

Public Access Committee Meeting Minutes

January 30, 2015 meeting called to order at 1:30 p.m.

Members Present: Justice Monica Márquez; Chief Judge Michael Martinez; Chief Judge Mark Thompson; Judge Devin Odell; Chad Cornelius, CIO; Karen Salaz, District Administrator; Sabra Millett, Clerk of Court

Non-Voting Members Present: Terri Morrison; Steven Vasconcellos; Carol Rigato; Dan Cordova; Eileen Kinney; Terrie Langham

Guests: Sherry Stwalley, Director, Court Services; Kristen Burke, Legal Counsel to the Chief Justice; Teresa Taylor Tate, Assistant Legal Counsel/SCAO; Tracy Walter, Senior ITS Manager/SCAO; Connie Lind, Court Services; John Nebel, Kathy Oatis, Marc Milligan, and Steven Balcerovich representing BIS; Marilyn McCormick and Lee Codding representing LexisNexis; Jeff Roberts representing Colorado Freedom of Information Coalition; Manual Martinez representing Bryan Cave; Susan Thompson and Jerry Nielson representing TruDiligence; Peter Coulter, Colorado Judicial Performance Review; Arthur Kane, Watchdog.org; Arthur Abplanalp, Jr., Attorney

Old Business/Updates

Minutes from the September 24, 2014 meeting approved.

Update Regarding Draft Rule on Public Access to Administrative Records

Teresa Tate, Assistant Legal Counsel, Colorado Judicial Department
Teresa provided status of work being done to complete a draft Rule regarding Public Access to Administrative Records. A subcommittee has been formed and charged to complete the draft Rule. All judicial Branch agencies are actively participating in the work of the subcommittee, with the exception of the Commission on Judicial Discipline (which has its own set of promulgated rules). The draft rule will contain five sections that govern public access to administrative records of the Branch: section one - definitions; section two - records are open to the public; section three - defines exceptions when the custodian may or must exclude records; section four - process for requesting records; section 5 - resolution of disputes. The Chief Justice has elevated the priority for completion of the draft rule, so the subcommittee is now meeting twice per month and anticipates submitting the draft rule to the Public Access Committee for review by the end of March. Once the Public Access Committee has reviewed the draft rule, it will be submitted to the Supreme Court. If approved by the Court, the rule would be incorporated into Colorado Court Rules, Chapter 38: Public Access to Records and Information.

The Public Access Committee agreed to meet prior to the next scheduled meeting in May to review the draft rule. A special meeting is set for April 8th, at 1:30, Room 1C in the Ralph Carr Building. If committee members are unable to attend the April 8th meeting, they are encouraged to send their comments regarding the draft rule to Teresa Tate or Justice Márquez.

Update on Public Access System Enhancements/ Status of Remote Access Display of Case Type and Arrest Charge Information/ LexisNexis VitalChek Alert Request Update/ Status of Data Replication Request

Chad Cornelius, CIO, Information Technology Services Division, SCAO

Chad informed the Committee that ITS has begun the design process to create a public access alert and notification system as a result of vendor requests for this service. LexisNexis VitalChek has provided ITS with their initial requirements, and ITS will incorporate these into the design. ITS has also completed the removal of criminal case type and criminal arrest charge information from data available to be displayed through the Public Access System. These changes were the result of a policy decision made by the Committee in May, 2014. Chad also noted that ITS continues to explore options to improve an already expeditious public access system, and will continue to do so in conjunction with BIS and LexisNexis VitalChek.

Justice Márquez noted that the Committee has not yet taken a vote on the data replication task force recommendations, and invited BIS to comment. BIS stated that it would like to withdraw its request for data replication at this time, as BIS and ITS are both committed to continue working together regarding further system enhancements. Justice Márquez inquired as to whether the Public Access Committee or BIS had any objections to removing the issue of data replication from the Committee's agenda permanently, and no objections were made.

Justice Márquez also inquired as to whether any of the ITS topics should remain on the agenda for status, considering the commitment of ITS and BIS to continue to work together regarding system enhancements. Both BIS and Chad agreed that continued status would not be necessary.

These topics will be removed from the May 2015 meeting agenda.

Courthouse News Access Request Update

Steven Vasconcellos, Senior Manager, Court Services Division, SCAO

Steven provided the Committee with an update of ongoing discussions between Judicial and CNS regarding timely access to new civil case filings. CNS has been seeking same day access to new civil complaints and Judicial has been providing monthly reports regarding the percentage of new civil case filings accepted within the same day in ten judicial districts. Recently, a discrepancy was identified between the data compiled by Judicial and CNS related to cases filed at the end of the business day. A problem was identified and corrected in the data compiled by Judicial, which will likely result in a same-day acceptance percentage decline of approximately 5% with the corrected data (80% to approximately 75%). Monthly reports for the end of 2014 are being recompiled, and will be available at the May meeting.

Steven thanked the Clerks of Court for their continued efforts in working to accept new civil cases within the same day they are filed.

Manuel Martinez, legal counsel for CNS, expressed his appreciation to the Branch for its dedication to this issue, and to ITS and CNS for identifying and correcting the data discrepancy.

This item will remain on the May 2015 agenda for status.

Supreme Court Library Public Access Terminals Update

Dan Cordova, Supreme Court Librarian

Dan updated the Committee regarding the use of public access terminals in the Supreme Court Library, and the concern as to whether the existing terminals were adequate to meet the current public demand for their use. Four additional public access terminals have now been installed with a dedicated printer, and documents that are publically available on the ICCES system are available to print from these terminals. Dan acknowledged the collaboration between ITS, Court Services and library staff to

accomplish this addition. Dan also informed the committee that phase two of this implementation will include the capability for batch printing and paying for documents on-line with a credit card, although the timeframe for this additional capability has not yet been determined. Dan encouraged users of the public access terminals to inform him if there are additional requirements they would like implemented and he will accommodate those requests if able. Karen Salaz inquired as to whether ITS would make the batch printing and credit card payment options available on public access terminals that exist in other court locations. Chad indicated that these features will be tested in the Supreme Court Library initially, and will hopefully be available to the districts in the future.

Subcommittee to Review Public Access Policy and Recommend Updates – Steven Vasconcellos

Carol Rigato, Court Programs Analyst-Public Access, SCAO

Work continues regarding the review of CJD 05-01 and drafting recommended changes.

Subcommittee members met in September and began identifying recommended changes regarding terminology and business practice. The subcommittee also met in January, and is scheduled to meet again in March to continue work on drafting recommended changes to current policy.

Once the subcommittee completes their review, a “track-changes” version of recommended changes to CJD 05-01 will be sent to all Committee members, and then presented to this Committee for open discussion. The subcommittee is targeting to complete their review and present recommendations to the Committee at the May meeting.

This item will remain on the May 2015 agenda for status.

Subcommittee on Criminal E-Filing Update

Terri Morrison, Legal Counsel, Colorado Judicial Department

In July, the Criminal Rules Committee passed a rule governing the process of criminal e-filing. Terri worked with the Committee and internal staff to ensure that the criminal e-filing process and rule protects documents and information as required in CJD 05-01 and the Criminal Justice Records Act. The Supreme Court adopted the proposed rule on September 24th. However, upon further examination, the Criminal Rules Committee proposed technical amendments to the rule, which were adopted by the Supreme Court on December 29th.

Chad informed the Committee that 10th (Pueblo) and 8th (Larimer) Judicial Districts are currently using the criminal e-filing system, and other Judicial Districts will continue to be added throughout the year. Additional features will be added as ITS continues to enhance the system.

New Business

Request for Attorney Access to Probate Case Information thru ICCES

Judge Devin Odell, District Court Judge, 8th Judicial District

Judge Odell provided a brief summary of the issue being introduced to the Committee regarding electronic access to probate estate and trust cases. Pursuant to CJD 05-01, Section 4.20(b)(3), specific information in electronic court records, which includes all probate case types, is not accessible to the public via remote access due to the inability to protect confidential information. Probate attorneys are requesting limited access to party information in probate trust and estate cases. Judge Odell introduced Attorney Arthur Abplanalp, Jr., who attended the meeting to provide the Committee with information regarding the issues probate attorneys struggle with regarding lack of statewide access to these case types.

Arthur Abplanalp addressed the Committee and shared issues identified at a meeting of the Larimer County Bar Association/Trust and Estate Section held in December 2013. A summary of those issues follows:

- When initiating a probate action, statute requires that an attorney must certify that there is no other probate action pending in the state. Currently, probate case information is only available through direct contact with Clerks of Court, therefore, attorneys must contact individual court locations to search for pending probate actions. If a probate action is identified, no contact information for the Personal Representative (PR) or their Counsel is available on-line. Probate attorneys acknowledge that there is a large amount of information in probate cases that should remain confidential, and are only requesting statewide electronic access to contact information for the Personal Representative or Counsel in probate trust and estate cases.
- A related problem exists regarding lodged wills. Individuals are entitled to lodge a will with the court, and upon their death, the will is activated and a petition for probate is filed. An attorney must certify that the will they are requesting to probate is the only existing will, and since lodged wills are not electronically indexed statewide, they cannot certify this. Attorneys request a statewide electronic index of lodged wills.
- A common problem is that probate attorneys often cannot locate an existing trust, as the name of the trust is based upon the settlor. Attorneys request that policy include a requirement that when a trust registration statement is filed, the filing party is required to include the name of the settlor (person creating the trust) and the names under which the trust does business and holds property.

Judge Odell summarized that the challenge is to provide access to the name and contact information for the PR or counsel in probate cases, without opening access to confidential information that should remain protected. He further clarified that this change is requested for probate trust and estate case types only, and no additional access is requested for probate protected proceedings case types. Connie Lind and Tracy Walter stated that indexed lodged will information is already available statewide, although it is not available thru ICCES.

Justice Márquez thanked Mr. Abplanalp for his presentation and recommended that a subcommittee be formed to investigate the issues discussed and propose amendments to CJD 05-01, Section 4.20(b)(3) that may be needed. Judge Odell offered to lead the work of the subcommittee; members will include an ITS staff member that Chad will appoint, Tammy Herivel, Amber Roth, and Connie Lind. This subcommittee will target to complete their task and provide proposed amendments to policy by the May meeting.

This item will remain on the May 2015 agenda for status.

SCA/Record Custodian Update

Carol Rigato reported that data requests received last quarter were able to be addressed within the existing Public Access policy. SCAO receives approximately 300 trial court data requests per year.

Next Meeting Dates

- April 8, 2015 at 1:30
- May 8, 2015 at 1:30
- September 16, 2015 at 1:30
- January 20, 2016 at 1:30

The meeting was adjourned at 3:05 pm.