

Michigan Court Rules on Personal Identifying Information

The Michigan Supreme Court recently entered an order, effective January 1, 2022, that protects certain personal identifying information. The order includes new subrules MCR 1.109(D)(9) and (10) and (H), and amendments to MCR 8.119(D) and (H). Along with the rule amendments, the Court amended Michigan Supreme Court Administrative Order No. 1999-4. The rules and administrative order can be viewed [here](#) and the extension for the effective [here](#).

These rule amendments are part of a larger project involving comprehensive records policies that need to be in place before e-Filing is implemented across the state. The policies address (1) ownership, custody, and care of all court records, (2) access to public court records, and (3) protection of personal identifying information, and are prescribed in the Michigan Trial Court Records Management Standards established by the State Court Administrative Office pursuant to Administrative Order No. 1999-4 and MCR 8.119.

Because the e-filing rules require courts to have an electronic document management system in place when e-filing is implemented, it is vital that protected personal identifying information be provided to courts by means other than inclusion in the public documents filed with the court. It is also important that policies and procedures be in place for redacting personal identifying information from documents already filed in the court before e-filing is implemented. Current access policies in MCR 8.119 and the records management standards allow a court to post case history (more commonly known as the register of action) on a public website, and post business court opinions online, as well. Otherwise, electronic public court case records are to be provided only on request.

Highlights of the substantive changes are:

- MCR 1.109(D)(9)(a) identifies an individual's date of birth, social security number or national identification number, driver's license number or state-issued personal identification card number, passport number, and financial account numbers as protected personal identifying information.
- MCR 1.109(D)(9)(b) specifies that any protected personal identifying information required by law or court rule to be filed with the court be provided in a form and manner established by the State Court Administrative Office (SCAO). When necessary, protected personal identifying information in a public document filed with the court must be redacted, and the information must be submitted on a SCAO-approved form that is nonpublic. The form is available—as required for case activity or as otherwise authorized by law or these court rules—only to the parties to the case; interested persons as defined in these court rules; and other persons, entities, or agencies entitled by law or these court rules to access nonpublic records filed with the court. Additionally, fields for protected personal identifying information may be included on

SCAO-approved court forms, and the information will be protected in the form and manner established by SCAO.

- MCR 1.109(D)(9)(c) prohibits local court forms from containing protected personal identifying information, and also provides that a court shall not reject a document for filing, dismiss a case, or take other punitive action against a party for failure to file protected personal identifying information on a local court form.
- MCR 1.109(D)(9)(d) provides that a party submitting protected personal identifying information in a way that is inconsistent with the rule waives the protections under the rule. Failure to comply with the rule may result in the improperly filed documents being sealed and an order requiring new redacted documents to be prepared and filed.
- MCR 1.109(D)(9)(e) requires protected personal identifying information to be entered in a court's case management system in accordance with SCAO standards and law.
- MCR 1.109(D)(10)(a) establishes that the responsibility for excluding or redacting protected personal identifying information from documents filed with or offered to the court rests with the filer. For a document filed with or offered to the court, except as otherwise provided in these rules, the court is not required to redact protected personal identifying information from the document, regardless of whether filed before or after January 1, 2022, before providing a requested copy of the document (whether requested in person or via the Internet) or before providing direct access to the document via a publicly accessible computer at the courthouse.
- MCR 1.109(D)(10)(b) makes clear that when a court receives a request for copies of any public document filed on or after March 1, 2006, the clerk must review the document and redact all social security numbers on the copy. If a certified or true copy is required by law, the social security number is not redacted.
- MCR 1.109(D)(10)(c) indicates that when protected personal identifying information is contained in a document filed with the court or an exhibit offered to the court, the person to whom it applies may make a written request for the protected PII to be redacted by the clerk of the court. There is no fee associated with a request to redact *protected* personal identifying information. However, a person may file an ex parte motion to request that the court redact, make nonpublic, or make confidential any personal identifying information that is not protected under MCR 1.109(D)(9)(a) (e.g. home address, personal phone number, maiden name, etc.).
- MCR 1.109(D)(10)(d) provides that a clerk may certify a redacted record as a true copy of an original record on file with the court by stating that the information has been redacted in accordance with law or court rule, or sealed as ordered by the court.
- MCR 1.109(D)(10)(e) requires that a document from which personal identifying information has been redacted shall be maintained in accordance with SCAO standards.

- MCR 1.109(H) defines the terms “confidential,” “nonpublic,” “redact,” “redacted document,” and “sealed.”
- MCR 8.119(D)(1)(a) was amended to clarify that any protected personal identifying information entered into the court’s case management system as required by MCR 1.109(D)(9)(e) must 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. It must not be displayed as case history, including when transferred to the Archives of Michigan.
- MCR 8.119(H) was amended to state, “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; however, the documents cannot be provided through a publicly accessible website if protected personal identifying information has not been redacted from those documents.” Additionally, if a public document prepared or issued by the court, on or after July 1, 2021, contains protected personal identifying information, the information must be redacted before it can be provided to the public, whether the document is provided upon request via a paper or electronic copy, or direct access via a publicly accessible computer at the courthouse.

Implementing the Rules

The changes in these rules necessitate varying stages of implementation through standards and guidelines, court forms, MiFILE case initiation data screens, and integration between court and executive branch systems. More information is available at courts.mi.gov/PII.

Effective Date

The amended rules were originally adopted and published in May 2019, with an effective date of January 1, 2021. The effective date was later [amended](#) to July 1, 2021, then [amended](#) to January 1, 2022, and [amended](#) once again to April 1, 2022 to provide opportunity to address the logistical details, such as (1) amending SCAO-approved court forms that contain fields for protected personal identifying information, (2) reprogramming case management systems to ensure protected personal identifying information is not displayed publicly, (3) determining the means for providing protected personal identifying information to law enforcement for arrest, search warrants, and LEIN entry, and (4) designing MiFILE screens and special SCAO-approved forms for capturing protected personal identifying information for filing with the court in a nonpublic manner.

Filing Protected Personal Identifying Information with Courts

Courts will be provided with protected personal identifying information when a case is initiated. In both paper-based systems and MiFILE, protected personal identifying information will be filed on SCAO-approved forms MC 97, MC 97a, and MC 97b. Depending on the type of case, one of these forms is completed for the person whose protected personal identifying information is required to be filed with the court. Filers are instructed on various pleadings to complete one of these forms whenever required. Whenever possible, SCAO-approved forms that previously contained fields for protected PII were modified to remove those fields. Additionally, when certain protected PII, such as date of birth, is necessary for the court, law enforcement agencies, or another party to accurately identify an individual, the forms were modified in such a way that allows limited access to the protected PII. Finally, some court-prepared forms, such as orders, will still include protected PII, and that information will be protected through the court redacting it before sharing it with a member of the public.

When documents are e-filed, the protected personal identifying information will also be entered into case initiation screens so that entry of case party data into the court’s case management system can be automated. Below (Figure 1) is an example of such a screen for a subject of petition in a probate court case.

Figure 1. Portion of the MiFILE case initiation screen for a guardianship case.

Subject of Petition

Last Name*	First Name*	Middle Name	Suffix
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Date of Birth*			
<input type="text" value="MM/DD/YYYY"/> <input type="calendar"/> <input type="checkbox"/> Unknown			
Last 4 Digits of SSN*			
<input type="text"/> <input type="checkbox"/> Unknown			
Race*			
<input type="text"/>			
Sex*			
<input type="text"/>			
Address* <input type="checkbox"/> Is this an international address?			
<input type="text"/>			
Address Line 2			
<input type="text"/>			
City*			
<input type="text"/>			

Access to Protected Personal Identifying Information

Certain protected personal identifying information, such as date of birth, is necessary for the court, law enforcement agencies, and the parties to accurately identify an individual. The courts, law enforcement, and parties will have access to all protected personal identifying information necessary for identifying parties, issuing warrants, and entering orders that require protected personal identifying information for identification purposes. Anyone else who has a legal right to that information will also have access to the protected personal identifying information in the case, which can be disseminated as provided by law or court rule. Details for dissemination are provided in the [Nonpublic and Limited-Access Court Records](#) chart.

Collaborating with Law Enforcement and State Agencies

SCAO collaborated with the various agencies affected by this rule. For each type of case that requires protected personal identifying information to be in a document for purposes of identification (such as a warrant, order of apprehension, order to transport, or for entry into LEIN), there will be a format for gathering that information from the filer and a format for disseminating it to the proper authorities and making it available to the parties. Meetings were held with these various stakeholders to discuss the most appropriate means to provide protected personal identifying information to law enforcement, prosecuting officials, and the Michigan Department of Health and Human Services for carrying out their respective duties in arrest, apprehension, transport, and search and seizure.