

Item IX – Social Security Redaction Proposal

Protection of social security and bank account numbers in court records

Court Records within Custody of Clerks of Court
Section 119.0714(1) and (2), F.S.

- Social security and bank account numbers in all court files must be kept confidential and protected from disclosure; however:
 - until January 1, 2011, clerks must protect social security and bank account numbers in court records only upon request of the holder of the number, or the holder’s attorney or guardian
 - on January 1, 2011 and thereafter, clerks must redact social security and bank account numbers in all paper and electronic court records without request
- In 2007, the Legislature postponed the clerks’ duty to protect social security and bank account numbers in court records from January 1, 2008 to January 1, 2011.

Records Held by Other State and Local Governmental Entities
Section 119.07(5)(a)(5) and (5)(b), F.S.

- State and local governmental entities and officers currently are required to protect social security and bank account numbers in all public records within their custody before, on or after the effective date of the exemption.

Revised Interim Policy and Manatee Pilot Project

- Under the Policy, no clerk may provide access to electronic court records, with stated exceptions.
- The Policy allows the clerks to provide access to some electronic records, “provided that no information is released that is confidential pursuant to federal or state law, court rule, or court order....”

- The Policy incorporates the statutory provision allowing clerks until Jan. 1, 2011 to protect social security and bank account numbers in court records, absent a request
- It is anticipated that the Court will modify or terminate the Interim Revised Policy to authorize public access to electronic court records on a prospective basis to newly-filed records.
- With Court approval, the Manatee County Clerk has implemented a pilot project allowing access to electronic court records on public and subscriber web sites; using automated software, the clerk currently is redacting social security and bank account numbers from court records made accessible to the public and subscribers; filers also have a duty to identify confidential information in new filings.

Section 28.2221(5)(a), F.S.

- The statute prohibits the clerks from releasing court records in family law, juvenile or probate cases maintained on a public web site; the statute does not prohibit access to these records on a subscriber site.
- The Revised Interim Policy encompasses these prohibitions since it prohibits the clerks from allowing electronic access to most court records

Proposed Amendments to Rule 2.420

- Rule 2.420(c)(7) & (8) currently incorporates all statutory exemptions; therefore, the rule requires protection of social security and bank account numbers contained in court records, as required by section 119.0714(1)(i) and (j); to the extent required by section 119.0714(2)(a) and (e), i.e., only as of January 1, 2011 or upon request.
- Proposed amendments to rule 2.420(d) establish a new procedure for filing court records by which filers will be required to identify confidential information contained in a filing. However, the filers' designation of confidential information does not relieve the clerks of their duty to protect personal numbers and the other confidential information described in the proposed list of automatically protected information, under subdivision (d)(1)(A) or (B)(i-xix) of the rule.

- Under the proposed amendment, the clerk’s duty to protect social security and bank numbers is tied to the January 1, 2011 date stated in section 119.0714(2)(a) and (e), or a request for confidentiality. If the statute is amended, the rule will require protection of numbers in accordance with the amended statute
- In requiring the clerks to protect confidential information, the rule, including the proposed amendment, does not distinguish between paper and electronic records, or public or subscriber web sites.

Clerks’ Proposal

“On January 1, 2011, and thereafter, the clerk of court must use best his or her efforts to redact all social security and complete bank account, debit, charge, or credit card numbers **from electronic copies** of court records placed on the clerk of court’s publicly available Internet website, **or otherwise made electronically available to the general public.**”

“The use of an automated program for redaction shall be deemed the best effort and complies with the requirements of this subparagraph. This best effort requirement shall apply **prospectively** to social security, bank account, debit, charge, and credit card numbers found in **electronic copies** of documents maintained by the clerk of court on **or after the effective date of this exemption.**”

Concerns:

- *Protects numbers only in electronic copies of new court filings maintained on a public website; allows disclosure of numbers in*
 - *new or existing paper records*
 - *new and existing electronic records maintained on subscriber sites*
 - *existing electronic records maintained by the clerks prior to effective date of “exemption”*
- *Precise meaning of “the effective date of the exemption” is not clear; social security numbers were first made confidential and exempt in court records in 2002. Perhaps, the intention was to apply the best effort requirement to electronic records maintained on a public site after the effective date of the amendment.*

Suggestions Regarding Proposed Amendment

- If the Revised Interim Policy is terminated or modified to allow public access only prospectively to newly-filed electronic court records posted online, any amendment to section 119.0714(2)(e)1 should require:
 - Redaction of social security and bank account numbers in newly-filed electronic records maintained on both public and subscriber web sites
 - A clearly specified date on which the clerk's duty to protect social security and bank account numbers in electronic records maintained on public and subscriber web sites is triggered
 - Redaction of social security and bank account numbers in existing electronic records that are not posted on a public or subscriber website, prior to disclosure, upon request for an individual record
 - Redaction of social security and bank account numbers in existing or newly-filed paper records prior to disclosure, upon request for an individual record
- If the Revised Interim Policy is modified or terminated to allow public access to existing, earlier filed electronic records, any amendment should require protection of numbers contained in all electronic records posted on public or subscriber web sites, as well as protection of numbers contained in any paper record, prior to disclosure, upon a request for an individual record.