

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE**

**Minutes of Meeting
Friday, May 30, 2014**

A quorum being present, the Colorado Supreme Court’s Advisory Committee on Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m., in the 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 Michael Berger, Chair | X | |
| David R. DeMuro | X | |
| Judge Ann Frick | | X |
| Peter Goldstein | X | |
| Lisa Hamilton-Fieldman | X | |
| Richard P. Holme | X | |
| Judge Jerry N. Jones | | X |
| Charles Kall | X | |
| Thomas K. Kane | X | |
| Debra Knapp | X | |
| Cheryl Layne | X | |
| Richard Laugesen | X | |
| David C. Little | X | |
| Chief Judge Alan Loeb | X | |
| Professor Christopher B. Mueller | X | |
| Judge Ann Rotolo | X | |
| Frederick B. Skillern | X | |
| Lee N. Sternal | X | |
| Ben Vinci | X | |
| Magistrate Chris Voisinet | X | |
| Judge John R. Webb | X | |
| J. Gregory Whitehair | | X |
| Christopher Zenisek | X | |
| Non-voting Participants | | |
| Justice Allison Eid, Liaison | X | |
| Carol Haller | X | |
| Teresa Tate | X | |

I. Attachments & Handouts

- A. Agenda packet
- B. Revised Clawback language May 30, 2014 (Mueller Synthesis)

II. Announcements from the Chair

Minutes of the March 21, 2014 meeting were approved with no revisions.

C.R.C.P 42.1 was amended to address a filing issue. It did not need to go through the Committee, and was approved by the supreme court on April 29, 2014.

The supreme court did not adopt the Committee's proposed rule changes to C.R.C.P. 54(d) and C.R.C.P. 121 §1-22. The supreme court decided it was not appropriate to overrule one of its cases, *Cherry Creek School District, No. 5 v. Voelker*, 859 P.2d 805, (1993) by rule change, and the court was concerned with the separation of powers issues raised with the proposed change. There is supreme court support to address litigation costs, but how to proceed was opened up for discussion. With one no vote, the Committee voted to reconstitute the costs subcommittee, chaired by Judge Webb.

III. New Business

A. The Civil Access Pilot Project

The Institute for the Advancement of the American Legal System's Preliminary Findings on the Colorado Civil Access Pilot Project (CAPP) was released in April 2014. The Civil Rules Committee's CAPP subcommittee was formed in March 2014, and has had two meetings so far.

At the first meeting, the subcommittee discussed the direction of their work, and decided that they will not propose a separate set of rules based on CAPP, but will instead take specific parts of CAPP and recommend their application to all courts by adding them to the Colorado Rules of Civil Procedure. At the second meeting, the subcommittee divided up topics to be addressed by its members. There are strong, divergent views on several topics, and the subcommittee assigned members with different points of view to these topics to create workable solutions that will be acceptable to the bar.

The subcommittee's concern is timing; the CAPP rules are set to end December 2014. The subcommittee would like to simultaneously transition from the end of CAPP to revised rules rather than make the courts and bar go through two sets of changes (reversion to the old rules at the end of CAPP and a later change when the new rules are implemented). However, the time it will take to submit changes to the Committee, discuss, vote, post the changes for public comment, and hold a hearing if necessary, cannot be accommodated by the end of the year. Therefore, the subcommittee's proposal is to ask the supreme court for a six month extension of CAPP. If CAPP is extended until June 2015 this will give the Committee time to act, so a motion was made to ask the supreme court to extend CAPP until June 2015. The motion passed unanimously.

B C.R.C.P. 26, Claw Back

The subcommittee submitted a new proposal, aimed at reducing the burden on the receiving party. After some discussion of the proposed change, and the addition of “All notices under this rule shall be in writing.” at the end, the proposal was passed 17 to 3.

C. Colorado Rules of Probate Procedure

The Colorado Bar Association’s Trust and Estate Section worked for over two years to amend the Colorado Rules of Probate Procedure. In March 2014, the Trust and Estate Section submitted the proposed rule changes to the State Court Administrator’s Office’s Probate Advisory Committee, and the rules are now ready for consideration by the Civil Rules Committee. The Trust and Estate Section and the Probate Advisory Committee agree on all but three amendments: 1) whether or not the probate rules should be renumbered; 2) whether or not current C.R.P.P. 14, Attorney’s Withdrawal, is necessary; and 3) the organization of the amendments to current C.R.P.P. 16, Court Approval of Settlement of Claims of Persons Under Disability. Judge Berger asked member Fred Skillern to look at the rules, checking for typos, word usage, word choice, etc., and to make a suggestion about the renumbering at the next meeting.

D. C.R.C.P. 411, Appeals

The proposed change fixed a minor error. The rule was amended to comply with current practice where the clerk, not the judge, certifies the record. The proposed change was passed unanimously.

E. C.R.C.P. 121, §1-15, Motions to reconsider

The overall objective of the proposed C.R.C.P. 121, Section 1-15(11) is to discourage motions for reconsideration because they are disfavored. The Committee decided to move the first sentence of the proposed “Addition to Comments” to the end of the proposed rule. It also decided to delete the last sentence of the proposed rule because courts have adequate sanctioning ability without it. The proposed rule change, as amended, passed unanimously.

F. C.R.C.P. 47, Juror Questions

The committee agreed that all juror questions and follow-up questions need to be in writing, to ensure that no juror questions will be presented orally in court. The revised proposed rule change passed unanimously.

IV. Future Meetings

September 26, 2014

October 30, 2014

November 21, 2014

The committee adjourned at 3:40 p.m.

Respectfully submitted,

Jenny A. Moore