

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
November 18, 2016 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 Court of Appeals Full Court Conference Room on the third 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 Ann Frick		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	
Debra Knapp	X	
Cheryl Layne		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

- A. November 18, 2016 agenda packet
- B. Supplemental Material
 - 1. C.R.C.P. 16.1 proposal
 - 2. Comment to C.R.C.P. 16.1 proposal

II. Announcements from the Chair

- The October 28, 2016 minutes were approved as submitted;
- Former chair and longtime member Richard Laugesen has resigned from the committee. Judge Berger recognized and thanked Mr. Laugesen for his dedication and contribution to the committee;
- The C.R.C.P. 120 hearing was held on November 20 at 2:30. There were six speakers, and only one spoke against the proposal. Judge Berger will update the committee on the status of the proposal; and
- The proposed addition of section 1-27 to Rule 121 has been withdrawn. The drafters are revising the proposal to try to garner more support.

III. Business

A. C.R.C.P. 16.1

Judge Davidson and Richard Holme began and stated that a revised version of the rule had been circulated to the committee. Major changes in the revised version include the deletion of limitations on damages (former subsection (c)); the change from 35 to 42 days in subsection (d); and, the last sentence in subsection (l).

There was much discussion, and the following amendments were adopted or failed as noted:

- Add an opt out provision that allows a qualifying case to not proceed under the rule if all parties and clients stipulate; this motion failed with five yes votes;
- Add a provision allowing parties to submit five interrogatories; this motion failed 13:9;
- Amend subsections (b)(2) and (d)(i) by adding “or more” as follows

Subsection (b)(2): “In compliance with C.R.C.P. 11, based on upon information reasonably available to me at this time, I certify and believe that ~~at least one of~~ my claims in this case against one or more of the other parties ~~in this case~~ have a fair expectation of being in excess of \$100,000.”

Subsection (d)(i): “Good cause shall be established and a motion shall be granted if a defending party files a statement on by the its attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify and believe that claims in this

case against one or more of the parties have a fair expectation of being in excess of \$100,000," or”

This motion failed 12:7;

- There was a motion to add language clarifying that cross-examination time would not be included in the six hours allotted for depositions. The committee was generally in favor of this but was unsure if language should be added to the rule or a comment. The subcommittee offered to draft language for the committee to consider, so the motion was withdrawn;
- There was a motion to add language clarifying that the six hours of deposition time allowed under the rule would exclude preservation depositions. The committee was generally in favor of this, and the subcommittee said it would consider it, so the motion was withdrawn;
- There was a motion to adopt the rule in concept, subject to additional review, and amendment at the January meeting. The motion passed 17:6.

Finally, Judge Berger asked the subcommittee to consider whether a comment should be added to the rule.

B. New form for admission of business records under hearsay exception rule

Tabled until the January 27, 2017 meeting.

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

Tabled until the January 27, 2017 meeting.

D. County and municipal appeals to district court

Judge Espinosa began and stated that the subcommittee had decided that the civil and criminal county and municipal appeal rules will not be harmonized. Each rule type contains different timelines for different reasons, so conforming amendments will not be pursued. However, the subcommittee is interested in working on a mechanism to allow indigent parties to receive transcripts. A couple of possible solutions were discussed:

- Audio recordings could be supplied to indigent parties, but trial courts would have to listen to the recordings, which could take a lot of time. While time logs are kept stating which witness is testifying, there wouldn't be pin cites, so time stamp information would not be available.
- A fund could be set-up to provide transcripts to indigent parties. If \$1 was added to every civil filing, it would likely cover indigent transcripts. While setting up a fund is outside the committee's authority, it was an option discussed by the subcommittee. Judge Romano offered to find out how indigent parties receive transcripts in Adams County.

There was a motion to table this item until there was more information for the committee to consider; the motion was adopted unanimously.

E. C.R.C.P. 83

Jeannette Kornreich began and stated she'd like other members of the committee to join her and Judge Kuenhold on the subcommittee, so David DeMuro and Lisa Hamilton-Fieldman volunteered to serve. There was a question about whether the committee had authority to adopt a rule allowing for use of a sworn declaration in place of a notary, because while there is a federal statute allowing it, 28 U.S.C. 1746, there is not a similar state statute. The subcommittee will study the issue and make a recommendation at a future meeting.

F. C.R.C.P. 121 §1-15

Judge Berger stated that C.R.C.P. 121 §1-15 was inaccurate and needed to be reviewed. He received an email, contained in the agenda packet, asking a question regarding Rule Change 2016(01), which, in part, amended C.R.C.P. 121 §1-15. Also, it was acknowledged that the rule has been modified by a court of appeals opinion. A subcommittee will be formed, and Judge Jones volunteered to serve as chair.

G. JDF 1111

Ms. Kornreich began and stated that the amendment was brought to her attention by Court Services. The language above the certificate of service is inaccurate, and the placement confuses self-represented parties. After discussion, the committee voted unanimously to adopt the amended language.

Future Meeting

January 27, 2017

The Committee adjourned at 4:00 p.m.

Respectfully submitted,
Jenny A. Moore