

MICHIGAN JUDICIAL INSTITUTE

# COURT EXECUTIVE TEAM CONFERENCE

*Challenges, Change & Creativity:  
Navigating Court Leadership in the New Normal*

JANUARY 20, 2022

## [2D] PERSONAL IDENTIFYING INFORMATION

### MATERIAL PREPARED AND PRESENTED BY:

Noah Bradow  
SCAO-Field Services

Rebecca Schnelz  
SCAO-Field Services

### TABLE OF CONTENTS

Handout: PII Court Rule History.....	2
Handout: MCR 1.109 as of 04/01/22, with Markup .....	3
Handout: SCAO Standards for Protected PII.....	9
Handout: Criteria for Court Protection of P-PII (as of 4/1/22) .....	13

## Handout: PII Court Rule History

The rules governing the protection of personal identifying information (PII) have been amended several times. The following is a chronological history of the rule amendments:

- 5/22/19 – [Amendments of Rules 1.109 and 8.119](#)
  - Adopting several amendments that make certain personal identifying information nonpublic and clarify the process regarding redaction.
- 5/22/19 – [Amendment of Administrative Order 1999-4](#)
  - Establishing the Michigan Trial Court Record Management Standards.
- 11/18/20 – [Amendment of Rules 1.109 and 8.119](#)
  - Extending the effective date of the amendments to Rules 1.109 and 8.119 from January 1, 2021 to July 1, 2021.
- 11/18/20 – [Amendment of Administrative Order 1999-4](#)
  - Extending the effective date for establishment of the Michigan Trial Court Record Management Standards from January 1, 2021 to July 1, 2021.
- 6/9/2021- [Amendments to MCR 1.109, 8.119, and Administrative Order No. 1999-4](#)
  - Allowing SCAO flexibility in protecting an individual’s personal identifying information and clarifying when a court is and is not required to redact protected personal identifying information.
- 06/30/21 – [Extension of Effective Date of Amendment of MCR 1.109 and 8.119](#)
  - Extending the effective date of the amendments to Rules 1.109 and 8.119 from July 1, 2021 to January 1, 2022.
- 06/30/21 – [Amendment of Administrative Order 1999-4](#)
  - Extending the establishment of the Michigan Trial Court Record Management Standards from July 1, 2021 to January 1, 2022.
- 06/30/21 – [Amendment of Administrative Order 2019-4](#)
  - Authorizing the 3rd, 6th, 13th, 16th, and 20th Circuit Courts to continue their e-filing programs with the extended effective dates for the amendments of MCR 1.109, MCR 8.119, and Administrative Order 1999-4.
- 12/06/21 – [Amendment of MCR 1.109, and 8.119](#)
  - Extending the effective date of the amendments to Rules 1.109 and 8.119 from January 1, 2022 to April 1, 2022.
- 12/06/21 – [Amendment of Administrative Order 1999-4](#)
  - Extending the effective date for changes to Administrative Order 1999-4 from January 1, 2022 to April 1, 2022.
- 12/06/21 – [Proposed Amendment of MCR 1.109](#)
  - Proposal to establish an authorized list of individuals who may have access to a party’s date of birth without the need to present a stipulation to the court. Unless altered, the rule would be implemented as proposed on April 1, 2022. Comments accepted until April 1, 2022.

## 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

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

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

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

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

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

- 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,

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

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

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

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.

## Handout: SCAO Standards for Protected PII

[Administrative Order 1994-4](#), as amended on May 22, 2019, directs that the SCAO “must establish standards and develop court forms to 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.”

### Michigan Trial Court Records Management Standards

[https://www.courts.michigan.gov/siteassets/court-administration/standardsguidelines/casefile/cf\\_stds.pdf](https://www.courts.michigan.gov/siteassets/court-administration/standardsguidelines/casefile/cf_stds.pdf)

- **(p20) Section 2.2 – Restricted-Access Case Records**

Case history (register of actions) provided through an automated public search capability must not display nonpublic cases. **In addition, courts are prohibited from publicly displaying protected personal identifying information as defined in MCR 1.109(D)(9).** For case history available only on paper, the court must make arrangements to ensure public access to nonpublic and confidential entries is restricted.

- **(p21) Section 2.2 – Restricted-Access Case Records, Records or Information within Case Files**

- The clerk of the court must take precautions to restrict access to pieces of information in restricted-access case files and other court records. This information includes nonpublic and confidential information regulated by Michigan or federal statute, federal regulation, Michigan court rule, or court order.
- When access to a document is restricted by statute, court rule, or order, the trial court should clearly mark the document “NONPUBLIC,” “CONFIDENTIAL,” or “SEALED,” as appropriate. The document should be maintained in a manner that permits the clerk to easily identify and remove that document if a request to review a public case file is made. Any confidential, nonpublic, or sealed stamp, label, or tag imprinted on or associated with a paper or electronic case file must be clearly identifiable.
- If information on a document is nonpublic or confidential, but the document itself is not nonpublic or confidential (such as a **nonpublic personal identifying information**), **the information should not be available except as permitted by statute, court rule, or order.** If a person is entitled to a copy of the document but not to certain nonpublic or confidential information on the document, the sensitive information must be redacted in accordance with court rule.

- **(p25) Section 2.4 – Public Access to Electronic Records at Court Location**

When a court's records are only available electronically, the court must provide a means for the public to view those records, while safeguarding nonpublic and confidential information. This may be accomplished by a publicly accessible computer without Internet access. The scope of access is as follows:

- Access to Public Case Files

## Handout: SCAO Standards for Protected PII

- Case number, case name/party names, age (when available), and public case history (docket) entries are viewable;
- **No protected personal identifying information, as defined in MCR 1.109(D)(9), is viewable;**
- Public document images (with personal identifying information redacted as required by law or court rule) are viewable;
- Copies of public records can be made available free of charge or upon payment of a reproduction fee, when a fee is permitted;
- No nonpublic, confidential, or sealed document images are viewable.
- Access to Nonpublic Case Files
  - Case number is viewable.
- [\(p25\) Section 2.4 – Public Access to Electronic Records through Internet](#)

Public records accessible from a court’s public website or other web-based portal are restricted to the case number, party names, and case history (docket) entries. Courts are prohibited from providing public access to document images through the Internet. MCR 8.119(H). Additional restrictions are:

  - Access to Public Case Files
    - Case number, case name/party names, and public case history (docket) entries are viewable;
    - **No protected personal identifying information, as defined in MCR 1.109(D)(9), is viewable;**
    - No document images are viewable;
    - Copies of public records can be requested/ordered in accordance with the court’s local administrative order on access to public records.
  - Access to Nonpublic Case Files
    - Case number is viewable.
- [\(p45\) Section 3.3.2.1 – Case History Data Standards](#)

Protected personal identifying information that may be provided by a party as part of the case initiation information includes:

  - date of birth
  - last four digits of social security number or national identification number,
  - driver’s license number or state-issued personal identification card number,
  - passport number, and
  - financial account numbers

## Handout: SCAO Standards for Protected PII

- [\(p46\) Section 3.3.2.1 – Case History Data Standards, Required Content](#)

The case history must contain the following information.<sup>1</sup>

- Case Identification Information
- Case Initiation Information:
  - Addresses and telephone numbers for parties.
  - **Protected personal identifying information as defined in MCR 1.109(D)(9).**
  - CTN/TCN and SID (for criminal and juvenile delinquency only).
- Case Filing and Event Information
- Adjudicative/Dispositive Information
- Postjudgment Information
- Other Information
- Additional Caseload Information
- Records Disposal Information

- [\(p64\) Section 3.3.1.4 – Minimum Filing Requirements, Document Preparation](#)

- All documents prepared for filing with Michigan courts (except Uniform Law Citations) must be prepared in accordance with these standards. Deviation from these standards may result in a submitted filing being rejected. MCR 1.109(D) and MCR 8.119(C). See standard rejection reasons and solutions in 3.3.1.5.
- **With the exception of redacting protected personal identifying information,** these standards do not apply to documents being filed with the court that: 1) the filing party did not create or 2) the filing party created for a reason other than filing with the court. Such documents are typically attached to or accompany a document that the filing party has specifically prepared for filing with the court. Examples include, but are not limited to:
  - leases, bank statements, wills, codicils, trusts, or other testamentary documents;
  - copies of documents from a court file that preceded these standards or a printout of a register of action from a court's records;
  - documents created by local, state, or federal government agencies, such as a local tax bill, marriage license, birth certificate, or death certificate; and
  - documents prepared, executed, acknowledged, or proved outside the state of Michigan, such as a copy of a foreign judgment
- Attachments the filing party is creating for filing with the court must comply with these standards. Each attachment accompanying a document must be separately attached (connected) and referenced to the lead document to which it relates as follows. For documents that are

---

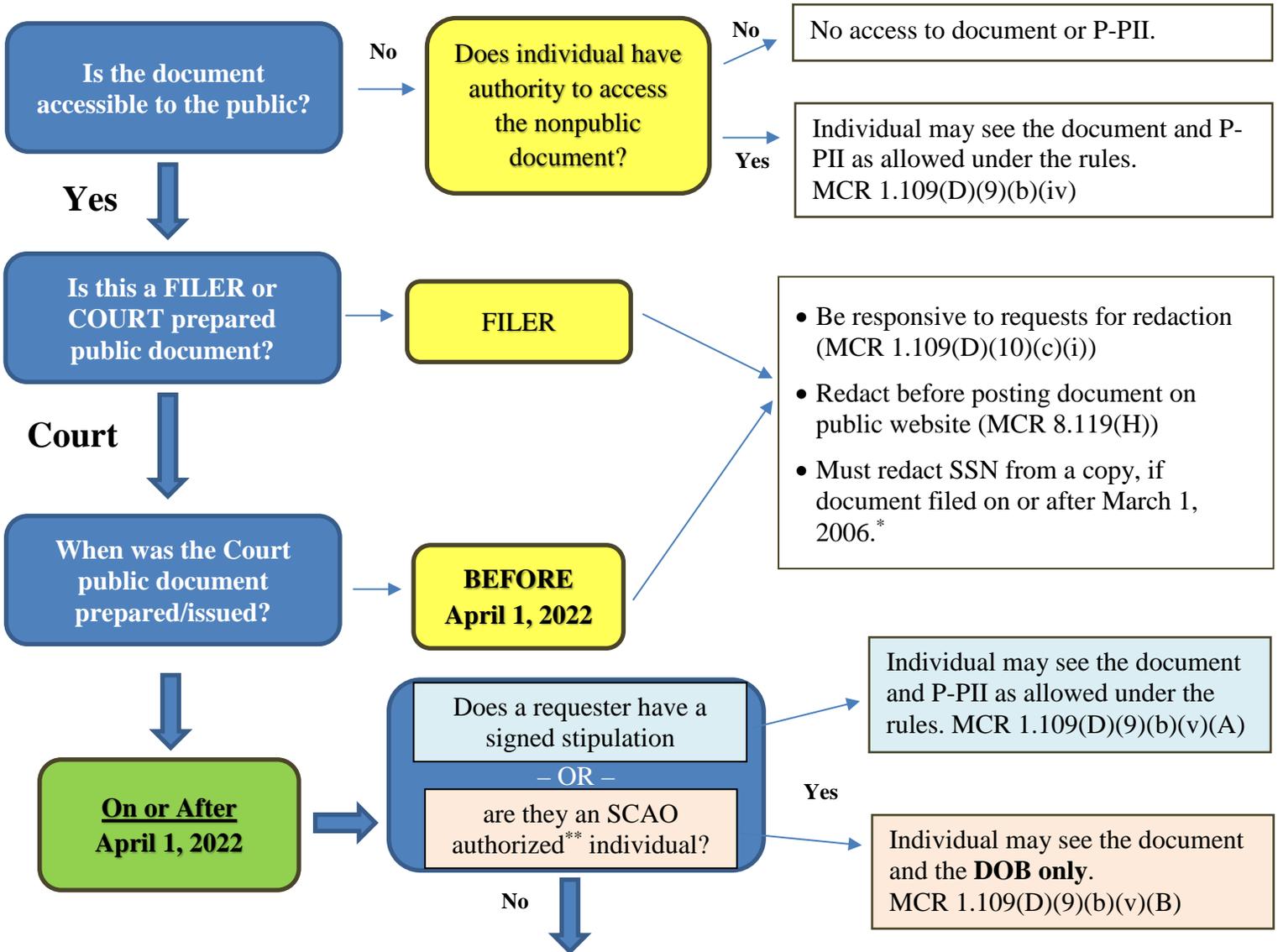
<sup>1</sup> See Section 3.3.2.1 of the Michigan Trial Court Records Management Standards for complete details.

## Handout: SCAO Standards for Protected PII

electronically filed, there are additional requirements regarding attachments; see Additional Requirements of Electronic Documents below:

- The last page of the lead document to which attachments pertain must contain an index subtitled “Index to Attachments” and must list the title of each attachment and its associated file name(s).
  - Each attachment must be identified as an attachment to the lead document, be numbered, and contain the title as follows: Attachment 1 [title of attachment, e.g., Lease] for [name of lead document, e.g., Complaint for Possession].
- [\(p65\) Section 3.3.1.4, Minimum Filing Requirements, Personal Identifying Information](#)
    - **Personal identifying information protected** under MCR 1.109(D)(9) must be provided to the court as required by MCR 1.109(D)(2) in an appropriate SCAO approved method or form. If by form, the form must be completed and filed with the document to which it pertains.
    - If a party is required to include **protected personal identifying information** in a public document filed with the court after **April 1, 2022**, 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 MCR 1.109(D)(9)(b)(i).

# Handout: Criteria for Court Protection of P-II (as of 4/1/22)



- Redact before posting document on public website (MCR 8.119(H))
- Cannot publically display P-II on case history (i.e. register of actions);
- Cannot disseminate P-II by allowing individual to inspect **court prepared or issued** documents in public case file that contain P-II. Any P-II must be redacted before inspection.
- Cannot provide an individual with a copy of a **court prepared or issued** document with that contains P-II. Any P-II must be redacted before providing the copy.\*
- Must redact SSN from any public document filed, or prepared by the court, on or after March 1, 2006.\*

\* Does not apply to certified or true copies when they are required by law, or copies made for those uses for which the social security number was provided. MCR 1.109(D)(10)(b). AO 2006-2.

\*\* See MCR 1.109(D)(9)(v) regarding an SCAO authorized individual list, effective 4/1/22.