Nevada Network Against Domestic Violence

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June 3, 2010

ADKT 410

Justice James Hardesty, Chair
Commission on Access, Preservation and Sealing of Court Records
Nevada Supreme Court Building
Carson City, NV 89701

Dear Chairman Hardesty and members of the Commission:

My name is Sue Meuschke and I am the Executive Director of the Nevada Network Against Domestic Violence (NNADV), the statewide coalition of domestic violence programs in Nevada. I am here today to provide comments and suggestions regarding how courts can best meet the confidentiality needs of the parties to Protective Orders as well as complying with the requirements for public access and retention of these records.

In 1985 when the Nevada State Legislature first created Orders for Protection Against Domestic Violence, the overriding concern was how to provide safety for victims while holding perpetrators accountable for their actions. Over the intervening 25 years the Legislature has created several other related orders – Stalking and Harassment, Child Abuse, Workplace Violence and most recently Sexual Assault orders – while all a little different each attempts to address safety and accountability issues. My remarks will focus on those issues and provide suggestions for some of the questions/statements contained within your order scheduling this hearing with a request that as you balance issues of confidentiality and public access use safety as the balancing test.

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We have great concern about the confidentiality and access rules that the Court will issue as a result of this hearing. We understand that open access maintains accountability of the judicial branch of government. However, unregulated public access to the sensitive information contained within protection order files can be harmful and used in ways that does not further the aims of any constitutional requirements. One problem experienced by a court in Nevada, involved the producers of a Court TV show scouring the court files (including protection order files) and then sending letters to the litigants asking if they wanted their cases decided on TV. As you might imagine several of the applicants were quite upset that their cases were being used in this way. While this was an obnoxious but benign invasion of privacy, we know that there are other cases where access to confidential information has a much more serious consequence.

A particular concern and the focus of my testimony is the issue of Internet access to court files. When courts move from paper access to internet access of court records, all citizens face increased risk from loss of privacy, the potential of identify theft from access to personal information, as well as possible discrimination from inappropriate use of court documents. Victims of domestic violence face possible fatal consequences.

Court records that are published to the Internet should undergo rigorous scrutiny to insure the accuracy of information. This level of review can be minimized by not posting family law cases and cases with victims, which usually contain highly sensitive information. These cases do not produce high volume access in the courthouse such as a large civil class action case and there is a higher likelihood that remote or internet access would make it more convenient for people misusing this information. Of most concern is the idea that once victims and witnesses learn that the court will publish their information and documents to the Internet they may hesitate to use the justice system.

Congress in 2005 passed legislation prohibiting Courts from publishing protection order information on the internet. Under 18 USC 2265(d)(3) (copy attached) courts should not be posting any personally identifying information in protection orders openly on the internet, including names, addresses, even names of children or any other information that (particularly in a rural area) might result in someone being able to identify or locate the person protected. We would request that this Commission follow Federal Law and adopt rules that prohibit Internet access to Protective Order files.

Other issues about confidentiality and protection of case files will be addressed by my colleague, Nancy Hart. She will address each of the issues specifically. What I would leave you with generally is the encouragement that if these files cannot be maintained presumptively confidential and we aren't sure that would be necessarily in the best interest of the victim anyway, that there be strong rules in place to protect the privacy of individuals who are at heightened risk already. The public's right to know must be balanced carefully against the individual's right to both privacy and safety.

I am happy to answer any questions you might have.

(c) LIMITS ON INTERNET PUBLICATION OF PROTECTION ORDER INFORMATION.—Section 2265(d) of title 18, United States Code, is amended by adding at the end the following:

"(3) LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.".

(d) DEFINITIONS.—Section 2266 of title 18, United States Code, is amended—

(1) by striking paragraph (5) and inserting the following:

"(5) PROTECTION ORDER.—The term 'protection order' includes—

"(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

"(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking."; and

(2) in clauses (i) and (ii) of paragraph (7)(A), by striking "2261A, a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser" and inserting "2261A—

"(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

"(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship".