AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, September 24, 2021 1:30 p.m.

VIRTUAL MEETING VIA WEBEX—PLEASE SEE EMAIL FOR THE LINK

I. Call to order

II. Approval of March 26, 2021 minutes [Pages 3 to 6]

III. Announcements from the Chair

A. Proposed Crim. P. 24(d)(5)—Combatting Implicit Bias in the Exercise of Peremptory Challenges—(Judge Berger) [Page 7]

IV. Present Business

A. Proposed Amendments or New Rules Regarding Uniform Procedures in FED Actions—(Judge Espinosa) [Pages 8 to 12]

B. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims) [Pages 13 to 29]

C. Colorado Municipal Court Rules of Procedure 257—Proposed Changes from Chief Justice Boatright—(Judge Berger) [Pages 30 to 31]

D. SB 21-002—Remove COVID-19 Era Language From Forms 26, 29, 32, 33, and 250—(Judge Berger) [Pages 32 to 62]

E. C.R.C.C.P. 404(a)—Proposed Rule Change—(Judge Berger) [Pages 63 to 64]

F. C.R.C.P. 30(b)(6)—Possible Amendments in Light of Federal Rule Change—(Stephanie Scoville) [Pages 65 to 78]

G. 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 79]

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

I. C.R.C.P. 4(m)—(Judge Jones)

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

K. C.R.C.P. 30(b)(7)—Virtual Oaths—(Lee Sternal) [Page 80]

V. Adjourn—**Next meeting is November 12, 2021 at 1:30 pm.**

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

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
March 26, 2021 Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Jerry Jones 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 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	
Cheryl Layne	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Judge Sabino Romano		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

- March 26, 2021, agenda packet.

II. Announcements from the Chair

- The January 29, 2021, minutes were approved with the following changes: section I, the spelling of Judge Berger's name was corrected; section G, "fed" was changed to "FED"; section A, the second sentence was changed to start with "Its" rather than "Their"; section L, "their" was changed to "its"; section G, the spelling of Judge Lipinsky's name was corrected.
- Judge Jones announced that he will be substituting as chair for Judge Berger today.
- Judge Jones introduced new member Mandy Allen.

III. Present Business

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

Judge Lipinsky brought a proposal from the Access to Justice Commission regarding FED cases. The committee was formed in response to two problems. First, a large number of default judgements are entered because defendants don't know how to navigate the system. Second, there is a lack of uniformity of FED practices around the state. The proposal includes two new forms, a new rule, and updates to an existing rule.

Judge Davidson asked whether any of the changes are aimed at improving the rate of appearances of defendants in court. Judge Lipinsky said that the new advisement sheet would be served on the defendant and provides helpful information to the defendant which should help reduce the number of no-shows.

Lisa Hamilton-Fieldman suggested adding section 8 language to the advisement sheet.

Judge Jones said that this proposal will go to a new subcommittee and mentioned that it would be good to have landlord representation on the subcommittee. Members interested in joining the subcommittee should email Judge Berger and Kathryn.

B. JDF 105 + 28a

Subcommittee Chair Mike Hofmann brought proposed changes to Form 7 of the County Court forms. The changes make it clear that the clerk may but is not required to mail the interrogatories. The subcommittee also made changes for clarification and grammatical purposes.

The subcommittee is also proposing a new Form 28(a). The exemption amounts for debts under C.R.S. § 26-2-128(1)(A) – which covers garnishments for judgments for public assistance fraud – is different from the standard exemption amounts. Currently no form covers these debts; proposed new Form 28(a) would fix that.

A motion was taken and seconded for adoption of the changes to one form and the approval of the new form. The motion passed unanimously.

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

Subcommittee Chair John Lebsack reminded everyone that at the last meeting, the committee voted against adopting the revised federal rule. The subcommittee took another look at this issue, and it still recommends that the committee adopt the federal rule. There are two alternatives. 1. Adopt the federal rule in the format of the Colorado rule. 2. Codify the *DIA Brewing* case into the rule. The subcommittee believes the federal rule is the better choice. Currently, 8 states have adopted the federal change.

David DeMuro said that he is opposed to adopting the federal rule because the Colorado rule is working. He is also against alternative 2 because he doesn't think it codifies the case accurately. Mr. Lebsack said the proposed change goes beyond the case in the interest of clarity.

The committee discussed potential efficiencies and inefficiencies of adopting the federal rule. Michael Hofmann offered that the current rule works well and that *DIA Brewing* is a one-off that won't happen frequently, so this rule does not need to be changed. The committee also discussed the fact that the language proposed in option 2 could be more precise and could more correctly encapsulate the *DIA Brewing* case.

A motion and a second were taken to adopt the federal rule. It failed by a vote of 9 to 16. A motion and a second were taken to adopt the second option proposed by the subcommittee. The committee did not vote on this motion. A motion and a second were taken to table this issue and succeeded with a vote of 17 to 7. Judge Jones encouraged the subcommittee to tighten up the language in option 2 and get rid of ambiguities that some members noted. He noted his appreciation for the subcommittee's hard work.

D. JDF 1111

This issue came to the committee from a member of the public. Judge Brody offered that her subcommittee could consider this issue along with C.R.C.P. 16.2, as the issues are related. Judge Jones agreed and asked that the subcommittee consider these materials.

E. County Court Rules 304 and 307

Speaking to the proposed changes to Rule 304, Subcommittee Chair Ben Vinci said that this proposal to add a section mirrors Rule 4 while allowing for timing differences in county court. The new section codifies the process of dismissing a case if nothing is going on with it. Judge Jones commented that a subcommittee is currently considering changes to 4(m), so it might make sense to hold off on these changes until those are considered. He also noted that if this rule is approved, then the committee could revisit before submitting to the court following any approved changes to 4(m). A friendly amendment to use 26 weeks rather than 6 months was accepted. A motion was made and seconded and it passed 16 to 7 to approve the rule with the friendly amendment.

The committee next considered the proposed changes to Rule 312. Mr. Vinci explained that the proposal is a housekeeping change to remove the reference to Rule 307. This proposal doesn't substantively change the rule, it just removes a circular reference. A motion to approve was made and seconded. It passed 20 to 1.

F. C.R.C.P. 16.2
Passed over.

G. Colorado Rules for Magistrates
Passed over.

H. Crim. P. 55.1—Public Access to Court Records
Passed over.

I. C.R.C.P. 30(b)(6)
Passed over.

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

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

Future Meetings
June 25, 2021
September 24, 2021
November 12, 2021

The Committee adjourned at 3:55 p.m.

michaels, kathryn

From: berger, michael
Sent: Wednesday, April 28, 2021 11:29 AM
To: michaels, kathryn
Subject: FW: Proposed Crim P. 24(d)(5): Combatting Implicit Bias in the Exercise of Peremptory Challenges

Kathryn, please add Justice Samour's email to Judge Dailey to the June meeting packet.

Michael H. Berger

From: dailey, john <john.dailey@judicial.state.co.us>
Sent: Wednesday, April 28, 2021 11:05 AM
To: COA Judges <coajudges@judicial.state.co.us>
Subject: Proposed Crim P. 24(d)(5): Combatting Implicit Bias in the Exercise of Peremptory Challenges

FYI

From: samour, carlos <carlos.samour@judicial.state.co.us>
Sent: Thursday, April 22, 2021 11:32 AM
To: dailey, john <john.dailey@judicial.state.co.us>
Subject: Proposed Crim. P. 24(d)(5)

Dear Judge Dailey,

Earlier today, the Colorado Supreme Court voted unanimously to reject the Criminal Rules Committee's proposal to add Crim. P. 24(d)(5). The court asked me to thank the committee for its work on this proposal. If the committee comes up with a similar proposal in the future that has greater consensus, the court will, of course, consider it.

Best,

Carlos A. Samour, Jr.
Justice, Colorado Supreme Court

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 / FED

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 Plaintiffs may ask the Court ~~may be asked~~ to enter judgment against you. This means you will have to move out and it may mean you have to pay money to the landlord ~~as set forth in the complaint~~.

~~1.~~2. A copy of the complaint against you and an answer form ~~that you must use if you file an answer~~for you to use are attached.

~~2.~~3. If you do not agree with the complaint, then you must either:

a. ~~Go to the Court, located at: _____, Colorado, at the above date and time~~Attend the court date above and file an 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.

~~3.~~4. When you file your answer, you must pay a filing fee to the Clerk of the Court.

~~4.~~5. If you file an answer, you must personally serve or mail a copy to the Plaintiffs 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, ~~at~~ on or before the date and time ~~for appearance specified~~ 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.

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,
- 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.

~~5. 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.~~

~~6.~~8. If you are claiming that the landlord's failure to repair a ~~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.

~~7.~~**9.** 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.

~~8.~~**10.** If you cannot afford the filing fee or jury fee, file *JDF 205 - Motion to Waive Fees* and *JDF 206 - Order for Fee Waiver*~~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.~~**11.** 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.~~**12.** If the plaintiff is granted possession of the premises, the court r**ecords may remain suppressed** if both parties agree to suppress the records.

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

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

Address(es) of Plaintiffs: _____

Telephone Number(s) of Plaintiffs _____

This Summons is issued pursuant to C.R.S. § 13-40-111. A copy of the Complaint together with a blank answer 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 signature block for the clerk, deputy and~~ 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 Mailing

I/we~~, the undersigned Plaintiff(s) (or agent for Plaintiff(s))~~, certify that on *(date)* _____, the date on which the Summons, Complaint, and Answer 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 _____, the Defendants at the following address(es):

_____.

_____.

_____
Signature of: Plaintiffs / Agent for Plaintiffs

Colorado Revised Statutes section 13-40-111, 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."

~~"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.~~

13-40-111.1. 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.

MEMORANDUM

TO: The Civil Rules Committee
FROM: Marianne Tims on behalf of the subcommittee
DATE: September 10, 2021
RE: CRM Colorado Rules for Magistrates

Dear Judge Berger:

On July 2, 2019 a subcommittee was formed to simplify the Colorado Rules for Magistrates (CRM). The subcommittee includes: Judges Karen Brody, Tom Kane, John Webb and Chris Zenisek, retired Judge Sabino Romano, Dick Holme, Lisa Hamilton-Fieldman, Lee Sternal and me. We have met more than a dozen times with the same goal for the revision: to alleviate uncertainty and to simplify these rules. Ideally, we wanted the new CRM to describe how to get *into* a magistrate's division and how to get *out*.

"The Colorado Rules for Magistrates creates a 'confusing appellate labyrinth' perplexing both counsel and pro se parties alike, leading to the dismissal of a 'significant and perhaps unacceptable' number of appeals. *IRM Stockman*, 251 P.3d 541, 543 (Colo. App. 2010). Our subcommittee has endeavored to resolve as much of this confusion as possible.

In the summer of 2019 Judges Zenisek, Webb and I sent emails to our counterparts, Court of Appeals judges, district court judges, and magistrates to determine the top concerns with the CRM as written. We received more than 50 comments which boiled down to four major areas for simplification: consent, appeal, finality of a magistrate's order, and the ability of a magistrate to reconsider her own rulings. Until we were able to draft new CRM rules, we have reached out only to the Criminal Rules Committee and gotten feedback from a grassroots group comprised mostly of lawyers with domestic relations appellate practices. For this reason, we absolutely recommend that there be a public comment period as the changes are significant. While they streamline the

process and more closely define a magistrate's authority, each of the 22 judicial districts (18, as there are no magistrates in four districts) uses their magistrates somewhat differently. To be sure, cases have historically been referred to magistrates to alleviate the judges' caseload and to allow the parties a quicker decision. With additional magistrates in the current FY22 budget there are now approximately 95 magistrates statewide. Each judicial district will or may be impacted differently with these proposed changes.

Kathryn Michaels and Polly Brock assisted us in our work. Kathryn was able to provide a few other states' magistrates rules, and we also looked at the federal rules. None of these were instructive or helpful. Polly Brock, the Clerk of the Court of Appeals, confirmed that there is no code used to reflect an appeal straight from a magistrate to the Court of Appeals pursuant to CRM 7(b) and thus no way to know those annual numbers. She did run a query for me and came up with 117 cases; upon review there were only a handful over the course of three years that were direct appeals. When my data specialist in the First Judicial District fashioned her own query, there were only two cases since 2017 and of those, only one was an actual direct appeal that had not first been the subject of a judicial review.

ONE AVENUE FOR APPEAL

The current CRM differentiates between a magistrate's authority where parties must consent to the magistrate and where consent is unnecessary. The distinction originally stemmed from a desire to maintain a clear difference between magistrates and judges. The consent/no consent distinction also informs the appeal process for parties and counsel. Within the CRM, however, timeframes for appeal are inconsistent and the way one consents to a magistrate – or fails to object in some cases – differs between rules. Certainly, our charge was to make this procedure understandable to parties, counsel, judges and the court of appeals. This is overlaid with the fact that more than 75% of cases typically heard by magistrates include fewer than two lawyers; the revised rules need to be understandable to self-represented litigants as well.

With this information, we decided early on that there should be only one avenue for appeal. Every final judgment or order of a magistrate must first be the subject of a motion/petition for judicial review as a prerequisite before an appeal may be filed with the Colorado Court of Appeals or Colorado Supreme Court. In part, we believe sending any litigant straight from a magistrate to the Court of Appeals poses a significant, detrimental impact: the district court can review the magistrate's decision more promptly and at far less expense. We determined that it was worth the tradeoff for the district court to handle a few more judicial reviews so as to simplify the rules and avoid confusion for parties and counsel. We note that any appeal from the county court decision, including one by a magistrate, already must be to the district court. C.R.S. §13-6-310.

MAGISTRATE AUTHORITY

We determined that there should be a single, comprehensive list of magistrate authority, as a magistrate is a creation of statute and rule, being aware that there are certain statutory provisions that give magistrate additional authority. Magistrates' authority is found at §§19-1-108 (juvenile), 13-8-109 (Denver Juvenile Court), 13-6-501 (county court), 13-6-405 (small claims) and 13-5-201 (district court). Our discussion ended on the premise that either the authority is found within the new rules (CRM 6 and CRM 8), or it is not. A magistrate's authority is not and should not be the same as a judge's. The importance of an elected judge making a final decision to be appealed to an elected panel at the Court of Appeals is paramount while still being mindful that being heard by an elected judge is a higher priority perhaps than a quicker turnaround. This gives a clear direction whether one is entitled to a hearing before a judge and discourages judge shopping. We discussed whether such a list might be too limiting from some judicial districts and how they choose to allocate their magistrates. A dissenting voice on the subcommittee would like the ability for any lawyer or litigant to consent to a magistrate for anything including any case type or function. The remainder of the

subcommittee felt equally strongly that writing in an invitation to judge shop would be contrary to what we have been charged with in simplifying the CRM.

The subcommittee felt strongly that only a judge should be able to sentence discretionarily within a sentencing range and some feedback from the criminal rules committee suggested a magistrate have authority only for petty offense and traffic, leaving both felony and misdemeanor to the province of judges. We got no traction to move, wholesale, all current functions that require consent to the duties of a magistrate. In fact, we moved just a few. See proposed changes: CRM 6(a)(10) – (a)(12), CRM 6(b)(1) and (4); CRM 8(a)(5) through 8(a)(8) and CRM 8(b)(6).

Because magistrates are used differently throughout the State, this is sure to be part of the public comment. By and large, magistrates are assigned to domestic relations, juvenile, small claims, traffic and county court tasks. Only Boulder is known to have an assigned district civil magistrate. We discussed, and propose, that a civil magistrate would have only limited, pre-trial authority. Please note there is a strenuous objection to giving a magistrate any authority in civil cases for pretrial practice, status conferences, discovery disputes or any part of active case management under Rule 16, C.R.C.P. We determined the only way to eliminate the with/without consent is to have one list of magistrate authority. We chose with a single list of authority, a policy determination that the function stays or drops away causing some disruption; we have received comments that in the eyes of some, use of a magistrates can degrade a citizens' entitlement to have major decisions performed by a constitutionally-vetted judge.

Magistrates have historically been precluded from reconsidering their own orders. This was premised on the idea that a litigant's highest priority is a final order. In practice this means that if a magistrate makes a mistake, he is unable to correct it. What might have been easily solvable now must instead be the basis for a request for judicial review. We considered at length these competing policies and ultimately concluded that a very narrow timeframe for the magistrate to reconsider makes sense in light of reaching a just, expedient and inexpensive resolution to cases. To allow for this, we are

recommending a one-week increase to 28 days for a request for judicial review; but within that 28 days allowing 7 for a motion to reconsider or correct clerical errors, 7 days for a response and 7 days for the magistrate to enter a ruling. None of these extends the 28 days for a party to seek judicial review. It might be that the magistrate's reconsidered ruling resolves the issue without the need for judicial review. A limited ability to reconsider weighs the need for a magistrate to fix any mistakes with not delaying a final order so that the judicial review process can proceed. In the new proposed CRM 7, the time for judicial review continues to run regardless of whether a reconsideration is sought.

A general complaint about the judicial review process is that it can sometimes take months to years for the district court to rule. We discussed whether a time limit should be imposed so that if there is to be an appeal to the Court of Appeals, there is a reasonable time within which to file. On one hand, while we do not believe judges would just let motions for review sit, judges have other competing priorities which have certainly be exacerbated by COVID backlogs. By imposing a "deemed denied" deadline, the worry is that a request for judicial review could be ignored and result in the denial of a meaningful, substantive review of a magistrate's ruling. On the other hand, a "deemed denied" deadline keeps the case moving and addresses litigants' expectations for a final order from the trial court that can be appealed. We worry, however, than most issues will not be appealed downtown: the cost and difficulty of a party navigating another set of rules is often too much. The result could be a non-constitutionally vetted judicial officer making a ruling that never sees the scrutiny of an elected judge. Nevertheless, there was strong support for a "deemed denied" end point. In proposed CRM 7 we recommend it to be 63 days after the filing of a motion for judicial review or receipt of the transcript should one be request and provided to the district court. Although somewhat arbitrary, it is the same timeframe for post-judgment relief found in Rule 59(j), C.R.C.P.

With this in mind: simple, understandable and all appeals from a magistrate must first go to the district court for review, we propose the following changes in the CRM – Rules 3, 5, 6, 7, and 8 (no changes are proposed to Rules 1, 2, 4, 9, 10, or 11).

Rule 1. Scope and Purpose

These rules are designed to govern the selection, assignment and conduct of magistrates in civil and criminal proceedings in the Colorado court system. Although magistrates may perform functions which judges also perform, a magistrate at all times is subject to the direction and supervision of the chief judge or presiding judge.

Rule 2. Application

These rules apply to all proceedings conducted by magistrates in district courts, county courts, small claims courts, Denver Juvenile Court and Denver Probate Court, as authorized by law, except for proceedings conducted by water referees, as defined in Title 37, Article 92, C.R.S., and proceedings conducted by masters governed by C.R.C.P. 53.

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 4. Qualifications, Appointment, Evaluation and Discipline

The following rules shall apply to all magistrates and proceedings before magistrates:
(a) To be appointed, a magistrate must be a licensed Colorado attorney with at least five years of experience, except in Class "C" or "D" counties the chief judge shall have the discretion to appoint a qualified licensed attorney with less than 5 years experience to perform all magistrate functions.
(b) All magistrates shall be attorneys-at-law licensed to practice law in the State of Colorado, except that in the following circumstances a magistrate need not be an attorney:
(1) A magistrate appointed to hear only Class A and Class B traffic infractions in a county court;
(2) A county court judge authorized to act as a magistrate in a small claims court;
(3) A county court judge authorized to act as a county court magistrate.
(c) All magistrates shall be appointed, evaluated, retained, discharged, and disciplined, if necessary, by the chief or presiding judge of the district, with the concurrence of the chief justice.
(d) Any person appointed pursuant to these rules as a district court, county court, probate court, juvenile court, or small claims court magistrate may, if qualified, and in the discretion of the chief or presiding judge, exercise any of the magistrate functions authorized by these rules.

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(5).~~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) 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.~~

(g) [repealed]

(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)~~ 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) Enter stipulated deferred prosecution and deferred sentence pleas.

(11) Enter stipulations that modify the terms and conditions of probation or deferred prosecutions and deferred sentences.

(12) Impose stipulated sentences to probation in cases assigned to problem solving courts.

~~(J)~~(13) 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 p~~Preside 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) A district court magistrate shall have the power~~
(3) ~~t~~To 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~~
(4) P~~p~~reside 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)~~ 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.
~~(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)~~ 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.
~~(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~~ that except as otherwise provided by statute, ~~in a proceeding in which consent is not necessary a written notice that~~ the order or judgment may not be taken to an appellate court unless within ~~was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21~~ 28 days of the date the order or judgment becomes final, a petition for review has been filed with the district court as provided in this ~~pursuant to~~ Rule 7(a).
(1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment ~~issued in a proceeding in which consent of the parties is not necessary~~.
(2) 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) Only a final order or judgment of a magistrate is reviewable under this Rule. A final order or judgment must ~~is that which~~ fully resolve~~s~~ an issue or claim. It is not reviewable until it is written, dated, and signed by the magistrate. A minute order that is signed and dated by a magistrate shall constitute a written order or judgment.
(4) ~~A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.~~
~~(5)~~ A party may obtain review of a magistrate's final order or judgment by filing a petition to review such final order or judgment with the reviewing judge no later than ~~14~~ 28 days from the date the ~~subsequent to the final~~ order or judgment becomes final~~if the parties are present when the magistrate's order is entered, or 21 days from the date the final order or judgment is mailed or otherwise transmitted to the parties~~.
(5) Within 7 days of the date the order or judgment became final, 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 expended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date of the order or judgment.
(6) 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 final.
~~(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) 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 be served on all parties. This date cannot be extended. The moving party may not file a reply.

(8) The review~~ing~~ is solely on the record of the proceeding before the magistrate. The reviewing judge shall consider the petition for review ~~on the basis of the petition~~ and any statements~~briefs~~ filed, together with such review of the record as is ~~necessary~~ available. If a transcript of the proceedings before the magistrate was not requested, t~~. T~~he reviewing judge shall presume that the record would support the magistrate's findings of fact~~also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under 6(c)(1) which effectively ends a case shall be subject to de novo review~~.

(9) Findings of fact made by the magistrate must be accepted by the reviewing judge unless they are ~~ay not be altered unless~~ clearly erroneous. Conclusions of law made by the magistrate and any order entered under Rule 6(c)(1) that effectively ends a case shall be subject to de novo review.~~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) If t~~T~~he reviewing judge concludes that findings of fact made by the magistrate were clearly erroneous or the magistrate made an error of law, the reviewing judge may remand the matter to the magistrate, take additional evidence, or order a de novo hearing in the district court.

(11) 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 later of the filing date of (i) the petition or (ii) the transcript, if the reviewing judge determines that a transcript is necessary, shall, without further action by the reviewing judge, be denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and the time for appeal shall commence as of that date.

~~(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) 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 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)~~ 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)~~ 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 nondisositive ~~civil trials to court and~~ hearings on 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.

Rule 9. Review of County Court and Small Claims Court Magistrate Orders or Judgments

(a) An order or judgment of a county or small claims court magistrate shall be the order or judgment of the county or small claims court.
(b) Any party to a proceeding before a county court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the county court.

(c) Any party to a proceeding before a small claims court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the small claims court.

Rule 10. Preparation, Use, and Retention of Record

(a) Record of Proceedings. Except as provided in C.R.C.P. 16.2(c)(2)(e), a verbatim record of all proceedings and trials conducted by magistrates shall be maintained by either electronic devices or by stenographic means. The magistrate shall be responsible for maintaining such record and, in the event of subsequent review, for certifying its authenticity.
(b) Use of the Record. If otherwise admissible, a certified transcript of the testimony of a witness at a trial or other proceeding before a magistrate may be admitted as evidence in a later trial or proceeding.
(c) Custody and Retention of Record. A reporter's notes or the electronic recordings of trial or other proceedings conducted by a magistrate shall be the property of the state, and shall be retained by the appropriate court for a period prescribed in the Colorado Judicial Department Records Management manual. During the period of retention, notes and recordings shall be made available to the reporter of record, or to any other reporter or person the court may designate. During the trial or the taking of other matters on the record, the notes and recordings shall be considered the property of the state, even though in custody of the reporter, judge, or clerk. After the trial and review or appeal period, the reporter shall list, date and index all notes and recordings and shall properly pack them for storage. Where no reporter is used, the clerk of the court shall perform this function. The court shall provide storage containers and space.

Rule 11. Title of Rules and Abbreviation

The title to these rules shall be Colorado Rules for Magistrates and may be abbreviated as C.R.M.

STATEMENT OF PARTIAL DISSENT

At the same time I declare my agreement to almost all of the proposed amendments and modifications to our Magistrate Rules I believe further consideration should be given to three issues before we give them our recommended adoption.

Concern #1 is that there is no requirement that a magistrate reside in the judicial district where their services are to be rendered. Since such judicial district residency is a requirement for our County Court and District court judges why should it not also be applicable to the magistrates since they will, essentially, be performing almost all the same duties as our appointed judges?

My suggested remedy to moot this difficult to defend discrimination is insertion, perhaps withing proposed Rule 3 in subsection (a) after "other than a judge" of:

> "…but a resident of the judicial district of the appointing authorized by statute judge or by these rules to enter…."

Concern #2 is that proposed Rule 6 (c)(5) extends magistrate authority to "all C.R.CP. 16 and 16.l matters". Rule 16 controls our civil litigation process. It is why we care who gets to be our appointed judges. How Rule 16 issues are addressed and ruled upon is what provides the basis for not only our but also the public's judicial evaluation and retention opinions. The degree of discretion that is afforded to Rule 16 orders is what makes how Rule 16 authority is administered the most important civil justice function a court possesses.

It is because that right to control the scope and speed of the litigation process gives such extreme importance to Rule 16 that its authority should not be delegated to a magistrate UNLESS it is with the specific written consent or stipulation of the litigants. To suggest that it would be appropriate for a judge to delegate his, or her, rule 16 authority to a magistrate, frankly, should beg question as to the level of possessed judicial commitment to the responsibilities of their office.

The argument that withholding Rule 16 authority from magistrate administration will result in unacceptable delays in the progress of a case overlooks two important questions. The first is whether adequate time could be conserved for the prompt and competent handling of Rule 16 issues if the Court assigned other of its docket matters to the Magistrate. The second is whether the concern for judicial "finality" should be allowed to outweigh the perception of achieved "fairness".

Frankly, adoption of the proposed change to Rule 6 which allows a judge to renounce his, or her, rule created obligation to administer Rule 16, will create a new and important issue for both the judicial appointment process and for the judicial evaluation process. To remedy this concern that a judge should not be afforded this opportunity to avoid this most important of their undertaken civil obligations and responsibilities, let me propose consideration of insertion of the following at (c) as the preamble to (5):

> "With the expressed consent or stipulation of the litigants,"….(to hear and rule upon all….C.R.C.P.16 and 16.1 matters).

My third concern is we are left without further modification to Proposed Magistrate rule 9 in respect to orders of County Court magistrates. While Rule 9 does create the apparent avenue of "appeal" it is on a street that, in some situations , dead ends at the district court . Subjecting the right to appeal to the process applicable to "judgments of the county court" takes us, in some cases, to C.R.S. 13-6-310 (4) which mandates that any appeal from the district court is only by "writ of certiorari".So, while our subcommittee has engaged in this proposed revision process with the overall goal of allowing eventual Court of Appeals review of any magistrate order, we have left this county court "loophole".

A suggested modification to recognize our intent to allow for eventual COA review of any magistrate order is to modify present Rule 9 at subsection (b) and (c) by deletion of the present reference to "statute" and end the sentences with:

> "…authorized by above rule 7"

At the same time proper compliance with our proposed Rule 7 to pursue appeal will hardly be either an easy or inexpensive experience, it would still be more welcome and more likely to achieve an acceptable review than what is presently affordable only by seeking the "discretion of the supreme court". In respect to proposed rule 7(12), however, I believe it would be helpful to insert in its final sentence after "Appeal of such"..the addition of "non reviewed".

Submitted for consideration this 13th day of September, 2021,

Lee N. Sternal

From: stevens, cheryl
Sent: Monday, April 26, 2021 8:23 AM
To: michaels, kathryn
Subject: Rule 257
Attachments: Rule 257.docx

Hi Kathryn,
I tweaked this change a bit and I think we should just take it to the committee in June letting them know
it is at the request of the Chief. Given the rarity of this occurrence, I don’t think there is any reason to
rush it through.

Thanks.

Rule 257. Rules of Court

All municipal court local rules, including local municipal procedures and standing orders having the effect of municipal court local rules, enacted before February 1, 1992, are hereby repealed. Each municipal court, by a majority of its judges, may from time to time propose municipal court local rules and amendments of municipal court local rules. Proposed rules and amendments shall not be inconsistent with the Colorado Rules of Municipal Court Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in municipal courts. A proposed local rule or amendment shall not be effective until it is approved by the Supreme Court. To obtain approval, three copies of any proposed local rule or amendment shall be submitted to the Supreme Court through the Clerk of the Supreme Court. ~~the office of the State Court Administrator~~. Reasonable uniformity of municipal court local rules is required. ~~Numbering and format of any municipal court local rule shall be as prescribed by the Supreme Court. Numbering and format requirements are on file at the office of the State Court Administrator.~~ The Supreme Court's approval of a municipal court local rule or local procedure shall not preclude review of that rule or procedure under the law or circumstances of a particular case. Nothing in this rule is intended to affect the authority of a municipal court to adopt internal administrative procedures not relating to the conduct of formal judicial proceedings as prescribed by the Colorado Rules of Municipal Court Procedure.

From: slagle, sean
Sent: Thursday, June 17, 2021 9:04 AM
To: michaels, kathryn
Cc: cooley, kayla
Subject: Re: Writ Forms Updates

Hi Kathryn,

It’s topsy-turvey for sure. Hopefully this will clarify:

* SB21-002 extended the COVID era collection protections. They were set to expire February 1, 2021, but the bill pushed that back to June 1, 2021.

* Forms 26, 29, and 47 specifically mentioned the February 1, 2021 end date. We proposed edits to change that date in the forms to June 1, 2021.

* Since those protections have now sunset, the changes we submitted in February are now moot.

* The new edits remove the COVID era protection language from forms 26, 29, 32, and 33 altogether.

* Form 47 was a Notice to the Garnishee about the COVID collection protections. This entire form is now moot and can be removed.

* JDF 250 edits are unaffected.

Thank you,

Sean Slagle, JD (she/her)
JDF Program – Coordinator & Editor
Judicial Access & Inclusion Unit
Court Services Division | SCAO

SENATE BILL 21-002

BY SENATOR(S) Winter and Gonzales, Bridges, Buckner, Coleman, Donovan, Fenberg, Fields, Ginal, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Rodriguez, Story, Garcia;
also REPRESENTATIVE(S) Herod, Amabile, Arndt, Bacon, Bernett, Bird, Caraveo, Cutter, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Hooton, Jackson, Kipp, Lontine, McCluskie, McCormick, McKean, Michaelson Jenet, Mullica, Ortiz, Roberts, Snyder, Sullivan, Tipper, Titone, Valdez A., Weissman, Woodrow, Garnett.

CONCERNING MODIFICATION OF THE LIMITATIONS ON CERTAIN DEBT COLLECTION ACTIONS ENACTED IN SENATE BILL 20-211.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-33.5-704.3, **amend** (2), (4), (5)(a)(I), and (5)(b); **repeal** (3); and **add** (5)(c) as follows:

24-33.5-704.3. Temporary prohibition on extraordinary collection actions - definitions - repeal. (2) In order to protect Colorado residents during the public health crisis caused by COVID-19, for the time period beginning on the effective date of this section and ending on ~~November 1, 2020,~~ JUNE 1, 2021, a judgment creditor shall not initiate or

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

maintain a new extraordinary collection action except in accordance with the requirements of this section. A court of record shall deny without prejudice any request for issuance of a writ or legal process to effect an extraordinary collection action if the court finds that the action does not comply with the requirements of this section. During the time period described in this subsection (2), ~~and as it may be extended under subsection (3) of this section,~~ the use of an extraordinary collection action NOT IN ACCORDANCE WITH THIS SECTION constitutes an unfair and unconscionable means of collecting a debt under section 5-16-108.

(3) ~~The administrator of the "Uniform Consumer Credit Code", as defined in section 5-16-103 (1), may issue an order extending the prohibition set forth in subsection (2) of this section through February 1, 2021, if the administrator finds that such an extension is necessary to preserve and prioritize the resources of state and local agencies or to protect Colorado residents from economic hardship as a result of the disaster emergency caused by COVID-19.~~

(4) For the duration of the period established in subsection (2) of this section, ~~and as it may be extended under subsection (3) of this section,~~ prior to the execution or service of a writ or legal process intended to effect an extraordinary collection action, the judgment creditor shall provide a written notice to the judgment debtor. The notice must be sent to the judgment debtor at least ten days, but not more than sixty days, prior to the execution or service of a writ or legal process intended to effect the extraordinary collection action during the duration of the period established in accordance with subsection (2) of this section. ~~and as it may be extended under subsection (3) of this section.~~

(5) (a) (I) The notice required by subsection (4) of this section must be in at least sixteen point type face, and must include the following:

"YOU HAVE THE RIGHT TO TEMPORARILY SUSPEND THIS COLLECTION ACTION IF YOU ARE FACING FINANCIAL HARDSHIP DUE TO THE COVID-19 EMERGENCY.

Judgment Creditor Name:
Judgment Creditor Address:
Case Number:
Phone:

The above judgment creditor intends on executing a collection action against you. If you have experienced financial hardship due to the COVID-19 emergency, directly or indirectly, you have the right to suspend temporarily this extraordinary collection action. The suspension is effective until ~~November 1, 2020, or February 1, 2021, if the state of Colorado extends the period of suspension~~ JUNE 1, 2021.

To exercise this right, you must notify the judgment creditor that you are experiencing financial hardship due to the COVID-19 emergency. You can provide this notice by phone call or by writing to the creditor at the address shown in this notice. Your notification to the judgment creditor must include your full name (first and last), the case number identified above and at least one (1) additional piece of the following information: your date of birth, social security number, physical and mailing addresses, or the judgment creditor's internal account number or identifier, if different from the case number designated above. You are not required to provide documentation to support your request.

NOTE: Requesting the temporary suspension of this extraordinary debt collection action is not a waiver of the obligation to pay or debt forgiveness. Interest may continue to accrue on the judgment debt even while extraordinary collection actions are suspended.

You may enter into a voluntary repayment plan with the judgment creditor, but you are not required to do so."

(b) The notice requirements under this section terminate once the period proscribed in subsection (2) of this section ~~and as it may be extended under subsection (3) of this section,~~ expires. The notice must be sent to a judgment debtor at the debtor's last known address to the judgment creditor. An additional copy of the notice must also be served with the writ of garnishment. In the case of a writ of continuing garnishment for wages, the notice must accompany the writ served upon the garnishee. The failure of the garnishee or its agent to provide the notice to the judgment debtor required by this subsection (5) does not create a cause of action or remedy against a judgment creditor.

(c) IF, BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (5)(c), A JUDGMENT CREDITOR PROVIDED A NOTICE TO A JUDGMENT DEBTOR STATING THAT THE PERIOD OF SUSPENSION IS EFFECTIVE UNTIL NOVEMBER 1, 2020, OR FEBRUARY 1, 2021:

(I) IF THE JUDGMENT DEBTOR NOTIFIED THE JUDGMENT CREDITOR

THAT THE JUDGMENT DEBTOR WAS EXPERIENCING FINANCIAL HARDSHIP IN ACCORDANCE WITH THE REQUIREMENTS OF THE NOTICE, THE PERIOD OF SUSPENSION IS EXTENDED TO JUNE 1, 2021.

(II) IF THE JUDGMENT DEBTOR DID NOT RESPOND TO THE NOTICE AND THE JUDGMENT CREDITOR DID NOT EXECUTE OR SERVE A WRIT OR LEGAL PROCESS INTENDED TO EFFECT THE EXTRAORDINARY COLLECTION ACTION BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (5)(c), THE JUDGMENT CREDITOR SHALL PROVIDE A NEW NOTICE PRIOR TO THE EXECUTION OR SERVICE OF A WRIT OR LEGAL PROCESS IN ACCORDANCE WITH SUBSECTIONS (4) AND (5)(a)(I) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 13-54-102, **amend** (1)(w)(I) as follows:

13-54-102. Property exempt - definitions - repeal. (1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(w) (I) Through ~~February 1, 2021,~~ JUNE 1, 2021, up to four thousand dollars cumulative in a depository account or accounts in the name of the debtor.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED January 21, 2021 at 9:50 am
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

❑County Court ❑District Court _____ County, Colorado Court Address: Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ **Court Use Only** ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

Writ of Continuing Garnishment

Read This Whole Document

~~❑This writ is in compliance with the requirements of 24-33.5-704.3 and 13-54-102, C.R.S. to initiate or maintain a new extraordinary collection action. Certain provisions of these statutes expire on June 1, 2021.~~

Judgment Debtor's name, last known physical and mailing addresses or a statement that Judgment Debtor's physical and mailing addresses are not known, and other identifying information: _____
_____

1. Original or Revived Amount of Judgment Entered on _____ (date) for $_____

a. Effective Garnishment Period
- ❑91 days (Judgment entered prior to August 8, 2001)
- ❑182 days (Judgment entered on or after August 8, 2001)

2. Plus any Interest Due on Judgment (currently_____% per annum) $_____

3. Taxable Costs (including estimated cost of service of this Writ) $_____

4. Less any Amount Paid $_____

5. Principal Balance/Total Amount Due and Owing $_____

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

❑ 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.

_____
Print Judgment Creditor's Name

Address: _____
_____

By: _____
Signature (Type Name, Title, Address and Phone)

Writ of Continuing Garnishment

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:
You are directed to serve **Two Copies** of this Writ of Continuing Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

To The Garnishee: You Are Summoned as Garnishee in This Action and Ordered:

a. To answer the following questions under oath and file your answers with the Clerk of Court AND mail a completed copy with your answers to the Judgment Creditor or attorney no later than 7 days after you have been served with this writ. **Your failure to answer this writ of continuing garnishment may result in the entry of a default against you.**

b. To pay any nonexempt earnings to the party designated in "e" below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).

c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, and a blank Objection to Calculation of the Amount of Exempt Earnings form, and an Explanation Of Wage Garnishment In Colorado to Judgment Debtor on the same day the copy of this Writ and Calculation of the Amount of Exempt Earnings are sent to Judgment Creditor.

d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.

e. **Make Checks Payable and Mail To:** ❑Judgment Creditor named above (only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); ❑Judgment Creditor's Attorney (if applicable); or to the ❑ Clerk of the ❑County Court or ❑District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.)

Name: _____
Address: _____
Please - put the case number (shown above) on the front of the check.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

Notice to Garnishee

a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**

b. "**Earnings" includes all forms of compensation for Personal Services.** Also read "Notice to Judgment Debtor" below.

c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.

d. **If you determine that the judgment debtor is your employee and the Writ of Continuing Garnishment contains all required information, you are required to send the judgment debtor this Writ of Continuing Garnishment and the document attached to it titled "EXPLANATION OF WAGE GARNISHMENT IN COLORADO" on the same day that you send your answer to this Writ of Continuing Garnishment to the judgment creditor.**

Questions to be Answered by Garnishee

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. Is the Judgment Debtor your employee?
1. ☐Yes
2. ☐No

b. Does the Writ of Continuing Garnishment contain: the name of the Judgment Debtor, the last-known physical and mailing addresses of the Judgment Debtor or a statement that the information is not known, the amount of the Judgment, information sufficient to identify the judgment on which the continuing garnishment is based, an Explanation of Wage Garnishment in Colorado?
1. ❑Yes
2. ❑No

c. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):

1. ❑WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES NOT INCLUDING TIPS (Earnings)

2. ❑Health, Accident or Disability Insurance Funds or Payments

3. ❑Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)

4. ❑Health insurance coverage provided by you and withheld from the individual's earnings

If you marked any box above, indicate how the Judgment debtor is paid: ❑weekly ❑bi-weekly ❑semi-monthly ❑monthly ❑other

The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line1a (front of this Writ), starting at least twenty-one days after you were served with this Writ of Garnishment:_____
_____

d. Are the Judgment Debtor's earnings subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended? If so mark the appropriate boxes and list the nature, number, and amounts of these deductions and the relative priority of this Writ of Garnishment (Mark appropriate box(es)):

5. ❑Writ of Garnishment for Support (Expected Termination Date: _____)

6. ❑Writ of Continuing Garnishment (Expected Termination Date: _____)

7. ❑Any additional deductions (Expected Termination Date: _____)

e. If in paragraph c. above you marked Box 1 and you did NOT mark either Box 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

f. If in paragraph c. above you marked Box 2, 3, or 4 and you did NOT mark either Box 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 5, 6, or 7, you must complete Calculations beginning with the first pay period following termination of the prior writ(s) that is at least twenty-one days after service of this writ on you. However, there are a number of total exemptions, and you should seek legal advice about such exemptions. **If the earnings are totally exempt, please mark box 8 below:**

8. ❑The earnings are totally exempt because:_____

Calculation of The Amount of Exempt Earnings (Each Pay Period)

Gross Earnings for the pay period from _____ thru _____ $ _____

Less Deductions Required by Law (For Example, Withholding Taxes, FICA, Costs for Employer-Provided Health Insurance Withheld From Earnings) - $ _____

Disposable Earnings (Gross Earnings less Deductions) = $ _____

Less Statutory Exemption (Use Exemption Chart Below) - $ _____

Net Amount Subject to Garnishment = $ _____

Less Wage/Income Assignment(s) During Pay Period (If Any) - $ _____

Amount to be withheld and paid = $ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	**PAY PERIOD**	**AMOUNT EXEMPT IS THE GREATER OF:**
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings,a blank Objection to Calculation of the Amount of Exempt Earnings form, and an EXPLANATION OF WAGE GARNISHMENT IN COLORADO form to the Judgment Debtor.

Name of Garnishee (Print) _____
Address _____
Phone Number _____

_____
Name of Person Answering (Print)

_____
Signature of Person Answering

Explanation of Wage Garnishment in Colorado

Notice of garnishment to judgment debtor.
Money will be taken from your pay if you fail to act.

1. Why am I getting this notice?

You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money.

Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

2. How much do I owe?

The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the Writ of Garnishment. The amount could also go down if you make payments to Creditor.

3. How will the amount I owe be paid?

The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for

up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment.

The rules about how much of your pay can be taken are explained in the notice of Colorado Rules About Garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

4. Do I have options?

Yes, you have several options, here are three of them:

A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.

B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.

C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

5. What if I don't do anything?

If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

6. How does garnishment work in Colorado?

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are.

The amount of your disposable earnings that can be garnished is determined by comparing two numbers: (1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under **4. Do I have options?**

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that $ _____ will be withheld from each paycheck that is subject to garnishment.

❑County Court ❑District Court _____ County, Colorado Court Address: Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ **COURT USE ONLY** ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
Writ of Garnishment with Notice of Exemption and Pending Levy	

~~❑This writ is in compliance with the requirements of 24-33.5-704.3 and 13-54-102, C.R.S. to initiate or maintain a new extraordinary collection action.~~

~~Certain provisions of these statutes expire on June 1, 2021.~~

The Judgment creditor is (check one): ❑a licensed collection agency pursuant to §5-16-101, et. seq., C.R.S.; ❑represented by an attorney; or ❑not represented by an attorney and is not a licensed collection agency pursuant to §5-16-101 et. seq., C.R.S.

Judgment Debtor's name, last known address, other identifying information:_____

_____

_____

1. Original Amount of Judgment Entered _____(date) $ _____
2. Plus any Interest Due on Judgment (currently_____% per annum) + $_____
3. Taxable Costs (including estimated cost of service of this Writ) + $_____
4. Less any Amount Paid - $_____
5. Principal Balance/Total Amount Due and Owing = $_____

☐ 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.

_____

Verification

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct and I am authorized to act for the Judgment Creditor.

_____
Printed name of Judgment Creditor

_____
Address City State Zip Code

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country

_____ _____
Printed name of Authorized Party Signature of Authorized Party (Title,and Phone No.)

_____
Address City State Zip Code

Writ of Garnishment with Notice of Exemption and Pending Levy

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:
You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

To The Garnishee:
You are hereby summoned as garnishee in this action and ordered:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you.

Your failure to answer this writ with notice may result in the entry of a default against you.

b. To hold pending court order the personal property of any kind (other than earnings of a natural person) in your possession or control, including the debts, credits, choses in action or money owed to the Judgment Debtor whether they are due at the time of the service of the writ or are to become due thereafter.

You Are Notified:

a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. After you file your answers to the following questions, and after receiving a separate notice or order from the court, **make checks payable** and mail to: ❑the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); ❑the Judgment Creditor's Attorney (if applicable); or to the ❑Clerk of the ☐County Court or ☐District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.) at the address below:

Name: _____
Address: _____
Please Put the Case Number (Above) on the Front of the Check.

CLERK OF THE COURT

By Deputy Clerk: _____
Date: _____

Questions to be Answered by Garnishee

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Judgment Debtor?
❑**YES** ❑**NO**

b. If **YES**, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____
_____

c. Do you claim any setoff against any property, debt or obligation listed above? ❑**YES** ❑**NO**

d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed:
(Attach additional pages if necessary): _____
_____

Verification

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the foregoing is true and correct.

Name of Garnishee (Print) _____

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country

_____ _____
(Printed name of Person Answering) Signature of Person Answering

Notice to Judgment Debtor of Exemption and Pending Levy

This Writ with Notice is a Court order which may cause your property or money to be held and taken to pay a judgment entered against you. You have legal rights which may prevent all or part of your money or property from being taken. That part of the money or property which may not be taken is called "exempt property". A partial list of "exempt property" is shown below, along with the law which may make all or part of your money or property exempt. The purpose of this notice is to tell you about these rights.

Partial List of Exempt Property

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing, jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade and certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, attributed to an earned income tax credit or child tax credit, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.
3. Worker's compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.
8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §231m.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Police Officer's and Firefighter's pension fund payments under Sections 31-30-1117 & 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service retirement benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(1)(s), C.R.S.
21. A Court-ordered child support or maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.
22. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.
23. Through February 1, 2021, ," up to four thousand dollars cumulative in a depository account or accounts in the name of the debtor under Section 13-54-102, C.R.S.

If the money or property which is being withheld from you includes any "exempt property," you must file within 14 days of receiving this notice a written Claim of Exemption with the Clerk of the Court describing what money or property you think is "exempt property" and the reason that it is exempt. YOU MUST USE THE APPROVED FORM attached to this Writ or a copy of it. When you file the claim, you must immediately deliver, by certified mail, return receipt requested, a copy of your claim to the Garnishee (person/place that was garnished) and to the Judgment Creditor's attorney, or if none, to the Judgment Creditor at the address shown on this Writ with Notice. Notwithstanding your right to claim the property as "exempt," no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt.

Once you have properly filed your claim, the court will schedule a hearing within 14 days. The Clerk of the Court will notify you and the Judgment Creditor or attorney of the date and time of the hearing, by telephone, by mail or in person.

When you come to your hearing, you should be ready to explain why you believe your money or property is "exempt property". If you do not appear at the scheduled time, your money or property may be taken by the Court to pay the judgment entered against you.

Remember that this is only a partial list of "exempt property"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

You must act quickly to protect your rights. Remember, you only have 14 days after receiving this notice to file your claim of exemption with the Clerk of the Court.

❑County Court ❑District Court _____County, Colorado Court Address: _____ Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	**COURT USE ONLY**
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

Writ of Garnishment – Judgment Debtor other than Natural Person

❑~~This writ is in compliance with the requirements of 24-33.5-704.3 and 13-54-102, C.R.S. to initiate or maintain a new extraordinary collection action.~~

Judgment Debtor's name, last known address, other identifying information: _____
_____

1. Original Amount of Judgment Entered _____(date) $ _____
2. Plus any Interest Due on Judgment (currently_____% per annum) + $_____
3. Taxable Costs (including estimated cost of service of this Writ) + $_____
4. Less any Amount Paid - $_____
5. Principal Balance/Total Amount Due and Owing = $_____

Verification

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Judgment Creditor and the foregoing is true and correct.

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country

_____
Printed name of Judgment Creditor

Address of Judgment Creditor: _____
City State Zip Code

By: _____ _____
Printed name Signature

Address: _____
City State Zip Code Phone

Writ of Garnishment

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:
You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.
TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answer to the Judgment Creditor or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you.

Your failure to answer this writ with notice may result in the entry of a default against you.

b. To hold pending court order any personal property owed to or owned by the Judgment Debtor and in your possession or control on the date and time this Writ was served upon you.

You Are Notified:

a. This Writ of Garnishment applies to all personal property owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. After you file your answers to the following questions, **and after receiving a separate notice or order from the court,**

MAKE CHECKS PAYABLE AND MAIL TO: ❑the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); ❑the Judgment Creditor's Attorney (if applicable); or to the ❑Clerk of the □County Court or □District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.) at the address below:

Name: _____
Address: _____
PLEASE PUT THE CASE NUMBER (above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT By Deputy Clerk: _____
Date: _____

Questions to be Answered by Garnishee

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys to the Judgment Debtor?
❑**YES** ❑**NO**

b. If **YES,** list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages is necessary): _____
_____
_____

c. Do you claim any setoff against any property, debt or obligation listed above?
❑**YES** ❑**NO**

d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed:
(Attach additional pages if necessary): _____
_____
_____

Verification

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the above answers are true and correct.

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country

_____
Printed name of Garnishee

Address of Garnishee: _____

City State Zip Code Phone

By: _____ _____
Printed name of Person Answering Signature of Person Answering

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

Writ of Garnishment in Aid of Writ of Attachment

~~❑This writ is in compliance with the requirements of 24-33.5-704.3 and 13-54-102, C.R.S. to initiate or maintain a new extraordinary collection action. Certain provisions of these statutes expire on November 1, 2020, unless extended by the Administrator to a date not later than February 1, 2021.~~

Defendant in Attachment's name, last known address, other identifying information: _____
_____

1.	Original Amount of Claim	$_____
2.	Plus any Interest Due on Claim (currently_____% per annum from _____(date)+	$_____
3.	Taxable Costs (including estimated cost of service of this Writ)	+ $_____
4.	Less any Amount Paid	- $_____
5.	Principal Balance/Total Amount Due and Owing	= $_____

Verification

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Plaintiff in Attachment and the above answers are true and correct.

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country

_____
Printed name of Plaintiff in Attachment

Address of Plaintiff in Attachment: _____
City State Zip Code

By: _____ _____
Printed name and Title of Person Answering Signature of Person Answering

Address: _____
City State Zip Code Phone

Writ Of Garnishment

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and not a party to this action:
You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

To The Garnishee:
You Are Hereby Summoned as Garnishee in This Action and Ordered:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (**AND** to mail a completed copy with your answer to the Plaintiff in Attachment or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you.

Your failure to answer this writ may result in the entry of a default against you.

b. To hold pending court order any personal property (other than earnings of a natural person) owed to or owned by the Defendant in Attachment and in your possession or control on the date and time this Writ was served upon you.

You Are Notified:

a. This Writ applies to all personal property (other than earnings of a natural person) owed to or owned by the Defendant in Attachment and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. If you are ordered to pay funds to the Court, tender your check for the amount ordered **PAYABLE TO THE CLERK OF THE** _____**COURT AT** _____**, CO**_____

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

Questions to be Answered by Garnishee

Defendant in Attachment's Name: _____**Case Number:** _____

The following questions MUST be answered by you:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Defendant in Attachment or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Defendant in Attachment? ❑**YES** ❑**NO**

b. If **YES to question a**, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

_____

_____

c. Do you claim any setoff against any property, debt or obligation listed above? ❑**YES** ❑**NO**

d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed:

(Attach additional pages if necessary): _____

_____

_____

Verification

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the above answers are true and correct.

Executed on the _____ day of _____, _____, at _____

(date) (month) (year) (city or other location, and state OR country

_____

Printed name of Garnishee

Address of Garnishee: _____

City State Zip Code Phone

By: _____ _____

Printed name of Person Answering | Signature of Person Answering

☐ District Court ☐ County Court _____ County, Colorado Court Address:	
Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ COURT USE ONLY ▲ Case Number: Division: Courtroom:
NOTICE TO JUDGMENT DEBTOR PURSUANT TO §24-33.5-704.3, C.R.S.	

This form is applicable until November 1, 2020, unless extended by the Administrator to a date not later than February 1, 2021.

TO THE JUDGMENT DEBTOR(S):

YOU HAVE THE RIGHT TO TEMPORARILY SUSPEND THIS COLLECTION ACTION IF YOU ARE FACING FINANCIAL HARDSHIP DUE TO THE COVID-19 EMERGENCY.

Judgment Creditor Name: _____
Judgment Creditor Address: _____
Case Number: _____
Phone: _____

The above judgment creditor intends on executing a collection action against you. If you have experienced financial hardship due to the COVID-19 emergency, directly or indirectly, you have the right to suspend temporarily this extraordinary collection action. The suspension is effective until November 1, 2020, or February 1, 2021, if the State of Colorado extends the period of suspension.

To exercise this right, you must notify the judgment creditor that you are experiencing financial hardship due to the COVID-19 emergency. You can provide this notice by phone call or by writing to the creditor at the address shown in this notice. Your notification to the judgment creditor must include your full name (first and last), the case number identified above and at least one (1) additional piece of the following information: your date of birth, social security number, physical and

mailing addresses, or the judgment creditor's internal account number or identifier, if different from the case number designated above. You are not required to provide documentation to support your request.

Note: Requesting the temporary suspension of this extraordinary debt collection action is not a waiver to the obligation to pay or debt forgiveness, Interest may continue to accrue on the judgment debt even while the extraordinary collection actions are suspended.

You may enter into a voluntary repayment plan with the judgment creditor, but you are not required to do so.

CERTIFICATE OF MAILING

I certify that on _____ (date), I mailed, faxed, or hand-delivered a copy of this NOTICE TO JUDGMENT DEBTOR PURSUANT TO §24-33.5-704.3, C.R.S.to the following:

☐Judgment Debtor
Judgment Debtor's Address:
_____
_____

☐ Judgment Debtor's Attorney
☐Other: _____

_____

_____ _____
_____
Signature of Judgment Creditor

Small Claims Court _____ County, Colorado
Court Address:

PLAINTIFF(S): _____
Address: _____
City/State/Zip: _____
Phone: Home _____ Work _____ Cell _____

v.

DEFENDANT(1): _____
Address: _____
City/State/Zip: _____
Phone: Home _____ Work _____ Cell _____

DEFENDANT(2): _____
Address: _____
City/State/Zip: _____
Phone: Home _____ Work _____ Cell _____

▲ **COURT USE ONLY** ▲
Case Number:

S

Division Courtroom

NOTICE, CLAIM AND SUMMONS TO APPEAR FOR TRIAL (Part 1)

If Defendant(s) is/are other than a person, go on-line at **www.sos.state.co.us** to determine the registered agent for service of this notice. Please enter name and address of the agent. Name: _____
Address: _____

1. The Defendant(s) is/are in the military service: ❑**Yes** ❑**No** ❑**Unknown**
2. The Defendant(s) reside(s), is/are regularly employed, has/have an office for the transaction of business, or is/are a student in this county, or real property located in this county is the subject of claim(s) arising from a restrictive covenant or security deposit dispute. ❑**Yes** ❑**No**
3. I/We understand that it is my/our responsibility to have each Defendant served with the "Defendant's Copy" of this Notice by a person whose age is 18 years or older and who is not a party to this action 15 days prior to the trial and to provide the Court with written proof of service. ❑**Yes** ❑**No**
4. I am an attorney: ❑**Yes** ❑**No**

Notice and Summons to Appear for Trial

To the Defendant(s):
You are scheduled to have your trial in this case on _____ (date) at _____(time) at the Court address stated in the above caption. Bring with you all books, papers and witnesses you need to establish your defense. **If you do not appear, judgment may be entered against you.** If you wish to defend the claim or present a counterclaim, you must provide a written response or written counterclaim on or before the scheduled trial date and pay a **nonrefundable** filing fee.

Dated: _____ _____
Clerk of Court/Deputy Clerk

Plaintiff(s)'s Claim (Please summarize reasons to support your claim below.)
The Defendant(s) owe(s) me $_____, which includes penalties, plus interest and costs allowed by law, and/or should be ordered to return property, perform a contract or set aside a contract or comply with a restrictive covenant for the following reasons. (If seeking return of property, please describe the property being requested).

_____
_____
_____
_____
_____

Note: The combined value of money, property, specific performance or cost to remedy a covenant violation cannot exceed $7,500.00.
I/we declare under penalty of perjury under the law of Colorado that the foregoing is true and correct. I/we have not filed in any Small Claims Court in this County more than 2 claims during this calendar month, nor more than 18 claims in this County this calendar year.

Dated: _____ _____
Plaintiff's Signature

_____
Plaintiff's Signature

Small Claims Court _____ County, Colorado
Court Address:

PLAINTIFF(S): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

v.

DEFENDANT(1): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

DEFENDANT(2): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

▲ **COURT USE ONLY** ▲

Case Number:

S

Division Courtroom

NOTICE, CLAIM AND SUMMONS TO APPEAR FOR TRIAL (Part 2)

If Defendant(s) is/are other than a person, go on-line at **www.sos.state.co.us** to determine the registered agent for service of this notice. Please enter name and address of the agent. Name: _____ Address: _____

1. The Defendant(s) is/are in the military service: ❑**Yes** ❑**No** ❑**Unknown**
2. The Defendant(s) reside(s), is/are regularly employed, has/have an office for the transaction of business, or is/are a student in this county, or real property located in this county is the subject of claim(s) arising from a restrictive covenant or security deposit dispute. ❑**Yes** ❑**No**
3. I/We understand that it is my/our responsibility to have each Defendant served with the "Defendant's Copy" of this Notice by a person whose age is 18 years or older and who is not a party to this action 15 days prior to the trial and to provide the Court with written proof of service. ❑**Yes** ❑**No**
4. I am an attorney: ❑**Yes** ❑**No**

Notice and Summons to Appear for Trial

To the Defendant(s):

You are scheduled to have your trial in this case on _____ (date) at_____ (time) at the Court address stated in the above caption. Bring with you all books, papers and witnesses you need to establish your defense. **If you do not appear, judgment may be entered against you.** If you wish to defend the claim or present a counterclaim, you must provide a written response or written counterclaim on or before the scheduled trial date and pay a **nonrefundable** filing fee.

Dated: _____ _____
Clerk of Court/Deputy Clerk

Plaintiff(s)'s Claim (Please summarize reasons to support your claim below.)

The Defendant(s) owe(s) me $_____, which includes penalties, plus interest and costs allowed by law, and/or should be ordered to return property, perform a contract or set aside a contract or comply with a restrictive covenant for the following reasons. (If seeking return of property, please describe the property being requested).

_____

_____

_____

_____

_____

Note: The combined value of money, property, specific performance or cost to remedy a covenant violation cannot exceed $7,500.00.

I/we declare under penalty of perjury under the law of Colorado that the foregoing is true and correct. I/we have not filed in any Small Claims Court in this County more than 2 claims during this calendar month, nor more than 18 claims in this County in this calendar year.

Dated: _____ _____
Plaintiff's Signature

_____
Plaintiff's Signature

You must complete and fill out a response and or counterclaim on reverse side of Defendant's copy and bring to Court.
Defendant's Response (If responding, pay the appropriate filing fee). I do not owe the Plaintiff(s) or am not responsible to the Plaintiff(s) because:

_____

_____

_____

Defendant's Counterclaim (If submitting a counterclaim, pay the appropriate filing fee).
The Plaintiff(s) owe(s) me $_____, which includes penalties, plus interest and costs allowed by law and/or should be ordered to return property, perform a contract or set aside a contract or comply with a restrictive covenant for the following reasons. (If seeking return of property, please describe the property being requested).

_____

_____

- ❑ The amount of my/our counterclaim does not exceed the jurisdictional amount of the Small Claims Court of $7,500.00.
- ❑ The amount of my/our counterclaim exceeds the jurisdictional amount of the Small Claims Court, but I/we wish to limit the amount that I/we wish to recover from the Plaintiff to $7,500.00.
- ❑ The amount of my/our counterclaim exceeds the jurisdictional amount of the Small Claims Court, and I/we wish to have the case sent to ❑County Court (only if I/we wish to limit the amount I/we can recover from the plaintiff to $~~15~~25,000.00) ❑District Court (I /we do not wish to limit the amount I/we can recover from the Plaintiff(s)) and will pay the appropriate filing fee**.** I/we am/are filing a Notice of Removal and paying the appropriate filing fee to the Court at this time.

I am an attorney. ❑Yes ❑No

I declare under penalty of perjury that this information is true and correct and that I mailed a copy of the Response/Counterclaim to the Plaintiff(s) at the address(es) stated on this form on _____ (date).

_____
Defendant's Address

_____ _____
Defendant's Signature Date

_____
Telephone #: Home Work Cell

Information for Defendants in Small Claims Cases

A. Filing Fees.
Response without a counterclaim:
- **Claim $500.00 or less: $26.00**
- **Claim over $500.00 but less than $7,500.00: $41.00**

Response with a counterclaim:
- **If Plaintiff's claim is $500.00 or less and counterclaim is $500.00 or less: $31.00**
- **If Plaintiff's claim is more than $500.00 or counterclaim is more than $500.00: $46.00**

B. Response. You have been served with a Summons. If you fail to appear on the trial date shown on this notice, judgment may be entered against you. If you wish to defend the claim or present a counterclaim, you must **file with the Court Clerk a written response or counterclaim** on or before the scheduled trial date, provide a copy to the Plaintiff(s), pay the appropriate **nonrefundable** filing fee, and appear on the date set for trial in this notice with all evidence and witnesses needed to establish your defense.

C. Subpoenas. Upon your request, the clerk will issue a subpoena to require witnesses to appear or bring documents for your trial. It is your responsibility to complete the information needed on the subpoena and to have the subpoena served. Subpoenas must be served personally and may be served by a person over the age of 18 that is not a party to the case. Subpoenas must be accompanied by a check for payment of witness fees and mileage for any witnesses served.

D. Counterclaim. If you have a claim against the Plaintiff(s), you must **file with the Court clerk** the Defendant's counterclaim at the top of this form, provide a copy of the counterclaim to the Plaintiff(s) prior to the trial, and pay the appropriate **nonrefundable** filing fee. If you settle your counterclaim before trial, notify the Small Claims Court and the Plaintiff(s) in writing. **If you want your case heard by a Court of greater jurisdiction, you must complete and file this form, pay the appropriate filing fee (County: Under $999.99 = $85.00; $1,000 - $14,999.99= $105.00; $15,000.00 - $25,000 = $135.00. District: $235.00) and file a Notice of Removal (JDF 251) at least 7 days before the trial date shown on this Notice.**

E. Trial Responsibility. You have a right to a trial. Bring all evidence necessary to establish your defense and/or counterclaim: books, papers, repair bills, photographs or other exhibits. If the suit involves the delivery of personal property, be prepared to deliver the property immediately after trial. Be on time. If you are late, the Court may enter judgment against you.

F. Appeal. If you wish to appeal, you must file your notice of appeal within 14 days of the judgment and proceed according to C.R.C.P 411.

G. Judgment. The Court does not collect any judgment, but will help with the necessary forms.
Money Judgment. If judgment is entered against you, you are expected to immediately pay the judgment, including filing fees and court costs. If the judgment is not paid immediately, you must answer questions about your assets and income and the other party can obtain a writ of garnishment or execution against your wages or property. Once the judgment is paid, you are entitled to have the judgment satisfied.
Non-monetary Judgment. If the Court orders immediate possession of the property, performance of a contract, setting aside of a contract or compliance with a restrictive covenant, your failure to comply with the Court order may result in an award of damages and/or being held in contempt.

H. Case Inquiries. When inquiring about this case, refer to the case number on this notice. Direct all inquiries to the clerk, not the judge or magistrate**.**

I. Attorney. If you want to be represented by an attorney, you or your attorney must file a Notice of Representation of Attorney (JDF 256) at least 7 days before the trial date on this notice. Then the Plaintiff(s) may have representation by an attorney. If the Plaintiff(s) is/are an attorney, you also may be represented by an attorney without filing a notice of representation. Even if there are attorneys in the case, the rules and procedures of the Small Claims Court will still apply.

J. Judicial Officer. A magistrate or a judge may hear your case. If you want a judge to hear your case, you must file an Objection to a Magistrate Hearing Case (JDF 259) at least 7 days before the trial date set in this notice. The rules and procedures of the Small Claims Court will still apply.

K. Language Interpreter. If you or a witness requires a language interpreter to be present for hearings, you must contact the Managing Interpreter corresponding to the district in which the case will be heard at least 7 days before the trial date is set on this notice. A language interpreter may only interpret what is said between parties during a hearing and immediately prior to or after the hearing. A language interpreter may not provide legal advice or any other service that is not related to interpreting. Interpreters may not provide any services that may constitute a violation of the language interpreter's Code of Professional Responsibility. A current list of Managing Interpreters can be viewed at http://www.courts.state.co.us/Administration/Custom.cfm?Unit=interp&Page_ID=117.

Small Claims Court _____ County, Colorado
Court Address:

PLAINTIFF(S): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

v.

DEFENDANT(1): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

DEFENDANT(2): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

▲ **COURT USE ONLY** ▲

Case Number:

S

Division Courtroom

NOTICE, CLAIM AND SUMMONS TO APPEAR FOR TRIAL (Part 3)

If Defendant(s) is/are other than a person, go on-line at **www.sos.state.co.us** to determine the registered agent for service of this notice. Please enter name and address of the agent. Name: _____ Address: _____

1. The Defendant(s) is/are in the military service: ❑**Yes** ❑**No** ❑**Unknown**
2. The Defendant(s) reside(s), is/are regularly employed, has/have an office for the transaction of business, or is/are a student in this county, or real property located in this county is the subject of claim(s) arising from a restrictive covenant or security deposit dispute. ❑**Yes** ❑**No**
3. I/We understand that it is my/our responsibility to have each Defendant served with the "Defendant's Copy" of this Notice by a person whose age is 18 years or older and who is not a party to this action 15 days prior to the trial and to provide the Court with written proof of service. ❑**Yes** ❑**No**
4. I am an attorney: ❑**Yes** ❑**No**

Notice and Summons to Appear for Trial

To the Defendant(s):

You are scheduled to have your trial in this case on (date) _____ (time) _____ at the Court address stated in the above caption. Bring with you all books, papers and witnesses you need to establish your defense. **If you do not appear, judgment may be entered against you.** If you wish to defend the claim or present a counterclaim, you must provide a written response or written counterclaim on or before the scheduled trial date and pay a **nonrefundable** filing fee.

Dated: _____ _____
Clerk of Court/Deputy Clerk

Plaintiff(s)'s Claim (Please summarize reasons to support your claim below.)

The Defendant(s) owe(s) me $_____, which includes penalties, plus interest and costs allowed by law, and/or should be ordered to return property, perform a contract or set aside a contract or comply with a restrictive covenant for the following reasons. (If seeking return of property, please describe the property being requested).

_____

_____

_____

_____

_____

Note: The combined value of money, property, specific performance or cost to remedy a covenant violation cannot exceed $7,500.00.

I/we declare under penalty of perjury under the law of Colorado that the foregoing is true and correct. I/we have not filed in any Small Claims Court in this County more than 2 claims during this calendar month, nor more than 18 claims in this County in this calendar year.

Dated: _____ _____
Plaintiff's Signature

_____
Plaintiff's Signature

INFORMATION FOR PLAINTIFFS IN SMALL CLAIMS CASES

A. FILING. You may file your claim in this Court if:

1. Your claim is for money, property, specific performance or rescission of a contract, or enforcement of a restrictive covenant that does not exceed $7,500.00. You may reduce a larger claim and waive the balance. You cannot divide a claim and file two separate cases.
2. At least one of the parties you sue resides, is regularly employed, has an office for the transaction of business, or is a student in this county, or they own rental property in the county that is the subject of this claim.
3. You pay the clerk one of the following **NONREFUNDABLE** filing fees.
   - **Claim $500.00 or less: $31.00**
   - **Claim over $500.00 but less than $7,500.00: $55.00**

B. SERVICE. This notice to appear must be served at least 15 days prior to the trial on each Defendant. It may be served by:

1. Any person whose age is 18 years or older and who is not a party to this action.
2. Sheriff or process server.
3. Certified Mail that is mailed by the clerk. You must deposit the cost for certified mail in advance.

C. SETTLEMENT. If you settle your claim before trial, you must notify the Small Claims Court and Defendant in writing.

D. SUBPOENAS. Upon your request, the clerk will issue a subpoena to require witnesses to appear or bring documents for your trial. It is your responsibility to complete the information needed on the subpoena and to have the subpoena served. Subpoenas must be served personally and may be served by a person over the age of 18 that is not a party to the case. Subpoenas must be accompanied by a check for payment of witness fees and mileage for any witnesses served.

E. TRIAL RESPONSIBILITY. You have a right to a trial. Bring all evidence necessary to prove your case: books, papers, repair bills, photographs or other exhibits. Be on time. If you are late or do not appear, the Court may enter judgment in favor of the Defendant and against you if the Defendant filed a counterclaim.

F. APPEAL. If you wish to appeal, you must file your notice of appeal within 14 days of the judgment and proceed according to C.R.C.P. 411.

G. JUDGMENT. THE COURT DOES NOT COLLECT ANY JUDGMENT, but will help with the necessary forms.
Money Judgment. If judgment is entered in favor of the Defendant and against you, you are expected to immediately pay the judgment, including filing fees and court costs. If the judgment is not paid immediately, you must answer questions about your assets and income and the other party can obtain a writ of garnishment or execution against your wages or property. Once the judgment is paid, you are entitled to have the judgment satisfied.
Non-monetary Judgment. If the Court orders immediate possession of the property, performance of a contract, setting aside of a contract or compliance with a restrictive covenant, failure to comply with the Court order may result in an award of damages and or being held in contempt.

H. CASE INQUIRIES. When inquiring about this case, refer to the case number on the other side of this document. Direct all inquiries to the clerk, not the judge or magistrate.

I. ATTORNEY. If the Defendant(s) want(s) to be represented by an attorney, the Defendant(s) or attorney must file a Notice of Representation of Attorney (JDF 256) at least 7 days before the trial date on this notice. Then, you may have representation by an attorney. If either party is an attorney, the other party may be represented by an attorney without filing a notice of representation. Even if there are attorneys in the case, the rules and procedures of the Small Claims Court will still apply.

J. JUDICIAL OFFICER. A magistrate or judge may hear your case. If you want a judge to hear your case, you must file an Objection to a Magistrate Hearing Case (JDF 259) at least 7 days before the trial date set in this notice. The rules and procedures of the Small Claims Court will still apply.

K. Language Interpreter. If you or a witness requires a language interpreter to be present for hearings, you must contact the Managing Interpreter corresponding to the district in which the case will be heard at least 7 days before the trial date is set on this notice. A language interpreter may only interpret what is said between parties during a hearing and immediately prior to or after the hearing. A language interpreter may not provide legal advice or any other service that is not related to interpreting. Interpreters may not provide any services that may constitute a violation of the language interpreter's Code of Professional Responsibility. A current list of Managing Interpreters can be viewed at: http://www.courts.state.co.us/Administration/Custom.cfm?Unit=interp&Page_ID=117.

Small Claims Court _____ County, Colorado
Court Address:

PLAINTIFF(S): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

v.

DEFENDANT(1): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

DEFENDANT(2): _____

Address: _____

City/State/Zip: _____

Phone: Home _____ Work _____ Cell _____

▲ **COURT USE ONLY** ▲

Case Number:

S

Division Courtroom

NOTICE, CLAIM AND SUMMONS TO APPEAR FOR TRIAL (Part 4)

If Defendant(s) is/are other than a person, go on-line at **www.sos.state.co.us** to determine the registered agent for service of this notice. Please enter name and address of the agent. Name: _____ Address: _____

1. The Defendant(s) is/are in the military service: ❑**Yes** ❑**No** ❑**Unknown**
2. The Defendant(s) reside(s), is/are regularly employed, has/have an office for the transaction of business, or is/are a student in this county, or real property located in this county is the subject of claim(s) arising from a restrictive covenant or security deposit dispute. ❑**Yes** ❑**No**
3. I/We understand that it is my/our responsibility to have each Defendant served with the "Defendant's Copy" of this Notice by a person whose age is 18 years or older and who is not a party to this action 15 days prior to the trial and to provide the Court with written proof of service. ❑**Yes** ❑**No**
4. I am an attorney: ❑**Yes** ❑**No**

Notice and Summons to Appear for Trial

To the Defendant(s):
You are scheduled to have your trial in this case on (date) _____ (time) _____ at the Court address stated in the above caption. Bring with you all books, papers and witnesses you need to establish your defense. **If you do not appear, judgment may be entered against you.** If you wish to defend the claim or present a counterclaim, you must provide a written response or written counterclaim on or before the scheduled trial date and pay a **nonrefundable** filing fee.

Dated: _____ _____
Clerk of Court/Deputy Clerk

Plaintiff(s)'s Claim (Please summarize reasons to support your claim below.)

The Defendant(s) owe(s) me $_____, which includes penalties, plus interest and costs allowed by law, and/or should be ordered to return property, perform a contract or set aside a contract or comply with a restrictive covenant for the following reasons. (If seeking return of property, please describe the property being requested).

_____

_____

_____

_____

_____

Note: The combined value of money, property, specific performance or cost to remedy a covenant violation cannot exceed $7,500.00

I/we declare under penalty of perjury under the law of Colorado that the foregoing is true and correct. I/we have not filed in any Small Claims Court in this County more than 2 claims during this calendar month, nor more than 18 claims in this County in this calendar year.

Dated: _____ _____
Plaintiff's Signature

_____

Plaintiff's Signature

Case Name _____ **v.** _____ **Case Number:** _____

AFFIDAVIT OF SERVICE

(Must be returned to Court)

I swear/affirm under oath that I am 18 years or older and not a party to the action, and that I served the ***Notice, Claim, and Summons to Appear for Trial (JDF 250)*** on the following:

Name of Person Served	**Date and Time of Service**	**Address of Service (Street, County, City, State)**

Check type of Service:

- ❑ By handing the documents to a person identified to me as the Defendant.
- ❑ By identifying the documents, offering to deliver them to a person identified to me as the Defendant who refused service, and then leaving the documents in a conspicuous place.
- ❑ By leaving the documents at the Defendant's usual place of abode with _____ (Name of Person) who is a member of the Defendant's family and whose age is 18 years or older. (Identify family relationship) _____.)
- ❑ By leaving the documents at the Defendant's usual workplace with _____ (Name of Person) who is the Defendant's secretary, administrative assistant, bookkeeper, or managing agent. (Circle title of person served.)
- ❑ By leaving the documents with _____ (Name of Person), who as _____ (title) is authorized by appointment or by law to receive service of process for the Defendant.
- ❑ By leaving the documents with an officer, partner, manager, stockholder, elected official or functional equivalent pursuant to C.R.C.P. 304 _____ (please identify) of the corporation or non-corporate entity which was to be served. (Circle title of person who was served.)
- ❑ By serving the documents as follows (other service under C.R.C.P. 304:_____ _____.

I have charged the following fees for my services in this matter:

❑ Private process server

❑ Sheriff, _____County
Fee $ _____ Mileage $ _____

_____
Signature of Process Server

_____
Name (Print or type)

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____.

My Commission Expires: _____

_____
Notary Public

CERTIFICATE OF SERVICE BY MAILING

(To be performed by Clerk within three days of filing)

I hereby certify that on _____(date), I mailed a true and correct copy of the ***NOTICE, CLAIM, AND SUMMONS TO APPEAR FOR TRIAL***, by placing it in the United States Mail, postage pre-paid to the Defendant(s) at the address(es) listed above.

_____
Clerk of Court/Deputy Clerk

❑ (If applicable) Plaintiff(s) notified of non-service on (date) _____. Clerk's Initials _____

From: slagle, sean
Sent: Monday, August 9, 2021 7:48 AM
To: michaels, kathryn
Subject: Re: CRCP 404

Hi Kathryn,

Are you aware if a rules committee is going to update the jurisdictional limit in the
Replevin rule?

* CRCCP 404(a) has the jurisdictional limit at $15,000.
* The general statutory limit was increased to $25,000 by the legislature in 2018. C.R.S. § 13-6-104(1); Law 2018, Ch. 298 § 1, Eff. Jan 1, 2019 (SB18-056).

Thank you,

Sean Slagle, JD (she/her)
Court Forms – Coordinator & Format Editor
Judicial Access & Inclusion Unit
Court Services Division | SCAO

From: "bonner, ian" <ian.bonner@judicial.state.co.us>
Date: Friday, August 6, 2021 at 2:39 PM
To: "slagle, sean" <sean.slagle@judicial.state.co.us>
Subject: JDF 115 Replevin error

Hi Sean!

I was just looking at the instructions for replevins and it looks like there is some bad info on there. It says
that the county court limit on replevins is $25,000 where CRCP Rule 404(a) specifically limits it to
$15,000. I talked to a Judge and she said the 15k is right. Can we update the forms to reflect that?

Thank you so much for everything and sorry to drop this on you on a Friday. Have a great weekend

Ian Bonner
Self-Represented Litigant Coordinator
8th Judicial District

Rule 404. Replevin

(a) Personal Property. The plaintiff in an action in the county court to recover the possession of personal property, the value of which does not exceed ~~fifteen~~ twenty-five thousand dollars, may, at the time of the commencement of the action, or at any time before trial, claim the delivery of such property to the plaintiff as provided in this Rule.

(b) - (p) [NO CHANGE]

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”(?).