



18-CV-L
18-AP-C

**COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES**

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May 1, 2018

MEMORANDUM

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

From: Honorable Wm. Terrell Hodges *Wm. Terrell Hodges*
Chair, Committee on Court Administration and Case Management

RE: **PRIVACY CONCERN REGARDING SOCIAL SECURITY AND IMMIGRATION OPINIONS
(INFORMATION)**

On behalf of the Committee on Court Administration and Case Management (CACM), I write to alert you to a privacy concern regarding sensitive personal information made available to the public through opinions in Social Security and immigration cases. For those courts that choose to adopt it, we offer a change to chambers practice, which the Committee believes will go a long way toward addressing this concern.

Nature of the Committee's Concern

About fifteen years ago, with the advent of electronic case files and increased public accessibility to court records, this Committee developed, and the Judicial Conference approved, a privacy policy aimed at protecting personal and sensitive information. The policy provides for remote public access to case files, but requires parties to redact certain personal identifiers.¹ JCUS-SEP/OCT 01, pp. 48-50; JCUS-SEP 03, pp. 15-16. The policy was subsequently codified

¹ The personal identifiers to be redacted are Social Security numbers, taxpayer identification numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses.

in the Federal Rules of Procedure,² and has been largely successful in limiting the availability of personal identifiers.

Under the privacy policy and subsequent federal rules, documents related to Social Security and immigration cases have a unique status. They are not available via remote public access, and instead can only be accessed at the courthouse.³ These access limits are motivated by the substantial personal and medical information contained in these cases and the difficulty of redacting the sensitive information they contain.⁴ The restrictions do not, however, extend to dockets or court-issued opinions. Fed. R. Civ. P. 5.2(c)(2)(B).⁵ As a result, the opinions, which (by their very nature) often contain a large amount of personal and medical information, remain widely available to the public through a number of government and commercial sources, including the Federal Digital System (FDsys) document repository administered by the Government Publishing Office (GPO); PACER; court websites⁶; and legal research databases such as Westlaw and LexisNexis. Indeed, unlike most documents accessible through PACER, opinions are often available through public search engines such as Google.

This results in a self-defeating scenario in which Fed. R. Civ. P. 5.2(c)(2)(B) restricts remote public access to Social Security and immigration cases because the information they contain is too sensitive to be broadly available, but then places no limits on public access to the opinions that contain much of the same information and are the likeliest documents to be circulated and scrutinized. Though the Committee believes there is a substantial, valid interest in having these opinions publicly available, widespread dissemination defeats the purpose of not making other documents from these cases available via remote access, which is to limit the release of personal and sensitive information.

Addressing this Concern

For these reasons, the Committee has investigated potential options for better balancing the need to provide public access to Social Security and immigration opinions with the need to protect the highly personal information they contain. In this process, the Committee has consulted with stakeholders including the Office of Privacy and Civil Liberties (OPCL) in the U.S. Department of Justice (DOJ), the Executive Office of Immigration Review (EOIR), the Social Security Administration (SSA), the District Clerks' Advisory Group (DCAG), and the Appellate Clerks' Advisory Group (ACAG).

² See Fed. R. App. P. 25(a)(5); Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037.

³ Specifically, the exception found in Fed. R. Civ. P. 5.2(c) applies to any action “for benefits under the Social Security Act” or “relating to an order of removal, to relief from removal, or to immigration benefits or detention.”

⁴ An Advisory Committee Note to Civil Rule 5.2 explains that these cases “are entitled to special treatment due to the prevalence of sensitive information and the volume of filings.”

⁵ The rule states that, in Social Security Act and immigration cases, any person may have remote electronic access to “the docket maintained by the court; and an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.”

⁶ Courts must provide website access to all written opinions in a text searchable format, regardless of whether they are to be published. E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat 2899, Sec. 205(a)(5).

Ultimately, the Committee decided that the most efficient means of improving protections over private Social Security and immigration case information is to encourage courts to **consider adopting a local practice of using only the first name and last initial of any non-government parties in the opinions in these cases.**⁷ This will ensure that the public maintains access to the opinions (in compliance with Civil Rule 5.2(c)(2)(B) and the E-Government Act of 2002), while still obscuring parties' identities within the opinions.⁸ The Committee is aware that docket sheets and other case documents available on PACER would still allow a determined member of the public to access sensitive Social Security and immigration information and identify the associated party. However, taking these proactive measures would eliminate the easy access to this information – including identifiers – that is now provided by public search engines. In addition, the CACM Committee has asked the Standing Committee on Rules of Practice and Procedure to consider whether any changes to Fed. R. Civ. P. 5.2(c) or related rules are needed to protect personal and sensitive information more effectively, while furthering national uniformity.

Thank you for the thoughtful consideration we know you and your colleagues will give to this issue.

If you have any questions or concerns, please feel free to contact Sean Marlaire, Policy Staff, Court Services Office, at 202-502-3522 or by email at Sean.Marlaire@ao.uscourts.gov.

cc: Circuit Executives

⁷ The Committee considered whether courts should use only the initials of non-government parties but declined to adopt that approach at the Social Security Administration's urging. The Committee considered and ultimately found persuasive the fact that using only initials would result in confusion and a potentially unmanageable volume of identically titled cases.

⁸ The courts may also wish to consider whether, when posting these opinions to their websites, they should obscure the non-government parties' names wherever they might be listed alongside the posted opinion.