



# WORLD **PRIVACY** FORUM

## **Comments of the World Privacy Forum**

### **To the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States**

### **Regarding proposed amendments to Form 4, Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis**

*Via Regulations.gov*

Honorable Jeffrey S. Sutton, Chair  
Committee on Rules of Practice and Procedure of the Judicial Conference of the United States  
Washington, D.C. 20544

January 3, 2017

The World Privacy Forum welcomes the opportunity to comment on the proposed change to Appellate Form 4 used by petitioners seeking to proceed in forma pauperis. The proposal seeks to eliminate the requirement to include on the form the last four digits of a litigant's Social Security Number.

The World Privacy Forum is a non-profit public interest research and consumer education group. We publish in-depth research papers, policy comments, and consumer education focusing on privacy and security issues. Much of our work explores emerging technology and privacy issues, including health, biometrics, consent, data analytics, and many other rapidly evolving areas of privacy. You can see our publications and more information at [www.worldprivacyforum.org](http://www.worldprivacyforum.org).

The World Privacy Forum supports the proposed change to Form 4. We offer three primary reasons.

First, the collection and maintenance of *any* personally identifiable information (such as a SSN, whether whole or partial) creates a concern about personal privacy for both the data subject *and* the data steward. Any responsible data steward collecting personally identifiable information

should assess the privacy risk associated with collection and should be prepared to take reasonable action (including the possibility of notifying the data subject about the breach) if and when the information falls into the hands of third parties who were not intended to have the information.<sup>1</sup> Those third parties may include innocent bystanders, hackers, thieves, or members of the staff of the data steward who have no need to access the information. Not collecting or keeping personally identifiable information in the first place lessens or eliminates the burden on the data steward while also protecting the privacy of the data subject.<sup>2</sup>

Second, an SSN does a poor job of identification and authentication. SSNs are widely available from governmental or commercial sources, and it is not difficult to find or even predict the SSN for any given individual.<sup>3</sup> Thus, any litigant seeking to represent himself or herself as another individual could easily acquire the SSN of that individual. In any event, we suggest that the likelihood of a litigant posing as another individual is highly unlikely. While financial, medical, and other forms of identity theft are commonplace today, we have never seen a report that an identity thief posed as another individual in litigation. Even if it happened, other parties to the litigation would identify an imposter in the ordinary course of litigation.

Third, the advisory committee reported the general consensus of clerks of court that the last four digits of a SSN serve no purpose and could be eliminated.<sup>4</sup> This reason alone justifies the proposed change without further consideration. We observe that both state and federal agencies have taken legislative and other actions to reduce reliance on SSNs in recent decades.<sup>5</sup>

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<sup>1</sup> Federal Trade Commission Report, *Security in Numbers: SSNs and ID Theft*, FTC, (December 2008.) <https://www.ftc.gov/sites/default/files/documents/reports/security-numbers-social-security-numbers-and-identity-theft-federal-trade-commission-report/p075414ssnreport.pdf>.

<sup>2</sup> One of the best historic conversations about SSNs and early concerns is contained in the archive of the HEW meetings, the results of which eventually led to the modern-day Fair Information Practices. It is remarkable that the same concerns discussed in these meetings are largely extant today. See: Hoofnagle, Chris Jay, *The Origin of Fair Information Practices: Archive of the Meetings of the Secretary's Advisory Committee on Automated Personal Data Systems (SACAPDS)* (July 15, 2014). Available at SSRN: <https://ssrn.com/abstract=2466418> or <http://dx.doi.org/10.2139/ssrn.2466418>.

<sup>3</sup> Alessandro Acquisti, Ralph Gross. *Predicting Social Security Numbers from public data*, *Proceedings of the National Academy of Science*, PNAS 2009 106 (27) 10975-10980. <http://www.pnas.org/content/106/27/10975.full.pdf>.

<sup>4</sup> Preliminary Draft of Proposed Amendment, Excerpt of Memorandum from Judge Steven M. Colloton, Chair, Advisory Committee on Appellate Rules, to Judge Jeffrey S. Sutton, Chair, Committee on Rules of Practice and Procedure (May 18, 2016), *Report of the Advisory Committee on Appellate Rules*, p. 18. <https://www.regulations.gov/document?D=USC-RULES-AP-2016-0002-0002>.

<sup>5</sup> Every state now has an identity theft statute, most of which constrain use of SSNs in some way. See National Conference of State Legislatures, *State Identity Theft Statutes*, <http://www.ncsl.org/research/financial-services-and-commerce/identity-theft-state-statutes.aspx>.

Thank you again for the opportunity to comment on the proposed change to the federal rules of practice and procedure.

Respectfully,

A handwritten signature in black ink that reads "Pam Dixon". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Pam Dixon  
Executive Director,  
World Privacy Forum  
[www.worldprivacyforum.org](http://www.worldprivacyforum.org)