

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
March 26, 2021 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Jerry Jones at 1:30 p.m. via videoconferencing software WebEx. Members present at the meeting were:

Name	Present	Not Present
Judge Michael Berger, Chair		X
Mandy Allen	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Miko Ando Brown	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	
Bradley A. Levin	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	
Judge Juan G. Villaseñor		X
Ben Vinci	X	
Judge (Ret). 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

- March 26, 2021, agenda packet.

II. Announcements from the Chair

- The January 29, 2021, minutes were approved with the following changes: section I, the spelling of Judge Berger’s name was corrected; section G, “fed” was changed to “FED”; section A, the second sentence was changed to start with “Its” rather than “Their”; section L, “their” was changed to “its”; section G, the spelling of Judge Lipinsky’s name was corrected.
- Judge Jones announced that he will be substituting as chair for Judge Berger today.
- Judge Jones introduced new member Mandy Allen.

III. Present Business

A. Proposed Amendments or New Rules Regarding Uniform Procedures in FED Actions

Judge Lipinsky brought a proposal from the Access to Justice Commission regarding FED cases. The committee was formed in response to two problems. First, a large number of default judgements are entered because defendants don’t know how to navigate the system. Second, there is a lack of uniformity of FED practices around the state. The proposal includes two new forms, a new rule, and updates to an existing rule.

Judge Davidson asked whether any of the changes are aimed at improving the rate of appearances of defendants in court. Judge Lipinsky said that the new advisement sheet would be served on the defendant and provides helpful information to the defendant which should help reduce the number of no-shows.

Lisa Hamilton-Fieldman suggested adding section 8 language to the advisement sheet.

Judge Jones said that this proposal will go to a new subcommittee and mentioned that it would be good to have landlord representation on the subcommittee. Members interested in joining the subcommittee should email Judge Berger and Kathryn.

B. JDF 105 + 28a

Subcommittee Chair Mike Hofmann brought proposed changes to Form 7 of the County Court forms. The changes make it clear that the clerk may but is not required to mail the interrogatories. The subcommittee also made changes for clarification and grammatical purposes.

The subcommittee is also proposing a new Form 28(a). The exemption amounts for debts under C.R.S. § 26-2-128(1)(A) – which covers garnishments for judgments for public assistance fraud – is different from the standard exemption amounts. Currently no form covers these debts; proposed new Form 28(a) would fix that.

A motion was taken and seconded for adoption of the changes to one form and the approval of the new form. The motion passed unanimously.

C. C.R.C.P. 15(a)

Subcommittee Chair John Lebsack reminded everyone that at the last meeting, the committee voted against adopting the revised federal rule. The subcommittee took another look at this issue, and it still recommends that the committee adopt the federal rule. There are two alternatives. 1. Adopt the federal rule in the format of the Colorado rule. 2. Codify the *DIA Brewing* case into the rule. The subcommittee believes the federal rule is the better choice. Currently, 8 states have adopted the federal change.

David DeMuro said that he is opposed to adopting the federal rule because the Colorado rule is working. He is also against alternative 2 because he doesn't think it codifies the case accurately. Mr. Lebsack said the proposed change goes beyond the case in the interest of clarity.

The committee discussed potential efficiencies and inefficiencies of adopting the federal rule. Michael Hofmann offered that the current rule works well and that *DIA Brewing* is a one-off that won't happen frequently, so this rule does not need to be changed. The committee also discussed the fact that the language proposed in option 2 could be more precise and could more correctly encapsulate the *DIA Brewing* case.

A motion and a second were taken to adopt the federal rule. It failed by a vote of 9 to 16. A motion and a second were taken to adopt the second option proposed by the subcommittee. The committee did not vote on this motion. A motion and a second were taken to table this issue and succeeded with a vote of 17 to 7. Judge Jones encouraged the subcommittee to tighten up the language in option 2 and get rid of ambiguities that some members noted. He noted his appreciation for the subcommittee's hard work.

D. JDF 1111

This issue came to the committee from a member of the public. Judge Brody offered that her subcommittee could consider this issue along with C.R.C.P. 16.2, as the issues are related. Judge Jones agreed and asked that the subcommittee consider these materials.

E. County Court Rules 304 and 307

Speaking to the proposed changes to Rule 304, Subcommittee Chair Ben Vinci said that this proposal to add a section mirrors Rule 4 while allowing for timing differences in county court. The new section codifies the process of dismissing a case if nothing is going on with it. Judge Jones commented that a subcommittee is currently considering changes to 4(m), so it might make sense to hold off on these changes until those are considered. He also noted that if this rule is approved, then the committee could revisit before submitting to the court following any approved changes to 4(m). A friendly amendment to use 26 weeks rather than 6 months was accepted. A motion was made and seconded and it passed 16 to 7 to approve the rule with the friendly amendment.

The committee next considered the proposed changes to Rule 312. Mr. Vinci explained that the proposal is a housekeeping change to remove the reference to Rule 307. This proposal doesn't substantively change the rule, it just removes a circular reference. A motion to approve was made and seconded. It passed 20 to 1.

F. C.R.C.P. 16.2

Passed over.

G. Colorado Rules for Magistrates

Passed over.

H. Crim. P. 55.1—Public Access to Court Records

Passed over.

I. C.R.C.P. 30(b)(6)

Passed over.

J. C.R.C.P. 4(m)

Passed over.

K. C.R.C.P. 30(b)(7)—Virtual Oaths

Passed over.

Future Meetings

June 25, 2021

September 24, 2021

November 12, 2021

The Committee adjourned at 3:55 p.m.