

Public Access Committee Meeting Minutes

May 12, 2017

The meeting was called to order at 1:36 p.m.

Voting Members Present: Judge Jerry Jones, committee chair; Judge Devin Odell (via telephone); Karen Salaz, District Administrator, 19th District; Sandra Casselberry, District Administrator, 21st District (via telephone); Lynette Cornelius, Clerk of Court, El Paso County (via telephone); Sabra Millett, Clerk of Court, Denver District Court; Polly Brock, Deputy District Administrator, Court of Appeals; Chad Cornelius, Chief Information Officer; Rob McCallum, Public Information Officer; Lindy Frolich, Office of Alternate Defense Counsel; Cheryl Layne, Clerk of Court; April McMurrey, Deputy Regulation Counsel; Kent Wagner, Office of Judicial Performance Evaluation; Ryann Peyton, Colorado Attorney Mentoring Program; Barbara Ezyk, Colorado Lawyer Assistance Program; Ashlee Arcilla for Melissa Michaelis, Office of Respondent Parents Counsel; James O' Connor, Office of the Public Defender

Non-Voting Members Present: Justice Monica Márquez (via telephone); Karen Yacuzzo for Terri Morrison, First Assistant 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: Marci Hoffman, Clerk of Court, Weld County; Kris Geraths representing Background Information Services; Susan Thompson and Jerry Nielson representing TruDiligence; Claire Walker, Court Services; Jason Bergbower, ITS; Lee Coddling and Marilynn McCormick representing LexisNexis

Approval of Minutes from the January 18, 2017 meeting

Karen Salaz moved for the Committee to accept the minutes from the January 18, 2017, meeting as submitted. Rob McCallum seconded the motion. The motion passed unanimously.

Update on legislative developments

Judge Jones provided an update on Senate Bill 17-040-Concerning Public Access to Files Maintained by Governmental Bodies. The bill modifies the Colorado Open Records Act and a provision that originally included Judicial was not included in final version that was approved for consideration by the Governor. There are provisions in the bill regarding structured data that the committee may want to review to decide if Judicial would benefit from mimicking any of them. If the bill is signed by the Governor, Judge Jones will send the bill out to the committee. If there are matters concerning this bill worth discussing in this committee or if there are particular ideas from this bill that the committee should consider recommending, please provide that information to Judge Jones in advance, so that he may discuss with Chief Justice Rice and make a decision about adding this matter to the agenda for the next meeting.

Old Business/Updates

Report from the subcommittee working on 2.00(b)(4); specifically, when an attorney representing a party should have access to other case files in which they do not represent that party. Discussion of the issue following the report – Lindy Frolich

There will be proposed language for Chief Justice Directive 05-01 to allow access to those with a notarized release of information from a party. The release will contain information regarding access to specific items in a case. For access in electronic filed cases, generic email accounts have been created for Alternate Defense Counsel, Office of the Child Representative, and Respondent Parent counsel, which will allow access for attorneys in the Colorado Courts E-filing system without a fee. A finalized version of the committee's proposals will be ready for the agenda for the next meeting. The subcommittee will discuss with Terri Morrison and address a prior inquiry in which criminal case access was requested through a federal court order.

Update on status of clerk subcommittee review of court records excluded from public access listed in section 4.60(d) — Karen Yacuzzo

The subcommittee has reviewed items listed in section 4.60(d) of Chief Justice Directive 05-01 and made determinations if documents should be suppressed or sealed. Terri Morrison will review the subcommittee's recommendations and incorporate this language with her proposed amendments of CJD 05-01 to the committee at the next meeting. There may also be a change to the definition of "suppressed," similar to the prior definition changes of "restricted" and "protected."

A report on how other jurisdictions handle the issue of having attorneys redact documents in the first instance, to be followed by a discussion of the issue — Karen Yacuzzo

Karen Yacuzzo provided information from 16 states regarding redaction procedures. All of the states responded that the filing party is responsible for redacting documents. Ten states have rules or statutes that do not hold the court clerk responsible for confirming redactions. Four states reported that parties are responsible for redacting but did not address if the clerk is responsible for confirming. Eleven states have authorized sanctions in their rules and statutes for redaction procedures. Legal recommends that if a rule is created, it should cover all case types.

Discussion was held to decide if there should be a rule for attorneys to be responsible for redacting documents in the first instance. Although clerks would be responsible for reviewing redacted documents submitted by attorneys, there could be a benefit for the clerks since redactions will already be completed. There are concerns from the Public Defender's office that the process will be highly burdensome because of the resources needed and attorneys and staff may not know all of the rules and expectations of the court for redacted information. Court clerks expressed that redactions done by attorneys would benefit them, especially with expectations that electronic redacted documents will become available in a short amount of time. The committee does not feel that attorneys should be solely responsible for all redactions and that the process may be similar to document preparation procedures done by attorneys regarding juveniles or victims in sex assault cases.

If a rule is created, the committee must consider all the details of the rule and its requirements. There will be a subcommittee formed to address the following issues:

- Should redactions be completed when a document is filed, and if so, by whom?
- Should redactions be completed in the first instance by the representative of party who is filing the document?
- If the decision is made to require the representative of the party who is filing to complete redactions in the first instance, should the clerk's office be responsible for review?
- The details of the rule and how will it be stated so that is not imposing a burden by making additional redaction requirements but protecting privacy.
- Is the list of information that judicial redacts exhaustive enough? A comparison can be made from the examples that Karen Yacuzzo provided of redacted information by courts in other states.

Please email Judge Jones for participation in the subcommittee. It is preferred that the subcommittee consist of a variety of representation, including those from the clerks' office, public defender's office, district attorney's office, ITS, and attorneys. The subcommittee can provide an updated report at the next meeting.

New Business

Sealed documents in cases appealed to the COA- Judge Jones

Judge Jones has noticed that in several cases, documents that should not be sealed or suppressed, such as jury instructions, have been. Court staff should properly limit such designations so as not to create unnecessary barriers to access.

Set next meeting dates

The meeting set for September 20, 2017, was rescheduled for September 22, 2017, at 1:30 PM. A subsequent meeting date was set for January 19, 2018, at 1:30 p.m.

Next Meeting Date

The next committee meeting dates are,

- September 22, 2017, at 1:30 p.m.
- January 19, 2018, at 1:30 p.m.

The meeting adjourned at 2:46 p.m.