SUPREME COURT OF WISCONSIN

In re the Matter of Filing of Court Documents
in Circuit and Appellate Courts
(Temporary Mailbox Rule)

FILED

APR 13, 2020

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

This order pertains to the filing of paper documents in all courts of this state by those unable to access and use the electronic filing system (eFiling). Parties should first consult the appropriate statutes and/or rules, and any previous orders issued by the court in which the action is pending, including general orders relating to the COVID-19 pandemic. This order does not alter existing rules pertaining to eFiling.

The Supreme Court has administrative and superintending authority over the courts and judicial system of this state and a duty to promote the efficient and effective operation of the state's judicial system, Wis. Const. Art. VII, § 3; In re Kading, 70 Wis. 2d 508, 519-20; 235 N.W.2d 409 (1976).

On March 24, 2020, the Wisconsin Department of Health Services, at the direction of Governor Evers, issued a "Safer at Home" order requiring Wisconsin residents to stay at home unless they must perform certain exempted activities. See Emergency Order #12, "Safer at Home." The Supreme Court has determined that, in light of the existing public health emergency declared in connection with the COVID-19 pandemic, and to protect the health of the public and the individuals who work for the courts of this state, it is necessary to limit temporarily the number of individuals who are physically present within the courts of this state and to temporarily modify certain procedures to ensure that the essential operations of the courts continue in an appropriate manner during the present public health emergency.

The offices of the Clerks of Circuit Court and the Clerk of the Supreme Court and Court of Appeals remain open. However, hand-delivery of any documents to any clerk's office, including juvenile court clerk offices and registers in probate, is strongly discouraged because of the risk of transmission of COVID-19 between members of the public and court staff.

The court recognizes that under the current restrictions imposed by COVID-19, individuals who do not have access to eFiling cannot or should not take the steps litigants typically take to ensure that the Clerk of the Circuit Court or the Clerk of the Supreme Court and Court of Appeals receives and stamps their filings to establish the date on which the court received the document. For those unable to file documents electronically, their control over the filing process is circumscribed by the current restrictions on travel and access as a result of COVID-19, and there may be concerns about relying on the "vagaries of the mail." State ex rel. Nichols v. Litscher, 2001 WI 119, ¶28, 247 Wis. 2d 1013, 635 N.W.2d 292. Therefore,

IT IS ORDERED that to address the concerns about the timely filing of paper documents, the court, as a temporary measure, hereby creates a "Temporary Mailbox Rule."

Temporary Mailbox Rule.

During the effective dates of this order, a document that has been correctly addressed to the appropriate clerk of court and deposited in the U.S. mail or tendered to a commercial carrier (collectively referred to as "Mailing"), with proper postage and with a Statement of Mailing, will be deemed to have been filed as of the date of the Statement of Mailing, described below.

If the Statement of Mailing, U.S. Postal Service mark, or commercial carrier documentation does not bear a date on or before the required filing date, the document will not be

deemed timely filed, regardless of when it was actually deposited in the mail or tendered to a commercial carrier.

This order does not alter in any way the prison mailbox tolling rule adopted in State ex rel. Nichols v. Litscher, 2001 WI 119, 247 Wis. 2d 1013, 635 N.W.2d 292.

Filing deadlines for documents that confer jurisdiction.

Litigants may not rely on the Temporary Mailbox Rule if their filing is required to confer jurisdiction on any Wisconsin court. The filing dates for those documents remain as stated in the statute or rule that confers jurisdiction. Litigants should ensure that these documents are received by the appropriate clerk's office by the date required by law.[1]

Statement of Mailing.

In the event of a challenge to the timely filing of a document, the court in which the document is filed will have to make a factual determination as to whether the document was timely filed. Accordingly, individuals filing by mail shall include a Statement of Mailing that: (1) certifies the document was placed in a U.S. mailbox or tendered to a commercial carrier; and (2) specifies the name of the individual who placed the document in the mailbox or provided it to the commercial carrier, a contact address, and the place and date of mailing or tender to a commercial carrier.

A Statement of Mailing will create a rebuttable presumption that the individual placed the document for filing in the U.S. Mail receptacle or tendered it to a commercial carrier for delivery on the particular day stated. A determination of timely filing may also consider the date of the

[1] See, e.g., this court's order, In re the Matter of Appellate Court Operations During the COVID-19 Pandemic, (S. Ct. Order issued Mar. 17, 2020), https://www.wicourts.gov/news/docs/covid19coa.pdf.

U.S. Post Office's postmark, any documentation from a commercial carrier, and/or the date the document was file stamped as received by the clerk.

Copies and Service.

During the duration of this order, the requirement of filing multiple copies is waived. The original and one copy of the document is sufficient. If the filer wants an authenticated and conformed copy returned, an additional (3rd) copy should be included together with a self-addressed stamped envelope, however, a delay in returning a paper file-stamped document should be expected. Service requirements remain in effect. Appellate briefs are exempted from this order. Wis. Stat. (Rule) s. 809.80(4). The number of copies required by statute for appellate briefs remains unchanged.

Filing Fee.

The filing fee, if required, may be paid electronically or with a paper check included with the filing. If that is not an option, the appropriate clerk's office will send an invoice to the sender upon receipt of the filing, as soon as reasonably practicable. A filer may also seek a waiver of the fee for reasons of indigency by submitting an affidavit of indigency which can be completed and returned to the clerk's office.[2]

Other Considerations.

This Temporary Mailbox Rule will not excuse a person's ultimate failure to pay filing fees, address the document properly, pay proper postage, or otherwise comply with filing requirements.

[2] The circuit court form, CV-410A, Petition for Waiver of Fees and Costs–Affidavit of Indigency, is available at https://www.wicourts.gov/forms/CV-410A.PDF. For filings in the Court of Appeals or Supreme Court, the Clerk of Supreme Court and Court of Appeals will provide the form, upon request.

This order does not transcend other existing legal restrictions on filing. See, e.g., Wis. Stat. § 801.02(7)(d) (a circuit court must dismiss an action by a prisoner seeking to waive the prepayment of filing fees where that prisoner has, on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ of certiorari, that was dismissed by a state or federal court for any of the reasons listed in s. 802.05(4)(b) 1. to 4.)

Clerk's Offices Remain Open; Posting.

In order to protect the public and the staff of the clerk's office, the Clerk of Circuit Court, subject to the approval of the Chief Judge of the Judicial District, and the Clerk of the Supreme Court and Court of Appeals, subject to the approval of the Supreme Court, may modify procedures governing physical access to the office (such as, but not limited to, limiting the number of persons permitted to enter and/or isolating paper documents).

Notices with appropriate mailing addresses, information about access, information about proper procedures for emergency filings, locations of drop boxes, and other filing information, as applicable, will be posted where visible to the public in or proximal to the clerk's office and, if practicable, will also be posted on the court's website.

If a person wishes to have in-person access to a court file that is currently in the possession of the clerk of circuit court, the person shall submit a request for such access to the clerk via email, via telephone call, or via written request mailed to the clerk's office. The clerk shall then make reasonable arrangements for the person to receive or to view the requested document or file, consistent with public safety.

This order is intended to be interpreted broadly for protection of the public, court staff, and judges from the risks associated with COVID-19.

The provisions of this order shall be subject to further modification or extension by future orders.

The State Bar of Wisconsin shall take all reasonable steps to notify its members of the contents of this order.