

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
May 20, 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 Court of Appeals Full Court Conference Room on the third 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 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. May 20, 2016 agenda packet

B. Supplemental Material – Judge Taubman’s CRCP 53 email

II. Announcements from the Chair

- The March 18, 2016 minutes were approved as amended by Judge Jones;
- Judge Webb was thanked for chairing the last meeting;
- The CRCP 120 comment period closed April 6, and a public hearing will be held in November;
- The county court jurisdictional increase was posted for public comment, and comments are due June 10;
- A letter to the supreme court regarding CRCP 47 was included in the agenda materials, and certiorari had been granted in 2015COA179; and
- The County Court Rules Subcommittee, a standing subcommittee of the Civil Rules Committee, chaired by Ben Vinci, had their first meeting.

III. Business

A. CRCP 53

Judge Zenisek began and reminded the committee that the amendments to CRCP 53 were introduced at the September 25, 2015 meeting. At that meeting, the committee expressed concerns about the authority of a district court judge to appoint a special master and the standard of review used in the rule. Since then, the proposal had been amended, and Chief Judge Davidson had joined the subcommittee.

There was discussion about what standard of review should be used in the rule. The rule used de novo review, but some members wondered if it was best. One member thought that a standard of review from the Administrative Procedures Act (APA) could be used, where a party can seek de novo review only from “ultimate conclusions.” Another idea was offered, taken from arbitration proceedings, where a party can ask for de novo review, but the judge has discretion to grant de novo review only if the losing party shows prejudice.

Richard Holme offered a working definition of de novo review: “on the record, unless the trial judge is persuaded to grant a new hearing on the facts.” A straw vote was taken, and 10 members were in favor of Mr. Holme’s working definition; 8 members were in favor of either the “ultimate conclusion” language from the APA or the approach taken in arbitration; and, 1 member was in favor of clearly erroneous.

Next, the committee discussed whether or not they were referring to de novo review or a de novo hearing. One member asked how the federal courts interpret de novo under Fed. R. Civ. P. 53. Subcommittee member Greg Whitehair offered to write a memo on what de novo review means in the federal courts in this context. The subcommittee will take the committee’s comments under consideration, and a motion to table the proposal until the June 24, 2016 meeting passed unanimously.

B. Form 20 & CRCP 33

The subcommittee presented the draft for final vote, but there were a few lingering questions. A motion to table the proposal until the next meeting passed unanimously. After the final vote, Form 20 and CRCP 33 will go to the Editing Subcommittee for review.

C. New Form for admission of business records under hearsay exception rule

Passed to the June 24, 2016 meeting.

D. Nits: CRCP 121 § 1-14, CRCP 121 § 1-19, CRCP 103, CRCP 41(b), and CRCP 17(b)

The rules contained typos, incorrect cross references and citations, or required other amendment. A motion to amend all rules as they appeared in the agenda packet passed unanimously.

E. CRCP 60(b)

There was a motion by Brad Levin to change two references in CRCP 60(b) from 6 months to 182 days. The motion passed unanimously. Mr. Levin stated he also found a few 6 month deadlines in CRCP 103; Judge Berger asked him to inform the County Court Rules Subcommittee Chair, Ben Vinci.

F. CRCP 57(j)

Judge Berger brought this to the committee after a discussion with the Appellate Rules Committee. He asked if the language in subsection (j) should be placed in a separate rule, similar to Fed. R. Civ. P. 5.1. Also, the federal rule requires a party challenging the constitutionality of a statute to notify the United States Attorney General, and perhaps a similar provision should be added to the Colorado rule. Stephanie Scoville from the Colorado Attorney General's Office will follow up with her office on these issues and report back to the committee.

G. CRCP 52

Lee Sternal brought this to the committee at the last meeting, and he had done some preliminary research on prior amendments. After discussion, a majority of the committee was interested in studying the issue, so a subcommittee will be formed.

H. County Court Municipal Appeals to district court

Passed to the June 24, 2016 meeting.

IV. Future Meetings

June 24, 2016

The Committee adjourned at 3:30p.m.

Respectfully submitted,
Jenny A. Moore