

FAQ

Supreme Court Transition to Mandatory eFiling

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What does the Supreme Court's recent eFiling order do?

On February 21, 2023, the Wisconsin Supreme Court adopted the Second Amended Revised Interim Rule governing eFiling. S. Ct. Order 17-02C and 20-07C, 2023 WI 10 (issued Feb. 21, 2023, eff. Feb. 21, 2023). The order and interim rule set forth a timeline for a phased transition to mandatory eFiling in the Supreme Court in the next several months. Voluntary participation in the eFiling pilot project will begin on April 1, 2023, and eFiling will become mandatory for nearly all cases in the Supreme Court on July 1, 2023. The order applies only to Supreme Court proceedings. Electronic filing became mandatory for attorneys in matters before the Court of Appeals, effective July 1, 2021.

When does voluntary eFiling start?

Voluntary eFiling will begin on April 1, 2023 for Supreme Court cases filed on or after that date.

What cases are eligible for voluntary eFiling?

Other than a limited category of judicial/attorney disciplinary and license proceedings, any action or proceeding filed in the Supreme Court on or after April 1, 2023, may be included in the eFiling pilot project, provided all parties consent.

Can an eligible case be admitted into the eFiling project after a party has already filed a brief or pleading by traditional means?

Yes. For example, if a petition for bypass is filed in a case using traditional methods on April 1, 2023, the parties can still consent to have the case admitted into the voluntary eFiling project. If admitted, all subsequent documents will be filed electronically in accordance with the rules set forth in the Second Amended Revised Interim Rule.

How do I get a case admitted into the eFiling pilot project?

Any party to an eligible proceeding who wishes to seek inclusion in the eFiling pilot project should first confer with all other parties and obtain their consent to inclusion in the pilot. Once that consent has been obtained, the party may request that it be made part of the eFiling pilot project by sending an email to the Clerk at clerk@wicourts.gov. The email must identify the case or proceeding and represent that the party has obtained consent from all other parties for the case to be made part of the eFiling pilot project. All other parties should be copied on the email.

What if my case was already in the eFiling pilot project before April 1, 2023?

If your case previously was admitted into the eFiling pilot project, the case will continue to be an eFiling pilot case and is governed by the provisions of the current Rules of Appellate Procedure, Wis. Stat. ch. 809 (2021-2022).

What if another party in my case won't consent to participation in the pilot project?

Cases may be admitted to the eFiling pilot project only if all parties to the proceeding consent. Electronic filing is not allowed on a party-by-party basis during the voluntary phase of the pilot project.

What happens if I have requested participation but have not heard back from the Clerk and a filing is due?

Parties requesting voluntary participation in the eFiling pilot project are encouraged to do so well in advance of any applicable deadline for the first document they intend to file electronically as part of the pilot project. Unless there is a reason that makes participation in the eFiling pilot project unwarranted, the Clerk will approve participation expeditiously. Parties, however, should not expect to submit a request on the due date for a filing and expect that they will be able to file the document electronically. **Until notice of acceptance in the pilot is issued by the Clerk**, the proceeding shall not be considered to be a pilot proceeding, and parties are required to file and serve paper copies of pleadings and briefs by traditional means in accordance with the rules set forth in the Second Amended Revised Interim Rule. In other words, if a party submits a request for inclusion in the pilot, but the request is not granted within the 30-day deadline for petitions for review, the party will be required to file a paper petition for review by the close of business on the 30th day. A party's delay in submitting a request for inclusion in the pilot will not be an excuse for the untimeliness of the petition for review, which will result in the dismissal of the petition.

Can I eFile a petition for review if my case has not been admitted into the eFiling pilot project?

In a non-pilot proceeding, a paper petition for review must be filed, and the time for filing will be determined by when a paper copy is physically received in the Clerk's office during normal business hours. See Wis. Stat. § 808.10(1) and St. John's Home of Milwaukee v. Continental Cas. Co., 150 Wis. 2d 37, 43, 441 N.W.2d 210 (1989). *This requirement and the 30-day filing deadline are strictly enforced.* Petitions for review not physically received in the Clerk's office by 5:00 p.m. on the 30th day do not invoke the Supreme Court's appellate jurisdiction and are summarily dismissed. Additionally, parties are reminded that a petition for review may not be filed by fax or email under either the former or the current appellate rules. Thus, attorneys who wait until the day a petition for review is due to request participation in the eFiling pilot project and attempt to eFile the petition for review on that day without filing paper copies before 5:00 p.m., run the risk that the filing may not be timely if the Clerk is unable to process the request before the close of business hours. Although the paper copy of the petition for review is the

official document in non-pilot cases and the time of physical receipt of that copy will determine the time of filing, parties in non-pilot cases who file paper copies of a petition for review are still required under the former rules to submit an electronic courtesy copy of the petition.

What rules apply if my case is part of the eFiling pilot project?

Upon notification from the Clerk that the case has been accepted into the eFiling pilot project, all parties to the proceeding will be required to comply with the filing, formatting, service, certification, and other requirements set forth in the current Rules of Appellate Procedure, Wis. Stat. ch. 809 (2021-2022). Those rules will, inter alia, govern the time that a document is considered filed and the deadlines for the filing of documents.

If my case is accepted into the eFiling pilot project, when is the deadline for filing a petition for review?

Under the current Rules of Appellate Procedure, a document is considered filed at the time and on the date when submission of the document to the eFiling system is completed, even though it may not be accepted by the Clerk's office until the following business day. Wis. Stat. § (Rule) 809.801(4)(am) (2021-2022). Thus, a petition for review in a pilot case will be considered timely if submission of the petition for review to the eFiling system is completed by 11:59 p.m. on the 30th day following the Court of Appeals' decision. This change in the current Rules of Appellate Procedure supersedes the result in St. John's Home of Milwaukee v. Continental Cas. Co., 150 Wis. 2d 37, 43, 441 N.W.2d 210 (1989), although that case still applies to petitions for review that are filed in hardcopy in non-pilot cases. Wis. Stat. §§ (Rules) 809.62 and 809.801 (2021 comments).

Do I still need to file and serve paper copies of briefs if my case is in the eFiling pilot project?

No. All cases admitted into the eFiling pilot project will proceed pursuant to the current Rules of Appellate Procedure, Wis. Stat. ch. 809 (2021-2022). Paper copies of filings are not required when the current eFiling rules apply.

What rules apply if a case is not part of the pilot project?

If a case is not part of the eFiling pilot project—either because it is ineligible, not all parties have consented, or participation has not yet been requested or approved—then parties will continue to be required to file paper documents and comply with the traditional methods of service for proceedings in the Supreme Court, including the filing of multiple bound copies of briefs, appendices, and petitions for review, as specified in the Second Amended Revised Interim Rule. Parties should be aware that under the Second Amended Revised Interim Rule, a non-pilot case generally is subject to the provisions of the former Rules of Appellate Procedure, Wis. Stat. Ch. 809 (2019-2020), in effect immediately prior to July 1, 2021, but certain formatting, certification, and other requirements in the current Rules of Appellate Procedure, Wis. Stat. ch. 809 (2021-

2022) still apply. Parties should consult Paragraph 6 of the Second Amended Revised Interim Rule for more specific information.

When does eFiling become mandatory?

The Second Amended Revised Interim Rule expires at 11:59 p.m. on June 30, 2023. The effect of the termination is that for all proceedings then pending or thereafter commenced in the Supreme Court, all attorneys who are subject to Wis. Stat. § 809.801(3)(a) (2021-2022), except those in a limited category of judicial/attorney disciplinary and license proceedings, will be required to file all pleadings and papers electronically and otherwise comply with the provisions of the current Rules of Appellate Procedure, Wis. Stat. ch. 809 (2021-2022).

What if I have a self-represented party in my case?

Nothing prohibits a self-represented party from consenting to participation in the voluntary eFiling pilot project and registering as an electronic filer. In order for the case to be accepted into the eFiling pilot project, however, all parties, including self-represented parties, must consent to participation in the pilot project. Under the current rules of appellate procedure, Wis. Stat. § 809.801(3) (2021-2022), self-represented parties are not required to register as electronic filers. If a self-represented party does not consent, the case will proceed as a non-pilot case prior to July 1, 2023. See the question above regarding what rules apply to non-pilot cases. After eFiling becomes mandatory for attorneys on July 1, 2023, filings by self-represented parties who do not register as electronic filers are governed by Wis. Stat. § 809.80(1)-(6) (2021-2022).

Why is the court doing this now?

The Second Amended Revised Interim Rule is the final part of the Wisconsin Court System’s phased transition to eFiling for appellate matters, which began on April 15, 2019.

Where can I access the Second Amended Revised Interim Rule?

The Second Amended Revised Interim Rule is available at <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=626527>