

Appellate Electronic Filing for SPD Case Types

1. Effective date:

The appellate efilng ruling, and associated rule changes, go into effect for the **court of appeals ONLY** on July 1, 2021. **The effective date for SCOW is not yet determined.** This means for the immediate future you will still need to file paper in SCOW (unless your case is chosen as a pilot efilng case by SCOW).

2. General concepts:

Section 801.18 is the general electronic filing rule. Updates were made to the original efilng rule in the order accepting the appellate efilng rule petition (20-07; 2021 WI 37). Section 809.801 is the appellate electronic filing rule and corresponding changes have been made throughout the appellate rules. The procedures in 801.18 and 809.801 are intended to be consistent with each other and will be interpreted consistently “to the extent practicable.” *See* s. 801.18(2)(k); 809.801(2)(k).

3. Appellate efilng definitions (809.01):

There are a number of efilng definitions in both 801.18(1) and 809.01. Two of note for appellate purposes are:

Docketing means receiving a document and entering its receipt into the court record. A new matter is “docketed” when the clerk accepts an initiating document and creates a new case. Note: This simply adds a definition for what the court of appeals clerk already did in the paper world. 809.01(1); *see also* 809.11(3)(a), (b). *See* Comment in Section 99 of order.

Word means a group consisting of one or more letters, numbers or symbols with a space or punctuation mark preceding and succeeding the group. **Note:** the definition was amended to include “numbers or symbols,” not just “alphabetical characters”. For anyone that did not count numerical record cites to stretch the word count, that option has been eliminated.

4. Appellate electronic filing (809.801):

Registration. Licensed Wisconsin attorneys shall register for access to the efilng system. 809.801(3)(a)1. Users shall register by executing a user agreement governing the system’s terms of use. 809.801(3)(d); 801.18(3)(d).

Opting in and opting out. After registering, the user must opt in to all cases for which the attorney expects to file and receive documents electronically.

809.801(3)(f); 801.18(3)(f). The definitions are in 809.01(23), (24). Upon completion of representation the attorney should opt out which is defined as “to indicate withdrawal from the case as an attorney.” 801.1(1)(km), (kr).

Nonparty filers. The electronic filing system may provide a method for filing documents by individuals who are not parties to the case. It may also provide a method for professionals and agencies associated with the case to receive information and file reports. 809.801(3)(j); 801.18(3)(j).

How late can I file a document? A document is considered filed on a particular day if the submission is completed by **11:59 p.m. central time**, as recorded by the efilng system, so long as it is subsequently accepted by the clerk of court upon review. Documents filed after that time are considered filed the next day the clerk’s office is open. 809.801(4)(am); 801.18(4)(am). The expanded time to file shall not affect the calculation of time under other statutes, rules, and court orders. *Id.* “The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.” 809.801(4)(a); 801.18(4)(a).

When is a document considered filed? If the clerk accepts the document for filing, it shall be considered filed with the court at **the date and time of the original submission**, as recorded by the electronic filing system. 809.801(4)(c); 801.18(4)(c).

What constitutes service and proof of service? Just like circuit court efilng, the electronic filing system issues a notice of activity that serves as proof of filing and service unless personal service or traditional service is required. 809.801(4)(c); 801.18(4)(c). “Notice of activity” means a notice sent by the electronic filing system to alert the parties that there has been a new user, filing, or activity on the case. 809.01(21); 801.18(1)(kg). For documents that do not require personal or traditional service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document. 809.801(6)(a); 801.18(6)(a).

What if personal service is required? It shall be served by traditional methods unless the responding party has consented in writing to accept electronic service or service by some other method. 809.801(6)(b); 801.18(6)(b).

Rejection of a document. If the clerk rejects the document the user will receive notice of the rejection and may be required to resubmit the document. 809.801(4)(cm); 809.18(4)(cm). “The clerk of circuit court **may not** refuse to accept a notice of appeal for failure to pay the appellate court filing fee ...” 801.18(4)(f).

Undeliverable notices. Electronic notifications that cannot be successfully delivered will be returned to the clerk. If the clerk cannot contact the user to update the information, the user shall be treated as a paper party. 809.801(6)(e); 801.18(6)(e).

Current cases when the rule takes effect. Mandatory users (attorneys) shall opt in on each case for which they continue to appear. 809.801(6)(f)1. The clerk will send a notice by traditional methods to each party who has not opted in on open cases stating the case has been converted. Mandatory users shall promptly opt in or inform the court they are no longer appearing on behalf of the party. 809.801(6)(f)2.

Closed cases when the rule takes effect. Do nothing unless there is a subsequent filing. 809.801(6)(f)3.

What if the document can't be filed due to size limitations? If a document cannot be electronically filed due to the size limitations of the system, the user shall contact the clerk of court for assistance. 809.801(8)(d); 801.18(8)(d).

PDFs. Appendices, exhibits, and affidavits shall be filed in portable document format. All other documents shall be filed in text-searchable portable document format. 809.801(8)(e).

Bookmarks, hyperlinks. Both can be used but external hyperlinks shall be used only in accordance with security procedures set by the court. 809.801(8)(f)&(g). These terms are defined at 809.01(3)&(16).

Room for file stamp. Leave 2 inch by 2 inch square in top right corner. 809.801(8)(h).

Stipulations. A stipulation will be considered signed by multiple persons if it bears the handwritten signatures of all or if it bears the printed name of each signatory and contains a representation by the filing party that the filing party has consulted with the signatories and all have agreed to sign the document. This does **not** include the required signature for parents in TPR cases. 809.801(12)(g).

5. Service on the state or county:

Attorney general vs. district attorney service. Service is on the attorney general for felonies in the court of appeals and supreme court; three judge appeals where the state must be served; and petitions for review in supreme court on misdemeanor cases. 809.802(1). For single judge appeals under s. 752.31, where the state must be served, the district attorney receives service (e.g. misdemeanors, juvenile cases). 809.802(1).

Electronic service for attorney general. The clerk will opt in the attorney general as an attorney for the state and provide the notice of docketing to the attorney general. Receipt of the notice of docketing provides access to the proceeding and constitutes service of the initiating document and other documents filed with the initiating document. 809.802(2).

Electronic service for district attorney/corporation counsel. When your opposing counsel is the same from the circuit court to the court of appeals (e.g. district attorney/corporation counsel) the notice of appeal will be served through the circuit court efilng system.

What about technical failures and deadlines? If a filing is made untimely because of a technical failure you may seek relief as follows:

1. If the failure is caused by the efilng system, the user may move for relief on the basis the attempt to timely file the document was made. The court may deem the document filed or served on the date and time the user first attempted to submit the document electronically or may grant other appropriate relief.
2. If the failure was not caused by the efilng system, “the court may grant appropriate relief upon satisfactory proof of the cause. Users are responsible for timely filing of electronic documents to the same extent as filing of paper documents.” 809.801(16)(a).

A motion for relief due to technical failure shall be made the next day the office of the clerk of court is open. 809.801(16)(b). “This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.” 809.801(16)(c).

6. Confidential and sealed documents:

Confidential documents. If the document is confidential it should be identified as confidential by the submitting party when filed. The clerk is not required to review the document to determine whether there is confidential information in them. 809.801(14)(c); 801.18(14)(c).

Motions to seal. If the user seeks court approval to seal a document the user may electronically file the document under temporary seal pending court approval of the user’s motion to seal. 809.801(14)(d); 801.18(14)(d).

Redacting. If the record includes a redacted version of any document, it shall also contain the unredacted version if submitted to the circuit court. The unredacted version shall be marked as confidential. 809.15(1)(d).

Marked confidential and sealed documents. If the record includes a sealed document, the document shall be marked as sealed. 809.15(1)(e). Identified confidential or sealed documents will have a “visible mark on the document to identify it as confidential or sealed.” 801.18(14)(e); 809.801(14)(e) -

7. Notice of appeal (NOA), statement on transcript (SOT), docketing statement, motions for 3-judge panel:

NOA is still filed through the circuit court electronic filing system. However, **the docketing statement, SOT, and motion for 3-judge panel** are now filed in the circuit court. See 809.801(5)(c).

Docketing statement. The docketing statement must be filed **in the circuit court with the notice of appeal**. 809.10(1)(d). Before appellate efilng, the docketing statement was filed in the court of appeals and sent with a copy of the NOA. As a reminder, docketing statements are **not** required for direct appeals or permissive appeals in criminal cases. They are required for other s. 809.30 appeals (ch. 48, 51, 55, or 938).

Motion for 3-judge panel under 809.41(1): A motion for a 3-judge panel shall be filed **in the circuit court with the notice of appeal**. 809.10(1)(g). If you are a respondent requesting a 3-judge panel, the motion is filed in the court of appeals within 14 days after service of the NOA. 809.41(1)(d).

SOT. The statement on transcript shall be filed **in the circuit court** within 14 days after filing the NOA. 809.11(4)(b). The clerk of circuit court has 3 days after its filing to transmit the SOT to the court of appeals. **Note:** this is a change because prior to efilng the SOT was filed in the court of appeals.

Service of NOA, docketing statement, SOT, and 809.41 motions. For electronic filing users in the circuit court case (e.g., DA, corp. counsel) filing these documents in the circuit court constitutes service on those parties. 809.10(1)(h); 809.11(4)(c). **For the attorney general**, service is made as provided in 809.802 which states where service is required for the AG, “the clerk of court of appeals shall opt in the attorney general as an attorney for the state and provide the notice of docketing to the attorney general through the appellate electronic filing system. **For the attorney general, receipt of the notice of docketing** provides access to the

proceeding and **constitutes service** of the initiating document and other documents filed with the initiating document.”

8. Signatures:

Electronic signatures. An electronic signature shall state “Electronically signed by” followed by the signatory, and shall be placed where the person’s signature would otherwise be. 801.18(1)(f); 801.18(12)(a); 809.801(12)(a).

“To be considered electronically signed, a document must be submitted by or on behalf of a user through the electronic filing system. A document requiring the signature of a user **shall bear either an electronic signature or a handwritten signature** applied to a document before it is imaged. An electronic signature shall state ‘Electronically signed by’ followed by the name of the signatory, and shall be placed where the person’s signature would otherwise appear. Either form of signature shall be treated as the user’s personal original signature for all purposes under the statutes and court rules.” 801.18(12)(a); 809.801(12)(a).

TPR client signatures: Handwritten signatures for TPR clients are still required for notices of intent, notices of appeal, and petitions for review. CITE. The handwritten signature of TPR clients on notices was specifically excluded from s. 801.18(12)(g)2 and 809.801(12)(g), allowing a single signature and a representation that the filing party consulted with the additional signatories for stipulations filed with the court.

9. Miscellaneous:

Filing in the COA. Documents filed after the NOA, docketing statement, 3-judge motions, and SOT, should be filed in the appellate court efile system. 809.10(1)(i).

Transmittal of the NOA. This section is updated to include transmitting the docketing statement and 3-judge motion with the NOA. 809.11(2).

Additional portions of the transcript. If the other party is filing a designation of additional portions to be included in the transcript that is filed in the COA, the appellant files the new SOT in the circuit court. 809.11(5)

Service of transcripts on the attorney general. “Where service of a transcript on the attorney general is required by s. 809.802(1), access to an electronic copy of the transcript through the appellate electronic filing system shall constitute service of the transcript.” 809.11(7)(a).

Service on the circuit court of motions filed in COA. The parties no longer have to serve motions filed in the court of appeals on the clerk of circuit court. Now, the clerk of the court of appeals will transmit necessary motions to the circuit court clerk. 809.14(3)(c).

10. Pre-appeal motions:

What are pre-appeal motions? These are motions filed before a NOA is filed, most commonly extension motions for the postconviction/postdisposition or NOA deadline. 809.14(14)(5); *see also* 809.801(5)(e).

Filing. The motion should be filed electronically in the court of appeals. The clerk of the court of appeals shall assign a pre-appeal case number (XX number), create a notice that it has been docketed, and transmit a copy to the circuit court clerk. 809.14(5)(a).

Service. Filing the motion in the COA is service on all filing users in the circuit court case (DA, corp. counsel). When the attorney general needs to be served the clerk of the court of appeals will “opt in” the attorney general and provide the notice of docketing as required by 809.802(2). This constitutes service on the attorney general. 809.14(5)(b). In other words, defense counsel does not need to independently provide a copy to the attorney general.

Subsequent pre-appeal motions. Subsequent pre-appeal motions arising out of the same case shall be filed and docketed in the same pre-appeal proceeding, i.e. the same XX number. So, if you are filing a second PCM/NOA extension motion in the same case you should file it using the previously designated XX number.

11. Circuit court record:

Numbering. The clerk shall use the document number assigned in the circuit court as the record number on appeal. 809.15(2). This will hopefully alleviate confusion re: the different numbering you’d see on documents in the circuit court efilings system. However, this may cause some numbering gaps in the index.

Transmittal. The rule specifies the record is electronically transmitted from the circuit court to court of appeals. 809.15(4)(a). Still, the clerk of the circuit court will transmit by traditional methods any original documents or exhibits not electronically maintained. 809.15(4)(a).

12. Briefs and Appendix:

Appendix TOC. The new rule specifies what should be in the table of contents for the appendix. The table of contents with the appendix include, for each record item included in the appendix, the title, page of the appendix on which the record item begins, and **the circuit court document number**. It shall also include the citation of any published opinion included in the appendix. 809.19(2)(a).

Appendix form. “The appendix shall be filed as a single document separate from the brief. Each document shall be imaged at a resolution sufficient to ensure legibility.” 809.19(2)(ae). **Note:** the comment in Section 123 of the order directs attorneys to contact the clerk of court for assistance if a very large appendix cannot be electronically filed as a single document.

Confidentiality in the appendix: If the record is required to be confidential, the portions included in the appendix shall be reproduced using one or more initials or other appropriate pseudonym or designation. This includes juveniles and parents of juveniles, “with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate reference to the record.” 809.19(2)(am).

Respondent’s brief. The former rule for calculating the due date of the respondent’s brief provided for the latter of the options: (1) thirty days from service + 3 days for mailing (if accomplished by mail), (2) thirty days from the date the court accepts the appellant’s brief for filing, and (3) thirty days after the record is filed in the office of the clerk. **Now**, the second option states “thirty days after the date on which the appellant’s brief is filed.” 809.19(3)(a)1.b. So now, it is the latter of filing the brief, service of the brief, and filing of the record. Practically speaking, the filing date and the service date will be the same unless the brief is filed after hours because the clerk accepts a filed document that triggers the notice of activity to the electronic parties, thereby serving them. *See* Comment 127 of the order.

Respondent’s appendix. If the respondent files a subsequent appendix it shall be filed separate from the brief and conform to the rule for appellant’s appendix in 809.19(2)(a).

Reply brief. The same events used for calculating the deadline for the response brief applies to reply briefs. 809.19(4)(a)2. And for the appellant-cross-respondent’s brief. 809.19(6)(b)1.b. And the respondent-cross-appellant’s brief. 809.19(6)(c)1.b. And appellant-cross-respondent’s brief. 809.19(6)(d)2.

Number. If there is a paper copy, you only need to serve one paper copy on that party and they only need to serve you with one copy. 809.19(8)(a).

Cover. Shall be white. 809.19(8)(b)1; 809.19(9). **Note:** the electronic version will have a colored line that corresponds to the old cover colors (e.g. blue for appellant's brief, red for respondent's brief, gray for reply brief).

Formatting. If **monospaced font** is used: 10 characters per inch, double-spaced. 809.19(8)(b)3.b. If a **proportional serif font** is used: minimum 13 point body text, 11 point for block quotes and footnotes. 809.19(8)(b)3.c. *Italics* may only be used for citations, headings, emphasis and foreign words. *Id.* **Bold** may only be used for citations, headings and emphasis. **Line spacing** must be between 1.15 and 1.5 lines or an equivalent line spacing. Additional spacing between paragraphs is permitted but not required. Block quotes and footnotes must be single-spaced. *Id.* **Margins** must be a minimum of 1.25-inches on the right and left sides and a minimum 1-inch margin on the top and bottom.

Pagination. Briefs and appendices need page numbers starting on the cover, centered on the bottom margin, using Arabic numerals ("1"). 809.19(8)(bm). This will avoid confusion with having different page numbers between the page number and page header in the efilng system.

Certifications. 809.19(8g).

a) Briefs; certification as to form and length.

1. Counsel shall submit with the brief a signed certification that the brief meets the form and length requirements of su. (8)(b), (bm), and (c) in the following form:

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is ... [pages] [words].

Signed: ...

Signature

- b) Appendices; certification regarding contents and confidentiality. 1. The following signed certification shall be submitted with the appendix:

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understand of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate reference to the record.

Signed:

Signature

2. Counsel filing a supplemental appendix shall submit it with a signed certification that the appendix complies with the confidentiality requirements under sub. (2)(am) in a form substantially similar to the confidentiality provision under subd. 1.

c) Combined certifications. Certification of a brief under par. (a) and certification of an appendix or supplemental appendix under par. (b) may be combined in a single document for signature.

13. TPRs (809.107):

Transmittal of NOA. The clerk of circuit court has 3 days after the filing of the NOA to transmit to the COA the NOA and copy of the circuit court record of the case. 809.107(5)(a).

SOT. Must be filed **in the circuit court** within 5 days after filing the NOA. 809.107(5)(d). The circuit court clerk must transmit to the court of appeals the SOT within 3 days after its filing.

No-merit report. The language re: the COA clerk having 5 days to provide counsel with a copy of the client's response to the NMR has been deleted because the attorney will receive it through the efilings system. 809.107(5m). The attorney still has 10 days to file a supplemental NMR within 10 days "after receiving the response to the no-merit report."

14. No-merit reports:

Formatting. same as briefs as required by 809.19(8)(b)&(bm). 809.32(1)(a).

Length. Length limits have been added for no-merit reports. 13,000 words if a proportional serif font, 50 pages if monospaced font or handwriting. 809.32(1)(a). This means the no-merit report must also include a certification re: length. For a supplemental no-merit petition for review (sections filed by the client), the length limits are: 8,000 words if proportional serif font and 35 pages if monospaced font or handwriting. 809.32(4)(a).

Certification. The attorney's certification required for no-merit reports is amended to change references from "he/she" to "client" and to add "I further certify that this no-merit report conforms to the length limit set out in s. 809.32 (1)(a). The length of this report is ... [pages] [words]." Both the certification of client counsel and client notification (the old certification) and the certification as to length (the new certification) can be combined in a single document with one signature. 809.32(1)(c).

Response. Length limits were also added for client responses to NMRs. 50 pages if monospaced font or handwritten and 13,000 words if a proportional serif font. It also specifies if the response is handwritten it should not be in cursive and legibly written. 809.32(1)(e). The attorney will receive a copy of the response through the efilings system and still has 30 days to respond from receipt through the efilings system. 809.32(1)(e), (f).

No-merit NOA deadline. Before the appellate efilng rule, no-merit NOAs and the no-merit report had the same deadline. The no-merit notice of appeal has the same deadline which is the latter of: (1) 180 days after the service of the transcript or court record or (2) 60 days after the order determining a postconviction or postdisposition motion. 809.32(2). See below where the no-merit report deadline changed. Because of the change to the no-merit report deadline, the no-merit notice of appeal now must state when the no-merit notice of appeal is due **not** the date the no-merit report is due. 809.32(2)(a).

No-merit report deadline. The no-merit report **is now due 14 days after the record is filed** in the court of appeals. 809.32(2)(d). Paper parties (i.e. the client) is still served by traditional methods.

SOT. As with merits appeals, the statement on transcript for a no-merit appeal is filed in the circuit court. 809.32(2)(a).

Transmittal of NM NOA. The clerk of circuit court shall transmit the no-merit notice of appeal and statement on transcript within 3 days of filing. The court of appeals clerk then docket the no-merit appeal upon receipt. The clerk shall assign a case number, create a notice that the case has been docketed, and transmit the notice to the clerk of circuit court. 809.32(2)(b).

Service. Same as merits appeals. 809.32(2)(c).

15. **Petitions for leave to appeal:**

Filing. Petitions for permissive appeals will be efiled in the court of appeals. The clerk will docket the case, assign, a case number, create a notice that the petition has been docketed, and transmit the notice and petition to the clerk of circuit court. Receipt of the notice of docketing and petition through the circuit court efilng system will constitutes service of the petition. When service on the AG is required, they will be served pursuant to 809.802(2). Paper parties are served by traditional methods. 809.50(1m). See also 809.801(5)(d).

Docketing statement. If the court grants leave to appeal, and the case type requires a docketing statement, the docketing statement shall be filed **in the court of appeals** within 11 days after the order granting the petition for leave to appeal. 809.50(3).

Word count certification. There needs to be certification re: compliance with the word or page count. 809.50(4).

16. Supervisory writ, original jx (809.51), original actions (809.70), SC supervisory writ (809.71):

Service by traditional methods. Unlike direct appeals, the petitions for supervisory writ (COA or SCOW), original jurisdiction, and original actions filed in the supreme court shall be served **by traditional methods** as provided in 809.80(2). 809.51(1); 809.70(1); 809.71(1); see also 809.801(5)(a). The clerk docket the petition, assigns a case number, transmits the notice of docketing to the clerk of circuit court – if applicable – and the notice of docketing is sent to the parties by traditional methods. 809.51(1m); 809.70(1m). This is because the case does not necessarily arise from a pending case through which the parties can be served electronically.

17. Petitions for Review:

Service. The notice of activity constitutes service. 809.62(1m)(a)2. If the AG needs to be served, it shall be made as provided in 809.802(2).

Time of filing. According to the comment in Section 205, since filing users will electronically file petitions for review and the efilng rule – s. 809.801(4)(ar) – extends filing until 11:59 p.m. for documents filed through the efilng system, the efilng rule supersedes *St. John’s Home v. Continental Casualty Co.*, 150 Wis. 2d 37, 441 N.W.2d 219 (1989), per curiam which held that a petition for review must be physically received by 5:00 p.m. on the due date. This means, attorneys can file petitions for review up until 11:59 p.m. on its due date **but** be mindful of s. 801.18(16) which addresses technical failures (“If the failure is not caused by the court electronic filing system, **the court may grant appropriate relief from non-jurisdictional deadlines** upon satisfactory proof of the cause. Users are responsible for timely filing of electronic documents to the same extent as filing of paper documents.”)

Form, length and certification. Comply with 809.19(8)(b), (8)(bm), and (8g).

18. Service by traditional methods (paper filing - 809.80):

Service by traditional methods. It is addressed in 809.80(2). Service by traditional methods will be used for paper parties (809.80(2)(e); 809.801(6)(c)) and for initiating proceedings pursuant to 809.51, 809.70, and 809.71 (809.80(2)(2)(bm)).

Paper party serving other parties. When a paper party initiates a proceeding by traditional methods the clerk will enter the filed documents into the electronic filing system and generate a notice of docketing. Service will then occur through the efilng system. 809.80(2)(c); 809.801(6)(d). For subsequent documents

filed by paper parties, the clerk will image the document and enter it in the efilng system where service occur for electronic filing users. 809.80(2)(d).

Time of filing. Documents completing transmission after 11:59 p.m. central time are considered filed the next day the clerk's office is open. 809.80(3)(a). Documents filed by fax are considered filed that day. 809.80(3)(a); see also comment in Section 231.