

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

IN RE: EXEMPTION FROM
THE ELECTRONIC PACER
PUBLIC ACCESS FEES BY
KATE STITH

Administrative Order
No. 18-MS-056

ADMINISTRATIVE ORDER

This matter is before the Court upon the application and request by Kate Stith, Yale Law School, for the exemption from the fees imposed by the Electronic Public Access fee schedule adopted by the Judicial Conference of the United States Courts. A copy of the request is attached to this Administrative Order.

This Court finds that Kate Stith, an individual researcher associated with an educational institution, falls within the class of users listed in the fee schedule as being eligible for a fee exemption. Additionally, Kate Stith has demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. Accordingly, Kate Stith shall be exempt from the payment of the fees for access via PACER to the electronic case files maintained in this Court, to the extent such use is incurred in the course of educational research. She shall not be exempt from the payment of fees incurred in connection with other uses of the PACER system in this Court. Additionally, the following limitations apply:

1. This fee exemption applies only to Kate Stith and is valid only for the purposes stated above and recited in the request;
2. This fee exemption applies only to the electronic case files of this Court that are available through the PACER system;

3. By accepting this exemption, Kate Stith agrees not to sell for profit any data obtained as a result of receiving this exemption;

4. This exemption is valid until 12 months from the date of this Order.

This order may be revoked at the discretion of the Court at any time. A copy of this Order shall be sent to the PACER Service Center.

IT IS SO ORDERED.

Date: June 19, 2018



ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE



Yale Law School

KATE STITH · *Lafayette S. Foster Professor of Law*

March 20, 2018
(revision of request sent on February 21, 2018)

Multi-Court Exemptions
Court Programs Division
DPS-CSO-PRGD
One Columbus Circle, N.E.
Washington, DC 20544

To Whom It May Concern:

I am writing to request an order of exemption from PACER fees in all 94 district courts in order to conduct academic research regarding the filing of prior drug felony informations pursuant to 21 U.S.C. § 851. I am a Yale Law School law professor who studies criminal law, criminal procedure, and constitutional law.

My research has been published in the Yale Law Journal, the Harvard Law Review, the Stanford Law Review, and the Federal Sentencing Reporter, among other publications. I have also published research in numerous books and spoken at many academic conferences and fora. Recently, I have become interested in the Attorney General guidance issued to United States Attorney offices and how they influence federal sentencing enhancements, particularly under 21 U.S.C. § 851.

My proposed project has two main objectives. The first is to understand the frequency and fraction of individuals convicted of federal narcotics trafficking who are sentenced under the enhanced sentencing statutes of 21 U.S.C. § 851, which requires that any mandatory minimum sentence be doubled if the prosecuting attorney files in the district court an information demonstrating a previous felony trafficking conviction. Right now, there is limited information about the prevalence of these enhanced sentences within the Department of Justice, the federal courts, and the United States Sentencing Commission. This project would elucidate recent trends in the use of this sentencing enhancement.

The second purpose of this project is to better understand the relationship between the Department of Justice and the U.S. Attorney offices. In particular, we are interested in compliance with a memo issued by Attorney General Eric Holder that directed U.S. Attorney offices to only seek sentencing enhancements under 21 U.S.C. § 851 in the most egregious cases.¹ Because we do not know the previous pattern of filing these enhancements or what occurred after this memorandum was issued, we cannot answer the seemingly simple question of whether the U.S. Attorney offices complied. This research project seeks to investigate this question.

¹ Memorandum from Eric H. Holder, Jr., Att'y Gen. of the United States, to U.S. Att'ys and Assistant U.S. Att'ys for the Crim. Div., Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases (Aug. 12, 2013).

The PACER fee schedule indicates a court may grant a fee waiver to an individual researcher associated with an academic institution if the individual researcher demonstrates that paying the normal access fees would result in an unreasonable burden and that the waiver will promote public access to information.² While there is a substantial amount of information not requiring PACER access regarding the number and types of criminal cases, these sources do not contain the information about whether a prosecutor sought a sentencing enhancement under § 851. Our project has been in contact with U.S. Attorney offices, the Department of Justice, and the United States Sentencing Commission, none of which has collected this data. After significant investigation, we have determined that the dispositive source for this information is the case docket itself. Because of the nature of PACER fees, however, compiling this information for a single year would likely cost tens of thousands of dollars. Paying the PACER fees for access to these documents constitutes an unreasonable burden and would likely make it impossible to complete this project.

This research will promote public access to information by illuminating the use of a significant statutory sentencing enhancement in drug trafficking cases and also by examining the nature and structure of the U.S. Department of Justice and how it relates to the federal prosecuting offices.

The PACER fee schedule also indicates that the researcher must also show that the defined project is narrow in scope, that the information accessed will not be redistributed on the internet, and that the researcher will not use this information for commercial purposes.³

This project is narrow in scope because it is solely concerned with sentencing in federal drug trafficking cases. In particular, we will only be investigating cases in which defendants have been charged under the statutes that may trigger a sentencing enhancement under 21 U.S.C. § 851, namely 21 U.S.C. §§ 841, 846, 952, 953, 960, and 963. On average, this represents 140 cases per district per year.⁴ This project anticipates retrieving docket information for as long as it is available on PACER in each district. Assuming that approximately 15 years of docket information is available on PACER, this would mean retrieving information from about 2,100 cases per district, on average.⁵

This project is also narrow in scope because it does not encompass civil cases or other types of prevalent federal criminal cases.

² JUDICIAL CONFERENCE, ELECTRONIC PUBLIC ACCESS FEE SCHEDULE 3 (2013), http://www.pacer.gov/documents/epa_feesched.pdf.

³ *Id.*

⁴ There is significant variation in the number of cases where a defendant has been charged under these statutes in a given year. This variation appears to be caused by the size of the district and the particular law enforcement environment in that district. Some districts have a few dozen cases per year, while a smaller number have several hundred cases per year. This analysis was performed using the Federal Judicial Center's Integrated Database. For the purposes of this analysis, year indicates the fiscal year in which a case was initiated.

⁵ This project is assuming 15 years of available data because the Administrative Office of the U.S. Courts has informed me that criminal cases are not available on PACER before 2004. Since PACER was rolled out in different districts at different times, this number will likely vary and will be lower for districts that began recording criminal cases in PACER after 2004.

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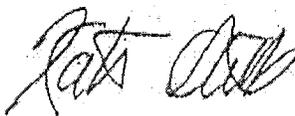
None of the data obtained from this project will be redistributed on the internet or used for commercial purposes. This project will not use PACER for anything other than the academic study of law, and this project will not use PACER for the practice of law, representing clients, or any other fee-generating purpose.

Before submitting the present application, I requested PACER fee exemptions from six district courts, and, have thus far been granted exemptions from four districts —the Southern District of New York, the Northern District of Iowa, the Middle District of Florida, and the District of Connecticut.

Without access to these dockets and related litigation materials, it may well be impossible to continue this research project. I would be very grateful if you could assist me in completion of this project. I therefore request a fee waiver from PACER for documents held by the 94 U.S. district courts. PACER access will be used only for academic research. I would like to request a fee waiver for the duration of a year and, if possible, beyond.

If you have any questions, please feel free to get in touch with me. Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Stith", written in a cursive style.

Kate Stith
Lafayette S. Foster Professor of Law
Yale Law School

Application for Multi-Court Exemption from the Judicial Conference's Electronic Public Access (EPA) Fees

1.) I am requesting an exemption from fees for public access to electronic case records for the courts selected below:

Courts of Appeal

- | | |
|---|---|
| <input type="checkbox"/> All Courts of Appeal | <input type="checkbox"/> Seventh Circuit |
| <input type="checkbox"/> First Circuit | <input type="checkbox"/> Eighth Circuit |
| <input type="checkbox"/> Second Circuit | <input type="checkbox"/> Ninth Circuit |
| <input type="checkbox"/> Third Circuit | <input type="checkbox"/> Tenth Circuit |
| <input type="checkbox"/> Fourth Circuit | <input type="checkbox"/> Eleventh Circuit |
| <input type="checkbox"/> Fifth Circuit | <input type="checkbox"/> D.C. Circuit |
| <input type="checkbox"/> Sixth Circuit | <input type="checkbox"/> Federal Circuit |

Bankruptcy Appellate Panels (BAP)

- | |
|---|
| <input type="checkbox"/> First Circuit - BAP |
| <input type="checkbox"/> Sixth Circuit - BAP |
| <input type="checkbox"/> Eighth Circuit - BAP |
| <input type="checkbox"/> Ninth Circuit - BAP |
| <input type="checkbox"/> Tenth Circuit - BAP |

District Courts

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> All District Courts | | | |
| <input type="checkbox"/> Alabama Middle | <input type="checkbox"/> Illinois Northern | <input type="checkbox"/> Nebraska | <input type="checkbox"/> Rhode Island |
| <input type="checkbox"/> Alabama Northern | <input type="checkbox"/> Illinois Central | <input type="checkbox"/> Nevada | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Alabama Southern | <input type="checkbox"/> Illinois Southern | <input type="checkbox"/> New Hampshire | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Alaska | <input type="checkbox"/> Indiana Northern | <input type="checkbox"/> New Jersey | <input type="checkbox"/> Tennessee Eastern |
| <input type="checkbox"/> Arizona | <input type="checkbox"/> Indiana Southern | <input type="checkbox"/> New Mexico | <input type="checkbox"/> Tennessee Middle |
| <input type="checkbox"/> Arkansas Eastern | <input type="checkbox"/> Iowa Northern | <input type="checkbox"/> New York Eastern | <input type="checkbox"/> Tennessee Western |
| <input type="checkbox"/> Arkansas Western | <input type="checkbox"/> Iowa Southern | <input type="checkbox"/> New York Northern | <input type="checkbox"/> Texas Eastern |
| <input type="checkbox"/> California Central | <input type="checkbox"/> Kansas | <input type="checkbox"/> New York Southern | <input type="checkbox"/> Texas Northern |
| <input type="checkbox"/> California Eastern | <input type="checkbox"/> Kentucky Eastern | <input type="checkbox"/> New York Western | <input type="checkbox"/> Texas Southern |
| <input type="checkbox"/> California Northern | <input type="checkbox"/> Kentucky Western | <input type="checkbox"/> North Carolina Eastern | <input type="checkbox"/> Texas Western |
| <input type="checkbox"/> California Southern | <input type="checkbox"/> Louisiana Eastern | <input type="checkbox"/> North Carolina Middle | <input type="checkbox"/> Utah |
| <input type="checkbox"/> Colorado | <input type="checkbox"/> Louisiana Middle | <input type="checkbox"/> North Carolina Western | <input type="checkbox"/> Vermont |
| <input type="checkbox"/> Connecticut | <input type="checkbox"/> Louisiana Western | <input type="checkbox"/> North Dakota | <input type="checkbox"/> Virgin Islands |
| <input type="checkbox"/> Delaware | <input type="checkbox"/> Maine | <input type="checkbox"/> Northern Mariana Islands | <input type="checkbox"/> Virginia Eastern |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Maryland | <input type="checkbox"/> Ohio Northern | <input type="checkbox"/> Virginia Western |
| <input type="checkbox"/> Florida Middle | <input type="checkbox"/> Massachusetts | <input type="checkbox"/> Ohio Southern | <input type="checkbox"/> Washington Eastern |
| <input type="checkbox"/> Florida Northern | <input type="checkbox"/> Michigan Eastern | <input type="checkbox"/> Oklahoma Eastern | <input type="checkbox"/> Washington Western |
| <input type="checkbox"/> Florida Southern | <input type="checkbox"/> Michigan Western | <input type="checkbox"/> Oklahoma Northern | <input type="checkbox"/> West Virginia Northern |
| <input type="checkbox"/> Georgia Northern | <input type="checkbox"/> Minnesota | <input type="checkbox"/> Oklahoma Western | <input type="checkbox"/> West Virginia Southern |
| <input type="checkbox"/> Georgia Middle | <input type="checkbox"/> Mississippi Northern | <input type="checkbox"/> Oregon | <input type="checkbox"/> Wisconsin Eastern |
| <input type="checkbox"/> Georgia Southern | <input type="checkbox"/> Mississippi Southern | <input type="checkbox"/> Pennsylvania Eastern | <input type="checkbox"/> Wisconsin Western |
| <input type="checkbox"/> Guam | <input type="checkbox"/> Missouri Eastern | <input type="checkbox"/> Pennsylvania Middle | <input type="checkbox"/> Wyoming |
| <input type="checkbox"/> Hawaii | <input type="checkbox"/> Missouri Western | <input type="checkbox"/> Pennsylvania Western | |
| <input type="checkbox"/> Idaho | <input type="checkbox"/> Montana | <input type="checkbox"/> Puerto Rico | |

Bankruptcy Courts

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> All Bankruptcy Courts | | | |
| <input type="checkbox"/> Alabama Middle | <input type="checkbox"/> Illinois Northern | <input type="checkbox"/> Nebraska | <input type="checkbox"/> Rhode Island |
| <input type="checkbox"/> Alabama Northern | <input type="checkbox"/> Illinois Central | <input type="checkbox"/> Nevada | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Alabama Southern | <input type="checkbox"/> Illinois Southern | <input type="checkbox"/> New Hampshire | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Alaska | <input type="checkbox"/> Indiana Northern | <input type="checkbox"/> New Jersey | <input type="checkbox"/> Tennessee Eastern |
| <input type="checkbox"/> Arizona | <input type="checkbox"/> Indiana Southern | <input type="checkbox"/> New Mexico | <input type="checkbox"/> Tennessee Middle |
| <input type="checkbox"/> Arkansas Eastern | <input type="checkbox"/> Iowa Northern | <input type="checkbox"/> New York Eastern | <input type="checkbox"/> Tennessee Western |
| <input type="checkbox"/> Arkansas Western | <input type="checkbox"/> Iowa Southern | <input type="checkbox"/> New York Northern | <input type="checkbox"/> Texas Eastern |
| <input type="checkbox"/> California Central | <input type="checkbox"/> Kansas | <input type="checkbox"/> New York Southern | <input type="checkbox"/> Texas Northern |
| <input type="checkbox"/> California Eastern | <input type="checkbox"/> Kentucky Eastern | <input type="checkbox"/> New York Western | <input type="checkbox"/> Texas Southern |
| <input type="checkbox"/> California Northern | <input type="checkbox"/> Kentucky Western | <input type="checkbox"/> North Carolina Eastern | <input type="checkbox"/> Texas Western |
| <input type="checkbox"/> California Southern | <input type="checkbox"/> Louisiana Eastern | <input type="checkbox"/> North Carolina Middle | <input type="checkbox"/> Utah |
| <input type="checkbox"/> Colorado | <input type="checkbox"/> Louisiana Middle | <input type="checkbox"/> North Carolina Western | <input type="checkbox"/> Vermont |
| <input type="checkbox"/> Connecticut | <input type="checkbox"/> Louisiana Western | <input type="checkbox"/> North Dakota | <input type="checkbox"/> Virgin Islands |
| <input type="checkbox"/> Delaware | <input type="checkbox"/> Maine | <input type="checkbox"/> Northern Mariana Islands | <input type="checkbox"/> Virginia Eastern |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Maryland | <input type="checkbox"/> Ohio Northern | <input type="checkbox"/> Virginia Western |
| <input type="checkbox"/> Florida Middle | <input type="checkbox"/> Massachusetts | <input type="checkbox"/> Ohio Southern | <input type="checkbox"/> Washington Eastern |
| <input type="checkbox"/> Florida Northern | <input type="checkbox"/> Michigan Eastern | <input type="checkbox"/> Oklahoma Eastern | <input type="checkbox"/> Washington Western |
| <input type="checkbox"/> Florida Southern | <input type="checkbox"/> Michigan Western | <input type="checkbox"/> Oklahoma Northern | <input type="checkbox"/> West Virginia Northern |
| <input type="checkbox"/> Georgia Northern | <input type="checkbox"/> Minnesota | <input type="checkbox"/> Oklahoma Western | <input type="checkbox"/> West Virginia Southern |
| <input type="checkbox"/> Georgia Middle | <input type="checkbox"/> Mississippi Northern | <input type="checkbox"/> Oregon | <input type="checkbox"/> Wisconsin Eastern |
| <input type="checkbox"/> Georgia Southern | <input type="checkbox"/> Mississippi Southern | <input type="checkbox"/> Pennsylvania Eastern | <input type="checkbox"/> Wisconsin Western |
| <input type="checkbox"/> Guam | <input type="checkbox"/> Missouri Eastern | <input type="checkbox"/> Pennsylvania Middle | <input type="checkbox"/> Wyoming |
| <input type="checkbox"/> Hawaii | <input type="checkbox"/> Missouri Western | <input type="checkbox"/> Pennsylvania Western | |
| <input type="checkbox"/> Idaho | <input type="checkbox"/> Montana | <input type="checkbox"/> Puerto Rico | |

National Courts

- | | | |
|--|--|---|
| <input type="checkbox"/> Judicial Panel on
Multidistrict Litigation | <input type="checkbox"/> U.S. Court of
Federal Claims | <input type="checkbox"/> U.S. Court of
International Trade |
|--|--|---|

2.) I am an individual associated with

3.) Please summarize why the case information from the Public Access to Court Electronic Records (PACER) service is needed and how it will be used. Also, please explain why an exemption from the courts identified is necessary. If you need more space, please provide in an attachment.

4.) In support of this application, I affirm the following:

a) An exemption from the Judicial Conference's EPA Fee is necessary in order to avoid unreasonable burdens and to promote public access to information.

b) That the exemption will be for a definitive period of time:

c) I understand that this fee exemption will apply only to me, will be valid only for the purposes stated above, and will apply only to the electronic case files of the court(s) indicated above that are available through the PACER service.

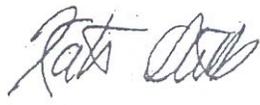
d) I agree that any data received through this exemption will not be sold for profit, will not be transferred, will not be used for commercial purposes, and will not be redistributed via the Internet.

Declaration: I declare that all the above information is true and understand that a false statement

may result in termination of my exempt access and an assessment of Electronic Public Access usage fees. (The box must be marked or your request will not be considered)

Applicant's Printed Name

Appl



Applicant's Signature

Applicant's Phone Number

Applicant's email address

Applicant's Mailing Address

City

State

Zip Code

Date

Please submit your completed, signed request via email to Multi-CourtExemptions@ao.uscourts.gov or by mail to:

Attention: Multi-Court Exemptions
Court Programs Division
DPS-CSO-PRGD
One Columbus Circle, N.E.
Washington, DC 20544

**** Requests sent through the US mail may take up to two weeks to clear security.****