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To: [ADMcomment](#)
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Comments on ADM file 2019-12

These court rule amendments represent a significant shift in records policy for the Court and should be reversed. Instead, the Court should only allow the case inventory to be confidential where domestic violence is indicated.

Background

The 2018 amendment of MCR 3.206 and creation of form MC 21, Case Inventory was intended to provide parties more writing space to list cases involving their family. Prior to the 2018 amendment of MCR 3.206, litigants only had enough writing space for one other case because the rule required specific language to be used (that only accounted for one case). On occasion, this limitation would lead to assigning a case to an inconsistent judge. For example, a personal protection matter would be assigned to Judge A when the divorce matter is assigned to Judge B.

A more poignant example of inconsistent assignment is when a minor guardianship is filed in probate court and assigned to a probate judge, despite a child protection matter pending in the family division of the circuit court. The family division of the circuit court could handle the guardianship^[1], which would be appropriate under the one judge, one family rule, MCL 600.1023. However, probate courts and circuit courts often do not have access to each other's cases for purposes of assignment. The guardianship matter could be assigned to the probate judge and disposed of without the probate judge ever knowing a child protection case exists.

The 2018 amendment of MCR 3.206 and creation of form MC 21, Case Inventory allows litigants to list multiple cases involving their family. In turn, the additional information helps court assign family division cases to the correct judge as required by MCL 600.1023^[2].

The problem with this rule amendment

These rule amendments create bad precedent by making aggregated public information confidential because of domestic violence policy.

The case inventory form provides the following public administrative information about a case file: (1) which court a case is in, (2) the case name, (3) case number, (4) assigned judge, (5) case status, and (6) whether a custody/parenting time order is in effect. The case inventory form combines this information about multiple cases in one place. These rule amendments blanketly make the case inventory confidential *in every case*, even though the administrative information provided on it remains public. In other words, this rule amendment makes the *aggregation* of information confidential, but not the underlying information itself.

In my opinion, this is a significant shift in policy for the Court and bad precedent. Aggregating administrative information about cases is essential for access to justice. Other examples of aggregated administrative information are the [\[3\]](#) register of actions, a court's docket/schedule, and an online listing of cases . These documents are essential to accessing case information. While domestic violence policy should be a consideration for the Court, the case inventory form is an innocuous administrative document. A domestic violence perpetrator may already know all the information it contains by virtue of being involved in the cases listed. By making it confidential, the Court has opened the door for making other such documents confidential, which slowly erodes public access to cases. For example, would a list of cases related to the parties be prohibited on a public access terminal? What about a list of related cases generated by MiFILE in a case search?

In addition, not requiring service of the case inventory form on the opposing party because of domestic violence policy is a disproportionate policy when compared to other forms. Specifically, the verified statement (FOC 23) and the upcoming verified financial information form (MCR 3.206(C)(2), effective January 1, 2020) must be served on the other party. These forms contain a person's date of birth, social security number, driver's license number, financial account number(s), eye color, hair color, height, weight, race, gender, and scars/tattoos, among other things. This information is far more dangerous than the information listed on the case inventory form. A person may omit information on these forms but must explain the omission in a separate statement. See MCR 3.206(C)(4), effective January 1, 2020.

Suggestion for change

I would encourage the court to reconsider implementation of these amendments entirely. However, I recognize that may be a fool's errand given its immediate effect.

Short of that, instead of making the case inventory confidential in every case, the Court should only make the case inventory confidential where domestic violence has been indicated. This could be achieved in a simple, straight-forward manner by including a checkbox on the case inventory form and modifying the rule language. The checkbox could state something like:

Domestic violence has occurred between these parties.

The rule would then be modified to state the following:

Where the plaintiff has indicated domestic violence has occurred between the parties, the case inventory is confidential, not subject to service requirements in MCR 3.203, and is available only to the party that filed it, the filing party's attorney, the court, and the friend of the court.

This structure allows the plaintiff to make a factual statement, prompting the clerk to make the case inventory confidential. It protects domestic violence victims and decreases the burden on courts to create and maintain confidential files.

Conclusion

Thank you for your time and consideration

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^[1] The family division of the circuit court has ancillary jurisdiction over guardianships. MCL 600.1021.

^[2] The proposed rule, published on September 20, 2017, included modifications to the probate court rules that would have required a case inventory in certain probate cases. These changes would have helped bridge the gap between probate and circuit court, but they were not included in the final order.

^[3] Consider that, in the future, MiFILE may allow a litigant to search for cases statewide.