

Letter to Judge Stephen George Clarifying *Bar Briefs* Paragraph on House Bill 424

(The following will be printed in the August edition of *Bar Briefs*)

Judge George,

Having just read my article in *Bar Briefs* about new laws enacted by the 2006 Kentucky General Assembly, I can understand why some parties and attorneys are confused about whether they are now required to redact personal identifiers from pleadings and exhibits filed with the courts. It appears that a qualifying phrase, included in the article as submitted, was edited out for publication.

In the July issue of *Bar Briefs*, the paragraph about HB 424 should have read as follows:

HB 424, ***in conjunction with an anticipated amendment to the Kentucky Rules of Civil Procedure***, will require that attorneys file with the courts two versions of any pleadings or exhibits containing "personal identifiers" (including dates of birth and Social Security and financial account numbers), one in which the personal identifiers are fully set forth and another in which they are redacted; it further requires that court clerks permit public inspection of only the version in which the personal identifiers have been redacted. (emphasis added).

The phrase bolded and italicized above was inexplicably edited out of the article. In addition, the article elsewhere stated that, unless otherwise noted, all bills mentioned would become effective on July 12, 2006. This left readers with the impression that they would have to file two versions of every pleading or exhibit containing personal identifiers effective July 12. This is not the case.

A proposed amendment to CR 10.01 was discussed at the June public hearing at the KBA Convention, but it has not yet been adopted by the Kentucky Supreme Court. The proposed amendment states as follows (with new language underlined):

(1) Every pleading shall have a caption setting forth the name of the court, the style of the action, the file number, and a designation as in Rule 7.01. In the complaint the style of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(2) Excepting matters which are otherwise deemed confidential by rule or statute, no pleading, document or exhibit filed with the court in a civil case shall contain personal data identifiers or sensitive information which could be used in the theft of identity. If sensitive information must be included, the following personal identifiers shall be partially redacted from the document by the attorney or party preparing, unless otherwise indicated by leave of court:

(a) Social Security Numbers. If an individual's social security number must be included in a document, only the last four digits of that number shall be used.

(b) Names of Minor Children. If the involvement of a minor child must be mentioned, only the initials of that child shall be used.

(c) Dates of Birth. If an individual's date of birth must be included in a document, only the year shall be used.

(d) Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers shall be used.

(3) A party filing any civil document, pleading or exhibit containing any of the personal identifiers specified above shall file the unredacted copy under seal. This sealed copy shall be retained by the court as part of the record. When an unredacted copy is filed under seal the party shall also file a redacted copy for the public record. Any personal information not otherwise protected by may be made available to the public.

(4) It is the sole responsibility of the counsel and the parties to ensure that all pleadings and other papers comply with the rules of this court requiring redaction of personal data identifiers. The clerk will not review each document for redaction.

(5) Counsel or parties failing to comply will be subject to the sanction powers of the court, including having relevant documents stricken from the record in their entirety.

It is my opinion that unless and until the above amendment to CR 10.01 is adopted, HB 424 does not mandate any change in either the way parties and attorneys file civil pleadings or in the manner in which the clerk's office manages them. Section 1 of the act simply provides:

If another section of this chapter or KRS 407.5311 or 407.5602 requires the provision of a personal identifier in a pleading, document, or exhibit filed with the court, the party making the filing shall provide the personal identifier in accordance with the Kentucky Rules of Civil Procedure.

At present, the Kentucky Rules of Civil Procedure do not speak to how personal identifiers contained within pleadings or exhibits to be filed with the courts should be handled. No rule currently requires personal identifiers to be redacted from pleadings or exhibits filed in court. Thus, parties or attorneys who file pleadings or documents with personal identifiers fully set forth are in accordance with the rules.

Section 2 of the act provides:

The clerk of the court shall allow the unredacted sealed copy of the pleading, document, or exhibit containing personal identifiers to be accessed only by a party to the case, an attorney of record in the case, a judge of the court or other authorized court personnel, a duly authorized employee or agent of the Cabinet for Health and Family Services involved in child support matters attendant to the case, or a person authorized to view the copy by specific order of the court.

Because parties and attorneys are not currently under any obligation to file unredacted sealed copies of pleadings or exhibits containing personal identifiers, the clerk does not yet have to worry about the access issue. Again, it is my opinion that unless and until the proposed amendment to CR 10.01 is adopted, there is no practical import to HB 424.

This will all change with the adoption of a new version of CR 10.01 as set forth above. In the past, the Kentucky Supreme Court has announced rules changes in the fall but there is no set schedule for it to do so. If and when CR 10.01 is amended, information will have to be disseminated to the public, bench, and bar about implementation of the changes. Until then, it is business as usual.

I hope this has helped clarify the effect of HB 424 and alleviate some of the concerns that have been expressed. Please feel free to share this information with anyone you think will benefit from having it.

— D. Scott Furkin