

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 24, 2021 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	
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	
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

- September 24, 2021 agenda packet.

II. Announcements from the Chair

- The March 26, 2021 minutes were approved as submitted.
- Chair Judge Berger shared an email on proposed Crim. P. 24(d)(5) regarding combatting implicit bias in the exercise of peremptory challenges. Judge Berger reported that there was a highly divided committee vote on this issue that led to the proposal not being approved by the court, and that this committee should strive to submit proposals that are strongly supported. Justice Gabriel mentioned that in the instance of Crim. P. 24(d)(5), the court was particularly concerned about the division because it was along advocacy sides. Further, even after revisiting the proposal with questions from the court, the group was unable to craft a more fully supported compromise.
- Judge Berger noted that two members were recently elevated to the Denver District Court: Adam Espinosa and Stephanie Scoville. Judge Berger congratulated them on their well-earned appointments.
- Judge Berger welcomed new members to the committee: Court of Appeals Judge Stephanie Dunn and Denver District Court Clerk Genevieve Rotella.
- Finally, Judge Berger shared that he will be retiring from the Court of Appeals in October 2022 and retiring as Chair of this committee as of January 1, 2022. He will remain on as a member.

III. Present Business

A. Proposed Amendments or New Rules Regarding Uniform Procedures in FED

Subcommittee Chair Judge Espinosa reported that this subcommittee met several times to review the submission from Judge Lipinsky and the Access to Justice Committee (ATJC), along with the new bills signed by Governor Polis. The subcommittee today is recommending several changes to rules and forms to bring the items in line with the recent bills and to improve them as suggested by the ATJC.

The committee members discussed the proposed changes to:

- 1) Rule 304: the subcommittee unanimously approved the ATJC's proposed changes to this rule.
- 2) Rule 312.5: this proposed new rule models Rule 312 and would govern pretrial procedures in FED cases. A friendly amendment was made to say: "no later than three days..." rather than "three days before."
- 3) Rule 316.5: this proposed new rule models Rule 316 and would govern pretrial procedures in FED cases.
- 4) New Advisement Sheet.
- 5) New Request for Documents form.
- 6) Summons: the subcommittee would like to make a few more changes to this form to comport with the signed bills.

A motion was made and seconded to approve 1) – 5) with one friendly amendment; it passed with a vote of 18-1. Judge Espinosa will consult with his subcommittee and submit the summons form for an email vote.

B. Colorado Rules for Magistrates

Subcommittee Chair Magistrate Tims stated that this subcommittee was tasked with simplifying the magistrate rules, which are, at present, internally inconsistent and confusing to use. The subcommittee

looked at other states' magistrate rules and the federal magistrate rules for ideas. They also tried to find how many cases appeal directly from magistrates to the Court of Appeals. These numbers are not known. From there, the subcommittee decided to come up with guiding principles to simplify the rules. The subcommittee proposes that the rules allow only one avenue for appeal and only one timeframe for judicial review.

The committee discussed the proposed changes. Some members disagreed with how much authority magistrates should be allowed, particularly related to C.R.C.P. 16 and 16.1.

The committee then looked at the proposed language changes:

- 1) Rule 3: a motion was made and seconded to tentatively approve this rule; it passed unanimously.
- 2) Rule 5: regarding 5(a), a reference needs to be repaired. In (b), on the third line, the committee suggested removing, "without consent." A motion was made and seconded and passed unanimously to tentatively approve this rule, along with the friendly amendments.
- 3) Rule 6: one member offered a friendly amendment to remove the words related to Rule 16. This failed 3-19. Then the committee voted to approve this rule as written unanimously.
- 4) Rule 7: a motion was made and seconded to tentatively approve this rule. There was a friendly amendment to correct a few typos. Substantively, the committee discussed whether every decision a magistrate makes that completely resolves a decision should be subject to district court review. Committee Chair Judge Berger noted that this is a fundamental question for the subcommittee to consider. One member noted that (a) states, "may not be taken to an appellate court..." and that this language might need to be carefully considered.
- 5) Rule 8: a motion was made and seconded to tentatively approve this rule. There was a friendly amendment to fix a typo in section b(5). The proposed rule was preliminarily approved unanimously.

The subcommittee will work on refining their proposal.

C. Colorado Municipal Court Rules of Procedure 257

Judge Berger noted that this proposal came from Chief Justice Boatright and is purely administrative in nature. A motion was made and seconded to approve the proposal; it passed unanimously.

D. Forms 26, 29, 32, 33, and 250

This issue came from Sean Slagle at SCAO and removes COVID-era reforms to forms. A motion was made and seconded to remove the extraneous language as proposed. It passed unanimously.

E. C.R.C.C.P. 404(a)

Judge Berger noted that the jurisdictional limit needs to be updated in this rule. A motion was made and seconded to send this proposal to the court; it passed unanimously.

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

Passed over.

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

Passed over.

H. Crim. P. 55.1

Passed over.

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

Passed over.

J. C.R.C.P. 16.2

Passed over.

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

Passed over.

Future Meetings

November 12, 2021

The Committee adjourned at 3:51 p.m.