

# Order

Michigan Supreme Court  
Lansing, Michigan

May 1, 2013

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-18

Michael F. Cavanagh  
Stephen J. Markman

Proposed New Rules 2E.001 *et seq.*  
of the Michigan Court Rules  
(Electronic Filing Rules for all  
Michigan Courts)

Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

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On order of the Court, this is to advise that the Court is considering a proposal to adopt new rules regarding electronic filing in Michigan courts. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at <http://courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx>.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its current form.

[The following language for electronic filing is new.]

Subchapter 2E.000 Applicability; Construction

Rule 2E.001 Applicability; Citation

The rules in this chapter and the electronic filing policies and standards of the State Court Administrative Office (SCAO) govern the electronic filing and service of documents in all courts established by the constitution and laws of the State of Michigan, and may be referred to as “e-filing rules.” Citation for these rules is governed by MCR 1.101.

Rule 2E.002 Definitions

For purposes of this chapter:

- (A) “Authorized user” means a user of the e-filing system who is registered to file documents through approved electronic means.
- (B) “Electronic filing” or “e-filing” means the electronic transmission of

information to and from the court.

- (C) “Electronic filing plan” means a plan prepared by a court and approved by SCAO.
- (D) “Electronic filing system” means a system provided by a court, or vendor with court approval, that provides electronic transmission of information.
- (E) “Electronic service” or “e-service” means the electronic service of information.

#### Rule 2E.003 Electronic-Filing Plans

Each court that implements e-filing shall adopt by local administrative order a plan that conforms to this chapter and the requirements of SCAO. The plan shall contain procedures that ensure document availability, security and integrity, and authentication of a document and its sender.

#### Rule 2E.004 Scope and Applicability

- (A) A court whose electronic filing plan has been approved by SCAO may do any of the following, consistent with the rules of this chapter:
  - (1) Accept electronic filing and permit electronic service of documents;
  - (2) Issue electronic filing guidelines consistent with this chapter that are not in conflict with statewide standards established by SCAO. The guidelines must be incorporated in the court’s local administrative order and posted prominently;
  - (3) Electronically issue, file, and serve notices, orders, opinions, and other documents, subject to the provisions of these rules and the statewide standards established by SCAO.
- (B) Confidential information may be electronically filed or electronically served in compliance with statewide standards established by SCAO.
- (C) Attachments, or discovery materials, submitted electronically shall be prepared in accordance with MCR 1.109(C) and policies and standards approved by SCAO. Exhibits to be used at trial shall be submitted to the judge in accordance with a local e-filing plan and as provided in MCR 2.516 and MCR 3.930.

#### Rule 2E.005 Transaction Fees

Transaction fees approved by the Supreme Court may be assessed. In addition, authorized users may be charged a reasonable convenience fee associated with credit card processing, electronic fund transfers, or other financial processing fees.

#### Rule 2E.006 Signatures

- (A) A pleading, document, or instrument electronically filed or electronically served under this chapter shall be deemed to have been signed if it conforms to MCR 1.109(D).
- (B) The filing party shall maintain documents containing handwritten signatures of third parties (e.g., affidavits and stipulations) and shall provide them to the other parties or the court upon request.

#### Rule 2E.007 Official Court Record

The electronic version of a document filed with or generated by the court under this chapter is an official court record pursuant to MCR 1.109. An appellate record shall be certified in accordance with MCR 7.210(A)(1).

#### Rule 2E.008 Transmission Failures

In the event of a transmission failure, a party may file a motion requesting that the court enter an order permitting a document to be deemed filed *nunc pro tunc* on the date it was first attempted to be sent electronically. The moving party must prove to the court's satisfaction that:

- (1) the transmission was attempted at the time asserted by the party;
- (2) the electronic filing system failed to process the transmission of the electronic document; and
- (3) the transmission failure was not caused, in whole or in part, by any action or inaction of the party.

#### Subchapter 2E.100 Electronic Filing

##### Rule 2E.101 Time and Effect

- (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 transmissions must be completed to be considered filed by the close of business on that day, but not later than 5:00 p.m.

- (B) If the court rejects a submitted document pursuant to 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.

#### Rule 2E.102 E-Filing Transaction

The electronic filing service provider shall maintain, in accordance with the *General Records Retention and Disposal Schedule #16 – Michigan Trial Courts*, a record that includes the date, time, size, and acceptance status of the transmission. The filer has the responsibility of ensuring that filings have been received by the e-filing system.

#### Rule 2E.103 Payment of Filing Fees

A filing fee is due and payable at the time of the transmission of the electronic document unless the fee is waived by order of the court pursuant to MCR 2.002, the fee is not due or payable under MCR 7.202(3), or the court makes alternative arrangements with the filer in accord with the court's local plan. Failure to timely pay a filing fee may result in the rejection of the filing by the court.

#### Rule 2E.104 Public Access Terminals

The court must provide a public access terminal that is available during the hours the court is open to enable electronic filings in conformity with this chapter.

#### Subchapter 2E.200 Electronic Service

##### Rule 2E.201 General Provisions

- (A) Service of process shall be accomplished electronically among authorized users through the electronic filing system in accordance with these rules. Service of documents on other parties who are not authorized users must be completed in the traditional manner, according to Michigan Court Rules.
- (B) Delivery of documents through the electronic filing service provider in conformity with these e-filing rules shall be considered valid and effective personal service.

##### Rule 2E.202 Time and Effect

A document served electronically through an electronic filing service provider in conformity with all applicable requirements of this chapter shall be considered served

when the transmission from the electronic filing service provider to the recipient's e-mail address is complete, except that for the purpose of computing time to respond, a document served after 5:00 p.m. local court time shall be deemed to have been served on the next day that is not a Saturday, Sunday, or legal holiday.

#### Rule 2E.203 E-Service Transaction

The electronic filing service provider shall maintain, in accordance with the *General Records Retention and Disposal Schedule #16 – Michigan Trial Courts*, a record that includes the date, time, size, and acceptance status of the transmission. The transmission serves as proof of service.

*Staff Comment:* 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.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2013, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2013-18. Your comments and the comments of others will be posted at <http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/chapter-2-civil-procedures.aspx>.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 1, 2013

*Corbin R. Davis*

Clerk