

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting
Friday, July 20, 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	
Megan Ring	X	
Karen Taylor	X	
David Vandenberg	X	
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. July 20, 2018 agenda
- B. April 20, 2018 minutes
- C. Crim. P. 15 draft
- D. Crim. P. 55(e) memo and C.R.C.P. 80 and 380 drafts
- E. Crim. P. 49.5 suggested amendments and memo
- F. Crim. P. 5 1973 and Crim. P. 7 1973
- G. Crim. P. 5 1988 and Crim. P. 7 1988
- H. Legislative Bills to Judicial Officers

II. Announcements from the Chair

- Judge Dailey welcomed Kathryn Michaels, the new rules staff attorney.
- Congratulations to Megan Ring on her new position as State Public Defender. Ms. Ring will be leaving the committee and will nominate her replacement.

- Judge Dailey welcomed the new Supreme Court Liaison, Justice Carlos Samour. Justice Samour indicated that he hopes to attend the beginnings of meetings in the future.

III. Approval of Minutes

The April 20, 2018 minutes were adopted with amendments to correct the following typographical errors: (1) in section IV(A), third bullet point, delete the apostrophe after clerks; (2) in section IV(A), last sentence, add the word *to* after *Mr. McGreevy*; (3) in section IV(C), near the end of page 4, delete *d* after *to determined*; and (4) in section IV(C), last paragraph, substitute *as reflected* for *as reflect*, and insert *the* before *reason*.

IV. New Business

A. Crim. P. 49.5

Judge Dailey took an agenda item out of order to allow Ms. Morrison to present suggested amendments to Crim. P. 49.5 in accordance with changes to CJD 11-01. Ms. Morrison explained that the proposed changes to Crim. P. 49.5 remove outdated language now that e-filing has been implemented. Additionally, a dead link was deleted, and under the comments section, the new e-filing website would be listed.

The committee briefly discussed the usage of “court location” in Crim. P. 49.5(m)(3) and deemed the phrasing confusing. The committee considered other options and ultimately proposed a friendly amendment to remove “location” entirely and instead have the rule state, “In courts where proposed orders are not required, a proposed order need not be filed with the court.” A motion to approve the proposed amendment was made, seconded, and unanimously passed.

The proposed amendments read:

Rule 49.5 Electronic Filing and Service System

(a) Types of Cases Applicable. E-Filing and E-Service may be used for certain cases filed in the courts of Colorado as the service becomes available. ~~The availability of the E-System for criminal cases will be determined by the Colorado Supreme Court and announced through its website www.jbits.courts.state.co.us/efiling/ and through published directives to the clerks of the affected court systems.~~

(b)-(l) [NO CHANGE]

(m) Form of Electronic Documents.

(1) Electronic Document Format, Size, and Density. Electronic document format, size, and density shall be as specified by Chief Justice Directive # 11-01.

(2) Multiple Documents. Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

(3) Proposed Orders. Proposed orders shall be E-Filed in editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the clerk's office and must be resubmitted. [In courts where proposed orders are not required, a proposed order need not be filed with the court.](#)

(n)-(o) [NO CHANGE]

COMMENTS

2014

[1] The Court authorized service provider for the program is the Integrated Colorado Courts E-Filing System (www.jbits.courts.state.co.us/icces).

[2] “Editable Format” is one which is subject to modification by the court using standard means, such as Word or WordPerfect format.

[3] C.R.C.P. 77 provides that courts are always open for business. This rule is intended to comport with that rule.

2017

[4] Effective November 1, 2016, the name of the court authorized service provider changed from the “Integrated Colorado Courts E-Filing System” to “Colorado Courts E-Filing” (www.jbits.courts.state.co.us/efiling/).

2018

[5] [The website for the Colorado Courts E-filing system is now www.courts.state.co.us/efiling.](http://www.courts.state.co.us/efiling)

Ms. Morrison will prepare the transmittal letter for the proposed rule change.

V. Old Business

A. Crim. P. 15: Depositions

Speaking for the subcommittee, Judge Fisch introduced a draft of Crim. P. 15. The committee discussed whether certified copies of transcripts should be required for subsection (f). Issues discussed included: what qualifies as certified; what are the costs to make something certified; who would be creating the transcripts and whether this could lead to questions on the accuracy of the transcript; and finally, what does certification add. A motion to adopt the proposed Crim. P. 15 as written by the subcommittee was made, seconded, and passed unanimously.

The proposed amendments to Rule 15 read:

Rule 15. Depositions

(a) – (c) [NO CHANGE]

(d) **Taking and Preserving Depositions.** Depositions shall be taken ~~and transcribed as~~ directed by the court. All depositions shall be preserved by video recording at the expense of the requesting party. A copy of the video recording ~~may direct and upon completion~~ shall be ~~lodged~~ filed with the clerk of the court and provided to the opposing party.

(e) [NO CHANGE]

(f) ~~Copies~~ Transcripts of Depositions to Defendant. ~~If the deposition is taken at the instance of the prosecution, a transcribed copy of it shall be furnished without cost to the defendant promptly upon the defendant's request. The requesting party shall file a transcript of the deposition with the clerk of the court and provide a copy to the opposing party without cost.~~

Judge Fisch will draft the transmittal letter.

B. Crim. P. 7(h) and 5(a)(4)

Subcommittee chair Mr. Vandenberg reported that he looked through the historical language of the two rules dating back to when they were enacted in 1973 and amended in 1988, and both iterations of the rules included the language regarding the prosecutor's request for a preliminary hearing. A motion and a second were taken to keep "prosecutor" in the rules.

One committee member noticed that "a" appears before one of the drug felony levels but not the others. Mr. Vandenberg accepted a friendly amendment to include "a" before all the drug felony levels. The committee voted unanimously to approve these changes.

The proposed amendments to the rule are:

Rule 5. Preliminary Proceedings

(a) through (a)(3) [NO CHANGE]

(a)(4) **Preliminary Hearing – County Court Procedures.** Every person accused of a class 1, 2, or 3 felony or a level 1 or 2 drug felony in a felony complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony or a level 3 or 4 drug felony by felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 18-1.3-406 or is a sexual offense under part 4 of article 3 of

title 18, C.R.S., shall have the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony [or a level 3 or 4 drug felony](#) who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony [or a level 3 or 4 drug felony](#) who is not entitled to a preliminary hearing shall, unless otherwise waived, participate in a dispositional hearing for the purposes of case evaluation and potential resolution. The following procedures shall govern the holding of a preliminary hearing:

(a)(4)(I) through (a)(4)(VIII) [NO CHANGE]

(a)(4.5) through (a)(5) [NO CHANGE]

(b) through (c) [NO CHANGE]

Rule 7. The Indictment and the Information

(a) through (h) [NO CHANGE]

(h)(1) In cases in which a direct information was filed pursuant to Rule 7(c), charging: (1) a class 1, 2, or 3 felony; (2) [a level 1 or 2 drug felony](#); or (3) a class 4, 5, or 6 felony [or a level 3 or 4 drug felony](#) if such felony requires mandatory sentencing or is a crime of violence as defined in section 18-1.3-406 or is a sexual offense under part 4 of article 3 of title 18, C.R.S., [a preliminary hearing is authorized](#). Either the defendant or the prosecutor may request a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony [or a level 3 or 4 drug felony](#) who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony [or a level 3 or 4 drug felony](#) who may not request a preliminary hearing shall participate in a dispositional hearing unless otherwise waived for the purposes of case evaluation and potential resolution. Except upon a finding of good cause, the request for a preliminary hearing must be made within 7 days after the defendant is brought before the court for or following the filing of the information in that court and prior to a plea. No request for a preliminary hearing may be filed in a case which is to be tried upon indictment.

(h)(2) through (h)(5) [NO CHANGE]

(i) [NO CHANGE]

Mr. Vandenberg will compose the transmittal letter to the supreme court.

C. S.B. 18-223

Ms. Yacuzzo reported that S.B. 18-223 was ultimately vetoed by the Governor and is now a dead issue.

D. Crim. P. 55(e)

The subcommittee noted that the Civil Rules Committee voted to repeal C.R.C.P. 80 and simply refer to CJD 05-03 on court reporters. The Colorado Supreme Court has not yet adopted the repeal of C.R.C.P. 80; however, if they do, it will impact Crim. P. 55(e), which references C.R.C.P. 80.

At this point, there are two options: 1) do as the Civil Rules Committee has proposed and repeal (e) and refer to CJD 05-03, or 2) import language from the current C.R.C.P. 80 into Crim. P. 55(e).

One committee member noted that CJD 05-03 essentially states that the court can hold all types of proceedings without a reporter. A few committee members mentioned that it is desirable to always have a court reporter, but also noted the economics of requiring that. Additionally, a few members mentioned the unattainability of court reporters. They shared that frequently around Colorado, job openings for court reporters receive no applicants, and positions remain vacant.

The subcommittee was split on their recommendation. Two members preferred deferring to CJD 05-03, while another member wanted to use C.R.C.P. 80's language in Crim. P. 55(e).

Subcommittee member Mr. Holman will recirculate a memo dated October 5, 2017 on the topic for the next committee meeting so that the committee can be prepared to take immediate action should the Colorado Supreme Court adopt the changes to C.R.C.P. 80. The committee will also be prepared to hold an interim meeting to discuss the direction of Crim. P. 55(e) if necessary.

VI. New Business, continued

B. Legislative Bills to Judicial Officers

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.

Judge Grohs, Mr. McGreevy, and Mr. Russel all volunteered to look at which, if any, of these bills impact criminal rules.

One committee member pointed out that a new bill requires judges to inquire about a defendant's veteran status and advise on treatment and services, whatever those might be. This bill will need to be investigated to see if it impacts Crim. P. 5.

C. Suppression of Cases

Ms. Skinner Reed cited recent Colorado news reports discussing suppression of whole criminal cases as possibly impacting criminal rules. Current statutes require for at least minimal information to be available. While there doesn't appear to be a rule that grants authority to suppress entire cases, there is a CJD that discusses restricting access to certain information, such as social security numbers. Ms. Skinner Reed will further consider whether there is a proposal she would like to bring to the committee.

VII. Future Meetings

October 19, 2018
January 18, 2019
April 19, 2019

The committee adjourned at 1:48 PM.

*Respectfully submitted,
Kathryn Michaels*