

June 21, 2013

The Honorable Robert M. Bell,
Chief Judge

The Honorable Glenn T. Harrell, Jr.

The Honorable Lynne A. Battaglia

The Honorable Clayton Greene, Jr.

The Honorable Sally D. Adkins

The Honorable Mary Ellen Barbera,

The Honorable Robert N. McDonald

Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Seventy-Ninth Report and recommends that the Court adopt, on an emergency basis, the amendments to Rule 1-322.1 and a new Rule 1-322.2 transmitted with this Report.

After an open hearing on April 18, 2013, the Court adopted Rule 1-322.1, which was part of the Rules Committee's One Hundred Seventy-Sixth Report transmitting the MDEC Rules. That Rule, derived from Fed. R. Civ. P. 5.2 and similar Rules in other States, generally precludes certain identifier information from being placed in paper or electronic filings unless required by law or permitted by court order. Although transmitted with the MDEC Rules, it is not one of them, but is a stand-alone Title 1 Rule that will apply in all courts immediately upon its effective date, July 1, 2013.

Shortly after the Court adopted that Rule, the Committee received communications from the Administrative Office of the Courts (AOC) and from the House of Ruth requesting certain immediate changes. The AOC advised that (1) AOC and the Circuit Court clerks were concerned that the Rule might be construed as applying to land records, which they did not want, and (2) the

clerks felt it was important that filings in non-MDEC counties contain the same kind of certificate of compliance with Rule 1-322.1 that Rules 20-201(f) (1) (B) and 20-106 (d) (1) and (2) require of filings (whether paper or electronic) in MDEC counties-- i.e., that the certificate requirement be the same and that the clerks in non-MDEC counties have the same authority to reject filings not containing the certificate as they will have to reject filings under MDEC that do not contain the required certificate.

The House of Ruth expressed concern over the preclusion of birth dates, other than those of a defendant in a charging document. Its representative advised that a protective order needs to include the respondent's date of birth in order for it to be registered with the National Crime Information Center, which may be important both in terms of serving the respondent and enforcing the order, and that the birth date therefore also needed to be included as part of the petition.

Others present at the meeting expressed concerns about the absence of birth dates in other types of actions, such as proceedings pertaining to child custody and child support.

The Rules Committee considered those concerns and desires at its open meeting on June 20, 2013. Based on the presentations, the Committee approved and recommends to the Court:

(1) a new section (a) to Rule 1-322.1 making clear that the Rule applies only to pleadings and papers filed by a person, other than a judge or judicial appointee, in an "action" -- a defined term in Rule 1-202 (a) -- and not to administrative records, business license records, or notice records, as defined in Rule 16-1001;

(2) a Committee note to section (a) advising judges and judicial appointees to be cognizant of the purpose of the Rule and to refrain from including personal identifier information in their filings unless necessary;

(3) adding a cross reference to two statutes that preclude certain personal information from being included in recordable instruments or posted on an Internet website;

(4) in section (b), deleting the restriction on including dates of birth; and

(5) permitting the inclusion of the personal identifiers listed in section (a) when required to implement a court order.

Upon the evidence presented, the Committee also recommends a new Rule 1-322.2, which would provide the uniformity requested by

the clerks with respect to certifying compliance with the requirements of Rule 1-322.1. It is important to note that the category of exclusions under MDEC is broader than that under Rule 1-322.1. The uniformity is in the method of assuring compliance with the applicable requirements; *i.e.*, requiring a certificate of compliance and permitting the clerks to reject a filing that does not contain the certificate.

Because Rule 1-322.1 is due to take effect July 1, 2013, the Committee recommends that the amendments to that Rule transmitted with this Report, to the extent approved by the Court, take effect as soon thereafter as possible. That is why it is being transmitted as an emergency measure. Rule 1-322.2 is closely tied to Rule 1-322.1, which is why it is submitted in this Report, but there is not the same urgency in requiring a certificate of compliance in every paper filing and authorizing clerks to reject filings not containing the certificate. Rule 1-322.2 has not been submitted for public comment. The Committee believes that it would be useful for the Court to adopt the Rule contemporaneously with the changes to Rule 1-322.1, but to give a grace period of a year and have Rule 1-322.2 apply only to filings on or after July 1, 2014, which is approximately when the MDEC Rule is scheduled to be fully implemented in Anne Arundel County. That will give attorneys and other potential filers an ample opportunity to become aware of the requirement before it actually takes effect.

For the further guidance of the Court and the public, following the proposed amendments to Rule 1-322.1 and proposed new Rule 1-322.2 is a Reporter's note describing in further detail the reasons for the proposals. *We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc

cc: Hon. Robert A. Zarnoch
Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322.1 to clarify its applicability, to add a Committee note, to add a cross reference, to delete references to birth dates, to permit the filing of personal identifier information required to implement a court order, to correct internal references, and to make stylistic changes, as follows:

Rule 1-322.1. EXCLUSION OF PERSONAL IDENTIFIER INFORMATION IN COURT FILINGS

(a) Applicability

This Rule applies only to pleadings and other papers filed in an action on or after July _____, 2013 by a person other than a judge or judicial appointee. The Rule does not apply to administrative records, business license records, or notice records, as those terms are defined in 16-1001 (a).

Committee note: Although not subject to this Rule, judges and judicial appointees should be aware of the purpose of the Rule and refrain from including personal identifier information in their filings, unless necessary.

Cross reference: For the definition of "action," see Rule 1-202. For the prohibition against including certain personal information on recordable instruments, see Code, Real Property Article, §3-111. For the prohibition against publicly posting or displaying on an Internet Website certain personal information contained in court records, including notice records, see Code, Courts Article, §1-205.

~~(a)~~ (b) Generally

~~Unless~~ Except as otherwise provided in this Rule, required

by law, ~~or~~ permitted by court order, or required to implement a court order, the following personal identifier information shall not be included in any electronic or paper filing with a court:

(1) an individual's Social Security number, or taxpayer identification number, ~~or date of birth~~; or

(2) the numeric or alphabetic characters of a financial or medical account identifier.

~~(b)~~ (c) Exceptions

Unless otherwise provided by law or court order, section ~~(a)~~ (b) of this Rule does not apply to the following:

(1) a financial account identifier that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; or

(2) the record of an administrative agency proceeding; or

~~(3) in a charging document, the date of birth of the defendant; or~~

~~(4) a court record filed prior to July 1, 2013.~~

~~(c)~~ (d) Alternatives

If, by reason of the nature of the action, it is necessary to include in a filing personal identifier information described in section ~~(a)~~ (b) of this Rule, the filer may:

(1) include in the filing only the last four digits of the Social Security or taxpayer identification number, ~~the year of the individual's birth~~, or the last four characters of the financial or medical account identifier, unless that identifier consists of fewer than eight characters, in which event all

characters shall be redacted;

Committee note: Financial accounts include credit and debit card accounts, bank accounts, brokerage accounts, insurance policies, and annuity contracts. PIN numbers or other account passwords also may need to be redacted, as well as health information identifiers.

(2) file the unredacted document under seal, if permitted by order of court;

(3) if the full information is required to be provided only to another party or to a court official, other than a judge or judicial appointee, provide the information separately to that party or official and file only a certificate that the information has been so provided;

Committee note: It may be necessary to provide personal identifier information to a court official, including a clerk, sheriff, or constable, in order for that official to send or serve notices, summonses, or other documents. Subsection ~~(c)(2)(A)~~ (d)(3) of this Rule is not intended to permit *ex parte* communications with a judge.

(4) if the full information is required to be in the filing and the filing is a paper filing, file the paper in duplicate, one copy with the information redacted as required by section ~~(a)~~ (b) of this Rule and one copy without redaction, together with instructions to the clerk to shield the unredacted copy in conformance with the Rules in Title 16, Chapter 1000; or

(5) if the full information is required to be in the filing and the filing is electronic, designate, in conformance with the applicable electronic filing requirements, the information to be redacted or shielded for purposes of public access.

Cross reference: See Rule 20-201.

~~(d)~~ (e) Protective Orders

For good cause, the court may, by order, in a case:

- (1) require redaction of additional information; and
- (2) limit or prohibit a nonparty's remote electronic access

to a document filed with the court.

Committee note: Other than remote access to docket entries, nonparties currently do not have remote access to documents filed with the court, except under certain limited circumstances, such as in asbestos-related litigation.

~~(e)~~ (f) Non-conforming Documents

- (1) Waiver

A person waives the protection of section ~~(a)~~ (b) of this Rule as to the person's own information by filing it without redaction and not under seal.

- (2) Sanctions

If a person fails to comply with this Rule, the court on motion of a party or on its own initiative, may enter any appropriate order.

Committee note: This Rule does not affect the discoverability of personal information.

Source: This Rule is in part derived from Fed. R. Civ. P. 5.2 (2007) and is in part new.

REPORTER'S NOTE

The effective date of new Rule 1-322.1 is July 1, 2013. Court administrators and clerks preparing to implement the Rule have different interpretations of it. To clarify the Rule, amendments have been drafted, and are proposed to be adopted on an emergency basis.

The amendments make clear that the Rule applies only to pleadings and other papers filed in an action other than by a

judge or judicial appointee. A cautionary Committee note directed to judges and judicial appointees follows proposed new section (a).

2010 Md. Laws, Chapter 452 contains several statutory prohibitions against disclosure of certain personal information that are applicable to court records. A cross reference to two Code provisions included in Chapter 452 -- Code, Real Property Article, §3-111 [prohibiting inclusion of certain personal information on recordable instruments] and Code, Courts Article, §1-205 [prohibiting posting or displaying on an Internet Website certain personal information contained in court records] -- is proposed to be added to the Rule.

At its June 2013 meeting, the Committee was asked to reconsider the Rule's provisions concerning dates of birth. As adopted, the Rule generally precludes, with limited exceptions, the inclusion an individual's date of birth in a court filing. Because dates of birth are believed to be needed for various reasons in numerous types of cases -- such as statutory rape prosecutions, child custody and support actions, guardianships, adoptions, and domestic violence proceedings -- the Committee recommends the deletion of the prohibition against including dates of birth in a filing.

Additionally, internal references are corrected and amended to conform to changes to the Rule.

Rule 1-322.1 contains a "sanctions" provision [subsection (e) (2), relettered (f) (2)] that addresses noncompliance with the Rule. It is a policy question whether there should be an additional enforcement mechanism similar to the "proof of service" enforcement mechanism of Rule 1-323.

Proposed new Rule 1-322.1 has been drafted to provide such a mechanism, and the Committee recommends its adoption.

Rule 1-322.2 requires that every pleading or paper filed in an action on or after July 1, 2014 contain a certificate of compliance with Rule 1-322.1 or, if applicable, Rule 20-201 (f) (1) (B). If there is no such certificate, the clerk must refuse to accept the pleading or paper.

Rule 1-322.2 applies not only to pleadings and papers filed by a party but also to papers, such as a court-ordered reports, that are filed in an action by nonparties.

The Committee recommends that Rule 1-322.2 be adopted with a delayed effective date -- July 1, 2014, to allow time for attorneys, clerks, and members of the public to learn about the

Rule and prepare for its implementation. The recommended delayed effective date also is needed to allow time for forms, such as District Court forms, to be revised to include the necessary certificate.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-322.2, as follows:

Rule 1-322.2. CERTIFICATE OF EXCLUSION OF PERSONAL
IDENTIFIER INFORMATION

(a) Certificate Required

Every pleading or paper filed an action on or after July 1, 2014 shall contain either:

(1) a certificate of compliance with Rule 1-322.1 that is signed by an individual who is (A) the party filing it or an attorney for the party, or (B) if the paper is filed by a nonparty, the person filing it or the person's attorney, employee, or agent; or

(2) in an affected action under Title 20 of these Rules, a certificate that complies with Rule 20-201 (f) (1) (B).

Cross reference: For the definition of "affected action," see Rule 20-101.

(b) Action by Clerk

The clerk shall not accept for filing any pleading or other paper requiring a certificate under section (a) of this Rule unless the pleading or paper contains the certificate.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 1-322.1.