

the absence of such an agreement, courts should seek to balance the parties' respective interests in receipt of the pre-embryos. In balancing those interests, courts should consider the intended use of the party seeking to preserve the pre-embryos; a party's demonstrated ability, or inability, to become a genetic parent through means other than use of the disputed pre-embryos; the parties' reasons for undertaking in vitro fertilization in the first place; the emotional, financial, or logistical hardship for the person seeking to avoid becoming a genetic parent; any demonstrated bad faith or attempt to use the pre-embryos as unfair leverage in the divorce process; and other considerations relevant to the parties' specific situation. However, courts should not consider whether the party seeking to become a genetic parent using the pre-embryos can afford a child. Nor shall the sheer number of a party's existing children, standing alone, be a reason to preclude preservation or use of the pre-embryos. Finally, courts should not consider whether the party seeking to become a genetic parent using the pre-embryos could instead adopt a child or otherwise parent non-biological children. The Court reversed the judgment of the Court of Appeals and remanded the case with directions to return the matter to the trial court to apply the announced balancing framework.

**2018 CO 86. No. 17SC195. People v. Lozano-Ruiz.**  
*Plain Error—Criminal Jury Instructions.*

In this case, the Supreme Court reviewed the trial court's reversal of a sexual assault conviction for failure to provide a jury instruction containing the statutory definition of "sexual penetration." The Court concluded that because the question of whether sexual penetration had occurred was not a contested issue at trial, the county court did not plainly err by failing to give a corresponding instruction to the jury. Accordingly, the Court reversed the trial court's order and affirmed Lozano-Ruiz's conviction. CL

These summaries of Colorado Supreme Court published opinions are provided by the Court; the CBA cannot guarantee their accuracy or completeness. Both the summaries and full opinions are available on the CBA website and on the Colorado Judicial Branch website.

# Colorado Supreme Court

## Rules Committees

### Notice of Request for Comments, Colorado Rules of Professional Conduct

#### Deadline for Comments: January 16, 2019 at 5 p.m.

The Colorado Supreme Court requests written public comments by any interested person on the proposed amendments to Rule 1.5 and Comment to Rule 1.5 of the Colorado Rules of Professional Conduct, and Proposed Form Flat Fee Agreement. Written comments should be submitted to Cheryl Stevens, Clerk of the Supreme Court. Comments may be mailed or delivered to 2 East 14th Avenue, Denver, CO 80203 or emailed to [cheryl.stevens@judicial.state.co.us](mailto:cheryl.stevens@judicial.state.co.us) no later than 5 p.m. on January 16, 2019. The Clerk will post written comments on the Colorado Supreme Court's website.

#### By the Court:

*Monica M. Márquez*

*Justice, Colorado Supreme Court*

*William W. Hood, III*

*Justice, Colorado Supreme Court*

*Note:* The proposed amendments can be found on the Court's website at

[https://www.courts.state.co.us/Courts/Supreme\\_Court/Rule\\_Changes.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes.cfm) CL

Visit the Supreme Court's website for complete text of rule changes, including corresponding forms and versions with highlights of revisions (deletions and additions), which are not printed in Court Business. Material printed in Court Business appears as submitted by the Court and has not been edited by *Colorado Lawyer* staff.