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February 22, 2020

Clerk of Appellate Courts  
Post Office Box 249  
Jackson, Mississippi 39205

Re: Proposed Rule 5.1

Dear Sir,

**FILED**

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OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

## The Privacy Act Prohibits The Disclosure of a SSN

I would suggest that in the age of the internet and internet hacking and identity theft that even the last four digits of the social security number should not be included on any document filed with any Court or any state agency. First, Section 7 of the federal Privacy Act of 1974, at 5 U.S.C. § 552(a)(1) states, "It shall be unlawful for any Federal, State, or local government agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." The case law interpreting this exact issue has already been decided in Florida and the Court **refused** to require a worker's compensation claimant to disclose the social security number. *Florida Div. Of Workers' Comp. v. Cagnoli*, 914 So. 2d 950 (Fla. 2005); *See Also Cagnoli v. Tandem Staffing*, 888 So. 2d 79 (Fla. Ct. App. 2004).

This statute and case alone is enough to warrant non-disclosure of any part of a ssn.

## Identity Theft

Per the 2016 FBI statistics on identity theft, 10% of people age 16 or older had been a victim of identity theft during the previous twelve months. *See Victims of Identity Theft, 2016*, Bureau of Justice Statistics. This means about 26 million people in just twelve months were victims of identity theft. Obviously, that is approximately 71,232 people **per day**.

## The Last Four Digits of the SSN Must Be Redacted And Are The Most Important To Protect

The last four digits of the ssn are the most important and must be protected and redacted and should never be disclosed in litigation in any way.

In fact, I would argue that the last four of the ssn are the **absolute most important** to protect if you consider the social security numbering scheme. As a matter of fact, if anyone on the committee gives me their last four, I can get first three and your second two in less than five minutes with current internet software and just by knowing a few things. As you may know, the first set of three digits is the "area number." This means the first three are assigned by geographical region by Social Security. The "area

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number” is based on the zip code in the mailing address provided on the application for the social security card. Obviously, this takes about ten seconds on Google or social media for me to figure out where you live or what state you were born and get the first three of your ssn.

How can I get your second two digits? First, this is real simple as there are only 99 combinations. Motivated hackers can and will do this. Thus, we now have a full social security number.

### Commercial Software To Get Your First Five Digits

Now, even if I did not know where you lived, with your last four, I can get your first seven digits with just about any commercial internet investigative website. This is not hacker software. This takes less than five minutes. The change to randomize the first three digits did not happen until 2011 which is way too late for most current and future litigants and even with that change, I would argue there simply is no reason for any party to have anyone’s ssn in any litigation because of identity theft.

### Your First Three Digits of Your SSN Are Probably Online Already

Just go to <https://www.ssa.gov/policy/docs/ssb/v45n11/v45n11p29.pdf> and read there. Guess what? **They have the correct first three for my social security number online** in that document which is on Social Security’s website (as you may know, there were only two choices for Mississippi anyway). Thus, a hacker has no reason to need nearly anything else from any other source, i.e., we gave them the last four and now they have the first three. This took me less than thirty seconds to get this on Google.

### Dates of Birth

With the last four of your ssn and a quick check of facebook or some other social media where you and my clients routinely list their date of birth, I can open a bank account, credit card, and do just about anything I want. Thus, the idea of providing just the last four does not make sense if you just use this option by itself (not counting the numerous other ways that take about 5 minutes with a Google search). How about if you do not list your date of birth on social media? No problem, just give me your name and just the city where you currently live and I can get your birthdate on commercially available internet websites.

### Birthdates of Supreme Court Justices

Why is giving out the last four digits of a ssn so dangerous? For example, I Googled our Supreme Court Justices and in five seconds, I got **full birthdates for Justice Kitchens, Justice Maxwell, and Justice Beam**. Again, **I just used Google** and I never used any commercial software to get this information. Thus, the idea that redacting only the first five digits of a ssn protects someone from identity theft simply is wrong.

### Algorithms

Please go to <https://arstechnica.com/science/2009/07/social-insecurity-numbers-open-to-hacking/> and just read how they can get your social security number without even knowing **any of the digits**. Why should we make it easier for them?

**Malpractice For Lawyer To Provide SSN In Filings Or In Response To Any Question In Litigation**

I simply see absolutely no reason to provide any part of anyone's social security number online or even in response to an interrogatory or deposition question. It is dangerous, unnecessary, and in the age of identity theft, it is malpractice for a lawyer to allow his client to provide this information in discovery or any pleading. As to any claim medical providers need this, this is false. The truth is even medical providers do not need your social security number for any reason - they simply get it for collection purposes if you do not pay.

I just gave a small sample of what hackers can do. The hackers are much more sophisticated than what I have outlined here but this should concern all of us.

Finally, after reading all this does anyone want to give me or anyone else the last four of their ssn? I would think not.

I greatly appreciate your consideration in not only requiring redaction of the entire ssn from any document but also we need a rule prohibiting the disclosure of any part of the ssn to any party because there simply is no reason to have it. Moreover, again, I think the Privacy Act already prohibits the disclosure of any part of the ssn. Thank you very much.

Sincerely,



Jay Foster