

Judiciary

A Judge's Unusual Request: Don't Print This in Westlaw or Lexis

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By [Debra Cassens Weiss](#)

Unpublished opinions often show up in online databases, but one federal judge in Los Angeles is apparently trying to do something about it.

Judge A. Howard Matz has added this line to at least 15 recent orders: "This order is not intended for publication or for inclusion in the databases of Westlaw or Lexis." The blog [Legal Research Plus](#) noted the unusual request and wondered why only two digital databases were mentioned.

"So what about Bloomberg Law.com?" the blog asks. "Or Google Scholar? Or Fastcase? Justia?"

Unpublished opinions are withheld from the official reports and traditionally treated as not having any precedential effect. But Matz's request referencing databases is out of the ordinary, according to David Cleveland, a law professor at Nova Southeastern University's Shepard Broad Law Center.

"The practice of declaring the court's opinion not only 'unpublished,' but not for publication in Westlaw or Lexis, is certainly new to me," Cleveland tells the ABA Journal in an e-mail.

Stephen Montes, Matz's courtroom deputy clerk, says the language is intended as a signal—and is not a command to Westlaw or Lexis.

"On the occasions when the judge has added that language, it was designed to signal to the reader that he knew that the analysis in the order was not necessarily definitive or exhaustive—that the order should not be viewed as something he intended to contribute to developing jurisprudence," Montes writes in an e-mail to the ABA Journal.

Matz references only Westlaw and Lexis because citations to unpublished opinions in the briefs he reads are to those databases only, Montes says.

But Cleveland sees some problems with Matz's language. "This court's order strikes me as impractical, inappropriate and potentially unconstitutional," he says.

Cleveland says the trend is toward greater openness, publication and citation of unpublished opinions.

He points out that the Federal Rules of Appellate Procedure were recently amended to bar courts from prohibiting or restricting citation to newly issued unpublished opinions. He also notes the E-Government Act of 2002 requiring courts to make available all written opinions on their websites.

Since others can still disseminate Matz's orders, the request is impractical, Cleveland says. It's also inappropriate to try to create a secret body of law, he says.

Cleveland argues that litigants ought to be able to point out a court's prior decisions even if they aren't binding precedent. He sees a potential due process or equal protection violation if litigants aren't allowed to ask a court to act today as it did in the past or to explain the distinction.

Cleveland doubts that Westlaw or Lexis will comply with the judge's request. He appears to be right. The ABA Journal turned up 15 cases in which Westlaw apparently ignored Matz and published his unpublished orders in its electronic database. In each case, Matz's unfulfilled request was printed at the bottom of the document.

Matz has long been aware that sometimes his rulings do make their way into the databases, despite the sentence saying they are not intended to be included there, Montes says. Montes emphasizes that the language is not an order to the publishers, and the judge doesn't always include it. "Judge Matz never has ordered any attorney, party, database (including Westlaw and Lexis) or publication not to print any order of his, and he would never do so," Montes says.

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