

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
March 31, 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:

Name	Present	Excused
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	
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	
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 Allison Eid, Liaison		X
Jeannette Kornreich	X	

I. Attachments & Handouts

- A. March 31, 2017 agenda packet
- B. Supplemental Material – Rule 120 memo

II. Announcements from the Chair

- The January 27, 2017 minutes were adopted as submitted;
- New member John Lebsack was introduced and welcomed;
- Longtime member and former chair Richard Laugesen has resigned from the committee. In 2014, a reception was held for Mr. Laugesen who was thanked for his 31 years of service as committee chair. Judge Berger proposed having another thank-you reception, before today's meeting, to thank Mr. Laugesen for his almost 40 years of committee membership, but due to a number of reasons Mr. Laugesen declined. Mr. Laugesen's contribution to civil practice in Colorado is invaluable and his work and leadership will never be forgotten. The committee is thankful for Mr. Laugesen's stellar legacy of commitment and service; and
- The county court jurisdictional increase proposed by the committee in March of 2016 will be moving forward. As a reminder, the committee recommended an increase from the current \$15,000 to \$35,000, and the committee's recommendation was posted for public comment. The increase will likely be in the realm of \$25,000, and Judge Berger will keep the committee updated on the statutory change.

III. Business

A. C.R.C.P. 16.1

On page 6 of the agenda packet, two alternative statements were listed. The statement the committee selects will have to be inserted in a few places throughout the draft. There was a motion to adopt the first statement that passed 18:1. There were other changes throughout the draft, mostly editorial, that elicited no discussion. Finally, there was a motion to adopt the comment, at pages 21-22 that passed unanimously. Hearing no further discussion, Judge Berger will prepare a letter and transmit the draft to the supreme court. Richard Holme, as well as the rest of the subcommittee, were thanked for their work.

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

Damon Davis began and reminded the committee that the forms at pages 32-37 of the agenda packet were the county court forms and instructions that were approved at the last meeting. Today, the committee was reviewing the district court forms that were virtually identical, minus the numbering and caption. There was a motion to adopt the district court forms that passed unanimously. Finally, Rule 16 was amended to include a reference to the forms. There was a motion to adopt Rule 16, correcting the rule reference from "9.2" to "902" that passed unanimously. Judge Berger will prepare a letter and transmit the drafts to the supreme court.

C. C.R.C.P. 120

Fred Skillern began and stated that he retired from the committee in 2015, but came back to resume the Rule 120 Subcommittee deliberations as chair. The subcommittee consisted of Jose Vasquez, Debra Knapp, Judge Haglund, Judge Hannon, Chuck Calvin, Keith Gantenbein, Deanna Stodden, and Elizabeth Marcus. The subcommittee met and addressed the objections raised in Mr. Terry Jones's letter (dated April 6, 2016) sent in response to Rule 120's public comment period. Mr. Skillern went through the subcommittee's annotated draft in response to Mr. Jones's objections.

1. The last sentence of subsection (a) read as follows: "The motion shall be captioned: 'Verified Motion for Order Authorizing a Foreclosure Sale under C.R.C.P. 120,' and shall be verified by a person direct knowledge who is competent to testify regarding the facts stated in the motion."

The subcommittee acknowledged the phrase "direct knowledge" is ambiguous and any knowledge the entity or its representative has is likely from business records. The subcommittee recommends changing "direct knowledge" to "with knowledge of the contents of the motion." The committee voted unanimously to adopt the recommended change.

2. In subsection (a)(1)(B), language was added to limit the time spent searching clerk and recorder records. The motion will contain addresses of interested persons found in the clerk and recorder records in the county where the property is located. The committee voted unanimously to adopt the recommended change.
3. The amendment in subsection (a)(1)(B)(iv), is intended to name and give notice to parties with interests that the moving party seeks to terminate by foreclosure. Notice would be provided not only to debtors and co-signers, but people who have acquired an interest in the property between the recording of the mortgage and the beginning of the foreclosure, like junior lien or easement holders. There was a motion and a second to adopt the subcommittee's recommended language and discussion ensued.

Members asked what does "entitled to" mean, and is it clear where one would go to find those who are "entitled to" notice of the foreclosure? The subcommittee stated that yes, the title report would list anyone entitled to notice. The committee was not swayed, and an alternative motion was proposed, as follows: (iv) will end at "demand for sale", and additional language would appear in new romanette (v); the "and" at the end of (iii) would move to the end of (iv); and, the following text would appear in (v): "those persons whose interest in the real property may otherwise be affected by the foreclosure." There was a 2nd and the alternative motion was adopted unanimously.

4. In subsection (b)(4), the amendment recognizes the practical problem that a debtor who is in discussions with a large lending organization will not speak to

one or the same person, and “single point of contact” as defined in section 38-38-100.3, C.R.S., is “an individual or team of personnel.” Also, the subcommittee explained that “loss mitigation” is terminology that those involved in a foreclosure will know.

Members asked at this stage in the foreclosure, who is the debtor put in contact with? The subcommittee explained that this is the person the debtor calls to begin the process of working out a loan modification. It is intended to get the debtor to the loss mitigation representative and get the debtor’s information into a model or sent to a lender to see if a modification is allowed or possible. The committee discussed using a different word other than “address”, like “receive” but ultimately decided “address” was the best option. There was a motion to adopt the language as submitted by the subcommittee that passed unanimously.

5. In subsection (d)(1)(B), the citation to the Servicemembers Civil Relief Act was updated.
6. In subsection (d)(1)(D), the subcommittee recommended no change in response to Mr. Jones’s letter. The subcommittee believes that more general language is preferred in a regulatory scheme that is constantly in flux. The committee unanimously voted to accept the subcommittee’s recommendation to keep the subsection as is.
7. In subsection (d)(1)(D)(2), the subcommittee recommended no change in response to Mr. Jones’s letter. The security follows the note, and lenders will elect to describe how the entity became the moving party. The creditor attorneys on the subcommittee didn’t view this as a problem, and judges on the subcommittee emphasized that review of the motion should not be mechanical. The committee unanimously voted to accept the subcommittee’s recommendation to keep the subsection as is.
8. In subsection (g), the new language is simpler, more consistent with subsection (d)(4), and less redundant. A motion to adopt the language passed unanimously.

Judge Berger will draft a transmittal letter and resubmit Rule 120 to the supreme court. Fred Skillern and the subcommittee were thanked for all of their hard work.

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

Tabled until the May 19, 2017 meeting.

E. C.R.C.P. 83

Senate Bill 17-154, the Uniform Unsworn Declarations Act, will be signed by the governor soon, and the subcommittee will no longer pursue enacting a civil rule. This bill provides verification language that will appear at the end of judicial department forms.

F. C.R.C.P. 80

Chief Justice Directive 05-03 basically supersedes the civil rule, and the criminal rule, Crim. P. 55, references the civil rule. Judge Berger and Judge Dailey are considering appointing a joint subcommittee to draft a rule that reflects current practice. There are many issues to consider, including the cost of an electronic recording compared to a court reporter. A subcommittee, which will include a court reporter, will be formed and will follow-up at the next meeting.

G. C.R.C.P. 4 – Judge Elliff

On further examination, Judge Elliff stated that no change was necessary.

H. C.R.C.P. 107 – Judge Berger

Judge Berger received a letter from an attorney stating that the rule should be amended to allow the award of attorney fees to the prevailing party. Also, the availability to collect costs and attorney fees should be discussed as related to punitive contempt. A subcommittee will be set-up to decide what, if any action, will be taken.

IV. Future Meeting

May 19, 2017

The Committee adjourned at 3:20 p.m.

*Respectfully submitted,
Jenny A. Moore*