

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure  
Minutes of January 30, 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:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Judge Michael Berger, Chair	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	
Charles Kall	X	
Thomas K. Kane	X	
Debra Knapp	X	
Cheryl Layne		X
Richard Laugesen	X	
Judge Cathy Lemon	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Judge Ann Rotolo		X
Frederick B. Skillern	X	
Lee N. Sternal	X	
Ben Vinci	X	
Magistrate Marianne Tims	X	
Judge John R. Webb	X	
J. Gregory Whitehair	X	
Christopher Zenisek	X	
<b>Non-voting Participants</b>		
Justice Allison Eid, Liaison	X	
Teresa Tate	X	

**I. Attachments & Handouts**

January 30, 2015 Agenda Packet  
David DeMuro's revised CRCP 121 §1-15 Memo

## II. Announcements from the Chair

The November 21, 2014 Meeting Minutes were adopted with one correction: in Roman numeral III, section B, paragraph 4, the reference to CRCP 16(a)(7) will be changed to CRCP 16(b)(7).

With 24 voting members, Judge Berger announced the results of the Improving Access to Justice (IAJ) final email vote:

<b>Proposal</b>	<b>Vote</b>
Votes in favor of all proposals	12
Votes against adding the last sentence to CRCP 54(d)	9
Votes against adding “manifestly” to CRCP 37	1
Members who did not vote	3

The IAJ proposal was transmitted to the supreme court on January 5, 2015, and a public hearing will be held on April 30 at 1:30 in the Supreme Court Courtroom. Judge Berger and IAJ Subcommittee Chair Richard Holme will represent the committee at the hearing. Judge Berger said that the IAJ proposal and subcommittee report are on the court’s website, and Mr. Holme’s first article on the proposed changes appeared in *The Colorado Lawyer’s* February 2015 issue. Judge Berger told members they are free to discuss the proposal with colleagues and there is no level of confidentiality to the Civil Rules Committee meetings, with one exception: subcommittee reports need to be considered by the entire committee before public release.

## III. Business

### A. IAJ Proposal

#### (i) Committee Comments

The committee comment discussion was centered on two issues: general remarks on the civil rules’ committee comments, and proposed action on the IAJ rules with committee comments.

The civil rules’ committee comments had been drafted on an ad hoc basis, and Judge Berger asked members their thoughts on committee comments generally. Some members thought having no committee comments would be best, because the rules should be written clearly enough to speak for themselves. Other members thought some committee comments were necessary, because they provide value by stating why the change or different treatment was necessary.

After discussion, the committee agreed that if committee comments were used, the committee must agree to abstain from drafting comments that paraphrase rules. Also, the committee agreed that a committee comment policy should be considered, as well as dating committee comments, like the federal rules.

Moving to the IAJ proposal, Rules 16, 26, 30, 31, 34, 37, 54, and 121 §1-22 have committee comments that were not amended in the IAJ proposal submitted to the

supreme court. Judge Berger proposed: 1) printing the IAJ Subcommittee Report after Rule 1 and in the other IAJ rules' committee comments, print a cross reference to the report; and 2) having members review the committee comments of the IAJ rules and report back at the February 27 Meeting with a recommendation on what to do with existing comments. These proposals were seconded and passed.

## **(ii) Effective Date**

The IAJ proposal submitted to the supreme court did not contain an effective date recommendation, and Mr. Holme described a scenario where three sets of rules would be in effect: 1) the CAPP rules in judicial districts participating in CAPP; 2) the existing civil rules in judicial districts not participating in CAPP; and 3) any or all of the IAJ rules that are adopted. Judicial districts participating in CAPP would not see a dramatic difference between the CAPP rules and the IAJ rules; however, judicial districts not participating in CAPP would see dramatic differences. Two examples Mr. Holme gave were the Rule 12(b)(5) motion (now you must file an answer), and the at issue date (a judge would have to decide whether to go ahead with the presumptive case management order, or use the new case management regime).

First, the committee considered whether the IAJ rules should be effective for all cases, both pending and new, on July 1. Generally most members were against this approach, because they thought bright line rules are best for trial courts, and they worried that every case would become a time consuming and expensive battle to see which rules applied.

Next, the committee considered making Rule 54(d) effectively immediately upon adoption. Most members thought 54(d) was an essential part of the IAJ proposal and it should not be singled and effective sooner than the other rules. A motion was made and seconded where all IAJ rules, except Rule 54(d), would be effective to all cases filed on or after July 1, and Rule 54(d) would be effective immediately upon adoption. This motion failed.

Finally, a motion was made where all IAJ rules would be effective to all cases filed on or after July 1. The motion was seconded and passed 17:1. Judge Berger told the committee he would supplement the IAJ proposal with an applicability letter to the supreme court.

## **B. Colorado Rules of Probate Procedure**

Tabled until the February 27, 2015 Committee Meeting.

## **C. Rule 120 Subcommittee**

The proposal contained in the meeting materials was drafted by Chair Fred Skillern. The subcommittee is looking at functional changes to the rule to clear up confusion as to how the rule operates. The subcommittee will meet until they have a proposal, and then Mr. Skillern will present to the committee.

#### **D. Rule 121 §1-15 Subcommittee**

Chair David DeMuro presented the amendment to C.R.C.P. 121 § 1-15 which would allow oral pre-trial motions. Allowing oral motions would save time and expense, and should be available to discovery and other non-dispositive motions. This amendment stems in part from the proposed change to C.R.C.P. 16(b)(14), which requires the proposed order to state whether the court does or does not require discovery motions to be presented orally. In addition, an amendment to C.R.C.P. 121 § 1-12 was proposed because a change to oral discovery motions would affect this rule.

Judge Berger added that he spoke to Chief Judge Michael Martinez from the second judicial district, and Chief Judge Martinez asked if page or word limits could be added to § 1-15. The subcommittee was going to consider all requests and present at the February 27, 2015 meeting.

#### **E. Rule 84, Forms**

Tabled until the February 27, 2015 Committee Meeting.

#### **IV. Future Meetings**

February 27, 2015

April 24, 2015

June 26, 2015

The Committee adjourned at 3:35 p.m.

*Respectfully submitted,*

*Jenny A. Moore*