

Order

**Michigan Supreme Court
Lansing, Michigan**

October 20, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2002-37

Michael F. Cavanagh
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Administrative Order No. 2011-6

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Proposed E-filing Project in
Oakland Probate Court

Brian K. Zahra,
Justices

On order of the Court, the Oakland County Probate Court is authorized to implement an Electronic Document Filing Pilot Project. The pilot project is established to study the effectiveness of electronically filing court documents in lieu of traditional paper filings in certain instances. The pilot project shall begin September 1, 2011, or as soon thereafter as is possible, and shall remain in effect until July 31, 2013, or further order of this Court. The Oakland County Probate 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 Oakland County Probate Court Electronic Document Filing Pilot Project, the Oakland County Probate Court will, within 60 days of the effective date of the rules, comply with the requirements of those rules.

The Oakland County Probate Court will track the participation and effectiveness of this pilot program and shall report to and provide information as requested by the State Court Administrative Office.

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 Oakland County Probate 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 Rules of Court govern all other aspects of the cases involved in the pilot.

2. Definitions

(a) “Register” means the Oakland County Probate Register.

- (b) “E-filing” means any court pleading, motion, brief, response, list, order, judgment, notice, claims, inventories, accounts, reports, or other documents filed electronically pursuant to the pilot program.
- (c) “LAO” means all local administrative orders governing the Oakland County Probate Court.
- (d) “MCR” means the Michigan Rules of Court.
- (e) “Pilot program” means the initiative by the Oakland County Probate Court in conjunction with the Oakland County Department of Information Technology, and in part with Tyler, Inc. (Wiznet), 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, claims, inventories, accounts, reports, and other documents. The Oakland County pilot program will begin testing with one probate judge with “DE”, “DA,” “TV,” and “CZ” case types. The court plans to expand the pilot program to all probate judges as soon as practicable.
- (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.

3. Participation in the Pilot Program

- (a) Participation in the pilot program shall be mandatory in all newly filed DE, DA, TV or CZ case types assigned to the participating probate judges. Participation shall begin following the filing of the initial petition, complaint or other initiating document, and assignment of the case to a participating judge pursuant to the court’s LAO. At the discretion of the judge, participation may also include post-disposition proceedings in qualifying case types assigned to participating judges.
- (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 a party 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 register's office, who will then file the documents electronically. Among the factors that the Oakland County Probate 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 register may, in accordance with MCR 8.119(C), reject documents submitted for filing that do not comply with MCR 5.113 or MCR 2.113(C)(2), are not accompanied by the proper fees, clearly violate Administrative Order No. 2006-2, 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.
 - (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 Probate Court during the normal business hours of the register's office. E-filings submitted after business hours shall be deemed filed on the business day the e-filing is accepted for filing. The register's office 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, register, attorney, party, or declarant.
 - (i) Signatures submitted electronically shall be scanned copies of the actual signed document, or shall use the following form for the signature: */s/John L. Smith.*
 - (ii) A document that requires a signature under the penalty of perjury, or is required to be signed by the fiduciary or trustee under MCR 5.114(A)(3), is deemed signed by the declarant or fiduciary if, before filing, the declarant or fiduciary 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 program. The court and the register 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 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 program satisfies the requirements of filing a judge’s copy where applicable under the MCR. 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 Oakland County Probate Court at the same time and in the same amount as required by statute, court rule, or administrative order. Inventory fees shall be paid according to procedures established by the court.
 - (i) Each e-filing is subject to the following e-filing fees:

Type of Filing	Fee
EFO (e-filing)	\$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 Tyler (Wiznet) application which will provide the court and opposing parties with one e-mail address with the functionality required for the pilot program. 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 address of all interested 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 other appropriate means under the MCR. 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 the MCR on the use of facsimile communication equipment.
- (d) The court reserves the right to serve parties by traditional means, including facsimile, when necessary to ensure appropriate service of notices, opinions and orders, and other official court documents.
- (e) Proof of Service shall be submitted to the Oakland County Probate Court according to the MCR and these rules.

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 program 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,
- (c) original documents which are required by statute to be filed with the court, such as wills submitted for probate. In such case, the document shall be e-filed using a copy of the document and the original shall be delivered to the court for filing within 14 days of the e-filing date,
- (d) inventories that are being presented pursuant to MCL 700.3706,
- (e) documents for case evaluation proceedings.

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, is the official court record. An appellate record for the Court of Appeals shall be certified in accordance with MCR 7.210(A)(1).
- (b) Certified copies of e-filed documents shall be issued in the conventional manner by the Oakland County Probate Register 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 register 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 program, if the program continues as a pilot project or in another format, the register 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 and register may issue, file and serve orders, judgments, and notices as e-filings.

11. Technical Malfunctions

- (a) A party experiencing a technical malfunction with the party's equipment (such as Portable Document Format [PDF] 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 Oakland County Probate 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) 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.
- (b) 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.
13. The Oakland Probate 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 Tyler per document and 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

Procedural aspects of 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. Proposed substantive changes, including, for example, a proposed expansion of the program to permit additional case types and a proposed change in fees, must be submitted to the Supreme Court for approval.

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 July 31, 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.

October 20, 2011

Corbin R. Davis

Clerk