

COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, July 16, 2021

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	
Jacob Edson	X	
Judge Kandace Gerdes	X	
Judge Shelley Gilman	X	
Judge Deborah Grohs	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	
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. July 16, 2021 agenda
- B. April 16, 2021 minutes
- C. HB 21-1309

II. Approval of Minutes

- A. The April 16, 2021 minutes were approved by acclamation.

III. Announcements from the Chair

- A. Chair Judge Dailey reminded the committee that a couple weeks ago, it had discussed and unanimously approved (13-0), via email the subcommittee’s proposed amendments to rule 43. The rule as submitted by the committee appears below.

Rule 43. Presence of the Defendant

(a) – (d) [NO CHANGE]

(e) Presence of the Defendant by Interactive Audiovisual Device.

(1) *Definitions.* As used in this Rule 43:

(I) “Interactive audiovisual device” means a television or computer based audiovisual system capable of two-way transmission and of sufficient audio and visual quality that persons using the system can view and converse with each other with a minimum of disruption.

(II) “Interactive audio device” means a telephone or computer-based audio system capable of two-way transmission and of sufficient audio quality that persons using the system can converse with each other with a minimum of disruption.

(2) A defendant may be present within the meaning of this Rule 43 by the use of an interactive audiovisual device or by interactive audio device, in lieu of the defendant's physical presence, ~~for the following hearings:~~with the Court’s approval, for any proceeding that does not involve a jury.

~~(I) First appearances pursuant to Crim.P. 5, for the purpose of advisement and setting of bail, including first appearances on probation or deferred sentence revocation complaints;~~

~~(II) Further appearances for the filing of charges or for setting the preliminary hearing;~~

~~(III) Hearings to modify bail;~~

~~(IV) Entry of pleas and associated sentencing or probation violation hearings in misdemeanor, petty offense, and traffic cases where the offense charged is not included within those offenses enumerated in C.R.S. 24-4.1-302 (I).~~

~~(V) Waivers of preliminary hearing;~~

~~(VI) Restitution hearings;~~

~~(VII) Appeal bond hearings;~~

~~(VIII) Crim.P. 35(B) hearings.~~

(3) The following hearings, conducted per subsection (e) of this rule, shall require the consent of the defendant:

(I) Entry of guilty plea;

(II) Sentencing hearings;

(III) Probation and deferred sentence revocation hearings;

(IV) Preliminary hearings;

(V) Pre-trial motions hearings;

(VI) Hearings to modify bail;

(VII) Restitution hearings;

(VIII) Crim. P. 35(b) and (c) hearings.

(4) The court shall advise a defendant of the following prior to any proceeding conducted per subsection (e)(3) of this rule:

(I) The defendant has the right to appear in person and will not be prejudiced if he or she chooses to do so.

(II) The defendant has the right to have his or her counsel appear with him or her

at the same physical location.

(III) The defendant's decision to appear by use of an interactive audiovisual device or interactive audio device must be voluntary on the defendant's part and must not be the result of undue influence or coercion on the part of anyone.

(IV) If the defendant is pro se, the identity and role of all individuals with whom the defendant may have contact through the interactive audiovisual device or interactive audio device.

~~(35)~~ *Minimum Standards.* Every use of an interactive audiovisual device or interactive audio device must comply with the following minimum standards in addition to those set forth in Crim.P. 43(e)(1):

(I) If defense counsel appears, such appearance shall be at the same physical location as the defendant if so requested by the defendant. If defense counsel does not appear in the same location as the defendant, a separate confidential communication line, such as a phone line, shall be provided to allow for private and confidential communication between the defendant and counsel.

~~(II) No defendant shall be compelled to appear by interactive video device at a hearing pursuant to subsection (e)(2)(III), (VI) or (VIII) of this rule.~~

(III) Installation of the interactive audiovisual device in the courtroom shall be done in such a manner that members of the public are reasonably able to observe, and, where appropriate, participate in the hearing.

~~(IV) Any hearing held pursuant to Crim.P. 43(e)(2)(IV) shall be conducted with the written consent of the defendant. The court shall advise a defendant of the following prior to obtaining a defendant's written consent and prior to any plea discussions being conducted:~~

~~(a) The rights enumerated in Crim.P. 5(2).~~

~~(b) The defendant has the right to appear in person and will not be prejudiced if he chooses to do so.~~

~~(c) The defendant has the right to have his or her counsel appear with him or her at the same physical location.~~

~~(d) The defendant's decision to appear by use of an interactive audiovisual device must be voluntary on the defendant's part and must not be the result of undue influence or coercion on the part of anyone.~~

~~(e) If the defendant is pro se, the identity and role of all individuals with whom the defendant may have contact through the interactive audiovisual device.~~

~~(IIIIV) An interactive audiovisual system used for hearings pursuant to Crim.P. 43(e)(2)(IV) shall include~~Parties must have the ability to electronically transfer documents ~~between the defendant and the court~~necessary for any hearing pursuant to subsection (e) of this rule. ~~and s~~Such transferred documents shall be considered the same as originals.

~~(4) Nothing in this rule shall require a court to use an interactive audiovisual device.~~

~~(5) In the event of inclement weather or other exceptional circumstances, which would otherwise prevent a hearing from occurring under Crim.P. 5, the court may conduct the hearing by use of~~

~~an interactive audiovisual procedure which does not comply with the minimum standards set forth in subsection (3).~~

~~(f) **Public Health Crisis Exception.** If the court finds that a public health crisis exists, it may, in its discretion and with the defendant's oral or written consent, allow the defendant and counsel to appear by an interactive audiovisual device or by audio device for any proceeding that does not involve a jury. The defendant's oral or written consent is not necessary for arraignments or for proceedings listed in subsections (e)(2)(I), (II), (III), (V), (VI), (VII), and (VIII) of this rule. During any interactive audiovisual or audio proceeding under this subsection (f), the court must allow counsel the opportunity to confer with the defendant confidentially when necessary. An interactive audiovisual or audio proceeding under this subsection (f) shall be conducted in a courtroom open to the public or in a manner that allows members of the public (including victims) to hear or watch and, where appropriate, participate in the proceeding. Use of an interactive audiovisual device under this subsection (f) must comply with subsection (e)(1) of this rule.~~

IV. Old Business

- A. Crim. P. 35(c)—Robert Russel**
Tabled.

V. New Business

- A. HB 21-1309—Speedy Trial Statutory Amendment—Judge Dailey**
Judge Dailey brought this to the attention of the committee to consider whether the statute would impact the committee's work on Crim. P. 43. Although the statute does not impact the recent changes to Crim. P. 43, Judge Grohs and others on the committee noted that the statutory amendments (and in particular, the mistrial provisions) could impact rules 24 and 48. A subcommittee, consisting of Sheryl Uhlmann (chair), Judge Malone, Matt Holman, Karen Taylor, Jacob Edson, and Judge Grohs, was appointed to look more closely into the matter.

VI. Future Meetings

October 15, 2021
January 21st, 2022
April 15th, 2022
July 15th, 2022
October 21st, 2022

The committee adjourned at 1:03 PM.

Kathryn Michaels