

[In the following proposed amendments, additions are indicated by underlining, deletions are indicated by strikethrough]

Minnesota Rules of Civil Procedure

Rule 5. Service and Filing of Pleadings and Other Papers

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5.04 Filing; Certificate of Service

Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by rules 301 to 378 of the General Rules of Practice for the District Courts.

All documents after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless upon order of the court or for use in the proceeding.

The administrator shall not refuse to accept for filing any documents presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices. Documents may be rejected for filing if:

- (a) tendered without a required filing fee or a correct assigned file number;
- (b) ~~or are~~ tendered to an administrator other than for the court where the action is pending;
- (c) the documents constitute discovery or trial exhibits submitted prior to trial without the express permission of the court (e.g., by order or rule), or without a corresponding motion related to the discovery or exhibit;
- (d) if the filing is the initial filing in a non-family case, and is not accompanied by the civil cover sheet required under rule 104(b) of the General Rules of Practice for the District Courts; or
- (e) the documents include restricted identifiers that have not been submitted in a confidential manner as required by rule 11 of the General Rules of Practice for the District Courts.

Minnesota General Rules of Practice for the District Courts

TITLE I. RULES APPLICABLE TO ALL COURT PROCEEDINGS

RULE 11. Submission of Confidential Information

Rule 11.01 Definitions

The following definitions apply for the purposes of this rule:

(a) “Restricted identifiers” shall mean the following numbers of a party or other person: complete or partial social security number, complete or partial employer identification number, and financial account numbers other than the last four numbers of a financial account number that is not also a social security number of a party or other person.

(b) “Financial source documents” means income tax returns, W-2 forms and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information deemed financial source documents by court order.

Rule 11.02 Restricted Identifiers

(a) Pleadings and Other Documents Submitted by a Party. No party shall submit restricted identifiers on any pleading or other document that is to be filed with the court except:

- (1) on a separate form entitled Confidential Information Form (see Form 11.1 as published by the state court administrator) filed with the pleading or other document; or
- (2) on Confidential Sealed Financial Source Documents under Rule 11.03.

The parties are solely responsible for ensuring that restricted identifiers do not otherwise appear on the pleading or other document filed with the court. The court administrator will not review each pleading or document filed by a party for compliance with this rule. The Confidential Information Form (Form 11.1) shall not be accessible to the public.

(b) Records Generated by the Court. Restricted identifiers maintained by the court in its register of actions (i.e., activity summary or similar information that lists the title, origination, activities, proceedings and filings in each case), calendars, indexes, and judgment docket shall not be accessible to the public. Courts shall not include restricted

identifiers on judgments, orders, decisions, and notices except on the Confidential Information Form (Form 11.1), which shall not be accessible to the public.

Rule 11.03 Sealing Confidential Financial Source Documents

Financial source documents shall be submitted to the court under a cover sheet designated “Confidential Sealed Financial Source Documents” and substantially in the form set forth as Form 11.2 as published by the state court administrator. Financial source documents submitted with the required cover sheet are not accessible to the public except to the extent that they are admitted into evidence in a testimonial hearing or trial or as provided in Rule 11.05 of these rules. The cover sheet or copy of it shall be accessible to the public. Statements from a permanently closed (also known as “charged off”) credit card or financial institution account that has been identified as a closed account in the related pleading need not be submitted as a confidential financial source document under rule 11.03 of these rules unless desired by the filing party or as directed by the court. Financial source documents that are not submitted with the required cover sheet ~~and that contain restricted identifiers~~ are accessible to the public, but the court may, upon motion or on its own initiative, order that any such financial source document be confidential sealed.

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Rule 11.05 Procedure for Requesting Access to Sealed Financial Source Documents

(a) **Motion.** Any person may file a motion, supported by affidavit showing good cause, for access to Confidential Sealed Financial Source Documents or portions of the documents. Written notice of the motion shall be required.

(b) **Waiver of Notice.** If the person seeking access cannot locate a party to provide the notice required under this rule, after making a good faith reasonable effort to provide such notice as required by applicable court rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are unlikely to be successful.

(c) **Balancing Test.** The court shall allow access to Confidential Sealed Financial Source Documents, or relevant portions of the documents, if the court

finds that the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this rule.

To: eCourtMN Steering Committee

From: Hon. Peter Cahill

Date: February 1, 2014

RE: Rule 11/Rule 5 Proposed Modifications Regarding Restricted Identifiers and Financial Source Documents

As you know the courts have been emphasizing rule 11 compliance to ensure privacy of social security numbers, financial account numbers and financial documents such as tax returns and financial account statements. Recent legislation¹ regarding assigned consumer debt default judgments has created confusion over whether full or partial numbers are required and whether supporting account documentation must also be protected.

Court staff in the Fourth and Second Districts, together with state court legal counsel, have met with attorneys representing both sides in these consumer debt matters² and have reached a consensus approach to resolving the confusion and maintaining an appropriate balance between interest related to privacy, public access, and efficiency. That approach involves proposed changes to Gen. R. Prac. 11 and R. Civ. P. 5 (see attached) that would:

- Clarify that no partial or full Social Security Numbers should appear in publicly-accessible pleadings, and where it is necessary to submit SSN to the district court, it must be submitted on a separate confidential form 11.1;
- Clarify that the last four digits of a financial account number that is not also a social security number, is permissible to include in a publicly-accessible pleading. Where it is necessary to submit more than the last four digits of the account number, that must be submitted on a separate confidential form 11.1;
- Allow administrative rejection of filings (i.e., court staff do not need a court order) that do not handle restricted identifiers in compliance with the above;
- Clarify that Financial Source Documents that are account statements from a permanently closed (also known as "charged-off") credit card or financial institution account that has been identified

¹ Minn. Stat. § 548.101 (2013).

² Jason Adams, Rausch, Sturm, Israel, Enerson & Hornik, Mpls., MN; Brian Chou and Derrick Weber, Messerli & Kramer, Mpls.; Amy Goltz, Gurstel Chargo, Mpls. MN; and Galen Robinson, Mid Minnesota Legal Assistance, Mpls. MN.

as a closed or charged-off account in the related pleading need not be submitted as a confidential financial source document under rule 11.03 of these rules unless desired by the filing party or as directed by the court.

I am requesting that the Steering Committee endorse these proposed changes and recommend their adoption by the Supreme Court. The rationale is explained below. Upon approval, I would forward a letter to the Supreme Court along with a copy of this memo and the attached proposed rule changes. Thank you for your consideration.

The rationale for the changes includes: (1) that full and partial social security numbers must be protected from disclosure and the rules should make the scope of this duty clear to the practicing bar and self represented litigants alike; (2) partial (i.e., last four digits) financial account numbers that are not also social security numbers do not appear to present the same degree of predictability and potential harm and should be permitted to be displayed in otherwise publicly-accessible court documents; (3) financial source documents (i.e. account statements) coming from closed accounts similarly do not appear to represent the same level of privacy concerns as long as those submitting the documents can factually represent that the account is closed (also referred to in the credit industry as a "charged-off" account), and any special concerns can be addressed by court order or filing party discretion; (4) allowing administrative rejection of filings that would otherwise publicly reveal social security numbers (whether whole or partial) or financial account numbers other than the last four digits of an account number that is not also a social security number, saves scarce judicial resources by avoiding the need to obtain a court order returning the filing and avoid the stigma of a court ordered sanction; and (5) other administrative filing rejections are also included to address some common issues perplexing court staff (filing discovery and trial exhibits or failing to file a required civil cover sheet) that similarly do not require judicial supervision.

The problem with making the last four digits of a social security number public is that since 2009 researchers have been able to predict the full number with alarming accuracy. The article that first appeared in 2009 remains posted at the Carnegie Mellon University website.³ The Social Security administration changed its method of assigning numbers right after this research appeared, but that does not help anyone who was assigned a number before 2009, and even for those individuals there is no assurance that someone else is holding other information that would enable them to piece the full number together.

³ Acquisti, Alessandro, Gross, Ralph, Predicting Social Security Numbers from Public Data (Proceedings of the National Academy of Science, May 5, 2009); see also Walters, Ken, Carnegie Mellon Researchers Find Social Security Numbers Can Be Predicted from Publicly Available Information (Carnegie Mellon University, July 6, 2009) (published at: http://www.cmu.edu/news/archive/2009/July/july6_ssnprediction.shtml).

It is important to note that there is a clear incentive for harvesting social security numbers. In a recent article a federal prosecutor notes that the street value of a single name plus SSN is \$1,000.⁴ Criminals use this information to intercept tax returns, and the IRS has its hands full with that.⁵ There is obviously more damage that someone can do with the same information. The point is that there are people harvesting this information from public records, and the judicial branch simply does not want to be one such source.

Provided that they are not also a social security number, financial account numbers are so varied and random that they do not present the same degree of predictability. Receipts from many commercial enterprises bear only the last four digits of credit card numbers, for example, and there is less incentive for persons to attempt to harvest full account numbers from the last four digits. Therefore, it is recommended that litigants and the courts themselves be permitted to utilize this now familiar and accepted short-hand reference to financial account numbers for use in otherwise publicly accessible court documents. This will obviate the need to submit separate, confidential forms for just this purpose, or to submit a complete second set of redacted pleadings. This alleviates considerable concerns in the new assigned consumer debt cases and in dissolution cases where judgments and decrees decide rights to live accounts.

Financial source documents (i.e. account statements) coming from closed accounts (also referred to in the credit industry as a "charged-off" account) similarly do not appear to represent the same level of privacy concerns. Closed accounts like other collectable items can be sold for collection purposes, so it is not unusual for the documentary proof of such accounts and their status to be generated in many different jurisdictions. Although processes across jurisdictions may be different, there appears to be a more or less uniform approach to utilizing the last four digits of such accounts in the proof documents. Barring any other privacy concerns relating to what might have been purchased under the account (and this can be addressed to the court or, in the discretion of the filer, submitted with the appropriate form 11.2 cover sheet and made confidential), allowing permanently closed account statements to remain publicly accessible increases the opportunity for public scrutiny and therefore enhances public trust and confidence in the courts. The proposed rule does require the filing party to make a factual representation in an associated pleading that the account is permanently closed or "charged-off." It may also benefit e-filers to add a comment in the comment field when e-filing identifying the account as permanently closed or charged-off. This may make the e-filing acceptance process proceed more quickly.

⁴ Bobkoff, Dan, What Happens When Someone Else Gets Your Tax Refund (National Public Radio, February 18, 2013) (published at: <http://www.npr.org/2013/02/18/172140486/what-happens-when-someone-else-gets-your-tax-refund?ft=1&f=1070>).

⁵ Id.

Allowing administrative rejection of filings that would otherwise publicly reveal social security numbers (whether whole or partial) or financial account numbers other than the last four digits of an account number that is not also a social security number, saves scarce judicial resources by avoiding the need to obtain a court order returning the filing, and avoids the stigma of a court ordered sanction. This empowers court staff to address the issue authoritatively and will promote compliance with rule 11.

Other administrative filing rejections are also included in the proposed rule 5 to reduce unnecessary work and avoid potential public access concerns caused by the filing of discovery where that is not necessary for the court, the filing of trial exhibits that are not related to a motion, or failing to file a required civil cover sheet. Addressing these issues administratively makes sense from a workload efficiency standpoint and a privacy perspective.

It is recommended that the proposed rules be given effect as soon as possible under the rule making process so that their effectiveness can begin sooner rather than later. None of these changes require significant advance notice to the practicing bar or litigants as they simply step up the enforcement of what is already required or clarify its application in a way that most would view as straightforward.