November 26, 2013

Chief Justice Michael Bender

Colorado Supreme Court

Ralph L. Carr Judicial Center

2 E.14th Ave.,

Denver, CO 80203

Re: Crim. P. 24(g)

Chief Justice Bender:

I write, on behalf of the Court’s Advisory Committee on Rules of Criminal Procedure, to propose an amendment to Crim. P. 24(g). The proposed amendment prescribes uniform procedures related to the handling of juror questioning of witnesses. The changes the Committee is proposing are attached.

The proposed changes are primarily the result of the Committee’s determination that some trial judges are not allowing parties to be heard on the appropriateness of jurors’ questions prior to posing them to witnesses. The Committee determined this, after conducting a survey of district court practices from around the state. The survey results revealed that the problem was more prevalent than committee members had imagined and that a change in the rule was needed.

While discussing how best to modify Crim. P. 24(g), the committee also discussed whether other procedures for handling juror questions should also be specified in the rule. These again were the result of information gathered in the survey as well as from the collective experience of members of the subcommittee. Mindful that trial judges appropriately prefer to have flexibility in how they conduct trials, the committee ultimately proposed only two additional clarifications, i.e., (1) permitting follow-up questions by the parties to any juror question posed to a witness; and (2) having the court announce its particular procedure for juror questions to the parties.

The court should be aware, however, that the second clarification was proposed on a 6-5 vote of the committee. The minority view was that the second addition was unnecessary, because (1) in many criminal courts, the majority of trials are handled by deputy district attorneys and deputy state public defenders or Alternate Defense Counsel lawyers who are already familiar with the court’s procedures; and (2) a court should retain the flexibility to determine when and how to explain things during trial. The majority, on the other hand, believe that the provision requiring the court to announce its procedures to the parties will benefit not only lawyers new to the particular trial judge but also jurors and defendants (either pro se or represented) who are unfamiliar with juror questions. The majority also felt that having the trial judge tell the parties what its procedures were would lead to smoother and more understandable trials and greater comfort by the parties and jurors with how to proceed.

Sincerely,

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