

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
Minutes of June 26, 2015 Meeting**

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 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 Ann Frick	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	
David C. Little	X	
Chief Judge Alan Loeb		X
Professor Christopher B. Mueller	X	
Gordon "Skip" Netzorg	X	
Brent Owen	X	
Judge Ann Rotolo		X
Stephanie Scoville	X	
Frederick B. Skillern	X	
Lee N. Sternal	X	
Magistrate Marianne Tims	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	
Teresa Tate	X	

I. Attachments & Handouts

- A. June 26, 2015 Agenda Packet
- B. Revised Rule 120 draft

II. Announcements from the Chair

The April 24, 2015 minutes were adopted with no corrections.

Judge Berger announced that after twelve years Chuck Kall resigned from the committee. Mr. Kall received a certificate of appreciation from the supreme court, and Judge Berger recognized Mr. Kall's service to the committee. As a result of Mr. Kall's resignation Damon Davis had been appointed to the committee. Judge Berger welcomed Mr. Davis to his first meeting and introduced other recently appointed members: Chief Judge (Ret.) Janice Davison, Gordon Netzorg, Brent Owens, and Stephanie Scoville.

Fred Baumann, Chair of the Colorado Access to Justice Commission, and Diana Poole, Executive Director of the Legal Aid Foundation of Colorado, appeared on behalf of the Rule 23 proposal.

Elizabeth Marcus, of the Janeway Law Firm, Terry Jones and Mike Rosser, of the Colorado Mortgage Bankers Association, and Keith Gantenbein, who practices in defense of debtors, appeared on behalf of the Rule 120 proposal.

Justice Eid thanked the committee for their hard work on the Improving Access to Justice (IAJ) Proposal that was adopted by the supreme court May 28, 2015, effective to cases filed on or after July 1, 2015.

Judge Berger announced a new subcommittee would be formed looking at possible amendments to Rule 16.1 and a study of the jurisdictional limits of county and small claims courts. A sign-up sheet was passed around and the subcommittee will report at the September 25 meeting.

III. Business

A. Rule 23

Fred Baumann began and explained that in May 2012 the supreme court granted two emergency distributions from attorney regulation funds to Colorado Legal Services to ameliorate a funding crisis. The Colorado Access to Justice Commission and the Colorado Bar Association worked together to develop long range funding planning that included an amendment to Rule 23. The amendment would require at least 50% of class action residual funds be disbursed to the Colorado Lawyer Trust Account Foundation to be used to support civil legal aid. A sign-up sheet was passed around and the Rule 23 subcommittee will report at the September 25 meeting.

B. Rule 120 Subcommittee

Fred Skillern began and said that the subcommittee unanimously adopted the proposal with the exception of section (b)(4). The following amendments were offered by the committee.

Section (b)(4)

If the moving party or authorized servicer, if different, is not authorized to modify the evidence of the debt, the notice shall state in addition the name, address, and telephone number of the person authorized to modify the evidence of debt. A copy of Rule 120 shall be included with or attached to the notice.

Section (c)(2)

If a response is filed stating grounds for opposition to the motion within the scope of this rule as provided for in subsection (d).

A member voiced concern that this came to the committee after a failed attempt to legislate, and the committee was usurping a legislative function by deciding policy here; but, after discussion, the committee decided to move forward with the Rule 120 amendments. A motion to adopt the rule as amended, including the additional amendments to sections (b)(4) and (c)(2) from today's meeting, was seconded, and passed with one opposing vote. Judge Berger asked the Editing Subcommittee to look over the proposal and present the edited draft at the September 25 meeting.

C. Probate Rules

The Probate Rules, with the additional edits noted in Assistant Legal Counsel Teresa Tate's Memo on page 60 of the Agenda Packet passed unopposed.

D. Antero v. Strudley

In *Antero v. Strudley*, 2015 CO 26, the supreme court held that modified case management orders, such as a Lone Pine order, are not authorized under the Colorado Rules of Civil Procedure. The committee discussed the merits of allowing trial courts to enter Lone Pine orders. Many members noted that *Antero* was decided under old Rule 16, not Rule 16 as amended by the AIJ Proposal. While amended Rule 16 doesn't authorize Lone Pine orders, it does require more active judicial case management.

Judge Berger explained that the committee could appoint a subcommittee to investigate whether or not Rule 16 needed an amendment to expressly allow trial courts to enter a Lone Pine order, or the committee could wait and see how amended Rule 16 worked in practice and if it alleviated the problem Lone Pine orders addressed. The committee's consensus was to let amended Rule 16 operate and come back to this issue later if necessary.

E. Rule 53 Masters

A subcommittee of Judge Zenisek, Dick Holme, Brent Owen, and David Tenner was formed and will report at the September 25 meeting.

F. Rule 121, §1-15 Subcommittee

The discussion of Rule 121, §1-15 was tabled until the September 25 meeting.

G. Rule 84 Forms

The discussion of Rule 84 was tabled until the September 25 meeting.

H. New Disclosure Form

The discussion of the New Disclosure Form was tabled until the September 25 meeting.

I. Rule 122(c)(7) Case Specific Appointment of Appointed Judges Pursuant to C.R.S. §13-3-111

The discussion of Rule 122 was tabled until the September 25 meeting.

IV. Future Meetings

September 25, 2015

November 20, 2015

January 29, 2016

The Committee adjourned at 3:39 p.m.

*Respectfully submitted,
Jenny A. Moore*