

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
October 28, 2016 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on 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 or excused from the meeting were:

Name	Present	Excused
Judge Michael Berger, Chair	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro		X
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Judge Ann Frick		X
Judge Fred Gannett	X	
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones		X
Judge Thomas K. Kane		X
Debra Knapp	X	
Richard Laugesen		X
Cheryl Layne		X
Judge Cathy Lemon		X
Bradley A. Levin	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Gordon "Skip" Netzorg	X	
Brent Owen	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 Allison Eid, Liaison	X	
Jeannette Kornreich	X	

I. Attachments & Handouts

- A. October 28, 2016 agenda packet
- B. Supplemental Material – C.R.C.P. 16.1 Proposal

II. Announcements from the Chair

- New member Judge Sabino Romano was introduced and welcomed;
- The C.R.C.P. 120 hearing will be held November 20 at 2:30; and
- The September 30, 2016 minutes were approved as submitted.

III. Business

A. C.R.C.P. 16.1

Judge Davidson and Richard Holme began and stated that there were many changes to the draft of Rule 16.1, but two major changes were that the rule would be mandatory for all applicable cases, absent good cause shown, and the \$100,000 limit would exclude attorney fees.

There was much discussion. There was a question about whether opt out language, if both parties agreed, could be added. The subcommittee had discussed this, but the problem with opt out language is that parties will generally opt out, and the rule will continue to be unused. Members were concerned about the \$100,000 jury damages limit, and there were numerous questions about whether the court has jurisdiction to limit damages. One member asked about the status of the county court jurisdictional increase. Judge Berger stated that the county court jurisdictional increase would not be addressed now, because the increase would affect staffing and other allocations; the committee will instead focus on Rule 16.1.

Judge Berger asked to take a straw vote to discover if the committee was generally in favor of the substantive changes to the rule taking into account that there would be numerous additional amendments. The straw vote revealed a majority of the committee was in favor of the changes. However, deposition times, interrogatories, request for production, and other things will have to be modified, so please send any recommendations to Judge Davidson and Mr. Holme.

B. C.R.C.P. 53

Judge Zenisek began and summarized the issues and considerations the subcommittee faced amending this rule: when an appointment is necessary, proportionality, costs, access to justice, and the meaning of de novo review. After summarizing the proposal there was a motion to adopt the rule as amended by the subcommittee; the motion passed 17:2. Next, there was a motion to amend the second line of the comment to read: “In this regard, Section (a)(1)(C) of this Rule should not be utilized on the basis of lack of professionalism by one or more counsel.” The amendment was adopted 16:3.

C. C.R.C.P. 52

Today the committee was considering final language adopted by the subcommittee. There was a motion to adopt the rule amendment located on page 12 of the agenda packet; the

motion passed with one no vote. There was a motion to approve the comment on pages 13-14 of the agenda packet that passed unopposed.

D. New form for admission of business records under hearsay exception rule

David Little and Damon Davis began and presented their forms and instructions. The committee was generally in favor of the proposal, however, it had a number of suggestions for the subcommittee. The subcommittee will take the committee's comments under advisement and report back at a future meeting.

E. C.R.C.P. 57(j)

Tabled to the November 18, 2016 meeting.

F. County and municipal appeals to district court

Tabled to the November 18, 2016 meeting.

G. C.R.C.P. 83

Tabled to the November 18, 2016 meeting.

H. C.R.C.P. 121 §1-15

Tabled to the November 18, 2016 meeting.

I. JDF 111

Tabled to the November 18, 2016 meeting.

Future Meetings

November 18, 2016

The Committee adjourned at 4:15p.m.

Respectfully submitted,

Jenny A. Moore