

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 29, 2017 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 12:00 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 Fred Gannett	X	
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme		X
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Cheryl Layne	X	
John Lebsack	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

September 29, 2017 agenda packet

II. Announcements from the Chair

- The June 23, 2017 minutes were approved as submitted;
- Justice Eid has been nominated to the 10th Circuit Court of Appeals; she had her hearing before the Senate Judiciary Committee last week. It has some consequence here, because she is the committee's liaison justice. If Justice Eid leaves, Justice Gabriel is her successor;
- Last year, in conjunction with Rule 16.1, the committee recommended a county court jurisdictional increase. Many people were upset, because there were concerns that a jurisdictional increase and the proposed amendments to Rule 16.1 may substantially increase county court filings. The Chief Justice referred the proposed jurisdictional increase to Court Services, a group at SCAO who work in resource allocation. Judge Berger presented to the Court Services Committee this summer, and they voted to approve the Civil Rules Committee's proposal. In conjunction with the proposed increase, the court has asked the Civil Rules Committee to take a final look at Rule 16.1 to make sure it and the proposed jurisdictional increase fit together. As a reminder, Rule 16.1 was posted for public comment, and the court received one comment from CDLA. Richard Holme has drafted a response, which will be circulated with the October meeting materials. The committee will take a final vote on Rule 16.1 at the next meeting; and
- Many members' terms expire on December 31, so please email Judge Berger if you'd like to renew. Renewal terms this year and next year may be a little longer than the usual 3 years to get all members on the same renewal schedule.

III. Business

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

Stephanie Scoville stated she reviewed Rule 57(j) as it relates to section 13-51-115, C.R.S., and the proposed amendments are clarifying: the title of subsection (j) has been amended to reflect that it refers to municipal ordinances and state statute challenges; and the text of subsection (j) has been modified to clarify that a party must give notice to the municipality, if challenging a municipal ordinance, or to the state and the attorney general's office, if challenging a state statute, not the court.

The committee asked, if Rule 57(j) is amended as recommended, would the committee need to make an amendment to Rule 121 § 1-15, alerting practitioners to the requirement to serve a municipality or the state. Some members thought Rule 121 § 1-15 should be amended to provide notice, while others thought that because Rule 57 only applies to declaratory judgments, the notification in subsection (j) was sufficient. After discussion, there was a motion to adopt the rule as amended and make no amendment to Rule 121 § 1-15. The motion passed 12:9.

B. C.R.C.P. 58 & 59

Judge Jones began and reminded the committee that he brought this based on his experience on a motions division. There, the parties involved lost the ability to file under Rule 59, because the court didn't immediately serve them under Rule 58. A subcommittee was formed and issues expanded. The subcommittee achieved consensus on one thing: it agreed not to change Rule 58. However, there was substantial disagreement about Rules 6 & 59 and two extremes emerged, do nothing or adopt the approach in the federal rules. The subcommittee would like the committee to weigh-in, because it doesn't have a recommendation.

Extending the time to file in Rule 59 from 14 to 28 days was met with approval by some members; others thought a change to 28 days would be inconsistent with other state court time frames, and may lead to additional timing changes in other rules. Some members thought nothing should be done, because issues surrounding these rules could be solved by other means, such as training. Also, there were many different recommendations about how the last clause of Rule 6(b)(2) could be amended.

There seemed to be a slight preference for what the what the committee was describing as the "federal option", where the last clause of Rule 6(b)(2) would be struck or amended and the timing in Rule 59(a) would be changed from 14 to 28 days. The committee took a straw vote on the "federal option" that passed 13:11. The subcommittee will draft and present specific language for the committee to consider at the next meeting, where a final vote will be taken.

C. C.R.C.P. 80

Judge Espinosa stated that the rule had been generally updated, but the major revision was in subsection (a) where the rule was made discretionary, not mandatory. A member asked if the subcommittee had considered repealing the rule and citing to CJD 05-03, because it covers most, if not all, issues related to court reporters. Another member stated that having two sources of authority on the same topic, a CJD and a court rule, could be problematic. The subcommittee stated it had discussed many alternatives and it believed keeping the rule was the best option. It provided trial court judges with another source of authority to cite if they wanted to ask their chief judge for a court reporter, and if the CJD was ever dramatically modified or repealed, the court rule would still be operational.

Next, the quality of an electronic record versus transcripts created by a court reporter was discussed. The audio quality of an electronic record can be poor; also, there are instances where someone forgets to turn on the machine or the machine malfunctions and doesn't record. Alternatively, a transcript is only as good as its court reporter, and court reporters are expensive and hard to get, especially in rural districts. The committee generally agreed that Rule 80 describes a state that doesn't exist, and in most civil trials, the party that wants a court reporter must pay for it. A motion was made to repeal Rule 80 and add a comment stating that the rule has been repealed and see CJD 05-03 for issues relating to court reporters. The motion passed 12:4. The subcommittee will draft comment language.

D. C.R.C.P. 26

Tabled to the October 27, 2017 meeting.

E. C.R.C.P. 69

Tabled to the October 27, 2017 meeting.

F. C.R.C.P. 79 & 379

Cheryl Layne began and stated that clerks of court from around the state had met and revised Rules 79 & 379. The rules had been modernized to reflect current court practice and to repeal out-of-date sections. A member asked if a signed written judgment is actually entered into the courts' computer systems. Ms. Layne explained that an order is signed and entered, but it may be a signed paper order or it may be an electronically signed electronic order. There were many questions about the process by which judgement is entered, and discussion turned to Casper v. Guarantee Trust Life Insurance Company, 2016 COA 167. In Casper, the trial court entered an oral order, and plaintiff died before the court had reduced its oral order into a written judgment; certiorari has been granted on three issues. Based on discussion, the committee decided to have a subcommittee broadly look at issues surrounding the proposal.

G. C.R.C.P. 107

Subcommittee chair, Lisa Hamilton-Fieldman, asked for clarification on the scope of the subcommittee's mandate. She reviewed the letter asking the committee to consider amending the rule so an award of attorney fees would be available to the prevailing party. Ms. Hamilton-Fieldman asked if the committee wanted the subcommittee to address the issue raised in the letter or should the rule receive broader study. The committee advised the subcommittee to make broad or narrow recommendations, whatever it thinks is best. Also, Judge Berger recommended the subcommittee consult with Judge Ray Satter, who has written extensively about contempt.

H. New business

A member asked the committee if there was any interest in discussing why "interrogatories" aren't referred to as "questions." The committee discussed this last fall when Rule 33 and Form 20, Pattern Interrogatories, were amended. At that time, the committee decided to keep using the word "interrogatories." The committee had no interest in discussing this again, and it was tabled.

IV. Future Meeting

October 27, 2017

The Committee adjourned at 2:00 p.m.

*Respectfully submitted,
Jenny A. Moore*