

## NJ Judges Face Uphill Privacy Battle Despite New Protections

By **Bill Wichert**

*Law360 (November 20, 2020, 8:58 PM EST)* -- The vast frontier of the internet will remain a daunting landscape for judges in New Jersey looking to corral their public information under a new law barring the online posting of their home addresses and phone numbers, which followed a shooting at U.S. District Judge Esther Salas' residence that left her son dead and husband wounded.

Removing such material will be challenging for jurists seeking protection under the bill New Jersey Gov. Phil Murphy signed into law Friday, experts said. The law is known as Daniel's Law in honor of Judge Salas' son, Daniel Anderl, who was gunned down July 19 in an apparent ambush by self-described "anti-feminist" attorney Roy Den Hollander.

"I think there are always challenges when it comes to trying to claw back information from the public forum," said Lowenstein Sandler LLP attorney Kathleen A. McGee, formerly chief of the New York Attorney General's Bureau of Internet and Technology.

Such public information is "out there and there is always going to be a way in theory to find out ... where someone lives," McGee said.

The legislation — which covers active and retired judges, prosecutors and law enforcement officers — authorizes criminal and civil charges for the online disclosure of their information, and extends certain protections to their immediate family members. The law also lets them request that their home addresses or phone numbers be taken down from websites. The law's protections for judges go into effect immediately.

During a bill-signing ceremony in Trenton, Murphy, Judge Salas and other speakers stressed that the legislation would protect judges.

"Daniel's Law will make a difference. It will protect judges from senseless acts of violence," Judge Salas said. "This groundbreaking legislation provides significant safeguards that are needed in order to protect our justice system and the rule of law."

But judges likely won't be able to scrub all online traces of such information, experts said. While the legislation shields judges' home addresses under the state's Open Public Records Act, such information is already available online on a myriad of websites. In just a few short clicks, one can find out where judges live and even see pictures of their homes.

"If there's someone who's dedicated enough ... and angry or motivated enough, they can find information about you on the internet," said retired U.S. Magistrate Judge Stephen Wm. Smith, director of Fourth Amendment and open courts at Stanford Law School's Center for Internet and Society.

Judge Smith, who served on the Texas federal bench from 2004 to 2018, said he was sympathetic about what happened to Judge Salas and her family, but said the New Jersey law is "an overreaction and it's not going to work." The judge said he didn't see "how you're going to be able to just eliminate the ability of somebody to track down a judge on the internet with so many resources available."

"For the truly motivated individual who is more likely to act ... on a threat, I don't think it's going to stop him," Judge Smith added.

Milton L. Mueller, a professor at the Georgia Institute of Technology's School of Public Policy and co-founder and director of the school's Internet Governance Project, said that "the ability of the information to be replicated and distributed makes it very difficult to track down things that might be floating around out there."

As different information sources become digitized, it's increasingly easy to cross-reference them, Mueller noted. For example, he said someone could find out on one website the town where a judge lives and then look up the property records for that municipality.

"You may not be entirely successful all the time, but if you're persistent, it's not that difficult ... to put the pieces together and find bits of information here and there," he said.

Mueller said it's difficult to rein in information already on the internet because "the residency of it is so diverse." There are perhaps "tens of thousands of different places where this might have been copied," Mueller said. The information is "so easily copied" and "could proliferate into new sources," he said.

The Garden State law could "close off some of the most obvious forms of getting that information, but not all of them," Mueller said. The measure is "not going to destroy the internet and it's not going to ensure that nobody could ever pursue a judge," he added.

In the shooting at Judge Salas' North Brunswick, New Jersey, home, the shooter, dressed as a FedEx delivery driver, killed Daniel Anderl and critically injured Judge Salas' husband, defense attorney Mark Anderl of Anderl & Oakley PC, before fleeing, authorities said.

Den Hollander, who had litigated a case before Judge Salas, was found dead the morning following the shooting in upstate New York with a single gunshot wound to the head in an apparent suicide. He is also suspected of killing fellow "men's rights" attorney Marc Angelucci in California about a week earlier.

In a YouTube video following the incident, Judge Salas called for greater privacy protections for jurists.

The New Jersey legislation outlines different standards for when posting online the home address or unpublished home phone number of judges, prosecutors and law enforcement officers, as well as their spouses and children, could lead to criminal and civil penalties. The law also adds privacy protections to OPRA by prohibiting the disclosure of the portion of any document that reveals the residential addresses of law enforcement officers, judges and prosecutors.

Such public records are already on the numerous websites that publicize home information, according to Rebecca Monck Ricigliano, a partner in the white collar and regulatory enforcement group at Crowell & Moring LLP. Policing such information in a way that supports the intent of the legislation will be challenging, she said.

For judges, prosecutors and law enforcement agents looking to keep their information off the internet, "it can seem like what is an endless set of data sets," she said.

Ricigliano, formerly New Jersey's first assistant attorney general and a onetime federal prosecutor, said the attorney general's office is well-suited to help educate such websites about the measure. The biggest first step is education and "giving the internet sites the information about why this is important and why this shouldn't be available on the internet," she said.

The office and other related entities also could help judges, prosecutors and law enforcement officers to remove their personal information via drafting a form letter and compiling a list of known websites and their contact information, Ricigliano said. With that assistance, "it makes it a lot easier for the individual to accomplish that goal," she said.

"It's not just you sitting down in front of the internet and feeling completely overwhelmed at the amount of information ... about you that's out there," she said.

Despite the challenges ahead, the legislation will make it more difficult to go after judges, according to Ricigliano.

"In my opinion, any little bit helps and if it makes it more difficult to do harm or threaten harm, it's worth it," she said. "Members of those groups need to be able to do their jobs without being worried for themselves or their family members or loved ones."

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