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COURT CASES NEED MORE ACCESSIBILITY, CRITICS SAY

2005 restriction aimed to curb identity-theft crimes

(AP) Colorado Springs, Colo. By DENNIS HUSPENI THE GAZETTE

The days of being able to walk into the El Paso County courthouse, pull a case file and read it are long gone.

Those court cases, public records created with taxpayer money, are no longer readily available to members of the public unless they are parties to the case.

A directive from the Colorado Supreme Court forbids clerks from releasing “private” personal information that might be used in identity-theft crimes.

Court officials can’t cite one instance in which any records were used in an identity theft, and many of the bits of information deemed “private” wouldn’t help identity thieves.

To look at a case file, one must pay a clerk — in some counties \$30 per hour — to read the file, edit out any of 24 types of information the Colorado Supreme Court considers “not to be accessible to the public,” then copy the document with portions blacked out.

That process in the 4th Judicial District takes up to eight days and costs \$20 per hour for a “research fee,” plus 75 cents per page for clerks to copy the file. The 4th Judicial District is made up of El Paso and Teller counties.

As restrictive as that policy sounds, it’s less so than in some judicial districts. Six districts covering 19 counties in the state have closed entire types of case files, including divorce and probate cases.

Citizens in Adams County must send a written request to the judge and explain why they want access.

“Their starting position is that all these cases are closed unless you ask for them to be opened,” said Steve Zansberg, a Denver lawyer specializing in open records law. “That’s unconstitutional.

“I don’t think the committee anticipated this result.”

The committee, made up of Colorado Supreme Court justices and judicial branch officials, issued the directive — dubbed Colorado Judicial Directive 05-01 — in April 2005.

Court clerks across the state are interpreting the directive differently. Some are ignoring it, and case files are still handed out to anyone who requests them. The other extreme is

that some judicial districts seal domestic relations and probate cases entirely.

“The courts are facing real problems,” wrote Chief 1st District Judge R. Brooke Jackson in an April 3 letter defending the district policy closing domestic relations and probate cases. Jackson wrote of “existing laws requiring that certain protected information in court files not be made public, and an inability to redact all such information from all the files that we have. Our goal is to keep our files accessible to the public while curtailing identity theft and other predatory practices.”

Jackson didn’t think forcing a member of the public to petition the court to get access to a public record “is an unreasonable burden.”

The new directive, Zansberg said, is making it difficult for the media to perform its function as government watchdog.

If reporters can’t afford to pay for case files to be edited or aren’t allowed access to a file because a judge refuses a petition, Zansberg said he wonders who will watch how the judges, district attorneys and public defenders are doing their jobs.

“The public has a right to inspect public documents and hold accountable government officials in the judicial branch,” Zansberg said. “It’s the role of the press to help monitor the conduct of government officials.”

Colorado Supreme Court Justice Alex Martinez, the chairman of the committee, said he wasn’t surprised some districts took the route of “blanket sealing of cases.”

“We anticipated that would occur,” Martinez said. “But at the same time, it’s occurred more often than we expected. . . . We’re definitely sympathetic because that’s more restrictive than what we want it to be. We don’t want to be in that posture of having cases sealed, closed or inaccessible-The committee put more emphasis on protecting “private” information than on keeping public records open, Martinez said.

Neither Martinez nor Karen Salaz, spokeswoman of the State Court Administrators office, could point to a single documented case of someone using court files to perpetrate identity theft.

“We’re certainly not going to take that chance,” Salaz said.

Martinez said he could see how media investigations could be hampered by the directive.

“That’s a danger,” he said. “We don’t want to be there.”

Gov. Bill Owens vetoed a bill in 2002 that would have sealed judicial documents in divorce, child custody and child support cases.

“If these records are unavailable to the public,” Owens wrote in his veto message, “we

will have no effective means to determine how the judicial branch in general and individual judges in particular handle dissolution of marriage, child custody and child support matters.”

A local lawmaker is cosponsoring a bill this session that would address some of the judiciary’s concerns about releasing private information while still keeping most of the court files open in divorce and child custody cases.

The bill has gone through revisions in the House and Senate, said Rep. Richard Decker, R-Fountain, and the differences must be ironed out by a conference committee.

The new judicial directive has made already harried clerks even busier having to study what must be edited from files, and editing and copying court files.

The workload for clerks in the 4th Judicial District has stretched them to the limit. For almost two years, the records department — where people can get access to case files — has been open from 1 to 4 p.m. daily. Officials say this is because of “state budget cuts.”

Now, partly because of the recent directive, the amount of research requests have almost doubled in three years.

The 4th Judicial District Clerk of Court Mary Perry has heard of other districts ignoring the directive.

“That’s frustrating for us, because we’re trying to comply,” Perry said.

“Every judicial district has the prerogative of implementing this as they need to, and see fit,” Salaz said. “Judicial districts are literally independently managed.”

Districts that shut down all access to domestic relations and probate files did so, Salaz said, because those types of cases “have the highest volume of information that must be redacted.”

But 4th Judicial District officials didn’t want to close entire types of case files.

“We didn’t feel like we were doing our job if we just closed off those cases,” said Joanna Foreman, supervisor of the records management team. “We felt like we could comply without closing them off. That’s not fair to the public.”

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FILES

The types of information that court clerks must edit out of a court file before releasing the file to the public include:

- Probation files
- Social Security numbers
- Deposited wills
- Victims name or identifying information in sexual assault cases
- Drug/alcohol treatment information
- Paternity tests, cases and records
- Genetic testing
- HIV/AIDS testing information
- Medical, mental health, sociological, intelligence testing
- Scholastic achievement data on individuals
- Adoption records
- Relinquishment cases
- Dependency and neglect records
- Mental health cases
- Expunged records
- Sealed files
- Files/fields/codes concerning the deliberative process
- Draft opinions, notes or internal memos
- Driver history c Judicial bypass cases
- Juror questionnaires
- Colorado Bureau of Investigation background check reports
- Credit reports

SOURCE: Colorado Judicial Department directive 05-01 (available in its entirety at www.courts.state.co.us/supct/directives/05-01.pdf)