

CONSUMER DATA PRIVACY AND BANKRUPTCY: EVERYTHING YOU NEED TO KNOW ABOUT PERSONAL IDENTIFIABLE INFORMATION (PII)

Bench and Bar Committee
Lunch and Learn
September 16, 2019



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Disclaimers?

WHAT IS PII?

11 U.S.C. § 101(41A)

- Any name or part of name
- Address of residence
- Email address
- Telephone number
- Social Security number
- Credit card account number
- Birth date
- Place of birth

[illegible]

WHY DO WE CARE?

- Legal Compliance
- Privacy Concerns

Improper disclosure of PII can lead to adverse consequences to the person whose information was disclosed (such as identity theft) and to possible repercussions under Bankruptcy and non-Bankruptcy Law to the party that improperly disclosed the information.

Bankruptcy Rule 9037

(a) Redacted filings. Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may 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 initials; and
- (4) the last four digits of the financial-account number.

Must redact PII
when filing in CM/ECF,
with some limited exceptions

CM/ECF Filer or PACER Login

Notice

This is a **Restricted Web Site** for Official Court Business only. Unauthorized entry is prohibited and subject to prosecution under Title 18 of the U.S.

Instructions for viewing filed documents and case information:

If you do not need filing capabilities, enter your PACER login and password. If you do not have a PACER login, you may register online at <http://www.pacer.uscourts.gov>

Instructions for filing:

Enter your CM/ECF filer login and password if you are electronically filing something with the court.

Authentication

Login:
Password:
Client code:

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or compliance with [Fed. R. Bankr. P. 9037](#). This requirement applies to all documents, including attachments.

☐ I understand that, if I file, I must comply with the redaction rules. I have read this notice.

Login Clear

Notice

An access fee of \$0.10 per page or \$2.40 per document with an audio attachment, as approved by the Judicial Conference of the United States, will be Service Center at (800) 676-6856.

CM/ECF has been tested using Firefox and Internet Explorer 11.

BANKRUPTCY RULE 9037, CONT.

Protective Orders

(d) Protective orders. For cause, the court may by order in a case under the Code:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.



UPCOMING CHANGES TO RULE 9037

On December 1, Rule 9037 will include a new subdivision (h):

- Addresses procedures for redacting personal identifiers
- Requires that public access to the Motion to Redact Personal Identifiers be restricted
- Requires that public access to the unredacted document be restricted when the Motion to Redact is filed

UPCOMING CHANGES TO RULE 9037(h)

(h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT.

(1) *Content of the Motion; Service.* Unless the court orders otherwise, if an entity seeks to redact from a previously filed document information that is protected under subdivision (a), the entity must:

- (A) file a motion to redact identifying the proposed redactions;
- (B) attach to the motion the proposed redacted document;
- (C) include in the motion the docket or proof-of-claim number of the previously filed document; and
- (D) serve the motion and attachment on the debtor, debtor's attorney, trustee (if any), United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

(2) *Restricting Public Access to the Unredacted Document; Docketing the Redacted Document.* The court must promptly restrict public access to the motion and the unredacted document pending its ruling on the motion. If the court grants it, the court must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies it, the restrictions must be lifted, unless the court orders otherwise.

11 U.S.C. § 107

Filing Under Seal

- Only appropriate in very limited circumstances
- Public policy favors case documents being a matter of public record



The background of the slide features a collage of tax forms. A W-2 form is visible in the upper left, with the text 'City' and 'Copy 2 to be filed with employer' clearly legible. Below it, a 1040 form is partially visible, showing the number '1040' and the text 'U.S. Individual Income Tax Return'. The forms are slightly blurred and overlapping, creating a sense of depth.

AVOIDING PII ISSUES

Where is PII often found?

- Tax returns and other official forms
- Contracts and other exhibits and attachments
- In pleadings and proofs of claim

AVOIDING PII ISSUES, CONT.

Office procedures:

- Segregate PII in your office
- Restrict access to those employees that need to see it






AVOIDING PII ISSUES, CONT.

Redact, Redact, Redact!

- Old school
 - *Opaque* permanent marker or tape on paper document prior to scanning
- Electronically
 - PDF tools
 - Dedicated redaction software
 - Watch for metadata!
 - Be sure to flatten!
 - Reference redaction resources on court's website

IMPROPER REDACTIONS



ABC Company
1 Anytown Street
Atlanta, GA 30003

Pay Advice

John Doe
100 Yellow Brick Rd.
Atlanta, GA 30003

Employee Number: 2230324
Enter date: 5/10/19
Social Number:

Description	Hours	Current	YTD
Paid Gross Wages	80.00	2100.00	19943.25
Total Deductions		433.56	5629.68
TOTAL NET:		1666.44	14313.57

This document was redacted using the Edit PDF tool in Adobe. The social security number is covered by the red box above. The document is ready for filing....

IMPROPER REDACTIONS



ABC Company
1 Anytown Street
Atlanta, GA 30003

Pay Advice

John Doe
100 Yellow Brick Rd.
Atlanta, GA 30003

Employee Number: 2230324
Enter date: 5/10/19
Social Number: 000-00-0000

Description	Hours	Current	YTD
Paid Gross Wages	80.00	2100.00	19943.25
Total Deductions		433.56	5629.68
TOTAL NET:		1666.44	14313.57

To flatten a document:

File →

Print →

Select Adobe PDF as printer →

Click OK →

Save document as a PDF

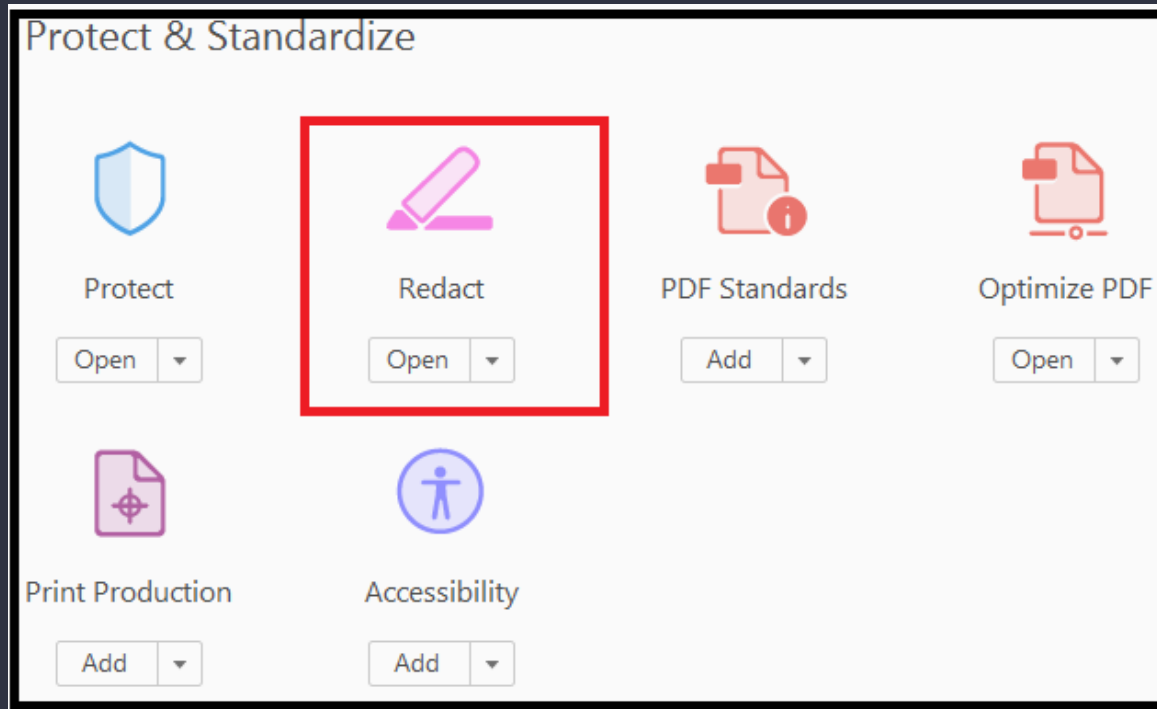
.....NO! IT IS NOT READY FOR FILING!

The redacting box can be lifted away to reveal the full social security number!

To prevent the redacting box or other object from being lifted away from the personal identifier, the document **MUST** be flattened prior to filing.

BEST PRACTICE FOR REDACTING PERSONAL IDENTIFIERS

- Use The Redact Tool In Adobe
 - ✓ No document flattening required



ABC Company
1 Anytown Street
Atlanta, GA 30003

Pay Advice

John Doe
100 Yellow Brick Rd.
Atlanta, GA 30003

Employee Number: 2230324
Enter date: 5/10/19
Social Number: [REDACTED]

Description	Hours	Current	YTD
Paid Gross Wages	80.00	2100.00	19943.25
Total Deductions		433.56	5629.68
TOTAL NET:		1666.44	14313.57

WHAT TO DO IF PII FILED IN ERROR

- Withdrawing the offending document does not correct the problem!
- Motion for Protective Order
- Motion to Redact
- Reference CM/ECF online procedure manual
- Once filed, damage is done, but take steps to mitigate quickly
- Possible non-bankruptcy law liability, disclosure requirements



CLERK'S OFFICE AND JUDICIARY POLICY

- It is the policy of the Judiciary to protect private information in case filings, including those that are publicly available via electronic public access.
- The Clerk's Office is not required to review documents filed with the court for compliance with Bankruptcy Rule 9037. But, if the Clerk's Office does identify unredacted personal identifiers in a document, the filer will receive an email or phone call advising them of the unredacted document.
- It is the filer's responsibility to redact the document and file the Motion to Redact Personal Identifiers.
- The Motion to Redact Personal Identifiers should be used to redact the personal identifiers outlined in Rule 9037(a).

PREPARING THE MOTION TO REDACT

Identify the proposed redactions and include:

- The docket or proof of claim number of the unredacted doc(s);
- A Certificate of Service showing service on:
 - ❖ Debtor
 - ❖ Debtor's attorney
 - ❖ Trustee
 - ❖ U.S. Trustee
 - ❖ The individual whose PII is to be redacted (if not the debtor)
 - ❖ The filer of the unredacted document
- The full redacted document as an attachment
- \$25 filing fee
 - ❖ The fee is for each motion filed, not for each document
 - ❖ The motion can include multiple requests to redact different documents filed within the same case

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

In re Chapter
Debtor Case No.

MOTION TO REDACT PERSONAL IDENTIFIERS

Case is the individual's interests of certain personal identifiers pursuant to Bankruptcy Code §§ 101(a)(6) and 541(c)(2), and Bankruptcy Rule 9037.

[Plaintiff] respectfully requests that the Court enter an order: (1) directing the Clerk of Court to instruct public access to [Plaintiff's] Case on [Date];

[Plaintiff] and (2) directing [Plaintiff] to remove the document with personal identifiers contained as required by Bankruptcy Rule 9037. This Motion is accompanied by the required \$25 filing fee.

Dated: Respectfully Submitted,
s/ _____

NOTE: No e-Order upload required with a Motion to Redact Personal Identifiers unless the redaction is for PII's other than under Rule 9037(a)

DOCKETING THE MOTION

Bankruptcy Events → Motions/Applications → Redact Personal Identifiers (FEE), Motion to

- Remind staff – the check box stating you must comply with redaction rules has a purpose – to remind you to check documents for redactions BEFORE filing.
 - Save time for both the filer and the court
 - Save money
 - Prevent any issues with personal identifying information getting in the wrong hands

This screenshot shows a login interface with three input fields: 'Login:', 'Password:', and 'Client code:'. To the right of these fields is a text area containing an 'IMPORTANT NOTICE OF REDACTION RESPONSIBILITY'. The notice states that all filers must redact Social Security or taxpayer-identification numbers, dates of birth, names of minor children, and financial account numbers, in compliance with Fed. R. Bankr. P. 9037. Below the notice is a checkbox with the text 'I understand that, if I file, I must comply with the redaction rules. I have read this notice.' The checkbox is currently unchecked. At the bottom left are 'Login' and 'Clear' buttons.

Authentication

Login:

Password:

Client code:

☐ I understand that, if I file, I must comply with the redaction rules. I have read this notice.

Login Clear

- The redacted document(s) should be attached at this screen during the docketing process –

This screenshot shows a document attachment screen. At the top, a red banner reads 'STOP! You MUST submit the complete redacted document below as a SEPARATE attachment to this Motion by selecting - [Attachment to Document: Yes]'. Below this is a 'Filename' label followed by a text input field and a 'Browse...' button. Underneath is a label 'Attachments to Document:' followed by two radio buttons: 'No' and 'Yes'. The 'Yes' radio button is selected, and a blue arrow points to it. At the bottom are 'Next' and 'Clear' buttons.

STOP! You MUST submit the complete redacted document below as a SEPARATE attachment to this Motion by selecting - [Attachment to Document: Yes]

Filename Browse...

Attachments to Document: ☐ No ☒ Yes

Next Clear