

Supreme Court Adopts Transition to Mandatory E-Filing

by

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For attorneys the days of paper filings in Wisconsin courts are quickly drawing to a close. On February 21, 2023, the Supreme Court issued an order and a revised interim rule that will create a phased transition to mandatory e-filing for attorneys in the Supreme Court over the next several months. See Order 19-02C and 20-07C and the attached Second Amended Revised Interim Rule. The first phase will be a large, temporary expansion of the existing appellate e-filing pilot project that will allow nearly all matters filed in the Supreme Court after April 1, 2023, to become voluntary e-filing cases. The second phase, beginning July 1, 2023, will make e-filing mandatory for attorneys in nearly all types of matters filed in the Supreme Court.¹

In the voluntary phase, any party in a case that will have an initial filing in the Supreme Court after April 1st can request participation in the e-filing pilot by obtaining agreement from all other parties and then sending an email request that notes the consent of all parties to the Clerk of the Supreme Court (clerk@wicourts.gov). The other attorneys or parties should be copied on the email to the Clerk. Parties can request participation in the pilot prior to or after filing a petition for review, a petition for bypass, an original action petition, or a writ petition.² The Clerk will grant those requests expeditiously unless there is a reason that makes participation in the pilot unwarranted

¹ Disciplinary and attorney regulatory matters, which have unique characteristics, have not been part of the pilot to date and will be transitioned to e-filing at a later date.

² If requesting participation prior to an initial filing, you are encouraged to do so well in advance of the filing deadline to ensure your request can be processed prior to the deadline. In other words, if you will be filing a petition for review, sending a request for participation on the 29th or 30th day may result in your request not being approved in time for you to e-file the petition. An attorney's delay in requesting participation will not be an excuse for the late filing of a petition for review.

and will notify counsel (and pro se parties, if applicable) of inclusion in the pilot via email.

Counsel should note that until the Clerk has sent an email approving participation in the e-filing pilot program, all parties will still be required to file paper documents, and to comply with most of the former rules of appellate procedure, including deadlines for physically delivering paper copies to the Clerk's office (as explained in the Supreme Court's interim rule). Thus, for cases not approved for participation in the pilot, paper copies of a petition for review must still be physically received by the Clerk by 5:00 p.m. on the 30th day after the court of appeals' decision.³ Complying with that deadline is important because the Supreme Court has held that its jurisdiction is not properly invoked if the petition for review is not physically received within the 30 day period, and that statutory period may not be enlarged by court order. St. John's Home of Milwaukee v. Continental Cas. Co., 150 Wis. 2d 37, 441 N.W.2d 219 (1989); First Wisconsin National Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).

Once the Clerk has approved participation in the pilot or it is after July 1, 2023, all parties represented by counsel will be required to file documents only electronically and to comply with the current Rules of Appellate Procedure adopted in 2021. It is important to note that the 2021 revision of the rules changed the deadline for filing a petition for review through the e-filing system. When the e-filing system is being used, whether in the voluntary phase or once mandatory e-filing has begun, a petition for

³ The requirement that a paper petition for review must be physically received by 5:00 p.m. on the 30th day will continue both during the voluntary phase and after July 1, 2023, for pro se parties who do not register to become electronic filing users.

review filed by an electronic filing user will be timely if it is submitted into the e-filing system by 11:59 p.m. on the 30th day. See Wis. Stat. §§ (Rule) 809.62 and 809.801(4) and the 2021 comments to both provisions. This means that the application of the current rules to electronic filers will supersede the decision in St. John's Home.

The Supreme Court's revised interim rule and pilot program will terminate at 11:59 p.m. on June 30th, and mandatory e-filing will commence on July 1, 2023. Consequently, as of July 1st, attorneys will be required to e-file all documents in all Supreme Court matters (both existing and new). Paper filings from attorneys will no longer be accepted, and the date on which filings by attorneys are officially received will depend solely on when the document was submitted in the e-filing portal. Notifications from the e-filing system will constitute service on the other parties to the case, except for those pro se parties who remain paper filers. The current Rules of Appellate Procedure will apply to all proceedings in the Supreme Court, except for disciplinary and attorney regulatory proceedings.

One should keep a few additional facts in mind for filings in the Supreme Court both during and after the transition to e-filing. First, although it will now be possible to submit a filing electronically 24 hours a day, electronic filings submitted outside of the Clerk's office's normal business hours (8:00 a.m. to 5:00 p.m.) will not be reviewed or accepted until the next business day.⁴ Because there may be a substantial number of such filings, it may take a while the following morning for the Clerk's office to review and accept an after-hours filing.

⁴ A document submitted to the e-filing system prior to 11:59 p.m. will be considered filed on the date of filing, even though it is not accepted until the following business day.

Second, if you have a true emergency (e.g., a situation requiring action by the Supreme Court within the next 72 hours), you should identify the emergency nature of the filing on face of the document, and you are strongly encouraged to call the Clerk's office prior to submitting the document electronically to advise the Court of its emergency nature. You should also build into your timeframe in such situations the Supreme Court's usual practice of ordering the other parties to file a response to your petition or motion before considering the merits of your request.

Finally, you should be aware that there are still specific rules for "signing" an electronic filing with which you must comply. The rules provide that there are two ways that an electronically filed document can be signed. Wis. Stat. § (Rule) 809.801(12). One way is to physically sign a hard copy of the document prior to scanning the document and then uploading the scan into the e-filing system. The other way is to electronically sign the document by inserting the words "Electronically signed by" followed by the attorney's name into the place in the document where the attorney's signature would usually appear. The rule does not permit inserting a stock image of the attorney's generic signature into an electronic document and then uploading that document into the e-filing system or typing "/s/" followed by the attorney's name in a document that is submitted in the e-filing system.

If after reading the Supreme Court's order and revised interim rule, you have a question about this transition, please contact the Clerk's office at (608) 266-1880.