

Appellate eFiling Petition 20-07

APPENDIX B

Amendments to s. 801.18 and related circuit court statutes

s. 801.18 Electronic filing.

(1) DEFINITIONS. In this section:

- (a) "Clerk of court" or "clerk" 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) "Converted" means that all documents in a paper case file have been imaged by the clerk of court and the case file is available to accept filings via the electronic filing system.
- (c) "Director" means the director of state courts.
- (d) "Document" means a pleading, notice of appeal, petition, writ, form, notice, motion, order, affidavit, ~~paper~~-exhibit, brief, judgment, opinion, writ of execution, or other filing in an action or proceeding.
- (e) "Electronic filing system" means an ~~internet~~Internet-accessible system established by the director for the purpose of filing documents ~~with-in~~ a circuit court, automatically integrating them into the court case management system, and electronically serving them on the parties.
- (f) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the document. To be considered electronically signed, a document must be submitted by or on behalf of a user through the electronic filing system. An electronic signature shall state "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. For purposes of the electronic filing system, a document is electronically signed if it is submitted by or on behalf of a user or court official through the electronic filing system and bears the name of the user in the place where a signature would otherwise appear. "Electronic signature" includes only those signature technologies specifically approved by the director.
- (g) "Filing agent" means a person authorized under s. 799.06 (2) to appear on behalf of another.
- (h) "High-volume filing agent" means a person authorized under s. 799.06 (2) who appears on behalf of an entity filing 10 or more actions ~~a-per~~ calendar year in the county where the action is being filed.
- (i) "Imaged document" means an electronic copy of a document originally created or submitted on paper.

- (j) "Initiating document" means a summons and complaint, petition, application, citation, criminal complaint, notice of appeal, or any other document filed to commence a court action or proceeding.
- (k) "Mandatory user" means a user who is subject to sub. (3) (a).
- (kg) "Notice of activity" means a notice sent by the electronic filing system to alert the parties that there has been a new user, filing, or activity on the case.
- (km) "Opt in" means to agree to receive electronic service and file electronic documents on a particular case, after first registering for access to the electronic filing system.
- (kr) "Opt out" means to cease participation as a voluntary user or to indicate withdrawal from the case as an attorney.
- (L) "Paper party" means a party who is not subject to sub. (3) (a) who chooses not to participate in the electronic filing system as described in sub. (3) (c).
- (Lm) "Registration" means entering into an agreement to access the electronic filing system prior to filing documents under sub. (3) (d) or s. 809.801 (3) (d).
- (m) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.
- (mm) "Transmit" means to send or transfer documents and records from one court to another and may be completed by making the documents and records electronically available to the other court.
- (n) "User" means an individual who has registered to use the electronic filing system ~~under sub. (3)~~. Users of the electronic filing system shall be individuals, not law firms, agencies, corporations, or other groups.
- (o) "Voluntary user" means a party who is not subject to sub. (3) (a) who voluntarily registers to use the electronic filing system under sub. (3) (b).

**Committee explanatory note:**

Most of the changes made to sub. (1) reflect an effort to incorporate language that also works for appellate eFiling. The terms "opt in", "opt out", and "notice of activity" are new terms added to clarify processes and reflect current usage. The term "electronic signature" now includes the format requirements of sub. (12) (a). The term "transmit" is limited to the transfer of documents between the clerk of the circuit court and the appellate clerk; it does not include electronic filing by the parties.

**(2) EFFECTIVE DATE; APPLICABILITY.**

- (a) The director ~~of state courts~~ shall implement an electronic filing system for the Wisconsin circuit courts. The requirements of this section shall govern

the electronic filing of documents in all types of actions and proceedings in circuit court.

- (b) Mandatory use of the electronic filing system shall be phased in according to a schedule set by the director until the system has been fully implemented. ~~The director shall make information about the transition schedule readily available to the public in advance of its application.~~
- (c) ~~Subject to the schedule set by the director under par. (b), m~~Mandatory users shall be required to use the electronic filing system for all new filings covered by the schedule. Electronic filing shall be required for all new actions brought in circuit court and for all new documents submitted in previously filed cases, except as otherwise provided in this section.
- ~~(d) After July 1, 2016 and prior to the date that electronic filing becomes mandatory under par. (b), parties may choose to electronically file actions and documents under the provisions of this statute or may continue to file by traditional methods.~~
- (e) Electronic filing is limited to methods specifically approved by the director. The director may enter into an agreement with any state agency to allow electronic filing through a custom data exchange between the court case management system and the agency's automated information system. Parties using a custom data exchange are considered mandatory users and are subject to the requirements of this section.
- (f) The procedures in this section shall be interpreted in a manner consistent with existing procedures. This section is not intended to limit the director's approval of new technologies that accomplish the same functions.
- (g) ~~The judges of the circuit court~~All judicial officers, the clerk of court, and all court staff shall cooperate and assist with the implementation of electronic filing.
- (h) This section does not ~~address-apply to~~ documents required by law to be filed with court officials that are not filed in an action before the court. These documents may be filed by traditional methods unless otherwise required by the director of state courts.
- (i) This section does not apply to filing of documents or transcripts with the court of appeals or supreme court.
- ~~(j) Prior to the effective date of this section, the director may require that electronic filing be mandatory in one or more pilot counties for purposes of testing and improving the mandatory electronic filing system.~~
- ~~(k) The procedures under this section are intended to be consistent with the procedures governing electronic filing and service in the appellate courts under s. 809.801. The circuit and appellate court electronic filing and service rules shall be interpreted consistently to the extent practicable.~~

**Committee explanatory note:**

Sub. (2) provided in part for a gradual rollout of the eFiling program as the programming became available, expanding by county and by case type, and providing for a period of voluntary use. Paragraphs necessary to effectuate the rollout can now be deleted. Par. (k) is also included in the appellate eFiling rule to support consistent interpretation of the two rules.

(3) REGISTRATION REQUIREMENTS.

- (a) ~~Subject to the schedule set by the director under sub. (2) (b), the~~ The following individuals shall register for access to the electronic filing system prior to filing documents in circuit court:
1. Licensed Wisconsin attorneys, ~~other than those who are representing only themselves.~~
  2. Attorneys appearing under SCR 10.03 (4).
  3. High-volume filing agents.
- (b) Parties who are not subject to par. (a) may voluntarily register to use the electronic filing system.
- (c) ~~A-Except as otherwise provided by law, a~~ party not subject to par. (a) who does not choose to participate in the electronic filing system under par. (b) shall file, serve, and receive paper documents by traditional methods.
- (d) All users shall register through the electronic filing system by executing a user agreement governing the system's 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. The electronic filing system shall make information on the technical requirements for filing readily available. By registering, users agree to electronically file all documents to the extent the electronic filing system can accept them. Users shall promptly provide notice through the electronic filing system of any change in the information provided for registration.
- (e) Upon completion of a properly executed user agreement under par. (d), the electronic filing system shall provide the user with a confidential, secure authentication procedure for access to the electronic filing system. This authentication procedure shall be used only by that user and by any agents or employees that the user authorizes. The same authentication procedure shall be used for all cases on which the user is an attorney or a party. The electronic filing system may reset authentication procedures as needed for administrative and security purposes. Upon learning that the confidentiality of the authentication procedure has been inadvertently or improperly disclosed, the user shall immediately report that fact through the electronic filing system.

- ~~(f) Users shall notify the electronic filing system within 10 business days of any change in the information provided for registration. Attorneys shall notify the electronic filing system within 10 business days of beginning representation of a formerly self-represented party. Entities appearing by a filing agent shall notify the electronic filing system within 10 business days of any change in the identity of a filing agent. After registering to use the electronic filing system, a user shall also opt in as an attorney or party on any case in which the user intends to participate. Users shall promptly opt in or out on each case upon beginning or ending appearance as an attorney or as a party. Filing agents appearing under s. 801.18 (3) (a) or (b) shall promptly opt in or out upon any change in the identity of a filing agent. Mandatory users who do not opt in on a case will not receive notices of activity or service of documents.~~
- (g) ~~Nonresident attorneys~~Attorneys appearing under SCR 10.03 (4) shall register following court approval of a motion to appear *pro hac vice*~~under SCR 10.03 (4).~~
- ~~(h) After registering to use the electronic filing system, a user shall also register as an attorney or party on any previously filed cases in which the user intends to continue to participate. The same authentication procedure shall be used for all cases on which the user is an attorney or a party. The electronic filing system may reset authentication procedures as needed for administrative and security purposes.~~
- (i) Voluntary users who wish to opt out of stop using the electronic filing system in a particular case ~~must shall~~ notify the electronic filing system or the clerk of court. The electronic filing system shall indicate that traditional methods must be used for this party for future filings and service.
- (j) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case. It may also provide a method for professionals and agencies associated with the case to receive information and file reports.

**Committee explanatory note:**

Sub. (3) (a) mandates that three types of filers participate in the electronic filing system. An exception for attorneys representing themselves was originally included in this rule at the request of a single attorney who theorized that electronic filing might be difficult for an attorney not in private practice. Experience has shown that electronic filing is straightforward to use, with minimal technical impediments or expense, so this exception is deleted.

The section has been re-ordered to separate the concepts of “registration” to use the eFiling system and “opting in” to appear in a particular case. Par. (f)

requires electronic filing users to promptly opt in and opt out for the cases where they are representing parties or participating as litigants. They are also required by par. (d) to keep their contact information up to date in order to receive electronic service.

**(4) TIME AND EFFECT OF ELECTRONIC FILING.**

**(a)** The electronic filing system is an agent of the circuit courts for purposes of filing, receipt, service, and retrieval of electronic documents. The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

**(am)** A document is considered filed on a particular day if the submission is completed by 11:59 p.m. central time, as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review. Documents filed after 11:59 p.m. are considered filed the next day the clerk's office is open. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.

**(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)** If the clerk of court accepts a document for filing, it shall be considered filed with the court at the date and time of the original submission, as recorded by the electronic filing system. ~~Upon acceptance, the~~ The electronic filing system shall issue a confirmation notice of activity to serve as proof of filing. When personal service is not required, the confirmation notice of activity shall also serve as constitute proof of service on the other users in the case.

**(cm)** If the clerk rejects the document, the user shall receive notification of the rejection. The user may be required to resubmit the document.

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

~~**(e)** A document is considered filed on a particular day if the submission is completed by 11:59 p.m. central time, as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review. Documents filed after 11:59 p.m. are considered filed the next day the clerk's office is open. The expanded availability of time to file shall not affect the calculation of time under other statutes, rules, and court orders.~~

**(f)** The clerk of the circuit court may not refuse to accept a notice of appeal for failure to pay the appellate court filing fee required by s. 809.25 (2) (a) or the transmittal fee required by s. 814.61 (9).



**Committee explanatory note:**

Sub. (4) has been re-ordered for better flow, but the language and concepts are intact. The review provided by the clerk of circuit court differs from the description in the appellate rule, s. 809.801 (4) (b). Clerks of circuit court typically review for errors and omissions such as lack of signature or case class code, filing in the wrong county, and failure to provide a required filing fee. They may review for breaches of rules relating to confidentiality but are not required to do so, under sub. (14) (a).

Sub. (4) (f) adds a provision codifying *Douglas v. Dewey*, 147 Wis. 2d 328, 338, 433 N.W.2d 243 (1989) and *Rome v. Betz*, 120 Wis.2d 528, 355 N.W.2d 844 (Ct. App. 1984), holding that payment of the appellate filing fee and circuit court transmittal fee are not prerequisites to filing a notice of appeal.

- (5) COMMENCEMENT OF ACTION OR PROCEEDING; FILING OF INITIATING DOCUMENTS.
- (a) A user seeking to initiate an action shall first register with the electronic filing system as provided in sub. (3). The user shall then file an initiating document in the county where the action is to be commenced and provide the additional information requested by the electronic filing system to open a case.
  - (b) If a filing fee is required, the clerk of court may reject the document unless it has been submitted as provided in sub. (7) (b). At the written or oral request of the filer, the clerk of court may reject the document for filings made in error, if the request is made before the clerk of court has accepted the document.
  - (c) 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 case shall then be available through the electronic filing system. If the clerk of court rejects an initiating document, the filer shall be notified of the rejection.
  - (d) 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 with instructions for how to use the electronic filing system.
  - (e) A mandatory user who represents a responding party shall register to use the electronic filing system as provided ~~by~~under this section. After registering to use the electronic filing system, the user shall also register as a user on the particular case. The electronic filing system will note the new user on the case.

- (6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS.
- (a) The electronic filing system shall generate a notice of activity to the other users in the case when documents other than initiating documents are filed. Users shall access filed documents through the electronic filing system. 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 par. (b).
- (b) If a document ~~other than an initiating document~~ requires personal service, it shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method.
- (c) Paper parties shall be served by traditional methods. The electronic case record shall indicate which parties are to be served electronically and which are to be served by traditional methods.
- (d) Paper parties shall file documents with the court by traditional methods. The clerk of court shall image the documents and enter the imaged documents into the electronic filing system promptly. The notice of activity generated by the entry shall constitute service on the users in the case. Paper parties ~~must~~ shall serve other paper parties by traditional methods.
- (e) An electronic notification that cannot be successfully delivered shall be returned to the clerk of court. If the clerk cannot contact the user to update the information, the user ~~If a notice sent to a user is returned undeliverable, the electronic filing system shall automatically notify the user who filed the document. The filing user shall then serve the document on that party by traditional methods. That party shall be treated as a paper party until the party corrects the problem and reregisters with the electronic filing system.~~
- (f) ~~For cases that were originally filed by traditional methods:~~
- ~~1. Subject to the schedule set by the director in sub. (2) (b), all mandatory users shall register as electronic users on each case for which they continue to appear. Mandatory users who do not register for a case will not receive notices of activity or service of documents.~~
  - ~~2. For all cases that are in open status at the time electronic filing is mandated, the clerk of court shall send a notice by traditional methods to each unregistered party stating that the case has been converted to electronic filing. Mandatory users shall promptly register for these cases unless the user informs the court that the user is no longer appearing on behalf of the party.~~
  3. For all cases that ~~are~~ were in closed status prior to the time electronic filing ~~is~~ was mandated, no action is required until there is a subsequent



filing or the court initiates further activity on the case, subject to all of the following:

- a. A mandatory user who ~~initiates electronic activity~~ wishes to file on a closed case shall ~~register as a user~~ opt in on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly ~~register as a user~~ opt in on the case or shall notify the court that the user is no longer appearing on behalf of the party.
- b. A voluntary user who ~~chooses to initiate electronic activity~~ wishes to file electronically on a closed case shall ~~register as a user~~ opt in on the case and shall serve any paper parties by traditional methods. Any mandatory user so served shall promptly ~~register as a user~~ opt in on the case or shall notify the court that the user is no longer appearing on behalf of the party.
- c. Service on a party who might be a voluntary user shall include a notice stating that the case has been converted to electronic filing and giving instructions for how to use the electronic filing system if the party chooses to do so.

**Committee explanatory note:**

Sub. (6) (e) originally envisioned that the eFiling system would automatically notify the sender when a message cannot be delivered. This process could not be automated, so CCAP staff have been contacting the filing party or the recipient to resolve the problem. This function is more appropriately performed by the clerks of circuit court, who handle similar problems with returned postal mail. The recipient will be served by traditional methods until the problem is resolved.

Subs. (6) (f) 1. and (6) (f) 2. are deleted because those phases are complete in the circuit court.

**(7) PAYMENT OF FEES.**

- (a) Users shall make payments due to the clerk of court through the electronic filing system unless otherwise ordered by the court or unless arrangements are made with the clerk of court. The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.
- (b) A document that requires payment of a fee is not considered filed until the fee is paid, a waiver of the fee is granted, or other arrangements for payment are made. The user may submit a petition or motion for waiver of costs and fees, including the electronic filing fee, under ss. 814.29 (1) or (1m), using a form provided by the court for that purpose. If a document is submitted with a petition or motion for waiver, it shall be considered

filed with the court on the date and time of the original submission if the waiver is subsequently granted by the court or other arrangements for payment are made.

- (c) Users shall be charged a fee for use of the electronic filing system, as provided under s. 758.19 (4m) and established by the director of state courts. The fee is a recoverable cost under ss. 799.25 (13) and 814.04 (2). The electronic filing fee shall not be charged to Wisconsin state ~~and-or~~ local government units.

(8) FORMAT AND CONTENT OF FILINGS.

- (a) The director shall make information about the technical requirements of the electronic filing system readily available to the public. Users are responsible for keeping up with these requirements and providing the necessary equipment, software, communication technology, and staff training.
- (b) Users shall provide any case management information needed to ~~transmit and~~ file documents. The electronic filing system shall reject a document for failure to include information in any one of the mandatory fields identified by the system.
- (c) Users shall format the appearance of all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including page limits.
- (d) The electronic filing system may set limits on the length or number of documents. ~~Documents 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. If a document cannot be electronically filed due to the size limitations of the system, the user shall contact the clerk of court for assistance.

(9) OFFICIAL RECORD.

- (a) Electronically filed documents have the same force and effect as documents filed by traditional methods. The electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court.
- (b) The duties of the clerk of court under ss. 59.40, 851.72, and 851.73, and all other statutes, court rules, and procedures may be fulfilled through proper management of electronic documents as provided in this section. The requirements of statutes and rules that refer to paper copies, originals, mailing, and other traditional methods may be satisfied by transmission of documents through the electronic filing system.
- (c) Subject to the schedule set by the director in sub. (2) (b), the clerk of court shall maintain the official court record only in electronic format for all cases commenced after that date. Documents filed by traditional methods

- shall be electronically imaged and made part of the official record. The clerk of court may discard the paper copy pursuant to [SCR 72.03 \(3\)](#). Any official court record containing electronically filed documents must meet the operational standards set by [SCR 72.05](#) for electronic records.
- (d) If a document is filed in a case in closed status, the clerk of court shall file the document electronically and convert that case to electronic format within a reasonable time. If conversion of the case would be unusually burdensome, the clerk of court may maintain the record in paper format with the permission of the court.
  - (e) The clerk of court shall make the public portions of the electronic record available for viewing at the clerk of court's office. The clerk of court shall make nonpublic portions of the electronic record available for viewing by authorized persons.
  - (f) The clerk of court may provide either paper or electronic copies of pages from the court record. The clerk of court shall charge the per-page fee set by ss. [814.61 \(10\)](#) and [814.66 \(1\) \(h\)](#) for electronic court records.
  - (g) Certified copies of an electronic record may be obtained from the clerk of court's office by traditional methods, as provided by s. [889.08](#). The electronic system may also make available a process for electronic certification of the court record. The seal of the court may be applied electronically. No use of colored ink or an impressed seal is required.
  - (h) Except as provided in par. (i), parties filing by traditional methods shall file a copy of any document and not the original paper document. The court may require the submitting party to produce the original paper document if authenticity of document is challenged. If the court inspects the original paper document, it shall be retained as an exhibit as provided in [SCR 72.03 \(4\)](#).
  - (i) Notwithstanding the other provisions of this section, a will deposited for safekeeping under s. [853.09](#) may not be electronically filed. The original paper will shall be deposited with the court.
  - (j) Notwithstanding the other provisions of this section, a person submitting a will to the court under s. [856.05](#) shall file the original paper will in the proper court. The register in probate shall image the will and create an electronic case file. The register in probate shall maintain the paper copy of a will in a separate file for the time period provided by [SCR chapter 72](#).
  - (k) ~~Documents~~Pleadings may be submitted during a court proceeding by traditional methods. ~~Pleadings~~Documents submitted in court shall be imaged and the imaged copy entered into the court record by the clerk of court.
  - (L) For documentary exhibits, parties shall submit a copy of the exhibit and not the original. The clerk of court shall image each documentary exhibit and enter the imaged document into the court record. Copies of documentary exhibits so imaged may be discarded as provided in [SCR](#)

72.03 (3). If inspection of the original document is necessary to the court proceeding, the court may order that the original document be produced. Any original document so produced shall be retained as an exhibit as provided in SCR 72.03 (4).

(m) An administrative agency submitting a record for judicial review in compliance with s. 227.55 shall image the administrative record and submit the imaged copy electronically using a method provided by the electronic filing system. The electronic record shall be the official record in the circuit court. If inspection of an original document is necessary to the court proceeding, the court may order that the original document be produced.

(10) AUTHENTICATION. Electronic placement of the court filing stamp and the 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 case management system by the clerk of court or from the electronic filing system by the user.

(11) NOTARIZATION AND OATHS.

(a) Notaries public who hold valid appointments under ch. 140 may issue certificates of notarial acts for electronically filed documents as provided in this section.

(b) Court officials authorized by law to perform notarial acts may do so by application of their electronic signatures provided through the electronic filing system.

(c) Unless specifically required by statute or court rule, electronically filed documents are not required to be notarized.

(d) 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 an imaged copy of the notarized document to the electronic filing system, and the court shall maintain the imaged copy as the official court record. The court may require the submitting party to produce the original paper document if the authenticity of the notarization is in question.

(e) An electronically filed complaint under ch. 799 may be verified by applying the electronic signature of the plaintiff or the plaintiff's attorney to a written oath attesting that the facts of the complaint are true, without swearing to the oath in front of a notarial officer.

(f) The director, in his or her discretion, may approve the use of an electronic notary technology compatible with the existing electronic filing system.

(12) SIGNATURES OF USERS.

- (a) To be considered electronically signed, a document must be submitted by or on behalf of a user through the electronic filing system. A document requiring the signature of a user shall bear either an electronic signature or a handwritten signature applied to a document before it is imaged. ~~is deemed to have been signed by the user when it is electronically filed through the court electronic filing system. The~~ An electronic signature shall ~~use the format~~ state "Electronically signed by" followed by the name of the signatory, and shall be placed where the person's signature would otherwise appear. ~~This~~ Either form of signature shall be treated as the user's personal original signature for all purposes under the statutes and court rules.
- (b) A summons and complaint, petition, or other initiating document that is signed in compliance with par. (a) bears a sufficient signature under s. 802.05.
- (c) Each electronically filed document shall bear that person's name, mailing address, electronic mail address, telephone number, and state bar number if applicable. Users shall notify the electronic filing system of any change in this information, consistent with sub. (3) ~~(d)~~.
- (d) An attorney may delegate the authority to submit documents to the electronic filing system to a person under the attorney's supervision. Any document requiring the attorney's signature is deemed to have been signed by the attorney if submitted to the electronic filing system and signed as provided in par. (a). Every attorney is responsible for all documents so submitted.
- (e) Every attorney is 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 a violation of any duty to the court under the supreme court rules.
- (f) Self-represented parties and filing agents under s. 799.06 are responsible for electronically filed documents to the same extent as for paper filings. Self-represented parties and filing agents using the electronic filing system are subject to sanctions under s. 802.05 and contempt procedures under ch. 785.
- (g) Users may submit documents without electronic signatures in the following situations:
1. A joint petition in an action for divorce or legal separation may be electronically filed if it bears the handwritten signature of one party and the electronic signature of the other or the handwritten signatures of both parties.
  2. A stipulation will be considered signed by multiple persons if it bears the handwritten signatures of all signatories or if it bears the printed name of each signatory and contains a representation by the filing party

that the filing party has consulted with the signatories and all have agreed to sign the document. This paragraph does not apply to the signature requirements of s. 809.107 (2) (bm) 6., (5) (a), or (6) (f), where a signature is required from the appellant or petitioner, other than the state, on whose behalf the document is filed.

3. The court may agree to accept a document with the handwritten signature of a user and direct that it be made part of the electronic record by the clerk of court.
  - (h) For paper parties, every document requiring a signature shall be signed using a handwritten signature. If a document requiring 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 under sub. (9).
  - (i) Documents containing handwritten 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 an imaged copy of the signed document to the electronic filing system, and the court shall maintain the imaged document 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.
  - (j) The director, in his or her discretion, may approve the use of other signature technologies to the extent that they work with the existing electronic filing system.

**Committee explanatory note:**

Sub. (12) (a) tightens the definition of signature used by the current circuit court rule to remove any suggestion that a document is considered signed if it is simply submitted through the electronic filing system; it must also include a signature line stating “Electronically signed by Name”. This provision is consistent with the definition provided in sub. (1) (f) and with the appellate eFiling rule, s. 809.801 (12) (a). Handwritten signatures are sometimes used where multiple attorneys wish to sign. Either form of signature provides the level of accountability to client and court called for by these rules.

Sub. (12) (g) 2. responds to a recent legislative change to proceedings for termination of parental rights, requiring the signature of both counsel and parents on the notice of intent to pursue postdisposition relief, notice of appeal, and petition for review. A representation that all signatories have agreed to sign the document cannot be used in lieu of the parents’ signatures in this situation.

**(13) SIGNATURES OF COURT OFFICIALS.**



- (a) If the signature of a court official is required on a document, an electronic signature applied through the court case management system 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 handwritten 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 delegates as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized delegate.
- (c) A court official may delegate the use of his or her electronic signature to an authorized staff member pursuant to the security procedures of the court 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 programs. Court officials shall safeguard the security of their electronic signatures and exercise care in delegation.

**(14) CONFIDENTIAL INFORMATION.**

- (a) The confidentiality of an electronic record 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) Parties shall comply with the requirements of ss. 801.19 to 801.21 regarding redaction of protected information, identification of confidential material, and sealing of filed documents.
- (c) 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.
- (d) If a user seeks court approval to seal a document, the user may electronically file the document under temporary seal pending court approval of the user's motion to seal.
- (e) If the clerk notes that a document has been identified as confidential or sealed, the~~The~~ electronic filing system shall place a visible mark on ~~documents identified as confidential~~the document to identify it as confidential or sealed.

**(15) TRANSCRIPTS.**

- (a) The original transcript of any proceeding produced under SCR 71.04 shall be electronically filed with the circuit court in accordance with procedures established by the director. This rule does not alter the requirements governing timelines, format or costs established by s. 814.69, SCR 71.04, or any other statutes, rules, and procedures. ~~This section does not alter the requirements for filing transcripts with the supreme court or court of appeals.~~
- (b) The electronic filing system shall note that the transcript has been prepared and filed with the court. Upon receiving payment or making arrangements for payment, the court reporter shall indicate which users may have access to the electronic transcript. Access to an electronic copy of the transcript through the electronic filing system shall serve as a duplicate copy under s. 757.57 (5) and SCR 71.04 (6). Upon the request of a user who is entitled to view the transcript, a single paper copy of the transcript shall be provided without additional charge. No user shall be granted access to view the transcript unless the court reporter has notified the system or the court has so ordered.
- (c) The court reporter shall notify any paper parties by traditional methods that the transcript has been prepared. The court reporter shall serve a paper copy of the transcript by traditional methods on any paper party who has made arrangements for payment or who is entitled to be served with a copy. A court reporter may by agreement make the transcript available in another format.
- (d) When notice to the clerk of the supreme court and court of appeals is required, the court reporter shall provide notice as provided in s. 809.801 (15) (d)~~by traditional methods until directed otherwise by the supreme court or court of appeals.~~
- (e) A transcript when filed under this section becomes a part of the court file. The transcript shall be made available to the public in accordance with the statutes and rules governing court records and any court orders.
- (f) Under SCR 71.04 (10) (b), a court reporter may certify that the transcript is a verbatim transcript of the proceedings by applying the court reporter's signature in the same manner as provided in sub. (12) (a) and then electronically filing the transcript.
- (g) A court reporter shall electronically file with the circuit court any sentencing transcript prepared under s. 973.08 (2). Payment shall be made as provided by SCR 71.04 (5) and s. 973.08 (2). The electronic filing system may provide a method to electronically transmit the transcript to the Department of Corrections as provided in s. 973.08 (5).
- (h) A court reporter shall electronically file an original unredacted transcript with the circuit court. Parties shall comply with the requirements of ss. 801.19 (4) and 801.21 (8), regarding redaction and sealing of protected information in the transcript. If redaction is ordered, a court reporter shall

- electronically file a complete copy of the redacted transcript as provided in s. 801.19 (4).
- (i) A court reporter's verbatim record that is required to be stored under SCR 71.03, SCR 72.01 (47), and Rule of Trial Court Administration 7 shall continue to be stored in its original medium.
- (16) 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 may make a finding of fact that the user ~~submitted~~attempted to file the document ~~to~~with the court in a timely manner by ~~tendering~~submitting it to the electronic filing system. The court may enter an order permitting the document to be deemed filed or served on the date and time the user first attempted to submit ~~transmit~~ the document electronically or may grant other relief as appropriate.
    2. If the failure is not caused by the court electronic filing system, the court may grant appropriate relief from non-jurisdictional deadlines upon satisfactory proof of the cause. Users are responsible for timely filing of electronic documents to the same extent as filing of paper documents.
  - (b) A motion for relief due to technical failure shall be made on the next day the office of the clerk of court is open. The document that the user attempted to file shall be filed separately and any fees due shall be paid at that time.
  - (c) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

### Comments Proposed for Publication, 2021

The definitions of sub. (1) now incorporate language consistent with the adoption of appellate eFiling and to use current electronic filing terminology.

Sub. (2) (k) is also included in the appellate eFiling rule, s. 809.801 (2) (k), to support consistent interpretation of the two rules.

Sub. (3) (a) mandates that three types of filers participate in the electronic filing system. An exception for attorneys representing themselves was included in this rule at the request of a single attorney who theorized that electronic filing might be difficult for an attorney not in private practice. Experience has shown that electronic filing is straightforward to use, with minimal technical impediments and expense, so this exception is deleted.

Sub. (4) (f) adds a provision codifying *Douglas v. Dewey*, 147 Wis. 2d 328, 338, 433 N.W.2d 243 (1989) and *Rome v. Betz*, 120 Wis.2d 528, 355 N.W.2d 844 (Ct. App. 1984), holding that payment of the appellate filing fee and circuit court transmittal fee are not prerequisites to filing a notice of appeal.

Sub. (12) (a) tightens the definition of signature used by the current circuit court rule to provide a consistent signature format. Traditional handwritten signatures may also be used. Either form of signature provides the level of accountability to client and court called for by these rules.

### **Other proposed changes to circuit court procedure related to electronic filing:**

#### **a) Requests for substitution of judge**

##### **s. 48.29 Substitution of judge.**

(1) The child, the child's parent, guardian or legal custodian, the expectant mother, or the unborn child's guardian ad litem, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. ~~Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named in the request.~~ When any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section does not apply to proceedings under s. [48.21](#) or [48.213](#).

##### **s. 801.58 Substitution of judge.**

(1) Any party to a civil action or proceeding may file a written request, signed personally or by his or her attorney, with the clerk of courts for a substitution of a new judge for the judge assigned to the case. The written request shall be filed preceding the hearing of any preliminary contested matters and, if by the plaintiff, not later than 60 days after the summons and complaint are filed or, if by any other party, not later than 60 days after service of a summons and complaint upon that party. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. Upon filing the

written request, the filing party shall forthwith ~~mail-serve~~ a copy thereof ~~to on~~ all parties to the action ~~and to the named judge in the manner provided in s. 801.18 (6) (a) or (c).~~

**s. 938.29 Substitution of judge.**

(1) Request for substitution. Except as provided in sub. (1g), the juvenile, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. ~~Immediately upon filing the written request, the juvenile shall mail or deliver a copy of the request to the judge named in the request.~~ In a proceeding under s. 938.12 or 938.13 (12), only the juvenile may request a substitution of the judge. If the juvenile has the right to request a substitution of judge, the juvenile's counsel or guardian ad litem may file the request. Not more than one written request may be filed in any one proceeding, and no single request may name more than one judge. This section does not apply to proceedings under s. 938.21.

**Committee explanatory note:**

These three statutes require a party requesting judicial substitution to mail a copy of the request to the judge, separate from the copy filed with the clerk. This is no longer necessary; the circuit court clerks send the request to the judge electronically and the paper copy is superfluous.

**b) Providing paper copies of divorce judgments**

**s. 767.36 Copies of judgment to parties.** At the time of filing a judgment for an annulment, divorce, or legal separation, ~~the party who prepared the judgment shall furnish to the clerk of court 2 true copies of the judgment, including any attachments to the judgment referenced in the judgment, in addition to the original judgment. Until the copies are presented, the clerk may refuse to accept the judgment for filing. After the judgment is filed,~~ the clerk shall mail a copy of the judgment promptly to each party to the action at the last-known address, and the mailing shall be shown in the court record.

**Committee explanatory note:**

S. 767.36 requires the party who prepares a divorce judgment to give the clerk of court two copies to mail to the parties. Almost all of the circuit court clerks surveyed would prefer to print the copies from the file without waiting for the parties to produce them.

### c) Serving small claims summons and complaints by mail

#### s. 799.12 Service of summons.

(3) If authorized by court rule under sub. (2), service may be made by mail by ~~filing leaving the original and necessary copies of~~ the summons with the clerk of court, together with a request for mail service and the fee prescribed in s. 814.62 (4). The court shall require the use of certified mail with return receipt requested for all eviction cases for which service by mail is authorized under sub. (2), and for all other cases may by rule require the use of certified mail with return receipt requested. Whenever the use of certified mail is required, the additional fee prescribed in s. 814.62 (4) shall be paid for each defendant. The clerk shall mail a copy to each defendant at the last-known address as specified in the summons. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address. Service by mail to obtain a personal judgment shall be limited to the county where the action is commenced.

#### Committee explanatory note:

In some counties, the clerk by ordinance is authorized to provide mail service of the summons and complaint in small claims cases. S. 799.12(3) requires plaintiffs to provide paper copies of the summons and complaint to be served on all defendants. The circuit court clerks do not want to manage the paper copies and would prefer to print the copies from the file.

### d) Further clarifying that the eFiling fee can be assessed as a cost

#### s. 814.04 Items of costs.

(2) **Disbursements.** All the necessary disbursements and fees allowed by law; the compensation of referees; a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but the item may not exceed the authorized sheriff's fee for the same service; amounts actually paid out for certified and other copies of papers and records in any public office; postage, photocopying, telephoning, electronic communications, facsimile transmissions, and express or overnight delivery; the electronic filing fee prescribed in s. 801.18 (7) (c); depositions including copies; plats and photographs, not exceeding \$100 for each item; an expert witness fee



not exceeding \$300 for each expert who testifies, exclusive of the standard witness fee and mileage which shall also be taxed for each expert; and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees shall not be taxed as a cost or disbursement.

**Committee explanatory note:**

This clarification is requested here in addition to the language found in s. 801.18 (7) (c).