

AGENDA
COLORADO SUPREME COURT
ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

Friday, October 21, 2022, 12:45 p.m.
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

- I. Call to Order
- II. Approval of Minutes from the July 15, 2022, Meeting
- III. Announcements from the Chair
- IV. Old Business
 - A. Civil Infraction Rules—HB 22-1229’s Possible Impact on Form A—(Sheryl Berry/Christian Champagne/Sheryl Uhlmann)
- V. New Business
 - A. Email from Jessica Yates and the Attorney Regulation Counsel—Crim. P. 16—(Judge Dailey)
- VI. Future Meetings
 - A. January 20; April 21; July 21; October 20
- VII. Adjourn

NOTICE
ANYONE WISHING TO INQUIRE ABOUT AN AGENDA ITEM
MAY CONTACT THE CHAIRPERSON OF THE COMMITTEE,
JUDGE JOHN DANIEL DAILEY, AT 720-625-5342.

From: Jessica Yates <j.yates@csc.state.co.us>
Sent: Tuesday, September 20, 2022 3:44 PM
To: samour, carlos <carlos.samour@judicial.state.co.us>; dailey, john <john.dailey@judicial.state.co.us>
Subject: [External] New matter for Criminal Rules of Procedure Committee?

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Good afternoon Justice Samour and Judge Dailey,
I'd like to explore a possible rule change with the Committee on the Rules of Criminal Procedure. My inquiry is based on the following provision, the highlighted portion:

Rule 16 - Part III.

(c) Custody of Materials. Materials furnished in discovery pursuant to this rule may only be used for purposes of preparation and trial of the case and may only be provided to others and used by them for purposes of preparation and trial of the case, and shall be subject to such other terms, conditions or restrictions as the court, statutes or rules may provide. Defense counsel is not required to provide actual copies of discovery to his or her

client if defense counsel reasonably believes that it would not be in the client's interest, and other methods of having the client review discovery are available. An attorney may also use materials he or she receives in discovery for the purposes of educational presentations if all identifying information is first removed.

Historically, when we learn of an attorney's arrest for a serious crime or a criminal conviction, we've requested the discovery from the DA's office, and generally they've been pretty responsive. (We also provide information to DA offices upon request or refer certain types of cases .)

In the past year or so, DA offices have increasingly declined to provide the discovery to us upon request, citing this provision as prohibiting them from sending us the discovery. Reviewing the language, I can see the concern, since our disciplinary matter isn't "the case" in the phrase "for purposes of preparation and trial of the case."

I'm wondering if a minor amendment could be made, perhaps to add " , unless allowed by court rule or a court order," or something like that. Prosecutors are subject to Colo. RPC 8.1's duty to report. Other court rules could be in play too. Another possibility is something like, "This restriction on disclosure and use does not prevent a prosecutor from disclosing the discovery to the Office of Attorney Regulation Counsel." I'm sure there are other options too – maybe even a Comment to the Rule.

I'm happy to discuss by phone or in-person. Thank you for any suggestions you may have to get this issue teed up for consideration.

Jessica E. Yates
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