REPORT OF THE ALACOURT.COM AND PERSONAL IDENTIFYING INFORMATION TASK FORCE

OVERVIEW

In April, 2017, Alabama State Bar President Cole Portis established a task force "to assess the current e-filing system (AlaFile) and online case access system (alacourt.com) to identify any issues with the protection personal identifying information (PII) that may be contained within a case file, other court documents or court data accessible online by the public." In addition, the task force was requested to "make recommendations on additional education or training needed by bar members to ensure that appropriate safeguards are being taken within the current framework of rules and/or statutes to protect PII." Further, the task force was also asked to "make recommendations to AOC and other stakeholders on the needs of lawyers or others using the e-file filing system to better safeguard the PII of parties, witnesses, victims or others within the context of the court's e-filing and online case access systems."

Lawyers from an array of practice areas, as well as circuit clerks, court personnel, and judges participated in multiple meetings and work sessions, both at the State Bar office in Montgomery and via telephone, in an effort to accomplish the purpose and scope of this task force.

In the process of evaluating what additional steps should be taken to protect PII, the task force noted a tension between statutes in the Alabama Code which provide citizens with "a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute" (Alabama Code §36-12-40) and that "public records" include "all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of

government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer." (Alabama Code 1975, §41-13-1)

In contrast, in criminal cases, personal identifying information about certain victims must be sheltered from public view. For instance, Section 15-23-69(b), pertaining to victims of certain violent offenses, provides that the address, phone number, place of employment, and other related information about the victims in the court file shall not be public record.

Rule 5.1(a) of the Alabama Rules of Civil Procedure provides for privacy protection of certain information that might be included in a document filed with the court. That Rule states that "[u]nless the Court orders otherwise, in an electronic or paper filing with the Court that contains a Social Security number, a taxpayer-identification number, or a financial-account number, a party or non-party making the filing may include only the last four digits of any such Social Security number, tax-payer identification number, or financial account number. Alabama Rule of Civil Procedure 5.1(f) states that "[t]he attorney, party, or non-party filing documents in the clerk's office or the electronic court record is responsible for making the redactions required by this rule." It is significant to note that the Rule goes on to state that "neither the clerk nor any other official custodian of court records shall be responsible for reviewing documents filed with the court for compliance with this rule." Furthermore, Rule 31(I), Ala. R. Jud. Admin., provides that "[t]he clerk or other official custodian of court records shall not be responsible for identifying information included on any document filed in the clerk's office. Any individual filing a document that requires or contains an individual's personal identifying information may

make proper request under these Rules or other applicable rules to protect the contents of such documents from public disclosure."

In practice, many clerks' office staff, as time and workload permits, undertake to try and identify PII that is inappropriately filed, but that is obviously an undertaking that takes up significant staff time. AlacourtPlus, the trial court's document management program, has been enhanced with a feature that allows the clerk to redact personal identifying information from public view. However, with reduced court funding over the years and the resulting reduction in manpower in Alabama's court system, the clerks' offices in the state simply do not have adequate personnel to undertake this in a comprehensive manner.

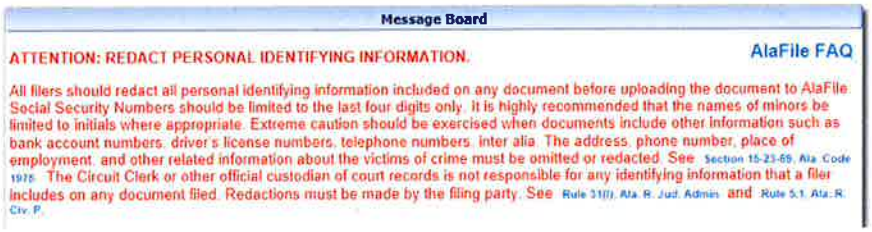
TASK FORCE WORK PROCESS

The first meeting of the task force focused on identifying the problems associated with the current system. It was soon recognized that there are significant differences in the issues associated with PII, depending upon the specific area of law; namely, family law (which includes divorce and juvenile law), criminal law, and general civil law. Thus, the task force was divided into working groups for each of these practice areas in order to perform focused research and analysis and to provide input back to the task force as to appropriate steps moving forward on matters relating to those specific areas.

In addition, AOC undertook an immediate and thorough review of Unified Judicial System court forms that contain fields from filers requesting PII. These are forms promulgated by the court system for litigants to complete and file. Once filed, whether conventionally or electronically, these completed forms become a part of the case file and can be considered public record. To the extent that AOC was permitted to do so unilaterally and where it did not require authorization from some other entity, AOC undertook to eliminate the fields on court forms that

request the filer to supply PII, as appropriate. AOC also restricted the entry of PII in such a way as to protect the information from inappropriate disclosure. For example, rather than having an entire social security number displayed openly, only the last four digits were made visible to any non-court personnel. Following its analysis of the forms which request PII from parties, victims, and other individuals, Nathan Wilson, former assistant director and legal director of AOC, prepared a memorandum, which is attached as Exhibit A, listing "forms that contain fields requesting the filer to include Social Security Numbers, driver license numbers, and other information that could be possibly be considered personal identifying information." Mr. Wilson's memo also noted "potential complications that could result from amending the forms."

Additionally, AOC also instituted a warning at the login screen in AlaFile for all users to see each time they access that system. The warning is also displayed immediately before a user electronically files a document through AlaFile, and the user is prompted to check a box indicating that they acknowledge the warning. This warning notice, a screenshot which is provided below, serves to remind users of the AlaFile system of their obligations relative to the introduction of PII into court records.



Message Board

ATTENTION: REDACT PERSONAL IDENTIFYING INFORMATION. AlaFile FAQ

All filers should redact all personal identifying information included on any document before uploading the document to AlaFile. Social Security Numbers should be limited to the last four digits only. It is highly recommended that the names of minors be limited to initials where appropriate. Extreme caution should be exercised when documents include other information such as bank account numbers, driver's license numbers, telephone numbers, inter alia. The address, phone number, place of employment, and other related information about the victims of crime must be omitted or redacted. See Section 15-23-69, Ala. Code 1975. The Circuit Clerk or other official custodian of court records is not responsible for any identifying information that a filer includes on any document filed. Redactions must be made by the filing party. See Rule 31(I), Ala. R. Jud. Admin. and Rule 5.1, Ala. R. Civ. P.

Furthermore, as noted above, the document-management system used by the trial-court clerks has been enhanced to include a redaction feature that allows the clerk to easily redact any PII that he or she determines needs to be removed from the public record. This tool was rolled out shortly after formation of the task force.

THE NEW DATA BREACH STATUTE

During the life of this task force, the Alabama State Legislature passed what was known as the "data breach" bill. That act was codified at Alabama Code §8-38-1 to 8-38-12. Although this Act does not have application to court records, it does provide some assistance in determining what constitutes sensitive PII:

a. "Except as provided in paragraph b., an Alabama resident's first name or first initial and last name in combination with one or more of the following with respect to the same Alabama resident:

1. A non-truncated Social Security number or tax identification number.

2. A non-truncated driver's license number, state-issued identification card number, passport number, military identification number, or other unique identification number issued on a government document used to verify the identity of a specific individual.

3. A financial account number, including a bank account number, credit card number, or debit card number, in combination with any security code, access code, password, expiration date, or PIN, that is necessary to access the financial account or to conduct a transaction that will credit or debit the financial account.

4. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

5. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

6. A user name or email address, in combination with a password or security question and answer that would permit access to an online account affiliated with the covered entity that is reasonably likely to contain or is used to obtain sensitive personally identifying information.

(b). The term does not include either of the following:

1. Information about an individual which has been lawfully made public by a federal, state, or local government record or a widely distributed media.

2. Information that is truncated, encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable, including encryption of the data, document, or device containing the sensitive personally identifying information, unless the covered entity knows or has reason to know that the encryption key or security credential that could render the personally identifying information readable or useable has been breached together with the information."

Ala. Code §8-38-2(6). The entire act is attached as Exhibit B.

DEVELOPMENT OF THE ATTORNEY'S GUIDE

Perry County Circuit Clerk Mary Moore, who has since retired, brought to the attention of the task force a document titled the *Guide for Circuit and District Court Clerks*, which she and AOC had prepared in 2008 to provide guidance to clerks' offices "on how to maintain case files, documents, or information contained within documents, that, by law or by court order, are considered confidential, not open to public inspection, or sealed." Ms. Moore, a committee of circuit clerks, and representatives of AOC substantially updated the scanning guide in 2018.

This guide provided a substantial foundation to one of the first major efforts that the task force decided to undertake: to create a similar guide for attorneys that provides detailed guidance on protecting confidential documents and information when filing documents in Alabama state courts. A copy of this *Attorney's Guide* is attached as Exhibit C. The task force believes this guide should be made available online through the Alabama State Bar website, and that a request be made to AOC to post a copy of this guide on all publicly accessible court websites. Further, it is the task force's opinion that this guide should be used as a foundational document upon which CLE presentations and other training opportunities should be based, in an effort to inform all persons who file documents in the courts and thus, through education, to substantially limit the instances of release of PII to the public.

While the task force has focused primarily on ways to prevent filing of court documents containing PII by lawyers and court personnel, there are many other individuals, some who are members of the bar and some who are not, that have the ability to place PII into case filings; thus, the task force believes these individuals also should receive education on PII. In addition to all court officials in the circuit and district courts (e.g. judges and clerks), court staff (e.g. judicial assistances, clerk's office employees, and court reporters), and all lawyers, the following groups are key players in the function of the courts that should also be required to participate in PII education: the Attorney General's office, district attorneys, law enforcement, city prosecutors, municipal court clerks, magistrates, circuit clerks, circuit and district court judges, legal assistants, and probate judges and their staffs.[1]

[1] It is important to note that at the present time, probate courts of Alabama do not use the same electronic filing system or document management system as the circuit and district courts. On many occasions members of the task force pointed out substantial PII is accessible through routine filings in Probate Court. This is a subject beyond the task force's charter, but should be a matter of significant import to the Probate Courts of Alabama going forward.

CRIMINAL LAW SPECIFIC ISSUES

Within the area of criminal law, some of the appropriate uses of access to PII include prosecutors reviewing information as part of the sentencing process, initial paper filings by law enforcement and district attorney offices that contain PII, bond information containing similar information, and criminal case filings from case file images that often include PII. Many of the instruments and forms required in starting a criminal case have such information embedded in them. In addition, the district court case files often have PII, including bond information or criminal deposition sheets, etc., and when a case transitions from district to circuit court, the images containing PII often get moved over to the circuit court file. It also should be noted that AOC is implementing a pilot project using electronic versions of arrest warrants which reduces the amount of PII found in publicly accessible documentation. AOC will continue to implement this project on a county-by-county basis with the goal of integrating with each law enforcement agency's case management software.

DOMESTIC AND JUVENILE LAW SPECIFIC ISSUES

Within the domestic and juvenile practice area, a number of court forms were changed by AOC and thus already no longer have publicly accessible PII in them. In divorce cases, financial information is often included. As noted above, it is the attorneys' responsibility to avoid including PII in any publicly filed materials. Child support cases also are fraught with the risk for PII since Social Security numbers and other information are also often included in filings. However, if the forms are made confidential, some attorneys of record are not in a position to see all the confidential documents, which creates other complications. Cases with the "JU" designation are typically confidential. Youthful offender cases also create the opportunity for information to remain on the Alacourt system when a case moves from district to the circuit

court level. One recent example found by the Chair of the task force, during a non-task force related search, was arrest documentation in district court continuing to remain on Alacourt when the circuit court resolution of the case with youthful offender status was not accessible.

CIVIL LAW SPECIFIC ISSUES

Within civil cases, the onus is clearly on a lawyer. PII is often found within motions and exhibits attached thereto and then introduced into evidence. In additional, trial evidence in the record on appeal often contains PII. While the circuit clerk guide, referred to above, addresses this issue lawyers need to take upon themselves to prevent PII from becoming a problem.

It was also noted that there were a number of other government entities where Social Security numbers are required on forms such as DHR and the Department of Defense.

RECOMMENDATIONS:

As noted above, the attached *Attorney's Guide* should be made available free through both the Bar and court-related websites. In addition, state and local CLE opportunities should be pursued with lawyers, clerk and court personnel, and other interested entities such as law enforcement, court reporters, and other groups whose data or information can contain PII and end up in routine court filings. It is recommended that the Bar undertake an expansive effort to put on CLE programs across the state and publish information regarding the results of this task force's efforts in the *Alabama Lawyer* as well as through the email notifications such as the *Addendum* and other email communications by state and local bars.

The task force further recommends that the Alabama Supreme Court ask its various rules committees to undertake a thorough review of all applicable rules of court to clarify what

constitutes PII, as necessary, to be consistent with other similar definitions, such as the one found in the data breach bill mentioned above.

It is recommended that the Future of the Bar Technology Committee also take on a review of PII and consider all technological developments which might involve access to such information.

Respectfully submitted,

Michael D. Ermert, Chair

ADMINISTRATIVE OFFICE OF COURTS
300 Dexter Avenue
Montgomery, Alabama 36104-3741
(334) 954-5000

Lyn Stuart
Chief Justice

Randy Helms
Administrative Director of Courts

DATE: October 23, 2018

TO: Members of the Alacourt.com & Personal Identifying Information Task Force

FROM: Nathan Wilson, Assistant Director and Legal Director
Administrative Office of Courts

RE: Court Forms

The Administrative Office of Courts has completed an analysis of the Unified Judicial System ("UJS") Forms that request personal identifying information from parties, victims, and other individuals. Listed below are the forms that contain fields requesting the filer to include Social Security Numbers, driver license numbers, and other information that could possibly be considered personal identifying information. Further, I have included a statement regarding the potential complications that could result from amending the forms or a statement regarding whether the form can be amended without any foreseeable issues.

Civil Forms

- C-2 - Petition for Protection from Abuse – SSN
- C-3 - Protection from Abuse Order – SSN, DL Number
- C-4 - Ex Parte Protection Order – SSN, DL Number
- C-90 - Petition for Elder Abuse Protection Order - SSN
- C-90 - Ex Parte Elder Abuse Protection Order – SSN, DL Number, DOB
- C-90 - Elder Abuse Protection Order

  Personal identifying information on these forms may help law enforcement with locating the defendant in protection from abuse cases. Furthermore, for domestic-violence PFAs, this information is entered into the Protection Order File of the National Crime Information Center.

- C-10 - Affidavit of Substantial Hardship and Order – Financial Information (SSN and DL number are already truncated).

- C-10A - Affidavit of Substantial Hardship - Financial Information (SSN and DL number are already truncated)

  In order to rule on a litigant's indigency-status request, the court needs the litigant's financial information. Although the Social Security Number and the driver license number are truncated, these forms contain detailed information about a litigant's income, assets, and liabilities.

Domestic Relations and Child Support Forms

- C-57 – Final Judgment of Divorce – SSNs
- C- 58 - Notice of Reference and Questionnaire – SSNs, Financial information

  Social Security Numbers can likely be truncated or removed from these forms. The financial information on C-58 is needed by the courts.

- Certificate of Divorce – SSNs

  The Social Security Numbers are not displayed when this form is uploaded on Alacourt.com. When the Department of Public Health returns the certificate to the court, the clerk needs to file the document in a private folder.

- Income Withholding Order – SSN, DOB, names and DOBs of children

  The Social Security Number can be truncated, but employers might have a use for the entire number. Names of children do not need to be redacted. See Committee Comments to Rule 5.1, Ala. R. Civ. P.

- CS-2 - Petition for Support – Names and DOBs of children

  Names of children do not need to be redacted. See Committee Comments to Rule 5.1, Ala. R. Civ. P.

- CS-24 – Transmittal of Withholding Order – Defendant's SSN

  The Social Security Number can be truncated.

- CS-32 – Affidavit for Service of Withholding Order SSNs

  The Social Security Number can be truncated.

- CS-35 – Answer to Order of Withholding

  The Social Security Number can be truncated.

- CS-36 – A Notice of Change [of] Defendant's Employment and Request for Service – SSN

  The Social Security Number can be truncated.

- CS-37 – Petition for Termination Upon Payment of Arrearages – SSN

  The Social Security Number can be truncated.

- CS-38 – Order of Termination Upon Payment of Arrearages – SSN
  The Social Security Number can be truncated.

- CS-39 – Conditional Judgment Against Employer – SSN

  The Social Security Number can be truncated.

- CS-40 – Final Judgment Against Employer – SSN

  The Social Security Number can be truncated.

- CS-41 – Child-Support Obligation Income Statement/Affidavit – SSN

  The Social Security Number has already been truncated.

- CS-44 – Affidavit for Termination of Withholding Order for Support – SSNs

  The Social Security Numbers can be truncated.

Criminal Forms

- CR-52(f) - Release Questionnaire –SSN, health information, names of children

  This form was once rarely used, but courts are now starting to use it more as a tool for providing criminal defendants with a meaningful review of the conditions of release at the initial appearance hearing in criminal cases. The form can be scanned into a private folder by the clerk.

- C-52(g) - Release Order – SSN

  The Social Security Number can be truncated or removed.

- C-64 - Complaint and Warrant – Complainant's name, address, and telephone number (possible victim); SSN for accused
- C-64(c) – Complaint and Warrant for NWNI – SSN
- C-65(a) – Alias Warrant of Arrest for Failure of Defendant to Appear – SSN

- C-77 – Summons to Appear – SSN, DOB
- CR-55 – Warrant of Arrest for Violation of Release Order – SSN
- CR-57 – Deposition – SSN, DL Number, DOB, Victim's name, Possible victim's SSN
- CR-58 – Warrant of Arrest -SSN, DOB

For warrants and other initiating documents in criminal cases, the Social Security Number is useful for law enforcement for identifying the defendant. The names of qualifying victims will need to be redacted from filings.

- C-79 – Order Requiring Defendant to Pay Certain Amounts of Money to the Clerk – Victim's Name, Defendant's SSN

The Social Security Number can be truncated or removed.

- CR-3 – Application to Pead Guilty on Information – SSN

The Social Security Number can be truncated or removed.

- CR-6 – Complaint - Complainant's name, address, and telephone number (possible victim)

Information about qualifying victims will need to be redacted on a case-by-case basis.

- CR-7 – Withholding Order – Costs, Fines, Assessments and Restitution – SSN
- CR-8 - Employer's Notice and Answer to Order of Withholding for Costs, Fines, Assessments, and Restitution – SSN

The Social Security Number can be truncated.

- CR-10 – Consolidated Appearance Bond – SSN, DOB, DL number
- CR-11 – Appearance Bond - SSN, DOB, DL number
- CR-12 & CR-13 – Certificate of Professional Bondsman – SSN
- CR- 20 – Bondsman's Process – SSN

Many of the bail-bond forms contain personal identifying information about the defendant. The Social Security Numbers can be truncated on these forms, but the bail-bond companies will need to obtain the Social Security Number by other means.

- C-71 – Oath of Office for Magistrates - C-71 – SSN
- C-72 – Application to Be Rescinded as Magistrate – SSNs
- C-73 – District Court Magistrate Appointment – SSN

These forms are primarily used by court administration. The Social Security Numbers can be truncated.