



Civil Rules Committee and the Rules of Criminal Procedure Committee

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This overview of the Colorado Civil and Criminal Rules Committees provides details as to the purpose, goals, structure, and organization of these committees in their advisory capacity to the Colorado Supreme Court ("Court"). In addition, this article includes information on how to research the history of the rules of both committees.

Not only is the Court the court of last resort in the Colorado court system, but it also has rule-making power: "The supreme court shall make and promulgate rules governing the administration of all courts and shall make and promulgate rules governing practice and procedure in civil and criminal cases."¹ Further, the Court has "supervisory power over all other state courts and over all attorneys practicing law in Colorado."² The Court exercises this supervisory power over Colorado courts and attorneys through a system of advisory committees.

There currently are twenty-one committees that provide recommendations to the Court. The recommendations of these committees address particular matters related to the court system or to the administration of the judicial branch. Each justice of the Court serves as a liaison to several of these committees.³ The Clerk of the Court acts as a liaison among the Supreme Court, Court committees, and State Court Administrator's Office. Two of these twenty-one Court committees are the Civil Rules Committee and Rules of Criminal Procedure Committee, both of which are described in more detail below.

Civil Rules Committee

Although the Civil Rules Committee (also referred to as the "Standing Committee on Civil Rules") was officially founded as a committee of the Court in 1978, a code for civil actions actually existed as far back as 1887: "An Act to provide a code of procedure in civil actions. . . ."⁴ On January 6, 1941, the Court adopted the new Colorado Rules of Civil Procedure ("C.R.C.P." or "Civil Rules"). The Rules became effective on April 6, 1941.

The Civil Rules Committee "is charged with the responsibility of periodic review, correcting, updating and improvement of all of the State Court Civil Rules except Appellate Rules [now handled by the Appellate Rules Committee] and the Colorado Rules of Evidence [now handled by the Evidence Rules Committee]."⁵ The Civil Rules

govern the procedure in the supreme court, court of appeals, district court and superior courts and in the juvenile and probate courts of the City and County of Denver, in all actions, suits and proceedings of a civil nature, whether cognizable as cases at law or in equity, and in all special statutory proceedings, with the exceptions stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determinations of every action.⁶

Driving factors for changes and additions to the Civil Rules are the need to: (1) improve the interrelationships between existing rules; (2) comply with new legislation; or (3) keep up with progress. Attorney Richard W. Laugesen is the chair of the Civil Rules Committee, a position he has held since 1982. The Court liaison to this Committee is Justice Nancy E. Rice.

Special thanks to Richard W. Laugesen, Committee Chair to the Civil Rules Committee; Justice Nancy E. Rice, Supreme Court Liaison to the Civil Rules Committee; Troy C. Singleton, Administrative Assistant to the State Court Administrator; Judge John Dailey, Committee Chair of the Committee on Criminal Rules; Terri Morrison, Committee on Criminal Rules staff; Mac V. Danford, Clerk of the Court; and, Martha Campbell, Supreme Court Librarian who provided the content for this article.

Goals and Committee Makeup

The goals of the Civil Rules Committee have remained relatively the same since its inception, save for the removal of Appellate Rules and the Rules of Evidence to separate committees. The Civil Rules Committee has become larger over time and now encompasses a diverse group of members, representing more varied areas of law. Although the number of members is not mandated, at present, the Civil Rules Committee is comprised of twenty-seven members from such backgrounds as “district and county judges; appellate judges; trial court magistrates; a district court clerk; law school professors; and attorney litigators in various areas of practice, including personal injury, business, family law, legal aid, real estate, collections, professional liability, and general litigation.”⁷

Civil Rules Committee members are not paid for their service. Members have set term limits, but sometimes terms are extended or renewed. Members of the Committee are appointed by the Court. Potential candidates for Committee membership are identified by the Court, the Committee itself, or other courts. Members of the public also may submit an application to serve on the Committee, although no one ever has. The Committee has a few standing subcommittees including Federal Rules of Civil Procedure (“Federal Rules”), Small Claims Rules, County Court Rules, Practice Standards, Garnishment Rules, and Forms.

Organization

The Civil Rules Committee meets at minimum of seven times a year—the last Friday of January, March, April, June, August, September, and October—but can meet more or less often as needed. These meetings take place in the Supreme Court Conference Room of the Colorado Judicial Building. Although the Committee does not fall under the open meetings law, all meetings of the Civil Rules Committee since 1982 have been and continue to be open to the public.

The Civil Rules Committee website⁸ displays notice of upcoming meetings with agenda items at least one week in advance of the meeting date. When necessary, persons with special knowledge, or those opposed to or in favor of a proposed rule change, are invited to speak at the meetings. Interested parties also may contact Chair Richard W. Laugesen or Troy C. Singleton, Administrative Assistant to the State Court Administrator, to obtain agendas for upcoming meetings.⁹

There is no single source from which the Civil Rules Committee receives suggestions or recommendations for changes to the Civil Rules. As previously noted, the Civil Rules Committee jurisdiction is far-reaching, encompassing the rules guiding district, county, magistrate, small claims, probate and water courts, family law, and professional conduct. The Committee receives input from many different sources, including the Court itself and Court of Appeals, the Bar associations and their individual sections, other committees, legislators, judges, individual members of the Bar, and the public. Historically, the Colorado Civil Rules have been patterned after the Federal Rules. Thus, the Committee looks to the Federal Rules for guidance and attempts to follow the pattern of the Federal Rules where possible.

Based on submitted changes or additions, the Civil Rules Committee makes its recommendation directly to the Court, which considers and determines whether the particular recommended change or addition will be adopted. The Court often invites written public comment and/or holds a public hearing

before reaching its final decision on a proposed change or addition. Public hearings and meetings are announced in advance in *The Colorado Lawyer* and on the Civil Rules Committee website.¹⁰ The hearings are held in the Supreme Court courtroom on the fifth floor of the Colorado Judicial Building in Denver. Public hearings are similar in nature to an oral argument.

A majority vote is required to implement a change or addition to a civil rule. Because the vote does not need to be unanimous, rules can be added or amended, even if there are dissenting votes. Once a change or addition has been adopted, the Court issues its order, which is then reported to *The Colorado Lawyer*, LexisNexis™, the West Group, and Bradford Publishing. The full text of the order is published in the “Court Business” section of *The Colorado Lawyer*, as well as linked on the Colorado Bar Association website.¹¹

Researching Colorado Civil Rules

Because the Colorado General Assembly adopted the original Code of Civil Procedure in 1887, the Code may be found in the 1887 Session Laws and, later, in the 1908 Colorado statutes, which were the first statutes published after 1887. The Code is located at the beginning of the statutes themselves, as opposed to being included therein. In 1941, in order for the Code to be amended so that it conformed to the Federal Rules, the Court first adopted the Colorado Rules, replacing Volume 1 of the 1935 Colorado Statutes Annotated that includes the Code with a new Volume 1 that contains the Rules. Between 1941 and 1978, the Court appointed *ad hoc* committees when changes to the Civil Rules were necessary. Changes were subsequently published in all codifications of the Colorado statutes.

The Civil Rules Committee website now contains all changes to the “Rules of the Court,” including those made to the Colorado Rules from the past seven years, minutes to the most recent meetings of the Civil Rules Committee, and a list of current members.¹² Historical versions of both the Civil Rule changes and meeting minutes are kept at the Office of the State Court Administrator.¹³ To view these documents, contact Committee Chair Richard Laugesen or administrative staffperson Troy C. Singleton to set an appointment.¹⁴ Copy costs may apply.

Criminal Rules Committee

The primary responsibility of the Colorado Supreme Court Advisory Committee on Rules of Criminal Procedure (“Criminal Rules Committee”) is the just determination of criminal proceedings. These proceedings ensure that the procedures respond to the constitutional rights of the plaintiff and defendant as to accurate fact-finding and the accommodation of evidentiary issues.

Goals and Committee Makeup

The Colorado Rules of Criminal Procedure (“C.R.Crim.P.” or “Criminal Rules”), as set forth in Criminal Procedure Rule 2, “shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.”¹⁵ As is the case with the Civil Rules Committee, much of the Criminal Rules Committee’s work involves responding to how the Criminal Rules are affected by recent case law and statutes in Colorado, as well as in other jurisdictions around the country. Judge John Dailey of the Colorado Court of Appeals holds the position of Committee Chair. The Colorado

Supreme Court liaison to this Committee is Justice Alex J. Martinez.

Membership of the Criminal Rules Committee currently stands at fifteen and "is comprised of District and County Court judges, prosecutors and defense attorneys,"¹⁶ as well as one appellate judge and one Supreme Court justice as liaison. As with the Civil Rules Committee, however, there is no particular number of members required, and there is no stipend or reimbursement of expenses for serving on the Criminal Rules Committee. The Committee discusses new appointments and makes recommendations, but it is the Supreme Court that ultimately renews the terms of members, as well as appoints new members.

Criminal Rules Committee members serve in staggered terms of three years, unless a member resigns. At the end of three years, there is no right to continue on the Criminal Rules Committee, but as is the case with the Civil Rules Committee, a member may be asked to continue for another term. When selecting members, a balance is sought between prosecuting and defense attorneys, among judges from different levels of jurisdiction, and between rural and metropolitan regions. Consideration is given to expanding the Criminal Rules Committee to non-lawyers, but as yet, this has not been done. Those invited to join usually have an expertise or experience the Criminal Rules Committee finds desirable. There is a legislative subcommittee, and other subcommittees are formed on an as-needed basis.

Organization

The Criminal Rules Committee meets at least four times a year. This Committee is not subject to the "open meetings" (that is, public meetings) law because it is an advisory Committee.¹⁷ The open meetings law applies to executive agencies, boards, and the General Assembly. The Colorado Supreme Court decides whether to hold public hearings on proposed Criminal Rule changes. This hearing is similar to arguing a case before the Court, where the pros and cons are presented. When a public hearing is called, the hearing date is posted on the Court website.¹⁸

As is the case with the Civil Rules Committee, recommendations for Criminal Rule changes or additions often come from Criminal Rules Committee members. Trial courts and criminal practitioners will often give the Criminal Rules Committee recommendations to review and analyze. Then, the Criminal Rules Committee, in its advisory capacity to the Court, will send back an analysis of the Court's inquiry. The public also may make a recommendation to any Criminal Rules Committee member by writing to the Chair of the Committee or to the Office of the State Court Administrator.¹⁹ There will be a preliminary assessment of some, but not all, recommendations by the Criminal Rules Committee. Then, if the Committee chooses to do so, it may invite the person making the recommendation to address the Criminal Rules Committee in greater detail.

When the Criminal Rules were first adopted in 1961,²⁰ they often paralleled the Federal Rules, with some deviations. Passage, deletion, or modification of a federal criminal rule may but will not necessarily trigger a rule change in Colorado. Regardless of the original source of a proposed rule change or addition, the Criminal Rules Committee advises and makes recommendations to the Court to assist the Court in its duty to set criminal procedure by which cases are brought to trial.

In making recommendations, the Criminal Rules Committee considers the statutes passed by the Colorado legislature, Colorado case law, recommendations from other advisory committees to the Court, federal and state Rules of Procedure, and the experience and insight of its members. Also taken into account are how these rules will affect criminal trials in rural areas of Colorado and the Western Slope, and how the availability of technology—or, perhaps more important, the lack thereof—might impact the procedural rules. The Court accepts, rejects, or modifies the Criminal Rules Committee's recommendations or sends them back to the Criminal Rules Committee for further study.

Researching Colorado Criminal Rules

Once a change or addition to the Criminal Rules has been adopted, it is posted on the Court website²¹ and is reported to *The Colorado Lawyer*, where it is published in the "Court Business" section, as well as linked on the Colorado Bar Association website.²² Occasionally a "Criminal Rules Committee Comment" or "Rule Comment" is added to a specific rule, indicating the intent or purpose of the Rule. At the discretion of the Criminal Rules Committee, excerpts from minutes, reports, announcements of public hearings, and proposed rules are posted on the Criminal Rules Committee website, as is a list of current members.²³

Although the Public Records Act does apply to some records maintained by the State Judicial Department, it does not apply to the Colorado Supreme Court.²⁴ The Court records are privileged because it is granted its rule-making powers under

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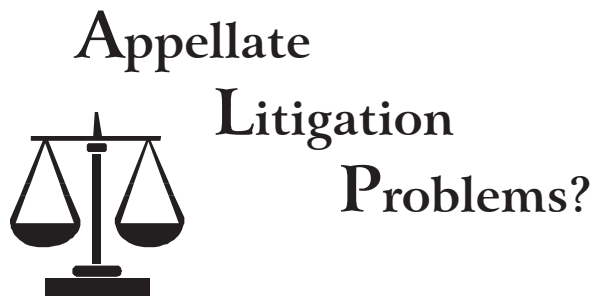


Kurt C. Hofgard, JD, CLU, ChFC

the Colorado Constitution. However, many records of the Criminal Rules Committee are made available on request to review or copy. In this instance, Terri Morrison, the staffperson assigned to the Criminal Rules Committee, will provide copies of most records.²⁵

In terms of historical documentation, there are records of correspondence, supporting documents, and minutes dating back to 1979. Audiotapes of Court public hearings discussing proposed changes to the Criminal Rules date back to 1983 and are available from the Clerk of the Supreme Court. The Clerk's office also can provide an index of these tapes, as well as any assistance that may be needed. Practitioners must bring their own equipment to listen to the tape or to make a copy of it. The tapes can be checked out with a valid I.D., but they cannot be taken from the fourth-floor reception area. There is no cost associated with using these tapes.

Colorado has always had a criminal code, including substantive and procedural law. The 1868 Colorado Revised Statutes ("CRS") for the territory of Colorado, in Chapter XII, and the first state statutes, the 1877 General Laws of the State of Colorado, in Chapter XXII, contain a Criminal Code. However, other sections concerning criminal laws and procedures are found throughout these and subsequent codifications of statutes. The Colorado legislature gave rule-making power to the Colorado Supreme Court in 1960, now found at CRS § 13-2-109. The Criminal Rules, first appearing in Bradford Publishing's Volume 1 of the 1963 CRS, separated the procedural law from the substantive, leaving the latter to the legislature. The Criminal Rules can be found in the CRS from 1963 forward.²⁶



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NOTES

1. Colorado Constitution, Art. VI, § 21.
2. Colorado Judicial Branch, Office of the State Court Administrator, *Colorado Courts at a Glance* (n.d.), available at <http://www.courts.state.co.us/exec/pubed/brochures/newglanceweb.pdf>.
3. Colorado Judicial Branch, *Colorado Supreme Court Overview* (rev. 1/23/04), available at <http://www.courts.state.co.us/supct/committees/nomcommdocs/overview/supctoverview.htm>.
4. Colo. Sess. Laws 97 (1887).
5. Colorado Judicial Branch, *Civil Rules Committee* (n.d.), available at <http://www.courts.state.co.us/supct/committees/rulescivilprocedure.htm>.
6. C.R.C.P. 1; *West's Colo.Rev. Stats. Annot.*, Court Rules, Chaps. 1 to 6 (St. Paul, MN: West Group, 2003).
7. Colorado Judicial Branch, Colo. Sup. Court Comm. on Civil Rules, available at <http://www.courts.state.co.us/supct/committees/rulescivilprocedure.htm>.
8. *Id.*
9. Contact Richard W. Laugesen at (303) 300-1006; fax, (303) 300-1008; e-mail, laugesen@indra.com. Contact Troy C. Singleton at (303) 861-1111; fax: (303) 837-2340; e-mail, troy.singleton@judicial.state.co.us.
10. The Civil Rules Committee website is available at <http://www.courts.state.co.us/supct/committees/rulescivilprocedure.htm>.
11. See <http://www.cobar.org> and click on opinions/rules/statutes.
12. Go to <http://www.courts.state.co.us/supct/rules/rulesindex.htm>.
13. Located at 1301 Pennsylvania St., Suite 300, Denver, CO 80203.
14. *Supra*, note 9.
15. Colorado Judicial Branch, *Colorado Supreme Court Committee on Criminal Rules*, available at <http://www.courts.state.co.us/supct/committees/rulescriminalprocedure.htm>.
16. *Id.*
17. CRS §§ 24-72-201 *et seq.* Open Meetings Law or Sunshine Act; CRS § 24-6-401-402.
18. See <http://www.courts.state.co.us/supct/supctindex.htm>.
19. *Supra*, notes 2 and 9.
20. See "Symposium on the Colorado Rules of Criminal Procedure," 34 *Rocky Mt. L.Rev.* 1 (1961); Scott, Jr., "1963 Amendments to Colorado Rules of Criminal Procedure," 35 *U. Colo. L.Rev.* 303 (1963).
21. Available at <http://www.courts.state.co.us/supct/rules/rulesindex.htm>.
22. Available at www.cobar.org, then click on opinions/rules/statutes.
23. Available at <http://www.courts.state.co.us/supct/committees/rulescriminalprocedure.htm>.
24. *Supra*, note 17.
25. Contact Terri Morrison at (303) 356-8389; fax, (303) 837-2340; e-mail, terri.morrison@judicial.state.co.us.
26. See note 20, *supra*. ■

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