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To <rules_comments@ao.uscourts.gov>

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Subject Criminal Records redaction of personal identifiers.

This in reference to criminal records: The Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files published in March 2004 states in part that "parties shall refrain from including, or shall partially redact where inclusion is necessary....

Dates of birth. If an individual's date of birth must be included, only the year should be used."

This policy should be changed to read "Because the basic method for differentiating people with the same name is the Date of Birth and/or the SSN, the electronic record shall include these elements (at a minimum in the abbreviated form), and will be displayed in the electronic access (Pacer).

I represent the Pre-Employment screening industry. All companies that do these background checks are considered Consumer Reporting Agencies under the Federal Fair Credit Reporting Act. This Act requires that the potential employer obtain a signed release from the applicant before any background check is accomplished and then must report back to the consumer (applicant) any information obtained that may be adverse and to then report again to the consumer if adverse action was actually taken based on this information.

If a criminal record search is done on PACER and the system returns a criminal record, we see what the charges were and the disposition/sentencing, but before this is reported to the employer, the record must somehow be confirmed that this is the correct person (Date of Birth or SSN). This is why this information should be in the record. If it is judged by USCourts that this information should not be published on the internet, then it should be available for confirmation by either a phone call where a court clerk can confirm the DOB or by special access to companies in our industry that are certified by our National Association of Professional Background Screeners (www.NAPBS.com) so they can do this confirmation for their clients.

Why should we be more protective of the "rights" of the convicted criminal than we are the rights of those who do not break the law and have learned it is important to background check their prospective employees for the protection of their customers, suppliers and other employees? Why should my reputation be tarnished because someone else with my name has a criminal record and it cannot easily be determined that this criminal record does not belong to me?

Several state and local courts who have redacted the DOB from their websites have thought this through and have changed their policy back and do publish the entire record or only redact limited parts of the SSN or DOB.

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