

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

**December 8, 2023, 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 pm in the Ralph. L. Carr Colorado Judicial Center Fourth Floor Conference Room and via WebEx. Members present or excused from the meeting were:

<b>Name</b>	<b>Present</b>	<b>Absent</b>
Judge Rebecca R. Freyre, Chair	X	
David DeMuro	X	
Judge Stephanie Dunn	X	
Judge Sean Finn	X	
Judge Melina Hernandez	X	
Rick Lee	X	
Luke McConnell		X
Professor Christopher Mueller		X
Norman Mueller	X	
Chief Judge Román	X	
Corelle Spettigue		X
Professor Karen Steinhauer	X	
Judge Juan G. Villaseñor		X
Lisa Weisz	X	
Judge Shay Whitaker		X

**I. Attachments & Handouts**

- December 8, 2023, Agenda
- December 2, 2022, Minutes
- Approved Federal Evidence Rule Changes for 2023
- Proposed Federal Evidence Rule Changes for 2024
- Draft Rules 106; 615 A; 615 B; and 806

**II. Minutes**

- The December 2, 2022, minutes were adopted as submitted.

**III. Announcements from the Chair**

- Judge Freyre made no announcements.

**IV. Old Business**

- a. **CRE 702 Update (Judge Freyre)**

At last year's meeting, this Committee discussed proposed changes to FRE 702 and wanted to pursue updating CRE 702 to mirror the federal rule. Following the Committee's decision, Judge Freyre discussed this issue with Justice Samour, and then also spoke with the entire Court during one of their conferences. The Court decided not to change CRE 702.

**V. New Business**

**a. 2023 Amendments to the Federal Rules of Evidence (Rules 106 and 615) (Judge Freyre)**

Rule 106: it was amended to encompass other ways of communicating. The intent of these changes is to displace the common law. One member noted that while these are not the most necessary changes, it does make sense to propose them to the Court because then the Colorado rule will align with the federal version *and* Colorado jurisprudence. Another member noted this is essentially a housekeeping amendment. A motion and second were taken. It passed unanimously. Judge Freyre will submit this proposal to the Court.

Rule 615: the federal amendment adds a new section to prohibit disclosure of testimony. A member noted that much of the new language is already how the rule is used in practice. A few members agreed that new section (b) might be a good change with the adoption of remote hearings, and that the proposed change will assist judges. Judge Freyre presented two versions of 615 for the Committee's consideration. 615 A conforms completely to the federal version; 615 B adds 4 to subsection (a) and adds 615 (b). The Committee noted that the biggest distinction is that 615 A follows the federal version more closely. A motion and second were taken to adopt 615 A. It passed unanimously. Judge Freyre will submit this proposal to the Court.

**b. 2024 Proposed Amendments to the Federal Rules of Evidence (New Federal Rule of Evidence 107; and Rules 613, 801, 804, and 1006) (Judge Freyre)**

New Rule 107: this proposed new rule provides standards for illustrative aids, allowing them to be used at trial after the court balances the utility of the aid against the risk of unfair prejudice, confusion, and delay. Members noted that this impacts civil more than criminal cases, and that the new rule does not change the state of the law, but instead provides clarification. Another member stated that the changes could be helpful in the context of appeals, too. No members shared concerns regarding the new rule.

Rule 613: this proposed amendment provides that extrinsic evidence of a prior inconsistent statement is not admissible until the witness is given an opportunity to explain or deny the statement. The Colorado rule currently allows this, and making the federal changes would require an overhaul of the Colorado rule. One member noted that the Colorado rule does not specify, "unless the court orders

otherwise...” One member observed that this language is vague; while another stated that it might refer specifically to timing.

Rule 801: the proposed language resolves a dispute among the courts about the admissibility of statements by the predecessor-in-interest of a party-opponent, providing that such a hearsay statement would be admissible against a declarant’s successor-in-interest. One member noted this would impact civil only. A few members stated their concern that the changes appear cryptic and could be easily misapplied.

Rule 804: this proposed amendment would broaden what a trial court can consider related to hearsay exceptions. There are some Colorado Supreme Court cases that cover this area. A member observed that this proposed change may provide important clarification to the Colorado rule. Another member noted being very conflicted about this proposed change and wondered how big the scope of admitted evidence would become. Several members stated that this is a very complicated issue. Judge Freyre said that the Committee might need to heavily consider this given its complicated nature. Rick Lee and Lisa Weisz may be called upon to do a deeper dive into this issue ahead of the Committee’s consideration.

Rule 1006: this proposed amendment adds a reference to Rule 107.

**c. Making the CRE Gender-Neutral (Judge Freyre and Judge Finn)**

Chairs of all the Colorado Supreme Court rules committees are determining how to gender-neutralize Colorado’s rules. Judge Finn attended the meeting in Judge Freyre’s place. Once the group develops a proposal, they will send it to the Supreme Court for approval. Then, once the Supreme Court determines how to proceed, Judge Finn will ask members to join a subcommittee to implement these changes. Judge Freyre will contact the Committee with any updates.

**d. Removal of a Comma from Rule 806 (Judge Freyre)**

This issue was brought to Judge Freyre by a division of the Court of Appeals. There is a comma in Rule 806 that does not appear in the federal version. The comma in question appears in the first line of Colorado’s rule, “Rule 801 (d)(2), (C), (D), or (E)...”. A motion and second were taken to remove the second comma in the first sentence of the rule. It passed unanimously.

**VI. Future Meeting date**

The committee adjourned at 1:49 pm.