



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

April 21, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR § 207.64, relating to omission or redaction of confidential personal information in papers filed in Surrogate's Court.

On February 19, 2014, a new section 207.64 of the Uniform Rules of the Surrogate's Courts was adopted limiting public access to certain documents containing confidential personal information (CPI), including death certificates, tax returns and all documents in Surrogate's Court Procedure Act Article 17 and 17-A proceedings (Exh. C). Section 207.64 was adopted upon the recommendation of the Surrogate's Court Advisory Committee (SCAC) and following a public comment period.

The SCAC has reexamined section 207.64 following the recent adoption of a new rule requiring redaction of CPI in papers filed in civil matters in the Supreme and County Courts (22 NYCRR § 202.5[e]) (Exh. B). In light of this reexamination, the SCAC has proposed an amendment of section 207.64 (Exh. A) that would: (1) require parties to redact certain CPI from Surrogate's Court documents; and (2) continue to prohibit viewing or copying of certain documents (death certificates, tax returns, firearms inventories, papers in Art. 17 and 17-a proceedings), except (a) by parties to the proceeding or their counsel, the Public Administrator or counsel thereto, court personnel, or counsel for any federal state or local government agency; or (b) upon court order or written permission of the Surrogate or Chief Clerk. Under the proposal, the standard for granting written permission in a contested matter would be identical to that used for the sealing of court records under 22 NYCRR § 216.1 (Exh. D).

Persons wishing to comment on this proposal 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 June 17, 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

Omission or Redaction of Confidential Personal Information; Public
Access to Certain Filings
(22 NYCRR 207.64)

The Surrogate's Court Advisory Committee has examined anew the issue of public access to Surrogate Court records containing personal and financial information. The Committee has analyzed the experience to date under the current secure filing rule in the Surrogate's Courts (22 NYCRR 207.64). Also, the Committee considered the newly enacted rule for the NY Supreme & County Courts - Civil (22 NYCRR 202.5(e)), which requires the redaction of certain confidential personal information. Surrogate's Court records are permeated with sensitive personal information, some of which is already protected under various provisions of state and federal law. The Committee seeks to balance the need for public access to records in the Surrogate's Court and the risk of exposing personal and financial information contained in court records to identity theft or other illegal scheme.

Proceedings in Surrogate's Court are exempt from the NY Supreme & County Court Rule 202.5(e). Recognizing that a redaction rule reduces the potential for misuse of the court's records for illegal purposes, the Committee proposes an amendment to Rule 207.64 to adopt a more narrow approach by requiring redaction of certain confidential personal information. While similar to the civil court rule 202.5(e), the definitions and procedures proposed here are also tailored to the distinctive nature of documents and practice in the Surrogate's Court.

Recognizing also that certain files contain sensitive information necessary for the routine identification of and service upon necessary parties in proceedings in Surrogate's Court, the Committee further recommends that public view of these files be limited by practical necessity. This proposal amends Rule 207.64 to require that the court clerk shall not permit a copy of specified types of such court documents to be viewed or taken by any person except by certain persons interested in the proceeding. These documents are: all papers and documents in proceedings instituted pursuant to SCPA Articles 17 and 17A; death certificates; tax returns; firearms inventories and categories of documents already protected under other provisions of law.

With respect to these documents the proposed amendments to the rule would allow access without the need for court permission to: a party to the proceeding or the attorney or counsel to a party to the proceeding; the Public Administrator or counsel thereto; counsel of any Federal, State or local governmental agency or court personnel or by order of the court or written permission of the Surrogate or Chief Clerk of the court.

The Committee also proposes that the rule be amended to include the requirement that the standard for the grant of such permission in a contested matter shall be the same as required under 22 NYCRR 216.1 and applicable law. The amendment adds language to clarify that the rule shall not preclude disclosure or copying of any index of filings maintained by the court. Further, any determination by the court regarding access to any filings may be the subject of an appropriate motion for clarification or reconsideration.

Proposal

207.64 Omission or Redaction of Confidential Personal Information; Public Access to Certain Filings

(a) Omission or Redaction of Confidential Personal Information.

(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 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; and

ii. other than in a proceeding under Article 13 of the SCPA, 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 22 NYCRR §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 CPI described in Paragraph (1) of this subdivision is material and necessary to the adjudication of the 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) When served with objections or a request for an inquiry or examination under SCPA 2211 or 1404 that specifies a request for particular unredacted documents previously filed in the proceeding with respect to which the objection or request for inquiry or examination relates, the party who originally served and filed the redacted document shall serve (but not file) an unredacted version upon all parties interested in the proceeding or such portion of it to which the objection or request for inquiry or examination relates.

(b) Public Access to Certain Filings

~~[The following documents may be viewed only by persons interested in the estate of the decedent, as defined by SCPA §103(39), or their counsel; the Public Administrator or counsel thereto; counsel for any Federal, State or local governmental agency; or court personnel; except upon written permission of the Surrogate or Chief Clerk of the court which shall not be unreasonably withheld]~~ The officers, clerks and employees of the court shall not permit a copy of any of the following documents to be viewed or taken by any other person than a party to the proceeding, or the attorney or counsel to a party to the proceeding, the Public Administrator or counsel thereto, counsel for any Federal, State or local governmental agency, or court personnel, or by order of the court or written permission of the Surrogate or Chief Clerk of the court. The standard for the grant of such permission in a contested matter shall be the same as required under 22 NYCRR 216.1 and applicable law :

- (1) All papers and documents in proceedings instituted pursuant to Articles 17 or 17-A of the SCPA;
- (2) Death certificates;
- (3) Tax returns;

(4) ~~[Documents containing social security numbers;~~

~~——(5)] Firearms Inventory; [and~~

~~——(6) Inventory of Assets] and~~

(5) Documents containing information protected from disclosure under other provisions of Federal or State law such as HIPAA for medical information, job protected services reports, material obtained from a state mental hygiene facility under MHL 33.13, and records involving alcohol or other substance abuse under 42 CFR 2.64. These examples are not intended to be exclusive.

This rule shall not preclude disclosure or copying of any index of filings maintained by the court. Any determination by the court regarding access to any filings may be the subject of an appropriate motion for clarification or reconsideration.

EXHIBIT B

**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 C

**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 add, effective immediately, a new section 207.64 of the Uniform Civil Rules of the Surrogate's Court, relating to public access to certain filings, as follows:

* * *

§ 207.64 Public Access to Certain Filings

The following documents may be viewed only by persons interested in the estate of the decedent, as defined by SCPA §103(39), or their counsel; the Public Administrator or counsel thereto; counsel for any Federal, State or local governmental agency; or court personnel; except upon written permission of the Surrogate or Chief Clerk of the court, which shall not be unreasonably withheld:

- (1) all papers and documents in proceedings instituted pursuant to Articles 17 or 17-A of the SCPA;
- (2) death certificates;
- (3) tax returns;
- (4) documents containing social security numbers;
- (5) Firearms Inventory; and
- (6) Inventory of Assets.



Chief Administrative Judge of the Courts

Dated: February 19, 2014

AO/43/14

EXHIBIT D

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RULES

Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts

Uniform Rules for N.Y.S. Trial Courts

PART 216. Sealing Of Court Records In Civil Actions In The Trial Courts

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216.01 Sealing of court records

Section 216.1 Sealing of court records.

(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

(b) For purposes of this rule, "court records" shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103(a).

Historical Note

Sec. filed Feb. 28, 1991 eff. March 1, 1991.

