

Order

Michigan Supreme Court
Lansing, Michigan

December 12, 2018

Stephen J. Markman,
Chief Justice

ADM File No. 2017-28

Proposed Amendment of Rules
1.109 and 8.119 of the Michigan
Court Rules, Rescission of Administrative
Order 2006-2, and Amendment to
Administrative Order No. 1999-4

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

On order of the Court, this is to advise that the Court is considering amendments of MCR 1.109, MCR 8.119, AO No. 1999-4, and rescission of AO No. 2006-2. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

MCR 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) [Unchanged.]

(b) The first part of every document must contain a caption stating:

(i)–(v) [Unchanged.]

(vi) ~~the name, an address, and telephone number~~ of each party appearing without an attorney and an address for each party where documents can be served on that party.

(c)–(f) [Unchanged.]

(g) Pursuant to ~~Administrative Order No. 2006-2~~subrule (D)(9) 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.~~protected personal identifying information.

(2)–(8) [Unchanged.]

(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.

- (c) If law or court rule requires protected personal identifying information to be included in a public document filed with the court, it must be provided in the following format:
- (i) Date of Birth. Only the year may be included in the following format: XX/XX/1998.
 - (ii) Social Security Number. Only the last four digits may be included in the following format: XXX-XX-1234.
 - (iii) Driver's License Number or State-Issued Personal Identification Card Number. Only the last four digits may be included in the following format: X-XXX-XXX-XX1-234.
 - (iv) Passport Number. Only the last three digits may be included in the following format: XXXXXX123.
 - (v) Financial Account Numbers. Only the last four digits may be included in the following format: XXXXX1234.
 - (vi) Home and Personal Telephone Numbers. Only the last four digits may be included in the following format: XXX-XXX-1234.
- (d) If a party is required to file a public document containing protected personal identifying information listed in subrule (a) or (b), the party may file a redacted document for the public file along with a confidential reference list on a form approved by the State Court Administrative Office. The confidential reference list 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 included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend the reference list as of right.
- (e) If an exhibit offered for hearing or trial contains personal identifying information that is defined as protected personal identifying information in this rule or may be considered personal identifying information by a party, the party offering the exhibit is not required to redact the information. However, the person to whom the information pertains may request that the court redact the personal identifying information under subrule (10).

(f) 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.

(iii) If a party fails to comply with the requirements of this rule in regard to another person's protected information, the court may impose reasonable expenses, including attorney fees and costs, or may sanction the conduct as contempt.

(g) 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 protected 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 will not review, redact, or screen documents for personal identifying information, protected or otherwise, whether filed electronically or on paper, except in accordance with this subrule.

(b) Dissemination of protected personal identifying information by the courts is restricted to the purposes for which its use is authorized by federal or state law or court rule. When a court receives a request for copies of any public document filed on or after January 1, 2021,

the court must review the document and redact all protected personal identifying information. 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 personal identifying information 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, shall be maintained in the case file, and is nonpublic.

(ii) Except as provided in subrule (i), 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 motion and order shall be on a form approved by the state court administrative office.

(iii) 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.

(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.

MCR 8.119 Court Records and Reports; Duties of Clerks

(A)–(C) [Unchanged.]

(D) [Unchanged.]

(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.]

(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.

(I)–(L) [Unchanged.]

AO No. 1999-4 for Michigan Trial Court ~~Case File~~Records Management Standards

In order to improve the administration of justice; to improve the service to the public, other agencies, and the judiciary; to improve the performance and efficiency of Michigan trial court operations; ~~and~~ to enhance the trial courts' ability to ~~preserve~~ create and maintain an accurate record of the trial courts' proceedings, decisions, orders, and judgments pursuant to statute and court rule, it is ordered that the State Court Administrator establish Michigan Trial Court ~~Case File~~ Records Management Standards for data, case records, and other court records and that trial courts conform to those standards. The State Court Administrative Office ~~shall~~ must enforce the standards and assist courts in adopting practices to conform to those standards.

Case records under MCR 8.119(D) must be made available electronically to the same extent they are available at the courthouse, provided that certain personal data identifiers are not available to the public. In order to protect privacy and address security concerns, it is ordered that protected personal identifying information, as defined in court rule, filed with the state courts of Michigan in any form or manner and for any purpose must be nonpublic. The State Court Administrative Office must establish standards and 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 except as otherwise required by law.

Staff Comment: The proposed amendments would 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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-28. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

December 12, 2018

Clerk