

# COURT NOTICES

## AMENDMENT OF RULE

### Uniform Civil Rules for the Supreme Court and the County Court

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby adopt, effective immediately, section 202.9-a of the Uniform Civil Rules for the Supreme Court and the County Court, relating to special proceedings pursuant to Uniform Commercial Code § 9-518, to read as follows:

\* \* \*

§ 202.9-a. *Special proceedings authorized by subsection (d) of section 9-518 of the Uniform Commercial Code.*

(a) *This section shall govern a special proceeding authorized by subsection (d) of section 9-518 of the Uniform Commercial Code for the redaction or expungement of a falsely-filed or amended financing statement. Except as otherwise provided in such subsection and in this section, such a special proceeding shall be subject to the provisions of article four of the CPLR and of section 202.9 of these rules.*

(b) *The following shall apply to a special proceeding governed by this section:*

(1) *Venue. Such a special proceeding shall be commenced in the Supreme Court in:*

(i) *Albany County; or*

(ii) *the County of the petitioner's residence; or*

(iii) *any County within a Judicial District in which any property covered by the financing statement is located.*

(2) *No fee required. Notwithstanding any provision of Article eighty of the CPLR, no fee shall be collected pursuant to such Article in such a special proceeding.*

(3) *Petitioner. In order to commence such a special proceeding, the petitioner must be:*

(i) *either (A) an employee of the State or of a political subdivision thereof, or (B) an attorney who represents or has represented the respondent in a criminal court; and*

(ii) *a person identified as a debtor in a financing statement filed pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code; and*

(iii) *bringing such special proceeding against the respondent to invalidate the false filing or amendment of such financing statement.*

(4) *Form and content of petition. A petition in such a special proceeding shall substantially conform to the model petition set forth in Appendix A of this section and shall allege that:*

(i) *the financing statement referred to in paragraph (3)(i) of this subdivision was falsely filed or amended to retaliate for the performance of the petitioner's official duties in his or her capacity as a public employee (or, if the petitioner is an attorney referred to in paragraph (3)(i)(B) of this subdivision, to retaliate for the performance of the petitioner's duties in his or her capacity as an attorney for the respondent in a criminal court); and*

(ii) *such financing statement does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the petitioner and the respondent; and*

(iii) *the collateral covered in the financing statement is the property of the petitioner; and*

(iv) *prompt redaction or invalidation of such financing statement is necessary to avert or mitigate prejudice to the petitioner.*

*The petition shall demand the expungement or redaction of such financing statement or, as appropriate, any amendment thereof, in the office in which the financing statement is filed; and may demand any additional relief authorized under section 9-625 of the Uniform Commercial Code.*

(5) *Use of Referee. The court may order a referee to hear and determine such a special proceeding.*

(6) *Judgment.*

(i) *Where the court (or a referee ordered by the court) makes a written finding that the allegations of the petition are established, it shall deliver a judgment, which shall include such finding and shall direct the expungement or redaction of the financing statement found therein to be falsely filed or amended in the public office in which it was filed; and may grant any additional relief sought that is authorized under section 9-625 of the Uniform Commercial Code. Where the court also finds that the respondent has engaged in a repeated pattern of falsely filing financing statements under Subpart one of Part five of Article nine of the Uniform Commercial Code, the court may enjoin the respondent from filing or amending any further financing statement without court leave; and, in such case, where respondent is incarcerated at the time such injunction issues, the court shall cause a copy thereof to be transmitted to the head of the correctional facility in which respondent is incarcerated.*

(ii) *In form, the judgment in such a special proceeding shall substantially conform to the model judgment set forth in Appendix B of this section.*

## APPENDIX A

### PETITION IN SPECIAL PROCEEDING PURSUANT TO SECTION 9-518(d) OF THE UNIFORM COMMERCIAL CODE

SUPREME COURT OF THE STATE OF NEW YORK  
County of \_\_\_\_\_

[Caption Box]

PETITION  
Index No.  
Judge Assigned

Petitioner [name of Petitioner], by his [or her] undersigned [attorney or attorneys] alleges as follows:

### NATURE OF THIS PROCEEDING

This is a Special Proceeding brought pursuant to section 9-518(d) of the Uniform Commercial Code to [redact or expunge, as applicable] a falsely-filed [or -amended] financing statement the contents of which are described in section 9-502 of the Uniform Commercial Code.

### THE PARTIES

1. The Petitioner in this Special Proceeding, [name of Petitioner], is [an employee of the State of New York or an employee of a political

subdivision of the State of New York or an attorney who represents or has represented the Respondent herein in a criminal court]. [Add one of the following sentences, as applicable:

(i) The Petitioner is employed by [name the office of his or her New York State employment or, if appropriate, of his or her employment by a named political subdivision of the State] as [state the name/nature of this employment]; or

(ii) The Petitioner was admitted to practice in [state the year] in the \_\_\_\_\_ Judicial Department.]

2. The Petitioner is identified as a debtor in a financing statement filed by or on behalf of the Respondent pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code.

3. The Respondent in this Special Proceeding is [name of Respondent]. [If the Respondent is incarcerated, so state and identify the facility of incarceration]

4. As authorized by section 9-518(d)(1) of the Uniform Commercial Code, the place of trial for this Special Proceeding is \_\_\_\_\_ County. [if not Albany County, add one of the following sentences, as applicable:

(i) The Petitioner resides at [include Petitioner’s address] in such County; or

(ii) The property of the Petitioner covered by the financing statement specified in paragraph two hereof is located in such County.]

FIRST CAUSE OF ACTION

5. Petitioner repeats and realleges each and every allegation contained in Paragraphs one through four above.

6. The Respondent in this Special Proceeding has filed [or amended] a financing statement under section 9-502 of the Uniform Commercial Code that identifies the Petitioner as a debtor and the collateral referred to in such financing statement is the property of the Petitioner.

7. The financing statement referred to in Paragraph six herein was falsely filed [or falsely amended] by or on behalf of the Respondent. On information and belief, this false filing [or false amendment] was to retaliate for the performance of the Petitioner’s official duties in his [or her] capacity as a public employee as specified in Paragraph one herein [or, if the Petitioner is an attorney who represents or has represented the Respondent herein in a criminal court, “this false filing statement [or amendment] was to retaliate for the performance of the Petitioner’s duties in his [or her] capacity as an attorney for the Respondent in a [specify the case name and the name of the criminal court]]. [add any essential facts forming the basis for information and belief]

8. The financing statement referred to in Paragraph six herein and alleged to have been falsely filed or falsely amended does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the Petitioner and the Respondent.

9. The collateral covered in the financing statement referred to in Paragraph six herein is the property of the Petitioner.

10. Prompt redaction or invalidation of the financing statement [or amendment to a financing statement] is necessary to avert or mitigate prejudice to the Petitioner.

SECOND CAUSE OF ACTION [if applicable]

11. Petitioner repeats and realleges each and every allegation contained in Paragraphs one through ten above.

12. On information and belief, the Respondent has engaged in a repeated pattern of falsely filing financing statements [or amendments to financing statements]. [add any essential facts forming the basis for information and belief]

There has been no previous application for the relief demanded in this proceeding in this or any other Court [or, if there has been such an application, so state and specify new facts not previously shown, if any].

DEMAND FOR RELIEF

WHEREFORE, Petitioner demands judgment against the Respondent as follows:

a. On the First Cause of Action, for expungement [or redaction] of the financing statement [or the amendment of the financing statement] in the [state the office in which the financing statement is filed] pursuant to section 9-518(d)(3) [Where redaction of the financing statement or an amendment thereto is demanded, specify the specify redaction sought] [and, where further relief is sought under section 9-625 of the Uniform Commercial Code, state such further relief].

b. On the Second Cause of Action [if applicable], for an injunction barring the Respondent from filing or amending any further financing statements pursuant to article nine of the Uniform Commercial Code without leave of the Court.

c. Awarding Petitioner costs and disbursements of this proceeding.

d. Granting Petitioner such other and further relief as the Court deems just and proper.

\_\_\_\_\_  
Attorney(s) for Petitioner

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK  
County of \_\_\_\_\_

[Caption Box]

PETITION  
Index No.  
Judge Assigned

The above-entitled special proceeding brought pursuant to section 9-518 of the Uniform Commercial Code having come on to be heard before the Honorable Justice \_\_\_\_\_ at Part \_\_\_\_\_ of this Court, held at the Courthouse at [include Courthouse address], on [include month, date and year], and the Petitioner having appeared by his [or her] attorney and the Respondent having [include, as applicable, “appeared by his [or her] attorney”/“failed to appear”], and the Court having, after due deliberation, found that:

\_\_\_\_\_ the following allegations, as set forth in the Petition, have been established:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ the allegations, as set forth in the Petition, have not been established,

Now, it is hereby

ORDERED, ADJUDGED AND DECREED, that:

\_\_\_\_\_ the Petitioner have judgment against the Respondent and that the \_\_\_\_\_

\_\_\_\_\_ [name of the office in which the financing statement to be expunged or redacted is filed] is directed to:

\_\_\_\_\_ expunge from the public record \_\_\_\_\_

\_\_\_\_\_ [describe the financing statement to be expunged]

\_\_\_\_\_ redact on the public record \_\_\_\_\_

\_\_\_\_\_ [describe the financing statement to be redacted and the specific redaction being ordered]

\_\_\_\_\_ the Respondent have judgment against the Petitioner and that this Special Proceeding be dismissed.

\_\_\_\_\_ the Petitioner have the following relief as authorized by section 9-625 of the Uniform Commercial Code:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_ the Respondent be enjoined from filing or amending any further financing statement pursuant to Article 9 of the Uniform Commercial Code without leave of this Court.

\_\_\_\_ [describe such further relief as the Court is ordering]

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Dated: [month, date, year]

Enter

\_\_\_\_  
Justice, Supreme Court, \_\_\_\_\_ County

