

Michigan Court Rules on Mandatory E-Filing and Exemptions

The Michigan Supreme Court entered Administrative Order 2019-2 and Michigan Court Rule 1.109(G)(3)(g), effective September 1, 2019, to address access issues (especially for the self-represented) related to the judiciary's long-term goal for mandatory statewide electronic filing.

Administrative Order 2019-2 is a counterpart to MCR 1.109(G)(3)(f) which requires that only attorneys are required to e-File. Although self-represented litigants may e-File they are not required to do so. Courts that seek to mandate e-Filing must submit an e-Filing Access Plan to the State Court Administrative Office (SCAO) for approval that describes how the court will provide assistance to self-represented litigants.

Implementing Mandatory E-Filing

MCR 1.109(G)(3)(f) states that “[f]or the required case types, attorneys must electronically file documents in courts where electronic filing has been implemented. All other filers are required to electronically file documents only in courts that have been granted approval to mandate electronic filing by the State Court Administrative Office under AO 2019-2.”

E-Filing Access Plan

A court does not have to mandate e-Filing for all filers; if it does, however, the court must have an e-Filing Access Plan. AO 2019-2 requires that an e-Filing Access Plan must conform to the model promulgated by the State Court Administrator and must ensure access to at least one computer workstation per county. The plan must be submitted to and approved by SCAO as a local administrative order under MCR 8.112. SCAO may revoke approval of an e-Filing Access Plan due to litigant grievances. See the [model E-Filing Access Plan](#) to begin your planning.

Standards for E-Filing Access Plan

Any court seeking to mandate e-Filing by all parties must conform to the standards promulgated by SCAO. Standards for the access plans include:

- The court must perform a calculation using a [calculator tool](#) to determine how many e-Filing workstations it must make available;
- The court must list all workstations (with a preference for onsite locations) that self-represented litigants may use;
- The court must list the manner of assistance to be provided in using the court's equipment;
- The court must include material on how to provide assistance to self-represented litigants in training its staff;

- The court must make its access plan available on its website, and will regularly review and update the plan; and
- The court must create a grievance process.

Minimum Criteria for Approval of Access Plan

An e-Filing Access Plan to mandate e-Filing for all filers may be approved by the SCAO when all of the following conditions are met:

- The court has attached a completed e-Filing Workstation Calculator worksheet.
- The court has identified all government agencies that file documents with the court and consulted with them to ensure the entity is capable of e-Filing.
- The court has the minimum number of e-Filing workstations available to litigants, as calculated by the e-Filing Workstation Calculator worksheet.
- If “MOU with Entity Providing Computer Workstation” is checked, the court has attached an executed MOU with each entity to which the court is referring litigants.
- At least one type of assistance is available to troubleshoot computer equipment and to obtain assistance completing e-Filing tasks.
- The court has identified at least one computer workstation per county. If that computer workstation is not in the courthouse, the attached MOU identifies that the filers have access to the computer at least 30 hours per week.
- The court has identified an appropriate grievance process in Section IV C.
- The LAO is signed and dated by the chief judge.
- Approving the order is in the best interests of the trial court and the filers.

Staffing and Workstations

Using a calculator, SCAO estimated the number of self-represented litigants that will likely be served on a given day in each circuit, district, and probate court. In many jurisdictions, that number is less than one; therefore, the criteria allows courts flexibility while ensuring that the resources are designed to address a realistic anticipated number of individuals. When workstations are to be made available on court premises, follow the [minimum technological specifications of a workstation](#). The model e-Filing Access Plan allows for courts to enter into a memorandum of understanding to support litigants’ technology needs instead of providing workstations at the court, and a [sample memorandum of understanding](#) is available for use when workstations are to be made available off site. The model e-Filing Access Plan also allows

trial courts to determine their own staffing needs for e-Filing. Technical assistance for litigants is available from the MiFILE vendor's Customer Care. [E-mail](#) or call 855-959-8868.

Grievance Process

The judiciary is committed to promptly and thoroughly addressing grievances regarding access to electronic filing assistance. As such, each e-Filing Access Plan must state that specific issues regarding e-Filing access are to be submitted to the court administrator by completing the grievance section of [form MC 98](#). The court must respond in writing to a grievance within five business days using the response section of [form MC 98](#). The court administrator is required to provide the grievance and court response to the person who submitted the grievance, the chief judge, and the appropriate regional administrator of the SCAO.

Implementing the Provisions of the Exemption Rule

The amendment of MCR 1.109(G)(3) provides a single statewide process for requesting an exemption from the requirement to e-File in subrules (G)(3)(g)-(i). Although mandatory statewide electronic filing is the ultimate goal of MCR 1.109(G)(3)(f), there are valid reasons that a filer may not be able to file or be served electronically. For example, a person's only access to the Internet may be through a public access terminal at a courthouse or through a public library. Therefore, to ensure equal access for all filers, it is necessary to have a process in place for filers to request an exemption from e-Filing, and likewise to ensure that courts that mandate e-Filing provide sufficient support for self-represented litigants.

Highlights of the rules for exemption from e-Filing include:

- The filer is required to submit a standard request form (locally-generated unique forms are prohibited). MCR 1.109(G)(3)(i).
- There is no fee for filing the request. MCR 1.109(G)(3)(i).
- The court must consider certain factors in the decision-making process. MCR 1.109(G)(3)(g).
- The time frame for making a decision is within two business days of the request. MCR 1.109(G)(3)(i)(iii).
- Certain individuals are exempt without the need to show good cause (a person who has a disability that prevents or limits the person's ability to use the electronic filing system; a person who has limited English proficiency that prevents or limits the person's ability to use the electronic filing system; and a party who 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). MCR 1.109(G)(3)(h).

- An exemption lasts for the life of the case. MCR 1.109(G)(3)(i)(v).
- An individual exempted from e-Filing who subsequently registers with the e-Filing system waives the exemption. MCR 1.109(G)(3)(i)(v).

See the [rule](#) as ordered by the Supreme Court on June 5, 2019.

What's Next?

Another MiFILE Brief explaining other court rule amendments adopted by the Michigan Supreme Court to facilitate e-Filing and electronic document management will be posted in August. The date and topic is August 15, E-Filing and E-Service Rule, MCR 1.109(G). Additional MiFILE Briefs will be distributed throughout the remainder of 2019.