

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 26, 2018 Minutes**

A quorum being present, the Colorado Supreme Court 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 at the meeting were:

Name	Present	Not Present
Judge Michael Berger, Chair	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis		X
David R. DeMuro	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Judge Fred Gannett		X
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	X
Michael J. Hofmann	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Cheryl Layne	X	
John Lebsack	X	
Judge Cathy Lemon	X	
Bradley A. Levin	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Gordon "Skip" Netzorg		X
Brent Owen	X	
John Palmeri	X	
Judge Sabino Romano	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Jose L. Vasquez	X	
Ben Vinci	X	
Judge John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins	X	

I. Attachments & Handouts

January 26, 2018 agenda packet

II. Announcements from the Chair

- New members, Mike Hofmann, John Palmeri, and Jeremy Botkins, introduced themselves;
- The September 29, 2017 minutes were approved as submitted; and
- Rules 120, 53, 121 § 1-15, 16 and the accompanying forms, were adopted on Dec. 7, 2017, effective as stated in the order. Rule 16.1 and JDF 601 were set for a public hearing. Judge Berger and Richard Holme will make a presentation and anyone else interested may sign up to speak with the clerk of the supreme court.

III. Business

A. C.R.C.P. 6 & 59

Judge Jones reminded the committee that this has been in front of the committee multiple times. The subcommittee has proposed changes to Rules 6(b) and 59(a), located on pages 15-16 of the agenda packet. A member asked if the court can still act on its own motion. The amendment was not intended, nor did the committee think that it in any way stifled the court's ability to act. There was a motion to adopt the subcommittee's proposed amendment to Rule 59(a) that passed 23:1. There was a motion to adopt the subcommittee's Rule 6(b) proposal that passed 23:0.

B. C.R.C.P. 107

Tabled to March 30, 2018 meeting.

C. Need for civil practitioner representation on a Public Access Committee subcommittee dealing with redaction of court filed documents

Judge Jones, chair of the Public Access Committee, said that he's looking for civil practitioners to serve on the committee. The committee is recommending a change to CJD 05-01, where attorneys would be required to redact information that shouldn't be publicly available. Currently in state courts, the clerk's office takes care of redaction. If anyone is interested, please contact Judge Jones.

D. Comment to C.R.C.P. 26

Richard Holme stated that on page 17 there is an amendment to comment 18. The amendment is to clarify that non-retained experts are testifying because of their personal involvement as treating physicians, accountants, police officers, etc. They are there because they are personally involved, not because they are not retained experts, so they shouldn't be required to submit a report unless the witness is asked to provide a different opinion or weigh-in on causation. A committee member stated that most doctors or police officers won't do this and an amendment like this may have unintended consequences. The committee discussed the change and took a straw vote on the concept of the amendment that passed 23:1. Mr. Holme will draft a final version of the comment for the committee to consider at the next meeting.

E. Memorandum and minor changes to C.R.C.P. 16, 26, and 121 § 1-15

Mr. Holme began and stated that the recommended changes came from a working group that surveyed district court judges around the state regarding the 2015 Improving Access to Justice proposal. The suggestions are marked in the Agenda Packet at pages 19-21. The committee discussed the proposed amendments, but agreed that it is too early to make any changes. They recommended district court judges keep a catalog of issues and collect more comments. The committee voted to table the issue.

F. Fixing discrepancy in existing C.R.C.P. 26 Re expert depositions

The proposed change to Rule 26 addresses whether a party has an automatic right to take the deposition of non-retained expert. There are two proposed changes on page 23 of the agenda packet; one would give parties an automatic right to depose non-retained experts and the other doesn't. The committee thought the automatic right to depose non-retained experts is the standard now, and that the committee shouldn't depart from it. There was a motion to allow the automatic right to depose non-retained and retained experts, option #2 on page 23 of the agenda packet, that passed 23:1.

G. C.R.C.P. 69

Tabled to March 30, 2018 meeting.

H. C.R.C.P. 58(a) & 79

The subcommittee reviewed the requirement that a written, signed, and dated judgment must be entered under Rule 58(a). This requirement can lead to delay and uncertainty. *See Estate of Casper v. Guarantee Tr. Life Ins. Co.*, 2016 COA 167, (*cert. granted* No. 17SC2 June 26, 2017). The subcommittee looked at various amendments, but decided there were no good alternatives. For now, the subcommittee is recommending tabling this and perhaps considering it in the future. The committee agreed.

I. Procedure for appeals from municipal courts

Judge Berger received an email from Judge Moss regarding municipal appeals; specifically, why there are no page limits on municipal court appeals. Judge Berger asked the committee if it should take up the issue. Judge Romano is in the 17th with Judge Moss, and offered to speak to Judge Moss about his concerns. The committee thought this was the best course of action and, if necessary, Judge Romano will follow-up with the committee.

J. Suggestion regarding TMO witness list requirements

Tabled to March 30, 2018 meeting.

K. C.R.C.P. 121 section 1-26; electronic signatures

Judge Berger received an email regarding C.R.C.P. 121 §1-26. Specifically, whether an original physical signature must be made and a copy maintained by the filing party, or whether the filing party need only maintain the pleading with a printout of the attorney's name, with the "/s/" symbol or an electronic signature. There was a fair amount of discussion, so the committee decided a subcommittee should be formed to study the issue.

L. C.R.C.P. 80 & 380

The subcommittee is still conferring, but they will follow-up when they have a recommendation regarding C.R.C.P. 380.

M. Judicial Department Forms

Justice Gabriel provided an update about the committee's charge regarding the Judicial Department Forms. Issues impacting all forms will be monitored and addressed by the State Court Administrator's Office. The committee or any individual is welcome to comment, but suggested changes may not be adopted.

IV. Future Meeting

March 30, 2018

The Committee adjourned at 3:20 p.m.

*Respectfully submitted,
Jenny A. Moore*