

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure  
Minutes of April 24, 2015 Meeting**

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 Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Judge Michael Berger, Chair	X	
Chief Judge (Ret.) Janice Davidson		X
David R. DeMuro	X	
Judge Ann Frick		X
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Charles Kall		X
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
Christopher Zenisek	X	
<b>Non-voting Participants</b>		
Justice Allison Eid, Liaison	X	
Teresa Tate	X	

**I. Attachments & Handouts**

- A. April 24, 2015 agenda packet
- B. Digest of public comment
- C. Amended Improving Access to Justice rules, in response to public comment
- D. Amended Improving Access to Justice rule comments, in response to public comment

**II. Announcements from the Chair**

The February 27, 2015 minutes were adopted with no corrections.

Judge Berger welcomed new members Chief Judge (Ret.) Janice Davison, Gordon Netzorg, Brent Owens, and Stephanie Scoville.

The committee comment amendments were submitted to the supreme court with Judge Berger’s letter recommending that the comments be approved by the committee, and not the court, much like the comments to the federal rules. The supreme court rejected this proposal. Rule and comment amendments are submitted as a package and the court will continue to oversee the comments. Therefore, “committee comments” will now be called “comments” and all comments will be dated by the effective year. The amended comments were revised accordingly and resubmitted to the supreme court.

**III. Business**

**A. IAJ Proposal – Public Comment**

Judge Berger said that the committee would spend the entire meeting discussing public comment received in response to the Improving Access to Justice Proposal. Judge Berger, Mr. Holme, Mr. Netzorg, (Mr. Netzorg commented only on the comment amendments), and Judge Webb went over all public comment, and new amendments were marked on the two documents emailed before the meeting: the Amended Improving Access to Justice rules, in response to public comment and the Amended Improving Access to Justice rule comments, in response to public comment.

Judge Berger explained that the rules would be discussed sequentially, the proposed amendments in response to public comment would be considered, and then other comments, questions, and amendments by the committee would be addressed. Discussion began and the amendments are as follows:

- Rule 1, no additional amendments;

- Rule 12
  - (a)(1) was amended to exclude qualified or absolute immunity defenses from the requirement of filing an answer;
  - in (a)(2) “subsection” was pluralized and a cross-reference to subsection (e) was added;
  - cross references to (a)(1) and (2) were added in subsection (e);
  - a new comment was added;
  - a motion to adopt Rule 12 as amended passed unanimously;
  
- Rule 16
  - qualified or absolute immunity language was added in (b)(1);
  - (b)(3) added video conferencing;
  - (b) (7) clarified that settlement discussions do not actually have to be held;
  - language was added in (b)(8) to accommodate statutory deadlines; later there was a motion to strike the added language, but with four yes votes the motion failed;
  - (b)(12) added the standard “good cause”;
  - (b)(18) expressly states that the case management order can be amended by the judge;
  - “Upon a showing of good cause, and in the absence of material prejudice the court should permit the requested amendment” was added in (e); however, later there was a motion to strike the statement, and striking the language passed with one dissenting vote;
  - a motion to adopt Rule 16 as amended passed unanimously.
  
- Rule 16.1; no additional amendments;
  
- Rule 26(a)-(d)
  - The phrase “14 days prior to the” was added to (a)(2)(B)(I)(h) so fee information does not have to be generated on the eve of trial passed with one dissenting vote;
  - the committee tried to make it clear in (a)(2)(B)(II) that there are retained experts and non-retained experts, but no “hybrid” expert by adding “expressing an expert opinion” which is aimed at limiting what a non-retained expert can testify to; a motion to add this language passed unopposed;
  - there was a motion to strike 26(b)(4)(D) that was seconded, but failed;
  - a motion to adopt Rule 26(a)-(d) as amended passed unanimously;
  
- Rule 26(e)
  - language was added so parties do not have to disclose information that will be used for impeachment only passed with a vote of 10 to 6;
  - an amendment making an expert’s opinions, bases, and reasons, when disclosed during the expert’s deposition by the adverse party, admissible by the court unless the court finds that the opposing party has been unfairly prejudiced passed with one dissenting vote;
  - a motion to adopt Rule 26(e) as amended passed unanimously;
  
- Three additional comments were added to Rule 26
  - *Pleading of affirmative defenses* passed with no opposition;

- *Depositions of retained experts* passed 10 to 5;
- *Sufficiency of disclosure of expert opinions and the bases therefor* passed 10 to 5;
- Rule 30
  - subsections “(a)” and “(b)” were changed to “(A)” and “(B)” for formatting consistency;
  - a motion to adopt Rule 30 as amended passed unanimously;
- Rule 31, no additional amendments;
- Rule 33
  - this rule was not in the original proposal;
  - the amendment added that interrogatory objections must state with specificity the grounds for the objection, a timely objection stays the obligation to answer, and no separate protective order pursuant to CRCP 26(c) is required;
  - a motion to adopt Rule 33 as amended passed unanimously;
- Rule 34, no additional amendments;
- Rule 37
  - the amendment clarified that a hearing will not be held automatically;
  - a motion to adopt Rule 37 as amended passed unanimously;
- Rule 121
  - “in support of the Bill of Costs” was added;
  - a motion to adopt Rule 37 as amended passed unanimously;
- Case Management Order Form, no additional amendment; and
- Rule 54.
 

Public comment from plaintiffs groups generally opposed the proposed amendment to Rule 54. In response to public comment, some members thought the word “reasonable” should be kept in subsection (d), line 2, but that all other amendments should be struck. However, other members thought public comment was primarily received from certain plaintiffs groups, specifically the construction defect group, and that the committee should proceed with Rule 54 as amended. A motion was made to adopt Rule 54 as amended and the motion passed by a vote of 10 to 6.

Judge Berger will draft a letter describing the committee’s final recommendations. He thanked the committee for their time and effort on this proposal and reminded the committee that the public hearing is Thursday, April 30 at 1:30.

## **B. Colorado Rules of Probate Procedure**

Tabled to the June 26, 2015 meeting.

**C. Rule 120 Subcommittee**

Tabled to the June 26, 2015 meeting.

**D. Rule 121, §1-15 Subcommittee**

Tabled to the June 26, 2015 meeting.

**E. Rule 84 Forms**

Tabled to the June 26, 2015 meeting.

**F. Rule 53 Masters**

Tabled to the June 26, 2015 meeting.

**G. New Disclosure Form**

Tabled to the June 26, 2015 meeting.

**H. Rule 122(c)(7) Case Specific Appointment of Appointed Judges Pursuant to C.R.S. §13-3-111**

Tabled to the June 26, 2015 meeting.

**IV. Future Meetings**

June 26, 2015

September 25, 2015

November 20, 2015

The Committee adjourned at 4:45 p.m.

*Respectfully submitted,*  
*Jenny A. Moore*