

The Supreme Court Enters the Digital Age

Mind Your Business Blog on **October 12, 2017**

Electronic filing is coming to the U.S. Supreme Court! [Effective November 13, 2017](#), amendments to the Supreme Court's rules take effect that require represented parties (and their amici) to submit petitions, briefs, and most other filings through the Court's electronic filing system. [The Rules](#) explain that the new e-filing requirements are "[i]n addition to the filing requirements" already set forth in the Rules. Accordingly, parties and their amici will still be required to submit forty copies of their briefs on paper in booklet form, and they now must additionally submit one paper copy on 8.5 x 11 inch paper (in case the Clerk's office needs to scan the brief for any reason). The paper submission remains the "official filing" for purposes of determining timeliness, but e-filing is supposed to occur "contemporaneously" with the paper filing. *Pro se* parties will continue to file submissions exclusively on paper; those submissions will be scanned by the Clerk's office and posted on the Court's web site.

Attorneys practicing before the Supreme Court will be required to register for an account on the Court's electronic filing system. The Court warns that it could take two days for a new account to be approved, so attorneys should register well in advance of a filing deadline. Attorneys of record will also now be required to file notices of appearance using the Court's e-filing system. Under the previous regime, the submission of a brief with an attorney's information constituted a notice of appearance. Now, an attorney need not file a notice of appearance to submit a case-initiating document, such as a cert petition, but must make an appearance before filing any other document.

While the advent of e-filing creates a few new procedural hurdles, it also presents some obvious benefits to litigators. Primarily, all documents e-filed with the Court will be made available to the public free of charge, which will make it easier to access briefs and petitions filed in other cases. Moreover, counsel who enter an appearance will receive immediate notifications of any activity in the case. Under the old system, a party would not learn of an adversary's filing until it arrived on paper by courier sometimes three days later, unless opposing counsel was courteous and emailed a courtesy copy.

E-filed documents will be posted immediately to the Supreme Court's web site. (The lone exception is a document that commences a new case, which will first be reviewed by the Clerk's office and the case assigned a number before the document becomes available to the public). Accordingly, the Court has promulgated new rules and guidelines to ensure that confidential information does not accidentally become public. Specifically, new Rule 34.6 incorporates the privacy protections found in Fed. R. Civ. P. 5.2 in most cases. Moreover, documents containing material under seal must not be submitted electronically but only in paper form. (This also holds true also for redacted forms of briefs submitted for the public record).

Given the Supreme Court's arcane procedural rules, Proskauer's Appellate Department recommends that any party or amicus practicing before the Court use an appellate printer to assist with filings. Printers are typically well-versed in the Court's procedural minutiae and will be able to help you navigate the Court's new e-filing process.

[View Original](#)

[Related Professionals](#)

- **John E. Roberts**
Partner