

COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, April 19, 2019

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. in the Colorado Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present at 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 | |
| Robert Russel | | X |
| Karen Taylor | X | |
| Sheryl Uhlmann | X | |
| David Vandenberg | X | |
| Non-Voting Participant | | |
| Karen Yacuzzo | X | |

I. Attachments & Handouts

- A. April 19, 2019 agenda
- B. January 18, 2019 minutes
- C. March 15, 2019 minutes
- D. Crim. P. 55(e) draft clean
- E. Crim. P. 55(e) draft marked
- F. Crim. P. 44(e) memo

II. Approval of Minutes

- Regarding the January 19, 2019 minutes: On the last sentence of the first paragraph on page five, David Vandenberg suggested adding a period. He also recommended correcting the misspelling of Judge Hoffman's name on the last page under subheading B. By acclamation, both changes were accepted.
- Regarding the March 15, 2019 minutes: Karen Yacuzzo recommended editing one of the references to Steve Zansberg to include his full name and mention that he was commenting in his capacity as the President of the Colorado Freedom of

Information Coalition (CFOIC). Further, regarding the fourth paragraph of the second page, Ms. Yacuzzo suggested deleting “sealed” and substituting “sealed or suppressed.” By acclamation, both changes were accepted.

III. Announcements from the Chair

- Judge Dailey announced that the committee’s proposed changes to Crim P. 5, 32(c)(3), and 55(e) were all adopted by the supreme court.

IV. Old Business

A. New Criminal Rule—Public Access to Court Records

This portion of the meeting was taken out of order so that guest Steve Zansberg, CFOIC President, could address the committee and answer its questions.

At this point, a member of the public attempted to join the meeting. After the woman was informed that the meeting was not open to the public, she was asked to leave and then shown out of the meeting by Judge Dailey.

Among other things, Mr. Zansberg referenced the recent discovery of “suppressed” cases and files and stated that to retain the public’s trust in the judicial system, there needs to be a presumption of access to court documents that can be overcome in appropriate situations; that standards for identifying those situations need to be adopted; and that courts should make specific findings with respect to those standards before restricting access to court documents.

Mr. Zansberg noted that the committee had previously rejected a proposal to amend the rules, in this regard, by not adopting Standard 8-3.2 of the *ABA Standards for Criminal Justice: Fair Trial and Free Press*, third edition. He pointed out that two members of the Colorado General Assembly had considered codifying the Standard in a statute but that his preference -- as well as that of some of the legislators – was to have the supreme court adopt a rule on the subject, if possible.

Mr. Zansberg once again endorsed the ABA Standard as providing an appropriate yardstick for regulating public access to court records.

Mr. Zansberg took questions from the committee. Among other things, the group inquired whether orders to seal or suppress should expire or be revisited after a set amount of time. Mr. Zansberg shared that the ABA Standard required courts to revisit rulings denying access to records.

Turning to the issue of notice, some members were worried about the burden on the court to inform the public of every suppressed or sealed document. Mr. Zansberg stated that as long as the motion to seal or suppress was made a matter of public record, people would know that the process was occurring; notice need not be specifically made to the media because the presence of the motion on the docket would be sufficient.

Judge Dailey thanked Mr. Zansberg for his presentation, and Mr. Zansberg then left the meeting.

Subcommittee Chair Judge Grohs explained that the subcommittee discussed the problem that judges are suppressing documents without any hearing or ruling. The consensus of the subcommittee was that suggesting a rule containing standards and procedures for the supreme court to adopt would provide consistency and transparency for the Colorado Judicial Branch. The subcommittee thinks judicial education on this matter may be helpful as well.

Judge Dailey stated that in light of recent events, a rule does seem to be in order. The subcommittee indicated that they are considering a short and sweet rule that provides procedures and standards. The subcommittee was asked to consider how the terminology of “suppressed” and “sealed” should be used in the rule, because both terms are used in Chief Justice Directive 05-01.

Justice Samour and Judge Dailey both offered to be available should the subcommittee desire any assistance.

B. Crim. P. 55—Court Reporter Issue

The committee welcomed guest Claire Walker from the State Court Administrator’s Office. After seeking input from clerks of court from around Colorado, Ms. Walker and the clerks developed the proposed changes to Crim. P. 55 to modernize the rule. A friendly amendment to the proposed rule change was accepted to make a grammatical correction.

A motion and second were taken, and the proposal was adopted by a vote of 9-0. Judge Fisch will prepare a transmittal letter.

The approved proposal to amend Rule 55 reads:

Rule 55. Records

(a) Register of actions (criminal docket). The clerk shall keep a record known as the register of actions and shall enter ~~therein~~ those items set forth below. The register of actions may be in any ~~of the following forms or styles:~~ form or style prescribed by supreme court directive or order or approved by the State Court Administrator.

~~(1) A page, sheet, or printed form in a book, case jacket, or separate file, or the cover of the case jacket for county court cases.~~

~~(2) A microfilm roll, film jacket, or microfiche card.~~

~~(3) Computer magnetic tape or magnetic disc storage, where the register of actions items appear on the terminal screen, or on a paper print out of the screen display.~~

~~(4) Any other form or style prescribed by supreme court directive.~~

A register of actions shall be prepared for each case ~~or matter~~ filed. The file number of each case ~~or matter~~ shall be not entered in the court case management system on every page, jacket cover, film, or computer record whereon the first and all subsequent entries of actions are made. All papersdocuments filed with the clerk, all process issued and returns made thereon, all costs, appearances, orders, verdicts, and judgments shall be noted chronologically in the register of actions. These notationsentries shall be brief but shall show the date and complete title nature of each documentpaper filed, order or writ issued, data transfer submitted or received, and the substance of each order or judgment of the court and ~~of~~ the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. The notation of the judgment in the register of actions shall constitute the entry of judgment. ~~When trial by jury has been demanded or ordered, the clerk shall enter the word jury on the page, jacket cover, film, or computer record assigned to that action.~~

(b) Criminal Record. Repealed effective September 4, 1974.

(c) Indices; Calendars. The clerk shall keep suitable indices of all records, as directed by the court. The clerk shall also keep as directed by the court, calendars of all hearings and all cases ready for trial, which shall distinguish trials to a jury from trials to the court. Indices and calendars may be in any ~~of the following forms or styles:~~ form or style prescribed by supreme court directive or order or approved by the State Court Administrator.

~~(1) A page or sheet in a book or separate file.~~

- (2) A mechanical or hand operated index machine or card file.
- (3) Computer magnetic tape or magnetic storage, where the information appears on the terminal screen, or on a print out of the screen display.
- (4) Microfilm copies of (1), (2), and (3) above.
- (5) Any other form or style prescribed by supreme court directive.
- (d) ~~Files. All papers filed in a case shall be filed in a separate file folder except that "Summons and Complaint" documents may be filed otherwise but only as may be authorized by the Supreme Court.~~
- (e) [No Changes]

(f) **Retention and Disposition of Records.** The clerk shall retain and dispose of all court records, ~~including those created under Rule 55(b) prior to its repeal, in accordance with instructions provided in accordance with~~ the manual entitled, Colorado ~~J~~Judicial ~~e~~Department [Retention and Disposition Schedules & Imaging Procedures for Designated Records Manual \(Records Retention Manual\)](#),~~records management~~.

C. Crim. P. 44(e)—Termination of Representation

Sheryl Uhlmann spoke on behalf of the subcommittee. This issue originally came to the committee from Denver County Court Judge Adam Espinosa, who asked the committee to examine whether Crim. P. 44(e) should be changed to clarify when an appointed public defender's representation terminates. The subcommittee unanimously agreed that this issue did not require a rule change. However, in looking at the rule, the subcommittee decided to recommend other changes for clarity.

The committee discussed the proposed rule changes. Some members mentioned that the use of “deferred prosecution” may no longer be appropriate; instead the proper term may be “pretrial diversion.” The subcommittee was asked to consider the committee’s comments.

D. Limited Representation/Unbundled Legal Services

This issue was tabled until the July 2019 meeting.

V. New Business

The committee considered no new business.

VI. Future Meetings

July 19, 2019
October 18, 2019
January 17, 2020

The committee adjourned at 3:04 PM.