronic signatures, counsel continue to add handwritten signatures to documents, particularly where there are multiple counsel on a brief, so a provision has been added to allow this practice.

27. *Updating current rules to reflect new laws.* The proposed rule makes several updates to reflect recent law changes.

(a) *Protecting the victim's name in domestic abuse and harassment restraining order cases.* [§§ 809.16 (1) (g) and 809.81 (9)] Federal law prohibits making public on the Internet any information that would reveal the identity or location of a party seeking protection, under 18 U.S.C. 2265 (d). In Wisconsin, the clerk directs the parties to designate the party seeking protection solely as "Petitioner" in the case caption and the briefs. This updated procedure is reflected in §§ 809.19 (1) (g) and 809.81 (9).

- (b) *Receiving confidential, redacted, and sealed circuit court documents into the appellate record.* [§§ 809.15 (1) (d) and (e)] In 2016, this court created procedures requiring parties to carefully identify those circuit court documents that are confidential, redacted, or sealed. §§ 809.15 (1) (d) and (e) state how these documents will be handled in the appellate court record.
- (c) *Providing that the signature of a parent filing a notice of appeal in a termination of parental rights proceeding may not be applied by stipulation.* [§ 809.801 (12) (g)] In 2017, the legislature amended § 809.107 to require the signature of both counsel and parents on the notice of intent to pursue postdisposition relief and the notice of appeal in a case involving termination of parental rights. The rule states that the process used by multiple parties to sign electronic stipulations cannot be used for the parents' signatures on these notices.

PROPOSED CHANGES TO CIRCUIT COURT eFILING

The Appellate eFiling Committee also proposes changes to the circuit court eFiling rule, Wis. Stat. § 801.18. Wording changes are suggested to update the rule and keep the language parallel to the appellate eFiling rule, for ease of use and consistency of interpretation. Some subsections have been deleted because they were only necessary while circuit court eFiling was gradually rolled out to the counties and new case types were being added. These changes have been reviewed by the Committee of Chief Judges, who were the proponents of the circuit court eFiling rule.

Under the proposed updates to Wis. Stat. § 801.18:

- new definitions are added to eFiling terminology and existing definitions are amended to match the appellate rule [§ 801.18 (1)]
- the definition of “high-volume filing agent” is clarified to mean an agent or employee who files 10 or more small claims actions per calendar year in a single county [801.18 (1) (h)]
- provisions related to the gradual rollout of circuit court eFiling and conversion of open cases from paper to electronic are deleted because

that process is complete in the circuit courts [§§ 801.18 (2) (b), (d) and (j); 801.18 (6) (f)]

- provisions relating to filing and acceptance are re-ordered and clarified, as they are in the appellate rule [§ 801.18 (4)]
- handwritten signatures for attorneys are allowed on electronically filed documents [§ 801.18 (12) (a)]
- the new law regarding parent signatures in termination of parental rights appeals is incorporated [§ 801.18 (12) (g)]

In addition, changes to several other statutes are proposed to delete outdated requirements for paper copies and to clarify how the eFiling fee is assessed as a cost. These changes are:

- a party making a motion for substitution does not need to send a separate paper copy to the judge; the circuit court clerk now brings these motions to the judge's attention through the circuit court judicial dashboard [§§ 48.29, 801.58, 938.29]
- a party who prepares a divorce judgment does not need to provide two paper copies to the clerk to send to each party; the clerk now prints these copies out from the case management system [§ 767.36]
- a party requesting the clerk to provide mail service of a small claims summons and complaint does not need to provide enough paper copies of the summons and complaint to serve on all parties; the circuit court clerks prefer to print these directly from the case file [§ 799.12 (3)]
- for clarification, a statement that the eFiling fee may be assessed as a cost, found in the eFiling rule at § 801.18 (7) (c), is also added to the provision on items of costs [§ 814.04 (2)]

IMPLEMENTATION

The Appellate eFiling Committee requests that these amendments be given an effective date of July 1, 2021. The proposed appellate rule provides that mandatory use of the eFiling system by attorneys shall be phased in according to an implementation schedule set at the direction of the Court. This will enable the Court to roll out the use of electronic filing as

programming, scanning, and training are completed. Based on the smooth implementation of the pilot program, the Committee believes that judges, attorneys and staff will be ready on the effective date to make eFiling mandatory for attorneys for all filings in the Court of Appeals.

Over the course of the next few months, CCAP will be working to develop a judicial dashboard to help the justices and their staff view and manage electronic case files. Work is also underway on the programming needed for eFiling of Supreme Court cases, including petitions to bypass, petitions for review, motions for reconsideration, original actions, supervisory writs, and judicial disciplinary proceedings under § 757.91. These are expected to be ready for implementation in July 2021 if the Court so chooses. Two general categories of proceedings are projected for implementation at a later date: attorney disciplinary matters under SCR ch. 22 and bar admission matters under SCR ch. 40.

The courts and litigants will achieve a number of administrative and fiscal advantages with the transition to eFiling. The clerk will see a reduction in time and costs for paper handling, scanning, delivery, and storage of paper files. Justices, judges and staff will have improved access to full case files and documents at their fingertips both inside and outside the office. Parties will see cost savings from reduced paper handling, printing and delivery costs. While some judges may choose to print paper records, the overall volume of paper copies will be significantly diminished.

CONCLUSION

The Wisconsin courts have followed a steady and logical progression in their use of electronic records over the last 20 years. The building blocks of appellate eFiling are already in place: adoption of the SCCA electronic records management system in 1998, attorney eFiling of briefs and appendices in 2008, circuit court eFiling in 2016, and successful implementation of the pilot project in the Court of Appeals in 2020. The Appellate eFiling Committee requests that the Supreme Court now approve this petition and adopt a comprehensive electronic filing system for the Court of Appeals and Supreme Court.

Respectfully submitted this 11th day of November, 2020.

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