

In re creation of Wis. Stat. 801.18

The mandatory electronic filing in circuit court

Comment to Amended petition 14-03

To: Chief Justice Roggensack and Associate Justices:

I have reviewed Amended Rule Petition 14-03 proposing the creation of Wis. Stat. 801.18 and respectfully comment:

1. After the effective date of the rule, Section (3) (A) 1 requires that all lawyers licensed in the State of Wisconsin *shall* be required to file actions electronically. Only lawyers representing themselves are exempt from the requirement.
2. Further, section (3) (d) requires “All users shall register through the electronic filing system by executing a user agreement governing the systems terms of use. To register, users must have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system.”

Comment: The proposed rule adds a new requirement to practice law in the State of Wisconsin. Except the few practitioners that never engage in litigation, every lawyer within this state will be required to have an “agreement” with “the system” as a prerequisite to file actions or other proceedings in our courts. This rule appears to interfere with the individual’s right to contract-or not contract- as protected by both the United States and Wisconsin Constitution. The Fourteenth Amendment Due Process Clause has been interpreted to prohibit the government from interfering with the right of citizens to freely contract. Only in those instances where the government’s interest relate to the “...safety, health, morals, and general welfare of the public” may the government interfere with contract

rights. See generally *Lochner v. New York* 198 U. S. 45. Certainly the required agreements are not related to safety, health, morals or general welfare of the public.

The Wisconsin Constitution, Article 1, section 12 provides: “No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.” Again, the state may impose an obligation to contract where the reasonable interest of the state or public is implicated, (mandatory auto insurance or workers compensation coverage, to name just two) but requiring all lawyers to contract with the court system does not rise to an appropriate reasonable state interest.

The proposed rule not only mandates that lawyers contract with the state court system, but also requires lawyers employ specific machinery within the practice. At what cost? The practice of law is a business and every business must be cognizant of costs to survive. How frequently will the requirements be updated thus requiring each lawyer to update the business machinery to continue as a user? Has anyone—court operations, CCAP, or the State Bar—estimated the initial or ongoing costs to lawyers upon implementation of this rule? That cost-analysis needs to be accomplished.

3. The original proposed rule provided a five dollar fee upon the filing of an original pleading. The amended petition contemplates an increase of the fee from five dollars to \$20.00 for the original filing and then another \$20.00 upon the filing of an answer.

Comment: Electronic filing and records retention appears to be appropriate for the courts. Electronic filing should streamline a clerk of courts records process. Electronic records retention will certainly save resources both initially and for the long term. However, whether electronic filing and records retention is in the general public-users interest has not been shown. While adapting new technologies to our court records system is beneficial and saves money in the long run, those expenses are general operating costs. Electronic records add no advantage to the general public's use or access to the courts. Indeed, given that the new costs will be imposed on small claims, paternity and family case types where the litigants have historically the least ability to pay, the fees may well create an impediment to having a dispute decided by a judge. Electronic filing and records retention is worthy goal as a management tool. But the cost of that management

tool should be borne by the government as an expense rather than passed on to users, some of whom can least afford the expense.

Respectfully submitted,

Eugene Harrington

Circuit Judge, Washburn County