

# Public Access Committee Meeting Minutes

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**April 8, 2015** Meeting called to order at 1:35 p.m.

*This was a special meeting of the Public Access Committee convened to review the draft Rule on Public Access to Administrative Records of the Judicial Branch.*

**Members Present:** Justice Monica Márquez; Chief Judge Michael Martinez; Judge Devin Odell (via phone); Karen Salaz, District Administrator; Sandra Casselberry, District Administrator (via phone); Chris Gastelle, Chief Probation Officer; Tammy Herivel, Clerk of Court; Sabra Millett, Clerk of Court; Chad Cornelius, Chief Information Officer; Rob McCallum, Public Information Officer

**Non-Voting Members Present:** Terri Morrison, Legal Counsel/Colorado Judicial Department; Terrie Langham, Court Administrator, Denver County Court; Carol Rigato, Court Services/SCAO

**Guests:** Teresa Taylor Tate, Assistant Legal Counsel/SCAO; Kristen Burke, Supreme Court; Melanie Ulrich, HR/SCAO; Jason Bergbower, ITS/SCAO; Lee Codding, LexisNexis; Jeff Roberts and Steve Zansberg, Colorado Freedom of Information Coalition; Jim Coyle, Chip Mortimer, and Nadine Cignoni, Office of Attorney Regulation Counsel; Ginette Chapman, Office of the Presiding Disciplinary Judge; James O'Conner and Lee Renfrow, Office of the State Public Defender; Lindy Frolich, Office of Alternative Defense Counsel; Chris Vanderveen, 9News; Art Kane, Watchdog.org

Justice Márquez opened the meeting by providing a brief history regarding the development of the draft *Rule on Public Access to Administrative Records of the Judicial Branch*, and clarified the goal of this special meeting and next steps in the process.

## **Background**

No rule or law currently governs access to Judicial Branch administrative records. Chapter 38, Rule 1 incorporates Chief Justice Directive ("CJD") 05-01 governing public access to court records. The Colorado Open Records Act, section 24-72-101, et. seq. ("CORA"), governs public access to records of the Executive and Legislative Branches of the State of Colorado. CORA does not, however, apply to the Judicial Branch.<sup>1</sup> In late 2013, the Judicial Branch began long discussed efforts to draft a Rule that would govern access to administrative records of the Judicial Branch. Legal Counsel for Colorado Courts and Probation presented a draft Rule in April 2014 to the Chief Justice, the Chair of the Public Access Committee, and to Judicial Branch agencies for comment. In May 2014, the Public Access Committee considered the draft Rule and recommended distribution to District Administrators, Clerks of Court, Chief Judges, and Chief Probation Officers for comment.

A charge issued in August, 2014 to form a Subcommittee to Continue Work on the Proposed Public Access Rule on Administrative Records of the Judicial Department ("Subcommittee"). The Subcommittee's charge was to continue work on the proposed rule on public access to administrative records; suggest content, language and consistency with CJD 05-01; and report to the Public Access Committee. The Subcommittee was originally comprised only of members from Colorado Courts and Probation, but was expanded to include members from each Judicial Branch agency. The Subcommittee met monthly for full-day meetings beginning in August, and twice monthly in February and March to accomplish the tasks set forth in the charge. Subcommittee meetings were well attended. Decisions were made by consensus and when consensus was not clear, by vote.

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<sup>1</sup> See *Office of the State Court Administrator v. BIS*, 994 P.2d 420, 426 (Colo. 1999); *Gleason v. Judicial Watch, Inc.*, 292 P.3d 1044 (Colo. App. 2012).

The Subcommittee began with the draft Rule circulated to the Public Access Committee, which was based on CORA. Then, the Subcommittee approached each decision with the following in mind:

- 1) administrative records of the Judicial Branch should be accessible to the public whenever possible;
- 2) CORA should be used as an example and followed when the Judicial Branch's records are similar;
- 3) an exception should only be included if the exception supports the public interest, a privacy interest, or is necessary to protect the Judicial Branch's ability to perform its duties; and
- 4) plain language should be employed whenever possible.

With these principles in mind, the Subcommittee made extensive revisions to the original draft Rule, and presented their final recommendation to the Public Access Committee for review and approval.

### **Process and Next Steps**

The goal of the special meeting was to review the draft rule on Public Access to Administrative Records of the Judicial Branch, make revisions in real-time, and vote on whether to approve and submit a final version of the draft Rule to the Supreme Court for its consideration.

The Subcommittee recommended including the proposed Access to Administrative Records of the Judicial Branch Rule in Chapter 38 of the Court Rules, which governs Public Access to Records and Information. The proposed Rule would be published in the Colorado Lawyer for public comment, and a public hearing will be scheduled in the early fall.

Justice Márquez noted that the Chief Justice has indicated that she is likely to adopt a version of the proposed Rule in the form of a Chief Justice Directive that would be in effect pending the possible adoption of the proposed Rule by the Supreme Court.

Justice Márquez also noted that the process of creating this draft Rule prompted discussion with the Chief Justice regarding whether the Chair of the Public Access Committee should be a court of appeals judge, as with other rules committees. Justice Márquez anticipates that she will be able to provide more information to the Public Access Committee regarding her role as Chair at the May meeting.

### **Review of the Draft Rule on Public Access to Administrative Records of the Judicial Branch**

Teresa Tate presented each section of the draft Rule, and answered questions from the Committee. Suggested revisions were discussed, and decisions to amend the draft Rule were made by consensus. A final version of the draft Rule as amended by this Committee will be available on-line on the Advisory Committee webpage: <https://www.courts.state.co.us/Administration/Section.cfm?Section=pubacci>. Revisions recommended by the Public Access Committee will be displayed in "track-changes" format.

### **Committee Recommendation**

The Draft Rule on Public Access to Administrative Records of the Judicial Branch was adopted as amended by unanimous vote of the Public Access Committee at this meeting. It will be submitted to the Supreme Court for its consideration.

### **Conclusion**

Justice Márquez thanked the Subcommittee for their time and dedicated commitment to creating the draft Rule on Public Access to Administrative Records of the Judicial Branch.

The special meeting was adjourned at 4:00 pm.