

## **AO No. 2010-6 — E-filing in the 16th Circuit Court (Macomb County)**

[Entered December 28, 2010; amended January 23, 2013, May 22, 2013, December 23, 2015, and February 28, 2018. Text as amended by order entered February 28, 2018.]

On order of the Court, the 16th Circuit Court is authorized to continue its e-filing project during a transition period while the State Court Administrative Office prepares and implements a statewide e-filing system. The 16th Circuit Court is aware that rules regarding electronic filing have been published for comment by this Court. If this Court adopts electronic-filing rules during the pendency of the 16th Circuit Court Electronic Document Filing Project, the 16th Circuit Court will, within 60 days of the effective date of the rules, comply with the requirements of those rules. The 16th Circuit Court will track the participation and effectiveness of this pilot program and shall report to and provide information as requested by the State Court Administrative Office. In addition, it is anticipated that the 16th Circuit Court, along with other court locations that participated as e-filing pilot courts, will be among the first group of courts that will connect with any statewide system for purposes of testing and early integration.

### **1. Construction**

The purpose of the transition period for e-filing is to continue successful e-filing efforts in the 16th Circuit Court and to coordinate with state efforts, through a vendor or otherwise, to build and operate a statewide system of e-filing. The 16th Circuit Court may exercise its discretion to grant necessary relief to avoid the consequences of error so as not to affect the substantial rights of the parties. Except for matters related to electronically filing or service of documents during the transition period, the Michigan Rules of Court govern all other aspects of the cases involved in the project.

### **2. Definitions**

- a. “Clerk” means the Macomb County Clerk.
- b. “E-filing” means any court pleading, motion, brief, response, list, order, judgment, notice, or other document filed electronically pursuant to the program.
- c. “LAO” means all local administrative orders governing the 16th Judicial Circuit Court.
- d. “MCR” means the Michigan Rules of Court.
- e. “Transition e-filing program” or “project” means the initiative by the Sixteenth Judicial Circuit Court, the Macomb County Clerk/Register of Deeds, and the Macomb County Information Technology Department in conjunction with the court’s vendor, and under the supervision of the State Court Administrative Office. This e-filing application facilitates the electronic filing of pleadings, motions, briefs, responses, lists, orders, judgments, notices, and other documents during the period after enactment of statutory authority to fund and operate a statewide electronic filing system. All state courts in Michigan are envisioned as eventually permitting e-filing (with appropriate modifications and improvements). The Macomb County program will begin testing with two circuit judges with “C” and “N” type civil cases. The 16<sup>th</sup>

Judicial Circuit Court will expand testing into the remaining Civil Division case types, and the Family Division case types for Divorces without Children, Personal Protection Proceedings, and Juvenile Proceedings. The court plans to expand the pilot program to all circuit judges.

f. “Technical malfunction” means any hardware, software, or other malfunction that prevents a user from timely filing a complete e-filing or sending or receiving service of an e-filing.

g. “TrueCertify” means an electronic document certification tool that allows the Macomb County Clerk’s office to create and deliver electronically certified documents, eliminating the need for raised seals. TrueCertify includes an ImageSoft hosted confirmation website (truecertify.com) that stores an encrypted copy of each certified document so that it can be visually verified by the recipient.

h. “TrueFiling” means a web-based efile and service solution provided by ImageSoft where electronic filings may be submitted and delivered to the Courts’ OnBase workflow.

### 3. Participation in the Program

a. Participation in the program shall be mandatory in all pending “C” or “N” case types assigned to participating circuit judges as part of Phase 1 and additionally in other case types as follows:

i. Phase 1: The Macomb County program will begin with two Civil/Criminal Division judges and will encompass case-type codes that begin with “C” or “N” .

ii. Phase 2: The program will expand to case-type codes AA, AE, AP, AR, AV, AH, AL, AS, AW, PC, PD, PR, PS, and PZ for the above two judges within six months after Phase 1 has begun.

iii. Phase 3: The program will expand to the remaining Civil/Criminal Division judges for all civil case-type codes within three months after Phase 2 has begun.

iv. Phase 4: The program will expand to case-type code DO with all Family Division judges within three months after Phase 3 has begun.

v. Phase 5: The program will expand to case-type codes PH, PJ, PP, and VP, for all judges within six months after Phase 4 has begun. Case initiation documents will be supported in this Phase for case-type codes PH, PJ, PP, and VP.

vi. Phase 6: The program will expand to case-type codes DJ, DL, EM, JG, NA, PW, TL, and VF for all Family Division judges within six months after Phase 5 has begun.

Until the 16th Circuit Court begins electronic case initiation for specific case-type codes, participation shall be assigned following the filing and service of the initial complaint or other initial filing and assignment of the case to a participating judge. At the discretion of the judge, participation may also include post-disposition proceedings in qualifying case types assigned to participating judges.

b. This is a mandatory e-filing project. It is presumed that all documents will be filed electronically. However, the Court recognizes that circumstances may arise that will prevent a party from e-filing. To ensure that all parties retain access to the courts, parties that demonstrate good cause will be permitted to file their documents with the Clerk, who will then file the documents electronically. Among the factors that the 16th Circuit Court will consider in determining whether good cause exists to excuse a party from mandatory e-filing are a party's access to the Internet and indigency. A self-represented party is not excused from the project merely because the individual does not have counsel. However, upon submission of proof of incarceration, a self-represented party shall be exempted from e-filing during the period of the individual's incarceration. Application for a waiver from e-filing at the time of case initiation shall be made to the Chief Judge or the Chief Judge's designee

#### 4. E-filings Submission, Acceptance, and Time of Service with the Court; Signature

a. In an effort to facilitate uniform service within the scope of this project, the 16th Circuit Court strongly recommends electronic service. However, service of process for initiating documents shall be made pursuant to MCR 2.105.

b. After the initial process has been served and the defendant has registered as a user with the TrueFiling e-filing system, amendments to the initiating documents may be served electronically subject to the limitations or restrictions otherwise imposed in this order

c. Program participants must submit e-filings pursuant to these rules and the program's technical requirements. The Clerk may, in accordance with MCR 8.119(C), reject documents submitted for filing that do not comply with MCR 2.113(C)(1), are not accompanied by the proper fees, clearly violate Administrative Order No. 2006-2, do not conform to the technical requirements of this project, or are otherwise submitted in violation of a statute, an MCR, an LAO, or the program rules.

d. Electronic filing is not restricted by the operating hours of the court and any document submitted at or before 11:59 p.m. of a business day is deemed filed on that business day. Any document submitted on a weekend or court holiday is deemed filed on the next business day. The clerk shall process electronic submissions on a first-in, first-out basis. Although the system may be used on a 24-hour basis, technical support will generally only be available during regular business hours.

e. E-filings shall be treated as if they were hand-delivered to the court for all purposes under statute, the MCR, and the LAO.

f. A pleading, document, or instrument e-filed or electronically served under this rule shall be deemed to have been signed by the judge, court clerk, attorney, party, or declarant.

i. Signatures submitted electronically shall use the following form: */s/ John L. Smith.*

ii. A document that requires a signature under the penalty of perjury is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.

iii. An e-filed document that requires a signature of a notary public is deemed signed by the notary public if, before filing, the notary public has signed a printed form of the document.

g. The original of a sworn or verified document that is an e-filing (e.g., a verified pleading) or part of an e-filing (e.g., an affidavit, notarization, or bill of costs) must be maintained by the filing attorney and made available upon reasonable request of the court, the signatory, or opposing party.

h. Proposed orders shall be submitted to the court in accordance with the provisions of the program. The court and the clerk shall exchange the documents for review and signature pursuant to MCR 2.602(B).

i. By electronically filing the document, the electronic filer indicates compliance with these rules.

#### 5. Time for Service and Filing of Pleadings, Documents, and Motions; Judge's Copies; Hearings on Motions; Fees

a. All times for filing and serving e-filings shall be governed by the applicable statute, the MCR and the LAO as if the e-filings were hand-delivered.

b. Where a praecipe is required, it must be e-filed along with the documents that require the praecipe, unless another court-approved mechanism is approved and used by the filer.

c. The electronic submission of a motion and brief through this program satisfies the requirements of filing a judge's copy under MCR 2.119(A)(2). A judge may require that one "courtesy copy" or "chambers copy" of any dispositive motion and all accompanying exhibits, as well as responses and replies, or any motion and brief in which the motion, brief, and attachments equal 40 pages or more be submitted directly to the judge's chamber in paper format. Any exhibits must be appropriately tabbed. Good practice requires that in appropriate cases, relevant portions of lengthy documents be highlighted. A printed copy of the e-filing transmission receipt must be attached to the front of the pleading. The requirement to provide a "courtesy copy" or "chambers copy" at a judge's request shall expire on May 22, 2018.

d. Applicable fees, including e-filing fees and service fees, shall be paid electronically through procedures established by the Macomb County Clerk's Office at the same time and in the same amount as required by statute, court rule, or administrative order.

#### 6. Service

a. All parties shall register with the court and opposing parties one e-mail address with the functionality required for the program. All service shall originate from this registered e-mail address. All parties shall also register this e-mail address with the TrueFiling e-filing system. Additional e-mail addresses for other attorneys or staff persons associated with counsel for the party may be added as registered users. Service shall be perfected upon a self-represented party or counsel and any additional registered users associated with counsel at the e-mail addresses registered with the TrueFiling e-filing system. Each individual bears the responsibility for the accuracy of the registered e-mail address.

b. Unless otherwise agreed to by the court and the parties, all e-filings must be served electronically to the e-mail addresses of all parties. The subject matter line for the transmittal of document served by e-mail shall state: “Service of e-filing in case [insert caption of case].”

c. The parties and the court may agree that, instead of e-mail service, e-filings may be served to the parties (but not the court) by facsimile or by traditional means. For those choosing to accept facsimile service:

i. the parties shall provide the court and the opposing parties with one facsimile number with appropriate functionality,

ii. the facsimile number shall serve as the number to which service may be made,

iii. the sender of the facsimile should obtain a confirmation of delivery, and

iv. parties shall comply with the requirements of MCR 2.406 on the use of facsimile communication equipment.

d. Proof of Service shall be submitted to the 16th Circuit Court according to MCR 2.107(D) and these rules.

#### 7. Format and Form of E-filing and Service

a. A party may only e-file documents for one case in each transaction.

b. All e-filings shall comply with MCR 1.109 and the technical requirements of the court’s vendor, and, after implementation, the vendor implementing the statewide e-filing system.

c. Any exhibit or attachment that is part of an e-filing must be clearly designated and identified as an exhibit or attachment.

d. All e-filings, subject to subsection 6(c) above, shall be served on the parties in the same format and form as submitted to the court.

#### 8. Pleadings, Motions, and Documents not to be E-filed

The following documents shall not be e-filed during the program and must be filed by the traditional methods provided in the MCR and the LAO:

a. initiating documents for case-type codes other than PH, PJ, PP, and VP3 [E-file case initiation for case-type codes PH, PJ, PP, and VP will be supported in Phase 5 of the program and these cases may be initiated through the TrueFiling web application. It is anticipated program participants will be able to access TrueFiling through their own Internet connected device from a remote location, through the Turning Point office located in the court building, or through additional on-site court computer kiosks.]

b. documents to be filed under seal (pursuant to court order).

## 9. Official Court Record; Certified Copies

a. For purposes of this program, the official court record is the electronic version of all documents filed with the court. An appellate record shall be certified in accordance with MCR 7.210(A)(1).

b. Certified or true copies of e-filed documents shall be issued in the conventional manner or through TrueCertify by the Macomb County Clerk's Office in compliance with the Michigan Trial Court Case File Management Standards.

c. At the conclusion of the program, if the program does not continue in some other format, the clerk shall convert all e-filings to paper form in accordance with MCR 8.119(D)(1)(d). Participating attorneys shall provide reasonable assistance in constructing the paper record.

d. At the conclusion of the pilot program, the Clerk shall provide for record retention and public access in a manner consistent with the instructions of the court and the court rules.

## 10. Court Notices, Orders, and Judgments

At the court's discretion, the court may issue, file, and serve orders, judgments, and notices as e-filings. Pursuant to a stipulation and order, the parties may agree to accept service from the court via facsimile pursuant to the procedures set forth in Rule 6(c).

## 11. Technical Malfunctions

a. A party experiencing a technical malfunction with the party's equipment (such as Portable Document Format [PDF] conversion problems or inability to access the project sites), another party's equipment (such as an inoperable e-mail address), or an apparent technical malfunction of the court's equipment, software, or server shall use reasonable efforts to timely file or receive service by traditional methods and shall provide prompt notice to the court and the parties of any such malfunction.

b. If a technical malfunction has prevented a party from timely filing, responding to, or otherwise perfecting or receiving service of an e-filing, the affected party may petition the 16<sup>th</sup> Circuit Court for relief. Such petition shall contain an adequate proof of the technical malfunction and set forth good cause for failure to use non-electronic means to timely file or serve a document. The court shall liberally consider proof of the technical malfunction and use its discretion in determining whether such relief is warranted.

## 12. Privacy Considerations (Personal Identifiers)

a. With respect to any e-filing, the following requirements for personal information shall apply for the following personal identifiers:

i. Social Security Numbers: Pursuant to Administrative Order No. 2006-2, full social security numbers shall not be included in e-filings. If an individual's social security number must be referenced in an e-filing, only the last four digits of that number may be used and the number specified in the following format: XXX-XX-1234.

ii. Names of Minor Children: Unless named as a party or otherwise required by statute, court rule, or administrative order, the identity of minor children shall not be included in e-filings. If a non-party minor child must be mentioned, only the initials of that child's name may be used.

iii. Dates of Birth: Except as required by statute, court rule, or administrative order, an individual's full birth date shall not be included in e-filings. Subject to the above limitation, if an individual's date of birth is otherwise referenced in an e-filing, only the year may be used and the date specified in substantially the following format: XX/XX/1998.

iv. Financial Account Numbers: Full financial account numbers shall not be included in e-filings unless required by statute, court rule, or other authority. If a financial account number must be referenced in an e-filing, only the last four digits of these numbers may be used and the number specified in substantially the following format: XXXXX1234.

v. Driver's License Numbers and State-Issued Personal Identification Card Numbers: A person's full driver's license number and state issued personal identification number shall not be included in e-filings. If an individual's driver's license number or state-issued personal identification card number must be referenced in an e-filing, only the last four digits of that number should be used and the number specified in substantially the following format: XXXXXX-XX1-234.

vi. Home Addresses: With the exception of a self-represented party, full home addresses shall not be included in e-filings. If an individual's home address must be referenced in an e-filing, only the city and state should be used. For a party whose address has been made confidential by court order pursuant to MCR 3.203(F), the alternate address shall be treated as specified above.

b. Parties wishing to file a pleading containing a complete personal data identifier as listed above may:

i. Pursuant to and in accordance with the MCR and the LAO, file a motion to file a traditional paper version of the document under seal. The court, in granting the motion to file the document under seal, may still require that an e-filing that does not reveal the complete personal data identifier be filed for the public files; or,

ii. Pursuant to and in accordance with the applicable MCR and LAO, obtain a court order to file a traditional paper reference list under seal. The reference list shall contain the complete personal data identifiers and the redacted identifiers used in the e-filing. All references in the case to the redacted identifiers included in the reference list shall be construed to refer to the corresponding complete personal data identifiers. The reference list must be filed under seal, and may be amended as of right.

c. Parties should exercise caution when filing papers that contain private or confidential information, including, but not limited to, the information covered above and listed below:

i. Medical records, treatment and diagnosis;

ii. Employment history;

- iii. Individual financial information;
- iv. Insurance information;
- v. Proprietary or trade secret information
- vi. Information regarding an individual's cooperation with the government; and,
- vii. Personal information regarding the victim of any criminal activity.

These rules are designed to protect the private personal identifiers and information of individuals involved or referenced in actions before the court. Nothing in these rules should be interpreted as authority for counsel or a self-represented litigant to deny discovery to the opposing party.

13. Records and Reports: Further, the 16th Circuit Court shall file an annual report with the Michigan Supreme Court covering the project to date by January 1 of each year (or more frequently or on another date as specified by the Court) that outlines the following:

a. Detailed financial data that show the total amount of money collected in fees for documents filed or served under the project to date, the original projections for collections of fees, and whether the projections have been met or exceeded.

b. Detailed financial information regarding the distribution or retention of collected fees, including the amount paid to ImageSoft, Inc. per document and in total for the subject period, the amount retained by the Court per document and in total for the period, and whether the monies retained by the Court are in a separate account or commingled with other monies.

c. A detailed itemization of all costs attributed to the project to date and a statement of whether and when each cost will recur.

d. A detailed itemization of all cost savings to the Court whether by reduced personnel or otherwise and a statement of whether any cost savings to the Court are reflected in the fee structure charged to the parties.

#### 14. Amendment

Procedural aspects of these rules may be amended upon the recommendation of the participating judges, the approval of the Chief Judge, and authorization by the State Court Administrator. Proposed substantive changes, including, for example, a proposed expansion of the program to permit additional case-type codes or a proposed change in fees, must be submitted to the Michigan Supreme Court for approval.

#### 15. Expiration

This pilot program, requiring parties to electronically file documents in cases assigned to participating judges, shall continue until further order of the Court.