

# MICHIGAN LEGAL HELP

Helping Michigan residents solve their legal problems

April 7, 2020

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

Re: Comments on ADM File No. 2002-37 – Proposed Amendments of e-Filing Rules Issued December 18, 2019

Dear Supreme Court Clerk,

I am writing as the Director of the Michigan Legal Help Program to provide input on the proposed rules related to e-Filing referenced above.

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). About 50% of the litigants appearing in Michigan's courts are self-represented, and the Michigan Legal Help website typically reaches about 57,000 individuals per 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.

## **A. Exemption Process for People with Disabilities: 1.109(G)(3)(i) and 1.109(G)(3)(j)(i)**

We oppose creating a separate process for exemption requests that are related to disabilities. A person with a disability should be able to ask for an exemption on either MC 70 (Request for Reasonable Accommodations and Response), or MC 100 (Request for Exemption from Use of MiFILE and Order). If a person with a disability comes across a form titled "Request for Exemption from Use of MiFILE" they could reasonably conclude that this is the correct form to ask for an exemption from MiFILE. It would be unfair to deny an exemption request related to a disability because the litigant used this form.

Requiring people to use different exemption request forms is likely to create confusion, and could cause courts to unintentionally mislead litigants. Many litigants who want an exemption from e-Filing will come to the court with paper forms. Clerks and other court staff may keep copies of MC 100 exemption request forms to give to

these litigants. While it is possible that every court employee who might be in this position could be trained to give everyone who asks both forms (MC100 and MC70), not to assume someone who appears to have a disability needs the accommodation form, and not to assume someone who does not appear to have a disability only needs the request for exemption form, there is an easier and less error-prone solution: allow all litigants to request exemptions using the MC 100 form.

#### **B. Clerk Process for Rejecting Exemption Requests: 1.109(G)(3)(i)(ii)**

We suggest expanding 1.109(G)(3)(i)(ii) to specify what will happen if a clerk does not grant a request for exemption. The process could be modeled on the new fee waiver process in MCR 2.002:

(ii) A request made under subrule (h)(ii) or (iii) shall be approved by the clerk of the court on a form approved by the State Court Administrative Office. If the clerk of the court is unable to grant an exemption, the clerk shall immediately submit the request for judicial review. ~~For all other requests, A judge must review requests that are not granted by a clerk, requests made under subrule (h)(i), and requests made under subrule (g).~~ The judge shall issue an order granting or denying the request within two business days of the date the request was filed.

#### **C. Transmission Failure as a Due Process Issue: 1.109(G)(7)(d)**

Because we feel strongly that transmission of documents that were intended to be legally served *always* implicates due process, we suggest striking a portion of the amended rule, as follows:

In the event the electronic-filing system fails to transmit a document selected for service, ~~if deemed necessary to ensure due process rights are protected,~~ the State Court Administrator shall approve notice to the affected persons in either of the following ways:...

#### **D. Suggested Clarification in Transcript Filing Requirements: 2.306(F)(3)**

We suggest a change to this proposed amendment for clarity. The amended rule references MCR 2.105(A) in connection with filing a transcript with the court. MCR 2.105(A) is the rule on service of process on individuals. If the rule intends to say that the parties should be served according to MCR 2.105(A), this could be accomplished by moving the reference to the part of the sentence that discusses notice to parties. Additionally, MCR 2.107, the rule on service of pleadings and other documents, might be better suited to this notice than the rule on service of process. The following change is one way to accomplish both of these things:

Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall promptly file the certified transcript with the court in which the action is pending ~~in accordance with MCR 2.105(A)~~ and shall give prompt notice of its filing to all other parties in accordance with MCR 2.107, unless the parties agree otherwise by stipulation in writing or on the record.

#### **E. Clerk Entry of Default: 2.603(A)**

We are opposed to an amendment that would automate the default process by allowing clerks to enter default without the request of a party. It is very difficult for a party to participate in a case after entry of default, especially if that person does not have a lawyer. After entry of default there are complicated extra steps a person

needs to follow to ask the court for permission to participate. Automatic entry of default is movement away from access to justice.

We are concerned that steps towards automation of bulk filing and default judgment will increase the risk that Michigan residents will face improper debt collection suits, or worse, have default judgment entered against them in a debt collection suit that never should have been filed. There is evidence that things like easy, low-cost filing can have an impact on the number of debt lawsuits filed in a state, even if the residents do not have more debts than those of other states.<sup>1</sup>

In the family law context, a party may decide not to request default if the parties are working towards a settlement, or if notice of default to the defendant could trigger retaliation in a case involving domestic violence. While an automatic default process may make it easier for some self-represented plaintiffs in family law cases to move their cases toward judgment, we believe the probable harms from this rule change outweigh any potential benefit.

#### **F. Service of Process in Evictions and Land Contract Forfeiture: 4.201(D)**

There seem to be three proposed changes to the court rule on service of process in evictions and land contract forfeitures. The amendment first adds clarification to the method of service required by changing “mail” to “first-class mail.” It goes on to create a bifurcated process with different requirements in e-Filed and paper filed cases. Finally, it completely removes the requirement that plaintiffs save and file the postal receipt along with the proof of service.

We support changing the rule to clarify the type of mail required, but oppose the rest of the changes. While we support increased specificity in the rules, and in fact have gotten questions on MichiganLegalHelp.org about the type of mail required in 4.201(D), we do not believe e-Filing creates any new circumstances that warrant reducing protections for people facing a loss of housing.

The rule appears to remove the requirement of filing a proof of service in paper filed cases, moving that requirement only to e-Filed cases. While such a rule might make sense once e-Filing is in effect statewide, at this point the e-Filing jurisdictions are still in the minority.

The general rule on service of process of case initiating documents, MCR 1.109(G)(6)(a)(i), says that “service...shall be made in accordance with the rules and laws required for the particular case type.” With this in mind, we suggest keeping only the “first-class mail” clarification and also further specifying regular first-class mail since certified mail is a type of first-class mail. The rule could read as follows:

Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by regular first-class mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. Where e-Filing is implemented, the plaintiff must 12 serve the defendant by first class mail and file proof of service with the court. In addition to mailing, the defendant must be served in one of the following ways:

Respectfully submitted,

Angela S. Tripp Director, Michigan Legal Help

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<sup>1</sup> Kiel, *For Nebraska's Poor, Get Sick and Get Sued*, ProPublica (April 28, 2016), available at <<https://www.propublica.org/article/for-nebraskas-poor-get-sick-and-get-sued>> (February 21, 2020).