

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
April 8, 2022, Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Jerry N. Jones at 1:30 p.m. in the Supreme Court Conference Room. Members present at the meeting were:

Name	Present	Not Present
Judge Jerry N. Jones, Chair	X	
Mandy Allen		X
Judge Michael Berger		X
Judge Karen Brody	X	
Miko Ando Brown		X
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman		X
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Magistrate Lisa Hamilton-Fieldman	X	
Michael J. Hofmann		X
Judge Thomas K. Kane		X
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Lucas Ritchie	X	
Chief Judge Gilbert M. Román	X	
Judge (Ret.) Sabino Romano		X
Genevieve Rotella		X
Judge Stephanie Scoville		X
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Jose L. Vasquez	X	
Judge Juan G. Villaseñor		X
Ben Vinci	X	
Judge (Ret.) John R. Webb		X
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins		X

I. Attachments & Handouts

- April 8, 2022, agenda packet.

II. Announcements from the Chair

- The January 28, 2022, minutes were approved as submitted.
- Chair Judge Jones welcomed new member Luke Ritchie. Judge Jones then provided updates on subcommittees: regarding the document retention subcommittee, the supreme court will create a uniform policy for document retention for all of the court's committees; therefore, this subcommittee will not be formed. The pronouns and PALs subcommittees both need additional volunteers.
- Justice Gabriel shared background on the document retention policy. The court is looking at, subject to legal counsel advising otherwise, keeping official records of committees, such as minutes, agendas, and memos, along with anything of historical interest. Justice Gabriel also noted that Judge Davidson has decided to retire from this Committee after serving since 1988. While Judge Davidson was not in attendance, Justice Gabriel will ensure she is honored properly.

III. Present Business

A. FED Actions

Judge Jones shared that during the email vote on the FED rules and form, several members shared comments. Based on these comments, Judge Jones thought it best to discuss the comments in a meeting. Judge Espinosa, Subcommittee Chair, said that the subcommittee today brings proposed changes to C.R.C.P. 55 and 355 along with the forms and a memo. Judge Espinosa explained that there are various meanings of *close of business* throughout rules and in different courts. The subcommittee agreed it best to follow the statute's language and not define close of business. Judge Jones noted the two remaining issues: First, should *close of business* be defined in a particular way, or should the Committee stick with the language of statute? Second, should the language refer to the ability to avoid default by filing an answer before the close of business on the appearance date? One member noted that there are multiple options possible, and because of that inconsistency, the language should be left to the legislature or a court's interpretation. Justice Gabriel said that the problem here is that the legislature did not define their term, and the court cannot legislate by rule. Ultimately, this is a legislative problem. The court might get stuck interpreting this at some point, but if the Committee recommends and the court adds language that isn't in the statute, the court might be accused of amending the statute by rule, which is not allowed. One member noted that it is not clear that a party can file an answer by the close of business. Another member noted that the summons must have specific language as required by the statute, and this presented an intractable issue for the subcommittee in drafting the language of the summons. Much of the discussion considered how much guidance a pro se litigant facing eviction needs compared to how the Committee can best follow the language of the statute. Judge Jones suggested a vote on two questions: 1. Should the Committee define close of business? 2. Should the Committee include language in the summons that tells the defendant more explicitly that if the defendant fails to not appear at the date and time, the defendant may avoid a default by filing an answer by close of business?

The Committee unanimously voted not to add the *close of business* language.

A motion and second were taken to revise the summons to articulate more clearly that a defendant can avoid default by filing an answer before the close of business. A member noted that the issue lies in the statute, and the language in the statute does not comport. There is no way to write in the form that this is what the legislature meant to say. The member continued that the language must follow the statute and we should let the legislature make the necessary changes. Another member noted that this is an access to justice issue because most tenants are self-represented. The Committee returned to the motion on the table to revise the summons to more clearly indicate that a party can avoid entry of default even if the party does not appear on the date and time indicated by filing an answer by the close of business. The proposed amendment failed by a vote of 4 to 14.

Then, there was a motion and second to move the date and time to paragraph 2 in the Summons. This would still comply with the statute but provide clarity by eliminating the first two clauses of paragraph one. A friendly amendment was suggested to remove the language *your options are below*. The motion was approved 14 to 6.

A motion and second were made to amend the rules and forms on the proposal as a whole. After members suggested a few nit edits, the motion passed unanimously 18-0.

Judge Jones will write a transmittal letter that indicates the various points of contention and submit these proposals to the court and expressed his thanks to the subcommittee members for all their work.

B. Summary of Other Pending Matters

Judge Jones said that the both the Magistrate Rules Subcommittee and the Rule 16.2 Subcommittee will present proposals at the next meeting.

Future Meetings

June 24, 2022; September 23, 2022; and November 4, 2022

The Committee adjourned at 3:31 p.m.