

DOMESTIC VIOLENCE COMMITTEE
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 Domestic Violence Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Domestic Violence Committee. The State Bar of Michigan has authorized the Domestic Violence Committee to advocate its position.

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 Domestic Violence Committee is 19.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 19. The number who voted in favor to this position was 10. The number who voted opposed to this position was 0.

Report on Public Policy Position**Name of committee:**

Domestic Violence Committee

Contact person:

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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:

July 11, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

0 Abstained from vote

9 Did not vote

Position:

The committee neither supported nor opposed the proposed court rules, but instead drafted a report detailing concerns that the proposed rules may have on cases involving domestic violence, including PPO cases, and suggesting possible responses.

Explanation of the position, including any recommended amendments:

The proposed new rules include:

- ADM File No 2013-18 – proposed new rules 2E.001 et seq. regarding e-filing statewide.
- ADM File No 2013-18 – includes Proposed Administrative Order regarding proposed establishment of e-filing standards and Draft E-filing Standards.

The following summarizes concerns expressed by the public policy subcommittee and the full committee at its May 2013 meeting:

A. Protection orders and E-Filing: Rules governing electronic access to records in cases where protection orders have been issued should comply with federal funding eligibility requirements, and with statutes protecting the identity of protected parties. Under 18 USC 2266(5), the term “protection order” includes civil protection orders (such as Michigan PPOs), probation and pretrial conditional release orders in criminal cases, and other types of protection orders meeting the statute’s definition, namely:

“(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

“(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.”

1. Michigan currently receives approximately \$3.5 million under the federal STOP and Grants to Encourage Arrest Programs. These programs support criminal justice initiatives responding to domestic violence, sexual assault, and stalking in every Michigan County. Any rules governing electronic court records should comply with federal eligibility conditions for these programs. These federal conditions include a prohibition on charging victims of domestic violence, sexual assault and stalking for the costs associated with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a protection order, or a petition for a protection order (as defined in 18 USC 2266(5)). Such charges would include any fees that might be imposed for electronic access to records in cases involving protection orders. The federal grant conditions are found in the following statutes:

- a) *42 SC 3796gg-5(a) (Excerpt) - Governing eligibility for federal STOP grant funding*

“A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, or unit of local government--

"(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING offense, or in connection with the filing, issuance, registration, MODIFICATION, ENFORCEMENT, DISMISSAL, WITHDRAWAL or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, DATING VIOLENCE, sexual assault, or stalking, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, MODIFICATION, ENFORCEMENT, DISMISSAL, WITHDRAWAL or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction.” [2013 amendments indicated in ALL CAPS]

b) *A similar provision exists in 42 USC 3796bb(c), which provides conditions of eligibility for federal Grants to Encourage Arrest.*

2. Any rules governing electronic court records should comply with 18 UCS 2265(d) governing full faith and credit for protection orders (as defined in 18 USC 2266(5)). This statute prohibits a state from making information that would identify or reveal the location of a party protected by a protection order publicly available on the Internet, as follows:

“(3) Limits on Internet publication of registration information.--A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.”

3. One approach to compliance with the above statutes is to exempt PPO cases from electronic record-keeping systems to avoid any possible violations. The Domestic Violence Committee notes that PPOs are currently not included in the electronic records systems currently used in some courts, and recognizes that this approach avoids inconsistencies with the above federal statutes, at least with regard to this type of protection order. Courts using this approach need to further recognize that the federal definition of “protection order” is broad enough to encompass other types of orders with conditions to protect victims of domestic violence, sexual assault, and stalking, including probation and pretrial release orders in criminal cases.

The Committee further recognizes that electronic access to court records that complies with the above statutes may benefit some survivors who cannot get to the courthouse or other e-filing locations during business hours because of distance, lack of transportation, disabilities or interference from an abuser. If PPOs and other types of protection orders are not exempted from electronic records systems, the committee urges that the governing rules exempt these cases from any additional e-filing fees, including transaction and convenience fees. Furthermore, public access to court records in these cases should be restricted as provided by 18 USC 2266(5).

B. Practical concerns for domestic violence survivors using e filing systems in all types of cases

1. Access or safe access to a computer; technological know-how:

- Although the proposed rule requires courts to provide on-site electronic access, many survivors will still have access issues. Survivors may have difficulty getting to the court’s location for the reasons noted in A.3 above. They also may not have access to their own computer, may lack knowledge about computer technology, or have limited English proficiency, all of which create potential barriers to court process.
- After e-filing is initiated, parties receive notice of subsequent e-filings in their case by email. Similar to above concerns, some survivors do not have access to their own computer. Others may not have access to a safe email account due to interference from an abuser. Survivors with these types of access barriers are at risk of missing notices regarding their cases.

In light of the foregoing access barriers, the proposed rules governing electronic records systems should include provisions allowing litigants to opt out of e-filing for the above, and other applicable reasons. (Other applicable reasons might include the inability to pay for access fees electronically, see discussion in B.2, below).

2. General concerns for low income or self-represented litigants (including domestic violence survivors)

- E-filing potentially adds additional costs to court cases (e.g., a transaction fee and a convenience fee)
- E-filing fees presume that fees will be paid by credit card or other electronic transfer, without much consideration for those who do not have credit cards and can only pay by cash
- The rules are not clear about how fee waivers will be processed; and
- Requests for a fee waiver must not result in a delay in filing a case.

The proposed rule should allow persons who cannot pay electronically to pay in cash, or to opt out of e-filing. Further, the rules should more clearly define that no fees related to e-filing will be charged to any litigant with a waiver of fees, and describe in detail the process a court must follow when processing fee waiver requests, including a statement that the processing will not add any delay to the litigant’s case.

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/Administrative%20Orders/2013-18_2013-05-01_formatted%20e-filing%20AO_FINAL.pdf

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