

## Handout: MCR 1.109 as of 04/01/22, with Markup

**\* NOTE: this compilation of changes is prepared as a conference resource only and is not an authoritative restatement of the court rule.**

Rule 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)-(f) [Unchanged.]

~~(g) Pursuant to Administrative Order No. 2006-2, 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.~~

(2)-(8) [Unchanged.]

(9) Personal Identifying Information.

(a) The following personal identifying information is protected and shall not be included in any public document or attachment filed with the court on or after July 1, 2021, 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, and

(v) financial account numbers.

(b) Filing, Accessing, and Serving Personal Identifying Information

(i) All protected personal identifying information listed in this rule that is required by law or court rule to be filed with the court or that is necessary to

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the court for purposes of identifying a particular person in a case must be provided to the court in the form and manner established by the State Court Administrative Office.

- (ii) Where a social security number is required to be filed with the court, it shall be the last four digits only. This requirement does not apply to documents required to be filed with the friend of the court that are not placed in the court's legal file under MCR 8.119(D).
- (iii) If a party is required to include protected personal identifying information in a public document filed with the court, the party shall file the document with the protected personal identifying information redacted, along with a personal identifying information form approved by the State Court Administrative Office under subrule (i). The personal identifying information form 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 listed in the personal identifying information form will be understood to refer to the corresponding complete identifier. A party may amend the personal identifying information form as of right. Fields for protected personal identifying information may be included in SCAO-approved court forms, and the information will be protected, in the form and manner established by the State Court Administrative Office.
- (iv) Protected personal identifying information provided under this subrule is nonpublic and 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.
- (v) Consent.

  - (A) A party may stipulate in writing to allow access to his or her protected personal identifying information to any person, entity, or agency. Unless otherwise provided by this subrule, the stipulation must be presented to the court when trying to access the protected personal identifying information.
  - (B) The State Court Administrative Office will maintain a list of authorized individuals who may have access to a party's date of birth

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contained in a court record for purposes of verifying the identity of that particular person without the need to present a stipulation to the court. To be placed on this list, these individuals must conform to the following procedures:

- (1) In a written document, identify the entity for which they work and provide assurance to the State Court Administrative Office that each time they seek verification of a party's date of birth, it will be in the course of their work and with that person's consent. The consent may be retained in the possession of the authorized individual, the entity for whom the individual works, the person or organization seeking the information about the person, or someone acting on behalf of that person or organization. Such assurance may be satisfied by a letter from the entity for which the individual works or other authorization. The assurance required under this provision shall be updated at least every six months, beginning from the date of the original submission. The update may be provided by the individual who seeks access to a person's date of birth or by the entity that authorizes the individual to operate on its behalf in accessing the information.
- (2) Submit proof of their employer's or hiring entity's current professional liability insurance in effect during the period when an authorized individual will be seeking date of birth information from a court. Failure to do so will result in the individual being removed from the list or in the individual not being placed on the list. The information provided in support of this provision shall be nonpublic. The proof of insurance required under this provision shall be updated annually.
- (3) Courts must verify the identity of anyone who claims to be an authorized individual by ensuring the name on the individual's state-issued identification matches the name in SCAO's authorized user list. A court may issue a register of actions or other document that includes a party's date of birth to an authorized individual.

- (vi) A party or a court is not exempt from the requirement to serve a nonpublic document containing protected personal identifying information that has

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been filed with the court under subrule (i), except by court order in accordance with subule (vii).

- (vii) Upon a finding of just cause, on the court's own motion or on motion of the party, the court may order any personal identifying information be made confidential. The order shall identify the party, person, or entity to whom access is restricted. If a party's home address or telephone number is made confidential, the order shall designate an alternative address for serving documents on that party or provide an alternative telephone number for making contact with that party for purposes of case activity.
- (c) Local court forms shall not contain fields for protected personal identifying information. A court shall not reject a document for filing, dismiss a case, or take other negative action against a party for failure to file protected personal identifying information on a local court form.
- (d) 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.
- (e) 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 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 is not required to review, redact, or screen documents at time of filing for personal identifying information,

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protected or otherwise, whether filed electronically or on paper. For a document filed with or offered to the court, except as otherwise provided in these rules, the clerk of the court is not required to redact protected personal identifying information from that document, regardless of whether filed before or after July 1, 2021, 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.

- (b) Dissemination of social security numbers by the courts is restricted to the purposes for which its use is authorized by federal or state law. When a court receives a request for copies of any public document filed on or after March 1, 2006, the court must review the document and redact all social security numbers on the copy. 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 social security number 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, and shall be maintained in the case file as a nonpublic document.
  - (ii) Personal identifying information that is not protected as identified in this rule may also be redacted or made confidential or nonpublic. The party or 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 shall be on a form approved by the state court administrative office, must specify the personal identifying information to be redacted, and shall be maintained in the case file as a nonpublic document.
  - (iii) A party or person whose protected personal identifying information is in an exhibit offered for hearing or trial may file a written request that the information be redacted. The request does not require a motion fee, must specify the protected personal identifying information to be redacted, and

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shall be maintained in the case file as a nonpublic document. The court shall enter such an order if the party or person's privacy interest outweighs the public's interest in the information.

- (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.