

Order

Michigan Supreme Court
Lansing, Michigan

September 30, 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

Amendment of Rule 2.107
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.107 of the Michigan Court Rules is adopted, effective January 1, 2009.

[Additions are indicated by underline, and deletions by strikethrough.]

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, or, if agreed to by the parties, e-mailing it to the attorney as allowed under MCR 2.107(C)(4);
 - (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, if agreed to by the parties, e-mailing it to the party as allowed under MCR 2.107(C)(4); 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 e-mail service among themselves by ~~e-mail~~ by filing a stipulation in that case. Some or all of the parties may agree to e-mail service by a court by filing an agreement with that court to do so. E-mail service shall be subject to the following conditions:
- (a) The stipulation or agreement 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. Parties and attorneys who have stipulated or agreed to service by email under this subsection shall immediately notify all other parties and the court if the party's or attorney's e-mail address changes.
 - (b) The parties shall set forth in the stipulation or agreement 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 or agreement for service by e-mail if that party notifies the other party or parties and the court 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. If an e-mail is returned as undeliverable, the party, attorney, or court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the e-mail was undeliverable. A party, attorney, or court must also retain a notice that the e-mail was returned as undeliverable.

- (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.

Staff Comment: The amendments allow parties or attorneys to voluntarily agree to receive notices and other documents from the court by e-mail, similar to the current ability of parties to stipulate to serve one another by e-mail.

The staff comment is not an authoritative construction by the 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.

September 30, 2008

Corbin R. Davis

Clerk