

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
November 22, 2019 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m. in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present at the meeting were:

Name	Present	Not Present
Judge Michael Berger, Chair	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X (phone)	
David R. DeMuro	X	
Judge Paul R. Dunkelman	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman	X (phone)	
Michael J. Hofmann	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X (phone)	
Cheryl Layne	X (phone)	
John Lebsack	X	
Bradley A. Levin	X	
David C. Little		X
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Judge Sabino Romano	X (phone)	
Stephanie Scoville	X (phone)	
Lee N. Sternal		X
Magistrate Marianne Tims	X (phone)	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor		X
Ben Vinci		X
Judge John R. Webb	X (phone)	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X (phone)	
Jeremy Botkins	X	

I. Attachments & Handouts

- November 22, 2019 agenda packet and supplements.

II. Announcements from the Chair

- The September 27, 2019 minutes were approved as presented.
- Judge Berger is forming a standing forms subcommittee as there are more and more issues related to forms that need attention. Judge Berger asked members to volunteer to serve.

III. Present Business

A. Local Rules

Subcommittee chair Richard Holme reported that the subcommittee is in the process of determining how to proceed. Mr. Holme requested additional subcommittee volunteers to allow the group to give better advice to the committee.

Judge Elliff commented that he does not want a rule that would tie the hands of trial judges who are trying to efficiently manage cases. He noted that every judge is different, every district will have unique needs, and that can well mean standing orders on certain issues.

B. C.R.C.P. 56

Mr. Holme brought to the committee the possibility of a change to C.R.C.P. 56 that calls for in-person discussions before a summary judgment motion is decided. The concept was inspired by the Institute for the Advancement of the American Legal System (IAALS). Mr. Holme shared that there don't appear to be rules anywhere around the country specifically authorizing a pre-hearing to talk about the substance of what would be included in a proposed summary judgment motion. Mr. Holme drafted some language, and with Judge Berger's permission, sent it to the trial judges on this committee. The results of the proposed language were mixed, but more positive than negative. Judge Berger took volunteers to serve on a subcommittee addressing these issues.

C. Colorado Municipal Court Rules of Procedure

Judge Frick noted that the Municipal Rules subcommittee is here today with five rule proposals. Once this committee has approved the rules, the Criminal Rules Committee will consider them as well.

Regarding rule 204: after making a few edits, the committee approved the proposal unanimously.

Regarding rule 210: Judge Frick shared that this rule reflects the court's duty to inform on the first appearance in court and on pleas of guilty. The proposed language changes respond to recent legislative changes. A motion was made to approve the rule and add *first appearance or arraignment* to the title, and it passed unanimously.

Regarding rule 223: Brad Levin suggested keeping in an *or* that had been removed. With

that small change, the committee approved the proposal unanimously.

Regarding rule 241: the subcommittee proposed changes to expand the authority of the Colorado Municipal Courts to issue a search warrant when it relates to a charter or ordinance violation involving a threat to public health, safety, or order. Lisa Hamilton-Fieldman queried whether these changes would necessitate that municipal judges be on call. Judge Frick replied that someone will need to be available, but that it probably wouldn't be a huge expansion. A motion was taken to adopt the proposed language with the addition that the court is a court of record to make the rule consistent with the statute. The committee voted 13-11 in favor of it passing. Judge Berger told the committee that the supreme court has rejected proposals in the past when the committee's vote was divided.

Regarding rule 254: Judge Frick explained that this rule restates and clarifies the law. The proposal passed unanimously.

D. JDF 601

Subcommittee chair Brad Levin reported that the group decided there should be a uniform rule discussing related cases. The subcommittee believes that for efficiencies and to avoid inconsistencies, it is important that judges know about related cases. The subcommittee is in favor of adding language to rule 121 and would like to obtain approval on that regard before tackling how exactly to do so.

Judge Dunkelman commented that in his court, related cases are an infrequent occurrence, but it is useful to have the cases together in order to avoid a single case using up more resources than is necessary. Judge Kane is in favor of a rule on this issue. In his court, they see a lot of these cases related to self-represented litigants. A rule on related cases would be very useful when someone is filing a lot of things with the court. Judge Davidson stated that related cases should include all related cases, not just those within a certain district. Judge Elliff shared that his district sees a list of related cases and that the related case information would be good to have. Judge Espinosa stated that currently, Denver County Court groups related cases informally; there, the oldest case tends to control all the new filings and the court doesn't have a form, but the staff seem to catch related filings and group them together. Hearing no opposition to the concept, Judge Berger directed the committee to move to the specifics of what a rule would look like.

Judge Dunkelman spoke in favor of a notice requirement in the rule, and Chief Judge Bernard noted that a rule should be simple but include a definition of related cases. A straw vote was taken and approved overwhelmingly to send this to the subcommittee to draft a rule that requires notice but does not suggest any specific action.

Judge Davidson noted that judicial education through the judges' benchbook could be helpful once a rule is proposed. Judge Elliff stated that there can be venue issues when there are two or three cases involved. Judge Berger shared that some of these preferences could be put into a comment. Judge Kane noted that on a family docket, he was required to contact other judges who had related cases. Judge Kane specified that contacting the

other judges shouldn't be mandatory in the rule, but a comment on the issue might be helpful.

The subcommittee will return with a proposal.

E. Colorado Rules for Magistrates

Subcommittee Chair Magistrate Tims reported that the subcommittee is still grappling with the issue of consent. The subcommittee has discussed the option of the rules saying something like: *in a civil case, this is what a magistrate can always do, can never do, etc.* The subcommittee has looked at five other states and determined that the federal rules aren't helpful. The subcommittee will continue their work.

F. JDF 105

Tabled until January.

G. County Court Rules 307, 341, and 412

Tabled until January.

H. C.R.C.P. 103

The subcommittee plans to meet in December and report to the full committee in January.

I. C.R.C.P. 8(c)

Judge Berger asked for volunteers for this subcommittee.

J. C.R.C.P. 4(m)

Judge Jones reported that the subcommittee will hopefully share a recommendation at the next meeting.

K. C.R.C.P. 304

Tabled until January.

L. Federal Rules Standing Subcommittee on C.R.C.P. 121, § 1-23 + C.R.C.P. 65.1

Subcommittee chair David DeMuro reported that this subcommittee had met and discussed changes recently made to the federal rules. This subcommittee has rejected some of the changes made to the federal rules but would like to amend the rule on bonds to be consistent with the federal approach. The subcommittee also recommends a repeal of rule 65.1. After Judge Webb asked if the subcommittee would be open to adding language about reasonable notice, a motion was made and unanimously passed to have the subcommittee tweak the language and return with it at the next meeting. Mr. Palmeri noted that rule 8 of the appellate rules uses similar language.

IV. Future Meetings

January 31, 2020

March 27, 2020

June 26, 2020

September 25, 2020

November 13, 2020

The Committee adjourned at 3:29 p.m.