

NOTICE TO THE BAR

AMENDMENTS TO RULE 1:38 TO ALLOW REPLACING AND/OR REMOVING DOCUMENTS CONTAINING CONFIDENTIAL PERSONAL IDENTIFIERS FROM THE COURT'S FILE

On October 8, 2013, the Supreme Court adopted two amendments to Rule 1:38 to be effective immediately. The Court's order and those amendments are attached.

A new paragraph (g) was added to Rule 1:38-7 ("Confidential Personal Identifiers") so as to provide a process for parties or other interested persons to request that the court replace a document in the court's file containing confidential personal identifiers contrary to Rule 1:38-7(b) with a redacted version of that document. Such a request is to be made by motion or application for order to show cause in the trial courts and by motion or emergent request for temporary relief in the Appellate Division or the Supreme Court, and may include a request for immediate temporary removal of the document from the file pending the return date. The court may thereafter order the clerk to replace the document in the court's file with a redacted version to be provided to the clerk by the party or attorney that submitted the document containing the confidential personal identifiers. The obligation to alter or redact the document pursuant to court order rests with the party or attorney who submitted the original document, not with the clerk.

A new paragraph (b) was added to Rule 1:38-8 to provide that the court may direct the clerk to destroy, return, or remove from the court's file a document improperly submitted to the court upon application to the court and notice to all parties as described in paragraph (a) of the same rule. The caption of Rule 1:38-8 also was amended ("Removing from the Court File Documents Improperly Submitted to Court").



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

Dated: October 23, 2013

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 1:38-7 and 1:38-8 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

For the Court,

A handwritten signature in black ink, appearing to read "Stuart Rosen", written over a horizontal line.

Chief Justice

Dated: October 8, 2013

1:38-7. Confidential Personal Identifiers

(a) ... no change

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

(f) ... no change

(g) Requesting Replacement of Submitted Documents for Failure to Redact Confidential Personal Identifiers.

(1) A party or other interested person may request that the court replace a document that contains confidential personal identifiers contrary to R. 1:38-7(b) with a redacted version on application to the court and notice to all parties. Such application should be made in the trial courts by order to show cause or motion and in the Appellate Division or Supreme Court either by motion or by emergent request for temporary relief, and may include a request for immediate temporary removal pending the return date.

(2) If the court thereafter determines that the confidential personal identifiers should not be in the document, it may by order direct the clerk to replace the original unredacted document with a redacted document for filing, with the redacted document to be submitted to the clerk by the party or attorney representing the party that submitted the document containing the confidential personal identifiers.

(3) The court shall not order the clerk to alter or undertake redaction of the document as that obligation rests with the party or the attorney for the party that submitted the document containing the confidential personal identifiers.

Note: New Rule 1:38-7 adopted July 16, 2009 to be effective September 1, 2009; paragraph (e) amended September 22, 2009 to be effective immediately; paragraphs (d) and (f) amended October 18, 2011 to be effective immediately; new paragraph (g) added October 8, 2013 to be effective immediately.

1:38-8. Removing from the Court File Documents Improperly Submitted to Court

(a) A party or other interested person may request that the court remove from its file an improperly submitted document upon application to the court and notice to all parties. A document is deemed improperly submitted to the court if the person who submitted the document had no legitimate basis in rule or law for doing so and if the document is not an evidentiary exhibit or part of a motion, brief, or other pleading. The party or interested person seeking to have a document removed from a court file bears the burden of proving by a preponderance of the evidence that it was improperly submitted.

(b) If the court thereafter determines that a document was improperly submitted, it may by order direct the clerk to destroy the document, to return it to the party that submitted it, or to remove the document from the file and retain it in a manner specified by the court pending further direction.

Note: New Rule 1:38-8 adopted July 16, 2009 to be effective September 1, 2009; caption revised, prior text designated as subparagraph (a), and new subparagraph (b) adopted October 8, 2013 to be effective immediately.