



COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

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Thomas B. Griffith


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Rebecca J. Pallmeyer
Roger W. Titus

Mark S. Miskovsky, Staff

September 17, 2014

MEMORANDUM

TO: Judges, United States Courts

FROM: Judge Julie A. Robinson, Chair 
Court Administration and Case Management Committee

Judge Irene M. Keeley, Chair 
Criminal Law Committee

Judge Catherine C. Blake, Chair 
Defender Services Committee

RE: PROTECTING COOPERATION INFORMATION (**INFORMATION**)

This memorandum is to inform you of the Court Administration and Case Management, Criminal Law, and Defender Services Committees' joint efforts to avert the use of cooperation information in court filings to threaten or harm government cooperators, and to ask for your assistance in achieving this goal.

Due to increased access to criminal case filings, there is a growing concern that cooperation information found in these files is being used to threaten or harm cooperating individuals, particularly those who are incarcerated. Information pertaining to government cooperators has become increasingly accessible since the advent of the Public Access to Court Electronic Records (PACER) system, including in pretrial motions, plea agreements, sentencing memoranda, Rule 35(b) motions, 5K1.1 motions, trial transcripts, and judicial orders.

Furthermore, many inmates have access to judicial opinions that contain cooperation information through electronic legal research or in law books housed in the institutions' libraries. The misuse of criminal case filings to intimidate or harm government cooperators undermines our criminal justice system, as information obtained from cooperators plays a large part in criminal prosecutions in federal courts.

Because of the serious consequences of ready access to this information, the Court Administration and Case Management, Defender Services, and Criminal Law Committees have been working collaboratively to develop a comprehensive policy proposal that would provide for national procedures for the handling of cooperation information in criminal cases for consideration by the Judicial Conference. A uniform solution could effectively curb the widespread misuse of court documents to harm government cooperators. It is, however, difficult to strike the right balance between protecting this information and the public's First Amendment rights of access to court documents. For this reason, the three committees agreed to not present a broad policy proposal to deal with this issue until additional research has been conducted. Our committees have jointly asked the Federal Judicial Center to undertake research on the extent of threats or actual harm to government cooperators. Nonetheless, the committees agree that several smaller suggestions could help to protect information relating to cooperation.

As a first step, we ask that you continue to be mindful of the potential, but very real, consequences to government cooperators when preparing opinions and orders. We urge you to consider avoiding the use of cooperators' names in your opinions and orders, whenever practicable, or to consider taking additional actions as you see fit, consistent with the law, to obscure cooperators' identities to ensure their safety.

On behalf of the three committees, we want to thank you for considering this suggestion. Moving forward, we plan to present a proposal to the Judicial Conference as the committees develop a comprehensive policy on this important issue.

cc: Clerks, United States Courts
Law Clerks, United States Courts
Chief Probation Officers
Chief Pretrial Services Officers