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September 3, 2013

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

Re: ADM File No. 2013-18
Proposed New Rules 2E.001 et seq. of the Michigan Court Rules
(Electronic Filing Rules for all Michigan Courts)

Dear Sir:

It is my opinion that the proposed electronic filing rules are, at best, less than half-baked. It is clear to me, after reviewing e-filing rules in other states, that insufficient thought or effort has gone into formulating the proposed Michigan rules.

I am attaching for the Court's consideration - as a useful model - the very comprehensive e-filing rules recently adopted by Nevada.

I support electronic filing for Michigan courts. It is essential to have our justice system use the technology of the 21st Century. However, the proposed rules have many shortcomings that need to be addressed.

My comments, submitted in compliance with MCR 1.108(1), are as follows:

1. Michigan needs a single standardized statewide e-filing system with uniform rules. There should be no hodge-podge of local e-filing plans and systems. I suggest that the Michigan Supreme Court consider the model created by the Federal PACER system, which has been very successful. I also suggest that Michigan needs to specify in its Court Rules that the technical format for electronically filed documents shall be "searchable PDF." The Court also needs to specify standardized data entry formats for e-filed documents.

2. The Michigan Supreme Court needs to empanel a committee – with multiple stakeholders and ***representatives of the general public included*** – to study, develop and monitor our state's e-filing standards and systems. At present, the court's Technology Implementation Committee consists almost solely of attorneys and court system bureaucrats, and the public has no voice. The Court has a myopic view that only legal professionals know best on these issues. Court records are the property of the citizens of Michigan, not the government bureaucrats who act as the custodians of the public's property. Citizen input on the development and use of electronic court record systems is essential and continuing legislative oversight of the money at issue is mandatory.

3. The proposed rules delegate too much power to the State Court Administrative Office. The proposed rules repeatedly use the phrases *"statewide standards established by SCAO"* and *"policies and standards approved by SCAO."* The SCAO is not required to solicit any input from the general public prior to formulating policy – and it usually does not. Its actions are not subject to oversight from outside of the court bureaucracy. The public interest is not protected in any way by giving SCAO the unilateral authority to set standards. SCAO frequently and unilaterally changes official policy in its *"Michigan Trial Court Case File Management Standards"* document. That document is often changed to limit public access to court records, such as audio-video records of court hearings, by promulgating new policies that are based solely on bureaucratic whim and administrative fiat without any prior public comment or any formal public administrative hearings before the Michigan Supreme Court.

4. Current Michigan court rules do not require that local courts conduct any public hearings or solicit public comment prior to adopting local administrative orders. About a dozen pilot e-filing systems currently operate in Michigan pursuant to local court administrative orders that were rubber-stamped by the Michigan Supreme Court. ***There has never been a public hearing or solicitation of public comments by any of these courts prior to approving the pilot e-filing orders.*** Any local administrative orders on e-filing should be the subject of public hearings before they are adopted and the Michigan Supreme Court should mandate such hearings by Court Rule.

5. Proposed Rule 2E.004(B) states that "Confidential information" must be handled in accordance with SCAO standards. However, neither the term "Confidential information" or the SCAO standards referenced are defined the proposed rule. The Court must carefully define in a formal rulemaking action, **open for public comment,** what is considered "Confidential Information." The definition should not be left to the bureaucratic whims of the SCAO.

6. In each of the pilot e-filing system administrative orders previously approved by the Michigan Supreme Court, the address information of litigants is considered confidential information and is not part of the public record. This is contrary to the

rules adopted by many other states. Michigan needs to restore this information to the public domain.

7. Eliminating the availability of litigant address information from e-filed documents in the pilot systems is already having the unintended side effect of thwarting the prompt and efficient service of legal process and impeding the administration of justice. Law enforcement officers, public defenders, private investigators and process servers frequently use court records to locate defendants and witnesses and to serve legal process documents such as summonses and subpoenas. The removal of this address information also poses national security risks because investigators conducting federal security clearance background investigations can no longer determine accurately from these e-filed records if a particular individual has been the subject of court action.

8. Any funding mechanism for e-filing must be constitutionally sound. All fees associated with the use of e-filing systems should be established statutorily by the Michigan Legislature, not through administrative fiat by the Michigan Supreme Court. While the Court might wish to baffle the public by using the euphemism "convenience fees," these fees are nothing but a tax on the public to finance a government operation. Michigan's Constitution requires that taxes be approved by the Legislature, not the Judiciary.

9. The proposed Court Rules and e-filing authorization bills now pending in the Michigan Legislature would permit "transaction fees" to be charged for the *inspection* of electronically filed court records. This appears to be an effort by the Michigan Supreme Court to create and levy on the public an astonishing new tax ***on the public's right to know about government.*** There is no requirement for the Supreme Court to hold public hearings or solicit public comment prior to imposing these taxes. There would be no oversight or review of these fees by the Legislature at any time. This situation cries out for a correction.

10. The proposed Court Rule (and pending legislation) also does not provide for any independent oversight or public accountability for operation of the e-filing data systems and the money generated by them. It is my belief this will provide an open-ended authorization for price-gouging and financial mischief by a cash-hungry judicial system.

11. The pilot e-filing systems already charge fees to file documents, as much as $5-$10 per document, a service that was previously free when filing paper documents. This money is split with private commercial vendors who operate the systems. There are two principal vendors, TYLER TECHNOLOGIES of Dallas, TX and IMAGESOFT of Southfield, MI. The details and percentages of the revenue splits have been kept secret by the courts. The Michigan Supreme Court ruled last October that the administrative and financial records of Michigan's court system are closed to public inspection. I note that the Court's action directly contradicts the mandate of the

Michigan Constitution that government financial records must be open for public inspection.

12. The proposed Court Rule (and pending legislation) will greatly limit public access to court information by creating economic barriers to citizens who want to look-up basic court information, such as case records and hearing schedules. Many courts are already charging outrageous fees for the public to search and access court records via electronic means. For example: Ottawa County Circuit Court charges the public $12.00 to search for a record – whether or not a record is found – and then another $2.50 each to examine any records found. In Ingham County Circuit Court, the fee is $11.00 per search and an additional $2.50 per record viewed. In Marquette and Muskegon Counties, it's $10 plus additional fees. The Circuit Courts of Kent and Livingston Counties charge $6.00 per search plus $2.50 for each case history or summary viewed.

13. Proposed rule 2E.104 would require courts to provide only a single public access terminal. This is an insufficient number, especially in courts serving large populations such as Detroit and Grand Rapids. Each Michigan court should be required to provide at least two (2) public access terminals at the clerk's office, regardless of size, and a greater number based on population and/or litigation case volume in large metropolitan areas. I note than an increasing number of courts in Michigan have removed - or do not have – public access terminals at the courthouses for citizens to search and inspect court records. This appears to be a move designed to raise revenues, since many courts are now charging as much as $10 for their clerks to search records that were previously free for public access. In Grand Rapids and Port Huron, local District Courts now keep records on document imaging systems and do not provide any public access terminals for citizens to inspect court records. In Grand Rapids, a citizen must purchase an entire case file from the Clerk in order to inspect a single imaged document. Photocopying fees are also excessive - $1.00 per page in most courts, $2.00 per page in Washtenaw County.

14. Documents should be deemed filed on the day of filing, regardless of the hour. Proposed Rule 2E.101 would require that a document be filed by the close of the court's business day, but not later than 5 PM. There is no need for this time restriction, and it represents an anachronism in the Internet age. An electronic filing system operates automatically around the clock and is not dependent on a court clerk's physical office operating hours. Many other states declare in their e-filing rules that documents must be submitted no later than 11:59 PM (23:59 hours) to be deemed filed on a particular day. Michigan should adopt the 11:59 PM rule

15. The proposed Court Rules do not guarantee access to e-filing systems by non-attorneys and self-represented litigants. At the present time, some courts do not permit access to the systems by anyone other than licensed attorneys, thus placing *pro se* litigants at a disadvantage in court proceedings. Further, Michigan's process servers should be permitted access to timely file Proofs of Service of litigation

documents. Many logistical problems have already developed in this area with the advent of the pilot systems.

16. Rule 2E.006(B) does not specify the retention period for litigants to maintain documents containing handwritten signatures. This needs to be amended to specify that the documents are to be remained through the conclusion of a case, including any appeal periods

17. Nothing in the Proposed Rules specifies that a confirmation of filing receipt shall be provided to litigants. Any parties filing documents with a court should receive a written confirmation of filing that is also admissible as evidence of filing in the event of any controversy.

18. Proposed Rule 2E.201 would allow service of process to be made on parties by electronic means. This should be amended to make it clear that any documents initiating original or continuing personal jurisdiction over a party (such as an initial Summons & Complaint, Subpoena to Appear, or Order to Appear for a Temporary Restraining Order Hearing) cannot be served electronically and must continue to be served personally. The State of Nevada uses the following language in its electronic filing rules: ***"A complaint, petition or other document that must be served with a summons, and a summons or a subpoena cannot be served electronically."***

19. Imposing fees for public access to court records is not in the public interest because it works against the economic and efficiency interests of Michigan courts. Free public electronic access to court information reduces the time and work demand on court clerks and other personnel to respond to requests from the public for docket information, hearing date schedules, etc. Allowing citizens to freely access basic court record information will help reduce expenditures for the courts and promote greater access to the justice system for the public, a true "win-win" situation for all. Taxpayers already pay for the collection and maintenance of this information for their benefit and the common good. They should not be required to pay twice to inspect or use their own property.

20. **All case indexes, registers of action, and formal judicial opinions issued by Michigan courts for all cases filed in Michigan courts should be available to the public for inspection and copying via the Internet completely free of charge.** This would be in a similar manner as how the Legislature freely provides information on its bills and legislative actions to the public through its website.

21. Changes to court record public access policies should be made only after public comment is solicited in advance and public administrative hearings are held by the Michigan Supreme Court. No changes through administrative fiat should be allowed in the ***Michigan Trial Court Case File Management Standards*** policy document.

22. The Michigan Judicial Data Warehouse should be opened immediately to free online public access. This data repository – created at public expense exceeding

$10 million - consists primarily of public record information including case indexes, registers of actions and court case records that are collected from local courts across the state. Many other states with similar systems (such as Missouri, Oklahoma and New York) permit free public access to their court information. Why should Michigan citizens be barred from using a public record system that was created with their tax dollars?

Respectfully submitted,

NEVADA ELECTRONIC FILING AND CONVERSION RULES

ADOPTED
BY THE
SUPREME COURT OF NEVADA

Effective March 1, 2007
and Including
Amendments Through September 30, 2011

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION OF STATEWIDE ELECTRONIC FILING STANDARDS AND RULES.

ADKT 404

ORDER ADOPTING NEVADA ELECTRONIC FILING RULES

WHEREAS, this court formed a committee to study and propose statewide policies and guidelines for Nevada courts to follow when designing and implementing a system for the electronic filing of documents and also requested the committee to draft proposed uniform rules applicable to all courts that accept documents electronically for filing; and

WHEREAS, the committee has now completed its work and filed a final report including proposed rules to govern electronic filing in all Nevada courts; and

WHEREAS, it appears to this court that adoption of proposed rules to govern electronic filing in all the courts in the State of Nevada is warranted; accordingly,

IT IS HEREBY ORDERED that a new set of rules entitled Nevada Electronic Filing Rules shall be adopted to govern electronic filing in all municipal courts, justice courts, district courts, and the Supreme Court of Nevada as set forth in Exhibit A.

IT IS FURTHER ORDERED that the Nevada Electronic Filing Rules shall be effective March 1, 2007, and shall apply to all electronic filing processes currently in use by any court in the State of Nevada and all future electronic processes to be implemented by any court in the State of Nevada. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 29th day of December, 2006.

BY THE COURT

ROBERT E. ROSE, *Chief Justice*

NANCY A. BECKER
Associate Justice

A. WILLIAM MAUPIN
Associate Justice

MARK GIBBONS
Associate Justice

MICHAEL L. DOUGLAS
Associate Justice

JAMES W. HARDESTY
Associate Justice

RON D. PARRAGUIRRE
Associate Justice

TABLE OF CHANGES TO NEVADA ELECTRONIC FILING AND CONVERSION RULES

Key: "A" amended; "N" added; "R" repealed; "T" transferred.

1. General Provisions

Rule	Key	Effective Date	Rule	Key	Effective Date
1	N	3/1/07			
	A	8/31/11			
2	N	3/1/07			
	A	8/31/11			
3	N	3/1/07			
	A	8/31/11			
4	N	3/1/07			
	A	8/31/11			
5	N	3/1/07			
	A	8/31/11			

2. Filing and Service of Documents

Rule	Key	Effective Date	Rule	Key	Effective Date
6	N	3/1/07			
	A	8/31/11			
7	N	3/1/07			
	A	8/31/11			
8	N	3/1/07			
9	N	3/1/07			
10	N	3/1/07			
11	N	3/1/07			
	A	8/31/11			
12	N	3/1/07			
13	N	3/1/07			
	A	8/31/11			
14	N	3/1/07			
	A	8/31/11			
15	N	3/1/07			
	A	8/31/11			
16	N	3/1/07			
	A	8/31/11			
17	N	8/31/11			
18	N	8/31/11			

NEVADA ELECTRONIC FILING AND CONVERSION RULES

1. General Provisions

Rule 1. Title. These rules may be known and cited as the Nevada Electronic Filing and Conversion Rules, or may be abbreviated NEFCR.

[Amended; effective August 31, 2011.]

Rule 2. Definitions of words and terms.

(a) *Case management system.* An electronic database maintained by the court or clerk to track information used to manage the court's caseload, such as case numbers, party names, attorneys for parties, titles of all documents filed in a case, and all scheduled events in a case.

(b) *Conversion.* The process of changing court records from one medium to another or from one format to another, including, but not limited to, the following:

(1) Changing paper records to electronic records;
(2) Changing microfilm to electronic records;
(3) Changing electronic records to microfilmed records; or
(4) Changing paper records to microfilmed records.

(c) *Document management system.* An electronic database containing documents in electronic form and structured to allow access to documents based on index fields such as case number, filing date, type of document, etc.

(d) *Electronic case.* An "electronic case" is one in which the documents are electronically stored and maintained by the court, whether the documents were electronically filed or converted to an electronic format. The court's electronic version of the document is deemed to be the original.

(e) *Electronic document.* An "electronic document" includes the electronic form of pleadings, notices, motions, orders, paper exhibits, briefs, judgments, writs of execution, and other papers.

(f) *Electronic filing*. "Electronic filing" is the electronic transmission to or from a court or clerk of a document in electronic form as defined by the accepting court; it does not include submission via e-mail, fax, computer disks, or other electronic means.

(g) *Electronic filing service provider*. An "electronic filing service provider" is a person or entity that receives an electronic document from a party for re-transmission to the court for filing. In submission of such filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

(h) *Electronic filing system.* "Electronic filing system" is a system implemented or approved by a court for filing and service of pleadings, motions, and other documents via the Internet.

(i) *Electronic service*. "Electronic service" is the electronic transmission of a document to a party, attorney, or representative under these rules. Electronic service does not include service of process or a summons to gain jurisdiction over persons or property.

(j) *Public access terminal.* A computer terminal provided by the court or clerk for viewing publicly accessible electronic court records. The public access terminal must be available during the court's normal business hours.

(k) *Registered user.* A person authorized by the court or by an authorized electronic filing service provider to access a court's electronic filing system via the Internet.

[Amended; effective August 31, 2011.]

Rule 3. Purpose, scope, and application of rules.

(a) *Purpose and scope*. These rules establish statewide policies and procedures governing the electronic filing and conversion processes in all the courts in Nevada. These rules cover the practice and procedure in all actions in the district, justice, and municipal courts of this state where no local rule covering the same subject has been

approved by the supreme court. A court may adopt local rules detailing the specific procedures for electronic filing or conversion processes to be followed in that court, provided that the rules are not inconsistent with these rules.

(b) *Application of rules*. These rules must be construed liberally to secure the proper and efficient administration of the business and affairs of the court and to promote and facilitate the administration of justice by the court.

[Amended; effective August 31, 2011.]

Rule 4. Implementation of electronic filing or conversion process.

(a) *Establishment of electronic filing system*. A district, justice or municipal court may establish a system for the electronic submission of documents provided that the system developed meets the minimum requirements set forth in these rules.

(b) *Mandatory electronic processes.* A court may mandate use of electronic filing processes in all cases or a particular type of case only if: (1) the court provides a free electronic filing process or a mechanism for waiving electronic fees in appropriate circumstances; (2) the court allows for the exceptions needed to ensure access to justice for indigent, disabled, or self-represented litigants; (3) the court provides adequate advanced notice of the mandatory participation requirement; and (4) the court provides training for filers in the use of the process. In addition, a judge may require participation in the electronic filing system in appropriate cases.

(c) *Voluntary electronic processes.* A court must ensure that all documents filed by electronic means or converted to electronic format are maintained in electronic form. In voluntary electronic processes, the court must prospectively, retroactively, or both, convert filed paper documents and store and maintain them electronically.

(d) *Quality control procedures.* A court must institute a combination of automated and human quality control procedures sufficient to ensure the accuracy and reliability of their electronic records system.

(e) *Integration with case management and document management systems.* Electronic documents should be accessed through a court's case management information system. A court's case management information system must provide an application programming interface capable of accommodating any electronic filing or conversion application that complies with these rules and should also provide automated workflow support. As used in this subsection, "automated workflow support" refers to a configurable set of rules and actions to route documents through a user-defined business process.

(f) *Archiving electronic documents.* A court must maintain forward migration processes in order to:

(1) Assure future access to electronic court documents so that the documents can be understood and used; and

(2) Ensure that the content, context, and format of electronic documents will not be altered as a result of the migration.

Verification techniques should be used to confirm record integrity after the migration, and a test restoration of data should be performed to verify the success of the migration and to ensure that the records are still accessible. Electronic records should be checked at regular time intervals pursuant to specific policies and procedures established by the court administrator or designee.

[Amended; effective August 31, 2011.]

Rule 5. Electronic filing system requirements. Any system for the electronic submission or conversion of documents adopted by a district, justice or municipal court must conform to the following minimum requirements:

(a) *Technical requirements*. A court must comply with any Administrative Office of the Courts (AOC) technical standards for electronic filing processes. The electronic filing system must support text searches wherever practicable.

(b) *Electronic viewing*. Electronic filing processes adopted by a court must presume that all users will view documents on their computer screens. Paper copies are to be available on demand, but their production will be exceptional, not routine.

(c) *Document format*. Electronic documents must be submitted in or converted to a nonproprietary format that is determined by the court and that can be rendered with high fidelity to originals and easily accessible by the public. When possible, the documents should be searchable and tagged. Software to read and capture electronic documents in required formats must be available free for viewing at the courthouse and available free or at a reasonable cost for remote access and printing.

(d) *Self-contained documents*. Each filed document must be self-contained, with links only to other documents submitted simultaneously or already in the court record.

(e) *Data accompanying submitted documents*. Filers submitting documents for electronic filing must transmit data identifying the document submitted, the filing party, and sufficient other information for the entry in the court's

docket or register of actions. In the case of a document initiating a new case, sufficient other information must be included to create a new case in the court's case management information system. This data may be specified with particularity by the court receiving the document.

(f) *Identity of the sender*. A court or an authorized e-filing service provider must use some means to identify persons interacting with its electronic filing system.

(g) *Integrity of transmitted and filed documents and data*. A court must maintain the integrity of transmitted documents and data, and documents and data contained in official court files, by complying with current Federal Information Processing Standard 180.2 or its successor. Nothing in this rule prohibits a court or clerk from correcting docketing information errors in documents submitted, provided that a record of such changes is maintained, including the date and time of the change and the person making the change.

(h) *Electronic acceptance of payments*. A court may establish a means to accept payments of fees, fines, surcharges, and other financial obligations electronically, including the processing of applications to waive fees. Any such system developed must include auditing controls consistent with generally accepted accounting principles and comply with any AOC technical standards that may be adopted.

(i) *Surcharges for electronic filing*. Mandatory electronic filing processes should be publicly funded to eliminate the need to impose surcharges for filing of or access to electronic documents. A court may, however, impose such surcharges or use a private vendor that imposes surcharges when sufficient public funding is not available. Such surcharges must be limited to recouping the marginal costs of supporting electronic filing processes if collected by the court or to a reasonable level if imposed by a private vendor. Collection of surcharges by a private vendor must be audited annually to ensure that the fee charged is reasonable and is properly assessed. The court must also require, at a minimum, a biennial periodic performance audit assessing the vendor's system for adequate service to the court, the public, and the bar, including the accuracy and authenticity of data produced, stored or transmitted by the vendor, the reliability of the hardware and software used by the vendor, the integrity and security of the vendor's system, the timeliness of access to documents and other data produced, stored, or transmitted by the vendor, and the vendor's compliance with Nevada law requiring the safeguarding of personal information. The audit may be performed by internal staff or by external experts.

(j) *Court control over court documents*.

(1) The original court record of electronic documents must be stored on hardware owned and controlled by the court system or other governmental entity providing information technology services to the court.

(2) Whenever copies of a court's electronic documents reside on hardware owned or controlled by an entity other than the court, the court must ensure by contract or other agreement that ownership of, and the exercise of dominion and control over, the documents remains with the court or clerk of the court.

(3) All inquiries for court documents and information must be made against the current, complete, accurate court record.

(4) Court documents stored by an outside vendor or entity cannot be accessed or distributed absent written permission of the court.

(k) *Special needs of users*. In developing and implementing electronic filing, a court must consider the needs of indigent, self-represented, non-English-speaking, or illiterate persons and the challenges facing persons lacking access to or skills in the use of computers.

(l) *Limiting access to specified documents and data*. A court's electronic filing system must contain the capability to restrict access to specific documents and data in accordance with statutes, rules, and court orders.

(m) *System security*. A court's electronic filing and records management system must include robust security features to ensure the integrity, accuracy, and availability of the information contained in them. They should include, at a minimum, document redundancy; authentication and authorization features; contingency and disaster recovery; system audit logs; secured system transmissions; privilege levels restricting the ability of users to create, modify, delete, print, or read documents and data; means to verify that a document purporting to be a court record is in fact identical to the official court record; and reliable and secure archival storage of electronic records in inactive or closed cases. System documentation should include the production and maintenance of written policies and procedures, on-going testing and documentation as to the reliability of hardware and software, establishing controls for accuracy and timeliness of input and output, and creation and maintenance of comprehensive system documentation.

[Amended; effective August 31, 2011.]

2. Filing and Service of Documents

Rule 6. Official court record.

(a) *Electronic documents.* For documents that have been electronically filed or converted, the electronic version of the document constitutes the official court record, and electronically filed documents have the same force and effect as documents filed by traditional means.

(b) *Form of record.* The court clerk may maintain the official court record of a case in electronic format or in a combination of electronic and traditional formats consistent with Rules 4(b), (c), and (f) above. Documents submitted by traditional means may be converted to electronic format and made part of the electronic record. Once converted, the electronic form of the documents are the official court record. If exhibits are submitted, the clerk may maintain the exhibits by traditional means or by electronic means where appropriate.

(c) *Retention of original documents after conversion.* When conversion of a court record is undertaken with sufficient quality control measures taken to ensure an accurate and reliable reproduction of the original, the court may, but is not required to, retain the original version of the record for historical reasons or as a preservation copy to protect against harm, injury, decay, or destruction of the converted record.

(d) *Exceptions to document destruction.* The following documents may not be destroyed by the court after conversion to electronic format:

(1) Original wills;

(2) Original deeds;

(3) Original contracts;

(4) Court exhibits;

(5) Any document or item designated in writing by a judge to be inappropriate for destruction because the document or item has evidentiary, historic, or other intrinsic value.

[Amended; effective August 31, 2011.]

Rule 7. Documents that may be filed electronically.

(a) *General.* A court may permit electronic filing or conversion of a document in any action or proceeding unless these rules or other legal authority expressly prohibit electronic filing or conversion.

(b) *Exhibits and real objects*. Exhibits or documents which otherwise may not be comprehensibly viewed in or converted to an electronic format must be filed, stored, and served conventionally.

(c) *Court documents.* The court may electronically file, convert, or issue any notice, order, minute order, judgment, or other document prepared by the court.

[Amended; effective August 31, 2011.]

Rule 8. Time of filing, confirmation, rejection, and endorsement.

(a) *Filed upon transmission*. Subject to acceptance by the court clerk, any document electronically submitted for filing shall be considered filed with the court when the transmission to the court's electronic filing system or an authorized electronic filing service provider is completed. Upon receipt of the transmitted document, the electronic filing system or electronic filing service provider must automatically confirm to the electronic filer that the transmission of the document was completed and the date and time of the document's receipt. Absent confirmation of receipt, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed the document transmitted.

(b) *Review by clerk*. The court clerk may review the document to determine whether it conforms with applicable filing requirements. If the clerk rejects the document for filing because it does not comply with applicable filing requirements or because the required filing fee has not been paid, the court must promptly send notice to the electronic filer. The notice must set forth the reasons the document was rejected for filing. Notification that the clerk has accepted the document for filing is not required.

(c) *Endorsement*. Electronic documents accepted for filing must be endorsed. The court's endorsement of a document electronically filed must contain the following: "Electronically Filed/Date and Time/Name of Clerk." This endorsement has the same force and effect as a manually affixed endorsement stamp of the clerk of the court.

(d) *Time of filing*. Any document electronically submitted for filing by 11:59 p.m. at the court's local time shall be deemed to be filed on that date, so long as it is accepted by the clerk upon review.

(e) *Availability of electronic filing process.* The court's electronic filing system must allow the electronic submission of documents during the court's regular business hours and should allow the electronic submission of documents 24 hours per day, 7 days per week, except when the system is down for scheduled maintenance.

Rule 9. Electronic service.

(a) *Applicability.* Electronic service of documents is limited to those documents permitted to be served by mail, express mail, overnight delivery, or facsimile transmission. A complaint, petition or other document that must be served with a summons, and a summons or a subpoena cannot be served electronically.

(b) *Service on registered users*. When a document is electronically filed, the court or authorized electronic filing service provider must provide notice to all registered users on the case that a document has been filed and is available on the electronic service system document repository. The notice must be sent by e-mail to the addresses furnished by the registered users under Rule 13(c). This notice shall be considered as valid and effective service of the document on the registered users and shall have the same legal effect as service of a paper document. A court is not required to make a document available until after the clerk has reviewed and endorsed the document.

(c) *Consent to electronic service*. Other than service of a summons or subpoena, users who register with the electronic filing system are deemed to consent to receive service electronically. A party may also agree to accept electronic service by filing and serving a notice. The notice must include the electronic notification address(es) at which the party agrees to accept service.

(d) *Service on nonregistered recipients*. The party filing a document must serve nonregistered recipients by traditional means such as mail, express mail, overnight delivery, or facsimile transmission and provide proof of such service to the court.

(e) *Service list.* The parties must provide the clerk with a service list indicating the parties to be served. The clerk shall maintain the service list, indicating which parties are to be served electronically and which parties are to be served in the traditional manner.

(f) *Time of service; time to respond*. Electronic service is complete at the time of transmission of the notice required by subsection (b) of this rule. For the purpose of computing time to respond to documents received via electronic service, any document served on a day or at a time when the court is not open for business shall be deemed served at the time of the next opening of the court for business.

Rule 10. Payment of filing fees.

(a) *Filing fees.* The court clerk is not required to accept electronic documents that require a fee. If the clerk does accept electronic documents that require a fee, the court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of filing fees associated with electronic filing. A court may also authorize other methods of payment consistent with any AOC guidelines that may be adopted.

(b) *Waiver of fees.* Anyone entitled to waiver of nonelectronic filing fees will not be charged electronic filing fees. The court or clerk shall establish an application and waiver process consistent with the application and waiver process used with respect to nonelectronic filing and filing fees.

Rule 11. Signatures and authenticity of documents.

(a) *Deemed signed.* Every document electronically filed or served shall be deemed to be signed by the registered user submitting the document. Each document must bear that person's name, mailing address, e-mail address, telephone number, law firm name, and bar number where applicable. Where a statute or court rule requires a signature at a particular location on a form, the person's typewritten name shall be inserted. Otherwise, a facsimile, typographical, or digital signature is not required.

(b) *Documents under penalty of perjury or requiring signature of notary public.*

(1) Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be submitted electronically, provided that the declarant or notary public has signed a printed form of the document. The printed document bearing the original signatures must be scanned and electronically submitted for filing in a format that accurately reproduces the original signatures and contents of the document.

(2) By electronically filing the document, the electronic filer attests that the documents and signatures are authentic.

(c) *Documents requiring signatures of opposing parties.*

(1) When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the party filing the document must first obtain the signatures of all parties on a printed form of the document.

(2) The printed document bearing the original signatures must be scanned and electronically submitted for filing in a format that accurately reproduces the original signatures and contents of the document.

(3) By electronically filing the document, the electronic filer attests that the documents and signatures are authentic.

(d) *Signature of judicial officer or clerk.* Electronically issued court documents requiring a court official's signature may be signed electronically. A court using electronic signatures on court documents must adopt policies

and procedures to safeguard such signatures and comply with any AOC guidelines for electronic signatures that may be adopted.

(e) *Rules applicable to electronic filers.* An electronic filer must retain the original version of a document, attachment, or exhibit that was filed electronically, and this retention must continue for a period of 7 years after termination of the representation of the party on whose behalf the document was filed. During the period that the electronic filer retains the original of a document, attachment, or exhibit, the court may require the electronic filer to produce the original of the document, attachment, or exhibit that was filed electronically.

[Amended; effective August 31, 2011.]

Rule 12. Format of documents. An electronic document shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings and other documents, including page limits. Electronic documents must be self-contained and must not contain hyperlinks to external papers or websites. Hyperlinks to papers filed in the case are permitted.

Rule 13. Registration requirements.

(a) *Registration mandatory.* All users of a court's electronic filing system must register in order to access the electronic filing system over the Internet. A court must permit the following users to register: (1) licensed Nevada attorneys; (2) non-Nevada attorneys permitted to practice in Nevada under Supreme Court Rule 42; and (3) litigants appearing in proper person in a particular case in which the court has mandated electronic filing. A court must permit users who are not authorized to access the court's electronic filing system over the Internet to access electronically filed or converted documents via a public access terminal located in the courthouse.

(b) *Registration requirements.* A court must establish registration requirements for all authorized users and must limit the registration of users to individuals, not law firms, agencies, corporations, or other groups. The court must assign to the user a confidential, secure log-in sequence. The log-in sequence must be used only by the user to whom it is assigned and by such agents and employees as the user may authorize. No user shall knowingly permit his or her log-in sequence to be used by anyone other than his or her authorized agents and employees.

(c) *Electronic mail address required.* Registered users must furnish one or more electronic mail addresses that the court and any authorized electronic service provider will use to send notice of receipt and confirmation of filing. It is the user's responsibility to ensure that the court has the correct electronic mail address.

(d) *Misuse or abuse of the electronic filing system.* Any user who attempts to harm the court's electronic filing system in any manner or attempts to alter documents or information stored on the system has committed misuse of the system. Any unauthorized use of the system is abuse. Misuse or abuse may result in loss of a user's registration or be subject to any other penalty that may be imposed by the court.

[Amended; effective August 31, 2011.]

Rule 14. Access to electronic documents; confidential information.

(a) *Electronic access.* Except as provided in these rules, a court must provide registered users in a case with access to electronic documents to the same extent it provides access to paper documents. Electronic access to such documents is required for registered users who are parties or attorneys on a case. A court may provide electronic access to registered users who are not parties or attorneys on a case.

(b) *Confidential records.* The confidentiality of electronic records is the same as for paper records. A court's electronic filing system must permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record shall release the information to any other person unless provided by law.

(c) *Identification of confidential documents.* The filing party must identify documents made confidential by statute, court rule, or court order. The electronic filing system shall make the document available only to registered users and only as provided by law.

(d) *Protection of personal information.* A document containing personal information as defined by NRS 603A.040 shall be so designated by the party filing the document. If a paper is designated as containing personal information, only registered users for the case may access the paper electronically. The document will remain available for public inspection at the courthouse unless otherwise sealed by the court or held confidential by law. The clerk is not required to review each paper for personal information or for the redaction of personal information.

(e) *Temporary sealing of documents.* For information not made confidential by statute, court rule, or court order, users may electronically submit documents under temporary seal pending court approval of the user's motion to seal.

[Amended; effective August 31, 2011.]

Rule 15. System errors, conversion errors, or user filing errors.

(a) *Failure of electronic filing or service.* When electronic filing or conversion does not occur due to technical problems, the court clerk may correct the problem. Technical problems include:

(1) An error in the transmission of the document to the electronic filing system or served party that was unknown to the sending party;

(2) A failure to process the electronic document when received by the electronic filing system;

(3) Erroneous exclusion of a party from the service list; or

(4) A technical problem experienced by the filer with the electronic filing system; or

(5) A technical problem experienced by a court employee with respect to the processing of a converted document.

(b) *Time of filing of delayed transmission.* Unless the technical failure prevents timely filing or affects jurisdiction, the court must deem a filing received on the day when the filer can satisfactorily demonstrate that he or she attempted to file or serve the document. The time for response is calculated from the time the document is correctly transmitted. When the technical failure prevents timely filing or affects jurisdiction, the issue shall come before the court upon notice and opportunity to be heard. The court may upon satisfactory proof enter an order permitting the document to be filed as of the date and time it was first attempted to be sent electronically.

[Amended; effective August 31, 2011.]

Rule 16. Electronic filing providers.

(a) *Right to contract.* A court may contract with one or more electronic service providers to furnish and maintain an electronic filing system for the court. A public bid process should be used to award such contracts.

(b) *Transmission to contracted provider.* If a court contracts with an electronic filing service provider, it may require electronic filers to transmit the documents to the provider. If, however, there is a single provider or in-house system, the provider or system must accept filings from other electronic service providers to the extent it is compatible with them.

(c) *Provisions of contract.* A court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. If such a fee is allowed, the contract must also provide for audits of the vendor as provided in Rule 5(i). The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system. Any contract between a court and an electronic filing service provider must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control its use. The vendor must expressly agree in writing to safeguard any personal information in accordance with Nevada law.

(d) *Transmission of filing to court.* An electronic filing service provider must promptly transmit any electronic filing, with the applicable filing fees, to the court.

[Amended; effective August 31, 2011.]

Rule 17. Third-party providers of conversion services.

(a) *Right to contract.* A court may contract with one or more third-party providers of conversion services in order to convert documents to an electronic format, provided that the conversion of a court record will be undertaken with sufficient quality control measures to ensure an accurate and reliable reproduction of the original. A public bid process should be used to award such contracts.

(b) *Provisions of contract.* Any contract between a court and a third-party provider of conversion services must acknowledge that the court is the owner of the original and converted documents and retains the exclusive right to control their use. The vendor must expressly agree in writing to safeguard any personal information in accordance with Nevada law.

[Added; effective August 31, 2011.]

Rule 18. Ability of a party to challenge accuracy or authenticity. These rules shall not be construed to prevent a party from challenging the accuracy or authenticity of a converted or electronically filed document, or the signatures appearing therein, as otherwise allowed or required by law.

[Added; effective August 31, 2011.]

NOTE TO MICHIGAN SUPREME COURT

Nevada Electronic Filing Rule 14(d), "Protection of Personal Information", references the following state statute:

NRS 603A.040 "Personal information" defined. "Personal information" means a natural person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:

1. Social security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

➥ The term does not include the last four digits of a social security number, the last four digits of a driver's license number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public.

(Added to NRS by 2005, 2504; A 2005, 22nd Special Session, 109; 2007, 1314; 2011, 2411)

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