Public Access Committee Meeting Minutes

September 18, 2020, at 1:00 pm

WebEx Meeting

The meeting was called to order at 1:05 p.m.

**Attendees:**

**Voting Members Present:** Judge Jerry Jones, Colorado Court of Appeals, committee chair; Chief Judge Michael Martinez, 2nd Judicial District; Peggy Gentles, Court Executive, 14th Judicial District; Polly Brock, Clerk of Court and District Administrator, Colorado Court of Appeals; April McMurrey, Office of Attorney Regulation Counsel; Kent Wagner, Office of Judicial Performance Evaluation; Cheryl Layne, Clerk of Court, Douglas County; Jason Bergbower, ITS; Melissa Thompson, Office of Respondent Parent Counsel; Timothy Lane, Colorado District Attorneys’ Council; Dawn Garey, Clerk of Court, Garfield County; Anne Deyell, Clerk of Court, Dolores County; Judge Don J. Toussaint, District Court Judge, 18th Judicial District; Rob McCallum, Public Information Officer, Colorado Judicial Department.

**Non-Voting Members Present:** Justice William W Hood, III, Colorado Supreme Court Justice, Colorado Supreme Court; Terri Morrison, Legal Counsel, Colorado Judicial Branch; Steven Vasconcellos, State Court Administrator, State Court Administrator’s Office; Amanda Huston, Court Programs Analyst, SCAO; Sherri Hufford, Probation Services, SCAO; Darren Cantor, Office of Alternate Defense Counsel.

**Guests:**

**Welcoming of New Members**

**Dawn Garey – Garfield County**

**Anne Deyell – Dolores County**

**Judge Don J. Toussaint – 18th Judicial District**

**Approval of Minutes from January 10, 2020, meeting**

Cheryl Layne moved to approve the minutes from the January 10, 2020, meeting. Polly Brock seconded the motion. All in favor. None opposed. The motion to approve the January 10, 2020, minutes passed unanimously.

**Old Business**

Status of amendments to CJD 05-01 approved in 2017; specifically relating to Addendum E and section 2.00(c). (Terri Morrison)

One item left outstanding in 2017 pertained to Addendum E. A subcommittee worked on section 2.00(c), but there were unresolved questions. It would treat attorneys and non-attorneys (such as incarcerated individuals seeking information about their cases) differently when it comes to the release of information. A person who is not an attorney would only get information about the person who signed the release. It is a policy call by the committee as to whether individuals who are not attorneys should be treated differently. Attorneys have an ethical obligation to keep case information protected but non-attorneys don’t. All other changes in the document were discussed in 2017. Local courts are identifying individuals before they give them access to the case, with or without the ROI (release of information). Polly Brock moved to approve the changes Terri proposed. Cheryl Layne seconded the motion. All in favor. None opposed. The motion passed and the proposed amendments will be sent to the supreme court.

Possible addition of categories of documents as sealed, not accessible to the public or counsel. (Terri Morrison)

Section 4.60 identifies court records that are excluded from public access. Clerks need guidance as to certain documents (example MIFP) and whether those should be available to the public. Probate Case Information Sheet has been approved to be sealed – JDF705SC. This update would give guidance to the clerks on how they handle specific documents when they are filed, if they are labeled sealed or suppressed. There is no perception of a conflict between this update and the proposed updates to the criminal rule.

The concern about the language in 05-01 and the proposed Criminal Rule 55.1 regarding sealed and suppressed documents is that no one but the court should see a sealed document.

If the committee adopts the new language, Terri will go through and delete current language and replace it with d, e, f, g. Tim Lane moved to approve Terri’s changes. Dawn Garey seconded the motion. All in favor. None opposed. The motion passed and proposed amendments will be presented to the supreme court.

Confidentiality of records pertaining to Judicial Department orientation, education, mentoring, and coaching programs. Proposed addition of a new subsection (26) to Section 3 of PAIRR. (Jennifer Mendoza, Terri Morrison, and Judge Jones)

This was presented back in January by Jennifer Mendoza and Judge Fisch. There is a concern that disclosure of judges’ (and other department employees’) identities and participation in these programs will discourage participation. Following discussion, Judge Jones said that he will take various versions of updates to those who are most involved to get proper language. This discussion will be tabled until Judge Jones has updates. He will bring proposed changes back to the committee.

Update on attorney redaction of filed documents. (Judge Jones)

Proposed Rule 5(g) (civil rules) and proposed Rule 305(g) (county court rules). These rules were looked at by the Civil Rules Committee and language was adjusted. They will be considered at its meeting next week and, if approved, will be passed on to the Supreme Court.

Update on rule changes regarding sealed and suppressed documents. See Attachment 5. (Judge Jones)

Criminal Rule update. The supreme court is holding a public hearing on proposed new Rule 55.1 on October 13. If the supreme court adopts a rule along these lines, the intent is that we will take that rule and use it as a model for other committees.

**New Business**

Proposed amendment to Section 1(c) of PAIRR 2 to add the Office of Public Guardianship as a non-covered entity. (Terri Morrison)

PAIRR 2 lists entities that are covered by PAIRR in the judicial branch. A proposed change would update the language to include the Office of Public Guardianship. Since this would be rule change, it would be directed to the supreme court for approval. Polly Brock moved for approval. Cheryl Layne seconded the motion. All in favor. None opposed. The recommendation will be forwarded to the supreme court.

Proposal to remove some restrictions on sharing documents from CJD 05-01, Section 4.40. (Darren Cantor)

Section 4.40(a)(6) requires anyone who makes a request for aggregate data to complete Addendum A, which requires the requestor to agree to certain things. Concerns arose when a university and two non-profits, all of whom were working together on a project, separately requested the same data. Judicial had to work on three requests when one would have sufficed. Judge Martinez recalled that these requirements were established to protect and maintain the integrity of the data. Could this be achieved by allowing multiple entities to submit a single request, if they all agree? Can we remove “or aggregate” language in roman numeral 3, which would align with roman numeral 1? Sherri Hufford didn’t have any objection to groups sharing data, but they would need to identify that this was their intent, identifying themselves on the data request. If an entity wasn’t aware of who they would be working with, it could submit a notice to SCAO requesting permission to share that data with the other group, once identified. Terri suggested adding “if there is more than one requestor using the data, please identify here.” Judge Jones suggested that those who are directly involved in this (Darren, Terri, Sherri) communicate further to come up with a proposal to be considered at the next meeting.

Proposal to amend section 3(c)(21)(B) of PAIRR 2 to remove the exception from disclosure for records relating to investigations involving Judicial branch employees, except judicial officers. (Justice Hood, Terri Morrison)

There has been discussion regarding putting the Judicial branch under CORA. We have records that don’t fit neatly under CORA. One sticking point concerns personnel investigations. There is language in 3(c)(21) that says any record of an internal personnel investigation, except the records of actions taken based on such investigation, must be made available for inspection by the public. The question has been raised why Judicial branch employees should be treated differently than Executive branch employees. The proposal includes insertion of the words “ongoing, civil or administrative” investigation in (21)(A), because that is the language in CORA. “Ongoing” was added to internal personnel investigations because allowing disclosure of information in the midst of an investigation would be disruptive to the ongoing personnel investigation. The proposal includes language in the new (C) regarding records of investigations that are referred to the Commission on Judicial Discipline because those are governed by their own set of rules. Lastly, the proposal adds (D), which tracks some of the language in CORA. Upon the conclusion of any investigation, excluding judicial discipline investigations, all records, not exempt, pursuant to the law or court rule, are open to inspection. Under (21)(A), which tracks CORA, there is an exception regarding persons within the investigating agency. Justice Hood adds that many other players were involved in drafting these updates. There seems to be a growing consensus that this change would be appropriate. The Attorney General’s Office’s CORA expert also reviewed these changes. Judge Jones had some editorial changes, but otherwise there no concerns were expressed. Peggy Gentles moved to recommend approval to the supreme court. Polly Brock seconded the motion. All in favor. None opposed. The motion passed. Judge Jones will make a few editorial suggestions and then send the recommendations to the supreme court along with a transmittal letter.

**Next Meeting Date**

Future meeting dates:

January 8th, 2021 @ 1:00 pm via WebEx

Meeting was adjourned at 1:26 p.m.