

**COLORADO SUPREME COURT**  
**ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE**  
**Minutes of Meeting**  
**Friday, October 21, 2016**

A quorum being present, the Colorado Supreme Court’s Advisory Committee on the Rules of Criminal Procedure was called to order by Judge John Dailey at 12:47 p.m., in the Colorado Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge John Dailey, Chair	X	
Judge Susan Fisch		X
Judge Shelley Gilman	X	
Judge Deborah Grohs	X	
Judge Morris Hoffman	X*	
Matt Holman		X
Abe Hutt		X
Kevin McGreevy	X	
Judge Dana Nichols	X	
Donna Skinner Reed	X	
Megan Ring		X
Karen Taylor	X	
David Vandenberg	X	
Robin Whitley	X	
<b>Non-Voting Participants</b>		
Terri Morrison	X	
Karen Yacuzzo	X	

\*Judge Hoffman was excused part-way through the meeting

**I. Attachments & Handouts**

- A. October 21, 2016 agenda
- B. July 15, 2016 minutes
- C. Rule 32(d): People v. Sosa, 2016COA93 Subcommittee Report
- D. Rule 41 Electronic Media Suggestion
- E. Rule 49.5 Colorado Courts E-Filing
- F. Memo re proposed changes to Rules 4 and 9
- G. Rule 15 Memo

**II. Approval of Minutes**

The July 15, 2016 minutes were approved as submitted.

### III. Announcements from the Chair

In honor of a birthday celebration, Mr. McGreevy brought donuts for the committee. Many thanks to Mr. McGreevy.

### IV. Old Business

#### A. HB 1104 [SB 13-250 & HB 09-1262]

The committee discussed various issues related to the proposal to amend Crim. P. 4 and 9, including

- 1) Changing Crim. P. 4(a)(1)'s title.
- 2) Using the term "request" instead of "recommend" in Crim. P. 4(a)(1).
- 3) Removing, in the proposed Crim. P. 4(a)(3), the word "in" after "level 2 drug felonies, and" so that the language will now read: "Except in class 1, class 2, and class 3 felonies, level 1 and level 2 drug felonies, and ~~in~~ unclassified felonies . . . ."
- 4) Adding, in Crim. P. 4(a)(4), language to reflect the following statutory language (in italics) from § 16-5-206(1), C.R.S.: ". . . unless a law enforcement officer presents in writing a basis to believe there is a significant risk of flight *or that the victim or public safety may be compromised.*"
- 5) Changing the word "his" in Crim. P. 4(a)(5) to a gender neutral term.
- 6) Encompassing corresponding changes to Crim. P. 9.
- 7) Putting the presumption language found in Crim. P. 4(a)(4) into Crim. P. 9(a)(4). (on this issue, Terri Morrison volunteered to contact the library to see if there are any historical documents available related to the 1974 rule change which added the presumption to Crim. P. 4).

Ultimately, the matter was returned to the subcommittee for further consideration and presentation of a revised proposal to amend Crim. P. 4 and 9.

#### B. HB 16-1027 (Depositions)

After a discussion, the committee decided to leave Crim. P. 15 as the general rule on depositions and not to incorporate various special statutory deposition categories into the general rule (or make new associated rules, e.g., 15.1, 15.2, etc.). But members of the committee questioned whether Crim. P. 15 should be amended to require all depositions be video recorded. Members agreed that video is the trend, it's better for juries to see the witness, and it would not appear to be much of an imposition to require video. The

subcommittee was asked to explore with Ms. Taylor and Mr. Whitley, whether all jurisdictions have the equipment necessary for video depositions and what, if any, impact requiring video recording would have throughout the state.

**C. Crim. P. 32(d) – People v. Sosa, 2016COA93**

For the reasons stated in its memo, the subcommittee recommended, and the committee agreed, that nothing should be done at this time on this issue. The committee will ask Jenny Moore to keep an eye on *People v. Espino-Paez*, 2014 COA 126 (cert. granted Sept. 8, 2015) and *People v. Corrales-Castro*, 2015 COA 34M (cert. granted Sept. 8, 2015). Should the decision in either of these opinions (or action by the General Assembly) require the committee to take up the issue again, Jenny will let the committee know.

**V. New Business**

**A. Crim. P. 41 – Electronic media seized by means of search warrant**

Mr. Whitley informed the committee that Federal Rule of Criminal Procedure 41 has been amended to address the issue of searches for electronically stored information. The committee agreed that similar amendments to Crim. P. 41 should be considered and assigned the matter to a subcommittee consisting of Mr. Whitley (chair), Mr. Hutt, and Judge Gilman.

**B. Integrated Colorado Courts E-Filing System name change – Crim. P. 49.5 – Terri Morrison & Karen Yacuzzo**

The committee adopted the proposed rule change by acclamation. Terri Morrison will draft a transmittal letter to be sent along with the proposed amendment.

**VI. Future Meetings**

January 20, 2017

April 21, 2017

July 21, 2017

The committee adjourned at 2:22 pm.

*Respectfully submitted,*

*J.J. Wallace*