

Privacy in Bankruptcy

Only *You* Can Prevent Harm by Sealing, Redacting, or Not Filing



41st Annual Jay L. Westbrook Bankruptcy Conference
November 17, 2022

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BK Bar, we have a problem...



BK Bar, we have a problem... and it's us.

We do not adequately consider individuals' privacy in administering bankruptcy proceedings, *in violation of other laws and our duties.*

- Today, bankruptcy dockets are publicly accessible via PACER and, in mega cases, noticing agent websites that are search optimized.
- In the life of a bankruptcy case, personal information is regularly disclosed (or sold).
 - Creditor Matrix
 - Schedules and SOFAs
 - Affidavits of Service
 - Chapter 7 or 13 petitions
 - Proofs of Claim
 - Claim Objections
 - Fee Applications
 - Sales of consumer data

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We are behind the legal times.

Jurisdictions around the country and globe are enacting privacy laws.

UK and EU GDPR

- Broadly covers "processing" of individuals' information
- Fines up to the higher of £17,500,000 or 4% of worldwide annual revenue

United States

- HIPAA
- Children's Online Privacy and Protection Act
- Gram-Leach-Bliley Act
- Federal Trade Commission Act
- California Consumer Privacy Act
- Virginia Consumer Data Protection Act
- Colorado Privacy Act
- State Legislation re Law Enforcement Officers' addresses

TEXAS

- Constitutional & Common Law Right to Privacy
- Consumer Protection Act
- Identity Theft Enforcement and Protection Act
- Medical Privacy Statutes
- Texas Human Resources Code

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We are ignoring our duties as lawyers.

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

(Including Amendments Effective January 31, 2022)

Rule 1.01. Competent and Diligent Representation

Maintaining Competence

8. Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology. To maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. Isolated instances of faulty conduct or decision should be identified for purposes of additional study or instruction.

We are ignoring our duties as lawyers.

Redaction Agreement

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY:

All filers must redact: Social Security or taxpayer-identification numbers; dates of birth; names of minor children; financial account numbers; and in criminal cases, home addresses in compliance with [Fed. R. App. P. 25\(a\)\(5\)](#), [Fed. R. Civ. P. 5.2](#), [Fed. R. Crim. P. 49.1](#), or [Fed. R. Bankr. P. 9037](#). This requirement applies to all documents, including attachments.

☐ I understand that, if I file, I must comply with the redaction rules. I have read this notice.

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