

Minutes of the
Identity Theft Committee
January 17, 2008

Those present: Judge Berger, Judge Blawie, Justice Borden, Judge Gruendel, Judge Ment, Judge Pellegrino, Judge Silbert, Atty. D'Alesio, Atty. Fisher, Atty. Roberts, Atty. Shay, Atty. Stillman, and Atty. Yen.

The meeting was called to order at 1:25 PM by Judge Pellegrino. He then introduced Justice Borden and welcomed him to the meeting.

1. The first agenda item was the approval of the minutes of the meeting of May 31, 2007. Upon motion and second, the minutes were approved unanimously.

(The agenda was modified to allow Judge Gruendel to present the report of the Family Subcommittee.)

2. Judge Gruendel presented the report of the Family Subcommittee, which met in December to review family forms and requested information. The rule proposed by the Committee will protect information in family cases except with respect to the IV-D cases in magistrates' court. The forms used and the data collected in IV-D matters are mandated by federal statutes and cannot be altered by an individual state. Other family forms fall into two general categories. First, incoming documents (pleadings, complaints) can be adapted to fit within the proposed rule. For example, the requirement that the mother's maiden name be part of the complaint could be eliminated, as can the requirement that the full birth date of the child be included in the complaint. There are some forms, i.e., a Capias, Mittimus, or a habeas corpus ad testificandum, that will require that personal identifying information be included for accurate identification purposes. The second category of documents is outgoing documents (orders, judgments, QDRO). Eliminating personal identifying information in these documents will be more difficult. The suggestion is that the information be available electronically and encrypted so that it can be provided to the parties when it is needed. Information from other states as to how they are handling the required personal identifying information in IV-D cases will be obtained for the next Committee meeting. A report from the subcommittee will be completed within a few months.
3. The next item on the agenda was the update on forms. Atty. Horwitch reported that Legal Services has completed the review of over 800 forms located in the form warehouse and forms only available electronically. Some forms were eliminated entirely; some have been modified by removal or partial redaction of personal identifying information; others will be modified as the forms are replaced. A process has been implemented to locate non-public forms so that the legend recommended by the Committee may be put on them. Atty. Horwitch will provide copies of the forms that have been changed for review by the Committee.
4. The next agenda item was the report from Judge Blawie on the Criminal Subcommittee. After a review of forms used in adult probation and in the criminal clerk's office, the Subcommittee concluded that the requirements of CJIS and other national databases necessitated the use of dates of birth as an essential identifier. On some forms, the social security number can be removed, and the subcommittee report lists the forms in which recommendations were made as to the redaction or

elimination of personal identifying information. Atty. D'Alesio said that as of February 1, 2008, the Branch will be putting criminal disposition information online, searchable by name or by docket number. Disposition information is in addition to daily dockets and pending case information, which are already available online. In all instances, the birth date of the defendant has been redacted. This may be the extent of what is viewable online in connection with criminal cases for the foreseeable future.

5. The next item on the agenda was the finalization of the proposed rule. Judge Berger reviewed the proposed rule change, which is intended to curtail the information coming in for both family and civil cases. He recommended making the rule apply to documents filed in the case file and to documents submitted at trial by deleting the second and third sentences of the commentary. The rule would then allow the judge to direct the clerk to redact a document submitted in evidence at trial. He also recommended using the language "need not review" as opposed to "will not review" in subparagraph 3 of the proposed new rule 4-7. After discussion, it was agreed that the rule would cover the IV-D cases because it permits the filing of personal identifying information if it is "otherwise required by law." A suggestion to add "any other financial account numbers" to the definition of personal identifying information in the proposed rule was made and that language was incorporated into the proposed rule. Discussion ensued as to the impact of this rule on pleading core elements in particular cases, i.e., cases alleging fraud.

After discussion, Judge Berger moved to approve the proposed rules with the addition of "any other financial account numbers," the deletion of the second and third sentences of the commentary, and the use of the language "need not review" in subparagraph three of the proposed rule 4-7, and to authorize Judge Pellegrino to submit the proposed rules to the chief court administrator for submission to the Rules Committee. Judge Ment seconded the motion. The motion was passed unanimously.

6. The final agenda item was other business. As an outgrowth of discussion on the proposed rule and the handling of personal identifying information, further discussion ensued as to how the redaction of information would take place, whether separate rules for paper and electronic filings would be needed, and what methods are available to protect information. The use of automatic redaction software and the use of a confidential information sheet were suggested. These issues are related to the remaining charges of the Identity Theft Committee, which include a review of the access policy proposed by the Public Access Task Force, the possible expansion of remote electronic access, the transfer and sale of bulk information, the right of nonparties to intervene in an action, and mechanisms for correcting incorrect information in a file. The issue of remote access is of particular interest to attorneys and to pro se litigants, but remote electronic access heightens the risks to individuals. Other states and the federal government are wrestling with these issues. For example, Atty. Yen pointed out that the Federal Reserve is now blocking out signatures from orders that they post online. It was suggested that the Committee may bring in an expert from the National Center for State Courts to discuss what other states are doing about protection of information and remote access.

The next meeting will be at the end of March/beginning of April.

The meeting adjourned at 2:30 PM.