



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909
Phone (517) 373-0128

Carl L. Gromek, Chief of Staff
State Court Administrator

MEMORANDUM

DATE: February 24, 2006

TO: Judges
cc: Court Administrators
County Clerks
Probate Registers

FROM: Carl L. Gromek

RE: SCAO Administrative Memorandum 2006-04; Privacy Policy and Access to Records

The Michigan Supreme Court has approved [Administrative Order 2006-2](#), a privacy policy that affects access to court records. A copy of the order is attached as an appendix to this memo. Its effective date is March 1, 2006, and it is to be implemented prospectively. Trial courts are directed to do the following:

- limit the collection and use of a social security number to the last 4 digits for party or court file identification purposes on cases filed on or after March 1, 2006;
- implement updated case file management standards for nonpublic records;
- eliminate the collection of social security numbers for purposes other than those required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification;
- establish minimum penalties for court employees and custodians of the records who breach the privacy policy.

Beginning March 1, 2006, if a court is collecting and using social security numbers for the purpose of party or court file identification, it must be limited to only the last 4 digits. Other identifying factors, such as birth date, should be used in conjunction with the last 4 digits of the social security number. This provision does not apply to cases in which a statute specifically allows for the collection and use of a social security number for identification purposes, such as wills filed with the court for safekeeping.

Courts are encouraged to work with other stakeholders, such as county clerks and bargaining units, to establish required minimum penalties for breach of the privacy policy. MCL 445.84 requires that minimum penalties must be published, along with reference to or a copy of AO 2006-02, in the court's employee handbook, procedures manual, or in one or more similar documents, which may be made available electronically.

ACCESS TO COURT RECORDS

The privacy policy adopted by the Michigan Supreme Court incorporates many aspects of the State Court Administrative Office's previous Model Access to Court Records Local Administrative Order (LAO 8), Nonpublic and Limited Access to Court Records Chart, and the Michigan Trial Court's Case File Management Standards. The Nonpublic Records Chart and Case File Management Standards are being updated to incorporate changes required as a result of the court's adoption of the privacy policy. Additionally, the Model LAO 8 governing access to court records has been renamed *Inspection, Reproduction, and Creation of Court Records* and includes updates resulting from the adoption of AO 2006-02. Courts should review their current Access to Court Records LAOs to determine if they should be updated. >>[See the new model LAO.](#)

SOCIAL SECURITY NUMBERS AND NONPUBLIC RECORDS

Implementation of the privacy policy will require support and assistance from the entire legal community. Courts should work with local bar associations to educate attorneys about the changes regarding collection and maintenance of social security numbers in court files. For instance, the privacy policy directs persons filing documents with a court to exclude social security numbers on documents except when the number is required or allowed by statute, court rule, court order, or for purposes of collection activity when it is required for identification. If a person is found to be in violation of this directive, they are subject to punishment for contempt and liable for costs and attorney fees related to protection of the social security number. Judges should take a proactive approach to limiting the collection of social security numbers. For example, prior to signing an order, judges should redact social security numbers when they are not required or allowed to be filed in the document (e.g., judgments of divorce).

REMEDY

AO 2006-02 allows persons whose social security number is included in any document filed in a court file on or after March 1, 2006, to file a motion to protect the social security number as follows:

- If a person's social security number is included on a court document and it ***is not required or allowed*** to be collected by statute, court rule, court order, or for purposes of collection activity when it is required for identification, the person may file a motion asking the court to direct the clerk to redact the number on the original document.
- If a person's social security number is included on a court document and it ***is required or allowed*** to be collected by statute, court rule, court order, or for purposes of collection activity when it is required for identification, the person may file a motion asking the court to direct the clerk to maintain the document in a separate nonpublic file.

A motion fee of \$20.00 is applicable. Courts should not redact social security numbers from original court documents that have been filed unless a person's social security number is not required or allowed to be collected, the person has filed a motion to have the number redacted, and the court has ordered the clerk to redact the number on the document.

COPIES OF DOCUMENTS CONTAINING SOCIAL SECURITY NUMBERS

The dissemination of social security numbers by the courts is restricted to the purposes for which they were collected and for which their use is authorized by federal or state law. When a court receives a request for copies of any public document that was filed on or after March 1, 2006, the court must review the document and redact all social security numbers on the copy. This requirement does not apply to true copies or certified copies when they are required by law. It also does not apply to copies made for those uses for which the social security number was provided (e.g., copy of tax garnishment to be filed with the Department of Treasury).

INSPECTION OR VIEWING OF FILES

The privacy policy does not apply to requests to view or inspect files. Courts are not required to remove court documents containing social security numbers in court files prior to allowing a person to inspect them.

APPLICABILITY OF PRIVACY POLICY

Administrative Order 2006-02 is limited in application to access to court records. If courts collect social security numbers for other purposes (e.g., human resources), MCL 445.84 requires them to develop a privacy policy unless specifically excluded from doing so under MCL 445.84(3).

The State Court Administrative Office stands ready to assist courts with the implementation of Administrative Order 2006-02 with statewide and regional training, as well as individualized management assistance, if necessary. If you have any questions or concerns, please contact Dawn Childress at 517-373-3756 or childressd@courts.mi.gov or Sandi Hartnell at 517-373-0122 or hartnells@courts.mi.gov.

Administrative Order 2006-2 PRIVACY POLICY

FREQUENTLY ASKED QUESTIONS

1. If a defendant has multiple court files with documents filed after 3/1/06 which contain his SSN, may he file one motion to cover all files, or must he file one motion for each file?

There is no social security number protection “action.” Each individual case file that contains a social security number filed on or after 3/1/2006 must be handled individually by the court. Therefore, a party (it may not always be a defendant) must file a motion in each file in which he or she seeks to protect a social security number.

2. Per MCR 2.119(G)(2), the clerk shall charge a single motion fee for all motions filed at the same time "in an action" regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions. For purposes of SSN protection, if the defendant must file multiple motions, must he pay \$20 for each motion (for each court file) or is SSN protection considered "an action" as opposed to the individual cases being "actions" under normal circumstances?

As noted above, there is no social security number protection “action.” There is a remedy provision available in actions where documents have been filed that contain a social security number. If a party files multiple motions in one file at the same time, there is only one \$20 motion fee collected. If, however, a party files multiple motions on several different case files, then a \$20 motion fee must be assessed on each of those cases. These are “normal circumstances,” and MCR 2.119 applies just like it does in all other motion practice.

3. If a defendant files a motion today, knowing that his case file contains documents with his SSN filed after 3/1/06, does that motion apply to all future filings or does he have to file and pay for a motion every time the plaintiff files a document containing the defendant’s SSN, say, for future garnishments? May the victim defendant file a motion to hold the plaintiff in contempt if the plaintiff continually includes the defendant’s SSN in documents where it is not required just to harass him?

When a party files a document containing a social security number where the social security number is not required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification, the owner of the social security number may file a motion to have it redacted from the original document. Within the body of that motion, the owner of the social security number may request that the court find the person filing the social security number in contempt of court. As always, the court is also allowed to, sua sponte, find a party in contempt of court. Contempt proceedings require a hearing because the action

giving rise to the contempt was committed outside the presence of the judge. *See MCR 3.606*

If, however, the social security number is required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification, the owner of the social security number may file a motion only to have it kept in a separate, nonpublic file.

5. Must the plaintiff be served? Must time frames for service be followed? Or can these motions be handled ex parte?

Yes. *See MCR 2.119 (C)(1) & (2).*

Yes. *See MCR 2.119 (C)(1) & (2).*

Yes. *See MCR 3.207*

6. Must there be a hearing or may the defendants send in a mail request?

A party may request an ex parte order pursuant to MCR 3.207 (a motion fee still applies). If a court normally accepts motion requests via mail, then there is no difference between this type of motion and any other motion and it should apply the same policies and procedures it always does.

7. Is there any circumstance under which a court can deny the motion if the moving party requests all proper remedies properly?

This must be determined by the court on a case-by-case basis after reviewing all the pleadings and hearing argument in the matter.

8. Should granting the motion be automatic? Does the 35-day time guideline apply?

If the motion is filed ex parte, “the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.” *MCR 3.207 (1)*

If the motion is heard, the court should make the determination on a case-by-case basis after reviewing all the pleadings and hearing argument in the matter.

MCR 8.107(A) states, “Matters under submission to a judge or judicial officer should be promptly determined . . . ; otherwise a decision should be rendered no later than 35 days after submission.” Furthermore, the Delay in Matters Submitted Report defines a “matter” as: “any issue submitted to a judge requiring a decision such as a pretrial motion, postjudgment motion” Therefore, the 35-day time period applies.

9. Must the judge report these motions on "Delay in Matters Submitted to the Judge" if a decision is not made within 56 days?

The Delay in Matters Submitted Report defines a "matter" as: "any issue submitted to a judge requiring a decision such as a pretrial motion, postjudgment motion, plea under advisement pursuant to MCR 6.302(F) or MCR 3.941(D)," etc. A motion is considered a "matter," so the answer is yes.

10. Can a court set up procedures whereby the clerks can automatically act on these motions, similar to their taking no proof of insurance waivers?

These are motions, not waivers. The court must issue an order prior to the clerk's taking any action. The evidence that must be considered by the court is set forth in court rule.

If the motion is filed ex parte, "the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued." MCR 3.207 (1)

If the motion is heard, the court should make the determination on a case-by-case basis after reviewing all the pleadings and hearing argument in the matter.

11. Is it up to the defendant to specifically identify which documents need to be protected or is it sufficient that he just identify the case number in his motion?

MCR 2.119(A)(1) sets forth the requirements for the Form of Motions and what they must contain.

12. If the court receives a garnishment with the complete SSN displayed, should the clerk redact all but the last four digits or leave the garnishment as it was submitted to the court?

The clerk should never redact social security numbers from original documents without an order entered by the court after hearing on a motion to redact. Additionally, there is no authority for a court to refuse to accept documents for filing just because they have a social security number within the body of the document. Garnishments, depending on whom they are submitted for collection purposes, will more than likely require a social security number. If that is the case and it meets the criteria set forth in Administrative Order 2006-2, the court may not have to redact the social security number from any copy it provides.