

MICHIGAN LEGAL HELP

Helping Michigan residents solve their legal problems

April 30, 2019

Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: Comments on ADM File No. 2002-37 – Proposed Rules Related to Exemptions from e-Filing and Proposed Administrative Order Related to e-Filing Access Plans

Dear Supreme Court Clerk,

I am writing to comment on the rules referenced above. I am writing as the Director of the Michigan Legal Help Program to provide input on the proposed rules related to e-Filing exemptions and the proposed Model Local Administrative Order related to e-Filing Access Plans.

As you are aware, the Michigan Legal Help Program supports the statewide Michigan Legal Help website and affiliated self-help centers dedicated to providing critical legal information, DIY tools, and referrals to self-represented litigants (SRLs). Estimates of the proportion of SRLs in Michigan courts average about 50%, and the Michigan Legal Help website reaches over 30,000 individuals a week. When e-Filing becomes mandatory these rules will impact all of the many self-represented litigants who visit our website. We make these comments now to ensure we're able to clearly provide guidance and direction to litigants about e-Filing, but also because we care deeply about eliminating barriers to access to justice for self-represented litigants, many of whom are also low-income and most of whom are unfamiliar with court processes.

Throughout our comments we provide suggested changes or additions to language. Our changes are shown by strikethrough and underlining. Changes shown in the proposed rule were removed to separate our suggestions from the Court's proposed amendments.

Below are our comments:

A. 1.109(G)(3)(g)

We oppose adoption of this court rule without a more specific and uniform standard for exemption. The current e-Filing pilot courts all have a good cause exemption requirement written into the Administrative Order (AO) that authorizes e-Filing in that court. Each of those AOs allow a good cause exemption. After visits to some of these courts and conversations with court staff that have worked on e-Filing in some capacity, we learned that

different courts were applying what is essentially the same rule very differently.¹ For example, in at least one jurisdiction a party will not get an exemption based on lack of Internet access, because judges in that court view the courthouse computers as negating the need for any other access. This view is problematic for filers who would then need to come back to the court periodically to check their e-mail for new MiFILE notifications, not having any other Internet access. Judges may not be familiar with the obstacles that self-represented litigants face when litigating a case with electronic filing, service, and notifications, and so providing more specific guidance will allow a fair and consistent application of the rule on exemptions. Specific guidance also allows litigants to better understand whether they might be eligible for an exemption, and will reduce the number of unfounded requests for exemptions. We suggest the following:

(g) Where electronic filing is mandated, a party may file paper documents with that court and be served with paper documents according to subrule (G)(6)(a)(ii) if the party can demonstrate good cause for an exemption. Factors to consider when determining good cause include:

- (i) Whether a person has reliable access to a device with Internet;
- (ii) Whether a person has an e-mail address;
- (iii) Whether a person has the technical ability to use and understand e-mail and electronic filing software;
- (iv) Whether a person has limited proficiency in the English language;
- (v) Whether a person has a disability that makes electronic filing burdensome, or whether electronic filing exacerbates the symptoms of a disability; and
- (vi) Any other relevant factor raised by a litigant.

We also suggest moving the following portion of the rule to its own subpart (h), since it does not involve a good cause analysis and will always be granted:

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, ~~has good cause for an exemption~~ shall be granted an exemption from electronic filing if requested.

Along with the changes above we suggest re-numbering 1.109(G)(3)(g)(i-v) to be 1.109(G)(3)(i), with parts (ii-v) as subsections (i-iv) underneath, as partially shown below:

(i) A request for an exemption must be filed with the court where the individual's case will be or has been filed. The request must be on a form approved by the State Court Administrative Office and verified under MCR 1.109(D)(3). There is no fee for the request.

- (i) The request must specify the reasons that prevent the individual from filing electronically. The individual may file supporting documents along with the request for the court's consideration.
- (ii) A judge must review the request and any supporting documentation and issue an order granting or denying the request within two business days of the date the request was filed.

[...]

¹ AO 2016-6, E-filing in the 16th Circuit Court (Macomb County); AO 2011-4, E-filing Rules for the 20th Circuit Court, the Ottawa County Probate Court, and the 58th District Court (Ottawa County); AO 2007-3- E-filing in Oakland County; AO 2010-4- E-filing Project in the 13th Judicial Circuit Court; 2011-1-E-filing Project in the 3rd Circuit Court (Wayne County). All current AO's list access to the Internet, and all except for AO 2011-4 list indigency as factors to consider in deciding whether there is good cause for an exemption.

B. 1.109(G)(3)(g)(v)

We oppose the portion of this rule that provides an automatic loss of exemption if a person creates a MiFILE account. The act of making a MiFILE account is not the access barrier; rather it is the need for continued, meaningful access to MiFILE and e-mail over the life of a case that poses the challenge to litigants. Without this access they won't be able to see other documents filed in the case, learn about hearings, or stay engaged in the litigation. A litigant could make their way to a self-help center and get assistance making an account, even though they will not be able to reliably check MiFILE or e-mail most of the time. A person with a disability may have a family member make an account for them that they cannot use on their own. An exempt litigant may seek legal advice from a limited scope attorney who helps them set up an account to see what is happening in the case, but the self-represented litigant would still need the exemption. We also believe it would be administratively burdensome to have someone in and out of electronic filing during the course of a case. If someone with an exemption would later like to opt in to e-Filing, a more intentional process should be required.

We suggest striking this language, as follows:

~~An exemption granted under this rule is valid only for the court in which it was filed and for the life of the case. unless the individual exempted from filing electronically registers with the electronic filing system. In that event, the individual waives the exemption and becomes subject to the rules of electronic filing and the requirements of the electronic filing system. An individual who waives an exemption under this rule may file another request for exemption.~~

C. 1.109(G)(3)(g)(i-iv)

We suggest adding language to clarify the procedure surrounding what will happen when a paper document is filed with an exemption request that is later denied. We suggest changing what is currently 1.109(G)(3)(g)(i) as follows:

A request for an exemption must be filed with the court where the individual's case will be or has been filed. The request must be on a form approved by the State Court Administrative Office and verified under MCR 1.109(D)(3). There is no fee for the request. If the individual is filing other documents at the same time as the exemption request, the clerk shall accept the paper documents, and they will be considered filed on the day they are provided to the clerk.

We suggest adding a new section after what is currently 1.109(G)(3)(g)(iii) as follows:

If the request is denied, any paper documents that were submitted along with the exemption request are considered filed and do not need to be re-submitted electronically. All subsequent documents must be electronically filed.

D. Model LAO Section II.A.

We suggest requiring at least one computer work station to be physically located in each court. For computer workstations located in outside entities, there should be minimum requirements of the outside entity. Courts should only be permitted to shift the burden of hosting these resources if the outside entity is providing high quality services equal to those that individuals would get in the court. We suggest the following language:

If any e-Filing computer workstations are located in an outside entity, the court will have a memorandum of understanding with that entity which includes:

- The number of workstations that will be available in the location.
- The hours and days that the workstations will be open to the public. This must substantially coincide with court hours of operation.
- An agreement that the court will provide the outside entity with training on e-Filing access policy and process as well as ongoing assistance as needed.
- An agreement that the outside entity has staff available to assist filers, as well as the number of staff that will be available to assist.
- A plan for periodic communication to ensure that the outside entity maintains capacity to assist self-represented litigants over time. This communication plan will include an evaluation of staff changes, and whether additional training on e-Filing is needed.
- The minimum technological specifications of the work stations, along with which party (the court or the outside entity) is responsible for maintaining and paying for the work stations. These must substantially coincide with specifications for workstations at the court.

In the part of this section that links to <http://www.mifile.info/mifile-pricing>, we suggest listing the actual equipment and specifications that are needed to make up an adequate workstation. The information could be in the actual LAO, at the top of the MiFILE pricing page, or on a separate SCAO page. Having the components broken down will help courts to know whether their current equipment is adequate, and will be more useful in cases where a court or outside entity needs to buy individual components but not an entire workstation.

E. Model LAO Section II.B.

We believe that in person assistance is important to e-Filing access. A training video will be useful, but will not be able to cover all of the questions a filer might have when they are using the system. We suggest amending the second bulleted list in this section as follows:

- ImageSoft Inc. MiFILE Customer Care at 855-959-8868.
- THIS IS A PLACEHOLDER FOR MiFILE TRAINING VIDEO LOCATION
- Electronic mail address Support@TrueFiling.com
- [insert number] court staff are available to provide in person assistance

We suggest a calculator to help courts determine how many court staff might be needed to provide assistance, similar to the one used to calculate the number of workstations needed.

F. Model LAO Section IV.C.

To ensure meaningful access to the grievance process, we suggest streamlining the submission process by only requiring submission to one entity, and providing an address or other means of submitting the form. That one entity would then be responsible for sharing it with all others. We do not have a strong opinion about who the form should be submitted to, but the language could be revised to say something like:

Specific issues regarding e-Filing access must be submitted to the ~~chief judge, court administrator, and State Court Administrative Office~~ by completing form SCAO XX.

The form may be submitted by e-mail, mail, or fax using the following contact information:

[Fill in contact information]

The court administrator will forward each grievance to the chief judge and to the State Court Administrative Office.

The court will respond in writing to your grievance using SCAO XXb within five business days.

G. General considerations related to cell phones and e-mail access

Many courts do not allow members of the public to bring cell phones inside, and also do not allow people to access e-mail from public court computers. Prohibiting cell phones creates multiple barriers to accessing the courts, including barriers to e-Filing. MiFILE requires checking one's personal e-mail to create an account, and notifications from MiFILE are delivered either by e-mail or text message. Some e-mail platforms require 2-factor authentication when logging in from a new device, which would mean some litigants will not be able to create a MiFile account from a court workstation even if the court allows people to check their e-mail from court computers. Some aspects of MiFILE may also use 2-factor authentication, either presently or in the near future. Before they can mandate self-represented litigants to e-File, courts should be required to adopt a policy allowing people to bring their cell phones with them when entering the courthouse.

Respectfully submitted,

Angela S. Tripp
Director, Michigan Legal Help