

Notice to Counsel in Criminal Cases Concerning the Posting of Appellate Briefs on the Internet

Eighth Circuit Local Rule 28A(d) requires parties filing a brief to provide a diskette or CD-ROM containing a digital version of the brief. In addition to using the diskette or CD-Rom to verify volume limits under FRAP 32(a)(7)(B), the clerk's office also posts the digital version of the brief on the court's Internet site. Since January, 2000, the clerk's office has posted more than 6,000 briefs on the site.

Concerns about the privacy and confidentiality of criminal files recently prompted the Judicial Conference of the United States to limit Internet access to these files and to direct the Federal Judicial Center and the Administrative Office of the U.S. Courts to further study the issue. Because of our brief posting program, the Eighth Circuit has been selected to serve as a pilot court to study the privacy implications of Internet access to electronic briefs. We will maintain our current brief library and continue to post electronic versions of criminal briefs in new cases until the study has been completed.

The courts participating in the study have been asked to notify counsel that their briefs will be posted on the Internet. Additionally, we have been instructed to notify counsel that any information which personally identifies a person and compromises their privacy should be redacted or eliminated from the brief. Examples of such information include Social Security numbers, financial account information, dates of birth, names of minor children and home addresses of any individual. It is acceptable to use the last four digits of Social Security numbers or account information, year of birth, and initials of minor children. In providing addresses (such as the address where a search took place), counsel may refer to the address as "the 4000 block of Elm." Sentencing documents, such as copies of Pre-Sentence Investigation Reports and Statements of Reasons, should never be included on the diskette.

There may be instances where the inclusion of sensitive information is necessary and relevant to the case. In compliance with the E-Government Act of 2002, a party wishing to file a brief containing the personal data identifiers specified above may file an unredacted brief under seal. The is document shall be retained by the clerk as part of the record. The court may, however, require the party to file a redacted copy for the public file and for placement on the Internet.

In child victim/witness cases and cases involving juvenile offenders, counsel are already required to submit both a redacted hard copy of the brief omitting any identifying information and unredacted hard copies of the briefs for the court's use in deciding the case. In these cases, counsel should submit only a diskette of the redacted brief they file for placement in the public record and should not provide a diskette of the unredacted brief. Please refer to the separate information we have provided you with respect to these types of cases. You may also contact the clerk's office for further guidance in preparing briefs in these cases.

You should also be aware that it is the sole responsibility of the filer to comply with redaction requirements. The clerk's office will not review every brief for redaction. You should share this notice with all clients so that an informed decision about the inclusion of sensitive materials may be made.

Counsel may ask the clerk not to post a brief on the Internet. If you do, please provide a brief statement of reasons when you file your brief. You should also mark the diskette "NOT TO BE FILED ON THE INTERNET."

Questions about the court's policy or this pilot project may be addressed to the St. Louis clerk's office at 314-244-2400.