



Prosecuting Attorneys Association of Michigan

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March 26, 2019

Justices of the Michigan Supreme Court
Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2017-28
**Proposed Amendments of Rules 1.109 and 8.119 of the
Michigan Court Rules**

Dear Justices,

The Prosecuting Attorneys Association of Michigan supports this Court's endeavor to protect sensitive personal information. However, there are certain documents filed in criminal cases in which some personal information is necessary and cannot be redacted.

As currently written, the amendment creating MCL 1.109(D)(9) states:

- (9) Personal Identifying Information. Personal identifying information is classified as protected or nonprotected.
 - (a) Protected Personal Identifying Information. 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,
 - (v) financial account numbers, and
 - (vi) home or personal telephone numbers.

(b) All protected personal identifying information required by law or court rule to be filed with the court must be provided in the form and manner established by the State Court Administrative Office. Protected personal identifying information provided under this subrule is nonpublic and available only to the parties to the case and other legally defined interested persons as required for case activity or as otherwise authorized by law or these court rules. The parties may stipulate in writing to allow access to protected personal identifying information to any person.

A significant problem presented is allowing only for disclosure of the year for the date of birth. Criminal warrants and complaints routinely contain the defendant's date of birth as a means of specifically identifying the defendant. This information is important to ensure the arrest of the right person. Often-times, there are people that have the same or similar names and a date of birth is critical to identifying the defendant. Additionally, the defendant's precise date of birth can be important in confirming that the case is properly filed in the correct court with jurisdiction, juvenile or district/circuit.

The public has a constitutional right to see open court files. Part of that function is to provide information that identifies who specifically is, or is not, charged with a crime. For example, "John Smith" is charged with criminal sexual conduct. How does he dispel a claim, especially in these days of intensive social media, that he is *not* the person charged in that specific case, where the absence of a public date of birth leaves the answer in doubt?

In addition, the date of birth can be important in the case itself. The age of the defendant and victim is frequently critical in child sexual assault cases. In cases where the abuse occurred over the course of years it may be necessary to discuss the victim's exact date of birth because a few days can mean the difference between a CSC 1st and a CSC 3rd. These types of issues are often raised on appeal and requiring parties to redact birthdates down to just the year would prevent the parties from accurately making their arguments and

would prevent the court from having the necessary information readily accessible.

The date of birth is also critical in abuse and neglect cases. The court often needs to take into consideration the date of birth of the children and that information must be provided in court documents. Requiring redaction of the specific date, leaving only the year, will make it more difficult for all of the parties to have accessible the information necessary to litigate the case. Essentially, there will be two court files – a public one that is highly redacted and a private one with all the real information.

Because of these concerns, PAAM requests that criminal cases and abuse and neglect cases be exempted from the requirements relating to date of birth. Thank you for considering our concerns.

Respectfully submitted,

Joseph Hubbell

Joseph Hubbell
Chair, PAAM Amicus and Court Rule Committee