AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, June 24, 2016, 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 May 20, 2016 minutes [Page 1 to 3]

III. Announcements from the Chair

A. CRCP 120 Public Hearing November 10 at 2:30

B. County Court Jurisdictional Increase—Public Comment [Page 4 to 10]

IV. Business

A. County Court Rules Subcommittee—(Ben Vinci)

B. CRCP 57(j) & Fed. R. Civ. P. 5.1—(Stephanie Scoville) [Page 11 to 15]

C. County and municipal appeals to district court—(Judge Espinosa) [Page 16 to 20]

D. CRCP 83—(Jeannette Kornreich) [Page 21 to 30]

E. Code of Virginia § 8.01-296. Manner of Serving Process Upon Natural Persons—(Judge Berger) [Page 31 to 32]

F. CRCP 52—(Lee Sternal)

G. New Form for admission of business records under hearsay exception rule—(Damon Davis and David Little) [Page 33 to 43]

H. CRCP 33 & Form 20—(Skip Netzorg) [Page 44 to 64]

I. CRCP 53—(Judge Zenisek)(Passed to September 30, 2016)

V. New Business

VI. Adjourn—Next meeting is September 30, 2016 at 1:30pm

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

Jenny Moore
Rules Attorney
Colorado Supreme Court
jenny.moore@judicial.state.co.us
720-625-5105

Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 87571471, followed by # key.

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
May 20, 2016 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 Court of Appeals Full Court Conference Room on the third 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 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	
Richard Laugesen	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	
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. May 20, 2016 agenda packet

B. Supplemental Material – Judge Taubman's CRCP 53 email

II. Announcements from the Chair

- The March 18, 2016 minutes were approved as amended by Judge Jones;
- Judge Webb was thanked for chairing the last meeting;
- The CRCP 120 comment period closed April 6, and a public hearing will be held in November;
- The county court jurisdictional increase was posted for public comment, and comments are due June 10;
- A letter to the supreme court regarding CRCP 47 was included in the agenda materials, and certiorari had been granted in 2015COA179; and
- The County Court Rules Subcommittee, a standing subcommittee of the Civil Rules Committee, chaired by Ben Vinci, had their first meeting.

III. Business

A. CRCP 53

Judge Zenisek began and reminded the committee that the amendments to CRCP 53 were introduced at the September 25, 2015 meeting. At that meeting, the committee expressed concerns about the authority of a district court judge to appoint a special master and the standard of review used in the rule. Since then, the proposal had been amended, and Chief Judge Davidson had joined the subcommittee.

There was discussion about what standard of review should be used in the rule. The rule used de novo review, but some members wondered if it was best. One member thought that a standard of review from the Administrative Procedures Act (APA) could be used, where a party can seek de novo review only from "ultimate conclusions." Another idea was offered, taken from arbitration proceedings, where a party can ask for de novo review, but the judge has discretion to grant a de novo review only if the losing party shows prejudice.

Richard Holme offered a working definition of de novo review: "on the record, unless the trial judge is persuaded to grant a new hearing on the facts." A straw vote was taken, and 10 members were in favor of Mr. Holme's working definition; 8 members were in favor of either the "ultimate conclusion" language from the APA or the approach taken in arbitration; and, 1 member was in favor of clearly erroneous.

Next, the committee discussed whether or not they were referring to de novo review or a de novo hearing. One member asked how the federal courts interpret de novo under Fed. R. Civ. P. 53? Subcommittee member Greg Whitehair offered to write a memo on what de novo review means in the federal courts in this context. The subcommittee will take the committee's comments under consideration, and a motion to table the proposal until the June 24, 2016 meeting passed unanimously.

B. Form 20 & CRCP 33
The subcommittee presented the draft for final vote, but there were a few lingering questions. A motion to table the proposal until the next meeting passed unanimously. After the final vote, Form 20 and CRCP 33 will go to the Editing Subcommittee for review.

C. New Form for admission of business records under hearsay exception rule
Passed to the June 24, 2016 meeting.

D. Nits: CRCP 121 § 1-14, CRCP 121 § 1-19, CRCP 103, CRCP 41(b), and CRCP 17(b)
The rules contained typos, incorrect cross references and citations, or required other amendment. A motion to amend all rules as they appeared in the agenda packet passed unanimously.

E. CRCP 60(b)
There was a motion by Brad Levin to change two references in CRCP 60(b) from 6 months to 162 days. The motion passed unanimously. Mr. Levin stated he also found a few 6 month deadlines in CRCP 103; Judge Berger asked him to inform the County Court Rules Subcommittee Chair, Ben Vinci.

F. CRCP 57(j)
Judge Berger brought this to the committee after a discussion with the Appellate Rules Committee. He asked if the language in subsection (j) should be placed in a separate rule, similar to Fed. R. Civ. P. 5.1. Also, the federal rule requires a party challenging the constitutionality of a statute to notify the United States Attorney General, and perhaps a similar provision should be added to the Colorado rule. Stephanie Scoville from the Colorado Attorney General's Office will follow up with her office on these issues and report back to the committee.

G. CRCP 52
Lee Sternal brought this to the committee at the last meeting, and he had done some preliminary research prior amendments. After discussion, a majority of the committee was interested in amending the rule, so a subcommittee will be formed.

H. County Court Municipal Appeals to district court
Passed to the June 24, 2016 meeting.

IV. Future Meetings
June 24, 2016

The Committee adjourned at 3:30p.m.

Respectfully submitted,
Jenny A. Moore

To: Clerk of the Supreme Court, Mr. Christopher Ryan

From: Colorado County Court Judges Association
Via email: Christopher.ryan@judicial.state.co.us

Dear Chief Justice Rice and Fellow Justices:

The Colorado County Court Judges Association is responding to the request for comments regarding the potential increase to the civil jurisdiction of Colorado County Courts. We understand that the Supreme Court is considering whether to support an effort to increase the civil jurisdiction of county courts from $15,000 to $35,000. Prompted by an initial round of email regarding the possibility we conducted an informal electronic survey to ascertain the position of our membership on this issue.

The survey was sent to our entire membership of 96 county court judges. We received 51 responses. Of the respondents, 74% have a mixed criminal and civil docket, 18% had a criminal docket only, and 8% have a civil docket only.

Of those who responded, 34% were in favor of the increase, 15% were neutral, and 51% were opposed to the increase. Of those who responded, 95% felt that it is important to conduct a workload analysis to determine the impact on the county court dockets of such an increase while 5% of respondents felt an analysis would be helpful, but was not critically necessary; 88%, felt it would be important to conduct a fiscal analysis of the impact of the increase while 12% felt the fiscal analysis was not that important.

When asked whether the CCJA should support the recommendation for the increase, 34% of the respondents said yes, and 66% said no.

We asked whether the respondents would also support an increase in the small claims court jurisdictional amount, if the county court jurisdictional amount were increased. 48% felt the small claims jurisdictional amount should not be increased, 31% supported an increase to $10,000 and 21% supported an increase to $15,000.

I have attached for your further consideration the verbatim comments that we received in reply to the inquiry: "What are your greatest concerns regarding the jurisdictional limit increase? "

Thank you for taking time to consider these concerns. As you can see from the responses – some are opposed, some are in favor. Not surprisingly, the vast majority of us really want to know that the decision makers have analyzed and considered the impact such a change will have on county courts so that we can all be better prepared to manage our dockets accordingly. To that end, we requested statistics from SCAO regarding current civil case loads for the County Courts as well as District Courts for cases with judgments of between $15,000 and $35,000. We are not aware of any data currently being collected at the district courts that would provide a count of the number of cases filed seeking recovery of damages in that range.

We have not yet received that information but do think it is important that it be available for your consideration and hope that our request will serve to provide Ms. Walker's staff an early start in gathering it for you.

If we can be of any further assistance, especially regarding any study of the impact this may have on county courts of various sizes, please let us know.

Sincerely,

Colorado County Court Judges Association
Judge JenniLynn E. Lawrence, President
Judge Anne Ollada, President Elect
Judge Sandra Gardner, Secretary
Judge Charles Unfug, Treasure
Judge Gretchen Larson, Past President

Responses to Inquiry Regarding Judges Greatest Concerns
About Jurisdictional Increase

- Increased workload w/o adequate time/resources; lack of actual facts about impact
- Unfairness to parties - is a $35,000 claim appropriately resolved through the expedited procedure in county cases, or should it be subject to discovery/etc.? If so, what effect will this have on both litigants and courts?
- Possible disproportionate effect on rural and PT judges - many district cases filed in rural jurisdictions will be transferred to county courts
- increased filings in County Court
- discovery issues
- More complex cases requiring significant time
- form 9 disclosures will not suffice
- having enough judges appropriated for the possible increase in case numbers
- trial time will increase from 2 day to 5 day trials potentially
- work load
- additional compensation
- speedy trial issues in criminal cases
- workload
- none
- The increase in docket time for pretrial conferences and trials. Some of these cases will take more than one day (especially jury trials) and this will cause a backlog to the rest of the docket. I don't think this really provides much more of an access to justice for litigants because the time delay will be felt by all.
- the complexity of cases for lay judges, part time judges, and the likelihood of increased # of appeals to District Court
- the lack of resources to handle these cases. research attorneys are precluded from assisting county court judges in my district. This means the county judges will have to use additional time to prepare rulings and conduct research at a time when magistrate resources are dwindling.
- Discovery Issues
- Evidence Issues - expert witnesses, etc.
- Real estate
- The potential for immediate increase in the caseload of the county judge with no salary increase for 3 years.
- I do not consider this to be an increase in the type of cases heard in County Court, just the number of cases. It will make court more accessible and less expensive in small civil litigation.
- Not having the training for higher monetary cases
- Lack of resources
- Lack of personnel
- Lack of time

- Time, time, time. As a part time judge (.60) the majority of my time (80% plus) is spent handling criminal matters. It will be a challenge to handle potentially more civil cases. Also, the discovery rules for county court may need to be expended. Furthermore, the pleading practice may need to be changed.
- Docket congestion
- pro se litigants
- simplified county court rule of civil procedure
- more work means less time spent on cases generally and/or more hours worked
- lack of additional clerks
- lack of additional judge or magistrate to help
- potential increase in workload without staff availability
- Increased time needed for civil cases
- It will require a change in the Rules to allow Discovery
- There will have to be County Divisions (Civil and Criminal) since this increase will mean lawyers, insurance companies and therefore more than a one day trials.
- That even a limited increase in cases in the range from $15,000 to $35,000 will add substantially to the time required for the civil docket.
- That for the part-time judges the added cases will not affect the weighted caseload sufficiently to reflect the additional time required for those cases.
- Our current case load is so heavy, we can barely keep our heads above water as is.
- Our Clerks are already overworked and stressed out.
- If we all have to handle civil cases, they will be put on the back burner, because the criminal docket will take precedence. Doesn't that defeat the concept of "Access to Justice"?
- How to manage the cases on my part time schedule.
- My docket is very different than the issues others would face
- I don't think there has been a civil trial here in the last 33 years
- There may have been no additional cases that would fall in this new limit, so I am very atypical and would support what makes sense for the group
- Adequate resources for invariably more complex litigation.
- That the transition will be abrupt and require a different skill set for County Judge's.
- That the weighted caseload won't quickly acknowledge the additional substantial burden on County Judge's that this will create.
- That any assumption that county court workloads have decreased because of a decrease in case filings, so that the county court can easily absorb the increased jurisdictional limit is a false and incorrect assumption. We in Douglas County have lost a significant portion of our magistrate time as a result of decreased case filings and we are already struggling to keep up with our workload as a result, even without any additional work that the increase in the jurisdictional limit will cause. The time percentages allocated for cases in the last weighted case load study are no longer accurate, at least in our jurisdiction where all of the law enforcement agencies now use dash cameras and/or body cameras, which significantly increases the time required for both motions hearings and jury trials.

- That any assumption that increasing the jurisdictional limit will not significantly increase the county court workload may not be at all correct and that the potential impact, and the possible need for an increase in county court resources if the limit is raised needs to be carefully analyzed and considered before a decision is made to increase the jurisdictional limit, not after.
- That the SCAO carefully consider and analyze not the potential number of increased county court case filings the increase could cause, but also the nature and type of those increased cases and whether they are likely to each require more time than the typical civil case already being heard in county court, given the increase in the amount in controversy. It is difficult to reconcile citing increasing access to the courts for pro se parties who otherwise might not pursue matters in district court as one of the main reasons for making the increase on the one hand, and then to conclude on the other that the change will not have any significant impact on county court workloads and existing resources.
- The recommendation appears to be an arbitrary increase in the jurisdictional limit without any analysis of what the county courts can realistically absorb.
- The increase in county court workload ignores the additional amount of time it takes to do cases in criminal JPOD.
- The CCJA was not consulted prior to this becoming a recommendation by the Rules Committee.
- Increase in case load
- Lack of discovery for cases involving more money
- Impact on nature of cases that would now be in county court
- Increase in workload, not mere #s
- Already lost our Magistrate this year doubling our caseload.
- The county courts will not be given the additional resources necessary to handle the change.
- The Supreme Court will rely upon invalid statistics.
- The allocation of resources will be based on projected case filings, without consideration of the increase in complexity of the cases being filed and other relevant factors.
- Changes to the Rules resulting in increased discovery issues and contested motions practice
- Increased complexity of cases will result in increased time per case, overwhelming too few resources and resulting in increased delays to final judgment
- Too little time to hold contested jury trials in county court
- Time and staffing.
- Just, speedy and inexpensive determination of cases.
- The reduction in staff and magistrates to the County Court make jurisdictional increases an overwhelming proposition. I would support the measure if I wasn't losing magistrate funding.
- I handle felony criminal cases which i would have to stop doing if jurisdictional limits are increased. This WILL impact District Courts

- County Court civil procedure discovery and other Rules may not be adequate to support more complex litigation.
- The volume of complex matters that will require more pretrial motions and hearing practice.
- The increase in number of cases.
- The increase in amount of time needed per case.
- The last time we did this the impact was not as much as I thought it would be so I think we need an in depth, realistic analysis
- CCJA should request a study to determine the actual impact on the county courts before taking a stand before or against the rule change because we don't have enough information. SCAO needs to examine not only the nature and number of the cases, but also the impact on jurisdictions that aren't in the City and County of Denver. My concern is that SCAO is underestimating the number and complexity of cases which would be kicked to county court. I am absolutely opposed to increasing the cap in small claims. Anyone can sue anyone with no evidence to back up the case, and I'd hate to see more people sued on bogus cases.
- I think this increase makes sense. The value of money over time has changed and this increase would respect that change.
- This would provide an increased access to our courts for persons that otherwise would not be able to present their case in District Court because the monetary value in controversy is greater than $15,000 but low enough that an attorney might not take the case.
- No man’s land on discovery and related issues.
- That we look at this initial increase as all that is required and ignore the larger jurisdiction conversation that needs to occur as it relates to monetary limits and matters.
- That the County Courts, by default, have become focused on criminal matters and failed to recognize the importance of the County Courts retaining jurisdiction over common civil matters that have moved to the District Courts due to the amount in question.
- Dramatic impact related to the time to process the cases
- More Jury Trials. This would create a significant negative impact for the County Court
- Discovery rules would need to be amended totally undermining the "simplified procedure" in place at present.
- Increased time consuming jury trials
- we are 2 Judges short at this time and they want to increase our work load !
- This was done with no input from Sate County Court Judges. Denver is not in the State system and have different needs and PAY !
- The District Court caseload is down but they want to increase the County Court work load when we are understaffed!
- We have no Magistrate help at the County Court level
- This is simply not just adding cases. They will take longer and be more complex to handle.
- Presently, we have no space on our dockets to do longer civil trials.

- Not enough time to fit in civil cases with criminal cases with the understanding of the timeframe that both cases need to be heard.
- Jurisdictional increase would likely result in more cases going to jury trials and pro se litigants would be at a significant disadvantage in defending or prosecuting such cases.
- More complex cases would be presented and neither side would have rights to additional discovery, but at the same time increased discovery and motion rights would negatively impact pro se litigants
- finding time to handle multi-day civil jury trials
- finding time to handle discovery issues should rules change
- Finding time :)

C.R.C.P. Rule 57

RULE 57. DECLARATORY JUDGMENTS

Currentness

(a) Power to Declare Rights, etc.; Force of Declaration. District and superior courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceedings shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

(b) Who May Obtain Declaration of Rights. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(c) Contract Construed Before Breach. A contract may be construed either before or after there has been a breach thereof.

(d) For What Purposes Interested Person May Have Rights Declared. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other; or

(2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

(e) Not a Limitation. The enumeration in sections (b), (c), and (d) of this Rule does not limit or restrict the exercise of the general powers conferred in section (a) of this Rule, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

(f) When Court May Refuse to Declare Right. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(g) Review. All orders, judgments, and decrees under this Rule may be reviewed as other orders, judgments, and decrees.

(h) Further Relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

(i) Issues of Fact. When a proceeding under this Rule involves the determination of an issue of fact, such issues may be tried and determined in the same manner as issues of facts are tried and determined in other actions in the court in which the proceeding is pending.

(j) Parties; Municipal Ordinances. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and is entitled to be heard.

(k) Rule is Remedial; Purpose. This Rule is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

(*l*) Interpretation and Construction. This Rule shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgment and decrees.

(m) Trial by Jury; Remedies; Speedy Hearing. Trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

Notes of Decisions (259)

Rules Civ. Proc., Rule 57, CO ST RCP Rule 57
Current with amendments received through May 1, 2016

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title II. Commencing an Action; Service of Process, Pleadings, Motions, and Orders

Federal Rules of Civil Procedure Rule 5.1

Rule 5.1. Constitutional Challenge to a Statute--Notice, Certification, and Intervention

Currentness

(a) Notice by a Party. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned--or on the state attorney general if a state statute is questioned--either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) Certification by the Court. The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

(c) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) No Forfeiture. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Adopted April 12, 2006, effective December 1, 2006; amended April 30, 2007, effective December 1, 2007.)

ADVISORY COMMITTEE NOTES

2006 Adoption

Rule 5.1 implements 28 U.S.C. § 2403, replacing the final three sentences of Rule 24(c). New Rule 5.1 requires a party that files a pleading, written motion, or other paper drawing in question the constitutionality of a federal or state statute to file a notice of constitutional question and serve it on the United States Attorney General or state attorney general. The party must promptly file and serve the notice of constitutional question. This notice requirement supplements the court's duty to certify a constitutional challenge to the United States Attorney General or state attorney general. The notice of constitutional question will ensure that the attorney general is notified of constitutional challenges and has an opportunity to exercise the statutory right to intervene at the earliest possible point in the litigation. The court's certification obligation remains, and is the only notice when the constitutionality of a federal or state statute is drawn in question by means other than a party's pleading, written motion, or other paper.

Moving the notice and certification provisions from Rule 24(c) to a new rule is designed to attract the parties' attention to these provisions by locating them in the vicinity of the rules that require notice by service and pleading.

Rule 5.1 goes beyond the requirements of § 2403 and the former Rule 24(c) provisions by requiring notice and certification of a constitutional challenge to any federal or state statute, not only those "affecting the public interest." It is better to assure, through notice, that the attorney general is able to determine whether to seek intervention on the ground that the act or statute affects a public interest. Rule 5.1 refers to a "federal statute," rather than the § 2403 reference to an "Act of Congress," to maintain consistency in the Civil Rules vocabulary. In Rule 5.1 "statute" means any congressional enactment that would qualify as an "Act of Congress."

Unless the court sets a later time, the 60-day period for intervention runs from the time a party files a notice of constitutional question or from the time the court certifies a constitutional challenge, whichever is earlier. Rule 5.1(a) directs that a party promptly serve the notice of constitutional question. The court may extend the 60-period [So in original. Probably should read "60-day period".] on its own or on motion. One occasion for extension may arise if the court certifies a challenge under § 2403 after a party files a notice of constitutional question. Pretrial activities may continue without interruption during the intervention period, and the court retains authority to grant interlocutory relief. The court may reject a constitutional challenge to a statute at any time. But the court may not enter a final judgment holding a statute unconstitutional before the attorney general has responded or the intervention period has expired without response. This rule does not displace any of the statutory or rule procedures that permit dismissal of all or part of an action -- including a constitutional challenge -- at any time, even before service of process.

2007 Amendment

The language of Rule 5.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Notes of Decisions (2)

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

Judge Berger,

The Civil Rules Subcommittee on County/Municipal Court Appeals met twice since the full Civil Rules Committee met. Damon Davis, Brent Owen and I discussed two maters. First, whether the rules regarding the time to file criminal and civil appeals from County Court to District should be revised to be consistent. Our Subcommittee unanimously voted not to recommend modifying those rules. We do not plan to address this with the larger Committee unless there is interest. Second, we considered whether the full Civil Rules Committee should consider changes to the Rules regarding the record on a appeal from County Court to District Court to address appeals involving indigent persons unable to afford a copy of the trial transcript. Damon Davis created a short memo for the group that is attached to this email. Our committee voted unanimously to bring this issue before the full Civil Rules Committee to determine if this is an issue the Committee would like the Subcommittee to explore further and if the full Committee had any additional suggestions. I am happy to address these items briefly tomorrow or at the next meeting.

I will need to appear for the meeting by telephone because I will be teaching in the mountains on Friday and Saturday for the CBA and CWBA, respectively.

Best,

Adam

Adam J. Espinosa | Judge

Denver County Court | City and County of Denver
520 W. Colfax

Courtroom 3G

Denver, CO 80202

720.337.0831 Phone
adam.espinosa@denvergov.org

From: Damon Davis [mailto:damon@killianlaw.com]
Sent: Thursday, May 05, 2016 7:54 PM
To: Espinosa, Adam - DCC Judge <Adam.Espinosa@denvergov.org>; 'Bowen@LRRLaw.com' <Bowen@LRRLaw.com>
Subject: County Court Appeals - record on appeal for indigent county court appellants

Gentlemen,

Please see the attached letter outlining the issue indigent county court appellants obtaining a record and suggesting some possible solutions and possible complications.

Damon Davis

Killian Davis Richter & Mayle, P.C.

202 North 7th Street

Grand Junction, CO 81502

Ph. 970-241-0707

Fax. 970-242-8375

This transmission may be subject to the attorney-client privilege, or may be an attorney work product. This communication is intended to be confidential to the addressee. If you are not the addressee or cannot deliver it to that person, please do not read, copy, distribute, or use it in any way. Please, delete it and all copies, including any reply, and notify the sender at 970-241-0707 or at damon@killianlaw.com.

Tax advice in this communication was not intended to be used to (i) avoid tax penalties, or (ii) promote, market, or recommend any matter discussed in this communication to another party. Tax advice based on your particular circumstances should be obtained from an independent tax advisor.

County Court Appeals – Transcripts for Indigent Litigants

By both statute and rule, county court litigants who wish to appeal must post an appeal bond, a judgment bond, and provide a record on appeal. C.R.C.P. 411, section 13-6-311, C.R.S. The record of the proceedings is to include a transcript, as designate by the appellant. C.R.E. 411(b); section 13-6-311(2)(a), C.R.S. The only exception is if the other party will stipulate to the content of the record.

The court can waive both the judgment bond and the appeal bond for indigent appellants. *O'Donnell v. State Farm*, 186 P.3d 46 (Colo. 2008) (but the appellee may begin collection efforts if there is no judgment bond); *Bell v. Simpson*, 918 P.2d 1123 (Colo. 1996). Although there is no specific rule or statute permitting such waivers, they are permitted by the general policy of allowing indigents access to the courts. *Bell*, 918 P.2d at 1127-1128, *citing* section 13-16-103, C.R.S.

However, there is currently no mechanism for indigent appellants to obtain a record on appeal. The Colorado Supreme Court determined that indigent appellants cannot get a free transcript because the cost of the transcript is billed by the court reporter and is not a cost that the court can waive. *Almarez v. Carpenter*, 477 P.2d 792, 794-795 (Colo. 1970).

An indigent appellant could ask the opposing side to stipulate to the content of the record. But this is unlikely to succeed. Unless the opposing party is cross-appealing, they have no incentive to assist the appellant in obtaining a record. I have had this issue come up in district court proceedings where successful defendants have strenuously objected to my clients obtaining alternate records despite their being indigent.

There appears to be a constitutional issue with indigent appellants being unable to appeal. *Almarez* held that the failure to provide a free record did not violate the state constitution, but its holding was premised on the availability of an alternate record as provided for in C.A.R. 10(d). 477 P.2d at 796-797. As discussed below, C.A.R. 10(d) allows for a summary of the record which is approved by the district court rather than through stipulation. *Almarez* cited *Griffin v. Illinois*, 351 U.S. 12 (1956). *Griffin* held that it was a violation of due process and equal protection to deny criminal defendants a means to obtain meaningful appellate review; although this could be done by providing a transcript or through some other means of securing the record. 351 U.S. at 18-20.

There appear to be three means of securing a record for indigent county court appellants. One method would be to provide a free transcript. However, this appears to be ruled out by *Almarez*.

Second, the rule could be amended to allow for a record as provided in small claims cases. In small claims cases, "A tape recording of the trial proceedings shall satisfy any requirement of a transcript for appeal, upon payment of a nominal fee by the appellant." Section

13-6-410, C.R.S. Assuming that all county courts in Colorado now have the ability to audio record the proceedings, this would appear to be the simplest and cheapest solution. On the other hand, if the proceeding is more than a couple hours, it could be pretty rough on the reviewing judge. It is my understanding that most judicial districts do not allow litigants to listen to audio recordings of proceedings, or obtain copies of them; this would prevent the use of pinpoint cites and require listening to the entire record. A change in the rule could be limited to indigent appellants so as avoid unnecessary conflict with section 13-6-311, C.R.S.

Third, the rule could be changes to incorporate C.A.R. 10(d), which allows a summary of the record as approved by the trial judge. Rule 10(d) provides:

"Agreed Statement as the Record on Appeal. In lieu of the record on appeal as defined in section (a) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court and shall then be certified to the appellate court as the record on appeal and transmitted thereto by the clerk of the trial court within the time provided by Rule 11."

This is an inexpensive means of preparing the record. However, it may be difficult for pro se parties to prepare a sufficiently accurate and objective summary of the evidence. And it puts some weight on the county court judges to review the record and ensure it is accurate. One advantage would be to ensure that potential appellants are sure enough about their desire to appeal that they are willing to put effort into preparing a summary. On the downside, they may lack the time to prepare a summary if they are working. And if they are illiterate or cannot read/write English they may be unable to prepare a summary.

My preference would be to use audio recordings for indigent appellants, assuming that the technology is available, and assuming that the average trial length is not excessive. My understanding is that most county court civil cases are only a couple of hours, but I may be wrong. If the average case is longer than that, then audio recordings may be impractical and a summary may be the better option. There may be other options for indigent county court appellants, but these are the ones that I have thought of.

Any of these potential solutions will put the rule in conflict with section 13-6-311, C.R.S. For this reason, the committee or the Supreme Court may not wish to act until a constitutional challenge is raised with regard to the current system. However, I think that the Supreme Court has authority to act in this situation.

This issue may be one of procedure. Section 13-6-311 does seem to embody a public policy of having simplified county court appeals. However, having a record available for meaningful review, and how that record is prepared, may be issues of procedure. They are issues that allow the court to function more effectively.

Also, the proposed changes would work within the goal of the statute and not against them. For example, although the statute requires payment of both an appeal and judgment bond, both can be waived for indigent appellants, even though such a waiver option does not appear in the statute. A rule change would not be undoing the means of obtaining a record in section 13-6-311, but providing an alternate means which, like waiving costs, provides indigents access to the courts.

If there is a constitutional infirmity in the procedure provided by the statute, and it relates to court procedure, it would seem that the Supreme Court could address it by rule rather than awaiting a challenge to the statute. There are times when both the legislature and the Supreme Court can act and address an issue. As the Supreme Court would not be contradicting the legislature, but simply providing an additional means of obtaining the record for indigents, this would seem to be one of those occasions.

MEMORANDUM

TO: Jerry Marroney, State Court Administrator; Executive and Court Services Divisions

FROM: Judge Kuenhold and Jeannette Walker Kornreich, Senior Assistant Legal Counsel

RE: Substitution of Sworn Declaration for Notary on JDF Forms

DATE: April 25, 2016

Particularly with the up-and-coming advent of efiling by self-represented parties, a concern has been raised as to whether the courts need to require the use of a notary where a JDF form is required to be "verified" by statute. A question arises whether a sworn declaration can be used in place of a notary for convenience and cost savings to the parties. As set forth below, yes, where a statute requires that a filing be "verified" it need not be signed by a notary, but rather, the JDF forms could provide for an sworn declaration before to the signature block with acknowledgement that the submitting party subjects him/herself to penalty of perjury if the information is not true and correct.

The Colorado Supreme Court has held that a *sworn* declaration can be used in place of a notary to "verify" a document. In *Colorado Department of Revenue v. Hibbs*, 122 P.3d 999 (Colo. 2005), the Court concluded that the word "verified" as used in a state statute is a broader term than "notarized." It, therefore, upheld a Department of Revenue form that allowed for a law enforcement officer's signature "under oath" without the use of a notary to satisfy the statutory requirement for a "verified report." The court determined that the Department properly exercised its authority to adopt the form and determine the form of "verification" it would use. Similarly, the courts have implicit authority to determine what "verify" means when developing pro se forms and can decide that a sworn declaration accompanying a signature is sufficient - that the use of a notary to witness the signature, or for purposes of administering an oath as to the veracity of what is stated, is not required.

The form of sworn declaration before the signature block used on the Department of Revenue form at issue in *Hibbs* read:

> ***I swear (or affirm) under penalty of perjury that the information and facts contained in this Affidavit and Notice of Revocation are true to the best of my knowledge and belief.***

(emphasis in original). This language is similar to that used in JDF 559, Relative Affidavit and Advisement Concerning the Child's Potential Placement which reads:

> **I swear under penalty of perjury that the above information is true and correct to the best of my knowledge and is a full and true disclosure of all information that is requested.**

Under the federal rules of civil procedure, any requirement for a sworn declaration, verification, certificate, statement, oath or affidavit may be satisfied by an *unsworn* declaration, certificate, verification or statement in the following format: ***"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America[1] that the foregoing is true and correct."*** (emphasis added); 28 U.S.C. § 1746. Thus, an unsworn declaration (also referred to as a certificate, verification or statement) is of the same force and effect as a sworn affidavit in federal court and would suffice to "verify" a pleading. Several states have adopted a similar by statute or court rule [WA; FL; TN CA and PA (not intended to be an exhaustive list)]. Given the language of the *Hibbs* decision, it would be advisable, however, to use a sworn, rather than unsworn, declaration (under penalty of perjury) on our JDF forms.

Given the dicta in the *Hibbs* case indicating that the requirement for verification requires a sworn, as opposed to, unsworn statement, we recommend that the Branch adopt a rule for the allowance of a sworn statement above the signature line on any JDF form where there is a statutory or other requirement for a court filing to be "verified," unless the applicable statute or other authority specifies that a notary is required. The language we recommend would be similar to that used on JDF 559 and in federal court as follows:

> ***I swear (verify or affirm) under penalty of perjury that the above information is true and correct to the best of my knowledge and is a full disclosure of all information requested.***

As a policy matter, alternatively, this could be done by state statute. Our proposed language for court rule or statute would be as follows:

(1) Whenever, under any law of this state, or under any rule, regulation, order, or requirement made pursuant to law, a document to be filed in the Colorado state courts is required to be verified and no specification is made for verification before a notary public, the matter may be supported, evidenced, established or proved with like force and effect in the court proceeding by the subscribing person with a sworn statement, in writing under penalty of perjury, declaring that the person swears (verifies or affirms) that the information submitted is true or correct to the best of that person's knowledge.

(2) The sworn declaration shall be submitted in substantially the following form: "I swear (verify or affirm) under penalty of perjury that the above information is true and correct to the best of my knowledge" followed by the date and signature of the person making the declaration.

[1] The words "under the laws of the United States of America" do not always appear on federal forms, more akin to the given examples.

122 P.3d 999
Supreme Court of Colorado.

Petitioner: The COLORADO DEPARTMENT OF,

v.

Respondent: Terry Lee HIBBS.

No. 04SC759.
|
Nov. 7, 2005.

Synopsis

Background: Commercial truck driver challenged Department of Revenue's one-year revocation of his commercial driver's license after he was found to have been driving commercial vehicle while intoxicated at level four times the legal limit. The District Court, Chaffee County, Kenneth M. Plotz, J., reversed the order. Department of Revenue appealed. The Court of Appeals, 107 P.3d 1061, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Hobbs, J., held that former statute's verified report requirement was satisfied by police officer's own signature and affirmation on department's form, and notarized report was not required.

Reversed and remanded.

West Headnotes (6)

[1] Automobiles
Administrative procedure in general

Former statute's verified report requirement, in case involving revocation of commercial driver's license, was satisfied by police officer's own signature and affirmation on Department of Revenue's form, under penalty of perjury, that facts contained in report were true to best of her belief, and former statute did not require officer to file report that was notarized or otherwise affirmed before third party. West's C.R.S.A. § 42–2–126(3)(b) (2004).

1 Cases that cite this headnote

[2] Appeal and Error
Cases Triable in Appellate Court

The Supreme Court reviews questions of statutory construction de novo.

6 Cases that cite this headnote

[3] Administrative Law and Procedure
Deference to agency in general

Administrative Law and Procedure
Erroneous construction; conflict with statute

While statutory construction is ultimately a judicial responsibility, the Supreme Court consults and ordinarily defers to the administrative agency's guidance, rules, and determinations, if they are within the agency's statutory authority and do not contravene constitutional requirements.

2 Cases that cite this headnote

[4] Administrative Law and Procedure
Permissible or reasonable construction

The Supreme Court defers to an agency's statutory interpretation that is reasonable and within the scope of its authority.

1 Cases that cite this headnote

[5] Statutes
Natural, obvious, or accepted meaning

The Supreme Court's duty, when construing a statute, is to effectuate the General Assembly's intent and, in order to do so, the court gives statutory words and phrases their familiar and generally accepted meaning.

2 Cases that cite this headnote

[6] Statutes
Intent

Statutes
Construing together; harmony

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

Statutes

Conflict

In construing a statute, the Supreme Court harmonizes, if possible, potential conflicting provisions and avoids constructions that defeat legislative intent.

Cases that cite this headnote

Attorneys and Law Firms

***1000** John W. Suthers, Attorney General, Ceri Williams, Assistant Attorney General, Business and Licensing Division, Denver, for Petitioner.

Law Office of Pete Cordova, P.C., Pete Cordova, Law Office of M. Stuart Anderson, P.C., M. Stuart Anderson, Salida, for Respondent.

Opinion

HOBBS, Justice.

We granted certiorari to review the court of appeals judgment in *Hibbs v. Colorado Department of Revenue*, 107 P.3d 1061 (Colo.App.2004).[1] The court of appeals upheld a judgment of the District Court for Chafee County that overturned the Department of Revenue's one-year revocation of Terry Lee Hibbs's commercial vehicle driver's license.

The Department of Revenue's ("Department") revocation order stemmed from Officer Theresa Barger's ("Barger") arrest of Terry Lee Hibbs ("Hibbs") for driving a commercial vehicle while intoxicated. Using the form specified by the Department, Barger submitted to Hibbs and to the Department a report documenting the circumstances of the arrest and that Hibbs's breath alcohol content while driving was 0.151, nearly four times the legal limit, § 42–2–126(2)(a)(III), C.R.S. (2002). Barger signed and swore, under oath, to the veracity of the report but did not notarize the report or otherwise affirm the report before a third party. Shortly thereafter, Barger testified at Hibbs's administrative hearing, under oath and subject to cross examination, concerning the events surrounding Hibbs's arrest for driving while intoxicated. After reviewing all of the evidence, the Department's hearing officer ordered revocation of Hibbs's commercial driver's license for one year.

***1001** The district court and the court of appeals overturned this revocation and ruled that the statute then in effect for a commercial vehicle driver's license, section 42–2–126(3)(b), C.R.S. (2002), required a law enforcement officer to forward to the Department a notarized report setting forth the basis for the revocation action.

The Department contends that Barger's report to the Department satisfied section 42–2–126(3)(b). We agree, and hold that the verification requirement of section 42–2–126(3)(b), C.R.S. (2002),[2] did not require notarization and was satisfied in this case by Barger's signature and affirmation, under penalty of perjury, that the facts contained in her report submitted on the Department's form were true to the best of her belief. Thus, we reverse the judgment of the court of appeals with directions to reinstate the Department's one-year revocation of Hibbs's commercial vehicle driver's license.

I.

On the icy night of December 4, 2002, Silverthorne Police Department Officer Barger stopped Hibbs, who was driving a semi tractor-trailer, for running a red light. She observed that he had "watery, red bloodshot eyes, and slow, deliberate, thick tongued, and slurred speech." He failed three roadside sobriety tests: the horizontal gaze, the walk and turn, and the one leg stand tests.

Advised of Colorado's express consent law, Hibbs elected to take a breath test. He tested at 0.151 grams of alcohol per two hundred ten liters of breath, nearly four times the legal limit of .04 grams for commercial drivers. Barger transported Hibbs to the Summit County Jail and issued him a court summons for driving while intoxicated and running a red light. She also signed and filled-out the Department's Affidavit and Notice of Revocation form (Department of Revenue Form DR–2576).

This was the first situation in which Barger had been called upon to utilize the Department's form when a commercial vehicle was involved. Although she checked that Hibbs was driving a commercial vehicle, she did not check the "0.04" box that stated the limit for commercial vehicle drivers. Instead, she checked the "0.10" box for other motor vehicle drivers. Nevertheless, the back side (second page) of the Affidavit and Notice of Revocation form clearly placed Hibbs on notice that his commercial driver's license was subject to revocation for exceeding the .04 limit. It stated:

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

> 6. *If you submit to a test which discloses an alcohol content of 0.04 or more (Commercial/HAZMAT Operators)* or 0.10 or more or at least 0.02 but less than but less than 0.04 (Commercial/HAZMAT Operator under 21) or at least 0.02 but less than 0.10 (operator under age 21), *the officer shall serve a Notice and Order of Revocation on behalf of the Department of Revenue* to become effective on the eighth (8th) day after *date shown on the other side.

(emphasis added).

Barger narrated on the Department's form the facts of her stop and arrest of Hibbs under the "probable cause" space. She included the results of the excessive alcohol breath test at 0.151, and signed the report in the signature block set forth at the bottom of the form. That signature block contained the following language: ***I swear (or affirm) under penalty of perjury that the information and facts contained in this Affidavit and Notice of Revocation are true to the best of my knowledge and belief.*** (emphasis in original).

Barger forwarded the filled-out form to the Department along with the signed intoxilyzer test results, certified intoxilyzer records, a Silverthorne Police Department Incident Narrative, an arrest report, a DUI report, a notarized warrantless arrest probable cause statement, a Summit County Sheriff's Office Arrest Summary Report, and summonses for driving a vehicle under the influence of alcohol, driving a vehicle with excessive alcohol content in his blood or breath, and failing to obey a traffic control device. The Department form Barger ***1002** filled out and swore to included information that identified Hibbs by name, social security number, and birthdate, a statement of Barger's probable cause for belief that Hibbs drove while under the influence of alcohol, and the intoxilyzer results and time of the test.

When the Department received Barger's report and documentation, it sent Hibbs a notice of revocation for one year and scheduled an administrative hearing on "revocation of your commercial driver privilege for driving a commercial motor vehicle when you had a blood alcohol content of .04 or more pursuant to 42–2–126 CRS." The Department also sent Hibbs a notice of revocation of his motor vehicle driving privilege for three months for violating the 0.10 limit and scheduled the administrative hearing to include that revocation.

Through counsel at the hearing, Hibbs argued that the report Barger forwarded to the Department on its form along with accompanying documents was inadequate for lack of notarization and that the Department's revocation of his commercial vehicle driver's license should be reversed for lack of jurisdiction. Barger testified at the hearing under oath to the facts and circumstances of her arrest of Hibbs for driving a commercial vehicle while intoxicated and her report and documentation to the Department.

After hearing Barger's and Hibbs's testimony and reviewing the documentary evidence, the hearing officer found Hibbs to be in violation of the 0.04 limit for a commercial vehicle operator and revoked all of his driving privileges for three months and his commercial vehicle driver's privilege for one year, as provided by subsections 42–2–126(6)(b)(I) and (III), C.R.S. (2002). The hearing officer ruled that Barger substantially complied with section 42–2–126(3)(b)'s requirements for a "verified" report by using the Department's form and supplying the other documents and there was no jurisdictional defect in the proceedings.

Hibbs appealed to the district court and prevailed in overturning the commercial driver's license revocation. Affirming the district court's ruling, the court of appeals held that section 42–2–126(3)(b) required Barger to submit a notarized report to the Department and her failure to do so deprived the Department of jurisdiction to revoke Hibbs's commercial driver's license. We disagree and order reinstatement of the Department's revocation order.

II.

[1] We hold that the verification requirement of section 42–2–126(3)(b), C.R.S. (2002), did not require notarization and was satisfied in this case by Barger's signature and affirmation, under penalty of perjury, that the facts contained in her report on the Department's form were true to the best of her belief.

A.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

Standard of Review

Hibbs argues that the term "verified report" in section 42–2–126(3)(b) meant a report notarized or otherwise attested to before a third party. He reasons that the preceding subsection, § 42–2–126(3)(a), C.R.S. (2002), for revocation of a non-commercial vehicle driver's license, contained language expressly dispensing with notarization, while subsection 3(b) applicable to commercial vehicle drivers did not, thereby implying that notarization was required in the commercial driver situation.

[2] **[3]** We review questions of statutory construction de novo. *Colo. Dep't of Labor & Employment v. Esser,* 30 P.3d 189, 194 (Colo.2001). While statutory construction is ultimately a judicial responsibility, we consult and ordinarily defer to the agency's guidance, rules, and determinations, if they are within the agency's statutory authority and do not contravene constitutional requirements. *Wash. County Bd. of Equalization v. Petron Dev. Co.,* 109 P.3d 146, 150 (Colo.2005).

B.

Administrative Revocation of a Commercial Vehicle Driver's License for Driving Under the Influence of Alcohol

In Colorado, commercial vehicle drivers are held to a higher standard than those ***1003** holding other driving privileges. At the time of Hibbs's arrest, a commercial vehicle driver's license was subject to revocation for proof of driving with an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath. § 42–2–126(2)(a)(III), C.R.S. (2002). A one year revocation resulted for the first offense. § 42–2–126(6)(b)(III), C.R.S. (2002). The trigger for revocation of the privilege to drive any other motor vehicle was 0.10. § 42–2–126(2)(a)(I), C.R.S. (2002). The first offense of that section resulted in a three month revocation. § 42–2–126(6)(b)(I), C.R.S. (2002).

In 2002, the administrative revocation of a driver's license for driving while intoxicated proceeded in two steps: first a law enforcement officer arrested the driver and submitted to the driver and the Department materials specified in either subsections 42–2–126(3)(a) or (b); second, based upon the materials submitted by the officer under subsection 3(a) or 3(b), the Department determined whether to proceed and revoke the arrested driver's license. § 42–2–126(4)(a).

Subsections 42–2–126(3)(a) and (b) were slightly different. In regard to a commercial vehicle driver's license, subsection 3(b) stated that the officer would forward to the Department a "verified report":

> A law enforcement officer who has probable cause to believe that a person was driving a commercial motor vehicle with a blood alcohol concentration of 0.04 or more ... *shall forward* to the department *a verified report* of all information relevant to the enforcement action, including information that adequately identifies the person, a statement of the officer's probable cause for belief that the person committed such violation, a report of the results of any tests that were conducted, and a copy of the citation and complaint, if any, filed with the court.

§ 42–2–126(3)(b), C.R.S. (2002)(emphasis added). In regard to a non-commercial vehicle driver's license, subsection 3(a) stated that the officer would forward an affidavit to the Department dated, signed, and sworn to by the law enforcement officer under penalty of perjury. This affidavit did not need to be notarized or otherwise attested to by a third party:

> Whenever a law enforcement officer has probable cause to believe that a person has violated section 42–4–1301(2) ... the law enforcement officer having such probable cause ... *shall forward* to the department *an affidavit* containing information relevant to legal issues and facts which must be considered by the department .... The executive director of the department shall specify to law enforcement agencies the form of the affidavit, the types of information needed in the affidavit, and any additional documents or copies of documents needed by the department to make

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

> its determination in addition to the affidavit. *The affidavit shall be dated, signed, and sworn to by the law enforcement officer under penalty of perjury, but need not be notarized or sworn to before any other person.*

§ 42–2–126(3)(a), C.R.S. (2002)(emphasis added).

Section 42–2–126(5)(d), C.R.S. (2002), gave the Department the power to administer these provisions and to "provide forms for notice of revocation ... to law enforcement agencies" and to "establish a format for the affidavits required." Pursuant to this legislative grant of administrative authority, the Department determined that the statutory sections applicable to commercial and other vehicle licenses could be met by an officer's signed oath on a unitary form applicable to commercial as well as all other drivers, without the need for notarization or other attestation before a third party. This form provided for entry of the basic probable cause, report, and notice of revocation information required by subsections 42–2–126(3)(a) and (b).

We determine that the Department acted within its authority in adopting Department of Revenue Form DR–2576, "Affidavit and Notice of Revocation." This form complied with section 42–2–126(3)(b)'s verification provision by providing for the officer's signature under oath, without the necessity of notarization or other attestation before a third party.

***1004 1. The Officer's Signature Under Oath on the Department's Form Satisfied the Legislature's Directive for a Verified Report**

We reject Hibbs's contention that a "verified report" in section 42–2–126(3)(b) meant a notarized report. We conclude that the term "verified report" in section 3(b) was satisfied when the law enforcement officer filled out and signed under oath Department of Revenue Form DR–2576 that set forth an identification of Hibbs, Barger's probable cause for her belief that Hibbs drove a commercial vehicle while under the influence of alcohol, and a report concerning the time and result of the intoxilyzer test. Along with this report, Barger forwarded to the Department a number of other police department documents evidencing and enforcing against Hibbs's conduct in driving a commercial vehicle while intoxicated, in violation of Colorado laws. The report and its accompanying documentation amply satisfied the requirements of section 42–2–126(3)(b).

[4] [5] [6] We defer to an agency's statutory interpretation that is reasonable and within the scope of its authority. *Wash. County Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 150 (Colo.2005); *Lobato v. Indus. Claim Appeals Office*, 105 P.3d 220, 223 (Colo.2005). Our duty is to effectuate the General Assembly's intent and, in order to do so, we give statutory words and phrases their familiar and generally accepted meaning; and we harmonize, if possible, potential conflicting provisions of the statutes and avoid constructions that defeat legislative intent. *Wash. County Bd. of Equalization*, 109 P.3d at 149; *Bd. of Dirs., Metro Wastewater Reclamation Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 105 P.3d 653, 657 (Colo.2005).

Here, the General Assembly expressly conferred upon the Department authority to adopt a form or forms to implement the revocation notice, report, and probable cause affidavit provisions of subsections 42–2–126(3)(a) and (b). § 42–2–126(5)(d), C.R.S. (2002). The Department did create such a form, but Hibbs suggests that we reject it. In making this argument, Hibbs would substitute the term "notarized" for the term "verified" even though the General Assembly actually chose to use "verified" in subsection 42–2–126(3)(b). We will not do this. *See Colo. Dep't of Labor & Employment v. Esser*, 30 P.3d 189, 196 (Colo.2001)(refusing to add words to the statutory provision that would undermine the General Assembly's intent to provide a speedy, efficient, and timely presentation of facts to the agency decision-makers).

The word "verified" is a broader term than "notarized," and the Department had the statutory authority to specify the form of verification it would utilize. The familiar and generally accepted meaning of "verified" includes but is not limited to notarization or attestation before a third party. *Webster's Dictionary* defines "verified" as "confirmed as to accuracy or truth by acceptable evidence, action, etc." *Webster's Encyclopedic Unabridged Dictionary of the English Language* 2114 (1996). *Black's Law Dictionary* defines "verify" and "verification" to include both attestation before a third party and other confirmation. "Verification" is either "[a] formal declaration made in the presence of an authorized officer, such as a notary public, or *(in some jurisdictions) under oath but not in the presence of such an officer, whereby one swears to the truth of the statements in the document,*" "[a]n oath or affirmation that an authorized officer administers to an affiant or deponent, or, "[l]oosely, acknowledgement." *Black's Law Dictionary* 1593 (8th ed.2004)(emphasis added). To "*verify* " is "[t]o prove

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

to be true; to confirm or establish the truth or truthfulness of; to authenticate" or "[t]o confirm or substantiate by oath or affidavit; *to swear to the truth of.*" *Id.* at 1594 (emphasis added); *see Esser*, 30 P.3d at 196 (recognizing that a "verified report" when required by statute may include a written statement given under oath).

Hibbs points out that the language of subsection 42–2–126(3)(a) applicable to non-commercial vehicle drivers expressly excluded any requirement to notarize or swear to the officer's oath before a third party, whereas subsection 42–2–126(3)(b)'s verified report provision did not include this disclaimer. The court of appeals reasoned that, because subsection 42–2–126(3)(b) did not exclude notarization, the General Assembly must have ***1005** intended notarization or some other form of third party attestation to make the officer's report and documentation more reliable. *Hibbs v. Colo. Dep't of Revenue*, 107 P.3d 1061, 1064 (Colo.App.2004). We disagree.

Subsection 42–2–126(3)(a)'s use of the word "notarization" demonstrates that the General Assembly was fully aware of this term and how to use it. Nowhere in the statute's revocation provisions did the General Assembly actually require notarization. Instead, in subsection 42–2–126(3)(b) applicable to commercial vehicle drivers, it chose the words "verified report" and assigned to the Department the choice of which type of verification to actually employ.

In the very next statutory provision, subsection 42–2–126(4)(a), that refers to both subsections 3(a) and 3(b)—the operative provision for the Department's exercise of its revocation authority—the General Assembly again chose not to specify notarization and simply referred to the affidavit and relevant documents:

> (4)(a) *Upon receipt of the affidavit of the law enforcement officer and the relevant documents required by subsection (3) of this section,* the department shall make the determination (of the intoxication level as the basis for passenger or commercial driver's license revocation). *The determination shall be based upon the information contained in the affidavit and the relevant documents.*

§ 42–2–126(4)(a) (emphasis added).

Hibbs's suggestion that we rewrite subsection 42–2–126(3)(b) to require a specific type of verification, i.e., notarization, also fails because Hibbs misconstrues the General Assembly's intent. He argues that the verification requirement should be a notarization requirement in order to impose a higher standard of reliability on law enforcement officers. But, the 0.04 limit applicable to commercial drivers actually demonstrates that it was the drivers whom the General Assembly held to a higher standard in light of the greater danger posed to citizen safety from operating big commercial rigs while intoxicated. The legislative statement of purpose to section 42–2–126 plainly states that its intent is to safeguard the safety of citizens with speedy revocation of intoxicated drivers' licenses, while protecting the rights of those accused through a full administrative hearing, if requested:

> **Revocation of license based on administrative determination.**
>
> (1) The purposes of this section are:
>
> (a) To provide *safety for all persons using the highways of this state by quickly revoking the driver's license of any person who has shown himself or herself to be a safety hazard by driving with an excessive amount of alcohol in his or her body* and any person who has refused to submit to an analysis as required by section 42–4–1301.1;
>
> (b) *To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for a full hearing.*

§ 42–2–126(1)(a)–(b), C.R.S. (2002)(emphasis added). The legislative history reinforces this intent with specific emphasis on the purpose for imposing stricter standards on commercial vehicle drivers:

> Hopefully to curtail and get some of the worst actors off the road and maintain the integrity that the Motor Carrier Association and most of the trucking associations support across the country that the commercial driver is a professional driver and can adhere to a very strict standard similar to airline pilots and those types of people who travel a lot of miles with a lot of our own safety involved.

 © 2016 Thomson Reuters. No claim to original U.S. Government Works.

An Act Concerning Commercial Motor Vehicles Drivers' Licenses: Hearing on H.B. 1228 Before the Sen. Trans. Comm., 57th Gen. Assemb. of Colo. (1989)(statement of John Duncan, Deputy Director of the Department of Motor Vehicles)(audio recording of March 7, 1989).

2. The Report and Documentation the Officer Supplied to the Department Amply Complied with Subsection 42–2–126(3)(b)

After a full administrative hearing, the Department's hearing officer found that Hibbs was driving a commercial vehicle while intoxicated at a level nearly four times the legal ***1006** limit. The Department commenced this hearing after receiving Barger's verified report on the Department's form, along with other police department documents that included the signed intoxilyzer test results, certified intoxilyzer records, a Silverthorne Police Department Incident Narrative, an arrest report, a DUI report, an arrest summary report, a notarized warrantless arrest probable cause statement, a Summit County Sheriff's Office Arrest Summary Report, and summonses for driving a vehicle under the influence of alcohol, driving a vehicle with excessive alcohol content in his blood or breath, and failing to obey a traffic control device.

Under the statutory design, the role of the police officer is to gather and forward to the Department evidence of the intoxicated driver's operation of a commercial vehicle and to place that driver on initial notice of the license revocation proceeding that the Department has authority to conduct under its revocation authority. Hibbs received proper notice of the revocation proceeding from Barger and from the Department after it had received Barger's verified report on the Department's form and the accompanying documentation. The record evidences compliance with then-existing subsection 42–2–126(3)(b). At his request, Hibbs received a full administrative hearing. Contrary to the rulings of the district court and the court of appeals, there was no jurisdictional defect in the Department's revocation proceeding.

III.

Accordingly, we reverse the judgment of the court of appeals. We remand this case to the court of appeals with directions ordering the district court to reinstate the Department's action revoking Hibbs's commercial driver's license.

All Citations

122 P.3d 999

Footnotes

1 The question we took on review is:

> Whether the court of appeals erred in holding that failure to notarize all the documents submitted to the Colorado Department of Revenue ("Department") pursuant to section 42–2–126(3)(b), C.R.S. (2004) was a statutory violation that deprived the Department of jurisdiction to hold a license revocation hearing.

2 Amended in 2005, subsection 42–2–126(3)(a), C.R.S. (2005), now eliminates subsection 3(b) and the "verification" requirement for a commercial driver's license revocation report. *See also* Ch. 185, sec. 16, § 42–2–126(3)(a)–(b), 2005 Colo. Sess. Laws 640, 647.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

DRAFT

Rule 83. Verification

Verification.

(a) Whenever, under any law of this state, or under any rule, regulation, order, or requirement made pursuant to law, a document to be filed in the Colorado state courts is required to be verified and no specification is made for verification before a notary public, the matter may be supported, evidenced, established or proved with like force and effect in the court proceeding by the subscribing person with a sworn statement, in writing under penalty of perjury, declaring that the person swears (verifies or affirms) that the information submitted is true or correct to the best of that person's knowledge.

(b) The sworn declaration shall be submitted in substantially the following form: "I swear (verify or affirm) under penalty of perjury that the above information is true and correct to the best of my knowledge" followed by the date and signature of the person making the declaration.

Judge Berger and Jenny:

See suggestion below that I received today via email.

Chris

Sent from my iPhone

Begin forwarded message:

From: "ryan, christopher" <christopher.ryan@judicial.state.co.us>
Date: March 11, 2016 at 10:18:01 AM MST
To: "eric@ehorwitzlaw.com" <eric@ehorwitzlaw.com>
Subject: Re: Service of Process in Colorado - Rule Change

Mr. Horwitz:

I will forward your comments to the Chair of the standing committee on Civil Rules.

Chris Ryan

Sent from my iPhone

On Mar 11, 2016, at 9:52 AM, "eric@ehorwitzlaw.com" <eric@ehorwitzlaw.com> wrote:

Dear Mr. Ryan,

I am an actively licensed attorney from the state of Virginia that has moved here and become a private process server.

After some experience adapting to Rule 4, I have become concerned that this state is going out of its way to effectuate notice, when something as simple as taping the paperwork to the door has worked *extremely* well in Virginia for a very long time.

It's quick, simple, efficient and does not put process servers at risk.

As an attorney in Virginia with tens of thousands of successful serves by merely taping, I am asking the Colorado Supreme Court to consider copying Virginia's well working rule:

Code of Virginia

§ 8.01-296. Manner of serving process upon natural persons.

Subject to the provisions of § 8.01-286.1, in any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows:

1. By delivering a copy thereof in writing to the party in person; or

2. By substituted service in the following manner:

a. If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of 16 years or older; or

b. If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode, provided that not less than 10 days before judgment by default may be entered, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing. In any civil action brought in a general district court, the mailing of the application for a warrant in debt or affidavit for summons in unlawful detainer or other civil pleading or a copy of such pleading, whether yet issued by the court or not, which contains the date, time and place of the return, prior to or after filing such pleading in the general district court, shall satisfy the mailing requirements of this section. In any civil action brought in a circuit court, the mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of 10 days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested, shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court. Any judgment by default entered after July 1, 1989, upon posted service in which proceedings a copy of the pleadings was mailed as provided for in this section prior to July 1, 1989, is validated.

c. The person executing such service shall note the manner and the date of such service on the original and the copy of the process so delivered or posted under this subdivision and shall effect the return of process as provided in §§ 8.01-294 and 8.01-325.

3. If service cannot be effected under subdivisions 1 and 2, then by order of publication in appropriate cases under the provisions of §§ 8.01-316 through 8.01-320.

4. The landlord or his duly authorized agent or representative may serve notices required by the rental agreement or by law upon the tenant or occupant under a rental agreement that is within the purview of Chapter 13 (§ 55-217 et seq.) of Title 55.

Dear Judge Berger:

Attached are forms for use with Rule 902(11) and (12), along with instructions. I created two sets of forms, one for county court and one for district court. The county court forms are forms 10 and 11; the district court forms are form 41 and 42. They are largely identical. Because the rules of evidence are used in both county court and district court, I thought it made sense to have forms for each court. To arrive at the numbering, I just looked at the last form number in my copy of the rules of procedure. I have tried to draft the forms and instructions so that junior attorneys and pro se parties would be able to use them with little or no assistance. These are my first shot a drafting a form, so I am certainly open to input and revisions.

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

Name of Organization or Business: _____

Address: _____

_____

City/State/Zip Code: _____

Telephone Number: _____

I swear or affirm that to the best of my knowledge and belief the following is true for the

attached documents, which are _____ (*describe documents*), consisting of

_____ number of pages, dated from _____ to _____.

1) I am the custodian of these 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;

2) The records 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;

3) Were kept in the course of the regularly conducted activity;

4) Were made by the regularly conducted activity as a regular practice.

Name: _____

Signature: _____

Subscribed and sworn to before me this ____ day of_____, 20___,

By _____

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

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. These forms are not the exclusive means of complying with the rules and parties may use their own forms 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 willing to go to the business.

Form 10 may be provided to the business or organization at the time records are requested, either 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."

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 may subpoena witnesses to testify about the documents if they so desire.

Form 41. CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

_____

City/State/Zip Code: _____

Telephone Number: _____

I swear or affirm that to the best of my knowledge and belief the following is true for the

attached documents, which are _____ (*describe documents*), consisting of

_____ number of pages, dated from _____ to _____.

1) I am the custodian of these 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;

2) The records 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;

3) Were kept in the course of the regularly conducted activity;

4) Were made by the regularly conducted activity as a regular practice.

Name: _____

Signature: _____

Subscribed and sworn to before me this ____ day of_____, 20___,

By _____

Witness my hand and official seal.

My commission expires_____.

_____
Notary Public

FORM 42. 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 41 AND 42

Forms 41 and 42 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. These forms are not the exclusive means of complying with the rules and parties may use their own forms so long as they comply with the requirements of the rules.

Form 41

Form 41 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 willing to go to the business.

Form 41 may be provided to the business or organization at the time records are requested, either 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 41 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 41 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."

Form 41 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 41 must accompany the documents when they are offered at trial or a hearing.

Form 42

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 42 provides a means to provide this notice.

Form 42 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 42 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 42 or made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 42 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 42 should be served sufficiently in advance of trial or hearing that the adverse parties may subpoena witnesses to testify about the documents if they so desire.

PROPOSED CHANGES TO C.R.C.P. 33 SUBMITTED BY THE CIVIL RULES COMMITTEE

C.R.C.P. 33

Rule 33. Interrogatories to Parties

(a) [NO CHANGE]

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. An objection must state with specificity the grounds for objection to the Interrogatory and must also state whether any responsive information is being withheld on the basis of that objection. A timely objection to an Interrogatory stays the obligation to answer those portions of the Interrogatory objected to until the court resolves the objection. No separate motion for protective order pursuant to C.R.C.P. 26(c) is required.

(2) – (5) **[NO CHANGE]**

.

(c) – (d) [NO CHANGE]

(e) Pattern and Non-Pattern Interrogatories; Limitations. The pattern interrogatories set forth in the Appendix to Chapter 4, Form 20, are approved. Any pattern interrogatory and its subparts shall be counted as one interrogatory. Any discrete subparts ~~to~~in a non-pattern interrogatory shall be considered as a separate interrogatory.

COMMENTS

1995 [NO CHANGE]

2016

Pattern interrogatories [Form 20, pursuant to C.R.C.P. 33(e)] have been modified to more appropriately fit the 2015 amendments to C.R.C.P. 16, 26 and 33. A change to or deletion of a pre-2016 pattern interrogatory should not be construed as making that former interrogatory improper, but instead, only that the particular interrogatory is, as of the effective date of the 2016 rule change, modified as stated or no longer a "pattern interrogatory."

The change to Rule 33(e) is made to conform to the holding of *Leaffer v. Zarlengo*, 44 P.2d 1072 (Colo. 2002).

Formatted: Font: Times New Roman, 12 pt

Formatted: Font: Not Bold

Formatted: Font: Not Bold

3962750.3

PROPOSED CHANGES TO FORM 20 SUBMITTED BY THE CIVIL RULES COMMITTEE

FORM 20. PATTERN INTERROGATORIES UNDER RULE 33

~~[] County Court []~~ District Court [see §2.a.]	
_____ County, Colorado	
Court Address:	
Plaintiff(s):	
v.	
Defendant(s):	
	COURT USE ONLY
Attorney or Party Without Attorney (Name and Address):	Case Number:
Phone Number: E-mail:	
FAX Number: Atty. Reg. #:	Division: Courtroom:

PATTERN INTERROGATORIES UNDER RULE 33

The following Pattern Interrogatories are propounded to:

[insert name of party] pursuant to C.R.C.P. 16(b)(11)~~(a)(1)(IV)~~, 26, and 33(e).

Section 1. General Instructions ~~to All Parties~~

(a) These pattern interrogatories and instructions do not change existing Rules or other law relating to interrogatories. ~~These are general instructions.~~ For time limitations, requirements for service on other parties, and other details, *see* C.R.C.P. 16(b)(11)~~(IV)~~, 26, 33, 121 § 1-12, and the cases construing those Rules.

Formatted: Font: Italic

(b) These pattern interrogatories and instructions do not ~~These interrogatories do not change existing law relating to interrogatories nor do they~~ affect an answering party's right to assert any privilege or objection. Parties may object to these pattern interrogatories, including but not limited to, on grounds that the interrogatories exceed the scope of permissible discovery as defined in Rule 26(b)(1) because the inquiry is not relevant to the claims and defenses of any party or is not proportional to the needs to the case.

Section 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in district courts only. These pattern interrogatories are intended as approved sample discovery requests; they are not intended to be served in every case.

(b) Parties should carefully consider the claims and defenses at issue to determine whether these pattern interrogatories are applicable to their particular action. Parties also should carefully consider whether these pattern interrogatories are proportional to the discovery needs of their particular case.

(c) Parties are strongly encouraged to consider whether the information sought through these pattern interrogatories would be better obtained through a request for the production of documents containing the information sought. As one example, an interrogatory asking for information relating to a party's medical treatment might more efficiently ask for the party's medical records in a request for production.

(d) Rule 26(a)(1)(C) requires production of specific information relating to the categories and amounts of a party's claimed damages. As a result, interrogatories requesting information relating to claimed damages may not be necessary, or may be tailored to particular topics relating to a party's claimed damages.

(e~~b~~) Check the box next to each interrogatory that you want the answering party to answer. ~~Use care in choosing those interrogatories that are applicable to the case.~~ Each checked box counts as one interrogatory for purposes of C.R.C.P. 26(b)(2)(B) and case management orders.

(f~~e~~) The interrogatories in section 16.0, Defendant's Contentions--Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(g~~d~~) Subject to the limitations in C.R.C.P. 16(b)(11)~~(IV)~~ and 33, additional, non-pattern interrogatories may be included~~attached~~.

Section 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within ~~30~~35 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. *See* C.R.C.P. 33 for details.

Formatted: Font: Italic

(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found. In addition, Rule 33(d) permits an answering party to identify and make available business records in lieu of responding to a particular interrogatory.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers: "I declare under penalty of perjury under the laws of the State of Colorado that the foregoing answers are true and correct to the best of my knowledge, information and belief."

(DATE)_____ (SIGNATURE)_____

Section 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON OR ENTITY** includes a natural person~~, firm, association,~~ or any organization other than a natural person. ~~, partnership, business, trust, corporation, or public entity.~~

(d) **DOCUMENT** means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, ~~Photostatting~~photocopying, photographing, electronically stored information, including emails, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON OR ENTITY** or entity referred to as a "Health Care Professional" or "Health Care Institution" in C.R.S. § 13-64-202(3) and (4).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Section 5. Interrogatories

The following interrogatories have been approved by the Colorado Supreme Court under C.R.C.P. 16(b)(11)~~(IV)~~, 26, and 33(e)~~.~~. The Pattern interrogatories have been modified to more appropriately fit the 2015 amendments to C.R.C.P. 16, 26 and 33. A change to or deletion of a pre-2016 pattern interrogatory should not be construed as making that former interrogatory improper, but instead, only that the particular interrogatory is, as of the effective date of the 2016 rule change, modified as stated or is no longer a "pattern interrogatory."

CONTENTS

Comment to C.R.C.P. 33.)

18.0 (*Reserved*)

19.0 (*Reserved*)

20.0 How the Incident Occurred--Motor Vehicle

25.0 (*Reserved*)

30.0 (*Reserved*)

40.0 (*Reserved*)

50.0 Contract

60.0 (*Reserved*)

1.0 Identity of Person Answering These Interrogatories

☐ 1.1 State the name, **ADDRESS,** telephone number, and relationship to you of each person who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

2.0 General Background Information--Individual

Formatted: Font: Bold

☐ 2.1 State:

(a) your name;

(b) every name you have used in the past;

(c) the dates you used each name.

~~[] 2.2~~ ~~State~~ (d) the date and place of your birth.

☐ 2.2~~3~~ At the time of the **INCIDENT**, did you have a driver's license or any other permit or license for the operation of a motor vehicle?

If so, state:

(a) the state or other issuing entity;

(b) the license number and type;

(c) the date of issuance;

(d) all restrictions.

~~[] 2.4 At the time of the **INCIDENT,** did you have any other permit or license for the operation of a motor vehicle?~~

~~If so, state:~~

~~(a) the state or other issuing entity;~~

~~(b) the license number and type;~~

~~(c) the date of issuance;~~

~~(d) all restrictions.~~

☐ 2.3~~5~~ State:

(a) your present residence **ADDRESS;**

(b) your residence **ADDRESSES** for the last five years;

(c) the dates you lived at each **ADDRESS.**

☐ 2.4~~6~~ State:

(a) the name, **ADDRESS,** and telephone number of your present employer or place of self-employment;

(b) the name, **ADDRESS,** dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.

☐ 2.5~~7~~ State:

(a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended beginning with high school;

(b) the dates you attended;

(c) the highest grade level you have completed;

(d) the degrees received.

☐ 2.6~~8~~ Have you ever been convicted of a felony?

If so, for each conviction state:

(a) the city and state where you were convicted;

(b) the date of conviction;

(c) the offense;

(d) the court and case number.

☐ 2.7~~9~~ Can you

(a) speak ~~or~~ English with ease?

(b) read English with ease? ~~and~~

(c) write English with ease?

If the answer to any of sub-interrogatories of 2.7 (a), (b) or (c) is "no" ~~not~~, what language and dialect do you normally use?

~~[] 2.10 Can you read and write English with ease?~~

~~If not, what language and dialect do you normally use?~~

☐ 2.8~~11~~ At the time of the **INCIDENT,** were you acting as an agent or employee for any **PERSON OR ENTITY?**

If so, state:

(a) the name, **ADDRESS,** and telephone number of that **PERSON OR ENTITY;**

(b) a description of your duties.

☐ 2.9~~12~~ At the time of the **INCIDENT,** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT?**

If so, for each person state:

(a) the name, **ADDRESS,** and telephone number;

(b) the nature of the disability or condition;

(c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT.**

~~[] 2.13 Within 24 hours before the **INCIDENT,** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)?~~

If so, for each person state:

(a) the name, **ADDRESS,** and telephone number;

(b) the nature or description of each substance;

(c) the quantity of each substance used or taken;

(d) the date and time of day when each substance was used or taken;

(e) the **ADDRESS** where each substance was used or taken;

(f) the name, **ADDRESS,** and telephone number of each person who was present when each substance was used or taken;

(g) the name, **ADDRESS,** and telephone number of any **HEALTH CARE PROVIDER** that prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information--Business Entity

☐ 3.1 Are you an entity? If so, state:
(a) the type of entity you are;
(b) the date and place where you were formed;
(c) your current name;
(d) all names under which you have operated within the last ten years, and the dates each name was used;
(e) the address of your principal place of business.

Are you a corporation?

If you are a corporationso, state:

(a) the name stated in the current articles of incorporation;

(b) all other names used by the corporation during the past ten years and the dates each was used;

(c) the date and place of incorporation;

(d) the **ADDRESS** of the corporation's principal place of business;

(e) whether you are qualified to do business in Colorado.

[] 3.2 Are you a partnership?

If you are a partnershipso, state:

(a) the current partnership name;

(b) all other names used by the partnership during the past ten years and the dates each was used;

(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;

(d) the name and **ADDRESS** of each general partner;

(e) the **ADDRESS** of the partnership's principal place of business.

[] 3.3 Are you a joint venture?

If you are a joint ventureso, state:

(a) the current joint venture name;

(b) all other names used by the joint venture during the past ten years and the dates

each was used;

(c) the name and **ADDRESS** of each joint venturer;

(d) the **ADDRESS** of the joint venturer's principal place of business.

[] 3.4 Are you an unincorporated association?

If you are an unincorporated associationso, state:

(a) the current unincorporated association's name;

(b) all other names used by the unincorporated association during the past ten years and the dates each was used;

(c) the **ADDRESS** of the association's principal place of business.

☐ 3.25 Have you done business under a fictitious name during the past ten years?

If so, for each fictitious name state:

(a) the name;

(b) the dates the name was used;

(c) the state and county of each fictitious name filing;

(d) the **ADDRESS** of your principal place of business.

☐ 3.36 Within the past five years, has any public entity registered or licensed your businesses?

If so, for each license or registration:

(a) identify the license or registration;

(b) state the name of the public entity;

(c) state the dates of issuance and expiration.

☐ 3.4 State the name, ADDRESS, and the job title of the manager or managers most responsible for overseeing the INCIDENT or events leading to the INCIDENT.

4.0 Insurance *(Withdrawn. See C.R.C.P. 26(a)(1)(D), and 2016 Comment to C.R.C.P. 33.)*

[] 4.1 At the time of the **INCIDENT,** was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT?**

If so, for each policy state:

the kind of coverage;

the name and **ADDRESS** of the insurance company;

the name, **ADDRESS,** and telephone number of each named insured;

the policy number;

the limits of coverage for each type of coverage contained in the policy;

whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company;

the name, **ADDRESS,** and telephone number of the custodian of the policy.

[] 4.2 Are you self-insured under any statute for the damages, claims, or actions that have

~~arisen out of the **INCIDENT?**~~

~~If so, specify the statute~~.

5.0 (Reserved)

6.0 Physical, Mental, or Emotional Injuries

☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT?**

If your answer is "no," do not answer interrogatories 6.2 through 6.7.

☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT?**

If so, for each complaint state:

(a) a description;

(b) whether the complaint is subsiding, remaining the same, or becoming worse;

(c) the frequency and duration.

☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by C.R.C.P. 35 or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT?**

If so, for each **HEALTH CARE PROVIDER** state:

(a) the name, **ADDRESS,** and telephone number;

(b) the type of consultation, examination, or treatment provided;

(c) the dates you received consultation, examination, or treatment;

(d) the charges to date.

☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT?**

If so, for each medication state:

(a) the name;

(b) the **PERSON OR ENTITY** who prescribed or furnished it;

(c) the date prescribed or furnished;

(d) the dates you began and stopped taking it;

(e) the cost to date.

☐ 6.6 Are there any other medical services not previously listed (for example, ambulance, nursing, prosthetics)?

If so, for each service state:

(a) the nature;

(b) the date;

(c) the cost;

(d) the name, **ADDRESS,** and telephone number of each provider.

☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT?**

If so, for each injury state:

(a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER;**

(b) the complaints for which the treatment was advised;

(c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT?**

If so, for each item of property:

(a) describe the property;

(b) describe the nature and location of the damage to the property;

(c) state the amount of damage you are claiming for each item of property and how the amount was calculated;

(d) if the property was sold, state the name, **ADDRESS,** and telephone number of the seller, the date of sale, and the sale price.

☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to interrogatory 7.1?

If so, for each estimate or evaluation state:

(a) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who prepared it and the date prepared;

(b) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has a copy;

(c) the amount of damage stated.

☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired?

If so, for each item state:

(a) the date repaired;

(b) a description of the repair;

(c) the repair cost;

(d) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who repaired it;

(e) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who paid for the repair.

8.0 Loss of Income or Earning Capacity

~~[] 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? If your answer is "no," do not answer interrogatories 8.2 through 8.8~~.

☐ 8.1~~2~~ State:

(a) the nature of your work;

(b) your job title at the time of the **INCIDENT;**

(c) the date your employment began.

☐ 8.2~~3~~ State the last date before the **INCIDENT** that you worked for compensation.

☐ 8.3~~4~~ State your monthly income at the time of the **INCIDENT** and how the amount was

calculated.

☐ 8.45 State the date you returned to work at each place of employment following the **INCIDENT.**

☐ 8.56 State the dates you did not work and for which you lost income.

~~[] 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.~~

☐ 8.68 Will you lose income in the future as a result of the **INCIDENT?**

If so, state:

(a) the facts upon which you base this contention;

(b) an estimate of the amount;

(c) an estimate of how long you will be unable to work;

(d) how the claim for future income is calculated.

8.7 *(Pattern interrogatory 8.7 was withdrawn. See C.R.C.P. 26(a)(1)(C), and 2016 comment to C.R.C.P. 33.)*

9.0 Other Damages

☐ 9.1 Are there any other damages that you attribute to the **INCIDENT?**

If so, for each item of damage state:

(a) the nature;

(b) the date it occurred;

(c) the amount;

(d) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** to whom an obligation was incurred.

☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1?

If so, state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT.**

10.0 Medical History

☐ 10.1 At any time before the **INCIDENT,** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT?** ~~[Too broad]~~

If so, for each state:

(a) a description;

(b) the dates it began and ended;

(c) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

10.2 *(Pattern interrogatory 10.2 is withdrawn. See 2016 Comment to C.R.C.P. 33.)*~~List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT.** (You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT.**)~~

☐ 10.3 At any time after the **INCIDENT,** did you sustain injuries of the kind for which you are now claiming damages?

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold, Italic

Formatted: Font: Not Bold

Formatted: Font: Italic

If so, for each incident state:

(a) the date and the place it occurred;

(b) the name, **ADDRESS,** and telephone number of any other **PERSON OR ENTITY** involved;

(c) the nature of any injuries you sustained;

(d) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER** that you consulted or who examined or treated you;

(e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims *(Withdrawn. See C.R.C.P. 26(b)(1), and 2016 Comment to C.R.C.P. 33.)*

Formatted: Font: Italic

~~[ ] 11.1 Except for this action, in the last ten years have you filed an action or made a written claim or demand for compensation for personal injuries?~~

~~If so, for each action, claim, or demand state:~~

~~(a) the date, time, and place and location of the **INCIDENT** (closest street **ADDRESS** or intersection);~~

~~(b) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** against whom the claim was made or action filed;~~

~~(c) the court, names of the parties, and case number of any action filed;~~

~~(d) the name, **ADDRESS,** and telephone number of any attorney representing you;~~

~~(e) whether the claim or action has been resolved or is pending.~~

~~[ ] 11.2 In the last ten years have you made a written claim or demand for workers' compensation benefits?~~

~~If so, for each claim or demand state:~~

~~(a) the date, time, and place of the **INCIDENT** giving rise to the claim;~~

~~(b) the name, **ADDRESS,** and telephone number of your employer at the time of the injury;~~

~~(c) the name, **ADDRESS,** and telephone number of the workers' compensation insurer and the claim number;~~

~~(d) the period of time during which you received workers' compensation benefits;~~

~~(e) a description of the injury;~~

~~(f) the name, **ADDRESS,** and telephone number of any **HEALTH CARE PROVIDER** that provided services;~~

~~(g) the case number of the workers' compensation claim.~~

12.0 Investigation--General

☐ 12.1 State the name, **ADDRESS,** and telephone number of each individual:

(a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT;**

(b) who made any statement at the scene of the **INCIDENT;**

(c) who heard any statements made about the **INCIDENT** by any individual at the scene;

(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claims to have knowledge of the **INCIDENT** (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)).

☐ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT?**

If so, for each individual state:

(a) the name, **ADDRESS,** and telephone number of the individual interviewed;

(b) the date of the interview;

(c) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who conducted the interview.

☐ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**?

If so, for each statement state:

(a) the name, **ADDRESS,** and telephone number of the individual from whom the statement was obtained;

(b) the name, **ADDRESS,** and telephone number of the individual who obtained the statement;

(c) the date the statement was obtained;

(d) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the original statement or a copy.

☐ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries?

If so, state:

(a) the number of photographs or feet of film or videotape;

(b) the places, objects, or persons photographed, filmed, or videotaped;

(c) the date the photographs, films, or videotapes were taken;

(d) the name, **ADDRESS,** and telephone number of the individual taking the photographs, films, or videotapes;

(e) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the original or a copy.

☐ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)) concerning the **INCIDENT?**

If so, for each item state:

(a) the type (i.e., diagram, reproduction, or model);

(b) the subject matter;

(c) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has it.

☐ 12.6 Was a report made by any **PERSON OR ENTITY** concerning the **INCIDENT?**

If so, state:

(a) the name, title, identification number, and employer of the **PERSON OR ENTITY** who made the report;

(b) the date and type of report made;

(c) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** for whom the report was made.

☐ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT?**

If so, for each inspection state:

(a) the name, **ADDRESS,** and telephone number of the individual making the inspection (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4));

(b) the date of the inspection.

13.0 Investigation--Surveillance

☐ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action?

If so, for each surveillance state:

(a) the name, **ADDRESS,** and telephone number of the individual or party;

(b) the time, date, and place of the surveillance;

(c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance.

☐ 13.2 Has a written report been prepared on the surveillance?

If so, for each written report state:

(a) the time;

(b) the date;

(c) the name, **ADDRESS,** and telephone number of the individual who prepared the report;

(d) the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the original or a copy.

14.0 Statutory or Regulatory Violations

☐ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON OR ENTITY** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT?**

If so, identify each **PERSON OR ENTITY** and the statute, ordinance, or regulation.

☐ 14.2 Was any **PERSON OR ENTITY** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT?**

If so, for each **PERSON OR ENTITY** state:

(a) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY;**

(b) the statute, ordinance, or regulation allegedly violated;

(c) whether the **PERSON OR ENTITY** entered a plea in response to the citation or charge and, if so, the plea entered;

(d) the name and **ADDRESS** of the court or administrative agency, names of the

parties, and case number.

15.0 ~~Affirmative~~ Defenses

☐ 15.1 Identify each denial of a material allegation ~~and each affirmative defense~~ in paragraph ___ (insert paragraph number) of your defensive pleading~~s~~ and for each:

(a) state the facts ~~all facts~~ upon which you base the denial ~~or affirmative defense~~;

(b) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of ~~those facts~~the facts;

(c) identify all **DOCUMENTS** and other tangible things which support your denial ~~or affirmative defense~~, and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT.**

[Note: This interrogatory may be repeated as additional interrogatories for any paragraphs of the pleading which the responding party has denied.]

☐ 15.2 For your ~~Identify each denial of a material allegation and each~~ affirmative defense of ~~in your pleadings~~ _____ (insert name of affirmative defense) ~~and for each~~:

(a) state the facts ~~all facts~~ upon which you base the ~~denial or~~ affirmative defense;

(b) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of ~~those facts~~the facts;

(c) identify all **DOCUMENTS** and other tangible things which support your ~~denial or~~ affirmative defense, and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT.**

[Note: This interrogatory may be repeated as additional interrogatories for any affirmative defenses which the responding party has pleaded.]

16.0 Defendant's Contentions--Personal Injury

[See Instructions Section 2(c)]

☐ 16.1 Do you contend that any **PERSON OR ENTITY,** other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff?

If so, for each **PERSON OR ENTITY:**

(a) state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY;**

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT?**

If so:

Formatted: Font: Not Bold
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold
Formatted: Font: Not Bold, Not Highlight
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold, Italic
Formatted: Font: Not Bold

(a) state ~~all facts~~ the facts upon which you base your contention;

(b) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSONS OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT?**

If so, for each injury:

(a) identify it;

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT?**

If so:

(a) identify each service;

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were unreasonable?

If so:

(a) identify each cost;

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT?**

If so:

(a) identify each part of the loss;

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery proceedings thus far in this case was not caused by the **INCIDENT?**

If so:

(a) identify each item of property damage;

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable?

If so:

(a) identify each cost item;

(b) state ~~all facts~~ the facts upon which you base your contention;

(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

☐ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case?

If so, for each plaintiff state:

(a) the source of each **DOCUMENT;**

(b) the date each claim arose;

(c) the nature of each claim;

(d) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT.**

☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4))?

If so, for each plaintiff state:

(a) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER;**

(b) a description of each **DOCUMENT;**

(c) the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT.**

17.0 Responses to Request for Admissions *(Withdrawn. See C.R.C.P. 36(a), and 2016 Comment to C.R.C.P. 33.)*

~~[ ] 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission?~~

~~If not, for each response that is not an unqualified admission:~~

~~(a) state the number of the request;~~

~~(b) state all facts upon which you base your response;~~

~~(c) state the names, **ADDRESSES,** and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of those facts;~~

~~(d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS,** and telephone number of the **PERSON OR ENTITY**who has each **DOCUMENT** or thing.~~

18.0 (Reserved)

19.0 (Reserved)

20.0 How the Incident Occurred--Motor Vehicle

☐ 20.1 State the date, time, and place (closest street address, intersection, or highway) of the **INCIDENT.**

☐ 20.2 For each vehicle involved in the **INCIDENT,** state:

(a) the year, make, model, and license number;

(b) the name, **ADDRESS,** and telephone number of the driver;

(c) the name, **ADDRESS,** and telephone number of each occupant other than the driver;

(d) the name, **ADDRESS,** and telephone number of each registered owner;

(e) the name, **ADDRESS,** and telephone number of each lessee;

(f) the name, **ADDRESS,** and telephone number of each owner other than the registered owner or lien holder;

(g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the **ADDRESS** and location where your trip began, and the **ADDRESS** and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT,** and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT.**

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the

INCIDENT.

☐ 20.6 Did the **INCIDENT** occur at an intersection?

If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT?**

If so, state:

(a) your location when you first saw it;

(b) the color;

(c) the ~~number of seconds~~ approximate length of time it had been that color;

(d) whether the color changed between the time you first saw it and the **INCIDENT.**

☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:

(a) just before the **INCIDENT;**

(b) at the time of the **INCIDENT;**

(c) just after the **INCIDENT.**

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**?

If so:

(a) identify the vehicle;

(b) identify each malfunction or defect;

(c) state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who is a witness to or has information about each malfunction or defect;

(d) state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT?**

If so:

(a) identify the vehicle;

(b) identify each malfunction or defect;

(c) state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who is a witness to or has information about each malfunction or defect;

(d) state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has custody of each defective part.

☐ 20.11 State the name, **ADDRESS,** and telephone number of each owner and each **PERSON OR ENTITY** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT.**

25.0 (Reserved)

30.0 (Reserved)

40.0 (Reserved)

50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:~~I~~

(a) identify all **DOCUMENTS** that are part of the agreement and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT;**

(b) state each part of the agreement not in writing, the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** agreeing to that provision, and the date that part of the agreement was made;

(c) identify all **DOCUMENTS** that evidence each part of the agreement not in writing and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT;**

(d) identify all **DOCUMENTS** that are part of each modification to the agreement, and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT;**

(e) state each modification not in writing, the date, and the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** agreeing to the modification, and the date the modification was made;

(f) identify all **DOCUMENTS** that evidence each modification of the agreement not in writing and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS,** and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT.**

☐ 50.2 If ~~Was~~ there was a breach of any agreement alleged in the pleadings,~~?~~

~~If so,~~ for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 If ~~Was~~ performance of any agreement alleged in the pleadings was excused,~~?~~

~~If so,~~ identify each agreement excused and state why performance was excused.

☐ 50.4 If ~~Was~~ any agreement alleged in the pleadings was terminated by mutual agreement, release, accord and satisfaction, or novation,~~?~~

~~If so,~~ identify each agreement terminated and state why it was terminated including dates.

☐ 50.5 If ~~Is~~ any agreement alleged in the pleadings is unenforceable,~~?~~

~~If so,~~ identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 If ~~Is~~ any agreement alleged in the pleadings is ambiguous,~~?~~

~~If so,~~ identify each ambiguous agreement and state why it is ambiguous.

60.0 (Reserved)