

January 4, 2019

## MEMORANDUM

**TO:** Subcommittee on Crim P. 55.

**FROM:** Matthew S. Holman  
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Criminal Appeals Section

**RE:** Crim. P. 55(e) and CJD 05-03.

This memorandum provides three alternative drafts of Crim. P. 55(e), which are meant to replace the current reference to C.R.C.P. 80 and 380.

1. The first includes language in 55(e) referencing CJD 05-03.

55(e). The practice and procedure concerning court reporter notes and electronic or mechanical recordings shall be as proscribed in Chief Justice Directive 05-03, Management Plan for Court Reporting and Recording Services.

2. The second repeals 55(e) and provides a comment referencing CJD 05-03.

55(e). Repealed.

**Comment.** Crim. P. 55(e) has been repealed as a result of C.R.C.P. 80 being repealed. C.R.C.P. was repealed as Chief Justice Directive 05-03 entitled, Management Plan for Court Reporting Services, addresses matters related to court reporters in District Court matters.

3. The third incorporates language directly from CJD 05-03 so that the rule would provide essential information without simply referencing to the CJD.

This version of Crim. P. 55(e) incorporates relevant provisions directly from Chief Justice Directive 05-03. But not all parts of the CJD are included. Instead, the

selected provisions address matters that are currently covered in C.R.C.P. 80. However, 55(e)(6) serves as a catchall reference to CJD 05-03.

Note: The first sentence of this version of 55(e) – which provides for the reporting of evidence unless the parties stipulate otherwise – is adapted from C.R.C.P. 80(a) as is 55(e)(5) – which addresses court reporter’s fees.

**55(e) Reporter’s Notes; Custody, Use, Ownership, Retention.** Unless the parties stipulate to the contrary, a district court shall, and any other court or referee or magistrate in its discretion may, direct that evidence be either stenographically or electronically reported.

(1) The preferred method of making an accurate record of court proceedings is with the assistance of a realtime certified court reporter; therefore, all proceedings conducted before a district court judge may be reported by a court reporter using a stenotype machine on a “realtime” basis. An electronic record operator using digital electronic sound recording equipment can record proceedings. This provision shall in no way prohibit a judge or magistrate from operating the equipment needed to make an accurate record of any proceeding. Realtime court reporting is the standard in Colorado courts.

(2) The chief judge of each judicial district shall determine which methods of recording court proceedings are to be used based upon current economic issues, availability of reporters and other relevant factors.

(3) Subject to the following requirements, each judicial district shall establish a case-type priority that shall be reported, if district resources permit, by court reporters:

(I) When a judicial district assigns a court reporter to report a proceeding that requires the taking of testimony in a class one or two felony case, the court reporter shall be at a minimum a Registered Professional Reporter (RPR) if an RPR certified reporter is available. Districts without an RPR court reporter should contact the State Court Administrator’s Office for assistance;

(II) In a death penalty case, Realtime reporting shall be used. If reasonable attempts to locate or appoint a Realtime reporter have been made without success, districts without Realtime reporting capability should contact the State Court Administrator’s Office for assistance. A reporter reporting a death penalty case shall be, at a minimum, RPR certified. Should Realtime equipment failures or personnel

emergencies occur, other court reporting methods may be used in extreme circumstances for the shortest amount of time possible.

(4) The notes of all court reporters: (I) shall remain property of the Colorado Judicial Branch controlled by the chief judge or designee to ensure transcripts may be prepared by another reporter, if and when necessary; (II) shall be retained by the appropriate court for a period prescribed by the Colorado Judicial Department Retention and Disposition Schedules; and (III) are not public records. The chief judge of the judicial district is ultimately responsible for the administration of any court reporting services in the district as well as the timeliness of the production of transcripts whether on appeal or for other purposes.

(5) A court reporter's fee shall be fixed by the court subject to limitations imposed by law, and shall be paid in the manner provided by law; and if taxed to litigant may be taxed ultimately as costs in the discretion of the court. The cost of transcripts shall be paid in full in the first instance by the party ordering same.

(6) Chief Justice Directive 05-03, entitled Management Plan for Court Reporting and Recording Services, addresses additional matters related to court reporters and the production and retention of reported and recorded cases.