



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

JOHN W. MCCONNELL
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MEMORANDUM

March 8, 2013

TO: All Interested Persons

FROM: John McConnell

RE: **Extension of public comment period on proposed adoption of 22 NYCRR § 202.5(e), relating to redaction of confidential personal information in papers filed in civil matters.**

The Administrative Board of the Courts has approved a 60-day extension for public comment on the proposed amendment of 22 NYCRR § 202.5 (Uniform Civil Rules for Supreme and County Court), requiring redaction of confidential personal information ("CPI") prior to the filing of papers in civil matters (Exhibit A).

The Chief Administrative Judge's Advisory Committee on Civil Practice has urged adoption of this measure on the grounds that court papers increasingly are accessed on the internet, CPI is of growing interest to identity thieves, and practitioners are aware of federal and state laws limiting disclosure of sensitive personal data. The Committee notes that New York lacks court rules specifically addressing protection of CPI in papers filed in civil matters.

The Committee's proposal defines "confidential personal information" by using a closed list of nine categories of sensitive data that parties are required to "omit or redact." The rule would apply except as otherwise provided by law or order, and expressly excepts matrimonial actions and Surrogate's Court proceedings. The court would have discretion, sua sponte or in response to a motion, to order a party to remove CPI from papers or resubmit papers with CPI redacted, or to order the clerk to seal papers or portions thereof containing CPI. The court may permit inclusion of CPI in papers for "good cause."

Persons wishing to comment on this proposal should e-mail their submissions to OCARule202-5-ecomments@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 May 7, 2013.

EXHIBIT A

Advisory Committee on Civil Practice to the Chief Administrative Judge
4/20/2012

Rule Proposal

Redaction of Personal Identifying Information in the Filing of Papers in Civil Proceedings (except matrimonial or Surrogate's court proceeding)
(22 N.Y.C.R.R. 202.5 (e) (new))

The Committee recommends that Rule 202.5, the rule governing papers filed in the Supreme Court and the County Court (22 NYCRR 200 et. seq.) be amended to require that certain personal identifying information be redacted prior to filing. The Committee believes that frequently there are cases with filed papers involving myriad sensitive personal information including, but not limited to, social security numbers and other numerical identifiers which, if revealed, increase the risk of identity theft, fraudulent use or disclosure in violation of state or federal law. The Committee urges the adoption of this proposal to further the protection of that information. As the court system enters the electronic age, courthouse papers are increasingly accessed by internet services and personal information is of increasing interest to identity thieves. Further, the Committee believes that by necessity practitioners are aware of the risks associated with revealing sensitive personal information and have access to all state and federal laws concerning identity theft issues.

Generally, personal information is increasingly subject to protection by law (See Public Officers Law § 96-a (g) (eff. Jan. 1, 2010; added L. 2008, c. 279) and General Business Law § 399-dd (6) (eff. Jan. 3, 2009; added L. 2008, c. 279)). However, in New York, court papers are presumptively public once filed with the county clerk or the clerk of court. Court records are presumptively open. *See, e.g., Nixon v. Warner Communications*, 435 U. S. 539 (1978); *Danco Laboratories, Ltd. v. Chemical Workers of Dedeon Richter, Ltd.*, 274 A.D.2d 1, 711 N.Y.S. 2d 419 (1st Dept. 2000). The Federal Courts have implemented Rule 5.2 of the Federal Rules of Civil Procedure (28 USCA 5.2) to address protection of privacy in federal cases.

Currently, however, there are no court rules addressing specifically the protection of confidentiality of sensitive personal information in civil court papers. There are certain specific statutes which do address particular information and certain information may be presumptively sealed by statute. (*Compare, e.g.,* Mental Health Information - N. Y. Mental Hygiene Law § 33.14 (Sealing of records pertaining to treatment for mental illness) with HIV Information - N. Y. Public Health Law § 2785 (Court authorization for disclosure of confidential HIV related information)).

This proposal defines “confidential personal information” by using a closed list, clearly provides that the rule applies “[e]xcept as otherwise provided by law or order” and expressly excepts matrimonial actions and proceedings in Surrogate’s court from the purview of the rule. This proposal places the responsibility of compliance squarely on the parties by requiring that

“the parties shall omit or redact” confidential personal information. The measure omits “address” information from the rule under the rationale that address information is required in many papers and judgments in civil actions. The proposal does not allow for the inclusion of “limited or partial” confidential information and the Committee rejects this approach as too subjective, unnecessarily opening the door to ancillary litigation and possible disclosure of such information.

The proposal makes clear that the court has, *sua sponte* or in response to a motion, discretion to order redaction or sealing under the Rule 216.1 (22 NYCRR § 216.1) standard. Also, the proposal adopts a “good cause shown” standard by which the court might, upon a finding of good cause vary the provisions of the rule. In addition, the proposal expressly provides that the court has discretion to order redaction and replacement of information in papers filed previous to enactment and if the court deems it necessary, under the standard of Rule 216.1, to order the offending paper sealed. Further, the proposal allows the court to “look back” in the case and order redaction of papers already filed in a pending action upon motion or *sua sponte*.

The measure allows the plaintiff to include the last four digits of the defendant’s account number, if any, in an action arising out of a consumer credit transaction . If the defendant appears and denies responsibility for that account, the court may review plaintiff’s amended paper in-camera or, if filed under the standard of Rule 216.1, under seal.

The proposed rule change is not intended to disturb the current strong presumption in the law favoring open access for the public to court records that are not confidential. The Committee unanimously recognizes the importance of transparency in the third branch of government and the necessity of maintaining the public right to open court records. The Committee supports the preservation of the established standard in Rule 216.1 requiring a finding of good cause before court records are ordered sealed. Further, the proposal allows for the waiver of the protection of this rule as to that party’s own personal identifying information by filing it without redaction and not under seal.

The Committee believes that F. R. Civ. P. Rule 5.2 has provided guidance as a privacy measure for federal cases, but is quite limited in scope, protecting only four specified items of information, and fails to provide the bench with sufficient discretion to order redaction. The Committee recommends that New York lead the way in state practice by enacting a broader rule designed to correct the current practice whereby far too revealing personal information is included or attached to papers for filing in the state courts.

The Committee recognizes the important report by and comments of the New York City Bar Association and the comments of the Civil Practice Law and Rules Committee of the New York State Bar Association.

Proposal

§ 202.5 Papers Filed in Court

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(e) Redaction of Personal Identifying Information. (1) Except in a matrimonial action or a proceeding in surrogate's court or as otherwise provided by law or court order and whether or not a sealing order is or has been sought, and where not waived under subdivision 4 of this section, 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 means: (i) a social security number; (ii) a date of birth, except a person's year of birth; (iii) a mother's maiden name; (iv) a driver's license number or a non-driver photo identification card number; (v) an employee identification number; (vi) a credit card number; (vii) an insurance or financial account number; (viii) a computer password or computer access information or (ix) electronic signature data or unique biometric data.

(2) The court sua sponte or on motion by any person may order a party to remove confidential personal information from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing confidential personal information in accordance with rules promulgated by the chief administrator of the courts; for good cause permit the inclusion of confidential personal information in papers; or determine that particular information in a particular action is not confidential.

(3) The redaction requirement does not apply to the last four digits of the relevant account number(s), 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 and in such an action in the event the defendant appears and denies responsibility for the identified account, the

plaintiff may without leave of court amend his or her pleading to add full account or confidential personal information 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 confidential personal information under seal in accordance with rules promulgated by the chief administrator of the courts.

(4) A party waives the protection of this rule as to the party's own personal identifying information by filing it without redaction and not under seal.