

# Order

Michigan Supreme Court  
Lansing, Michigan

May 22, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2017-28

David F. Viviano,  
Chief Justice Pro Tem

Amendments of Rules 1.109  
and 8.119 of the Michigan  
Court Rules

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Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 1.109 and 8.119 of the Michigan Court Rules are adopted, effective January 1, 2021.

[Additions to the text are indicated in underlining  
and deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures;  
Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1) Form and Captions of Documents.

(a)-(f) [Unchanged.]

(g) ~~Pursuant to Administrative Order No. 2006-2, a filer is prohibited from filing a document that contains another person's social security number 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.~~

(2)-(8) [Unchanged.]

(9) Personal Identifying Information.

(a) The following personal identifying information is protected and shall not be included in any public document or attachment filed with the court except as provided by these rules:

- (i) date of birth,
- (ii) social security number or national identification number,
- (iii) driver's license number or state-issued personal identification card number,
- (iv) passport number, and
- (v) financial account numbers.

(b) Filing, Accessing, and Serving Personal Identifying Information

- (i) All protected personal identifying information listed in this rule that is required by law or court rule to be filed with the court or that is necessary to the court for purposes of identifying a particular person in a case must be provided to the court in the form and manner established by the State Court Administrative Office.
- (ii) Where a social security number is required to be filed with the court, it shall be the last four digits only. This requirement does not apply to documents required to be filed with the friend of the court that are not placed in the court's legal file under MCR 8.119(D).
- (iii) If a party is required to include protected personal identifying information in a public document filed with the court, the party shall file the document with the protected personal identifying information redacted, along with a personal identifying information form approved by the State Court Administrative Office under subrule (i). The personal identifying information form must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers listed in the personal identifying information form will be understood to refer to the corresponding complete identifier. A party may amend the personal identifying information form as of right. Fields for protected personal identifying information will not be included in SCAO-approved court forms.

- (iv) Protected personal identifying information provided under this subrule is nonpublic and available, as required for case activity or as otherwise authorized by law or these court rules, only to the parties to the case; interested persons as defined in these court rules; and other persons, entities, or agencies entitled by law or these court rules to access nonpublic records filed with the court.
  - (v) A party may stipulate in writing to allow access to his or her protected personal identifying information to any person, entity, or agency.
  - (vi) A party or a court is not exempt from the requirement to serve a nonpublic document containing protected personal identifying information that has been filed with the court under subrule (i), except by court order in accordance with subrule (vii).
  - (vii) Upon a finding of just cause, on the court's own motion or on motion of the party, the court may order any personal identifying information be made confidential. The order shall identify the party, person, or entity to whom access is restricted. If a party's home address or telephone number is made confidential, the order shall designate an alternative address for serving documents on that party or provide an alternative telephone number for making contact with that party for purposes of case activity.
- (c) Local court forms shall not contain fields for protected personal identifying information. A court shall not reject a document for filing, dismiss a case, or take other negative action against a party for failure to file protected personal identifying information on a local court form.
- (d) Failure to Comply.
- (i) A party waives the protection of personal identifying information as to the party's own protected information by filing it in a public document and not providing it in the form and manner established under this rule.
  - (ii) If a party fails to comply with the requirements of this rule, the court may, upon motion or its own initiative, seal the

improperly filed documents and order new redacted documents to be prepared and filed.

(e) Protected personal identifying information provided to the court as required by subrule (c) shall be entered into the court's case management system in accordance with standards established by the State Court Administrative Office. The information shall be maintained for the purposes for which it was collected and for which its use is authorized by federal or state law or court rule; however, it shall not be included or displayed as case history under MCR 8.119(D)(1).

(10) Request for Copy of Public Document with Protected Personal Identifying Information; Redacting Personal Identifying Information; Responsibility; Certifying Original Record; Other.

(a) The responsibility for excluding or redacting personal identifying information listed in subrule (9) from all documents filed with or offered to the court rests solely with the parties and their attorneys. The clerk of the court is not required to review, redact, or screen documents at time of filing for personal identifying information, protected or otherwise, whether filed electronically or on paper.

(b) Dissemination of social security numbers by the courts is restricted to the purposes for which its use is authorized by federal or state law. When a court receives a request for copies of any public document 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 certified copies or true copies when they are required by law, or copies made for those uses for which the social security number was provided.

(c) Redacting Personal Identifying Information.

(i) Protected personal identifying information contained in a document and filed with the court shall be redacted by the clerk of the court on written request by the person to whom it applies. The clerk of the court shall process the request promptly. The request does not require a motion fee, must specify the protected personal identifying information to be redacted, and shall be maintained in the case file as a nonpublic document.

(ii) Personal identifying information that is not protected as identified in this rule may also be redacted or made confidential or nonpublic. The party or person whose personal identifying information is in a public document filed with the court may file an ex parte motion asking the court to direct the clerk to redact the information from that document or to make the information either confidential or nonpublic. The court may schedule a hearing on the motion at its discretion. The court shall enter such an order if the party or person's privacy interest outweighs the public's interest in the information. The motion shall be on a form approved by the state court administrative office, must specify the personal identifying information to be redacted, and shall be maintained in the case file as a nonpublic document.

(iii) A party or person whose protected personal identifying information is in an exhibit offered for hearing or trial may file a written request that the information be redacted. The request does not require a motion fee, must specify the protected personal identifying information to be redacted, and shall be maintained in the case file as a nonpublic document. The court shall enter such an order if the party or person's privacy interest outweighs the public's interest in the information.

(d) Certifying a Record. The clerk of the court may certify a redacted record as a true copy of an original record on file with the court by stating that information has been redacted in accordance with law or court rule, or sealed as ordered by the court.

(e) Maintenance of Redacted or Restricted Access Personal Identifying Information. A document from which personal identifying information has been redacted shall be maintained in accordance with standards established by the State Court Administrative Office.

(E)-(G) [Unchanged.]

(H) Definitions. The following definitions apply to case records as defined in MCR 8.119(D) and (E).

(1) "Confidential" means that a case record is nonpublic and accessible only to those individuals or entities specified in statute or court rule. A confidential record is accessible to parties only as specified in statute or court rule.

- (2) “Nonpublic” means that a case record is not accessible to the public. A nonpublic case record is accessible to parties and only those other individuals or entities specified in statute or court rule. A record may be made nonpublic only pursuant to statute or court rule. A court may not make a record nonpublic by court order.
- (3) “Redact” means to obscure individual items of information within an otherwise publicly accessible document.
- (4) “Redacted document” means a copy of an original document in which items of information have been redacted.
- (5) “Sealed” means that a document or portion of a document is sealed by court order pursuant to MCR 8.119(I). Except as required by statute, an entire case may not be sealed.

#### Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(C) [Unchanged.]

(D) **Records Kept by the Clerk of the Court.** The clerk of the court shall maintain the following case records in accordance with the Michigan Trial Court Records Management Standards. Documents and other materials made nonpublic or confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated accordingly and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court under subrule (I) that makes a document or other materials in that case nonpublic or confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

(1) [Unchanged.]

- (a) **Case History.** The clerk shall create and maintain a case history of each case, known as a register of actions, in the court’s automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case and shall also be capable of searching a case by number or party name (previously known as numerical and alphabetical indices) and displaying the case number, date of filing, names of parties, and names of any attorneys of record. The case history shall contain both pre- and post-judgment information and shall, at a minimum, consist of the data elements prescribed in the Michigan Trial Court Records

Management Standards. Each entry shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each entry shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action. Protected personal identifying information entered into the court's case management system as required by MCR 1.109(D)(9)(d) shall be maintained for the purposes for which it was collected and for which its use is authorized by federal or state law or court rule; however, it shall not be included or displayed as case history, including when transferred to the Archives of Michigan pursuant to law.

(b) [Unchanged.]

(2)-(4) [Unchanged.]

(E)-(G) [Unchanged.]

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk shall not permit any case record to be taken from the court without the order of the court. A court may provide access to the public case history information through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039; ~~however,~~ If a request is made for a public record that is maintained electronically, the court is required to provide a means for access to that record ~~other public information in its case files may be provided through electronic means only upon request; however, the documents cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those documents.~~ The court may provide access to any case record that is not available in paper or digital image, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(D), in a medium for which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.

(1)-(2) [Unchanged.]

(I)-(L) [Unchanged.]

*Staff Comment:* The amendments make certain personal identifying information nonpublic and clarify the process regarding redaction.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, 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.

May 22, 2019

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk