

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
November 20, 2015 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 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 | |
| David C. Little | X | |
| Chief Judge Alan Loeb | | X |
| Professor Christopher B. Mueller | | X |
| Gordon "Skip" Netzorg | X | |
| Brent Owen | X | |
| Judge Ann Rotolo | X | |
| Stephanie Scoville | X | |
| Frederick B. Skillern | | X |
| Lee N. Sternal | X | |
| Magistrate Marianne Tims | 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. November 20, 2015 agenda packet
- B. Post-Judgment Subcommittee handout

II. Announcements from the Chair

The September 26, 2015 minutes were approved as submitted.

Judge Berger announced that after 28 years Fred Skillern had decided not to renew his membership on the committee. Judge Berger recognized and thanked Mr. Skillern for his service to the committee. Judge Berger introduced new member Judge Adam Espinosa from Denver county court. Today was Judge Espinosa's first meeting, and Judge Berger welcomed him.

Fred Baumann and Diana Poole were introduced. Both guests appeared to answer any questions related to the C.R.C.P. 23 proposal.

III. Business

A. C.R.C.P. 23

Subcommittee chair Richard Laugesen began and stated that the subcommittee was ready to present its final draft of C.R.C.P. 23(g) that passed the subcommittee with one abstention. A concern was raised that a property interest remained with undispersed funds and there had been a few federal court opinions on the issue. An amendment to subsection (g)(2) was suggested that addressed the possible remaining property interest; however, there wasn't a second to adopt the amendment. A motion to adopt the amendment as submitted by the subcommittee passed 18:3.

B. Post-Judgment Subcommittee and County Court Working Group

There were proposals from the Post-Judgment Subcommittee, a subcommittee of the Civil Rules Committee, and the County Court Rules Subcommittee, a group operating through the State Court Administrator's Office. The Post-Judgment Subcommittee Chair, Ben Vinci, gave some history about the proposals before the committee. A motion was made to table all proposals until subcommittee membership could be expanded to include individuals representing the interests of debtors. With a vote of 13:2 that motion passed.

C. C.R.C.P 121 § 1-15

Subcommittee chair David DeMuro began and reminded the committee that at the September meeting the committee adopted amendments to Rule 10 and Rule 121 § 1-12 and § 1-15. One of the amendments to Rule 121 § 1-15 changed a historic comment; however, due to a new procedure, historic comments will no longer be amended. As a result, Rule 121 § 1-15 has a new 2015 comment for the committee to consider. A motion to adopt the new 2015 comment passed unanimously. The only remaining issue with the proposal was the effective date. Mr. DeMuro said he'd follow up about it with Judge Berger with an effective date recommendation.

D. C.R.M. 6

Subcommittee chair Judge Webb began and said that the court of appeals sees cases with a late attempt to challenge a magistrate’s ruling. The right to be heard by a district court judge is important and waiver shouldn’t be implied. Some members thought that the proposal was an improvement, especially to self-represented parties. Other members had questions about how consent would be given and whether this new procedure would lead to delays. A motion to adopt the proposal passed 10:7.

E. Form 35.1

The Editing Subcommittee reviewed Form 35.1 and suggested minor, non-substantive revisions. A motion to adopt Form 35.1 passed unanimously.

F. County Court and Municipal appeals to district court

Judge Berger began and explained that there were inconsistencies between the statutes and court rules and a joint criminal, civil, and appellate rules subcommittee would be formed. The subcommittee will be set up and propose various amendments to the civil rules.

G. C.A.R. 8(d)

The Appellate Rules Committee sent this amendment to the Civil Rules Committee for consideration. C.A.R. 8(d) contains district court functions that need to be moved to the appropriate civil rule. A subcommittee will be set up to propose an amendment.

H. C.R.C.P 84

Richard Holme originally recommended deleting all forms, but after discussion with committee members and Colorado Legal Services his proposal has been revised. The new proposal is to keep all forms with the exception of Form 20. After discussion a motion was made to keep all forms, with the exception of Form 20, but that motion failed 10:9. A new motion was made to refer Form 20 to a subcommittee for amendment, and with one no vote that motion passed.

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

Damon Davis and David Little had been working on this proposal and had a preliminary draft they were working with. The draft wasn’t ready for circulation but, the subcommittee will keep the committee updated on their progress.

IV. Future Meetings

January 29, 2016

The Committee adjourned at 3:30 p.m.

*Respectfully submitted,
Jenny A. Moore*

