

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 09-03

(New SCR Criminal 49.1)

WHEREAS, pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved new Superior Court Rule of Criminal Procedure 49.1; and

WHEREAS, pursuant to D.C. Code § 11-946 new SCR Criminal 49.1 has been approved by the District of Columbia Court of Appeals; it is

ORDERED that new SCR Criminal 49.1 is hereby promulgated as set forth below; and it is further

ORDERED that new SCR Criminal 49.1 shall take effect August 3, 2009 and govern all proceedings thereafter commenced and insofar as is just and practicable all pending proceedings.

NEW SCR CRIMINAL 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.

By the Court:

Date: June 5, 2009

/s/
Lee F. Satterfield
Chief Judge

Copies to:

All Judges
All Magistrate Judges
Library
Dan Cipullo, Director, Criminal Division
David Luria, Attorney Advisor