

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE**

**Minutes of Meeting
Friday, October 21, 2011**

A quorum being present, the Colorado Supreme Court's Advisory Committee on Rules of Criminal Procedure was called to order by Judge John Dailey at 12:51 p.m., Court of Appeals Conference Room at the Denver News Agency Building. Members either present at or excused from the meeting were:

Name	Present	Excused
Judge Ed Casias		X
Judge John Dailey, Chair	X	
Dana Easter	X	
Judge Susan Fisch	X	
Judge Shelley Gilman	X	
Judge Morris Hoffman	X	
Matt Holman	X	
Abe Hutt	X	
Steve Jacobson	X	
Judge Gilbert Martinez		X
Justice (Supreme Court Liaison)		
Kevin McGreevy		X
Cliff Riedel		X
Karen Taylor	X	
Robin Whitley	X	

I. Attachments

- A. Agenda
- B. Minutes of the July 22, 2011 Meeting
- C. Email changes to Crim. P. 17(c)
- D. Email from Robin re: proposed changes to Crim. 17(h)

II. Approval of Minutes

The July 22, 2011 minutes were approved as submitted.

III. Chair report

Judge Dailey reported that Robin Whitley had discovered discrepancies between the proposals to amend Crim. P. 17(h), as forwarded to the supreme court by the committee, and as posted by the supreme court on its website. April Bernard will investigate and report back to the committee at the next meeting.

Judge Dailey asked Matt Holman to submit a transmittal letter in connection with the proposal to amend Crim. P. 32.2. that had previously been approved by the committee.

Finally, Judge Dailey noted that Justice Martinez had spoken with him about expanding public access to committee records and/or meetings. It was noted that Ms. Bernard currently posts, for public access, meeting agendas and minutes on the court website. Judge Dailey stated that he planned to speak with Chief Justice Bender further about the subject.

IV. Old Business

A. Crim. P. 17

Judge Hoffman recounted the background for the proposal to amend Crim. P. 17 to address subpoenas for medical records and the release of privileged materials without the privilege holder's consent.

Judge Hoffman then reported that, in August, the Civil Rules Committee submitted proposed revisions to C.R.C.P. 45 addressing those subjects. Upon meeting, the Crim. P. 17 subcommittee decided to unanimously recommend that no similar change be made to the criminal rules. Several reasons were put forth in support of this position, including (1) subpoenas for the production of documents in criminal cases are not the broad tools of discovery that they are in civil cases; (2) subpoenaing privileged or confidential material was not a significant problem in criminal cases (generally speaking, the criminal bar is obtaining these records properly, only after obtaining either a waiver of the privilege or a court order; case law subpoenaing privileged or confidential material without a waiver or an order is a recurring subject of ethical training for criminal lawyers); and, (3) the sanctity of the statutory privileges is not quite as inviolate in criminal cases as it is in civil cases, by virtue of various statutes that abrogate various privileges in some criminal contexts. It was also noted that case law provided useful guidance in this area.

The committee, without objection, adopted the recommendation of the subcommittee. Judge Dailey asked that Judge Hoffman prepare a letter transmitting to the supreme court the committee's position and the reasons therefor.

B. Time Computation

Mr. Whitley updated the committee on its time computation proposal. A package of proposed rules, including civil, appellate, criminal, and other specialty chapters addressing the issue of time computation, has been submitted to the supreme court. The proposed rules have been posted on the website for public comment. Many of the comments received so far touched on minor matters unrelated to criminal rules.

Mr. Whitley reminded the committee that legislation may be required to change some statutory timelines. The subcommittee will monitor the legislative process to recommend retraction of some of the proposed rules if statutory changes are not made.

C. Crim. P. 35(c)

This subject was tabled.

V. New Business

A. Crim. P. 17(c) -- Notice of Subpoena to Victims

Judge Ethan Feldman emailed Judge Dailey, recommending that the rule be amended to (1) require notice of subpoenas duces tecum (SDTs) to victims and other persons in interest; and (2) recognize that victims and other persons of interest have standing to quash or object to those subpoenas. After discussion, the committee, without objection, decided that no change to the rule was necessary. Although victims' rights regarding notice and an opportunity to object may have been violated in the past, the prosecution was required to be served with copies of SDTs; the prosecution had standing to object to their use; the prosecution, under the victim's rights statute, has the duty to notify victims; and Attorney Regulation has begun vigorously prosecuting attorneys who fail to comply with SDT notice requirements. The combined practical effect of prosecutorial duties and attorney ethical responsibilities, the committee felt, provided adequate protection of victims' rights.

Judge Dailey asked that the committee's position and reasons therefor be transmitted to supreme court in a letter.

VI. Future Meetings Scheduled

A. Jan 20, 2012

B. April 20, 2012

The committee adjourned at 1:30 p.m.

Respectfully submitted,

April Bernard