

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure  
January 27, 2017 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 or excused from the meeting were:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
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 Ann Frick		X
Judge Fred Gannett	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Debra Knapp	X	
Cheryl Layne	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
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	
<b>Non-voting Participants</b>		
Justice Allison Eid, Liaison	X	
Jeannette Kornreich	X	

## **I. Attachments & Handouts**

- A. January 27, 2017 agenda packet
- B. Supplemental Material
  - 1. Rule 16.1 memo
  - 2. Warne v Hall memo

## **II. Announcements from the Chair**

- The November 18, 2017 minutes were adopted with two changes: under section III, A, bullet 4, “examination time” was changed to “cross-examination time”, and in bullet 5 “presentation” was changed to “preservation”;
- In re the Marriage of Gromicko, 2017 CO 1, was included as an informational item;
- All non-substantive changes, including C.R.C.P. 33 and Form 20, the county court rule and form changes, and Colorado Courts E-filing system name changes were adopted by the supreme court;
- C.R.C.P. 52 and 53, and C.R.M. 5 and 6, have been posted for public comment. After the public comment period closes, the committee can and may revise the rules based on comments received and resubmit the rules to the supreme court;
- The C.R.C.P. 120 has been remanded back to the committee for further consideration. The subcommittee has been reconstituted and Fred Skillern has agreed to serve as chair. A group of bankers, the principal opponents to the rule change, presented at the public hearing and provided written comments. The subcommittee will address the bankers’ comments, the addition of “direct knowledge” in subsection (a), and other issues as necessary;
- House Bill 1095, Service to Process to Secured Dwellings, has been introduced and states that if a person lives in a gated community, and the process server is denied access by security or management personnel, in some circumstances process may be served on the attendant or the management company with service being mailed to party to be served. The State Court Administrator’s Office will keep the committee updated on the status of the bill; and
- A reception for former chair and longtime member Dick Laugesen may be held at the beginning of the March meeting.

## **III. Business**

### **A. C.R.C.P. 16.1**

Judge Davidson and Richard Holme began and stated that a comment is forthcoming. Discussion centered on the following issues:

- The phrase “arising from a single transaction, incident, or occurrence” elicited much discussion. There was a motion to exclude the phrase throughout the rule and form that passed 17:6;
- In subsection (b)(2), in the last sentence, there was discussion about changing “fair expectation” to “reasonable expectation”;

- There were many comments about the excessive quoting of the district court cover sheet in subsection (c). Members remarked this is out of the ordinary and may constrict district courts; and
- Subsection (1)(5)(II) will be reworked by the subcommittee. In part (II), the highlighted language proposed by the subcommittee will be struck, because the committee had concerns about adding preservation depositions into the rules, and the “7 days before trial” deadline seemed too short.

Subcommittee will take all committee comments under advisement and present a revised draft in March.

## **B. Rule 365 (taken out of order)**

Ben Vinci began and stated that the amendments to the rule were approved unanimously by the County Court Rules Subcommittee, and he introduced three guests: Judge Brian T. Campbell, Ms. Gina L. Tinchler, and Ms. Lila Sol. Mr. Vinci stated that subsection (a) refers to repealed statutes, and the rule has been misapplied and has limited the scope of protective orders in domestic violence and family abuse cases. Judge Campbell, Ms. Tinchler, and Ms. Sol stated that victims of abuse are being denied protection orders and greater strides need to be taken to protect victims in domestic and non-domestic situations.

After discussion there was a motion to table the issue so it could be studied by a subcommittee; the motion failed.

There was a motion to break the rule into two rules; current Rule 365 would contain subsection (a) and repealed subsection (b), and a new rule, Rule 366, would contain what is now subsection (c); the motion failed.

A motion to adopt the following language in subsection (a), repeal subsection (b), and change the word order in the first sentence of subsection (c) passed unanimously:

### **CRCP 365**

(a) Civil Protection Orders. No civil protection order, injunction, restraining order, or injunction under Title 13, Article 14, order to prevent domestic abuse or for emergency protection under sections 14-4-101 et seq., C.R.S., shall be issued by the court, except as provided therein, section (b) hereof or in accordance with sections 14-4-101 et seq., C.R.S.

(b) Repealed.

(c) Restrictive Covenants on Residential Real Property.

(1) Upon the filing of a ~~complaint~~, duly verified complaint alleging that the defendant has violated a restrictive covenant on residential real property, the court shall issue a summons, which shall include notice to the defendant that it will hear the plaintiff's request for a preliminary injunction on the appearance date.

Judge Berger will prepare a transmittal letter for submission to the supreme court.

**C. New form for admission of business records under hearsay exception rule**

David Little and Damon Davis began and presented the forms for use in county court. A motion to adopt the forms passed 17:3. The committee thought a timing reference should be added in Rule 16(f)(3)(VI)(B). Mr. Holme offered to mark Rule 16 and it, along with the district court forms, will be presented at the March meeting.

**D. C.R.C.P. 57(j)**

Tabled until the March 31, 2017 meeting.

**E. C.R.C.P. 83**

Tabled until the March 31, 2017 meeting.

**F. C.R.C.P. 121 §1-15**

Judge Jones began and stated there are four recommendations in the subcommittee's memo, and he will address them out of order:

- The first recommendation is to amend the first sentence of part (3) by deleting "C.R.C.P. 56" and replace it with "written". A motion to adopt this change passed unanimously;
- The fourth recommendation is to amend part (1)(a) by deleting the word limits in the second and third sentences and including a cross-reference to Rule 10(d) in the last sentence. A motion to adopt these changes passed unanimously;
- The third recommendation is to amend part (8) to require an attempt to confer by and with a self-represented party before filing a motion that includes a description of the nature of any efforts to confer. An additional issue arose in the subcommittee about whether exceptions to this requirement should be included; for instance, excluding the conferral requirement for incarcerated parties or parties subject to a restraining order. After discussion, the committee decided 10:8 that illustrative, not dispositive, exception language should be added. The subcommittee will draft exception language to present at the next meeting; and
- The second recommendation is to amend the second sentence of part (3) by adding a clause limiting its application to motions not seeking to resolve a claim or defense. The proposed amendment would generally conform the rule to case law, and a motion to adopt the change passed 17:1.

**G. Warne v. Hall**

Brad Levin began and stated that the subcommittee had discussed the case and determined that no rule changes were necessary at this time. Also, Judge Elliff surveyed the district court judges and they agreed no changes were necessary now. There was a question about whether all forms needed to be reviewed, and there was a motion to table the review for a year; the motion passed 12:5.

**Future Meeting**

March 31, 2017

The Committee adjourned at 4:15 p.m.

*Respectfully submitted,  
Jenny A. Moore*