

Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

**CHANGES MADE TO PROPOSED AMENDMENT
RELEASED FOR PUBLIC COMMENT**

No change was made in the rule as published for public comment.

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Rule 49.1. Privacy Protection For Filings Made with the Court

- 1 **(a) Redacted Filings.** Unless the court orders otherwise, in
2 an electronic or paper filing with the court that contains
3 an individual's social-security number, taxpayer-
4 identification number, or birth date, the name of an
5 individual known to be a minor, a financial-account
6 number, or the home address of an individual, a party or
7 nonparty making the filing may include only:
8 **(1) the last four digits of the social-security number and**
9 taxpayer-identification number;

12 FEDERAL RULES OF CRIMINAL PROCEDURE

- 10 (2) the year of the individual's birth;
- 11 (3) the minor's initials;
- 12 (4) the last four digits of the financial-account number;
- 13 and
- 14 (5) the city and state of the home address.
- 15 **(b) Exemptions from the Redaction Requirement. The**
- 16 **redaction requirement does not apply to the following:**
- 17 **(1) a financial-account number or real property address**
- 18 **that identifies the property allegedly subject to**
- 19 **forfeiture in a forfeiture proceeding;**
- 20 **(2) the record of an administrative or agency**
- 21 **proceeding;**
- 22 **(3) the official record of a state-court proceeding;**
- 23 **(4) the record of a court or tribunal, if that record was**
- 24 **not subject to the redaction requirement when**
- 25 **originally filed;**
- 26 **(5) a filing covered by Rule 49.1(d);**

27 (6) a pro se filing in an action brought under 28 U.S.C.
28 §§ 2241, 2254, or 2255;

29 (7) a court filing that is related to a criminal matter or
30 investigation and that is prepared before the filing of
31 a criminal charge or is not filed as part of any
32 docketed criminal case;

33 (8) an arrest or search warrant; and

34 (9) a charging document and an affidavit filed in
35 support of any charging document.

36 **(c) Immigration Cases.** A filing in an action brought under
37 28 U.S.C. § 2241 that relates to the petitioner's
38 immigration rights is governed by Federal Rule of Civil
39 Procedure 5.2.

40 **(d) Filings Made Under Seal.** The court may order that a
41 filing be made under seal without redaction. The court
42 may later unseal the filing or order the person who made
43 the filing to file a redacted version for the public record.

14 FEDERAL RULES OF CRIMINAL PROCEDURE

44 **(e) Protective Orders.** For good cause, the court may by
45 order in a case:

46 **(1) require redaction of additional information; or**

47 **(2) limit or prohibit a nonparty's remote electronic**
48 **access to a document filed with the court.**

49 **(f) Option for Additional Unredacted Filing Under Seal.**

50 A person making a redacted filing may also file an
51 unredacted copy under seal. The court must retain the
52 unredacted copy as part of the record.

53 **(g) Option for Filing a Reference List.** A filing that
54 contains redacted information may be filed together with
55 a reference list that identifies each item of redacted
56 information and specifies an appropriate identifier that
57 uniquely corresponds to each item listed. The list must be
58 filed under seal and may be amended as of right. Any
59 reference in the case to a listed identifier will be

60 construed to refer to the corresponding item of
61 information.

62 **(h) Waiver of Protection of Identifiers. A person waives**
63 the protection of Rule 49.1 (a) as to the person's own
64 information by filing it without redaction and not under
65 seal.

COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. But the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See <http://www.privacy.uscourts.gov/Policy.htm>. The Judicial Conference policy is that documents in case files generally should be made

available electronically to the same extent they are available at the courthouse, provided that certain “personal data identifiers” are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver’s license numbers and alien registration numbers — in a particular case. In such cases, protection may be sought under subdivision (d) or (e). Moreover, the Rule does not affect the protection available under other rules, such as Criminal Rule 16(d) and Civil Rules 16 and 26(c), or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or nonparty making the filing.

Subdivision (e) provides that the court can order in a particular case more extensive redaction than otherwise required by the Rule, where necessary to protect against disclosure to nonparties of sensitive or private information. Nothing in this subdivision is

intended to affect the limitations on sealing that are otherwise applicable to the court.

Subdivision (f) allows a person who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (g) allows the option to file a register of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to “redacted” information. The term “redacted” is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (h) allows a person to waive the protections of the rule as to that person’s own personal information by filing it unsealed and in unredacted form. One may wish to waive the protection if it is determined that the costs of redaction outweigh the benefits to privacy. If a person files an unredacted identifier by mistake, that person may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 49.1 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.

The Judicial Conference Committee on Court Administration and Case Management has issued “Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files” (March 2004). This document sets

out limitations on remote electronic access to certain sensitive materials in criminal cases. It provides in part as follows:

The following documents shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access:

- unexecuted summonses or warrants of any kind (*e.g.*, search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- statements of reasons in the judgment of conviction;
- juvenile records;
- documents containing identifying information about jurors or potential jurors;
- financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
- *ex parte* requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act; and
- sealed documents (*e.g.*, motions for downward departure for substantial assistance, plea agreements indicating cooperation).

To the extent that the Rule does not exempt these materials from disclosure, the privacy and law enforcement concerns implicated by

the above documents in criminal cases can be accommodated under the rule through the sealing provision of subdivision (d) or a protective order provision of subdivision (e).

CHANGES MADE TO PROPOSED AMENDMENT RELEASED FOR PUBLIC COMMENT

Numerous changes were made in the rule after publication in response to the public comments as well as continued consultation among the reporters and chairs of the advisory committees as each committee reviewed its own rule.

A number of revisions were made in all of the e-government rules. These include: (1) using of the term "individual" rather than "person" where possible, (2) clarifying that the responsibility for redaction lies with the person making the filing, (3) rewording the exemption from redaction for information necessary to identify property subject to forfeiture, so that it is clearly applicable in ancillary proceedings related to forfeiture, and (4) rewording the exemption from redaction for judicial decisions that were not subject to redaction when originally filed. Additionally, some changes of a technical or stylistic nature (involving matters such as hyphenation and the use of "a" or "the") were made to achieve clarity as well as consistency among the various e-government rules.

Two changes were made to the provisions concerning actions under §§ 2241, 2254, and 2255, which the published rule exempted from the redaction requirement. First, in response to criticism that the original exemption was unduly broad, the Committee limited the exemption to pro se filings in these actions. Second, a new subdivision (c) was added to provide that all actions under § 2241 in which immigration claims were made would be governed exclusively

by Civil Rule 5.2. This change (which was made after the Advisory Committee meeting) was deemed necessary to ensure consistency in the treatment of redaction and public access to records in immigration cases. The addition of the new subdivision required renumbering of the subdivisions designated as (c) to (g) at the time of publication.

The provision governing protective orders was revised to employ the flexible “cause shown” standard that governs protective orders under the Federal Rules of Civil Procedure.

Finally, language was added to the Note clarifying the impact of the CACM policy that is reprinted in the Note: if the materials enumerated in the CACM policy are not exempt from disclosure under the rule, the sealing and protective order provisions of the rule are applicable.

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