

**COLORADO SUPREME COURT  
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE  
Minutes of Meeting  
Friday, July 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	
Sheryl Berry	X	
Judge Shelley Gilman		X
Judge Deborah Grohs	X (phone)	
Judge Morris Hoffman	X	
Matt Holman	X	
Abe Hutt		X
Kevin McGreevy	X	
Judge Dana Nichols		X
Robert Russel	X	
Karen Taylor	X	
Sheryl Uhlmann		X
David Vandenberg	X (phone)	
<b>Non-Voting Participant</b>		
Karen Yacuzzo	X	

**I. Attachments & Handouts**

- A. July 19, 2019 agenda
- B. April 19, 2019 minutes
- C. Rule 44(e) Subcommittee Memo
- D. Unbundled Legal Services/Limited Appearances Subcommittee Memo
- E. Draft of new rule for discussion purposes only: Access to Court Records in Criminal Cases

**II. Approval of Minutes**

- The April 19, 2019 minutes were approved as submitted.

**III. Announcements from the Chair**

- Judge Dailey welcomed new member Sheryl Berry from the Jefferson County District Attorney’s Office; informed the committee that, inasmuch as Judge Fisch had retired, a new county court judge would have to be appointed, and recommendations from committee members would be appreciated; introduced

invited guest Judge Jerry Jones, chair of the Public Access Committee; and, announced that the committee's proposed changes to Crim P. 55 were adopted by the supreme court.

#### IV. Old Business

##### A. New Criminal Rule—Public Access to Court Records

Judge Grohs presented a draft of a proposed rule for the committee's consideration.

Karen Yacuzzo, working with other attorneys at the State Court Administrator's Office (SCAO), offered some edits and suggestions to the proposal; asked the committee to keep in mind that the court clerks have responsibilities set forth in statute, rule, regulation, chief justice directive or court order; suggested that the committee consider clarifying what the terms *public* and *court record* mean, and that the rule not govern probation records; and recommended that the committee consider amending the proposed rule's language to provide SCAO's Information Technology Services (ITS) with flexibility regarding the appropriate document security type.

Judge Dailey reminded the committee that any proposed rule cannot supersede the Colorado Criminal Justice Records Act, and then the committee turned to whether the word *public* should be defined in the proposed rule. Some members noted that *public* is defined in Chief Justice Directive 05-01 and therefore has a certain meaning to judicial staff members. Others stated that *public* should have a more lay meaning and should signify EVERY person in the world.

Invited guest Judge Jones from the Court of Appeals noted that this committee should not assume that CJD 05-01 will stay the same forever: portions of it that refer to sealed or suppressed documents might not be necessary and will perhaps be removed once court rules cover the area.

Judge Grohs brought up the topic of who will respond to requests for access to court materials. It was suggested that the judge handling the case would be the individual most familiar with the case and therefore the best person to respond.

One committee member noted that the subcommittee may want to consider an effective date so that anything before that date will not be affected by the new rule.

Committee members noted that different standards appeared in rules from other jurisdictions. One member mentioned the fact that *compelling interests* is a term of

art used in constitutional law and therefore might be confusing in a criminal rule such as this.

The committee explored the duration portion of the draft rule and asked who (judge, party, clerk) ought to be responsible for monitoring compliance with that part of a court's order.

Judge Dailey asked the subcommittee to consider these, as well as other issues, in refining its proposed draft further before the next committee meeting and commended the members of the subcommittee for all their hard work on this issue.

### **B. Crim. P. 44(e)—Termination of Representation**

Judge Hoffman refreshed the committee's memory that at the last meeting, the committee had approved the subcommittee's proposed changes but had raised two new questions: 1) whether the rule's existing phrase "*deferred prosecution*" should be changed to "*pretrial diversion*," and 2) whether the word "*timely*" should be inserted into the provision that deals with appeals. The subcommittee considered both changes and ultimately decided to adopt both suggestions.

The subcommittee recommended both changes to the rule. After some discussion, the committee approved the two additional changes by a 6-1 vote.

The approved proposal to amend Rule 44(e) reads:

#### **Rule 44. Appearance of Counsel**

(a) - (d) [NO CHANGES]

#### **(e) Termination of Representation.**

(1) Unless otherwise directed by the trial court or extended by an agreement between counsel and a defendant, counsel's representation of a defendant, whether retained or appointed, shall terminate when at the conclusion of trial court proceedings have concluded. and after a final determination of restitution. Trial court proceedings ~~shall conclude~~ "have concluded" when restitution is finally determined and at the point in time:

(I) When dismissal is granted by the court and no timely appeal has been filed;

(II) When the parties have entered into an agreement for pretrial diversion or when an order enters granting a ~~deferred prosecution~~, deferred sentence, or probation if no sentence to incarceration is imposed;

(III) After a sentence to incarceration is imposed upon conviction when no motion has been timely filed pursuant to Crim. P. 35(b) or such motion so filed is ruled on; or

(IV) When a timely notice of appeal is filed by the defendant.

(2) At the time a pretrial diversion order is entered ~~deferred prosecution~~ or deferred sentence is granted or at the time sentence is imposed upon conviction, the court shall inform the defendants when representation shall terminate.

Judge Hoffman agreed to write the transmittal letter to the supreme court.

### **C. Limited Representation/Unbundled Legal Services**

Speaking for the subcommittee, Mr. McGreevy reported that this issue originally came to the committee from Denver County Court Judge Espinosa. Essentially, the question was whether a rule allowing unbundled legal services or limited appearances in criminal cases should be adopted. The subcommittee met a few times and talked to several people, including Judge Espinosa, Judge Taubman from the Court of Appeals, attorneys at the Public Defender's Office, and several private practice criminal defense lawyers. The subcommittee concluded that no rule change is necessary. The subcommittee discussed several drawbacks in allowing limited appearances, including the fact that if an attorney is going to represent someone, he or she needs to understand all the issues to provide quality representation. Mr. McGreevy noted that the subcommittee considered a small exception in county court cases but decided ultimately that no rule should be proposed related to these issues.

This committee decided to table the issue.

## **V. New Business**

The committee considered no new business.

Judge Dailey informed the committee that the civil rules committee has been asked to look at some municipal court rules, some of which concern criminal-type cases. As a result, this committee may, at some point, be asked to look at the municipal court rules.

## **VI. Future Meetings**

October 18, 2019  
January 17, 2020  
April 17, 2020

The committee adjourned at 2:23 PM.

DRAFT