

District of Columbia
Court of Appeals



No. M-274-21

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

AMENDED ORDER

(FILED—February 2, 2024)

PUBLIC ACCESS TO CERTAIN BRIEFS, ORDERS, AND MOTIONS

This amended order updates the court's M-274-21 order issued on November 8, 2021, amended June 17, 2021, July 29, 2022, and May 2, 2023.

In August 2022, the court started a pilot project making certain documents filed in the court electronically available to the public, and focusing on briefs filed and orders issued in appeals designated by the court as CV appeals. The court began accepting and posting briefs in certain case types in criminal appeals in June 2023. As a next phase, the court will focus on all motions filed in civil (CV) and criminal case sub-types: CF (Criminal Felony), CM (Criminal Misdemeanor), CT (Criminal Traffic), and CO (Criminal Other). In addition to motions filed in the cases noted above, if a party files a redacted brief or motion, that party **must also file an unredacted copy of the brief or motion**. This is a new, mandatory requirement; before this amendment parties were only required to file an unredacted copy if it would aid in the court's understanding. Therefore, it is

ORDERED that, effective **March 4, 2024**, each unsealed motion filed in a CV, CF, CM, CT, or CO appeal shall comply with the following requirements:

1. The party filing the brief or motion must redact all personal identifiers listed in Super. Ct. Civ. R. 5.2 or Super. Ct. Crim. R. 49.1 (attached).
2. For civil cases, 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. For criminal cases, the party filing the brief or motion must also ensure that the brief (a) does not contain any information revealing the identity of an individual receiving mental-health services; (b) does not contain any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services; (c) does not contain 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) uses initials when referring to victims of sexual offenses; and (e) does not contain any other information required by law to be kept confidential or protected from public disclosure.

5. The following procedural provisions in Super. Ct. Crim. R. 49.1 are also applicable: R. 49.1(b) (exemptions from the redaction requirement), 49.1(c) (filings made under seal), 49.1(d) (protective orders), 49.1(e) (option for additional unredacted filing under seal), 49.1(f) (option for filing a reference list), and 49.1(g) (waiver of protection of identifiers).

6. Where redaction is necessary to comply with the foregoing requirements, **the party filing the redacted brief or motion MUST also file an unredacted brief or motion under seal.** The party need not seek leave of the court to file an unredacted brief or motion under seal.

7. Parties filing briefs or motions through the court's e-file system shall file all briefs under the Briefs (redacted) subcode and all motions shall similarly be filed under a Motions (redacted) subcode whether or not there is a redaction made to the filing. In the event a party has redacted and will file a sealed version, the party shall use Brief (sealed) and Motion (sealed) subcodes.

8. All appendixes, including presentence reports, must be filed separately from the brief or motion and need not be redacted. Any brief or motion filed with an attached appendix will be rejected for electronic filing with an instruction to refile the brief and the appendix separately. Appendixes will not be made electronically available during this pilot project.

9. The filing party must complete and file the appropriate Redaction Certificate Disclosure Form (civil or criminal case), linked on the court's website, indicating that the person has reviewed Super. Ct. Civ. R. 5.2(a) or Super. Ct. Crim. R. 49.1 and this order and that the brief, motion, and any accompanying appendix complies with the applicable requirements of those provisions. The form must be *included as of part of the same electronic file, at the end of the brief or motion, not uploaded as a separate file.*

10. **Incarcerated individuals ONLY:** incarcerated individuals who are unrepresented by an attorney (often referred to as "proceeding pro se") are strongly encouraged to follow the redaction requirements set forth in this order and the redaction form. However, where it is not reasonably possible for an incarcerated individual to redact their filings, they may initial the redaction form at "G," certifying they are unable to file a redacted brief or motion. The form must be *included as of part of the same electronic file, at the end of the brief or motion, not uploaded as a separate file.* Those briefs or motions will be unavailable for public viewing through online public access but will available in person in the public office.

11. This order does not apply to sealed cases or to briefs or motions filed entirely under seal.

PER CURIAM

Sup. Ct. Civil 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.

Sup. Ct. Criminal Rule 49.1. Privacy Protection for Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number or driver's license or non-driver's license identification card number, the name of an individual known to be a minor child as that term is defined in D.C. Code § 16-2301 (3), a person's birth date, a debit card, credit card or other a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

(1) the acronym "SS#", "TID#", "DL#", or "NDL#" instead of the social-security number, taxpayer-identification number, driver's license number and non-driver's license identification card number, respectively ;

(2) the minor child's initials;

(3) the acronym "DOB" instead of the individual's birth date;

(4) the last four digits of a debit card, credit card, or other financial-account number; and

(5) the city and state of the home address.

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

(1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

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

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

(4) the record of a court or tribunal, if that record was not subject to the redaction

requirement when originally filed;

- (5) a filing covered by Rule 49.1(c)(d);
 - (6) a pro se filing in an action brought under D.C. Code §§ 22-4135 or 23-110
 - (7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
 - (8) an arrest or search warrant; and
 - (9) a charging document and an affidavit filed in support of any charging document.
- (c) 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.
- (d) 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.
- (e) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.
- (f) 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.
- (g) Waiver of Protection of Identifiers. A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

COMMENT TO THE 2009 AMENDMENT

This Rule is identical to the Federal Rule with the following exceptions.

Paragraph (a) of this Rule requires redaction of several categories of information not covered by the Federal Rule: driver's license and non-driver's license identification card numbers, and credit and debit card numbers. See D.C. Code § 28-3851 (3)(A) (defining "Personal information" for purposes of the Consumer Personal Information Security Breach Notification Act of 2006, D.C. Code § 28-3851 *et seq.*) Paragraph (a) also substitutes the term "child" for the term "minor" and refers to a locally applicable definition of that term.

Subparagraph (a)(3) differs from the Federal Rule, which requires redaction of the month and date of birth, but not the year of birth. This Rule requires redaction of the entire date of birth and use of the acronym "DOB" in its place.

Subparagraph (b)(6) refers to post-conviction proceedings under local, rather than federal, law.

Paragraph (c) of the Federal Rule ("Immigration Cases") is omitted from this Rule as locally inapplicable.

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.