SUPREME COURT
COMMITTEE ON RULES OF CIVIL PROCEDURE
MINUTES OF MEETING

October 26, 2012

The Colorado Supreme Court Civil Rules Committee was called to order by Richard W. Laugesen at 1:40 p.m. in the 5th Floor, Denver News Agency Building, 101 West Colfax Avenue, Denver.

The following members were present:

David R. DeMuro
Ann Frick
Peter A. Goldstein
Carol Haller
Richard P. Holme
Thomas K. Kane
Richard W. Laugesen
Cheryl Layne
David C. Little
Christopher B. Mueller
Justice Nancy Rice
Ann Rotolo
Lee N. Sternal
Jane A. Tidball
Ben Vinci
John R. Webb

The following members were excused:

James Abrams
Michael H. Berger
Janice B. Davidson
Lisa Hamilton-Fieldman
Charles Kall
Howard Rosenberg
Frederick B. Skillern

Approval of Minutes:

The September 28, 2012 minutes were approved as submitted.

Information Items:

Chairman Richard Laugesen called the Committee's attention to the following.

- The Supreme Court approved the Committee's recommendations for repeal and readoption of C.R.C.P. 45, together with forms JDF 80 (District Court Subpoena), JDF 80.1 (Notice for Subpoenas to Produce), and JDF 80.2 (a new County Court Subpoena). The new C.R.C.P. 45 and forms will become effective January 1, 2013. Richard Holme has written an article about the changes that will be included in the Jan. C*olorado Lawyer*.

- An updated Civil Rules Committee member roster was handed out. Chairman Laugesen asked that members keep April Bernard informed of any changes.

- Chairman Laugesen called the Committee's attention to the 2013 Civil Rules Committee Meeting Schedule and that the Committee's next meeting

(January 25, 2013) will be in the new Ralph Carr Judicial Building, 2 East 14th Avenue, Denver, Colorado.

- Chairman Laugesen called the Committee's attention to revised ICCES Start Dates [Agenda Packet pp 2-4]

- Chairman Laugesen noted the *Colorado Lawyer* piece describing the new CBA Casemaker Research Program [p 5 of the Agenda Packet].

  Chairman Laugesen asked Carol Haller to provide a brief update on current happenings with ICCES.

  Ms. Haller reported that the transition from LexisNexis to ICCES was going well. There had been a few minor changes made, including correction of some minor bugs in the system, as well as fine tuning. The 20th Judicial District will be coming online Oct. 29, 2012. The entire State Judicial office is pitching in with the new call center to handle technical assistance.

  Ms. Haller further reported that State Judicial is now operating the e-filing system. ICCES is much more flexible. Additional case types, such as criminal and juvenile will be added to the system over time.

  Ms. Haller noted that the ICCES system has a different look. The process of working through a case or pleading filing is logical. Every judicial district will be on ICCES by January 1, 2013.

  In answer to a question, Ms. Haller reported that the cost of filing cases and pleadings will remain approximately the same. However, charges for postage and viewing cases will be different. Postage will be a flat fee. For an attorney who is not on a case, the fee will be $10 to access the case data for a 7-day window versus $10 each time a case was viewed in LexisNexis.

  In answer to another question, Ms. Haller reported that retrieving served-but-not filed documents in older LexisNexis cases will be available for 6 months, at no charge. For example, a law firm will have a certificate of service, but no proof that the item was actually delivered. LexisNexis will keep the proof of service. After 6 months there will be an additional charge if attorneys still want to access the LexisNexis case management system. Arrangements for viewing prior data should be made directly with LexisNexis. Ms. Haller stated that she will provide more complete information to David Little when he contacts her by phone the week of October 29, 2012.

  Chairman Laugesen next asked Justice Rice if she wished to make any comment. She thanked the Committee for its work on C.R.C.P. 45.

  Justice Rice also reported that while preparations for the new building have taken a great deal of time, things should settle down after the move-in on Dec. 15, 2012. She noted that the new Education Center will be the first of its kind in the

country. It is scheduled for completion in March of 2013. The formal opening of the building is on May 1 and 2, 2013.

SB 12-134—Proposed Rule Change to Implement and Certify Compliance With S.B. 12-134 Pertaining to Availability of Information About Hospital Financial Assistance, Charity Care and Payment Policies.

Chairman Laugesen called to the Committee's attention to a just-received matter not on the Agenda concerning the possible need for a rule pertaining to availability of information about hospital financial assistance, charity care and payment policies in hospital billing collection matters. He introduced Elisabeth Arnales (Colorado Center for Law and Policy) and Edwin Kahn, Esq., who brought the matter to the Committee for its consideration. Written materials, including several suggestions on how particular rules and/or forms could be used to provide a certification of compliance.

Elisabeth Arnales provided the background. A new law enacted during the 2012 legislative session [SB 12-134 adding a new C.R.S. § 25-3-112] deals with collections of hospital billings from uninsured patients, and making them aware of programs that may be of assistance. She noted that 62% of bankruptcies, as well as some foreclosures, involve medical debt. There are three parts to the problem: transparency, negotiated rates and the tendency to send such matters to collections quickly. Some hospitals have been compliant and reasonable, but others not. Usually, uninsured patients do not get negotiated rates. She reported there are no agreements with hospitals or an enforcement mechanism within the legislation. Discussions during the legislative sessions proposed including the Colorado Department of Public Health and Environment as the enforcement body. That was, however, ultimately rejected. There are a few of these types of statutes around the country, some with enforcement, some not. Those with enforcement are typically handled by an agency similar such as the Department of Health. There is concern that those without insurance may not have the resources to ensure that the law is applied. A mechanism via Civil Rules was believed to be a possible solution. Ms. Arnales referred to the Affordable Care Act and provisions of the Hospital Charity Act. The new SB 12-134 enactment applies to both non-profit and for-profit hospitals.

Ms. Arnales stated that work is ongoing with the Hospital Associations to ensure that they are mindful of the enactment and made aware that the Civil Rules Committee is being approached for a possible rule. The Hospital Associations would like the right of comment on any rule that may come out of the Committee.

Edwin Kahn provided information on the statute and suggestions for a proposed rule or civil cover sheet form change. If a patient is under the 250% poverty level, the hospital must charge the lowest negotiated rate and make a payment plan available. Typically, the patient is not able to work out a payment plan and the hospital sends the matter to collections. In collections, the patient may be unrepresented and the issue of hospital compliance with the law may not be raised. To protect the public, it is important to determine that the hospital in a collections matter has complied with the statute before the matter gets too deeply into the case. He suggested some form of check box on a form, possibly the civil case cover sheet or a provision in C.R.C.P. 9 or the Practice Standard on default judgments as is done with the Armed Services Civil Relief Act. The

check box could be as simple as an affirmation that the matter does not involve a hospital billing, or if it does, that the requirements of the statute were met. Clerks of court would need instruction that if boxes were not checked, the matter should not be accepted for filing.

A member inquired about inclusion of a statement to the effect that collection may not be undertaken unless there has been compliance with the statute. Mr. Kahn responded, stating that the statute contemplates a need for compliance. A check box-type form is not in the statute, but would be a way to bring about compliance.

A member inquired about the indigent care process. Mr. Kahn responded there is a reference in the statute to the Colorado Indigent Care Program.

A member asked about billed-versus-paid charges and subrogation that has recently been the subject of recent appellate-level litigation--whether that was taken into consideration. Mr. Kahn responded that that issue was not discussed during the legislative process on the bill. Work on the bill did involve the collections Bar, and the federal Affordable Care Act also requires financial assistance policies, as well as limitations on charges.

Several members asked if this is really something for the courts to enforce--that perhaps wording in the statute should be changed indicating that hospitals must comply, as well as a means of enforcement. There was also concern expressed about using the Civil Case Cover Sheet as a method of enforcement.

Another member commented that the issue seems to involve a narrow class of cases--attorneys collecting on hospital bills--that perhaps something could be done through that group of attorneys, rather than procedure rules.

Another member noted that the Civil Case Cover Sheet involves C.R.C.P. 8(a), and that inclusion of a rule change in C.R.C.P. 8 may interrupt the normal process--that C.R.C.P. 9 may be the better place for the provision.

A member commented that patients involved in a collections matter often will not be hiring a lawyer. There apparently will be no check that hospitals are following the rules so that at least the proposed option provides a means of certification. The member voiced support for the proposed change, including the simplicity of the proposed change.

A member asked if non-compliance would include a violation of C.R.C.P. 11. Another member responded that pro se parties typically don't have the resources for this type of enforcement and would not have sufficient knowledge to deal with rules themselves.

It was noted by a member that the statute does not include physician billings, so that there could continue to be that gap.

A member stated he would not feel comfortable signing the certification--the certification is an attestation as to what the signer did, instead of what the doctor or hospital involved in the conflict did. The affidavit approach seems better, since the hospital, keeper of the

record, must sign the affidavit. Because the attorney does not keep the records, he should not be the one signing the certification.

A member suggested a certification by the hospital that they have complied with the statute so that the case may go forward--that this would be similar to C.R.C.P. 120 cases wherein mortgage holders must appear with a similar certification, i.e. the Armed Services Civil Relief Act. Another member pointed out that there would be other problems with a C.R.C.P. 120-type attorney certification--that he would oppose that approach.

A member commented that C.R.C.P. 9 deals with conditions precedent--the burden should come early in the case and be on the claiming party not the respondent--many times the respondent can't or does not hire an attorney.

Another member pointed out that there are many other similar statutes that have compliance requirements. If a special rule or form is developed for this one, will we need to identify all the others and make special rules or certifications for them as well?

A member asked what particular concern led the presenters to request enforcement through the mechanism of civil rules--are the concerns related to the involved attorneys, hospitals, inadvertence--what? The presenters stated that concerns relate to pro se parties not being able to hire attorneys.

The presenters noted a similar statute in New York. A survey was conducted there which showed a substantial lack of compliance with the statute. Pro se parties will likely not know about the statute and will not ask the right questions.

A member asked the question whether attorneys and hospitals have simply ignored the issue even though they are aware of it--it seemed to him to be more a concern with hospital compliance.

Several members stated that they did not see the issue as a problem the Civil Rules Committee should be dealing with--that a rule change is not appropriate for one class of cases under one particular statute--that perhaps the problem could be solved by educating the bench to reject these types of matters if there has been non-compliance.

Carol Haller pointed out that the statute refers to collection proceedings, not necessarily a court case. Such a matter should not be on the cover sheet, because the cover sheet deals with other specific issues. She voiced support for a certification from hospital administration--if this option isn't acceptable to hospital administration, the group may need to approach the legislature again.

Another member stated his agreement that the check box on the cover sheet would not work--these cases usually not defended and pro se parties typically don't have sufficient knowledge of what is required to properly deal with the problem.

Mr. Kahn felt that hospitals certifying that they have not charged more than required and that they provided a payment plan would be useful. There will be many who face these types of billings and need some form of mechanism of protection.

A motion was made and seconded to decline adding to or modifying any Rule of Civil Procedure to deal with the issue.

During discussion, a member proposed a partial measure, perhaps in C.R.C.P. 121, § 1-14, Default Judgment. The issue could be added to the list of items that must be met in the affidavit form, showing that qualifications for judgment have been met. Mr. Kahn stated he thought that option might be useful. Another member commented that there is no similar county court rule, so that other problems may be created by such a rule. Another member noted that a motion for default judgment is too deep into the case so be effective, and that such a rule would not catch those matters where an answer (pro se or otherwise) had been filed.

Several other members also expressed disagreement with attempting to use any procedural rule, stating that the problem is really the hospitals' not doing what they should be doing and the solution more appropriately being solely by and through them.

Another member observed that the statute is new (effective August 8, 2012), and that going back to the legislature would not be all that difficult. There was also a suggestion that the Hospital Associations take up and resolve the problem.

Upon call for a vote, by show of hands, the motion carried 11:1.

C.R.C.P. 16.2—Due Date of Expert Rebuttal Reports

Chairman Laugesen next brought to the Committee's attention another matter that was not in the Agenda Packet. Materials were handed out at the beginning of the meeting. The issue involves family law cases and practitioners' perceived ambiguity of C.R.C.P. 16.2(g)(5). The rule specifies the due date of expert rebuttal reports in domestic relations matters, but is unclear as to what happens if the initial report is filed early.

It was noted that the Committee had remedied the same problem in C.R.C.P. 26. The same fix appeared to possibly be appropriate for 16.2 as well.

A motion was made and seconded to accept the proposed language change to C.R.C.P. 16.2 as outlined on page 27 of the Agenda Packet. A member suggested slightly different (he thought clearer) language.

Several members disagreed with the suggestion and called for a vote. The motion carried 8:0, with two abstentions.

The proposed change will provide as follows:

"**Rule 16.2. Court Facilitated Management of Domestic Relations Cases and General Provisions Governing Duty of Disclosure**

(a) through **(f)** * * * * [NO CHANGE]

(g)(1) through (4) * * * * [NO CHANGE]

(5) Unless otherwise ordered by the court, expert reports shall be provided to the parties 56 days (8 weeks) prior to hearing. Rebuttal reports shall be provided 21 days thereafter. <u>If an initial report is served early, the rebuttal report shall not be required sooner than 35 days (5 weeks) before the hearing.</u>

(g)(6) through (j) * * * * [NO CHANGE]"

C.R.C.P. 3—Should Advisory Language Be Added to The District Court Summons to Inform Recipients That No Case Number Does Not Invalidate The Summons and That The Action Must Be Filed Within 14 Days of Service

Chairman Laugesen next directed the Committee's attention to Item 4 of the Agenda [pp 6-10 of the Agenda Packet]. Mr. Laugesen noted that the matter had been brought to the Committee's attention by the CBA Litigation Section Council of which Peter Goldstein is a member. Mr. Laugesen asked Mr. Goldstein to provide a brief background of the matter and the Litigation Section Council's proposed solution.

In providing background, Mr. Goldstein noted that the district court summons when issued by an attorney (which is usually) does not contain a date or a seal, but does have the signature of an attorney. It was brought to the Council's attention that those receiving the summons without a court seal have been of the impression that the pleading was simply a scare tactic and required no action on their part. If the person does not appear, a default judgment will be entered, and if the plaintiff waits six months before attempting to enforce the judgment, there is nothing that can then be done to correct the misunderstanding.

Mr. Goldstein reported that the purpose of the proposed change is to give those served with a document that does not appear to be from the court, an indication that the document is valid. A member reminded the Committee that a summons and complaint out of the state district court may be served without first filing the action with the court. In county court there is a return date on the face of the summons, which makes it less likely to be construed as a trick. Mr. Goldstein responded that the Litigation Section preferred to create specific language. Its proposal is set forth on pp 9 and 9 A of the Agenda Packet. The difference between the two versions is the placement of the prescribed notice language on the summons form.

A member inquired about the issuance of the summons by the attorney instead of the court--noting that in federal court, the documents are stamped and filed by the court and requires filing before the summons and complaint can be served. Another member responded that the practice of attorney-generated summons in state court has been in place for many years. The rationale for allowing the procedure is that because there is

a substantial fee for filing in state court, and particularly in collection matters, frequent inability to serve the person makes it undesirable to have to pay the filing fee unless the suit papers can be served. Service is thus allowed before filing to deal with that problem. The procedure is allowed in many other states as well for the same reason. Of course, attorneys are officers of the court, and should not be misusing the privilege.

A member voiced support for the idea, but had several suggestions to improve the language. Mr. Goldstein asked that a vote be taken to see if the concept is approved in principle, then deal with the specific language.

Several members stated they felt this was a legitimate issue. Several other members felt there was no data--only anecdotal information--and that they were not aware of any large number of instances where people were misled into allowing a default because the summons had no court or date stamp.

Mr. Goldstein responded that he had certainly become aware in his practice of instances where pro se parties called the attorney or the court clerk about receiving documents without a case number. If they call the clerk, clerks are having to spend time explaining why the suit papers have no case number. Clerks typically tell callers to read the summons and check back with the court as they get closer to the running of days specified for a response. He observed that there would be at least that savings of court clerks' time.

Carol Haller shared that the State Judicial forms person had also been thinking of clearer language for the summons form--this isn't a problem in this case-type alone. She reported more is being done to provide additional information to assist pro se parties.

A motion was made and seconded to approve language as proposed by the CBA Litigation Section in principle, and to appoint a subcommittee to work with State Judicial on appropriate changes.

A member suggested a friendly amendment to recommend that State Judicial consider this change along with others to be proposed. Mr. Goldstein rejected the proposed amendment.

Another friendly amendment was proposed to place additional proposed language in the summons only, rather than the rule. Another member pointed out that the summons is not a mandatory form so that language in the rule is necessary. Mr. Goldstein rejected that friendly amendment.

Upon vote, the motion carried 7:6.

The Committee then moved on to the language. A member suggested shortening the proposed language. Another member suggested that the summons declare that the plaintiff has 14 days from a specified, written date, as well as a phone number for the court. That suggestion died for lack of a second.

A motion was made and seconded that a subcommittee be appointed to work out specific language to be added to the summons and/or rule and to work with Ms. Haller on appropriate forms. The motion carried 12:0. Chairman Laugesen appointed a Subcommittee consisting of the following persons: Peter Goldstein, Hon. Ann Rotolo, Lee Sternal and Judge John Webb. Chairman Laugesen appointed Peter Goldstein to chair the Subcommittee.

A member recommended that the Subcommittee also consider reviewing C.R.C.P. 4(c) for inclusion on the summons. Several members agreed with that suggestion.

C.R.C.P. 313 --Proposed Amendment to Allow Remand of Removed Matters Back to County Court When a Jurisdiction-Exceeding Counterclaim Causing The Removal is Dismissed

Chairman Laugesen next directed the Committee's attention to Item 5 [pp 11-14 of the Agenda Packet]. This issue was brought to the attention of the Committee at the last meeting from Judge Kane. Judge Kane provided a proposal that would add language to C.R.C.P. 313 [at pp 12 and 13 of the Agenda Packet].

There was discussion about the language. A member wondered if the word "shall" was considered, rather than "may." Judge Kane noted that the Subcommittee did consider "shall" language, but concluded that judicial districts should have the option to leave particular matters in the district court. Judge Rotolo voiced her concurrence from a county court viewpoint urging that remand be discretionary.

A discussion then followed concerning compliance with the Civil Cover Sheet and applicability of the C.R.C.P. 16.1 declaration.

There was also discussion about removing the "as though the case had never been removed" language. Another member suggested placing the period after "proceedings."

A member recommended that if there is disagreement between district and county court judges as to where to place the case, the chief judge can take care of the issue. At some point, the case will be placed in the appropriate court--that mandated remand should not be included.

A member provided an example of a district court automatically sending county court cases back to the county court--there was confusion as to which rules apply and which case number. To solve the problem, the case was kept with the district court--not having an automatic remand can be important.

A member pointed out that due to constitutional limitations, a county court case may be filed in district court, but (except one having a counterclaim that exceeds the jurisdiction of the county court) a county court case cannot be removed from county court. Another member added that any small claims or county court case can be brought in district court, but there are sometimes benefits to filing some matters in county court, hence the claiming party may forego an amount or claim that exceeds the county court jurisdiction

to be in county court (i.e., district court often takes a longer time due to procedural delays, a more complex docket and discovery).

A member added his concern about mandates as this may be burdensome to the county court--the dockets are different and there are not huge chunks of time for civil matters. The member thought that perhaps judges should be polled.

Several members stated their support for the discretionary remand language--noting that the timing of the counterclaim being dismissed could be very important--it could occur at trial or directly before trial.

A motion was made and seconded to accept the proposed language, but without "as though the case had never been removed."

In the discussion on the motion, a member commented that parties often check a box for the case to go to district court and pay the additional docket fee to stall the matter. Having a discretionary remand would solve that difficulty.

Judge Tidball noted that in the first judicial district, there is one county court judge who is designated as a district court judge. The judge determines whether or not to keep the case in county court. Some cases do remain while others are transferred to district court. If a judge wishes to keep the case, the matter can always be discussed with the county court judge. This process seems to work well.

A member mentioned potentially applicable case law (perhaps from 1970) indicating that once a case is in district court it cannot be remanded. Several of the judge members concurred with the potential of the case law, but noted that the Constitution provides that district courts are the courts of general jurisdiction. If a counterclaim is dismissed, both the county and district judge may agree that the case should be remanded. Both judges may also agree not to remand the case. If the case initiates in county court, remanding the case should be a possibility. Several members indicated their uncertainty, but liked the discretionary remand approach.

A vote was called for. The motion carried 12:0 with one abstention--the member stating his uncertainty about the constitutionality of the provision.

The approved language of the amendment was as follows:

"**Rule 313. Counterclaim and Cross Claim**

(a) * * * * [NO CHANGE]

(b) Alternate. If at the time the action is commenced the defendant possesses a counterclaim against the plaintiff that is not within the jurisdiction of the county court, exclusive of interest and costs, the defendant may:

(1) * * * * [NO CHANGE]

(2) File the counterclaim together with the answer in the pending county court action and request in the answer that the action be transferred to the district court. Upon filing the answer and counterclaim, the defendant shall tender the district court filing fee for a complaint. Upon compliance by the defendant with the requirements of this section, all county court proceedings shall be discontinued and the clerk of the county court shall certify all records in the case and forward the docket fee to the district court. In the event the counterclaim which caused the removal is subsequently dismissed, the case may be remanded to the county court for further proceedings.

(c) through **(g)** * * * * [NO CHANGE]"

Further Consideration of Amendments to C.R.C.P. 47—Proposed Rule Changes to Deal With Concerns Expressed by the CBA Litigation Section

Chairman Laugesen next directed the Committee's attention to Item 6 [pp 15-19 of the Agenda Packet]. The proposed rule change deals with the lack of a uniform jury selection process expressed by the CBA Litigation Section through Peter Goldstein.

Chairman Laugesen asked Mr. Goldstein to provide a brief background of the matter and to remind the Committee of the Litigation Section's recommended solution.

Mr. Goldstein outlined the jury selection process--giving the example that the process begins with 17 potential jurors in the box--each side exercises peremptory challenges to any of the 17 jurors--before peremptory challenges begin, the court tells the parties which seat will be the alternate juror--afterward, peremptory challenges are exercised. The least attractive option is having to exercise voir dire on all potential jurors.

A member suggested identifying the last juror seated as the alternate. Mr. Goldstein responded that the proposed rule adequately allows for selection of the alternate juror--that it is not desirable to be required to exercise peremptory challenges on 15 through 17, as one of those panelists will be the alternate juror.

There was additional discussion about the proposed language [on pp 15 and 16 of the Agenda Packet]. A motion was made to approve the proposed language, but before the motion could be seconded, a member suggested a total of 5 peremptory challenges. Mr. Goldstein responded that the language allows for 6 peremptory challenges. The member stated that the language seemed confusing to him. Several other members pointed out, however, that the last sentence in (g) clarifies the issue.

Mr. Laugesen reminded the Committee that it had previously approved the concept and now needs to approve the proposed language. A member proposed a correction to the language in proposed C.R.C.P. 47(b) to read: "but at no time shall the panel or the jury be told…" instead of: "but at no time shall the panel nor the jury be told…"

There was also a suggestion to correct proposed (h): “Peremptory challenges may be exercised as to any prospective juror…” instead of: “Peremptory challenges may be exercised as to any potential juror…” There was then additional discussion about references to jurors after the proposed change.

The motion to approve proposed changes, together with the proposed language changes to (b) and (h) was seconded. The language of the proposal would thus read as follows:

PROPOSED AMENDMENT

“Rule 47. Jurors

(a)No change

(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~~ **shall exercise** one peremptory challenge **per alternate** in addition to those otherwise allowed. The additional peremptory challenge may be exercised as to any prospective juror ~~.~~**or alternate juror. Prior to the exercise of peremptory challenges, the court shall disclose to the parties or their attorneys which seat or seats will constitute the alternate juror or jurors as the case may be, but at no time shall the panel or the jury be told except as stated above in this section.**

(c) through (f) No change

(g) Order of Selecting Jury. ~~The clerk shall draw by lot and call the number of jurors that are to try the cause plus such an additional number as will allow for all peremptory challenges permitted.~~ **Fourteen prospective jurors, plus three for each alternate to be seated, shall be called by lot into the box for voir dire questioning.** ~~After each~~ **If a** challenge for cause sustained, another juror shall be called to fill the vacancy and may be challenged for cause. When the challenges for cause are completed, the clerk shall make a list of jurors remaining, in the order called, and each side, beginning with plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then swear the remaining jurors, or so many of them in the order listed as will make

up the number fixed to try the cause, and these shall constitute the jury.

(h) Peremptory Challenges. Each side shall ~~be entitled to~~ **exercise** four peremptory challenges, **plus one per alternate** and if there is more than one party to a side they must join in such challenges. Additional peremptory challenges in such number as the court may see fit may be allowed to parties appearing in the action either under Rule 14 or Rule 24 if the trial court in its discretion determines that the ends of justice so require. **Peremptory challenges may be exercised as to any prospective juror or alternate juror remaining seated after all challenges for cause have been exercised and ruled upon, or waived.**

(i) through (u) No change"

Upon call for the vote, the motion carried 9:1 with 1 abstention.

C.R.C.P. 354—Further Consideration of a Change Proposal on Revival of Judgments

Chairman Laugesen next called to the Committee's attention Agenda Item 7 pertaining to revival of judgments [pp 20-25 of the Agenda Packet] and asked Committee member Ben Vinci [who is also a member of the County Court Rules Subcommittee] to provide a brief background of the matter and the Subcommittee's recommendation. Mr. Vinci indicated that this item should again be tabled for further Subcommittee study and discussion at a later meeting.

Chairman Laugesen declared the matter tabled for further study and discussion at a later meeting.

There being no further business, Chairman Laugesen declared the meeting adjourned at 4:15 p.m. The next regular meeting is scheduled for **Friday, January 25, 2013** at 1:26 p.m., in the Conference Room 4244, Ralph Carr Judicial Building, Supreme Court, 2 E. 14th Avenue, Denver, Colorado.

Respectfully submitted,

April Bernard