

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL CIVIL CODE ADVISORY
COMMITTEE HELD SEPTEMBER 25, 2009

The Civil Code Advisory Committee met Friday, September 25, 2009 in Room 269, Kansas Judicial Center, Topeka, Kansas, at 9:00 a.m.

The following members were present:

J. Nick Badgerow, Chair;
Prof. Jim Concannon;
Hon. Jerry G. Elliott;
Joseph W. Jeter;
Hon. Kevin P. Moriarty;
Donald W. Vasos; and
Nancy Strouse, Reporter.

Members Hon. Terry L. Bullock, Prof. Robert C. Casad, Hon. Bruce T. Gatterman, John L. Hampton, Hon. Marla J. Luckert, David M. Rapp, and Thomas A. Valentine were unable to attend.

Also present at the beginning of the meeting were: Norm Crawford, a citizen interested in HB 2393; and Jason Thompson from the Office of the Revisor of Statutes, attending to speak to the Committee about the Civil Code revision project.

Minutes

The minutes of the meeting held August 28, 2009 were approved as distributed.

HB 2393

The Committee first addressed the assignment of reviewing and making recommendations on HB 2393, which deals with the expungement of civil records. Chairman Badgerow reminded the Committee that it had received printed copies of Norm Crawford's web site at the last meeting. He also advised that Mr. Crawford had submitted an additional letter on the subject of data brokers on the day of the meeting, and copies of the letter were distributed. Chairman Badgerow introduced the bill, noting that it relates to the expungement of entries in the civil record upon the petition of an interested person. The bill provides guidelines for what the petition must contain and establishes standards for the expungement.

Nancy Strouse explained the origin of the bill. Mr. Crawford had contacted all of the legislators about this subject, and he was ultimately referred to the Office of the Revisor of Statutes, where Jill Wolters was assigned to draft the bill. Ms. Strouse also informed the Committee that her research into the topic had turned up no evidence of similar legislation in any other state.

Mr. Crawford spoke to the Committee about his experience. He stated that the problem began when he was in college pursuing a second degree and the Shawnee County Courthouse started putting "other people's transgressions" on Mr. Crawford's civil record. According to Mr. Crawford, these erroneous entries cannot be deleted because there is no procedure for doing so. He stated that he has lost his house over this because no one will hire a computer network administrator who cannot handle the responsibility of managing his own checking account. He said that the existing records in the courthouse show that he writes bad checks and sues people, neither of which has ever happened. He stated that if these entries were part of a criminal record, they could be expunged, but there is no comparable procedure for expunging an erroneous civil entry.

Joe Jeter questioned who would be entitled to notice of a civil expungement proceeding. The Committee discussed that the bill provides only that notice of the hearing be given to the clerk of the district court, but does not specifically require that the petition be served on or notice be given to the other party or parties to the action for which expungement has been requested. Chairman Badgerow noted also that the bill wasn't written in the same order that he might have chosen, but asked the Committee for feedback about the underlying concept. Having heard Mr. Crawford's story, he inquired whether anyone on the Committee had encountered any similar situations or had any history or experience that would support the need for a statutory provision for civil expungement. Judge Jerry Elliott noted that the bill could have some impact in cases where fraudulent liens or lawsuits are filed against judges or elected officials, but said that while such *posse comitatus* activities used to be a problem, they have now largely disappeared.

Mr. Crawford was questioned whether these items were showing up on his credit bureau report. He replied that when a prospective employer does a background check and pulls records from the Shawnee County Courthouse, they find these civil records that do not belong to him. Mr. Crawford also stated that his record has a problem with multiple entries. He said he had done a survey and found that "approximately 9% of all people in Shawnee County who have a courthouse record have duplicated entries, as in a record has been entered multiple times, and those multiple entries cannot be deleted either." Mr. Crawford was asked how a repeated entry, if it is correct, can hurt someone. He replied that an HR person may only see the number of entries, and that it would take a real "numbers nerd" to notice that multiple entries have the same case number.

Judge Kevin Moriarty noted that identity theft matters are flagged on credit bureau reports so that it is apparent which entries can be discounted. Mr. Crawford reiterated that credit reports are not the problem for him. He is troubled only by courthouse records. Mr. Crawford stated that he was certain that the entries on his civil record in Shawnee County had prevented him from obtaining employment, specifically mentioning a position at the Veteran's Administration. He stated that checking such records is common practice in hiring and that anyone can get access to records nationwide with an inexpensive subscription to a web-based service.

The Committee discussed the implications of implementing HB 2393. It was noted that, beyond the question of whether there is a need for it at all, it is extremely broad. Section (e)(4) provides that the court shall order the civil record expunged upon finding that the case had been dismissed prior to trial. It was noted that the vast majority of cases are settled prior to trial, and this bill would therefore allow a major portion of the entire civil record to be erased.

The Committee expressed sympathy for Mr. Crawford's situation, but members noted that legislation cannot be written to solve the problems of one person. No Committee members were aware of a need for civil expungement and there was a consensus that a "cure" for Mr. Crawford would result in much bigger problems for many others.

It was moved by Judge Moriarty and seconded by Mr. Jeter that the Committee recommend against the adoption HB 2393. The motion passed unanimously.

Mr. Crawford left the meeting at this time.
