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April 30, 2019

Larry Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2002-37 – Proposed Amendment of Rule 1.109 of the Michigan Court Rules

Dear Clerk Royster:

At its April 12, 2019 meeting, the State Bar of Michigan Board of Commissioners (Board) considered the above-referenced proposed rule amendment published by the Court for comment. As part of its review, the Board considered recommendations from the Access to Justice Policy, Civil Procedure & Courts, and Criminal Jurisprudence & Practice committees.

After this review, the Board voted unanimously to support the proposed rule with amendments to help ensure that Michigan courts remain accessible to all, including people who do not have reliable access to electronic devices, internet, or transportation.

First, a clear definition of “good cause” is essential to ensuring that litigants are treated similarly in all courts throughout the state. The rule should more explicitly define factors for courts to consider in determining whether a litigant has established good cause to be exempt from electronic filing requirements, as follows (recommended changes shown in bold and underline):

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.

(i) 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.

(ii) **A court shall consider the following non-exhaustive factors in determining whether a party has demonstrated good cause:**

- a. **Lack of reliable access to an electronic device on which party can regularly check email;**
- b. **Distance of travel to access a public computer;**
- c. **Lack of transportation or other limitations on the ability to travel;**
- d. **Safety issues;**
- e. **Limited English proficiency;**
- f. **Age or disability limitations; and**
- g. **Lack of capability to use the e-filing system.**

Second, the rule should provide that filing deadlines are tolled pending the court's review of the electronic filing exemption request. While the rule provides that a judge must issue an order within two business days, it does not toll filing deadlines while the judge is reviewing the request. Tolling filing deadlines is essential to ensuring that litigants are not disadvantaged for seeking an exemption.

The State Bar of Michigan continues to support the Court's efforts to implement a statewide electronic filing system, and applauds the Court's efforts in helping to ensure that Michigan courts remain accessible to all. We thank the Court for the opportunity to convey the Board's position on this rule proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet K. Welch", is written over a circular blue stamp or seal.

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Jennifer M. Grieco, President, State Bar of Michigan