

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

11
12 **Suspension and cancellation of logins and passwords.** A login
13 and password may be immediately *suspended* by an employee of the
14 judicial branch if it appears that the login or password may have been
15 compromised. A password and login can only be *anceled* by the court.
16 If the court determines that good cause exists, the court may refuse to
17 allow a person to use the electronic document management system.
18 Under appropriate circumstances, like an intentional misuse or reckless
19 use of a password or login, a person may also be subject to appropriate
20 sanctions by the court. A refusal to allow a person to use the system
21 does not mean the person is excluded from using the courts, but the
22 person would need to obtain authorization under rule 16.302(2) to
23 submit paper documents to the clerk.

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25 **Electronic cover sheet.** A filer must complete an electronic cover
26 sheet whenever a document or group of documents is placed into the

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

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

1 system or other technical difficulties moments before a midnight filing
2 deadline.

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

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

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21 **Electronic presentation.** Formerly parties could physically hand
22 the judge an unfiled document for consideration. With the
23 implementation of the electronic document management system, this
24 must now be done electronically. Electronic presentation is initiated
25 through the use of a special designation on the electronic cover sheet. A
26 document that is electronically presented is available for viewing only by

1 the court and is not a part of the court file unless the document is later
2 filed by the court or a party. Examples of when electronic presentation
3 would be used include the submission of trial informations for court
4 approval, applications for search warrants, proposed orders, documents
5 to be viewed in camera, and proposed dissolution decrees approved by
6 the parties. The electronic presentation of a document has no impact on
7 whether a party or lawyer should be or must be present when the court
8 reviews the document. In addition, the ethical obligations of the parties,
9 lawyers and court regarding ex parte communications or other ethical
10 requirements are not modified by the fact a document is presented
11 electronically.

12

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

18 Prior to implementation of the electronic document management
19 system it was possible for a party to hand the clerk of court a number of
20 documents at one time. An example is a petition for dissolution of
21 marriage, a motion for temporary support or temporary custody, and a
22 financial affidavit. Although these documents were handed to the clerk
23 at the same time, the documents were filed separately and each
24 document had its own docket entry. When using the electronic
25 document management system these types of documents must continue
26 to be filed separately. A filer may not attach these documents to one

1 another. A separate electronic cover sheet must be completed for each
2 document. *See* rule 16.313(2).

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

9 When attempting to distinguish between the requirements of rule
10 16.313(1) and 16.313(2), it may be helpful to draw on one's experience
11 with paper documents. Generally, if a filer would have stapled all the
12 documents together before submitting them to the clerk of court, those
13 documents should now be electronically attached to the main document
14 before filing them in the electronic document management system, and
15 only one cover sheet need be completed. If the documents would not
16 have been stapled together then they should not be electronically
17 attached to one another and separate cover sheets must be completed for
18 each document when they are filed.

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

22

23 **Administrative records.** Many administrative records are quite
24 large and it would be time consuming and costly to convert the records
25 to an electronic format for purposes of review of the case by the court.
26 Rule 16.315(1)(a) addresses the cost and time concerns in administrative

1 review cases by allowing the administrative record to be filed in a
2 nonelectronic format. The rule does not exempt cases initiated within a
3 government agency on a limited basis. The documents generated in
4 those cases should be filed electronically through the electronic
5 document management system. Examples of those types of cases
6 include cases covered by Iowa Code Chapters 252C, 252F, and 252H.

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

13

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

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

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7 **Filing notices of discovery requests and responses.** Rule
8 16.401(2) requires parties to file a notice with the court when discovery
9 requests or responses are made. This requirement is necessary not
10 because the courts need or want to see discovery requests or responses,
11 but to add a layer of protection for litigants. Registered filers will have
12 programmed their spam filters to receive notices from the electronic
13 document management system. Registered filers' computer filters may,
14 however, occasionally filter out an electronically sent discovery request
15 from opposing parties. By following rule 16.401(2)'s requirement the
16 registered filer will be assured of at least knowing they should have
17 received a discovery document.

18

19 **Electronic service.** When a document is filed the electronic
20 document management system will automatically send an e-mail notice
21 about the filing to registered filers in the case. The notice of electronic
22 filing will contain a list of the parties who were sent the electronic notice.
23 Although the electronic document management system will automatically
24 send out the notice, it is the responsibility of the filer to review the notice
25 of electronic filing to ensure that all parties have been provided notice.
26 In the event an electronic notice is returned to the system due to a

1 “delivery failure” to a registered filer, the system will send notice of that
2 delivery failure to all registered filers. Upon receipt of the notice of
3 delivery failure the filer must provide service to that person by other
4 means. Electronic service can not be used to serve an original notice or
5 any other document that is used to confer personal jurisdiction.

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7 **Access to court files.** Use of the electronic document
8 management system will have no effect on what documents or case files
9 are accessible to the public and what documents or files are confidential.
10 Any member of the general public will be able to view a non-confidential
11 file or document by using a public access terminal located at the
12 courthouse. Lawyers, parties to a case, self-represented litigants, and
13 abstractors will have the ability to remotely access some court
14 documents. *See* Iowa Ct. R. 16.502.

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

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

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23 **Protection of personal privacy.** In the past many parties
24 routinely provided the court with a party’s personal information whether
25 or not the information was required by the court. The personal privacy
26 protection rules, rules 16.601 through 16.609, are meant to assist in

1 protecting certain identifying information from widespread dissemination
2 and possible misuse. To provide greater protection, parties should not
3 put this information in documents filed with the court unless it is
4 material or required. When the information is material or required the
5 parties should carefully follow the redaction rules in Division VI.
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