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

Minutes of September 26, 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. September 26, 2014 Agenda Packet
3. Costs Report
4. Improving Access to Justice Report
5. **Announcements from the Chair**

New members Judge Cathy Lemon and Magistrate Marianne Tims were introduced to the Committee.

The minutes of the May 30, 2014 Meeting were approved with no corrections.

C.R.C.P 26(b)(5), C.R.C.P. 121 §1-15, and C.R.C.P. 411 were approved by the supreme court on September 18, 2014. The supreme court did not act on C.R.C.P. 47(u) because certiorari was pending in People v. Gallo, 09 CA 1308 (Colo.App. 2014).

Judge Berger proposed creating an Editing Subcommittee that would vet all proposed rule changes for punctuation, grammar, and word choice. He stated that the CBA Ethics Committee had a similar subcommittee and the editing work produced better proposals. The subcommittee would not make substantive changes, but it would flag substantive issues if the subcommittee thought such issues were unaddressed. After brief discussion a proposal to appoint an Editing Subcommittee was seconded, and the motion passed unopposed with Judge Webb and Judge Jones as Co-Chairs.

1. **Business**
2. **Costs**

The Costs Subcommittee, chaired by Judge Webb, circulated a new proposal after the supreme court did not adopt C.R.C.P 54(d) and C.R.C.P. 121 §1-22. The Committee reacted with serious questions, and a revised proposal was circulated (Costs Report, page 2). After considering the work of the Improving Access to Justice Subcommittee (IAJS) (formerly, the Colorado Civil Access Pilot Project Subcommittee), Judge Webb recommended the costs proposal should be considered by the IAJS because the costs issue was related to the IAJS’s work. Dick Holme agreed that considering all interrelated issues together would be best. Mr. Holme stated the IAJS would consider the costs proposal at the next subcommittee meeting.

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

The Civil Rules Committee was asked to consider the amendments to the Colorado Rules of Probate Procedure. Fred Skillern explained that the proposed changes updated rule language and made mechanical changes. Mr. Skillern stated that he had a few comments for the initiating committees, the CBA’s Trust and Estate Section and the Probate Advisory Committee, and he would contact the committees with his comments and report back to the Civil Rules Committee.

1. **C.R.C.P. 120**

Representatives Beth McCann and Angela Williams sent a letter recommending a change making it clear that the issue of whether the party seeking foreclosure is the real-party-in-interest, or that the loan terms had been modified may be raised and considered at a Rule 120 hearing. Judge Berger appointed the C.R.C.P 120 Subcommittee chaired by Mr. Skillern, and informed the Committee that Representative McCann would be at the October 30 Meeting.

1. **Form 35.1**

Teresa Tate spoke on behalf of the Family Issues Standing Committee regarding the amendments to Form 35.1, Mandatory Disclosures. The Family Issues Standing Committee drafted changes to eliminate exchange of unnecessary financial disclosures that are not applicable to post-decree maters. Numerous questions were asked relating to word use and punctuation. Based on the questions Judge Berger asked the Editing Subcommittee to review Form 35.1 as the subcommittee’s first order of business.

1. **C.R.C.P. 26(b)(4)(D)**

The proposed rule change would treat drafts of expert reports and communication between the expert and the attorney as protected work product. This proposal elicited much discussion, and the issue was tabled pending subcommittee research on whether federal case law discussed ambiguity in the the use of “considered” in F.R.C.P. 26 (b)(4)(C)(ii) versus “relied on” in F.R.C.P. 26(b)(4)(C)(iii).

1. **Improving Access to Justice Report**

Mr. Holme shared that the IAJS had had numerous productive meetings. The IAJS Report detailed rule proposals to C.R.C.P. 1, 12, 16, 26, 30, 31, 34, and 121 §1-15. Mr. Holme explained that issues related to discovery, depositions, and experts would be considered next, and he believes all IAJS proposals will be passed through the Civil Rules Committee and submitted to supreme court by the end of the year.

1. **Future Meetings**

October 30, 2014

November 21, 2014

The Committee adjourned at 4:00 p.m.

*Respectfully submitted,*

*Jenny A. Moore*