Re: Proposed rule changes for fairness to pro se and IFP litigants

Sai   to: Rules_Support   09/07/2015 10:36 AM

History: This message has been forwarded.

Dear Committee on Rules of Practice and Procedure -

I further request parallel changes to the non-civil rules, and defer
to the Committee on how to mirror them appropriately, as I am only
familiar with the civil rules.

In particular, I note an error in my draft below for proposal #2: 18
U.S.C. 3006A (the Criminal Justice Act) would of course come under the
FRCrP, not the FRCvP, so the FRCvP rule should refer only to 28 U.S.C.
1915 (the IFP statute).

Sincerely,
Sai

On Mon, Sep 7, 2015 at 10:02 AM, Sai <dccc@s.ai> wrote:
> Dear Committee on Rules of Practice and Procedure -
>
> I hereby propose the following four changes to the Federal Rules of
> Civil Procedure.
>
>
> 1. FRCP 5.2: amend (a)(1) to read as follows:
> (1) any part of the social-security number and taxpayer-identification
number
>
> The last four digits of an SSN, prior to a recent change by the SSA,
> is the only part that is random. The first digits can be strongly
> derived from knowing the person's place and date of birth.
>
> Disclosure of the last four digits of an SSN effectively gives away
> all of the private information, serves no public purpose in
> understanding the litigation, and should therefore be sealed by
> default (absent a court order to the contrary, as already provided for
> by FRCP 5.2).
>
> See, e.g.:
> Alessandro Acquisti and Ralph Gross, Predicting Social Security
> numbers from public data, DOI 10.1073/pnas.0904891106, PNAS July 7,
> 2009 vol. 106 no. 27 10975-10980 and supplement
> https://www.pnas.org/content/106/27/10975.full.pdf
> http://www.heinz.cmu.edu/~acquisti/ssnstudy/
>
> EPIC: Social Security Numbers (Nov. 13, 2014)
> https://epic.org/privacy/ssn/
>
> Latanya Sweeney, SSNwatch, Harvard Data Privacy Lab; see also demo
> http://latanyasweeney.org/work/ssnwatch.html
> http://dataprivacylab.org/dataprivacy/projects/ssnwatch/index.html
>
>
> 2. FRCP 5.2: add a new paragraph, to read as follows:
>
> (i) Any affidavit made in support of a motion under 28 U.S.C. 1915 or

> 18 U.S.C. 3006A shall be filed under seal and reviewed ex parte. Upon
> a motion showing good cause, notice to the affiant and all others
> whose information is to be disclosed, and opportunity for the same to
> contest the motion, the court may order that such affidavits be
> (1) disclosed to other parties under an appropriate protective order; or
> (2) unsealed in appropriately redacted form.
>
> For extensive argument, please see the petition and amicus briefs in
> my petition for certiorari regarding this issue: http://s.ai/ifp
>
>
> 3. Add new rule 7.2, matching that of S.D. & E.D. NY:
>
> Rule 7.2. Authorities to Be Provided to Pro Se Litigants
> In cases involving a pro se litigant, counsel shall, when serving a
> memorandum of law (or other submissions to the Court), provide the pro
> se litigant (but not other counsel or the Court) with copies of cases
> and other authorities cited therein that are unpublished or reported
> exclusively on computerized databases. Upon request, counsel shall
> provide the pro se litigant with copies of such unpublished cases and
> other authorities as are cited in a decision of the Court and were not
> previously cited by any party.
>
> See:
> Local Civil Rule of the Southern and Eastern Districts of New York 7.2
> Lebron v. Sanders, 557 F.3d 76 (2d Cir. 2009)
>
>
> 4. Add new subparagraph to rule 5(d)(3):
> (1) A court may not require a pro se litigant to file any paper by
> non-electronic means solely because of the litigant's pro se status.
>
> Pro se litigants should still be permitted (not required) to file by
> paper, to ensure that those without access to CM/ECF or familiarity
> with adequate technology have access to the courts.
>
> Pro se litigants may of course be required to register with CM/ECF in
> the same manner as an attorney, including signing appropriate
> declarations or passing the same CM/ECF training or testing required
> of attorneys.
>
> However, courts should not prohibit pro se litigants from having
> CM/ECF access where represented parties would have it. Doing so
> imposes a disparate burden of time, expense, effort, processing
> delays, reduction in the visual quality of papers due to printing and
> scanning, removal of hyperlinks in papers, and reduction in ADA /
> Rehab Act accessibility.
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>
> I request to be notified by email of any progress related to the four
> changes I have proposed above.
>
> Respectfully submitted,
> /s/ Sai