SUPREME COURT
COMMITTEE ON RULES OF CIVIL PROCEDURE
MINUTES OF MEETING

September 28, 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
Peter A. Goldstein
Lisa Hamilton-Fieldman
Thomas K. Kane
Richard W. Laugesen
Cheryl Layne
David C. Little
Christopher B. Mueller
Howard Rosenberg
Lee N. Sternal
Jane A. Tidball
Ben Vinci
John R. Webb

The following members were excused:

James Abrams
Michael H. Berger
Janice B. Davidson
Ann Frick
Carol Haller
Richard P. Holme
Charles Kall
Justice Nancy Rice
Ann Rotolo
Frederick B. Skillern

Approval of Minutes:

The August 30, 2012 minutes were approved as submitted.

Information Items:

Chairman Richard Laugesen called the Committee's attention to:

- Supreme Court Order Adopting Amendments to C.R.C.P. 4(e); C.R.C.P. 5(b); C.R.C.P. 304(d); and C.R.C.P. 305.5 [Agenda Packet pp 1-3];

- Supreme Court Order Adopting Amendments to JDF Forms 714, 716, 785, 807, 821, 823, 840, 844, 860, 875, 882, 887, 945, 949, and 950 [Agenda Packet p 3];

- Supreme Court Order Adopting an Amendment to C.R.P.C. 1.12 [Agenda Packet pp 3-5];

- Article on ICCES by Chad Cornelius and Brian Medina of State Judicial [Agenda Packet pp 6-7]; and

- Article on the New CBA Casemaker Research Service [Agenda Packet pp 16-26].

Chairman Laugesen handed out and asked the Committee to review proposed new C.R.C.P. 45 and proposed new JDF 80, 80.1 and 80.2 forms that were approved in principle at the August 30, 2012 meeting. Mr. Laugesen asked members to contact him with any questions, suggestions or comments. Mr. Laugesen advised that he would be making his final submission on Wednesday, and that there likely would not be any further public input.

Mr. Laugesen next asked Magistrate Hamilton-Fieldman [a member of the State Judicial's ICCES Committee] to provide the Committee with a brief update on what is happening with ICCES. Ms. Hamilton-Fieldman reminded the Committee that LexisNexis is being replaced by ICCES statewide on January 1, 2013. On and after that date, all electronic filings for civil cases in the District, County and Colorado Appellate Courts will be made through the new ICCES program. Beginning Monday, October 1, 2012, select judicial districts will begin using ICCES on a pilot project basis through December 31st. The pilot courts are the 8th, 14th, 17th and 20th judicial districts. During the three-month pilot, ICCES and File&Serve will run parallel. Ms. Hamilton-Fieldman again urged that everyone, including legal assistants, attend training. She reminded the Committee that the website for preregistration is http://www.courts.state.co.us/icces.

C.R.C.P. 411(b)—Proposed Change of the Days-Counting Start Date for the Time Allowed for Preparation and Filing of the Record in a County Court Appeal--Changing From Date of Judgment to Date of Filing the Notice of Appeal.

Chairman Laugesen next directed the Committee's attention to Item 4 of the Agenda [pp 12-15 of the Agenda Packet]. He noted that the proposal corrects the word "electrically" to "electronically" and would change the days-counting start date for the time allowed for the preparing and lodging the record on appeal on appeals from county to district court as is done on appeals to the Court of Appeals. It was also noted that the amount of days in the proposal should be 42 rather than 40 to comport with Rule of Seven reform standards.

Following discussion, it was moved and seconded that C.R.C.P. 411(b) be amended to read as follows:

> "**C.R.C.P. 411. Appeals.**
>
> **(a)** * * * * [NO CHANGE]
>
> **(b) Preparation of Record on Appeal.** Upon the deposit of the estimated record fee, the clerk of the court shall prepare and issue as soon as may be possible a record of the proceedings in the county court, including the summons, the complaint, proof of service, and the judgment. The record shall also include a transcription of such part of the actual evidence and other proceedings as the

parties may designate or, in lieu of transcription, to which they may stipulate. If a stenographic record has been maintained or the parties agree to stipulate, the party appealing shall lodge with the clerk of the court the reporter's transcript of the designated evidence or proceedings, or a stipulation covering such items within 42 days after ~~judgment~~ the filing of the notice of appeal. If the proceedings have been ~~electrically~~electronically recorded, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the county court or under the supervision of the clerk, within 42 days after ~~judgment~~the filing of the notice of appeal. The clerk shall notify, in writing, the opposing parties of the completion of the record, and such parties shall have 21 days within which to file objections. If none are received, the record shall be certified forthwith by the judge. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible, and the record then certified.

(c) through (e) * * * * [NO CHANGE].

There then followed discussion on related matters:

There was a short discussion about cost bonds. Mr. Goldstein reported that he had been informed by an attorney who had made inquiry to the Court of Appeals about a problem with cost bonds and being unable to obtain a satisfactory response or solution. The difficulty was that an appellate clerk at the district court would not accept a check for the bond--the attorney then attempting to e-file the bond and have the charge applied to his LexisNexis account, but being advised that LexisNexis was also unable to process the request.

Magistrate Hamilton-Fieldman observed that the process may be easier once ICCES is in place. Judge Webb offered to look into the issue from the Court of Appeals side, but noted that this may simply be a difference in the process between districts. Mr. Laugesen suggested that Carol Haller also look into the problem. Cheryl Layne volunteered to take the issue to the Clerks' Advisory Group. Lee Sternal asked that Ms. Layne also bring up the problem of *pro se* parties often not serving other parties.

There then followed a discussion about attorneys having difficulty looking at case filings in LexisNexis. It was noted by a member that the inability to view cases may be related to the law firm's settings in the system--when a *pro se* party files something in the system, the pleading should be available--minute orders are only available if a judge scans and uploads them. A member stated that notification should be automatic when a *pro se* party files a pleading.

Another member responded that the problem may be similar in ICCES--*pro se* parties will initially only have access to small claims cases--access for other courts will come later. Magistrate Hamilton-Fieldman stated she would look into the various concerns, including sufficiency of the contact information requirement for e-filing parties.

The motion carried 10:0 with one abstention. Chairman Laugesen noted that the Chief Justice Directive would also be amended as appropriate to incorporate the amended language of the Rule.

C.R.C.P. 47—Proposed Rule Change to Deal With Concerns Expressed by the CBA Litigation Section.

Chairman Laugesen next directed the Committee's attention to Item 6 of the Agenda [pp 27-38 of the Agenda Packet]. Mr. Laugesen reminded the Committee that the concern and proposal came from the CBA Litigation Section through Committee member Peter Goldstein, who is also a member of the Litigation Section Council. He noted that discussion of the matter had begun at the April 27, 2012 meeting [see pp 7-9 of the 4-27-12 minutes], with the matter then being tabled until Mr. Goldstein could be present and judge training materials could be gathered and circulated by Carol Haller. Those materials along with a summary of a comment poll of district court judges had been included in the August 30, 2012 Agenda Packet.

Mr. Laugesen asked Mr. Goldstein to summarize the previous discussion and describe the Litigation Section's proposal.

Mr. Goldstein, citing several examples, reported that the main difficulty was a lack of uniformity and predictability of jury selection procedures, as well as problems with the process in selecting alternate jurors.

There then followed various suggestions from Committee members as to how an ideal selection process should operate: One of the Committee member judges noted the long-time established procedure of calling 14 prospective jurors to the jury box; accomplishing the voir dire questioning and dealing with challenges for cause [replacing particular panelists excused for cause]; then, on an alternating basis, requiring counsel on each side [by passing the list of panelists back and forth] each strike 4 so that the final remaining number of panelists is 6. For longer trials where the parties do not wish to proceed with less than 6 jurors, additional panelists and peremptory challenges can be added and dealt with by agreement. A number of members nodded that that was also their understanding.

A member noted that while that may be the usual process, some judges use the criminal case process where 6 panelists are seated in the jury box and challenges, either peremptory or for cause, made or waived as to each particular panelist.

There then followed discussion as to how alternates are and should be selected, and whether alternates should ultimately be allowed to deliberate to the final verdict in a case.

A member noted that sometimes, the physical layout of the courtroom may require or not allow particular procedures in jury selection.

A motion was made to table the issue to allow Mr. Goldstein to take into consideration the Committee's discussions and redraft proposed language. Another member added to the request that Mr. Goldstein also consider whether jury selection procedures in district and county court be consistent.

Upon second, Chairman Laugesen declared the matter tabled for Mr. Goldstein's further work-up of the proposal.

C.R.C.P. 103 and 403—Change proposals From the County Court Rule Committee.

Chairman Laugesen next directed the Committee's attention to Item 7 [pp 39-43 of the Agenda Packet]. Mr. Laugesen asked Committee member Ben Vinci [who is also on the County Court Rules Subcommittee] to provide the Committee with the background of the request and an explanation of the Subcommittee's recommendation.

Mr. Vinci reminded the Committee that the proposal would create the same procedure in C.R.C.P. 103 and 403, Section 2(g)(1) as was made to C.R.C.P. 103/403, Section 1(k)(1) in 2010. The procedure allows the garnishee to pay over the garnished funds or property directly to the judgment creditor [without paying into and through the court] when the judgment creditor is either represented by an attorney or is a licensed collection agency. The rationale is that the fact that both [the licensed collection agency and the attorney] are licensed and required by their license to be honest and accountable, having to pay the funds or property into the court for its payment-over to the judgment creditor is unnecessary, time consuming work for court clerks and everyone concerned.

Mr. Vinci noted [and Committee member Cheryl Layne nodded her agreement] that as with Section 2(g)(1), the Court Clerks' Advisory Group approved of and joined in the recommendation. Of course, if the judgment creditor is not a licensed collection agency or is not represented by an attorney, then the direct pay-over procedure cannot be used.

After discussion, a motion was made and seconded to approve the proposed changes to C.R.C.P. 103 and 403, Section 2(g)(1) as follows:

"**C.R.C.P. 103. Garnishment. and Rule 403. Garnishment.**

SECTION 1 * * * * [NO CHANGE].

SECTION 2

WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

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

Further Consideration of C.R.C.P. 121, § 1-15 and C.J.D. 11-01 to Deal With Orders With Signatures.

Chairman Laugesen next directed the Committee's attention to Agenda Item 5 [pp 16-26 of the Agenda Packet]. He noted that the proposal involved revisiting and perhaps providing an exception to a matter the Committee had dealt with several meetings ago [requiring filed orders be in editable format]. He observed that such an exception is particularly important in domestic relations matters where the parties physically sign orders--that pp 23 and 24 of the Agenda Packet contain the proposed solution.

Several members noted that such an exception would also apply to any civil order that requires an attorney/party signature. Another member joined, indicating that there may also be instances in probate matters.

A member asked if the change would apply to protective orders or stipulated pre-trial orders. Another member responded that those would not need to be included in the proposed change.

There then followed a short discussion about stipulated judgments signed by counsel. A member observed that there did not appear to be a requirement that judgments be signed by a party or attorney.

Another member noted the requirement of the client's signature on the Exclusion From C.R.C.P. 16.1 form--that form must be signed by the party and attorney. Another member responded, stating that the C.R.C.P. 16.1 Exclusion form is not really an order.

There then followed discussion about: what constitutes a signature; that orders containing signatures can be scanned; that the need for the exception probably arises only in domestic relations matters; and that once ICCES is in place, there will be less of a need.

A motion was made and seconded to adopt the proposed change without the phrase "court orders" and include the word "for" after the word "except" to read as follows:

> **"Rule 121. Local Rules -- Statewide Practice Standards.**
>
> * * * *
>
> **Section1-15**
>
> **DETERMINATION OF MOTIONS**
>
> ¶¶ 1 through 9 * * * * [NO CHANGE].
>
> 10. **Proposed Order.** Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied."

(g) **Court Order on Garnishment Answer.**

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se request such indebtedness be paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101, et. seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(2) through (4) * * * * [NO CHANGE].

(h) and (i) * * * * [NO CHANGE].

Section 3 through 12 * * * * [NO CHANGE]."

The motion carried 12:0.

C.R.C.P. 354—Change Proposal From the County Court Rule Committee.

Chairman Laugesen next called to the Committee's attention Agenda Item 8 pertaining to revival of judgments [pp 44-45 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 asked that the matter be again tabled to allow completion of research of the issues raised during the August meeting, particularly whether the court retains personam jurisdiction over the judgment debtor for the garnishment process.

Chairman Laugesen granted the request and ordered the matter tabled to the next meeting.

Other Matters

Chairman Laugesen if there were any other matters for the Committee's consideration.

Judge Thomas Kane raised an issue pertaining to C.R.C.P. 313--situations where a counterclaim exceeding the county court's jurisdiction is transferred to the district court, but does not survive motions or for some other reason is dismissed. The concern is that C.R.C.P. 313 does not allow for the case to be returned to the county court. Judge Kane stated that a rule change appeared necessary to allow the district court to return the case to the county court--that such a return procedure would benefit everyone because [after dismissal of the counterclaim] the matter will be more quickly and efficiently handled in the county court, and the district court's docket will not be burdened with a matter that should not have been in the district court in the first place.

A member joined, stating that the State Constitution identifies the district court as a court of general jurisdiction so that such a matter could have been brought directly in the district court, but wasn't. A matter filed in the county court cannot be moved from the county court to the district court unless it involves a counterclaim that exceeds the jurisdiction of the county court. The member agreed that while a county court matter with a counterclaim exceeding county court jurisdiction must be transferred to the district court, if the counterclaim is dismissed, there is no good reason for the matter to remain in district court.

Chairman Laugesen asked Judge Kane to provide a letter on the issue and include proposed language to remedy the problem.

There being no further business, Chairman Laugesen declared the meeting adjourned at 4:15 p.m. The next regular meeting is scheduled for **Friday, October 26, 2012** at 1:26 p.m., in the Fifth Floor Conference Room, Denver News Agency Building, 101 West Colfax Avenue, Denver, Colorado.

Respectfully submitted,

April Bernard