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The Volokh Conspiracy • Opinion

Can you get a court to take an opinion that mentions you off its Google-searchable website?

By Eugene Volokh May 3

Say that you're involved in a court case — as a plaintiff, as a civil defendant, as a criminal defendant, or perhaps even as a nonparty. The court case may well appear in Google results when people search for your name, both on the government's own sites and on sites such as findlaw.com, casetext.com, or leagle.com. (Lexis and Westlaw versions of the case, which cost money, don't show up on Google results; Google Scholar versions don't show up in ordinary Google searches.) Can you do anything to get these taken down?

The answer is: Maybe, if you ask nicely and have what a judge thinks is good reason (and if the opinion is non-precedential) — but maybe not. It seems to be left largely to judges' unguided discretion.

1. A few weeks ago, for instance, a federal district court judge (Eric Vitaliano of the Eastern District of New York) wrote an opinion rejecting a Social Security ligitant's request to get an early opinion taken down from the court's site (see also Eric Goldman's post on this case):

> In February 2014, plaintiff Tamara Nelson filed a complaint, seeking review of the final decision of the Commissioner of Social Security ("Commissioner") finding that her disability had ended in April 2010. On December 31, 2014, Judge John Gleeson issued a

Memorandum and Order (the "Order") remanding Nelson's case to the Commissioner for the calculation and award of benefits.

On November 14, 2016, appearing pro se, plaintiff filed a letter motion, which requested that the Court seal her casefile because some "law research blogs" had posted the Order online and the publication of this information was frightening her. Without elaboration, Nelson also asserted that the publication of this material had caused her to fear for her safety.... In [a later] letter, Nelson distraughtly explained that the availability of the Order online had only worsened her anxiety and depression and had caused her to suffer panic attacks. She also offered that, even if the Order could not be sealed, she would feel better if it did not appear on law blogs or show up in online search results.... [A still later] letter went on to explain that she has lost friends as a consequence....

[This Court's] denial of [Nelson's] motion in no way suggests that the Court does not take Nelson at her word that the availability of the Order online has caused her great distress. The public availability of such orders is, unfortunately for her, the consequence of a public dispute resolution system financed with taxpayer funds.

Electronic access, moreover, is not unique to Nelson's case; nor, surely, is Nelson alone in unhappiness. In Social Security cases, orders regularly include sensitive personal health information regarding a claimant's disability.

But, we do not have Star Chamber justice in the United States. Access by the media, the legal profession and the public at large to courts deciding cases openly on the public record helps solidify that arrangement, which is why, consequently, the Federal Rules of Civil Procedure establish a baseline requirement that orders such as the one aggrieving Nelson will be available to the public through remote electronic access.

Moreover, it is the availability of public access to such decisions that helps ensure the refreshed validity of caselaw and that parties similarly situated are treated equally under the law. In line with these considerations, a movant bears a weighty burden when requesting that a case be sealed.

Succinctly, Nelson's predicament is no different than that facing any other social security claimant who brings her case in federal court, and, at bottom, nothing in Nelson's file qualifies for sealing, especially since the horse of online access to the Order has long since

> left the barn. Consequently, neither Nelson's case (broadly) nor the Order (specifically) will be ordered sealed, and her motion seeking such relief is denied....

Likewise, in *In re de Groote* (Bankr. D.D.C. 2008), the court denied a "motion to remove memorandum decision from court's website," "because by statute the court is required to make its written decisions available to the public in electronic form." In *Yongo v. Ashcroft* (1st Cir. 2004), the court refused to remove an asylum decision from a court site, though without a categorical statement that such removal is impermissible:

> Yongo's counsel, Jeffrey W. Goldman, has now filed a motion requesting this court "to place this matter under seal; to remove the Court's Judgment and Written Decision from the Court's web site; and to recall, to the extent possible, any public placement or posting of the Court's Decision and Order." As grounds, counsel cites to the confidentiality provisions of 8 C.F.R. 208.6 pertaining to asylum applications and related documents, and says that the court has now "posted [on the world wide web] confidential information about [Yongo's] torture; the name of his persecutors; and the reasons he fears returning to his home country ...." The cited regulation by its terms does not apply to any disclosure made to a court considering legal proceedings arising from the adjudication of an asylum application.
>
> When briefs and administrative records are filed with a federal court, they are customarily treated as available to the public; but common practice, reflected in our own local rules, permits a motion to seal any document so filed. It is, needless to say, the responsibility of counsel to make such a motion in timely fashion and to show good cause for the requested sealing. A review of the docket sheet confirms that no such timely motion was made by Mr. Goldman or any other attorney representing Mr. Yongo in this case.
>
> The court's subsequent decision provides nothing more than the same relatively tame description of the background events that appears in the publicly filed briefs and similar publicly available records in this case. If there is any basis for the sealing of any part of the court's decision, it is not apparent from counsel's motion which — rhetoric aside — contains no reference to anything specific in the decision. Nor does the motion offer any reason to believe that anything in the decision would be likely to threaten harm to Yongo.

And I've seen many other cases where such motions to remove have been denied without explanation. See *Bennett v. NTSB* (4th Cir. 2003); *Paredes v. Attorney General* (11th Cir. 2007); *Elhadidi v. Secretary of Health & Human Servs.* (Ct. Fed. Cl. 2013); *Gradinger v. Washington Nat'l Ins.* (11th Cir. 2007); *In re*

Zaffiro (Wisc. Ct. App. 2006); *In re Bush* (Pa. Super. Ct. App. 2016); *Smith v. Smith* (Wisc. Ct. App. 2006); *United States v. Hart* (8th Cir. 2005).

2. On the other hand, sometimes courts do remove opinion from their web sites.

A. Here, for instance, is a letter that led the court in *Correctional Medical Care, Inc. v. Gray* (E.D. Pa. 2008) to remove an opinion (as with all of these, a non-precedential opinion, which wasn't designated for official publication) from the court's site:

> I am requesting on behalf of my client ... that the above referenced Order be removed from the Court's/Pacer website.
>
> [My client] and his wife are involved in domestic litigation and are separated. My client informs me that his children have been encountering difficulties because their friends are looking up [My client and his wife] and reading court files that are publicly available. While this pertains to a different case, the opinion is harmful to my client and his children in that this case was dismissed with prejudice, but the dismissal order does not show in search engines and so suggests an untrue (or at least an unproven) set of circumstances that paint Mr. and Mrs. Gray in an unfavorable light.
>
> Since this case was dismissed with prejudice and without the full record being available, we respectfully request that you remove this opinion from public view on the internet. We thank you kindly for you attention to this matter.

The court expressly refused to remove the opinion from PACER, the subscription-based service that can be used to access court files if one wants to access them; and the opinion is also available on Westlaw and Lexis, two even more expensive pay services, as well as two free services, casetext.com and courtlistener.com. But the court agreed to remove the opinion from its own site.

B. Here is one successful letter from a bankruptcy case (*In re Granoff* (E.D. Pa. 2013)):

> I was told by [someone at the clerk's office] to write this letter to get my name removed from your website. This was an appeal for a bankruptcy for Civil action that happened seven years ago. I was never able to bankrupt myself and this is damaging my online reputation.... I am currently seeking employment and would beg the court to remove this from their

> website as many employers Google your name after receiving a resume. I was never charged with a felony or even a misdemeanor. Thank you for your prompt response on this manner.

C. Or consider this letter sent to the court in 2015 as to *State v. Touchette* (Mich. Ct. App.), a non-precedential opinion that held that a second-offense drunken-driving case against the defendant could go forward (despite defendant's Fourth Amendment objection):

> I am writing in regards to COA 279214, a Michigan Court of Appeals case from 2008. Recently, I was made aware that when an individual searches the Internet using my full legal name [omitted by EV] with a search engine such as Google.com, the court case aforementioned appears in the search results....
>
> The main reason for the request is that this case is from an event that happened close to 10 years ago in my early 20's and is not a reflection of a the person I am today. From this point, I completed all sentencing requirements on lime with no issues and have not had any encounters with law enforcement since. If a potential employer or other professionally contact were to search my name, this item appears in the search results. Although I understand this is a public record, there is a difference between publicly available and being publicized. This document is being publicized using my name and Google or oilier similar companies have business models to profit off including such items in their search results while only having negative effects for me. In addition, the support for the case was based off one individual's pre-trial testimony and may not give the full details of the case.
>
> Further, the method of using a public folder provides inconsistency in the way documents are found, indexed and presented in search results. Depending on the structure of the document will determine if it appears in search results at all. As an example, the number of times ones name appears in a PDF may make it more relevant and increase die position in search results if that name or a similar spelling of die name is searched. Alter a quick test using the names of other cases found in this same public folder (http://publicdocs.courts.mi.gov:81/opinions/final/coa/), where the defendants names were searched in a similar fashion, I found that at times the court cases did not appear in the search results, and if they did, the document appeared much lower in the search results. Even more serious cases, such as felonies or violent crimes do not appear in this manner on the Michigan Courts website.

> Also, I performed a quick search to understand if other courts both in Michigan or other states use the websites in a similar fashion, where court cases are placed in public folders on their website domain, and was not able to find any that used this same method. If there is a reason for including the cases in public folder, such as newsletter links as an example, there [are] other better ways to store documents or at the very least prevent the case from being indexed in internet search results.
>
> I am not asking that the document be sealed or expunged, rather just prevented being indexed in the internet search results. This is a rather simple task for most technology professionals and basic instructions can be found:
>
> https://support.google.com/webmasters/answer/93710?hl=en
>
> Finally, without this change, this will have long-term implications to my reputation and ability for the pursuit of happiness with the unknown of when this will come up in conversation. I appreciate the consideration and the courts efforts to remedy this situation. Please let me know if there are any questions or additional steps to rectify the situation.

The court removed the opinion from its site, though it's still available on Westlaw. And see also *Hicintuka v. Holder* (5th Cir. 2009) (removing a non-precedential opinion in an asylum case, based on a claim that the availability of the opinion could endanger the asylum seeker, who had been denied asylum and who would presumably be back in his home country); *McPherron v. Unemployment Compensation Bd. of Review* (Pa. Commw. Ct. 2008) (sealing opinion altogether, as well as removing it from the site).

3. What if you also want to get the opinion removed from other Google-searchable sites, such as findlaw.com, casetext.com, and the like? Even if a court takes down the opinion from its site, the other sites are under no obligation to do the same. The court probably won't even try to order them to do so (indeed, in the *Granoff* case, it expressly declined to do so). And I think any such attempt to order a site to remove a formerly public opinion would be unconstitutional: The government generally can't restrict people from communicating information that was once a part of public record. See, e.g., *Florida Star v. B.J.F.* (1989).

But some of the sites might be willing to echo the court's decision: A site might take the view that its job is to faithfully reproduce those things that the court is willing to make public, and once an opinion is no longer made public by the court, it makes sense for the private site to follow suit. (Google Scholar, for instance, also omits the opinion in Touchette's case, noting that "As a courtesy, we have removed 1 sealed court opinion(s) from this page" — though that is somewhat imprecise, since the opinion is not technically sealed but just

taken down from the court's site.) On the other hand, other sites might believe that their task is to provide the maximum possible information for searchers, in which case they may keep the opinion up. Leagle.com seems to take this view, for instance, at least judging by its About Us page.

* * *

None of this tells us, of course, what courts *should* do. I think the courts should not be able to stop private sites from displaying certain decisions that have been made public in the past; but a court's control over its own site is a different matter. On one hand, I see the arguments for having courts provide maximum information for the public, especially since each opinion can provide insight on what the legal system is doing. Moreover, why should courts help people hide information from others (prospective employers)?

On the other hand, I see the arguments for courts deciding that they don't want to help reveal to the public information about private people that they see as no longer really relevant. After all, a court often has the discretion to reveal more or less in its opinion — it can often decide non-precedential cases without a published opinion at all, or publish an opinion that uses pseudonyms, or an opinion that declines to mention certain information. It likely should also have the discretion to change its mind, though that doesn't tell us how it should exercise that discretion in any particular case. (Also, even if a court has a statutory obligation, under some state or federal rule, to make its decision available to people who want to look it up specifically, I've seen no statutory rules that require courts to make their decisions available in a way that shows up on Google searches.)

I also see both the arguments for leaving this as a highly discretionary decision and the arguments against that. Discretion leaves courts with the flexibility to have a strong presumption in favor of publicity and depart from that only in cases where the particular details suggest that certain information isn't really important and is potentially harmful to the people involved. On the other hand, it also virtually ensures that similar cases will be routinely treated differently simply based on which judge happens to decide the case (or which day he happens to decide it).

In this post, though, I don't aim to resolve these questions — just flag them, and flag the reality that in our system courts are making such decisions, and sometimes making them in favor of removal and sometimes against.

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