



## Task Force on Transparency and Privacy in Court Records

**TO:** Members of TAP Committee  
**FROM:** Jack Baldacci, Esq.  
**RE:** Introduction to the Federal Approach  
**DATE:** March 23, 2017

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The following provides a brief introduction to the Public Access to Court Electronic Records (“PACER”) system, and to the Federal Courts’ approach to managing electronic access to court documents. For a further discussion of the Federal Court system, *see* Peter W. Martin, *Online Access to Court Records-From Documents to Data Particulars to Patterns*, 53 VILL. L. REV. 872 (2008) (discussing the PACER system), and D.R. Jones, *Protecting the Treasure: An Assessment of State Court Rules and Policies for Access to Online Civil Court Records*, 61 DRAKE L. REV. 375, n. 67 (2013).

The Federal Courts Rules governing electronic access to court documents are embodied in F.R. Crim. P. 49.1, F.R. Civ. P. 5.2, F.R. App. P. 25(a)(5), and F.R. Bankr. P. 9037. These rules apply not only to electronic files, but also to paper files that are not converted into electronic format. F. R. Crim. P. 49.1, cmt. The Federal Courts utilize the PACER system, mentioned previously, to administer access to electronic court files. Generally, PACER functions to allow individuals electronic access to the contents of a case file to the same extent as if the file was accessed at the Courthouse. *Id.* PACER does not allow electronic access to certain personally identifying information, which include Social Security numbers, names of minor children, financial account numbers, birth dates, and in criminal cases, home addresses. *Id.*; *Privacy Policy for Electronic Case Files*, (Mar. 2008), <http://www.uscourts.gov/rules-policies/judiciary-policies/privacy-policy-electronic-case-files-footnote2>.



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The Federal Courts place the responsibility for ensuring the integrity of personal identifying information with the parties themselves. F. R. Civ. P. 5.2, cmt. Court clerks have no obligation to search the case file for, or to redact, personal identifying information. *Id.* Therefore, if the parties neglect to redact personal identifying information from their filings, the client’s personal identifying information will be made available for public access online. *See* F.R. Civ. P. 5.2(h) (“A person waives the protection of [Rule 5.2\(a\)](#) as to the person's own information by filing it without redaction and not under seal.”).

An attorney who inadvertently files personally identifiable information may seek leave of the court to correct the filing. *Id.* The Federal Rules also provide that a party may waive the requirement of redaction if the cost of redaction outweighs the benefits of protecting the information. *Id.* Parties who require more redaction than is mandated by the Federal Rules may, on a showing of good cause, obtain a protective order from the Court. F.R. Civ. P. 5.2(e).