

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

**Minutes of Meeting  
Friday, April 19, 2013**

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 12:55 p.m., SCAO Conference Room at the Denver News Agency Building. Members present, excused from, or not excused from, the meeting were:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Judge Ed Casias		X
Judge John Dailey, Chair	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
Kevin McGreevy		X
Donna Skinner Reed	X	
Karen Taylor	X	
Robin Whitley	X	

**I. Attachments & Handouts**

- A. Agenda
- B. Transmittal Letter RE: Crim. P. 24(e)
- C. Email and Form RE: FTP warrants
- D. Email Crim. P. 17(e), electronic service of subpoenas
- E. Email Crim. P. 17(e), address confidentiality
- F. Submission Policy for Committee Rule Changes

**II. Approval of Minutes**

With but one amendment, the proposed minutes for the January 18, 2013 meeting were approved. The one amendment: the minutes should reflect that Robin Whitley is also a member of the "actual innocence" subcommittee.

**III. Announcements from the Chair**

- A. Judge Dailey reported that Crim.P. Rules 5 and 7 have been approved by the Supreme Court.

- B. **Committee Membership**— Three names were recommended to fill the vacancy left by Cliff Riedel’s resignation from the committee. Ultimately, Eighth Judicial District Deputy District Attorney David Vandenberg was selected for the position. He will attend the July meeting.
- C. **Crim.P. 24(e)**. Judge Dailey reported that the proposed rule change and transmittal letter had been forwarded to Chief Justice Bender. Judge Dailey indicated that the letter did not, however, reflect the numerical breakdown of those favoring the majority proposal and those favoring the minority proposal. Judge Dailey indicated that he would provide that information to the Chief Justice.

A question was asked whether the supreme court’s format for submitting rule proposals (see below) requires such a breakdown. Judge Dailey stated that it does not, although sometimes (as was the case for rule 24(e)) the committee wants the court to be apprised of that information. He recalled having been informed, however, that it is not the number of votes that counts, as much as the reasoning behind any given proposal.

- D. **Rule Submission Policy**. A copy of the Supreme Court’s submission policy and format for proposing rule changes was distributed to the committee. And it was noted that, if committee members need help in formatting proposed rule changes, staff can help.
- E. Judge Dailey noted that he will not attend the July 2013 committee meeting; Judge Fisch agreed to chair the meeting in his stead.

#### IV. Old Business

- A. **“Failure to Pay” Warrants**— Judge Dailey forwarded to Carol Haller, legal counsel for the judicial branch, information Judge Casias had received after making inquiries in the 5<sup>th</sup> Judicial District concerning failure to pay warrants. Ms. Haller has been working with ACLU representative Rebecca Wallace on this issue. A subcommittee – consisting of Judge Casias, Judge Fisch, David Vandenberg, and Abe Hutt -- was formed to work with Ms. Haller and Ms. Wallace.
- B. **Crim. P. 35: “Actual Innocence” Exception**—Steve Jacobson reported that the subcommittee had a spirited discussion at their first meeting; will meet again in late May; and will report on its progress at the July meeting.
- C. **Crim. P. 24 (g): Juror Questions**: Judge Hoffman reported for the subcommittee, regarding jurors asking questions of witnesses and to what extent, if any, the rules should provide for more standardized practice in this area. He reported that the subcommittee looked at the bench book and found

that it was silent on what judges should do with juror questions. He also conducted a poll of all 171 district judges in the state, 92 (or 54%) of which responded to the following questions:

**Do you ask jurors if they have questions, with each witness?**

73 judges said they remind the jurors of their right to ask questions after the lawyers are done with their questions of each witness; three judges said “it depends” ; and 16 judges said they don’t remind the jurors.

**Do you allow lawyers an opportunity to review the questions to object to them before allowing questions to be asked?**

89 judges said they give lawyers notice and an opportunity to object to jurors’ questions; three said they did not.

**Do you allow lawyers to ask follow-up questions?**

73 judges said they give lawyers some opportunity to ask follow-up questions; nine said “sometimes they do”; two said they do not.

**“Any other suggestions or comments?”**

Several judges requested more guidance in the rule as to when to permit -- and when not to permit -- juror questions; many judges, though, were concerned that a rule change might not be beneficial.

In light of this information, the subcommittee recommended that rule 24(g) should (a) require trial courts give lawyers notice and an opportunity to object to juror questions; (b) direct the court to consider, upon the request of counsel, allowing follow-up questions within the scope of the jurors’ questions; (c) not specify whether or when the trial judge should remind jurors of their right to ask questions; and (d) not contain guidelines or factors for the trial court to consider in deciding whether to allow juror questions.

After lengthy discussion, a motion was made, seconded, and approved by a vote of 7-0, to

1. Require, in the rule, prior notice to, and an opportunity to object by, the parties.
2. Require, in the rule, upon request of counsel, permitting follow-up questions, within the scope of the juror questions
3. Create a comment, which would accompany the rule, recommending that judges remind jurors of their right to ask questions after each witness.

The subcommittee was directed to propose, for action at the next committee meeting, rule and comment language achieving these ends.

## **V. New Business**

**A. Crim. P. 17(e): Electronic Service of Subpoenas.** Judge Hartmann, chief judge of the 19<sup>th</sup> Judicial District, had sent, by email, a proposal to amend Crim. 17 to allow for electronic service of subpoenas. In his email, Judge Hartmann indicated a representative of the Colorado District Attorneys' Council (CDAC) would be following up on the proposal. As of the meeting, however, Judge Dailey had not been contacted by anyone from CDAC.

A subcommittee was formed to contact Judge Hartmann, the CDAC, and members of the prosecution and defense communities; to gather information, and to evaluate the proposal. Karen Taylor and Donna Reed agreed to serve on the subcommittee. Judge Dailey indicated that he would contact Judge Gilman to determine whether she was able to serve on the subcommittee as well.

(Subsequently, Judge Casias indicated that he would be willing to serve on the subcommittee in lieu of Judge Gilman)

**B. Crim. P. 17(e): Address Confidentiality Program --** Robin Whitley reported that Crim. P. 17(e) needs to be amended to reflect the correct current statutory reference for the address confidentiality program (that is, section 24-30-2104(3), C.R.S 2012. A motion was made, seconded and approved by a 7-0 vote, to submit the proposed rule change, together with a transmittal letter, to the supreme court. Mr. Whitley will prepare both.

## **VI. Future Meetings Scheduled**

**A. July 19, 2013**

**B. Oct. 18, 2013**

**C. January 17, 2014**

The committee adjourned at 2:07 p.m.

*Respectfully submitted,*

*Terri S. Morrison*