

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
June 24, 2016 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	
Richard Laugesen	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	
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. June 24, 2016 agenda packet

B. Supplemental Material

- County Court Rules Subcommittee's Proposal
- C.R.C.P. 53 – Memo & OK Statute

II. Announcements from the Chair

- The May 20, 2016 minutes were approved with two amendments: in subsection (E) "162" was changed to "182"; and in subsection (G) "pursuing an amendment" was changed to "studying the issue";
- New member Judge Elliff was introduced and welcomed;
- County Court Rules Subcommittee member Jacques Machol was in attendance to discuss the subcommittee's proposal;
- The C.R.C.P. 120 public hearing will be held on November 10 at 2:30;
- The County Court Judges Association's (CCJA) comment in response to the recommended county court jurisdictional increase was circulated. The CCJA is generally opposed to the increase, and the committee will take no further action at this time; and
- The committee is at capacity with 31 members; new members will be added when an existing member leaves. A list of persons interested in appointment will be kept for when there is a vacancy.

III. Business

A. County Court Rules Subcommittee

The County Court Rules Subcommittee was formed at the beginning of the year, and its members were from a prior county court group operating under the State Court Administrator's Office (SCAO). Membership consists of county court judges, a magistrate, clerks of court, SCAO representatives, and attorneys. Subcommittee chair Ben Vinci reported that the subcommittee had unanimously adopted the proposed changes to the rules and forms. The proposals were amended and adopted by the committee as noted:

- In Form 26, "under penalty of perjury" was added in the statement after #5 by a vote of 11:8. There was a motion to keep the Return of Service that had been struck on page 4, but with two yes votes the motion failed;
- In Form 28, the subcommittee added a column for "The Employer's Calculation," but after discussion the committee voted to remove the column 15:4. In #1, a motion to delete "I object" and replace it with "Judgment Debtor's objection" passed unanimously;
- In Forms 29, 31, 32, and 33 "under penalty of perjury" was added in the statement after #5;

- It was clarified that the changes in the draft apply to both C.R.C.P. 103 and 403. In subsection (h)(2), the amended language will be changed to “and the *Judgment Debtor’s* Objection to the Calculation of the Amount of Exempt Earnings” to track Form 28, and the “6 month” references in the rule will be changed to 182 days; and
- A motion to adopt the rules and forms as amended passed unanimously.

B. C.R.C.P. 57(j) & Fed. R. Civ. P. 5.1

Stephanie Scoville addressed whether C.R.C.P. 57 should be amended to mirror the federal rule, which expressly provides for notice to the U.S. Attorney General’s Office when the constitutionality of a statute is challenged. Ms. Scoville advised the committee it could do nothing or pursue a truncated version of Fed. R. Civ. P. 5.1. A simpler version of Fed. R. Civ. P. 5.1 could provide clarification as to how and how long a party has to notify the Colorado Attorney General’s Office, but something as extensive as the federal rule is unnecessary. A subcommittee will be formed and decide what action to pursue.

C. County and municipal appeals to district court

Subcommittee chair Judge Espinosa began and stated that the subcommittee wanted the committee to weigh in on an issue. The subcommittee was discussing ways in which an indigent county court appellant can get a copy of the record on appeal. The subcommittee had a few ideas, but discussion centered on the service For The Record (FTR), which is used in many courts. FTR records and produces an electronic copy of the record. The committee was interested in the subcommittee studying this issue further, so the subcommittee will follow-up when it has more information about FTR.

D. C.R.C.P. 33 & Form 20

Judge Berger received an inquiry about the 2015 change to C.R.C.P. 33 that was part of the Improving Access to Justice proposal. Specifically, was the language in subsection (b)(1), inadvertently struck:

C.R.C.P. 33 Interrogatories to Parties

(a) [NO CHANGE]

(b) **Answers and Objections.**

(1) An objection must state with specificity the grounds for objection to the Interrogatory and must also state whether any responsive information is being withheld on the basis of that objection. A timely objection to an Interrogatory stays the obligation to answer those portions of the Interrogatory objected to until the court resolves the objection. No separate motion for protective order pursuant to C.R.C.P. 26(c) is required. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the

~~reasons for objection and shall answer to the extent the interrogatory is not objectionable.~~

After discussion, the committee agreed the language in subsection (b)(1) was inadvertently struck. The struck language will be reinstated, and Rule 33 will be sent to the Editing Subcommittee for review.

E. C.R.C.P. 83

Jeannette Kornreich stated that a question was raised as to whether courts need to require notarization where a Judicial Department Form (JDF) must be verified by statute. Where a statute requires a filing be verified, but doesn't specify that it must be signed by a notary, the JDF could have a sworn declaration acknowledging the signer understands he or she is subject to the penalty of perjury if the information provided is not true and correct. The text of the new rule, C.R.C.P. 83, and the verification statement were discussed. The committee asked how this would affect the domestic setting where notarization is important to acknowledge that the signer is actually the signer, and whether any uniform acts could impact this proposal. Ms. Kornreich will look into the committee's concerns and report back.

F. C.R.C.P. 52

The subcommittee had met a few times and is still discussing what to do. The subcommittee is considering deleting the last sentence of C.R.C.P. 52, but adding a comment discussing how the deletion should be construed. The subcommittee will continue to meet and follow-up at the next meeting.

G. C.R.C.P. 53

Subcommittee member Greg Whitehair's memo was circulated to the committee. The subcommittee is meeting in July, and C.R.C.P. 53 will be discussed at the next meeting.

H. New Form for Admission of Business Records Under Hearsay Exception

Passed to September 30, 2016 meeting.

I. Code of Virginia § 8.01-296. Manner of Serving Process Upon Natural Persons

Passed to September 30, 2016 meeting.

IV. Future Meetings

September 30, 2016

The Committee adjourned at 3:30p.m.

Respectfully submitted,
Jenny A. Moore