

COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, January 17, 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. 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
Judge Morris Hoffman	X	
Matt Holman	X	
Abe Hutt	X	
Judge Chelsea Malone	X (phone)	
Kevin McGreevy	X	
Judge Dana Nichols	X (phone)	
Robert Russel	X	
Karen Taylor	X	
Sheryl Uhlmann	X (phone)	
David Vandenberg	X (phone)	
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. January 17, 2020 agenda
- B. October 18, 2019 minutes
- C. Access to Criminal Court Records in Criminal Cases rule draft
- D. 19CV30233

II. Approval of Minutes

- A. The October 18, 2019 minutes were approved as submitted.

III. Announcements from the Chair

- A. Judge Dailey expressed his appreciation for everyone who volunteered for another term of service on the committee. They are Judge Gilman, Judge Grohs, Abraham Hutt, Kevin McGreevy, Judge Nichols, Robert Russel, and David Vandenberg.

- B. Kathryn Michaels reported that the Supreme Court adopted the committee’s proposal to amend rule 44.

IV. New Business

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

This item was handled out of order. The issue is whether a prosecutor’s appeal under Crim. P. 37.1 is supposed to function like an appeal under Colorado Appellate Rule 4.1, and if so, whether an amendment to Crim. P. 37.1 is necessary to make that clear. When Mr. Russel brought up another issue related to appeals taken under Crim. P. 37, Judge Dailey created a subcommittee – comprised of Judge Hoffman (chair), Judge Nichols, Karen Taylor, Sheryl Berry, Abe Hutt, and Robert Russel -- to consider these Crim. P. 37 and 37.1 issues.

V. Old Business

A. New Criminal Rule—Public Access to Court Records

Judge Dailey stated that the new edits to the rule are consistent with comments by the committee at the last meeting and noted that once some final concepts are addressed at today’s meeting, and if the committee comes to an agreement, Judge Dailey and Justice Samour will put the comments together and present the rule to the supreme court for their vote. Judge Dailey noted that there are expediency issues at play and that he would like the rule to be sent to the supreme court soon.

The committee discussed several matters, including, for example, inquiries from David Migoya at the Denver Post; who should have the duty to redact information from court documents; the organization of the rule; and how the rule could work in connection with grand jury indictments and requests for sealed affidavits and arrest warrants; and the duration of orders restricting the public’s access to court documents.

Invited guest Judge Jerry Jones shared that the Public Access Committee, of which he is chair, is currently considering who should have the duty to redact information from court filings. Judge Jones thinks that his committee will ultimately recommend that the civil and criminal rules committees propose rules putting on parties or counsel the onus of redacting information.

The committee also discussed the proposed rule, paragraph by paragraph, and suggested numerous edits thereto. Consensus was ultimately reached on all but one of the proposed provisions. In section d, a member made a motion to have the language say, the “hearing shall be closed to the public.” The motion was seconded,

but when the committee's vote on the motion was 5-5, Chair Judge Dailey cast the deciding vote (6-5) against the motion. Another motion was immediately made that the provision say, "the hearing shall be closed to the public, unless the court in its discretion determines otherwise." That motion was seconded and passed by a vote of 8-2.

Recognizing how close the committee was to completing its work on the proposed rule, a motion was made, seconded, and unanimously approved to work on the rule's finishing touches via email.

VI. Future Meetings

April 17, 2020
July 17, 2020
October 16, 2020

The committee adjourned at 3:32 PM.