

NEW PRIVACY RULES AND JUDICIAL CONFERENCE PRIVACY POLICY

The amendments to the Appellate, Bankruptcy, Civil, and Criminal Rules that implement the E-Government Act of 2002 will take effect on December 1, 2007. The amendment to Appellate Rule 25, and new Bankruptcy Rule 9037, Civil Rule 5.2, and Criminal Rule 49.1 require that personal identification information be redacted from documents filed with the court — individuals' Social Security and taxpayer identification numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses.

In May 2007, the Forms Working Group (comprised of judges and clerks of court) reviewed over 500 national forms issued by the Administrative Office of the U.S. Courts for use by the courts and public to ensure that the forms did not contain personal identifier information in compliance with the new rules amendments. The working group found six national forms — AO 98 (appearance bond), 98A (appearance and compliance bond), 99 (appearance bond of witness), 100 (agreement to forfeit property), 246 (order of probation), and 249 (reinstatement of federal benefits), which contained personal identification information. The forms were revised to modify or delete fields calling for disclosure of personal identifiers to conform to the new privacy rules.

The six Appellate Forms, appended to the Federal Rules of Appellate Procedure, and the newly restyled Illustrative Civil Forms to the Federal Rules of Civil Procedure, which take effect on December 1, 2007, were also reviewed for compliance with the new privacy rules and are now posted at <http://www.uscourts.gov/rules/newrules4.html>. The forms are posted in WordPerfect and RTF (Word compatible) formats. The forms are offered as templates based on the official published forms, but are not identical to them. Language in the forms may require modification before the document can be filed with the court. Red font is used to draw attention to these instances. Instructions are enclosed in angle brackets and alternative phrases appear in square brackets.

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.” 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. Because these documents are not made part of the public 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.

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.