

Order

Michigan Supreme Court
Lansing, Michigan

March 16, 2010

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
Diane M. Hathaway,
Justices

Administrative Order No. 2010-3

Adoption of Administrative Order
to Expand the Scope of the
E-filing Pilot Project in
Oakland Circuit Court,
Family Division

On order of the Court, the Sixth Judicial Circuit Court, in consultation with the State Court Administrative Office (SCAO), developed this pilot project to study the effectiveness of electronically filing court documents in connection with the just, speedy, and economical determination of Family Division actions in a mandatory electronic filing environment.

Beginning March 16, 2010, or as soon thereafter as is possible and effective until December 31, 2012 or further order of this court, the Sixth Judicial Circuit Court adopts an e-filing pilot program requiring parties to electronically file documents in cases assigned to one or more participating judges. Rules designed to address issues unique to the implementation of this program are attached to and incorporated by reference to this local administrative order. Participation in this pilot program is mandatory for cases with a “DO” case code and assigned to pilot program judge(s).

The Sixth Judicial Circuit Court will track the participation and effectiveness of this pilot program and report the results to the SCAO.

1. Construction

The purpose of the pilot is to study the effectiveness of electronically filing court documents in connection with the just, speedy, and economical determination of divorce actions involved in the pilot. The 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, the Michigan Rules of Court govern all other aspects of the cases involved in the pilot.

2. Definitions

- (a) “Clerk” means the Oakland 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.
- (c) “LAO” means all local administrative orders governing the Sixth Judicial Circuit Court.
- (d) “MCR” means the Michigan Rules of Court.
- (e) “Pilot” means the initiative by the Sixth Judicial Circuit Court, the Oakland County Clerk, and the Oakland County Department of Information Technology in conjunction with Wiznet, Inc. and under the supervision of the SCAO. This e-filing application facilitates the electronic filing of pleadings, motions, briefs, responses, lists, orders, judgments, notices, and other documents. The vision is that all state courts in Michigan will eventually permit e-filing (with appropriate modifications and improvements). The Oakland County pilot will begin testing with two Circuit Court judges with “DO” type civil cases. The Court plans to expand the pilot to all Family Division judges who wish to participate. The pilot program is expected to last approximately two years, beginning on January 1, 2010.
- (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) “Wiznet envelope” means an electronic submission that contains one or more Wiznet transactions.
- (h) “Wiznet transaction” means the submission of one or more related documents which results in a single register of actions entry. A single register of actions entry is determined by the Clerk. E.g. a motion, brief, affidavit, notice of hearing, and proof of service for a single motion submitted at one time frequently constitutes a single register of actions entry.

3. Participation in the Pilot

- (a) Participation in the Pilot program shall be mandatory in all pending or newly filed “DO” type cases assigned to participating Circuit Court judges. Participation for new filings shall begin following the filing of the initial complaint or other initiating document, and assignment of the case to a participating judge. At the discretion of the e-filing judge, participation in the pilot may also include proceedings in post-disposition cases assigned to the pilot 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 will

arise which 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 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 project merely because the individual does not have counsel.

4. E-filings Submission, Acceptance, and Time of Service with the Court; Signature

- (a) 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), are not accompanied by the proper fees, clearly violate AO 2006-2, do not conform to the technical requirements of this pilot project, or are otherwise submitted in violation of statute, court rule, administrative order, or program rules.
- (b) E-filings may be submitted to the court at any time, but shall only be reviewed and accepted for filing by the Oakland County Clerk's Office during normal business hours of 8:00 a.m. to 4:30 p.m. E-filings submitted after business hours shall be deemed filed the business day the e-filing is accepted (usually the next business day). The Clerk shall process electronic submissions on a first in/ first out basis.
- (c) E-filings shall be treated as if they were hand delivered to the court for all purposes under statute, court rule, and administrative order.
- (d) 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.
- (e) 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 or self represented litigant and made available upon reasonable request of the court, the signatory, or opposing party.

- (f) Proposed orders shall be submitted to the court in accordance with the provisions of the pilot. The Court and Clerk shall exchange the documents for review and signature pursuant to MCR 2.602(B).
- (g) 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 the applicable statute, court rule, and administrative order as if the e-filings were hand delivered. Where a praecipe is required by LCR 2.119(A), it must be submitted electronically to the Court through the epraecipe application at <http://courts.oakgov.com/ePraecipe/>.
- (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 a request of the Court, the filing party shall promptly provide a traditional paper Judge's Copy to chambers.
- (c) Applicable fees, including e-file fees and service fees, shall be paid electronically through procedures established by the Oakland 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-file fees.

Type of Filing	Fee
EFO (e-file 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 register as a service contact with the Wiznet application which will provide the court and opposing parties with one email address with the functionality required for the Pilot program.
- (b) It is highly recommended that all e-filings must be served electronically to the email addresses of all parties.
- (c) The parties and court may agree that, instead of eservice, e-filings may be served to the parties (but not the court) as provided in MCR 2.107.
- (d) 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) Proof of Service shall be submitted to the Court according to MCR 2.104 and these rules.

7. Format and Form of E-filing and Service

- (a) A party may only e-file documents for one case per Wiznet envelope.
- (b) A party may e-file multiple Wiznet transactions within a single Wiznet envelope, subject to subrule 7(a).
- (c) All e-filings shall comply with MCR 1.109 and the technical requirements of the Court's vendor.
- (d) Any exhibit or attachment that is part of an e-filing must be clearly designated and identified as an exhibit or attachment.
- (e) All e-filings, subject to subsection 6(c) above, shall be served on the parties in 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 program and must be filed by the traditional methods provided in the court rules and administrative orders:

- (a) documents to be filed under seal (pursuant to court order), and
- (b) initiating documents.

9. Official Court Record; Certified Copies

- (a) For purposes of this Pilot program, the electronic version of all documents filed with the Court, with the exception of documents filed under seal [see 8(a) and MCR 8.119(F)] is 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 Oakland 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 retain all e-filed documents in accordance with MCR 8.119(D)(1)(d).
- (d) At the conclusion of the Pilot program, if the program continues as a Pilot project or in another format, the Court and 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

The Court shall issue, file, and serve orders, judgments, and notices as e-filings. A party exempted from e-filing under this pilot shall be served in accordance with MCR 2.107(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 sites), another party's equipment (such as an inoperable email 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 as provided in these rules and shall provide prompt notice to the court and 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 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:

1. **Social Security Numbers.** Pursuant to Administrative Order 2006-2, full social security numbers shall not be included in any 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.
2. **Names of Minor Children.** Unless named as a party or otherwise required by statute, court rule, or administrative order, the identity of minor children shall not be included in any e-filings. If a non-party minor child must be mentioned, only the initials of that child's name may be used.
3. **Dates of Birth.** Except as required by statute, court rule, or administrative order, an individual's full birth date shall not be included in any e-filings. Subject to the above limitation, if an individual's date of birth is otherwise referenced in an e-filing, only the year may be used and the date specified in substantially the following format: XX/XX/1998.
4. **Financial Account Numbers.** Full Financial account numbers shall not be included in any 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.
5. **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 any 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.

6. **Home Addresses.** With the exception of a self-represented party, full home addresses shall not be included in any e-filings. If an individual's home address must be referenced in an e-filing, only the city and state should be used. For a party whose address has been made confidential by court order pursuant to MCR 3.203(F), the alternative address shall be treated as specified above.

(b) Parties wishing to file a complete personal data identifier listed above may:

1. Pursuant to and in accordance with court rules and administrative orders, file a motion 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

2. Pursuant to and in accordance with the applicable court rules and administrative orders, 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:

1. Medical records, treatment and diagnosis;
2. Employment history;
3. Individual financial information;
4. Insurance information;
5. Proprietary or trade secret information;
6. Information regarding an individual's cooperation with the government;
and
7. Personal information regarding the victim of any criminal activity.

(d) These rules are designed to protect the private personal identifiers and information of individuals involved or referenced in actions before the Court.

Nothing in these rules should be interpreted as authority for counsel or a self represented litigant to deny discovery to the opposing party under the umbrella of complying with these rules.

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. Financial data.

Detailed financial data as defined in Administrative Order No. 2009-1, including costs generated and savings realized under the terms of this e-filing pilot project, shall be included in the Oakland Circuit Court's annual report for submission to this Court.

15. 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 December 31, 2012 or further order of this 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.

March 16, 2010

Corbin R. Davis

Clerk