

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 19-02C and 20-07C

**In re Interim Court Rule Governing
Electronic Filing in the Supreme Court.**

FILED

FEB 21, 2023

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

This matter comes before the Wisconsin Supreme Court upon the court's own motion as part of the phased transition to mandatory electronic filing in Wisconsin's appellate courts. This order expands the eFiling pilot project for the Wisconsin Supreme Court and sets forth a timeline for a phased transition to voluntary and then mandatory eFiling for most cases and proceedings in the supreme court.

On April 15, 2019, this court authorized a pilot project and adopted an interim rule to facilitate the development and testing of procedures to permit electronic filing of documents in the court of appeals and supreme court. S. Ct. Order 19-02, 2019 WI 38 (issued Apr. 15, 2019, eff. Apr. 15, 2019). On April 23, 2021, this court granted rule petition 20-07, expanding the electronic filing system to the appellate courts, and amending the rules of appellate procedure. S. Ct. Order 20-07, 2021 WI 37 (issued Apr. 23, 2021, eff. July 1, 2021). As set forth in that order, implementation of mandatory eFiling in the

appellate courts is occurring in phases.¹ The court of appeals' participation in the pilot project ceased on June 30, 2021, and electronic filing became mandatory for attorneys in matters before the court of appeals, effective July 1, 2021. Id.

The Rules of Appellate Procedure, Wis. Stat. ch. 809, were significantly revised, effective July 1, 2021, and many of the requirements associated with filing multiple copies of paper documents were eliminated. It was therefore necessary to establish interim rules applicable to paper documents filed in the supreme court from July 1, 2021, until mandatory electronic filing commences in the supreme court. Accordingly, this court adopted a revised interim rule by order dated June 15, 2021. S. Ct. Order 19-02A and 20-07A, 2021 WI 62 (issued Jun. 15, 2021, eff. July 1, 2021), under which the supreme court continued participation in the eFiling pilot project. On July 7, 2022, the court amended the revised interim rule with respect to the filing of copies of documents and to signature requirements on documents filed in the supreme court. See S. Ct. Order 19-02B and 20-07B, 2022 WI 62 (issued July 7, 2022).

This court has now determined that a final phased transition to mandatory eFiling in this court should occur. The first step of this transition will be a temporary expansion of the pilot project, beginning on April 1, 2023, that will permit voluntary eFiling in eligible matters, with the consent of all parties and upon receiving approval from the Clerk of the Supreme Court ("Clerk"). The second step of the

¹See S. Ct. Order 20-07, 2021 WI 37, Section 238, stating "At the direction of the supreme court, mandatory use of the electronic filing system shall be phased in according to a schedule set by the director until the system has been fully implemented."

transition, effective July 1, 2023, will terminate the interim rule governing filings in the supreme court (as amended by this order), make eFiling mandatory for attorneys in all cases and proceedings in the supreme court, other than those identified in footnote 2 below ("judicial/attorney proceedings"), and will make the current Rules of Appellate Procedure (including those governing eFiling), Wis. Stat. ch. 809 (2021-22), applicable to all cases and proceedings, other than judicial/attorney proceedings.² We now adopt the Second Amended Revised Interim Rule, which is attached to this order as Exhibit A.

As set forth in the attached Second Amended Revised Interim Rule, with the consent of all parties to a matter, any action or proceeding filed in the supreme court on or after April 1, 2023, other than judicial/attorney proceedings, may be included in the eFiling pilot project. Any party to an eligible proceeding may request that it be made part of the eFiling pilot project by sending an email to the Clerk

² The court will adopt a new interim rule, effective July 1, 2023, that will govern filings in, and the transition to eFiling in, a limited number of categories of proceedings, some of which are not otherwise subject to the provisions of Wis. Stat. ch. 809. The categories of proceedings that will be governed by the new interim rule will be: judicial disciplinary proceedings initiated under Wis. Stat. § 757.85; attorney regulatory proceedings initiated under SCR ch. 22 and SCR ch. 40; petitions for readmission to the practice of law; petitions for reactivation of an attorney's license to practice law; and petitions for reinstatement following an administrative suspension for failure to pay bar dues and assessments, for failure to comply with mandatory reporting of continuing legal education/ethics and professional responsibility credits, for failure to file a trust account certificate, and for failure to enroll in the State Bar of Wisconsin. Because of the unique character of these categories of proceedings and the need for the development of eFiling systems that will accommodate them, these categories of proceedings will not transition to mandatory eFiling as of July 1, 2023.

(clerk@wicourts.gov), identifying the proceeding (whether existing or anticipated) for which the party is requesting inclusion, and representing that the party has obtained consent from all other parties in the proceeding for the proceeding to be made part of the eFiling pilot project. Unless there is a reason that makes participation in the eFiling pilot project unwarranted, as determined by the Clerk in consultation with the supreme court commissioners, the Clerk will approve participation. 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). Parties in non-pilot proceedings, which include all cases for which approval to participate in the eFiling pilot project has not been sought or given, must continue to comply with the provisions in the former Rules of Appellate Procedure, Wis. Stat. ch. 809 (2019-2020), in effect immediately prior to July 1, 2021, except as set forth in the second amended revised interim rule.

The supreme court interim rule governing the eFiling pilot project, the current version of which is attached as Exhibit A, will terminate at 11:59 p.m. on June 30, 2023. Thus, beginning July 1, 2023, eFiling will become mandatory for all attorneys in supreme court proceedings who are subject to Wis. Stat. § 809.801(3)(a) (2021-2022), other than attorneys appearing in judicial/attorney proceedings. The supreme court will continue to consult with the Clerk and the Consolidated Court Automation Programs (CCAP) to investigate the feasibility of, and if

appropriate, to develop computer systems and procedures for transitioning to eFiling for judicial/attorney proceedings.

A copy of the Second Amended Revised Interim Rule is attached to this order as Appendix A.

Therefore,

IT IS ORDERED that the Clerk of the Supreme Court, in collaboration with the Consolidated Court Automation Programs and the supreme court, shall expand the existing eFiling pilot project to allow for voluntary eFiling in the Wisconsin Supreme Court as set forth in this order; and

IT IS FURTHER ORDERED that the interim rule adopted April 15, 2019, and as amended by orders dated June 15, 2021 and July 7, 2022, is further amended as set forth in Appendix A, attached hereto as the "Second Amended Revised Interim Rule", and is adopted, effective April 1, 2023; and

IT IS FURTHER ORDERED that the court's Second Amended Revised Interim Rule governing the eFiling pilot project in the supreme court will expire at 11:59 p.m. on June 30, 2023; and

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 21st day of February, 2023.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

Appendix A
Wisconsin Supreme Court Electronic Filing Pilot Project:
Second Amended Revised Interim Rule Beginning April 1, 2023
(amended February 21, 2023)

1. Amendment. This second amended revised interim rule adopted February 21, 2023, supersedes the amended revised interim rule adopted by order dated July 7, 2022.
2. Statement of purpose; authority. The supreme court is in the process of implementing a phased transition to mandatory electronic filing in the appellate courts of Wisconsin. The court has adopted rules to implement electronic filing and service and to eliminate the filing of paper documents by attorneys. See S. Ct. Order 20-07, 2021 WI 37 (issued Apr. 23, 2021, effective July 1, 2021). On April 15, 2019, this court authorized an eFiling pilot project and adopted an interim rule to facilitate the development and testing of procedures to permit electronic filing of documents in the court of appeals and supreme court. S. Ct. Order 19-02, 2019 WI 38 (issued Apr. 15, 2019, eff. Apr. 15, 2019). On July 1, 2021, mandatory electronic filing began in the court of appeals, and this court revised the interim rule and continued the eFiling pilot project in the supreme court. S. Ct. Order 19-02A and 20-07A, 2021 WI 62 (issued Jun. 15, 2021, eff. July 1, 2021). The interim rule was further amended on July 7, 2022. See S. Ct. Order 19-02B and 20-07B, 2022 WI 62 (issued July 7, 2022).

This second amended revised interim rule:

- A. Authorizes the Clerk of the Supreme Court (the "Clerk"), in collaboration with the Consolidated Court Automation Programs (CCAP) and the Wisconsin Supreme Court, to expand the eFiling pilot project to allow for voluntary participation in eligible proceedings before the supreme court.
- B. Provides the rules applicable to requesting participation in the eFiling pilot project and for the filing and service of electronic and paper documents in the supreme court from April 1, 2023, through June 30, 2023, for both eFiling pilot proceedings and non-pilot proceedings.
- C. Provides that the second amended revised interim rule governing the eFiling pilot project in the supreme court will terminate at 11:59 p.m. on June 30, 2023, meaning that as of July 1, 2023, electronic filing in the supreme court will become mandatory for attorneys who are subject to Wis. Stat. § 809.801(3)(a) (2021-22), and the provisions of Wis. Stat. ch. 809 (2021-2022) will become applicable to all filings in the supreme court, except as otherwise set forth in this order.

This second amended revised interim rule is adopted pursuant to the court's superintending and administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

3. Effective dates; notice. Cases made part of the eFiling pilot project prior to April 1, 2023, will continue to be part of the pilot project. Voluntary eFiling in the supreme court within the pilot project will begin April 1, 2023, for eligible proceedings. This second amended revised interim rule will terminate at 11:59 p.m. on June 30, 2023. Accordingly, mandatory eFiling for attorneys will begin on July 1, 2023, for filings in the supreme court in both existing and new matters governed by Wis. Stat. ch. 809 (2021-22), except for "judicial/attorney proceedings" identified in footnote 1.¹
4. Official record. The Clerk shall continue to keep the official court record in electronic format, in both the court of appeals and the supreme court, for all proceedings listed in Wis. Stat. § 809.801 (5).
5. Voluntary participation in the pilot project; rules.
 - A. Eligible proceedings. With the consent of all parties, any action or proceeding filed in the supreme court on or after April 1, 2023, other than judicial/attorney proceedings, may be included in the eFiling pilot project. Cases that are already pending before the supreme court as of April 1, 2023, but that are not already part of the eFiling pilot project, are not eligible for voluntary participation in the eFiling pilot project.
 - B. Requesting participation. Any party to an eligible proceeding may request that it be made part of the eFiling pilot project, whether prior to the filing of the first document in the supreme court or when the proceeding is pending before the supreme court, by sending an email to the Clerk at clerk@wicourts.gov, identifying

¹ Pursuant to a new interim rule to be adopted by the court, the following categories of proceedings ("judicial/attorney proceedings") will not be governed by the eFiling provisions of Wis. Stat. ch. 809 (2021-22): judicial disciplinary proceedings initiated under Wis. Stat. § 757.85; attorney regulatory proceedings initiated under SCR ch. 22 and SCR ch. 40; petitions for readmission to the practice of law; petitions for reactivation of an attorney's license to practice law; and petitions for reinstatement following an administrative suspension for failure to pay bar dues and assessments, for failure to comply with mandatory reporting of continuing legal education/ethics and professional responsibility credits, for failure to file a trust account certificate, and for failure to enroll in the State Bar of Wisconsin. Filing and service of documents in these categories of proceedings shall continue to be accomplished via traditional means, as set forth in paragraph 6 of this second amended revised interim rule and as set forth in the new interim rule that will become effective on July 1, 2023.

the proceeding for which the party is requesting inclusion, and representing that the party has obtained consent from all other parties in the proceeding for the proceeding to be made part of the eFiling pilot project. Parties will be notified by the Clerk when the case is accepted into the eFiling pilot project.² Until notice of acceptance is issued by the Clerk, the proceeding shall not be considered to be a pilot proceeding and parties shall be subject to the provisions of paragraph 6.

C. Rules for eFiling pilot proceedings. 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) (hereinafter the "current" rules). Those rules will, inter alia, govern the time that a document is considered filed and the deadlines for the filing of documents.

6. Non-pilot proceedings; interim rules. Parties to judicial/attorney proceedings and any other proceeding not included in the eFiling pilot project ("non-pilot proceedings"), 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 this section.

A. Applicability of former rules. The following provisions of the former Rules of Appellate Procedure, Wis. Stat. ch. 809 (2019-2020),³ in effect immediately prior to July 1, 2021 (hereinafter the "former" rules), shall continue to apply to documents filed in the supreme court in non-pilot proceedings:

- 1) Parties in non-pilot proceedings shall continue to file paper documents with the Clerk and to serve paper copies by traditional methods on other parties. See former §§ 809.80 (1), (2), (3), and (4).
- 2) Unless the Supreme Court orders otherwise in a particular matter, papers must be filed (i.e., physically received) in the Clerk's office by the close of business at 5:00 pm in order to be considered filed

² Parties requesting voluntary participation in the eFiling pilot project are encouraged to do so 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, as determined by the Clerk in consultation with the supreme court commissioners, the Clerk will approve participation.

³ Available at https://www.wicourts.gov/supreme/docs/wis_stat_ch809.pdf.

on that date. Filings by facsimile ("fax") must complete transmission by 5:00 pm. See former § 809.80 (3), (4).⁴

- 3) All paper documents filed with the Clerk's office must contain a handwritten signature. Parties need not file the original document so long as the copy filed with the Clerk's office contains a handwritten signature (not an electronic or stamped signature or a digital image). It is not permissible, however, (1) to have someone else sign the original document on behalf of the attorney, (2) to affix the attorney's signature using a signature stamp or a digital image of the attorney's signature, or (3) merely to indicate on the paper original that the document was electronically signed. If a filing does not contain a handwritten signature as required by this Revised Interim Rule, the clerk's office will still accept the filing, but will notify the filing party that a handwritten signature must be affixed to the filing within 14 days. If the handwritten signature is not affixed or received within 14 days, the filing will be subject to being stricken by the court.
- 4) Briefs, appendices, petitions for review, and responses to petitions for review shall continue to be printed and bound, with color covers if applicable. See former §§ 809.19 (6) (b) and (c), 809.19 (8) (b) 4., 809.19 (9), 809.62 (4) (a).
- 5) The number of copies to be filed and served shall be as provided by former rules. See former §§ 809.19 (8)(a), 809.62 (4), 809.81 (2).
- 6) An attorney filing a brief, appendix, petition for review, or response to a petition for review must file an electronic copy of the document with the court in addition to the paper copies. An attorney filing an appendix may file an electronic copy in addition to the paper copies. The attorney must certify that the electronic copy is identical to the

⁴ 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. In addition, a petition for review submitted by a party in a non-pilot proceeding is not considered filed until a paper copy is physically received in the Clerk's office during normal business hours. St. John's Home of Milwaukee v. Continental Cas. Co., 150 Wis. 2d 37, 43, 441 N.W.2d 210 (1989) ("Whatever method of delivery is used, a petition for review must be physically received in the clerk's office within 30 days of the filing of the court of appeals' decision that is to be reviewed."). This rule, and the 30-day filing deadline, are strictly enforced. See Wis. Stat. § 808.10 (1). In addition, there are restrictions on what other types of documents may be filed in the Supreme Court by facsimile transmission. An individual wishing to file a document by facsimile transmission should first contact the Clerk's office to clarify that the particular filing will be accepted via facsimile transmission.

paper copy. See former §§ 809.19 (12) (f) and (13) (f) and Comment, 809.32 (1) (fm), 809.62 (4).

- 7) Certifications of length, confidentiality, and client counseling shall continue to use the wording provided in former rules. See former §§ 809.19 (2) (b), (8) (d), 809.32 (1) (c).

B. Applicability of current rules. The following provisions of the current rules apply to documents filed in the supreme court by parties to non-pilot proceedings. Parties to non-pilot proceedings should consult S. Ct. Order 20-07 for specifics applicable to these provisions.⁵

- 1) The formatting of documents, including form, pagination, and length, shall be as provided in the current rules. See current § 809.19 (8) (b), (bm), and (c); 809.81.
 - 2) The appendix shall be formatted in accordance with the current rules. See current § 809.19 (2).
 - 3) The confidentiality provisions of the current rules apply with respect to protection of sealed and redacted information in the record and identification of a petition seeking a protective order. See current §§ 809.801 (14), 809.81 (9).
 - 4) The Clerk will use the circuit court document number in numbering the record on appeal. See current §§ 809.15 (2), 809.19 (2).
 - 5) The Clerk will calculate the time for responsive pleadings using the provisions of the current rules. See current §§ 809.19 (3), (4), and (6). The date the paper copy of a document is physically received in the clerk's office will be used as the date of filing for the purpose of this calculation consistent with section 6.A (2) above.
 - 6) The electronic copy of briefs and appendices submitted under former §§ 809.19 (12) and (13) must meet the court's technical standards for electronic documents. See current § 809.801 (8).
7. Termination of second amended revised interim rule; mandatory electronic filing. This second amended revised interim rule governing the eFiling pilot project in the supreme court will terminate at 11:59 p.m. on June 30, 2023. The effect of the termination of the second amended revised interim rule is that for all proceedings then pending or thereafter commenced in the supreme court, all attorneys who are

⁵ See S. Ct. Order 20-07, 2021 WI 37 (issued Apr. 23, 2021, eff. July 1, 2001), available at <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=360509>.

subject to Wis. Stat. § 809.801(3)(a) (2021-2022), except those in judicial/attorney 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).

8. Filings in judicial/attorney proceedings after July 1, 2023. Filings in judicial/attorney proceedings shall continue via traditional means of filing and service, under the provisions in paragraph 6 through June 30, 2023, and thereafter under a similar interim rule that will be adopted by the court at a future date.
9. Application; revision. Application of this and other rules should be consistent with the understanding that the interim rule was written for a pilot project. This second amended revised interim rule is temporary and is subject to change by CCAP and the Clerk, upon notice to and approval by the court, as the needs of the pilot project dictate.

