

1 **GENERAL COMMENTARY ON ELECTRONIC FILING RULES**

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

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12 **Exceptions to mandatory use of the electronic document**
13 **management system.** Use of the electronic document management
14 system is mandatory for all judicial officers, lawyers, self-represented
15 parties, and other users in all cases. There will be rare instances,
16 however, when a person cannot use the system. In a situation where the
17 potential filer's computer system is down or the person cannot obtain a
18 login and password in time to meet a deadline, the court or the clerk of
19 court can authorize a filer to submit a paper document on a one-time
20 basis. If a filer will not be capable of using the electronic document
21 management system throughout a particular case, the filer must move to
22 be excused from registering to participate in the system. The party
23 seeking to be excused must show exceptional circumstances. An
24 example of exceptional circumstances is a prisoner who does not have
25 access to the Internet. See Iowa Ct. Rs. 16.302(2), 16.1204(2).

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2 **Registration, logins and passwords.** Some filers may wish to
3 register and obtain more than one login and password. Lawyers with
4 more than one staff member who file documents on the lawyer's behalf
5 may choose to use a different login and password for each paralegal or
6 secretary. This would allow the attorney to track which staff member
7 made each filing. A lawyer may also choose to register with a different e-
8 mail address and use that registration and login as a means to track a
9 large, complex case. Regardless of how many logins and passwords a
10 lawyer obtains, the lawyer remains responsible for the use or misuse of
11 each login and password registered to the lawyer.

12

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

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1 **Electronic cover sheet.** A filer must complete an electronic cover
2 sheet whenever a document or group of documents is placed into the
3 electronic document management system for filing or for electronic
4 presentation. The cover sheet is generated by the system based on basic
5 information provided by the filer. Different cover sheets will be generated
6 depending on whether the document is related to a criminal or civil case
7 or whether the document is being filed in a new case or an existing case.
8 It is critical that a cover sheet be properly completed by the filer.
9 Information provided on the cover sheet will ensure the document is
10 properly routed through the system. For example, proper completion of
11 the cover sheet will, where appropriate, ensure the document is properly
12 routed to the correct electronic file, create a correct docket entry for the
13 document, inform the court that expedited relief is being requested, and
14 ensure a document is properly sealed. A filer who completes an
15 electronic cover sheet for a new civil case will not need to file the cover
16 sheet required by Iowa Rule of Civil Procedure 1.301(2).

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18 **Electronic filing and jurisdictional deadlines.** Use of the
19 electronic document management system provides a number of benefits
20 to filers. One benefit is the opportunity to file documents outside of
21 normal business hours. Rule 16.311(1)(b) states that a document filed
22 before midnight on the date the filing is due is considered timely filed. A
23 filer is cautioned, however, not to wait until the last moment to
24 electronically file documents as the electronic document management
25 system may not always be available. Just as a jurisdictional deadline

1 cannot be extended for a filer who, due to vehicle or traffic problems,
2 arrives at the courthouse moments after the clerk's office has closed,
3 jurisdictional deadlines cannot be extended for the filer who encounters
4 system or other technical difficulties moments before a midnight filing
5 deadline.

6

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

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13 **Retention of paper documents.** Except in very limited situations
14 delineated by these rules, the court will not retain non-electronic
15 documents or other items as part of the court file. The rules contemplate
16 a number of situations where paper documents containing original
17 signatures can be scanned and then electronically filed. These rules do
18 not require any party or any lawyer to retain documents with original
19 signatures for any length of time. However, parties and lawyers may
20 want to retain the documents for varying lengths of time due to statutory
21 requirements, ethics rules, malpractice insurance requirements, and
22 good business practices.

23

24 **Electronic presentation.** Formerly parties could physically hand
25 the judge an unfiled document for consideration. With the

1 implementation of the electronic document management system, this
2 must now be done electronically. Electronic presentation is initiated
3 through the use of a special designation on the electronic cover sheet. A
4 document that is electronically presented is available for viewing only by
5 the court and is not a part of the court file unless the document is later
6 filed by the court or a party. Examples of when electronic presentation
7 would be used include the submission of trial informations for court
8 approval, applications for search warrants, proposed orders, documents
9 to be viewed in camera, and proposed dissolution decrees approved by
10 the parties. The electronic presentation of a document has no impact on
11 whether a party or lawyer should be or must be present when the court
12 reviews the document. In addition, the ethical obligations of the parties,
13 lawyers and court regarding ex parte communications or other ethical
14 requirements are not modified by the fact a document is presented
15 electronically.

16
17 **Attachments.** When submitting documents through the
18 electronic document management system it is important for parties to
19 recognize the distinction between documents that are *filed* and
20 documents that are included in a court file as *attachments* to a filed
21 document.

22 Prior to implementation of the electronic document management
23 system it was possible for a party to hand the clerk of court a number of
24 documents at one time. An example is a petition for dissolution of
25 marriage, a motion for temporary support or temporary custody, and a

1 financial affidavit. Although these documents were handed to the clerk
2 at the same time, the documents were filed separately and each
3 document had its own docket entry. When using the electronic
4 document management system these types of documents must continue
5 to be filed separately. A filer may not attach these documents to one
6 another. A separate electronic cover sheet must be completed for each
7 document. *See* rule 16.313(2).

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

14 When attempting to distinguish between the requirements of rule
15 16.313(1) and 16.313(2), it may be helpful to draw on one's experience
16 with paper documents. Generally, if a filer would have stapled all the
17 documents together before submitting them to the clerk of court, those
18 documents should now be electronically attached to the main document
19 before filing them in the electronic document management system, and
20 only one cover sheet need be completed. If the documents would not
21 have been stapled together then they should not be electronically
22 attached to one another and separate cover sheets must be completed for
23 each document when they are filed.

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

4
5 **Administrative records.** Many administrative records are quite
6 large and it would be time consuming and costly to convert the records
7 to an electronic format for purposes of review of the case by the court.
8 Rule 16.315(1)(a) addresses the cost and time concerns in administrative
9 review cases by allowing the administrative record to be filed in a
10 nonelectronic format. The rule does not exempt cases initiated within a
11 government agency on a limited basis. The documents generated in
12 those cases should be filed electronically through the electronic
13 document management system. Examples of those types of cases
14 include cases covered by Iowa Code Chapters 252C, 252F, and 252H.

15
16 **Hyperlinks.** These rules are designed to encourage the use of
17 hyperlinks for cited materials contained within the case file and for cited
18 legal authorities. Hyperlinks may also be used to refer the court to other
19 information. Hyperlinks, are not, however, part of the filed document so
20 the filed document must comply with traditional citation requirements.

21
22 **Maintaining exhibits in an electronic format.** It is the goal of
23 rule 16.412 to have as many exhibits as possible stored or maintained by
24 the court in an electronic format. The rule does not specify when the
25 exhibits should be converted to electronic formats, and decisions on

1 when to do so will need to be made on a case-by-case basis. In some
2 situations, the parties and court may be able to agree that exhibits can
3 be converted before trial. In some situations, like criminal cases, a
4 defendant may not know for certain what exhibits the defendant will use
5 before trial or the defendant may not want to disclose the potential
6 exhibits before trial. In many situations, the exhibits may need to be
7 kept in their original form for easier presentation to a jury and easier
8 review by the jury during deliberations.

9
10 **Service of notice of items filed nonelectronically.** The
11 electronic document management system will not generate a notice of
12 filing for items filed nonelectronically. The purpose of rule 16.315(2) is to
13 provide an electronic notice to other parties in the case that the item was
14 filed.

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16 **Filing notices of discovery requests and responses.** Rule
17 16.401(2) requires parties to file a notice with the court when discovery
18 requests or responses are made. This requirement is necessary not
19 because the courts need or want to see discovery requests or responses,
20 but to add a layer of protection for litigants. Registered filers will have
21 programmed their spam filters to receive notices from the electronic
22 document management system. Registered filers' computer filters may,
23 however, occasionally filter out an electronically sent discovery request
24 from opposing parties. By following rule 16.401(2)'s requirement the

1 registered filer will be assured of at least knowing they should have
2 received a discovery document.

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4 **Electronic service.** When a document is filed the electronic
5 document management system will automatically send an e-mail notice
6 about the filing to registered filers in the case. The notice of electronic
7 filing will contain a list of the parties who were sent the electronic notice.
8 Although the electronic document management system will automatically
9 send out the notice, it is the responsibility of the filer to review the notice
10 of electronic filing to ensure that all parties have been provided notice.
11 In the event an electronic notice is returned to the system due to a
12 “delivery failure” to a registered filer, the system will send notice of that
13 delivery failure to all registered filers. Upon receipt of the notice of
14 delivery failure the filer must provide service to that person by other
15 means. Electronic service can not be used to serve an original notice or
16 any other document that is used to confer personal jurisdiction.

17

18 **Access to court files.** Use of the electronic document
19 management system will have no effect on what documents or case files
20 are accessible to the public and what documents or files are confidential.
21 Any member of the general public will be able to view a non-confidential
22 file or document by using a public access terminal located at the
23 courthouse. Lawyers, parties to a case, self-represented litigants, and
24 abstractors will have the ability to remotely access some court
25 documents. See Iowa Ct. R. 16.502.

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

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

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9 **Protection of personal privacy.** In the past many parties
10 routinely provided the court with a party's personal information whether
11 or not the information was required by the court. The personal privacy
12 protection rules, rules 16.601 through 16.609, are meant to assist in
13 protecting certain identifying information from widespread dissemination
14 and possible misuse. To provide greater protection, parties should not
15 put this information in documents filed with the court unless it is
16 material or required. When the information is material or required the
17 parties should carefully follow the redaction rules in Division VI.

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