

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure  
September 25, 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:

<b>Name</b>	<b>Present</b>	<b>Not Present</b>
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	
<b>Non-voting Participants</b>		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins		X

## **I. Attachments & Handouts**

- September 25, 2020 agenda packet.

## **II. Announcements from the Chair**

- The June 26, 2020 minutes were approved as presented.
- Chair Judge Berger announced that the supreme court approved the garnishment rules and forms that this committee submitted, and he thanked the subcommittee for all their work.
- Judge Berger asked members whose terms are expiring to let him know if they would like to return.
- Judge Berger stated that the committee will hold five meetings in 2021. The 2021 meeting dates are listed on the agenda.
- Finally, Judge Berger stated that Colorado no longer recognizes Columbus Day on the second Monday in October and instead celebrates Frances Cabrini Day on the first Monday in October. The committee voted unanimously to update C.R.C.P. 6(a)(2), which discusses state holidays.

## **III. Present Business**

### **A. Redaction of Court Filings by Parties/Counsel**

Subcommittee chair David DeMuro stated that this rule was approved at the last meeting but was brought back for the group to see its final form. Since the last meeting, Mr. DeMuro made changes to the corresponding county court rule to make it the same as rule 5. A motion was made and seconded to adopt rule 5 as it appears in the materials and rule 305 as it appears with one change: conform subsection (3) of Rule 305 to subsection (3) of Rule 5. The motion overwhelmingly passed.

Mr. DeMuro also mentioned that the court IT department brought to his attention that the federal filing system prompts people to acknowledge that they are performing their duties with a checkbox. After discussion, a motion and second was made to have the IT department investigate adding a checkbox asking if people understood and made the redactions as required, similar to the federal requirement. This passed overwhelmingly.

### **B. JDF 601/Related Case Doctrine**

Subcommittee chair Bradley Levin noted that after the last meeting, the subcommittee added a comment as suggested by the committee. A motion was made and seconded to approve the rules as they appear in the agenda packet. This passed unanimously.

### **C. Form CRCCP 1A—Fed Suppression Litigation**

Judge Berger stated that a recent statute signed into law necessitated a change to this form. The Office of the State Court Administrator suggested these edits to this form to the committee. Judge Berger queried whether the committee wanted to send this to a subcommittee or was ready to vote now. A motion was made and seconded to approve the form with the new statutory language. Judge Elliff suggested one minor edit in the

proposed paragraph 11 to change the word *private* to *suppressed*. The motion passed unanimously with the suggested edit.

**D. C.R.C.P. 16, 16.1, and 26—Water Court Committee Request**

The Water Court Committee has asked this committee to consider some proposed changes to civil rules that mention water rules. A motion was made, seconded, and passed unanimously to adopt the proposals.

Lisa Hamilton-Fieldman mentioned that the language on any relevant forms will also need to be changed. Justice Gabriel mentioned that this could be sent back to the Water Court Committee for any suggestions to change civil forms.

**E. C.R.C.P. 16 and 26**

Judge Elliff reported that the subcommittee has met twice and will have proposals for the committee within the next few meetings.

**F. C.R.C.P. 4(m)**

Passed over.

**G. Local Rules**

Judge Elliff reported for the subcommittee. He stated that he was not in favor of changing local rules but others in the subcommittee were. He then stated that the subcommittee did not find many local orders that substantively changed the rules; the one exception is that there were some orders out there that adjusted deadlines outside of the rules prior to trial. Those struck the subcommittee as fair. The subcommittee determined that they did not want to propose a rule regarding local rules without further direction as to whether it made sense to pursue a rule change given the subcommittee's initial findings. The subcommittee is asking today if the committee believes this is worth pursuing or not. Judge Elliff continued that, essentially, a proposal would say that a judicial officer cannot adopt a standard rule that alters the timelines that are already provided for in the civil rules unless it is discussed at the case management conference. In other words, you can't have a standing rule that changes a deadline. The committee's feedback was that the subcommittee should pursue drafting a proposed rule.

**H. C.R.C.P. 15(a)**

Judge Berger put this on the agenda even though the DIA Brewing case is now before the supreme court on cert. The committee discussed whether it should address this before the supreme court considers it. Based on that discussion, Judge Berger determined that a subcommittee should be formed to determine whether C.R.C.P. 15(a) should conform to the Federal 15(a). Interested members should email Kathryn.

**I. C.R.C.P. 30(b)(7)—Virtual Oaths**

Passed over.

**J. Letter to the Committee from Kevin Conner regarding Sealing of County Court Criminal Records**

Judge Berger shared that this letter comes from Mr. Kevin Conner, who has views about when and how records in county courts should be sealed. In a sense, this dovetails with a new rule currently being considered by the court, Crim. P. 55.1, as it raises some of the same issues.

Justice Gabriel mentioned that it may make sense to wait on this until after the hearing in October. Mr. Vinci reminded the committee that his county court subcommittee brought this up to the group last year. He recalled that this got tabled because of the criminal rule that was being developed. Judge Jones echoed this thought.

The committee will revisit after the criminal rule is considered by the supreme court.

**K. Colorado Rules for Magistrates**

Magistrate Tims shared that the subcommittee met a few weeks ago and will meet again soon. The subcommittee is considering the issue of appellate review and whether everything should just go to the district court.

**L. JDF 105**

Passed over.

**M. County Court Rules 307 and 341**

Subcommittee Chair Ben Vinci reported that the subcommittee has not been able to meet.

**N. C.R.C.P. 304**

Passed over.

**O. Crim. P. 55.1**

Passed over.

**IV. Future Meetings**

November 13, 2020

January 29, 2021

March 26, 2021

June 25, 2021

September 24, 2021

November 12, 2021

The Committee adjourned at 3:00 p.m.