

5-502.1. Discovery; redaction of witness or victim information.

A. **Scope of rule.** This rule applies to documents and other materials subject to disclosure under Rules 5-501 and 5-502 NMRA.

B. **Definitions.** For purposes of this rule the following definitions apply:

(1) “counsel team” means the attorneys representing the parties and their employees or contractors who are participating in the preparation of the prosecution or the defense, provided that “counsel team” does not include the defendant or any members of the public;

(2) “personal contact information” means a person’s home address, home phone number, personal cell phone number, or personal email address;

(3) “protected personal identifier information” means social security number, taxpayer identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth; and

(4) “public” means any person or entity except members of the counsel team or court personnel.

C. **Redaction of protected personal identifier information.**

(1) An attorney with an obligation to provide discovery to opposing counsel under Rule 5-501 NMRA or Rule 5-502 NMRA may redact protected personal identifier information or personal contact information if the attorney deems it appropriate under the circumstances of the case. To do so, the attorney must

(a) file a notice that redacted and unredacted discovery is being provided to the opposing party; and

(b) provide two versions of documents and materials subject to disclosure as follows:

(i) The first version may have redacted protected personal identifier information or personal contact information. For discovery provided by the state, the defense counsel team may provide the redacted version to the defendant, and the defendant may retain the redacted version in the defendant's possession.

(ii) The second version shall be an unredacted version of the same discovery and shall be provided to the counsel team for the opposing party to accommodate the need for any conflicts checks and background investigation of victims and witnesses.

(2) If the state has an obligation to provide discovery to a pro se defendant under Rule 5-501 NMRA, the prosecutor may redact protected personal identifier information or personal contact information if the prosecutor deems it appropriate under the circumstances of the case. To do so, the attorney must file a notice that redacted discovery is being provided to the defendant.

(3) If an attorney provides redacted discovery under this rule, unredacted discovery shall not be disclosed to the defendant or a member of the public unless the court issues a written order finding that the defendant or member of the public has a specific compelling need for the unredacted discovery. The court may issue an order permitting the disclosure of unredacted discovery on motion of a party, including a defendant acting pro se, or on the court's own motion.

D. Failure to comply. An attorney receiving discovery that includes redacted protected personal identifier information or personal contact information shall take all reasonable precautions to ensure that the unredacted version of the discovery is not disclosed by the attorney or any member of the counsel team to the defendant or any member of the public. Failure to comply with the provisions of this paragraph may subject the attorney or other person to sanctions, including sanctions for contempt of court, or the initiation of disciplinary proceedings.

[Adopted by Supreme Court Order No. 22-8300-025, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — This rule creates a mechanism for an attorney to redact discovery as needed to protect victims and witnesses from violent crime and identity theft and to encourage their participation in criminal proceedings without compromising the needs of opposing counsel to conduct conflicts checks and background investigations and otherwise fulfill counsel’s duty to provide ethical, competent representation. This rule does not alter the disclosure requirements of Rules 5-501 and 5-502 NMRA, nor does it alter any requirement to provide a witness list, *see, e.g.*, Rules 5-503, 5-508, and LR2-308 NMRA. Under Paragraph C, an attorney must provide an unredacted version of documents and materials subject to disclosure. As appropriate, witness lists may be drafted to avoid explicit disclosure of names and addresses by making reference to the unredacted discovery. The definition of “protected personal identifier information” in this rule is consistent with the definition set forth in Rule 5-123 NMRA (Public inspection and sealing of court records), and varies slightly from the definition of “protected personal identifier information” set forth in the Inspection of Public Records Act, NMSA 1978, § 14-2-6(E) (2018).

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