



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
 844 NORTH RUSH STREET
 CHICAGO, ILLINOIS 60611-1275

GENERAL COUNSEL

MEMORANDUM

TO: The Hon. David G. Campbell, Chair
 Prof. Daniel R. Coquillette, Reporter
 Standing Committee on Rules of Practice and Procedure
 Judicial Conference of the United States

FROM: Ana M. Kocur *Ana M. Kocur*
 General Counsel
 U.S. Railroad Retirement Board

RE: Federal Rule of Civil Procedure 5.2(c) and Privacy Protections in Railroad Retirement Benefit Cases

DATE: December 18, 2018

I understand from the May 1, 2018 memorandum of the Committee on Court Administration and Case Management of the Judicial Conference of the United States that the Standing Committee has been asked to consider whether any changes to Fed. R. Civ. P. 5.2(c) or related rules are needed to protect personal and sensitive information of individuals in social security and immigration cases. I am writing to propose that Fed. R. Civ. P. 5.2(c) be revised to include actions for benefits under the Railroad Retirement Act in the types of cases limiting remote access to electronic files.

The Railroad Retirement Act (RRA), 45 U.S.C. § 231 *et seq.*, replaces the Social Security Act with respect to employment in the railroad industry and provides monthly annuities for employees who meet certain age and service requirements, including annuities based on disability. Many family relationships in the RRA are defined by reference to the Social Security Act.¹ Courts have also consistently recognized the similarities between benefits

¹ Section 2(c)(4) of the RRA, 45 U.S.C. § 231a(c)(4) (defining “divorced wife” by reference to section 216(d) of the Social Security Act); section 2(d)(1) of the RRA, 45 U.S.C. § 231a(d)(1) (defining “widow”, “widower”, “child”, “parent”, “surviving divorced wife”, and “surviving divorced mother” by reference to sections 216(c), 216(g),

under the Social Security Act and the RRA, and have referred to social security case law in evaluating railroad retirement cases.² Much like claim files in Social Security benefit cases, claim files in Board cases contain substantial personal and medical information which is difficult to fully redact in a public court filing. Since the Advisory Committee on Civil Rules noted in 2007 that actions for benefits under the Social Security Act are entitled to special treatment due to the prevalence of sensitive information and the volume of filings, I believe it is appropriate to extend this recognition and privacy protection to actions for benefits under the RRA.

Section 8 of the RRA provides that decisions of the Board determining the rights or liabilities of any person under the Act shall be subject to judicial review in the same manner and subject to the same limitations as a decision under the Railroad Unemployment Insurance Act, except that the statute of limitations for requesting review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit must be commenced within one year of the Board's decision. 45 U.S.C. § 231g. In turn, section 5(f) of the Railroad Unemployment Insurance Act provides for review of a final decision of the Board by filing a petition for review in one of three United States courts of appeals:

- 1) The United States court of appeals for the circuit in which the claimant or other party resides or has its principal place of business or principal executive office;
- 2) The United States Court of Appeals for the Seventh Circuit; or
- 3) The United States Court of Appeals for the District of Columbia Circuit.

45 U.S.C. § 355(f). Under an agreement with the Department of Justice in place since September 1937, the legal staff of the Board handles litigation of benefits cases in the circuit courts of appeals. Although the Board does not generally litigate cases in the federal district courts, Fed. R. App. P. 25(a)(5) provides that privacy protection in proceedings such as appeals of final Board decisions is governed by Fed. R. Civ. P. 5.2. Because the Board may be called to litigate these types of cases across the country in any

216(e), 202(h)(3), 216(d), and 216(d) of the Social Security Act respectively); section 2(d)(4) of the RRA, 45 U.S.C. § 231a(d)(4) (applying rules in section 216(h) of the Social Security Act when determining whether an applicant under the Railroad Retirement Act is a wife, husband, widow, widower, child, or parent of a deceased railroad employee).

² See *Bowers v. Railroad Retirement Board*, 977 F.2d 1485, 1488 (D.C. Cir. 1992) (“The standard for granting annuities under [section 2(a)(1)(v) of the Railroad Retirement Act] closely resembles that for making disability determinations under the Social Security Act.”); *Burleson v. Railroad Retirement Board*, 711 F.2d 861, 862 (8th Cir. 1983) (“The standards and rules for determining disability under the Railroad Retirement Act are identical to those under the more frequently litigated Social Security Act, and it is the accepted practice to use social security cases as precedent for railroad retirement cases.”); *Soger v. Railroad Retirement Board*, 974 F.2d 90, 92 (8th Cir. 1992) (“The regulations governing social security disability cases, 20 C.F.R. §§ 404.1501 *et seq.*, may be used by the Board in evaluating disability under the Railroad Retirement Act.”).

geographic circuit, a uniform rule applicable to all actions for benefits under the RRA would be beneficial to both the Board and individual claimants who are seeking review of the Board's decisions and place railroad retirement beneficiaries in the same position as beneficiaries under the Social Security Act for privacy protection purposes.

Regarding the text of Fed. R. Civ. P. 5.2(c), this proposed change may be effectuated simply by inserting the phrase "or Railroad Retirement Act" in the first sentence of the rule, after "in an action for benefits under the Social Security Act". Thank you for your consideration. Please let me know if I can provide any additional information to help you evaluate this proposed change.

cc: Committee on Court Administration and Case Management