

Public Access Committee Meeting Minutes

September 17, 2021, at 1:30 pm
Virtual via WebEx

The meeting was called to order at 1:33

Attendees:

Voting Members Present: Judge Jerry Jones, committee chair; Chief Judge Michael Martinez, 2nd Judicial District; Marci Hoffman, Court Executive, 19th Judicial District; Jason Bergbower, Manager of Data Analytics, SCAO; Timothy Lane, Colorado District Attorneys' Council; Anne Deyell, Clerk of Court, 22nd Judicial District; April McMurrey, Office of Attorney Regulation Counsel; Darren Cantor, Office of Alternate Defense Counsel; James O'Conner, Office of Public Defender; Ryann Peyton, Colorado Attorney Mentoring Program

Non-Voting Members Present: Justice William W. Hood, III, Colorado Supreme Court; Terri Morrison, Legal Counsel, Colorado Judicial Branch; Steven Vasconcellos, State Court Administrator, Colorado Judicial Branch; Sherri Hufford, Probation Services, SCAO; Jeremy Ford, Court Services, SCAO

Guests: Mari Cano, Clerk of Court, 20th Judicial District; Shana Kloek, Clerk of Court, 18th Judicial District; Mandy Allen, Clerk of Court, 11th Judicial District; Genevieve Rotella, Clerk of Court, 2nd Judicial District; Lee Coddling, representing LexisNexis CoCourts; Jeff Roberts, representing Colorado Freedom of Information Coalition; Linda Edwards, representing Office of Respondent Parents' Counsel; Brian Medina, SCAO ITS

Approval of Minutes from May 14, 2021 meeting

Marci Hoffman moves to approve minutes from May 14. Timothy Lane seconds motion to approve meeting minutes. All in favor. None opposed. Motion to approve minutes passes unanimously.

Old Business

Update on additions of Civil Rule 5(g) and County Court Rule 305(g) relating to attorneys' obligation to redact documents before filing. (Judge Jones)

Judge Jones clarifies that Civil Rule 5(g) and County Court Rule 305(g) have been approved by the Civil Rules Committee but have not yet been presented to the Colorado Supreme Court for consideration. The committee members start by addressing the questions contained in Dave DeMuro's memo (attachment 4).

What should the clerks do with a filing that contains information that the filing party failed to redact under 5(g)?

Chief Judge Martinez would like to know what the expectations are of our clerks. He recommends we talk to the federal clerks to see how they handle this situation. He believes they put the expectation on the filing attorneys to do the screening prior to filing any documents, the clerks are not then going back to ensure that all redactions are completed.

Genevieve Rotella notes that the rule doesn't differentiate; is this an attorney's responsibility as it

simply states, “filing party”? What about pro se individuals?

Marci Hoffman is concerned that this will not alleviate some of the work for the clerks. The filing will remain protected until it is asked for and then the clerks will review it. There just isn’t enough staff to review every filing. This doesn’t address the other concern of attorneys or nonparties wanting access public documents quicker.

Shana Kloek asks whether the rule can be like federal rule 5.2(h), waiver of protection identifiers.

Judge Jones said that is possible although his concern is other information relating to other people must be redacted. Judge Jones will reach out to some of the members from the Civil Rules Committee who practice in federal court to see if they can answer how they handle this situation.

Brian Medina reached out to the federal clerks regarding some of these types of questions. He said they place the burden on the parties/attorneys. He is willing to share the responses he received from the federal clerks and a contact person.

Judge Jones is concerned about the hands-off approach because there are so many things that are required by statute to be redacted that maybe the feds don’t have to deal with. A couple suggestions include an initial glance at the document. Does it comply? If not, reject it for non-compliance. Or designate the documents as protected until someone asks for it (current practice).

What happens when filers redact too much information?

Judge Jones said that becomes an issue for the parties and not the clerks. If an opposing party feels too much information has been redacted, it can raise that issue.

In 5(g)(2), did we really mean that the court will order documents to be filed “under seal,” which means that the parties cannot see the filing?

Mari Cano said an affidavit for an arrest warrant does not specifically say if it should be sealed in its entirety or until arrest. It creates an issue for parties wanting to file something in that case. It isn’t visible because of its sealed status. It creates additional work for the court side because it can’t be acknowledged by staff.

Judge Jones said the Civil Rules Committee is working on a new rule dealing with when cases/documents should be sealed.

Rule 5(g)(3) may create some confusion among clerks who review filings. That section allows a party making a redacted filing to also file, without seeking leave of court, an unredacted copy under seal. How would the reviewing clerk know what the filing party is attempting to do?

Judge Jones said the intent of allowing the second filing is so only the judge sees the filing and can make an informed ruling.

Genevieve Rotella requests that something be added to the rule so the accepting clerk will know that is why it is being filed under seal, so they don’t mistakenly reject it.

Mandy Allen agrees.

Judge Jones said the document may just need to be a suppressed document, not necessarily filed as sealed. In addition to titling the document, file it in conjunction with the other document.

Justice Hood would like to know if a protected document is a document that the public should have access to except nobody has taken the time to redact information like ss#, dob.... Is this a statewide issue or just in certain jurisdictions?

Mandy Allen said if we label everything as protected then the public has access to nothing until the document has been reviewed. Which is part of the problem.

Marci Hoffman said Court Services has done a great job with helping us label and have automatic protection statuses attached to documents that contain sensitive information, like ss#’s. So parameters like that do already exist.

Genevieve Rotella said a lot of documents are being protected because of lack of resources. We don't have enough staff to go through pages and pages of filings to check for information that should be redacted.

Shana Kloek notes that exhibits are normally the biggest time drain.

Genevieve Rotella suggests that the rule make clear that the court is not responsible for the redaction of the information, which is the sole responsibility of the filing party.

Judge Jones believes the rule is already explicit by stating the parties "shall".

Genevieve Rotella said rule 5(g) would require that information be redacted which is actually information (e.g., child's full name & ss#'s) that is needed in some situations like protection orders and support orders. They are suppressed now which allows court staff to see the needed information.

Marci Hoffman said another form we need to talk about is a motion to proceed in forma pauperis (MIFP). Right now, it is an auto-sealed document, which the CJD doesn't allow.

Terri Morrison said that under the CJD that was sent to the Chief Justice, suppressed and sealed documents were delineated, so MIFP is put in the sealed category.

Judge Jones, Genevieve Rotella, and Mandy Allen are on the Civil Rules Committee. They will go over the minutes, organize, and submit to Mr. DeMuro.

Update on possible new Civil Rule regarding sealing and suppression of documents. (Judge Jones)

Judge Jones said there is a subcommittee of the Civil Rules Committee that is working on this.

Discussion of issues pertaining to current practice re: suppressed cases. (Judge Jones)

Thank you, Kayla, for surveying everyone.

Judge Jones noted that, as you can see from the spreadsheet, not everything is treated uniformly across the state, which is something we are trying to shoot for.

Terri Morrison said suppressed is unlike sealed; a criminal statute says you don't acknowledge the case exists if it is sealed. Suppressed just means that the documents are available to the parties. It is concerning that we have such a disparity in treatment.

Mari Cano thinks this disparity is due to how the question in the survey was worded. It may be different if the person is calling on the phone or if they appear in person. In person they can provide identification as opposed to calling on the phone.

Terri Morrison believes a number of these items are public information. Suppressed means the parties can't get the document. A case number, case type, party names, there is nothing that is not public in a case with suppressed documents. If the case itself is suppressed that is when it shouldn't be acknowledged that it exists.

Judge Jones will address these issues with Kayla to see if we can fine tune the questions and truly identify the areas of different treatment. If you have any concerns, please send an email to Judge Jones or Kayla.

Marci Hoffman believes this could also be a training issue. Kayla could bring this up with Meghann Post.

New Business

Request for access to e-filing system for attorney-mediators. (Judge Jones)

Judge Jones addressed the email from an attorney who acts as a mediator and cannot e-file settlement documents.

Chief Judge Martinez noted that expanding filing access or privileges has been a long-standing issue that we just don't have a work around for.

Judge Jones said we don't necessarily want mediators to have full access. Creating a separate class for these types of situations sounds like a tech issue. How much of an issue is this?

Chief Judge Martinez noted that filing competency reports is a huge issue statewide.

Mandy Allen said a lot of mediations are being delayed because parties are not getting their information to the mediators on time. It would be helpful for the mediator to have access to that information (domestic relations cases). Third-party e-filing is on the radar for ITS.

Marci Hoffman said there are various types of mediators (attorney mediators, non-attorney mediators) as well as CFIs in DR cases.

Jason Bergbower confirms this has been an issue for a while and is on the ITS radar but not necessarily a priority.

Judge Jones said this is a concern and is on the radar. It's a complicated issue but not necessarily a priority right now.

Shana Kloek related that in Arapahoe County the parties can file the settlement from the mediation.

Genevieve Rotella said the biggest concern with pro se parties filing the settlement is if they don't file it right away and the settlement ends up falling apart before it is filed. Mediators try to file it right away before this happens. The mediator may be able to sit with the parties and help them file it once all courts have pro se filings available.

Brian Medina proposes having an attorney-mediator file as an intervenor non-party without entering an appearance; go into file the documents, add themselves as non-party mediator, submit the documents, and when the document is accepted it will add the attorney-mediator as an intervenor.

Marci Hoffman thinks Mr. Medina's suggestions is a viable solution if it is available in DR case types.

Brian Medina said third-party for attorney customers is available across the board in all case types. This only solves the issue for attorney-mediators. The bar number serves as a foundation for the way the entire system works. Therefore, it is not available right now for non-attorney-mediators or individuals filing competency reports.

Next Meeting Date

The next meeting will be set in January 2022 and a doodle poll with potential dates will be sent as we get closer. At this time, there is no determination whether the next meeting will be held in person or virtually. Regardless, a video option will be provided. Please send any prospective agenda items to Judge Jones.

Meeting was adjourned at 2:48