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FREDDIE G. BURTON, JR.
CHIEF JUDGE OF PROBATE

DAVID BRAXTON
CHIEF JUDGE PRO TEMPORE

APRIL K. MAYCOCK
PROBATE REGISTER

JEANNE S. TAKENAGA
PROBATE REGISTER 1990 - 2011

VIA Electronic and Regular Mail

April 1, 2019

Larry S. Royster
Supreme Court Clerk
P.O. Box 30052
Lansing, Mich. 48909

Re: ADM File No. 2017-28
Nonpublic Information\Records Redaction

Dear Mr. Royster:

The following comments on the proposed probate court rule changes related to nonpublic information and redaction of records are submitted on behalf of the Wayne County Probate Court. We applaud the concept of protecting information in court files to prevent their misuse by unscrupulous individuals or entities. However, it is important that the response to this concern be calibrated in such a manner as to balance the interests of the public and the courts who serve them. As discussed below, portions of this proposal would place an impossible burden on courts to implement and maintain, and effectively render them unable to administer their cases. The following items address various aspects of this proposal with which the Court has specific concerns.

The Wayne County Probate Court is unclear as to whether, under the current terms of MCR 1.109(D)(9)(b), home\personal telephone numbers would be available to attorneys and guardians ad litem (GALs) assigned to specific cases. Phone numbers are used by GALs and attorneys to contact petitioners. Their continued access to this information is extremely important in large probate courts with their high number of in pro per cases. The language in question indicates that protected personal identifying information (including phone numbers) "...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. ..." However, even if this rule were clarified to ensure that attorneys and GALs were able to access this information, the entire bifurcated access model presents an intractable problem for courts.

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From an operational standpoint, a two tiered access system, public or non-public, is manageable and is a current requirement for various documents, cases, and is reasonable to maintain. A system which would require specific access by party type to specific information within a case would be almost impossible to manage. It would almost certainly require significant and costly modifications to document management systems. How, operationally, can access to certain documents be provided for certain individuals only within the various courts' case and document management systems? It is unclear what method could be used to carve out access for attorneys, GALs, and interested persons. A login/password generating system would be prohibitively expensive, and almost impossible to administer. Many of our interested persons and petitioners are in pro per litigants with limited or no access to computers and often have extremely modest educational backgrounds. An access system for a court that utilizes paper records would be equally challenging to manage. Implementing this process for a court that stores its records electronically (which all courts will likely be doing, to some degree, within the next few years) would be even more difficult from a system security perspective. Any marginal benefit to increased security from identity theft is completely outweighed by the crushing cost, both financially and in staff time, which such a system would impose on courts.

Mr. Royster, if you have any questions regarding these comments please do not hesitate to contact me at (313) 224-5686 or fgbstaff@wcpc.us. Also feel free to talk with April K. Maycock, my Probate Register and Director of Information Services, on this matter.

Sincerely,



Freddie G. Burton
Chief Judge

FGB/cc

CC: April K. Maycock, Probate Register\Director of Information Services