

# Public Access Committee Meeting Minutes

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May 31, 2019, at 1:30 pm  
1300 Broadway  
Denver, CO 80203  
Supreme Court Conference Room

The meeting was called to order at 1:35 p.m.

## Attendees:

**Voting Members Present:** Jerry Jones, committee chair; Chief Judge Michael Martinez, 2nd Judicial District; Peggy Gentles, Court Executive, 14<sup>th</sup> Judicial District; Polly Brock, Clerk of Court and District Administrator, Colorado Court of Appeals; Jessica Yates for April McMurrey, Office of Attorney Regulation Counsel; Kent Wagner, Office of Judicial Performance Evaluation; Lynette Cornelius, Clerk of Court, El Paso Combined Courts; Sabra Millett, Clerk of Court, Denver District Court; Cheryl Layne, Clerk of Court, Douglas County; Marci Hoffman, District Administrator, 19th Judicial District; Chief Judge Mark D. Thompson, 5th Judicial District (via telephone)

**Non-Voting Members Present:** Justice William W Hood, III, Colorado Supreme Court Justice, Colorado Supreme Court; Timothy Lane, Colorado District Attorneys' Council; Terri Morrison, Legal Counsel, Colorado Judicial Branch; Steven Vasconcellos, Director Court Services, State Court Administrator's Office; Kayla Lipscomb for David Quirova Jr., Court Programs Analyst, SCAO

**Guests:** Paul Chessin and Jose Vasquez, representing Colorado Legal Services; Marilyn McCormick and Larry Hudson representing LexisNexis CoCourts; Jim Tatten; Rob Hernandez, Advocate/Peaceable Observer; Kris Geraths representing Background Information Services; Jeff Roberts and Steve Zansberg representing Colorado Freedom of Information Coalition; Brian Medina, ITS; Kevin Hanks, Attorney Regulation

## Approval of Minutes from September 7, 2018 meeting

Judge Jones informed group to a typographical error found by Peggy Gentles of the previous minutes. On page 2, citation should read § 30-10-101 instead of § 13-10-101. Polly Brock moved for the Committee to accept the minutes from the September 7, 2018 meeting as amended. Cheryl Layne seconded the motion. The motion passed unanimously.

## Old Business

### Report and recommendation by the subcommittee on attorney redaction. (Terri Morrison)

The motion that carried for the subcommittee was the implementation of a pilot Rule in civil cases but not criminal cases. This would be a requirement for the filing party (attorney or pro se litigant) to not include, or partially redact if inclusion is necessary, the following personal identifiers from any document filed with the court:

- (1) Social Security Number;
- (2) Driver's License;
- (3) Financial Account Numbers;
- (4) Federal Tax ID's;
- (5) Personal Identification numbers, including but not limited to Passports, Student Identification numbers, State Identification numbers;
- (6) Data or information restricted by court order in the case in which the filing is made. The filing party may only use the last four digits.

There were concerns about the Appellate Court Rules because a redacted version of an exhibit would not be useful for the Appellate Court. The subcommittee recommended that the pilot rule be referred to the Appellate Rules Committee for determination of what would be needed to prepare the record. There was discussion by the subcommittee about access to exhibits. There is not a specific case type for exhibits so there is not a way to automatically make the document ready for public view. The subcommittee agreed to include language that would impose sanctions for knowing and willful violations of this rule.

There are concerns by attorneys who are unable to view exhibits and documents in a case that are in protected status when they should not be protected. The rule proposed does not put responsibility of redaction to the filer for exhibits. There is nothing in the proposal that would impact the ability of the requesting party to obtain a release of protected documents to make it more efficient. Paul Chessin expressed that the burden should be on the filer and not the clerks. Due to the mass amounts of exhibits, the clerks would not have time to review every single exhibit to make redactions. There is no way in the coding in the system to determine the difference between redactable exhibits and non-redactable exhibits. Terri Morrison will reach out to other states to see how they handle exhibits, especially those that are non-public documents. Steve Zansberg expressed that CJD 05-01 4.60(d), should be rescinded because these documents are presumptively suppressed when there should be a presumption that all documents should be available for public inspection. He also stated that CJD 05-01 conflicts with Court of Appeals opinion regarding financial affidavits. The Redaction Subcommittee will reconvene with Judge Jones and look at verbiage of the rule and incorporate comments made today. This matter will be brought back to the Public Access Committee in September.

#### **Update on sealed and suppressed documents and cases. (Judge Jones)**

There have been concerns that around the state, there were different standards being applied on what should be suppressed and sealed. A subcommittee was formed to address these issues. The Chief Justice has decided that the issue should be addressed by rule and not by CJD. The Criminal Rules Committee has been directed to draft and propose a rule setting forth standards for sealing and suppressing and reviewing the timing issue so that cases do not remain sealed after the purpose of sealing has expired. The notion is that if the rule can be adopted in the Criminal Rules, it can be brought to the other rule committees so that standards can be applied to all types of cases. There is a meeting in July that Judge Jones will attend and if there is anything to report he will bring that information back to the Public Access Committee in September. Depending on the rule, this committee will have to address CJD 05-01 and make any necessary changes. Sabra Millet asked if documents will be addressed as well and Judge Jones will find out this information.

## **Next Meeting Date**

The next meeting was Tentatively set for September 6<sup>th</sup>, 2019 at 1:30 PM in the Supreme Court Conference Room.

The meeting adjourned at 2:24 p.m.