

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
November 12, 2021 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Chair Judge Michael Berger at 1:30 p.m. in the Supreme Court Conference Room. Members present at the meeting were:

Name	Present	Not Present
Judge Michael Berger, Chair	X	
Mandy Allen	X	
Chief Judge Steven Bernard		X
Judge Karen Brody		X
Miko Ando Brown		X
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis		X
David R. DeMuro	X	
Judge Paul R. Dunkelman	X	
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Judge (Ret.) Sabino Romano	X	
Genevieve Rotella	X	
Judge Stephanie Scoville	X	
Lee N. Sternal		X
Magistrate Marianne Tims	X	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor		X
Ben Vinci	X	
Judge (Ret.) John R. Webb		X
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	

Name	Present	Not Present
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins		X

I. Attachments & Handouts

- November 12, 2021, agenda packet.

II. Announcements from the Chair

- The September 24, 2021, minutes were approved as submitted.
- Chair Judge Berger announced that the Colorado Supreme Court has appointed Court of Appeals Judge Jerry Jones as Chair beginning January 1, 2022.
- Justice Gabriel and Judge Berger thanked Dick Holme for his service to the Committee and the legal community over the years. Mr. Holme will be retiring from the Committee after 27 years.
- Justice Gabriel then acknowledged Judge Berger for serving as Chair with great distinction.

III. Present Business

A. Committee Records Policy

Judge Berger shared that the Colorado Supreme Court has requested that all rules committees draft policies for preserving documents. Judge Berger would like to set up a subcommittee to explore this and interested members should email Chair Designate Judge Jones. Justice Gabriel noted that this arose because a chair left a different rules committee and had many banker’s boxes of things to be managed, which caused the court to reflect on where this information goes and who oversees it.

B. Letter from SB21-173 Sponsors to Committee Re: Court Summons and Answer Deadline

Judge Berger reminded the Committee that the FED Subcommittee toiled on this project for a significant amount of time under short timelines despite the apparent inconsistencies in the relevant statutes. In early October, the Committee submitted its recommendations to the court, and the court then adopted the submitted proposals. After the court announced the approval of those amendments, a number of comments were received. Somewhat unusually, a group of Colorado legislators wrote a letter to the Justices. Judge Berger is reconstituting the Subcommittee and has added additional subject matter experts. The Subcommittee will consider the comments received and determine whether to recommend any further changes.

Judge Berger noted that this is very important work, and the goal is to make it as easy as possible to navigate working within the parameters that the legislators provided. Justice Gabriel noted the court’s thanks for all the hard work of this Committee and Subcommittee. He also said that the court would have had a formal public hearing on these rules had there been time. Instead, the court chose to act quickly to protect the rights of the people involved. Justice Gabriel said that the court takes these concerns

seriously and will amend what needs amending.

C. Colorado Rules for Magistrates

Subcommittee Chair Magistrate Tims presented a new draft of the proposed rules. The Subcommittee was sent back to the drawing board on Rule 7 to consider whether there should be something akin to an interlocutory appeal to the district court and whether an issue can be raised for the first time to the Court of Appeals if it was not raised in a petition for judicial review.

Subcommittee Chair Magistrate Tims noted that the proposed language tries to balance how to move a case through the process without denying people their rights, and further stated that the Subcommittee was not trying to broaden the rule. One member noted that the challenge here is that these rules are governing all types of issues. Some members noted that the proposal adds layers of procedure and may create a new set of litigable issues. Judge Berger said that the threshold issue is vital here and must be resolved before any specific language is proposed.

Judge Berger took a straw vote to see who wants to retain the basic structure of magistrate review. The Committee voted 11 to 10 to leave the review structure alone. There was then a motion and second taken to table the issue, which failed by a vote of 11 to 10, since a two-thirds majority is required.

The Committee then turned to why the review began in the first place. Justice Gabriel noted the goal of relieving confusion of litigants, and Chair Judge Berger stated that 75 new magistrates were added last year.

The following motion was made and seconded: proceed with a revision of Rule 7 that gets rid of the consent and non-consent, follows the general structure of what the Subcommittee has proposed, but defines much more precisely, by example, orders subject to review by district court; but in any event, requires that all claims remain subject to review by the Court of Appeals. The motion included deleting the language in (l), (m), and a parallel change in subpart (a). This motion passed 15 to 4.

Magistrate Tims will take this back to the Subcommittee for consideration.

D. C.R.C.P. 30(b)(6)

Subcommittee Chair Judge Stephanie Scoville noted that the Committee asked for changes to this rule in the wake of a federal rule change. The Subcommittee looked at a host of issues and is today proposing several changes. The Committee voted unanimously to approve the initial recommendations to clarify language and incorporate language from the federal rule and rules of other states. Next, the Subcommittee presented proposed language on the conferral obligation. The Committee voted unanimously to include that portion. The next proposal clarifies the permitted length of 30(b)(6) depositions. The Committee voted to approve this portion, with only one no vote. Finally, the Subcommittee proposed a comment specifying reciprocal duties. Judge Berger noted that the word “proportional” is used but has a meaning different from that in other rules. As a result, “reasonable in relation to” was substituted for

“proportional” in the comment. The Committee voted unanimously to approve the addition of this comment.

Because the Subcommittee looked at many issues, a member noted the idea to include this on the next agenda to follow up with any concerns members may have.

E. C.R.C.P. 15(a)

Passed over.

F. C.R.C.P. 16.2

Passed over.

G. C.R.C.P. 30(b)(7)

Passed over.

H. Crim. P. 55.1

Passed over.

I. C.R.C.P. 4(m)

Passed over.

Future Meetings

January 28, 2022; April 8, 2022; June 24, 2022; September 23, 2022; and November 4, 2022

The Committee adjourned at 3:45 p.m.