

# Order

Michigan Supreme Court  
Lansing, Michigan

May 19, 2009

Marilyn Kelly,  
Chief Justice

ADM File No. 2002-37

Michael F. Cavanagh  
Elizabeth A. Weaver

Administrative Order No. 2009-4

Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

E-filing Pilot Project in  
the 42<sup>nd</sup> Circuit Court

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On order of the Court, the 42<sup>nd</sup> Circuit Court is authorized to implement an electronic filing pilot project to study, in asbestos cases, the effectiveness of electronically filing court documents in lieu of traditional paper filings. The pilot project shall begin May 19, 2009, or as soon thereafter as is possible, and shall remain in effect until July 30, 2013, or further order of this Court. The 42<sup>nd</sup> Circuit Court acknowledges that certain rules regarding electronic filing have been published for comment by this Court. If this Court adopts electronic-filing rules during the pendency of this pilot project, the 42<sup>nd</sup> Circuit Court will, within 60 days of the effective date of the rules, comply with the requirements of those rules.

The 42<sup>nd</sup> Circuit Court will track the participation in and effectiveness of this pilot project and shall report to and provide such information upon request by the State Court Administrative Office.

## 1. Construction

The purpose of the pilot project 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 project. This 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. The Michigan Court Rules govern all other aspects of the cases involved in the pilot project, except for matters related to electronically filing documents during the pilot project.

## 2. Definitions

- (a) "Clerk" means the Midland 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 project.
- (c) “LAO” means all local administrative orders governing the 42<sup>nd</sup> Circuit Court.
- (d) “MCR” means the Michigan Court Rules.
- (e) “Pilot project” means the initiative by the 42<sup>nd</sup> Circuit Court, the Clerk, and the Midland County Information Systems Department in conjunction with Wiznet, Inc., CherryLAN Systems, Inc., and under the supervision of the State Court Administrative Office. This e-filing application facilitates the electronic filing of pleadings, motions, briefs, responses, lists, orders, judgments, notices, and other documents.
- (f) “Asbestos” means the matters that the pilot project will test and are described as all pending cases identified as an “NP” Case Type based in whole or in part on a claim of injury as a result of exposure to asbestos.
- (g) “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.

### 3. Participation in the Pilot Project

- (a) Participation in the pilot project shall be mandatory in all pending “Asbestos” type cases. Participation shall be assigned following the filing and service of the initial complaint or other initial filing and assignment of the case to the participating judge.
- (b) This is a mandatory e-filing project. It is presumed that all documents will be filed electronically. However, the court recognizes that circumstances may arise that will prevent one from e-filing. To ensure that all parties retain access to the courts, parties that demonstrate good cause will be permitted to file their documents with the clerk, who will then file the documents electronically. Among the factors that the 42<sup>nd</sup> Circuit Court will consider in determining whether good cause exists to excuse a party from mandatory e-filing are a party’s access to the Internet and

indigency. A self-represented party is not excused from the pilot project merely because the individual does not have counsel.

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 pilot project, the 42<sup>nd</sup> Circuit Court strongly recommends electronic service.
  - (b) Program participants must submit e-filings pursuant to these rules and the pilot project'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 project, or are otherwise submitted in violation of a statute, an MCR, an LAO, or the 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 Office of the Clerk during the normal business hours of 8:00 a.m. to 4:30 p.m. E-filings submitted after business hours shall be deemed filed on the business day the e-filing is accepted (usually the next business day). The clerk shall process e-filings on a first-in, first-out basis.
  - (d) E-filings shall be treated as if they were hand-delivered to the court for all purposes under statute, the MCR, and the LAO.
  - (e) 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 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.

- (f) 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.
  - (g) Proposed orders shall be submitted to the court in accordance with the provisions of the pilot project. The court and the clerk shall exchange the documents for review and signature pursuant to MCR 2.602(B).
  - (h) By electronically filing the document, the electronic filer affirms 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 the applicable statute, the MCR, and the LAO as if the e-filings were hand-delivered.
  - (b) The electronic submission of a motion and brief through this pilot project satisfies the requirements of filing a judge's copy under MCR 2.119(A)(2). Upon request by the court, the filing party shall promptly provide a traditional judge's copy to chambers.
  - (c) Applicable fees, including e-filing fees and service fees, shall be paid electronically through procedures established by the clerk 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;
 

<b><u>Type of Filing</u></b>	<b><u>Fee</u></b>
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 are also responsible for a 3% user fee.

6. Service

- (a) All parties shall provide the court and opposing parties with one e-mail address with the functionality required for the pilot project. All service 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 addresses of all parties. 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) 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 the 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.
- (d) Proof of service shall be submitted to the 42<sup>nd</sup> Circuit Court according to MCR 2.104 and this administrative order.

## 7. Format and Form of E-filing and Service

- (a) A party may only e-file documents for one case in each 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(c) above, 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

The following documents shall not be e-filed during the pilot project and must be filed by the traditional methods provided in the MCR and the LAO:

- (a) documents to be filed under seal (pursuant to court order),
- (b) initiating documents, and
- (c) documents for case evaluation proceedings.

## 9. Official Court Record; Certified Copies

- (a) For purposes of this pilot project, 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 clerk in compliance with the Michigan Trial Court Case File Management Standards.
- (c) At the conclusion of the pilot project, 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). Participating attorneys shall provide reasonable assistance in constructing the paper record.
- (d) At the conclusion of the pilot project, 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 the 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 a stipulation and order, the parties may agree to accept service from the court via facsimile pursuant to the procedures set forth in Section 6(c) above.

## 11. Technical Malfunctions

- (a) A party experiencing a technical malfunction with the party's equipment (such as format or conversion problems or inability to access the pilot sites), another party's equipment (such as an inoperable e-mail address), or an apparent technical malfunction of the court's pilot 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 42<sup>nd</sup> 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. Pursuant to Administrative Order No. 2006-2, 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 a minor child shall not be included in e-filings. If a nonparty 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: XXXXX1234.

- (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 shall 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 the LAO, file a motion to file a traditional paper version of the document under seal. The court, in granting the motion to file the document under seal, may 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. Records and Reports: Further, the 42<sup>nd</sup> Circuit Court shall file an annual report with the Supreme Court covering the project to date by January 1 of each year (or more frequently or on another date as specified by the Court) that outlines the following:
- (a) Detailed financial data that show the total amount of money collected in fees for documents filed or served under the pilot project to date, the original projections for collections of fees, and whether the projections have been met or exceeded.
  - (b) Detailed financial information regarding the distribution or retention of collected fees, including the amount paid to Wiznet per document and in total for the subject period, the amount paid to CherryLAN in total for the subject period, the amount retained by the court per document and in total for the period, and whether the monies retained by the court are in a separate account or commingled with other monies.
  - (c) A detailed itemization of all costs attributed to the project to date and a statement of whether and when each cost will recur.
  - (d) A detailed itemization of all cost savings to the court whether by reduced personnel or otherwise and a statement of whether any cost savings to the court are reflected in the fee structure charged to the parties.

- (e) Information regarding how the filing and service fees were calculated and whether it is anticipated that those fees will be necessary and continued after the conclusion of the pilot program.
- (f) A statement of projections regarding anticipated e-filing and service-fee collections and expenditures for the upcoming periods.

#### 14. 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.

#### 15. Expiration

Unless otherwise directed by the Michigan Supreme Court, this pilot project, requiring parties to electronically file documents in cases assigned to participating judges, shall continue until July 30, 2013.



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.

May 19, 2009

*Corbin R. Davis*

Clerk