

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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June 6, 2011

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Mr. Carl Malamud
Public.Resource.Org
1005 Gravenstein Hwy. North
Sebastopol, California 95472

Dear Mr. Malamud:

I write in my capacity as Chair of the Judicial Conference Advisory Committee on Appellate Rules to let you know the results of the Committee's consideration of the concerns that you raised about alien registration numbers in your May and October 2008 letters to Judge Lee H. Rosenthal.

Judge Rosenthal forwarded your letters to Judge Carl E. Stewart, who was then the Chair of the Appellate Rules Committee. The Committee discussed the question of alien registration numbers at its November 2008 meeting. Shortly thereafter, the Judicial Conference Standing Committee on Rules of Practice and Procedure tasked its Subcommittee on Privacy with considering a number of privacy-related concerns, including those that you had articulated regarding alien registration numbers. In the light of this development, the Appellate Rules Committee deferred further consideration of alien registration numbers until the Privacy Subcommittee completed its deliberations.

The Privacy Subcommittee considered a variety of privacy-related questions concerning the Appellate, Bankruptcy, Civil, and Criminal Rules. The Privacy Subcommittee reviewed the materials submitted by Public.Resource.Org; it commissioned the Federal Judicial Center ("FJC") to conduct a survey of court filings; it reviewed local rules concerning redaction; with the assistance of the FJC, it surveyed judges, clerks and attorneys about privacy-related issues; and it held a day-long conference at Fordham Law School in April 2010. One of the panels at the Fordham Conference focused specifically on immigration cases.

The Privacy Subcommittee's report is available at <http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/ResearchingRules/AgendaBooks.aspx> (click on the link for Volume 2 of the January 2011 agenda materials for the Committee on

Rules of Practice and Procedure). The Subcommittee reached the following conclusions about alien registration numbers:

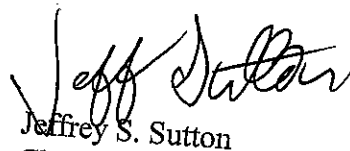
In considering possible amendments to the Privacy Rules, the Subcommittee gave particular attention to the need to redact alien registration numbers insofar as they might be analogized to social-security numbers. After extensive discussion and debate, including consideration at the Fordham Conference, the Subcommittee concludes that redaction of alien registration numbers is not warranted at this time.

Disclosure of an alien registration number, unlike a social-security number, poses no significant risk of identity theft. Moreover, the Subcommittee heard from a number of court clerks and Department of Justice officials, all of whom stressed that redacting alien registration numbers would make it extremely difficult for the courts to distinguish among large numbers of aliens with similar or identical names and to ensure that rulings were being entered with respect to the correct person. Redaction would create a particularly acute problem in the Second and Ninth Circuits, which have heavy immigration dockets. Given the lack of any expressed support for the redaction of alien registration numbers, the Privacy Subcommittee sees no reason to add them to the list of information subject to redaction under subdivision (a) of the Privacy Rules.

In the light of the Privacy Subcommittee's conclusions, the Appellate Rules Committee voted at its April 2011 meeting to remove from its current study agenda the item concerning alien registration numbers.

The Committee appreciates your bringing this issue to its attention and welcomes your future suggestions concerning the Appellate Rules.

Sincerely,



Jeffrey S. Sutton
Chair, Advisory Committee on Appellate Rules

cc: The Honorable Lee H. Rosenthal
Peter G. McCabe
Andrea Kuperman
Catherine T. Struve