Public Access Committee Meeting Minutes January 18, 2017

The meeting was called to order at 1:34 p.m.

**Voting Members Present**: Judge Jerry Jones, committee chair; Chief Judge Michael Martinez; Judge Devin Odell (via telephone); Karen Salaz, District Administrator; Sandra Casselberry, District Administrator (via telephone); Chris Gastelle, Chief Probation Officer (via telephone); Lynette Cornelius, Clerk of Court; Sabra Millett, Clerk of Court; Polly Brock, Deputy District Administrator, Court of Appeals; Chad Cornelius, Chief Information Officer; Rob McCallum, Public Information Officer; Lindy Frolich, Office of Alternate Defense Counsel; April McMurrey, Deputy Regulation Counsel; Kent Wagner, Office of Judicial Performance Evaluation; Linda Weinerman, Office of the Child’s Representative; Ryann Peyton, Colorado Attorney Mentoring Program; Barbara Ezyk, Colorado Lawyer Assistance Program; Melissa Michaelis, Office of Respondent Parents Counsel; James O’ Connor, Office of the Public Defender

**Non-Voting Members Present**: Justice Monica Márquez; Terri Morrison, Legal Counsel, Colorado Judicial Department; Steven Vasconcellos, Senior Manager, Court Services; Sherri Hufford, Probation Services; Terrie Langham, Court Administrator; David Quirova, Jr., Court Services

**Guests**: Sean Thompson representing TruDiligence; Claire Walker, Court Services; Jason Bergbower, ITS; Lee Coddins and Marilynn McCormick representing LexisNexis; Jeff Roberts representing Colorado Freedom of Information Coalition; Genevieve Rotella, 2nd Judicial District; Manual Martinez representing Bryan Cave

**Approval of Minutes from the September 21, 2016, meeting**

Polly Brock moved for the Committee to accept the minutes from the September 21, 2016, meeting as submitted. Judge Martinez seconded the motion. The motion passed unanimously.

**Update on status of new members**

The Chief Justice has formally approved all new members of the Committee. Please submit ideas about identifying representatives of the public at large as members to Judge Jones.

**Update on legislative activity**

Justice Monica Márquez provided an update on House Bill 17-029, which is virtually identical to a Colorado Open Records Act legislation that was presented during the 2016 legislative session. If passed, the Bill would make Judicial subject to certain portions of CORA, such as those addressing administrative investigations and trade secrets. The Bill has been assigned to the State Affairs Committee and the next hearing is scheduled for early February.

**Old Business/Updates**

**Further discussion of section 2.00(b)(4) (“Who Has Access Under This Policy”); specifically, access by parties’ attorneys in other cases — Terri Morrison.**

Attorneys sometimes need access to multiple cases for clients. Restricting access to cases in which they are not the attorney of record may cause problems. There may need to be language added to the Chief Justice Directive that allows or otherwise addresses access. Clerks are concerned about the difficult and time consuming process of determining an attorney’s access in cases in which they are not the attorney of record. A subcommittee will be created to recommend policy and implementation measures. Judge Jones will send out an email regarding the sub-committee and interested members can respond to Judge Jones.

**Further discussion regarding whether attorneys should be responsible in the first instance for redacting nonpublic information in documents they wish to file — Judge Jerry Jones.**

Court clerks spend time reviewing and redacting information in filed documents that was not redacted by an attorney in the first instance. Attorneys may be missing redactions or there may be a discrepancy of the understanding of redaction standards between attorneys and the court. Terri Morrison will survey other states regarding their statutes and rules that address redaction requirements for attorneys. Chad Cornelius and ITS will look into software that has the capability to redact documents, and will determine if it is feasible to conduct a pilot in the courts. Polly Brock will gather information about redaction software that is currently used by the federal courts in Colorado and perhaps elsewhere.

Break 2:41 p.m.

Meeting resumes 2:52 p.m.

**New Business**

**Discussion about whether records deemed nonpublic under section 4.60(d) (“Court Records Excluded From Public Access”) should also be denominated as sealed —Terri Morrison**

A group of clerks of court and the legal team at SCAO have been reviewing documents that are listed in Chief Justice Directive 05-01 as excluded from public access under section 4.60(d) to determine which documents should remain on the existing list and whether additional classes of documents should be added. Additionally, the group is considering whether to recommend creating a second list consisting of documents governed by legal authority other than CJD 05-01. Documents on this second list would be sealed. For example, birth certificates should not be released by a court because they are protected by statute. If proposed language for CJD 05-01 is created in advance of the next meeting by the group, it will be sent out to the committee.

**Discussion of what to do about circumstances where the Judicial Department needs to release data for its own purposes to a user who would not necessarily agree to (or really need to) execute one of the Addendums to 05-01 —Terri Morrison**

Compiled data released to certain entities by Judicial is not done through the normal request process utilizing Addendum C to CJD 05-01. For instance, when Judicial provides lists to the District Attorney’s office for the purpose of vacating warrants, the District Attorney is not necessarily requesting the data. As a result, CJD 05-01 may require amendments to accommodate compiled data releases that are initiated by the court rather than an outside entity. Districts have addressed this matter with provisions in a contract or a Memorandum of Understanding between the court and the entity to which data is being released. Terri Morrison will send out a request to the district administrators and the clerks of court to gather examples for the committee to consider.

**Discussion of whether the court is the custodian of records in appeals of an administrative agency decision such that the court, rather than the agency, is responsible for protecting against disclosure of nonpublic information —Karen Salaz**

After discussion, the committee reached consensus that the court is the custodian for the referring administrative agency record and should follow court policy regarding public access to records. For documents that are not considered accessible to the public, the requester of any such document can be referred to the originating agency.

**Set post-summer meeting date**

Post-summer meeting date set for September 20, 2017.

**Next Meeting Date**

The next committee meeting dates are,

* May 12, 2017, at 1:30; and
* September 22, 2017, at 1:30 p.m.

The meeting adjourned at 3:16 p.m.