



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. MCCONNELL
Counsel

MEMORANDUM

November 20, 2012

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed repeal of 22 NYCRR §202.5-b(d)(3)(iii), relating to e-filing of documents in "secure" status.

In June 2012, following public comment, the Chief Administrative Judge amended 22 NYCRR § 202.5-b(d)(3)(iii), excluding eight document types from e-filing in "secure" status. (Exhibit A) Many who commented on that proposal urged elimination of section 202.5-b(d)(3)(iii) in its entirety. That section permits a party to e-file a document as "secure" where it contains individually identifiable health information, social security, credit card or bank account numbers, and other sensitive data. E-filing a document in "secure" status renders it unavailable for public inspection online through the New York State Electronic Filing System, except to counsel of record and self-represented parties in the case. However, "secure" documents remain available for public inspection on a computer terminal at the office of the County Clerk.

Commentators observed that section 202.5-b(d)(3)(iii) may give e-filers a false sense of security, leading them to e-file documents in "secure" status without redacting social security numbers or other private data that can be viewed at a public computer terminal at the County Clerk's office. Such a result would appear to conflict with General Business Law 399-dd(6), prohibiting the filing of "any document available for public inspection . . . in any court of this state that contains a social security number of any other person . . .," as well as Public Officers Law § 96-a, prohibiting the state and its subdivisions from "mak[ing] available to the general public in any manner an individual's social security account number." (Exhibit B).

Persons submitting comments on the proposed repeal of section 202.5-b(d)(3)(iii) may wish to consider it in conjunction with proposed adoption of 22 NYCRR § 202.5(e) – also released for public comment today – relating to redaction of personal identifying information in papers filed in civil matters.

Persons wishing to comment on this proposal should e-mail their submissions to OCARule202-5-bcomments@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 January 22, 2013.

EXHIBIT A

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

Pursuant to the authority vested in me, and upon consultation with and approval by the Administrative Board of the Courts, I hereby amend, effective immediately, section 202.5-b(d)(3)(iii) of the Uniform Civil Rules for the Supreme and County Courts, relating to electronic filing of actions in the Supreme Court, to read as follows:

(iii) Secure information. When electronically filing a document, the filer shall indicate whether it contains any of the following: individually identifiable health information, a social security number (where filing of such number is allowed by General Business Law §399-dd(6)), a credit card or bank account number, an individual's date of birth or home address, a minor child's name, or trade secrets. If such person indicates that any of this information is contained in the document, access to it on the NYSCEF site will be restricted to consenting parties to the action, the County Clerk and the court and, if the filer is a filing agent, to the agent. The document will, however, be available for public inspection at the office of the County Clerk unless sealed by the court. **Secure filings of the following documents shall not be permitted: (1) affirmation/affidavit of service; (2) notice of pendency; (3) cancellation of notice of pendency (lis pendens); (4) bill of costs; (5) proof of service; (6) request for judicial intervention (all forms); (7) release of lien; and (8) satisfaction of judgment.**



Chief Administrative Judge of the Courts

Dated: June 18, 2012

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EXHIBIT B

ditional wireline telephone customers have a right and expectation of privacy for personal information relating to telephone communication, including but not limited to the content of communications, the telephone numbers called and the telephone numbers from which calls are received, the date and time of such calls, the duration of such calls and the charges applied for such calls. While other parties may have a legitimate interest

in obtaining or using those records, such as a telephone company with legitimate business needs, law enforcement agencies investigating or prosecuting crimes, or litigants seeking justice through the courts, when there is no countervailing interest, it is in the public interest to prohibit the procurement of, sale or use of telephone record information without the authorization of the customer."

§ 399-dd. Confidentiality of social security account number

[As added by L.2006, c. 676. Other General Business Law §§ 399-dd were added by other acts.]

Beginning on and after January first, two thousand eight:

1. As used in this section "social security account number" shall include the number issued by the federal social security administration and any number derived from such number. Such term shall not include any number that has been encrypted.

2. No person, firm, partnership, association or corporation, not including the state or its political subdivisions, shall do any of the following:

(a) Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number. This paragraph shall not apply to any individual intentionally communicating to the general public or otherwise making available to the general public his or her social security account number.

(b) Print an individual's social security account number on any card or tag required for the individual to access products, services or benefits provided by the person, firm, partnership, association or corporation.

(c) Require an individual to transmit his or her social security account number over the internet, unless the connection is secure or the social security account number is encrypted.

(d) Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

(e) Print an individual's social security account number on any materials that are mailed to the individual, unless state or federal law requires the social security account number to be on the document to be mailed. Notwithstanding this paragraph, social security account numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security account

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number. A social security account number that is permitted to be mailed under this section may not be printed, in whole or part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(f) Encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.

3. This section does not prevent the collection, use, or release of a social security account number as required by state or federal law, the use of a social security account number for internal verification, fraud investigation or administrative purposes or for any business function specifically authorized by 15 U.S.C. 6802.

4. Any person, firm, partnership, association or corporation having possession of the social security account number of any individual shall, to the extent that such number is maintained for the conduct of business or trade, take reasonable measures to ensure that no officer or employee has access to such number for any purpose other than for a legitimate or necessary purpose related to the conduct of such business or trade and provide safeguards necessary or appropriate to preclude unauthorized access to the social security account number and to protect the confidentiality of such number.

5. Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

6. No person may file any document available for public inspection with any state agency, political subdivision, or in any court of this state that contains a social security account number of any other person, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule.

7. Whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of subdivision two of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for a single violation and not more than one hundred thousand dollars for multiple

violations resulting from a single act or incident. The second violation and any violation committed thereafter shall be punishable by a civil penalty of not more than five thousand dollars for a single violation and not more than two hundred fifty thousand dollars for multiple violations resulting from a single act or incident. No person, firm, partnership, association or corporation shall be deemed to have violated the provisions of this section if such person, firm, partnership, association or corporation shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

(Added L.2006, c. 676, § 1, eff. Sept. 13, 2006. Amended L.2008, c. 279, §§ 4, 5, eff. Jan. 3, 2009.)

Historical and Statutory Notes

L.2008, c. 279 legislation Subd. 7. L.2008, c. 279, § 5, re-
 Subd. 2, par. (f). L.2008, c. 279, numbered subd. 6 as 7.
 § 4, added par. (f).
 Subd. 6. L.2008, c. 279, § 5, re-
 numbered subd. 6 as 7 and added a
 new subd. 6.

Law Review and Journal Commentaries

Employment Law. Susan Schultz Laluk, Sharon P. Stiller; 58 Syracuse L.
 Rev. 955 (2008)

§ 399-e. Prohibition of the importation, manufacturing, distribution, or sale of yo-yo waterball toys

[As added by L.2008, c. 498. Another General Business Law § 399-e was added by another act.]

1. No person, firm, corporation, or association shall import, manufacture, sell, offer to sell, or distribute a yo-yo waterball toy.
2. For purposes of this section, the term "yo-yo waterball toy" means a yo-yo waterball, water yo-yo, or any similar toy made of rubber or rubber-like material consisting of a ball that is filled with a liquid and attached to an elastic cord with a finger loop at the end.
3. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred,

**PUBLIC OFFICERS LAW, ARTICLE 6-A
PERSONAL PRIVACY PROTECTION LAW**

§ 96-a. Prohibited conduct.

1. Beginning on January first, two thousand ten the state and its political subdivisions shall not do any of the following, unless required by law:

(a) Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number. This paragraph shall not apply to any individual intentionally communicating to the general public or otherwise making available to the general public his or her social security account number.

(b) Print an individual's social security account number on any card or tag required for the individual to access products, services or benefits provided by the state and its political subdivisions.

(c) Require an individual to transmit his or her social security account number over the internet, unless the connection is secure or the social security account number is encrypted.

(d) Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

(e) Include an individual's social security account number, except the last four digits thereof, on any materials that are mailed to the individual, or in any electronic mail that is copied to third parties, unless state or federal law requires the social security account number to be on the document to be mailed. Notwithstanding this paragraph, social security account numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security account number. A social security account number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(f) Encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.

(g) Nothing in this section shall prohibit a county clerk or court from making available a document publicly recorded or filed prior to the effective date of this section, provided that if any individual requests redaction of a social security number from a publicly recorded document available to the public online, such number shall be promptly redacted by the county clerk. Nothing in this section shall limit disclosure of criminal history record information currently permitted.

2. As used in this section "social security account number" shall include the nine digit account number issued by the federal social security administration and any number derived therefrom. Such term shall not include any number that has been encrypted.

3. This section does not prevent the collection, use or release of a social security account number as required by state or federal law, or the use of a social security account number for internal verification, fraud investigation or administrative purposes.