



WISCONSIN COURT OF APPEALS

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MICHAEL R. FITZPATRICK, JUDGE

March 19, 2019

Clerk of Supreme Court
Attn: Deputy Clerk-Rules
clerk@wicourts.gov

Re: Rule Petition 19-02

Dear Honorable Justices of the Supreme Court:

Thank you for the invitation to comment on Rule Petition 19-02 regarding a pilot project for electronic filing (efiling) in the Wisconsin appellate courts. As staff attorneys of the Court of Appeals, we are interested in appellate court efiling and the changes that it will have on our work environment. There are intricate procedures in play that foster the efficient handling of the Court of Appeals' high volume of work by communication and delivery of file materials between the clerk's office, the staff attorneys' office, and the judges' chambers. The efiling system needs to have tools to preserve those procedures and efficiencies. We are eager to have representation in any work group that may be formed to address the development of related tools for judges and non-judicial staff and changes that may be made to the Rules of Appellate Procedure. We suggest that the Administrative Assistant to the Chief Judge, Chief Staff Attorney, and at least one other central staff attorney be included in any work group.

As stated in the petition, the pilot program is to develop and test procedures "to permit exclusive electronic filing of documents" in the appellate courts. To that end paragraph seven of the proposed interim rule provides that requirements for sending paper copies of a document may be eliminated. We understand that efiling operates as a paper on demand system. However, the goal for the total elimination of the submission of paper copies by litigants concerns us.

The nature of appellate work is reading and writing intensive. It is almost exclusively reading and working with written materials and often documents that are very

lengthy, such as petitions, motions, briefs, draft opinions, or research. The work habits of appellate judges and their staff involve highlighting, annotating, and comparing written material on paper. A few years ago, the Court of Appeals judges piloted electronic readers of some kind and were dissatisfied with those tools as a functional equivalent of reading and annotating paper appellate briefs. Until such time that appellate court judges and staff are provided with tools which permit handwritten notes on electronic versions of the petitions and briefs, paper will be required and required by multiple users. And because technology has already put much of the daily work of appellate judges and staff on the computer screen, appellate judges and staff will opt to work away from the computer screen by utilizing paper copies of certain filings on a consistent and daily basis. This means that the production of paper copies of the lengthier appellate court filings—petitions for leave to appeal, petitions for supervisory writs, and appellate briefs and appendices—is a known constant.

The adoption of efilings without companion paper copies of some documents merely shifts the time and expense of creating needed paper copies to the appellate court. It raises the questions of who will be responsible for creating the paper copies and what are the real costs with doing so. The debate on these questions can be avoided by requiring the litigants to file a reduced number of paper copies of certain efiled documents, *i.e.* two paper copies of petitions for leave to appeal, petitions for supervisory writs, responses to those petitions, four copies of appellate briefs and appendices, and two copies of those items in appeals and proceedings to be decided by one court of appeals judge under WIS. STAT. § 752.31(2). A number of appellate jurisdictions require the submission of paper copies with efilings. A non-exhaustive sample list is attached. Other advantages of efilings will still be realized by filers even if some paper copies are required, such as ease in motion filing, instant receipt of court notices and orders, reduced service requirements and costs, reduced paper copies, and filing until 11:59 p.m. Further, requiring some paper copies from filers, largely attorneys, puts filers on equal footing with the large number of self-represented individuals who might not utilize efilings and must file and serve paper copies by traditional methods.

We urge the Supreme Court to consider a system that continues to require a minimum number of paper copies of certain petitions, responses, briefs, and appendices so that staff are not burdened by the time and cost of producing multiple paper copies of those documents. If efilings is not supplemented with a requirement for the submission of paper copies of certain documents, the pilot project could include a mechanism by which the real costs of producing paper versions of efiled documents are tracked.

We are also curious about what new equipment and programming might be required to utilize efiled documents, particularly the massive amounts of on-screen reading time and document circulation that will be necessary when efilings is mandatory across the Court of Appeals. The electronic tools should be as flexible as possible to accommodate a wide variety of reading styles and computer savviness. Whatever tools are identified as necessary for judges should also be supplied to Supreme Court commissioners and Court of Appeals staff attorneys.

Aside from concerns over the tools to be provided and the costs and burden of printing paper copies, we recognize that appellate efilng may have benefits for the appellate courts and the litigants who can take advantage of efilng. We would appreciate the opportunity to participate in any efilng work group. When the pilot project gets underway, we will provide feedback to promote the development of an efficient and functional efilng system for all users. Thank you for considering our comments.

Respectfully submitted,

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Appellate Courts Requiring Paper Briefs with Electronic

United States Supreme Court, GUIDELINES FOR THE SUBMISSION OF DOCUMENTS TO THE SUPREME COURT'S ELECTRONIC FILING SYSTEM (requiring filings be parties represented by counsel to be submitted through the electronic filing system in addition to existing requirements concerning the paper filing of documents).

ALABAMA APPELLATE COURTS INTERIM ELECTRONIC FILING AND SERVICE RULE (requiring submission of hard copies in addition to the e-document which is accompanied by confirmation receipt of e-filing).

RULES OF THE SUPREME COURT AND COURT OF APPEALS OF THE STATE OF ARKANSAS, Rule 4-3(a), 4-4(a) (requiring six copies of paper brief to be filed within five days of the electronic filing).

CONNECTICUT RULES OF APPELLATE PROCEDURE, § 67-2(g), (j) (requiring an electronic version of the brief to be submitted prior to the timely filing of the paper brief and to include the electronic confirmation of submission).

RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE, Rule 10.2(3) (any participant e-filing any brief shall deliver to the clerk ten paper copies of the brief and include the ID number associated with the electronically filed document).

ILLINOIS ELECTRONIC FILING PROCEDURES AND USER MANUAL FOR THE SUPREME COURT OF ILLINOIS, Rule 8 (requiring paper copies of petitions and briefs to be submitted after electronic filing and to include the clerk's electronic filing stamp); ADMINISTRATIVE AND PROCEDURAL RULES OF THE ILLINOIS APPELLATE COURT FIRST DISTRICT, Rule 39, RULES OF ILLINOIS APPELLATE COURT, SECOND DISTRICT, Rule 101(c), THIRD DISTRICT APPELLATE COURT ADMINISTRATIVE ORDER 72; FIFTH DISTRICT APPELLATE COURT ADMINISTRATIVE ORDER (Nov. 14, 2017).

MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE, Rule 131.03(1) allows for paper copies to be set by standing order of the applicable appellate court; mandatory appellate e-filing but standing order reduces the number of paper copies to five in the court of appeals, and one unbound copy in the supreme court which includes the confirmation of electronic filing.

22 NYCRR PART 500.2(a) (requiring the submission of brief in digital format as a "companion" to the paper brief filed in the New York Court of Appeals).

GUIDELINES FOR SUBMISSION OF ELECTRONIC BRIEFS, APPENDICES, AND RECORDS AND USER'S/ADMINISTRATOR'S MANUAL FOR THE VIRGINIA APPELLATE COURTS ELECTRONIC SYSTEM, ch. 3, III.C. (requiring paper copies of briefs to be filed one day after electronic filing).