

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
March 18, 2016 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge John Webb at 1:30 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 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	
Richard Laugesen	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	
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.** March 18, 2016 agenda packet
- B.** Supplemental Material—CTLA's position on CRCP 47

II. Announcements from the Chair

- The January 29, 2016 minutes were approved as submitted.
- Judge Berger is absent, so Judge Webb will be chairing today's meeting.

III. Business

A. CRCP 16.1 & Raising County Court Jurisdiction Subcommittee

Judge Davidson began and reminded the committee that the subcommittee was charged with amending CRCP 16.1 and recommending a county court jurisdictional increase. Judge Davidson has received new direction to proceed with the county court jurisdictional increase separately from CRCP 16.1; the subcommittee will come back to CRCP 16.1 after the Chief Justice's Report is released this summer. The memo in the agenda packet summarizes the pros and cons and the recommended increase is to \$25,000-35,000. The subcommittee discussed higher numbers, like \$50,000, but if the number is too high there will be a push for more discovery and higher filing fees in county court. Representatives from Denver County Court and the State Court Administrator's Office said that an increase to \$35,000 could be absorbed with no additional resources. A motion was made and seconded to recommend a county court jurisdictional increase to \$35,000; the motion passed 18:2.

B. C.R.M. 5 & 6

Magistrate Tims stated that the subcommittee had revised the proposals to C.R.M. 5 and 6 to ensure that parties know they have the right to be heard by a judge and that waiver of the right to be heard requires consent. After discussion a motion was made to adopt the amendments as submitted by the subcommittee; the motion passed 20:1.

C. C.A.R. 8(d)

David DeMuro began and said the amendment relates to issues around releasing a lien or bonding over a lien. If there is a judgment lien and bond is posted, a party can move to have the judgment lien removed. Currently there are procedures in C.A.R. 8(d), but there are no procedures in the civil rules. Language from C.A.R. 8(d) was modified and moved to CRCP 121, into a new subsection in section 1-23. There was a question about whether or not section (d) in C.A.R. 8 would be struck from the appellate rules. Chief Judge Loeb stated that is a separate issue that will be considered by the Appellate Rules Committee. A motion was made to adopt the amendments as submitted by the subcommittee; the motion passed 18:2.

D. CRCP 47

Brad Levin began and stated that initially this seemed like a simple issue that came out of the court of appeals case, 2015COA179. However, potential conflicts between § 13-71-103 and § 13-71-142 and CRCP 47 and 48 were discussed extensively by the subcommittee. The subcommittee struggled with whether the discrepancies between the rule and the statutes are procedural or substantive. If they are procedural, then amending

the rule is appropriate, but if they are substantive then the statute controls. The subcommittee wasn't unanimous and there are three versions of possible changes to CRCP 47 in the agenda packet. The Colorado Trial Lawyers Association submitted a memo in response to the subcommittee's activity that was distributed before the meeting.

Some members thought that the problem here is the rights of the parties versus the need to accommodate jury service. The rights of the litigants must trump the feelings of alternate jurors, and the trial court shouldn't be able to overrule either or both parties if the parties have come to an agreement. Other members thought that trial judges should have the discretion to permit alternates to deliberate. Most district or county court judges on the committee had consulted with their colleagues, and almost all of those consulted want this discretion. It's not about the discomfort of releasing alternates, but the bigger issue is alternate jurors have engaged in pre-deliberations. If the alternate jurors can't deliberate, then they shouldn't be allowed to pre-deliberate or ask questions. A final group of members thought that this is a substantive issue and CRCP 47 must track the statute.

After discussion, a motion was made and seconded to preserve the status quo or, in other words, to not amend CRCP 47. The vote was tied 11:11, and Judge Webb voted yes, to break the tie. The motion to maintain the status quo passed 12:11.

E. County Court Rules Subcommittee

Subcommittee chair Ben Vinci began and announced that a County Court Rules Subcommittee had been formed and it is a new standing subcommittee of the Civil Rules Committee. The new subcommittee will meet soon and the goal is to keep simplified procedure intact, so access to county courts is quick, cheap, and helpful to self-represented parties. Mr. Vinci thinks some of the ideas about sorting cases by characteristics and other reforms should be tested in county courts.

F. New Form for admission of business records under hearsay exception rule

David Little began and asked that this be laid over to the May meeting. Specifically he asked the committee to consider: 1) if this procedure would enable the admission of voluminous documents; and 2) whether the trial process for voluminous documents is assisted by this process. A motion to table this to the May meeting passed 16:1.

G. Form 20

Skip Netzorg reported that the final draft of Form 20 was sent to Judge Berger for submission to the supreme court.

H. CRCP 121 section 1-14, CRCP 41(b), and CRCP 17(b)

Passed to May 20, 2016 meeting.

I. County and municipal appeals to district court

Passed to May 20, 2016 meeting.

J. CRCP 53

Passed to the May 20, 2016 meeting.

IV. New Business

K. CRCP 52

Lee Sternal said he'd chair a subcommittee on whether or not the last sentence of CRCP 52 should be amended. This item will appear on the May agenda.

L. CRCP 60

Brad Levin noted that the deadline in CRCP 60(b) is 6 months, and it would be better if the reference was changed to days. He'll work on an amendment for the May meeting.

V. Future Meetings

May 20, 2016

The Committee adjourned at 3:30 p.m.

*Respectfully submitted,
Jenny A. Moore*