

I. Action Items

A. RULES RECOMMENDED FOR ADOPTION

1. Rule 5.2

The Committee recommends approval for adoption of new Rule 5.2:

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF CIVIL PROCEDURE***

1 **Rule 5.2. Privacy Protection For Filings Made with the**
2 **Court**

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

- 9 (1) **the last four digits of the social-security number and**
10 **taxpayer-identification number;**
11 (2) **the year of the individual's birth;**
12 (3) **the minor's initials; and**
13 (4) **the last four digits of the financial-account number.**

*New material is underlined.

14 **(b) Exemptions from the Redaction Requirement.** The
15 redaction requirement does not apply to the following:

16 (1) a financial-account number that identifies the
17 property allegedly subject to forfeiture in a forfeiture
18 proceeding;

19 (2) the record of an administrative or agency
20 proceeding;

21 (3) the official record of a state-court proceeding;

22 (4) the record of a court or tribunal, if that record was
23 not subject to the redaction requirement when originally
24 filed;

25 (5) a filing covered by Rule 5.2(c) or (d); and

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

28 **(c) Limitations on Remote Access to Electronic Files;**
29 **Social-Security Appeals and Immigration Cases.** Unless
30 the court orders otherwise, in an action for benefits under the
31 Social Security Act, and in an action or proceeding relating to
32 an order of removal, to relief from removal, or to immigration
33 benefits or detention, access to an electronic file is authorized
34 as follows:

35 (1) the parties and their attorneys may have remote
36 electronic access to any part of the case file, including the
37 administrative record;

38 (2) any other person may have electronic access to the
39 full record at the courthouse, but may have remote
40 electronic access only to:

41 (A) the docket maintained by the court; and

42 (B) an opinion, order, judgment, or other
43 disposition of the court, but not any other part of the
44 case file or the administrative record.

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

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

51 (1) require redaction of additional information; or

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

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

55 A person making a redacted filing may also file an unredacted

56 copy under seal. The court must retain the unredacted copy
57 as part of the record.

58 **(g) Option for Filing a Reference List.** A filing that
59 contains redacted information may be filed together with a
60 reference list that identifies each item of redacted information
61 and specifies an appropriate identifier that uniquely
62 corresponds to each item listed. The list must be filed under
63 seal and may be amended as of right. Any reference in the
64 case to a listed identifier will be construed to refer to the
65 corresponding item of information.

66 **(h) Waiver of Protection of Identifiers.** A person waives
67 the protection of Rule 5.2(a) as to the person's own
68 information by filing it without redaction and not under seal.

COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 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 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 (c) provides for limited public access in Social Security cases and immigration cases. Those actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings. Remote electronic access by nonparties is limited to the docket and the written dispositions of the court unless the court orders otherwise. The rule contemplates, however, that nonparties can obtain full access to the case file at the courthouse, including access through the court’s public computer terminal.

Subdivision (d) reflects the interplay between redaction and filing under seal. It does not limit or expand the judicially developed rules that govern sealing. But it does reflect the possibility that redaction may provide an alternative to sealing.

Subdivision (e) provides that the court can by order in a particular case for good cause require more extensive redaction than otherwise required by the Rule. 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 (g) 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 5.2 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.

Rule as Published

The changes made from Rule 5.2 as published are shown by overstriking and underlining.

Rule 5.2. Privacy Protection For Filings Made with the Court

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

- 8 (1) the last four digits of the social-security number and
9 taxpayer-identification number;
10 (2) the ~~minor's initials~~ year of the individual's birth;
11 (3) the minor's initials ~~the year of birth~~; and
12 (4) the last four digits of the financial-account number.

13 (b) **Exemptions from the Redaction Requirement.** The
14 redaction requirement of ~~Rule 5.2(a)~~ does not apply to the
15 following:

- 16 (1) ~~in a forfeiture proceeding,~~ a financial-account
17 number that identifies the property ~~allegedly to be~~ subject
18 to forfeiture in a forfeiture proceeding;

- 19 (2) the record of an administrative or agency
20 proceeding;
- 21 (3) the official record of a state-court proceeding;
- 22 (4) the record of a court or tribunal ~~whose decision is~~
23 ~~being reviewed~~, if that record was not subject to Rule
24 5.2(a) the redaction requirement when originally filed;
- 25 (5) a filing covered by Rule 5.2(c) or (d); and
- 26 (6) a pro se filing ~~made~~ in an action brought under 28
27 U.S.C. §§ 2241, 2254, or 2255.

28 **(c) Limitations on Remote Access to Electronic Files;**
29 **Social-Security Appeals and Immigration Cases.** Unless
30 the court orders otherwise, in an action for benefits under the
31 Social Security Act, and in an action or proceeding relating to
32 an order of removal, relief from removal, or immigration
33 benefits or detention, access to an electronic file is authorized
34 as follows:

- 35 (1) the parties and their attorneys may have remote
36 electronic access to any part of the case file, including the
37 administrative record;

38 (2) any other person may have electronic access to the
39 full record at the courthouse, but may have remote
40 electronic access only to:

41 (A) the docket maintained by the court; and

42 (B) an opinion, order, judgment, or other
43 disposition of the court, but not any other part of the
44 case file or the administrative record.

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

49 (e) **Protective Orders.** ~~If necessary to protect private or~~
50 ~~sensitive information that is not otherwise protected under~~
51 ~~Rule 5.2(a), a For good cause, the court may by order in a~~
52 case:

53 (1) require redaction of additional information; or

54 (2) limit or prohibit a nonparty's remote electronic
55 access ~~by a nonparty~~ to a document filed with the court.

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

57 A party person making a redacted filing under ~~Rule 5.2(a)~~

58 may also file an unredacted copy under seal. The court must
59 retain the unredacted copy as part of the record.

60 **(g) Option for Filing a Reference List.** A filing that
61 contains redacted information ~~redacted under Rule 5.2(a)~~ may
62 be filed together with a reference list that identifies each item
63 of redacted information and specifies an appropriate identifier
64 that uniquely corresponds to each item ~~of redacted~~
65 ~~information~~ listed. The reference list must be filed under seal
66 and may be amended as of right. Any reference in the case to
67 an listed identifier ~~in the reference list~~ will be construed to
68 refer to the corresponding item of information.

69 **(h) Waiver of Protection of Identifiers.** A party person
70 waives the protection of Rule 5.2(a) as to the party's person's
71 own information ~~to the extent that the party files such~~
72 information by filing it without redaction and not under seal
73 ~~and without redaction.~~

Committee Note

The Committee Note was amended only in the paragraph discussing subdivision (e): * * *

Subdivision (e) provides that the court can by order in a particular case for good cause require more extensive redaction than

otherwise required by the Rule, ~~where necessary to protect against disclosure to non-parties of sensitive or private information.~~ Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.

Changes Made After Publication and Comment

The changes made after publication were made in conjunction with the E-Government Act Subcommittee and the other Advisory Committees.

Subdivision (a) was amended to incorporate a suggestion from the Federal Magistrate Judges Association that the rule text state that the responsibility to redact filings rests on the filer, not the court clerk.

As published, subdivision (b)(6) exempted from redaction all filings in habeas corpus proceedings under 28 U.S.C. §§ 2241, 2254, or 2255. The exemption is revised to apply only to pro se filings. A petitioner represented by counsel, and respondents represented by counsel, must redact under Rule 5.2(a).

Subdivision (e) was published with a standard for protective orders, referring to a need to protect private or sensitive information not otherwise protected by Rule 5.2(a). This standard has been replaced by a general reference to "good cause."

Discussion

Rule 5.2 was developed under the direction of the Standing Committee Subcommittee on the E-Government Act and in conjunction with the development of parallel rules by the Appellate, Bankruptcy, and Criminal Rules Committees. Many of the choices reflected in the rule are dictated by the Act. The basic approach is further framed by policies recommended by the Committee on Court Administration and Case Management and adopted by the Judicial Conference. The policy is that in most circumstances everyone in the world should have direct access by electronic means to electronically maintained court records under the same rules that apply to in-person access to paper files at the courthouse.

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2. The Style Project

The Committee recommends that the Standing Committee approve for adoption each part of the Style Project. There are four parts: . . . and style revisions for the rules that were approved and are scheduled to become effective in December 2006, before the effective date of the Style Rules.

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C. The Style Amendments to Rule Amendments Scheduled to take Effect on December 1, 2006

During the extended work on the Style Project, the Judicial Conference and the Supreme Court approved new Rule 5.1, amended Rule 50, and the proposed electronic discovery amendments. If Congress does nothing to disapprove them, these amendments will become effective on December 1, 2006. Although these proposals used many of the Style Project drafting guidelines and principles,