



U.S. Department of Justice

Office of the United States Trustee

*Districts of Maine, Massachusetts,
New Hampshire and Rhode Island*

537 Congress Street, Suite 300
Portland, ME 04101
Tel: 207-780-3564

January 17, 2020

Debtor's Counsel, Esq.
Mailing address

VIA EMAIL: Debtor's Counsel email address

Re: Rule 9037-1 of the Local Rules of the United States Bankruptcy Court for the District of *** – Privacy Protection for Filings Made with the Court**

Dear Attorney *****,

This letter is in response to recent filings made by your Office, **in Case No. *-***** – Debtor's last name**, in which certain personal and private information pertaining to your clients ("personal identifiers") was disclosed to the public and which public disclosures are in violation of certain applicable Rules specifically Description of PII disclosed. We write to make you aware of the applicable Rules governing privacy protection for filings made with the United States Bankruptcy Court and to provide you with the information you require to ensure that these issues do not arise in your practice again.

Rule 9037 of the Federal Rules of Civil Procedure requires the redaction of specific personal identifiers (i.e., social security and taxpayer identification numbers, names of minor children, dates of birth, and financial account numbers), from any unsealed documents filed with the United States Bankruptcy Court. The party and/or counsel to the party filing the unsealed document is responsible for ensuring compliance with this Rule. For a complete discussion of this Rule, please see the attached Memorandum from *****, Assistant United States Trustee for the District of ***** (attached as Exhibit A hereto).

Recently, the United States Bankruptcy Court for the District of ***** enacted Local Rule 9037-1, which details how a movant should redact personal identifiers from a Court filing. A copy of Rule 9037-1 of the Local Rules for the United States Bankruptcy Court for the District of ***** is attached as Exhibit B for ease of reference.

These Rules are intended to help mitigate the incidences of identity theft resulting from the general public's access to legal documents which are a matter of public record. See 11 U.S.C. § 107(a). Practitioners are expected to comport their practice in compliance with these Rules.

Please notify us by return email to *****@usdoj.gov of your timeframe for resolving these issues. If you have any questions, I can be reached at (***) ***-****.

Sincerely yours,

Trial Attorney
Office of the U.S. Trustee



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MEMORANDUM: Rule 9037 - Privacy Protection for Filings Made with the Court

Dear Attorney:

We are writing because in recent filings made by your office, information pertaining to your client, which should be private, has been disclosed.

A. **Private Information**

Rule 9037 of the Federal Rules of Bankruptcy Procedure went into effect on December 1, 2007. Adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Rule 9037 addresses privacy and security concerns arising from filing documents, whether electronically or in paper format, in a bankruptcy case.

Specifically, Rule 9037 requires the redaction of specific personal identification information (i.e., Social Security and taxpayer identification numbers, names of minor children, financial account numbers, and dates of birth) from unsealed documents filed with the court, as well as other private or sensitive information identified by the court for cause. Since the clerk of the court is not required to determine whether documents filed with the court comply with the new rule, entities filing documents with the court bear full redaction responsibility.

Rule 9037 implements section 107(c) of the Bankruptcy Code. Enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, section 107(c) permits a court, for cause, to issue protective orders to prevent the disclosure of information and means of identification that would create an undue risk of identity theft or unlawful injury to an individual or his or her property. See 11 U.S.C. § 107(c).

The objective of section 107(c) and Rule 9037 is to prevent identity theft by avoiding the disclosure of personal information in documents filed with the bankruptcy court.

Effective January 1, 2008, the Executive Committee of the Judicial Conference approved amendments to Official Bankruptcy Form No. 1, the voluntary petition. The amendments make the official form consistent with Rule 9037 by requiring debtors to redact individual taxpayer identification numbers and Social Security numbers. Pursuant to Rule 1007(f), individual debtors are required to file Official Form No. 21, the statement of Social Security number. Because this form is submitted but not "filed" in the case, it does not become part of the official court record or the electronic case record accessible through the Internet. The clerk may insert the Social Security number on the copy of the notice of the section 341(a) meeting that is sent to creditors, as required under Fed. R. Bankr. P. 2002(a)(1), but the copy of the notice inserted in

**EXHIBIT
A**

the case file does not contain the debtor's Social Security number. See 2003 Advisory Comm. Note to Fed. R. Bankr. P. 2002.

B. Redaction Requirements

With respect to the practical application of Rule 9037, Information concerning bank and financial account statements, credit card and loan records, pay advices, tax returns, business records, invoices, information showing the debtor's ability to pay creditors, or other personal identification information contained in any of these filings or their attachments or exhibits, should be redacted in accordance with Rule 9037.

Rule 9037 applies to all cases, whether filed by individuals or non-individuals. However, the redaction requirement pertains specifically to the personal identification information of individuals. "Personal identification information," as used in section 107(c) and Rule 9037, is different from "personally identifiable information" defined in section 101(41A), and as used in sections 332 and 363(b). Thus, by way of example, in a corporate case, if a document to be filed contains an individual's personal information, that information would need to be redacted.

C. Remedial Action

Rule 9037 does not address ramifications for lack of compliance. However, where an entity files an unsealed document that mistakenly includes unredacted personal identification information, it may "seek relief" from the court. See 2007 Advisory Comm. Note to Fed. R. Bankr. P. 9037. Given the recent enactment of Rule 9037, case law on what constitutes relief has yet to be developed, but courts are likely to respect the need to protect the personal identification information of individuals in accordance with Rule 9037, whether prospectively or retroactively. See, e.g., In re Throw, No. 05-30432, 2007 WL 4468650, n.7(W.D. Wash. Dec. 14, 2007)(recognizing objective of Rule 9037 to alleviate debtor concerns regarding disclosure of private information, including personal financial information, in bankruptcy filings).

1. Documents Redacted for Cause

Under Rule 9037(d), a court may, for cause, issue a protective order, whether *sua sponte* or by motion of a party in interest, for the redaction of information, including personal identification information not enumerated in Rule 9037(a). Examples of such additional information might include the "means of identification" referenced in section 107(c) of the Bankruptcy Code and defined in section 1028(d) of title 18. "Means of identification" include, but are not limited to, any name or number that can be used by itself or in conjunction with other information, to identify and individual. Such information includes:

- (A) name, Social Security number, date of birth, driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;
- (B) fingerprint, voice print, retina or iris image, or other physical representations;
- (C) electronic identification number, address, or routing code; or
- (D) telecommunication identifying information to access device permitting account access for purposes of receiving money, goods, services, or anything of value, or to transfer funds.

2. Documents with Limited or Prohibited Non-Party Access

While not specifically a redaction requirement, under Rule 9037(d), a court may issue a protective order to limit or prohibit a non-party's remote electronic access to a document filed with the court. A court may issue such a protective order to prevent remote access where the document contains private or sensitive information.

We appreciate the technical nature of these requirements. Nevertheless, the protection of debtors from the potential damage resulting from identity theft is a core consideration. Please advise this office by return email of your timeframe for resolving this issue.

Sincerely,

Assistant United States Trustee

RULE 9037-1 – REDACTION OF PERSONAL IDENTIFIERS

Rule 9037 of the Federal Rules of Bankruptcy Procedure provides that no filing made with the Court contain certain listed personal data identifiers. Parties wishing to redact personal identifiers from a Court filing shall use the Court’s standardized form “Application for Redaction of Personal Identifiers.” Any deviation from the standardized form shall be explained in bold-faced type within the body of the submitted request. All requests shall be accompanied by a redacted version of the Court filing that is an exact duplicate of the document to be redacted.

Any party seeking to redact information not listed in Federal Rule of Bankruptcy Procedure 9037(a) shall proceed by motion pursuant to District of ***** Local Bankruptcy Rule 9013-1.

**EXHIBIT
B**