

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 25, 2015 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 Ann Frick | | 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 | |
| David C. Little | X | |
| Chief Judge Alan Loeb | X | |
| Professor Christopher B. Mueller | X | |
| Gordon "Skip" Netzorg | X | |
| Brent Owen | X | |
| Judge Ann Rotolo | | X |
| Stephanie Scoville | X | |
| Frederick B. Skillern | X | |
| Lee N. Sternal | | X |
| Magistrate Marianne Tims | 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. September 25, 2015 agenda packet
- B. Rule 23 proposal

II. Announcements from the Chair

The June 26, 2015 minutes were approved as submitted.

Judge Berger informed the committee that two new member appointments were forthcoming: Judge Fred Gannett, district court judge in the 5th judicial district, and Judge Adam Espinosa, county court judge in 2nd judicial district.

Jeannette Kornreich, assistant legal counsel from the State Court Administrator's Office (SCAO) was introduced. She is taking over SCAO's representation on the committee.

Two guests were introduced: attorney David Tenner who is working with the Rule 53 subcommittee and Sean Slagle, the Appellate Self-Represented Litigant Coordinator, who is interested in the rule promulgation process.

There are a many people who have expressed interest in joining the committee, but the size of the committee won't be increased, so a new membership protocol will be used moving forward. Members with expiring terms will have to inform Judge Berger by November 30, 2015 that they wish to be reappointed to the committee. If Judge Berger does not receive notice stating that a member wishes to remain on the committee then the member's term will not be renewed. Also, if a member has not attended a majority of the meetings in a calendar year, the member's term will not be renewed, absent extenuating circumstances.

Judge Berger reported that he presented on the Improving Access to Justice Proposal at Judicial Conference. The presentation went well and he received positive feedback on the rule changes.

Finally, a new Colorado Supreme Court Probate Rules Committee had been formed. Judge Diana Terry of the Court of Appeals was named chair, and any changes to the probate rules will go through that committee.

III. Business

A. Rule 121 Subcommittee

Changes to Rule 121 § 1-12, § 1-15, and Rule 10 were discussed and voted on as follows:

Rule 121 § 1-15

In #1, section (a), "orders that certain or all non-dispositive motions be made orally" was added unanimously;

In #1, section (a), new page and word limits passed with one no vote;

In #1, section (a), at the end of the page and word limits, a new sentence was added requiring all briefs and motions be double spaced, except for footnotes and quotations, passed 17:6;

In #1, section (d), “A Motion shall not be included in a response or reply to the original motion.” passed with one no vote;

In section (d), the committee voted unanimously to strike the new sentence, “A motion shall be filed in a separate document.”;

The New Alternative language in #4, and the sentence “If possible, the court shall determine oral motions at the conclusion of the argument, but may take the motion under advisement or require briefing before ruling.” were both passed unanimously; and

The Committee Comment was amended unanimously.

Rule 121 § 1-12

In #1, “If the court directs that any discovery motion under Rule 26(c) be made orally, then movant’s written notice to the other parties that a hearing has been requested on the motion shall stay the discovery to which the motion is directed.” was added as the last sentence and passed unanimously;

A motion to strike the new last sentence in #3, “If the court requires that any discovery motion under rules 26(c) or 37 be made orally, then, prior to the hearing, the movant shall provide each party and the court with a copy of the portions of any written discovery at issue, unless the court orders otherwise.” passed 13:6;

In #5, “If the court requires that any discovery motion be made orally, then movant must make a reasonable effort to confer with opposing counsel before requesting a hearing from the court.” was added as the last sentence and passed 18: 2; and

A new comment was added unanimously.

Rule 10

In section (d)(2)(II), “, including footnotes” was added at the end of the sentence and passed 18:2;

In section (d)(3)(I) delete “Motions” and in section (d)(3)(II) add “Motions” passed 18:2; and

A motion to add “All pleadings, motions, briefs and other documents filed and served under these rules which are more than two page in length shall be double spaced.” in section (d)(3) failed.

B. Rule 120

The committee reviewed the final draft from the Editing subcommittee and discussed the use of “other than counsel” and “personal” in section (a). The Rule 120 subcommittee chair Fred Skillern pointed out that “other than counsel” and “personal” weren’t in the draft the committee passed at the last meeting. He added that the Rule 120 subcommittee had debated using “personal”, but because this is based on a business relationship, the subcommittee opted not to use “personal.” There was a motion to strike “direct” and insert “personal” into section (a) that was seconded, but failed. A new motion to keep “direct” in section (a) passed with one no vote.

C. Rule 16.1

Chief Judge (Ret.) Davidson reported that the subcommittee had met once and will have numerous future meetings to discuss Rule 16.1 and whether or not, with current resources, county court jurisdiction can be increased. Also, the Council of Chief Justices is publishing recommendations on simplified procedure in January, and the subcommittee is awaiting that report. The subcommittee will update the committee as necessary.

D. C.R.M. 6 – Judge Webb

Amendments to C.R.M 5 and 6 may be necessary to alert parties that their consent is required to have their case heard before a district court magistrate, rather than a district court judge, and that their consent can be implied from failure to object. A subcommittee will be formed to study the issue and submit a proposal to the committee.

E. Rule 53

The subcommittee presented a proposal based on the federal rule with a few Colorado specific amendments. Discussion centered on the difference in authority between the federal and state court systems, to include the role of the federal magistrate judges. The subcommittee will consider committee discussion and present a revised draft at a future meeting.

F. New Form for admission of business records under hearsay exception rule

Damon Davis initiated this proposal and thought a new form would be beneficial because it would streamline the presentation of evidence. The form would also include a sample instruction and disclosure certificate. A subcommittee will be formed to study the issue and submit a proposal to the committee.

G. C.R.M. 6 – Jeannette Kornreich

The proposed change to C.R.M. 6 would correct a citation to the Interstate Compact for Adult Offenders, and clarify that probable cause hearings are governed by the Compact. The change passed unanimously.

H. Rule 359(b) and §13-6-311(b)

Here, the rule and statute have two different time periods to file an appeal. The statute, §13-6-311(b), cites 14 days, and the rule, Rule 359(b), cites 21 days. The committee voted unanimously to update the rule to 14 days to mirror the statute.

I. Rule 122(c)(7)

The proposed change will be sent out for an email vote.

J. Rule 121 §1-14 citation update

The proposed change will be sent out for an email vote.

K. Rule 23 Class Action

Tabled to the November 20, 2015 meeting.

L. Rule 84

Tabled to the November 20, 2015 meeting.

IV. Future Meetings

November 20, 2015

January 29, 2016

The Committee adjourned at 4:11 p.m.

*Respectfully submitted,
Jenny A. Moore*