

Colorado Supreme Court Committee on Rules of Appellate Procedure

Thursday, April 9, 2009, 1:30 p.m.

The Colorado Supreme Court Committee on Rules of Appellate Procedure was called to order by Chief Judge Janice Davidson at 1:30 p.m. in the Second Floor Conference Room at the Colorado Judicial Building, 2 East 14th Avenue, Denver, Colorado.

The following members were present:

Catherine Adkisson
Judge John Dailey
Chief Judge Janice Davidson
Anne Gill
Joseph Goldhammer

Richard Laugesen
Andy Low
Norman Mueller
Justice Nancy Rice
Karen Taylor

The following members were excused:

Michael Berger
Carol Haller

Guests included:

Daniel Hoffman, Hogan & Hartson
Annette Edgar, Hogan & Hartson

Limited Interlocutory Civil Appeals in the Court of Appeals—Proposal by Daniel Hoffman

To accommodate our guests, Mr. Hoffman and Ms. Edgar, the committee first turned to new business, which consisted of a proposal by Mr. Hoffman to allow limited interlocutory civil appeals in the Court of Appeals. According to Mr. Hoffman and Ms. Edgar, the primary purpose of the proposed change is to avoid unnecessary litigation, save costs of litigation, and preserve judicial resources. The proposal would not apply to criminal, domestic, water, or small cases.

Mr. Hoffman and Ms. Edgar presented two alternative proposals: 1) the first proposal tracks nearly verbatim 28 U.S.C. § 1292(b), the federal rule ; 2) the second proposal also tracks the federal rule but unlike the federal rule, requires the agreement of the parties to seek interlocutory review; stays the proceedings in the trial court; requires accelerated briefing; and requires expedited handling in the Court of Appeals.

It was agreed that in addition to a new rule, the proposal would require a legislative change, likely to be sponsored by the civil litigation section of the Bar.

After discussion, a straw vote was taken and, 8:0, the committee agreed that the proposal should be pursued. A subcommittee of both members and non-members of the Committee was created, to include Mr. Hoffman, Ms. Edgar, Michael Berger, Dick Laugesen, Andy Low, Norm Mueller, Judge John Webb, Peter Goldstein, and Greg Kirwin. Dick Laugesen will serve as chair.

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With the thanks of the Committee, Mr. Hoffman and Ms. Edgar were excused.
Judge Davidson then welcomed new member Karen Taylor from the Office of the Public Defender.

Approval of Minutes

The September 24, 2007 Appellate Rules Committee meeting minutes were approved as submitted.

Chair's Report

Judge Davidson reported that the Supreme Court approved C.A.R. 4, 25, 30, 32, 35, and 52, as submitted by the Committee. Judge Davidson also reported that instead of having an Appellate Rules subcommittee develop a rule on E-briefs, the Court of Appeals has instituted an interim policy on E-briefs and will propose a rule to the committee only after the trial period has concluded.

Proposed New C.A.R. 32(f) With Accompanying Form

In order to improve parties' compliance with C.A.R. 28(k), and to facilitate Court of Appeals' screening for compliance with the rules pertaining to briefs, Judge Davidson submitted from the Court proposed new rule C.A.R. 32(f), which would require submission of a Certificate of Compliance with C.A.R. 28 and C.A.R. 32.

As an initial matter, because it was not intended that the Certificate be included in the word count, it was suggested that "certificate of compliance" should be added to the list of items not counted in the word limit in C.A.R. 28(g). Similarly, it was suggested that the phrase "signature block," be added to the list of items not counted in the word limit in C.A.R. 28(g).

A motion was then made and seconded to modify C.A.R. 28(g) accordingly, to read as follows:

(g) Length of Briefs. Except by permission of the court, principal briefs shall not exceed thirty pages, and reply briefs shall not exceed eighteen pages, unless they comply with the word limits set forth below. Principal briefs are opening brief, answer brief, opening—answer brief, and answer-reply brief. A principal brief is acceptable if it contains no more than 9,500 words. A reply brief is acceptable if it contains no more than 5,700 words. Headings, footnotes, and quotations count toward the word limitations. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, signature block, and any addendum containing statutes, rules, regulations, etc. do not count toward the page limits or word limits.

The motion passed 8:0.

The members then discussed proposed C.A.R. 32(f). It was then moved and seconded to add "immediately behind the caption page" in lieu of "immediately following the signature of the attorney or unrepresented party filing the brief" in C.A.R. 32(f). The motion passed 8:0.

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A motion was then made and seconded to adopt proposed C.A.R. 32(f) as follows:

(f) Certificate of Compliance. Each brief shall include, on a separate page immediately behind the caption page, a certificate that the brief complies with all requirements of C.A.R. 28 and C.A.R. 32. Form 6 is a suggested form for a certificate of compliance, use of which shall be regarded as meeting the requirements of C.A.R. 32(a)(3) and C.A.R. 32(f).

The motion carried, 8:0.

A typographical error in Form 6, Certificate of Compliance, was corrected by replacing the word “on” with “and” at the end of the third paragraph:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.____, p.____), not to an entire document, where the issue was raised and ruled on.

The Form was then approved, 8:0.

C.A.R. 52(3)--Time for Filing Petition for Certiorari in ICAO Cases

Prior changes to the rule regarding time limits did not include conforming changes for ICAO cases. The proposed rule was submitted to correct that omission.

After brief discussion, a motion was made and seconded to amend C.A.R. 52(3) as follows:

C.A.R. 52 (3) Any petition for a writ of certiorari to review a judgment of the Court of Appeals shall be filed in the Supreme Court within 46 days of the issuance of the opinion of the Court of Appeals, if no petition for rehearing is filed, or within thirty days after the denial of a petition for rehearing by the Court of Appeals. Any petition for writ of certiorari to review a judgment of the Court of Appeals in workers' compensation and unemployment insurance shall be filed in the Supreme Court within 31 days after the issuance of the opinion of the Court of Appeals, if no petition for rehearing is filed, or within 15 days after the denial of a petition for rehearing by the Court of Appeals.

The motion passed 8:0.

C.A.R. (4) d--Amend to Reference §16-12-201 et. seq., and Crim. P. 32.2?

This issue was referred to a subcommittee consisting of Judge John Dailey, chair, Catherine Adkisson, and Karen Taylor.

Forms for Pro-Se Appeals-Informational Item

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Judge Davidson reported that, in order to better assist pro se parties, the Court of Appeals would like to provide more extensive information on the Judicial Branch website, explaining various steps of an appeal and requirements of the Appellate Rules, with links to forms for notice of appeal, designation of record, and the like. The Court of Appeals will handle development of the information to be posted and related forms and submit them to the Supreme Court for its approval.

Next Meeting-Adjournment

The meeting adjourned at 3:30 p.m. The next meeting date was not discussed.

Respectfully submitted by April Bernard