

Minutes of
Identity Theft Committee
May 31, 2007

The Identity Theft Committee met at 99 East River Drive, East Hartford, in Room 707 on Thursday, May 31, 2007 from 1:00 PM to 2:50 PM.

Those in attendance: Judge Berger, Judge Blawie, Mr. Callahan, Judge Carroll, Atty. D'Alesio, Atty. Fisher, Judge Gruendel, Prof. Marsh, Judge Ment, Judge Pellegrino, Det. Peterson, Judge Pittman, Atty. Roberts, Atty. Shay, Atty. Stillman, and Atty. Yen.

Judge Pellegrino called the meeting to order at 1:00 PM.

1. Review and Approval of Minutes: Upon motion and second, the minutes were unanimously approved as distributed.
2. Update on Review of Judicial Branch forms: Atty. Horwitch reported that 876 judicial branch forms had been reviewed for the presence of personal identifying information. Of the 876 forms, only 224 had such indicators. To date, 19 forms can be changed to eliminate the full identifiers; 37 forms are criminal or adult probation forms, which will be handled by the criminal subcommittee; 84 forms are for juvenile matters; 8 forms are obsolete; 48 of the forms still must be reviewed by the unit that uses them; and 28 forms are being discussed by the committee today because the units that used them did not think the information could be eliminated. The review to date represents the bulk of the forms, but Legal Services will be looking for any additional forms and electronic forms in the next several weeks. At this time, however, the review is almost complete.
3. Discussion of forms with restricted personal identifiers: Atty. D'Alesio led the discussion of the forms in which identifiers were found and were deemed necessary. The committee began discussing each form on the list. David Iaccarino, Deputy Director of Family, Support, and Juvenile Matters from Court Operations Division, David Panke, Deputy Director, Support and Policy, Support Enforcement Division, Stephen R. Grant, Director Family Services, Court Support Services Division, and Randy Roorbach, Regional Manager, Juvenile Probation Services responded to inquiries from the committee regarding why certain information was needed in the forms. The responses provided by the people most familiar with these forms revealed that the information requested was required not only by Connecticut for Connecticut's use in a specific court case, but in many cases, was an essential data element for use by the federal government, certain nationwide databases, and other states. Initially the committee considered recommending the elimination of mother's maiden name and health insurance account numbers from all forms and the redaction of all birth dates to month and year. However, after extensive discussion on these forms, the committee did not recommend the form-wide elimination and redaction, but it made several other recommendations.

First, it determined that a distinction had to be made between forms to which the public had access and forms which were not available to the public. The committee agreed that if a form were not found in a court file, then there was no need to eliminate or redact the personal identifiers. Even if a form is not available to the public, the committee recommends that a legend be placed on each such form: "This is not a public document. Do not place this document in the court file." The legend would be prominently placed

(in red ink or in bold font) on any non-public forms containing the personal identifiers. This recommendation was made specifically with respect to the following forms: JD-FM-94 (also remove directive to place original in the court file), JD-FM-95, JD-FM-132, JD-FM-194; and JD-JA-16.

The committee also concluded that the complex interrelationships of the data elements in the various forms used in family, custody, and child support files, the enforcement of any orders in connection with such files on a state or nationwide basis, and the federal requirements in connection with child support files and withholding orders, *inter alia*, make it necessary to have a smaller group study these forms and the issues associated with removing elements like the minor children's dates of birth. Judge Gruendel will chair a subcommittee, and Judge Ment, Stephen Grant, David Iaccarino, David Panke, Don Turnbull, Attorney Norman Roberts, and a representative from Legal Services will be members of the subcommittee which will look at the family forms as well as the UIFSA forms.

The committee did recommend that one of these forms, "Individual Case Report - Family Violence Victim Advocate," JD-FM-102, be referred to the criminal subcommittee.

Discussion also took place regarding the possible ways of protecting personal identifiers contained in these forms that are deemed essential information. Atty. Roberts made the point that some of the information that would not be available to the public would still be needed on an order by a party at some point. A means of separating the publicly available information from the necessary, but not publicly available, information would have to be found. The possibility of redacting the personal identifiers, filing such identifiers in a separate document that would not be available to the public, encrypting sensitive data elements, or removing sensitive data elements from the forms and maintaining them separately were all discussed. Attorney Livesay referred to the Arizona proposed rule handed out to the committee. That rule provides for the use of a sensitive data form in which sensitive information is kept in a file. Judge Ment pointed out that the committee must think about these issues in connection with files in an electronic format because paper files will not exist in a short time. Atty. D'Alesio said rules would still be necessary to govern what the public can and cannot see, whether in electronic or paper format.

4. Report on Conference on Privacy and Public Access to Court Records: Atty. Livesay gave a brief report on the conference that she and Atty. Mastrony had attended, and at which Judge Quinn had spoken, in March. Overall, Connecticut is ahead of most states in terms of what types of information are currently available to the public electronically. Atty. Livesay specifically discussed the evolution of policies on public access to court documents in Alaska, Florida, New Jersey, and Ohio. The conference pointed out that all states are wrestling with these same issues of privacy and public access to court records, and no state has any answers. Approximately ten states have implemented a "sensitive data sheet" like that proposed by Arizona.

5. Discussion on proposed rule changes: Judge Berger, Judge Pittman, and staff had drafted a proposed new rule (P.B. Sec. 4-7) and an amendment to two existing rules on sealing of documents (P.B. Sec. 11-20A and 25-59A) which had been circulated for comments to the committee prior to the meeting. Attorney Stillman asked about the inclusion of some type of pre-notification procedure prior to the filing of a document containing personal identifiers. The rule itself, however, would eliminate the filing of

such information, which to a large extent is provided by attorneys as additional information rather than as information required by statute, rule, or procedure. Attorney Roberts suggested that such information would be included less if P.B. Sec. 10-1 were enforced more strictly. Judge Pittman explained that the amendments would permit the more efficient removal of personal identifiers that should not have been included in the first instance.

Judge Blawie suggested that the rule reference the identity theft statute (C.G.S. 53a-129a) rather than the listing of elements that is in the draft rule. Atty. Yen suggested the addition of health insurance group number and health insurance membership number to the list of proscribed elements, but Judge Blawie pointed out that health insurance identification numbers are included within the statutory definition of "personal identifying information" found in Section 53a-129a (b). Atty Roberts suggested that this rule be specifically incorporated in Chapter 25 of the Practice Book.

Judge Berger and Judge Pittman will take the comments from the committee, redraft the rules, and at the next meeting of the committee, present a final draft for the approval of the committee. The committee will meet in September, and plan to submit this proposal to the Rules Committee for their October meeting.

6. Update on Criminal Subcommittee: Judge Pellegrino said that the membership of the criminal subcommittee had not yet been finalized and therefore, it had not met as a group. Atty. D'Alesio pointed out that of the views of many individuals and agencies on both the state and federal level must be included in this subcommittee, and it is important to have them all represented. The plan is to get the committee formed in late August and have a meeting in mid-to-late September.

7. Other business: Judge Gruendel's subcommittee will meet concerning the family forms this summer.

Judge Pittman referred the committee to Judge Silbert's decision (*Carol Soroka v. Household Automotive Finance Corp.*, Superior Court, judicial district of New Haven, Docket No. NNH CV - 04-4000300 (April 30, 2007)), which involved redacting sensitive information that had been filed in court records. She recommended the decision highly for its in-depth discussion and analysis of the issues involved in identity theft, privacy, and access. She said that his decision points to some inherent authority on the part of the court to redact information that should not be in a court file. Judge Pittman suggested that Judge Silbert be added to this committee. Judge Pellegrino agreed to include him on the committee.

Atty. Livesay will be canvassing other states over the summer months to see what progress they are making in connection with identity theft issues and rules to protect sensitive information.

The committee will be notified of the date of the next meeting which will be scheduled for September.