AGENDA

COLORADO SUPREME COURT
COMMITTEE ON
RULES OF CIVIL PROCEDURE

Friday, February 27, 2015, 1:30p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to order

II. Approval of January 30, 2015 Meeting Minutes [Page 3 to 6]

III. Announcements from the Chair

Effective date of the IAJ rules – Letter to Court [Page 7 to 9]

IV. Current Business

A. IAJ Proposed Rules (Judge Webb) (Committee Comments to the proposed rules—existing comments and new comments) [Page 10 to 29]

B. Colorado Rules of Probate Procedure (Fred Skillern and Teresa Tate) (Passed to April 24, 2015 Meeting)

C. Rule 120 Subcommittee (Fred Skillern) (Possible brief interim report from Fred Skillern.)

D. Rule 121 §1-15 Subcommittee (David DeMuro and Lee Sternal) [Page 30 to 35]

E. Rule 84 – Forms (Dick Holme)

F. Rule 53 – Masters (Brief discussion of possible appointment of subcommittee) [Page 36 to 37]

V. Adjourn

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

Jenny Moore, Esq.
Rules Research Attorney
Colorado Supreme Court Committees
Jenny.moore@judicial.state.co.us
720-625-5105

Conference Call Information:

Dial (720) 625-5050 and enter the access code, 15994434, followed by # key.

NEXT MEETING IS FRIDAY, APRIL 24, 2015 AT 1:30PM

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
Minutes of January 30, 2015 Meeting

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

Name	Present	Excused
Judge Michael Berger, Chair	X	
David R. DeMuro	X	
Judge Ann Frick		X
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Charles Kall	X	
Thomas K. Kane	X	
Debra Knapp	X	
Cheryl Layne		X
Richard Laugesen	X	
Judge Cathy Lemon	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Judge Ann Rotolo		X
Frederick B. Skillern	X	
Lee N. Sternal	X	
Ben Vinci	X	
Magistrate Marianne Tims	X	
Judge John R. Webb	X	
J. Gregory Whitehair	X	
Christopher Zenisek	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Teresa Tate	X	

I. Attachments & Handouts

January 30, 2015 Agenda Packet
David DeMuro's revised CRCP 121 §1-15 Memo

II. Announcements from the Chair

The November 21, 2014 Meeting Minutes were adopted with one correction: in Roman numeral III, section B, paragraph 4, the reference to CRCP 16(a)(7) will be changed to CRCP 16(b)(7).

With 24 voting members, Judge Berger announced the results of the Improving Access to Justice (IAJ) final email vote:

Proposal	Vote
Votes in favor of all proposals	12
Votes against adding the last sentence to CRCP 54(d)	9
Votes against adding "manifestly" to CRCP 37	1
Members who did not vote	3

The IAJ proposal was transmitted to the supreme court on January 5, 2015, and a public hearing will be held on April 30 at 1:30 in the Supreme Court Courtroom. Judge Berger and IAJ Subcommittee Chair Richard Holme will represent the committee at the hearing. Judge Berger said that the IAJ proposal and subcommittee report are on the court's website, and Mr. Holme's first article on the proposed changes appeared in *The Colorado Lawyer's* February 2015 issue. Judge Berger told members they are free to discuss the proposal with colleagues and there is no level of confidentiality to the Civil Rules Committee meetings, with one exception: subcommittee reports need to be considered by the entire committee before public release.

III. Business

A. IAJ Proposal

(i) Committee Comments

The committee comment discussion was centered on two issues: general remarks on the civil rules' committee comments, and proposed action on the IAJ rules with committee comments.

The civil rules' committee comments had been drafted on an ad hoc basis, and Judge Berger asked members their thoughts on committee comments generally. Some members thought having no committee comments would be best, because the rules should be written clearly enough to speak for themselves. Other members thought some committee comments were necessary, because they provide value by stating why the change or different treatment was necessary.

After discussion, the committee agreed that if committee comments were used, the committee must agree to abstain from drafting comments that paraphrase rules. Also, the committee agreed that a committee comment policy should be considered, as well as dating committee comments, like the federal rules.

Moving to the IAJ proposal, Rules 16, 26, 30, 31, 34, 37, 54, and 121 §1-22 have committee comments that were not amended in the IAJ proposal submitted to the

supreme court. Judge Berger proposed: 1) printing the IAJ Subcommittee Report after Rule 1 and in the other IAJ rules' committee comments, print a cross reference to the report; and 2) having members review the committee comments of the IAJ rules and report back at the February 27 Meeting with a recommendation on what to do with existing comments. These proposals were seconded and passed.

(ii) Effective Date

The IAJ proposal submitted to the supreme court did not contain an effective date recommendation, and Mr. Holme described a scenario where three sets of rules would be in effect: 1) the CAPP rules in judicial districts participating in CAPP; 2) the existing civil rules in judicial districts not participating in CAPP; and 3) any or all of the IAJ rules that are adopted. Judicial districts participating in CAPP would not see a dramatic difference between the CAPP rules and the IAJ rules; however, judicial districts not participating in CAPP would see dramatic differences. Two examples Mr. Holme gave were the Rule 12(b)(5) motion (now you must file an answer), and the at issue date (a judge would have to decide whether to go ahead with the presumptive case management order, or use the new case management regime).

First, the committee considered whether the IAJ rules should be effective for all cases, both pending and new, on July 1. Generally most members were against this approach, because they thought bright line rules are best for trial courts, and they worried that every case would become a time consuming and expensive battle to see which rules applied.

Next, the committee considered making Rule 54(d) effectively immediately upon adoption. Most members thought 54(d) was an essential part of the IAJ proposal and it should not be singled and effective sooner than the other rules. A motion was made and seconded where all IAJ rules, except Rule 54(d), would be effective to all cases filed on or after July 1, and Rule 54(d) would be effective immediately upon adoption. This motion failed.

Finally, a motion was made where all IAJ rules would be effective to all cases filed on or after July 1. The motion was seconded and passed 17:1. Judge Berger told the committee he would supplement the IAJ proposal with an applicability letter to the supreme court.

B. Colorado Rules of Probate Procedure

Tabled until the February 27, 2015 Committee Meeting.

C. Rule 120 Subcommittee

The proposal contained in the meeting materials was drafted by Chair Fred Skillern. The subcommittee is looking at functional changes to the rule to clear up confusion as to how the rule operates. The subcommittee will meet until they have a proposal, and then Mr. Skillern will present to the committee.

D. Rule 121 §1-15 Subcommittee

Chair David DeMuro presented the amendment to CRCP 121 §1-15 which would allow oral pre-trial motions. Allowing oral motions would save time and expense, and should be available to discovery and other non-dispositive motions. This amendment stems in part from the IAJ's proposed change to CRCP 16(b)(4), which states whether the court does or does not require discovery motions to be heard orally. In addition, an amendment to CRCP 121 §1-12 was proposed because a change to oral discovery motions would affect this rule.

Judge Berger added that he spoke to Chief Judge Michael Martinez from the second judicial district, and Chief Judge Martinez asked if page or word limits could be added to §1-15. The subcommittee was going to consider all requests and present at the February 27, 2015 Committee Meeting.

E. Rule 84, Forms

Tabled until the February 27, 2015 Committee Meeting.

IV. Future Meetings

February 27, 2015
April 24, 2015
June 26, 2015

The Committee adjourned at 3:35 p.m.

Respectfully submitted,

Jenny A. Moore

Court of Appeals

STATE OF COLORADO
2 EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
720-625-5000

Michael H. Berger
Judge

February 11, 2015

Hon. Allison Eid

Justice, Colorado Supreme Court

Re: Colorado Supreme Court Civil Rules Committee—Recommended Effective Date for Improving Access to Justice proposals

Dear Justice Eid:

I write to you in your capacity as the Liaison Justice to the Civil Rules Committee. This letter supplements my letter to you dated January 5, 2015 and the materials submitted with that letter.

At its January 28, 2015 meeting, the Committee recommended, with only one member dissenting, that the proposed Improving Access to Justice (IAJ) rules previously recommended to the Court become effective for **all cases filed on or after July 1, 2015.** If the Court accepts this proposal (and adopts some or all of the IAJ proposed amendments) that means that CAPP cases filed prior to July 1, 2015 would continue to be governed by the CAPP rules through their completion; non-CAPP cases filed before July 1, 2015 will continue to be governed by the civil rules presently in effect; and all cases filed on or after July 1, 2015 will be governed by the IAJ amended rules.

The Committee recognizes that there is no perfect effective date solution. While the Committee sought a solution that would avoid having three separate sets of rules in effect for any period of time—the existing rules of civil procedure,

the CAPP rules (for those districts participating in CAPP) for CAPP cases filed prior to July 1, 2015 and, assuming the Court adopts any or all of the proposed IAJ proposals, those rules, a large majority of the Committee concluded that the only practical alternative was to have the new rules effective only for cases filed on or after July 1, 2015.

The Committee rejected a proposal (made by the chair of the IAJ subcommittee, who later voted against his own proposal) that the IAJ proposals become effective for all cases, both pending and new, on July 1, 2015. That proposal recognized that in particular cases the district court would have to make ad hoc adjustments to the effective date rule. For example, a CAPP case that was nearing trial would not have had any expert depositions. Applying the proposed IAJ rule which does permit limited expert depositions obviously conflicts with CAPP and would raise the question whether expert depositions could be taken in that CAPP case.

The comments against such an effective date provision were many and persuasive. They included the observation that there would be a time-consuming and expensive battle in every case to determine on an ad hoc basis, which rules to apply. Other committee members (the Chief Judge of the court of appeals, another court of appeals judge, and a former state district court magistrate) expressed the view that the trial judges need bright line rules and dumping the type of ad hoc determinations that the rejected proposal would have required upon the trial courts was not appropriate. Two committee members (a district court judge and a law professor) expressed the view that the rejected proposal would engender substantial gamesmanship which is contrary to the very purposes of the IAJ proposals.

There was also discussion regarding a different effective date—an immediate effective date-- for the costs rule, C.R.C.P. 54 (d). A strong majority of the Committee rejected that concept because the costs rule is viewed by the Committee as an integral part of the IAJ proposals and should not be singled out for different treatment.

For all of these reasons, the Committee recommends that all of the IAJ proposed amendments become effective for cases filed on or after July 1, 2015.

Respectfully submitted,

Michael H. Berger

Chair, Civil Rules Committee

2/20/2015 Draft

IAJ AMENDMENTS – EXISTING AND PROPOSED COMMENTS

C.R.C.P. 1

2015 Committee Comment

Formatted: Normal

For a description of the purposes and intended operation of the 2015 Amendments, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, reproduced below.

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Normal

C.R.C.P. 12

2015 Committee Comment

Formatted: Normal

For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 12, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Normal

C.R.C.P. 16

~~COMMITTEE COMMENT~~

~~History and Philosophy~~

~~Effective differential case management has been a long term goal of the Bench, Bar, and Public. Adoption by the Colorado Supreme Court of C.R.C.P. 121 and its practice standards in 1983; revised C.R.C.P. 16 in 1988 to require earlier disclosure of matters necessary for trial; and the Colorado Standards for Case Management Trial Courts in 1989 were a continuing and evolving~~

effort to achieve an orderly, fair and less expensive means of dispute resolution. Those rules and standards were an improvement over prior practice where there was no prescribed means of case management, but problems still remained. There were problems of discovery abuse, late or inadequate disclosure, lack of professionalism, slow case disposition, outrageous expense and failure to achieve an early settlement of those cases that ultimately settled.

In the past several years, a recognition by the organized Bar of increasing unprofessional conduct by some attorneys led to further study of problems in our civil justice system and new approaches to resolve them. New Federal Rules of Civil Procedure were developed to require extensive early disclosure and to limit discovery. The Colorado Bar Association's Professionalism Committee made recommendations concerning improvements of Colorado's case management and discovery rules.

After substantial input through surveys, seminars and Bench/Bar committees, the Colorado Supreme Court appointed a special Ad Hoc Committee to study and make recommendations concerning Colorado's Civil Rules pertaining to case management, disclosure/discovery and motions practice. Reforms of Rules 16, 26, 29, 30, 31, 32, 33, 34, 36, 37, 51, 121 § 1-11, 121 § 1-12, 121 § 1-15, and 121 § 1-19 were developed by this Committee.

The heart of the reform is a totally rewritten Rule 16 which sets forth a new system of case management. Revisions to Rules 26, 29, 30, 31, 32, 33, 34, 36, and 37 are patterned after December 1, 1993, revisions to Federal Rules of the same number, but are not in all respects identical. Colorado Rules 16, 26, 29, 30, 31, 32, 33, 34, 36, and 37 were developed to interrelate with each other to provide a differential case management/early disclosure/limited discovery system designed to resolve difficulties experienced with prior approaches. Changes to C.R.C.P. 121 §§ 1-11, 1-12, 1-15, and 1-19 are designed to interrelate with the case management/disclosure/discovery reform to improve motions practice. In developing these rules, the Committee paid particular attention to the 1993 revisions of the Federal Rules of Civil

Procedure and the work of the Colorado Bar Association regarding professionalism.

Operation

New Rule 16 and revisions of Rules 26, 29, 30, 31, 32, 33, 34, 36, 37, 51, and 121 §§ 1-11, 1-12, 1-15, and 1-19 are designed to accomplish early purposeful and reasonably economical management of cases by the parties with Court supervision. The system is based on communication, including required early disclosure of persons with knowledge and documents relevant to the case, which disclosure should lead in many cases to early evaluation and settlement efforts, and/or preparation of a workable Case Management Order. Lead attorneys for each party are to communicate with each other in the spirit of cooperation in the preparation of both the Case and Trial Management Orders. Court Case Management Conferences are available where necessary for *any* reasonable purpose. The Rules require a team effort with Court leadership to insure that only *appropriate* discovery is conducted and to carefully plan for and conduct an efficient and expeditious trial.

Rules 16 and 26 should work well in most cases filed in Colorado District Courts. However, where a case is complex or requires special treatment, the Rules provide flexibility so that the parties and Court can alter the procedure. The importance of economy is encouraged and fostered in a number of ways, including authorized use of the telephone to conduct in-person attorney and Court conferences.

The Committee acknowledges the greater length of the Rules comprising this reformed system. However, these Rules have been developed to describe and to eliminate "hide-the-ball" and "hardball" tactics under previous Disclosure Certificate and Discovery Rules. It is expected that trial judges will assertively lead the management of cases to ensure that justice is served. In the view of the Committee, abuses of the Rules to run up fees, feed egos, bludgeon opponents into submission, force unfair

~~settlements, build cases for sanctions, or belittle others should not be tolerated.~~

~~These Rules have been drafted to emphasize and foster professionalism and to de-emphasize sanctions for non-compliance. Adequate enforcement provisions remain. It is expected that attorneys will strive diligently to represent their clients' best interests, but at the same time conduct themselves as officers of the Court in the spirit of the recently adopted Rules of Professional Conduct.~~

~~(a)~~

~~The purpose and scope of Rule 16 are as set forth in subsection (a). Unless otherwise ordered by the Court or stipulated by the parties, Rule 16 does not mandatorily apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, Rule 120, or other expedited proceedings. Provisions of the Rule could be used, however, and Courts involved in those proceedings should consider their possible applicability to particular cases.~~

~~(b)~~

~~The "Case Management Order" is the central coordinating feature of the Rule 16 case management system. It comes at a relatively early but realistic time in the case. The Case Management Order governs the trial setting; contains or coordinates disclosure; limits discovery and establishes a discovery schedule; establishes the deadline for joinder of additional parties and amendment of pleadings; coordinates handling of pretrial motions; requires a statement concerning settlement; and allows opportunity for inclusion of other provisions necessary to the case.~~

~~Lead counsel for each of the parties are required to confer about the nature and bases of their claims and defenses, discuss the matters to be disclosed and explore the possibilities of a prompt settlement or other resolution of the case. As part of the conferring process, lead counsel for each of the parties are required to cooperate in the development of the Case Management Order, which is then~~

~~submitted to the Court for approval. If there is disagreement about any aspect of the proposed Case Management Order, or if some aspect of the case requires special treatment, the parties are entitled to an expeditious Case Management Conference. If any party is appearing *pro se* an automatic mandatory Case Management Conference is triggered.~~

~~A time line is specified in C.R.C.P. 16(b) for the C.R.C.P. 26(a)(1) disclosures, conferring of counsel and submission of the proposed Case Management Order. The time line in section (b) is triggered by the "at issue" date, which is defined at the beginning of C.R.C.P. 16(b).~~

~~Disclosure requirements of C.R.C.P. 26, including the duty to timely supplement and correct disclosures, together with sanction provisions of C.R.C.P. 37 for failure to make disclosure, are incorporated by reference. Because of mandatory disclosure, there should be substantially less need for discovery. Presumptive limitations on discovery are specified in C.R.C.P. 26(b)(2). The limitations contained in C.R.C.P. 26 and Discovery Rules 29, 30, 31, 32, 33, 34, and 36 are incorporated by reference and provision is made for discovery above presumptive limitations if, upon good cause shown (as defined in C.R.C.P. 26(b)(2)), the particular case warrants it. The system established by C.R.C.P. 16(b)(1)(IV) requires the parties to set forth and obtain Court approval of a schedule of discovery for the case, which includes the timing and number of particular forms of discovery requests. The system established by C.R.C.P. 16(b)(1)(IV) also requires lead counsel for each of the parties to set forth the basis of and necessity for all such discovery and certify that they have advised their clients of the expenses and fees involved with each such item of discovery. The purpose of such discovery schedule and expense estimate is to bring about an advanced realization on the part of the attorneys and clients of the expense and effort involved in the schedule so that decisions can be made concerning propriety, feasibility, and possible alternatives (such as settlement or other means of obtaining the information). More stringent standards concerning the necessity of discovery contained in C.R.C.P. 26(b)(2) are incorporated into C.R.C.P.~~

16(b)(1)(IV). A Court should not simply "rubber stamp" a proposed discovery schedule even if agreed upon by counsel.

A Court Case Management Conference will not be necessary in every case. It is anticipated that many cases will not require a Court Case Management Conference, but such conference is available should the parties or the Court find it necessary. Regardless of whether there is a Court Case Management Conference, there will always be the Case Management Order which, along with the later Trial Management Order, should effectively govern the course of the litigation through the trial.

(c)

The Trial Management Order is jointly developed by the parties and filed with the Court as a proposal no later than thirty days prior to the date scheduled for the trial (or at such other time as the Court directs). The Trial Management Order contains matters for trial (see specific enumeration of elements to be contained in the Trial Management Order). It should be noted that the Trial Management Order references the Case Management Order and, particularly with witnesses, exhibits, and experts, contemplates prior identification and disclosure concerning them. Except with permission of the Court based on a showing that the witness, exhibit, or expert could not have, with reasonable diligence, been anticipated, a witness, exhibit, or expert cannot be revealed for the first time in the Trial Management Order.

As with the Case Management Order, Trial Management Order provisions of the Rule are designed to be flexible so as to fit the particular case. If the parties cannot agree on any aspect of the proposed Trial Management Order, a Court Trial Management Conference is triggered. The Court Trial Management Conference is mandatory if any party is appearing in the trial *pro se*.

As with the Case Management Order procedure, many cases will not require a Court Trial Management Conference, but such a conference is available upon request and encouraged if there is any

problem with the case that is not resolved and managed by the Trial Management Order.

The Trial Management Order process will force the attorneys to make decisions on which claims or defenses should be dropped and identify legal issues that are truly contested. Both of those requirements should reduce the expenses associated with trial. In addition, the requirement that any party seeking damages define and itemize those damages in detail should facilitate preparation and trial of the case.

Subsection (c)(IV), pertaining to designation of "order of proof," is a new feature not contained in Federal or State Rules. To facilitate scheduling and save expense, the parties are required to specifically identify those witnesses they anticipate calling in the order to be called, indicating the anticipated length of their testimony, including cross-examination.

(d)

Provision is made in the C.R.C.P. 16 case management system for an orderly advanced exchange and filing of jury instructions and verdict forms. Many trial courts presently require exchange and submission of a set of agreed instructions during the trial. C.R.C.P. 16(d) now requires such exchange, conferring, and filing no later than three (3) days prior to the date scheduled for the commencement of the trial (or such other time as the Court otherwise directs).

HISTORICAL NOTES

Supreme Court Change effective January 1, 1995, provides that rule 16 adopted by the court is effective January 1, 1995, for all cases filed on or after that date.

CROSS REFERENCES

Contraband forfeiture, proceedings, see § 16-13-505.

~~Criminal proceedings, public nuisance actions, expedited proceedings, see § 16-13-307.~~

~~Dismissal of actions, see Civil Procedure Rule 41.~~

2015 Committee Comment

For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 16, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

C.R.C.P. 16.1

[no comment]

Formatted: Left

C.R.C.P. Rule 26

~~COMMITTEE COMMENT~~

~~SCOPE~~

~~Because of its timing and interrelationship with C.R.C.P. 16, C.R.C.P. 26 does not apply to domestic relations, mental health, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings. However, the Court in those proceedings may use C.R.C.P. 26 and C.R.C.P. 16 to the extent helpful to the case. In most instances, only the timing will need to be modified.~~

~~COLORADO DIFFERENCES~~

~~Revised C.R.C.P. 26 is patterned largely after Fed.R.Civ.P. 26 as amended in 1993 and 2000 and uses substantially the same numbering. There are differences, however. The differences are to fit disclosure/discovery requirements of Colorado's case/trial management system set forth in C.R.C.P. 16, which is very different~~

from its Federal Rule counterpart. The interrelationship between C.R.C.P. 26 and C.R.C.P. 16 is described in the Committee Comment to C.R.C.P. 16.

The Colorado differences from the Fed.R.Civ.P. are: (1) timing and scope of mandatory automatic disclosures is different (C.R.C.P. 16(b)); (2) the two types of experts in the Federal Rule are clarified by the State Rule (C.R.C.P. 26(a)(2)(B)), and disclosure of expert opinions is made at a more realistic time in the proceedings (C.R.C.P. 26(a)(2)(C)); (3) sequenced disclosure of expert opinions is prescribed in C.R.C.P. 26(a)(2)(C) to avoid proliferation of experts and related expenses; (4) the parties may use a summary of an expert's testimony in lieu of a report prepared by the expert to reduce expenses (C.R.C.P. 26(a)(2)(B)); (5) claiming privilege/protection of work product (C.R.C.P. 26(b)(5)) and supplementation/correction provisions (C.R.C.P. 26(e)) are relocated in the State Rules to clarify that they apply to both disclosures and discovery; (6) a Motion for Protective Order stays a deposition under the State Rules (C.R.C.P. 121 § 1-12) but not the Federal Rule (Fed.R.Civ.P. 26(c)); (7) presumptive limitations on discovery as contemplated by C.R.C.P. 16(b)(1)(VI) are built into the rule (see C.R.C.P. 26(b)(2)); (8) counsel must certify that they have informed their clients of the expense of the discovery they schedule (C.R.C.P. 16(b)(1)(IV)); (9) the parties cannot stipulate out of the C.R.C.P. 26(b)(2) presumptive discovery limitations (C.R.C.P. 29); and (10) pretrial endorsements governed by Fed.R.Civ.P. 26(a)(3) are part of Colorado's trial management system established by C.R.C.P. 16(c) and C.R.C.P. 16(d).

As with the Federal Rule, the extent of disclosure is dependent upon the specificity of disputed facts in the opposing party's pleading (facilitated by the requirement in C.R.C.P. 16(b) that lead counsel confer about the nature and basis of the claims and defenses before making the required disclosures). If a party expects full disclosure, that party needs to set forth the nature of the claim or defense with reasonable specificity. Specificity is not inconsistent with the requirement in C.R.C.P. 8 for a "short, plain statement" of a party's claims or defenses. Obviously, to the extent there is

disclosure, discovery is unnecessary. Discovery is limited under this system.

FEDERAL COMMITTEE NOTES

Federal "Committee Notes" to the December 1, 1993 and December 1, 2000 amendments of Fed.R.Civ.P. 26 are incorporated by reference and where applicable should be used for interpretive guidance.

The most dramatic change in C.R.C.P. 26 is the addition of a disclosure system. Parties are required to disclose specified information without awaiting a discovery demand. Such disclosure is, however, tied to the nature and basis of the claims and defenses of the case as set forth in the parties' pleadings facilitated by the requirement that lead counsel confer about such matters before making the required disclosures.

Subparagraphs (a)(1)(A) and (a)(1)(B) of C.R.C.P. 26 require disclosure of persons, documents and things likely to provide discoverable information relative to disputed facts alleged with particularity in the pleadings. Disclosure relates to disputed facts, not admitted facts. The reference to particularity in the pleadings (coupled with the requirement that lead counsel confer) responds to the concern that notice pleading suggests a scope of disclosure out of proportion to any real need or use. To the contrary, the greater the specificity and clarity of the pleadings facilitated by communication through the C.R.C.P. 16(b) conference, the more complete and focused should be the listing of witnesses, documents, and things so that the parties can tailor the scope of disclosure to the actual needs of the case.

It should also be noted that two types of experts are contemplated by Fed.R.Civ.P. and C.R.C.P. 26(a)(2). The experts contemplated in subsection (a)(2)(B)(II) are persons such as treating physicians, police officers, or others who may testify as expert witnesses and whose opinions are formed as a part of their occupational duties (except when the person is an employee of the party calling the witness). This more limited disclosure has been incorporated into

the State Rule because it was deemed inappropriate and unduly burdensome to require all of the information required by C.R.C.P. 26(a)(2)(B)(I) for C.R.C.P. 26(a)(2)(B)(II) type experts.

2001 COLORADO CHANGES

The change to C.R.C.P. 26(a)(2)(C)(II) effective July 1, 2001, is intended to prevent a plaintiff, who may have had a year or more to prepare his or her case, from filing an expert report early in the case in order to force a defendant to prepare a virtually immediate response. That change clarifies that the defendant's expert report will not be due until 90 days prior to trial.

The change to C.R.C.P. 26(b)(2)(A) effective July 1, 2001 was made to clarify that the number of depositions limitation does not apply to persons expected to give expert testimony disclosed pursuant to subsection 26(a)(2).

The special and limited form of request for admission in C.R.C.P. 26(b)(2)(E) effective July 1, 2001, allows a party to seek admissions as to authenticity of documents to be offered at trial without having to wait until preparation of the Trial Management Order to discover whether the opponent challenges the foundation of certain documents. Thus, a party can be prepared to call witnesses to authenticate documents if the other party refuses to admit their authenticity.

The amendment of C.R.C.P. 26(b)(1) effective January 1, 2002 is patterned after the December, 2000 amendment of the corresponding Federal rule. The amendment should not prevent a party from conducting discovery to seek impeachment evidence or evidence concerning prior acts.

HISTORICAL NOTES

Supreme Court Change effective January 1, 1995, provides that rule 26 adopted by the court is effective January 1, 1995, for all cases filed on or after that date.

~~CROSS REFERENCES~~

~~Contraband forfeiture, proceedings, see § 16-13-505.~~

~~Exemplary damages, see § 13-21-102.~~

~~General restrictions on privileges, see Evidence Rule 501.~~

~~Jury, use of depositions not permitted during deliberations, see Civil Procedure Rule 47.~~

~~Privilege, persons who may not testify without consent, see § 13-90-107.~~

~~Public nuisance actions, expedited proceedings, limited discovery, see § 16-13-307.~~

~~Related rules of practice,~~
~~County courts, see County Court Civil Procedure Rule 326.~~
~~Small claims courts, see Small Claims Courts Rule 510.~~

2015 Committee Comment

1. For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 26, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

2. The 2015 amendments to C.R.C.P. 26, like the current and proposed version of Rule 26 of the Federal Rules of Civil Procedure, emphasize the application of the concept of proportionality to disclosure and discovery.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

C.R.C.P. 30

~~**COMMITTEE COMMENT**~~

~~Revised C.R.C.P. 30 is patterned in part after Fed.R.Civ.P. 30 as amended in 1993 and now interrelates with the differential case~~

management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of depositions and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

Language in C.R.C.P. 30(c) and C.R.C.P. 30(f)(1) differs slightly from the language of Fed.R.Civ.P. 30(c) and Fed.R.Civ.P. 30(f)(1) to facilitate the taking of telephone depositions by eliminating the requirement that the officer recording the deposition be the person who administers the oath or affirmation.

HISTORICAL NOTES

Supreme Court Change effective January 1, 1995, provides that rule 30 amended by the court is effective January 1, 1995, for all cases filed on or after that date.

CROSS REFERENCES

Depositions outside Colorado, see Civil Procedure Rule 28.

Failure to attend deposition, see Civil Procedure Rule 37.

Failure to make discovery, see Civil Procedure Rule 37.

Persons before whom depositions may be taken, see Civil Procedure Rule 28.

Protective orders, see Civil Procedure Rule 26.

Pre-2015 Committee Comment

C.R.C.P. 30 (c) and 30 (f)(1) differ slightly from Fed.R.Civ.P. 30 (c) and 30 (f)(1) to facilitate the taking of telephone depositions by eliminating the requirement that the officer recording the deposition be the person who administers the oath or affirmation.

Formatted: Indent: Left: 0", Hanging: 0.5"

2015 Committee Comment

For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 30, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

C.R.C.P. 31

~~**COMMITTEE COMMENT**~~

~~Revised C.R.C.P. 31 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.~~

~~A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of depositions and the basis for the necessity of such discovery with attention to the presumptive limitations and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.~~

~~HISTORICAL NOTES~~

~~Supreme Court Change effective January 1, 1995, provides that rule 31 amended by the court is effective January 1, 1995, for all cases filed on or after that date.~~

~~CROSS REFERENCES~~

~~Related rule, county courts, see County Court Civil Procedure Rule 331.~~

~~Subpoenas for taking depositions, see Civil Procedure Rule 45.~~

~~Summary judgment, use of depositions, see Civil Procedure Rule 56.~~

2015 Committee Comment

For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 31, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

C.R.C.P. 34

~~**COMMITTEE COMMENT**~~

~~Revised C.R.C.P. 34 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.~~

~~A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of requests for production and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.~~

~~HISTORICAL NOTES~~

~~Supreme Court Change effective January 1, 1995, provides that rule 34 amended by the court is effective January 1, 1995, for all cases filed on or after that date.~~

~~CROSS REFERENCES~~

~~Protective orders, see Civil Procedure Rule 26.~~

~~Subpoenas against nonparties, see Civil Procedure Rule 45.~~

2015 Committee Comment

For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 34, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

C.R.C.P. 37

~~**COMMITTEE COMMENT**~~

~~Subsection (b)(1) was modified to reflect that orders to deponents under subsection (a)(1), when the depositions are taking place within this state, are sought in and issued by the court where the action is pending or from which the subpoena is issued pursuant to Section 13-90-111, C.R.S., and it is that court which will enforce its orders. Deponents appearing outside the state are beyond the jurisdictional limits of the Colorado courts. For out-of-state depositions, any problems should be addressed by the court of the jurisdiction where the deponent has appeared for the deposition under the laws of that jurisdiction.~~

~~**COMMITTEE COMMENT**~~

~~Revised C.R.C.P. 37 is patterned substantially after Fed.R.Civ.P. 37 as amended in 1993 and has the same numbering. There are slight differences: (1) C.R.C.P. 37(4)(a) and (b) make sanctioning discretionary rather than mandatory; and (2) there is no State Rule 37(e) [pertaining to sanctions for failure to participate in framing of a discovery plan]. As with the other disclosure/discovery rules, revised C.R.C.P. 37 forms a part of a comprehensive case management system. See *Committee Comments* to C.R.C.P. 16, 26, 30, 31, 33, 34, and 36.~~

~~HISTORICAL NOTES~~

~~Supreme Court Change effective January 1, 1995, provides that rule 37 amended by the court is effective January 1, 1995, for all cases filed on or after that date.~~

~~CROSS REFERENCES~~

~~Civil contempt, see Civil Procedure Rule 107.~~

~~Default judgment, notice of prior to entry, see Civil Procedure Rule 55.~~

~~Dismissal of actions, see Civil Procedure Rule 41.~~

2015 Committee Comment

For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 37, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

C.R.C.P. 54

PRE 2015 COMMITTEE COMMENT

~~The amendment~~Prior amendments to C.R.C.P. 54(c) ~~is to~~ eliminate what has been perceived as a possible conflict between that section

and ~~the recent~~ prior changes to C.R.C.P. 8(a) which prohibits statement of amount in ~~that~~ an **ad damnum clause**. The amendment simply strikes the words "or exceed in amount" to make the section consistent with C.R.C.P. 8(a). Relief sought in the ~~prayer~~ claim for relief is now described rather than stated as an amount. It is, therefore, not necessary to have an amount limitation in C.R.C.P. 54(c).

~~CREDIT(S)~~

~~Amended eff. Jan. 1, 1989; Jan. 1, 2012.~~

~~CROSS REFERENCES~~

~~Amendment of judgment, see Civil Procedure Rule 59.~~

~~Bill of costs, see Civil Procedure Rule 121.~~

~~Costs in civil actions, see § 13-16-101 et seq.~~

~~Judgment as lien upon real property, see § 13-52-102.~~

~~Marriage dissolution, verified entry of support judgment, filing, see § 14-10-122.~~

~~Motion to revive judgment, filing, see Civil Procedure Rule 4.~~

~~Notice of appeal, contents, see Appellate Rule 3.~~

~~Partnerships, actions by and against, property bound by judgment, see § 13-50-105.~~

~~Related rules of practice,~~
~~County courts, see County Court Civil Procedure Rule 354.~~
~~Small claims courts, see Small Claims Courts Rules 513, 517.~~

2015 Committee Comment

1. For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 54, see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1.

2. Cost shifting must be addressed in the Case Management Order required by C.R.C.P. 16

3. Large cost awards have the potential to reduce the access to justice for many litigants

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

CRCP 121, Section 1-22 (1)

2015 COMMITTEE COMMENT

1. COSTS. This Standard establishes a uniform~~, optimum~~ time within which to claim costs.~~.~~ The ~~15~~ 21 day requirement encourages prompt filings so that disputes on costs can be determined with other post-trial motions. This Standard also requires itemization and totaling of cost items and reminds practitioners of the means of determining disputes on costs. ~~C.R.S. 13-16-122 (1981) sets forth~~ Section 13-16-122, C.R.S. and C.R.C.P. 54 (d) describe those items generally awardable as costs and presumptive limitations regarding certain types of costs~~.~~

2. ATTORNEY FEES. Subject to certain exceptions, this Standard establishes a uniform procedure for resolving attorney fee disputes ~~in matters where the request for attorney fees is made at the~~in those cases in which, by contract, statute or rule, attorney fees are awardable as costs. Unless the court otherwise orders, this Standard does not address the situation in which attorney fees are part of the damages claimed by a party. ~~conclusion of an action or where attorney fees are awarded to the prevailing party (see "Scope").~~ Unless otherwise ordered by the court, attorney fees under C.R.S. 14-10-119 should be heard at the time of the hearing on the motion or proceeding for which they are requested.

3. For a description of the purposes and intended operation of the 2015 Amendments to C.R.C.P. 121, Section 1-22 (1), see the Report of the Supreme Court Standing Committee on Civil Rules Concerning Proposed Amendments to Certain Pretrial Civil Rules of Procedure, the Civil Access Pilot Project, and Improving Access to Justice dated December 12, 2014, appended to C.R.C.P. 1

MEMORANDUM

TO: Judge Michael Berger, Chairperson
Colorado Supreme Court Advisory Committee on Civil Rules

FROM: Dave DeMuro

RE: CRCP 121, §§ 1-15 and 1-12

DATE: February 20, 2015

Last month I submitted a report on proposed modifications to §§ 1-15 and 1-12 of CRCP 121. The history leading up this proposal was described in last month's report so I will not repeat it here, but essentially the IAJ subcommittee ran out of time to address these rules but some changes appear to be necessary to make these rules consistent with the IAJ proposals. The committee briefly considered § 1-15 in January and the subcommittee was asked to revise the proposals and return next month.

Attached is a revised proposal on § 1-15. Paragraph 1 was revised to present two alternative approaches to giving trial court judges clear authority to require oral motions in one of two categories: non-dispositive motions or just discovery motions.

Paragraph 1 was also revised to add word limits to the proposed page limits on motions and briefs, as discussed at the last meeting. After some checking on various briefs and other rules, I decided to propose word limits based on 300 words per page. For example, motions other than those under Rule 56 are now proposed to be limited to 15 pages (but not more than 4,500 words). If we recommend that the Supreme Court adopt a page limit without a word limit (or a clear requirement of double spacing), I am concerned that lawyers might start filing 15 page single-spaced motions, which are difficult to read and probably too long.

I also revised the language in paragraph 4 of § 1-15 as suggested at the last meeting. There are other short proposed changes in ¶¶ 3 and 5. One committee member also suggested to me that our recently-adopted paragraph 11 on motions to reconsider be revised to include a provision that such motions are deemed denied if not ruled on in so many days, such as we have in CRCP 59(j). Finally, the committee may wish to recommend dropping the committee comment to ¶ 1-15. It seems to just repeat the rule, some of which has been changed or may soon be changed.

Also attached is a proposal to amend §1-12 of Rule 121. We did not have time to discuss this at the last meeting, but my prior memo explains that it was included because if other changes are made to allow for oral discovery motions, we need to address if and how an oral discovery motion stays the discovery to which it is directed, which is currently the effect of filing a written discovery motion.

Section 1-15
DETERMINATION OF MOTIONS

1. Briefs; When Required; Time for Serving and Filing--Length.

(a) Except motions during trial or where the court ORDERS THAT CERTAIN OR ALL NON-DISPOSITIVE [alternative: DISCOVERY] MOTIONS BE MADE ORALLY ~~deems an oral motion to be appropriate~~, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion ~~except for a motion pursuant to C.R.C.P. 56. Motions or briefs in excess of 10 pages in length, exclusive of tables and appendices, are discouraged. Except for electronic filings made pursuant to Section 1-26 of this Rule, the original and one copy of all motions and briefs shall be filed with the court, and a copy served as required by law.~~ UNLESS THE COURT ORDERS OTHERWISE, MOTIONS AND RESPONSIVE BRIEFS NOT UNDER C.R.C.P. 56 ARE LIMITED TO 15 PAGES (BUT NOT MORE THAN 4,500 WORDS), AND REPLY BRIEFS TO 10 PAGES (BUT NOT MORE THAN 3,000 WORDS), NOT INCLUDING THE CERTIFICATE OF SERVICE AND ATTACHMENTS. UNLESS THE COURT ORDERS OTHERWISE, MOTIONS AND RESPONSIVE BRIEFS UNDER C.R.C.P. 56 ARE LIMITED TO 25 PAGES (BUT NOT MORE THAN 7,500 WORDS), AND REPLY BRIEFS TO 15 PAGES (BUT NOT MORE THAN 4,500 WORDS), NOT INCLUDING THE CERTIFICATE OF SERVICE AND ATTACHMENTS.

(b) The responding party shall have 21 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief. If a motion is filed 42 days or less before the trial date, the responding party shall have 14 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief.

(c) Except for a motion pursuant to C.R.C.P. 56, the moving party shall have 7 days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief. For a motion pursuant to C.R.C.P. 56, the moving party shall have 14 days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief.

2. Affidavits. If facts not appearing of record may be considered in disposition of the motion, the parties may file affidavits with the motion or within the time specified for filing the party's brief in this Section 1-15, Rules 6, 56 or 59, C.R.C.P., or as otherwise ordered by the court. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

3. Effect of Failure to File Legal Authority. If the moving party fails to incorporate legal authority into ~~the motion or fails to file a brief with~~ a C.R.C.P. 56 motion, the court may deem the motion abandoned and may enter an order denying the motion. Failure of a responding party to file a responsive brief may be considered a confession of the motion.

4. Motions to Be Determined on Briefs, When Oral Argument Is Allowed; Motions Requiring Immediate Attention. If possible, WRITTEN motions shall be determined promptly upon the written motion and briefs submitted. However, the court may order oral argument or an evidentiary hearing, or if the request for oral argument or an evidentiary hearing is requested in a motion~~,~~ or any brief, oral argument may be allowed by the court at its discretion. IF POSSIBLE, THE COURT SHALL DETERMINE ORAL MOTIONS AT THE CONCLUSION OF ARGUMENT, BUT MAY TAKE THE

MOTION UNDER ADVISEMENT OR REQUIRE BRIEFING BEFORE RULING. Any motion requiring immediate disposition shall be called to the attention of the courtroom clerk by the party filing such motion.

5. Notification of Court's Ruling; Setting of Argument or Hearing When Ordered. Whenever the court enters an order denying or granting a motion without a hearing, all parties shall be forthwith notified by the court of such order. If the court desires or authorizes oral argument or an evidentiary hearing, all parties shall be so notified by the court. After notification, it shall be the responsibility of the moving party to have the motion set for oral argument or hearing. A UNLESS THE COURT ORDERS OTHERWISE, A notice to set oral argument or hearing shall be filed in accordance with Practice Standard § 1-6 within 7 days of notification that oral argument or hearing is required or authorized.

6. Effect of Failure to Appear at Oral Argument or Hearing. If any of the parties fails to appear at an oral argument or hearing, without prior showing of good cause for non-appearance, the court may proceed to hear and rule on the motion.

7. Sanctions. If a frivolous motion is filed or if frivolous opposition to a motion is interposed, the court may assess reasonable attorney's fees against the party or attorney filing such motion or interposing such opposition.

8. Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated.

9. Unopposed Motions. All unopposed motions shall be so designated in the title of the motion.

10. Proposed Order. Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied.

11. Motions to Reconsider. Motions to reconsider interlocutory orders of the court, meaning motions to reconsider other than those governed by C.R.C.P. 59 or 60, are disfavored. A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. The motion shall be filed within 14 days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. Good cause for not filing within 14 days from the date of the order includes newly available material evidence and an intervening change in the governing legal standard. The court may deny the motion before receiving a responsive brief under paragraph 1(b) of this standard.

COMMITTEE COMMENT

This Practice Standard was necessary because of lack of uniformity among the districts concerning how motions were to be made, set and determined. The Practice Standard recognizes that oral argument and hearings are not necessary in all cases, and encourages disposition of motions upon written submissions. The standard also sets forth the uniform requirements concerning filing of legal

authority, filing of matters not already of record necessary to determination of motions, and the manner of setting an oral argument if argument is permitted. The practice standard is broad enough to include all motions, including venue motions. Some motions will not require extended legal analysis or affidavits. Obviously, if the basis for a motion is simple and routine, the citation of authorities can be correspondingly simple. Motions or briefs in excess of 10 pages are discouraged. This standard specifies contemporaneous recitation of legal authority either in the motion itself for all motions except those under C.R.C.P. Rule 56. Moving counsel should confer with opposing counsel before filing a motion to attempt to work out the difference prompting the motion. Every motion must, at the beginning, contain a certification that the movant, in good faith, has conferred with opposing counsel about the motion. If there has been no conference, the reason why must be stated. To assist the court, if the relief sought by the motion has been agreed to or will not be opposed, the court is to be so advised in the motion.

Paragraph 4 of the standard contains an important feature. Any matter requiring immediate action should be called to the attention of the courtroom clerk by the party filing a motion for forthwith disposition. Calling the urgency of a matter to the attention of the court is a responsibility of the parties. The court should permit a forthwith determination. Paragraph 11 of the standard neither limits a trial court's discretion to modify an interlocutory order, on motion or sua sponte, nor affects C.R.M. 5(a).

Section 1-12

MATTERS RELATED TO DISCOVERY

1. Unless otherwise ordered by the court, reasonable notice for the taking of depositions pursuant to C.R.C.P. 30(b)(1) shall not be less than 7 days. Before serving a notice to take a deposition, counsel seeking the deposition shall make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent and counsel for all parties. Prior to scheduling or noticing any deposition, all counsel shall confer in a good faith effort to agree on a reasonable means of limiting the time and expense of that deposition. Pending resolution of any motion pursuant to C.R.C.P. 26(c), the filing of the motion shall stay the discovery at which the motion is directed. IF THE COURT REQUIRES THAT ANY DISCOVERY MOTION UNDER RULE 26(C) BE MADE ORALLY, THEN MOVANT'S NOTICE OF THE MOTION TO ALL PARTIES SHALL ALSO STAY THE DISCOVERY TO WHICH THE MOTION IS DIRECTED.

2. Motions under Rules 26(c) and 37(a), C.R.C.P., shall set forth the interrogatory, request, question or response constituting the subject matter of the motion.

3. Interrogatories and requests under Rules 33, 34, and 36, C.R.C.P., and the responses thereto shall be served upon other counsel or parties, but shall not be filed with the court. If relief is sought under Rule 26(c), C.R.C.P., or Rule 37(a), C.R.C.P., copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with the motion. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be made available and placed, but not filed, with the trial judge at the outset of the trial insofar as their use reasonably can be anticipated. IF THE COURT REQUIRES THAT ANY DISCOVERY MOTION UNDER RULES 26(C) OR 37 (A) BE MADE ORALLY, THEN, UNLESS THE COURT ORDERS OTHERWISE, MOVANT SHALL PRIOR TO THE HEARING PROVIDE EACH PARTY WITH A COPY OF THE PORTIONS OF THE WRITTEN DISCOVERY AT ISSUE AND SHALL PROVIDE THE SAME TO THE COURT AT THE HEARING.

4. The originals of all stenographically reported depositions shall be delivered to the party taking the deposition after submission to the deponent as required by Rule 30(e), C.R.C.P. The original of the deposition shall be retained by the party to whom it is delivered to be available for appropriate use by any party in a hearing or trial of the case. If a deposition is to be used at trial, it shall be made available for inspection and placed, but not filed with the trial judge at the outset of the trial insofar as its use reasonably can be anticipated.

5. Unless otherwise ordered, the court will not entertain any motion under Rule 37(a), C.R.C.P., unless counsel for the moving party has conferred or made reasonable effort to confer with opposing counsel concerning the matter in dispute before the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule at the time the motion under Rule 37(a), C.R.C.P., is filed. IF THE COURT REQUIRES THAT ANY DISCOVERY MOTION BE MADE ORALLY,THEN MOVANT MUST MAKE A REASONABLE EFFORT TO CONFER WITH OPPOSING COUNSEL BEFORE REQUESTING A HEARING FROM THE COURT.

COMMITTEE COMMENT

Provisions of the practice standard are patterned in part after the local rule now in effect in the United States District Court for the District of Colorado. This practice standard specifies the minimum time for the serving of a notice to take deposition. Before serving a notice, however, counsel are required to make a good faith effort to schedule the deposition by agreement at a time reasonably convenient and economically efficient to the deponent and all counsel. Counsel are also required to confer in a good faith effort to agree on a reasonable means of limiting the time and expense of any deposition. The provisions of this Practice Standard are also designed to lessen paper mass/filing space

problems and resolve various general problems related to discovery. THIS RULE WAS AMENDED TO ADDRESS SITUATIONS ARISING IN COURTS THAT REQUIRE ORAL DISCOVERY MOTIONS.

moore, jenny

From: David Tenner <tenner@ridleylaw.com>
Sent: Monday, February 09, 2015 2:40 PM
To: berger, michael
Cc: moore, jenny
Subject: RE: Civil Rules Committee - Amending Rule 53 (Masters)

Absolutely. It would be my pleasure to participate. Thanks for the offer. Hopefully some district court judges will be interested. They're the ones who take the brunt of the current Rule.

I'll wait to hear from you and/or Jenny.

David

RIDLEY MCGREEVY & WINOCUR P.C.
David M. Tenner
RIDLEY, MCGREEVY & WINOCUR, P.C.
303 16th Street, Suite 200
Denver, Colorado 80202
Tel. 303.629.9700
Fax 303.629.9702
tenner@ridleylaw.com
www.ridleylaw.com

From: berger, michael [mailto:michael.berger@judicial.state.co.us]
Sent: Monday, February 09, 2015 2:36 PM
To: David Tenner
Cc: moore, jenny
Subject: RE: Civil Rules Committee - Amending Rule 53 (Masters)

Dave, I share your view that CRCP 53 is in need of a major redo. When I was in practice I often wondered what some of its provisions meant and since being on the court I already have had to address in an opinion one ambiguity contained in the rule.

So, the bottom line is that I am confident that the Civil Rules Committee will be interested in taking this up. The normal procedure is for me to appoint a subcommittee after consultation with the committee, comprised of members of the Committee, and such outside persons as I choose to appoint. I would very much like you to participate on the subcommittee. Please let me know if you are willing to do so.

The next meeting of the full Committee will be held on February 27, 2015. At that meeting, I will raise this matter with the committee and, in all likelihood, appoint a subcommittee. I will let you know the result.

Thank you very much for your interest in this rule.

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

From: David Tenner [mailto:tenner@ridleylaw.com]
Sent: Monday, February 09, 2015 2:27 PM

To: berger, michael
Subject: Civil Rules Committee - Amending Rule 53 (Masters)

Judge-

I do a lot of special master work and I would like to see the current Rule 53 amended to more resemble FRCP 53. The current Rule is unnecessarily difficult for courts, counsel and special masters to work with because it was drafted at a time when special master appointments were much more limited than current practice. The Federal rule was amended in 2003 to reflect changes in the use of special masters, but the Colorado rule has not been similarly revised.

For example, if I am appointed as a discovery master in a civil case, under the current Rule, if the case is a non-jury case, the parties have 14 days to file an objection to my order, my findings of fact must be accepted unless clearly erroneous, and the judge may adopt, modify or reject my ruling. However, if an identical motion to compel is filed in a jury case, there is no deadline for objections to my ruling, my findings of fact can be reviewed de novo (unless the parties have agreed otherwise) and my ruling is admissible as evidence and can be read to the jury. All of which makes no sense when I'm ruling on a discovery motion.

The Federal rule was modified to deal with these and other issues and I believe it's time for the Colorado Rule to follow suit. I have no idea how someone goes about trying to get a Colorado rule changed, but since you are the Chair of Civil Rules Committee, I thought I would start with an email to you. If this is something the Committee would be interested in pursuing, I would be happy to volunteer my time to participate in the process of evaluating and recommending changes to the Rule. In addition to the work I do as a special master for district court cases, I am a fellow of the Academy of Court Appointed Masters and I currently serve on the Academy's Board of Directors. As such, I have access to numerous special masters across the country who participated in the amendment of the Federal Rule and the subsequent amendment of numerous state rules.

If there is anything further or more formal I should do to request a review of Rule 53, please let me know.

Thank you.
David Tenner

RIDLEY MCGREEVY & WINOCUR P.C.
David M. Tenner
RIDLEY, MCGREEVY & WINOCUR, P.C.
303 16th Street, Suite 200
Denver, Colorado 80202
Tel. 303.629.9700
Fax 303.629.9702
tenner@ridleylaw.com
www.ridleylaw.com