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**Comments on the Superior Court of the District of Columbia Proposed Court Policy
on Remote Public Access to Civil Case Files**

Submitted by
The National Network to End Domestic Violence

Introduction and Summary

In an effort to assist the Superior Court of the District of Columbia with its consideration of a policy to allow remote public access to public case files in Civil Division cases, The National Network to End Domestic Violence ("NNEDV") submits these comments recommending increased safeguards and additional "opt-out" provisions to ensure the protection of victims of domestic violence and other family law litigants.

NNEDV is a not-for-profit organization incorporated in the District of Columbia since 1995. NNEDV is a network of state domestic violence coalitions, representing over 2,000 member organizations nationally. NNEDV serves as the national voice of battered women and their children and those who provide direct services to them. From testifying before Congress on domestic violence issues to assisting state coalitions in better serving the needs of the victim community, NNEDV is a national leader in efforts to assist battered women in protecting themselves and their children.

Domestic violence is a terrifying reality for women and children across the United States.[1] Millions of women are physically abused by their husbands or partners each year.[2] The effects of domestic violence are severe and devastating, and the physical injuries such as broken bones, bruises, and burns are only the visible consequences. Victims of domestic violence also miss work due to their injuries and can ultimately lose their jobs as a result of the violence against them. Battered women often have trouble establishing independent lives due to poor credit, rental, and employment histories resulting from their abuse.[3]

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[1] Because the vast majority of victims of domestic violence and sexual assault are women, NNEDV will use only female nouns and pronouns throughout these comments. See Callie Marie Rennison & Sarah Welchans, U.S. Department of Justice, Intimate Partner Violence, at 1 (2000) (estimating that 85% of reported assaults on partners or ex-partners are committed by men against women). NNEDV acknowledges that men are also victims of domestic violence, especially in same-sex relationships.

[2] See Patricia Tjaden & Nancy Thoennes, Nat'l. Inst. of Justice, Prevalence, Incidence and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey, at 2, 7 (1998). In fact, the National Institute of Justice reported that 5.9 million assaults are perpetrated against women annually. See id. at 11. See also United States v. Morrison, 529 U.S. 598, 632 (2000) (Souter, J., dissenting) (citing estimate of four million women assault victims every year).

[3] See Susan A. Reif & Lisa J. Krisher, Subsidized Housing and the Unique Needs of Domestic Violence Victims, Clearinghouse Rev. 20 (May-June 2000). In addition to the personal toll, the cost of domestic violence to society is also substantial. The cost of intimate partner violence annually exceeds $5.8 billion, including $4.1 billion in direct health care expenses, $900 million in lost productivity, and $900 million in lifetime earnings. See National Center for Injury Prevention and Control, Costs of Intimate Partner Violence Against Women in the United States, Atlanta, Ga.: Centers for Disease Control and Prevention, 2003. When the costs of direct property loss, ambulance services, police response, pain and suffering and the criminal justice process are considered, the total annual cost of intimate partner violence grows to $67 billion dollars. See Ted R. Miller et al., Victim Costs and Consequences: A New Look, National Institute of Justice Research Report (1996).

Unfortunately for victims of domestic violence, there are no easy escapes. Battered women often face increased violence when they attempt to flee their abusers.[4] The severity of this "separation violence" often compels women to stay in abusive relationships rather than risk greater injury to themselves or their children. Many of those who succeed in leaving their abuser live in constant fear of being found. This constant fear of being found is only exacerbated by the potential for a victim's abuser to obtain important information about the victim's location and activities through Internet access to Civil Division cases. Unfettered public access to these cases, filed by victims to obtain protection from abuse, may provide abusers with additional weapons to terrorize their victims.

Comments

NNEDV believes that the access regime constructed by the proposed rule will imperil victims of domestic violence by making it more difficult for these women to leave their abusers, and by compromising the locations of those who do flee. NNEDV understands and appreciates the public interest served by access to court records, and believes that these interests can be served without derogating victims' safety and privacy. To mitigate the jeopardy posed by access to court records, NNEDV recommends the proposed rule be modified to:

- exclude documents in civil protection matters, family law, domestic violence, sexual assault, and stalking cases from remote or Internet access
- exclude domestic violence and sexual assault victim and witness identities from any public access and online remote access
- prevent the disclosure of protected information in web based summary documents or indexes
- allow any petitioner to exclude all court records from remote access
- protect information from the time of request through decision of the court
- allow a victim to remove her court documents without her papers being posted to the Internet if a court denies a request to seal or restrict remote/Internet access
- provide robust notification of electronic record management to litigants, victims, witnesses, and the community, including victim advocacy groups
- include processes for preventing and remedying failures to properly exclude information from public access

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[4] The desire to reclaim the family or retaliate can lead to sharp increases in child and spousal abuse at the time of separation. Bowker, L.H., Arbitell, M. and McFerron, J.R., On the Relationship Between Wife Beating and Child Abuse, Yllo, K. and Bograd, M. eds., Perspectives on Wife Abuse, Newbury Park, CA, 1986). Women are at an increased risk of harm after separation from an abusive partner. Separated women are 3 times more likely than divorced women and 25 times more likely than married women to be victims of violence at the hands of an intimate partner. See Ronnet Bachman and Linda Salzman, Bureau of Justice Statistics, Violence Against Women: Estimates From the Redesigned Survey 1 (January 2000).

A. Exclude documents in civil protection matters, family law, domestic violence, sexual assault, and stalking cases from remote or Internet access

These cases do not create high volume access in the courthouse such as a large civil class action case that might have many plaintiffs and attorneys wanting remote or Internet access to reduce time at the courthouse. As a result, there is a higher likelihood that remote or Internet access would make it more convenient for people misusing this information than for those seeking a legitimate use. A court may consider these cases "public" and provide access at a court facility without "publishing" them to the web. People who have a need to look at these cases can come into the courthouse for onsite paper or electronic access. We do not want young children learning how to search the Internet in school to find their own custody or parent's divorce petitions and allegations on the Internet.

B. Exclude domestic violence and sexual assault victim and witness identities from any public access and online remote access

These protections are critical, considering that the information provided in what would otherwise seem to be "harmless" could mean the difference between life and death for victims and witnesses of these crimes. The rules should restrict contact information categorically (home address, phone, email) from any public access (not just the web) if at all possible, as well as restrict remote/Internet access to names in domestic violence, sexual assault, stalking, family law and protection order cases. At a minimum, the rules for public access should allow individuals to restrict access to their names in docket listings (since many docket listings are shared widely and being posted to the web).

C. Prevent the disclosure of protected information in web based summary documents or indexes

Many court systems are posting to the Internet their docket lists with summary information including name, address, docket number, case disposition, and other summary data. As a result, an online docket listing could put a victim at risk of being located by a batterer or stalker. Anyone should be able to petition to restrict access to prevent such disclosure, such as filing under initials or pseudonym or listing docket numbers with no name and a note "case restricted or sealed", for example.

D. Allow any petitioner to exclude all court records from remote access

Many citizens including survivors of domestic violence, sexual assault and stalking may have legitimate concerns about their information being posted by the courts to the Internet. Many survivors of these abuses who have started new lives may avoid using the court system for any matter in the future if their new location is subject to widespread publication through remote access. Since the court can choose to provide access within the courthouse, anyone should be able to petition the court to restrict remote access. Since this is not the same as sealing a case completely, a lower standard

can apply that preserves the goal of public access while granting sufficient protection from harm.

E. Protect information from the time of request through decision of the court

Regardless of the mechanism by which information about a civil case is protected under the proposed rules, if a request is made for protection all such information about should be protected from the time of the request until a decision is made on the merits of the request. Otherwise, the request is moot because once the information is posted many search engines and other web information repositories will preserve that information online even after it has been removed from the court's website, and a victim's privacy and safety could be violated. If there is no protection of the information while a request is being reviewed, many victims who are most in need of the protections of the justice system may be forced to forego those protections to protect the privacy of their information.

F. Allow a victim to remove her court documents without her papers being posted to the Internet if a court denies a request to seal or restrict remote/Internet access

As a corollary to the issues raised in item E. above, if a petition to restrict Internet publication is denied, then a victim must have the ability to withdraw her initial filing without her petition to withdraw being posted to the web. Although this will result in a victim being excluded from the protections of the justice system, at least the individual's privacy (and well-being) will not be further degraded.

G. Provide robust notification of electronic record management to litigants, victims, witnesses, and the community, including victim advocacy groups

If web-based access is being considered, the DC courts must provide robust notice to all litigants and other participants on where the records are posted and the mechanisms for restricting access. Many comparable data privacy doctrines require comprehensive notice. Some court staff may be hesitant to include notice on how to restrict access for fear that all who use the court will petition for restriction and) witnesses and victims might not participate in hearings if they understand that information about them will be posted to the Internet. This concern further confirms the need for the notice; otherwise, the burden of increased access will fall on those least able to protect themselves from the consequences.

Clear signs posted throughout the courthouse as well as a brochure to be distributed to all litigants and witnesses when they are called to the court would assist those most vulnerable, especially *pro se* litigants, who are without attorneys to explain the court's publication policy. Other officers of the court (prosecutors, etc) can also provide comprehensive notice to victims and witnesses during proceedings

H.   Include processes for preventing and remedying failures to properly exclude information from public access

All good technology initiatives include quality assurance and auditing processes. The DC courts must include a comprehensive and timely QA process PRIOR to posting any court records into an electronic system connected to the Web. Preferably, an outside neutral office should assist or oversee an audit process to check for errors. Random sampling of all cases and checking cases where restrictions to access were granted would help identify if the court is posting information to the Internet in error. Alternatively or in addition, an office in the court that is not responsible for the day-to-day management of the electronic court records could oversee an audit. Since it can be assumed that errors will occur, a timely remedy process should be developed prior to implementing an electronic system. Depending on the nature of the error (posted a case to the Internet that was not supposed to be posted at all or an error within a court document) the court might want judicial review – however it should be timely. Victim safety and citizen privacy could be compromised by an error and due to Internet search engines, selling court data in bulk, and Internet archives, time is of the essence. All court staff including judges should be required to participate in training on any electronic system to reduce errors and assist in granting petitioners appropriate restrictions on Internet publication. All court staff should know the process to request a restriction of access and also the process to remedy an error, even if that process is the correct referral to the appropriate staff person.

The Kobe Bryant sexual-assault case provides two compelling examples of the consequences of poor quality assurance that resulted in potentially harmful releases of information. In one instance, the court reporter mistakenly sent transcripts from closed hearings to several media outlets that exposed information about Kobe Bryant's accuser. In a second instance, the name and address of Kobe Bryant's accuser was mistakenly posted on a state court Web site. In the former situation, only due to a last-minute court order by the presiding judge prevented publication of the nonpublic information; in the latter, the information was posted on the Internet for over an hour before it was removed.

Conclusion

NNEDV supports the use of technology to improve access to the judicial system for all individuals. In certain cases, such as those involving domestic violence or other family law issues, Internet access to information contained in those cases may have unintended negative consequences. Open access to information about litigants can expose victims of domestic violence to their abusers at a juncture when victims are most vulnerable (while litigation is pending), increasing the likelihood of further abuse and discouraging the use of the courts for protection. NNEDV recommends implementing common sense safeguards to ensure the well-intentioned purposes of the proposed policy are not outweighed by the risks to victims of domestic violence.

Respectfully submitted,

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