

## GENERAL PRACTICE SECTION

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 General Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the General Practice Section only and is not the position of the State Bar of Michigan.

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 General Practice Section is 1,205.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 9. The number who voted in favor to this position was 8. The number who voted opposed to this position was 0.

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

General Practice Section

**Contact person:**

William A. Roy

**E-Mail:**[roy@rsmv.com](mailto:roy@rsmv.com)**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 15, 2013

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

Position adopted after an electronic discussion and vote.

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

9

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

8 Voted for position

0 Voted against position

0 Abstained from vote

1 Did not vote

**Position:**

See comments

**Explanation of the position, including any recommended amendments:**

The use of electronic media in court is to be encouraged. Every time we save a person from having to drive out to court we save fuel, time, congestion at the courthouse, and at the same time can accommodate disabilities. Electronic filing, such as the ECF system used in the Federal Courts, demonstrates this saving.

The Solo and Small Firm-General Practice Section is specifically interested in the future development of electronic filing systems. We have seen the establishment of several e-filing systems in Michigan Courts. Unlike the Federal ECF system, individual judicial circuits in Michigan have established their own systems. This is a particular burden on solo and small firm practitioners, who generally do not have IT departments. Any attorney who accepts a case in an "e-filing" county in which he or she has not previously practiced must learn a new system. Any attorney who does not have regular business in a county usually has to "bone up" on the county system if some time has passed since the last filing. It also means having filings rejected until the nuances of each new system are perfected.

Having distinct e-filing systems in the several judicial circuits runs counter to two overarching principles which guide our justice system in Michigan. Article 6 §1 of the Michigan Constitution establishes one court of justice, which is divided into a supreme court, court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction. MCR 1.105 indicates that the Michigan Court Rules are to be construed to secure the just, speedy and economical determination of every action.

The paper filing system which is being replaced by e-filing is uniform. An attorney can go into any judicial circuit and file papers using the same procedure as any other circuit. The system that is evolving envisions a different set of filing rules for each circuit. Every attorney must "join" the county system in each circuit that establishes e-filing (possible 57 circuits with different systems), have the equipment necessary to access the system, keep a pass code for each system, and keep up with the changes for each system. What if the 83 probate courts, the 98 district courts and the 4 municipal courts go to e-filing? Use of individualized systems places a tremendous burden on small practitioners, who cannot "spread out" the overhead cost of learning new filing systems over a large client base.

A state wide system would have the added benefit of spreading out the costs of the system itself. This would perhaps allow some jurisdictions, which would otherwise find the transition cost prohibitive, to enjoy the benefits of this technology.

A single system would also permit each circuit to access other systems with the obvious benefits. For example, attorney scheduling could be tracked between courts, to avoid scheduling conflicts.

Another problem with the current e-filing systems is the fees being charged. E-filing has reduced the need for court clerks and clerical help, but we now see charges for us in the system for each filing (e.g. \$8.75 charge for an "envelope" for each filing in the 6 Circuit (Oakland County \$1.00 per page to retrieve a "filed" copy of a document in the 16th Circuit (Macomb County)). These charges are a direct burden on the clients, many of whom are severely impacted financially by having to engage in litigation in the first place.

All other fees charged for filing papers with the court (case filing fee, motion fee, judgment fee *etc.* are set by statute. MCLA 600.2529 provides that the fees enumerated therein "are payment in full for all clerk, entry, and judgment fees in an action from the commencement of the action to and including the issuance and return of the execution or other final process, and are taxable as costs". It seems that charging fees for

electronic filing, which is less costly to the court should be covered by the rubric of "clerk" fees and subsumed in the filing fee paid by the litigant.

Adding direct costs to the litigation process also favors the wealthy litigant. Any extra cost taxed to the party with less financial means is an impediment to justice. Litigation has become so expensive that in many cases, the question debated by clients and attorneys is not whether the facts or the law support our position, but how much will it cost for us to get a decision. It is certainly disconcerting to see a client with a perfectly good case have to give up because the other side is litigating the matter to death and he or she cannot afford to pursue the matter. Must we widen this gulf?

The Solo and Small Firm-General Practice Section firmly believes that the Supreme Court must establish a state wide e-filing system in the circuit courts. In this way, practitioners will be able to master one set of rules, which will guide their filing in any circuit court in which they choose to practice. The key is uniformity, which will not be achieved with separate systems. Further, the cost savings should be passed on to the public who litigate in the courts, as opposed to viewing e-filing as an opportunity for a new revenue stream.

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