

Invitation to Comment

Title	Protecting Private Information in Public Court Documents (amend California Rules of Court, rule 1.20, and adopt <i>Confidential Reference List of Personal Identifiers</i> (form CM-120))
Summary	<p>Rule 1.20 of the California Rules of Court on the filing of documents with the court would be amended, effective January 1, 2008, to require litigants to exclude or redact certain personal identifying information from documents presented for public filing.</p> <p>Rule 1.20 would also be amended to authorize the court to order that a party may file a <i>Confidential Reference List of Personal Identifiers</i> (form CM-120), a new form that would contain a confidential list of the redacted personal identifiers and corresponding references that would be used to refer to those identifiers in publicly filed documents.</p>
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665, Patrick.o'donnell@jud.ca.gov
Discussion	<p>Recently, public attention has been drawn to the issues of privacy protection generally and identity theft in particular, especially in light of the increased availability of information—including court records—on the Internet. In 2002, the California Office of Privacy Protection characterized “[t]he balancing of competing values of public access to government records with individual privacy rights” as “one of the most significant public policy issues Americans face today.”¹</p> <p>To accomplish this balance, especially as more court records are being made publicly available online, this proposal recommends:</p> <p>(1) An amendment to the rule on filing of papers to prevent the inclusion of certain sensitive private information (i.e., social security numbers and financial account numbers) in publicly filed court documents; and</p>

¹ See COMMENTS OF THE CALIFORNIA OFFICE OF PRIVACY PROTECTION ON THE *MODEL POLICY OF PUBLIC ACCESS TO COURT RECORDS*, draft dated Feb. 22, 2002, prepared on behalf of the Conference of Chief Justices and the Conference of State Court Administrators by the National Center for State Courts and the Justice Management Institute, <http://www.privacy.ca.gov/recommendations/courtrecords.pdf>.

(2) The adoption of a new confidential form to be used if it is necessary to present information about personal identifiers to the court.

Rule on Exclusion or Redaction

Rule 1.20 would be amended to add a new subdivision (b) requiring a party filing a document that contains certain personal identifying information—specifically, social security numbers and financial account numbers—to not include the identifiers or, where the inclusion is necessary in the case, to redact the identifiers in the documents that are to be publicly filed with the court. (See amended rule 1.20(b)(1).)

Responsibility of the Filer

The new subdivision would place the burden on the parties and their attorneys, rather than on court employees, to eliminate or redact the personal identifying information. (See rule 1.20(b)(2).) Parties and their attorneys would be responsible for removing all the personal identifiers from the documents before the documents are filed.

Confidential List of Personal Identifiers

Although this would not often be the case, there may sometimes be situations when it is necessary in the course of litigation to refer to personal identifying information in pleadings or other filed documents. In these situations (for example, in a case involving identity theft or financial abuse), the court and the litigants may need to refer to particular accounts, without at the same time disclosing publicly the particular personal identifiers.

To deal with these situations, rule 1.20 would include a new provision that, if the court so orders, a party may file a confidential list containing the personal identifiers that have been redacted along with a corresponding set of references used for those identifiers in the public file. (See amended rule 1.20(b)(3).) The requirement that the court must order the filing of a list, instead of the parties being permitted to do so at their own choice, will ensure that confidential lists are filed with the court only in appropriate circumstances where that information is needed for the case.

To implement new subdivision (b)(3), new *Confidential Reference List of Personal Identifiers* (form CM-120) would be adopted along with the proposed amendments to rule 1.20. This form would be

used by parties seeking to provide the confidential list of personal identifiers and corresponding references as authorized by subdivision (b)(3). The form is designed to ensure that it will be filed confidentially and will contain only the appropriate types of information.

New subdivision (b)(3) and the form together would enable the confidential filing of certain specific information about personal identifiers in the unusual circumstances that such information needs to be filed at all. At the same time, the rule and form are narrowly drawn to preclude the filing of unnecessary or inappropriate information as confidential.

Comments are specifically invited on whether subdivision (b)(3) authorizing the court to order the filing of confidential lists and the proposed form are needed. If these are not adopted, courts and litigants would proceed under existing law, including the rules on the sealing of records, if in a particular case personal identifiers need to be filed with the court, but not be included in the public record.

Other Comments Sought

More generally, the public is invited to submit comments regarding both rule 1.20 and the *Confidential Reference List of Personal Identifiers* (form CM-120).

Among other things, comments are sought regarding whether proposed rule 1.20(b) and form CM-120 should apply to filings in all types of civil and criminal cases; whether rule 1.20(b), if adopted, should require redaction of any additional categories of personal identifying information, such as dates of birth, names of minor children, driver's license numbers, and home addresses; whether the rule and form may be unnecessarily challenging to self-represented litigants; whether the rule may have unintended consequences on other governmental agencies, organizations and employees, such as sheriffs' offices and court clerks; and whether the rule is compatible with currently operative electronic filing systems.

Attachments

Rule Proposal

Rule 1.20 of the California Rules of Court would be amended, effective January 1, 2008, to read as follows:

Rule 1.20. Filing

(a) Effective date

Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.

(b) Protection of privacy

(1) Exclusion or redaction of personal identifiers

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following personal identifiers from all pleadings and other papers filed in the court’s public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:

(A) Social security numbers

If an individual’s social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used;

(B) Financial account numbers

If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.

(2) Responsibility of the filer

The responsibility for excluding or redacting personal identifiers from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.

(3) Confidential reference list

1 If the court so orders, a party filing a document containing personal identifiers
 2 listed in (b)(1) may file, along with the redacted document that will be placed in
 3 the public file, a reference list. The reference list is confidential and must not be
 4 kept in the public file. A party filing a confidential reference list must use
 5 *Confidential Reference List of Personal Identifiers* (form CM-120) for that
 6 purpose. The confidential list must identify each item of redacted information
 7 and specify an appropriate reference that uniquely corresponds to each item of
 8 redacted information listed. All references in the case to the redacted personal
 9 identifiers included in the confidential reference list will be understood to refer
 10 to the corresponding complete personal identifier. A party may amend its
 11 reference list as of right.
 12

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):	DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
ATTORNEY FOR (<i>Name</i>):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
SHORT TITLE:	CASE NUMBER:
CONFIDENTIAL REFERENCE LIST OF PERSONAL IDENTIFIERS <input type="checkbox"/> _____ AMENDED	

**TO COURT CLERK: THIS LIST IS CONFIDENTIAL.
DO NOT FILE THIS CONFIDENTIAL REFERENCE LIST IN A PUBLIC COURT FILE.**

INSTRUCTIONS FOR FILER

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, social security numbers and financial account numbers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise ordered by the court. (Cal. Rules of Court, rule 1.20(b).)

If the court so orders, a party may file, along with the redacted pleading or paper that will be placed in the public file, this *Confidential Reference List of Personal Identifiers* that will not be kept in the public file. The confidential reference list must identify each personal identifier that has been redacted from the pleading or paper in the public file and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references included in the list will be understood to refer to the corresponding complete personal identifier. Additional pages may be attached to this form as necessary.

REFERENCE LIST

	COMPLETE PERSONAL IDENTIFIER <i>Use this column to list the personal identifiers that have been redacted from the document that is to be placed in the public file.</i>	CORRESPONDING REFERENCE <i>Use this column to list the reference or abbreviation that will refer to the corresponding complete personal identifier.</i>	LOCATION <i>Use this column to identify the document or documents where the reference appears in place of the personal identifier.</i>
1.			
2.			
3.			
4.			
5.			
6.			

Additional pages are attached. Number of pages attached: _____

Item SPR07-19 Response Form

Title: Protecting Private Information in Public Court Documents (amend California Rules of Court, rule 1.20, and adopt *Confidential Reference List of Personal Identifiers* (form CM-120))

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*