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**In re creation of Wis. Stat. § 801.19,  
relating to protection of information  
in circuit court records**

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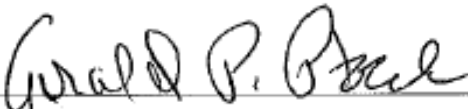
**PETITION  
14-**

The CCAP Steering Committee, a committee of the Director of State Courts Office, hereby petitions the Supreme Court to create Wis. Stat. § 801.19, to provide protection for personal information found in court records and to establish procedures for submission of confidential information, sealing, and redaction. This petition is made pursuant to the court's rulemaking authority under § 751.12 and its administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

The proposed rule addresses several key areas: (1) it defines certain identifiers as "protected information"; (2) it requires parties to redact those identifiers from documents filed after the date of the rule; (3) it requires parties to identify information made confidential by statutes, court rules or case law when submitting it to the court; (4) it clarifies the process for sealing information not covered in (2) or (3); (5) for previously filed documents and transcripts, it provides for redaction only upon motion.

The subject matter of this petition falls within the power of this court to regulate pleading, practice, and procedure in judicial proceedings for the purposes of simplifying the same and promoting the speedy determination of litigation upon its merits. Wis. Stat. § 751.12. Although the procedures established by the rule help ensure that court records do not unnecessarily expose litigants to the risk of identity theft, the rule does not abridge, enlarge, or modify the substantive rights of any litigant. The rule is proposed as part of the code of civil procedure, which may be amended by either court rule or by legislation. Cross-references are added to apply the rule in criminal and juvenile cases and to provide for redaction of transcripts.

Respectfully submitted this 3rd day of Nov., 2014.



Judge Gerald P. Ptacek  
On behalf of the CCAP Steering Committee  
Director of State Courts Office

## TEXT OF THE PROPOSED RULE

801.19 of the statutes is created to read:

**801.19 Protection of information in circuit court records. (1) DEFINITIONS.** In this section:

(a) “Protected information” means any of the following contained in a circuit court record:

1. A social security number.
2. An employer or taxpayer identification number.
3. A financial account number.
4. A driver license number.
5. A passport number.
6. Similar information deemed protected by court order.

(b) “Protected information form” means a form provided by the court under SCR 70.153 for the purpose of submitting information in the manner described by this section.

**(2) REQUIRED REDACTION OF PROTECTED INFORMATION.**

(a) To retain privacy and prevent misuse of personal information, no party shall submit protected information in any action or proceeding in circuit court except in the manner provided by this section, for any document or exhibit filed with the circuit court on or after [*insert effective date of rule*].

(b) Except as provided in par. (c), the parties to the action are solely responsible for ensuring that protected information does not appear on a pleading or other document filed with the court. The court will not review each pleading or document filed by a party for compliance with this section. Protected information that is not properly submitted is accessible to the public to the same extent as the rest of the court record.

(c) A party shall omit protected information from documents filed with the court unless the information is required by law or is material to the proceedings. When protected information is provided to the court, a party shall omit or redact it from any documents filed and provide it to the court subject to all of the following:

1. When submitting a pleading or other original document, a party shall omit the protected information from the document. Protected information formatted as a string of digits may be identified by providing the last four digits, in a manner that indicates that information has been redacted. If the protected information is necessary to the action, the party shall submit it separately on the protected information form.
2. When submitting an exhibit or other previously existing document, a party shall redact all protected information from a copy of the document. Protected information formatted as a string of digits shall be obscured except for the last four digits. If the protected information is necessary to the action, the party shall submit it separately on the protected information form.

The party shall submit the redacted copy for the public case file and attach an unredacted copy to the protected information form.

3. If redaction of a document is impracticable, the document may be attached to the protected information form without redaction. Any disagreement as to proper redaction of protected information shall be decided by the court.

(d) The protected information form and attachments are not accessible to the public, even if admitted as a trial or hearing exhibit, unless the court permits access.

(e) In actions affecting the family, protected information may be submitted together with the information protected by ss. 767.215 and 767.127.

(f) A party waives the protection of this section as to the person's own information by filing it without the protected information form. If a party fails to comply with the requirements of this section, the court may, upon motion or its own initiative, seal the improperly filed documents and order new documents to be prepared. If a party fails to comply with the requirements of this rule in regard to another individual's protected information, the court may impose reasonable expenses, including attorney fees and costs, or sanction the conduct as contempt.

(g) The court shall not include protected information in documents generated by the court, including judgments, orders, decisions, and notices, except in the manner provided in par. (c). Notwithstanding this section, protected information may be referred to in open court to the extent deemed necessary by the court and may be taken down by the court reporter as part of the record.

(h) 1. Protected information shall be accessible to the parties, their attorneys, guardians ad litem appointed to the case, judicial officers, and court staff as assigned, unless otherwise ordered by the court. Access to other persons and agencies shall be allowed as provided by law. The parties may stipulate in writing to allow access to protected information to any person.

2. Any person may file a motion for access to protected information for good cause. Written notice of the motion to all parties shall be required.

3. If the person seeking access cannot locate a party to provide the notice required under this section, an affidavit may be filed with the court setting forth reasonable efforts to locate the party and requesting waiver of the notice requirement. The court may waive the notice requirement if the court finds that further efforts to locate the party are not likely to be successful.

(i) On appeal, if the record assembled under s. 809.15 (1) (c) includes the redacted version of any document, it shall also contain the unredacted version. The unredacted version shall be marked as confidential. Confidential paper documents shall be submitted in a sealed envelope.

**(3) WHEN DOCUMENTS MAY BE FILED AS CONFIDENTIAL.**

The Director of State Courts shall maintain a list of commonly-filed documents made confidential by statutes, court rules and case law, and shall make this list publicly available. Documents on the list may be submitted by a party without a motion or court order and will be automatically treated by the court as confidential. The filing party is responsible for properly identifying the document as confidential at the time it is filed. The court is not required to review documents to determine if the documents are confidential in nature.

**Comment.**

Confidentiality of court documents is often an area of confusion for the public, lawyers, and court-related professionals. This problem can be addressed by publishing a list of commonly-filed documents that the court will automatically treat as confidential without a motion because they are protected by statutes, court rules or case law. The filing party must properly identify the document at the time it is filed. Court staff are not required to review documents to determine confidentiality.

**(4) SUBMITTING DOCUMENTS UNDER SEAL.**

(a) A party seeking to protect a court record not listed under sub. (3) shall file a motion to seal the document or specific information in the document. The motion must be served on all parties to the action. The filing party shall specify the authority for asserting that the information should be restricted from public access. The information to be sealed or redacted may be filed under a temporary seal, in which case it shall be considered sealed until the court rules on the motion.

(b) The court may conduct a hearing on a motion to seal a court record. The court may require that the moving party provide notice to the general public by posting information at the courthouse or other location, including the time, date, and location of the hearing.

(c) The court shall determine whether there are sufficient grounds to prohibit public access according to applicable constitutional, statutory, and common law. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requester. The court may order that a document be redacted in the manner provided under sub. (2) (c). If the court seals or redacts information, the public record shall contain at least the court order and the name of the person who filed the motion.

(d) Documents filed subsequent to the sealing order that are subject to the order must be so identified by the filing party.

(e) On appeal, if the record assembled under s. 809.15 includes a sealed document, the sealed document shall be marked as confidential. Sealed paper documents shall be submitted in a sealed envelope.

**Comment**

This rule is intended to define the procedural prerequisites for filing of documents under seal. This rule is not intended to expand or limit the confidentiality concerns that might justify special treatment of any document. The rule is intended to make it clear that filing

parties do not have the unilateral right to designate any filing as confidential and that permission from the court is required. This permission may flow from a statute or rule explicitly requiring that a particular document or portion of a document be filed confidentially or from an analysis of the facts of the case and the applicable law.

**(5) REDACTION OF PREVIOUSLY FILED DOCUMENTS.**

(a) This section does not require any party, attorney, clerk, or judicial officer to redact protected information that was filed prior to [*insert effective date of rule*].

(b) For documents filed prior to [*insert effective date of rule*], a person affected may by motion request that protected information in a circuit court file be redacted as provided in this section, using a form approved by the court for this purpose. The moving party shall identify every place in the court record where the information to be protected is located. The protected information shall be submitted on or attached to a protected information form as provided in sub. (2).

(c) If the motion is granted, the clerk of circuit court or register in probate shall redact the information from the record at the places identified by the party. The clerk or register is not responsible for making any other redaction. The moving party shall be responsible for verifying that the redaction is complete as requested. Replacement documents shall not be submitted to the court.

(d) The redacted version of the record shall be accessible to the public to the same extent as the rest of the court record. The information submitted on or attached to the protected information form shall not be accessible to the public and the original unredacted document shall be sealed. The clerk of circuit court or register in probate may certify the redacted record as a true copy of an original record on file with the court.

(e) The judge or court commissioner may, on his or her own initiative, order redaction of protected information in the same manner.

(f) The clerk of circuit court or register in probate may redact an individual's social security number and passport number upon the written request of that individual. All other requests for redaction of information already filed must be determined by a judge or court commissioner.

**(6) REDACTION OF TRANSCRIPTS.**

(a) Within 30 days of the time a transcript is filed with the circuit court, a person affected may file a motion with the circuit court to redact protected information or to seal information in the transcript. The moving party shall identify by page and line every place in the transcript where the protected information or information to be sealed is located. The information shall be submitted on or attached to a protected information form as provided in sub. (2). The unredacted transcript shall be publicly available while the motion and redaction are pending unless otherwise provided by law or court order. The court may order redaction or sealing after the 30-day period for good cause shown.

(b) Upon court order, the court reporter shall, without charge, redact the protected information or seal a portion of the transcript in accordance with the court order and directives established by the director of state courts office. The court reporter shall file the complete redacted version of the transcript with the circuit court and shall send a notice of transcript redaction to the parties within 20 days of receiving the court order. The court reporter is not required to provide a paper copy of the redacted version of the transcript to registered users of the electronic filing system under s. 801.18. The court reporter shall provide a redacted copy of the transcript, without charge, upon the request of a party not registered to use the electronic filing system. If the page numbers of the transcript do not change after redaction, only replacement pages may be provided.

(c) The redacted version of the transcript shall be accessible to the public to the same extent as the rest of the court record. The original unredacted transcript shall be sealed.

(d) The court reporter shall certify the transcript under SCR 71.04 by stating that the redacted version is a verbatim transcript of the proceedings from which protected information has been redacted, as provided in this rule and ordered by the circuit court. The protected information form and the unredacted transcript may be included with the record on appeal if the information is material to the appeal or otherwise required by law. The protected information and unredacted transcript shall be marked as confidential; paper documents shall be submitted in a sealed envelope.

(e) Except as provided in this section, a court reporter is not required to redact protected information from any transcript of a circuit court proceeding.

**Cross-references:**

971.027 of the statutes is created to read:

**971.027 Protected information.** In criminal cases, a party submitting documents or exhibits containing protected information as defined in s. 801.19 (1) shall submit them in the manner provided in that section.

48.396 (2) (ad) of the statutes is created to read:

48.396 (2) (ad) **Protected information.** In proceedings under this chapter and ch. 938, a party submitting documents or exhibits containing protected information as defined in s. 801.19 (1) shall submit them in the manner provided in that section.

938.396 (2) of the statutes is renumbered 938.396 (2) (a).

938.396 (2) (b) of the statutes is created to read:

938.396 (2) (b) **Protected information.** In proceedings under this chapter and ch. 48, a party submitting documents or exhibits containing protected information as defined in s. 801.19 (1) shall submit them in the manner provided in that section.

**SCR 71.04(13) is created to read:**

**SCR 71.04 (13)** A court reporter may certify a transcript that has been redacted in accordance with s. 801.19, stats., by stating that the redacted version is a verbatim transcript from which protected information has been redacted in accordance with that rule and as ordered by the circuit court. The court reporter shall file the complete redacted version of the transcript with the circuit court and shall send a notice of transcript redaction to the parties. The court reporter is not required to provide a paper copy of the redacted version of the transcript to registered users of the electronic filing system. The court reporter shall provide a redacted paper copy of the transcript, without charge, upon the request of a party not registered to use the electronic filing system. If the page numbers of the transcript do not change after redaction, only replacement pages may be provided.