

APPELLATE PRACTICE SECTION  
Respectfully submits the following position on:

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ADM File No. 2013-18 – Proposed New Rules 2E.001 et seq. of  
the Michigan Court Rules  
ADM File No. 2013-18 – Proposed Administrative Order No. 2013-  
ADM File No. 2013-18 – Draft Standards for E-Filing

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The Appellate Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Appellate Practice Section only and is not the position of the State Bar of Michigan.

The State Bar of Michigan's position on this matter is to support and send the Court the comments from committees and sections.

The total membership of the Appellate Practice Section is 667.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 16. The number who voted opposed to this position was 0.

**Report on Public Policy Position**

**Name of section:**

Appellate Practice Section

**Contact person:**

Phillip J. DeRosier

**E-Mail:**

[pderosier@dickinsonwright.com](mailto:pderosier@dickinsonwright.com)

**Proposed Court Rule or Administrative Order Number:**

2013-18 - Proposed New Rules 2E.001 *et seq.* of the Michigan Court Rules

This series of proposed new “2E” rules contains court rules regarding e-filing in Michigan courts. Please note that this proposed order is part of a group of documents in this file that has been published for comment, including a proposed administrative order regarding e-filing rules and the proposed e-filing standards.

2013-18 - Proposed Administrative Order No. 2013-

This proposed administrative order would require the State Court Administrator to promulgate e-filing standards, and would require courts that offer e-filing to comply with those standards. Please note that this proposed order is part of a group of documents in this file that has been published for comment, including proposed e-filing rules and proposed e-filing standards.

2013-18 - Draft Standards for E-filing

These proposed standards provide additional guidance for courts planning for implementation of e-filing in their jurisdiction. The proposed standards are published to provide a context for the proposed e-filing rules and proposed administrative order that have also been published for comment in this file.

**Date position was adopted:**

September 3, 2013

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote.

**Number of members in the decision-making body:**

23

**Number who voted in favor and opposed to the position:**

16 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote

**Position:**

Support and Amend

**Explanation of the position, including any recommended amendments:**

While the Appellate Practice Section welcomes the expansion of e-filing in Michigan, we do have some comments we hope the Court will consider.

As presented, proposed MCR 2E.101(A) provides that a court's e-filing plan "must state the time by which transmissions must be completed to be considered filed by the close of business on that date, but not later than 5:00 p.m." In other words, each court may set its own cut-off time for accepting e-filed pleadings, but the time cannot be later than 5:00 p.m. In addition, MCR 2E.101(B) allows the court to reject a document, under certain conditions, and "notify the filer of the rejection," but does not set a time period for the notification to take place. Each of these provisions is somewhat problematic.

First, the members of the Section Council agree that the time for accepting pleadings should be uniform across the state. With 235 trial courts and two appellate courts in Michigan, there is much potential for confusion and inconsistency if each court can make its own decision about the time it will stop accepting electronic filings. While varying local conditions may warrant flexibility in setting the hours for a court clerk's office, it is unnecessary when filings are submitted to an unmanned computer. There were also concerns about overloading the system when there is a rush of late-in-the-day filings, a problem that has already occurred in at least some of the circuit courts.

Second, the Council members were almost universally opposed to the 5:00 p.m. deadline. Most practitioners have experience with the federal courts' electronic case filing (ECF) system, which accepts pleadings until 11:59 p.m. In a deadline-driven profession, the ability to work after normal business hours is an invaluable advantage of any electronic filing system.

Third, proposed subrule (B) would allow a court to reject a pleading but does not require that the filing party be notified in sufficient time to correct the alleged defect and resubmit the document the same day. Council members report having had e-filed pleadings rejected inconsistently, or rejected for reasons not "pursuant to MCR 8.119(C)." Proposed MCR 2E.2008 allows refile nunc pro tunc in the case of "transmission failure." An analogous provision should be incorporated in MCR 2E.101(B) to provide that a filing is timely if the clerk rejects it for a reason other than those permitted by MCR 8.119(C).

Finally, the proposed "Draft standards for e-filing" include a proposed standard 3.1.6, which requires that "[a]ny information that will become part of, or is related to, a court case file, and which is being transmitted electronically to the clerk of the court must be in a format that can be rendered with high fidelity to originals and is searchable." The result of applying this proposed standard appears to be a requirement that not only pleadings but also all exhibits be "high fidelity . . . and . . . searchable." In practice, this goal is not always attainable. For example, relevant documents may be handwritten or of poor quality that cannot be scanned into a form that is "searchable" in any meaningful way.

In summary, the Appellate Practice Section urges the Court to adopt the following modifications:

Proposed MCR 2E.101:

(A) A document filed electronically shall be considered filed with the court when the transmission to the electronic filing service provider is complete. The court's e-filing plan must state the time by which that

transmissions must will be completed to be considered filed by the close of business on that date, but not later than 5:00 p.m. if transmission is completed by 11:59 p.m.

(B) If [T]he court may rejects a submitted document only if it does not meet the minimum filing requirements specified in MCR 8.119 (C), the court shall notify the filer of the rejection and the reason for the rejection. A rejected document shall not become part of the official court record.

Proposed standard 3.1.6

Any information pleading that will become part of, or is related to, a court case file, and which is being transmitted electronically to the clerk of the court must be in a format that can be rendered with high fidelity to originals and is searchable. Any other information that will become part of, or is related to, a court case file, and which is being transmitted electronically to the clerk of the court should be in a format that can be rendered with high fidelity to originals and is searchable.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

[http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-18\\_2013-05-01\\_formatted%20e-filing%20order\\_FINAL.pdf](http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-18_2013-05-01_formatted%20e-filing%20order_FINAL.pdf)

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[http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-18\\_2013-05-01\\_E-filing%20Standards\\_FINAL.pdf](http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-18_2013-05-01_E-filing%20Standards_FINAL.pdf)

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RE: ADM 2013-18  
Proposed electronic filing rules for all Michigan courts

Dear Mr. Royster:

Thank you for the opportunity to comment on ADM 2013-18. While the Appellate Practice Section welcomes the expansion of e-filing in Michigan, we do have some comments we hope the Court will consider.

As presented, proposed MCR 2E.101(A) provides that a court's e-filing plan "must state the time by which transmissions must be completed to be considered filed by the close of business on that date, but not later than 5:00 p.m." In other words, each court may set its own cut-off time for accepting e-filed pleadings, but the time cannot be later than 5:00 p.m. In addition, MCR 2E.101(B) allows the court to reject a document, under certain conditions, and "notify the filer of the rejection," but does not set a time period for the notification to take place. Each of these provisions is somewhat problematic.

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(B) ~~If [ ] the court may rejects a submitted document only if it does not meet the minimum filing requirements specified in MCR 8.119(C); the court shall notify the filer of the rejection and the reason for the rejection. A rejected document shall not become part of the official court record.~~

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Thank you again for offering us the opportunity to provide input on these proposals. Please feel free to contact me if the Section can offer any assistance.

Very truly yours,



Phillip J. DeRosier  
Chair, Appellate Practice Section