

## **PROPOSED AMENDMENTS TO MICHIGAN COURT RULE 2.107**

### **I. ELECTRONIC SERVICE—Adding MCR 2.107(C)(4)**

### **II. DATE OF FILING WITH COURT DEFINED—MCR 2.107(G)**

#### **Issues**

- A. Should the Representative Assembly adopt a proposed amendment to MCR 2.107(C)(4)—electronic service of papers—that modifies a previous amendment supported by the Representative Assembly?**
- B. Should the Representative Assembly adopt a proposed amendment to MCR 2.107(G)—actual date of filing with court defined—that modifies a previous amendment supported by the Representative Assembly?**

#### **Synopsis**

In 2005, the Representative Assembly supported two amendments to MCR 2.107. The first, proposed by the Electronic Filing Task Force of the State Bar of Michigan, introduced the electronic serving of papers, by adding subsection (C)(4) to MCR 2.107. The second amendment, proposed by the Criminal Jurisprudence and Practice Committee of the State Bar of Michigan, defined the filing date in MCR 2.107(G).

In 2007, the Michigan Supreme Court released these two amendments for public comment. The Civil Procedure and Courts Committee reviewed these two amendments as released. In the last two years since the Representative Assembly approved the amendment to MCR 2.107(C)(4), knowledge and expertise related to the internet and e-filing has grown, and the Committee believes that the proposed amendment to MCR 2.107(C)(4) is limited and should be revised.

With respect to MCR 2.107(G), the Committee believes that the previous amendment should be changed to correct a term misused in that amendment.

#### **Background**

**A. Electronic Filing (adding MCR 2.107(C)(4)).** In 2005, the Electronic Filing Task Force of the State Bar of Michigan ("SBM") submitted to the Representative Assembly a proposal that would amend MCR 2.107 by adding subsection (C)(4), which introduces the electronic service of papers by email. Further background information related to this amendment, and its specific language, are attached to this proposal. (See Former SBM Executive Director John Berry's letter to Corbin Davis, Clerk of the Michigan Supreme Court, dated January 10, 2006 (Exhibit A), and *Report on Public Policy Position, Proposed Amendment to MCR 2.107(C)*. (Exhibit B).)

At its September 22, 2005 meeting, the Representative Assembly voted to recommend the amendment. On January 10, 2006, the SBM submitted proposed MCR 2.107(C)(4) to the Michigan Supreme Court (Exhibits A and B). The Supreme Court made minor stylistic modifications to the proposed language (compare Exhibits B, p1 and D, p 2) and, on April

10, 2007, the Supreme Court published the proposed MCR 2.107(C)(4) for comments under ADM File No. 2007-12 (Exhibit D). The Supreme Court website received four comments (Exhibit E). The deadline for submitting comments expired on August 1 (Exhibit D, p 3), and the Public Administrative Hearing scheduled to review this amendment was scheduled for September 26, 2007, one day before this Assembly's meeting.

The language of the **proposed amendment as previously approved by the Representative Assembly now reads as follows:**

- (4) E-mail. Some or all of the parties may stipulate service of papers by e-mail.
- (a) The stipulation of service by e-mail shall set forth the following:
- (i) the e-mail addresses of all stipulating attorneys of record and any of their paralegals or assistants charged with receipt of the attorney's e-mail;
- (ii) a subject line that identifies the case by party name and case number, along with the title or legal description of the document(s) being sent; and
- (iii) the primary document format through which the parties shall send and receive documents by e-mail.
- (b) The sending e-mail address shall allow for receipt of a reply e-mail.
- (c) E-mail transmission after 4:00 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday.

The Civil Procedure and Courts Committee has reviewed the previously approved proposed language and believes that it should be changed to cover the issues and problems that may arise from the limited language. The Civil Procedure and Courts Committee asks this Assembly to approve and recommend **the alternative version set forth below**. The Committee's reasons for these changes are in *italics* following the suggested language.

- (4) **E-mail. Some or all of the parties represented by attorneys may agree to service by e-mail by filing a stipulation in that case. E-mail service shall be subject to the following conditions:**
- (a) **The stipulation for service by e-mail shall set forth the e-mail addresses of the attorneys agreeing to e-mail service, which shall include the same e-mail address currently on file with the State Bar of Michigan. If the attorney is not a member of the State Bar of Michigan, the e-mail address shall be currently on file with the appropriate registering agency in the State of the attorney's admission.**
- (b) **The parties shall set forth in the stipulation all limitations and**

- conditions concerning e-mail service, including but not limited to:
- (i) The maximum size of the document that may be attached to an e-mail;
  - (ii) Designation of exhibits as separate documents;
  - (iii) The obligation (if any) to furnish paper copies of e-mailed documents; and
  - (iv) The names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.
- (c) Documents served by e-mail must be in PDF format or other format that prevents the alteration of the document contents.
- (d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/". That designation shall constitute a signature for all purposes including those contemplated by MCR 2.114(C) and (D).
- (e) Each e-mail transmitting a document shall include a subject line that identifies the case by court, party name, and case number, and the title or legal description of the document(s) being sent.
- (f) An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).
- (g) A party may withdraw from a stipulation for service by e-mail by stipulation of the parties who agreed to e-mail service or leave of court on terms and conditions the court deems proper.
- (h) Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the e-mail address to be served.
- (i) The e-mail sender shall maintain an archival record of sent items that shall not be purged until the conclusion of the case, including the disposition of all appeals.

*Civil Procedure and Courts Committee Comments: The published proposal fails to address a number of matters that should be covered. Included are subjects such as the signing of documents; whether it is possible to withdraw from such a stipulation, and, if so, how; the consequences of the sending attorney's learning that the e-mail was not delivered; and the obligation of the sending party to retain the items sent. These points are covered in subrules (4)(d), (g), (h), and (i) of the Committee version.*

*Published subrule (4)(a)(ii) needs to be revised. The stipulation cannot include the title or legal description of the document being sent. That will be different for each item served. The Committee's revision avoids that problem. See subrule (4)(e), above.*

*The Committee believes that the section on the stipulation should cover the subject of limitations or conditions on service by e-mail. See subrules (b)(i)-(iii), above.*

*The meaning and purpose of subrule (4)(b) of the published proposal are unclear. That provision is omitted in the Committee revision.*

*The published proposal requires the stipulation to specify the "primary document format" by which documents are to be sent. The Committee believes that the rule should require that the format be one that does not allow alteration of the documents. See subrule (4)(c), above.*

*The rule needs to specify whether e-mail service is treated as service by mail or by delivery, because different time limits can apply depending on which is chosen. See, e.g., MCR 2.119(C)(1), (2). The Committee version treats the e-mail service as delivery. See subrule (4)(f) above.*

**B. Date of Filing with the Court Defined (amending MCR 2.107(G)).** Also before the Representative Assembly meeting on September 22, 2005 was a proposed amendment to MCR 2.107(G), submitted by the Criminal Jurisprudence and Practice Committee of the State Bar of Michigan. Here, the proposal added new language to the existing rule, further defining the date in which pleadings are filed. The background information related to this amendment, and its specific language, are attached to this proposal. (See Former SBM Executive Director John Berry's letter to Corbin Davis, Clerk of the Michigan Supreme Court, dated January 10, 2006 (Exhibit A), and *Report on Public Policy Position, Proposed Amendment to MCR 2.107(G)*. (Exhibit C).) The language of proposed MCR 2.107(G) is also found below.

At its September 22, 2005 meeting, the Representative Assembly voted to recommend the amendment. On January 10, 2006, the SBM submitted proposed MCR 2.107(G) to the Michigan Supreme Court (Exhibits A and C). The Michigan Supreme Court made no changes to the SBM's proposed language and, on April 10, 2007, the Supreme Court published the proposed MCR 2.107(G) for public comments under ADM File No. 2007-12 (Exhibit D). It does not appear from the Court's website that any comments were received with respect to this amendment (See Exhibit E). The deadline for submitting comments expired on August 1 (Exhibit D, p 3), and the Public Administrative Hearing scheduled to review this amendment was scheduled for September 26, 2007, one day before the this Assembly's meeting.

The language of the proposed amendment reads as follows:

2.107(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the

responsibility of the party who presented the papers to confirm that they

have been filed with the clerk. The date the pleadings are filed, which includes receipt by mail, shall be noted on the docketing statement if different from the date the pleadings are docketed.

**The Civil Procedure and Courts Committee has reviewed the proposed language and believes that the last sentence—the sentence underlined above—should be deleted and the following sentence inserted in its place as follows:**

If the clerk docket papers on a date other than the actual filing date, the clerk shall note the actual filing date on the register of actions.

The reason for the Civil Procedure and Courts Committee's suggested change is as follows:

*Civil Procedure and Courts Committee Comments: The published proposal refers to noting information on the "docketing statement." That term has no meaning in the trial courts. [It is a term used only by the Michigan Court of Appeals – see MCR 7.204(H).] The correct term is "register of actions." See MCR 8.119(D)(1)(c), (D)(3)(b).*

### **Opposition**

None known. The comments posted on the Supreme Court website generally support the concept, but do not discuss the details. See <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>

### **Prior Action by Representative Assembly**

At its September 2005 meeting, the Representative Assembly approved a recommended amendment of MCR 2.107 that was the basis of the proposal published for comment by the Supreme Court.

### **Fiscal and Staffing Impact on State Bar of Michigan**

None known.

**STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 27, 2007**

A. The Representative Assembly adopts the alternative version of the amendment to MCR 2.107(C)(4), as proposed by the Civil Procedure and Courts Committee.

(a) Yes

or

(b) No

B. The Representative Assembly adopts the amendment to MCR 2.107(G) with the revision to the last sentence, as proposed by the Civil Procedure and Courts Committee.

(a) Yes

or

(b) No

**SBM**

S T A T E B A R O F M I C H I G A N

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January 10, 2006

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

**Re: Rule 2.107 (C) of the Michigan Court Rules**  
Service and Filing of Pleadings and Other Papers, Manner of Service  
**Rule 2.107 (G) of the Michigan Court Rules**  
Service and Filing of Pleadings and Other Papers, Filing with Court Defined

Dear Mr. Davis:

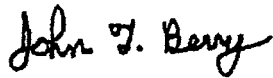
In September of 2005, the Representative Assembly of the State Bar considered and approved a proposal recommended by the Electronic Filing Task Force of the State Bar for changes in MCR 2.107 (C). The Task Force, at the request of Justice Robert P. Young, Jr., surveyed Michigan attorneys regarding their use of technology and interest in future use. The survey results have provided to Justice Young and to the State Bar membership. The survey revealed that attorneys were very supportive of e-filing if the following three conditions were met: 1) a seamless process that allows instant documents to be filed from a personal computer; 2) full access to the dockets; 3) secure and reliable transmission. With this information, the State Bar's Task Force began work in conjunction with the TAG group headed by the Hon. Kirk Tabbey to consider rule changes that would implement e-filing. The Task Force identified the following as the most important obstacles to implementation of a statewide e-filing system: 1) current differences in case management systems; 2) integration of service; 3) integrating paper files into the electronic system; 4) cost. The proposal presented by this letter is the first step in addressing both attorney demands and concerns. The proposed rule change would allow attorneys, by stipulation, to serve papers to each other electronically. The intent is to allow attorneys to agree to terms of electronic transmissions at the beginning of a case (example: exchange of email address, types of documents that can be sent, etc.). The electronic transfer of information would most likely be initiated after the initial complaint and answer. The proposed change is needed is to make electronic transmission a form of proper service.

The Representative Assembly also considered and unanimously supported a proposal by the Criminal Jurisprudence and Practice Committee of the State Bar regarding 2.107 (G). The proposal would add language to the existing rule that would require the date a pleading is filed to be noted on the docketing statement if it is different from the date docketed. Attorneys have experienced instances where an item is filed in a timely matter but not docketed the same day. The difference in dates has implications if an item appears to have been filed untimely, particularly in the context of appellate cases.

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I am now transmitting to you the text of the proposed changes, and a summary and rationale for each. The State Bar stands prepared to provide further explanation and assistance in regard to these proposals.

Sincerely,



John T. Berry  
Executive Director

cc: Lynn K. Richardson, Administrative Counsel, Michigan Supreme Court  
Thomas W. Cranmer, President  
Lori A. Buiteweg, Representative Assembly Chair  
Edward L. Haroutunian, Representative Assembly Vice Chair  
Janet Welch, General Counsel

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Report on Public Policy Position

Name of Committee:

Electronic Filing Task Force

Contact Person:

Joe Firestone

Email or Phone:

jfire@firestonelaw.net or (248) 540-2701

RE: Proposed Amendment to MCR 2.107 (C) - Service and Filing of Pleadings and Other Papers, Manner of Service

Date position was adopted:

June 29, 2005

Process used to take the ideological position:

General Consensus

Number of members in the decision-making body:

22 members, 9 non-member participants

Number who voted in favor and opposed to the position:

General Consensus

Position:

MCR 2.107(C) should be amended to allow attorneys to stipulate to serve documents upon each other via electronic mail.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

*(New language)*

MCR 2.107(C) Manner of Service

(4) Email. Some or all of the parties may stipulate to service of papers by email.

(a) The stipulation of service by email shall set forth the following:

(i) the email addresses of all stipulating attorneys of record and/or their paralegals or assistants charged with receipt of the attorney's email;

(ii) a subject line that identifies the case by party name and case number, along with the title or legal description of the document(s) being sent;

(iii) the primary document format through which the parties shall send and receive documents by email;

(b) The sending email address shall allow for receipt of a reply email.

(c) Email transmission after 4:00 p.m. eastern time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday.

B,

**RECOMMEND STATE BAR ACTION ON THIS ISSUE**

The E-Filing Task Force recommends the following to the Representative Assembly:

That, while the E-Filing Task Force continues to pursue the concept of e-filing *with the courts*, the Assembly should adopt the position that attorneys should be permitted to serve *one another* via electronic mail pursuant to court rule and stipulation.

**Arguments for the position:**

The arguments for adding electronic mail as a third method of services include: (a) saving the time and cost of mailing or hand delivery; (b) the ability to access documents from remote locations at any time; (d) the ability to transmit documents to clients who use email more quickly and inexpensively than through transmittal by regular mail; (e) the ability to store documents electronically on a long-term basis, thereby reducing the rental cost of storage; (f) saving paper; and (g) saving the time and cost of re-typing discovery requests before inserting every response.

**Synopsis**

As MCR 2.107(C) currently stands, "service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address..." (emphasis added).

The proposed change would add a third method of service - **electronic mailing** - to the options available to attorneys.

**Background**

Although this particular proposal pertains to e-filing *between attorneys*, the background information pertaining to e-filing *with the state courts* is insightful and is therefore included here.

At the January 29, 2005 meeting of the Technology Advisory Group, Justice Young requested the State Bar of Michigan to survey what the legal profession's needs are for e-filing and how interested State Bar members would be in using an e-filing system *for the state courts*. As a result, the E-Filing Task Force<sup>1</sup> was revitalized. In late March, the Task Force and State Bar staff began work on a survey and in June 2005, a survey was sent to a statistical sample of the SBM membership seeking information on their technological capabilities, their needs for e-filing, and comments and suggestions regarding e-filing at the state level.

A hyper link to the complete results, findings, conclusions and recommendations from that survey will be publicized by the time of the Assembly meeting. A summary of important findings is presented here.

- Approximately 80% of the respondents file pleadings at least weekly.
- About 90% of the respondents are able to access the Internet from their desk, and of those, close to 90% have high-speed access. About 70% of the respondents are connected to a network.
- Over 80% of the respondents have their own email account, and close to 95% check it daily.
- Close to 85% of the respondents indicated that if they could view electronically filed documents filed with the court, they would e-file with the court; and 85% indicated they would e-file if they could inquire on the status of a case. Of those 85% who would e-file:
  - Close to 55% would electronically file 100% of the time, and close to 90% would file electronically at least 50 % of the time.
  - 65% would be willing to pay a nominal fee to e-file (however, there was some debate by the respondents as to what "nominal" means).

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Proposed Amendment to MCR 2.107 (C)

- The most important attributes of e-filing would be 1) viewing the status of service online, 2) viewing documents and supporting documents, 3) retrieving a register of actions online, 4) retrieving electronic court records, 5) the ability to file subsequent pleadings, and 6) Secure document transfer.
- Those 15% who would not e-file had concerns that would need to be addressed before they would consider e-filing including:
  - Security and privacy of e-filing
  - Reliability of the e-filing system, including the reliability of their own computer system
  - Whether the e-filing system is optional and they can still use paper
  - Need for training and education
  - Need for upgrading member technology and computer capability

Other comments and suggestions pertaining to e-filing included the desire to make the system uniform and patterned after the federal court (PACER) system:

**Arguments against the position (if any):**

Not all attorneys use electronic mail or would be comfortable using electronic mail as a method of service; however, the proposed change would require attorneys to stipulate to service by electronic mail before service by this method would be recognized by the Court. In addition, these proposed changes do *not* seek to modify: (a) any filing requirements with the courts; (b) service on a party; or (c) provisions that specifically require personal service. Therefore, there appear to be no arguments against the position.

**If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.**

At its September 22, 2005 meeting, the Representative Assembly voted to recommend the amendment of Rule 2.107(C).

**Fiscal implications of the recommended policy to the State Bar of Michigan:**

None.

**<sup>1</sup> State Bar of Michigan E-Filing Task Force**

**Members**

Joseph H. Firestone, Chair

Diane L. Akers, Detroit

Austin G. Anderson, Saline

Denise Devine, Southfield

John R. Dresser, Sturgis

James R. Duby, Jr., Lansing

Matthew R. Halpin, Grosse Pointe Farms

Troy W. Haney, Grand Rapids

Michael S. Khoury, Southfield

Christopher P. Kohler, Southfield

James C. LaMacchia II, Lansing

Stephen M. Landau, Bingham Farms

Regina A. Mullen, Ann Arbor

Paul J. Raine, Rochester Hills

Jeffrey G. Raphelson, Detroit

Lore A. Rogers, Ann Arbor

Elizabeth A. Smith, Pontiac

Manvinder S. Talwar, Waterford

Cindy Rhodes Victor, Utica

Daniel Voss, Lansing

**Associate Member**

Millicent K. Sloan, Southfield

**Commissioner Liaison**

Lori A. Buiteweg, Ann Arbor

**SBM Staff Liaison**

James C. Horsch, Lansing

**Other SBM Staff Participants**

Chad Sluss, Lansing

Will Kramer, Lansing

Janet K. Welch, Lansing

**Other Participants**

Judge Kirk W. Tabbey, Ypsilanti

Hon. Joseph G. Scoville, Grand Rapids  
Hon. Donald E. Shelton, Ann Arbor

Marcus Dobek, Lansing  
Margo Runkle, Kalamazoo

**RECOMMEND STATE BAR ACTION ON THIS ISSUE**

**Arguments for the position:**

The Committee's proposal to MCR 2.107(G) aims to clarify that the date of receipt of a pleading is the filing date. The change is needed because some counties are listing the date the entry is made on the docket sheet, which is sometimes after the date of receipt, and that date difference can make a timely filed motion appear to be or considered to be untimely.

**Arguments against the position (if any):**

None provided.

**If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.**

At its September 22, 2005 meeting, the Representative Assembly unanimously voted to recommend the amendment of Rule 2.107(G).

**Fiscal implications of the recommended policy to the State Bar of Michigan:**

None

# Order

Michigan Supreme Court  
Lansing, Michigan

April 10, 2007

Clifford W. Taylor,  
Chief Justice

ADM File No. 2007-12

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment of  
Rule 2.107 of the Michigan  
Court Rules  
(Provision to allow e-discovery  
and to clarify filing requirements)

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On order of the Court, this is to advise that the court is considering an amendment of Rule 2.107 of the Michigan Court Rules. 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 by the Court before a final decision is made. The notices and agendas for public hearings are posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

[Additions are indicated by underline, and deletions by strikethrough.]

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A-B) [Unchanged.]

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

(a) handing it to the attorney personally;

(b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or

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- (c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.
- (2) Delivery to Party. Delivery of a copy to a party within this rule means
- (a) handing it to the party personally; or
  - (b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.
- (3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.
- (4) E-mail. Some or all of the parties may stipulate service of papers by e-mail.
- (a) The stipulation of service by e-mail shall set forth the following:
    - (i) the e-mail addresses of all stipulating attorneys of record and any of their paralegals or assistants charged with receipt of the attorney's e-mail;
    - (ii) a subject line that identifies the case by party name and case number, along with the title or legal description of the document(s) being sent; and
    - (iii) the primary document format through which the parties shall send and receive documents by e-mail.
  - (b) The sending e-mail address shall allow for receipt of a reply e-mail.
  - (c) E-mail transmission after 4:00 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday.

(D-F) [Unchanged.]

(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge

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**Report on Public Policy Position**

**Name of Committee:**

Criminal Jurisprudence and Practice Committee

**Contact Person:**

Val Newman/Marty Krohner

**Email:**

valerie@sado.org/ marty@mich.com

**RE:** Proposed Amendment to MCR 2.107 (G) - Service and Filing of Pleadings and Other Papers, Filing With Court Defined

**Date position was adopted:**

March 17, 2005

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

Committee discussion

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

10

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

Unanimous support

**Position:**

The Committee supports an amendment to rule 2.107(G). The Committee proposes adding an additional sentence at the end of the rule.

**The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:**

*(New language)*

2.107(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk. *The date the pleadings are filed, which includes receipt by mail, shall be noted on the docketing statement if different than the date docketed.*

C<sub>1</sub>



to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk. The date the pleadings are filed, which includes receipt by mail, shall be noted on the docketing statement if different from the date the pleadings are docketed.

Staff Comment: The proposed amendments were adopted by the State Bar of Michigan Representative Assembly for submission to the Supreme Court. The proposal would allow parties to stipulate to agree to electronic-discovery, or service of papers among the parties, by e-mail. The proposal would also require that court clerks note the date pleadings are filed if that date is different from the date the filing is docketed.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or MSC clerk@courts.mi.gov. All comments will be posted on the Court's website. When filing a comment, please refer to ADM File No. 2007-12.



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.

April 10, 2007

*Corbin R. Davis*

Clerk

D3

up.net

2007-12

**From:** "Judge Gibson" <judgebag@up.net>  
**To:** <clerk@courts.mi.gov>  
**Sent:** Thursday, June 21, 2007 10:59 AM  
**Subject:** ammendment of MCR 2.107

I ask that the committee continue the Trial Courts discretion to allow or not allow use of e-filings, pursuant to the proposed rule.

Beth Ann Gibson  
92nd District Court Judge

*Received  
6/25/07  
codrain*

E,

6/21/2007

# Michigan Judges Association

## Founded 1927

May 30, 2007

**PRESIDENT:**  
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**Executive Director:**  
TIM WARD

Chief Justice Clifford W. Taylor  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

Dear Chief Justice Taylor:

Re: ADM file no. 2007-12 and ADM file no. 2005-31

At the May 22, 2007 meeting of the Michigan Judges Association, the Rules Committee and the Executive Board considered the above-referenced proposed amendments.

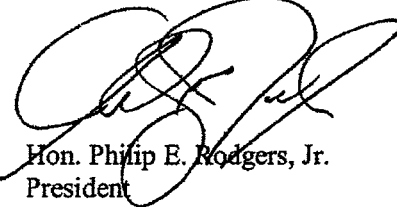
We considered ADM file no. 2007-12, proposed amendment of MCR 2.107. MJA supports the amendment as it moves us further into the electronic age and is by stipulation of the parties.

As to ADM file no. 2005-31, proposed amendment of MCR 3.602, MJA supports the amendment with the exception that, under MCR 3.602 J(3), the motion to vacate an award be filed within 21 days and not extended to 91 days in domestic relations cases because of the need to meet time-guidelines.

We thank the Court for considering our input on these matters. If the Michigan Judges Association may provide any further information or assistance, we stand ready to assist the Court.

Sincerely,

MICHIGAN JUDGES ASSOCIATION



Hon. Philip E. Rodgers, Jr.  
President

pc: Corbin R. Davis, Clerk of the Michigan Supreme Court  
Hon. Stephen D. Gorsalitz, Rules Committee Chairperson  
Hon. Fred L. Borchard, Secretary of MJA  
Anne Boomer, Administrative Counsel

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## Michigan District Judges Association



July 31, 2007



Chief Justice Clifford W. Taylor  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, Michigan 48909

RE: ADM File 2007-12  
ADM File 2002-37

Dear Chief Justice Taylor:

The Michigan District Judges Association has reviewed these proposals and takes the following positions on them:

With respect to ADM File 2007-12, which amends MCR 2.107 to allow for service of documents and pleadings by electronic means, we support the proposal provided that it is by stipulation of the parties and approval of the court.

With respect to ADM File 2002-37, which proposes to adopt MCR 2E.001 *et seq.* to provide for a comprehensive plan for the electronic filing of pleadings and documents with the court, the MDJA supports the proposed rules in concept. The association is of the opinion that the results of the pilot program provided by ADM Order 2007-3 should be awaited before final action on this proposal.

The MDJA also requests that these proposed rules allow flexibility to the district court in recognition of the nature of its cases, the higher volume of *in pro per* matters, and the varying level of sophistication of the litigants.

Sincerely,

Richard Hammer  
Chairperson, Rules Committee  
Michigan District Judges Association

RH/dw

C: Corbin R. Davis, Clerk of the Michigan Supreme Court  
Hon. Kirk Tabbey, MDJA President  
Anne Boomer, Administrative Counsel  
Hon. Kathleen McCann, MDJA Secretary

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STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

P.O. Box 30212  
LANSING, MICHIGAN 48909

July 30, 2007

*1,  
Send to Anne*

The Honorable Clifford W. Taylor  
Chief Justice  
Michigan Supreme Court  
Hall of Justice  
Lansing, MI 48909

Dear Chief Justice Taylor:

Re: ADM File No. 2002-37 Proposed New Rules 2E.001 et seq of the Michigan Court Rules (Electronic Filing).

ADM File No. 2007-12 Proposed Amendment of Rule 2.107 of the Michigan Court Rules (Provision to allow e-discovery and to clarify filing requirements).

As the Attorney General, I serve as the State of Michigan's exclusive legal advisor.<sup>1</sup> Michigan courts have observed that it is the function and duty of the Attorney General, and only the Attorney General, to provide legal representation and advice to all client state agencies and employees.<sup>2</sup>

I am writing to offer comments on these proposals that would permit e-discovery, electronic filing, and clarify filing requirements. I enthusiastically support the principle of the courts and litigants moving to a system of electronic filing and serving documents and providing electronic access to documents in court files, and I generally support both proposals listed above, but I have some concerns.

**General Comments:**

Despite my general support of an e-filing system, I must nonetheless express my serious concerns with the potential impact its adoption may have on my budget. My office currently participates in the e-filing pilot program being used by the Court of Appeals. The vendor chosen, WIZNET, imposes a \$5 filing fee and 3% service fee (to cover the cost of credit card company charges) for each court filing, in addition to the court filing fees for specific

<sup>1</sup> See, MCL 14.28, 14.29, and 14.32.

<sup>2</sup> See, e.g., *Babcock v Hanselman*, 56 Mich 27, 28 (1885); *Jennings v State Veterinary Board*, 156 Mich 417 (1909); *Attorney General v PSC*, 243 Mich App 487, 504 (2000).

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documents. My staff reports generally favorable experience with this system, but there are issues to address before it is implemented statewide.

If the WIZNET system, or something similar, is adopted under amended court rules, the costs may be substantial. The financial impact resulting from the adoption of the rules on the budget of the Attorney General could be substantial. Research conducted by my office during the sample month of May 2007 indicates that if the Court were to adopt a similar program statewide, the annual cost to my department alone could exceed \$100,000. Due to the State's current fiscal situation it is unlikely that I can expect any additional funding from the Legislature to cover this additional expense. We also calculated that this cost might be offset by potential postage savings of \$15,340, but I fear that such savings will not materialize. I note that Guideline 4 of the Court of Appeals Electronic Filing Guidelines requires mailing hard copies of documents in addition to electronic filing.<sup>3</sup> I also note the recent tendency of some United States District Court judges to require mailing hard copies of documents that are electronically filed. Once the electronic filing system is fully operational, I urge this Court not to require or permit filing redundant hard copies by mail.

In addition to the cost itself, there are potential problems with the mechanics of payment. Under the pilot program currently in use in the Court of Appeals, the filer uses a credit card to pay the vendor. For filing fees, on the other hand, the Court of Appeals and Supreme Court currently use a system of monthly inter-account billing to charge my office. Some filing fees are charged to client agencies, but some are not; and it would be inconvenient, cumbersome, and expensive for my office to have to set up credit card accounts in order to pay all fees at the time of filing.

Accordingly, I urge the Court to more carefully explore the cost implications resulting from the adoption of the e-filing court rule. I ask that before it is adopted, other options be explored that would eliminate the need to use a private vendor to administer the e-filing system. While the Court of Appeals uses a private vendor that charges a fee for each court filing, all federal courts in Michigan that require e-filing do not impose any additional fees. I ask that the Court explore the feasibility of licensing the federal software or creating or acquiring its own no-cost-per-filing software program so that the potential efficiencies and savings of an e-filing system are not undercut by added expenses to litigants and attorneys.

I also note that in ADM File 2002-37, Administrative Order 2007-3, this Court has authorized the 6th Circuit Court (Oakland County) to implement an Electronic Document Filing Pilot Project. I urge the Court to carefully consider the experience of that pilot project, and the lessons to be learned from it, before implementing an electronic filing system statewide.

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<sup>3</sup> [http://courtofappeals.mijud.net/efile/COA\\_Electronic\\_Filing\\_Guidelines.pdf](http://courtofappeals.mijud.net/efile/COA_Electronic_Filing_Guidelines.pdf)

**Comments on ADM File No. 2002-37:**

- **Consistency among courts.** I believe it is essential that whatever procedures for electronic filing are adopted must be consistent throughout the entire court system. At any given time, my office has more than 10,000 open cases pending in the trial and appellate courts of this State. We have litigation pending in virtually every county. It would be extremely burdensome if courts around the State had different requirements for the mechanics and timeliness of filing, for example. Proposed Rule 2E.002(C) contemplates that the State Court Administrator could approve different plans for different courts and proposed Rule 2E.003(A) contemplates that courts "may" do "any" of four listed activities. I understand that there may be difficulties in initial implementation of an electronic filing system and that some sort of incremental implementation may be necessary, but I urge the Court to require that within some reasonable time all courts should adopt consistent requirements.
- **Timeliness of filing.** As one example of the need for consistency among courts, I note that there is an inconsistency between the two proposals about the timeliness of filings. ADM File No. 2007-12, Proposed Rule 2.107(C)(4)(c) provides that anything filed after 4:00 p.m. Eastern Time will be deemed served on the next day and ADM File No. 2002-37, Proposed Rule 2E.202 provides that documents filed or served after 5:00 p.m. local court time shall be deemed served on the next day. The fact that Dickinson, Gogebic, Iron, and Menominee Counties in the western Upper Peninsula are in the Central Time Zone complicates things even more. I believe it is essential that filing and service deadlines and other electronic filing requirements be consistent and that they be based on the local court time.
- **Definition of "authorized users."** In ADM File No. 2002-37, Proposed Rule 2E.002 defines "authorized user" as only a party or a party's attorney, and Proposed Rule 2E.004(A) provides that only authorized users may engage in electronic filing or service. In contrast, under ADM File No. 2007-12, Proposed Rule 2.107(C)(4)(a) permits a stipulation of service by e-mail to include other attorneys of record, paralegals, and assistants. In a large office like mine with several thousand active cases and several hundred attorneys and staff members, a back-up system of information sharing is essential. I recommend that in addition to a single counsel of record, other attorneys, paralegals, and secretaries be permitted to be designated as authorized users for purposes of filing, serving, and receiving service of documents.

**Comments on ADM File No. 2007-12:**

I support the proposal to amend MCR 2.107 to permit parties to stipulate to service of papers by e-mail. I note that in the electronic filing system used by the United States District Courts a notice is automatically generated that, in essence, serves notice to opposing parties that a document has been filed, allowing the party to access the document via the U.S. District Court's e-filing system. This eliminates the need to serve documents via first class mail for all parties that participate in the e-filing system. If a party does not participate in the e-filing

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The Honorable Clifford W. Taylor  
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system, the court's website provides a page that reminds the filer to serve the documents on those people via first class mail. I suggest that whatever changes are made to MCR 2.107, they be coordinated with other changes in the electronic filing system so that one consistent electronic filing and service system becomes exclusive, not just an addition to other requirements for filing and serving paper copies of documents.

Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael A. Cox". The signature is fluid and cursive, with the first name "Michael" and last name "Cox" clearly distinguishable.

Michael A. Cox  
Attorney General

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