AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, March 31, 2017, 1:30p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to order

II. Approval of January 27, 2017 minutes [Page 1 to 5]

III. Announcements from the Chair

A. Dick Laugesen's retirement

B. New member John Lebsack

IV. Business

A. CRCP 16.1—(Judge Davidson and Richard Holme) [Page 6 to 24]

B. New Form for admission of business records under hearsay exception rule—(Damon Davis and David Little) [Page 25 to 39]

C. C.R.C.P. 120—(Fred Skillern)

D. CRCP 57(j) & Fed. R. Civ. P. 5.1—(Stephanie Scoville)

E. CRCP 83—(Jeannette Kornreich)

F. C.R.C.P. 80—(Judge Berger) [Page 40 to 47]

G. C.R.C.P 4—(Judge Elliff) [Page 48 to 49]

H. C.R.C.P. 107—(Judge Berger); (a) award of attorney fees when no contempt is found and (b) attorney fees against contemnor when punitive sanctions are imposed [Page 50]

I. C.R.C.P. 121 § 1-26—E-Filing Concerns (Ben Vinci) [Page 51 to 53]

V. New Business

VI. Adjourn—Next meeting is May 19, 2017 at 1:30pm

Michael H. Berger, Chair
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Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 19306142, followed by # key.

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 27, 2017 Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m., in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	**Present**	**Excused**
Judge Michael Berger, Chair	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Judge Ann Frick		X
Judge Fred Gannett	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Debra Knapp	X	
Cheryl Layne	X	
Judge Cathy Lemon	X	
Bradley A. Levin	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller		X
Gordon "Skip" Netzorg	X	
Brent Owen		X
Judge Sabino Romano	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Jose L. Vasquez	X	
Ben Vinci	X	
Judge John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Jeannette Kornreich	X	

I. Attachments & Handouts

A. January 27, 2017 agenda packet
B. Supplemental Material
   1. Rule 16.1 memo
   2. Warne v Hall memo

II. Announcements from the Chair

- The November 18, 2017 minutes were adopted with two changes: under section III, A, bullet 4, "examination time" was changed to "cross-examination time", and in bullet 5 "presentation" was changed to "preservation";
- In re the Marriage of Gromicko, 2017 CO 1, was included as an informational item;
- All non-substantive changes, including C.R.C.P. 33 and Form 20, the county court rule and form changes, and Colorado Courts E-filing system name changes were adopted by the supreme court;
- C.R.C.P. 52 and 53, and C.R.M. 5 and 6, have been posted for public comment. After the public comment period closes, the committee can and may revise the rules based on comments received and resubmit the rules to the supreme court;
- The C.R.C.P. 120 has been remanded back to the committee for further consideration. The subcommittee has been reconstituted and Fred Skillern has agreed to serve as chair. A group of bankers, the principal opponents to the rule change, presented at the public hearing and provided written comments. The subcommittee will address the bankers' comments, the addition of "direct knowledge" in subsection (a), and other issues as necessary;
- House Bill 1095, Service to Process to Secured Dwellings, has been introduced and states that if a person lives in a gated community, and the process server is denied access by security or management personnel, in some circumstances process may be served on the attendant or the management company with service being mailed to party to be served. The State Court Administrator's Office will keep the committee updated on the status of the bill; and
- A reception for former chair and longtime member Dick Laugesen may be held at the beginning of the March meeting.

III. Business

A. C.R.C.P. 16.1

Judge Davidson and Richard Holme began and stated that a comment is forthcoming. Discussion centered on the following issues:

- The phrase "arising from a single transaction, incident, or occurrence" elicited much discussion. There was a motion to exclude the phrase throughout the rule and form that passed 17:6;

- In subsection (b)(2), in the last sentence, there was discussion about changing "fair expectation" to "reasonable expectation";

- There were many comments about the excessive quoting of the district court cover sheet in subsection (c). Members remarked this is out of the ordinary and may constrict district courts; and

- Subsection (l)(5)(II) will be reworked by the subcommittee. In part (II), the highlighted language proposed by the subcommittee will be struck, because the committee had concerns about adding preservation depositions into the rules, and the "7 days before trial" deadline seemed too short.

Subcommittee will take all committee comments under advisement and present a revised draft in March.

B. Rule 365 (taken out of order)

Ben Vinci began and stated that the amendments to the rule were approved unanimously by the County Court Rules Subcommittee, and he introduced three guests: Judge Brian T. Campbell, Ms. Gina L. Tincher, and Ms. Lila Sol. Mr. Vinci stated that subsection (a) refers to repealed statutes, and the rule has been misapplied and has limited the scope of protective orders in domestic violence and family abuse cases. Judge Campbell, Ms. Tincher, and Ms. Sol stated that victims of abuse are being denied protection orders and greater strides need to be taken to protect victims in domestic and non-domestic situations.

After discussion there was a motion to table the issue so it could be studied by a subcommittee; the motion failed.

There was a motion to break the rule into two rules; current Rule 365 would contain subsection (a) and repealed subsection (b), and a new rule, Rule 366, would contain what is now subsection (c); the motion failed.

A motion to adopt the following language in subsection (a), repeal subsection (b), and change the word order in the first sentence of subsection (c) passed unanimously:

CRCP 365

(a) Civil Protection Orders. No civil protection order, ~~injunction,~~ restraining order, or injunction under Title 13, Article 14,~~order to prevent domestic abuse or for emergency protection under sections 14-4-101 et seq., C.R.S.,~~ shall be issued by the court, except as provided therein. ~~section (b) hereof or in accordance with sections 14-4-101 et seq., C.R.S.~~

(b) Repealed.

(c) Restrictive Covenants on Residential Real Property.

(1) Upon the filing of a ~~complaint,~~ duly verified complaint alleging that the defendant has violated a restrictive covenant on residential real property, the court shall issue a summons, which shall include notice to the defendant that it will hear the plaintiff's request for a preliminary injunction on the appearance date.

Judge Berger will prepare a transmittal letter for submission to the supreme court.

C. New form for admission of business records under hearsay exception rule

David Little and Damon Davis began and presented the forms for use in county court. A motion to adopt the forms passed 17:3. The committee thought a timing reference should be added in Rule 16(f)(3)(VI)(B). Mr. Holme offered to mark Rule 16 and it, along with the district court forms, will be presented at the March meeting.

D. C.R.C.P. 57(j)

Tabled until the March 31, 2017 meeting.

E. C.R.C.P. 83

Tabled until the March 31, 2017 meeting.

F. C.R.C.P. 121 §1-15

Judge Jones began and stated there are four recommendations in the subcommittee's memo, and he will address them out of order:

- The first recommendation is to amend the first sentence of part (3) by deleting "C.R.C.P. 56" and replace it with "written". A motion to adopt this change passed unanimously;

- The fourth recommendation is to amend part (1)(a) by deleting the word limits in the second and third sentences and including a cross-reference to Rule 10(d) in the last sentence. A motion to adopt these changes passed unanimously;

- The third recommendation is to amend part (8) to require an attempt to confer by and with a self-represented party before filing a motion that includes a description of the nature of any efforts to confer. An additional issue arose in the subcommittee about whether exceptions to this requirement should be included; for instance, excluding the conferral requirement for incarcerated parties or parties subject to a restraining order. After discussion, the committee decided 10:8 that illustrative, not dispositive, exception language should be added. The subcommittee will draft exception language to present at the next meeting; and

- The second recommendation is to amend the second sentence of part (3) by adding a clause limiting its application to motions not seeking to resolve a claim or defense. The proposed amendment would generally conform the rule to case law, and a motion to adopt the change passed 17:1.

G. Warne v. Hall

Brad Levin began and stated that the subcommittee had discussed the case and determined that no rule changes were necessary at this time. Also, Judge Elliff surveyed the district court judges and they agreed no changes were necessary now. There was a question about whether all forms needed to be reviewed, and there was a motion to table the review for a year; the motion passed 12:5.

Future Meeting

March 31, 2017

The Committee adjourned at 4:15 p.m.

Respectfully submitted,
Jenny A. Moore

Janice and Mike: Attached is the latest version of Rule 16.1 (2/13/17 version).

Virtually all of the changes are minor and non-substantive polishing.

I believe the only change worth discussion is the wording of the certification relating to the amount of the claims for determining whether the case is within or outside of Rule 16.1. This was the subject of a couple different suggestions at our last meeting.

In their proposed clean form the two alternatives are as follows with the only wording differences underlined:

"In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

[Alternative:] ". . . In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that this party's claims against one of the other parties are reasonably expected to justify an award in excess of $100,000."

[If the alternative is preferred, conforming changes would need to be made in sections (d)(1), (l) and Form 1.2).]

In the next email, I will enclose the current proposed version of the Comments for this Rule, the changes to which are all non-substantive and cosmetic.

Dick

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PROPOSED REVISIONS TO RULE 16.1. SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS (2/13/17)

(a) Purpose of Simplified Procedure.
The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to allow earlier trials; and to limit discovery and its attendant expense.

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:

(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or

(2) civil actions in which any one party seeks monetary judgment from any other party of more than $100,000, exclusive of reasonable allowable attorney fees, interest and costs, as shown by a statement on the Civil Cover Sheet by the party's attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify ~~and believe~~ that the value of this party's claims ~~in this case~~ against one of the other parties ~~have a fair expectation of being~~ is reasonably believed to exceed ~~in excess of~~ $100,000."

[Alternative: ". . . In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that this party's claims against one of the other parties are reasonably expected to justify an award in excess of $100,000."][If preferred, make similar changes in sections (d)(1), (l) and Form 1.2).]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) Motion for Exclusion from Simplified Procedure. Simplified Procedure shall apply unless, no later than 42 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a motion, signed by both the party and its counsel, if any, establishing good cause to exclude the case from the application of Simplified Procedure.

(1) Good cause shall be established and the motion shall be granted if a defending party files a statement by its attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify ~~and believe~~ that the value of this party's claims ~~in this case~~ against one of the other parties ~~have a fair expectation of being~~ is reasonably believed to exceed ~~in excess of~~ $100,000," or

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(2) The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) Election for Inclusion Under this Rule. In actions excluded from Simplified Procedure by subsection (b)(2), within 42 days after the case is at issue, as defined in C.R.C.P. 16(b)(1), the parties may file a stipulation to be governed by this Rule.

(f) Case Management Orders. In actions subject to Simplified Procedure , the case management order requirements of C.R.C.P. 16(b)(2), (3) and (7) shall apply, except that preparing and filing a Proposed Case Management Order is not required.

(g) Trial Setting. No later than 42 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the court.

(h) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f), (g) and (k)(1) of this Rule or, if the parties have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.

(i) Expedited Trials. Trial settings, motions and trials in actions subject to Simplified Procedure should be given early trial settings, hearings on motions and trials, if possible.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set a case management conference shall be filed stating the reasons why such a conference is requested. If any party is unrepresented or if the court determines that such a conference should be held, the court shall set a case management conference. The conference may be conducted by telephone.

(k) Simplified Procedure. Cases subject to Simplified Procedure shall not be subject to C.R.C.P. 16, 26-27, 31, 33 and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(l) Required Disclosures.

(A) Disclosures in All Cases. Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g) no later than 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.

(B) Additional Disclosures in Certain Actions. Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include, but are not limited to, the following:

(I) ***Personal Injury Actions***. In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within five years prior to the date of injury who or which provided services which are related to the injuries and damages claimed, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records, subject to appropriate protective provisions obtained pursuant to C.R.C.P. 26(c). The claimant shall also produce transcripts or tapes of recorded statements, documents, photographs, and video and other recorded images that address the facts of the case or the injuries sustained. The defending party shall disclose transcripts or tapes of recorded statements, any insurance company claims memos or documents, photographs, and video and other recorded images that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those specific records for which the party, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court.

(II) ***Employment Actions***. In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure, and shall produce all documents which reflect or reference the claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the defending party to obtain the claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after consultation pursuant to C.R.C.P 26(c), timely moves for a protective order from the court. The defending party shall produce the claimant's personnel file and applicable personnel policies and employee handbooks.

(iii) Requested Disclosures. [Repealed]

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P. 16.1(k)(1)(B) and 26(a)(1) shall be made immediately available for inspection and copying to the extent not privileged or protected from disclosure.

(2) Disclosure of Expert Witnesses. The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), 26(b)(4), 26(b)(5), 26(c), 26(e) and 26(g) shall apply to disclosure of expert witnesses. Written disclosures of experts shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 49 days before trial. The parties shall be limited to one expert witness per side retained pursuant to C.R.C.P. 26(a)(2)(B)(I), unless the trial court authorizes more for good cause shown.

(3) Mandatory Disclosure of Trial Testimony. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken, and for whom expert reports pursuant to subparagraph (k)(2) of this Rule have not been provided. For adverse party or hostile witnesses a party intends to call at trial, written disclosure of the expected subject matters of the witness' testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks)

before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 49 days before trial.

(4) Permitted Discovery. The following discovery is permitted, to the extent allowed by C.R.C.P. 26(b)(1):

(~~I~~A) Each party may take a combined total of not more than six hours of depositions noticed by the party;

(~~II~~B) Not more than five requests for production of documents may be served by each party; and

(~~III~~C) The parties may request discovery pursuant to C.R.C.P. 34(a)(2) (inspection of property) and C.R.C.P. 35 (medical examinations).

(5) Depositions for Obtaining Documents and for Trial. In addition to depositions allowed under subsection (k)(4)(~~I~~A) of this Rule:

(~~I~~A) Depositions may be taken for the sole purpose of obtaining and authenticating documents from a non-party; and

(~~II~~B) A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4) and (7), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial without being subject to the six-hour limit on depositions in subsection (k)(4)(~~I~~A) of this Rule. Unless authorized by the court or stipulated to by the parties, ~~a preservation deposition is limited to one day of 6 hours. [??] S~~such a deposition shall be taken at least ~~7~~ 21 days before trial. In that event, any party may offer admissible portions of the witness' deposition, including any cross-examination during the deposition, without a showing of the witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial by the party taking the preservation deposition.

(6) Trial Exhibits. All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties at least 35 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 14 days after receipt of the exhibits. Documents in the possession, custody and control of third persons that have not been obtained by the identifying party pursuant to document deposition or otherwise, to the extent possible, shall be identified 35 days before trial and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) Limitations on Witnesses and Exhibits at Trial. In addition to the sanctions under C.R.C.P. 37(c), witnesses and expert witnesses whose depositions have not been taken shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures, provided, however, that adverse parties and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (k)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously

made for the purpose of authenticating exhibits if the opposing party made a timely objection to the authenticity of such exhibits specifying the factual issues concerning the authenticity of the exhibits.

(8) Juror Notebooks and Jury Instructions. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(g).

(9) Voluntary Discovery. [Repealed]

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(l) Changed Circumstances. In a case under Simplified Procedure, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of Simplified Procedure and enter such orders as are appropriate under the circumstances. Except in cases under subsection (e) of this Rule, if any party discloses damages against another ~~single~~ party in excess of $100,000 – including actual damages, penalties and punitive damages, but excluding allowable attorney fees, interest and costs – that defending ~~opposing~~ party may move to have the case removed from Simplified Procedure and the motion shall be granted unless the claiming party stipulates to a limitation of damages against the ~~opposing~~ defending party, excluding allowable attorney fees, interest and costs, of $100,000. The stipulation must be signed by the claiming party and, if the claiming party is represented, by the claiming party's attorney.

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☐**FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND**

District Court _____ County, Colorado Court Address: _____ Plaintiff(s): v. Defendant(s):	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number:
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND	

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading by may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ❑ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

   ❑ This party is seeking a monetary judgment against another party for more than $100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time,

"I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

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or

❑ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ❑ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____ _____

Signature of Party or Attorney for Party

NOTICE
This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

JDF 601 __/17 DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

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PROPOSED REVISIONS TO RULE 16.1. SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS (1/31/17) – Clean version

(a) Purpose of Simplified Procedure.
The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to allow earlier trials; and to limit discovery and its attendant expense.

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:

(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or

(2) civil actions in which any one party seeks monetary judgment from any other party of more than $100,000, exclusive of reasonable allowable attorney fees, interest and costs, as shown by a statement on the Civil Cover Sheet by the party's attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

[Alternative: ". . . In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that this party's claims against one of the other parties are reasonably expected to justify an award in excess of $100,000."][If preferred, make similar changes in sections (d)(1), (l) and Form 1.2).]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) Motion for Exclusion from Simplified Procedure. Simplified Procedure shall apply unless, no later than 42 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a motion, signed by both the party and its counsel, if any, establishing good cause to exclude the case from the application of Simplified Procedure.

(1) Good cause shall be established and the motion shall be granted if a defending party files a statement by its attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000," or

(2) The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) Election for Inclusion Under this Rule. In actions excluded from Simplified Procedure by subsection (b)(2), within 42 days after the case is at issue, as defined in C.R.C.P. 16(b)(1), the parties may file a stipulation to be governed by this Rule.

(f) Case Management Orders. In actions subject to Simplified Procedure , the case management order requirements of C.R.C.P. 16(b)(2), (3) and (7) shall apply, except that preparing and filing a Proposed Case Management Order is not required.

(g) Trial Setting. No later than 42 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the court.

(h) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f), (g) and (k)(1) of this Rule or, if the parties have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.

(i) Expedited Trials. Trial settings, motions and trials in actions subject to Simplified Procedure should be given early trial settings, hearings on motions and trials, if possible.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set a case management conference shall be filed stating the reasons why such a conference is requested. If any party is unrepresented or if the court determines that such a conference should be held, the court shall set a case management conference. The conference may be conducted by telephone.

(k) Simplified Procedure. Cases subject to Simplified Procedure shall not be subject to C.R.C.P. 16, 26-27, 31, 33 and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(l) Required Disclosures.

(A) Disclosures in All Cases. Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g) no later than 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.

(B) Additional Disclosures in Certain Actions. Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include, but are not limited to, the following:

(I) ***Personal Injury Actions***. In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within five years prior to the date of injury who or which provided services which are related to the injuries and damages claimed, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records, subject to appropriate protective provisions obtained pursuant to C.R.C.P. 26(c). The claimant shall also produce transcripts or tapes of recorded statements, documents, photographs, and video and other recorded images that address the facts of the case or the injuries sustained. The defending party shall disclose transcripts or tapes of recorded statements, any insurance company claims memos or documents, photographs, and video and other recorded images that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those specific records for which the party, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court.

(II) ***Employment Actions***. In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure, and shall produce all documents which reflect or reference the claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the defending party to obtain the claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after consultation pursuant to C.R.C.P 26(c), timely moves for a protective order from the court. The defending party shall produce the claimant's personnel file and applicable personnel policies and employee handbooks.

(iii) ***Requested Disclosures*** [Repealed]

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P. 16.1(k)(1)(B) and 26(a)(1) shall be made immediately available for inspection and copying to the extent not privileged or protected from disclosure.

(2) Disclosure of Expert Witnesses. The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), 26(b)(4), 26(b)(5), 26(c), 26(e) and 26(g) shall apply to disclosure of expert witnesses. Written disclosures of experts shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 49 days before trial. The parties shall be limited to one expert witness per side retained pursuant to C.R.C.P. 26(a)(2)(B)(I), unless the trial court authorizes more for good cause shown.

(3) Mandatory Disclosure of Trial Testimony. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken, and for whom expert reports pursuant to subparagraph (k)(2) of this Rule have not been provided. For adverse party or hostile witnesses a party intends to call at trial, written disclosure of the expected subject matters of the witness' testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks)

before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 49 days before trial.

(4) Permitted Discovery. The following discovery is permitted, to the extent allowed by C.R.C.P. 26(b)(1):

(A) Each party may take a combined total of not more than six hours of depositions noticed by the party;

(B) Not more than five requests for production of documents may be served by each party; and

(C) The parties may request discovery pursuant to C.R.C.P. 34(a)(2) (inspection of property) and C.R.C.P. 35 (medical examinations).

(5) Depositions for Obtaining Documents and for Trial. In addition to depositions allowed under subsection (k)(4)(A) of this Rule:

(I) Depositions may be taken for the sole purpose of obtaining and authenticating documents from a non-party; and

(II) A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4) and (7), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial without being subject to the six-hour limit on depositions in subsection (k)(4)(A) of this Rule. Unless authorized by the court or stipulated to by the parties, such a deposition shall be taken at least 21 days before trial. In that event, any party may offer admissible portions of the witness' deposition, including any cross-examination during the deposition, without a showing of the witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial by the party taking the preservation deposition.

(6) Trial Exhibits. All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties at least 35 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 14 days after receipt of the exhibits. Documents in the possession, custody and control of third persons that have not been obtained by the identifying party pursuant to document deposition or otherwise, to the extent possible, shall be identified 35 days before trial and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) Limitations on Witnesses and Exhibits at Trial. In addition to the sanctions under C.R.C.P. 37(c), witnesses and expert witnesses whose depositions have not been taken shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures, provided, however, that adverse parties and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (k)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously

made for the purpose of authenticating exhibits if the opposing party made a timely objection to the authenticity of such exhibits specifying the factual issues concerning the authenticity of the exhibits.

(8) Juror Notebooks and Jury Instructions. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(g).

(9) Voluntary Discovery. [Repealed]

(l) Changed Circumstances. In a case under Simplified Procedure, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of Simplified Procedure and enter such orders as are appropriate under the circumstances. Except in cases under subsection (e) of this Rule, if any party discloses damages against another party in excess of $100,000 – including actual damages, penalties and punitive damages, but excluding allowable attorney fees, interest and costs – that defending party may move to have the case removed from Simplified Procedure and the motion shall be granted unless the claiming party stipulates to a limitation of damages against the defending party, excluding allowable attorney fees, interest and costs, of $100,000. The stipulation must be signed by the claiming party and, if the claiming party is represented, by the claiming party's attorney.

RULE 16.1

COMMENTS

2017

[1] Rule 16.1, which established Simplified Procedure, took effect in 2004 to enhance the application of Rule 1's admonition that the civil rules be interpreted to provide just, speedy, and inexpensive determination of cases and to increase access to the courts and justice system, particularly for cases seeking damages of less than $100,000. As originally established, the application of Simplified Procedure was completely voluntary and parties could opt out without stating any reason or justification. A substantial majority of cases opted out of Simplified Procedure, minimizing its ability to advance its important justification and goals. However, lawyers and judges who have used Simplified Procedure strongly approve of it. *See* Gerety, "Simplified Pretrial Procedure in the Real World Under C.R.C.P. 16.1", 40 *The Colorado Lawyer* 23, 25 (April 2011).

[2] As a result, several significant revisions have been made to Rule 16.1. First, with the exception of several relatively unique forms of civil actions, Simplified Procedure applies presumptively to all civil lawsuits.

[3] Excluded from Simplified Procedure are cases seeking damages from any single defending party of at least $100,000 (exclusive of reasonable allowable attorney fees, interest and costs). This exclusion can be met in the mandated Civil Cover Sheet to be filed in all applicable civil cases if the attorney or unrepresented party executes a statement contained in the Cover Sheet that in compliance with C.R.C.P. 11 and based on information reasonably available to the signer that his or her claims against one of the other parties is reasonably believed to exceed $100,000. This certification allows a party or the party's attorney to reasonably estimate the value of the case, but always subject to the requirements of Rule 11.

[4] Cases can also be exempted after the case is in progress if one of the parties discovers that the claimant's damages may exceed $100,000 and requests transfer of the case out of Simplified Procedure.

[5] Trial courts may exclude cases from Rule 16.1 even though the claims do not seek money damages reaching the $100,000 threshold after consideration of the factors contained in Rule 16.1(d)(2). Thus, cases with small or even no monetary damages which challenge the constitutionality of laws or procedures, seek declaratory judgments or injunctions, or raise other important and complex legal issues may be excluded from Simplified Procedure.

[6] Another important change in Simplified Procedure is that the cap on damage awards of $100,000 in those cases has been removed.

[7] Simplified Procedure now requires disclosures of persons, documents, damages and insurance under Rule 26 and disclosure of proposed testimony from witnesses and experts. It also allows up to 6 hours of depositions per party and, if needed, additional preservation

depositions; up to five requests for production of documents; inspection of property and things; and relevant medical examinations.

[8] Because of the limited discovery, it is particularly important to the just resolution of cases under Simplified Procedure, that parties honor the requirements and spirit of full disclosure. Parties should expect courts to enforce disclosure requirements and impose sanctions for the failure to comply with the mandate to provide full disclosures.

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Hello All,

I spoke to Dick Holme today about the forms for the certification of business records and disclosure of intent to use the records. During our discussion, he brought to my attention that under the most recent version of the district court civil rules the last form is Form Number 36. This means that the business records forms for district court should be number 37 and 38. I have updated the numbering to reflect this.

When I started putting the forms together I looked at the 2014 version of the rules – which was what was in my office. Under the 2014 version, the forms went to Form 40. That is why I had been using the numbering Form 41 and 42 for the district court forms. I never checked to see if the number of forms had changed, or if any forms had been renumbered to be JDF forms. I apologize for any confusion.

The only change is the numbering: the district court forms went Form 41 and Form 42, to Form 37 and Form 38. The county court numbering of forms 10 and 11 remains unchanged. I wanted to get the updated numbering sent out before the next meeting.

Sincerely,

Damon Davis
Killian Davis Richter & Mayle, P.C.
202 North 7th Street
Grand Junction, CO 81502
Ph. 970-241-0707
Fax. 970-242-8375

Form 37. CERTIFICATION OF RECORDS UNDER C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

_____

City/State/Zip Code: _____

Telephone Number: _____

Subject Matter of the Records: _____

Description or Bates Number Range of the Attached Records: _____

Number of Pages: _____

Date Range of the Records: _____

I am the custodian of the attached records, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities. I swear or affirm that to the best of my knowledge and belief that the attached records:

1) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; 2) Were kept in the course of the regularly conducted activity; 3) Were made by the regularly conducted activity as a regular practice.

[Remainder of page intentionally left blank - signature on next page]

Date: _____ Signature: _____

Print Name: _____

Job Title or Position: _____

Subscribed and affirmed or sworn before me on this _____ day of_____,

20___, in the County of _____, State of _____.

Name: _____ Signature: _____

Witness my hand and official seal.

My commission expires_____.

_____

Notary Public

FORM 38. DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

DISTRICT COURT, _____ COUNTY, COLORADO Address: _____ Plaintiff(s): v. Defendant(s): _____ Attorney or Party Without Attorney (Name and Address): Telephone Number: E-Mail: FAX Number: Atty. Reg. #:	**COURT USE ONLY** Case No. Div.

[NAME OF PARTY] DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS

[Name of Party] Hereby submits this Disclosure of Records to be Offered Through A Certification of Records.

[Name of Party] provides notice to all adverse parties of the intent to offer the following records through a Certification of Records Pursuant to C.R.E. 902(11) and 902(12):

[List all records to be offered through a certification of records. If you intend to offer all records through a certification, you may state "all records." Use additional Pages if necessary]

_____

_____

_____

_____

_____

_____

These records with the accompanying certification (*check applicable line*):

_____ Have already been provided to all adverse parties.

_____ Are being provided to all adverse parties with this Disclosure.

_____ Have been provided to all adverse parties in part, with the remainder being provided with this Disclosure

_____ Are available for inspection and copying on reasonable notice at this location:

_____

Date: _____ _____

(*Signature of Party or Attorney*)

CERTIFICATE OF SERVICE

I certify that on _____ (*date*) a copy of this **DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS** was served on the following parties (*list all parties served by name and address, use extra pages if necessary*):

_____ _____

_____ _____

_____ _____

_____

(*Signature of Party or Attorney*)

INSTRUCTIONS FOR FORMS 37 AND 38

Records of a regularly conducted activity, often business records, may be admissible by affidavit if Colorado Rules of Evidence 902(11) or 902(12) are followed. Forms 37 and 38 provide a means to comply with the requirements of C.R.E. 902(11) and 902(12) to allow the admission of the records of a regularly conducted activity (otherwise known as business records). These forms are not the exclusive means of complying with the rules and parties may use other forms of certification and written notice, so long as they comply with the requirements of the rules.

Form 37

Form 37 should be completed by the person in charge of the records at the business or organization, or by another person who is familiar with how the records are kept. It must be notarized. If the business or organization does not have a notary, it may be necessary to find a notary who can notarize the signature on the affidavit, such as a notary willing to go to the business or organization.

Form 37 may be provided to the business or organization at the time records are requested, in person, by letter, or by subpoena. The form may then be completed at the time the records are provided. However, completion of the form is voluntary and the business or organization may refuse.

If a party desires a business or organization to complete Form 37 after the documents have been provided, it may be necessary to give the business a copy of the documents, so it can verify exactly what was earlier provided.

Form 37 calls for a description of the documents being certified. This description may be brief, such as: "medical records;" "architects notes and blue prints;" or "repair estimates." A Bates number range may be used as a description, so long as it allows the attached documents to be identified.

The subject matter of the documents is the person, place, or thing that the documents are about. This would be the patient the "medical records" are for; the address the "architect notes" apply to; or the car the "repair estimate" applies to.

The number of pages should be included to assist in identifying what records are certified by the affidavit.

Form 37 calls for a date range for the documents. This is to assist in determining what specific documents have been certified. If the documents are undated, and the date range cannot be ascertained, then this may be left blank.

The completed Form 37 must accompany the documents when they are offered at trial or a hearing.

Form 38

C.R.E. 902(11) and 902(12) require advance notice if documents will be offered into evidence through a certification of the records. Form 38 provides a means to provide this notice.

Form 38 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 38 may state "all records." By way of example, the records may be listed by name or description, Bate's number, or trial exhibit number.

Both the records to be offered and the certifications must be provided to all adverse parties, or at least made available for inspection and copying. If the records or certifications have not already been provided, they should be attached to Form 38 or be made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 38 must be served on all adverse parties before of the use of the records at a trial or hearing. For the sake of simplicity, it may be desirable to serve all parties, and not just all adverse parties. The service must be sufficiently in advance of the trial or hearing that the adverse parties may prepare to address the documents.

What constitutes sufficient advance notice is decided on a case-by-case basis. But Form 38 should be served sufficiently in advance of the trial or hearing that the adverse parties have an opportunity to raise any concerns with the court and to subpoena witnesses to testify about the documents if they so desire.

Form 10. CERTIFICATION OF RECORDS UNDER C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

_____

City/State/Zip Code: _____

Telephone Number: _____

Subject Matter of the Records: _____

Description or Bates Number Range of the Attached Records: _____

Number of Pages: _____

Date Range of the Records: _____

I am the custodian of the attached records, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities. I swear or affirm that to the best of my knowledge and belief that the attached records:

1) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; 2) Were kept in the course of the regularly conducted activity; 3) Were made by the regularly conducted activity as a regular practice.

[Remainder of page intentionally left blank - signature on next page]

Date: _____ Signature: _____

Print Name: _____

Job Title or Position: _____

Subscribed and affirmed or sworn before me on this _____ day of_____,

20___, in the County of _____, State of _____.

Name: _____ Signature: _____

Witness my hand and official seal.

My commission expires_____.

_____

Notary Public

FORM 11. DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

COUNTY COURT, _____ COUNTY, COLORADO Address: _____ Plaintiff(s): v. Defendant(s): _____ Attorney or Party Without Attorney (Name and Address): Telephone Number: E-Mail: FAX Number: Atty. Reg. #:	**COURT USE ONLY** Case No. Div.

[NAME OF PARTY] DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS

[Name of Party] Hereby submits this Disclosure of Records to be Offered Through A Certification of Records.

[Name of Party] provides notice to all adverse parties of the intent to offer the following records through a Certification of Records Pursuant to C.R.E. 902(11) and 902(12):

[List all records to be offered through a certification of records. If you intend to offer all records through a certification, you may state "all records." Use additional Pages if necessary]

_____

_____

_____

_____

_____

_____

These records with the accompanying certification (*check applicable line*):

_____ Have already been provided to all adverse parties.

_____ Are being provided to all adverse parties with this Disclosure.

_____ Have been provided to all adverse parties in part, with the remainder being provided with this Disclosure

_____ Are available for inspection and copying on reasonable notice at this location:

_____

Date: _____ _____

(*Signature of Party or Attorney*)

CERTIFICATE OF SERVICE

I certify that on _____ (*date*) a copy of this **DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS** was served on the following parties (*list all parties served by name and address, use extra pages if necessary*):

_____ _____

_____ _____

_____ _____

_____

(*Signature of Party or Attorney*)

INSTRUCTIONS FOR FORMS 10 AND 11

Records of a regularly conducted activity, often business records, may be admissible by affidavit if Colorado Rules of Evidence 902(11) or 902(12) are followed. Forms 10 and 11 provide a means to comply with the requirements of C.R.E. 902(11) and 902(12) to allow the admission of the records of a regularly conducted activity (otherwise known as business records). These forms are not the exclusive means of complying with the rules and parties may use other forms of certification and written notice, so long as they comply with the requirements of the rules.

Form 10

Form 10 should be completed by the person in charge of the records at the business or organization, or by another person who is familiar with how the records are kept. It must be notarized. If the business or organization does not have a notary, it may be necessary to find a notary who can notarize the signature on the affidavit, such as a notary willing to go to the business or organization.

Form 10 may be provided to the business or organization at the time records are requested, in person, by letter, or by subpoena. The form may then be completed at the time the records are provided. However, completion of the form is voluntary and the business or organization may refuse.

If a party desires a business or organization to complete Form 10 after the documents have been provided, it may be necessary to give the business a copy of the documents, so it can verify exactly what was earlier provided.

Form 10 calls for a description of the documents being certified. This description may be brief, such as: "medical records;" "architects notes and blue prints;" or "repair estimates." A Bates number range may be used as a description, so long as it allows the attached documents to be identified.

The subject matter of the documents is the person, place, or thing that the documents are about. This would be the patient the "medical records" are for; the address the "architect notes" apply to; or the car the "repair estimate" applies to.

The number of pages should be included to assist in identifying what records are certified by the affidavit.

Form 10 calls for a date range for the documents. This is to assist in determining what specific documents have been certified. If the documents are undated, and the date range cannot be ascertained, then this may be left blank.

The completed Form 10 must accompany the documents when they are offered at trial or a hearing.

Form 11

C.R.E. 902(11) and 902(12) require advance notice if documents will be offered into evidence through a certification of the records. Form 11 provides a means to provide this notice.

Form 11 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 11 may state "all records." By way of example, the records may be listed by name or description, Bate's number, or trial exhibit number.

Both the records to be offered and the certifications must be provided to all adverse parties, or at least made available for inspection and copying. If the records or certifications have not already been provided, they should be attached to Form 11 or be made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 11 must be served on all adverse parties before of the use of the records at a trial or hearing. For the sake of simplicity, it may be desirable to serve all parties, and not just all adverse parties. The service must be sufficiently in advance of the trial or hearing that the adverse parties may prepare to address the documents.

What constitutes sufficient advance notice is decided on a case-by-case basis. But Form 11 should be served sufficiently in advance of the trial or hearing that the adverse parties have an opportunity to raise any concerns with the court and to subpoena witnesses to testify about the documents if they so desire.

All: After being reminded that I had apparently agreed to create a reference to the new Notice and Certification forms for business records in Rule 16(f)(3)(VI)(B), I have now proposed what I hope is a simple reference that will be enough to flag the forms for those who need them. That change is attached for your consideration.

However, as is frequently the case, tasting the dish revealed a lack of certain ingredients.

Working from the approved new forms from our January meeting, I found that "Forms 10 and 11" were already taken in the district court Appendix of forms. I subsequently learned from Damon Davis that these numbers were used as the next numbers in the county court forms. Since I was amending a district court rule, we decided to renumber them as forms 37 and 38, which are the next available district court form numbers. Damon will consider what to do about the designation of the applicable court in the caption and box on those forms and may either drop the caption and box form completely as has been done on a number of other district court forms (e.g., Forms 2-9) or will use an optional caption and box, such as that on Form 26 re garnishments.

Having discovered the above referenced district court numbering problem, I then started looking for a place in the county court rules to place a reference to "Forms 10 and 11." However, there is no county court counterpart to Rule 16(f). . . . Indeed, I think that there is no county court rule about trial exhibits at all. Thus, rather than bulling my way around that china shop, I hereby lateral the handling of how to (or even whether to) reference Forms 10 and 11 in the county court rules to Ben Vinci. Ben, thanks and good luck.

Dick

CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) and (12)

Amendment to C.R.C.P. 16(f)(3)(VI)

(B). Exhibits. Each party shall attach to the proposed trial management order a list of exhibits including physical evidence which the party intends to introduce at trial. Unless stipulated by the parties, each list shall assign a number (for plaintiff or petitioner) or letter (for defendant or respondent) designation for each exhibit. Proposed excerpted or highlighted exhibits shall be attached. If any party objects to the authenticity of any exhibit as offered, such objection shall be noted on the list, together with the ground therefor. If any party stipulates to the admissibility of any exhibit, such stipulation shall be noted on the list. Records of regularly conducted activity to be offered pursuant to C.R.E. 9.2(11) and (12) may be supported by use of Forms 37 and 38 in the Appendix to Chapters 1 to 17A. Forms. On or before the trial date, a set of the documentary exhibits shall be provided to the court.

From: masias, mindy
Sent: Wednesday, February 15, 2017 2:06 PM
To: berger, michael; marroney, gerald
Cc: eid, allison; dailey, john; stwalley, sherry
Subject: Re: Order Denying Court Reporter

Thank you for your time speaking with me, Judge Berger. Per our conversation, Sherry Stwalley has offered to provide technical assistance in the assigned subcommittee, should that eventually be needed. I have copied her here.

Mindy Masias

Chief of Staff

Colorado Judicial Department

1300 Suite #1200

Denver, CO 80203

720-625-5901

From: berger, michael
Sent: Wednesday, February 15, 2017 10:07 AM
To: marroney, gerald; masias, mindy
Cc: eid, allison; dailey, john
Subject: FW: Order Denying Court Reporter

Jerry and Mindy, I have placed this matter on the Civil Rules Committee agenda for its March 31, 2017 meeting. I have little doubt that CRCP 80 (a) needs to be amended, but the more difficult question is what an amended rule should say. Because this obviously affects the administration and budget of the Judicial Branch, I think input from your office is essential before the civil rules committee makes any recommendations to the Supreme Court. No action will be taken at the March 31 meeting, other than probably appointing a subcommittee to study the matter. I have discussed the matter with Judge Dailey, the chair of the Criminal Rules Committee, and Judge Dailey and I probably will establish a joint subcommittee. I think it will be important for a representative of SCAO to participate on that joint subcommittee.

Michael H. Berger, Chair

Civil Rules Committee

720 625-5231

Michael.berger@judicial.state.co.us

From: moore, jenny
Sent: Tuesday, February 14, 2017 12:03 PM
To: berger, michael; dailey, john
Cc: swift, pattie
Subject: FW: Order Denying Court Reporter

Hello,

Please see the email string and document attached that pertain to a proposed amendment to C.R.C.P. 80(a). Judge Dailey, I'm including you because Crim. P. 55(e) contains a reference to C.R.C.P. 80. Judge Berger, please let me know if you'd like this placed on the March 31 agenda.

Thanks,
Jenny

From: masias, mindy
Sent: Tuesday, February 14, 2017 11:31 AM
To: moore, jenny <jenny.moore@judicial.state.co.us>
Cc: swift, pattie <pattie.swift@judicial.state.co.us>
Subject: FW: Order Denying Court Reporter

Jenny,

Thank you for taking my call today. Judge Swift would like to formally request the respective rules committees to consider revision based on the the interplay between the rules of criminal procedure and the rule of civil procedure, 80(a), that says the court must provide a court reporter unless the parties stipulate otherwise. Attached is a Judge Gonzales' decision on a motion filed before the court. Clarity will be beneficial for the future.

Thank you very much for your help with this matter!

Mindy Masias

Chief of Staff

State Court Administrator's Office

1300 Broadway, Suite 1200

Denver, CO 80203

Office 720-625-5901

Fax 720-625-5934

From: "swift, pattie" <pattie.swift@judicial.state.co.us>
Date: Monday, February 13, 2017 at 5:01 PM
To: Mindy Masias <mindy.masias@judicial.state.co.us>
Cc: "gallegos, christina" <christina.gallegos@judicial.state.co.us>
Subject: FW: Order Denying Court Reporter

Hi Mindy,

Now that we have no court reporters on staff in the 12th, we repeatedly receive motions from the public defender to require us to obtain a court reporter for a jury trial. One of the bases for this motion is the interplay between the rules of criminal procedure and the rule of civil procedure, 80(a), that says the court must provide a court reporter unless the parties stipulate otherwise. Attached is an order Judge Michael Gonzales wrote that denies such a request and reviews the relevant rules and caselaw. My question to you, though, is can't the Supreme Court revise the rules of civil and criminal procedure to make clear that electronic recording is sufficient to make the record? I don't want to approach the Chief Justice with this order given that, if the defendant is convicted at trial, his case could end up in front of the Supreme Court. But I would like to raise this issue in some way. Do you have a suggestion for how to go about that?

Thanks,

Pattie P. Swift

Chief Judge – 12th Judicial District

Water Judge – Water Division 3

Alamosa County Courthouse

702 Fourth Street

Alamosa, CO 81101

719-589-4996

From: gonzales, michael
Sent: Monday, February 13, 2017 4:51 PM
To: hayes, patrick; swift, pattie; gonzales, martin
Cc: pacyga, benjamin
Subject: Order Denying Court Reporter

Fellow Judges-

I am attaching an order that Ben prepared and I issued regarding the ongoing "Demand for a Court Reporter" filed by the Public Defender.

After discussing the ongoing issue with Ben, we felt that it was appropriate to issue a written order to put the issue to rest at least for the time being; I am sure Ben would be happy to share if this order is helpful in any way. Thanks Ben.

Judge Mike

Michael A. Gonzales

District Court Judge

12th Judicial District

702 4th Street
Alamosa, CO 81101

(719) 589-7610

District Court, Alamosa County, State of Colorado Court Address: 702 Fourth Street, Alamosa, CO 81101	
THE PEOPLE OF THE STATE OF COLORADO, *Plaintiff*, **v.** **NATHANIEL FERRELL,** *Defendant*.	▲ COURT USE ONLY ▲ Case No: 2016CR415 Division: 2
Order: Denying Demand for Court Reporter [D-11]	

THIS MATTER came before the Court on the Defendant Nathaniel Ferrell's *Demand for Court Reporter [D-11]*, filed on February 13, 2017. In the *Demand*, the Defendant seeks an order appointing a court reporter to record the proceedings at his trial by jury. The Defendant did not file the *Demand* until two days before trial. The Defendant is represented by Deputy State Public Defender Amanda Hopkins. The People are represented by Deputy District Attorney Ashley Fetyko.

Initially, the Court concludes that the *Demand* was not timely filed. On February 6, 2017, the Court ordered the parties to file any motions in limine by February 8, 2017. The Defendant did not file this motion until February 13, 2017. The Court, therefore, denies the motion as untimely, especially in light of the difficulty of finding a court reporter on such short notice. But, the Court also denies the *Demand* on the merits.

The Colorado Rules of Criminal Procedure specify that "[t]he practice and procedure concerning reporter's notes and electronic or mechanical recordings shall be as prescribed in Rule 80, C.R.C.P., for district courts . . . ." Crim. P. 55(e). In turn, Rule 80(a) provides: "Unless the parties stipulate to the contrary, a district court . . . shall . . . direct that evidence be taken stenographically and appoint a reporter for that purpose." The chief purpose of Rule 80(a) is ensuring, "in case of a review of the judgment, a full and complete record of the proceedings may be written out to be laid before the appellate tribunal." *Jones v. Dist. Court*, 780 P.2d 526, 529 (Colo. 1989) (quoting *Keady v. Owers*, 30 Colo. 1, 7, 69 P. 509, 511 (1902).

In 2000, the Chief Justice signed CJD 00-02, titled "Concerning Waiver of Application of C.R.C.P. 80(a)."[1] The directive provided:

> Colorado Rule of Civil Procedure 80(a), insofar as it requires that evidence be taken stenographically for proceedings in the district

[1] CJD 2000-02, available at https://www.courts.state.co.us/Courts/Supreme_Court/Directives/00-02.pdf.

> court, is waived for proceedings conducted by any district or county judge assigned to hear a district court case when the Chief Judge of the district determines that such a waiver is necessitated by exigent circumstances, such as the unavailability of a court reporter.

The Chief Judge for the Twelfth Judicial District has issued CJAO 2003-09, as amended,[2] which provides:

> . . . .
> B. C.R.C.P. 80(a) notwithstanding, Chief Justice Directive (CJD) 2000-02 authorizes the chief judge of each judicial district to waive the requirements of C.R.C.P. 80(a) and permit the use of electronic recording devices as necessary when a court reporter is unavailable.
> C. The Twelfth Judicial District does not currently employ any court reporters.
> D. Until the Twelfth Judicial District is able to hire one or more court reporters, it will be necessary to electronically record proceedings before the district court.

(emphasis added). Because it is necessary to electronically record proceedings before the district court in the Twelfth Judicial District, the Court denies the *Demand*.

Despite CJD 2000-02 and CJAO 2003-09, the Defendant argues that the court must provide a court reporter unless he stipulates to the contrary. He contends that the CJD and CJAO serve to "prevent a litigant from having a full and complete record of the proceedings so as to protect his or her right to an appeal do not promote the efficient function of the Court . . . ." Motion [D-11], at ¶ 5. The Court disagrees. These authorities allow the Court to rely on electronic recording instead of a live court reporter. The Court has used its electronic recording devices and transcriptionists to prepare transcripts for appeal.[3] The Defendant has not explained how using this process would prejudice him. Indeed, this process will produce a full and complete record for appeal with the same content as if it were created by a live court reporter. Thus, the Court's use of electronic recording fully satisfies Rule 80(a)'s purpose of providing "a full and complete record" for any appeal. *See Jones*, 780 P.2d at 529.

The Defendant also argues that "Chief Justice Directives are policy statements, not statutes." Motion [D-11], at ¶ 6. The Court agrees that a Chief Justice Directive is not a statute. But, such directives are binding on the courts. Chief Justice Directives flow from the Chief Justice's "administrative authority" as "the executive head of the Judicial Branch." *People ex rel. D.L.C.*, 70 P.3d 584, 587 (Colo. App. 2003); Colo. Const. art. VI, §§ 2, 5(2). As a result, "Chief

[2] CJAO 2003-09 as amended, available at https://www.courts.state.co.us/userfiles/file/Court_Probation/12th_Judicial_District/Chief%20Judge%20Administrative%20Orders/2003-09%20-%20Making%20a%20Record%20in%20District%20court%20rev%201-9-2017.pdf

[3] *See* 12th Judicial District, Transcript Ordering Policy, *available at* https://www.courts.state.co.us/userfiles/file/Court_Probation/12th_Judicial_District/Transcripts/12th%20JUDICIAL%20DISTRICT%20Transcript%20policy%201-17.docx.

Justice directives are an expression of Judicial Branch policy and are to be given full force and effect in matters of court administration." *Hodges v. People*, 158 P.3d 922, 926 (Colo. 2007) (emphasis added); *People v. Cardenas*, 62 P.3d 621, 623 (Colo. 2002); *People v. Schupper*, 2014 COA 80M, ¶ 24, 353 P.3d 880, 888; *People v. Orozco*, 210 P.3d 472, 475 (Colo. App. 2009). Such matters of administration are directly tied to the use of electronic recording devices instead of court reporters. For instance, a court reporter will be available only if there is funding to pay court reporters and court reporters can be assigned to district court trials. *Cf. Yeager v. Quinn*, 767 P.2d 766, 769 (Colo. App. 1988) (concluding that Chief Justice Directive could require county court to use electronic recording devices instead of court reporters, even though statute gave county court judges discretion to use either). Thus, the Chief Justice, as executive head of the Judicial Branch, has authority to create an exception to Rule 80(a) when it is administratively impossible to comply with it — that is, when there are exigent circumstances, such as the unavailability of a court reporter. And, the CJAO merely clarifies how that directive applies in the Twelfth Judicial District.

The Defendant's reliance on *Jones* is misplaced. As relevant here, the trial court in *Jones* ruled that it would not record certain aspects of a trial — including bench or side-bar conferences. 780 P.2d at 530. The trial court indicated that it would allow parties to make a record of these proceedings at a more convenient time. *Id.* at 527. The Colorado Supreme Court held that "absent the consent of the parties, Colorado law requires that trial proceedings be recorded contemporaneously by the court reporter." *Id.* But, the Colorado Supreme Court did not consider the use of contemporaneous electronic recording as an alternative to court reporters; instead, the court focused on making a complete and contemporaneous record. Therefore, *Jones* does not require the court to use a live court reporter instead of its electronic recording system.

The Defendant also argues that the use of electronic recording devices instead of court reporters would violate the Defendant's constitutional right to due process of law. None of the cases cited by Defendant support this conclusion. *See Jones*, 780 P.2d at 528-30 (citing procedural rules and constitutional provision specifying that district courts are courts of record); *Herren v. People*, 147 Colo. 442, 444, 363 P.2d 1044, 1046 (1961) (similar). The Court has reviewed other cases addressing the use of court reporters. *See, e.g.*, *Norton v. Norton*, 494 P.2d 847 (Colo. App. 1972); *Pacheco v. People*, 146 Colo. 200, 360 P.2d 975 (1961); *Schleiger v. Schleiger*, 137 Colo. 279, 324 P.2d 370 (1958). And, the Court has not found any cases supporting this conclusion and concludes that, at least in the absence of demonstrated prejudice to the defendant, the use of electronic recording devices is not a due process violation.

Finally, the Defendant appears to imply that Rule 80(a) contradicts CJD 00-02 and CJAO 03-09. The Court disagrees. When the rationale of a legal rule no longer applies, that rule itself no longer applies. *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The rationale for Rule 80(a) is ensuring "a full and complete record" for any appeal. *See Jones*, 780 P.2d at 529. This rationale does not provide any basis for distinguishing between the use of electronic recording devices and the use of live court reporters. And, this rationale does not require the use of live court reporters when exigent circumstances — such as the unavailability of a court reporter — make it onerous to comply with it. Here, the Defendant waited until two days before trial to demand a court reporter. It would be onerous for the Court to secure one at this time and, if the

Court did so, it would not further the rationale of ensuring "a full and complete record" for any appeal.

IT IS THEREFORE ORDERED THAT the Defendant's *Demand for Court Reporter [D-11]*, filed on February 13, 2017, is Hereby DENIED.

Issue Date: 2/13/2017

BY THE COURT:

Michael A. Gonzales
District Court Judge

From: berger, michael
Sent: Monday, February 13, 2017 9:45 AM
To: elliff, j. eric
Subject: RE: Rule 4 Issue?

I agree that there probably is an inconsistency created by CRCP 4(a) which seems to say that no-one but the supreme court has the authority to prescribe how process is served. That probably is wrong; I don't know why the legislature doesn't have authority, in its comprehensive regulation of corporations, to specify alternative methods of serving corporations which are required to have a registered agent, but don't. (And even if an argument could be made that the courts have the sole constitutional authority under separation of powers to govern service, I just don't see the supreme court getting in a fight with the legislature over such a minor matter.) Perhaps CRCP 4 (a) should be modified to add the words "or by statute" at the end of section 4 (a). This same issue may come up again because a bill has been introduced in the legislature to govern service of persons who live in gated communities. I don't know if the Judicial Branch intends to take a position for or against this bill; these same problems led to the amendments to CRCP 4 (f). I will put this on the agenda at a future meeting.

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

From: elliff, j. eric
Sent: Tuesday, February 07, 2017 4:25 PM
To: berger, michael
Subject: Rule 4 Issue?

Here is something that came up yesterday. C.R.C.P. 4(f) allows for substituted service when a party is unable to accomplish personal service under Rule 4(e). In such a case, once a court is satisfied that further attempts at personal service would be of no avail, the court may order substituted service in a manner reasonably calculated to be effective, and also mail a copy of the process to the party to be served.

So far so good. But, C.R.S. 7-90-704(2) provides that in the case of an entity required to maintain a registered agent with the Secretary of State, the entity "may be served by registered mail" if the registered agent cannot be found or if there is no registered agent.

A party in a collection case moved for default, and stated in his affidavit that he had served the defendant (a corporation with a defunct registered agent) by mail. I denied the motion because the movant had not sought permission for substituted service under Rule 4(f). He moved for reconsideration arguing that he had a right to serve by mail, citing the statute.

There seems to be an inconsistency here. Or am I missing something?

Eric

J. ERIC ELLIFF
JUDGE

Denver District Court, Second Judicial District
City and County Building, Courtroom 215
1437 Bannock Street
Denver, Colorado 80202

BENDELOW
LAW OFFICE LLC

EDWARD "TED" M. BENDELOW
tedbendelow@bendelow.net

February 15, 2017

Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Re: C.R.C.P. 107(d)(2)

To Whom It May Concern:

I am writing to express my concern regarding the one sided nature of the application of the rule. The language in the rule appears neutral: "…costs and reasonable attorney fees in connection with the contempt proceeding may be assessed in the discretion of the Court." Colorado Courts have ruled that the rule does not authorize attorney fees to recompense the contemptor, no matter how inappropriate may be the contempt proceeding initiated by the person claiming damage. *AVCO Financial Services of Colorado, INC. v. Gonzales,* 653 P.2d 751 (1982); *Agee v. Trustees of Pen Bd. Of Cunningham Fire,* 518 P.2d 301 (1974).

I recently successfully defended my client in defense of a contempt claim. He incurred substantial attorney fees in the defense with no opportunity for recovery in light of the cited cases. In fact, it is a one sided application, with the complainant at no risk if the complaint is not successful.

I would request the rule be amended to a truly neutral position, namely that an award of attorney fees be available to the prevailing party.

Respectfully,
BENDELOW LAW OFFICE, LLC

Edward M Bendelow

Edward M. Bendelow

1707 North Main Street, Suite 301 :: Longmont, Colorado 80501 :: T (303) 837-9600 :: F (303) 860-0311

berger, michael

From: Ben Vinci <Ben@vincilaw.com>
Sent: Wednesday, March 01, 2017 2:43 PM
To: berger, michael
Subject: FW: electronic filing matters

Judge Berger

The email below was sent to me from a lawyer in the Grand County area. He raises a couple of concerns that are out of my sub-committee preview. I am hoping that you can get this to a committee member who is more directly involved in proposals dealing with Rule 121. He says that he gave these issue to Dick years ago and never heard back. He would like them to at least be considered and he would like an acknowledgment and if they aren't going to be addressed at least some reasoning as to why. The first one truly does seem to be an oversight that needs to be corrected.

Thank you for your attention to this matter.

P.S. I will be out of town for spring break and will be unavailable for the March meeting.

LICENSED IN COLORADO, NEBRASKA, WYOMING AND UTAH.

Ben Vinci
Vinci Law Office, LLC
Attorney at Law
2250 South Oneida St. Suite 303
Denver, Co 80224
303 872-1898
ben@vincilaw.com
Follow us on Facebook, LinkedIn, and Twitter!

If this communication was sent in an attempt to collect a debt, then any information will be used for that purpose.

From: steven gall [mailto:attorney@stevenagallpclaw.com]
Sent: Tuesday, February 28, 2017 7:51 AM
To: Ben Vinci <Ben@vincilaw.com>
Subject: Re: electronic filing matters

Dear Mr. Vinci:

Thank you for speaking with me regarding the following matters:

1. Service of papers under CRCP 121 Sec. 1-26 para. 6: This paragraph purports to make service of papers mandatory through the e-system. These presents some confusion with CRCP 5 which allows alternative methods of service. ICCES charges $7.50 for e-service. I can see no reason why clients should be charged $7.50 for each service which can be done at much less expense by fax, mail, hand delivery, or email. For example, there is one attorney's office who is often opposing counsel about a block from my office and I can easily drop off a copy. I did this often in the days before e-filing on my way to court to file the paper. Obviously, other methods of electronic delivery cost nothing. If Sec. 1-26 para. 6 is literally applied, it is a great disservice to the public. $7.50 is not a minor amount in cases where there is a lot of motions and pleadings. Sec. 1-26 para. 6 should be changed to state that service can be accomplished via the e-system or any other method permitted by CRCP 5.

2. There is a fault with the e-system in how pro se parties and attorney represented parties are treated. This fault appears, in my opinion, to be of constitutional proportions. Why should pro se parties be allowed to file without charge when attorney represented parties must pay to use the e-system? This is readily apparent in divorce cases where I am told that 50%+ of the parties are pro se and therefore do not pay for filing. Attorney represented divorce parties must pay for each filing. I can see no reasonable basis for this difference/discrimination. I see no reason why pro se parties should not have to pay for each filing if attorney represented parties must pay for each filing. On the other hand, I see no reason why attorney represented parties should be required to pay for each filing when pro se parties do not have to pay. The remedy is one or the other - either all pay or none pay. This is a disservice to the public who choose to be assisted by attorneys.

You indicated that you are on the supreme court rules committee and will present these matters for discussion and, hopefully, action per the above. Earlier, I have brought these matters to the attention of the CBA with miserable results. Hopefully, you can do better. I assume that you will communicate any results after consideration by the committee. Thank you.

berger, michael

From: Ben Vinci <Ben@vincilaw.com>
Sent: Thursday, March 02, 2017 8:08 AM
To: berger, michael
Subject: Proposals

Judge Berger

I received the following comment from Mr. Gall in response to the email I sent you yesterday. He just wanted me to be clear as to what Dick Laguson's response was the last time he tried to get rule 121 changed. Mr. Gall says that the problem is persisting and rule 121 needs to conform with rule 5.

Dear Mr. Vinci:

Received your email. I believe that there should probably be a minor correction in regard to "Dick". If "Dick" is in reference to Richard Laguson and if Richard was on the rules committee at the time of the Email rule, note that I did contact Richard and he did respond. Richard indicated his belief that the Email rule was not the exclusive method of service of electronically filed papers. However, nothing formal in the sense of a rule revision resulted. Richard was cooperative with me and I appreciated Richard's assistance. Hope this helps.

Sent while I was in outer space please disregard any typos.
LICENSED IN COLORADO, NEBRASKA, WYOMING AND UTAH.

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