



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Assembly Committee on Judiciary**

**on
Assembly Bill 59
March 14, 2019**

Mr. Chairman and members of the committee, thank you for the opportunity for a public hearing on AB 59. This bill is straightforward and codifies common practice by many attorneys.

Current law allows service of pleadings and other documents personally, through mail or fax, but not e-mail.¹ Email is commonly used by attorneys to communicate with clients and other attorneys. Electronic service is allowed under the Federal Rules of Civil Procedure.² Numerous states, including Tennessee, Florida, South Dakota, Illinois, Michigan and Oregon already allow electronic service. In Wisconsin, the law lags behind technology.

Under this proposal electronic service is *completely voluntary*; attorneys are not required to consent to electronic service. Opting-in requires written consent by an attorney, or party if appropriate. Electronic service is complete upon transmission, except if the sender receives notification or indication that the message was not delivered. Further, the bill does not allow electronic service for initial pleadings,³ which still must be served via personal service.⁴

Thank you for your time. I am open to answering any questions you may have.

¹ Wis. Stat. 801.14(2).

² Fed. R. Civ. Pro. 5(b)(2)(E) (“sending it by electronic means if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served”).

³ See *Sacotte v. Ideal-Werk Krug & Priester Maschinen-Fabrik*, 121 Wis.2d 401, 408 (1984) (“Section 801.14 (2), is applicable only after the action has been commenced and an attorney has appeared in the action on behalf of a party.”).

⁴ Wis. Stat. 801.13(1).



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on Assembly Bills 58 and 59

Chairman Ott and members of the Assembly Committee on Judiciary, thank you for holding a public hearing on this legislation. The bills before you today represent an effort to clarify two processes that impact citizens and employers, how they interact with state government and how they interact with one another while pursuing legal remedies in our courts.

AB 58 increases and clarifies the ways in which a person may serve notice of claim against a state officer or employee. A 2016 decision by the Wisconsin Supreme Court found that service of process requirements must be strictly followed. Current law defines a very narrow procedure for proper service of a claim against a state official. It specifically requires the use of certified mail to deliver a notice to the state Capitol office of the Attorney General. As we know, this office is more of a formality – the substantial work of the Department of Justice and the Attorney General is conducted across the street from here at the Risser Justice Center. Further, delivery of certified mail within the Capitol to an individual office is nearly impossible given the way we deliver both U.S. mail and interdepartmental mail.

Allowing notice of claims to be delivered in person to the DOJ or the state Capitol office of the attorney general, or mailed via certified mail directly to the DOJ resolves the difficult bar currently set in statute for properly serving notice of claims against the state.

The other bill before you, AB 59, clarifies that private parties to lawsuits may serve certain legal documents via e-mail if both parties have, prior to the service, consented in writing to the use of e-mail as a valid medium for transmitting and receiving documents. Current law allows service of certain documents via personal delivery, delivery to a lawyer representing a party, delivery to a home address or place of business, and even via fax machine, but does not explicitly allow for the use of e-mail. Adding e-mail and electronic service to these methods brings this portion of state law into the 21st Century.

Thank you for considering this legislation.

LITIGATION SECTION

To: Assembly Committee on Judiciary
From: Litigation Section, State Bar of Wisconsin
Date: March 14, 2019
Re: AB 59 – service of pleadings

The Litigation Section of the State Bar of Wisconsin supports the introduction AB 59, Representative Ron Tusler's legislation allowing email as an alternative method to serve certain documents in ongoing litigation.

With the change to e-filing for all communications with the courts, this bill is a common-sense update that allows service of other documents, such as discovery, to be made by electronic means, with consent of counsel, in addition to mail or facsimile.

AB 59 has appropriate safeguards, including the requirement that participants agree to receive documents by email and addresses notification of non-delivery. This change will allow for more consistency in the legal profession and recognizes the technological updates of the modern office.

For these reasons, the Litigation Section respectfully requests your support in this common-sense legislation.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN