

The Supreme Court's New Electronic Filing System

On November 13, 2017, the Supreme Court entered the world of electronic filing with the inauguration of its electronic filing system (EFS), as provided in the newly adopted Supreme Court Rule 29.7. Now, any party or amicus curiae represented by an attorney in the Supreme Court *must* submit filings through the EFS during both the certiorari and merits stages of an appeal. Further, the list of submissions (e.g., certiorari petitions; briefs) included in the Court's online docket for each case will be hyperlinked, and thus, just a click away to any attorney or member of the public.

This article will summarize the basic information that Supreme Court practitioners need to know about the EFS, including: (1) general filing requirements; (2) how to register for EFS filing; (3) filing a petition for writ of certiorari; (4) entering a notice of appearance; (5) submitting other filings in an existing case; and (6) the posting of electronic documents on the Court's website. This summary is based on the Guidelines, Frequently Asked Questions, and other information available on the Supreme Court's website: <https://www.supremecourt.gov/> (click on "Filings & Rules" / "Electronic Filing").

General Requirements for Filings Through the EFS.

- Any party or amicus represented by an attorney in the Supreme Court must submit filings through the EFS.

- Pro se parties currently may *not* file through the EFS.
- For now, the paper version of the document must be filed as in the past, and remains the official filing.
- Therefore, the inability to submit a filing through the EFS because of technical problems does not affect the timeliness of the filing.
- Service of the filing on other parties is effected solely through the paper under Rule 29.
- Documents submitted through the EFS should be submitted contemporaneously with their filing under Rule 29.2.
- The expectation is that the EFS will become the official means of filing after the system has successfully operated for a period of time.
- Submitted documents should be in the PDF/A format, created from a word-processing document, and be text searchable.
- Submitted documents may contain hyperlinks to another part of the same document, or to an external source cited in the document.
- The maximum size of any single computer file that can be uploaded to the EFS is 100MB. A file that exceeds 100MB must be separated into multiple parts so that each part is under this limit.

How to Register for EFS filing.

- Registration is open to members of the Supreme Court Bar and to non-members who are appointed for a particular case in the lower courts under the federal Criminal Justice Act.
- To register, go to <https://file.supremecourt.gov>.
 - From the Home page, click on “Register” at the top navigation menu, or the “Register Here” link.
 - Enter the information requested on the form, which includes setting up a username and password.
 - Submit your account registration for approval. The Clerk’s Office will notify you by email when it has reviewed your account registration request.
- Once the Clerk’s Office has approved your account registration request, the last step is to “Validate Your Account” by clicking on the link provided in the email notification.

How to File a Petition for Certiorari.

- After logging on, click on the “New Filing” box, click on the box to indicate that it is not in an existing case, then follow the prompts to enter information about the case in the lower courts, upload the documents, and submit the filing.

- Documents that are required to be submitted when filing a paid cert petition are (1) the petition; (2) the appendix; (3) a certificate of word count; and (4) proof of service. Each of these documents must be created and uploaded as a separate PDF/A file.
- Any registered user who represents a party can submit a cert petition through the EFS—it does not need to be the counsel of record.
- The filing of a case-initiating document like a cert petition serves as the entry of an appearance in the case. Any other attorney seeking to file a subsequent document in the case must first file a notice of appearance.

Entering a Notice of Appearance.

- Before an attorney can submit any document through the EFS in an existing case, the attorney must first enter an appearance.
- To enter an appearance, click on the “New Filing” box, choose “Notice of Appearance” from the dropdown menu, and follow the prompts.
- Thereafter, to submit a document, click on “New Filing” again, choose the type of filing from the dropdown menu, and follow the prompts.
- Only the counsel of record is required to enter an appearance in a case.
- However, electronic notification of activity in the case will be provided only to attorneys who have entered an appearance.

Other Filings in an Existing Case

- To submit a filing in an existing case, click on the “New Filing” box, indicate that the filing is in an existing case with a docket number, enter the docket number, and follow the prompts.
- **Brief in opposition or brief in support at the cert stage.** Required documents are: (1) the main document; (2) a certificate of word count; and (3) a proof of service.
- **Amicus brief.** Required documents are: (1) the main document; (2) a certificate of word count; and (3) a certificate of service. If the parties have given consent to the filing, the brief itself should reflect that consent—under amended Rule 37.2(a), no separate document reflecting that consent need be file.
- **Letters.** Only the following types of letters to the Court should be submitted through the ECS:
 - Motions for extension of time under Rule 30.4, and responses thereto.
 - Amendments to corporate disclosure statements or party name changes.

- Notices under Rule 12.6 providing the petitioner’s view that a party below no longer has an interest in the outcome of a petition, and responses thereto.
- Substitutions of public officers under Rule 35.3.
- Renewed applications under Rule 22.4.
- Waivers of the 14-day waiting period under Rule 15.5.
- Letters submitted in response to a specific request from the Court.

Posting of Documents.

- All documents submitted through the EFS (except those containing sealed material or otherwise exempt from electronic posting) will be made available to the public without charge on the Supreme Court’s website: <http://www.supremecourt.gov>.
- Filings that initiate a new case will be posted on the Court’s website only after the Clerk’s Office has received and reviewed the paper version, determined that it should be accepted for filing, and assigned a case number.
- Subsequent filings will be posted upon electronic submission to the EFS. They will be initially noted on the docket as “Submitted.” Once the Clerk’s Office has received and reviewed the paper version and

determined that it should be accepted for filing, the docket will reflect that the document has been “Filed.” If a paper document is not accepted for filing, the docket entry will reflect that it is “Not Accepted for Filing,” and an electronic version of the document will no longer be accessible.

Conclusion.

A new, long-awaited day has dawned at the Supreme Court! The advent of electronic submission of documents—and the resulting ability for counsel and the public to access case filings electronically—is a welcomed change. As with any new filing system, however, there will be bumps at the outset. A filer unable to submit a document through the EFS because of technical problems may contact the Clerk’s Office for assistance at:

- efilingsupport@supremecourt.gov or
- 202-479-5660

between 9:00am and 5:00pm on days the Clerk’s Office is open under Rule 1.3. If after working hours and the deadline to file is before the Clerk’s Office opens, the filer should email the document to the other parties and to efilingsupport@supremecourt.gov.