

**COLORADO SUPREME COURT  
COMMITTEE ON THE RULES OF EVIDENCE**

**MINUTES OF MEETING  
March 2, 2001**

David R. DeMuro, Chair, called the Colorado Supreme Court Committee on the Rules of Evidence to order at 1:30 p.m., in the Supreme Court Conference Room on the Fifth Floor of the Colorado State Judicial Building.

The following members were present:

Nathan B. Coats (Liaison Justice)	Sheila Hyatt
Harlan Bockman	Christopher B. Mueller
Rebecca Bromley	David K. Rees
Philip A. Cherner	Henry R. Reeve
Janice Davidson	Robert M. Russell
Elizabeth F. Griffin	

The following members were excused:

Martin Egelhoff	Christopher Miranda
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Handouts

David DeMuro distributed extra copies of a revised Committee list and agenda materials that had been previously mailed to all Committee members.

Committee Goals

David DeMuro explained that the committee has been formed at the request of Chief Justice Mullarkey and Justice Coats. Justice Coats asked the committee members for feedback on committee goals. Discussion was held, as follows:

- David DeMuro stated that there has been a lot of work done on the Federal level on the Rules of Evidence. If the committee determines the need to address the outdated Rules in the Colorado Court Rules, it would be a long-term project.
- Philip Cherner asked if the Attorney General's Office would seek any legislative changes.
- Several members asked questions regarding the authority of the committee and whether or not the committee can draft new Rules for the Expert Witness Rule and Rule 702. David Rees suggested that as a Committee of the Supreme Court, this committee has the authority to make suggestions to the Supreme Court. Justice Coats agreed with this assessment.
- David DeMuro suggested that the committee members be assigned to standing committees, which are responsible for specific issues. David Rees suggested that the subcommittees could be responsible for compiling reports that can be used as working documents by the whole committee.

- A committee member asked if the Supreme Court would like the committee to look at the old Rules or to look at current areas of concern. David DeMuro suggested that the committee could focus on any issues that members feel are important.

#### Rules 701, 702, and 703 – Opinion Testimony by Lay and Expert Witnesses

David Rees moved that a subcommittee be established to look at Article VII Rules and determine what changes need to be made. Discussion was held, as follows:

- Judge Bockman stated that he has some concerns about making any changes to these Rules and would like input from the committee members.
- A committee member asked whether there are any current cases addressing these Rules. David DeMuro suggested that the committee may often be addressing Rule changes while the Supreme Court is addressing cases.
- Judge Davidson suggested clarifying the Rules instead of changing the Rules.
- Henry Reeve asked whether the committee could recommend an amendment be made to the comments.

Judge Bockman volunteered to Chair a subcommittee addressing Rules 701, 702 and 703. David Rees, Judge Davidson, Christopher Mueller, and Henry Reeve also agreed to serve on this subcommittee. David DeMuro suggested that some additional defense lawyers might also be recruited to serve on this subcommittee.

#### Rule 103(a) – Effect of Erroneous Ruling

Discussion was held, as follows:

- A committee member suggested that the committee adopt the Federal changes.

Christopher Mueller volunteered to draft some comments that could be added to the Rule.

#### Rule 404(a) – Character Evidence Generally

Discussion was held, as follows:

- A committee member asked whether the committee should address this Rule.
- A committee member stated that there might be issues with this Rule when the victims know each other.

Professor Hyatt volunteered to Chair this subcommittee. Robert Russel, Judge Bromley and Elizabeth Griffin will also serve on this subcommittee.

#### Rule 803(6) – Records of Regularly Conducted Activity

#### Rule 902(11) and (12) – Self Authentication of Records of Regularly Conducted Activity

Discussion was held, as follows:

- Christopher Mueller stated that issues with these Rules do come up in some civil suits.
- David Rees suggested conforming the Colorado Rule to the Federal Rule.

David DeMuro volunteered to prepare a proposal on this issue for the next meeting. Perhaps some minor changes will improve the Rules.

Next Meeting

After some discussion, the committee members agreed to meet again on June 1<sup>st</sup>, if the Conference Room is available. Phil Cherner will set up a computer site so members can send notes and comments to other members. The subcommittees will meet prior to the next general meeting on June 1<sup>st</sup>.

Respectfully submitted, Troy Singleton

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