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UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

July 15, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR § 202.5(e), relating to inclusion in definition of confidential personal information of documents, testimony or evidence protected as confidential or sealed in matrimonial actions under DRL § 235 which are referenced in other civil actions; and amendment of 22 NYCRR § 202.16, relating to redaction of certain personal information from written decisions in contested matrimonial matters.

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Effective January 1, 2015, redaction of confidential personal information (CPI) is required in papers filed in civil matters in the Supreme and County Courts (22 NYCRR § 202.5[e]) (Exh. A). The Matrimonial Practice Advisory and Rules Committee has recommended an amendment of section 202.5(e) that would expand the definition of CPI to include any documents or sealed testimony or evidence in a matrimonial action protected as confidential under Domestic Relations Law § 235 and which are attached as exhibits or referenced in papers filed in any other civil action (Exh. B, p.1). According to the Committee, the amendment is intended to prevent public disclosure in a separate civil action of confidential information or testimony revealed in a matrimonial action (Id., pp. 4-5).

The Committee also recommends an amendment of the rules applicable to contested matrimonial actions (22 NYCRR § 202.16) to require the court to omit or redact certain personal information from written decisions (Exh. B, p. 3). Under the proposal, a court would be required to use the parties' initials rather than full names in written decisions involving sensitive issues such as allegations of domestic violence, abuse or neglect, juvenile delinquency or mental health issues, and to use the initials of children under the age of 18. Home addresses of parties and children would be subject to redaction by the court in written decisions as would dates of birth, except for year of birth. The court would have discretion to omit or redact information beyond that required by the rule. The proposal would not apply to judgments or orders entered by the court. The proposal would not require parties to redact personal information from papers submitted to the court for filing.

Persons wishing to comment on these proposals should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than September 10, 2015.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend the Uniform Civil Rules of the Supreme and County Courts by adding a new section 202.5(e), relating to the omission or redaction of confidential personal information, to read as set forth below, effective January 1, 2015. Compliance with this rule shall be voluntary from January 1 through February 28, 2015, and mandatory thereafter.

§ 202.5 Papers Filed in Court

* * *

(e) Omission or Redaction of Confidential Personal Information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the mental hygiene law, or as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information ("CPI") means:

- i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;
- ii. the date of an individual's birth, except the year thereof;
- iii. the full name of an individual known to be a minor, except the minor's initials; and
- iv. a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof.

(2) The court sua sponte or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of 22NYCRR §216.1 that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the pro se status of any party in granting relief pursuant to this provision.

(3) Where a person submitting a paper to a court for filing believes in good faith that the inclusion of the full confidential personal information described in subparagraphs (i) to (iv) of

paragraph (1) of this subdivision is material and necessary to the adjudication of the action or proceeding before the court, he or she may apply to the court for leave to serve and file together with a paper in which such information has been set forth in abbreviated form a confidential affidavit or affirmation setting forth the same information in unabbreviated form, appropriately referenced to the page or pages of the paper at which the abbreviated form appears.

(4) The redaction requirement does not apply to the last four digits of the relevant account numbers, if any, in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section one hundred five of the civil practice law and rules. In the event the defendant appears in such an action and denies responsibility for the identified account, the plaintiff may without leave of court amend his or her pleading to add full account or CPI by (i) submitting such amended paper to the court on written notice to defendant for in camera review or (ii) filing such full account or other CPI under seal in accordance with rules promulgated by the chief administrator of the courts.

* * *



Chief Administrative Judge of the Courts

Dated: November 6, 2014

AO/198/14

EXHIBIT B

To John McConnell, OCA Counsel

From Susan Kaufman, Counsel to Matrimonial Practice Advisory and Rules Committee

cc: Hon. Jeffrey Sunshine, Chair, Matrimonial Practice Advisory and Rules Committee

re: Matrimonial Practice Advisory and Rules Committee Redaction Rule Proposals

Date: June 8, 2015

Please see two rule proposal recommendations to the Chief Administrative Judge from the Matrimonial Practice Advisory and Rules Committee concerning Redaction and Confidentiality in matrimonial actions followed by the Justification for both proposals.

First Rule Proposal Amendment

22 NYCRR section 202.5(e) is hereby amended to read as follows:

(e) Omission or Redaction of Confidential Personal Information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the mental hygiene law, or as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information ("CPI") means:

- i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;
- ii. the date of an individual's birth, except the year thereof;
- iii. the full name of an individual known to be a minor, except the minor's initials; and
- iv. a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof.

v. any of the documents or testimony in a matrimonial action protected by Domestic Relations Law section 235 or evidence sealed by the court in such an action which are attached as exhibits or referenced in the papers filed in any other civil action. For purposes of this rule, a matrimonial action shall mean: an action to annul a marriage or declare the nullity of a void marriage, an action or agreement for a separation, an action for a divorce, or an action or proceeding for custody, visitation, writ of habeus corpus, child support, maintenance or paternity.

(2) The court *sua sponte* or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of 22NYCRR §216.1

that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the pro se status of any party in granting relief pursuant to this provision.

(3) Where a person submitting a paper to a court for filing believes in good faith that the inclusion of the full confidential personal information described in subparagraphs (i) to (v) of paragraph (1) of this subdivision is material and necessary to the adjudication of the action or proceeding before the court, he or she may apply to the court for leave to serve and file together with a paper in which such information has been set forth in abbreviated form a confidential affidavit or affirmation setting forth the same information in unabbreviated form, appropriately referenced to the page or pages of the paper at which the abbreviated form appears.

(4) The redaction requirement does not apply to the last four digits of the relevant account numbers, if any, in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section one hundred five of the civil practice law and rules. In the event the defendant appears in such an action and denies responsibility for the identified account, the plaintiff may without leave of court amend his or her pleading to add full account or CPI by (i) submitting such amended paper to the court on written notice to defendant for in camera review or (ii) filing such full account or other CPI under seal in accordance with rules promulgated by the chief administrator of the courts.

Second Rule Proposal (new):

22NYCRR section 202.16 is hereby amended by adding a new subdivision (m) as follows:

(m) Omission or Redaction of Confidential Personal Information from Matrimonial Decisions

(1) Except as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the court shall redact the following confidential personal information in issuing written decisions in matrimonial matters subject to this section.

- i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;**
- ii. the actual home address of the parties to the matrimonial action and their children;**
- iii. the full name of an individual known to be a minor under the age of eighteen (18) years of age, except the minor's initials;**
- iv. the date of an individual's birth (including the date of birth of minor children), except the year of birth;**
- v. the full name of either party where there are allegations of domestic violence, neglect, abuse, juvenile delinquency or mental health issues, except the party's initials**
- vi. a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number (including a health insurance account number), except the last four digits or letters thereof.**

(2) Nothing herein shall require parties to omit or redact personal confidential information as described herein or 22NYCRR § 202.5(e) in papers submitted to the court for filing; nor shall this rule apply to judgments or orders entered by the court.

(3) Nothing herein shall prevent the court from omitting or redacting more personal confidential information from a written decision than is required by this rule, either on motion or sua sponte.

Justification:

Recently, the Administrative Board of the Courts approved 22NYCRR section 202.5(e) requiring attorneys to redact certain confidential information from court filings in Supreme and County Court in all cases with certain exceptions. One such exception was for Matrimonial actions. In an article published in the *New York Law Journal* on December 2, 2014, Peter E. Bronstein questioned the wisdom of exempting matrimonial actions from the section 202.5(e), saying: *"It is time that we expand the protection of parties' privacy in matrimonial actions beyond the duty of the clerks to seal the files. It is impossible to get divorced without commencing a court proceeding. Since only a judge can pronounce a divorce and the rules require extensive financial disclosure, the court should also undertake to preserve the privacy of that material."* Mr. Bronstein notes that even when parties' initials are used in the *New York Law Journal*, the *New York State Law Reports* will include the parties' full names when the decision is published. Indeed, we note that even when the trial Judge uses initials rather than names to protect identity, the Appellate Division may use the full names on appeal. Mr. Bronstein also notes that the powers of search engines such as "google" once full names of the parties are revealed compounded by the ability of parties to a divorce to e-file papers revealing details of the divorce action in civil actions without the protections of DRL § 235 as occurred recently in *Kelly v. Kelly*.

While we agree that some additional protections for matrimonial decisions are necessary in this internet age, we do not believe that a blanket rule such as section 202.5 (e) should apply to all papers filed in matrimonial actions because some of the information such as complete social security numbers, addresses, birthdates, employers' name, and names and social security numbers and birthdates of children are required by third party agencies of state government, which need the identifying information to enforce child support and maintenance laws in conformity with D.R.L. §240-a and D.R.L. §240-b. DRL §235 already protects as confidential most of the documents in the matrimonial action.

Moreover, the trial judge may need to know other information potentially damaging to the family to make a reasoned decision on custody, visitation, support, maintenance, counsel fees, or equitable distribution and to explain that decision as required by various provisions in the Domestic Relations Law, as Mr. Bronstein points out. Indeed, when someone goes to court, they expose their personal information to public scrutiny. There must be a balancing between the right to an open, public proceeding on the one hand, which will ensure fairness to the opposing party, and the protection of children's identity and the identification of financial information that could lead to theft. To impose too broad a redaction rule in matrimonial actions would hamper

the ability of judges to use their discretion in applying the matrimonial laws of this state. As stated in a recent First Department Decision upholding the trial court's decision not to allow the plaintiff to proceed anonymously, the Appellate Division stated: "The trial court did not improvidently exercise its discretion in finding that plaintiff's privacy concerns were outweighed by, inter alia, the fact that the action was brought against an individual defendant, relates to his private life and reputation, and puts plaintiff's credibility at issue (*see Doe v Shakur*, 164 FRD 359, 361 n 1 [SD NY 1996]; *cf. Doe v Szul Jewelry, Inc.*, 2008 NY Slip Op 31382[U] [Sup Ct, NY County 2008]), and under *488 mined by her reporting her story to the media before serving defendant with process (*see Doe v Kidd*, 19 Misc 3d 782, 789 [Sup Ct, NY County 2008]). "[C]laims of public humiliation and embarrassment . . . are not **2 sufficient grounds for allowing a plaintiff . . . to proceed anonymously" (*Doe v Shakur*, 164 FRD at 362; *Doe v New York Univ.*, 6 Misc 3d 866, 879 [Sup Ct, NY County 2004]; *cf. Doe No. 2 v Kolko*, 242 FRD 193 [ED NY 2006]) (*See Anonymous v. Lerner*, 124 A.D.3d 487, 487-88, 998 N.Y.S.2d 619 (1st Dept. 2015)).

The Matrimonial Practice Advisory and Rules Committee recommends a two pronged approach to better protect confidential information in matrimonial actions. First, we propose an amendment to 22NYCRR §202.5(e) to prevent the information or testimony revealed in an action for divorce, an action or agreement for a separation, or an action or proceeding for custody, visitation, writ of habeas corpus, child support, maintenance or paternity, otherwise protected under DRL§ 235, or evidence sealed by the court in such an action, from being revealed in another civil action as happened in the *Kelly v. Kelly* proceeding discussed by Mr. Bronstein. The proposed rule amendment, like 22 NYCRR 202.5(e), puts the onus on parties submitting papers for filing to prune and redact, rather than on the Court and County Clerks. The proposed amendment would add a new subsection (v) to the items included in the definition of "confidential personal information" which the parties must redact under 22NYCRR §202.5(e)(1). At the same time, 22NYCRR §202.5(e)(3) would be amended to apply to the new subsection (v).

Second, we recommend a limited rule on redaction of personal information from written decisions in matrimonial actions as heretofore delineated. Our rule proposal would be added to 22NYCRR§ 202.16 containing the matrimonial rules applicable to contested matrimonial actions where judicial determinations are to be made. The rule would not apply to uncontested divorce actions where written decisions would be unlikely, and would not require parties to omit or redact personal confidential information in papers submitted to the court for filing. Nor would the rule apply to judgments or orders entered by the court. Thus required information would be available for support enforcement and other necessary government functions to carry out state and federal laws. And while the rule would require parties' initials rather than full names to be used in all written decisions involving certain types of sensitive issues where there are allegations of domestic violence, neglect, abuse, juvenile delinquency or mental health issues, the rule would not require parties' names to be redacted in other cases where embarrassing or

harmful information is less likely. Similarly initials rather than full names of children would be required only up to the age of majority, but not up to the age of 21. The actual home address of the parties would be redacted under our rule proposal, but employers' names and addresses could be revealed, as could birth years of the parties and their children in the interest of allowing the full facts of the case to come out, unless the Judge exercises his/her discretion as expressly authorized under the proposal to redact more in the written decision than is required by the rule under the circumstances of the case, either on motion or sua sponte.