

CIVIL PROCEDURE & COURTS 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 Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Civil Procedure & Courts Committee. The State Bar of Michigan has authorized the Civil Procedure & Courts 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 Civil Procedure & Courts Committee is 18.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 18. The number who voted in favor to this position was 13. The number who voted against it was 0.

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

Civil Procedure & Courts 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:

May 18, 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:

18

Number who voted in favor and opposed to the position:

13 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Position:

See comments

Explanation of the position, including any recommended amendments:

The Committee was honored to be joined by a representative of SCAO who drafted the proposed rule. SCAO noted that the provision is still subject to ongoing discussion, likely is going to be changed (and expanded as applied to service of process), and still subject to large-scale decisions (such as whether there will be a unified e-filing system state wide [which the Committee unanimously favors]). As such, our comments are more ‘advisory’ given the incomplete nature of the process.

- Generally there is opposition to a system which permits a review of filings before they are accepted. The Federal PACER system permits all filings; if there are problems, the clerk issues a notice the next day and gives a time for it to be corrected. This avoids the problem created by the proposed rule, where something is filed but then rejected for some inadequacy. The filing could then be late or time-barred absent a nunc pro tunc order of the court, an extra step which simply represents unnecessary motion practice. Moreover, an automatic acceptance system permits simultaneous filing and e-service, whereas the proposed system introduces the potential of delays between filing and service through no fault of the filing party.
- The Committee was advised of the significant debates regarding the assessment of fees by the courts and pending legislation. The Committee thus notes only that the transaction fees should be defined as taxable costs.
- Rule 2E.006(B): delete “them” and insert “copies and make originals available for inspection”
- If Rule 2E.008 is to stay, it should permit discretion of the court with consideration of the listed factors. As written, it suggests satisfaction of each factor is mandatory.
- A major advantage of electronic filing is 24/7 access. As such, the Committee does not favor a 5:00 p.m. deadline in 2E.101(A). Assuming service is accomplished automatically and simultaneously with filing, as in PACER, this should not present a problem for courts or practitioners. Whether such a system suggests that the current 7 day default rule for the filing of motions should be revisited is another topic.

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

http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2013-18_2013-05-01_E-filing%20Standards_FINAL.pdf