# Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure

Minutes of October 30, 2014 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 Colorado Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

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| Name | Present  | Excused |
| 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 |  |
| **Non-voting Participants**  |  |  |
| Justice Allison Eid, Liaison  | X |  |
| Teresa Tate  | X |  |

1. **Attachments & Handouts**
2. October 30, 2014 Agenda Packet
3. Improving Access to Justice Report
4. **Announcements from the Chair**

The September 26, 2014 Meeting Minutes were approved with one correction:

In Roman numeral II, paragraph 2, “granted” was changed to “pending”.

The 2015 meeting dates were announced: January 30, February 27, April 24, June 26, September 25, and November 20.

Judge Berger discussed whether or not subcommittee reports should be publicly available. He thought it was fair to release subcommittee reports, but only after full Committee review. After brief discussion the Committee agreed, and this practice will be used moving forward.

CRCP 47(u) was adopted by the supreme court.

1. **Business**
2. **CRCP 120**

Representative Beth McCann, Representative Angela Williams, and Keith Gantenbein appeared before the Committee. Representatives McCann and Williams told the Committee stories of constituents facing foreclosure and being unable to raise real-party-in-interest and loan modification at the Rule 120 hearing. Mr. Gantenbein, who practices in loan modification and Rule 120 defense, said Rule 120 hearing procedures varied from county to county, and that Rule 120 should mirror existing case law.

CRCP 120 was initially adopted in response to the Soldiers’ and Sailors’ Civil Relief Act of 1940, to protect military members from foreclosure proceedings commenced during military service, but over time case law and subsequent rule modification had enlarged the scope of the hearing. The Committee had questions about how the oral modification of a loan reconciles with the requirement that credit agreements be in writing, §38-10-124, C.R.S., and legislative remedies available to homeowners. Judge Berger appointed a subcommittee, chaired by Fred Skillern, to consider a modification to Rule 120 and update the Committee at the January Meeting.

**B.****CRCP 103 & 403**

Ben Vinci brought two proposed rule changes to collection practices that had been passed without opposition by the County Court and Post Judgment Rules Subcommittees. Now, clerks order funds, get checks, and then endorse checks over to the attorney or collection agency. The proposed changes would make CRCP 103 and 403 consistent with other garnishment rules by having the garnishee pay the attorney or collection agency, rather than depositing funds with the court, which would make funds available faster. With a vote of 21:0 the rules passed. Mr. Vinci was going to see if Form 32 needed to be amended, and if so, present an amended form to the Committee.

1. **Colorado Rules of Probate Procedure**

Consideration of the Colorado Rules of Probate Procedure was laid over to the November 21 Meeting.

1. **Improving Access to Justice Report**

Dick Holme presented the Improving Access to Justice Report and then discussed proposed changes to the following rules:

* 1, adopts identical wording proposed by the federal rules;
* 12, amendments were designed to remove delays and to avoid problems CAPP revealed;
* 16, subsection (b), lists the required contents of the case management order, and includes a new form; (c), has new pretrial motion deadlines; and (d), sets the case management conference requirements;
* 26, sets the basis for discovery, by defining scope of discovery, requiring certain initial disclosures prior to discovery, places presumptive limits on the types of permitted discovery, and describes expert disclosure;
* 30, reduces the time for ordinary deposition from 7 t0 6 hours;
* 31, corrects two typos; and
* 34, avoids the practice of repeating numerous objections, allows scheduled production of documents in place of permitting inspection at a specified and reasonable date, and clarifies that objection to production is adequate to stop production, without also filing a motion for a protective order.

In addition to the rules above, the subcommittee is still considering rules 37, 54, 121 §1-22, and 16.1. The subcommittee hopes to present final drafts to the Committee for voting before the end of the year. During the discussion Judge Berger appointed David DeMuro and Lee Sternal to a new subcommittee to propose a change to CRCP 121 §1-15 to allow the district court to accept oral motions in person or over the phone.

1. **Future Meetings**

November 21, 2014

January 30, 2015

The Committee adjourned at 3:35 p.m.

*Respectfully submitted,*

*Jenny A. Moore*