



# JUDICIAL CONFERENCE OF THE UNITED STATES


WASHINGTON, D.C. 20544

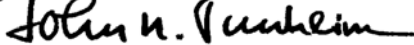
THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

November 21, 2007

## MEMORANDUM

To: Chief Judges, United States Courts of Appeals  
Judges, United States District Courts  
Judges, United States Bankruptcy Courts

From: Honorable Lee H. Rosenthal   
Chair, Committee on Rules of Practice and Procedure

Honorable John R. Tunheim   
Chair, Committee on Court Administration and Case Management

RE: JUDICIAL CONFERENCE ACTIONS REGARDING PRIVACY AND SECURITY OF  
ELECTRONIC CASE FILES

Over the past months, the Judicial Conference has addressed several issues relating to the application of rules and policies protecting the privacy of personal information contained in the Judiciary's case files. The issues include the pending amendments to the Federal Appellate, Bankruptcy, Civil, and Criminal Rules on the privacy and security of case files and the new Judicial Conference policy on redaction of personal information from transcripts of court proceedings. As the chairs of the Committees responsible for the rules and policies, we write to address some questions about these new privacy rules and transcript policy.

### 1. The Changes to the Rules

Amendments to the Appellate, Bankruptcy, Civil, and Criminal Rules to implement the requirements of the E-Government Act of 2002 will take effect on December 1, 2007. The amendments require that certain "personal identifier" information be redacted from court filings. The personal identifiers that must be redacted are Social Security numbers, names of minor children, financial account numbers, birth

dates, and, in criminal cases, home addresses.<sup>1</sup> The new rules codify, to a large extent, the 2001 Judicial Conference privacy policy, as revised in 2003, which requires redaction of personal identifier information from court filings.<sup>2</sup>

a. Documents That Are Not Subject to the Redaction Requirement

The E-Government Act of 2002 required the Supreme Court to prescribe rules protecting the security and privacy of electronic filings. The Act states that “each court shall make any document that is filed electronically publicly available online.”<sup>3</sup> The Act provides exceptions by stating that documents filed but not “otherwise available to the public, such as documents filed under seal, shall not be made available online.” Under Judicial Conference policy and consistent with the exceptions authorized in the E-Government Act, certain categories of documents are not to be included in a public case file and may not be made available to the public either at the courthouse or via remote electronic access. The redaction requirement does not apply to these categories of documents. These categories are:

- unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- statements of reasons in the judgment of conviction;
- juvenile records;
- documents containing identifying information about jurors or potential jurors;
- financial affidavits in seeking representation under the Criminal Justice Act;
- ex parte requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act; and
- sealed documents (e.g., motions for downward departure for substantial assistance, plea agreements indicating cooperation).

Most courts do not make these categories of documents part of the public case file. These documents are either placed in the “left-side” of the file or if they are electronic, access to them is restricted. Because these documents are not made part of the public

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<sup>1</sup>Fed. R. App. P. 25(a), Fed. R. Bankr. P. 9037, Fed. R. Civ. P. 5.2, and Fed. R. Crim. P. 49.1.

<sup>2</sup>JCUS-SEP/OCT 01, pp.48-50 and JCUS-SEP 03, pp.15-16.

<sup>3</sup>Pub. L. No. 107-347, § 205(c)(1).

case file, the redaction requirement does not apply to them. So long as these documents remain unavailable to the public, no redaction of personal identifier information in them is required. If these documents are made part of the public case file, however, the redaction requirement will apply, unless the court orders the documents sealed.

b. Cases That Are Not Subject to the Redaction Requirement

In addition, the new Civil Rules becoming effective on December 1, 2007, do not apply the redaction requirements to certain categories of cases that are exempted from remote public access. These categories are immigration cases and Social Security cases. The parties have remote electronic access to filings in these cases, but the public has access to the filings only at the courthouse.

2. The New Policy Governing Remote Public Access to Transcripts

Under the new Judicial Conference policy governing public access to transcripts of court proceedings, transcripts are not available to the public online until 90 days after they are docketed. During that time, members of the public may view transcripts at the courthouse, or may purchase a copy from the court reporter or transcriber.

As a practical matter, it is not feasible for the court reporter who prepared the transcript to make the redactions required by the rules. Under the Conference policy, it is the responsibility of each party's attorney to review the transcript and specify the necessary redactions to be made by the court reporter. Attorneys have five days after a transcript has been transmitted to the clerk of court to review it and file a notice of an intent to request redactions of personal identifiers from that transcript. Attorneys have 21 days from the date of the notice of intent to request redaction to specify the redactions that the court reporter is to make. A court may extend the time for the attorney to specify the redactions.

The transcript redaction procedures are available on the J-Net at <http://jnet.ao.dcn/it/ecf/ecfprivacy.html>. Information posted at that link also answers a number of questions about the transcript redaction requirement. The procedures provide a method for applying the privacy rules requirements to transcripts. We urge your court to adopt these procedures.

Judges can reduce the burden of making redactions by taking steps to minimize the presence of personal identifying information in a transcript. The Federal Judicial Center has created a model instruction that the judge can read or hand to counsel at the start of a

hearing or other proceeding, reminding them not to elicit or provide the protected personal identifiers unless necessary to prove an element of the case. The model instruction is available on the J-Net at <http://jnet.ao.dcn/it/ecf/FJCAAdvisory.pdf>. Additionally, judges can and should interject to prevent disclosure if a witness is asked a question calling for personal information that is protected under the Rules. For example, if a witness is asked for a Social Security number, the judge could interject to clarify that only the last four digits should be stated.

The web links provide more detail about the transcript policy. Please do not hesitate to let us know if you have additional questions. Thank you for your help in implementing these rules and policies.

cc: District Court Executives  
Clerks, United States Courts