

COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, October 16, 2020

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 12:45 p.m. via videoconferencing software WebEx. Members present at or excused from the meeting were:

Name	Present	Excused
Judge John Dailey, Chair	X	
Sheryl Berry	X	
Judge Shelley Gilman	X	
Judge Deborah Grohs	X	
Judge Morris Hoffman	X	
Matt Holman	X	
Abe Hutt	X	
Judge Chelsea Malone	X	
Kevin McGreevy	X	
Judge Dana Nichols	X	
Robert Russel	X	
Karen Taylor	X	
Sheryl Uhlmann	X	
David Vandenberg	X	
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. October 16, 2020 agenda
- B. January 17, 2020 minutes
- C. SB 20-088
- D. SB 20-100
- E. Crim. P. 24(d) memo
- F. Criminal Rules Committee Interim Report

II. Approval of Minutes

- A. The January 17, 2020 minutes were approved as submitted by acclamation with the following edits: in the first sentence at the top of page 3, “committee’s” should be substituted for “committee” and “motion” should be substituted for “motions”.
- B. Regarding the Interim Report, no one had any suggestions, corrections, or changes. The Interim Report was approved by acclamation.

III. Announcements from the Chair

- A. Chair Judge Dailey announced that the supreme court held the hearing on the public access rule. Several members of the committee presented during the hearing.
- B. Justice Samour let the committee know that the supreme court is considering written and oral comments on proposed rule 55.1 and to some extent, 55.2. Justice Samour offered to answer questions, but the committee did not have any.

IV. New Business

A. SB 20-100—Death Penalty Repealed

Judge Dailey said that this bill will likely require a change to Crim. P. 32.2. A committee member mentioned that Crim. P. 31, 31.2, 32, and 32.2 all mention the death penalty and will have to be considered. Karen Taylor, Matt Holman, and Judge Grohs all volunteered to form a subcommittee. Karen Taylor will chair the subcommittee.

B. SB 20-088—Forfeiture By Wrongdoing Evidentiary Rule

Karen Yacuzzo reported that she has referred this issue to the supreme court's Advisory Committee on the Rules of Evidence. Judge Dailey said that inasmuch as the Evidence committee will be able to handle this, no action is needed by this committee.

C. Crim. P. 24(d)—Combatting Racial Bias in the Exercise of Peremptory Challenges

Kevin McGreevy asked the committee to consider adopting a rule based largely on a rule in the state of Washington. According to Mr. McGreevey, while *Batson v. Kentucky* prohibits purposeful racial discrimination in the exercise of peremptory challenges, the *Batson* analysis leaves much to be desired in combating real (but perhaps implicit) racial discrimination in the selection of jurors.

One judge shared that many people are not adept at dealing with *Batson* challenges, and that a roadmap like the one in the proposed rule could help lawyers and judges do a better job of handling *Batson* challenges. Another committee member supported this view, saying that inasmuch as implicit bias is omnipresent and particularly present in jury selection, he would like to at least have the chance to consider the proposal. Yet another member mentioned that the justice system has a duty to consider these types of issues and do what it can to remove implicit or express racial bias.

One member expressed reticence in adopting this type of rule, seeing its substance as a solution in search of a problem. Another questioned whether there have been any studies on the impact of a rule like the one proposed. Mr. McGreevy reported that he is looking to obtain further information from a Washington Supreme Court Justice regarding how the rule has been used and what its impact has been.

Kevin McGreevy, David Vandenberg, Judge Gilman, Bob Russel, Sheryl Uhlmann, and Judge Nichols all volunteered to serve on a subcommittee. Mr. McGreevy was appointed chair of the subcommittee.

Judge Dailey asked the subcommittee to consider a couple questions, i.e., whether (1) any of the proposed grounds for prohibiting a peremptory challenge might be too broad, and (2) if such a rule is adopted, would it portend the need to adopt similar rules for other categories, such as gender.

V. Old Business

A. Crim. P. 37/37.1 – Prosecutorial Interlocutory Appeals of County Court Orders

This subject was tabled until the next meeting.

VI. Future Meetings

January 15, 2021

April 16, 2021

July 16, 2021

October 15, 2021

The committee adjourned at 1:52 PM.