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JUDICIAL DISTRICTS OBJECT TO PUBLIC ACCESS TO FILES

By Chuck Murphy and Jeffrey A. Roberts
Denver Post Staff Writers

When several judges, clerks and computer experts were appointed in 1999 to examine public access to Colorado court records, they intended to make rules to handle the exploding number of requests for information that could be used commercially.

As time went on, their mission grew. Privacy concerns became paramount. Identity theft became an issue. Worries about court staffing, budgets and even TABOR implications overtook the group, and what resulted has surprised even the panel's chairman, Colorado Supreme Court Justice Alex J. Martinez.

Nearly a year after a 2005 directive from Martinez's panel designed to protect public access, judicial districts serving 19 of Colorado's 64 counties have embarked on the opposite course. They have declared files in all probate and domestic-relations matters, which are mostly divorces, off-limits to the public.

"We certainly anticipated that might occur," Martinez said. "I don't think we anticipated it would go as far as it has."

Probate files, which include wills, estates and guardianships over the elderly and incompetent, are routinely available in other states, as are domestic relations cases. And even in the Colorado counties that have closed public access to them, the files are still available to the parties in a case - and the public can petition a judge for access.

But that process takes time and knowledge of the court system, and there is no guarantee that a request would be granted.

The public could pass a constitutional amendment mandating access to court and other government records, but none has been proposed. Legislators also could pass a law requiring that divorce and probate files remain open.

Instead, legislation pending in the state Senate mimics some of the state Supreme Court's actions, requiring that certain information in future divorce filings be confidential. Rep. Richard Decker, R-Fountain, said his bill provides a way for divorce files "to be opened back up sans information that could be used to steal someone's identity or hurt someone's body." House Bill 1169 has passed the House.

"Taking divorce cases off the books is really kind of ridiculous," said Lucy Dalglish, executive director of the national Reporters Committee for Freedom of the Press. "There are some very high-profile people who tend to get special treatment in divorce court, and having public scrutiny lets you see whether that court is being operated fairly."

In April 2005, Martinez's committee announced new rules for the state's 22 judicial districts. Produced after years of meetings among court insiders, but without input from the public or media, they were intended to "provide a comprehensive framework for public access to court records" while creating a system that "maximizes accessibility to court records."

Most of the changes were intended to accommodate and prepare for the increasing use of electronic documents instead of paper, but one section has created considerable work and consternation for the state's clerks.

That section requires clerks to remove Social Security numbers, driver histories, criminal background information and a host of other items from any file

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