Public Access Committee Meeting Minutes January 19, 2018

The meeting was called to order at 1:33 p.m.

**Voting Members Present**: Judge Jerry Jones, committee chair; Judge Devin Odell (via telephone); Marci Hoffman, District Administrator, 19th District (via telephone); Sandra Casselberry, District Administrator, 21st District (via telephone); Lynette Cornelius, Clerk of Court, 4th District; Sabra Millett, Clerk of Court, Denver District Court; Polly Brock, Clerk of the Court of Appeals and District Administrator; Chad Cornelius, Chief Information Officer, Office of the State Court Administrator; Darren Cantor, Office of Alternate Defense Counsel; Judge Michael Martinez (via telephone); Cheryl Layne, Clerk of Court, 18th District; Judge Mark Thompson; April McMurrey, Deputy Regulation Counsel; Barbara Ezyk, Colorado Lawyer Assistance Program; Melissa Thompson, Office of Respondent Parents Counsel (via telephone); James O’Connor, Office of the Public Defender; Ryan Peyton, Colorado Attorney Mentoring Program; Timothy Lane, Colorado District Attorneys’ Council

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

**Guests**: Jerry Nielson representing TruDiligence; Damian Schwade and Kris Geraths representing Background Information Services; Brian Medina, ITS; Marilynn McCormick representing LexisNexis CoCourts; David Foy representing RELX; Melissa Autin and Mani Young representing LexisNexis Risk Solutions; Jeff Roberts and Steven Zansberg representing Colorado Freedom of Information Coalition; Manual Martinez representing Bryan Cave

**Introduction of new committee member**

Timothy Lane from the Colorado District Attorney’s Council has been appointed to the committee.

**Approval of Minutes from September 22, 2017, meeting**

Minutes are amended to reflect Terri Morrison appearing as Legal Counsel. Polly Brock moved for the Committee to accept the minutes from the September 22, 2017, meeting with the correction provided by Terri Morrison. Barbara Ezyk seconded the motion. The motion passed unanimously.

**Information about a recently issued Court of Appeals decision, People in Interest of T.T., 2017 COA 132.**

Judge Jones wants the committee to be aware of the decision. If there are ideas to clarify the statute referenced, members may seek the appropriate avenues to do so.

**Old Business**

**Report by the subcommittee on attorney redaction — Terri Morrison**

The subcommittee has decided that it will recommend rules requiring attorney redaction for the Public Access Committee to bring to the Supreme Court (or to court rules committees). The subcommittee has discussed the redaction of driver’s license numbers, financial account numbers, social security numbers, personal identification numbers, and tax identification numbers. The subcommittee will review exceptions such as complaints filed with the court that contain personal information that the court requires to create a case. There will be a recommendation for the clerks to not redact information that the filer was supposed to redact, unless required by statute. Clerks are required to redact child victim and victims of sexual assault information prior to release under the Criminal Justice Records Act. The subcommittee has discussed e-filing options such as a screen that would require checking a box to verify that redactions were made and submitting a certificate of digital submission. In cases where an un-redacted document is required for the court, the filer may request to file as suppressed so that the information may only be viewed by the parties. The subcommittee believes that the recommendations should be adopted in several court rules rather than in PAIRR 2, and it will continue to research the best placement. A civil practitioner will be appointed to the subcommittee. If a recommendation is complete, it will be presented at the next meeting.

**Report by the subcommittee on release of information — Terri Morrison**

Terri Morrison provided an overview of proposed changes to CJD 05-01 sections 2(b), 2(c), 2(d), and Addendum E:

* Under section 2.00(c), a provision was added that states, “*Attorneys who have a release of information that meets the requirements of Addendum E are entitled to access any court records listed in the release that the party from whom the release was obtained would be entitled to access. However, prior to releasing a court record pursuant to the release the custodian must redact victim identifying information from any restricted court record and must comply with the redaction requirements of Section 4.60(g)...”*
* Section 2.00(d) amended to state, *“Except in case classes and case types listed in section 4.60(b)(1-9), and except as excluded by paragraph (e) below, anyone who has a release of information that meets the requirements of Addendum E is entitled to access any court records listed in the release that the party from whom the release was obtained would be entitled to access. However, prior to releasing a court record pursuant to the release the custodian must redact victim identifying information from any restricted court record and must comply with the redaction requirements of Section 4.60(g)…”*
* Under section 2.00(e), a provision was added that states, “*Releases of information applicable to more than five individuals must comply with the requirements of section 4.40(g) even if the request does not pertain to compiled or aggregate data…”*
* Under Addendum E, proposed language was added that states, *“Unless the Release of Information is presented by an attorney, the following shall not be provided by the custodian pursuant to an ROI unless the information is personal to the party that signed the ROI…”*

The committee has no objections to the subcommittee integrating the proposed changes into a comprehensive proposal of recommended changes to CJD 05-01.

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

There are concerns about using judicial resources to provide data to a private entity. There are also concerns about determining what other entities should receive data. There is no clear understanding of how the process of providing data to private entities was established. Research will be conducted to determine the origins and purpose of the decision to provide data to private entities. Examples of statutes from other states will be provided to the committee by Mr. Foy and this matter will be addressed at the next meeting in May.

**New Business**

**Proposal to revise section 4.60 of CJD 05-01 to address sealing and suppression of documents in criminal cases — Steven Zansberg of Colorado Freedom of Information Coalition**

The proposal provided to the committee addressed court rulings and statutes regarding the public’s right to access to court records and court proceedings. Through the proposal, the Colorado Freedom of Information Coalition requests an articulated standard for access to records that will apply throughout the state for uniformity. The proposal raises issues relating to suppressed and sealed documents in CJD 05-01 and potential conflicts with Civil Rules. A subcommittee will be created to look at all current issues relating to sealed and suppressed documents listed in CJD 05-01. Judge Jones will send out an email seeking for volunteers for this subcommittee.

**Potential conflict between C.R.C.P. 121 sec. 1-5 and CJD 05-01 sections regarding suppression and sealing of documents — Judge Jones**

This matter will be addressed by the new subcommittee on sealed and suppressed documents.

**Correction to PAIRR 2, section 3(c)(9) — Judge Jones**

A typographical error in PAIRR 2 was discovered. The statutory citation should be changed from article 71 to article 72. Polly Brock moved to amend PAIRR 2, section 3(c)(9). Judge Thompson seconded the motion. The motion passed unanimously. The committee recommends amending PAIRR 2, section 3(c)(9) to state, “… *part 3 of article 72 of title 24* …”.

**Recommendation to add list of jury documents not typically subject to sealing to CJD 05-01 — Cheryl Layne**

This matter will be addressed by the new subcommittee on sealed and suppressed documents. The item on the proposal listed as “Defense Proposed Jury Instructions” was clarified to reference instructions that defense would only want the Judge to view for the sake of not revealing information to the prosecution early in the case.

**Potential changes to PAIRR 2 concerning the deliberative process privilege, passwords, ethics complaints against attorneys, and other matters — Terri Morrison**

Terri Morrison has proposed the following changes to and recommendations concerning PARR 2:

* Add passwords to the list of items that can’t be released.
* Amend section 3(c)(21)(B) to begin with “*Except as provided in section 3(c)(3)…”* in order to cross-reference the provisions on sexual harassment records.
* Amend section 3(c)(3) to mirror CORA with regard to the definition of “*interested person”*.
* Amend section 3(c)(21)(B) to indicate that reports of misconduct filed by Judicial Branch employees with Office of Attorney Regulation Counsel are governed by the Rules of Civil Procedure: C.R.C.P. 251.31.
* Currently, judges’ notes and work product are not court records under CJD 05-01 similar to what Florida has done in its administrative rules. The recommendation is to make them administrative records to clearly indicate they are not subject to release.
* Section (3)(c)(13) prohibits release of collections investigator files. The recommendation is to open it up to victims, to allow release of information that does not include personal financial information of the defendant, so that a victim can know what the payment plan is and how much interest has been assessed.
* Examine SB17-040 and HB 17-1177, which made amendments to CORA to see if there are suggestions for Rule changes.

A comprehensive proposal for changes of PAIRR 2 will be presented to the committee in May.

**Update on ITS standing committee (added agenda item) — Judge Mark Thompson**

The committee has been working on matters such as redaction and public access terminals and their technological and practical implications. A subcommittee has been created to evaluate the technological capabilities for public access to the criminal docket. Redaction software is being researched though the National Center for State Courts. The standing committee will be ready to provide solutions for the policies that are created by the Public Access Committee.

**Set third meeting for 2018**

The third meeting for 2018 was set for September 7, 2018, at 1:30 p.m.

**Next Meeting Date**

The next committee meeting dates are,

* May 11, 2018, at 1:30 p.m. in the Supreme Court Conference Room
* September 7, 2018, at 1:30 p.m. in the Supreme Court Conference Room

The meeting adjourned at 3:37 p.m.