From:	michaels, kathryn
Sent:	Tuesday, November 9, 2021 8:12 AM
To:	allen, mandy; bernard, steven; brody, karen; 'miko.andobrown@airbnb.com'; davidson, janice; 'damon@killianlaw.com'; 'ddemuro@vaughandemuro.com'; dunkelman, paul; dunn, stephanie; elliff, j. eric; espinosa, adam; 'pagpc@prodigy.net'; 'artldf@yahoo.com'; 'michael.hofmann@bryancave.com'; 'rpholme@live.com'; jones, jerry; kane, thomas; 'jlebsack@wsteele.com'; 'bal@levinsitcoff.com'; 'christopher.mueller@colorado.edu'; 'brent.owen@squirepb.com'; 'jpalmeri@gordonrees.com'; 'judgesabinoromano@gmail.com'; rotella, genevieve; scoville, stephanie; 'lee@lnslaw.net'; 'reception@lnslaw.net'; tims, marianne; 'jvasquez@colegalserv.org'; villasenor, juan; 'ben@vincilaw.com'; 'john.webb@coag.gov'; 'jgw@whitehairlaw.com'; zenisek, christopher; botkins, jeremy; cooley, kayla
Cc:	gabriel, richard; berger, michael; michaels, kathryn
Subject:	Civil Rules Committee - Colorado Rules for Magistrates

Please see the message below from Judge Berger.

A non-member of the committee asked for leave to address the committee on Friday on the Magistrate Rules proposal. I denied the request. Nevertheless, although these points have been made by others, the more information the better, and below is the email I received from the non-member.

Michael H. Berger

From: Ruth Moore <ruth@moorewilliams.com>
Sent: Monday, November 8, 2021 4:09 PM
To: berger, michael <michael.berger@judicial.state.co.us>
Cc: Sharlene J. Aitken, Esq. <saitken@aitkenlawllc.com>
Subject: Civil Rules Committee - Colorado Rules for Magistrates

Dear Judge Berger:
I am requesting leave to speak to the Civil Rules Committee this Friday to express concerns about the pending proposal to do away with magistrate consent jurisdiction, expand magistrate non-consent jurisdiction, and limit judicial review of magistrates' decisions. These changes are moves in the wrong direction. They prioritize the convenience of judges who apparently don't wish to handle certain cases over the rights of litigants to a constitutionally appointed and accountable decisionmaker. The Colorado Rules for Magistrates should instead be revised to: (1) require affirmative written consent before a magistrate can preside over important issues; and (2) provide for *de novo* review by a judge who was constitutionally nominated, appointed, and retained by the voters.

Committee member Lee Sternal touched on these concerns when he dissented from the CRM subcommittee's proposal. Mr. Sternal, a civil litigator, explained that C.R.C.P. 16 and 16.1 matters are too important and integral to the litigation process to be delegated to a magistrate without consent. He noted: "Rule 16 controls our civil litigation process. It is why we care who gets to be our appointed judges. How Rule 16 issues are addressed and ruled upon is what provides the basis for not only our but also the public's judicial evaluation and retention opinions. The degree of discretion that is afforded to Rule 16 orders is what makes how Rule 16 authority is administered the most important civil justice function a court possesses…. To suggest that it would be appropriate for a judge to delegate his, or her, rule 16 authority to a magistrate, frankly, should beg question as to the level of possessed judicial commitment to the

responsibilities of their office." As a civil litigator myself, I share Mr. Sternal's concerns and believe that most of our colleagues would also.

Family law practitioners express the same concerns over the CRM's overbroad nonconsensual delegation of family law decision-making to magistrates. As a practical matter, this is a much larger concern for family law because courts are already heavily using magistrates to render many of the most important issues in family law. Last year, Sharlene Aitken and I convened a grassroots group of lawyers—mostly family law practitioners—to collect input and propose changes to the Colorado Rules for Magistrates, which we presented in a memorandum to the chair of the CRM subcommittee last September. We explained that the current scope of non-consent jurisdiction is considered too broad because it deprives litigants of their right to a judge over serious matters such as motions to modify permanent orders and contempt proceedings. Moreover, since the current rules allow for constructive or presumed consent rather than actual consent, parties may be deprived of their right to a proceeding before a constitutionally appointed and retained judge in circumstances where they have not agreed to waive that right. As a result, we proposed that:
- C.R.M. 6(b)(1)(B)&(C) and C.R.M. 6(b)(2) should be changed so that consent is necessary for a magistrate to preside over motions to modify permanent orders concerning property division, maintenance, child support, or allocation of parental responsibilities.
- C.R.M. 5(b) should be changed to provide that only a judge may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt, unless the parties consent to a magistrate doing so.
- C.R.M. 3(f)(1)(A) should be changed to omit the provisions allowing non-written consent. This section should read: "For the purposes of these rules, where consent is necessary, the party must have affirmatively consented in writing."

Instead of these changes, the proposal currently before the Civil Rules Committee goes in the opposite direction. It does away with consent jurisdiction entirely, expands magistrate non-consent jurisdiction, and deletes a judge's authority to "conduct further proceedings, take additional evidence, or order a trial de novo in the district court."

I would greatly appreciate the opportunity to address these matters with the committee on Friday. Thank you for your consideration.

Best regards,
Ruth Moore

Ruth Moore
Direct Dial: (303) 243-2540

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