



Report on Public Policy Position

Name of Committee:

Electronic Filing Task Force

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Other:

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:

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.

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 Force¹ was revitalized. In

¹ State Bar of Michigan E-Filing Task Force

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Members

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James R. Duby, Jr., Lansing

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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.

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- 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).
- 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.

To date, the State Bar of Michigan does not have a position on this matter.

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

None.