

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 26, 2024, Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Chair Judge Jerry N. Jones at 1:30 p.m. in the Supreme Court Conference Room. Members present at the meeting were:

Name	Present	Not Present
Judge Jerry N. Jones, Chair	X	
Judge Michael Berger	X	
Judge Karen Brody		X
Judge Catherine Cheroutes		X
Damon Davis	X	
David R. DeMuro	X	
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Magistrate Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller		X
Brent Owen		X
John Palmeri	X	
Alana Percy	X	
Lucas Ritchie		X
Chief Judge Gilbert M. Román		X
Judge (Ret.) Sabino Romano		X
Judge Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Andi Truett	X	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor	X	
Ben Vinci	X	
Judge Gregory R. Werner	X	
Judge (Ret.) John R. Webb		X
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Justice Richard Gabriel, Liaison (non-voting)	X	
Su Cho (non-voting)	X	

I. Attachments & Handouts

- January 26 2024, agenda packet and supplement.

II. Announcements from the Chair

The November 3, 2023, minutes were approved as submitted with the following change: Mr. Whitehair was changed to being present at the meeting. Then, Justice Gabriel and Judge Jones honored outgoing members Judge Kane and Judge Espinosa for their service.

Judge Jones provided an update on the proposed rule and form changes sent to the Colorado Supreme Court for consideration at the end of 2023. Certain changes were approved by the Court effective immediately while others were put out for a public comment period.

Judge Jones also updated the Committee on the gender neutral rules issue. At this point, the Chairs of the Supreme Court Committees have agreed on an approach and will be presenting it to the Court for consideration. If the Court approves this proposal, Judge Jones will be asking for volunteers to update the rules.

Judge Jones then moved to the topic of generative artificial intelligence. Many courts around the country are starting to adopt rules addressing generative AI. Members should begin thinking about this, as the Committee may need to tackle this topic.

III. Present Business

A. Civil and County Court Forms—(Justice Hart)

Justice Hart provided an informational update on the civil forms. She noted that sometimes forms need to change quickly and that the current process lacks nimbleness. Additionally, the Court must make the forms more publicly accessible. To improve nimbleness, many of the forms will no longer presumptively start with this Committee for edits. Justice Hart also shared that there is a website revamp coming, and one of the goals is to make the forms easier to find.

B. Form 28SC—Spelling Error in Title—(Judge Jones)

Sean Slagle brought this form issue to the attention of the Committee. Judge Jones stated that the misspelling is clearly a trivial matter and illustrates the point made above that some changes should not take up this Committee’s time. Judge Jones will send this change to the Court.

C. C.R.C.C.P. 343—Conflicting Statute Related to Remote Hearings in Eviction Proceedings—(Justice Gabriel)

Justice Gabriel brought this to the Committee and noted that there is a conflict between C.R.C.C.P. 343 and a statute that went into effect January 1st. The legislative mandate requires that in eviction cases, if any party or witness wants a remote hearing, they may appear remotely. Justice Gabriel proposed a solution and members expressed approval of that language.

A motion was made to adopt Justice Gabriel’s language. A friendly amendment was then taken to add the word “remote” after “concerning”. The motion passed 12-2. Judge Jones then formed a subcommittee to further explore remote hearings within the civil and county rules of eviction proceedings. Those interested should email Judge Jones to join.

D. C.R.C.P. 121 § 1-14(1)(a)—Clarification—(Brad Levin)

Brad Levin brought this to the Committee and noted that this rule provides that, in order to obtain a default judgment, the movant must provide the court with “[t]he original summons showing valid service on the particular defendant in accordance with Rule 4, C.R.C.P.” However, the summons does not reflect service of process on a party. Mr. Levin recommended that the phrase “and return of service” be inserted following the word “summons.”

While some members noted that this change does not seem necessary, it passed unanimously.

E. C.R.C.P. 56—Conflict with Federal Rule—(Brad Levin)

Brad Levin noted that there is a conflict between the Colorado and federal rules regarding whether documents presented to support or oppose a motion for summary judgment must be attached to an affidavit. Colorado’s rule indicates that, other than pleadings, depositions, and discovery responses, affidavits are required to establish the presence or absence of material facts. The federal rule does not have a similar requirement. One member researched this issue and said that the federal rule appears to be unclear, and a Colorado rule change might have long-reaching ramifications. Given the comments, Judge Jones tabled this issue.

F. C.R.C.P. 16(f)(3)(VI)(D)—Deposition Schedule—(Brad Levin)

Brad Levin said that another attorney brought to his attention that, under this rule, the designation schedule often results in the submittal of the designations on the Friday before a Monday trial. Consequently, a court is either left to rule on the designations over the weekend before trial or during the trial itself. The attorney has proposed that the Committee consider modifying the schedule so that designations must be filed further in advance of the trial.

A motion was made to change the language of the rule in terms of days. Some members preferred a longer timeline while others preferred a shorter one. The Committee voted 9-6 to approve the 28, 21, 14, and 7 timeline. Judge Jones will transmit this to the Court, noting the significant disagreement as to the exact timelines so that the Court realizes there is support for a longer timeline.

Future Meetings

April 5, June 28, September 27, and November 1

The Committee adjourned at 3:32 p.m.