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Michigan Court Rules in the Digital Age

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Introduction

Michigan has entered the Digital Age. In 2000, our legislature enacted the Uniform Electronic Transactions Act,¹ which, broadly speaking, recognizes and regulates electronic records and electronic signatures, including those used by state agencies. So, too, our Supreme Court has amended the court rules to recognize and embrace digital technology.² This article surveys Michigan court rules and procedures that deal specifically with digital information.

Civil Discovery

Electronically stored information is subject to discovery.³ “A party has the same obligation to preserve electronically stored information as it does for all other types of information.”⁴ The rules regulate the manner of producing electronic records and resolution of disputes involving claims of undue burden or cost.⁵ A party may be excused from failure to produce electronically



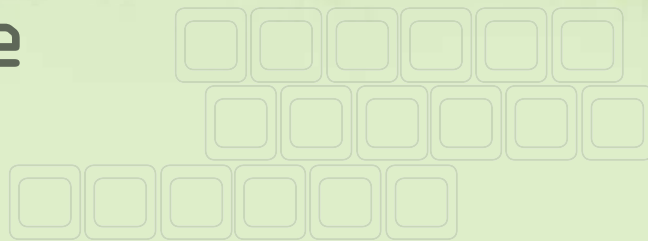
stored information that was lost as a result of the routine, good-faith operation of an electronic information system.⁶

A subpoena to a witness may also require production of electronically stored information, which the witness is generally required to provide in the form it is ordinarily maintained.⁷ The rules similarly provide for resolution of disputes involving alleged undue burden or cost.⁸

Evidence Rules

An electronically recorded voice (such as a voice-mail message) may be authenticated by opinion based on hearing the voice at any time under circumstances connecting it with the alleged speaker.⁹

If data is stored on a computer, any printout readable by sight, shown to reflect the data accurately, qualifies as an “original” satisfying the Best Evidence Rule.¹⁰



Filing and Service of Court Documents

Our Supreme Court has established an E-filing pilot project for the Oakland County Circuit Court for “C” and “N” type civil actions assigned to six circuit judges.¹¹ The Court has also approved an E-filing project for the 42nd Circuit Court (Midland County) in asbestos cases.¹²

The Michigan Court of Appeals has an E-filing project for Michigan Public Service Commission appeals, criminal cases, and appeals from Oakland County E-filing cases.¹³ Participants in the Court of Appeals project not only save the cost of paper and postage for briefs and exhibits (as compared with the fee charged by the court’s service provider, Wiznet, Inc.), but any filing received by 11:59 p.m. on a business day will be docketed for that business day.¹⁴

Citations initiating civil infraction and misdemeanor cases may be filed electronically in district court.¹⁵ The parties to a civil proceeding may stipulate to e-mail service of pleadings and court notices.¹⁶

Where a prosecutor has filed and served notice of a victim request for information in a criminal appeal, the Court of Appeals must provide expedited electronic notice to the prosecutor of any decision adverse to the State.¹⁷

Fast Fact

Michigan has joined the digital revolution. Fast-paced changes in technology are reflected in changes to Michigan court rules.

Citation of Electronic Authority

The Michigan Uniform System of Citation provides that, when an official or regional reporter is unavailable, legal material on Lexis or Westlaw is cited as:

A v B, ___ [Official Reporter]; ___ [Unofficial Reporter(s)] ___; [year] LEXIS/WL [library] [page].¹⁸

Internet material is cited as:

[Author (if available)], [Title], <[Internet address]> (accessed [date accessed]).¹⁹

Proposed Rules

Our Supreme Court recently proposed an amended rule that would require a trial court to instruct jurors, among other things, not to use a cell phone, computer, or other electronic device to obtain information about the case, such as by checking criminal records of witnesses, conducting research, reviewing news accounts, or consulting aerial maps.²⁰ Another recently proposed rule would regulate attorney cell phone use in court facilities.²¹

The Supreme Court is also considering a proposed rule regarding E-filing in Michigan courts.²²

Our Supreme Court recently proposed an amended rule that would regulate attorney cell phone use in court facilities.

Online Access to Court Rules

Fortunately for the busy practitioner, a current, searchable version of Michigan court rules, including proposals and recent amendments, is available 24/7 on the Internet by visiting <http://coa.courts.mi.gov/rules/> and following the links.

Conclusion

Michigan has joined the digital revolution. Fast-paced changes in technology are reflected in changes to Michigan court rules. Up-to-date knowledge of court rules and procedures is just as important as proficiency in substantive law. ■

Randy E. Davidson received a JD degree cum laude from Wayne State University Law School in 1979. He was admitted to the Bar in 1979 and has served as an assistant defender at the State Appellate Defender Office since 1992. He is a member and past chair of the State Bar Committee on Libraries, Legal Research, and Legal Publications and a member of the Criminal Defense Attorneys of Michigan.

FOOTNOTES

1. MCL 450.831 *et seq.*
2. See, for example, the December 16, 2008 amendments to Michigan’s discovery rules, effective January 1, 2009, discussed in this article and reported at 482 Mich lxxx-lxxxvii.
3. MCR 2.302(B)(1).
4. MCR 2.302(B)(5).
5. MCR 2.310(C)(2); MCR 2.302(B)(6).
6. MCR 2.313(E).
7. MCR 2.506(A)(2).
8. MCR 2.506(A)(3).
9. MRE 901(b)(5).
10. MRE 1002; MRE 1001(3).
11. Administrative Order 2007-3; see also Oakland County, Michigan, E-File&Serve <<http://www.oakgov.com/clerkrod/efiling/index.html>>. “C” and “N” type actions refer to the case classification codes set forth in MCR 8.117(A)(4)(a)-(i) and MCR 8.117(A)(5)(a)-(k); specifically, civil damage suits (such as personal injury, malpractice, and products liability) and other civil matters (such as business and contract claims). All websites cited in this article were accessed May 21, 2009.
12. Administrative Order 2009-4 (ADM File No. 2002-37, order issued May 19, 2009).
13. Michigan Court of Appeals, E-Filing and Service Project Summary <<http://coa.courts.mi.gov/efile/>>.
14. See the Court’s electronic filing and service guidelines, available at <http://coa.courts.mi.gov/pdf/COA_EFile_User_Guidelines.pdf>.
15. MCR 4.101(A)(1); MCR 8.125.
16. MCR 2.107(C)(4).
17. MCR 7.215(H).
18. Administrative Order 2006-3, I.C.9.
19. Administrative Order 2006-3, I.C.13.
20. Proposed amendment of MCR 2.516 (ADM File No. 2008-33, order issued January 14, 2009).
21. Proposed amendment of MCR 8.115 (ADM File No. 2008-35, order issued January 14, 2009).
22. Proposed new MCR 2E.001 *et seq.* (ADM File No. 2002-37, order issued April 10, 2007).