# Minutes

**COLORADO SUPREME COURT**

**WATER COURT COMMITTEE**

Friday, April 19, 2019, 1:30 p.m.

Ralph L. Carr Colorado Judicial Center

2 E.14th Ave., Denver CO 80203

Third Floor, Court of Appeals Conference Room

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| --- | --- | --- |
| **Name** | **Present** | **Excused** |
| Justice Monica Márquez, Chair | X |  |
| Justice (Ret.) Gregory Hobbs | X |  |
| Judge (Ret.) John Kuenhold | X |  |
| Judge (Ret.) Thomas Ossola |  | X |
| Referee John Cowan | X |  |
| Referee Nicolas Sarmiento | X |  |
| Referee Susan Ryan | X |  |
| Holly Strablizky | X |  |
| Amy Beatie | X |  |
| Kevin Rein | X |  |
| Erin Light | X |  |
| Craig Cotten | X |  |
| Kaylea White | X |  |
| Doug Clements | X |  |
| Jennifer Ashworth | X |  |
| Mark Hamilton | X |  |
| Mark Hermundstad | X |  |
| Andy Jones |  | X |
| Peter Ampe |  | X |
| Jim Witwer | X |  |
| Doug Sinor |  | X |
| Chris Geiger | X |  |
| Emily Hunt | X | X |
| Sean Cronin |  | X |
| Madoline Wallace Gross |  | X |
| **Non-voting Participants** |  |  |
| Andrew Rottman | X |  |
| Veronique Van Gheem | X |  |

Also present: Paul Benington

1. **Call to Order**
2. **Welcome and Introductions**
3. **Approval of Minutes from 10/12/2018 Meeting**

The Committee approved the minutes from 10/12/2018 with minor changes.

#### **Report from Education Subcommittee**

Jennifer Ashworth reported that the Education Subcommittee is planning the CLE program for October 11. The Subcommittee has until June 7 to set the agenda. The Subcommittee requested topic suggestions. Paul Benington suggested a discussion of the decennial abandonment proceedings and changes to the process.

#### **Report on 50th Anniversary of 69 Act**

Justice Hobbs reported on the symposium on the 50th anniversary of the 69 Act. He thanked everyone for their participation in a great program and thanked all of the students involved in the process. The materials are available for anyone who wants them. Justice Márquez thanked Justice Hobbs and the students involved in the project.

#### **C.R.C.P. Applicability to “Water Law” Cases**

Amy Beatie addressed a proposal to change the rules to clarify which cases are subject to the Uniform Local Rules and which cases are subject to the Rules of Civil Procedure. The Subcommittee met and discussed the previous memo from her office explaining the issue and proposing rules changes. The Subcommittee agreed with the proposed solution. Justice Márquez asked the Subcommittee to explain the proposed changes. The Committee discussed the category of cases to which this proposed change would apply. The Committee also discussed the concurrent changes that would be made through the Civil Rules Committee. Jim Witwer spoke of specific examples of what cases might be covered by the proposed changes. Justice Hobbs questioned how the rules might apply in specific types of cases. Mr. Benington stated that the rules provide a default procedure that can be modified by a CMO or other mechanism. Justice Hobbs asked whether there is a water attorney on the Civil Rules Committee. Justice Márquez agreed to look into that question. Justice Márquez stated that if the Committee approved the proposal, she would then send it to the water judges for comment. After comments are received, the Committee will take a final vote and send a recommendation to the Civil Rules Committee. The Committee approved sending the proposal to the water judges for comment.

#### **Location Information on Water Court Forms**

Erin Light discussed the issue of inconsistent location information on water court forms. The statutes use the term “legal description” and the Uniform Local Rules use “location information.” There is tension between the UTM locations and PLSS legal descriptions. The engineers do not prefer that both be provided, because oftentimes the locations described by the two methods are different. This could result in two different location descriptions for a single structure. The Committee then discussed the information required for an application and inconsistencies in the application form itself. Kevin Rein stated that for someone who wants to object to an application, the PLSS information is generally more useful. The Committee discussed potential issues with having incorrect or inconsistent information in resumes and filings. Erin Light proposed a subcommittee to look into these issues. Referee Cowan had previously raised similar concerns and thought this needs to be addressed. Pro se applicants in particular have trouble with location information. The Committee discussed various places where additional guidance on this issue could be provided to litigants, such as on the Division of Water Resources website, the non-attorney’s handbook, and the instructions for the forms. Justice Márquez appointed a subcommittee of Referees Cowan and Sarmiento, Jennifer Ashworth, Erin Light, Craig Cotten, Jim Witwer, Doug Clements, and Mark Hamilton. Holly Strablizky agreed to help if necessary. Erin Light and Craig Cotten will serve as co-chairs.

#### **Updates**

#### **Update on Resume Publication**

Mark Hermundstad updated the committee on the work of the Resume Publication Subcommittee. The Subcommittee is looking at ways to shorten resumes. The statute requires a certain minimum amount of information to be published. The Subcommittee is looking at potential changes to Uniform Local Rule 3 regarding resume publication to provide for a base amount of information, and each division would be able to decide which additional information to include on the resume. The Subcommittee is also looking into where the resumes are published.

Jim Witwer reported that he has talked to referees around the state about how they address resume issues. He stated that referees think most people look at the online resume and not the newspaper. Divisions have different requirements for what the applicant must provide for the resume, and Division 1 has an administrative order regarding resumes. Not every Division requires the applicant to provide a proposed resume, and some leaves it up to the applicant to include as much information as they want. The Subcommittee is not proposing any statutory changes and doesn’t want to propose anything that would interfere with a Division’ s decisions regarding the resume. Craig Cotten asked stated that the resume is required to contain a description of the water right involved, and he asked whether that could include a requirement to provide location and source. Paul Benington stated when the application is for claimed non-tributary water, the source is critical. Mr. Benington and Justice Hobbs had additional suggestions for language and requirements. The Subcommittee will continue discussions and consider the comments from the Committee.

#### **Open Discussion of Future Projects**

Kevin Rein described the need for an additional form for parties wanting to join abandonment proceedings. He suggested sending this to the forms Subcommittee. Paul Benington stated that the abandonment statute and new rule provide for other parties not involved in a case to file an entry of appearance. He believed this is confusing for pro se parties and suggested an entry of appearance form for interested parties. Justice Márquez asked the abandonment subcommittee to look into this issue.

Justice Hobbs asked Referee Ryan to comment on her recent pro se panel discussion. Referee Ryan recapped the panel discussion. The Committee discussed additional resources for pro se parties, where those resources should exist, and different options for attorney help for pro se water litigants. The Committee considered a student run clinic, distribution of pro se brochures, a legal resource day in the different Divisions designed to provide help and possibly advice to pro se parties. Referee Sarmiento expressed the need to discuss the issue with Justice Hart and the Access to Justice Commission. Justice Hobbs described the limitations of student help and believed the water bar and engineers need to be involved in providing resources. Referee Ryan discussed the reasons litigants are appearing pro se. Some can afford an attorney yet still choose to proceed without one. The Committee discussed collecting data on pro se litigants. Referee Cowan described the problem of pro se parties misunderstanding basic law and filing a case to protect something that doesn’t need protection. Justice Márquez asked for volunteers to assist Referees Ryan and Sarmiento in looking into pro se issues. Referee Cowan and Jim Witwer volunteered to help.

#### **Next Meeting Date**

Andy Rottman will schedule the October meeting.

#### **Adjourn**