

Public Access Committee Meeting Minutes

November 18, 2015 meeting called to order at 1:35 p.m.

This was an additional meeting of the Public Access Committee convened to continue the review of Subcommittee recommendations regarding proposed revisions to CJD 05-01.

Voting Members Present: Justice Monica Márquez; Chief Judge Mark Thompson (via phone); Judge Kathy Delgado (via phone); Judge Devin Odell; Karen Salaz, District Administrator; Sandra Casselberry, District Administrator (via phone); Chris Gastelle, Chief Probation Officer; Tammy Herivel, Clerk of Court; Lynette Cornelius, Clerk of Court; Polly Brock, Deputy District Administrator, Court of Appeals; Chad Cornelius, Chief Information Officer

Non-Voting Members Present: Terri Morrison, Legal Counsel, Colorado Judicial Department; Steven Vasconcellos, Sr. Manager, Court Services; Carol Rigato, Court Services; Terrie Langham, Court Administrator, Denver County Court

Guests: Claire Walker, Court Services/SCAO; Jason Bergbower, ITS/SCAO; Connie Lind, Court Services/SCAO; Jessica Brill, Court Services/SCAO; John Nebel, Steve Balcerovich, and Kathy Oatis representing BIS; Jeff Roberts representing Colorado Freedom of Information Coalition; Manuel Martinez representing Bryan Cave

Old Business/Updates

Update Regarding Public Access to Administrative Records of the Judicial Branch

Justice Monica Márquez, Supreme Court Justice

Justice Márquez provided an update regarding P.A.I.R.R. 2, the Rule governing access to administrative records of the Judicial Branch. On April 8th, 2015 this Committee approved a Proposed Rule on Public Access to Administrative Records of the Judicial Branch and submitted this proposed rule to the Colorado Supreme Court (Court). The Court received comments and held a public hearing on the proposed rule, and then revised the rule in response to the comments received. On October 30th, 2015 the Court adopted the new rule governing Public Access to Administrative Records of the Judicial Branch as Rule 2 of Chapter 38 of the Colorado Court Rules. The Court also amended the title of Rule 38 to “Public Access to Information and Records” (P.A.I.R.R.). P.A.I.R.R. Rule 1 remains as the reference to CJD 05-01, and P.A.I.R.R. Rule 3 governs media coverage of court proceedings.

Justice Márquez provided a summary of changes made by the Court to the proposed rule. The most significant change made was to revise the proposed rule to conform more closely to the Colorado Open Records Act (CORA). Substantive deviations from CORA reflect the unique nature of the records of the Judicial Branch and are noted in comments throughout the rule.

Revisions made to the proposed rule include:

- The Court added preamble language to refer to CORA as the guide used to create P.A.I.R.R. 2, regarding access to administrative records of the Judicial Branch. The preamble also notes that the Court drafted the final rule taking into consideration all public comments received.

- Section 1: Definitions.
 - The Court added a new definition for “confidential personal information”. This definition does not exist in CORA and provides clear guidance regarding what information must be redacted prior to the release of records.
 - The Court responded to concerns that the streamlined reference to “law, rule, or order” was too broad and may exclude court decisions or regulations promulgated by agencies. Therefore, to be more precise, the phrase was changed to “federal or state statute, court rule, or court order” throughout the rule.
 - The Court added a comment to the definition of “Judicial Branch” to explain why the Independent Ethics Commission and The Judicial Discipline Commission are not governed by this rule. These Commissions are independent and autonomous constitutional entities and the Court did not believe it was appropriate to promulgate a rule governing access to their records.
 - In response to feedback regarding the treatment of personnel files in the proposed rule, the Court revised the definition of “personnel file” to mirror the CORA definition and its treatment of personnel files. The definition is narrow, and everything that is excluded from the definition may potentially be disclosed, depending on the nature of the information requested.
- Section 2: Access to Administrative Records. No substantive changes.
- Section 3(a): Exceptions and Limitations on Access to Records.
 - Justice Márquez noted that both the proposed and final Rule allow the custodian to deny access to records when “such inspection could compromise the safety or security of a Judicial Branch employee”. This provision does not exist in CORA; however, certain security concerns are relevant to the Judicial Branch that do not exist in other agencies.
- Section 3(b): “May Deny”.
 - The Court moved two categories of documents in the proposed rule that appeared in Section 3(c): “Must Deny”, to Section 3(b): “May Deny.” These changes pertain to security records and certain financial records. The Court’s goal was to restrict the “must deny” section as much as feasible to increase record accessibility. Testing records, including bar exam materials, were also moved into the “may deny” section.
- In Section 3(c): Must Deny.
 - The Court added paragraph (3) regarding records of sexual harassment complaints and investigations to be consistent with CORA.
 - The Court amended paragraph (18), regarding purchasing records, in response to public feedback requesting that the Court tether this section to freestanding procurement rules. The Court also removed language included in the draft rule that referenced “purchasing records that reveal information related to a particular court case.”
 - The Court amended paragraph (19), regarding financial records. The court removed language in the draft rule that referenced “financial records that involve or implicate confidential information or privileged attorney-client communication, work product, or advice given in the course of professional employment.” The Court took the approach that attorney-client privileged information is covered by other provisions of the rule and other statutory provisions.
 - CORA does not specifically address internal personnel investigations, but paragraph (21) of the final rule reflects what the Court deemed a compromise. As revised, paragraph (21) allows the disclosure of any records of actions taken as a result of an investigation, but maintains the confidentiality of the notes in the investigative process in order to protect persons involved in those allegations and those persons making the allegations.

- In response to public comment, the Court amended paragraph (25), which references records protected under the common law governmental or deliberative process privilege, to mirror CORA.
- Section 4: Procedure to Access Records.
 - The Court amended section 4 to be consistent with CORA timeframes in which a custodian must provide access to records. Under the final rule, records must be provided within three business days of receipt of a request for inspection, with a seven business-day extension due to extenuating circumstances.
- Section 5: Resolution of Disputes.
 - The Court amended section 5 to be consistent with CORA.

The Committee had no follow up questions or comments.

On behalf of the Supreme Court, Justice Márquez thanked the members of the subcommittee for composing the draft rule, and for the time and dedication it took to accomplish that task.

Continue Review of Subcommittee Recommendations Regarding CJD 05-01: Public Access to Court Records

Carol Rigato, Court Services/SCAO and Subcommittee

The Subcommittee charged with reviewing CJD 05-01 continued to present recommended revisions to this policy. At the September 2015 meeting, the Committee ended their discussions of recommended policy revisions in Section 4.20. The Committee therefore resumed discussions in this section. The Committee continued to work through each section of the policy to review recommended revisions. The Committee discussed and made additional revisions. The Committee completed its review through Section 7.00 at this meeting; however, the following items require additional discussion or revision:

- Amend the language in CJD 05-01 to be consistent with P.A.I.R.R. 2 regarding references to “law, rule, or order”. Amend these references to read “federal or state statute, court rule, or court order”.
- The Committee accepted the revisions made to Section 4.20, specifically to open probate trust and estate case types to remote access. The Committee agreed that these case types will be available in ICCES and may also be viewed through our existing public access vendors. ITS confirmed that these case types can be opened at the document level in ICCES “for cases filed after XX date”. This addresses the concern raised by the Clerks of Court that because these case types have not been available through remote access to date, some documents in these cases may need to be redacted/protected. Opening these cases types to remote access as of a specific future date will address this issue. The date that probate trust and estate case types will be opened at the document level in ICCES has not yet been determined. The Committee also discussed whether these case types should be available for viewing on the existing public access terminals located in courthouses. No decision was made regarding this issue, and the Committee tabled this policy issue for discussion at a future Committee meeting.
- Discuss Section 4.40(a)(3) further in January. Add content regarding when the use of a Memorandum of Understanding regarding the protection and use of data will be required.
- Discuss the need for the Civil Judgment Report referenced in Section 4.40(d). Discuss whether this provision should be removed, or if this report continues to provide a beneficial service.

- Add content in Section 4.40(f)(3) regarding when the use of Addendum C (concerning the release of electronic data), or a Memorandum of Understanding (regarding the protection and use of data) should be used, and in what circumstances both documents would be required.
- Review the revision made to Section 4.60(e)(6) to ensure that partial SSNs should be redacted from documents prior to releasing them to the public.
- Amend Section 5.00(d) to conform more closely with P.A.I.R.R. 2 regarding accessing court records. Consider changing the 30 additional days that CJD 05-01 allows to produce requested records to the “7 additional business days” allowed in P.A.I.R.R. 2. Also, review and revise the definition of “extenuating circumstances” to more closely match the language in P.A.I.R.R. 2.

The Committee worked from a clean version of CJD 05-01 that incorporates all recommended revisions made to date. This revised document is included with these minutes as a record of the Committee’s work completed at this meeting. Additional revisions recommended by the Committee are displayed in “track-changes” format, and items requiring additional discussion or review are noted with comments.

Next Meeting Dates

- January 20, 2016 at 1:30
- May 13, 2016 at 1:30
- September 21, 2016 at 1:30

The meeting was adjourned at 4:30 pm.