

Order

**Michigan Supreme Court
Lansing, Michigan**

April 8, 2008

Clifford W. Taylor,
Chief Justice

ADM File No. 2007-30

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

Proposed Amendment of
Rules 2.107 and 2.117
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.107 and 2.117 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A)-(B)[Unchanged.]

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

(a) handing it to the attorney personally;

(b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or

- (c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.
- (2) Delivery to Party. Delivery of a copy to a party within this rule means
 - (a) handing it to the party personally; or
 - (b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.
- (3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.
- (4) E-mail. Some or all of the parties may agree to service by e-mail by filing a stipulation in that case. E-mail service shall be subject to the following conditions:
 - (a) The stipulation for service by e-mail shall set forth the e-mail addresses of the parties or attorneys that agree to e-mail service, which shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission.
 - (b) The parties shall set forth in the stipulation all limitations and conditions concerning e-mail service, including but not limited to:
 - (i) the maximum size of the document that may be attached to an e-mail;
 - (ii) designation of exhibits as separate documents;
 - (iii) the obligation (if any) to furnish paper copies of e-mailed documents; and
 - (iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.

- (c) Documents served by e-mail must be in PDF format or other format that prevents the alteration of the document contents.
 - (d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).
 - (e) Each e-mail that transmits a document shall include a subject line that identifies the case by court, party name, case number, and the title or legal description of the document(s) being sent.
 - (f) An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).
 - (g) A party may withdraw from a stipulation for service by e-mail if that party notifies the other party or parties in writing at least 28 days in advance of the withdrawal.
 - (h) Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the e-mail address of the intended recipient.
 - (i) The e-mail sender shall maintain an archived record of sent items that shall not be purged until the conclusion of the case, including the disposition of all appeals.
- (5) Electronic Service. Notwithstanding any other provision of these rules or law, by administrative order of the trial court, the court may electronically serve a party with any required notice or document, unless the party or the party's attorney has notified the court in writing that he or she elects for good cause not to receive service in such a manner. For purposes of this subrule:
- (a) electronic service includes e-mail or facsimile service.
 - (b) good cause includes the fact that the attorney or party does not have ready access to a facsimile machine or e-mail communication.

(D)-(G)[Unchanged.]

Rule 2.117 Appearances

(A) Appearance by Party.

- (1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. The party's address and telephone number must be included in the appearance. If the court has adopted an administrative order pursuant to MCR 2.107(C)(5), and if a party has not notified the court in writing that the party elects for good cause not to receive service electronically, the written appearance of the party or the first responsive pleading filed with the court shall include the party's e-mail address and facsimile number to which court-issued notices or documents in the case may be forwarded to comply with service requirements.
- (2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to receive copies of all pleadings and papers as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

- (1) In General. An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.
- (2) Notice of Appearance.
 - (a) If an appearance is made in a manner not involving the filing of a paper with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The attorney's address and telephone number must be included in the appearance.

- (b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to service of pleadings and papers as provided by MCR 2.107(A).
 - (c) If the court has adopted an administrative order pursuant to MCR 2.107(C)(5), and if an attorney for a party has not notified the court in writing that the attorney elects for good cause not to receive service electronically, the written appearance of the attorney or the first responsive pleading filed with the court shall include the attorney's e-mail address and facsimile number to which court-issued notices or documents in the case may be forwarded to comply with service requirements.
- (3) Appearance by Law Firm.
- (a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.
 - (b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.
- (C) [Unchanged.]

Staff comment: 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.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2007-30. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



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.

April 8, 2008

Corbin R. Davis

Clerk