# Minutes

**COLORADO SUPREME COURT**

**WATER COURT COMMITTEE**

Thursday, October 24, 2019, 1:30 p.m.

Ralph L. Carr Colorado Judicial Center

2 E.14th Ave., Denver CO 80203

Fourth Floor, Supreme Court Conference Room

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| --- | --- | --- |
| **Name** | **Present** | **Excused** |
| Justice Monica Márquez, Chair | X |  |
| Justice (Ret.) Gregory Hobbs | X |  |
| Judge (Ret.) John Kuenhold | X |  |
| Judge (Ret.) Thomas Ossola | X |  |
| Referee John Cowan | X |  |
| Referee Nicolas Sarmiento | X |  |
| Referee Susan Ryan | X |  |
| Holly Strablizky | X |  |
| Amy Beatie |  | X |
| Kevin Rein | X |  |
| Erin Light | X |  |
| Craig Cotten | X |  |
| Kaylea White | X |  |
| Doug Clements |  | X |
| Jennifer Ashworth | X |  |
| Mark Hamilton |  | X |
| Mark Hermundstad | X |  |
| Andy Jones | X |  |
| Peter Ampe | X |  |
| Jim Witwer | X |  |
| Doug Sinor |  | X |
| Chris Geiger |  | X |
| Emily Hunt |  | X |
| Sean Cronin |  | X |
| Kara Godbehere | X |  |
| **Non-voting Participants** |  |  |
| Andrew Rottman | X |  |
| Veronique Van Gheem | X |  |

Also Present: Paul Benington

1. **Call to Order**
2. **Welcome and Introductions**
3. **Approval of Minutes**

The Committee approved the 4/19/2019 Minutes with minor changes.

#### **Report from Education Subcommittee**

Jennifer Ashworth report that 83 attorneys attended the October 11 CLE, which focused on water court procedures. The CLE Subcommittee received positive feedback, and attorneys indicated they want more practical CLEs like this one as well as more ethics credit.

The next CLE will be on May 8, 2020. The CLE Subcommittee will start putting together the agenda in November. Justice Hobbs asked about a CLE program on conducting a water trial. Ms. Ashworth agreed to consider that proposal in developing the program.

#### **C.R.C.P. Applicability to “Water Law” Cases**

Paul Benington reported that he circulated a memo responding to comments from water judges. Mr. Benington believed the proposal was ready for a vote of the full committee. Justice Márquez questioned whether the revised proposal should go to the Civil Rules Committee before moving forward on the ULR change. Mr. Benington thought the committee should hold off on water court rule change and present all rule changes to court at the same time.

Jim Witwer raised concerns that some cases that normally go to water court would now fall under C.R.C.P. 16.1, which provides for limited discovery and condensed timelines compared to C.R.C.P. 16. Mr. Benington responded that C.R.C.P. 16.1 is appropriate for many of these cases, and the parties can always request a modified CMO if 16.1 is too restrictive. Mr. Benington mentioned that some cases do not come with a presumptive need for experts or substantial discovery. Mr. Witwer stated that it is not always easy to convince a court to opt out of the constraints of 16.1, and he had concerns about a number of these cases going through a simplified procedure. Mr. Witwer believed C.R.C.P. 16 is a better default, and attorneys in each case should consider whether 16.1 would be appropriate. Kara Godbehere wanted to speak with Mr. Witwer and the water law section to see if they have shared concerns. The committee discussed cases in which there are water use issues and other related issues, and those are sometimes filed in water courts and district courts simultaneously. Mr. Benington stated that there are many cases that are so fact specific it is hard to have a uniform rule to address them. He preferred to leave that up to the judges. Justice Márquez suggested giving Mr. Benington and Mr. Witwer 30 days to discuss the issue, and the Committee could then act by email vote if the proposal does not change. If the proposal changes, the Committee believed it would be appropriate to discuss the revised proposal at the April meeting.

#### **Abandonment Protest Form and Abandonment Entry of Appearance Form**

Paul Benington reported that he had discussions with Abandonment Subcommittee regarding updating existing forms, creating new forms, and the appropriate filing fees for certain appearances. The largest proposed change to the abandonment protest form eliminates the requirement for legal description. Mr. Benington explained that the original decree already describes the right, and it would be confusing to have different information on the protest form, even if the protest form is more accurate. The proposed changes retain the requirement to provide a map. The Subcommittee’s proposed Entry of Appearance form is entirely new; no current form exists. The proposed form is consistent with the new abandonment rules. The proposed form instructs the filing party to check with the clerk of court regarding fees. Justice Márquez agreed to send the proposed forms to the water judges for comment.

#### **Location Information on Water Court Forms**

Erin Light continued the committee’s previous discussion regarding the appropriate location information to include on water court forms. When an applicant provides PLSS and UTM information, many times they describe two different locations. The Engineers would like to have one location description on the forms. Erin Light expressed a preference for PLSS location, because it is more helpful to water users than UTM coordinates. Currently, the court forms instructions encourage applicants to provide both UTM and PLSS. There was also a discussion about including the source of location information on the form.

The committee discussed location problems unique to diligence applications. Holly Strablizky explained that the form for diligence applications asks for the “most recent decreed location.”

Justice Márquez suggested sending the forms to water judges. Erin light stated that the only change she would make to the proposed forms is to include a question about the source of information for a PLSS location.

#### **Updates**

#### **Update on Resume Publication**

Mark Hermundstad updated the committee on discussions in the Resume Publication Subcommittee. The Subcommittee made further revisions to proposed rules changes, and the new proposed rule was presented to the committee. The committee did not have any comments or questions. The committee recommended forwarding the proposed changes to water judges and water clerks.

#### **Update on Pro Se Resources**

Referee Ryan reported that the Subcommittee discussed different ways to get resources to pro se water court litigants. The Subcommittee considered a water court day similar to what other courts do for family law. Due to logistical and market issues, the subcommittee tabled that idea. The Subcommittee also discussed something on the courts’ website that would link to the different divisions and provide resources in one place. Referee Sarmiento discussed the self-help forms on the courts’ website and adding resources for water law cases. The Subcommittee also discussed a 45-minute presentation that could be given in the division about how to use the resource website. The committee discussed who would give the presentation and whether a video would make more sense. The committee also discussed improving the nonattorney handbook. Justice Márquez offered to put the Subcommittee in touch with the IT Division at SCAO and the Judicial Education team.

#### **Open Discussion of Future Projects**

The committee discussed the notarization requirement on certain water court forms. New legislation may have impacted whether these forms can be verified instead of notified. Referee Cowan and Judge Kuenhold will look into this. Veronique Van Gheem with SCAO legal has done work on this for other court forms and will work with Referee Cowan and Judge Kuenhold.

#### **Next Meeting Date**

The next meeting will be held in April. Andy Rottman will coordinate.

#### **Adjourn**