SUPREME COURT COMMITTEE
ON RULES OF CIVIL PROCEDURE
MINUTES OF MEETING

August 29, 2013

The Supreme Court Civil Rules Committee was called to order by Richard W. Laugesen at 1:43 p.m. in Room 4244, Fourth Floor, Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Denver, Colorado.

The following members were present:

David R. DeMuro
Judge Ann Frick
Peter A. Goldstein
Lisa Hamilton-Fieldman
Carol Haller
Cecily Harms
Richard P. Holme
Judge Jerry N. Jones
Judge Thomas K. Kane
Richard W. Laugesen
Chief Judge-Designate Alan Loeb
Jenny Moore
Christopher B. Mueller
Chief Justice-Designate Nancy Rice
Judge Ann Rotolo
Frederick B. Skillern
Lee N. Sternal
Ben Vinci
Judge John R. Webb
J. Gregory Whitehair
Judge Christopher Zenisek

The following members were excused:

Charles Kall
Debra Knapp
Cheryl Lane
David C. Little
Magistrate Chris Voisinet

Approval of Minutes:

Following correction of an ambiguous reference to a "statute" in the first three lines of page 8 (the "statute" being changed to "C.R.S. 13-16-122"), and member Richard Holme's clarification that he was not seeking a rule change with his article ("No Written Discovery Motions Technique") mentioned on page 2, the June 28, 2013 minutes were approved.

Information Items:

Chairman Laugesen called the Committee's attention to the following:

- The Committee has six new members: Judge Jerry N. Jones; Debra R. Knapp, Esq.; Chief Judge-Designate Alan Loeb; Magistrate Chris Voisinet; J. Gregory Whitehair, Esq.; and Judge Christopher Zenisek.

- There is an updated Civil Rules Committee Roster [pages 1 through 3 of the Agenda Packet]. Any changes or corrections should be directed to Jenny Moore.

- Three finalists have been selected for the Court of Appeals judgeship: Judge Karen Ashby, Michael Berger, Esq., and Judge Marcelo Kopcow [page 4 of the Agenda Packet].

- The Colorado State Judicial Branch has amended forms regarding protection orders and sealing of juvenile cases [pages 4 through 6 of the Agenda Packet].

- The Civil Access Pilot Project has been extended one year by amended Chief Justice Directive 11-02 [page 7 of the Agenda Packet].

- The Supreme Court did not adopt the Committee's recommended change to C.R.C.P 47 regarding the jury selection process, but State Judicial will attempt to handle the concern through judge training [page 8 of Agenda Packet].

- The Eighth Judicial District phone numbers changed on August 9, 2013 [page 9 of Agenda Packet].

C.R.C.P. 54(d) Review and Reconsideration of June 28, 2013 Committee Action Because of Multiple Sources of Public Comment

Chairman Laugesen stated that the first order of business was whether the proposed change to C.R.C.P. 54(d) should be reconsidered, and if so, the scope of that reconsideration. Noting that several guests at the meeting who had submitted written comments and asked to be heard on the proposal, Mr. Laugesen asked the Committee to first address the narrow issue of whether the Committee's June 28, 2013 proposal should be reconsidered.

Member Peter Goldstein stated that he did not believe the proposal should be reconsidered. He stated that he felt the Supreme Court was the proper forum to hear testimony--not a Civil Rules Committee meeting. He noted that the usual way of dealing with such matters was the Committee's submission to the Supreme Court with the Court then deciding whether to have a public hearing and/or written public comment. Member Goldstein stated he felt the Committee should not set a precedent of pre-submission revisiting of all the pros and cons of a proposed rule change. Chairman Laugesen responded, stating that he

remembered the Civil Rules Committee previously revisiting a proposed rule change when necessary; that the Committee had six new members since the June 28, 2013 meeting; and that on this particular proposal, there had been considerable public concern and input since the June 28 meeting.

Member Lisa Hamilton-Fieldman stated that she had been unable to attend the June 28, 2013 meeting and had concerns about the proposal.

Member Judge Kane stated that he would like to reconsider the proposal because of the amount of input the Committee has received--that if the Committee refuses to reconsider the proposed change on a procedural basis, the substance of what was done might be lost.

Member Lee Sternal stated he does not remember revisiting something that had been the subject of a final vote, and that he was against any type of reconsideration of the substance of what was done at the June 28, 2013 meeting. He stated that he too believed that the Supreme Court would be the proper forum for public input and reconsideration.

Member Richard Holme (speaking as one of the members who was not at the June 28, 2013 meeting) stated that the most significant factor in favor of reconsideration was the Colorado Attorney General John Suthers' letter stating that the Committee's action was invalid.

Member David DeMuro stated that he remembered that C.R.C.P. 345 [subpoenas in the county court] was reconsidered many times because the Committee believed they owed the Supreme Court their best effort. Member DeMuro stated he believed the Committee can go back and reconsider its C.R.C.P. 54(d) proposal.

Member Hamilton-Fieldman stated that she also remembered the reconsideration of its C.R.C.P. 345 proposal. She stated that she believed that the experience with C.R.C.P. 345 shows an economy of effort consideration, and that if the Committee sends something to the Supreme Court that will ultimately need to be redone, the Committee is better served doing it correctly before its submission.

Member Goldstein stated that if the Committee's C.R.C.P. 54(d) proposal is reconsidered, it should not be done today. Rather, the Committee should notify the bar and invite public comment. This will provide notice to outside sources and give interested parties a reasonable opportunity to prepare a presentation.

Justice Rice [the Committee's Liaison Justice] stated that she had received letters and e-mails from interested parties, and she told them to come to the meeting today to be heard. She stated she believed the letters submitted and the June 28, 2013 meeting minutes would provide people who wanted to comment

an idea of what was said. She stated that, for at least this matter, it was preferable to have a full consideration of the proposal before its submission to the Court.

A motion was made and seconded to reconsider the Committee's C.R.C.P. 54(d) proposal and to hear testimony of the several persons in attendance at this August 29, 2013 meeting, but to not make a final recommendation today. Upon call for the vote, the motion carried 13:3.

Chairman Laugesen informed the attendees that some of the items they had submitted had been included with the meeting's Agenda Packet, with those too late to be included handed out and on the table before each of the Committee members. Mr. Laugesen stated that those who wished to be heard on the matter were welcome to speak. He requested that, because the Committee already had most of their written comments, it would be appreciated if those wishing to speak would not simply repeat what had been submitted in writing.

Mark Fogg [COPIC General Counsel] was the first to speak on the matter. Mr. Laugesen noted that his letter was at page 23 of the Agenda Packet. Mr. Fogg stated that he recognized that costs are a huge item for all parties, and that there has been a substantial increase in amount of costs. Mr. Fogg noted that costs have increased principally because of expert witness fees and depositions. He stated that by the time he left private practice, depositions were more and more being videotaped, and that had resulted in tripling of that kind of expense. Expert witness fees have multiplied because those sorts of depositions are typically longer and take more of the expert's time. He stated that the statute [C.R.S. 13-16-122] have certain limited categories of costs, but the judicial branch has expanded those categories since Cherry Creek No. 5 v. Voelker, 859 P.2d 805 (Colo.1993).

Mr. Fogg stated that most federal courts have rejected looking at disparity of income or assets in assessing costs, but instead look to see if costs can be assessed and if the parties can afford costs. Mr. Fogg stated he believes the proposed rule change does not address the problem, and that a subcommittee should be appointed to examine all factors driving up costs.

Mr. Fogg suggested this might be good topic for the Plaintiff and Defense bar. He believes we need to get past the adversarial nature of the issue and work to find common ground. Mr. Fogg stated he thought a subcommittee should be formed.

At the close of Mr. Fogg's remarks, he invited questions. Member Goldstein asked what an insurance company does with its recovered costs. He said he knew some insurance companies distribute the funds back to customers and/or give grants or fund foundations in line with their mission. Member Goldstein asked if recovered costs lowered premiums? Mr. Fogg replied that because cost awards are unpredictable and there is a lack of uniformity in costs, costs do not

directly lower premiums. Member Goldstein then asked: when COPIC wins a case, the plaintiff can pay costs and COPIC gets a collectable judgment, is it a windfall for the organization? Mr. Fogg replied that COPIC uses money in different ways including, patient safety and patient advocacy. Member Goldstein asked if COPIC could have kept the money judgment? Mr. Fogg replied yes, but it would not be included in the rate structure. Mr. Fogg stated he is in favor of managing costs because he has seen the shift in costs from virtually no discovery to multiple videotaped depositions that last for hours. Another concern about the proposed rule change is that costs are looked at near the end of the process after they have been incurred. Perhaps it would be better if costs were examined at the beginning of the process.

Member Judge Ann Frick stated that unlike cases tried under the Civil Access Pilot Project (CAPP), where a case management conference is required, in a medical malpractice case, a case management conference is not required. In a medical malpractice case there is less ability to monitor costs than in a CAPP case. Member Frick indicated she is in favor of addressing the cost issue at the front end of a medical malpractice case and asked Mr. Fogg if the Committee should consider revising C.R.C.P. 16. Member Hamilton-Fieldman responded, stating that there is nothing in C.R.C.P. 16 that precludes a trial judge in a medical malpractice case from having a case management conference. She stated that, as a magistrate, she put in place many of the same restrictions that are in the Pilot Project rules. Member Frick responded, stating that Denver District Court does not have magistrates to assist as Boulder does, so if a party does not make the request for a case management conference, her docket is too full to address the issue herself.

Mr. Fogg said when he practiced he requested a case management conference in every case. He believes the proposed rule change myopically addresses the problem, but the factors in statute and case law can help create a multifaceted solution. He would like both sides getting together and discussing the issues.

Member Christopher Mueller stated that dealing with costs at the end of the process is not working. It might be more effective if the cost discussion occurred at the beginning of discovery.

Member Sternal said that in every case he tries against a doctor insured by COPIC he asks up front not to waste time and money by deposing every doctor--instead, depose only the doctors who will be called as experts at trial. Almost every time the COPIC lawyer says no and wants to depose all the doctors. The huge cost awards borne by his clients if they do not win are a substantial concern to Member Sternal. They are having a chilling effect on access to our courts. Mr. Fogg responded, saying that both sides of the Bar could do a better job to control costs.

With Mr. Fogg's remarks concluded, Patrick O'Rourke [Counsel for the University of Colorado] came to the podium and began. Mr. O'Rourke stated that with the Governmental Immunity Act, costs are less of an issue in the cases he tries because lawyers are less willing to run up costs that will ultimately be limited by the Act. He shared Member Frick's concerns that the proposed rule change does not affect the majority of filed cases because most costs are incurred before trial, but most cases do not go to trial. He would like a different process at the front end including, identifying whether the parties can pay and bear costs, and then tailoring discovery accordingly. Judges need a mechanism at the beginning of the case to know if there is a hardship on one of the parties and address it before a large sum of money has been spent. Discovery should be better tailored to how costs are incurred and doled out.

Member Sternal asked Mr. O'Rourke if his suggestion required judges to look at the parties economic circumstances, which is what the proposed rule change requires? Mr. O'Rourke suggested the cost analysis occur at the beginning of the process. Member Sternal asked if the analysis were at the beginning, would he (Mr. O'Rourke) support the rule? Mr. O'Rourke replied he would not necessarily oppose it. Mr. Sternal noted that the $150,000 cap in the Governmental Immunity Act and exception in the Rule protect the University of Colorado, but for others, huge costs can be incurred on just the appeal of a matter.

Member Goldstein inquired if CU had insurance. Mr. O'Rourke said CU carries insurance within the limits of the Act, and they have other insurance. Member Goldstein asked if there were some cases in which it was more cost effective to pay the $150,000 limit than run up fees? Mr. O'Rourke stated it depended on the case--it can sometimes be a better economic position to settle the case, but there can be other considerations. Some cases cannot be settled. For example, if a medical malpractice case does get settled it is on the doctor's record. Member Sternal asked if the doctor could veto settlement? Mr. O'Rourke responded that a case can be settled over a physician's objection but if the doctor has a strong preference they will consider it. Carol Haller stated that the State Court Administrator's Office can settle a case against a judge even if the judge is opposed to it. Judge Webb asked Mr. O'Rourke if there were greater due process and equal protection problems if the judge were to consider the parties economic circumstance at the front end of litigation? Mr. O'Rourke said he had not thought through the constitutional issues. He stated courts do a lot of things to interfere with people trying to work up their cases the way they want to. Mr. O'Rourke concluded by saying the number of cases that have a huge cost award after judgment are in the minority, and cautioned the Committee against doing a disservice to the majority of cases.

Member Goldstein asked Mr. Fogg how many COPIC cases went to verdict in 2012. Mr. Fogg said he was not in charge of claims, but he would estimate six to ten cases.

With Mr. O'Rourke's remarks concluded, Brendan Powers, Esq., stepped to the podium and began. Mr. Powers stated that he has a private practice handling insurance bad faith cases. He felt that in light of the new statute for unreasonable delay or denial of first-party insurance claims [C.R.S. 10-3-1115 and 1116], the plaintiff holds a lot of cards in litigation. The purpose of the plaintiff deposing as many people as possible is that they are apparently trying to catch the company saying different things that will help their case at trial. It is a good strategy, but it makes costs run high. When attorney fees and costs are attached to litigation, they often drive the litigation. Mr. Powers stated he too would recommend a subcommittee to study the issue and address access to justice in a comprehensive manner. Also, having more factors than just ability to pay would be helpful, because of questions such as when would discovery on the ability to pay be done? As a part of discovery? After entry of the judgment? When?

Mr. Powers reminded the Committee that Hecla Mining Co. v. New Hampshire Insurance Co., 811 P.2d 1083 (Colo.1991), on the insurer's duty to defend created an interesting dynamic in insurance cases because the insurance company is often paying on behalf of the defendant, but reserves the right to collect from the defendant if there is no coverage. Mr. Powers stated that this situation is important in the discussion of ability to pay and in considering which entity is actually incurring the costs.

Mr. Powers also stated there is a possible equal protection issue in the language about the "entity that actually incurs the cost". He thinks it is a veiled reference to the insurance company. He believes the person who had the foresight to purchase insurance should not be punished. In the billed-versus-paid cases from the Supreme Court insurers pay a reduced amount, but the court still allows the plaintiff to recover the billed amount enabling plaintiffs to recover damages not incurred based on the collateral source rule. Mr. Powers stated that the proposal could flip that so that a court would consider a defendant having bought insurance as a consideration of whether the defendant can pay costs.

Member Goldstein interjected that a plaintiff cannot insure himself or herself ahead of time for pain and suffering if rendered quadriplegic. Mr. Powers replied that was true, but individuals can buy insurance for treatment of an injury.

Mr. Powers stated that in the federal system, most courts oppose looking at parties' relative ability to pay. Member Holme, responding, stated costs are limited in the federal court. There is no issue there about collecting expert witness fees. That difference between federal and state situations makes the federal approach inapplicable here. Mr. Powers replied that the federal courts do not have a rule delineating ability to pay as a factor to be considered. Member Sternal joined in the exchange, stating the rule would give the court discretion to award costs--isn't that enough? Mr. Powers replied that the Committee should provide more guidance and include more than one factor.

Committee member Ben Vinci stated that the Committee had heard a lot of opposition to the proposed rule change, but not many solutions. He asked Mr. Powers what his solution would be. Mr. Powers stated changing the case management process is a possible solution, as well as identifying more factors for the court to consider. He added we also need to change both lawyer and party motivations, and give the attorneys the ability to communicate with their clients about costs. He said that, in his opinion, a cost cap should be considered in the future and that he would be in favor of a more universal approach to change and reform.

Member Vinci asked the judges in the room if amending the case management process would be a burden. Member Frick replied that she is in favor of case management at the beginning and she would like a broader way of addressing the issue rather than just changing C.R.C.P. 54(d). Member Frick stated that she likes having the discretion and the ability to talk to the parties and ask why they need certain discovery requests. Member Frick stated that she has only civil cases, and asked if front-end case management would be a burden for judges with mixed dockets? Member Judge Christopher Zenisek, who has a mixed docket, said more case management is a good idea, but that front-end case management is more complicated than one thinks. He said on cases in which there is a cost cap, judges are very reliant on the parties for information. Member Zenisek stated that the most common scenario he sees is parties wanting at least a presumptive limit, and more because in their eyes, their particular case is "special". He believes there would be reluctance by attorneys to agree to limited costs.

Member Kane joined, stating that he thinks that front-end case management is doable, and that what we are suggesting might change the content of case management conferences, but not increase the number of case management conferences. Mr. Powers responded, stating that a case management conference is helpful to identify one's client's ability to pay, and to have parties understand that they may not recover costs. He suggested it also might help to allow parties to have as many depositions as they want, but earmark certain depositions as not being cost-recoverable. In that instance there is no limit on the amount of discovery, only on recovery as costs.

Member Vinci asked Mr. Powers if trial practice has changed from "out-lawyering" your opponent, to "out-experting" your opponent? Mr. Powers replied no--that the biggest change in trial practice has been the substantial increase in awarded costs. It used to be required for an award of an expert's fees and expenses as costs that the expert have been relied upon to advance the theory of the case, but that basis is no longer necessary. Now with Cherry Creek No. 5 v. Voelker, 859 P.2d 805 (Colo.1993), the bases for the cost awards have changed. Now, most people are recovering most of their costs--whereas early in his career, they usually did not. Member Frick replied that attorney fees have

also helped change the dynamic in litigation. Now, lawyers in her courtroom will often stretch a case to add a claim where fees are awarded. Mr. Powers agreed that discussion is often about attorney fees and costs--not the settlement of the case.

Member Gregory Whitehair added that he has been on both sides of the issue in both state and federal courts, and that federal courts are completely different from state courts because you cannot get expert fees in federal court. Member Whitehair stated that the highest federal case costs award he has seen was $19,000 in a $3.1 million dollar case. He sees the fee shifting debate and the expert witness fees as the new way to pressure the plaintiff. He sees the merits of the proposed rule change, but finds it complicated and difficult to imagine how this would fix the problems today's plaintiffs and defendants experience in litigation.

Member Mueller joined, stating maybe the change to C.R.C.P. 54(d) is not broad enough--the problem with regulating costs at the front end is that we do not know what will happen until the parties go through discovery. He suggested that reforms on both ends of litigation might be better. Mr. Powers agreed and said that then attorneys would not have to file a motion every time they receive a notification for a deposition. Member Goldstein replied, stating that the cost of deposing an opponent's expert is incurred at the time of deposition--not the end of the case. His biggest concern is whether we are excluding the middle class who are driving the economy and who should have the most access to the courts because they are the people who have something to lose and cannot write the big check. Mr. Powers agreed, noting that he works with people who have coverage issues, and that the challenge with even C.R.C.P. 16.1 is that $100,000 is a lot of money to most people.

Andrew Lafontaine, Esq. [an associate in State Farm's in-house law firm] spoke next. Chairman Laugesen noted that Mr. Lafontaine's firm's senior partner [Stuart Jorgensen's] letter to Justice Rice was at pages 15-17 of the Agenda Packet. Mr. Lafontaine clarified that he was not speaking on behalf of State Farm, but here at the meeting because he was concerned with access to justice. He stated that he had researched if the federal courts have considered the economic circumstances of the parties in awarding costs. In his opinion the proposed rule change would increase access to justice in the wrong way by encouraging a party to go to court because he or she would be not burdened with a huge cost bill. He stated he believes the proposed rule change would subsidize cases where someone has an unmeritorious claim, and force the financially secure party who wins to bear the expense of their improper involvement. He feels we should not penalize people who win. He also pointed to County of Broomfield v. Farmer's Reservoir and Irrigation Co., 239 P.3d 1270 (Colo. 2010), and Firelock Inc. v. Dist. Court, 776 P.2d 1090, 1095-96 (Colo. 1989), for the idea that access to justice does not mean you can come to court and not expect to pay.

Member Goldstein asked if costs recovered are included in State Farm's rate structure? Mr. Lafontaine replied he speculates that because State Farm has to pay out costs initially they might get some money back in the end, but otherwise he did not know.

There being no further attendees who wished to speak and no further questions by the Committee, Chairman Laugesen thanked the attendees for attending and invited them to stay if they wished. He then asked if there were any further comments.

Member Christopher Mueller stated that he was interested in adding factors to which the courts could look when considering cost awards, and also interested in the idea of amending the rule by impacting the front end of a case, such as in C.R.C.P. 16 or C.R.C.P. 26, and at the same time the back end of a case as affected by a change to C.R.C.P. 54(d). He further added that the cost of discovery is implicit in F.R.C.P. 26, but it too has not been effective in bringing down costs in the federal system. He concluded, that even if the Committee does not amend C.R.C.P. 16 or C.R.C.P. 26, a change to C.R.C.P. 54 will impact how judges and litigants think about their cases.

Chairman Laugesen noted that empanelling of a subcommittee had been suggested. He asked for the sense of the Committee on appointing an appropriate committee to study the matter and make recommendations to the Committee as a whole.

Member Hamilton-Fieldman agreed that a subcommittee would be appropriate. She observed that the issue is more than a question of the financial circumstances of a party, the larger issue being that costs have ballooned exponentially and that there is a disconnect between the problems and the proposed rule change to C.R.C.P. 54(d)--the proposed change not addressing the real problem. She also agreed that the Committee not make a substantial change to the Colorado Rules of Civil Procedure while CAPP is in effect and being evaluated.

Chairman Laugesen acknowledged that Member Hamilton-Fieldman made a good point and stated that the Committee should not do anything that would affect CAPP. He then asked Member Hamilton-Fieldman if she opposed appointing a subcommittee. Member Hamilton-Fieldman agreed that a sub-committee is a good idea, but that it should focus on more than C.R.C.P. 54.

Member Holme asked Members Goldstein and Sternal, if the Committee decides to appoint a subcommittee that is reasonably balanced with plaintiff and defense lawyers, should we still have a session next time to allow a rebuttal?

Member Sternal responded, stating he would like having a subcommittee if the subcommittee's work can be done quickly. Member Holme replied, stating that

whatever would happen would not be done quickly, and having gone through the C.R.C.P. 16.1, 45 and 345, the issues involved never end up being simple. Member Mueller pointed out that nothing should be put in place until CAPP is over because the pilot project is dealing with case-handling efficiency. Member Sternal joined, stating that he would like the other side to present at the next meeting and then appoint a subcommittee, but critically important to keep moving forward with this issue.

Chairman Laugesen said the Committee would continue discussion and consideration of this issue at the next meeting.

Member Goldstein noted this is a polarizing issue so that an equitable solution might be difficult. He stated that he would like to hear from the leadership of CTLA. He is the liaison for the Litigation Section of the CBA, and would like to find out what the Litigation Section thinks about this discussion. Member Goldstein will inquire if these parties will be able to present at the next meeting. Chairman Laugesen asked if their presentation would be oral or written? Member Goldstein replied: oral, because he would like to be able to ask the presenters questions. Chairman Laugesen responded, stating that the Committee would hear testimony again at the next meeting and would then appoint an appropriate subcommittee.

Member Vinci commented that this was one of the most important issues he has seen before the Committee--that the issue is not keeping costs down, but accurately allowing for appropriate and proportional costs. He stated he would like speakers at the next meeting offer solutions to the problem.

Member DeMuro stated he too is in favor of a subcommittee to look at the issue broadly, but reaffirmed that he does not agree with the proposed change to C.R.C.P. 54(d)--he agrees with the Attorney General's letter and would continue to vote no on 54(d).

Proposed Change to C.R.C.P. 411(a) and (b) to Deal With Legislature's Amendment of C.R.S. 13-6-311 Shortening the Time Allowed for Filing of Notice of Appeal, Posting of an Appeal Bond, and Time to Object to the Record

Chairman Laugesen next called the Committee's attention to Item 5 of the Agenda Packet [pp 40-46], and summarized the statutory changes shortening the time for filing a notice of appeal, posting an appeal bond, and objecting to the record. Mr. Laugesen noted that before the amendment, the statute's time periods were 21 days after entry of a judgment because CTLA wanted a longer time to be fair to county court practitioners, but the legislature has changed C.R.S. 13-6-311 from 21 days to 14 days, so C.R.C.P. 411(a) and (b) must be changed to match the statute.

It was moved and seconded to amend C.R.C.P. 411(a) and (b) as follows:

PROPOSED AMENDMENT

Rule 411. Appeals

(a) Notice of Appeal; Time for Filing; Bond. If either party in a civil action believes that the judgment of the county court is in error, that party may appeal to the district court by filing a notice of appeal in the county court within ~~21~~ **14** days after the date of entry of judgment. The notice shall be in the form appearing in the Appendix to Chapter 25, Form 4, C.R.C.P. If the notice of the entry of judgment is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the notice. The appealing party shall also file within the said ~~21~~ **14** days an appeal bond with the clerk of the county court. The bond shall be furnished by a corporate surety authorized and licensed to do business in this state as a surety, or one or more sufficient private sureties, or may be a cash deposit by the appellant and, if the appeal is taken by the plaintiff, shall be conditioned to pay the costs of the appeal and the counterclaim, if any, and, if the appeal be taken by the defendant, shall be conditioned to pay the costs and judgment if the appealing party fail. The bond shall be approved by the judge or the clerk. Upon filing of the notice of appeal, the posting and approval of the bond, and the deposit by the appellant of an estimated fee in advance for preparing the record, the county court shall discontinue all further proceedings and recall any execution issued. The appellant shall also, within 35 days after the filing of the notice of appeal, docket the case in the district court and pay the docket fee.

(b) Preparation of Record on Appeal. Upon the deposit of the estimated record fee, the clerk of the court shall prepare and issue as soon as may be possible a record of the proceedings in the county court, including the summons, the complaint, proof of service, and the judgment. The record shall also include a transcription of such part of the actual evidence and other proceedings as the parties may designate or, in lieu of transcription, to which they may stipulate. If a stenographic record has been maintained or the parties agree to stipulate, the party appealing shall lodge with the clerk of the court the reporter's transcript of the designated evidence or proceedings, or a stipulation covering such items

within 42 days after the filing of the notice of appeal. If the proceedings have been electronically recorded, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the county court or under the supervision of the clerk, within 42 days after the filing of the notice of appeal. The clerk shall notify, in writing, the opposing parties of the completion of the record, and such parties shall have ~~21~~ **14** days within which to file objections. If none are received, the record shall be certified forthwith by the judge. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible, and the record then certified.

(c) through (e) * * * * [NO CHANGE]

On a call for the vote, the motion carried 13:0.

Further Consideration of Proposed Change to C.R.C.P. 354--Revival of Judgments from the County Court Rules Subcommittee

Chairman Laugesen next called the Committee's attention to Item 6 of the Agenda Packet [pp 47-51].

Committee member Ben Vinci [member of the County Court Subcommittee] stated that on August 16, 2013 the County Court Rules Subcommittee voted to withdraw from consideration the proposed change to C.R.C.P. 354. Chairman Laugesen noted that it had been a controversial issue and would permit the withdrawal.

Other Business

Chairman Laugesen noted that John Tatlock had e-mailed Committee member Richard Holme posing several procedural rule problems in family law. Chairman Laugesen stated that he tried to call Mr. Tatlock to discuss the problems and to ask for proposed solutions, but had been unable to reach Mr. Tatlock by the time of the meeting. Chairman Laugesen ordered passing on the issue until he is able to hear from Mr. Tatlock

Member Sternal raised a question about jurors' political affiliations being publicly available to attorneys from the Secretary of State's website during voir dire. Mr. Sternal inquired if jurors' political affiliations should be included in jury forms as a time saving device because the information is already publicly

available. Carol Haller replied that the content of jury forms is set by statute, so a juror's political affiliation could not be added.

Adjournment

There being no further business, Chairman Laugesen declared the meeting adjourned 3:38 p.m.

The next regular meeting is scheduled for **Friday, September 27, 2013 at 1:26 p.m. in Room 4224, Fourth Floor, Ralph L. Carr Colorado Judicial Center, 2 East 14th Avenue, Denver, Colorado.**

Respectfully submitted,

Jenny A. Moore