

Order

Michigan Supreme Court
Lansing, Michigan

September 11, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2020-08

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Proposed Amendments
of Rules 2.107 and 3.203
of the Michigan Court Rules

By order dated July 26, 2021, the Court adopted and simultaneously published for comment amendments of many rules, including Rule 2.107 of the Michigan Court Rules. On order of the Court, notice and an opportunity for comment having been provided, the feedback regarding the July 26, 2021 amendment of Rule 2.107(G) of the Michigan Court Rules has been considered, and the Court is now considering an alternative proposed amendment of Rule 2.107 and a proposed amendment of Rule 3.203 of the Michigan Court Rules. Before determining whether to retain the original amendment of Rule 2.107 or whether this current 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

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 to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 2.107 Service and Filing of Pleadings and Other Documents

(A)-(B) [Unchanged.]

(C) Manner of Service. Except as otherwise provided in subrule (C)(4), all service by parties, except for case initiation, must be performed by using electronic means. If a case is not subject to electronic service and~~Except under MCR 1.109(G)(6)(a),~~ service of a copy of a document on an attorney is~~must be~~ made by delivery or by mailing to the attorney, it must be delivered or mailed to~~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. ~~Except under MCR 1.109(G)(6)(a),~~ Sservice on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings. Nothing in this subrule requires the court or friend of the court to use electronic service.

(1)-(3) [Unchanged.]

(4) Alternative—Electronic Service. Parties must use electronic service in accordance with this subrule unless the party opts out as provided in this subrule, another court rule requires a different method of service for a particular type of action or prohibits the use of electronic service, or the case is subject to electronic service under MCR 1.109(G)(6)(a).

(a) ~~Except as provided by MCR 1.109(G)(6)(a)(ii), the parties may agree to alternative electronic service among themselves by filing a stipulation in that case. Some or all of the parties may also agree to alternative electronic service of notices and court documents in a particular case by a court or a friend of the court by filing an agreement with the court or friend of the court respectively. Methods.~~ Alternative—Electronic service may be by any of the following methods:

(i)-(iii) [Unchanged.]

(b) Notification. A party initiating a case must file and serve on all other parties a notification of electronic service on a form approved by the State Court Administrative Office. All other parties must file and serve the notification form when filing their responsive pleading, or if no responsive pleading is filed, at the party's or the party's attorney's first appearance. The notification must state:

(i) Whether the party opts out from using electronic service, and if so, the reason(s) for opting out.

(ii) If the party is not opting out from electronic service, the notification must also state:

(A) The type(s) of electronic service the party can send and receive.

(B) The email address(es) or phone number(s) that will be used for electronic service, including 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. Attorneys must 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 email address must be the e-mail

address currently on file with the appropriate registering agency in the state of the attorney's admission.

A party must file and serve a new notification form if the party's opt out status changes.

(c**b**) ~~Obligation to Provide and Update Information.~~

(i) ~~The agreement for alternative electronic service shall set forth the e-mail addresses or phone numbers for service. Attorneys who agree to e-mail service 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 email address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have not opted out of agreed to alternative electronic service under this subrule must ~~shall~~ immediately file with ~~notify, as required,~~ the court a new notification form and serve it on all parties and ~~or~~ the friend of the court if the e-mail address or phone number for service changes.~~

(ii) ~~The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to service by text message or text message alert under this subrule must ~~shall~~ immediately file with ~~notify, as required,~~ the court a new notification form and serve it on all parties and ~~or~~ the friend of the court if the phone number for service changes.~~

(d) A party may opt out from using electronic service if any of the following barriers to effective electronic service exist:

(i) the party lacks reliable access to the Internet or an electronic device that is capable of sending or receiving electronic service;

(ii) the party lacks the technical ability to use and understand the methods for engaging in electronic service described in subrule (C)(4)(a);

- (iii) access from a home computer system or the ability to gain access at a public computer terminal present a safety issue for the party;
 - (iv) the party has a disability as defined under the Americans with Disabilities Act that prevents or limits the person's ability to use the methods of electronic service identified in subrule (C)(4)(a);
 - (v) the party has limited English proficiency that prevents or limits the person's ability to engage in or receive electronic service;
or
 - (vi) the party is confined by governmental authority, including but not limited to an individual who is incarcerated in a jail or prison facility, detained in a juvenile facility, or committed to a medical or mental health facility.
- (ee) ~~The following party or attorney shall set forth the agreement all~~ limitations and conditions concerning e-mail or text message service ~~apply, including but not limited to:~~
- (i) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent.
 - (ii) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.
 - (iii) An electronic service transmission sent at or before 11:59 p.m. is deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or other day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.
 - (iv) Electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If

an electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.

(v) If an attachment exceeds the maximum size permitted by the email or text messaging provider, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a statement indicating that the electronic transmission was not possible due to its size. The court or friend of the court must also retain a notice that the electronic transmission was not possible.

(vi) Exhibits must be attached or sent and designated as separate documents.

(i) ~~the maximum size of the document that may be attached to an e-mail or text message,~~

(ii) ~~designation of exhibits as separate documents,~~

(iii) ~~the obligation (if any) to furnish paper copies of e-mailed or text message 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.~~

(d) ~~Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.~~

(fe) A document served by ~~alternative~~ electronic service that the court or friend of the court or his or her authorized designee is required to sign may be signed in accordance with MCR 1.109(E).

(f) ~~Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject~~

line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent.

- ~~(g)~~ An alternative electronic service transmission sent at or before 11:59 p.m. shall be deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or other day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.
- ~~(h)~~ A party or attorney may withdraw from an agreement for alternative electronic service by notifying the party or parties, court, and the friend of the court, as appropriate, in writing and shall take effect immediately.
- ~~(i)~~ Alternative electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If an alternative electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.
- ~~(g)~~ [Relettered as (g) but otherwise unchanged.]
- ~~(hk)~~ This rule does not require the court or the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.
- ~~(l)~~ The party or attorney requesting electronic service under this subrule is required to submit a request to initiate, update, modify, or withdraw from electronic service to the court independently from the friend of the court office.

(D)-(F) [Unchanged.]

- ~~(G)~~ Notwithstanding any other provision of this rule, until further order of the Court, all service of process except for case initiation must be performed using electronic means (eFiling where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but

~~should otherwise comply as much as possible with the provisions of subsection (C)(4).~~

Rule 3.203 Service of Notice and Court Documents in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1)-(2) [Unchanged.]

(3) ~~Alternative~~-Electronic Service. A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney in accordance with MCR 2.107(C)(4). However, the friend of the court must not use electronic service if federal law, state law, or court rule:

(a) prohibits the document from being served electronically in a form that complies with other court rules governing the document, or

(b) requires restrictions that make it less likely the recipient can receive or open the document.

(B)-(J) [Unchanged.]

Staff Comment (ADM File No. 2020-08): MCR 2.107(G) was adopted and simultaneously published for comment by the Court on July 26, 2021. The proposed amendment of MCR 2.107 in this order reflects an alternative proposal that would expand the use of electronic service by requiring its use unless a party opts out, as suggested by some commenters on the original proposal. The proposed amendment of MCR 3.203 clarifies the use of electronic service in domestic relations cases.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this 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 the proposal may be submitted by January 1, 2025 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at

P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2020-08. Your comments and the comments of others will be posted under the chapter affected by this proposal.



I, Larry S. Royster, 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 11, 2024

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk