

COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, July 21, 2017

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 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
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. July 21, 2017 agenda
- B. April 21, 2017 minutes
- C. Crim. P. 15 & 55 – subcommittee memo
- D. Crim. P. 41 – subcommittee memo
- E. Crim. P. 5 & 7 – subcommittee memo

II. Approval of Minutes

The January 21, 2017 minutes were adopted as submitted.

III. Announcements from the Chair

- As indicated at the April 21, 2017, meeting, Judge Dailey emailed Justice Coats about the production of records issue raised by Judge Hartmann. As a reminder, Judge Hartmann had asked the committee to consider a rule change allowing applications for orders to produce records to be handled similarly to applications

for search warrants, i.e., electronically or over the phone. The committee concluded that legislation was needed to authorize the supreme court to adopt a rule to modernize procedures for obtaining orders for production of records. In Judge Dailey's email, he urged the supreme court to consider recommending a legislative change to that effect;

- The Committee's revised proposal to amend Rule 16 was submitted and adopted by the supreme court. It will take effect when all districts are online and using the new e-discovery system; and
- Robin Whitley has resigned from the committee. Mr. Whitley has been an outstanding committee member and part of the October meeting will be devoted to recognizing him as such. Judge Dailey's suggestion that he would like to approach Robert Russel to (re)join the committee was met with approval from other committee members.

IV. Old Business

A. Crim. P. 15: Depositions

Judge Fisch, presenting for the subcommittee, proposed that two sentences be added to current text of Crim. P. 15(d):

(d) Taking and Preserving Depositions. Depositions shall be taken and transcribed as the court may direct and upon completion shall be lodged with the clerk of the court. [All depositions shall be videotaped at the expense of the requesting party. A copy shall be provided to the opposing party.](#)

The proposal was based on two considerations: 1) section 18-6.5-103.5 requires that depositions of at-risk adults be taken in a "video imaging format"; and 2) committee members thought all depositions should to be videotaped, and paid for by the party requesting them.

The committee discussed whether the proposal should use a term that more similarly tracked the language of section 18-6.5-103.5 and modern video recording technology. An inquiry was made as to whether all judicial districts have the capability to video depositions, and, if so, whether it was accomplished through formal equipment in courthouses, or via a smartphone or tablet. The committee asked the subcommittee to get some more information from districts and stakeholders, including Alternative Defense Counsel.

The committee also asked the subcommittee to consider revising the first sentence in subsection (d); specifically, should the "lodged" requirement be removed or altered?

The subcommittee will re-address its proposal at the next meeting.

B. Crim. P. 41: Process regarding electronic media seized by means of search warrant

This matter was originally brought to the committee by Mr. Whitley, who is no longer a member of the committee. Before resigning, Mr. Whitley wrote a memo and circulated it to subcommittee members Judge Gilman and Abe Hut. The subcommittee had not yet had a chance to meet and discuss Mr. Whitley’s memo. Donna Skinner Reed volunteered to join the subcommittee to fill the vacancy created by Mr. Whitley’s resignation from the committee.

C. New rule: Access to court files, documents, and hearings.

Judge Grohs stated that the subcommittee is still reviewing the research provided by Ms. Moore. Judge Grohs noted that there was some concern that the rule, as proposed by Mr. Zansberg, only allows for suppression of information after a hearing is held and specific written findings are made. The subcommittee will continue to meet and follow-up on this topic at the October meeting.

D. Crim. P. 55: Court reporter issue

The subcommittee is not ready to propose written changes to the rule. They have met but are waiting to see what, if any, recommendations or proposals on this issue come out of the Civil Rules Committee. The subcommittee will report back at the next meeting.

E. Crim. P. 5 & 7

The committee discussed the subcommittee’s memo, and rephrasing the proposed new language; specifically, throughout the draft stating “level 1 or 2 drug felony” instead of “level 1 or level 2 drug felony”. Also, the committee found Crim. P.7(h)(1) awkward, and asked the subcommittee if they could revise this section. Finally, there was a question about Crim. P. 5 (a)(4)(I) as it relates to section 16-5-301; the rule allows the prosecutor or the defendant to request a preliminary hearing, but the statute doesn’t authorize the prosecutor to request a preliminary hearing. The subcommittee will discuss these matters and report back at the October meeting.

V. Future Meetings

October 20, 2017
January 19, 2018
April 20, 2018

The committee adjourned at 2:30 pm.

*Respectfully submitted,
Jenny Moore*