

General Commentary on Electronic Filing Rules

The advent of electronic filing and the use of electronic files introduces a significant change in how documents will be filed and presented to the Iowa courts. These rules are intended to increase access for parties and their counsel to the courts by allowing access to their cases 24 hours per day and seven days per week from any site with Internet access. This general commentary is meant to assist those who use the court system in understanding the general function and purpose of some of these new rules.

Exceptions to mandatory use of the electronic document management system.

Use of the electronic document management system is mandatory for all judicial officers, lawyers, self-represented litigants, and other users in all cases. There will be rare instances, however, when a person cannot use the system. In a situation where the potential filer's computer system is down or the person cannot obtain a login and password in time to meet a deadline, the court or the clerk of court can authorize a filer to submit a paper document on a one-time basis. If a filer will not be capable of using the electronic document management system throughout a particular case, the filer must move to be excused from registering to participate in the system. The party seeking to be excused must show exceptional circumstances. Exceptional circumstances include but are not limited to a litigant who does not have any access to the Internet, or who has limited access to the Internet—for example, through a local public library. See Iowa Ct. Rs. 16.302(2), 16.1204(2).

Registration, logins and passwords. A lawyer may choose to list multiple e-mail addresses when the lawyer registers. Multiple e-mail addresses may be used as a means to track a large, complex case or may be used to allow more than one person on the lawyer's staff to monitor documents served electronically. The lawyer remains responsible for the use or misuse of the login and password registered to the lawyer and remains responsible for proper monitoring of the e-mail service accounts.

Suspension and cancellation of logins and passwords. A login and password may be immediately *suspended* by an employee of the judicial branch if it appears that the login or password may have been compromised. A password and login can only be *canceled* by the court. If the court determines that good cause exists, the court may refuse to allow a person to use the electronic document management system. Under appropriate circumstances, like an intentional misuse or reckless use of a password or login, a person may also be subject to appropriate sanctions by the court. A refusal to allow a person to use the system does not mean the person is excluded from using the courts, but the person would need to obtain authorization under rule 16.302(2) to submit paper documents to the clerk.

Electronic cover sheet. A filer must complete an electronic cover sheet whenever a document or group of documents is placed into the electronic document management system for filing or for electronic presentation. The cover sheet is generated by the system based on basic information provided by the filer. Different cover sheets will be generated depending on whether the document is related to a criminal or civil case

or whether the document is being filed in a new case or an existing case. It is critical that a cover sheet be properly completed by the filer. Information provided on the cover sheet will ensure the document is properly routed through the system. For example, proper completion of the cover sheet will, where appropriate, ensure the document is properly routed to the correct electronic file, create a correct docket entry for the document, inform the court that expedited relief is being requested, and ensure a document is properly sealed. A filer who completes an electronic cover sheet for a new civil case will not need to file the cover sheet required by Iowa Rule of Civil Procedure 1.301(2).

Errors in the submission of documents. Rule 16.309(3)(c) deals with instances where the filer submits documents that cannot be correctly filed or docketed. The clerk may find it necessary to return a submission to the filer for correction when, for example, a document is scanned upside down or sideways, is scanned in such a way that the file stamp cannot be applied, is improperly attached to other documents, or is submitted under the wrong docket entry so that the correct fees, signatures, or other configuration cannot be processed by the electronic document management system. It will be the filer's responsibility to keep a record of the original submission date and time, as well as the reason for the return of the filing, contained in the system notices e-mailed in response to the submission. Those notices include the "Received Notice" and the "Rejection Notice" sent by e-mail to the filer, as well as the Filing Status Reports available through the Filer's Interface under eFile/Filing Status.

Electronic filing and jurisdictional deadlines. Use of the electronic document management system provides a number of benefits to filers. One benefit is the opportunity to file documents outside of normal business hours. Rule 16.311(1)(b) states that a document filed before midnight on the date the filing is due is considered timely filed. A filer is cautioned, however, not to wait until the last moment to electronically file documents as the electronic document management system may not always be available. Just as a jurisdictional deadline cannot be extended for a filer who, due to vehicle or traffic problems, arrives at the courthouse moments after the clerk's office has closed, jurisdictional deadlines cannot be extended for the filer who encounters system or other technical difficulties moments before a midnight filing deadline.

Governmental agency filings. Certain governmental agencies will be allowed to file documents and transfer data by a court-approved alternative method of transferring the document or data from the agency's electronic system to the court's electronic document management system.

Multiple-case filing option. Certain governmental agencies and lawyers licensed to practice law in Iowa may file a document or documents in multiple cases in a single filing.

Retention of paper documents. Except in very limited situations delineated by these rules, the court will not retain non-electronic documents or other items as part of the court file. The rules contemplate

a number of situations where paper documents containing original signatures can be scanned and then electronically filed. These rules do not require any party or any lawyer to retain documents with original signatures for any length of time. However, parties and lawyers may want to retain the documents for varying lengths of time due to statutory requirements, ethics rules, malpractice insurance requirements, and good business practices.

Electronic presentation. Formerly parties could physically hand the judge an unfiled document for consideration. With the implementation of the electronic document management system, this must now be done electronically. Electronic presentation is initiated through the use of a special designation on the electronic cover sheet. A document that is electronically presented is available for viewing by the court and is not a part of the court file unless the document is later filed by the court or a party. Examples of when electronic presentation would be used include the submission of trial informations for court approval, applications for search warrants, proposed orders, documents to be viewed in camera, and proposed dissolution decrees approved by the parties. The electronic presentation of a document has no impact on whether a party or lawyer should be or must be present when the court reviews the document. In addition, the ethical obligations of the parties, lawyers and court regarding ex parte communications or other ethical requirements are not modified by the fact a document is presented electronically.

Attachments. When submitting documents through the electronic document management system it is important for parties to recognize the distinction between documents that are *filed* and documents that are included in a court file as *attachments* to a filed document.

Prior to implementation of the electronic document management system it was possible for a party to hand the clerk of court a number of documents at one time. An example is a petition for dissolution of marriage, a motion for temporary support or temporary custody, and a financial affidavit. Although these documents were handed to the clerk at the same time, the documents were filed separately and each document had its own docket entry. When using the electronic document management system these types of documents must continue to be filed separately. A filer may not attach these documents to one another. A separate electronic cover sheet must be completed for each document. See rule 16.313(2).

There are, however, documents that may be electronically attached to another document. Examples include an amended petition that is attached to a motion for leave to amend, a written notice of intention to file an application for default which must be attached to a request for default, see Iowa R. Civil Pro. 1.972(2), and exhibits or affidavits used to support a motion or other document. See rule 16.313(1).

When attempting to distinguish between the requirements of rule 16.313(1) and 16.313(2), it may be helpful to draw on one's experience with paper documents. Generally, if a filer would have stapled all the documents together before submitting them to the clerk of court, those documents should now be electronically attached to the main document

before filing them in the electronic document management system, and only one cover sheet need be completed. If the documents would not have been stapled together then they should not be electronically attached to one another and separate cover sheets must be completed for each document when they are filed.

When a party makes a motion with the court and desires to electronically present a proposed order with the motion, that proposed order may be electronically attached to the motion. See rule 16.409.

Administrative records. Many administrative records are quite large and it would be time consuming and costly to convert the records to an electronic format for purposes of review of the case by the court. Rule 16.315(1)(a) addresses the cost and time concerns in administrative review cases by allowing the administrative record to be filed in a nonelectronic format. The rule does not exempt cases initiated within a government agency on a limited basis. The documents generated in those cases should be filed electronically through the electronic document management system. Examples of those types of cases include cases covered by Iowa Code Chapters 252C, 252F, and 252H.

Hyperlinks. These rules are designed to encourage the use of hyperlinks for cited materials contained within the case file and for cited legal authorities. Hyperlinks may also be used to refer the court to other information. Hyperlinks, are not, however, part of the filed document so the filed document must comply with traditional citation requirements. Although the use of hyperlinks is encouraged, the filer is cautioned that links to external documents or websites may become invalid. The filer is

also cautioned that hyperlinks to other documents within the case file may or may not function depending on conditions outside the control of the electronic document management system. Hyperlinks to locations within the same document will be properly associated and function based on the web browser or computer application used to view the document.

Maintaining exhibits in an electronic format. It is the goal of rule 16.412 to have as many exhibits as possible stored or maintained by the court in an electronic format. The rule does not specify when the exhibits should be converted to electronic formats, and decisions on when to do so will need to be made on a case-by-case basis. In some situations, the parties and court may be able to agree that exhibits can be converted before trial. In some situations, like criminal cases, a defendant may not know for certain what exhibits the defendant will use before trial or the defendant may not want to disclose the potential exhibits before trial. In many situations, the exhibits may need to be kept in their original form for easier presentation to a jury and easier review by the jury during deliberations.

Service of notice of items filed nonelectronically. The electronic document management system will not generate a notice of filing for items filed nonelectronically. The purpose of rule 16.315(2) is to provide an electronic notice to other parties in the case that the item was filed.

Filing notices of discovery requests and responses. Rule 16.401(2) requires parties to file a notice with the court when discovery requests or responses are made. This requirement is necessary not because the courts need or want to see discovery requests or responses, but to add a layer of protection for litigants. Registered filers will have programmed their spam filters to receive notices from the electronic document management system. Registered filers' computer filters may, however, occasionally filter out an electronically sent discovery request from opposing parties. By following the requirement of rule 16.401(2) the registered filer will be assured of at least knowing they should have received a discovery document.

Electronic service. When a document is filed the electronic document management system will automatically send an e-mail notice about the filing to registered filers in the case. The notice of electronic filing will contain a list of the parties who were sent the electronic notice. Although the electronic document management system will automatically send out the notice, it is the responsibility of the filer to review the notice of electronic filing to ensure that all parties have been provided notice. If the filer learns of delivery failure the filer must provide service to that person by other means. Electronic service can not be used to serve an original notice or any other document that is used to confer personal jurisdiction.

Access to court files. Use of the electronic document management system will have no effect on what documents or case files are accessible to the public and what documents or files are confidential.

Any member of the general public will be able to view a non-confidential file or document by using a public access terminal located at the courthouse. Lawyers, parties to a case, self-represented litigants, and abstractors will have the ability to remotely access some court documents. *See* Iowa Ct. R. 16.502.

There will be at least one public access terminal for viewing and filing in each courthouse.

Cost to use the system. There will be no cost to view a non-confidential file or document electronically. It is anticipated that registered users and registered filers will pay a fee as required by law and determined by the Technology Governance Board.

Protection of personal privacy. In the past many parties routinely provided the court with a party's personal information whether or not the court required the information. The personal privacy protection rules, rules 16.601 through 16.609, are meant to assist in protecting certain identifying information from widespread dissemination and possible misuse. To provide greater protection, parties should not put this information in documents filed with the court unless it is material or required. When the information is material or required the parties should carefully follow the redaction rules in Division VI. Orders and other court-generated documents that require enforcement or action by someone outside the court would fall under rule 16.603(4) and include, for example, the following: writs of execution that require a full financial account number; juvenile transportation orders and placement orders containing a child's full name and identifying information; letters

of appointment with full names of minors in guardianship and conservatorship cases; protective orders and other orders containing full names of juveniles; and applications, orders, and resulting arrest warrants, juvenile summons, and writs of mittimus containing a defendant's full name, date of birth, and social security number.