

Public Access Committee Meeting Minutes

May 9, 2014 meeting called to order at 1:30 p.m.

Members Present: Justice Monica Márquez; Chief Judge Michael Martinez; Chief Judge Mark Thompson; Judge Kathy Delgado; Judge Devin Odell; Karen Salaz, District Administrator; Fran Jamison, Chief Probation Officer; Tammy Herivel, Clerk of Court; Sabra Millett, Clerk of Court; Chad Cornelius, CIO; Rob McCallum, Public Information Officer

Non-Voting Members Present: Carol Haller; Eileen Kinney; Steven Vasconcellos; Carol Rigato

Guests: Marc Milligan, John Nebel, Kathy Oatis, and Steven Balcerovich representing BIS; Dennis Thompson representing Acxiom; Marilynn McCormick and Lee Coddling representing LexisNexis; Jeff Roberts representing Colorado Freedom of Information Coalition; Manual Martinez representing Bryan Cave; Megan Gallegos representing Courthouse News Service; Jerry Nielson and Susan Thompson representing TruDiligence; Terri Morrison, First Assistant Legal Counsel/SCAO; Brian Medina, ITS/SCAO

Committee Membership Changes: Carol Haller, Deputy State Court Administrator, will be retiring at the end of May and was acknowledged for her service; Terri Morrison will be replacing Carol as Legal Counsel as of June 1, 2014. Chief Judge Mark Thompson joined the committee.

Minutes from January 31, 2014 meeting approved.

Old Business/Updates

Status of Data Replication Request/Update on Public Access System Enhancements

Justice Márquez provided a summary of the data replication request that the Committee was tasked to consider 2.5 years ago. The Task Force report recommended against providing replicated data, however, the Committee has postponed taking a vote on whether data replication should be permissible from a policy perspective due to on-going and productive discussions between Judicial and BIS. The Committee must now decide whether to schedule a vote or continue to postpone the matter. Chad updated the Committee on the status of system enhancements that further improve system speed and performance, and the target of moving our data center to the Ralph L. Carr Judicial Center by 2015 – depending on staff availability. As these enhancements have not yet been fully implemented, Chad recommended that the vote regarding data replication be postponed. BIS concurred that it was premature to vote at this time, as enhancements have not yet been completed, and the data center has not yet been moved. Justice Márquez noted that although a vote on the Task Force report would not impede ongoing progress regarding system enhancements, the vote will be postponed to allow the Information Technology Services Division and BIS to continue to work together. The topic will remain on the agenda for a status at the September meeting.

LexisNexis VitalChek Alert Request Update

Chad Cornelius, Chief Information Officer
Several vendors have asked for alert request functionality and Judicial acknowledges that alerts are important to the vendors. Initial specifications have been developed; however, significant

programming will be required to create a public access alert and notification system. This request has been added to the ITS Division's list of projects but has not been scheduled at this time. The topic will remain on the agenda for a status at the September meeting.

Remote Access Request Consideration – Chad Cornelius, Steven Vasconcellos

Judicial has periodically received requests to expand remote access to court records and provide the same access on home computers as is available on public access terminals in courthouse locations. Steven and Chad assessed the feasibility of providing this type of access and made a presentation to the Committee. Three main considerations were identified and discussed:

- amendments may be required to CJD 05-01 regarding which court records and documents would be made available via remote access;
- resource impacts would be significant related to programming, expanded customer service support and increased hardware costs;
- limitations exist related to the current contractual relationships with PAS vendors.

Committee discussion revealed that it is unclear if there is a great demand for expanded remote access, as only periodic requests have been received. News agencies, however, would most likely utilize any expanded access that would be provided. Carol Haller commented that this consideration contains two parts; providing statewide access on all existing public access terminals (currently only available in the Supreme Court Library), and providing remote access to home computers. The Branch may want to consider the former as a means of providing some expanded access, but that also raises concerns regarding staff ability to address questions related to documents from outside the local jurisdiction. Justice Márquez noted that the decision to pursue expanded remote access is beyond the scope of the Committee and recommended that no further action be taken by the Committee at this time. The Committee will revive the issue of remote access if the topic becomes a strategic consideration of the Branch. Presentation materials will be posted to the website.

Courthouse News Access Request

Carol Haller, Deputy State Court Administrator and Legal Counsel

CNS had expressed concern regarding the length of time it takes for Judicial staff to accept new civil cases after they are e-filed with the courts. CNS is seeking same day access to civil complaints. Following a productive joint meeting in January, Judicial had committed to track data for 6 months beginning this spring, but had missed this deadline. Carol apologized for the delay in getting reports to CNS, and ensured that reports would be provided before the September meeting. Carol commented that the Branch must examine access to e-filed civil complaints as related to our entire business model, and cautioned against making commitments that are not balanced against other essential functions of the Judicial Branch, such as health, life, and safety issues.

Both CNS and Judicial continue to work cooperatively regarding civil case acceptance timeliness. Manuel Martinez, counsel for CNS, also expressed appreciation for the willingness to discuss this issue, the flexibility the Branch has shown over the years, and the statewide access available on terminals in the Supreme Court Library. The topic will remain on the agenda for a status at the September meeting.

Report on Expanding Public Access Policy to include all Judicial Department Records – Carol Haller

Carol and the legal staff completed the initial draft of a Judicial Branch policy regarding access to administrative records that are not court records (covered by CJD 05-01). This Public Access Rule for Administrative Records is expected to be incorporated into Colorado Court Rules, Chapter 38 –

Public Access to Records and Information. The draft document has been sent to SCAO and the Chief Justice for comment, as well as to other Judicial Branch agencies. Carol is seeking to identify those agencies that choose to be covered by this policy, and to determine what is missing in the policy specific to those agencies. Carol is also seeking input from this Committee regarding next steps, and volunteers to work with a subcommittee that will work on finalizing the document. Judge Thompson, Tammy Herivel, Karen Salaz, Eileen Kinney (or designee), and Fran Jamison volunteered to work with other members from SCAO, the courts, and probation on the subcommittee. Carol will draft the charge of the subcommittee. This item will remain on the September agenda for status.

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

Work continues regarding the review of CJD 05-01 and drafting recommended changes. Subcommittee members met with the Clerk’s Advisory Committee to discuss their recommendations. To address concerns and legal questions raised by the Clerk’s Advisory Committee, the following members volunteered to join the subcommittee: Judge Delgado; Terri Morrison; Fran Jamison; Eileen Kinney; and Lynette Collins. Existing subcommittee members are Steven Vasconcellos (chair), Chad Cornelius, Karen Salaz, Sabra Millett and Carol Rigato. The subcommittee will aim to provide a preliminary report to the Committee in September. This item will remain on the September agenda for status.

Public Access: Display of Arrest Charge Information – Steven Vasconcellos, Carol Rigato

As a result of a public complaint received by ITS, the question was raised whether initial arrest charges or case type information should be displayed through the court’s public access system. The question arose in a case where the original arrest charge was much more severe than the charge ultimately filed. A presentation was made to the Committee outlining the steps taken to investigate this issue. A legal analysis revealed that no federal, state, or local laws have been violated by displaying original arrest charges or case type. However, CJD 05-01, Section 4.20 does not allow for case type to be displayed via remote access, and “charges” are allowed as part of the Register of Actions which displays filed charges only. Also, no contractual agreement exists with current public access vendors regarding specific fields of information to be transmitted or displayed. On the Federal level, the EEOC has acknowledged that criminal history records do impact employability, and has requested employers to only seek background information directly related to job openings.

Case Type: Case type information appears in the ROA, but is not an official action of the court. This data field is used as an administrative tool and for workflow tracking purposes. In many instances, case type does not reflect the actual filed charges in a case, which can cause confusion when this field of information displays in the Public Access System. PAS vendors are currently receiving and displaying case type information. CJD 05-01 does not list case type as a data field to be displayed via remote access, therefore, a change in policy would not be required to discontinue the remote display of this information. A motion was made to discontinue remote display of the case type data field and passed unanimously by Committee members. ITS will work with the PAS vendors to coordinate implementation of this change.

Arrest Charges: CJD 05-01 allows for the remote access of charges as displayed in the ROA. Only filed charges appear in an ROA, and arrest charges remain hidden. However, PAS vendors are currently receiving information for both filed charges and initial arrest charges, and displaying both in the Public Access System. Displaying both arrest and filed charge information has caused some concern regarding the accuracy or clarity of how court records display in both vendor systems. The concern was also raised that if arrest charge information was completely removed from the PAS, the public may not have information related to an arrest until filed charges were entered. The time

between arrest and charges filed in a case can often be several days. To maintain transparency in case proceedings, the Committee agreed that displaying arrest charges until filed charges are entered into a case is the preferred practice related to the remote display of charge information. As CJD 05-01 broadly allows for the remote display of charges, a policy change would not be required to discontinue the display of arrest charges. A policy clarification could be considered, however, regarding the practice of displaying arrest charges until filed charges are entered. Chad agreed that this change can be programmed. He also commented that we may need to provide further clarity in vendor contracts regarding how case information is to be displayed. Steven will provide a status at the September meeting regarding implementation of case type and arrest charge display changes.

New Business/Updates

Report of the Subcommittee on Criminal E-Filing

Terri Morrison, First Assistant Legal Counsel

The Criminal Rules Committee appointed a subcommittee charged with drafting a rule governing the process of criminal e-filing, scheduled to begin in early October, 2014. Terri has been working with this subcommittee as well as an internal group from SCAO to draft this rule. CRCP 121, Sec. 1-26 has been used as a model. Terri is working 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. Cases involving sex offenses will be automatically suppressed in ICCES, which will display the case caption and document titles, but allow access to documents only to case parties. The draft Rule will be presented to the Criminal Rules Committee in July. This item will remain on the September 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.

Next Meeting Dates

- September 24, 2014 at 1:30
- January 30, 2015 at 1:30
- May 8, 2015 at 1:30

The meeting was adjourned at 4:00 pm.