

**Colorado Supreme Court Advisory Committee on the Rules of Probate Procedure  
September 30, 2016 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Probate Procedure was called to order by Judge Diana Terry at 9:30 a.m., in Conference Room C2215 on the second 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 Diana Terry, Chair	X	
Shari Caton	X	
Judge Mary Deganhart	X	
Emily Gregory		X
Michael Holder	X	
Magistrate Frances Johnson	X	
Michael Kirtland	X	
Lauris Laue	X	
Judge Elizabeth Leith	X	
Connie Lind	X	
Judge Mark MacDonnell	X	
Marcie McMinimee	X	
Judge Devin Odell	X	
Judge Lily Oeffler		X
Amber Roth	X	
Charles Spence	X	
Casey Williams	X	
<b>Non-voting Participants</b>		
Justice Allison Eid, Liaison	X	
Veronique Van Gheem	X	

**I. Attachments & Handouts**

- A. September 30, 2016 agenda
- B. Revised Probate Rules draft
- C. Rule 8.8 Memo

**II. Announcements from the Chair**

Judge Terry welcomed all members to the meeting. Judge Terry told the committee that she had attended the Editing and Forms subcommittee meetings, and she was very impressed with the work of both subcommittees.

### **III. Business**

#### **Revised Probate Rules draft**

The Editing Subcommittee flagged certain rules for full committee discussion, and the rules will be discussed in order.

Rule 4: whether subsections (a)(12) and (13) are appropriate delegations to a non-judicial officer. The committee thought that because both subsections had an option for an interested person to object the subsections were appropriate. There was a motion to keep subsections (a)(12) and (13) that passed 10:4.

Rule 5: the committee discussed whether a reference to C.R.C.P. 121(b) should be added to the rule. The subcommittee stated that it was in agreement that all local probate rules in effect should be repealed, however, the subcommittee was unsure whether districts should be able to adopt local rules. A member asked how many local probate rules were in effect and one had been located. Members were concerned that if districts were allowed to adopt local rules parties could be “home-towned.” After discussion, the committee agreed that districts should have the flexibility to adopt local rules, but they must be adopted under C.R.C.P. 121(b).

Rule 11: whether rules that reference Judicial Department Forms (JDFs) should reference the form by JDF number, or if a generic form reference should be used. The subcommittee was concerned that if the forms were renumbered, cross-references would have to be updated. The committee unanimously decided that the benefits of referring parties to the specific form to be used outweighed the possibility of future updating, so the specific JDF number will be used.

Rule 12: the subcommittee flagged the definition in subsection (b)(2) for the committee to consider, because “legal disability” is not defined in the statutes, and the subcommittee had wrestled with the definition. The committee decided that the language in the subsection best tracked C.R.C.P. 17(c), so subsection (b)(2) will remain as is.

Rule 22: the subcommittee wanted the committee’s opinion on whether this rule should remain in the rules. The rule seemed redundant, but it didn’t necessarily do any harm, so the committee decided to leave it in the draft.

#### **Rule 24**

First, subsection (a) was discussed. The issue was whether the language in the first sentence should be “any matter” or “matters that are routine and expected to be unopposed.” After lengthy discussion, a motion was made to change the first sentence of

subsection (a) to read “any appropriate matter” and add a comment, listing things that generally are or are not appropriate for the non-appearance docket. That motion passed 8:6. Discussion ensued, and Rule 24(a) will be tabled to the next meeting when the committee can review the comment.

Second, there was a motion to delete subsection (b)(4), but with three yes votes, the motion failed.

Third, there was a motion to change the timing requirement in subsection (b)(4) from 14 to 21 days, but with three yes votes, the motion failed.

Fourth, there was a motion to amend the last sentence in subsection (b)(4) to read: “Failure to timely set the objection for an appearance hearing as required by section (4) of this rule shall result in action by the court without further notice as set forth in subsection (d).~~the dismissal of the objection with prejudice without further hearing.~~” This motion passed 12:2.

Fifth, there was a motion to change the “shall” in the first sentence of subsection (b)(4) to “may” that failed with one yes vote; however, there was a motion to change “shall” to “must” that passed unanimously.

Sixth, there was a motion to change the title of Rule 24 to “Determination of Matters by Hearing without Appearance.” After discussion, the motion was withdrawn.

Finally, the committee discussed removing the word “shall” from the draft. Judge Terry mentioned that “shall” had different definitions and that the Court of Appeals had opinions on the subject. The committee unanimously decided “shall” must be deleted from the draft.

Judge Terry told the committee, although some already know, there is discussion about whether the JDFs on the court’s website should be posted in an editable or non-editable format. She was going to survey the probate bench to determine their comments and concerns, and whether there was a consensus on the most useful format. This will be an agenda item at a future meeting, but for now the forms will be posted in a non-editable version on the court’s website.

#### **IV. Future Meetings** TBD

The Committee adjourned at 12:00 p.m.

*Respectfully submitted,*  
*Jenny A. Moore*