

# MCBA

MICHIGAN CREDITORS BAR ASSOCIATION

## BOARD OF DIRECTORS

### President

Curtis A. Robertson  
[crobertson@weberolcese.com](mailto:crobertson@weberolcese.com)

### Vice President

Robert Goodman  
[rgoodman@goodmanpoeszat.com](mailto:rgoodman@goodmanpoeszat.com)

### Secretary/Treasurer

Lori Frank  
[ljfrank@collectionlaw-firm.com](mailto:ljfrank@collectionlaw-firm.com)

### Directors

Michael H. R. Buckles  
Government Affairs Director  
[mike@bucklesmg.com](mailto:mike@bucklesmg.com)

### Jennifer Dillow

[jdillow@weltman.com](mailto:jdillow@weltman.com)

### Andrea A Enright

[aenright@shermeta.com](mailto:aenright@shermeta.com)

### Shaun Fathallah

[srfathallah@portfoliorecovery.com](mailto:srfathallah@portfoliorecovery.com)

### Jason Sims

[simsjr@grsims.com](mailto:simsjr@grsims.com)

### Executive Director

Scott J. Gaghan  
[gaghaniv@aol.com](mailto:gaghaniv@aol.com)

P. O. Box 516  
New Buffalo, MI 49117  
Phone #888-653-7133  
Fax#810-272-4316  
[www.mcbaonline.com](http://www.mcbaonline.com)

Michigan Supreme Court Clerk  
P.O. Box 30052  
Lansing, MI 48909

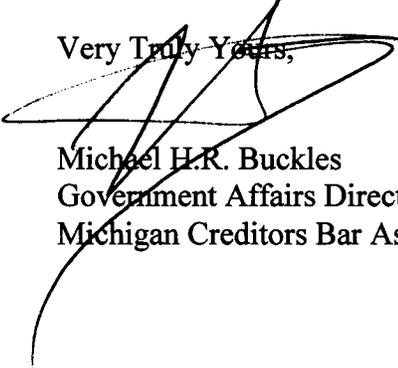
August 26, 2013

Re: Proposed New Rule 2E.001

Dear Sir or Madam,

The Michigan Creditors Bar Association opposes the implementation of proposed rule MCR 2E.001 and any other court rules or administrative orders permitting or extending e-filing for the reasons more fully stated in the attached position paper issued by the Michigan Creditors Bar Association on August 8, 2013.

Very Truly Yours,

  
Michael H.R. Buckles  
Government Affairs Director  
Michigan Creditors Bar Association

**Michigan Creditors Bar Association**  
**Position regarding E filing in Michigan's One Court of Justice**  
**August 8, 2013**

The Michigan Creditors Bar Association supports a standardized, cost efficient, state-wide computer system for digital filing of trial court and appellate documents (E filing) for all Michigan Courts and is willing to work with the Supreme Court, SCAO and the Legislature toward this goal, provided that funding is compliant with the Michigan Constitution and fair to all users. Accordingly, we respectfully submit the following:

1. **Digital access should be standardized across the state.** Users should not have to learn multiple digital systems for access, filing and document management. Local units should not be incentivized to fragment the system by being allowed to charge fees that raise revenue rather than defray the incremental costs of the digital system. Ultimately, local units will be the cost winners of the new system even without new fees, since digitization will bring labor and cost savings. The state should absorb this cost and collect any new income.
2. **Digital filing and access fees should be standard and equitable.** Digital fees must be designed to defray only the incremental costs of the digital system, consistent with the Michigan Supreme Court's *Bolt* decision.<sup>i</sup> Fees should *not* be designed to generally raise revenue for the courts. If multiple funding units and courts set fees, one or more will inevitably violate *Bolt* and seize the opportunity to use these new fees as a way of financing basic court operations. This already appears to be happening in some pilot counties.
3. **Fees for the funding of digital access and E filing must be set by the state legislature.**<sup>ii</sup> To be compliant with Michigan Constitution Article 9 sections 1 and 2 and Article 3, section 2, the legislature is required to set all digital fees, which will also ensure uniformity, equity and promote transparency.
4. **Financial transparency must be a mandate not an option.** Funds for digital access and E filing are "public money" which must be accounted for annually, and records for which must be open to public inspection, pursuant to the Michigan Constitution. No court should collect fees for digital access unless all fees collected by court clerks are remitted to the state treasury pursuant to the Michigan Constitution. The Judicial Technology Fund already exists for this purpose.
5. **A statewide study to recommend a uniform, statewide system and to recommend equitable and proportionate fees must be the starting point to avoid fragmentation, a lack of uniformity and accountability and to escape inequity.** No business would install a complicated digital system piecemeal or before adequately designing the system through the assistance of an expert. Michigan has multiple pilot programs in place now, and when coupled with federal and state comparables, has more than sufficient data for an expert to undertake a study and to make the necessary recommendations to state officials. Unless the state moves to control this process, the digital system will soon mirror the fragmented court funding system with resulting inefficiencies and inequities.

---

<sup>i</sup> *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998).

<sup>ii</sup> Several sections of Michigan's 1963 Constitution are relevant. Art 9, §1 provides that only the state legislature has the power to raise taxes to pay the expenses of state government, including the courts. Art. 9, §2 states that the power of taxation shall "never be surrendered or contracted away." Art 3, §2 precludes the courts from exercising the legislature's general revenue raising power. Art 9, §21 and §23 provide that all state revenues are public money and receipt thereof is a public record. Art 6, §7 requires the state courts to remit all the money they collect to the state treasury. The Michigan Court of Appeals has already ruled that trial courts "...like the Supreme Court...are required to remit any money it collected to the state treasury." *In re Contempt of Auto Club*, 243 Mich App 697 (2000.)