

Minutes
Committee on Judicial Information Policy
March 18, 2010

Those present: Hon. Marshall Berger, Ms. Elizabeth Bickley, Hon. David Borden, Atty. Janice Calvi, Atty. Peggy Chapple, Atty. Jorene Couture, Atty. Joseph D'Alesio, Mr. P. J. Deak, Ms. Krista Hess, Atty. Daniel Horwitch, Atty. Charisse Hutton, Prof. Elizabeth Marsh, Hon. Aaron Ment, Atty. Louis Pace, Hon. Joseph Pellegrino (chair), and Atty. Kevin Shay.

The meeting was called to order at 2:00 PM by Judge Pellegrino.

1. Review and approval of minutes of December 15, 2009 – Upon motion by Judge Ment and second by Justice Borden, the minutes were approved unanimously.
2. Discussion of revised Practice Book Section 4-7 – The revised rule was presented by Justice Borden, who discussed suggested changes to the original draft to clarify that the circumstances under which a person would file the sensitive data form. Discussion ensued as to whether a distinction should be made between parties and attorneys and other individuals obtaining access to the form. After discussion, it was unanimously decided to add the words “for good cause shown” after the word “access” on line 36 to make clear that the same standard would apply to parties and attorneys and other individuals seeking access. Further discussion resulted in the removal of the word “clerk’s” prior to “record on appeal” in line 42. A change was also made to line 43, replacing “the appellate court” with “an appellate court.”

Discussion ensued on the logistics of filing and storing the sensitive data form. Currently, the process would require that a sensitive data form be filed on paper. It could then be scanned in and retained electronically, but not publicly available, in the court file.

Questions regarding some specific forms were then discussed at length by the Committee, including the JD-FM 1, income withholding form, and forms filed in connection with Uniform Interstate Family Support Act (UIFSA) proceedings. The income withholding form does not need to contain the social security number when it is sent to the clerk in non-IV-D cases. Attorney Couture suggested changing the instruction on the form to say that the party should not provide information in certain areas until after form is returned by the clerk with the non-IV-D income withholding order signed and before it is filed with Support Enforcement. In looking at these issues, the Committee was reminded that the family files are not electronic and will continue as paper files for several years, but whether a file is paper or electronic, privacy and security are important.

The issue with UIFSA cases is that the cases include personal identifying information in forms mandated by the federal government, is more complicated. These files are court records, and most of the forms are not completed in Connecticut, so if there is no exception to the rule accorded these matters, a child support agency from another state would have to redact the forms and attach a sensitive data form in accordance with the rule. It was suggested that an exception be made a part of the rule for the UIFSA cases, and the Committee agreed to such an exception. Language will be submitted for approval.

A question was raised as to the possible need to include “aliases” as personal identifying information, but the definition came from the statute and the consensus was that no changes needed to be made.

A motion was made by Justice Borden and seconded by Professor Marsh to approve the proposed revised rule 4-7 with the changes to lines 36, 42 and 43. There being no discussion, the proposed revised rule 4-7 was approved unanimously by the committee members in attendance. Attorney Charisse Hutton abstained from the vote.

3. Information from other states on handling sensitive data – A brief report out on the experiences of other states was provided by Attorney Livesay. States such as Arizona, Washington, Montana, and Nevada are using similar forms, with some success. Based on their experiences, eliminating personal identifying information from court files will require a culture change. Attorney D'Alesio reported that a spot survey of 100 civil court files with Section 17-23 motions filed since the passage of Rule 4-7 showed personal identifying information in 81 of the files. The Committee recognized that it will require both education and time in order to change the culture of the Bar regarding the filing of this information. At some point, a face-to-face meeting of Judges with attorneys who continue to include this type of information might be necessary.

An issue faced by the courts is the need to process *sua sponte* orders from the court to filers to redact personal identifying information. Such orders are increasing and result in additional Judge and staff time for processing and tracking. A proposed revision to Section 11-20B and 25-59B regarding time to file a redacted version of a pleading and enhanced electronic tracking should assist with this issue.

4. Discussion of Proposed Sensitive Data Rule – This discussion was part of #2 on the agenda. A discussion did ensue regarding the form for filing sensitive data with the Court. The subcommittee will make revisions to the form and bring the revised form back to the Committee at its next meeting.
5. Discussion of Proposed Draft Policy on Access to Court Records – The Committee agreed to take up a discussion of the draft policy at its next meeting. Staff will re-circulate the draft policy for review.

Attorney Horwitch raised a question for consideration by the Committee in connection with the policy on access. Clerks have received telephone inquiries about full birth dates from the public in response to the posting online of birth year only in criminal/motor vehicle cases. These calls can be seeking confirmation of a birth date or asking for the full birth date in order for the caller to ensure that the information online is about the specific person being researched. The question is what is the clerks' role when they receive a telephone inquiry about birth dates? The information is public although it is not displayed online. Further discussion on this question will take place in connection with the discussion of the overall policy of public access to court records.

A discussion took place with respect to other form in family cases that require dates of birth and other personal identifying information. The sense of the committee is that some of these forms could probably be revised to permit the filing of a redacted birth date, for example. These types of revisions as well as Practice Book revisions will be discussed at future meetings.

6. Future Meetings – An email will be sent regarding the date of the next meeting, which will probably be scheduled for April.

Upon motion by Justice Borden and second by Attorney Shay, the meeting was adjourned at 3:20 PM by unanimous vote.