

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

I. Attachments & Handouts

- A. October 20, 2017 agenda
- B. July 21, 2017 minutes
- C. Crim. P. 35(c) – proposal and revised proposal
- D. Crim. P. 15 – subcommittee memo
- E. Crim. P. 55 – subcommittee memo

II. Approval of Minutes

The July 21, 2017 minutes were adopted with one amendment; in subsection (e) “primary” was changed to “preliminary.”

III. Announcements from the Chair

- Judge Dailey welcomed Denver District Attorney Chief Deputy Robert Russel to the committee. Mr. Russel had previously served as a member of the committee from 2000-2002.
- Judge Dailey stated that after the adjournment of business today, the committee would recognize Robin Whitley for the many contributions he made on behalf of the committee over the years; and
- Jenny Moore recounted that two rule changes had been adopted since the last meeting, Rule Change 2017(07), Rule 16, and Rule Change 2017(08), Rules 4 & (9). She also noted that a correction to Rule Change 2017(08) was made adding in text that was inadvertently omitted.

IV. Old Business

A. Crim. P. 15: Depositions

Judge Fisch, presenting for the subcommittee, stated that the changes are marked in the draft and she moved for adoption of the rule change. It was seconded and discussion began.

Questions were raised as to how depositions remained part of the court record; what would happen if a party accidentally destroyed or lost copies of CDs on which depositions were stored; whether the requirement that the deposition be “lodged” with the court should be deleted from the rule; and even, whether the committee should propose amending the rule at all; and, if it did, whether the phrase “video imaging format” in the proposed amendment needed to be changed because it was vague.

The committee decided to take a straw vote on a few concepts:

- Should all depositions be video recorded? Answer: Yes, by a vote of 8-2.
- Should the references to “video imaging format” in the second and third sentences of proposed subsection (d) be changed to “video recording” and “recording,” respectively? Answer: Yes, by a vote of 10-2.
- Should the Clerk’s Advisory Committee be asked about a proposal to added the phrase “transmitted to the court” in the last sentence of subsection (d)? By a vote of 9-1, the answer was “Yes.”; and
- Should subsection (f) be deleted from the present rule? By a vote of 5-3, the answer was, “Yes.”

The subcommittee will report back at the next committee meeting.

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

Judge Gilman reported that she and the other members of the subcommittee (Abe Hut and Donna Skinner Reed) had reviewed the proposal and memo previously submitted to the committee by Mr. Whitley. A motion to pass the proposed changes to Rule 41(d)(5)(VI) and (VII), but without the proposal to publish an accompanying comment, passed by a vote of 7-0, with three abstentions. Judge Gilman will draft the transmittal letter.

The committee recommends that the proposed changes be effective immediately.

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

Judge Dailey stated that he had spoken to Judge Jones, chair of the Public Access Committee. Judge Jones thinks issues related to the release of or access to documents would fall within the purview of the supreme court's advisory committee on Public Access; he agreed that our committee was the appropriate one to consider public access to court proceedings.

After some discussion, the committee decided, by a vote of 11-0, not to recommend adoption of the rule that had been proposed by Mr. Zansberg. In the committee's view, the matters encompassed in the proposed rule are adequately addressed in CJD 05-01 and existing case law.

D. Crim. P. 5 & 7

Subcommittee chair, Dave Vandenberg, stated that the subcommittee is still working on proposed changes to the rules, and that he would follow-up with them at the next meeting,

E. Crim. P. 55: Court reporter issue

Judge Fisch reported that the Civil Rules Committee is proposing that the supreme court repeal C.R.C.P. 80 and add a comment directing practitioners to CJD 05-03.

The subcommittee thought it could submit a tandem rule change with the civil rule committee, deleting subsection (e), or it could rewrite the provision. Ultimately, the committee was unsure whether it should follow the lead of the Civil Rules Committee or propose its own rule. A motion was made and passed to table this matter until the January meeting.

V. New Business

A. Crim. P. 35(c)

Judge Dailey introduced a proposal brought to him by a member of his court to amend two parts of Crim. P. 35(c). The purpose of the amendments would be to foreclose a

person's ability to pursue in a postconviction relief petition a claim which could have been brought in a prior appeal if an appeal had been pursued. A subcommittee of Judge Gilman, Robert Russel, and Karen Taylor was tasked to review the proposal.

B. Thank-you, Robin Whitley!!

A thank-you celebration was held for longtime member, Robin Whitley, for his service, to the committee on many, many occasions.

VI. Future Meetings

January 19, 2018

April 20, 2018

July 20, 2018

The committee adjourned at 3:00 pm.

*Respectfully submitted,
Jenny Moore*