

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

November 1, 2019 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 Court of Appeals Full Court Conference Room on the third 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	
Scott Bauer	X	
Chief Judge Steven Bernard		X
Harlan Bockman		X
Prof. John Campbell		X
Philip A. Cherner	X	
David DeMuro	X	
Judge Martin Egelhoff		X
Elizabeth F. Griffin	X	
Judge Marcelo Kopcow	X (phone)	
Judge Gale T. Miller	X	
Professor Christopher Mueller	X	
Norman Mueller	X	
Henry R. Reeve		X
Magistrate Kelley R. Southerland		X
Judge Juan G. Villaseñor	X	

I. Attachments & Handouts

- November 1, 2019 Agenda
- May 10, 2019 Minutes
- 5/7/2016 Evidence Rules Report to the Standing Committee
- Articles: *New Evidence Rules and Artificial Intelligence; What’s Not to “Like”;*
Something Old and Something New: Exploring the Recent Amendments to the
Federal Rules of Evidence; Practical Considerations When Using New Evidence
Rule 902(13) to Self-Authenticate Electronically Generated Evidence in Criminal
Cases

II. Minutes

- The May 10, 2018 minutes were adopted as submitted.

III. Announcements from the Chair

- Judge Freyre shared that her intern gathered articles and created a table of cases related to the new Federal Rules of Evidence 902(13) and (14). Judge Freyre said that not much has happened since this committee's last meeting regarding these newly adopted rules, but she has not seen any negative feedback on the new federal rules.

IV. Old Business

a. FRE 902(13) and (14).

The committee discussed a possible rule change in Colorado following the federal rule change on FRE 902 to add electronic evidence. The committee's discussion centered largely around many committee members' concerns over the implications in criminal cases. One member shared a belief that this rule change is geared toward gamesmanship, but she doesn't see gamesmanship as a problem in Colorado. The committee also discussed that this rule change would shift the burden from the prosecution to the defense. Another committee member noted that this rule change does not seem extremely pressing and that he does not want to make science easier to admit in court. Another member noted that there does not seem to be a large group in Colorado demanding this change currently, and another member mentioned the possibility of unintended consequences.

The committee ultimately decided that proposing changes to the supreme court would be premature at this point. Committee Chair Judge Freyre said that the committee will table this issue and reconsider in a few years once more cases have come out.

V. New Business

A committee member raised the co-amendment that was adopted with the changes to FRE 902 – the ancient documents exception to hearsay. Professor Mueller felt that this issue posed a more imminent problem in Colorado and agreed to investigate and report back to the full committee at a meeting sometime next year.

VI. Future Meeting date

The committee adjourned at 2:40 pm.