AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, November 12, 2021 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to order

II. Approval of September 24, 2021 minutes [Pages 3 to 6]

III. Announcements from the Chair

A. Rule Change 2021(21) [Pages 7 to 29]

B. 2022 Meeting Dates: January 28; April 8; June 24; September 23; and November 4

IV. Present Business

A. Committee Records Policy—(Judge Berger) [Page 30]

B. Letter from SB21-173 Sponsors to Committee Re: Court Summons and Answer Deadline—(Judge Espinosa) [Pages 31 to 34]

C. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims) [Pages 35 to 42]

D. C.R.C.P. 30(b)(6)—Possible Amendments in Light of Federal Rule Change—(Stephanie Scoville) [Pages 43 to 56]

E. C.R.C.P. 15(a)—Possible Amendments in view of DIA Brewing Co., LLC v. MCE-DIA, LLC, 2021 COA 4—(John Lebsack) [Page 57]

F. C.R.C.P. 16.2—Simplified Process for Dissolution of Marriage in Low-Income/Low-Conflict Situations—(Judge Brody)

G. C.R.C.P. 30(b)(7)—Virtual Oaths—(Lee Sternal) [Page 58]

H. Crim. P. 55.1—Public Access to Court Records—(Judge Jones)

I. C.R.C.P. 4(m)—(Judge Jones)

V. Adjourn—**Next meeting is January 28, 2022 at 1:30 pm.**

Michael H. Berger, Chair
michael.berger@judicial.state.co.us
720-625-5231

Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 551050, followed by # key.

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 24, 2021 Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m. via videoconferencing software WebEx. Members present at the meeting were:

Name	**Present**	**Not Present**
Judge Michael Berger, Chair	X	
Mandy Allen	X	
Chief Judge Steven Bernard		X
Judge Karen Brody	X	
Miko Ando Brown	X	
Chief Judge (Ret.) Janice Davidson		X
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman		X
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman		X
Michael J. Hofmann	X	
Richard P. Holme		X
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller	X	
Brent Owen		X
John Palmeri	X	
Judge (Ret.) Sabino Romano	X	
Genevieve Rotella	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor	X	
Ben Vinci		X
Judge (Ret.) John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins	X	

I. Attachments & Handouts

- September 24, 2011 agenda packet.

II. Announcements from the Chair

- The March 26, 2021 minutes were approved as submitted.
- Chair Judge Berger shared an email on proposed Crim. P. 24(d)(5) regarding combatting implicit bias in the exercise of peremptory challenges. Judge Berger reported that there was a highly divided committee vote on this issue that led to the proposal not being approved by the court, and that this committee should strive to submit proposals that are strongly supported. Justice Gabriel mentioned that in the instance of Crim. P. 24(d)(5), the court was particularly concerned about the division because it was along advocacy sides. Further, even after revisiting the proposal with questions from the court, the group was unable to craft a more fully supported compromise.
- Judge Berger noted that two members were recently elevated to the Denver District Court: Adam Espinosa and Stephanie Scoville. Judge Berger congratulated them on their well-earned appointments.
- Judge Berger welcomed new members to the committee: Court of Appeals Judge Stephanie Dunn and Denver District Court Clerk Genevieve Rotella.
- Finally, Judge Berger shared that he will be retiring from the Court of Appeals in October 2022 and retiring as Chair of this committee as of January 1, 2022. He will remain on as a member.

III. Present Business

A. Proposed Amendments or New Rules Regarding Uniform Procedures in FED

Subcommittee Chair Judge Espinosa reported that this subcommittee met several times to review the submission from Judge Lipinsky and the Access to Justice Committee (ATJC), along with the new bills signed by Governor Polis. The subcommittee today is recommending several changes to rules and forms to bring the items in line with the recent bills and to improve them as suggested by the ATJC.

The committee members discussed the proposed changes to:

1) Rule 304: the subcommittee unanimously approved the ATJC's proposed changes to this rule.
2) Rule 312.5: this proposed new rule models Rule 312 and would govern pretrial procedures in FED cases. A friendly amendment was made to say: "no later than three days…" rather than "three days before."
3) Rule 316.5: this proposed new rule models Rule 316 and would govern pretrial procedures in FED cases.
4) New Advisement Sheet.
5) New Request for Documents form.
6) Summons: the subcommittee would like to make a few more changes to this form to comport with the signed bills.

A motion was made and seconded to approve 1) – 5) with one friendly amendment; it passed with a vote of 18-1. Judge Espinosa will consult with his subcommittee and submit the summons form for an email vote.

B. Colorado Rules for Magistrates

Subcommittee Chair Magistrate Tims stated that this subcommittee was tasked with simplifying the magistrate rules, which are, at present, internally inconsistent and confusing to use. The subcommittee

looked at other states' magistrate rules and the federal magistrate rules for ideas. They also tried to find how many cases appeal directly from magistrates to the Court of Appeals. These numbers are not known. From there, the subcommittee decided to come up with guiding principles to simplify the rules. The subcommittee proposes that the rules allow only one avenue for appeal and only one timeframe for judicial review.

The committee discussed the proposed changes. Some members disagreed with how much authority magistrates should be allowed, particularly related to C.R.C.P. 16 and 16.1.

The committee then looked at the proposed language changes:

1) Rule 3: a motion was made and seconded to tentatively approve this rule; it passed unanimously.
2) Rule 5: regarding 5(a), a reference needs to be repaired. In (b), on the third line, the committee suggested removing, "without consent." A motion was made and seconded and passed unanimously to tentatively approve this rule, along with the friendly amendments.
3) Rule 6: one member offered a friendly amendment to remove the words related to Rule 16. This failed 3-19. Then the committee voted to approve this rule as written unanimously.
4) Rule 7: a motion was made and seconded to tentatively approve this rule. There was a friendly amendment to correct a few typos. Substantively, the committee discussed whether every decision a magistrate makes that completely resolves a decision should be subject to district court review. Committee Chair Judge Berger noted that this is a fundamental question for the subcommittee to consider. One member noted that (a) states, "may not be taken to an appellate court…" and that this language might need to be carefully considered.
5) Rule 8: a motion was made and seconded to tentatively approve this rule. There was a friendly amendment to fix a typo in section b(5). The proposed rule was preliminarily approved unanimously.

The subcommittee will work on refining their proposal.

C. Colorado Municipal Court Rules of Procedure 257

Judge Berger noted that this proposal came from Chief Justice Boatright and is purely administrative in nature. A motion was made and seconded to approve the proposal; it passed unanimously.

D. Forms 26, 29, 32, 33, and 250

This issue came from Sean Slagle at SCAO and removes COVID-era reforms to forms. A motion was made and seconded to remove the extraneous language as proposed. It passed unanimously.

E. C.R.C.C.P. 404(a)

Judge Berger noted that the jurisdictional limit needs to be updated in this rule. A motion was made and seconded to send this proposal to the court; it passed unanimously.

F. C.R.C.P. 30(b)(6)

Passed over.

G. C.R.C.P. 15(a)

Passed over.

H. Crim. P. 55.1
Passed over.

I. C.R.C.P. 4(m)
Passed over.

J. C.R.C.P. 16.2
Passed over.

K. C.R.C.P. 30(b)(7)
Passed over.

Future Meetings
November 12, 2021

The Committee adjourned at 3:51 p.m.

RULE CHANGE 2021(21)

COLORADO RULES OF CIVIL PROCEDURE
Chapter 25 The Colorado Rules of County Court Civil Procedure

Rules: 304, 312.5, and 316.5
Forms: Form 1A, JDF 185, and JDF 186

Rule 304. Service of Process.

(a) [NO CHANGE]

(b) Initial Process. Initial process shall be as follows:
(1) Initial Process in cases other than forcible entry and detainer cases.
Except in cases of service by publication under Rule 304(f), the complaint and a blank copy of the answer form shall be served with the summons.
(2) Initial Process in forcible entry and detainer cases. Plaintiff shall serve the following on the defendant at least seven days before the return date: (1) summons containing all language and information required by statute; (2) complaint; (3) blank copy of the answer form; (4) Form JDF 186 SC: Information for Eviction Cases; (5) Form JDF 185 SC: Request for Documents in Eviction Cases; and (6) blank copies of Forms JDF 205 and 206 (fee waiver forms).

(c) - (j) [NO CHANGE]

Rule 312.5. Defenses and Objections in Forcible Entry and Detainer Cases -- When and How. Defenses and Objections in Forcible Entry and Detainer Cases -- by Pleading or Motion.

(a) Responsive Pleadings; When Presented. The defendant shall file an answer including any counterclaim or cross-claim on or before, and shall appear in court at, the date and time as fixed in the summons, or such other date as fixed by the court.

(b) Motions. A defendant may file a motion setting forth defenses simultaneously with the defendant's answer. All other motions, except for motions arising at trial, must be filed at least three days before the earlier of the date of any pretrial conference or the trial date.

(c) Waiver of Defenses. A party waives all defenses and objections which are not raised either by motion or in his answer except that the defense of lack of jurisdiction of the subject matter may be made at any time.

(d) Motion for Judgment on the Pleadings. At any time after the last pleading is filed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. A party shall not submit matters outside the pleadings in support of the motion.

Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Cases -- Requests for Documents and Conference.

(a) Requests for Documents.
(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.
(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

(c) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request shall be made only during the pretrial conference. The discovery may include depositions, requests for admission, interrogatories, physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall be followed as to the missing term.

(d) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

(e) Juror Notebooks. The court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

Court ☐ County Colorado County: _____ Court Address: _____	
Plaintiffs: _____ v. Defendants: _____ ☐ Any and all other occupants	**Court Use Only**
My Name: _____ Address: _____ Phone _____ Fax: _____ Email: _____ Atty. Reg.#: _____	Case Number: _____ Division: _____ Courtroom: _____

Court Summons: Eviction / Forcible Entry and Detainer ~~SUMMONS IN FORCIBLE ENTRY AND UNLAWFUL DETAINER~~

To the above-named Defendant(s), take notice that:

1. **Court Date**

On *(enter date)* _____,

~~20~~ _____, at *(enter time)* _____,

at the court above in *(enter location/room number)* _____, ~~o'clock~~ _____ ~~.M. in the~~ _____ ~~County Court,~~ _____ ~~, Colorado,~~

the Plaintiff may ask the Court ~~may be asked~~ to enter judgment against you. If the Court grants the Plaintiff's request to enter judgment against you, you will have to move out and it may mean you have to pay money to the landlord ~~as set forth in the complaint~~.

2. A copy of the complaint against you, ~~and an~~ a blank answer form, blank ~~that you must use if you file an answer~~ ~~for~~ request for documents form, blank fee waiver forms, and an eviction information form are attached for your use.

3. If you do not agree with the complaint, then you must either:

a. File your answer with the Court at or before the court date specified above stating any legal reason you have why judgment should not be entered against you, **or**

~~a.~~b. ~~Go to the Court, located at: _____, Colorado, at the above date and time~~Attend the court date and time above **and** file ~~an~~your answer ~~stating any legal reason you have why judgment should not be entered against you.~~, ~~**OR**~~

~~b. File the answer with the Court before that date and time.~~

4. When you file your answer, you must pay a filing fee to the Clerk of the Court. If you are eligible for ~~want a~~ jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee. If you cannot afford the filing fee or jury fee, file *JDF 205 - Motion to Waive Fees* and *JDF 206 - Order for Fee Waiver*.

5. If you file an answer, you must ~~personally serve~~provide ~~or mail~~ a copy to the Plaintiff~~(s)~~ or the attorney who signed the complaint.

6. If you do not respond to the landlord's complaint by filing a written answer ~~file~~ with the Court, as set forth above,~~at or before the time for appearance specified in this summons~~ or appear in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord.

7. In your ~~an~~ answer to the court, you can state:

- Why you believe you have a right to remain in the property,
- Whether you admit or deny the landlord's factual allegations against you and your ~~,~~legal defenses,
- Whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons, and
- Whether you have a counterclaim or crossclaim against the landlord.

~~complaint setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due~~

~~or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff(s) is (are) entitled.~~

~~7.~~ 8. If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises. In addition to filing an answer, you are required to complete an Affidavit (JDF 109) to support the amount you will need to pay into the registry of the Court or to seek waiver of this requirement.

~~8. If you want a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee.~~

~~9. If you want to file an answer or request a jury trial and you are indigent, you must appear at the above date and time, fill out a financial affidavit, and ask the Court to waive the fee.~~

9~~10~~. **Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the plaintiff possession of the premises.**

1~~0~~1. **If the plaintiff is granted possession of the premises, the court records may remain suppressed if both parties agree to suppress the records.**

Dated: _____ ~~at , Colorado, this _____ day of _____~~
~~_____ 20___.~~

~~Clerk of the Court~~

~~By:~~Signed: _____
Deputy Clerk of Court or Attorney for Plaintiff(s) (if applicable)

Address(es) of Plaintiff(s) (if applicable): _____
Telephone Number(s) of Plaintiff(s) _____

This s~~S~~ummons is issued pursuant to C.R.S. § 13-40-111. A copy of the ~~C~~complaint together with a blank answer form, blank request for documents form, blank fee waiver forms, and an

eviction information form must be served with this sSummons. This form should be used only for actions filed under Colorado's Forcible Entry and Detainer Act.

To the clerk: If this sSummons is issued by the Clerk of the Court, ~~the signature block for the clerk, deputy and~~ the seal of the Court should be provided by stamp, or typewriter, in the space to the ~~left~~ right of the ~~attorney's name~~signature.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
☐ By checking this box, I am acknowledging that I have made a change to the original content of this form.

Certificate of ~~Mailing~~Service

I/we~~, the undersigned Plaintiff(s) (or agent for Plaintiff(s))~~, certify that a copy of on ~~*(date)* _____, the date on which~~ the Ssummons, Ccomplaint, blank ~~and~~ aAnswer form, request for documents form, fee waiver forms, and an eviction information form were: ~~filed, I/we mailed a copy of the Summons/Alias Summons, a copy of the Complaint, and Answer form by postage prepaid, first class mail, to~~ ☐ Served personally upon the following person on the following date and time:

_____.

OR

☐ After diligent efforts, on (date) _____ were posted in some conspicuous place on the premises, and mailed by first class mail to the Defendants at the following address:

_ _____.~~, the Defendants at the following address(es):~~

~~_____.~~

~~_____.~~

_____

Signature of: Plaintiff/(s) / Agent for Plaintiff(s)

Resources

- Colorado Judicial Branch Self Help Center
    - Your local Self Help Center can be found by following this link: https://www.courts.state.co.us/Self_Help/center.cfm
- Colorado Legal Services
    - Free legal services to low income tenants facing evictions.
    - Call (303) 837-1313 ext. 444 or visit https://www.coloradolegalservices.org/
- Colorado Department of Local Affairs
    - The Division of Housing can help with rental assistance programs, housing counseling, eviction and foreclosure prevention, and other programs.
    - Call (303) 864-7810 or visit https://cdola.colorado.gov/housing
- Colorado Housing Connects
    - Free housing, eviction, and foreclosure resources for tenants, landlords, homeowners, and homebuyers.
    - Call (844) 926-6632 or visit https://coloradohousingconnects.org/
- Colorado Poverty Law Project
    - Free legal services to fight eviction and housing insecurity.
    - https://www.copovertylawproject.org/
- COVID-19 Eviction Defense Project
    - Free legal aid and guidance to tenants facing eviction and housing insecurity.
    - Visit https://www.cedproject.org

Relevant Statutes

Colorado Revised Statutes sSection 13-40-111 ~~Colorado Revised Statutes~~, as amended.

13-40-111. Issuance and return of summons.

(1) Upon filing the complaint as ~~provided~~ required in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons ~~shall~~ must command the Defendant to appear before the Court at a place named in ~~such~~ the summons and at a time and on a day ~~which shall be~~ not less than seven days but not~~r~~ more than fourteen days from the day of issuing the same to answer the complaint of Plaintiff. The summons ~~shall~~ must also contain a

statement addressed to the Defendant stating: "If you do not respond to the landlord's complaint by filing a written answer with the court on or before the date and time in this summons or appearing in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord. In your answer to the court, you can state why you believe you have a right to remain in the property, whether you admit or deny the landlord's factual allegations against you, and whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons. When you file your answer, you must pay a filing fee to the clerk of the court. If you are claiming that the landlord's failure to repair a residential premises is a defense to the landlord's allegation of nonpayment of rent, the court will require you to pay into the registry of the court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises; unless the court determines that you qualify to have this requirement waived due to your income.~~."~~

~~"If you fail to file with the Court, at or before the time for appearance specified in the summons, an answer to the complaint setting forth the grounds upon which you base your claim or possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff is entitled". If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises.~~

13-40-112. Service.

(1) Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons.

(2) If personal service cannot be had upon the Defendant by a person qualified under the Colorado Rules of Civil Procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition thereto, the Plaintiff shall mail, no later than the next day following the day on which he/she files the complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the Defendant at the premises by postage prepaid, first class mail.

(3) Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

County Court _____ County, Colorado Court Address: Plaintiff(s): v. Defendant(s):	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: FAX Number: _____ Atty. Reg. #:	Case Number: Division _____ Courtroom

REQUEST FOR DOCUMENTS IN EVICTION CASES

I _____, am the ❑Plaintiff ❑Defendant in this case.

I ask that the court order the other party in this case to give me all documents that the party has that are relevant to this case.

Dated: _____

_____ _____

Printed name of ☐ Plaintiff/Petitioner ☐ Defendant/Respondent Signature of ☐ Plaintiff/Petitioner ☐ Defendant/Respondent

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *REQUEST FOR DOCUMENTS IN EVICTION CASES* was served on the other party by:

❑Hand Delivery ❑E-filed ❑Faxed to this number _____ or ❑by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____

_____

_____ _____

_____ Signature

_____

FOR COURT USE ONLY BELOW THIS LINE:

ORDER

The Court orders that the party who was asked to provide documents in the above Request for Documents in Eviction Case must provide all documents related to this case to the party that made the request within the earlier of (a) two business days after this Order is received or (b) two days before the trial in this case is scheduled to begin.

Dated: _____

_____ ❑Judge ❑Magistrate

Information for Eviction Cases

A forcible entry and detainer case, also called an "FED" or "eviction" case, has been filed against you. This sheet explains some of your rights. While you are not required to do so, you may contact the landlord or the landlord's attorney to discuss resolving your case and you may also contact a tenant attorney to discuss your case.–

1 What to do

If you disagree with the claim against you, you must:

1. Complete the blank Answer form.

Your completed Answer should say why you should not be evicted and/or do not owe the money (state your defense). You can also list claims you may have against the plaintiff/landlord. These are called "counterclaims." If you have a counterclaim, you must list the facts that support your counterclaim.

2. File your completed Answer.

File your completed Answer with the court at or before the date given for your appearance in the Summons.

Provide a copy to the plaintiff/landlord or the plaintiff/landlord's attorney.

3. Appear in Court at the date and time listed in your Summons or in any court order.

4. Pay the filing fee *or*, if you cannot afford the filing fee, complete and file fee waiver forms JDF 205 and 206. You can find the forms and instructions at:https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=176

5. You may request all documents in the plaintiff/landlord's possession related to this case.

- File with the court a completed copy of the Request for Documents in Eviction Cases form.
- You received this form with the Summons.
- Provide a copy of the completed Request to the plaintiff/landlord.

6. You must follow any court order requiring you to give the plaintiff/landlord documents that you have related to this case.

If you are missing forms, you can find them at:https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28

The following website has information about the procedures in the county in which your case was filed: https://www.courts.state.co.us/Courts/District/Choose.cfm

Note: If you do **not** file a timely Answer or appear in court, the court may issue a *default judgment* and/or money judgment against you. This means you will be evicted. The landlord is given possession of the property. You may also owe the landlord money.

The Court may also issue a Writ of Restitution against you. The Writ of Restitution allows a Sheriff to remove you and your belongings from your home.

2 Resources

You can find these and other helpful resources in the Summons form:

- Self Help Center
  To locate your local self help center go here:
  https://www.courts.state.co.us/Self_Help/center.cfm

- Colorado Legal Services
  - Free legal services to low income tenants facing evictions.

  - Call (303) 837-1313 ext. 444 or visit
  https://www.coloradolegalservices.org/

Rule 304. Service of Process.

(a) [NO CHANGE]

(b) Initial Process. Initial process shall be as follows:
(1) Initial Process in cases other than forcible entry and detainer cases. Except in cases of service by publication under Rule 304(f), the complaint and a blank copy of the answer form shall be served with the summons.
(2) Initial Process in forcible entry and detainer cases. Plaintiff shall serve the following on the defendant at least seven days before the return date: (1) summons containing all language and information required by statute; (2) complaint; (3) blank copy of the answer form; (4) Form JDF 186 SC: Information for Eviction Cases; (5) Form JDF 185 SC: Request for Documents in Eviction Cases; and (6) blank copies of Forms JDF 205 and 206 (fee waiver forms).

(c) - (j) [NO CHANGE]

Rule 312.5. Defenses and Objections in Forcible Entry and Detainer Cases -- When and How. Defenses and Objections in Forcible Entry and Detainer Cases -- by Pleading or Motion.

(a) Responsive Pleadings; When Presented. The defendant shall file an answer including any counterclaim or cross-claim on or before, and shall appear in court at, the date and time as fixed in the summons, or such other date as fixed by the court.

(b) Motions. A defendant may file a motion setting forth defenses simultaneously with the defendant's answer. All other motions, except for motions arising at trial, must be filed at least three days before the earlier of the date of any pretrial conference or the trial date.

(c) Waiver of Defenses. A party waives all defenses and objections which are not raised either by motion or in his answer except that the defense of lack of jurisdiction of the subject matter may be made at any time.

(d) Motion for Judgment on the Pleadings. At any time after the last pleading is filed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. A party shall not submit matters outside the pleadings in support of the motion.

Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Cases -- Requests for Documents and Conference.

(a) Requests for Documents.
(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.
(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

(c) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request shall be made only during the pretrial conference. The discovery may include depositions, requests for admission, interrogatories, physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall be followed as to the missing term.

(d) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

(e) Juror Notebooks. The court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

Court ☐ County Colorado County: _____ Court Address: _____	
Plaintiffs: _____ v. Defendants: _____ ☐ Any and all other occupants	**Court Use Only**
My Name: _____ Address: _____ Phone _____ Fax: _____ Email: _____ Atty. Reg.#: _____	Case Number: _____ Division: _____ Courtroom: _____

Court Summons: Eviction / Forcible Entry and Detainer

To the above-named Defendant(s), take notice that:

1. Court Date

On *(enter date)* _____,
at *(enter time)* _____,
at the court above in *(enter location/room number)* _____,

the Plaintiff may ask the Court to enter judgment against you. If the Court grants the Plaintiff's request to enter judgment against you, you will have to move out and it may mean you have to pay money to the landlord.

2. A copy of the complaint against you, a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form are attached for your use.

3. If you do not agree with the complaint, then you must either:

a. File your answer with the Court at or before the court date specified above stating any legal reason you have why judgment should not be entered against you, **or**
b. Attend the court date and time above **and** file your answer.

4. When you file your answer, you must pay a filing fee to the Clerk of the Court. If you are eligible for a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee. If

you cannot afford the filing fee or jury fee, file *JDF 205 - Motion to Waive Fees* and *JDF 206 - Order for Fee Waiver*.

5. If you file an answer, you must provide a copy to the Plaintiff or the attorney who signed the complaint.

6. If you do not respond to the landlord's complaint by filing a written answer with the Court, as set forth above, or appear in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord.

7. In your answer to the court, you can state:

- Why you believe you have a right to remain in the property,
- Whether you admit or deny the landlord's factual allegations against you and your legal defenses,
- Whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons, and
- Whether you have a counterclaim or crossclaim against the landlord.

8. If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises. In addition to filing an answer, you are required to complete an Affidavit (JDF 109) to support the amount you will need to pay into the registry of the Court or to seek waiver of this requirement.

9. Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the plaintiff possession of the premises.

10. If the plaintiff is granted possession of the premises, the court records may remain suppressed if both parties agree to suppress the records.

Dated: _____

Signed: _____
Deputy Clerk of Court or Attorney for Plaintiff(s) (if applicable)

Address(es) of Plaintiff(s) (if applicable): _____
Telephone Number(s) of Plaintiff(s) _____

This summons is issued pursuant to C.R.S. § 13-40-111. A copy of the complaint together with a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form must be served with this summons. This form should be used only for actions filed under Colorado's Forcible Entry and Detainer Act.

To the clerk: If this summons is issued by the Clerk of the Court, the seal of the Court should be provided by stamp, or typewriter, in the space to the right of the signature.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
☐ By checking this box, I am acknowledging that I have made a change to the original content of this form.

Certificate of Service

I/we, certify that a copy of the summons, complaint, blank answer form, request for documents form, fee waiver forms, and an eviction information form were:

☐ Served personally upon the following person on the following date and time:

_____.

OR

☐ After diligent efforts, on (date) _____ were posted in some conspicuous place on the premises, and mailed by first class mail to the Defendants at the following address:

_____.

_____
Signature of: Plaintiff/(s) / Agent for Plaintiff(s)

Resources

- Colorado Judicial Branch Self Help Center
    - Your local Self Help Center can be found by following this link: https://www.courts.state.co.us/Self_Help/center.cfm
- Colorado Legal Services
    - Free legal services to low income tenants facing evictions.
    - Call (303) 837-1313 ext. 444 or visit https://www.coloradolegalservices.org/
- Colorado Department of Local Affairs
    - The Division of Housing can help with rental assistance programs, housing counseling, eviction and foreclosure prevention, and other programs.
    - Call (303) 864-7810 or visit https://cdola.colorado.gov/housing
- Colorado Housing Connects
    - Free housing, eviction, and foreclosure resources for tenants, landlords, homeowners, and homebuyers.
    - Call (844) 926-6632 or visit https://coloradohousingconnects.org/
- Colorado Poverty Law Project
    - Free legal services to fight eviction and housing insecurity.
    - https://www.copovertylawproject.org/
- COVID-19 Eviction Defense Project
    - Free legal aid and guidance to tenants facing eviction and housing insecurity.
    - Visit https://www.cedproject.org

Relevant Statutes

Colorado Revised Statutes section 13-40-111, as amended.

13-40-111. Issuance and return of summons.

(1) Upon filing the complaint as required in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons must command the Defendant to appear before the Court at a place named in the summons and at a time and on a day not less than seven days but not more than fourteen days from the day of issuing the same to answer the complaint of

Plaintiff. The summons must also contain a statement addressed to the Defendant stating: "If you do not respond to the landlord's complaint by filing a written answer with the court on or before the date and time in this summons or appearing in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord. In your answer to the court, you can state why you believe you have a right to remain in the property, whether you admit or deny the landlord's factual allegations against you, and whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons. When you file your answer, you must pay a filing fee to the clerk of the court. If you are claiming that the landlord's failure to repair a residential premises is a defense to the landlord's allegation of nonpayment of rent, the court will require you to pay into the registry of the court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises; unless the court determines that you qualify to have this requirement waived due to your income."

13-40-112. Service.

(1) Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons.

(2) If personal service cannot be had upon the Defendant by a person qualified under the Colorado Rules of Civil Procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition thereto, the Plaintiff shall mail, no later than the next day following the day on which he/she files the complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the Defendant at the premises by postage prepaid, first class mail.

(3) Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

County Court _____ County, Colorado Court Address: Plaintiff(s): v. Defendant(s):	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

REQUEST FOR DOCUMENTS IN EVICTION CASES

I_____, am the ❑Plaintiff ❑Defendant in this case.

I ask that the court order the other party in this case to give me all documents that the party has that are relevant to this case.

Dated: _____

_____ _____

Printed name of ☐ Plaintiff/Petitioner ☐ Defendant/Respondent Signature of ☐ Plaintiff/Petitioner ☐ Defendant/Respondent

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *REQUEST FOR DOCUMENTS IN EVICTION CASES* was served on the other party by:

❑Hand Delivery ❑E-filed ❑Faxed to this number _____ or ❑by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____

_____

_____ _____

_____ Signature

FOR COURT USE ONLY BELOW THIS LINE:

ORDER

The Court orders that the party who was asked to provide documents in the above Request for Documents in Eviction Case must provide all documents related to this case to the party that made the request within the earlier of (a) two business days after this Order is received or (b) two days before the trial in this case is scheduled to begin.

Dated: _____ _____

❑Judge ❑Magistrate

Information for Eviction Cases

A forcible entry and detainer case, also called an "FED" or "eviction" case, has been filed against you. This sheet explains some of your rights. While you are not required to do so, you may contact the landlord or the landlord's attorney to discuss resolving your case and you may also contact a tenant attorney to discuss your case.

① What to do

If you disagree with the claim against you, you must:

1. Complete the blank Answer form.

Your completed Answer should say why you should not be evicted and/or do not owe the money (state your defense). You can also list claims you may have against the plaintiff/landlord. These are called "counterclaims." If you have a counterclaim, you must list the facts that support your counterclaim.

2. File your completed Answer.

File your completed Answer with the court at or before the date given for your appearance in the Summons.

Provide a copy to the plaintiff/landlord or the plaintiff/landlord's attorney.

3. Appear in Court at the date and time listed in your Summons or in any court order.

4. Pay the filing fee *or*, if you cannot afford the filing fee, complete and file fee waiver forms JDF 205 and 206. You can find the forms and instructions at:https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=176

5. You may request all documents in the plaintiff/landlord's possession related to this case.

- File with the court a completed copy of the Request for Documents in Eviction Cases form.
- You received this form with the Summons.
- Provide a copy of the completed Request to the plaintiff/landlord.

6. You must follow any court order requiring you to give the plaintiff/landlord documents that you have related to this case.

If you are missing forms, you can find them at:https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28

The following website has information about the procedures in the county in which your case was filed: https://www.courts.state.co.us/Courts/District/Choose.cfm

Note: If you do **not** file a timely Answer or appear in court, the court may issue a *default judgment* and/or money judgment against you. This means you will be evicted. The landlord is given possession of the property. You may also owe the landlord money.

The Court may also issue a Writ of Restitution against you. The Writ of Restitution allows a Sheriff to remove you and your belongings from your home.

② Resources

You can find these and other helpful resources in the Summons form:

- Self Help Center
  To locate your local self help center go here:
  https://www.courts.state.co.us/Self_Help/center.cfm

- Colorado Legal Services
  - Free legal services to low income tenants facing evictions.
  - Call (303) 837-1313 ext. 444 or visit
  https://www.coloradolegalservices.org/

Amended and Adopted by the Court, En Banc, October 13, 2021, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

michaels, kathryn

From: gabriel, richard
Sent: Thursday, October 7, 2021 2:04 PM
To: berger, michael; bernard, steven; welling, craig; navarro, anthony; furman, david; michaels, kathryn
Subject: Agenda item for all rules committees

Hi all –

This is not urgent, but today, my court had a discussion, and we agreed that it would be useful for all of the rules committees to come up with some policies regarding committee records (e.g., how long we'll keep records, where they are kept, etc.). Given that so much is electronic now, I'm hoping this won't be too much of a burden. That said, if there are hard copies of materials (e.g., the "legislative history" of rules that have been adopted), we'll want to know where that stuff is, how we should organize it, where it should be kept, etc. My guess is that Mike, who has been on Civil Rules forever, might have a treasure trove of stuff. Marcy Glenn who just came off the ARC Advisory Committee after about 20 years, sent us boxes of documents. This is what has gotten us to think about all this stuff.

Thanks!

Rich

Richard L. Gabriel (he/him/his)
Justice, Colorado Supreme Court
2 East 14th Avenue
Denver, Colorado 80203
(720) 625-5440
richard.gabriel@judicial.state.co.us

michaels, kathryn

From: berger, michael
Sent: Friday, October 29, 2021 11:04 AM
To: michaels, kathryn
Cc: gabriel, richard; espinosa, adam; berger, michael
Subject: FW: Letter from SB21-173 sponsors and legal services providers re: court summons & answer deadline
Attachments: Letter to Rules Committee 10.29.21.pdf

Kathryn, please put this on the November agenda and include both the email and the attached letter.

From: Jack Regenbogen <jack@copovertylawproject.org>
Sent: Friday, October 29, 2021 10:58 AM
To: Jack Regenbogen <jack@copovertylawproject.org>
Cc: hart, melissa <melissa.hart@judicial.state.co.us>; boatright, brian <brian.boatright@judicial.state.co.us>; márquez, monica <monica.marquez@judicial.state.co.us>; gabriel, richard <richard.gabriel@judicial.state.co.us>; hood, william <william.hood@judicial.state.co.us>; samour, carlos <carlos.samour@judicial.state.co.us>; berkenkotter, maria <maria.berkenkotter@judicial.state.co.us>; julie.gonzales.senate@state.co.us; yadira.caraveo.house@state.co.us; dominick.moreno.senate@state.co.us; serena.gonzales-gutierrez.house@state.co.us; Jon Asher <jasher@colegalserv.org>; Reenie Terjak <rterjak@colegalserv.org>; Shannon MacKenzie <shannon@copovertylawproject.org>; Snyder, Thomas W. <thomas.snyder@kutakrock.com>; Jennifer Wherry <jennifer@alpinelegalservices.org>; zach@cedproject.org
Subject: Letter from SB21-173 sponsors and legal services providers re: court summons & answer deadline

Dear Members of the Colorado Civil Rules Committee,

I am reaching out with a letter (attached) signed by the legislative sponsors of SB21-173 and several legal services providers regarding the implementation of SB21-173, and particularly, the revised eviction court summons and new deadline for a defendant to file an answer in response to an eviction.

We appreciate your diligence in striving to ensure compliance with this new law by its effective date of October 1st, 2021. However, we hope that this letter sheds light on the legislative intent for these provisions in SB21-173, and that you will consider the concerns that we described in this letter.

Thank you for your time and consideration. We look forward to your response.

Respectfully,
-Jack Regenbogen

Jack Regenbogen, Esq.
he/him
Policy and Advocacy Staff Attorney
Colorado Poverty Law Project
C: (314) 479-1617

October 29, 2021

Via email

To the Members of the Colorado State Supreme Court Civil Rules Committee

CC:
Chief Justice Brian D. Boatright
Justice Monica M. Márquez
Justice William W. Hood, III
Justice Richard L. Gabriel
Justice Melissa Hart
Justice Carlos A. Samour, Jr.
Justice Maria E. Berkenhotter

RE: Implementation of legislative changes to court summons and processes in forcible entry and detainer (FED) actions

Dear Members of the Colorado State Supreme Court Civil Rules Committee,

We are reaching out as members of the Colorado General Assembly who were the prime sponsors of recent legislation, SB21-173 (*"Rights in Residential Lease Agreements),* along with the undersigned legal aid providers who are principally responsible for following and ensuring compliance with the provisions in these new laws.

We appreciate your diligence in ensuring Colorado's compliance with these new statutory provisions which, among other changes, modified certain timeframes and court documents in Colorado's eviction court process, by the bill's effective date of October 1st, 2021. We are grateful for your thoughtfulness in ensuring that these new legal requirements are implemented impartially and appropriately.

We are concerned, however, that the implementation of these new statutory provisions, and the recent approval of a modified, uniform FED court summons, has insufficiently fulfilled the General Assembly's intent in passing this legislation and has failed to comply with the dictates included in the new statutory language.

One of the legislature's principal goals in passing this legislation was to ensure that tenants/defendants in FED actions have the opportunity to file an answer in response to an eviction summons *at any time of day* on the date they are due to appear in court. This new policy was established in recognition that factors outside of a defendant's control, such as employment requirements, unavailable childcare or inaccessible public transportation, often create insurmountable barriers that impede due process and active participation in the civil FED process. This intention was articulated in the new language in C.R.S. 13-30-111(1): "A court

shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due." The General Assembly's intention was also reiterated during the legislative process, as reflected by the testimony heard by the legislative committees that considered this legislation.

Despite the new statutory language, which we had believed was unambiguous in its direction, we are concerned that some parties may be misinterpreting this dictate, and that the new revised summons form continues to suggest that a default judgment may occur if a defendant fails to appear by a certain time on the date that their answer is due, *other than by the end of business* on that day.

Additionally, while we recognize that a portion of the summons language is prescribed verbatim in statute, Colorado law also provides the courts with considerable discretion in drafting the document to be accessible and understandable to litigants. Accordingly, you have the discretion to include information in a manner that would inform defendants, most of whom appear pro se, of their rights and responsibilities for participating in the FED process.

To that end, we are concerned that the revised court summons fails to convey information regarding a defendant's required participation, opportunities for fee-waiving, and other essential due process rights, in a manner that is clear and understandable to many members of the general public. For instance, the concept of a "Forcible Entry and Detainer," as well as similar wording on the summons, is foreign to most non-lawyers and could makes the summons hard for a lay person to understand.

While we appreciate your proactive steps to ensure compliance with these new statutory directives by the legislation's effective date, we believe that this process would have benefited from further opportunities for public input. **Accordingly**, **we are writing to request that the Civil Rules Committee consider scheduling a series of public meetings for obtaining feedback on the revised court summons, and to commit to a process and timeline for making further revisions to this crucial court document, which are necessary for ensuring appropriate compliance with legislatively established directives.**

Thank you for your time and consideration of this matter. We look forward to your response.

Sincerely,

Colorado State Representative Serena Gonzales-Gutierrez
Colorado State Representative Yadira Caraveo
Colorado State Senator Dominick Moreno
Colorado State Senator Julie Gonzales
Alpine Legal Services
Colorado Legal Services
Colorado Poverty Law Project
COVID-19 Eviction Defense Project

michaels, kathryn

From: tims, marianne
Sent: Monday, November 1, 2021 8:14 AM
To: michaels, kathryn
Subject: RE: FINAL PROPOSAL CRM

That will be great. Last time we presented changes to Rules 3, 5, 6, 7, and 8. Everything was approved/tentatively approved except 7. We were sent back to the drawing board on two things: (1) should there be something akin to an interlocutory appeal to the district court and (2) can an issue be raised for the first time to the COA if it was not raised in a petition for judicial review. We have addressed these in the new Rule 7.

If you are able to merge the documents, that would be **fabulous**!

I'm not sure another memo is necessary (perhaps this one to you) to reflect that we reconsidered language in Rule 7 in line with the feed back and questions we got on 9/24/21.

You're my hero. MMT

FINAL PROPOSAL

Rule 3. Definitions

The following definitions shall apply:
(a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.
(b) Chief Judge: The chief judge of a judicial district.
(c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.
(d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.
(e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.
~~**(f)** Consent:~~
~~**(1)** Consent in District Court:~~
~~**(A)** For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if:~~
~~**(i)** The party has affirmatively consented in writing or on the record; or~~
~~**(ii)** The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or~~
~~**(iii)** The party failed to appear at a proceeding after having been provided notice of that proceeding.~~
~~**(B)** Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.~~
~~**(2)** Consent in County Court:~~
~~**(A)** When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.~~
~~**(B)** Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.~~
~~**(3)** Consent in Small Claims Court:~~
~~**(A)** A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).~~
~~**(B)** Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.~~

Rule 5. General Provisions

(a) An order or judgment of a magistrate in any judicial proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. However, an order or judgment becomes final for purposes of magistrate review as stated in C.R.M. 7.~~Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing.~~

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.
(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.
(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.
(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.
(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.
(g) [repealed]~~For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice -- which must be written except to the extent given orally to parties who are present in court -- shall state that all parties must consent to the function being performed by the magistrate.~~
~~**(1)** If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.~~
~~**(2)** Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented~~.
~~**(h)** [Effective Until July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.~~
(h) All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates

(a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

~~(1) No consent necessary:~~
~~(A)~~(1) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.
~~(B)~~(2) Appoint attorneys for indigent defendants and approve attorney expense vouchers.
~~(C)~~(3) Conduct bond review hearings.
~~(D)~~(4) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).
~~(E)~~(5) Schedule and conduct arraignments on indictments, informations, or complaints.
~~(F)~~(6) Order presentence investigations.
~~(G)~~(7) Set cases for disposition, trial, or sentencing before a district court judge.
~~(H)~~(8) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.
~~(I)~~(9) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.
(10) Accept pleas of guilty.
(11) Enter stipulated deferred prosecution and deferred sentence pleas.
(12) Enter stipulations that modify terms and conditions of probation or deferred prosecutions and deferred sentences.
(13) Impose stipulated sentences to probation in cases assigned to problem solving courts.
~~(J)~~(14) Any other function authorized by statute or rule.
~~(2) Consent necessary:~~
~~(A) Enter pleas of guilty.~~
~~(B) Enter deferred prosecution and deferred sentence pleas.~~
~~(C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.~~
~~(D) Impose stipulated sentences to probation in cases assigned to problem solving courts.~~

(b) Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:
~~(1) No Consent Necessary~~
~~(A) A district court magistrate shall have the power to~~(1) P ~~p~~reside over all proceedings arising under Title 14, except contested permanent orders~~as described in section 6 (b)(2) of this Rule~~.
~~(B)~~(2) ~~A district court magistrate shall have the power to p~~Preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions to review as defined in C.R.M. 7.
~~(C)~~(3) ~~A district court magistrate shall have the power to d~~Determine an order concerning child support filed pursuant to Section 26-13-101 et seq.
~~(D) Any other function authorized by statute.~~
~~(2) Consent Necessary: With the consent of the parties, a district court magistrate may p~~(4) Preside over uncontested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.
(5) Any other function authorized by statute or rule.

(c) Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:
~~(1) No consent necessary~~
~~(A)~~(1) Conduct settlement conferences.

~~(B)~~(2) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.
~~(C)~~(3) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.
~~(D)~~(4) Conduct hearings as a master pursuant to C.R.C.P. 53.
~~(E)~~(5) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.
~~(F)~~(6) Conduct proceedings involving protection orders pursuant to C.R.S. Section 13-14-101 et seq.
~~(G)~~(7) Any other function authorized by statute or rule.
~~(2) Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.~~

(d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).

(e) Functions in Probate and Mental Health Cases:
~~(1) No consent necessary:~~
~~(A)~~(1) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.
~~(B)~~(2) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.
~~(C)~~(3) Any other function authorized by statute or rule.
~~(2) Consent Necessary~~
~~(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.~~
~~(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.~~
~~(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 5 (g).~~

Rule 7. Review of District Court Magistrate Orders or Judgments

(a) ~~Orders or judgments entered when consent not necessary.~~ Magistrates shall include in ~~any~~every order or judgment ~~entered in a proceeding in which consent is not necessary a written notice~~ that except as otherwise provided by statute, the order or judgment may not be taken to the court of appeals unless within 28 days of the date the order or judgment becomes reviewable, a petition for review has been filed with the district court as provided in this ~~was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to~~ Rule 7 ~~(a)~~.
~~(1)~~(b) Unless otherwise provided by statute, this Rule is the exclusive method to obtain district court review of a ~~district court~~ magistrate's order or judgment ~~issued in a proceeding in which consent of the parties is not necessary~~.
~~(2)~~(c) Each ~~The~~ chief judge shall designate one or more district judges to review orders or judgments of ~~district court~~ magistrates ~~entered when consent is not necessary~~.

~~(3)~~**(d)** Only a~~n final order or~~ order or judgment of a magistrate that ends the particular part of the action in which it is entered by fully resolving an issue or claim is reviewable under this Rule. ~~A final order or judgment is that which fully resolves an issue or claim.~~ The order or judgment is not reviewable

~~(4) A final order or judgment is not reviewable~~ until it is written, dated, and signed by the magistrate. A ~~M~~minute ~~O~~order ~~which~~ that is signed and dated by a magistrate ~~wi~~shall constitute a ~~final~~ written order or judgment.

~~(5)~~**(e)** A party may obtain district court review of a magistrate's ~~final~~ reviewable order or judgment by filing a petition to review ~~such final~~ the order or judgment with the reviewing judge no later than ~~14~~28 ~~-~~days ~~subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days~~ from the date the ~~final~~ order or judgment becomes reviewable~~is mailed or otherwise transmitted to the parties~~.

(f) Within 7 days of the date the order or judgment became reviewable any party may file with the magistrate either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within 7 days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

(g) If the magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors, a petition for review of the amended judgment or order must still be filed within 28 days of the date the original judgment or order became reviewable.

~~(6) A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.~~

~~(7)~~**(h)** A petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a ~~memorandum~~ brief statement of ~~discussing~~ the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting ~~brief~~ statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file an ~~memorandum brief in~~ opposition~~.~~, which shall state whether a transcript has been ordered by the opposing party, and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

(i) The review is solely on the record of the proceedings before the magistrate. The reviewing judge shall consider the petition for review and any statements filed, together with such review of the record as is available. If a transcript of the proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact.

(j) Findings of fact made by the magistrate must be accepted by the reviewing judge unless they are clearly erroneous. Conclusions of law made by the magistrate and any order entered under

~~(8) The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. The reviewing judge also~~

~~may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under~~ Rule 6 (c)~~(1)~~ which effectively ends a case shall be subject to de novo review.

~~**(9)** Findings of fact made by the magistrate may not be altered unless clearly erroneous. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order.~~

~~**(10)**~~**(k)** The reviewing judge shall adopt, reject, or modify the ~~initial~~ final order or judgment of the magistrate by written order, which ~~order~~ shall be the order or judgment of the district court. Any petition that has not been decided within 63 days of the filing date of (i) the petition or (ii) the transcript, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and the time for appeal shall commence as of that date.

(l) Only issues addressed in a magistrate's reviewable order or judgment that were raised in a timely petition for review can be appealed to the court of appeals.

~~**(11)** Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a reviewing court in accordance with these Rules.~~

~~**(12)**~~**(m)** If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the ~~appellate~~ court of appeals is barred.

~~**(b)** Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).~~

Rule 8. Functions of County Court Magistrates

(a) Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:

~~**(1)** No consent necessary:~~

~~**(A)**~~**(1)** Appoint attorneys for indigent defendants and approve attorney expense vouchers.

~~**(B)**~~**(2)** Conduct proceedings in traffic infraction matters.

~~**(C)**~~**(3)** Conduct advisements and set bail in criminal and traffic cases.

~~**(D)**~~**(4)** Issue mandatory protection orders pursuant to C.R.S. section 18-1-1001.

~~**(E)** Any other function authorized by statute.~~

~~**(2)** Consent necessary:~~

~~**(A)**~~**(5)** Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in ~~misdemeanor,~~ petty offense~~,~~ and traffic offense matters.

~~**(B)**~~**(6)** Conduct deferred prosecution and deferred sentence proceedings in ~~misdemeanor,~~ petty offense~~,~~ and traffic offense matters.

~~(C)~~(7) Conduct ~~misdemeanor and~~ petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.
~~(D)~~(8) Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.
(9) Any other function authorized by statute or rule.

(b) Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:
~~(1) No consent necessary:~~
~~(A)~~(1) Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.
~~(B)~~(2) Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.
~~(C)~~(3) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.
~~(D)~~(4) Conduct proceedings involving protection orders, pursuant to C.R.S. sections 13-14-101 et seq. and conduct proceedings pursuant to C.R.C.P. 365.
~~(E) Any other function authorized by statute.~~
~~(2) Consent necessary:~~
~~(A)~~(5) Conduct ~~civil trials to court and~~ hearings on nondispositive motions.
~~(B)~~(6) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.
(7) Any other function authorized by statute or rule.

September 15, 2021

M E M O R A N D U M

TO: Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure

FROM: The 30(b)(6) subcommittee (Stephanie Scoville, Judge Eric Elliff, David DeMuro, Greg Whitehair, John Lebsack, Brad Levin, Christopher Mueller, and John Palmeri)

RE: Current issues with Rule 30(b)(6) and proposed amendments

INTRODUCTION

Federal Rule 30(b)(6) was amended in 2020 to require conferral among parties about the matters for examination before taking the deposition of a representative of an organization. At the January 2021 meeting, our full committee considered whether similar or other amendments to Rule 30(b)(6) should be adopted. A subcommittee formed consisting of Stephanie Scoville, Judge Eric Elliff, David DeMuro, Greg Whitehair, John Lebsack, Brad Levin, Christopher Mueller, and John Palmeri; the subcommittee was assisted by Emely Garcia, a Fellow with the Office of the Attorney General. The subcommittee understood that its charge was to look holistically at the rule to identify possible improvements.

Federal subcommittees studied issues surrounding 30(b)(6) depositions in 2006, 2013, and again in 2016-2019. The most recent federal subcommittee identified 16 potential issues with the federal rule covering a wide variety of subjects. Following extensive discussion and nearly 1800 public comments, the federal committee recommended just a single change to the rule – a conferral requirement, which was adopted by the U.S. Supreme Court, effective December 1, 2020. The federal committee was unable to garner consensus on how to solve other issues.

Our subcommittee met regularly for three months and engaged in wide-ranging discussions about many of the same topics identified by the federal subcommittee. Our subcommittee unanimously agreed that parties on both sides of the 'v.' experience significant problems in conducting efficient and manageable 30(b)(6) depositions. Our subcommittee also unanimously agreed that the federal amendment was excessively modest given the scope of the issues and resolved to explore additional reforms to improve Colorado's rule.

Our subcommittee was able to reach consensus on three sets of proposed revisions to Colorado's Rules, plus a proposed Comment. The subcommittee considered other potential amendments, but ultimately decided that existing rules or caselaw adequately address the issue, that the issue could not be solved by a rule, that a change was not necessary, or that a consensus could not be reached on a solution.

Our subcommittee's work involved surveying all 50 states' versions of the rule, analyzing the federal materials, and researching caselaw and scholarly articles about the rule. The materials gathered are too voluminous to attach to this memo, but we would be happy to share those materials with any interested committee members.

IDENTIFIED PROBLEMS WITH THE CURRENT RULE

Subcommittee members unanimously agreed that practicing lawyers and courts regularly encounter problems with 30(b)(6) depositions and that the current rule does not provide sufficient guidance to practitioners. Lawyers representing both plaintiffs and defendants expressed frustration with the rule and feel that it is open to gamesmanship and abuse.

Lawyers taking 30(b)(6) depositions are sometimes frustrated with investing considerable time and resources in the deposition only to question witnesses who are not knowledgeable on the matters for examination, whether because the organization has not designated the right person with knowledge or because the witness is not prepared. Lawyers taking depositions are also frustrated when an organization later attempts to augment or contradict elicited testimony during summary judgment briefing or at trial.

Lawyers defending 30(b)(6) depositions are sometimes frustrated with receiving 30(b)(6) notices with topics that are so numerous or broad as to be unmanageable, particularly if there is a threat of sanctions for allegedly inadequate witness preparation; being asked to prepare witnesses on more topics than could be realistically covered in a single deposition; the difficulty, and sometimes impossibility, of preparing a lay witness on topics akin to contention interrogatories; and with broadly worded topics that lead to misunderstandings or disagreements during the actual deposition.

For their part, courts are frustrated with the level of intervention required when parties cannot agree on the number of topics, the scope of the topics, the length of the deposition, or after-the-fact, whether the defending party adequately prepared its witness(es). Courts also observe that 30(b)(6) depositions may not be the most appropriate or efficient avenue for conducting discovery and that the same information could be elicited more efficiently through the use of written discovery.

The subcommittee created a list of issues under the current rule that are ripe for consideration:

1. Whether the language of the rule should be updated and clarified, including to mirror the federal rule;
2. Whether a conferral requirement should be added and whether to specify when conferral should occur;
3. When a 30(b)(6) notice should be served and/or how long a defending party should have to respond to the notice;
4. Whether the rules should clarify how many 30(b)(6) depositions may be taken;
5. Whether the rules should clarify the permitted length of a 30(b)(6) deposition;
6. Whether the rule should limit the number of matters for examination;
7. Whether the rule should provide additional guidance on how to define matters for examination;
8. Whether the rule should address whether matters for examination may include topics that are the equivalent of contention interrogatories;
9. Whether the rule should direct a defending party to identify the representative(s) who will testify on behalf of the entity in advance of the deposition;
10. Whether the rule should provide guidance on how/when to raise objections to the matters for examination;
11. Whether the rule should expressly permit/prohibit questions that are outside the scope of the notice and define a responding party's obligations to respond to questions outside the scope;
12. Whether the rule should address whether statements made in a 30(b)(6) deposition are binding admissions;
13. Whether the rule should include a statement that the organization has an affirmative obligation to prepare its witnesses;
14. Whether the rules should address what constitutes sanctionable conduct; and
15. Whether comments are necessary or useful to explain the amendments.

AMENDMENTS PROPOSED BY THE SUBCOMMITTEE

I. UPDATES TO CLARIFY LANGUAGE AND INCORPORATE LANGUAGE FROM THE FEDERAL RULE AND THE RULES OF OTHER STATES

The subcommittee compared Colorado's language with the federal rule and with other states' rules and recommends some revisions:

A. **Updating to gender neutral language.** The current rule uses the outdated pronouns "he" and "his". The subcommittee recommends updating to gender neutral language.

B. **Adding "other entities" to the list of those organizations subject to 30(b)(6) depositions.** While some states try to call out additional types of organizations that may be subject to 30(b)(6) depositions (ex: LLCs), some state rules and the federal rule solve this issue with a catchall "other entities." The subcommittee recommends adopting this change.

C. **Clarifying that 30(b)(6) depositions may be imposed on nonparties by subpoena.** A party may take a 30(b)(6) deposition of a nonparty. Rule 30(a)(1) already provides, "[t]he attendance of witnesses may be compelled by subpoena as provided in C.R.C.P. 45." The federal rule and a significant majority of other states make plain that a subpoena may name an organization as the deponent, thus triggering the requirements of Rule 30(b)(6). The subcommittee recommends that Colorado similarly clarify that Rule 30(b)(6) requirements apply to nonparty depositions of organizations.

D. **Directing a nonparty organization served with a subpoena to designate a witness.** The federal rule and a significant majority of other states expressly state that, "A subpoena shall advise a nonparty organization of its duty to make such a designation." The subcommittee recommends this addition to Colorado's rule. Having acknowledged that a subpoena may be served on a nonparty organization for a deposition of the organization, the subpoena should make the obligations for the deposition clear to the nonparty organization.

E. Updating Rule 45 to conform with the recommended clarifications to Rule 30(b)(6). If the full committee accepts the recommended clarifications to Rule 30(b)(6), the subcommittee recommends a related change to Rule 45. A subpoena under Rule 45 is the mechanism to procure nonparty attendance at deposition. If a subpoena commands a deposition from an organization, it should trigger the requirements of Rule 30(b)(6), including that the organization have notice of the matters for examination and – if adopted as recommended below – that the organization be informed of a conferral obligation, in addition to its existing duty to make witness designations. We, therefore, recommend that the committee amend Rule 45 with a cross-reference to Rule 30(b)(6).

F. **Updating forms to conform with these recommended clarifications.** If the full committee adopts these suggested revisions, this subcommittee recommends that the subcommittee on forms consider whether any updates should be made to JDF 80, 80.1, and 80.2.

Redline of current Colorado Rule 30(b) with these recommendations:

(6) A party may in its~~his~~ notice or subpoena name as the deponent a public or private corporation, ~~or a~~ partnership, ~~or~~ association, ~~or~~ governmental agency, or other entity and designate with reasonable particularity the matters on which examination is requested. The named organization ~~so named~~ shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person~~he~~ will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

Redline of current Rule 45(e) with these recommendations:

(e) Subpoena for Deposition~~; Place of Examination~~.

[new] ***(3) Subpoena for deposition of an organization****: A subpoena commanding a public or private corporation, partnership, association, governmental agency, or other entity to attend and testify at a deposition is subject to the requirements of Rule 30(b)(6). Responses to such subpoenas are also subject to Rule 30(b)(6).*

II. CONFERRAL OBLIGATION

The federal rule was amended in 2020 to require conferral by adding the underlined text: "Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify."

The federal advisory committee comment relating to the adoption of the conferral requirement states:

> Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns raised have included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).
>
> Candid exchanges about the purposes of the deposition and the organization's

> information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.
>
> The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The process of conferring may be iterative. Consistent with Rule 1, the obligation is to confer in good faith about the matters for examination, but the amendment does not require the parties to reach agreement. In some circumstances, it may be desirable to seek guidance from the court.
>
> When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.

Virginia recently adopted the federal conferral requirement in its state rules. The subcommittee unanimously recommends that Colorado similarly amend our rule.

The subcommittee believes that some of the current issues with gamesmanship under the rule may be alleviated if the parties meaningfully confer and reach an understanding prior to the deposition on the topics that will be covered. Although conferral is a common practice in Colorado, it is not universal. The subcommittee considered whether the conferral requirement should be placed in Rule 30(b)(6) or located elsewhere in the civil rules, such as in Rule 121, § 1-12, which requires conferral on deposition scheduling and the efficient conduct of a deposition. The subcommittee felt that Rule 30(b)(6) provides the most prominent location from which to impress on parties the need to confer.

The subcommittee recommends one tweak to the federal language. The appropriate time for conferral differs based on whether the conferral is with a party by way of a deposition notice or with a nonparty by way of a subpoena. For parties, conferral is most appropriate before the deposition notice is served. But when a deposition of a nonparty organization is sought, there is no mechanism by which to

compel the nonparty to engage in any discussions about the deposition or matters for examination until a subpoena is served. Once a subpoena is served, the nonparty is brought into the action and becomes subject to the requirements of Rule 30(b)(6). The subcommittee, therefore, recommends that Colorado adopt the following conferral language: "Before a notice is served, or promptly after a subpoena is served, the serving party and the organization shall confer in good faith about the matters for examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify."

Redline of current rule with this recommendation:

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. Before a notice is served, or promptly after a subpoena is served, the serving party and the organization shall confer in good faith about the matters for examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

III. CLARIFICATION ON THE PERMITTED LENGTH OF 30(b)(6) DEPOSITIONS

One often litigated aspect of 30(b)(6) depositions is the length of the deposition. Some of this confusion may stem from Colorado's Rule 30(d)(2)(A), which specifies that a deposition "of a person" other than a retained expert is limited to one day of 6 hours. In contrast, the federal rule says that "a deposition is limited to one day of 7 hours." Fed. R. Civ. P. 30(d)(1). Another source of confusion is a federal Advisory Committee Note from 2000: "For purposes of this durational limit [Rule 30(d)(2) of 1 day/7 hours], the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition." This federal comment, however, has been rejected by Colorado's federal courts. *See In Re Rembrandt Techs.*, No. 09-CV-00691-WDM-KLM, 2009 WL 1258761, at *13–14 (D. Colo. May 4, 2009) (rejecting argument that the deposition of each designee is a separate deposition with a seven-hour limit); *E.E.O.C. v. The Vail Corp.*, No. CIV.A07CV02035REBKLM, 2008 WL 5104811, at *1 (D. Colo. Dec. 3, 2008) (same).

The subcommittee agreed that the intent of the rule is that an organization should substitute for an individual as a deponent, and therefore, the presumptive time limit for a deposition of a person should apply to the deposition of an organization. The subcommittee agreed that this is one way in which the current

rule should be clarified and that the cleanest way to do it is by cross-reference to Rule 30(d)(2)(A). That subsection sets a presumptive time limit for a deposition and also directs parties on the grounds for requesting that the presumptive limit be shortened or lengthened.

Redline of current rule with this recommendation:

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules. The duration of a deposition under this subsection (b)(6), regardless of the number of persons designated, is governed by Rule 30(d)(2)(A).

IV. COMMENT SPECIFYING RECIPROCAL DUTIES

The subcommittee believes that the current rule theoretically encompasses the reciprocal duties imposed by the rule: 1) the duty of the taking party to sufficiently define reasonable matters for examination; 2) the duty to confer (if the full committee agrees to that recommendation); and 3) the duty of the organization to sufficiently prepare and produce knowledgeable witnesses. These duties are reinforced in current caselaw. *See D.R. Horton, Inc.-Denver v. D&S Landscaping, LLC*, 215 P.3d 1163 (Colo. App. 2008). But the problems that were amply observed by the federal subcommittees and unanimously confirmed by our subcommittee demonstrate that parties are not sufficiently recognizing and adhering to these duties. In practice, disputes about 30(b)(6) depositions are wasting the time and resources of parties and courts. As a result, the subcommittee unanimously agreed that the comments to Rule 30 should spell out these reciprocal duties in an effort to detail and emphasize them to parties.

Recommended new comment:

COMMITTEE COMMENT: Rule 30(b)(6) depositions differ from ordinary depositions and impose additional obligations on both the party taking the deposition and the organization being deposed. First, the serving party must provide advance notice of topics that are sufficiently detailed and proportional to the time for the deposition such that the organization may fairly prepare a representative(s) to testify. Second, the serving party and the organization must engage in substantive conferral on matters to be covered in the examination. Third, the organization has an obligation to identify and adequately prepare its witness(es) to testify on the specified topics.

PROPOSED TEXT OF RULE WITH ALL RECOMMENDED AMENDMENTS

RULE 30(b)

(6) A party may in its notice or subpoena name as the deponent a public or private corporation, partnership, association, governmental agency, or other entity and designate with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which each person will testify. Before a notice to a party is served, or promptly after a subpoena is served, the serving party and the organization shall confer in good faith about the matters for examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules. The duration of a deposition under this subsection (b)(6), regardless of the number of persons designated, is governed by Rule 30(d)(2)(A).

COMMITTEE COMMENT: Rule 30(b)(6) depositions differ from ordinary depositions and impose additional obligations on both the party taking the deposition and the organization being deposed. First, the serving party must provide advance notice of topics that are sufficiently detailed and proportional to the time for the deposition such that the organization may fairly prepare a representative(s) to testify. Second, the serving party and the organization must engage in substantive conferral on matters to be covered in the examination. Third, the organization has an obligation to identify and adequately prepare its witness(es) to testify on the specified topics.

RULE 45

(e) Subpoena for Deposition

(3) Subpoena for deposition of an organization: *A subpoena commanding a public or private corporation, partnership, association, governmental agency, or other entity to attend and testify at a deposition is subject to the requirements of Rule 30(b)(6). Responses to such subpoenas are also subject to Rule 30(b)(6).*

OTHER PROPOSED AMENDMENTS CONSIDERED BUT REJECTED BY SUBCOMMITTEE

I. WHEN A 30(b)(6) NOTICE SHOULD BE SERVED / TIME FOR RESPONDING TO A 30(b)(6) NOTICE

The subcommittee considered whether the special nature of 30(b)(6) depositions requires modification of the current rules, which specify that deposition notices or subpoenas be served no less than 7 days before a deposition. *See* Rules 121, § 1-12(1) and 45(b)(1)(B). The subcommittee agreed that 7 days is not sufficient time to negotiate the matters for examination and prepare a witness(es), but concluded that parties generally work this out. Rule 121 § 1-12(1) already requires that "[p]rior to scheduling or noticing any deposition, all counsel shall confer in a good faith effort to agree on a reasonable means of limiting the time and expense of that deposition." Also, if the full committee accepts the proposed conferral language, then conferral will be required before the notice is served and the 7-day period is triggered. The subcommittee also concluded that changing the amount of time required to notice only 30(b)(6) depositions could result in confusion.

The subcommittee similarly considered whether the rules should specify a time for responding to a 30(b)(6) notice with objections or a motion for protective order. The subcommittee felt that, again, this is something that naturally gets worked out between the parties and does not require further clarification in the rule.

II. NUMBER OF PERMISSIBLE 30(b)(6) DEPOSITIONS

The subcommittee considered whether the civil rules should specify whether more than one 30(b)(6) deposition should be permitted in a case. Some subcommittee members believed that more than one 30(b)(6) of the same organization may be warranted in a case, such as when one deposition is needed on liability and another is needed on damages. Other subcommittee members believed that the same organization should not be subjected to more than one 30(b)(6) deposition under any circumstances. Ultimately, the subcommittee concluded that this issue is best resolved on a case-by-case basis with reference to the proportionality factors in Rule 26(b)(1) and that this is not an issue that should be resolved with a blanket rule.

Rule 26(b)(2)(A) already provides that "[a] party may take one deposition of each adverse party…" Rule 30(a)(2)(B) also already provides that leave must be obtained to take a deposition if "[t]he person to be examined already has been deposed in the case." And Rule 30(d)(2)(A) already provides that, upon motion, the court may allow additional time for a deposition "if needed for a fair examination of

the deponent and consistent with C.R.C.P. 26(b)(2), or if the deponent or another person impedes or delays the examination, or if other circumstances warrant." Rule 26(b)(2) incorporates the proportionality factors in Rule 26(b)(1). These rules provide an adequate framework for parties to advocate for additional depositions or additional time in a deposition of an organization and for a defending party to advocate against such extensions.

III. LIMITATION ON THE NUMBER OF MATTERS FOR EXAMINATION AND WHETHER THE RULE SHOULD PROVIDE ADDITIONAL GUIDANCE ON HOW TO DEFINE MATTERS FOR EXAMINATION

The subcommittee fully agreed that poorly defined matters for examination are the root of many problems under the rule, whether because witnesses are not sufficiently prepared on the topic noticed by the taking party or because the organization cannot sufficiently discern the topic and prepare its witness. The subcommittee considered whether the rule or a comment should provide additional guidance on the level of specificity required when defining matters for examination. Ultimately, the subcommittee could not come up with a more descriptive description than the current one, which states that the notice or subpoena must "designate with reasonable particularity the matters on which examination is requested."

The subcommittee considered whether some of the problems under the current rule could be solved by imposing a limit on the number of topics per notice. The subcommittee quickly concluded, however, that imposing an arbitrary number of topics would create more problems than it solved, with parties likely to dispute whether topics are overly broad or whether the topics contain unrelated subparts.

IV. MATTERS FOR EXAMINATION AKIN TO CONTENTION INTERROGATORIES

One question the subcommittee confronted was whether the matters for examination may include topics that are akin to contention interrogatories. Parties taking 30(b)(6) depositions often find these topics to be useful; parties defending 30(b)(6) depositions find it particularly difficult to prepare witnesses on these topics and that these questions often can be answered only by a lawyer.

The subcommittee was concerned with unintended consequences, such as additional litigation over what constitutes a contention topic for examination. Further difficulties could present as parties and courts attempt to tease apart what constitutes a factual question or an application of fact to law. Subcommittee members also observed that this is a problem in regular depositions. Overall, the subcommittee was reluctant to differentiate organizations from other deponents by creating a special rule for 30(b)(6) depositions.

V. WHETHER AN ORGANIZATION MUST PROVIDE ADVANCE NOTICE OF THE IDENTIY OF THE DESIGNEES WHO WILL TESTIFY ON A PARTICULAR MATTER FOR EXAMINATION

Subcommittee members were divided in what they had observed on this issue. The current rule requires an organization to "designate" a representative to testify on its behalf, but that designation does not require advance notice or any particular form of notice to other parties. Upon discussion, the subcommittee determined that there are a variety of practices, but that those practices are not leading to significant disputes. Some subcommittee members always provide advance notice of the identity of the witness who is designated on a particular topic. This practice may provide some efficiencies, such as by facilitating a single deposition of an individual – in part, as an individual and in part, as a corporate representative. Other subcommittee members felt that organizations should have the right to make a unilateral decision, even at that the last minute, as to who will appear as the organization's representative. Because the witness is testifying on behalf of the organization and not as an individual, the identity of the witness is not material and no advance notice is necessary. On the whole, the subcommittee concluded that this is an issue that parties generally work through in practice and that any problems are not significant enough to warrant a revision to the rule.

VI. WHETHER THE RULES SHOULD SPECIFY THE MECHANISM TO OBJECT TO MATTERS FOR EXAMINATION

The subcommittee considered whether the rule should specify how or when parties should raise objections to the matters for examination. This is another issue that seems to get largely resolved in practice. Subcommittee members agreed that it is perilous for a defending party to fail to object to any matters for examination that are vague, overbroad, or inappropriate for other reasons. If conferral does not resolve an issue, most parties understand that the proper recourse is to file a motion for protective order under Rule 26(c) rather than to object during the deposition or wait for the party taking the deposition to file a motion to compel. The subcommittee agreed that this issue does not require either a special mechanism for Rule 30(b)(6) or cross reference to other rules.

The subcommittee agreed that good faith conferral, such as is now found in the federal rule, should help resolve disputes that otherwise would have led to a motion for protective order. Conferral, however, will never resolve all issues and some disputes will inevitably arise in the course of the deposition. A change to the rule cannot address all manner of concerns.

VII. WHETHER STATEMENTS OF AN ORGANIZATION IN A 30(b)(6) DEPOSITION ARE BINDING ADMISSIONS

The subcommittee considered whether the rule should specify whether a statement in a 30(b)(6) deposition is an admission that binds the organization. Two subcommittee members felt strongly that an organization should be estopped from changing any testimony offered during a deposition. Current caselaw addresses this issue, which led the majority of the subcommittee to conclude that this is an issue of law that should be resolved by courts and not by rule. *See D.R. Horton, Inc.-Denver*, 215 P.3d at 1170 (finding that 30(b)(6) testimony "does not rise to the level of a judicial admission…"); *see also Vehicle Mkt. Research, Inc. v. Mitchell Int'l, Inc.*, 839 F.3d 1251, 1261 (10th Cir. 2016) ("We agree with our sister circuits that the testimony of a Rule 30(b)(6) witness is merely an evidentiary admission, rather than a judicial admission."); 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 2103 (3d ed. 2021) ("Of course, the testimony of the representative designated to speak for the corporation are admissible against it. But as with any other party statement, they are not 'binding' in the sense that the corporate party is forbidden to call the same or another witness to offer different testimony at trial."). The majority of the subcommittee also observed that Rule 30(e) addresses making corrections "in the form or substance" of a deposition transcript, and this rule applies to Rule 30(b)(6) depositions.

As a result, the subcommittee agreed that other sources sufficiently address this issue. The subcommittee also agreed that 30(b)(6) depositions should not be elevated to a special form and that 30(b)(6) depositions should be treated the same as all other depositions in which a deponent may correct or supplement an answer under the regular mechanisms provided in the rules, subject to impeachment at trial.

VIII. WHETHER THE RULE SHOULD STATE IF QUESTIONS OUTSIDE THE SCOPE OF THE NOTICE MAY OR MUST BE ANSWERED BY THE DEPONENT

One question that often arises in Rule 30(b)(6) depositions is whether an organization's representative must answer a question that falls outside the scope of the matters for examination. And if the representative answers the question, then is "I don't know" a permissible response? Some subcommittee members believed that an instruction not to answer is appropriate; others believed that the deponent should be required to answer if possible, but that a failure to provide a knowledgeable answer is not grounds for sanctions; others believed that the answer should be acknowledged as an answer of the individual and not as an answer of the corporate representative. At a recent Faculty of Federal Advocates CLE, Judge Kato Crews was of the opinion that under the federal rules, a deponent must answer

questions outside the scope of the notice but that the answer is one of the individual, not the organization. This view, however, is not uniformly held by the federal courts. *See Crawford v. George & Lynch, Inc.*, 19 F. Supp. 3d 546, 554-55 (D. Del. 2013) (noting disagreements among courts). Overall, the subcommittee could not reach a consensus on this issue and decided not to make any additional recommendation.

IX. WHETHER THE RULE SHOULD ADDITIONALLY SPEAK TO SANCTIONABLE CONDUCT IN 30(b)(6) DEPOSITIONS

Finally, the subcommittee considered whether the rule should do more to specify what constitutes sanctionable conduct in relation to a 30(b)(6) deposition. Although parties occasionally do engage in improper conduct, the subcommittee decided that the current Rule 37 sufficiently addresses this issue. Rule 37(a)(2)(B) provides for sanctions when a deponent fails to answer a question propounded. That rule also provides for sanctions if a "corporation or other entity fails to make a designation pursuant to C.R.C.P. Rule[] 30(b)(6)…" Rule 37(b)(2) provides for sanctions if "a person designated under Rule 30(b)(6) … fails to obey an order to provide or permit discovery…" And Rule 37(d) provides for sanctions if a 30(b)(6) deponent fails to appear and that "the failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has previously filed a motion for a protective order…"

Based on this authority, the subcommittee determined that the current rules are sufficient. In addition, the subcommittee concurred that compliance with a good faith conferral requirement should give parties some assurance that they will not be subject to sanctions when they bump up against disputes.

Memorandum

To: The Honorable Michael Berger, Chair of the Civil Rules Committee

From: John Lebsack for the Subcommittee on Revisions to C.R.C.P 15(a)

(Brad Levin, John Palmeri, Stephanie Scoville, Judge Webb)

Re: Whether to Change Rule 15(a)

Date: June 7, 2021

After taking another look at our proposed changes to C.R.C.P. 15(a) the subcommittee now believes that no changes are needed, except to replace male pronouns. That work is probably better done as part of a project to update all the rules, so the changes can be done on a consistent basis.

We earlier proposed adopting the federal rule, but the committee rejected that idea. We also proposed a simpler alternative, as follows:

> (a) Amendments. A party may amend ~~his~~ **a** pleading once as a matter of course at any time before a responsive pleading is filed **and prior to entry of an order dismissing the claims of the party** or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, ~~he~~ **the party** may so amend it any time within 21 days after it is filed. Otherwise, a party may amend ~~his~~ **a** pleading only by leave of court….

Adding the phrase "and prior to entry of an order dismissing the claims of the party" addresses potential problems that could arise after an order of dismissal that is not a final judgment. *DIA Brewing, LLC v. MCE-DIA, LLC*, 2020COA21, involved a dismissal that was a final judgment. *DIA Brewing* held that the right to amend without leave of court terminates with a dismissal order that is a final judgment. The case did not address whether the right to amend without leave terminates with a dismissal order that is not a final judgment (such as dismissing just one of several defendants or dismissing some claims but not all). There could be problems if an amended pleading is filed long after a partial dismissal order, based on the argument that the right amend still exists because there is no final judgment.

No one on the subcommittee has ever seen that happen. Although *DIA Brewing* leaves an opening opening for that argument, we believe the situation is so unlikely that it is not necessary to change the rule just to anticipate it. Changing the rule could have unintended consequences. Adding language to address all the hypothetical scenarios would lead to a very long rule. We question whether a rule amendment should be used to fill a gap rather than waiting for it to arise and letting an appellate court announce substantive law. The CMO could be used to set a time limit on amendments in the scenario where a dismissal order is not a final judgment.

From: berger, michael
Sent: Monday, March 23, 2020 7:57 AM
To: lee lnslaw.net; michaels, kathryn
Subject: Re: Virtual Oaths

Lee, I'm not aware of a Colorado statute that addresses this. As you know, CRCP 30 (b)(7)
expressly authorizes the taking of depositions by telephone or other remote electronic device
and subsection (c) of that rule requires that the witness shall be put under oath or affirmation,
but doesn't address the precise question you raise. If and when we ever have another civil
rules committee meeting, I will put this on the discussion agenda. Thanks for your inquiry. Stay
well.

Michael H. Berger

From: lee lnslaw.net <lee@lnslaw.net>
Sent: Saturday, March 21, 2020 12:01 PM
To: berger, michael <michael.berger@judicial.state.co.us>
Subject: Virtual Oaths

Michael,
Apparently the Fla. Supreme Court has just issued a rule which allows oaths, such as what is typically
required from a witness prior to deposition or testimony to be accomplished “over the phone” so the
person who administers it is not personally present with the witness / deponent. Since I have seen
some comments that “we should do the same thing” my assumption is that perhaps “we” haven’t. If so,
perhaps we should be suggesting it as ‘our” way of fostering “social disengagement”(?).