

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF EVIDENCE**

September 8, 2017 Meeting Minutes

A quorum being present, the Colorado Supreme Court’s Advisory Committee on the Rules of Evidence was called to order by Judge Rebecca R. Freyre at 1:30, in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members and guests present or excused from the meeting were:

Name	Present	Excused
Judge Rebecca R. Freyre, Chair	X	
Harlan Bockman	X	
Prof. John Campbell	X	
Philip A. Cherner	X	
David DeMuro	X	
Judge Martin Egelhoff		X
Elizabeth F. Griffin		X
Fred Haines		X
Judge Marcelo Kopcow	X	
Chief Judge Alan Loeb	X	
Judge Gale T. Miller	X	
Professor Christopher Mueller	X	
Norman Mueller	X	
Henry R. Reeve	X	

I. Attachments & Handouts

- Agenda
- Federal Rules business:
FRE 803(16) & 902(13) & (14)
- CRE 606(b) materials:
Subcommittee Report
Reported Colorado 606(b) Decisions
Federal Committee Minutes April 21 2017
Capra Memo

II. Minutes

The October 30, 2015 minutes were adopted as submitted.

III. Announcements from the Chair

- Judge Rebecca Freyre, new chair of the Evidence Committee, welcomed the committee and introduced herself. Former chair, Judge Gale Miller, retired from the Court of Appeals, but has remained on the committee as a member; and
- CRE 502 was adopted by the supreme court on March 22, 2016, effective immediately.

IV. CRE606(b)

The committee discussed *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855 (2017), which held that the defense has a right to be heard on a challenge to a verdict, due to racial bias in the jury room. The Federal Rules of Evidence Committee considered many options, but ultimately decided to do nothing. However, in *Colorado*, committee members were concerned that the rule as it is now doesn't accurately reflect the law. The committee discussed amending the rule but decided to recommend adding a comment instead. Professor Mueller offered to draft a comment and send it to the subcommittee, and then to the committee. After further discussion, the committee decided to submit only a citation to the case, which Judge Freyre stated she would transmit it to the supreme court.

V. Old Business

FRE 803 & 902

The committee discussed FRE 803(16) & 902(13) & (14), which absent congressional action will be adopted on December 1, 2017. The committee decided to come back to this in the future, either in the Spring or Fall. Prof. Campbell offered to report back on these issues at the next meeting.

VI. Future Meeting date

TBD

The committee adjourned at 2:30pm.

Respectfully submitted,
Jenny A. Moore