

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

May 8, 2015 Meeting Minutes

A quorum being present, the Colorado Supreme Court’s Advisory Committee on the Rules of Evidence was called to order by Judge Gale T. Miller at 1:30, in the Full Court Conference Room on the third floor of the Ralph L. Carr Colorado Judicial Center. Members and guests present or excused from the meeting were:

Name	Present	Excused
Judge Gale T. Miller, Chair	X	
Catherine P. Adkisson	X	
Harlan Bockman	X	
Philip A. Cherner	X	
Judge Theresa Cisneros	X	
David DeMuro	X	
Judge Martin Egelhoff		X
Elizabeth F. Griffin	X	
Judge Marcelo Kopcow	X	
Professor Sheila Hyatt	X	
Chief Judge Alan Loeb		X
Professor Christopher Mueller	X	
Norman Mueller	X	
Henry R. Reeve	X	
Robert M. Russel	X	

I. Attachments & Handouts

May 8, 2015 agenda packet

II. Announcements from the Chair

The October 24, 2014 minutes were passed with no corrections.

Judge Miller announced that the amendments to FRE 801 and 803 were adopted on Dec. 1, 2014 and were included in the agenda packet.

III. Business

a. FRE 502

Professor Mueller explained that the supreme court adopted an amendment to CRCP 26 that sets forth a procedure to use when a party learns it has produced information in disclosure or discovery that is subject to a claim of privilege or the work-product rule. CRCP 26 sets forth a procedure to bring disclosure to the court but does not provide the

court with a standard in making its determination. The subcommittee studied the issue and reported that 13 states adopted a rule similar to FRE 502, and the subcommittee's recommendation was that Colorado should adopt a rule similar to FRE 502. There were two versions of CRE 502 in the agenda packet, one with an arbitration clause and one without. The committee favored the version of CRE 502 without an arbitration clause. A motion was made to adopt the version of CRE 502 without an arbitration clause. The motion was adopted unanimously. Judge Miller will prepare the transmittal letter and submit the letter and CRE 502 to the supreme court.

b. FRE 801(d)(1)(B)

At the last meeting it was decided a subcommittee would study CRE 801 and recommend if it needed an amendment similar to FRE 801(d)(1)(B). After studying the issue, the subcommittee recommended not to amend CRE 801. A motion was made to adopt the subcommittee's recommendation. The motion passed with two dissenting votes.

c. Restyling

Whether or not the Colorado Rules of Evidence should be restyled similar to the federal rules was discussed at the last meeting, and Professor Hyatt offered to create a document comparing the Colorado and Federal Rules of Evidence side by side. Professor Hyatt presented the document, and Judge Miller asked if the committee was interested in restyling the Colorado Rules of Evidence. With only two yes votes, the project will not be pursued. However, Judge Miller asked the committee to review Professor Hyatt's comparison document in anticipation of the October 30, 2015 meeting and identify individual rules that would benefit from restyling.

d. New Form

Judges Berger and Miller received a submission suggesting the creation of a new business records authentication form. Under CRE 803(6), a party may admit business records under the hearsay exception if the records are accompanied by an affidavit by the records custodian certifying the records fall within the hearsay exception; the certification must comply with CRE 902(11) or (12). Professor Hyatt had found a sample form from Michigan for the committee to review. While the committee thought the form was a good idea, the Rules of Evidence don't have any forms, and a motion was made to pass this issue to the Civil Rules Committee. The motion passed unanimously.

e. HB 15-1216

David DeMuro said that during the last legislative session, House Bill 15-1216, Basis for Expert Opinion Testimony, was introduced and it essentially codified FRE 702. With this bill it seemed as though the legislature was overstepping its boundaries and legislating in an area that is reserved for the courts. The bill was opposed by many parties, and was assigned to the House Judiciary Committee where it was postponed indefinitely. Previously, the committee had proposed a change to CRE 702 making it more like FRE 702, and the court rejected it. Currently, the committee has no plans to submit an amendment making CRE 702 similar to FRE 702. The committee will see if this comes up again at the next legislative session.

IV. Future Meetings

October 30, 2015

The committee adjourned at 3:15pm.

*Respectfully submitted,
Jenny A. Moore*