

**REPORT OF THE SUBCOMMITTEE TO CONTINUE WORK ON THE PROPOSED PUBLIC ACCESS
RULE ON ADMINISTRATIVE RECORDS OF THE JUDICIAL DEPARTMENT**

March 30, 2015

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.¹

In August 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 the 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 to form the Subcommittee to Continue Work on the Proposed Public Access Rule on Administrative Records of the Judicial Department ("Subcommittee") on August 8, 2014. 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 of 14 members of Colorado Courts and Probation and chaired by undersigned Assistant Legal Counsel, Teresa Taylor Tate.

The Subcommittee met monthly for full-day meetings beginning in August and twice a month in February and March to accomplish the tasks set forth in the charge. Beginning in October, the Subcommittee invited a member of each Judicial Branch agency to join the subcommittee. The Subcommittee meetings were well attended. Decisions were made by consensus and when consensus was not clear, by vote.

The Proposed Draft Rule: Chapter 38, Rule 2

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 protects the Judicial Branch's ability to perform its duties; and 4) employ plain language whenever possible.

¹ 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).

With these principles in mind, the Subcommittee made extensive revisions to the draft Rule.

The Subcommittee recommends including the 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 Subcommittee recommends adoption of this Rule as Rule 2, and repeal and reenactment of the current Rule 2, Media Coverage of Court Proceedings, as Rule 3. Placement of the administrative records access rule as Rule 2 following Rule 1, which pertains to court records, is logical. Including the administrative records rule in Rule 1 may create confusion as Rule 1 is adopted on an interim basis, uses its own unique set of definitions through CJD 05-01, and at this juncture applies to only Colorado Courts and Probation. Therefore, to avoid confusion, CJD 05-01 and the Access to Administrative Records of the Judicial Branch should be adopted under separately numbered rules. The Subcommittee believes, however, that the access records rules for court records and administrative records should be in succession in the rule book, thus, the numbering recommendation.

Effective Date and Public Hearing

The Subcommittee recommends the following with respect to the effective date and applicability:

- that the Rule become effective 60 days after adoption by the Court and signature to allow time for the Judicial Branch to develop, promulgate, and publish policies and procedures as required under the Rule;
- that the Rule apply to all requests submitted on or after the effective date; and
- that the Rule apply to all administrative records in the possession of the Judicial Branch.

The Subcommittee recommends that the Court hold a public hearing on the proposed Rule and accept written and public comment.

Respectfully submitted,

/s/

Teresa Taylor Tate
Assistant Legal Counsel