

## Access to Electronic Records and AO 1999-4

[Michigan Supreme Court Administrative Order No. 1999-4](#) was amended May 22, 2019, with an effective date of January 1, 2021. The amended administrative order is part of a larger project involving comprehensive records policies that need to be in place before e-Filing is implemented across the state. The policies address (1) ownership, custody, and care of all court records, (2) access to public court records, and (3) confidentiality of personal identifying information, and are prescribed in the Michigan Trial Court Records Management Standards established by the State Court Administrative Office (SCAO) pursuant to AO No. 1999-4 and MCR 8.119. See [MiFILE Brief 5](#) for details about personal identifying information.

Highlights of the amendment to AO 1999-4 include:

- Clarifying that court records includes data, case records, and other court records, as defined in MCR 8.119.
- Establishing a policy that case records under MCR 8.119(D) must be made available electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not available to the public.
- Prescribing that protected personal identifying information (PPII), as defined in court rule (which is not effective until January 1, 2021), filed with the courts in any form or manner and for any purpose must be nonpublic. This statement dovetails the requirements in MCR 1.109(D)(9)(b) and is not a requirement for the courts to redact PPII from existing public documents in order to maintain the PPII as nonpublic.
- Requiring the SCAO to establish standards and develop court forms that ensure all protected personal identifying information necessary to a given court case is provided to the court separately from filed documents, except as otherwise required by law.

An [Access to Records Committee](#) will be established in 2020 to help SCAO determine statewide policies and procedures for access to electronic court records. In the meantime, the following current policies remain in effect.

### Current Records Access Policies

Courts are encouraged to read the [Michigan Trial Court Records Management Standards](#), especially Section 2. The policies and standards in this resource will be invaluable to courts in understanding the special challenges associated with managing electronic court records, providing access to the public, and modifying local practices with regard to creation, maintenance, access, and disposal of those records.

### Retroactive Redaction Not Required

- Courts are not required to redact any personal identifying information (PII) defined in MCR 1.109(D)(9) from public court documents filed with the court before January 1, 2021.

## **Courts With an Electronic Document Management System**

- Courts that have an electronic document management system (EDMS) must provide reasonable access to those records at that courthouse. [Michigan Trial Court Records Management Standards](#), Standard 2.4, page 21.
- The SCAO is required by Michigan Court Rules 1.109(D)(9) and 8.119 and AO 1999-4 to establish standards pertinent to access to electronic court records and the Access to Records Committee will be asked to make recommendations in this regard.

## **Providing Access to Electronic Public Court Records**

- All documents filed with the court on or after January 1, 2021 are presumed to be in compliance with MCR 1.109(D)(9) and can be made available for viewing electronically at a courthouse computer without the need for the court to screen for and redact PII. It is the filer's responsibility to redact PII and, if required to be filed, to file PII in a nonpublic document.
- AO 2006-2 does not apply to requests to view or inspect files. Therefore, courts are not required to remove documents containing social security numbers from court files before allowing a person to inspect them.
- Courts are prohibited from making electronic public court documents available via the Internet pursuant to MCR 8.119(H).
- Certain case history (register of actions) information can be displayed on the Internet, in accordance with [Michigan Trial Court Records Management Standards](#), Section 2.
- An [Access Security Matrix](#) is available to assist courts and system providers in establishing appropriate user groups and levels of access to electronic court records. The matrix can also be used as a table of contents by clerks of the court to easily locate specific record types with restricted access; details for each record can be located by the item and page number.
- For policies on access to electronic records at the court and through the court's public website or other web-based portal, see Section 2.4 of the [Michigan Trial Court Records Management Standards](#).

## **Protecting Access to Restricted Court Records**

- Restricted court records include nonpublic, confidential, and sealed records and pertain to entire case files, documents, or pieces of information within files or documents.
- AO 2006-2 and SCAO ADM Memo 2006-4 are still in effect and require the clerk to redact the social security number from any copy that the clerk makes of a document on or after March 1, 2006.
- SCAO-approved forms are being revised to remove fields for PII as defined in MCR 1.109(D)(9). SCAO will be providing information to courts about the implications of those changes.
- SCAO will be determining policies and procedures for dissemination of PII when requests for access to nonpublic or confidential court records are received by entities who need that information (e.g., law enforcement), and the Access to Records Committee will be asked to make recommendations in this regard.