

NOTICE TO THE BAR

NEW RULE 1:38 — PUBLIC ACCESS TO COURT RECORDS — PERSONAL IDENTIFIERS DEFINED; REDACTION OF PERSONAL IDENTIFIERS; CERTIFICATION OF REDACTION; PROHIBITION ON THE USE OF CERTAIN PERSONAL IDENTIFIERS WHEN MAKING APPLICATION FOR A WRIT, ORDER OR JUDGMENT INVOLVING A JUDGMENT DEBTOR

The Supreme Court adopted new Rule 1:38 on July 16, 2009, to be effective September 1, 2009. Although the new rule expands public access to Judiciary records, it also, among other mandates, imposes certain requirements on attorneys and litigants filing documents with the court in order to safeguard confidential personal identifiers, as defined in new Rule 1:38-7(a). These requirements include:

A. Personal Identifiers Defined

New Rule 1:38-7(a) defines a confidential personal identifier as a Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number.

B. Redaction of Personal Identifiers

New Rule 1:38-7(b) requires attorneys and self-represented litigants to redact confidential personal identifiers from all documents prior to filing, unless provision of the personal identifier(s) is required by statute, court rule, administrative directive or court order. Note, however, that active financial account numbers may be identified by the last four digits when the financial account is the subject of the litigation and cannot otherwise be identified.

It is not the responsibility of court staff to undertake the redaction of confidential personal identifiers when included in pleadings or other documents submitted to the court, nor are staff authorized to reject for filing any documents containing such confidential personal identifiers.

C. Certification of Compliance with Prohibition on Submission of Confidential Personal Identifiers to the Court

Attorneys and self-represented litigants must certify with their first filed pleading that all confidential personal identifiers have been redacted and that subsequent submissions will not contain such identifiers. In any case type in which a Case Information Statement (CIS) is required to be filed with the first pleading (e.g., Civil Part and Foreclosure cases, certain Family docket types, Appellate Division matters), the certification will be

included in the model CIS form itself. In General Equity and Special Civil Part cases, new Rule 1:38-7(c)(2) sets forth the language of the certification to be included within the first filed pleading. In Criminal matters, new Rule 1:38-7(c)(2) provides that the judge will inform the parties at the time of the arraignment status conference that confidential personal identifiers must be redacted from further pleadings and other documents submitted to the court.

Court staff are not authorized to reject for filing first pleadings that do not include the required certification, except that staff may, as now, reject pleadings that are not accompanied by a signed CIS.

D. Prohibition on the Use of Certain Personal Identifiers When Making Application for a Writ, Order, or Judgment Involving a Judgment Debtor

Pursuant to Rule 1:38-7(d), any application for a writ, order, or judgment involving a judgment debtor, including applications made to the Special Civil Part for the issuance of wage and chattel executions, may include the last four digits of active financial account numbers and the last four digits of the judgment debtor's Social Security number. No other confidential personal identifiers (e.g., complete Social Security number, driver's license number, vehicle plate number, insurance policy number, complete active financial account number or complete active credit card number) shall be included in the application. With respect to requests to issue wage and chattel executions in the Special Civil Part, such confidential personal identifiers may be furnished, when needed, by the judgment creditor or the judgment creditor's attorney directly to the Special Civil Part Officer to whom the writ or wage execution order was issued, but the Special Civil Part Officer shall not add such identifiers to the copies of the Notice to Debtor or Affidavit of Levy filed with the court, nor to the copy of the execution returned to the court.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Court

Dated: August 6, 2009