Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2005-02

Proposed Administrative Order regarding
Privacy Policy and Access to Court Records

On order of the Court, this is to advise that the Court is considering adoption of the following proposed Administrative Order to ensure the confidentiality of social security numbers and management of nonpublic information contained within public documents filed within the judiciary. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

The Social Security Number Privacy Act, 2004 PA 454, requires all persons who, in the ordinary course of business, obtain one or more social security numbers, to create a privacy policy in order to ensure the confidentiality of social security numbers, prohibit unlawful disclosure of such numbers, limit access to information or documents containing social security numbers, provide for proper disposal of documents containing social security numbers, and establish penalties for violation of the privacy policy. While the separation of powers principles set forth in Const 1963, art 3, § 2, make it clear that the management of documents within court files is the responsibility of the judiciary, as a matter of comity with the Legislature, the Supreme Court issues this administrative order in an effort to prevent the illegal or unethical use of personal information found within all court records.

The management of documents within court files is the responsibility of the judiciary. In the regular course of business, courts are charged with the duty to maintain information contained within public documents that is itself nonpublic, based upon statute, court rule, or court order. In carrying out its responsibility to maintain these documents, the judiciary must balance the need for openness with the delicate issue of personal privacy. In an effort to prevent the illegal or unethical use of information found within court files, the following privacy policy is provided for all court records, effective January 1, 2006, and to be implemented prospectively.

Accordingly, on order of the Court,

A. The State Court Administrative Office is directed to assist trial courts in implementing this privacy policy and to update case file management standards established pursuant to this order.

B. Trial courts are directed to:

1. limit the collection and use of a social security number for party and court file identification purposes on cases filed on or after January 1, 2006, to the last 4 digits;

2. implement updated case file management standards for nonpublic records;

3. eliminate the collection of social security numbers for purposes other than those required by statute, court rule, court order, or collection activity when it is required for purposes of identification;

4. establish minimum penalties for court employees and custodians of the records who breach this privacy policy; and

5. cooperate with the State Court Administrative Office in implementing the privacy policy established pursuant to this order.

On further order of the Court, the following policies for access to court records are established.

ACCESS TO PUBLIC COURT RECORDS

Access to court records is governed by MCR 8.119 and the Case File Management Standards.

ACCESS TO NONPUBLIC RECORDS

1. Maintenance of nonpublic records is governed by the NonPublic and Limited Access Court Records Chart and the Case File Management Standards.

2. The parties to a case are allowed to view nonpublic records within their court file unless otherwise provided by statute or court rule.

3. If a request is made by a member of the public to inspect or copy a nonpublic record or a record that does not exist, court staff shall state, "No public record exists."

SOCIAL SECURITY NUMBERS AND NONPUBLIC RECORDS

1. The clerk of the court shall be allowed to maintain public files containing social security numbers on documents filed with the clerk subject to the requirements in this section.

2. No person shall file a document with the court that contains another person's social security number except when the number is required by statute, court rule, court order, or for purposes of collection activity when it is required for

identification. A person who files a document with the court in violation of this directive is subject to punishment for contempt and is liable for costs and attorney fees related to protection of the social security number.

3. A person whose social security number is contained in a document filed with the clerk may file a request pursuant to MCR 2.612(A)(1) asking the court to direct the clerk to:

   a. redact the number on any document that does not require a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification; or

   b. file a document that requires a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification, in a separate nonpublic file.

The clerk shall comply with the court's order and file the request in the court file.

4. Dissemination of social security numbers is restricted to the purposes for which they were collected and for which their use is authorized by federal or state law. Upon receiving a request for copies of a public document that contains a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification, a court shall provide a copy of the document after redacting all social security numbers on the copy. This requirement does not apply to requests for certified copies or true copies when required by law. This requirement does not apply to those uses for which the social security number was provided.

RETENTION AND DISPOSAL OF NONPUBLIC RECORDS

Retention and disposal of nonpublic records and information shall be governed by General Schedule 16 and the Michigan Trial Court Case File Management Standards.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-02. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 13, 2005 Deputy Clerk