

COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, October 19, 2018

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	
Robert Russel	X	
Karen Taylor	X	
Sheryl Uhlmann	X	
David Vandenberg	X	
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. October 19, 2018 agenda
- B. July 20, 2018 minutes
- C. Transmittal letters for Crim P. 5+7, 15, 24(g), and 49.5
- D. Crim. P. 24(g) as sent to the court
- E. Crim. P. 24(g) as adopted by the court
- F. C.R.C.P. 80/380 memo and drafts
- G. Crim. P. 55(e) memo
- H. H.B. 18-1078
- I. Crim. P. 11
- J. Crim. P. 5

II. Announcements from the Chair

- Judge Dailey welcomed new committee member Sheryl Uhlmann;

- Judge Dailey announced that the supreme court adopted the committee’s proposals to amend Crim. P. 5, 7, 15, and 49.5; the court also adopted a modified version of the committee’s proposed Crim. P. 24(g).
- Justice Samour explained the modifications to the proposed Crim. P. 24(g): (1) the court removed the requirement that the trial court announce what procedures would be followed (the court did not want to micromanage the trial courts, and people can ask for clarification during the trial if it is needed); and (2) the court also changed the order of some wording to achieve greater clarity.

III. Approval of Minutes

- Karen Yacuzzo suggested deleting, “Ms. Yacuzzo brought to the committee’s attention a digest of legislative bills enacted in Colorado in 2018. She explained to the committee that the SCAO legal team decides which bills might be of interest to the court each session and compiles them into this list.” She suggested replacing it with, “The committee next considered the *Bills to Judicial Officers* spreadsheet, which was prepared by the SCAO legal team for judicial officers and forwarded to the members of the committee at Judge Dailey’s request. Ms. Yacuzzo explained that the spreadsheet only included legislation that SCAO’s legal team determined would be of particular interest to judicial officers as opposed to being a comprehensive list of every bill passed by the General Assembly.” By acclamation, this change was accepted.
- David Vandenberg suggested the following edit: on page 4, under subsection B near the end of the first paragraph, the word “*public*” should be changed to the word “*preliminary*.” By acclamation, this change was accepted.
- The minutes were approved as amended.

IV. Old Business

A. Crim. P. 55(e)—Court reporter issue – Judge Fisch, Karen Taylor, and Matt Holman

Speaking for the subcommittee, Matt Holman reminded the committee that (1) Crim. P. 55(e) currently references C.R.C.P. 80 and 380, which address requirements of court reporters transcribing proceedings; (2) the Civil Rules Committee is proposing that the supreme court eliminate C.R.C.P. 80 and narrow C.R.C.P. 380 so that it doesn’t include references to court reporters. Mr. Holman then noted that his October 5, 2017 memo had presented three options for the committee to consider: (a) eliminating Crim. P. 55(e) altogether under the presumption that CJD 05-03 governs this area; (b) refer to CJD 05-03 in Crim. P. 55(e); or (c) modify the language of C.R.C.P. 80 for placement under Crim. P. 55(e) without a reference to CJD 05-03. In discussing these options, yet another option was raised: put the applicable part of CJD 05-03 into Crim. P. 55(e).

The issue arises, in large part, because of a shortage of court reporters and the lack of File Transfer Recorder (FTR) technology in some rural districts. One committee member noted that that criminal defendants are currently in litigation over instances where courts didn't have court reporters, and that the issue was one of due process.

Some committee members thought referring to CJD 05-03 would be helpful so that people would know where to look for guidance regarding the usage of court reporters. Others said that CJD 05-03 isn't readily available, so referring to it wouldn't be helpful. Further, not all courthouses in Colorado have wireless internet access, so practically speaking, people would not always be able to obtain the directive.

Some committee members voiced support for rewriting the rule to comport with CJD 05-03 so that people wouldn't have to find the CJD itself. A unanimous vote of the committee directed the subcommittee to return with two proposals: (1) a short version of Crim. P. 55(e) which simply referenced the requirements of CJD 05-03 and C.R.C.P. 380; and (2) a larger, more fulsome version of Crim. P. 55(e), incorporating the applicable text of CJD 05-03 itself. Additionally, the committee asked Mr. McGreevy if he would propose language improving on the contents of CJD 05-03 for possible inclusion in Crim. P. 55(e).

The subcommittee was also tasked to return with a recommendation regarding the remainder of Rule 55 as well.

B. New Legislation – Judge Grohs, Kevin McGreevy, and Bob Russel

Judge Grohs reported that the subcommittee reviewed the *Bills to Judicial Officers* spreadsheet and found only one bill (H.B. 18-1078) requiring committee action. C.R.S. § 16-7-207.5, updated by H.B. 18-1078 and effective August 8, 2018, now requires the court to (1) determine whether a defendant has current or prior military service and (2) to inform any defendant with such service that he or she may be entitled to receive mental health treatment, substance abuse treatment, or other services. This inquiry must be made at the defendant's first appearance or upon arraignment, whichever is first.

The new statute further requires that the court not accept a guilty plea or a plea of nolo contendere from a defendant without first making the above inquiry and providing the required information.

The subcommittee proposed changes to Crim. P. 5 and 11 to make the rules compliant with the newly updated C.R.S. § 16-7-207.5.

After discussion, a motion was made, seconded, and unanimously approved by committee, to amend Crim. P. 5 and 11 in the following manner:

Rule 5. Preliminary Proceedings

(a) through (a)(2) [NO CHANGE]

(2.5) Inquiry About Military Service. At the defendant’s first appearance the court shall ascertain whether the defendant is serving in the United States Armed Forces or is a veteran of such forces. The court shall inform any such defendant that he or she may be entitled to receive mental health treatment, substance use disorder treatment, or other services as a veteran.

(3) **Appearance in the Court Not Issuing the Warrant.** If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) and (a)(2.5) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(a)(4) through (a)(5) [NO CHANGE]

(b) [NO CHANGE]

(c) through (c)(1) [NO CHANGE]

(2) **Appearance Before the Court.** At the first appearance in the county court the defendant shall be advised in accordance with the provisions set forth in subparagraphs (a)(2)(I) through (VII) and (a)(2.5) of this Rule.

(3) **Appearance in the County Court Not Issuing the Warrant.** If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2)(I through VII) and (a)(2.5) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

Rule 11. Pleas

(a) through (b)(6) [NO CHANGE]

(7) That in class 1 felonies, or where the pleas of guilty is to a lesser included offense, a written consent shall have been filed with the court by the district attorney;:-

(8) Whether the defendant is currently serving in the United States Armed Forces or is a veteran of such forces. If the defendant is currently serving or is a veteran, the court shall advise the defendant that he or she may be entitled to receive mental health treatment, substance use disorder treatment, or other services as a veteran.

(c) – (f) [NO CHANGE]

Judge Grohs will prepare the transmittal letter explaining the reasons for the proposed amendments.

V. New Business

Judge Grohs brought to the committee's attention H.B. 16-1311, which changed C.R.S. § 18-1.3-702 in 2016. HB 16-1311 requires a judge to instruct a defendant that if they can't pay restitution right away, they must make a payment plan according to their ability to pay.

Judge Grohs, Ms. Uhlmann, and Mr. Vandenberg all volunteered to serve on this subcommittee to explore how this statute impacts the criminal rules.

VI. Future Meetings

January 18, 2019
April 19, 2019
July 19, 2019

The committee adjourned at 1:58 PM.

*Respectfully submitted,
Kathryn Michaels*