

September 4, 2015

Clerk of the Wisconsin Supreme Court
Attn: Deputy Clerk Carrie Janto
P.O. Box 1688
Madison, WI 53701-1688

Re: Comment on Rule Petition 15-02, Petition to Amend Rules of Appellate Procedure, Wis. Stat. §§ 809.01, 809.105, 809.11, 809.15

Dear Deputy Clerk Janto,

On behalf of the Appellate Practice Section of the State Bar of Wisconsin, we write in support of Rule Petition 15-02 regarding the transmission and storage of electronic records in appeals. Further, we are happy to report that, in response to comments from Members of the Appellate Practice Board in favor of the petition, the State Bar of Wisconsin Board of Governors is scheduled to take up whether to support the petition at its meeting on September 26, 2015.

Currently, the record in all cases before the Wisconsin Court of Appeals and Wisconsin Supreme Court exists in paper form only. Under Wis. Stat. Rule 809.15(1)(c), circuit courts must assemble a paper record and transmit it to the Wisconsin Court of Appeals—even though, as the supporting memo to Petition 15-02 explains, courts in fourteen counties are now entirely paperless, and courts in sixty-eight of Wisconsin’s seventy-two counties do some electronic scanning and record retention.

Submitted by the Clerk of the Wisconsin Supreme Court and Court of Appeals, Petition 15-02 would make amendments to the rules of appellate procedure to allow circuit courts to transmit the record to the court of appeals in a paperless, electronic format. The current rules use the word “transmit” when referring to the sending of the record and the initiating documents of an appeal to the court of appeals. *See, e.g.* Wis. Stat. Rule 809.15(4)(a) (the “clerk of the circuit court shall transmit the record to the court of appeals”); *see also* Wis. Stat. Rules 809.107(5)(b), 809.30(2)(k), and 809.32(2). The petition would amend Chapter 809 by defining “transmit” to include making a document or record electronically available to a court, while making a number of other small changes to Chapter 809 to facilitate the transmission and storage of records in electronic form. Additionally, the petition would amend Wis. Stat. Rule 809.15(1)(a)9. to broaden the types of court exhibits to be included in the record on appeal. The petition would provide that the record should include photographs, video recordings, audio

recordings, computer media such as disks or flash drives, but not oversized exhibits unless requested by a party.

We commend the clerk's office for its efforts in preparing the petition, and in transitioning the state appellate courts to the use of electronic records. Electronic transmission of records would save circuit courts staff time, and printing and mailing costs. Electronic storage of records would likewise save the appellate courts staff time and the expense of storing paper files. It would also benefit the decisional process, allowing judges, justices and court staff convenient access to the record from their computers. Instead of sharing one paper record, multiple users would be able to access the record at one time.

The clerk's office's implementation of electronic record storage would also have benefits for appellate practitioners. According to the supporting memo, the clerk's office plans to make the electronic record available to parties who e-file their appellate briefs through the appellate courts' e-filing system. Remote 24/7 access to the record will be a great convenience to attorneys in the preparation of appellate briefs.

For these reasons, the Appellate Practice Section of the Wisconsin State Bar supports Petition 15-02, and respectfully asks the Court to adopt the petition as proposed at its open conference on October 13, 2015.

Sincerely,

Members of the Appellate Practice Section Board

Jake Wittwer, Chairperson, Wisconsin Department of Justice
Shelley Fite, Chairperson-Elect, Federal Defender Services of Wisconsin, Inc.
Amelia Bizzaro, Secretary, Bizzaro Law LLC
Kent Tess-Mattner, Treasurer, Schmidt, Rupke, Tess-Mattner & Fox SC
Erin O'Connor, Immediate Past Chairperson, O'Connor Law Offices LLC
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Freya Bowen, Perkins Coie LLP
Sarah Burgundy, Wisconsin Department of Justice
Jacques Condon, Condon Law Firm LLC
Melissa Greipp, Marquette University Law School
Kathryn Keppel, Gimbel Reilly Guerin & Brown LLP
Eric Pearson, Foley & Lardner LLP
Jeremy Perri, State Public Defenders Office, Appellate Division
Donald Romundson, Wisconsin Court of Appeals, District III

cc: Diane Fremgen
Clerk, Wisconsin Supreme Court and Court of Appeals