

**District of Columbia
Court of Appeals**



No. M-274-21

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Beckwith, Easterly, McLeese, Deahl, Howard, and AliKhan, Associate Judges.

A M E N D E D O R D E R

(FILED—July 29, 2022)

PILOT PROJECT: PUBLIC ACCESS TO CERTAIN BRIEFS AND ORDERS

This amended order updates the court's M-274-21 order issued on November 8, 2021. The Redaction Certificate Disclosure Form is located on the [court's website](#).

On February 12, 2021, the court issued a notice indicating that it was exploring how best to make documents filed in the court electronically available to the public. The court received a number of very helpful comments in response. As a first step, the court has decided to adopt a pilot project focused on briefs filed and orders issued in appeals designated by the court as CV appeals. The court uses the CV designation for a subset of civil cases designated by the Superior Court as Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts, and Vehicle Cases. The CV designation does not include family cases, probate cases, special-proceedings cases, tax cases, bar-discipline cases, or cases coming directly to the court from agencies. It is therefore

ORDERED that, effective August 1, 2021, each unsealed brief filed in a CV appeal shall comply with the following requirements.

1. The party filing the brief must redact all personal identifiers listed in Super. Ct. Civ. R. 5.2(a) (attached).

2. The party filing the brief must also ensure that the brief does not contain (a) any information revealing the identity of an individual receiving mental-health services; (b) any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services; (c) information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266 (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached); (d) any information revealing the identity of an individual who has been the victim of a sexual offense (initials should be used in lieu of the victim’s name); or (e) any other information required by law to be kept confidential or protected from public disclosure.

3. The following procedural provisions in Super. Ct. Civ. R. 5.2 are also applicable: R. 5.2(d) (court may order filing of unredacted brief under seal), 5.2(e) (court may enter protective orders), 5.2(g) (reference lists), 5.2(h) (waiver of privacy protection), and 5.2(i) (responsibility to redact rests solely with person or entity making filing).

4. Where redaction is necessary to comply with the foregoing requirements, the party filing the redacted brief may also file an unredacted brief under seal. Where necessary for the court’s understanding of the brief, an unredacted and sealed brief must be filed. The party need not seek leave of the court to file an unredacted brief under seal.

5. The party filing the brief must complete and file the Redaction Certificate Disclosure Form indicating that the person has reviewed Super. Ct. Civ. R. 5.2 and this order and that the brief complies with the applicable requirements of those provisions. The form must be attached to the brief. (AMENDED AS OF NOVEMBER 8, 2021). A copy of the form is available at <https://www.dccourts.gov/sites/default/files/COA-efiling-cases-online-PDFs/Redaction%20Checklist%20for%20Parties.pdf>

6. Any appendix must be filed separately from the brief and need not be redacted. Appendices will not be made electronically available during this pilot project.

7. This order does not apply to sealed cases or to briefs filed entirely under seal. It is

FURTHER ORDERED that the court reserves the right to accept unredacted submissions filed by pro se litigants, including incarcerated litigants, but not make them electronically available to the public over the internet.

PER CURIAM

Rule 5.2. Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, a party or nonparty must redact, in an electronic or paper filing with the court, an individual's social-security number, taxpayer-identification number, driver's license or non-driver's license identification card number, and birth date; the name of an individual known to be a minor; and a financial-account number, except that a party or nonparty making the filing may include the following:

(1) the acronym "SS#" where the individual's social-security number would have been included;

(2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;

(3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;

(4) the year of the individual's birth;

(5) the minor's initials; and

(6) the last four digits of the financial-account number.

(b) [Omitted].

(c) [Omitted].

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

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

(f) ADDITIONAL UNREDACTED FILING UNDER SEAL.

(1) *Motion to File an Unredacted Copy Under Seal.* Except as provided in Rule 5.2(f)(2), a person who makes a redacted filing and wishes to file an additional unredacted copy must file a motion to file an unredacted copy under seal. If granted, the court must retain the unredacted copy as part of the record.

(2) *Name Change Applications.* A person filing an application under Rule 205 (name change) must file an unredacted copy of the application under seal.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

(i) RESPONSIBILITY TO REDACT. The responsibility for redacting these personal identifiers rests solely with the person or entity making the filing.

COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 5.2* except that: 1) section (a) has been modified to require protection of driver's license and non-driver's license identification card numbers; 2) section (a) requires parties to redact entirely social-security numbers and taxpayer-identification numbers, allowing only the acronyms "SS#" and "TID#," respectively; 3) section (b) has been omitted, removing exemptions to provide greater protection for identifiers; 4) section (c) has been omitted as inapplicable; 5) section (f) has been modified to require a motion where a person wishes to file an unredacted copy except that a person filing a name change application must file an unredacted version under seal; and 6) section (i) was added to make clear that the clerk is not required to review filings for compliance with this rule.

The modifications to section (a) were made because the Superior Court was concerned that filing portions of social-security numbers and taxpayer-identification numbers might increase the risk of identity theft by making the critical portions of these numbers readily accessible on the internet.

As used in this rule, the phrase "financial-account number" is intended to include credit and debit card numbers.

A party may move to seal documents or other information not covered under this rule by using the procedures described in Rule 5-III.

18 U.S.C. § 2265. Full faith and credit given to protection orders

(d) Notification and Registration.—

(3) Limits on internet publication of registration information.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

18 U.S.C. § 2266. Definitions

In this chapter:

(5) Protection Order.—The term “protection order” includes—

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.