

Report on Public Policy Position

Name of committee:

Civil Procedure and Courts Committee

Contact person:

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Proposed Court Rule or Administrative Order Number:

[2007-30 - Proposed Amendment of Rules 2.107 and 2.117 of the Michigan Court Rules](#)

The proposed amendments would allow a court to enter an order authorizing electronic service of notices and documents unless the party or attorney files written notice with the court that he or she for good cause elects not to receive service electronically. Good cause is defined to include the fact that a party or attorney does not have ready access to a facsimile machine or e-mail communication. Electronic service would include service by facsimile or e-mail.

Date position was adopted:

May 3, 2008

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:

20

Number who voted in favor and opposed to the position:

11 Voted for position

0 Voted against position

0 Abstained from vote

9 Did not vote

Position:

Support and Amend

Explanation of the position, including any recommended amendments:

The committee supported the concept of the proposals, but suggested a number of modifications.

- As the Committee had urged regarding the proposals for electronic filing, File 2002-37, this electronic service procedure should be established via a uniform state-wide rule, rather than a multiplicity of local variants.

- It is not appropriate to have local courts adopt such procedures by local administrative order. Under MCR 8.112(B), that mechanism is appropriate only for matters of internal court management. These proposals go beyond that – they require that attorneys and parties be informed of the practice, and require them to do acts in litigation – providing email addresses or opting out of the procedure. Cf. MCR 8.112(A) (2). If this procedure is to be done by local option rather than statewide, it may be more appropriate to use local rules.
- The rule should incorporate some of the safeguards that were included in the recent amendment of MCR 2.107(C)(4) covering email service by parties. For example, it might be wise to apply subrules (C)(4)(c), (e), (f), (h) and (i) to documents that courts send by email. Those subrules cover subjects such as document format, subject line, the time service is deemed to have been made, and archiving requirements.
- The rule should allow only email service, not fax transmissions, which the Committee believes are too unreliable in reaching the intended recipient.
- The procedure would be less unwieldy if MCR 2.117 simply required parties and attorneys always to include email addresses on their papers (or state that they don't have one), along with their addresses and phone numbers. This would avoid the awkwardness of proposed MCR 2.117, under which the requirement for providing an email address is triggered only if the court has adopted an administrative order; some attorneys and parties may not know if a particular court has done so.
- There should be an explicit requirement that attorneys and parties are to notify the court of changes in address, phone number or email address.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. <http://courts.michigan.gov/supremecourt/Resources/Administrative/2007-30-Order.pdf>