

**FILED**

**FEB 07 2020**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 5.1

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

MOTION TO AMEND M.R.C.P. 5.1

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 5.1 in the manner shown in Exhibit A attached hereto. The Exhibit includes a proposed Advisory Committee Note. The Committee proposes the amendment to address the increasing risks to information security, particularly information related to personal and financial privacy and to address growing concerns about the vulnerability of information stored in state court records, many of which are available electronically. Even though Section 9 of the Administrative Procedures for Mississippi Electronic Courts contains many of the same requirements, adopting the proposed amendment would make the requirements applicable to conventional paper filings as well as electronic filings. The rule gives certain personal data identifiers (social security numbers, taxpayer-ID numbers, birth dates, minors' full names and financial account numbers) heightened protection by requiring partial redaction with limited exemptions. The Committee also requests that the Court consider adding "annulments and separate maintenance" to the MEC list of restricted access cases and in turn adding "annulments and separate maintenance" to the proposed amendment to M.R.C.P. 5.1.

The motion to amend M.R.C.P. 5.1 was unanimously approved by the Committee on January 10, 2020. The Supreme Court Advisory Committee on Rules therefore moves that the attached proposed amendment to M.R.C.P. 5.1 be considered by the Mississippi Supreme Court.

SO MOVED, this the 7<sup>th</sup> day of February, 2020.

SUPREME COURT ADVISORY COMMITTEE ON RULES

  
\_\_\_\_\_  
JUDGE ASHLEY HINES, CHAIR

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## Exhibit A

### Proposed MRCP Rule 5.1 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 or exhibits admitted into evidence that contain an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party, a nonparty or any attorney making the filing has a duty to include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's ~~first two initials and last name~~; and
- (4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) information contained in the record of any administrative, agency, or court proceeding, if that record was not subject to the redaction requirement when originally created;
- (3) a filing governed by a statute, rule, regulation, or other provision of law that requires the inclusion of the information that would otherwise be subject to redaction by this rule;
- (4) a filing covered by Rule 5.12(c) and (d); and
- (5) documents filed as Restricted Access under the Administrative Procedures for Mississippi Electronic Courts if the private information is necessary and relevant to the case. Cases with Restricted Access include: Debt Collection; Garnishment; Replevin; Child Custody/Visitation; Child Support; Divorce; Fault; Divorce; Irreconcilable Differences; Modification; Paternity; Termination of Parental Rights; Birth Certificate Correction; Conservatorship; Guardianship; Minor's Settlement; Protection from Domestic Abuse Law.

(c) GARNISHMENT. A Suggestion of Garnishment or Writ of Garnishment that is filed with a court shall only include the last four digits of the defendant's social-security number, taxpayer-identification number, or financial-account number; provided however, that the plaintiff shall provide the defendant's full social-security number, taxpayer-identification number, or financial-account number, if reasonably available to the plaintiff, on the copies of the Suggestion or Writ of Garnishment served on the garnishee.

(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) 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.

(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) DUTY AND RELIEF. The duty to redact rests with the filer. The clerk will not review filings for compliance. Parties, nonparties, or attorneys aggrieved by the filing of unredacted, nonsealed documents may seek relief by motion.

### Advisory Committee Note

*This rule was amended in \_\_\_\_ in recognition of the increasing risks to information security, particularly information related to personal and financial privacy and to address growing concerns about the vulnerability of information stored in state court records, many of which are available electronically. The rule gives certain personal data identifiers (social security numbers, taxpayer-ID numbers, birth dates, minors' full names and financial account numbers) heightened protection by requiring partial redaction with limited exemptions. In some cases, it may also be necessary to protect information not covered by the redaction requirement—such as driver's license numbers and medical records. In such cases, protection may be sought under subdivision (d) or (e) of this Rule. Moreover, this rule does not affect the protection available under other rules, such as M.R.C.P. 26(d) governing protective orders. Given that any personal information not otherwise protected by sealing or redaction will be available to the public (often over the internet), parties and their counsel should carefully discuss and consider what personal information is to be included in a document filed with the court.*

*In addition to the duties imposed by M.R.C.P. 5.1, the Administrative Procedures for Mississippi Electronic Courts impose additional duties to protect sensitive and private information when filing electronic documents. Section 9.A. requires that certain personal identifiers (social security numbers, names of minor children, dates of birth, and financial account numbers) be redacted. In addition, Section 9.A. advises attorneys to exercise caution when filing documents that contain: "(1) [a] personal identifying number, such as driver's license number; (2) medical records, treatment and diagnosis; (3) employment history; (4) individual financial information; and, (5) proprietary or trade secret information."*

*Parties and their counsel are responsible for making the required redactions and are cautioned that failure to comply with the rule may subject counsel to the disciplinary and remedial powers of the court, including sanctions pursuant to M.R.C.P. 11.*