

Draft Minutes
Committee on Judicial Information Policy
July 21, 2010

Those present: Hon. David Borden, Hon. Patrick Carroll III, Atty. Jorene Couture, Atty. Joseph D'Alesio, Mr. P. J. Deak, Atty. Melissa Farley, Mr. Joseph Greelish, Atty. Daniel Horwitch, Atty. Nancy Kierstead, Hon. Aaron Ment, Hon. Joseph Pellegrino (chair), Atty. Norman Roberts, Atty. Kevin Shay, Atty. Thomas Ventre and Atty. Elizabeth Yen.

The meeting was called to order at 2:03 PM by Judge Pellegrino.

1. Review and approval of minutes of March 18, 2010 – Upon motion by Judge Carroll and second by Judge Ment, the minutes of the meeting of March 18, 2010 were approved.
2. Discussion of Proposed Sensitive Data Rule – Attorney D'Alesio explained to the Committee that after the draft of the rule was discussed and approved with some revisions, the revised version was circulated to the members for their comments. In Some concerns were raised with respect to the rule in connection with whether the form would be filed with the clerk and sent to all counsel of record and appearing parties and whether the provisions encompassed all entities that might have need for the personal identifying information contained in the form. Two options were presented to the committee to address the concerns. The first option would not require a party submitting the form to the clerk to serve copies on all appearing parties and counsel of record and would require parties and counsel of record to file a motion and show good cause in order to access the form. The second option would require the party to file the form with the clerk and provide copies to appearing parties and counsel of record with an option for the filing party to ask the court that copies of the form not be provided to some other party. Parties and counsel of record would also have access to the form and information without an order from the court absent a court order to the contrary.

The committee members then discussed the options: whether the form should be presumptively open to parties and counsel of record or whether parties and counsel of record should be required to demonstrate a need for access to the information in the form. The discussion included whether language should be added to the rule requiring compliance with the certification sections of the Practice Book, whether access to these forms should be provided to parties and counsel without a showing of good cause, how other states handled similar types of information and forms containing that information, how the court could tailor its order in response to a motion for access to the information, the filing of multiple forms as information changes or additional information is needed, educating judges and litigants about what is available under what circumstances, who should have the burden of establishing good cause, and the need of counsel to see what has been filed by other parties. In the course of the discussion, the committee ascertained that clarification was needed with respect to what information a party would have to include in updating a form as required by a rule. The possibility of having a separate rule for family cases was also discussed.

The committee then voted on whether the form should be closed to parties and counsel of record unless good cause is shown (closed) or presumptively open to parties and counsel of record (open).

Those voting for the closed option were Justice Borden, Judge Pellegrino, Atty. Shay and Atty. Yen.

Those voting for the open option were: Judge Carroll, Atty. Couture, Atty. D'Alesio, Mr. Deak, Atty. Farley, Mr. Greelish, Atty. Horwitch, Atty. Kierstead, Judge Ment, Atty. Roberts, and Atty. Ventre.

The Committee adopted the open option.

Atty. Horwitch suggested a clarification regarding the filing of updated forms. The last sentence of subsection (e) should be revised to read: Whenever new information is needed to supplement the record in a case, the parties shall file an updated "Personal Identifying Information" form, reflecting all personal identifying information previously disclosed by the filing party plus any additional personal identifying information required to be filed in the case.

Atty. Horwitch also suggested that the name of the form be changed from "sensitive data" form to "personal identifying information" form to avoid confusion and foster consistency.

In response to the concern of Mr. Deak that subsection (e) implies that there is only one form, although many forms could be filed during the life of a case, Atty. Yen suggested changing the reference from "the personal identifying information form" to "any personal identifying information form."

The committee agreed unanimously to accept these three revisions to the proposed rule.

The committee then voted unanimously to approve P.B. Sec. 4-7 (d), (e), (f) and (g) as revised in its entirety. The rule will next be sent to the Judges Advisory Committee for consideration. A copy of the rule with those revisions is attached to these minutes as Exhibit A.

A brief discussion ensued as to whether this rule should apply to criminal cases. The consensus of the committee was that this question required further discussion.

The question was also raised as to whether these forms would be filed electronically. Since personal identifying information forms are not available to the public, they would be filed in paper format. If the rule is adopted, the e-filing program managers, the information technology group, and the court operations business process team and steering committee will determine how the forms and information will be maintained.

3. Future meetings – Atty. D'Alesio and Judge Pellegrino discussed the next steps for this Committee. This Committee has completed almost all of the tasks that were assigned to it, first by the Public Access Task Force and later under the strategic plan of the Public Service and Trust Commission. The remaining recommendations on developing an overall access policy for court records and developing educational materials for attorneys, litigants and the public on access to court records are going to be addressed by the Judges Advisory Committee on e-filing, which includes several members of the Committee on Judicial Information Policy. The Judges Advisory Committee is addressing many of the issues that are part of the access policy and rather than have multiple committees working on the same task, it would be more efficient to have one committee address the development of an access policy. The expertise of members of the Committee on Judicial Information Policy will be solicited by the Judges' Advisory Committee as it continues to develop an access policy.

Justice Borden, who convened the Public Access Task Force and appointed the members to the original Identity Theft Committee, praised the members of the Committee for the work that it has accomplished. He commented that the committee's completion of the review and revision of the forms was a major accomplishment. Further, he commended the group on developing a considered and sensible recommendation on the handling of personal identifying information.

Judge Pellegrino thanked the committee members for their efforts.

The meeting adjourned at 3:00 PM.

Exhibit A

Sec. 4-7 Personal Identifying Information to be Omitted or Redacted from Court Records in Civil and Family Matters

- (a) As used in this section, “personal identifying information” means: an individual’s date of birth; mother’s maiden name; motor vehicle operator’s license number; Social Security number; other government issued identification number except for juris license, permit or other business-related identification numbers that are otherwise made available to the public directly by any government agency or entity; health insurance identification number, or any financial account number, security code or personal identification number (PIN). For purposes of this section, a person’s name is specifically excluded from this definition of personal identifying information.
- (b) Persons who file documents with the court shall not include personal identifying information, and if any such personal identifying information is present, shall redact it from any documents filed with the court, whether filed in electronic or in paper format, unless specifically required by law or ordered by the court, in which case such information shall be filed pursuant to subdivision (d) below.
- (c) The responsibility for omitting or redacting personal identifying information rests solely with the person filing the document. The court or the clerk of the court need not review any filed document for compliance with this rule.
- (d) If personal identifying information, as defined in subsection (a), is specifically required by law or ordered by the court, the filing party shall record the requested information on a separate “Personal Identifying Information” form prescribed by the Office of the Chief Court Administrator, which shall be filed with the clerk and maintained as a confidential record and not open to public inspection. Whenever new information is needed to supplement the record in a case, the parties shall file an updated “Personal Identifying Information” form, reflecting all personal identifying information previously disclosed by the filing party plus any additional personal identifying information required to be filed in the case.

- (e) Access to the personal identifying information contained on any "Personal Identifying Information" form is prohibited, except that: (1) a party or an attorney of record in a case shall be allowed access unless otherwise ordered by the court; (2) court officials, court personnel, or authorized employees of other governmental entities, including a Title IV-D agency, law enforcement agencies, and assistant attorneys general not appearing in a case acting on behalf of a Title IV-D Agency or pursuant to C.G.S. 46b-55 or P.B. Section 25-2(b), whose duties require access to the personal identifying information contained on the form, shall be allowed access upon request to the clerk of the court; and (3) other individuals shall be allowed access by the court for good cause shown upon motion made by such individuals.
- (f) Any "Personal Identifying Information" form must not be included in the record on appeal. A "Personal Identifying Information" form may be provided to an appellate court only upon specific written order from that appellate court. If an appellate court orders a copy of a "Personal Identifying Information" form to be filed, it must be maintained separately from the remainder of the record or court file.
- (g) The provisions of this section shall not apply to petitions or documents filed pursuant to the Uniform Interstate Family Support Act (UIFSA) as adopted by the state of Connecticut in C.G.S. § 46b-212 to 46b-213w, inclusive.

COMMENTARY: The court should avoid requiring the submission of unredacted documents that contain personal identifying information and should avoid using personal identifying information in its orders and opinions except when necessary. This rule applies to all documents filed in a case, including documents offered in evidence at a hearing or trial.