

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
June 26, 2020 Minutes**

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

Name	Present	Not Present
Judge Michael Berger, Chair	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman	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	
Cheryl Layne	X	
John Lebsack	X	
Bradley A. Levin	X	
David C. Little		X
Professor Christopher B. Mueller	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	
Judge Juan G. Villaseñor	X	
Ben Vinci	X	
Judge (Ret). 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

- June 26, 2020 agenda packet and supplements.

II. Announcements from the Chair

- The January 31, 2020 minutes were approved as presented.
- Chair Judge Berger announced that the supreme court approved two emergency rule proposals since January.
- Finally, Judge Berger stated that he hopes in-person meetings can resume in September, but that remains to be seen.

III. Present Business

A. C.R.C.P. 103/403/forms

Subcommittee Chair Jose Vasquez explained that the subcommittee presents two alternate proposals. In version 1, a debtor may be able to object to subsequent calculations on their pay; version 2 does not include this language. Version 1 also contains much more language from the statute than does version 2.

Judge Jones suggested doing as little as is required. He explained that holding remote meetings increases the opportunity for mistakes, for overlooking issues, and for missing problems. Judge Jones suggested doing the minimum required to avoid those issues. Several other members concurred with Judge Jones' sentiments. Chief Judge Bernard stated that although necessary for the circumstances we face, WebEx is not an ideal forum for a committee to make significant changes to court rules, and he fears unintended consequences.

Ben Vinci shared that he has expressed concerns in the subcommittee with version 1. He does not want to see judicial officers having to hold repeated hearings when debtors continually ask for adjustments every pay period. Mr. Vasquez does not think those requests would be supported by the rule. He also stated that legislators intended people to have the ability to bring up these types of exigent circumstances.

After a motion was made and seconded, the committee approved the following proposal with 4 no votes and 1 voter abstaining: amend paragraph (4); keep first sentence, delete second sentence, add in "Such objection may be made at any time during the pendency of the garnishment." Mr. Vasquez will implement this in a new version and the committee will hold a final email vote on the finalized written proposal.

The committee then turned to the forms. Judge Berger directed that any typographical edits should be emailed to Mr. Vasquez for correction by next Tuesday at noon. The committee will take a final vote via email.

B. Redaction of Court Filings by Parties/Counsel

David DeMuro explained that he agreed to take a look at this rule proposal after the last meeting when Judge Jones had proposed a Colorado version of Federal Civil Rule 5.2. The federal rule was adopted in 2007 to comply with a federal statute requiring the

Supreme Court to adopt rules to protect privacy and security concerns that increased with the electronic filing of court documents. Colorado does not currently have a rule like 5.2, but it does have Chief Justice Directive (CJD) 05-01 that addresses public access to court filings. The proposal brought today closely follows Judge Jones' January proposal. The proposal requires people filing documents with courts in Colorado to redact certain numbers such as social security numbers, birthdates, and other private numbers. The subcommittee thinks this rule is overdue in Colorado.

Judge Berger suggested making the text of the rule easier to read by structuring it like the federal rule. Mr. DeMuro liked that suggestion. Judge Berger also queried why the court shouldn't have the discretion to order sanctions. Judge Jones stated that he does not have a strong feeling on the sanctions issue. His sense is that it can be easy to miss some of these numbers that should be redacted when filing with the court.

Mr. Vinci highlighted that the last four digits of a social security number will be needed for garnishments. He also stated that many people have the same name and there will be a need for some way to differentiate these people. He also mentioned that sanctions don't need to be broadened further. Judge Jones responded that the complete redaction of these types of numbers is already required by the existing CJD.

A motion and second were made to adopt Rule 5(g) with the following exceptions: add subsection lettering, correct a typo on part 2, and say you can file unredacted copies without a need of a motion. It passed 18-9. The committee will vote via email on the text of the final proposal.

Regarding sanctions, which were considered separately: a motion has made and seconded to remove the only if qualification. It passed. Mr. DeMuro will finalize the language of the proposed rule change.

C. Colorado Rules for Magistrates

Judge Berger shared that subcommittee chair Magistrate Tims has not had much time to deal with this, given what is going on in the trial courts. He further stated that the project will not be completed in 2020 as initially anticipated.

D. JDF 601/Related Case Doctrine

Subcommittee chair Bradley Levin shared the current iteration of the proposal and stated that they followed the committee's advice in preparing it.

Judge Berger commented that the word "aware" is not usually a word used in court rules and suggested "actual knowledge" as a possibility. Mr. Levin accepted that suggestion. Judge Berger also asked whether a comment making it clear that nothing in this rule directs a court to do anything and that the related case information is merely an information-providing function. Mr. Levin agreed with the idea and suggested making the last sentence in the memo into a comment.

A motion was made and seconded to adopt the proposal as is with the following changes:

the word “aware” will be changed to “actual knowledge” and a comment will be added. It passed. Mr. Levin will put the proposal together, and the committee will vote by email.

A motion was also made and seconded to put the proposed related case language in the Case Management Order and referenced in Rule 16 into a new subsection 18. It passed unanimously and will be voted on for final approval later.

E. JDF 105

Passed over.

F. C.R.C.P. 16 and 26

Judge Berger will appoint a subcommittee to evaluate how all the rules are working. Mr. Holme will serve but not as chair. Interested parties should email Kathryn or Judge Berger to volunteer.

G. County Court Rules 307 and 341

Passed over.

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

Passed over.

I. Local Rules

Passed over.

J. C.R.C.P. 304

Passed over.

K. Crim. P. 55.1

Passed over.

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

Passed over.

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

Passed over.

IV. Future Meetings

September 25, 2020

November 13, 2020

The Committee adjourned at 4:04 p.m.