

Order

Michigan Supreme Court
Lansing, Michigan

July 21, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2002-37

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
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Justices

Administrative Order No. 2009-5

E-filing Pilot Project in the
56th Circuit Court (Eaton County)

On order of the Court, the 56th Circuit Court is authorized to implement an Electronic Document Filing Project. The pilot project is established to study the effectiveness of electronically filing court documents in lieu of traditional paper filings. The pilot project shall begin as soon as possible after approval by the Court, and shall remain in effect until July 1, 2011, or further order of this Court. The 56th Circuit Court is aware that rules regarding electronic filing have been published for comment by this Court. If this Court adopts electronic-filing rules during the pendency of the 56th Circuit Electronic Document Filing Pilot Project, the 56th Circuit Court will, within 60 days of the effective date of the rules, comply with the requirements of those rules.

The 56th Circuit Court will track the participation and effectiveness of this pilot program and shall report to, and make such findings available to, the Michigan Supreme Court.

1. Construction

The purpose of the pilot program is to study the effectiveness of electronically filing court documents in connection with the just, speedy, and economical determination of the actions involved in the pilot program. The 56th Circuit Court may exercise its discretion to grant necessary relief to avoid the consequences of error so as not to affect the substantial rights of the parties. Except for matters related to electronically filing documents during the pilot program, the Michigan Court Rules govern all other aspects of the cases involved in the pilot program.

2. Definitions

- a. "Clerk" means the Eaton County Clerk.

- b. “E-filing” means any court pleading, motion, brief, response, list, order, judgment, notice, or other document filed electronically pursuant to the pilot program.
- c. “LAO” means all local administrative orders governing the 56th Judicial Circuit Court.
- d. “MCR” means Michigan Court Rules.
- e. “Pilot program” means the initiative by the 56th Judicial Circuit Court, the Eaton County Clerk, the Eaton County Department of Information Services, and the Judicial Information Systems division of the State Court Administrative Office in conjunction with Wiznet, Inc. This e-filing application facilitates the electronic filing of pleadings, motions, briefs, responses, lists, orders, judgments, notices, and other documents. The Eaton County pilot program will begin testing with “C,” “N,” and circuit court domestic cases wherein the case suffix begins with a “D.” The court intends this pilot program to include all circuit and family division judges, including the probate judge sitting by assignment in the family division of the circuit court. A judge may exempt a case or cases from the pilot program. The pilot program is expected to last approximately two years.
- f. “Technical malfunction” means any hardware, software, or other malfunction that prevents a user from timely filing a complete e-filing or sending or receiving service of an e-filing.
- g. “Filing Party” means any party or attorney representing a party who has registered to file pleadings or papers electronically in a particular matter.

3. Participation in the Pilot Program

- a. Participation by parties and counsel in the pilot program will initially be voluntary to accommodate training. Commencing on a date certain to be set by the court approximately 90 days following the launch of the pilot program, all attorneys filing a new “DO” case shall be required to file all pleadings and papers therein electronically. On a date certain to be set by the court approximately 180 days following the initiation of mandatory “DO” filings, attorneys filing a new “DM” case shall be required to file all pleadings and papers therein electronically. Approximately 180 days following the initiation of mandatory “DM” filings, all attorneys filing a new civil case in circuit court wherein the suffix of the case starts with a “C” or an “N,” and in all newly filed domestic matters not already required to be filed electronically wherein the suffix starts with a “D,” all pleadings

and papers filed therein shall be required to file electronically. Mandatory filings in an identified case type shall also include newly filed domestic post-disposition proceedings.

- b. Parties not represented by counsel may voluntarily participate in the pilot program. An unrepresented party who initially chooses to voluntarily participate in this pilot program may withdraw from the program at any time by filing a hard copy of a paper or pleading pursuant to the Michigan Court Rules, at which time the Clerk shall create a paper file and maintain the paper file as outlined in § 4(d).
 - c. Pursuant to the schedule outlined in § 3(a), it is presumed that all documents will be filed electronically. However, the Court recognizes that circumstances may arise that would prevent an attorney or participating party from filing a document or documents electronically. To ensure that all parties retain access to the courts, parties that demonstrate good cause will be permitted to file a hard copy of their documents with the clerk, at which time the Clerk shall create a paper file and maintain the paper file as outlined in § 4(d).
 - d. A public access terminal will be available at the Eaton County Courthouse for those persons wishing to participate in the pilot program or to review electronically filed documents but without sufficient equipment to facilitate participation. The electronic filing system utilized for this pilot program limits access to those person who are parties in a matter to case files in which they have registered as a filing party. Those not a party to the case may access the case file by making a request to the Circuit Court Clerk, where proper protocol with regard to access to public and non-public files will be followed. Electronically retained documents may be printed and presented to the requester. A customary copy fee may be applied if the requestor seeks to retain the provided copy.
4. E-filings Submission, Acceptance, and Time of Service with the Court; Signature
- a. In an effort to facilitate uniform service within the scope of this program, the 56th Circuit Court strongly recommends electronic service.
 - b. Program participants must submit e-filings pursuant to these rules and the pilot program's technical requirements. The clerk may, in accordance with MCR 8.119(C) reject documents submitted for filing that do not comply with MCR 2.113(C)(1), are not accompanied by the proper fees, do not conform to the technical requirements of this pilot program, or are otherwise submitted in violation of a statute, MCR, LAO, or program rules.

- c. E-filings may be submitted to the court at any time, but shall only be reviewed and accepted for filing by the Eaton County Clerk's Office during normal business hours of 8:00 a.m. to 5:00 p.m. E-filings received by the clerk's office before midnight will be granted that day's date for filing purposes. For purposes of determining e-filing receipt time, the receipt time reflected on the clerk's computer will serve as the official time of receipt.
- d. In any mandatory case, as outlined in § 3(a), wherein all parties are represented by counsel, and subject to § 3(c), the court shall create and maintain only an electronic file. In those instances where a party is originally represented by counsel who subsequently withdraws and the party desires to continue in pro per without participating in this pilot program, a paper file shall be created by the clerk with a notice that the file was originally created electronically, and any documents filed before the creation of the paper file will be maintained electronically. Subsequent electronically filed documents will be retained in electronic format and only the verification of receipt of an electronically filed document will be placed into the paper file. If the pro per litigant wishes to participate in the pilot program, the clerk shall maintain only an electronic file.
- e. In any mandatory case as outlined in § 3(a) wherein some parties are represented by counsel and other parties are not, and at least one of those parties not represented by counsel does not desire to voluntarily participate in this pilot program, the clerk shall create a paper file. All pleadings and papers submitted electronically will be retained in electronic format and only the verification of receipt of an electronically filed document will be placed into the paper file. All paper filing will be retained in the paper file created by the clerk.
- f. These rules apply to parties added or joined to an existing matter. If counsel represents the new party or parties, all papers filed by counsel must be done so in conformity with these rules. Sections 3(b), 4(d), and 4(e) set forth the respective rights and obligations of unrepresented parties. The clerk shall maintain its files in conformity with these rules.
- g. E-filings shall be treated as if they were hand-delivered to the court for all purposes under statute, MCR, and LAO.
- h. A pleading, document, or instrument e-filed or electronically served under this rule shall be deemed to have been signed by the judge, court clerk, attorney, party or declarant:

- i. Signatures submitted electronically shall use the following form: /s/
John L. Smith.
 - ii. A document that requires a signature under the penalty of perjury is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
 - iii. An e-filed document that requires a signature of a notary public is deemed signed by the notary public if, before filing, the notary public has signed a printed form of the document.
 - i. The original of a sworn or verified document that is an e-filing (e.g., a verified pleading) or part of an e-filing (e.g., an affidavit, notarization or bill of costs) must be maintained by the filing attorney and made available upon reasonable request of the court, the signatory or opposing party.
 - j. Proposed orders shall be processed by the court in accordance with the provisions of the pilot program. The clerk shall present the document to the court for review and signature pursuant to MCR 2.602(B).
 - k. By electronically filing the document, the electronic filer indicates compliance with these rules.
5. Time for Service and Filing of Pleadings, Documents and Motions; Judge's Copies; Hearings on Motions; Fees
- a. All times for filing and serving e-filings shall be governed by applicable statute, MCR, and LAO, with the exception that e-filings received by the Clerk's Office before midnight will be granted that day's date for filing purposes, and electronic service sent before midnight will be deemed served on that business day.
 - b. The electronic submission of a motion and brief through this pilot program satisfies the requirements of filing a judge's copy under MCR 2.119(A)(2). Upon request of the court, the filing party shall promptly provide an electronic or paper judge's copy to chambers.
 - c. For documents filed electronically, applicable fees, including e-filing fees and service fees, shall be paid electronically through procedures established by the Eaton County Clerk's Office at the same time and in the same amount as required by statute, court rule, or administrative order.

- i. Each e-filing is subject to the following e-filing fees.

Type of Filing	Fee
EFO (e-filing only)	\$5.00
EFS (e-filing with service)	\$8.00
SO (service only)	\$5.00

- ii. Users who use credit cards for payment may also be responsible for a user fee, as set by the Eaton County Clerk up to a maximum of 2% of the transaction amount.
- d. User fees shall not be waived on the basis of indigency. Indigent litigants not represented by counsel may file hard copies of papers and pleadings.

6. Service

- a. All attorneys, and parties appearing pro se, participating in this pilot program shall provide the court and counsel, where opposing counsel is present, with one e-mail address with the functionality required for the pilot program. All service on opposing counsel shall originate from and be perfected upon this e-mail address.
- b. Unless otherwise agreed to by the court and the parties, all e-filings must be served electronically to the e-mail address of opposing counsel. The subject-matter line for the transmittal of document served by e-mail shall state: "Service of e-filing in case [insert caption of case]."
- c. In matters where an attorney represents a party and the opposing side or sides are unrepresented, service by all parties shall be by traditional means, unless otherwise agreed to in writing.
- d. The parties and the court may agree that, instead of e-mail service, e-filings may be served to the parties (but not the court) by facsimile or by traditional means. For those choosing to accept facsimile service:
- i. The parties shall provide the court and opposing parties with one facsimile number with appropriate functionality,
 - ii. The facsimile number shall serve as the number to which service may be made,
 - iii. The sender of the facsimile should obtain a confirmation of delivery, and

- iv. Parties shall comply with the requirements of MCR 2.406 on the use of facsimile communication equipment.
- e. In mandatory situations, and those where one chooses to voluntarily participate in the pilot program, proof of service shall be submitted electronically to the 56th Circuit Court according to MCR 2.104 and these rules.

7. Format and Form of E-filing and Service

- a. An attorney or party may only e-file documents for one case per transaction.
- b. All e-filings shall comply with MCR 1.109 and the technical requirements of the court's vendor.
- c. Any exhibit or attachment that is part of an e-filing must be clearly designated and identified as an exhibit or attachment.
- d. All e-filings, subject to subsection 6(d), shall be served on the parties in the same format and form as submitted to the court.

8. Pleadings, Motions, and Documents not to be E-filed

Documents to be filed under seal (pursuant to court order) shall not be e-filed during the pilot program and must be filed by the traditional methods provided in the MCR. The obligation of the clerk in such an instance shall be governed by § 4 of this administrative order.

9. Official Court Record; Certified Copies

- a. For purposes of this pilot program, e-filings are the official court record. An appellate record shall be certified in accordance with MCR 7.210(A)(1).
- b. Certified or true copies of e-filed documents shall be issued in the conventional manner by the Eaton County Clerk's Office in compliance with the Michigan Trial Court Case File Management Standards.
- c. At the conclusion of the pilot program, if the program does not continue as a pilot project or in some other format, the clerk shall convert all e-filings to paper form in accordance with MCR 8.119(D)(1)(d), unless electronic

means of long-term retention is approved. Participating attorneys shall provide reasonable assistance in constructing the paper record.

- d. At the conclusion of the pilot program, if the program continues as a pilot project or in another format, the clerk shall provide for record retention and public access in a manner consistent with the instructions of the court and court rules.

10. Court Notices, Orders, and Judgments

At the court's discretion, the court may issue, file, and serve orders, judgments, and notices as e-filings. Pursuant to stipulation and order, the parties may agree to accept service from the court via facsimile pursuant to the procedures set forth in Rule 6(c).

11. Technical Malfunctions

- a. A party experiencing a technical malfunction with the party's equipment (such as PDF conversion problems or inability to access the pilot program sites), another party's equipment (such as an inoperable e-mail address), or an apparent technical malfunction of the court's pilot program equipment, software, or server shall use reasonable efforts to timely file or receive service by traditional methods and shall provide prompt notice to the court and the parties of any such malfunction.
- b. If a technical malfunction has prevented a party from timely filing, responding to, or otherwise perfecting or receiving service of an e-filing, the affected party may petition the 56th Circuit Court for relief. Such petition shall contain an adequate proof of the technical malfunction and set forth good cause for failure to use non-electronic means to timely file or serve a document. The court shall liberally consider proof of the technical malfunction and use its discretion in determining whether such relief is warranted.

12. Privacy Considerations

- a. With respect to any e-filing, the following requirements for personal information shall apply:
 - i. Social Security Numbers. Full social security numbers shall not be included in e-filings. If an individual's social security number must be referenced in an e-filing, only the last four digits of that number may be used and the number specified in substantially the following format: XXX-XX-1234.

- ii. Names of Minor Children. Unless named as a party, the identity of minor children shall not be included in e-filings. If a non-party minor child must be mentioned, only the initials of that child's name may be used.
 - iii. Dates of Birth. An individual's full birth date shall not be included in e-filings. If an individual's date of birth must be referenced in an e-filing, only the year may be used and the date specified in substantially the following format: XX/XX/1998.
 - iv. Financial Account Numbers. Full financial account numbers shall not be included in e-filings unless required by statute, court rule, or other authority. If a financial account number must be referenced in an e-filing, only the last four digits of these numbers may be used and the number specified in substantially the following format: XXXXXX1234.
 - v. Driver's License Numbers and State-Issued Personal Identification Card Numbers. A person's full driver's license number and state-issued personal identification number shall not be included in e-filings. If an individual's driver's license number or state-issued personal identification card number must be referenced in an e-filing, only the last four digits of that number should be used and the number specified in substantially the following format: X-XXX-XXX-XX1-234.
 - vi. Home Addresses. With the exception of a self-represented party, full home addresses shall not be included in e-filings. If an individual's home address must be referenced in an e-filing, only the city and state should be used.
- b. Parties wishing to file a complete personal data identifier listed above may:
- i. Pursuant to, and in accordance with the MCR and administrative orders, file a motion seeking the court's permission to file a traditional paper version of the document under seal. The court may, in granting the motion to file the document under seal, still require that an e-filing that does not reveal the complete personal data identifier be filed for the public files.

or

- ii. Pursuant to and in accordance with the applicable MCR and LAO, obtain a court order to file a traditional paper reference list under seal. The reference list shall contain the complete personal data identifiers and the redacted identifiers used in the e-filing. All references in the case to the redacted identifiers included in the reference list shall be construed to refer to the corresponding complete personal data identifiers. The reference list must be filed under seal, and may be amended as of right.
- c. Parties should exercise caution when filing papers that contain private or confidential information, including, but not limited to, the information covered above and listed below:
 - i. Medical records, treatment, and diagnosis;
 - ii. Employment history;
 - iii. Individual financial information;
 - iv. Insurance information;
 - v. Proprietary or trade secret information;
 - vi. Information regarding an individual's cooperation with the government; and
 - vii. Personal information regarding the victim of any criminal activity.

13. Amendment

These rules may be amended upon the recommendation of the participating judges, the approval of the chief judge, and authorization by the state court administrator.

14. Expiration

Unless otherwise directed by the Michigan Supreme Court, this pilot program, requiring parties to electronically file documents in cases assigned to participating judges, shall continue until July 1, 2011, or further order of the 56th Circuit Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 21, 2009

Corbin R. Davis

Clerk