

Public Access Committee Meeting Minutes

May 11, 2018

The meeting was called to order at 1:37 p.m.

Voting Members Present: Judge Jerry Jones, committee chair; Marci Hoffman, District Administrator, 19th District; Sabra Millett, Clerk of Court, Denver District Court (via telephone); Darren Cantor, Office of Alternate Defense Counsel; Judge Michael Martinez; Cheryl Layne, Clerk of Court, 18th District; April McMurrey, Deputy Regulation Counsel; Barbara Ezyk, Colorado Lawyer Assistance Program; Kris Ferrell for Melissa Thompson, Office of Respondent Parents Counsel (via telephone); Rob McCallum, Public Information Officer; James O'Connor, Kent Wagner, Office of Judicial Performance Evaluation; Office of the Public Defender; Ryan Peyton, Colorado Attorney Mentoring Program; Timothy Lane, Colorado District Attorneys' Council; Linda Weinerman, Office of the Child's Representative;

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

Guests: Sarah Meyers, Colorado Lawyer Assistance Program; Kris Geraths representing Background Information Services; Brian Medina, ITS; Claire Walker, Court Services; Kevin Hanks, Office of Attorney Regulation Counsel; Marilynn McCormick representing LexisNexis CoCourts; David Foy and Larry Hudson representing RELX/LexisNexis; Melissa Autin representing LexisNexis Risk Solutions; Jeff Roberts representing Colorado Freedom of Information Coalition; Manual Martinez representing Bryan Cave

Approval of Minutes from January 19, 2018 meeting

Barbara Ezyk moved for the Committee to accept the minutes from the January 19, 2018, meeting. Cheryl Layne seconded the motion. The motion passed unanimously.

New Business

Legislative update — Justice Monica Márquez

House Bill 18-1152 has passed. This bill makes certain records of the state judicial department relating to sexual harassment investigations subject to the Colorado Open Records Act. The legislative declaration of the bill requests the Colorado judicial department to revise its rules governing access to records, rules governing attorney discipline, and other applicable rules to allow greater transparency of sexual harassment investigation proceedings to persons in interest while respecting legitimate confidentiality interests. P.A.I.R.R. 2 revisions have been made by Terri Morrison to meet the requirements of this bill and the Colorado Records Act. The Office of Attorney Regulation is revising Rule 251, which will include compliance with the attorney discipline provisions of this bill.

Redaction subcommittee update — Terri Morrison

The Redaction subcommittee met on April 24, 2018. Civil practitioners in the subcommittee expressed concerns that debt buyer attorneys who file in bulk would be unable to comply with redacting

requirements. Civil practitioners in the subcommittee stated that there are new debt buyer laws with new filing requirements and additional redaction of documents would impede on the judge's ruling of a case. There were issues raised that a person would be unable to prove that they were not a judgment debtor in a civil case or a defendant in a criminal case by using their social security number, if the court record only contained redacted information. Attorneys on the subcommittee understood that the court will face challenges with redaction and the need for documents become available to the public immediately but they did not feel attorneys should be responsible for redaction requirements. The recommendation of the subcommittee is not to pursue a requirement for attorneys to redact in the first instance.

Suppressed and sealed documents subcommittee update — Judge Jerry Jones

This subcommittee will explore if the Supreme Court should adopt a rule(s) that would create a uniform standard for the court to apply in determining the sealing or suppressing of documents. These issues would require input from judges. The committee was asked to provide Judge Jones with contact information of any judges who they think would be an ideal member in the subcommittee.

Proposed changes to P.A.I.R.R. 2— Terri Morrison

Terri Morrison provided the following recommendations for amendments to P.A.I.R.R. 2:

- To be consistent with section 3(a)(2), the term “*federal regulation*” is added to indicate the authority for not releasing a record. The amended sections are:
 - Section 1(c)
 - Section 2(a)
 - Section 3(b)
 - Section 3(b)(10)(E) comment
 - Section 3(c)
 - Section 3(c)(21)(A)
 - Section 4(c)(1)
- Section 1(c)(8) is amended to reflect “*Director*” instead of “*Executive Director*” of the Office of Alternate Defense Counsel.
- The “*Judicial Discipline Commission*” is amended to “*Commission on Judicial Discipline*” to more accurately reflect the name of the Commission. The amendments are in section 1(e) and the Comment, and in section 3(c)(21)(B).
- To mirror CORA and reflect changes made by HB18-1152, section 3(c)(3) is amended to add paragraph (B) to define a “*person in interest*” for purposes of sexual harassment complaints and investigations and the access such persons can have to sexual harassment records. In addition, paragraph (C) is added to indicate the use of the information obtained, if a publicly reported sexual harassment claim made against a person in interest, is false.
- Section 3(c)(5) is amended to add credentials and login passwords as well as addressing records of investigations by the Judicial Information Security as items that must not be released.
- Section 3(c)(9) is deleted as it pertains to probation supervision files since these records are now covered by Chief Justice Directive 05-01. In its place, paragraph (9) now addresses reports of misconduct made to the Office of Attorney Regulation Counsel (OARC) as not being public except as permitted by C.R.C.P. 251. This change is to provide harmony between P.A.I.R.R. 2 and the Rules governing access to OARC investigations.

- Section 3(c)(12) is amended to permit the release of de-identified aggregate or statistical juror information. This amendment responds to requests for information regarding jurors, such as aggregate information regarding why jurors are excused.
- Section 3(c)(13) is amended to allow victims of crime to have certain information from a collections investigator regarding the restitution they are owed. The amendment does not permit release of financial information about an offender but allows the victim general information about payment plans and collection efforts.
- Section 3(c)(18) is amended to just state “*applicable procurement rules*” instead of “*applicable to the agency*” because “*agency*” is not a defined term in the Rule.
- Section 3(c)(21)(B) is amended to cross-reference that internal personnel investigation reports of sexual harassment are controlled by the more specific provisions of section 3(c)(3).
- Section 3(c)(25) is added to provide that the items listed relating to a court or judge’s decision-making process are not public record unless included in a court file and thus subject to CJD 05-01. These records are specified as not being court records under CJD 05-01 and thus the clarity that they are not public administrative records is helpful.

Justice Márquez suggested that “*C.R.C.P. 251.31*” in section (3)(c)(9) be amended to reflect “*C.R.C.P. 251*”, since the entire rule is not likely to be relocated by Attorney Regulation. Barbara Ezyk motioned to submit the proposed amendments with the suggested edit in P.A.I.R.R. 2 to the Supreme Court for consideration. Rob McCallum seconded the motion. The motion passed unanimously.

Revised proposal by LexisNexis to modify CJD 05-01, section 4.40 to require creation of a monthly “traffic report” and to allow electronic access to that report by insurers — Steven Vasconcellos; David Foy of RELX Group

The proposal is for a report that would be created by judicial for LexisNexis containing traffic case data that would include names. It is believed that section 4.40, in CJD 05-01 was created to provide civil judgment reports electronically instead of collection companies pulling files in courthouses, which involved excessive clerk time. Sealed or suppressed information could not be shared with LexisNexis if reports were submitted to them. The committee expressed concern about creating a rule that would entail judicial to compile data that would aid LexisNexis in their commercial enterprise. There is concern that providing this type of data perpetuates collateral consequences. The sale of personal information through judicial was another concern for the committee. Individual searches can currently be completed on LexisNexis Colorado Courts Record Search and Background Information Services. Mr. Foy expressed that insurance companies would use this information for purposes such as identify verification, and accurate insurance rates. Larry Hudson of LexisNexis requested a subcommittee and the request was denied. Rob McCallum motioned to discontinue consideration of the proposal by LexisNexis. James O’Connor seconded the motion. The motion passed unanimously.

Set meeting for January 2019

The January 2019 meeting date was set for January 11, 2019, at 1:30 p.m.

Next Meeting Date

The next committee meeting dates are,

- September 7, 2018, at 1:30 p.m. in the Supreme Court Conference Room
- January 11, 2019, at 1:30 p.m. in the Supreme Court Conference Room

The meeting adjourned at 3:02 p.m.