

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

**May 10, 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 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:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
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	
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**

- May 10, 2019 Agenda
- Letter to the Committee from Judge Freyre
- November 9, 2018 Minutes
- Memo regarding FRE 902(13) and (14) Amendments
- Committee Roster
- *How Two New Rules for Self-Authentication Will Save You Time and Money* by John M. Haried

**II. Minutes**

- The November 9, 2018 minutes were adopted as submitted.

### **III. Announcements from the Chair**

- Judge Freyre shared that the Criminal Jury Instructions Committee modified a stock instruction relating to judicial notice following the 2015 COA case, *Doyle v. People*. The Criminal Jury Instructions Committee determined that the change would not impact the evidence rules, so this committee need take no action.
- Judge Freyre introduced new member Magistrate Kelly Southerland.
- Mr. Reeve suggested providing a link to the Federal Advisory Committee on Rules of Evidence's Reports in this committee's agendas, should any members be interested in viewing those documents.

### **IV. Old Business**

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

Professor Campbell shared his belief that the amendments to FRE 902 seem to be mild and incremental. As he wrote in his memo, the changes seem to save time and money when used correctly, and litigants and courts don't seem to have significant concerns. Professor Campbell, in his review, has not heard or read anything that says the changes are not working as intended. In sum, it is a reasonable change to the federal rule and would be a reasonable change for the Colorado rule.

The committee as a whole then discussed the changes to FRE 902 and considered whether similar changes should be contemplated for Colorado. Some committee members worried that this rule could be used as more than an authentication device. Others mentioned that even if a court rules that the evidence is self-authenticating, that doesn't preclude the other party from challenging the witness. Members discussed the possibility that issues might arise more often in criminal law due to tight timelines and lack of funds, and that this may put a burden on defendants. Some members remarked that they liked that these rule changes help avoid gamesmanship.

The committee is considering here whether to recommend the supreme court adopt these rule provisions or not, exclusive of the comments to the rule. A member mentioned that trial judges will have the federal rule comments to aid in interpreting the Colorado rule, should the changes be adopted.

The committee determined that since this rule has only been in place since late 2017, it wants to see how it works in other jurisdictions before recommending it to the supreme court. Professor Campbell will provide an update on any newly published cases and any states who adopt similar rules at the November meeting. Then, the committee will vote on whether to recommend adopting these changes.

### **V. New Business**

The committee discussed no new business.

### **VI. Future Meeting date**

The committee adjourned at 2:37 pm.