AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, November 16, 2018 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Third Floor, Court of Appeals Full Court Conference Room

I. Call to order

II. Approval of September 28, 2018 minutes [Pages 1 to 6]

III. Announcements from the Chair

IV. Present Business

A. C.R.C.P. 69—(Brent Owen) [Pages 7 to 15]

B. C.R.C.P. 16.2(e)(10)— (Judge Jones & Lisa Hamilton-Fieldman) [Page 16]

C. C.R.C.P. 47—Alternate Jurors in Multiparty Civil Case—Possible conflict between section 13-71-142, C.R.S. 2017 and C.R.C.P. 47(b), raised by District Judge William Herringer—(Judge Elliff) [Pages 17 to 18]

D. C.R.C.P. 121 §1-14(1)(f)—Default Judgments—problems relating to electronic evidence of debt—(Judge Kane) [Page 19]

E. C.R.C.P. 106—Unintended use of rule to obtain interlocutory appeals in county court criminal cases—(Judge Zenisek) [Pages 20 to 21]

F. C.R.C.P. 17(c)—GAL proposal from CBA committee via Mr. David Kirch— (Lisa Hamilton-Fieldman and Judge Dunkelman)

G. C.R.C.P. 304—Time Limit for Service from Attorney Daniel Vedra— (Judge Berger) [Pages 22 to 24]

H. C.R.C.P. 4 + 304—Unsworn Declarations issue from the Process Servers Association of Colorado— (Judge Berger) [Pages 25 to 31]

I. Form 1.3, JDF 602, Notice to Elect Exclusion From C.R.C.P. 16.1 Simplified Procedure—Repeal form and update online instructions for completing the civil case cover sheet?—(Lisa Hamilton-Fieldman) [Page 32]

J. C.R.C.P. 30(c)—Depositions Upon Oral Examination—Differences from Federal Rule—(John Lebsack) [Page 33]

V. Adjourn—**Next meeting is JANUARY 25, 2018 at 1:30 pm.**

Michael H. Berger, Chair
michael.berger@judicial.state.co.us
720 625-5231

Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 551050, followed by # key.

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 28, 2018 Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge Jerry Jones 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 (Ret.) Janice Davidson	X	
Damon Davis	X	
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	
Michael J. Hofmann	X	
Richard P. Holme		X
Judge Jerry N. Jones	X	
Judge Thomas K. Kane		X
Cheryl Layne	X	
John Lebsack	X	
Judge Cathy Lemon	X	
Bradley A. Levin		X
David C. Little		X
Chief Judge Alan Loeb		X
Professor Christopher B. Mueller		X
Brent Owen	X	
John Palmeri		X
Judge Sabino Romano	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Jose L. Vasquez	X	
Ben Vinci	X	
Judge 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

- September 28, 2018 agenda packet & supplement.

II. Announcements from the Chair

- Judge Jones is filling in for Committee Chair Judge Berger today;
- The May 18, 2018 minutes were approved as submitted; and
- Kathryn Michaels is the new supreme court staff attorney assigned to this committee.

III. Present Business

A. C.R.C.P. 69 Brent Owen

Brent Owen reported that the subcommittee has come to a consensus on proposed language. The subcommittee plans to finalize their proposal in October and bring it to the full committee at the November 16th meeting. In the interim, the language will be shared outside the subcommittee to obtain input from the committee generally.

B. C.R.C.P. 16.2(e)(10) Judge Jones

Judge Jones reminded the committee that the second sentence in Rule 16.2(e)(10) was construed three different ways by *In re Marriage of Runge*, a recent court of appeals case. The subcommittee was tasked with clarifying the rule to avoid further confusion. The proposed language is intended to make clear that the court may make a ruling if the misstatements or omissions occurred within five years. Judge Jones explained that the clause *under this paragraph* was included so as not to imply that a party could not file a C.R.C.P. 60 motion or a collateral attack such as personal jurisdiction as is contemplated by the second sentence in the rule. Judge Davidson commented that she was at the meeting where this rule was originally proposed, discussed, and forwarded to the supreme court, and the proposal at hand is what the committee originally intended.

Gregory Whitehair stated that the word *believes* feels odd and suggested *learns* or *discovers* instead. He also questioned whether this rule is intended to describe newly discovered evidence or a situation in which one later realizes he or she made a misstatement. Judge Jones responded that the discovery piece is separate. Additionally, Judge Jones reported that he spoke with practitioners in this subject area concerning the issue of whether discovery should be allowed. Some practitioners thought that discovery should not be allowed, while others thought it should be in the discretion of the court. Judge Jones also asked Judge Furman to run this by the Standing Committee on Family Law Issues. Judge Furman responded that 13 of the 25 committee members approved of the changes, 1 member said it was ok if the C.R.C.P. 60 reference was kept, and the remaining members did not respond.

Justice Gabriel found the proposed language a bit odd grammatically. Judge Lemon voiced a concern about changing more language than necessary and the unintended consequences of doing so. Judge Lemon recommended not addressing the parties'

subjective belief, and further, not saying the court must rule under one circumstance and deny under another. Judge Jones reported that he included *believes* because the rule seems to assume it. He further stated that the concept of the proposed rule change was to indicate that this is what a party alleges or believes, and a court will then rule on whether they agree. Judge Lemon suggested *alleges* rather than *believes.*

The conversation then turned to the length of time allowed by the rule. Judge Jones observed that 5 years is an extraordinarily long time and that no other rule comes close to this length in this type of rule. Judge Davidson commented that this was a difficult paragraph to crack because of its unusualness. C.R.C.P. 16.2 expedited the whole process, and some information could then be successfully concealed. Judge Davidson further explained that when this rule was written, 5 years was a compromise on time. To her, the only question is whether it is a cutoff from 5 years of the date of dissolution or 5 years from the filing, and, in Judge Davidson's view, this proposed language successfully clarifies on this point.

Judge Jones will fine-tune the language and report back with an improved proposal considering this discussion.

C. C.R.C.P. 47

Tabled to October 26, 2018 meeting.

D. C.R.C.P. 121 Judge Kane

Tabled to November 16, 2018 meeting. Ben Vinci would like to join this subcommittee.

E. C.R.C.P. 106 Judge Jones

Judge Jones reported that parties in criminal cases filed in county court are filing C.R.C.P. 106(a)(4) actions in district court to challenge a variety of interlocutory, discretionary rulings. This is problematic because this would not be possible were the cases originally filed in district court and because the result creates a substantial delay (possibly years) in resolving those cases. The subcommittee met and discussed potential alternatives to the current rule, and these alternatives are laid out in the subcommittee's memo. A second memo written by Judge Jones discusses the history of the rule and why it is used this way. The subcommittee is not making a specific proposal today. Rather, they are hoping the committee will weigh in to provide the subcommittee with more direction in resolving this issue.

Subcommittee member Judge Zenisek noted that in his view, simple is best. He continued by stating that people should not have an automatic interlocutory to delay a case. Fellow subcommittee member Judge Romano agreed with this sentiment. Mr. Whitehair commented that this method of appeal should be blocked, and that the two regular appeals options are more than enough due process. He further stated that nothing in the review mentioned a special case type that deserves extra protection.

Judge Jones explained that the subcommittee does not want to impact civil cases. He mentioned that the rule isn't used the same way in civil cases as it is in criminal cases. Additionally, this rule applies to agency and board decisions, and it works fine in that context.

Damon Davis stated that of the solutions presented in the memo, he liked either the second more ambitious option, or a combination of the third and fourth options. Mr. Davis encouraged the committee to be mindful of how the supreme court has already come down on this issue so as not to cut against their decisions. Subcommittee member Lisa Hamilton-Fieldman asserted that the subcommittee decided to come out how they did because although the supreme court has given its blessing, it did so before the changes to C.R.C.P. 21 when there was not an alternative method of appeal, and now there is. She also voiced her opinion that the solution of limiting it to just civil cases is appropriate.

Judge Jones clarified that Mr. Davis and Ms. Hamilton-Fieldman were referring to *Cty. Court v. Ruth*, 575 P.2d 1 (Colo. 1977). In this case, the court did go out of its way to sanction the use of 106(4)(a). Though, it was at a time when C.R.C.P. 21 was closed off to county court cases, which was later changed in 1999. If someone is charged with a felony in *district court* and has a speedy trial concern, options are 1) C.R.C.P. 21 or 2) an appeal to the court of appeals. If someone is charged with a felony in *county court*, C.R.C.P. 106(a)(4) provides a third option to appeal.

Dave DeMuro asked whether the subcommittee had a sense of which direction they'd like to pursue. Judge Jones responded that the first alternative, to simply add a clause that expressly limits the rule to civil cases, holds the most support. There is some backing for adding a comment as well. There is much less support in the subcommittee for changing the language in the rule concerning abuse of discretion.

Justice Gabriel stated that he would not be worried that the first option would overrule another case. While he can't speak for his colleagues, it doesn't seem that the first option would cause concern in that regard. Justice Gabriel said that he *is* concerned about the second option. Judge Davidson commented that the simple fix is good, and if there's interest by the group, perhaps the abuse of discretion piece could be clarified. Ms. Hamilton-Fieldman said she was reluctant to deal with the abuse of discretion piece as well. She said that 100 years of case law already explains the abuse of discretion part, so she is reluctant to get embroiled in recrafting something that doesn't possess such a long history. Judge Jones stated that he is not completely in favor of tackling the abuse of discretion piece either.

Michael Hofmann queried whether adding the clause "any civil matter" would be broad enough to conserve agency appeals. He suggested a comment might provide clarification if necessary. Mr. Hoffman concluded that he is in favor of the first approach so long as the rule isn't narrowed so much as to exclude agency appeals.

Judge Jones stated that the subcommittee will write a more concrete proposal for the larger group.

F. C.R.C.P. 17(c) Judge Jones

Judge Jones introduced local attorney and CBA committee representative David Kirch to discuss a proposed C.R.C.P. 17(c) revision regarding guardian ad litems (GALs). Mr. Kirch was later joined by Marcie McMinimee, also a local attorney and a member of the committee setting forth this proposal. Mr. Kirch explained that the proposed revision to the rule 1) incorporates the *Sorensen* test; 2) provides a list of permissible duties and roles that might be assigned by a court to a GAL, and; 3) specifies duties that should not be performed by a GAL.

Lee Sternal voiced his concern that these changes will require additional costs in litigation, specifically for a proposed settlement for a minor. Mr. Sternal also commented that he did not advise adopting a rule that prohibits the court from saying that the GAL may serve as a conservator.

Stephanie Scoville commented that the changes presented are quite substantive and queried whether there is a better place to make these changes. Ms. McMinimee and Mr. Kirch responded that the bar committee had considered making the changes via statute and CJD as well, but that ultimately, because C.R.C.P. 17(c) is where one sees GALs mentioned the most, proposing a rule change made the most sense. Mr. Demuro suggested that a trial benchbook might be another option.

Ms. Hamilton-Fieldman noted her concern, especially regarding the restrictions of what GALs can do. She stated that when there aren't funds to appoint counsel, not allowing a GAL to be appointed in financial matters might really harm those who need the assistance. In Ms. Hamilton-Fieldman's view, the suggested changes to C.R.C.P. 17(c) would be hugely substantive and would have many unintended consequences. Mr. Kirch remarked that they are open to rewording and redrafting.

The committee also discussed which subsections referred to adults and/or minors. Mr. Whitehair asked for the revising group to make this clear in the next draft.

Judge Jones and several other committee members noted the considerable thought and effort that went into this draft of C.R.C.P. 17(c). Due to the complicated nature of this rule and the significant changes suggested, Judge Jones recommended a subcommittee might best tackle this issue. A signup sheet was passed around for interested members to join this subcommittee.

IV. Future Meetings

October 26, 2018
November 16, 2018

The Committee adjourned at 2:55 p.m.

Respectfully submitted,
Kathryn Michaels

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Memo

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VIA EMAIL

To: Colorado Civil Rules Committee

From: Brent Owen, Rule 69 Subcommittee

Date: November 5, 2018

Subject: Proposed Change to Rule 69 to Bring Discovery Procedure In Line with Practice

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Colorado Rule of Civil Procedure 69 Subcommittee—Mandate and Analysis

At the June 23, 2017 Civil Rules Committee, the committee created a subcommittee to "consider a revision to Rule 69, which has inconsistent practices and antiquated language."[1] Since its creation last year, the subcommittee has analyzed the rule, considered possible amendments, and received input from other lawyers who regularly utilize Rule 69.[2] The subcommittee identified the following problems (among others) with current Rule 69:

- **Impractical, Unrealistic, and Ignored Discovery Requirements**. Rule 69 currently imposes impractical and unrealistic obligations on judgment debtors in discovery, including requiring that a judgment debtor answer interrogatories by appearing "before the clerk of court in which the judgment was entered to sign the answers to the interrogatories under oath and file them." C.R.C.P. 69(d)(1). One practitioner explained that his client attempted to comply with the rule by taking unsigned interrogatories to the courthouse to sign them in front of the clerk—as the rule requires. The clerk turned the client away, telling the individual to "have your lawyer send these to the other side's lawyer." This anecdote is consistent with the consensus: most parties do not follow the

[1] Civil Rules Committee June 23, 2017 Minutes at 2, available https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Committees/Civil_Rules_Committee/06_23_17%20minutes.pdf. Note also that the County Court Subcommittee is evaluating a possible change to Colorado Rule of County Court Civil Procedure Rule 369.

[2] The subcommittee consists of Ben Vinci, Jose Vasquez, Judge Sabino Romano, Karen Cody Hopkins, Lisa Hamilton-Fieldman, and Brent Owen. Additionally, Keith Gantenbein—who possesses extensive practice experience representing parties in connection with Rule 69—assisted the subcommittee. Aaron Boschee, an attorney with Squire Patton Boggs who focuses on debtor-creditor disputes and asset recovery, also provided insight and analysis useful to refining the rule.

letter of the requirements in Rule 69(d), (e), and (f) because the outdated requirements are inconsistent with modern discovery practice.

- **Reliance on Federal Case Law, Despite Different Rule**. Despite the materially different language, courts and parties appear to rely on Federal Rule of Civil Procedure 69 case law in attempting to resolve discovery disputes under Rule 69.

- **Failure to Provide Adequate Notice to Impacted Individuals**. Another consequence of Rule 69's language is that often judgment debtors are unaware of the serious legal consequences of failing to respond to discovery propounded under Rule 69.

Suggested Language Change

To address the concerns identified above, the subcommittee unanimously recommends replacing current subsections (d), (e), and (f), with a new section (d); revised section (d) tracks closely with the discovery procedure in Federal Rule of Civil Procedure 69(d). Like the change proposed here, subsection (d) was added to the federal rules to assure "that, in aid of execution on a judgment, all discovery procedures provided in the rules are available[.]" Notes of Advisory Committee on Rules—1970 Amendment. The suggested new subsection (d) to Colorado Rule of Civil Procedure 69 also includes a conspicuous-notice requirement and a comment clarifying the amendment:

> **(d) Obtaining Discovery**. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules. Any discovery request made in aid of judgment or execution shall include on its face the following conspicuous notice to the judgment debtor: "Failure to answer or otherwise respond to these requests may result in an order for Contempt of Court."

. . .

COMMENT

> 2019
>
> [1] The amendment to C.R.C.P. 69(d), (e), and (f) is to bring Rule 69's discovery procedures in line with modern practice and F.R.C.P. 69(a)(2).

A clean version of the subcommittee's proposed Rule 69 is attached as **Exhibit 1**. The following exhibits are also attached to assist the committee in evaluating this proposal.

- **Exhibit 2**: Existing Rule 69 with track changes
- **Exhibit 3**: Existing Rule 69, clean
- **Exhibit 4**: Federal Rule of Civil Procedure 69

Exhibit 1, Proposed New Rule & Comment

Rule 69. Execution and Proceedings Subsequent to Judgment

(a) In General. Except as provided in C.R.C.P. 103 or an order of court directing otherwise, process to enforce a final money judgment shall be by writ of execution.

(b) Proceedings for Costs. Costs finally awarded by order of court may be enforced in the same manner as any final money judgment. Costs awarded by an appellate court may be enforced in the same manner upon application by filing a remittitur or other order of the appellate court with the clerk of the trial court showing the award of costs.

(c) Debtor of Judgment Debtor; Debtor May Pay Sheriff. After issuance of a writ of execution against property, the judgment debtor or any person indebted to the judgment debtor may pay to the sheriff to whom the writ of execution is directed the amount necessary to satisfy the execution. The sheriff's receipt for the amount shall be a discharge for the amount so paid.

(d) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules. Any discovery request made in aid of judgment or execution shall include on its face the following conspicuous notice to the judgment debtor: "Failure to answer or otherwise respond to these requests may result in an order for Contempt of Court."

(e) Order to Apply Property on Judgment; Contempt. The court, master, or referee may order any party or other person over whom the court has jurisdiction, to apply any property other than real property, not exempt from execution, whether in the possession of such party or other person, or owed the judgment debtor, towards satisfaction of the judgment. Any party or person who disobeys an order made under the provisions of this Rule may be punished for contempt. Nothing in this rule shall be construed to prevent an action in the nature of a creditor's bill.

History. Source: (d)(1) amended May 17, 1994, effective July 1, 1994; (d) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b).

COMMENT

2019

[1] The amendment to C.R.C.P. 69(d), (e), and (f) is to bring Rule 69's discovery procedures in line with modern practice and F.R.C.P. 69(a)(2).

Exhibit 2, Track Change Version of New Rule

Rule 69. Execution and Proceedings Subsequent to Judgment

(a) In General. Except as provided in C.R.C.P. 103 or an order of court directing otherwise, process to enforce a final money judgment shall be by writ of execution.

(b) Proceedings for Costs. Costs finally awarded by order of court may be enforced in the same manner as any final money judgment. Costs awarded by an appellate court may be enforced in the same manner upon application by filing a remittitur or other order of the appellate court with the clerk of the trial court showing the award of costs.

(c) Debtor of Judgment Debtor; Debtor May Pay Sheriff. After issuance of a writ of execution against property, the judgment debtor or any person indebted to the judgment debtor may pay to the sheriff to whom the writ of execution is directed the amount necessary to satisfy the execution. The sheriff's receipt for the amount shall be a discharge for the amount so paid.

(d) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules. Any discovery request made in aid of judgment or execution shall include on its face the following conspicuous notice to the judgment debtor: "Failure to answer or otherwise respond to these requests may result in an order for Contempt of Court."

~~**Requirement That Judgment Debtor Answer Written Interrogatories.**~~

~~**(1)** At any time after entry of a final money judgment, the judgment creditor may serve written interrogatories upon the judgment debtor in accordance with C.R.C.P. 45, requiring the judgment debtor to answer the interrogatories. Within 21 days of service of the interrogatories upon the judgment debtor, the judgment debtor shall appear before the clerk of the court in which the judgment was entered to sign the answers to the interrogatories under oath and file them.~~

~~**(2)** If the judgment debtor, after being properly served with written interrogatories as provided by this Rule, fails to answer the served interrogatories, the judgment creditor may file a motion, with return of the previously served written interrogatories attached thereto, and request an order of court requiring the judgment debtor to either answer the previously served written interrogatories within 21 days in accordance with the provisions of (d)(1) of this Rule or appear in court at a specified time to show cause why the judgment debtor shall not be held in contempt of court for failure to comply with the order requiring answers to interrogatories; a copy of the motion, written interrogatories and a certified order of court shall be served upon judgment debtor in accordance with C.R.C.P. 45.~~

~~**(e) Subpoena for Appearance of Judgment Debtor.**~~

~~**(1)** At any time after entry of a final money judgment, a judgment creditor may cause a subpoena or subpoena to produce to be served as provided in C.R.C.P. 45 requiring the judgment debtor to appear before the court, master or referee with requested documents at a specified time obtained from the court to answer concerning property. A judgment debtor may be required to~~

~~attend outside the county where such judgment debtor resides and the court may make reasonable orders for mileage and expenses. The subpoena shall include on its face a conspicuous notice to the judgment debtor that provides: "Failure to Appear Will Result in Issuance of a Warrant for Your Arrest."~~

~~**(2)** If the judgment debtor, after being properly served with a subpoena or subpoena to produce as provided in C.R.C.P. 45, fails to appear, the court upon motion of the judgment creditor shall issue a bench warrant commanding the sheriff of any county in which the judgment debtor may be found, to arrest and bring the judgment debtor forthwith before the court for proceedings under this Rule.~~

~~**(f) Subpoena for Appearance of Debtor of Judgment Debtor.** At any time after entry of a final money judgment, upon proof to the satisfaction of the court, that any person has property of, or is indebted to a judgment debtor in any amount exceeding Five Hundred Dollars not exempt from execution, the court may issue a subpoena or subpoena to produce to such person to appear before the court, master or referee at a specified time and answer concerning the same. Service shall be made in accordance with C.R.C.P. 45, and the court may make reasonable orders for mileage and expenses.~~

(eg) Order to Apply Property on Judgment; Contempt. The court, master, or referee may order any party or other person over whom the court has jurisdiction, to apply any property other than real property, not exempt from execution, whether in the possession of such party or other person, or owed the judgment debtor, towards satisfaction of the judgment. Any party or person who disobeys an order made under the provisions of this Rule may be punished for contempt. Nothing in this rule shall be construed to prevent an action in the nature of a creditor's bill.

(fh) Witnesses. Witnesses may be subpoenaed to appear and testify in accordance with C.R.C.P. 45.

(gi) Depositions. After entry of a final money judgment, the judgment creditor, upon order of court which may be obtained ex parte, may take the deposition of any person including the judgment debtor, in the manner provided in these Rules.

COMMENT

2019

[1] The amendment to C.R.C.P. 69(d), (e), and (f) is to bring Rule 69's discovery procedures in line with modern practice and F.R.C.P. 69(a)(2).

Exhibit 3, Current Text of Rule 69

Rule 69. Execution and Proceedings Subsequent to Judgment.

(a) In General. Except as provided in C.R.C.P. 103 or an order of court directing otherwise, process to enforce a final money judgment shall be by writ of execution.

(b) Proceedings for Costs. Costs finally awarded by order of court may be enforced in the same manner as any final money judgment. Costs awarded by an appellate court may be enforced in the same manner upon application by filing a remittitur or other order of the appellate court with the clerk of the trial court showing the award of costs.

(c) Debtor of Judgment Debtor; Debtor May Pay Sheriff. After issuance of a writ of execution against property, the judgment debtor or any person indebted to the judgment debtor may pay to the sheriff to whom the writ of execution is directed the amount necessary to satisfy the execution. The sheriff's receipt for the amount shall be a discharge for the amount so paid.

(d) Requirement That Judgment Debtor Answer Written Interrogatories.

(1) At any time after entry of a final money judgment, the judgment creditor may serve written interrogatories upon the judgment debtor in accordance with C.R.C.P. 45, requiring the judgment debtor to answer the interrogatories. Within 21 days of service of the interrogatories upon the judgment debtor, the judgment debtor shall appear before the clerk of the court in which the judgment was entered to sign the answers to the interrogatories under oath and file them.

(2) If the judgment debtor, after being properly served with written interrogatories as provided by this Rule, fails to answer the served interrogatories, the judgment creditor may file a motion, with return of the previously served written interrogatories attached thereto, and request an order of court requiring the judgment debtor to either answer the previously served written interrogatories within 21 days in accordance with the provisions of (d)(1) of this Rule or appear in court at a specified time to show cause why the judgment debtor shall not be held in contempt of court for failure to comply with the order requiring answers to interrogatories; a copy of the motion, written interrogatories and a certified order of court shall be served upon judgment debtor in accordance with C.R.C.P. 45.

(e) Subpoena for Appearance of Judgment Debtor.

(1) At any time after entry of a final money judgment, a judgment creditor may cause a subpoena or subpoena to produce to be served as provided in C.R.C.P. 45 requiring the judgment debtor to appear before the court, master or referee with requested documents at a specified time obtained from the court to answer concerning property. A judgment debtor may be required to attend outside the county where such judgment debtor resides and the court may make reasonable orders for mileage and expenses. The subpoena shall include on its face a conspicuous notice to the judgment debtor that provides: "Failure to Appear Will Result in Issuance of a Warrant for Your Arrest."

(2) If the judgment debtor, after being properly served with a subpoena or subpoena to produce as provided in C.R.C.P. 45, fails to appear, the court upon motion of the judgment creditor shall issue a bench warrant commanding the sheriff of any county in which the judgment debtor may be found, to arrest and bring the judgment debtor forthwith before the court for proceedings under this Rule.

(f) Subpoena for Appearance of Debtor of Judgment Debtor. At any time after entry of a final money judgment, upon proof to the satisfaction of the court, that any person has property of, or is indebted to a judgment debtor in any amount exceeding Five Hundred Dollars not exempt from execution, the court may issue a subpoena or subpoena to produce to such person to appear before the court, master or referee at a specified time and answer concerning the same. Service shall be made in accordance with C.R.C.P. 45, and the court may make reasonable orders for mileage and expenses.

(g) Order to Apply Property on Judgment; Contempt. The court, master, or referee may order any party or other person over whom the court has jurisdiction, to apply any property other than real property, not exempt from execution, whether in the possession of such party or other person, or owed the judgment debtor, towards satisfaction of the judgment. Any party or person who disobeys an order made under the provisions of this Rule may be punished for contempt. Nothing in this rule shall be construed to prevent an action in the nature of a creditor's bill.

(h) Witnesses. Witnesses may be subpoenaed to appear and testify in accordance with C.R.C.P. 45.

(i) Depositions. After entry of a final money judgment, the judgment creditor, upon order of court which may be obtained ex parte, may take the deposition of any person including the judgment debtor, in the manner provided in these Rules.

Exhibit 4, Current Text of Federal Rule of Civil Procedure 69

Rule 69. Execution

(a) In General.

(1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

(b) Against Certain Public Officers. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.

[Earlier Notice of Advisory Committee excluded]

NOTES OF ADVISORY COMMITTEE ON RULES—1970 AMENDMENT

The amendment assures that, in aid of execution on a judgment, all discovery procedures provided in the rules are available and not just discovery via the taking of a deposition. Under the present language, one court has held that Rule 34 discovery is unavailable to the judgment creditor. *M. Lowenstein & Sons, Inc. v. American Underwear Mfg. Co.*, 11 F.R.D. 172 (E.D.Pa. 1951). Notwithstanding the language, and relying heavily on legislative history referring to Rule 33, the Fifth Circuit has held that a judgment creditor may invoke Rule 33 interrogatories. *United States v. McWhirter*, 376 F.2d 102 (5th Cir. 1967). But the court's reasoning does not extend to discovery except as provided in Rules 26–33. One commentator suggests that the existing language might properly be stretched to all discovery, 7 *Moore's Federal Practice* 69.05[1] (2d ed. 1966), but another believes that a rules amendment is needed. 3 Barron & Holtzoff, *Federal Practice and Procedure* 1484 (Wright ed. 1958). Both commentators and the court in *McWhirter* are clear that, as a matter of policy, Rule 69 should authorize the use of all discovery devices provided in the rules.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 69 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Amended Rule 69(b) incorporates directly the provisions of 2 U.S.C. §118 and 28 U.S.C. §2006, deleting the incomplete statement in former Rule 69(b) of the circumstances in which execution does not issue against an officer.

MEMORANDUM

TO: Civil Rules Committee

FROM: Judge Jones

RE: Revised proposed revision to Rule 16.2(e)(10) to address the ambiguity flagged in *In re Marriage of Runge*, 2018 COA 23M, 415 P.3d 884

I proposed revisions to this rule at the last committee meeting. Several members expressed concerns regarding clarity. So I went back to the drawing board and, with input from a couple of folks, came up with the following:

> If a party believes that the disclosure contains a misstatement or omission materially affecting the division of assets or liabilities, the party may file and the court shall consider and rule on any motion seeking to reallocate assets and liabilities based on such a misstatement or omission, provided that the motion is filed within 5 years of the final decree or judgment. The court shall deny any such motion that is filed under this paragraph more than 5 years after the final decree or judgment.

Again, the intent is to make clear that a court must rule on a motion that is filed within 5 years of a final decree, but must deny such a motion that is filed more than 5 years after the final decree.

TO: Civil Rules Committee

FROM: J. Eric Elliff

DATE: October 12, 2018

RE: Discrepancy between C.R.C.P. 47(b) and C.RS. § 13-71-142

This issue was brought to my attention by J. William Herringer in Durango.

C.R.C.P. 47(b) provides as follows:

> **(b) Alternate Jurors.** The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall not be discharged until the jury renders its verdict or until such time as determined by the court. If the court and the parties agree, alternate jurors may deliberate and participate fully with the principal jurors in considering and returning a verdict. If one or two alternate jurors are called **each side** is entitled to one peremptory challenge in addition to those otherwise allowed. The additional peremptory challenge may be exercised as to any prospective juror.

C.R.C.P. 47(b) (emphasis supplied).

On the other hand, C.R.S. § 13-71-142 states:

> In all civil and criminal trials, the court may call and impanel alternate jurors to replace jurors who are disqualified or who the court may determine are unable to perform their duties prior to deliberation. Alternate jurors shall be summoned in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath, and have the same functions, powers, and privileges as regular jurors. An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict, unless otherwise provided by law, by agreement of the parties, or by order of the court. The seating of an alternate juror entitles **each party** to an additional peremptory challenge, which may be exercised as to any prospective jurors.

C.R.S. § 13-71-142 (emphasis supplied).

There is no case law addressing this discrepancy. As to C.R.C.P. 47(b), the Colorado Supreme Court has held:

> Our rule expressly requires a collective total of four peremptory challenges per side, irrespective of the number of parties comprising either the party-plaintiff or the party-defendant. Thus, the rule in Colorado is that multiple litigants, designated as co-plaintiffs or co-defendants, are together entitled to only one set of peremptory challenges, regardless of whether their interests are essentially common or generally antagonistic. C.R.C.P. 47(h) provides that when there are several parties on a side, all must join in making a challenge. *See generally* Annot., 32 A.L.R.3d 747, § 9 (1970) (cases collected which require multiple parties to join in challenges).

Blades v. DaFoe, 704 P.2d 317, 321 (Colo. 1985), *rev'd in part grounds, Laura A. Newman, LLC v. Roberts*, 365 P.3d 972 (Colo. 2016) (reversing that part of *Blades* which required automatic reversal for failure to follow C.R.C.P. 47(h)).

Neither *Blades* nor *Laura A. Newman* addresses the effect of C.R.S. § 13-71-142 on Rule 47(b). In *Blades*, this is because the statute was not enacted until 1989. *Laura A. Newman* is silent on effect of the statute on the rule. The good news (for trial judges, anyway) is that *Laura A. Newman* suggests that a trial court's failure to follow the statute likely would not result in automatic reversal.

C.R.S. § 13-71-142 was passed in 1989 as part of a package of legislation addressing jury service reform. Research at the Colorado Supreme Court Law Library and the state archives has revealed no relevant statutory history which might explain why this law was passed.

What do we do about this discrepancy? The easy answer is to change the rule. But such a change would disrupt a rule that pre-dates the statute by decades (and, I dare say, the normal practice in the vast majority of this state's trial courts). Moreover, allowing additional pre-emptory challenges per party could radically increase the number of jurors necessary in multi-party cases and could quickly become unworkable in cases with a large number of parties.

In my view, changing the statute would be far preferable, but that is beyond the purview of this Committee. Accordingly, absent a consensus that we should attempt to amend the statute, I recommend that the Committee take no action on this discrepancy.

MEMORANDUM

TO: Civil Rules Committee

FROM: Subcommittee CRCP 121-1-14(f)

RE: Recommendation

ISSUE: A lawyer wrote to the Civil Rules Committee and asked about the applicability of CRCP 121-1-14(f) to electronic instruments.

DISCUSSION: Legal research was largely unproductive. Inquiries to other interested parties reflected an acknowledgment of the issue with no real plan for resolution of the issue. The Clerk of Court (4th Judicial District), the Public Trustee for El Paso County and the attorney who represents the Public Trustee Association (Jill Norris) really seemed comfortable managing cases with electronic instruments without marking the electronic instruments with any notation of judgment or payment. If the instrument is "paper based," it is marked per the rule. If the instrument is electronic, there is no marking because it is so difficult to designate an original.

PROPOSAL: The subcommittee proposes an amendment to the language of CRCP 121-1-14(f) to "paper based" instruments.

(f) If the action is on a Promissory Note, and the original note is paper based, the original note shall be presented to the Court in order that the Court may make notation of the judgment on the face of the note. If the note is to be withdrawn, a photocopy shall be substituted.

MEMORANDUM

TO: Civil Rules Committee

FROM: Rule 106(a)(4) Subcommittee

RE: Recommended changes to Rule 106(a)(4)

At the last full committee meeting, the subcommittee submitted several alternatives for changing Rule 106(a)(4), all intended to address the problem of delays caused by the filing of Rule 106(a)(4) proceedings in district court to challenge rulings in criminal cases filed in county court. The clear direction from the full committee was to keep it simple. To that end, the subcommittee proposes that the Civil Rules Committee recommend to the Colorado Supreme Court that it add the clause ", in any civil matter," after "Where" at the beginning of subsection (a)(4). The effect would be to remove criminal cases from the Rule's ambit.

To make this even more clear, and to provide guidance to the bar, the subcommittee also recommends adding the following comment:

> The Court has changed subsection (a)(4) to limit its application to civil matters; the subsection may not be used to challenge rulings by county, municipal, or other inferior

> courts in criminal cases. Any such challenge may proceed under Crim. P. 37.1 (if applicable) or C.A.R. 21.

The committee may also wish to recommend the following additional comment:

> Under subsection (a)(4) of the rule, the district court should consider the merits of the petition only if "there is no plain, speedy, and adequate remedy otherwise provided by law." If such a remedy is available, the district court should dismiss the petition. This limitation is intended to forestall unnecessary delays and piecemeal appeals of the underlying action.

Daniel J. Vedra
Attorney

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1435 Larimer Street, Suite 302
Denver, CO 80202

October 8, 2018

Judge Michael H. Berger, Chair
Colorado Supreme Court Committee on Rules of Civil Procedure
2 East 14th Ave.
Third Floor
Denver, Colorado 80203

Re: Colorado Rule of County Court Civil Procedure 304

Dear Judge Berger:

By way of introduction, I am an attorney in private practice in Denver, Colorado. My practice focuses primarily on representing consumers as defendants in debt collection lawsuits and plaintiffs in suits for violations of consumer protection laws. The vast majority of debt collection cases are brought in county court. I have seen at least one study that showed there are more than 100,000 debt collection cases brought every year in county court. These cases range from small-dollar medical bills (as low as $50.00 in one case) to cases above the jurisdictional limit where plaintiff has elected to limit recovery to the jurisdictional limit. This year, the Colorado legislature amended the jurisdictional limit of county courts from $15,000.00 to $35,000.00. S.B. 18-056.

County court civil cases are different than most any other case. Unlike most district court cases, where the plaintiff generally files the complaint and then serves the defendant, county court cases most often start with the plaintiff serving the defendant and then filing the case. Plaintiffs proceed in this way because they file hundreds of lawsuits at regular intervals. Their computer systems draft summonses for many defendants with the same return date (akin to a first appearance in criminal practice). Plaintiffs then distribute these summonses to a network of process servers. When the process server locates and serves the defendant, the plaintiff then files the case.

If the statute of limitations will run soon, the plaintiff takes the usual district court approach and files the case and then attempts to serve the defendant. The plaintiff must still select a return date, which is docketed with the county court. If the plaintiff cannot serve the defendant, the plaintiff issues an alias summons and sets a new return date. There are no limitations on the number of alias summonses or the number of continued return dates. In other words, the plaintiff can file the case, commence the action, toll the statute of limitations, and continue to attempt service with no limitation on time.

I have recently encountered this situation on behalf of client. In 2012, a large, multi-state credit union filed a lawsuit to collect the balance of a defaulted car loan. The creditor directed its attorneys to serve my client at the wrong address. After service was unsuccessful, the creditor

filed the complaint and commenced the action. After sundry attempts to locate and serve my client, who had since moved out of state, the creditor ultimately located and served my client. By this time, the statute of limitations would have run but for filing the complaint.

Confronted with this issue, I reviewed County Court Rule of Civil Procedure 304. Rule 304, unlike Rule 4, does not contain a time limit for service. In 2013, the Colorado Supreme Court amended Rule 4 to include a time limit on serving defendants. Colo. R. Civ. P. 4(m). Accordingly, the only limitation on the time in which a plaintiff must serve a summons and complaint is the requirement that the plaintiff must prosecute the case under Rule 341.

Rule 341 differs from its district court analog in a significant way. Rule 41 provides that the court may dismiss an action for failure to prosecute upon notice and in compliance with Rule 121 § 1-10. Colo. R. Civ. P. 41(b)(2). Rule 121 creates a rebuttable presumption that a plaintiff has failed to prosecute the case with due diligence if "the case has not been set for trial" and there has been "no activity of record in excess of 12 continuous months . . . ." Colo. R. Civ. P. 121 § 1-10(3). Rule 341 does not create such a presumption, and places the burden on the defendant who has not been served.

County court judgments disproportionately affect indigent Coloradans who lack access to attorneys to litigate cases on their behalf. Addressing these issues in county court based on the current rules regime is difficult and too expensive for most defendants to afford even at greatly reduced rates. I submit that Rules 304 and 341 ought to be amended to conform with Rules 4 and 41. Allowing a plaintiff, usually a collection agency or a debt buyer, to continue a case well beyond the statute of limitations is an unfair advantage to the plaintiff.

While a sophisticated collection agency or a debt buyer can easily maintain sufficient information to make out its affirmative claims for many years, an indigent defendant cannot. Particularly in cases involving medical debt, credit cards, and stale claims, a defendant will often lose the information necessary to mount a defense. By way of example, one defense to a medical debt is that the debt was covered by Medicaid or private insurance. My staff has spent countless hours attempting to locate coverage information to prove this defense on claims only a few years old. The amount of time required to locate the information, if it is still available, grows geometrically with the passing of time. The result is that the defendant loses a defense that may have been a complete defense to collection.

I hope that the rules committee will consider changing these rules for the benefit of indigent defendants sued in county court. County court judgments and collection efforts lead to bankruptcies, evictions, homelessness, unemployment, and poverty. I pray that the committee will address this issue.

Sincerely,

VEDRA LAW LLC

By: /s/ Daniel J. Vedra
Daniel J. Vedra

CC: Jose Vasquez
Encl: None

Date: October 16, 2018

To: Colorado Supreme Court Civil Rules Committee

From: The Process Servers Association of Colorado, (PSACO), Board of Directors and its Members

Re: Unsworn Declarations – C.R.S. 13-27-101 [Formerly 12-55-301]

The Process Servers Association of Colorado (PSACO), respectfully requests, to be added to the Colorado Civil Rules Committee's November Agenda. Our topic will cover amendments to C.R.C.P. Rule 4 and 304 regarding Unsworn Declarations.
Currently, process servers submit Affidavit(s) following the guidelines set forth in, C.R.C.P. Rule 4 (h) Manner of Proof and C.R.C.P. Rule 304 (g) Manner of Proof. Both Rules require persons other than the sheriff, marshal or similar governmental official to submit duly acknowledged affidavits.

During the 2017 Colorado Legislative Session, the Uniform Unsworn Declarations Act was amended. The Act now states:

Article 27

13-27-104. [Formerly 12-55-304] Validity of unsworn declaration.

(a) (1) Except as otherwise provided in subsection (b) SUBSECTION (2) of this section, if a law of this state requires or permits use of a sworn declaration in a court proceeding, an Unsworn Declaration (Affidavit) as they accept Sworn Affidavits meeting the requirements of this part 3 ARTICLE 27 has the same effect as a sworn declaration.

C.R.S. 13-27-101 defines Sworn Declarations to include Affidavits.

8480 E. Orchard Road, #5700, Greenwood Village, CO 80111
Phone: (720) 253-5773 Fax: (303) 778-1310

We respectfully request, the Colorado Rules of Civil Procedure be amended to allow the Colorado Court Clerks and Judges, to accept Unsworn Declarations meeting the requirements of part 3 Article 27 (See Sample Affidavit).

Respectfully,

Steven D. Glenn
President
Process Servers Association of Colorado (PSACO)

Enclosures

- CRCP Rule 4 (h) (Proposed)
- CRCP Rule 304 (g) (Proposed)
- Sample Affidavit

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Phone: (720) 253-5773 Fax: (303) 778-1310

C.R.C.P. Rule 4 (Marked)

(a) – (g) [NO CHANGE]

(h) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or **~~statement duly acknowledged under oath~~** **unsworn declaration signed under penalty of perjury under the law of Colorado** by any other person completing the service as to date, place, and manner of service;

(2) [NO CHANGE]

(3) [NO CHANGE]

(4) [NO CHANGE]

(5) [NO CHANGE]

(6) If served by substituted service, by **~~a duly acknowledged statement~~** **an unsworn declaration signed under penalty of perjury under the law of Colorado** as to the date, place, and manner of service, accompanied by an affidavit that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(i) – (m) [NO CHANGE]

C.R.C.P. Rule 4 (Clean)

(a) – (g) [NO CHANGE]

(h) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or unsworn declaration signed under penalty of perjury under the law of Colorado by any other person completing the service as to date, place, and manner of service;

(2) [NO CHANGE]

(3) [NO CHANGE]

(4) [NO CHANGE]

(5) [NO CHANGE]

(6) If served by substituted service, by an unsworn declaration signed under penalty of perjury under the law of Colorado as to the date, place, and manner of service, accompanied by an affidavit that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(i) – (m) [NO CHANGE]

C.R.C.P. Rule 304 (Marked)

(a) – (f) [NO CHANGE]

(g) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or **statement duly acknowledged under oath** **unsworn declaration signed under penalty of perjury under the law of Colorado** by any other person completing the service as to date, place, and manner of service;

(2) [NO CHANGE]

(3) [NO CHANGE]

(4) [NO CHANGE]

(5) [NO CHANGE]

(6) If served by substituted service, by ~~**a duly acknowledged statement**~~ **an unsworn declaration signed under penalty of perjury under the law of Colorado** as to the date, place, and manner of service, accompanied by an affidavit that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(h) – (j) [NO CHANGE]

C.R.C.P. Rule 304 (Clean)

(a) – (f) [NO CHANGE]

(g) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or unsworn declaration signed under penalty of perjury under the law of Colorado by any other person completing the service as to date, place, and manner of service;

(2) [NO CHANGE]

(3) [NO CHANGE]

(4) [NO CHANGE]

(5) [NO CHANGE]

(6) If served by substituted service, by an unsworn declaration signed under penalty of perjury under the law of Colorado as to the date, place, and manner of service, accompanied by an affidavit that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(h) – (j) [NO CHANGE]

COUNTY COURT, DENVER COUNTY, COLORADO

1437 Bannock Street Room #135, Denver, CO 80202

Plaintiff(s)
BOBINELL J. CASEY

AFFIDAVIT OF SERVICE

v.

Case #: 18C00694

Defendant(s)
JOSE ALEJANDRO RAMIREZ AND ANY AND ALL OTHER OCCUPANTS

Compliance Date: 09/24/2018

Received on **September 14, 2018 at 10:24 AM**

I, **Patrick Aragon III**, being duly sworn, depose and say, I have been duly authorized to make service of the document(s) listed herein, in the above mentioned case. I am over the age of 18, and am not a party to or otherwise interested in this matter.

On **Monday, September 17, 2018**, at **07:15 PM**, I executed service of a **SUMMONS IN FORCIBLE ENTRY AND UNLAWFUL DETAINER; COMPLAINT IN FORCIBLE ENTRY AND DETAINER; BLANK ANSWER UNDER SIMPLIFIED CIVIL PROCEDURE (INCLUDING COUNTERCLAIM(S) AND/OR CROSS CLAIM(S)); ATTACHMENTS**, on **ANY AND ALL OTHER OCCUPANTS** at **3115 South Colorado Boulevard, Denver, County of Denver, CO 80222.**

By Personal/Individual Service to: MARY RAMIREZ - WIFE

Description:
Age: 50's Ethnicity: Caucasian Gender: Female Weight: 120 Height: 5'4" Hair: Brown Glasses:

Additional Comments: Service by Refusal - Mary Ramirez answered the door. I recognized Mary Ramirez because I had served her personally on August 29, 2018 at 7:10 pm. I asked for Jose Ramirez and Mary told me that she did not know who Jose was and she closed the door. I said in a loud voice that I was serving her by refusal, the type of documents I was serving them, and I was posting them to the front door.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct

Executed on the _____ **day of** _____, _____, **at Greenwood Village, CO.**
(date) (month) (year)

_____
Patrick Aragon III

Client Reference: 18C00694
Field Sheet ID: 2632754

From: Lisa F

Sent: Wednesday, October 24, 2018 5:19 PM

To: michaels, kathryn

Cc: berger, michael

Subject: Re: Colorado Supreme Court Civil Rules Committee--CANCELLATION O

Good afternoon,

I would like to request an addition to the November agenda, please: an immediate repeal of Form 1.3, JDF 602, Notice to Elect Exclusion From C.R.C.P. 16.1 Simplified Procedure, and an immediate update to the online instructions for completing the Civil Case Cover sheet which can be found on state judicial's website. The form is particularly problematic--although Rule 16.1 no longer provides for an election of exclusion, it does not specifically disallow it either. The fact that the form can still be found in both the written versions of the rules (the official CRS 2018 published sets were just distributed to courts and libraries within the past 6 weeks, including this form) and the online appendix could easily lead an attorney or pro se party to conclude that it can still be filed and apply, and since the form includes in bold caps the language "IT IS UNDERSTOOD THAT ONCE THIS NOTICE OF EXCLUSION IS FILED WITH THE COURT, THE PROCEDURES OF C.R.C.P. 16, CASE MANAGEMENT AND TRIAL MANAGEMENT WILL APPLY TO THIS CASE " it is entirely possible that cases that should be proceeding under Rule 16.1 are instead proceeding under Rule 16.

Thanks,

Lisa Hamilton-Fieldman

Sent from Yahoo Mail on Android

On Wed, Oct 24, 2018 at 1:29 PM, michaels, kathryn

<kathryn.michaels@judicial.state.co.us> wrote:

> Hello Civil Rules Committee,
>
> This is a reminder that the meeting scheduled for this **Friday, October 26, 2018 is**

From: berger, michael
Sent: Friday, November 2, 2018 11:01 AM
To: John Lebsack
Cc: michaels, kathryn; berger, michael
Subject: RE: Civil Rules Committee

I have no recollection of this ever coming up (but that doesn't mean that it hasn't). If you will be attending the meeting on November 16, I will put this on the agenda and you can address it. If not, maybe you can address it at a later meeting.

From: John Lebsack <JLebsack@wsteele.com>
Sent: Friday, November 2, 2018 10:55 AM
To: berger, michael <michael.berger@judicial.state.co.us>
Subject: Civil Rules Committee

Mike-
I just noticed that the deposition rule in Colorado differs from the Federal rule in a small but important detail. CRCP 30(c) says the examination shall proceed per the rules of evidence "except CRE 103" (which deals with rulings on evidence). Federal rule 30(c)(1) has similar language but the exception extends to "Rules 103 and 615." Rule of Evidence 615 deals with sequestration of witnesses. The Federal comment says the addition of the reference to Rule 615 was made in 1993 to address problems with witnesses (such as potential deponents) attending depositions.

I wonder if a similar change was ever considered in Colorado – if not, should we consider it now?

John Lebsack | attorney
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