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## Supreme Court Adopts Transition to Mandatory E-Filing

Starting July 1, 2023, e-filing will be mandatory for attorneys in nearly all types of matters filed in the Wisconsin Supreme Court.

For attorneys, the days of paper filings in Wisconsin courts are quickly drawing to a close. On Feb. 21, 2023, the Wisconsin Supreme Court issued an order and a revised interim rule that created a phased transition to mandatory e-filing for attorneys in the supreme court.<sup>1</sup> The first phase, which began on April 1, 2023, and will continue through the end of June, is a large, temporary expansion of the existing

appellate e-filing pilot project that allows nearly all matters filed in the supreme court 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.<sup>2</sup>

### Voluntary and Mandatory e-Filing Timelines and Procedures

In the voluntary phase, any party in a case that is or will be pending in the supreme court 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.<sup>3</sup> The other attorneys or parties should be copied on the email to the clerk. Parties can request participation in the pilot before or after filing a petition for review, a petition for bypass, an original action petition, or a writ petition.<sup>4</sup> The clerk will grant those requests expeditiously unless there is a reason that participation in the pilot is unwarranted, and the clerk will notify counsel (and self-represented parties, if applicable) of inclusion in the pilot via email. 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,



such as the 30-day non-extendable deadline for physically delivering hard copies of a petition for review.<sup>5</sup>

Starting July 1, 2023 (or once the clerk has approved participation in the pilot, if that occurs earlier), all parties represented by counsel must file documents only electronically and comply with the current rules of appellate procedure (as amended in 2021). 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 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.<sup>6</sup> This means that while a petition for review must still be filed within 30 days after the date of the court of appeals' final decision, the application of the current rules to electronic filers will supersede the decision in *St. John's Home* regarding the physical delivery of a petition for review.<sup>7</sup>

The supreme court's revised interim rule and pilot program will terminate at 11:59 p.m. on June 30, 2023, and mandatory e-filing will commence on July 1, 2023. Consequently, as of July 1, 2023, 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 self-represented 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.

### Tips Regarding Timing, Emergencies, and Signing

Attorneys should keep a few additional facts in mind for electronic 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 any time of day or night, electronic filings submitted outside the clerk's office's normal business hours (8 a.m. to 5 p.m.) will not be reviewed or accepted until the next business day.<sup>8</sup> Because there might be a substantial number of such filings, it may take a while for the clerk's office to review and accept after-hours filings.

Second, in a true emergency (e.g., a situation requiring action by the supreme court within 72 hours), the attorney should identify the emergency nature of the filing on the face of the document and should call the clerk's office before submitting the document electronically to advise the court about the emergency. The attorney should also keep in mind in such situations the supreme court's usual practice of ordering the other parties to file a response to a petition or motion before the court considers the merits of the request.

Finally, there are still specific rules for "signing" an electronic filing with which parties and attorneys must comply. The applicable rule provides two ways that an electronically filed document may be signed.<sup>9</sup> One way is to physically sign a hard copy of the document before 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.

### Conclusion

If you have a question about the transition to e-filing in the supreme court, please contact the clerk's office at (608) 266-1880. **WL**

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#### ENDNOTES

<sup>1</sup>See SCO 19-02C and SCO 20-07C and the attached Second Amended Revised Interim Rule, both of which, along with a supreme court e-filing transition FAQ, are available on the appellate court e-filing page of the supreme court's website, at <https://www.wicourts.gov/ecourts/efileappellate/index.jsp>.

<sup>2</sup>Disciplinary and attorney regulatory matters, which have unique characteristics, have not been part of the e-filing pilot to date and will be transitioned to e-filing later. Filings in those matters will continue to be made via delivery of paper documents to the clerk's office.

<sup>3</sup>The clerk's email address is [clerk@wicourts.gov](mailto:clerk@wicourts.gov).

<sup>4</sup>Attorneys requesting participation before an initial filing are encouraged to do so well in advance of the filing deadline to ensure the request can be processed before the deadline. An attorney's delay in requesting participation will not be an excuse for the late filing of a petition for review.

<sup>5</sup>*St. John's Home of Milwaukee v. Continental Cas. Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989); *First Wis. Nat'l Bank of Madison v. Nicholaou*, 87 Wis. 2d 360, 274 N.W.2d 704 (1979). The requirement that a paper petition for review must be physically received by the clerk's office by 5 p.m. on the 30th day will continue both during the voluntary phase and after July 1, 2023, for self-represented parties who do not register to become electronic filing users.

<sup>6</sup>See Wis. Stat. §§ 809.62 and 809.801(4) and the 2021 comments to both provisions.

<sup>7</sup>See *supra* note 5.

<sup>8</sup>A document whose submission to the e-filing system is completed before 11:59 p.m. will be considered filed on the date of filing, even though it is not accepted until the following business day. Wis. Stat. § 809.801(4)(am).

<sup>9</sup>Wis. Stat. § 809.801(12). **WL**