

**CONTACT**

**LEGISLATIVE AFFAIRS DEPARTMENT**

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**COMMENTS ON PROPOSED RULE FOR  
REDACTION OF CONFIDENTIAL PERSONAL INFORMATION IN PAPERS FILED  
IN NEW YORK CITY CIVIL COURT AND OTHER LOWER COURTS  
THROUGHOUT THE STATE**

The New York City Bar (“City Bar”)<sup>1</sup> greatly appreciates the opportunity to comment on the proposed adoption of 22 N.Y.C.R.R. §208.4 (b), a rule aimed at preventing the unnecessary disclosure of confidential personal information in papers filed in civil matters (the “Proposed Rule”) in the New York City Civil Court. These comments are focused on 208.4(b), amending the rules of the New York City Civil Court, but may also be relevant to the parallel rules contained in this same rulemaking proposal for lower courts outside of New York City (District Courts, etc.).

The City Bar’s Council on Judicial Administration, in a report released in 2010,<sup>2</sup> recommended allowing the filing of partially redacted Confidential Personal Information (“CPI”) under certain circumstances. In 2013 and 2014, the Office of Court Administration’s (“OCA”) proposed rules governing the redaction of CPI in Supreme and County Courts. The City Bar strongly supported those proposals, with some recommendations. At that time, the City Bar urged OCA to extend the CPI rules to the New York City Civil Court. We commend OCA for proposing to extend the CPI rule to the Civil Court. The City Bar supports the Proposed Rule, subject to the suggestions and comments set forth below.<sup>3</sup>

OCA’s public notice invites comments regarding “whether there are specific factors that should be take into consideration in adopting and implementing appropriate redaction provisions for each court, for different types of action and proceedings, and for self-represented litigants.” The New York City Civil Court is characterized by a large volume of cases to collect consumer debts.<sup>4</sup> Over 30% of the Civil Court docket consists of consumer credit cases which, require at least partial disclosure of financial accounts. The Court is also characterized by the large

---

<sup>1</sup> This report was authored by the City Bar’s Council on Judicial Administration and Civil Court Committee.

<sup>2</sup> See Comments of the New York City Bar on Proposed Rule for Redaction of Confidential Personal Information, dated January 28, 2014 and attached hereto as Exhibit A.

<sup>3</sup> For additional background and statements in support of the rule please refer to, Exhibit A. Some of the City Bar’s suggested revisions to Rule 202.5(e) were incorporated into the final Supreme and County Court rule and are reflected in 208.4(b).

<sup>4</sup> This type of case is formally defined in section (4) of the Proposed Rule as 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.”

numbers of *pro se* litigants – particularly in housing and consumer debt cases. Civil Court also hears name-change petitions. These comments address how the CPI rule should be modified to better meet the needs of the actions, proceedings and people that populate New York City Civil Court – and, likely, its sister courts throughout the state.

**1. THE LIMITED EXCEPTION FOR CONSUMER DEBT CASES IS NEEDED, AND THE RULE SHOULD BE MODIFIED TO ALLOW FURTHER DISCLOSURE BECAUSE ACCOUNT IDENTIFICATION IS MATERIAL IN CONSUMER DEBT CASES**

As we said in our 2014 Comments, the majority of actions arising out of consumer credit transactions, which are the subject of subdivisions (1)(iv) and (4) of the Proposed Rule, are filed in the Civil Court. Although the Rule generally requires redaction of financial account numbers, such as credit card account numbers, section (4) allows the last four digits of the account number to be disclosed in court papers. This is an important exception to the redaction rule because an account number is needed to identify the specific debt that is the subject of the lawsuit and determine whether the named defendant is responsible for the debt. Disclosure of the last four digits of the account number will help defendants to verify debts that are legitimately owed. Many consumers today have several credit cards and can have more than one issued by the same bank. Moreover, account numbers change when banks merge or when they acquire business from other entities.

Partial disclosure of an account number in consumer debt cases is also important for avoiding error. In the experience of our members who practice in this area, the number of errors made in consumer debt cases is significant. Not only do debt buyers purchase large portfolios of defaulted credit card and other consumer debt, but the purchasers often re-sell the debt. There are cases of mistaken identity (suing someone with the same name as the debtor) or even suing upon a debt that was already paid (often, when another debt buyer owned the account). In this regard, the rule explicitly provides a means to allow full disclosure of the account number or CPI either *in camera* or under seal, when the defendant denies responsibility for an account. The provision, however, is one-sided. It specifies that if the defendant denies responsibility for the account, “the **plaintiff** may...amend his pleading...” [Emphasis added.] There is no provision to allow a defendant to provide CPI when it would help to resolve the issue of responsibility for the account.

In addition, there are times when a defendant may want a full financial account number to appear in a public court document. When a defendant’s responsibility for a debt is resolved by court order, judgment or stipulation, the defendant should leave court with proof that the debt is no longer in default. To prove to a credit reporting agency that a debt is not in default, a defendant would need an official court document with the full account number.

While reducing the risk of identity theft, which is the purpose of the Proposed Rule, is a laudable goal, the damage that can be caused to a consumer if the plaintiff has sued the wrong person or sued on the wrong account can be profound. When a credit card account is in default, the creditor closes the account well before the creditor or its successor commences a collection lawsuit. Thus, the accounts sued on are no longer active accounts, and the account numbers

cannot be used to incur new charges. If, however, the debt is invalid, it can cause lasting damage to a person's credit, employment, and housing prospects.

To accommodate the needs of defendants in actions arising from consumer credit transactions for full disclosure of financial account numbers, the rule should be modified to allow disclosure upon consent of the defendant. As currently drafted, the Rule would allow a defendant to obtain inclusion a full CPI only by making a motion to the court. *Proposed* Rule 208.4(b)(2) and (3). Most defendants in consumer cases are *pro se* and, often, quite unsophisticated. It would impose a serious burden to require such defendants to make a motion to allow inclusion of CPI. Thus, a provision allowing disclosure upon consent of the defendant should be written into the rule.

## **2. PROPOSED RULE 202.4(B) SHOULD BE APPLIED CONSISTENT WITH EXISTING CCM-172 REGARDING THE REDACTION OF SOCIAL SECURITY NUMBERS**

Under section (1)(i), all but the last four digits of a social security number must be redacted from a court paper. The New York City Civil Court has a well-established requirement that its clerks redact social security numbers from court papers. Chief Clerk Memorandum 172 ("CCM-172"), issued by the Chief Clerk of the New York City Civil Court. CCM-172 specifies that when a paper presented for filing contains a social security number, the clerk "[u]sing a black marker cover the numbers completely." In this regard the City Bar urges that the Proposed Rule not serve to override or undercut the efficacy of CCM-172. Particularly because of the high numbers of *pro se* litigants, it should be clear that the Clerk may still accept papers with full social security numbers for filing, but should redact all but the last four digits of the number.

## **3. FULL BIRTH DATES AND MINORS' FULL NAMES MUST BE DISCLOSED ON NAME CHANGE APPLICATIONS**

The Proposed Rule requires the redaction of an individual's date of birth, except for the year, and redaction of a minor's full name, except for initials. This requirement would impede the hearing of name change applications in the name change part. Specifically, complete birth dates are currently required as judges must compare various identifying documents to be sure that the birth date on the documents matches, especially because people often have different names (or variations of a name) listed on their documents and the date of birth is the only consistent identifier. Such information is necessary with regard to both adults and minors. More problematic is the language stating that a minor's full name may not appear on a court document. This requirement would be impossible in the name change process, as the child's full name needs to appear in order for the court, the parties, and the public to understand the name the child wishes to use. (Both the current name and proposed new name are listed in the caption.) The child's address is usually waived for publication of the name change, but typically the new name of the child will appear in the publication.

#### **4. SUGGESTIONS TO ASSIST *PRO SE* LITIGANTS**

Finally, the City Bar urges OCA to make special efforts to protect unrepresented and unsophisticated litigants from the risk of identity theft and to assist them in complying with the new redaction rule. These efforts could include:

- The placement in the Clerk's offices of posters in English and other languages commonly spoken in New York City which explain the Proposed Rule, what redaction is and how to carry it out.
- Posting such explanatory information on OCA's website and on other websites, such as LawHelp.
- Training of court personnel in the clerk's office and in the courtrooms to explain the rule to litigants.
- Issuance of an Advisory Notice to encourage judges to inform litigants about the risks of including unredacted CPI in court filings but also to provide guidance on the minimal disclosure necessary when material to the case.

July 2015

**EXHIBIT A**

**NEW YORK  
CITY BAR**

**COMMENTS OF THE NEW YORK CITY BAR ON PROPOSED RULE FOR  
REDACTION OF CONFIDENTIAL PERSONAL INFORMATION**

The New York City Bar (“City Bar”)<sup>1</sup> greatly appreciates the opportunity to comment on the proposed adoption of 22 N.Y.C. R.R. §202.5(e), a rule aimed at preventing the unnecessary disclosure of confidential personal information in papers filed in civil matters (the “Proposed Rule”).

The City Bar strongly supports the Proposed Rule, subject to the suggestions and comments set forth below and indicated in the black-lined version of the Proposed Rule attached to this report as Exhibit “A”. In particular, we applaud the Advisory Committee for proposing a court rule rather than a statutory amendment and for adopting a “closed” rather than open-ended definition of protected confidential personal information (“CPI”). We also commend the Advisory Committee for excluding matrimonial and Surrogate’s Court cases and for excepting the last four digits of account numbers in consumer credit transaction cases.

The City Bar’s Council on Judicial Administration, in a report released in 2010,<sup>2</sup> recommended allowing the filing of partially redacted CPI under certain circumstances and also suggested that a statement of purpose be included in the rule. The City Bar believes that promulgation of a rule sooner rather than later is important and is therefore prepared to support the Proposed Rule, even though it omits these provisions. We suggest, however, that the Office of Court Administration (“OCA”) consider those provisions for a potential future amendment, depending on experience with the Proposed Rule when implemented. The rule proposed in our 2010 report is attached as Exhibit “B” for ease of reference.

**1. THE PROPOSED RULE SHOULD APPLY TO CIVIL COURT PROCEEDINGS**

Although the Advisory Committee comments to the Proposed Rule speak of “Civil Proceedings,” Rule 202.5 only governs papers filed in the Supreme and County Courts. We assume a similar rule will be adopted for the New York City Civil Court, given that the majority of actions arising out of consumer credit transactions, which are the subject of subdivision (3) of the Proposed Rule, are filed in the Civil Court.

In this regard, however, the City Bar urges that the Proposed Rule should not serve to override or undercut the efficacy of Chief Clerk Memorandum 172 (“CCM-172”), issued by the Chief Clerk of the New York City Civil Court. CCM-172 requires the clerk to redact social security numbers from any document filed with the New York City Civil Court.

---

<sup>1</sup> This report was authored by the City Bar’s Council on Judicial Administration.

<sup>2</sup> Report Recommending A New York State Court Rule Requiring That Sensitive Information Be Omitted Or Redacted From Documents Filed With Civil Courts, dated February 2, 2010.

## EXHIBIT A

### **2. EDITORIAL SUGGESTIONS**

Our black-line of the Proposed Rule contains certain suggested edits to enhance clarity and for the sake of consistency. These include consistent and capitalized use of the term “Confidential Personal Information” and the addition of the word “Omission” to the title of the rule since its body permits parties to “omit” CPI as an alternative to redacting.

### **3. DEFINITION OF CONFIDENTIAL PERSONAL INFORMATION**

The City Bar appreciates the Advisory Committee’s desire to have the Proposed Rule be as consistent as possible with the redaction requirements of section 500.5 of the Rules of the Court of Appeals. We believe, however, that the practicalities of trial level practice and filing volumes require a somewhat more narrow definition of CPI than might have been deemed appropriate for Court of Appeals filings.

In that connection, we certainly concur with the Advisory Committee’s recommendation that e-mail addresses not be included in the definition of CPI. E-mails are simply too often attached to civil filings for a redaction requirement to be practical. For much the same reasons, the City Bar also believes four other categories of information that are now included in the Proposed Rule’s definition of CPI should be eliminated. These are “names of employers,” “exact street addresses,” “telephone numbers” and “names of children’s schools”.

Requiring parties to omit the names of employers and names of children’s schools seems both unnecessary and problematic. First, the name of an employer is not a unique identifier and does not seem especially prone to identity theft abuse. We can also foresee many situations in which the name of an employer is highly relevant to a civil filing – most obviously in employment cases where the employer is named as a party. Likewise, so long as the names of minor children are redacted from the filings, we see little justification for the wholesale redaction of school names since the child’s identity is protected. We can also foresee situations where such information will be relevant to a civil filing without posing a threat of identity theft or other abuse.

Admittedly, exact street addresses and telephone numbers present closer cases. But we are concerned that there are just too many situations in which such information is relevant to a civil pleading or in which such information is part of an email or other document attached to a filing and redaction would be a serious burden. Indeed, read literally, even the addresses and phone numbers of counsel for the parties would have to be redacted under the Proposed Rule, as now framed (of course, we recognize that is not the intent). Possible compromises include requiring redaction only for exact street addresses and telephone numbers of natural persons or including only home and/or cellular phone numbers in the definition of CPI. On balance, however, we favor omitting these terms entirely from the CPI definition.

Our final suggestion on the CPI definition is to delete the catch-all: “other information that would identify a person whose identity should not be revealed (e.g., victim of a sex crime).” While we understand the desirability of keeping such information confidential, we are concerned that the open-ended nature of this provision undermines the goals of specificity and certainty,

## EXHIBIT A

which underlie the decision to adopt a “closed” definition of CPI in the first place.<sup>3</sup> We also believe that information concerning, for instance, the victim of a sex crime is protected under other laws and rules and/or as a matter of prosecutorial policy.

### **4. OTHER SUGGESTIONS**

With regard to sealing of documents, the City Bar urges the Office of Court Administration (“OCA”) to take the measures necessary to ensure that any sealing of documents containing CPI pursuant to the Proposed Rule be in accordance with the requirement of 22 NYCRR §216.1 that sealing must be no broader than necessary to protect the threatened interest. The City Bar therefore recommends that the Proposed Rule incorporate a direct reference to this requirement, as shown in our black-line of the Proposed Rule.

Finally, the City Bar urges OCA to make special efforts to protect unrepresented and unsophisticated litigants from the risk of identity theft. These efforts could include:

- The placement in the Clerk’s offices of posters in English and other languages commonly spoken in New York City which explain the Proposed Rule, what redaction is and how to carry it out.
- Posting such explanatory information on OCA’s website and on other websites, such as LawHelp.
- Issuance of an Advisory Notice to encourage judges to inform litigants about the risks of including unredacted CPI in court filings.

January 28, 2014

---

<sup>3</sup> Issuance of a rule that does not include an “other information” category could be accompanied by the establishment of a committee to monitor implementation of the rule with regard to the need to add or eliminate specific categories of CPI and possibly recommend further rule-making.

EXHIBIT A

Exhibit A

Proposal

§ 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~~ Confidential Personal Information means: (i) social security numbers; (ii) taxpayer identification numbers; (iii) financial account numbers; (iv) full dates of birth; ~~or~~ ~~(v)~~ ~~exact street addresses;~~ (vi) telephone numbers; ~~(vii)~~ (v) names of minor children; ~~(viii) names of children's schools;~~ ~~(ix) names of employers or~~ (x) other information that would identify a person whose identity should not be revealed (e.g., victim of a sex crime).

(2) The court *sua sponte* or on motion by any person may order a party to remove ~~confidential personal information~~ 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~~ Confidential Personal Information in accordance with ~~rules promulgated by the chief administrator of the courts~~ the requirement of 22 NYCRR § 216.1 that any sealing be no broader than necessary to protect CPI; for good cause permit the inclusion of ~~confidential personal information~~ Confidential Personal Information in papers; may order a party to file an unredacted copy under seal for *in camera* review 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~~ other 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~~ Confidential Personal Information under seal in accordance with rules promulgated by the chief administrator of the courts.



## EXHIBIT A

### Exhibit B

#### § 202.5 Papers Filed in Court

(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 rule, court order or administrative court directive, 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; ~~(viiiiv)~~ (viiiiv) an employee identification number; ~~(viiivv)~~ (viiivv) a credit card number; ~~(viiivi)~~ (viiivi) an insurance or financial account number; or ~~(viiivii)~~ (viiivii) a computer password [or computer access information]; or ~~(ixviii)~~ (ixviii) [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 the requirement of 22 NYCRR §216.1 that any sealing must be no broader than necessary to protect the CPI; ~~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 who files his or her own confidential personal identifying information by filing it~~ without redaction and not under seal. waives the protection of this rule as to that confidential personal information in the court proceeding at issue. Such a party may, however, seek the retroactive redaction or sealing of such information.