

MICHIGAN LEGAL HELP

Helping Michigan residents solve their legal problems

April 1, 2019

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

Re: Comments on ADM File No. 2017-28 – Proposed Rules Related to Personal Identifying Information

Dear Supreme Court Clerk,

I am writing to comment on the rules referenced above. I am writing as the Director of the Michigan Legal Help Program to provide our input on the proposed rules related to personal identifying information and how they might impact self-represented people.

As you are aware, the Michigan Legal Help Program supports the statewide Michigan Legal Help website and affiliated self-help centers dedicated to providing critical legal information, DIY tools, and referrals to self-represented litigants (SRLs). Estimates of the proportion of SRLs in Michigan courts average about 50%, and the Michigan Legal Help website reaches over 44,000 individuals a week. The proposed rules would directly impact many court forms, both state court administrative office approved forms and local forms. Our experience helping SRLs as they interact with these forms informs our comments below. We support the proposed rule's protection of personal identifying information, and have some suggestions for amendments that will help all litigants to understand and comply with the rules.

Throughout our comments we provide suggested changes or additions to language. Our changes are shown by strikethrough and underlining. Changes shown in the proposed rule were removed to separate our suggestions from the Court's proposed amendments:

Below are our comments:

A. 1.109(D)(9)

We believe the classification of protected and nonprotected personal identifying information (PII) is unnecessary and possibly confusing, since nonprotected PII is not specifically mentioned again in the rule. We suggest striking the part of the definition that says "Personal identifying information is classified as protected or nonprotected." And leaving only the part of the definition that is listed in part (9)(a), including subparts (i-vi).

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This would leave what is listed in the proposed rule as 1.109(D)(9)(a) as the introductory text for the section on PII, which we believe is appropriate. This would be renumbered as 1.109(D)(9), and 1.109(D)(9)(b) would be renumbered as (D)(9)(a) with subsequent sections renumbered as needed.

B. 1.109(D)(9)(b)

We suggest clarifying the final sentence of this section which currently states: “The parties may stipulate in writing to allow access to protected personal identifying information to any person.”

Was this section intended to require that every party to a case stipulate to access of protected PII? Or only the party/parties to whom the information belongs? If the latter we suggest changing this sentence as follows:

A partiesy may stipulate in writing to allow access to its protected personal identifying information to any person.

Is this section intended to make the PII completely public, using “any person” to mean any person who views the file? Or is it intended to make the PII available to a single person, using “any person” to mean any specific person? If the latter we suggest changing the sentence as follows:

The parties may stipulate in writing to allow access to protected personal identifying information to ~~any~~ the person or entity named in the writing.

C. 1.209(D)(9)(d)

Is the purpose of these privacy rules generally to protect PII from public view when people view public court records? Is the purpose to protect PII from new risks associated with electronic storage and submission of records? Or both? If the purpose is wholly or in part to protect from risks related to electronic storage, we suggest that that confidential reference list required in this section be paper filed, not e-filed.

D. 1.109(D)(9)(f)

We have two suggested changes to this section, both related to protecting self-represented litigants from being punished for unknowingly violating this rule if they have been prompted to do so by the forms they are given.

First, we suggest a new section 1.109(D)(9)(f)(iv) which would state:

If a party fails to comply with the requirements of this rule because it gave information prompted by a form provided by a court or the State Court Administrative Office, the court shall not impose any sanction or take any negative action against the party. The court may issue an order to seal the document containing Personal Identifying Information and order new documents as described in subrule (ii).

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Second, the Michigan Legal Help Program has come across many local court forms requiring information which, under the proposed rule, would be protected PII. We suggest the inserting the following language as 1.109(D)(9)(f)(v):

Local forms may not ask for or require protected personal identifying information. If a local form asks for or requires any protected personal identifying information, the court may not reject a filing, dismiss a case, or take any negative action towards a party for failure to file the form.

E. 1.109(D)(10)(c)(ii)

To the extent that nonprotected PII can be requested to be redacted in subsection (D)(10)(c)(ii) or elsewhere, we suggest making more explicit in these sections that nonprotected PII is covered. We also suggest adding an explicit standard for deciding these requests.

~~Except as provided in subrule (i), a~~Personal Identifying Information that does not meet the definition of protected personal identifying information may be redacted, made confidential, or made nonpublic upon written request. A party or a 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 and order shall be on a form approved by the state court administrative office.

F. 1.109(D)(10)(c)(iii)

We propose the following language to make it clear that anyone can ask to have their protected PII redacted, and also that in the event an exhibit makes it into a case file it can be requested to be redacted even after the hearing or trial. As in 1.109(D)(10)(c)(ii), we suggest adding a standard for deciding requests.

~~A party or interested person whose protected personal identifying information is in an exhibit offered for hearing or trial may file a written request before the hearing or trial that the information be redacted. The judge shall determine whether the request should be granted.~~ The court shall enter such an order if the party or person's privacy interest outweighs the public's interest in the information.

G. AO No. 1999-4

Related to item D above, we suggest that the following sentence be added to the end of the final new paragraph, so that paragraph reads, "...The State Court Administrative Office must establish standards and

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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 as otherwise required by law. Local forms developed and required by courts must follow the same standards.”

We look forward to continuing to work closely with the Court and with SCAO as e-filing rules are put in place and e-filing becomes commonplace and then mandatory for self-represented litigants. Thank you for considering our comments and feedback.

Respectfully submitted,

Angela S. Tripp
Director, Michigan Legal Help