

## AGENDA

### COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Friday, November 21, 2014, 1:30p.m.  
Ralph L. Carr Colorado Judicial Center  
2 E.14<sup>th</sup> Ave., Denver CO 80203  
Third Floor, Court of Appeals Full Court Conference Room

PLEASE NOTE THAT THIS MEETING WILL NOT BE HELD IN THE USUAL LOCATION. INSTEAD, THE MEETING WILL TAKE PLACE IN THE COURT OF APPEALS FULL COURT CONFERENCE ROOM ON THE THIRD FLOOR OF THE RALPH L. CARR COURTHOUSE. AFTER YOU EXIT THE ELEVATOR TURN LEFT AND FOLLOW THE SIGNS.

- I. Call to order
- II. Approval of October 30, 2014 meeting minutes [Page 2 - 4].
- III. Announcements from the Chair
- IV. Business
  - a. Colorado Rules of Probate Procedure (Fred Skillern) [Page 5 - 47].
  - b. Improving Access to Justice Subcommittee (fka CAPP Subcommittee) (Dick Holme, subcommittee chair)—in depth review of Subcommittee recommendations [Page 48 - 85].
- V. Adjourn

## Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure

Minutes of October 30, 2014 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 Colorado 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	
<b>Non-voting Participants</b>		
Justice Allison Eid, Liaison	X	
Teresa Tate	X	

### I. Attachments & Handouts

- A. October 30, 2014 Agenda Packet
- B. Improving Access to Justice Report

## **II. Announcements from the Chair**

The September 26, 2014 Meeting Minutes were approved with one correction: In Roman numeral II, paragraph 2, "granted" was changed to "pending".

The 2015 meeting dates were announced: January 30, February 27, April 24, June 26, September 25, and November 20.

Judge Berger discussed whether or not subcommittee reports should be publicly available. He thought it was fair to release subcommittee reports, but only after full Committee review. After brief discussion the Committee agreed, and this practice will be used moving forward.

CRCP 47(u) was adopted by the supreme court.

## **III. Business**

### **A. CRCP 120**

Representative Beth McCann, Representative Angela Williams, and Keith Gantenbein appeared before the Committee. Representatives McCann and Williams told the Committee stories of constituents facing foreclosure and being unable to raise real-party-in-interest and loan modification at the Rule 120 hearing. Mr. Gantenbein, who practices in loan modification and Rule 120 defense, said Rule 120 hearing procedures varied from county to county, and that Rule 120 should mirror existing case law.

CRCP 120 was initially adopted in response to the Soldiers' and Sailors' Civil Relief Act of 1940, to protect military members from foreclosure proceedings commenced during military service, but over time case law and subsequent rule modification had enlarged the scope of the hearing. The Committee had questions about how the oral modification of a loan reconciles with the requirement that credit agreements be in writing, §38-10-124, C.R.S., and legislative remedies available to homeowners. Judge Berger appointed a subcommittee, chaired by Fred Skillern, to consider a modification to Rule 120 and update the Committee at the January Meeting.

### **B. CRCP 103 & 403**

Ben Vinci brought two proposed rule changes to collection practices that had been passed without opposition by the County Court and Post Judgment Rules Subcommittees. Now, clerks order funds, get checks, and then endorse checks over to the attorney or collection agency. The proposed changes would make CRCP 103 and 403 consistent with other garnishment rules by having the garnishee pay the attorney or collection agency, rather than depositing funds with the court, which would make funds available faster. With a vote of 21:0 the rules passed. Mr. Vinci was going to see if Form 32 needed to be amended, and if so, present an amended form to the Committee.

### **C. Colorado Rules of Probate Procedure**

Consideration of the Colorado Rules of Probate Procedure was laid over to the November 21 Meeting.

#### **D. Improving Access to Justice Report**

Dick Holme presented the Improving Access to Justice Report and then discussed proposed changes to the following rules:

- 1, adopts identical wording proposed by the federal rules;
- 12, amendments were designed to remove delays and to avoid problems CAPP revealed;
- 16, subsection (b), lists the required contents of the case management order, and includes a new form; (c), has new pretrial motion deadlines; and (d), sets the case management conference requirements;
- 26, sets the basis for discovery, by defining scope of discovery, requiring certain initial disclosures prior to discovery, places presumptive limits on the types of permitted discovery, and describes expert disclosure;
- 30, reduces the time for ordinary deposition from 7 to 6 hours;
- 31, corrects two typos; and
- 34, avoids the practice of repeating numerous objections, allows scheduled production of documents in place of permitting inspection at a specified and reasonable date, and clarifies that objection to production is adequate to stop production, without also filing a motion for a protective order.

In addition to the rules above, the subcommittee is still considering rules 37, 54, 121 §1-22, and 16.1. The subcommittee hopes to present final drafts to the Committee for voting before the end of the year. During the discussion Judge Berger appointed David DeMuro and Lee Sternal to a new subcommittee to propose a change to CRCP 121 §1-15 to allow the district court to accept oral motions in person or over the phone.

#### **IV. Future Meetings**

November 21, 2014

January 30, 2015

The Committee adjourned at 3:35 p.m.

*Respectfully submitted,*

*Jenny A. Moore*

**moore, jenny**

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**From:** Kerri Klein <[klein@poskuscatonklein.com](mailto:klein@poskuscatonklein.com)>  
**Sent:** Thursday, October 30, 2014 10:40 AM  
**To:** Fred Skillern  
**Cc:** berger, michael; moore, jenny; Ms. Elizabeth A. Bryant  
**Subject:** RE: Probate Rules - For Supreme Court Civil Rules Committee review - WITH ATTACHMENTS  
**Attachments:** Memo re renumbering.docx

Dear Fred –

Thank you so much for looking at these changes. Attached is a short memorandum regarding the reasoning behind the renumbering.

If the renumbering does not take effect, I'd recommend the following rules be marked as "deleted" so that it is clear and consistent with the other deleted rules: 6, 8.4, 8.5, 8.7, 13, 15, 21, 25.2, 31.1, 31.2, 32, 33.1, 33.2.

Additionally, Rules 14 and 20 have been rewritten per questions and comments from the Probate Advisory Committee (PAC). The Trust and Estate Section has passed new versions of those rules, but the PAC has not yet reviewed them. I would recommend listing those rules as "no change" until they become finalized in the future.

Below are the answers regarding the questions on some of the titles:

Rule 17 – the missing language was accidentally omitted

Rule 26 – the "Power of Attorney" language was accidentally omitted

Rule 28 – the word "Conservatorships" should remain but the remainder of the language was deleted intentionally

Rule 30 – the missing language was accidentally omitted

Rule 33 – the rest of the title was deleted intentionally

One final thought is that the new Rule 18.1 is unnecessary if the renumbering does not occur. Rule 18 could still encompass both decedent's estate and conservatorships. The suggested separation was only if the rules were renumbered and reorganized.

I remain available for any further questions. Again, thank you for all of your effort in this regard.

Sincerely,

Kerri

**Kerri L. Klein**

Poskus, Caton & Klein, P.C.

303 East 17th Avenue, Suite 900

Denver, Colorado 80203

Telephone: 303-832-1600

Facsimile: 303-832-1676

E-mail: [klein@poskuscatonklein.com](mailto:klein@poskuscatonklein.com)

Website: [www.poskuscatonklein.com](http://www.poskuscatonklein.com)

TO: Fred Skillern  
Civil Rules of Procedure Committee

FROM: Kerri L. Klein, Chair  
Rule Rewrite Subcommittee  
Rules and Forms Committee  
Trust and Estate Section of the Colorado Bar Association

DATE: October 30, 2014

SUBJECT: Renumbering of the Colorado Rules of Probate Procedure

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Upon review of the Colorado Rules of Probate Procedure, the subcommittee came to the realization that after many years of adding rules, the numbering and the order of the rules was nonsensical and cumbersome. In particular, many numbers were divided into parts using the point system while other numbers remained whole. Additionally, the rules were no longer in any particular order. For example, rules governing decedent's estate were spread throughout the numbering and intermingled with rules governing protected proceedings.

The issues with the numbering become additionally problematic after the subcommittee deleted 17 rules found to be archaic, duplicative of statute or otherwise unnecessary. These deletions left the rules in further disarray with some whole numbers being deleted but parts of other numbers remaining intact.

Therefore, the subcommittee created the new numbering and table of contents for the rules. The new order and numbering separates the rules into clear categories and has several "reserved" numbers for future use when new rules need to be added.

This subcommittee, the Rules and Forms Committee and the Trust and Estate Section Council all voted unanimously to renumber the rules in this way.

## **COLORADO RULES OF PROBATE PROCEDURE**

### **GENERAL:**

- Rule 1 – Scope of Rules – How Known and Cited (1)
- Rule 2 – Definitions (2)
- Rule 3 – Attorney Entry of Appearance and Withdrawals (13/14)
- Rule 4 – Registry of Court – Payments and Withdrawals (19)
- Rule 5 – Files Under Seal (20)
- Rule 6 – Delegation of Powers to Clerk and Deputy Clerk (34)
- Rule 7 – Rules of Court (35)
- Rule 8 – RESERVED
- Rule 9 – RESERVED

### **PLEADINGS:**

- Rule 10 – Judicial Department Forms (5)
- Rule 11 – Identification of Party and Attorney (7)
- Rule 12 – Correction of Clerical Errors (11)
- Rule 13 – Petitions Must Indicate Persons Under Legal Disability (10)
- Rule 14 – RESERVED
- Rule 15 – RESERVED
- Rule 16 – RESERVED
- Rule 17 – RESERVED
- Rule 18 – RESERVED
- Rule 19 – RESERVED

### **NOTICE:**

- Rule 20 – Process and Notice (8)
- Rule 21 – Constitutional Adequacy of Notice (8.1)
- Rule 22 – Waiver of Notice (8.2)
- Rule 23 – Non-Appearance Hearings (8.8)
- Rule 24 – Notice of Formal Proceedings Terminating Estates (8.3)
- Rule 25 – Conservatorships – Closing (30.1)
- Rule 26 – RESERVED
- Rule 27 – RESERVED
- Rule 28 – RESERVED
- Rule 29 – RESERVED

### **FIDUCIARIES:**

- Rule 30 – Change of Address (12)
- Rule 31 – Accountings and Reports (31)
- Rule 32 – Appointment of Nonresident (26)
- Rule 33 – Bond (29)

- Rule 34 – RESERVED
- Rule 35 – RESERVED
- Rule 36 – RESERVED
- Rule 37 – RESERVED
- Rule 38 – RESERVED
- Rule 39 – RESERVED

**CONTESTED PROCEEDINGS:**

- Rule 40 – Discovery
- Rule 41 – Jury Trial – Demand and Waiver (25)
- Rule 42 – Objections to Accounting (33)
- Rule 43 – RESERVED
- Rule 44 – RESERVED
- Rule 45 – RESERVED
- Rule 46 – RESERVED
- Rule 47 – RESERVED
- Rule 48 – RESERVED
- Rule 49 – RESERVED

**DECEDENT’S ESTATES:**

- Rule 50 – Wills – Deposit for Safekeeping and Withdrawals (22)
- Rule 51 – Transfer of Lodged Wills (23)
- Rule 52 – Informal Probate – Separate Writings (25.1)
- Rule 53 – Heirs and Devisees (17)
- Rule 54 – Supervised Administration (30)
- Rule 55 – Court Order Supporting Deed of Distribution (33.3)
- Rule 56 – Foreign Personal Representatives (18)
- Rule 57 – RESERVED
- Rule 58 – RESERVED
- Rule 59 – RESERVED

**PROTECTIVE PROCEEDINGS:**

- Rule 60 – Physicians’ Letters or Professional Evaluation (27.1)
- Rule 61 – Inventory with Financial Plan – Conservatorships (28)
- Rule 62 – Court Approval of Settlement of Claims of Persons Under Disability (16)
- Rule 63 – Foreign Conservators (18)
- Rule 64 – RESERVED
- Rule 65 – RESERVED
- Rule 66 – RESERVED
- Rule 67 – RESERVED
- Rule 68 – RESERVED
- Rule 69 – RESERVED

**TRUSTS:**

Rule 70 – Trust Registration (8.6)

Rule 71 – RESERVED

Rule 72 – RESERVED

Rule 73 – RESERVED

Rule 74 – RESERVED

Rule 75 – RESERVED

Rule 76 – RESERVED

Rule 77 – RESERVED

Rule 78 – RESERVED

Rule 79 – RESERVED

## Rule 1. [NO CHANGE]

## Rule 2. Definitions

(a) As used in these rules, unless the context otherwise requires:

(1) "Document or Documents" means any petition, or application, inventory, claim, accounting, notice or demand for notice, motion, and any other writing which is filed with the court.

(2) Deleted.

~~2. "Fiduciary" means any personal representative, guardian, conservator, trustee, and special administrator.~~

~~3(23). "Accounting" means any written statement that substantially conforms to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards.~~

~~4(34). "Colorado Probate Code" means the "Colorado Probate Code" sections §§15-10-101 et seq., C.R.S., as amended. Articles 10 to 17 of Title 15 of the Colorado Revised Statutes.~~

(b) Except as otherwise provided in this rule, terms used in these rules shall be as defined in the applicable sections of Title 15, C.R.S., as amended.

## Rule 3. Order of Business

Rule 3  
(Deleted)

~~For matters to be heard by the court, the order of business for the day shall be as follows:~~

~~1. Petitions and motions in probate matters, defaults, and other like ex parte matters, motions to show cause, and requests for other like rulings and orders.~~

~~2. Motions and other matters requiring supporting testimony, if they do not conflict with scheduled hearings or trials;~~

~~3. Hearings/trials requiring appearances of parties according to the calendar;~~

~~4. Non-appearance hearings according to the calendar;~~

~~5. The court shall establish a system for monitoring guardianships and conservatorships, including the filing and review of annual reports and plans and shall schedule such activities as resources permit.~~

#### **Rule 4. Minute Orders**

##### **Rule 4 (Deleted)**

~~This Rule is intended to facilitate the work of the court and to provide the bar and the general public with prompt response to petitions and motions which require court orders. Any order, not required by the circumstances to contain recitals, findings of fact, or conclusions of law, may be evidenced by a concise memorandum or minute containing the caption of the proceeding, the date of the order, and a statement of the ultimate direction or conclusion of the court. Such order shall be signed by the judge forthwith and promptly delivered or mailed to the clerk of the court in the county in which the matter is pending. The judge may make the order and sign the memorandum or minute thereof at any place within the state and at any time.~~

#### **Rule 5. Judicial Department Forms Preparations of Proceedings**

~~In proceedings under the Code, †~~The Judicial Department Forms (JDF) forms approved by the Colorado Supreme Court should be used where applicable. ~~Any approved form produced by a word processor~~ Any form filed in a probate proceeding should, insofar as possible, substantially follow the format and content of the approved form, should not include language which otherwise would be stricken, highlight in bold or capital letters or with an appropriate check mark emphasize all alternative clauses or choices which have been selected, underline emphasize all filled-in blanks, and contain a statement ~~in a conspicuous place~~ that the pleading conforms in substance to the current version of the approved form, citing the form's JDF form number and effective date. ~~In all other proceedings, pleadings which are acceptable to the court may be used. Except as otherwise provided herein and in the Code, the form and presentation of pleadings, motions, and instructions shall be governed by the Colorado Rules of Civil Procedure. All other pleadings and papers to be filed in any matter shall be prepared and fastened as may be designated by rules adopted from time to time by the court.~~ Unless the context otherwise requires, terms used in JDFs shall be as defined as provided in Rule 2.

#### **Rule 6. Forms of Claim**

~~Any claim filed with the court shall be in the JDF form approved by the Supreme Court.~~

#### **Rule 7. [NO CHANGE]**

#### **Rule 8. Process and Notice**

The issuance, service, and proof of service of any process, notice, or order of court under the Colorado Probate Code shall be governed by the provisions of the Colorado Probate Code and

these rules. When no provision of the Colorado Probate Code or these rules is applicable, the Colorado Rules of Civil Procedure shall govern. Except when otherwise ordered by the court in any specific case or when service is by publication, if notice of a hearing on any petition or other pleading is required, the petition or other pleading, unless previously served, shall be served with the notice. When served by publication, the notice shall briefly state the nature of the relief requested. The petition or other pleading need not be attached to or filed with the proof of service, waiver of notice, or waiver of service.

**Rule 8.1. [NO CHANGE]**

**Rule 8.2. [NO CHANGE]**

**Rule 8.3. Notice of Formal Proceedings Terminating Estates**

The notice of hearing on a petition under §Section 15-12-1001 or §Section 15-12-1002, C.R.S., shall include statements: (1) that interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person; and (2) that if any interested person desires to object to any matter such person shall file his specific written objections at or before the hearing and shall furnish-serve the personal representative with a copy thereof pursuant to C.R.C.P. 5.

**~~Rule 8.4. Information Concerning Appointment—Contents and Filing~~**

~~The information concerning appointment required by Section 15-12-705, C.R.S., shall state:~~

- ~~1. The date of death of the decedent.~~
- ~~2. Whether the decedent died intestate or testate.~~
- ~~3. If the decedent died testate, the dates of the will and any codicils thereto, the date of admission to probate, and whether probate was formal or informal.~~
- ~~4. The name, address, and date of appointment of the personal representative.~~
- ~~5. Whether bond has been filed.~~
- ~~6. Whether the administration is supervised, and, if administration is unsupervised, that the court will consider ordering supervised administration if requested by an interested person.~~

~~7. That the information is being sent to persons who have or may have some interest in the estate being administered.~~

~~8. That papers relating to the estate, including the inventory of estate assets, are on file in the described court or, if not, may be obtained from the personal representative.~~

~~9. That interested persons are entitled to receive an accounting.~~

~~10. The surviving spouse, children under twenty one years of age, and dependent children may be entitled to exempt property and a family allowance if a request for payment is made in the manner and within the time limits prescribed by Statutes (Section 15-11-401 et seq., C.R.S.).~~

~~11. The surviving spouse may have a right of election to take a portion of the augmented estate if a petition is filed within the time limits prescribed by Statute (Section 15-11-201 et seq., C.R.S.).~~

~~12. That interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person.~~

~~The personal representative shall promptly file with the court a copy of the information provided and a statement of when it was provided, to whom, and at what addresses.~~

#### **Rule 8.5. Information Concerning Informal Probate—Contents and Filing**

~~The information concerning informal probate required by Section 15-12-306, C.R.S., shall state the name and address of the moving party, the date of the death of the decedent, the date or dates of the will admitted to informal probate, the date of informal probate, that no personal representative has been appointed, and that interested persons wishing to object to the informal probate must act within the time and in the manner provided by the Colorado Probate Code.~~

~~The moving party shall promptly file with the court a copy of the information provided and a statement of when it was provided, to whom, and at what addresses, if mailed.~~

#### **Rule 8.6. Trust Registration – Amendment, ~~Release~~, ~~Amendment~~ and Transfer**

~~(a)~~ A trustee shall file with the court of current registration an amended trust registration statement to advise the court of any change in the trusteeship, of any change in the principal place of administration, or of termination of the trust.

~~(a)~~ (b) If the principal place of administration of a trust has been removed from this state, the court may release a trust from registration in this state upon request~~petition~~ and after notice to interested parties.

(c) If the principal place of administration of a trust has changed within this state, the trustee may transfer the registration from one court to another within this state by filing in the court to which the registration is transferred an amended trust registration statement with attached thereto ~~a copy~~ court-certified copies of the original trust registration statement and of any amended trust registration statement prior to the current amendment, and by filing in the court from which the registration is being transferred a copy of the amended trust registration statement. The amended statement shall indicate that the trust was registered previously in another court of this state and that the registration is being transferred.

~~A trustee shall file with the court of registration an amended trust registration statement to advise the court of any change in the trusteeship, of any change in the principal place of administration, or of termination of the trust.~~

### **Rule 8.7. Demands for Notice**

~~(a) Mailing by the Clerk. Upon receipt of a demand for notice with respect to a decedent's estate, the clerk shall mail a copy of the demand to the personal representative, if one has been appointed. The clerk shall not be required to mail a copy of the demand to the personal representative if a certificate of service is filed with the demand stating that a copy of the demand has been mailed or delivered to the personal representative.~~

~~(b) Certificate of Service Requirement After Initial Filing. After a demand for notice is filed with respect to a decedent's estate, all filings and orders to which the demand relates shall be accompanied by a certificate of service stating that a copy of the filing or order has been mailed or delivered to the person making the demand and to the personal representative. The clerk or registrar may thereafter take any authorized action, including accepting and acting upon an application for informal appointment of personal representative. Advance notice shall be required only for actions or hearings for which advance notice would otherwise be required.~~

### **Rule 8.8. Non-Appearance Hearings**

(a) Unless otherwise required by statute, these rules or order of court, matters that are routine and are expected to be unopposed may be set for a Non-Appearance Hearing. Such Non-Appearance Hearings shall be conducted as follows:

(1) Attendance at the hearing is not required or expected.

(2) Any interested person wishing to object to the requested action set forth in the motion or petition attached to the notice must file a specific written objection with the ~~C~~court at or before the hearing, and shall furnish a copy of the objection to the person requesting the court order. ~~Form~~JDF 722 in the Appendix to these Colorado Rules of Probate Procedure Rules may be used and shall be sufficient notice of objection.

(3) If no objection is filed, the court may ~~rule take action on the motion or petition~~ without further notice or hearing.

(4) If any objection is filed,

~~A. If any objection is filed,~~ the objecting party shall, within 14 days after filing the objection, set the objection for an Appearance Hearing.

~~B. Upon receipt of a timely request to set a hearing from the objecting party, the court clerk shall note such request in the register of actions. The court, in its discretion, may allow the scheduling of a hearing or refer the matter for alternative dispute resolution prior to a hearing. Nothing in these rules shall prohibit a court from referring any matter, in its discretion, to alternative dispute resolution pursuant to 13-22-301, et seq., C.R.S.~~

(5) Failure to timely set the objection for an Appearance Hearing as required by section (4) of this rule shall result in the dismissal of the objection with prejudice without further hearing.

(6) Upon receipt of a timely request to set a hearing from the objecting party, the court clerk shall note such request in the register of actions. The court, in its discretion, may allow the scheduling of a hearing or refer the matter for alternative dispute resolution prior to a hearing. Nothing in these rules shall prohibit a court from referring any matter, in its discretion, to mediation or other ancillary form of alternative dispute resolution pursuant to section 13-22-313, C.R.S. to alternative dispute resolution pursuant to 13-22-301, et seq., C.R.S.

(b) The notice of a Non-Appearance Hearing, together with copies of the motion or petition and proposed order must be served on all interested persons no less than 14 days prior to the setting of the hearing and shall include a clear statement of the rules governing such hearings. ~~Form~~ JDF 712 or JDF 963 in the Appendix to these Colorado Rules of Probate Procedure Rules may be used and shall be sufficient. The authorization of this Form shall not prevent use of another Form consistent with this rule.

## **~~Rule 9. Verification of Documents~~**

### **Rule 9** **(Deleted)**

~~Except as otherwise specifically provided in the Code, rule or as identified in the applicable JDF form each document filed with the court under the Code, including applications, petitions, and demands for notice, need not be verified.~~

## **Rule 10. Petitions Must Indicate Persons Under Legal Disability**

If any person who has any interest in the subject matter of a petition is under the age of eighteen years, or otherwise under legal disability, or incapable of adequately representing his or her own interests, each petition, the hearing of which requires the issuance of notice, shall state such fact and the name, age, and residence of such minor or other person when known and the name of the guardian, conservator, or personal representative, if any has been appointed.

## Rule 11. Correction of Clerical Errors

(a) Minor eClerical errors in documents filed with the court may be made the subject of a written requests for correction only by filing JDF 740 together with corrected documents as necessary. “Clerical errors” include, but are not limited to, the following:

(1) Errors in captions (i.e. AKAa/k/a names, etc.);

(2) MisspellingsSpelling errors;

(3) Errors in dates, other than dates for settings, hearings, and limitations periods; and

(4) Transposition errors.

(b) If the court is not satisfied that a written request for correction is a “clerical error”, the request may be denied. A clerical error does not include the addition of an argument, allegation, or fact that has legal significance, in which case the judge or registrar may make such correction on the documents specified. Significant errors in documents filed with the court shall be corrected by presentation of an amended or supplemental document, or as otherwise directed by the judge or registrar.

## Rule 12. Fiduciaries—Change of Contact InformationAddress

Every fiduciary shall promptly notify the court of any change in the fiduciary’s name,his address, e-mail address or telephone number by filing JDF 725.

## Rule 13 Attorney’s Entry of Appearance

~~An attorney desiring to enter his appearance in any proceeding, other than the attorney appearing on behalf of a party in the first instance, shall file a written entry of appearance or on oral request obtain an order recognizing his appearance. The attorney's name, address, registration number, and telephone number shall be in the written entry of appearance.~~

## RULE 14. ATTORNEY'S WITHDRAWAL

~~(a) Before the court. An attorney desiring to withdraw from a matter before the court shall obtain an order authorizing his withdrawal after due notice to his client or the filing of the client's written consent. Notice of the order authorizing withdrawal shall be sent by the withdrawing attorney to all other counsel of record, persons demanding such notice by document of record, and such other persons as the court may direct.~~

~~(b) Before the registrar.~~ An attorney desiring to withdraw from a matter before the registrar shall file his withdrawal after due notice to his client or the filing of the client's written consent. Notice of the withdrawal shall be sent by the withdrawing attorney to all other counsel of record and any person demanding such notice by document of record.

## **RULE 15. GUARDIANS AD LITEM**

~~The court may appoint a guardian ad litem only in conformity with section 15-10-403(5), 15-14-115 or 15-18-108(2)(a), C.R.S. For appointments pursuant to 15-10-403(5) and 15-14-115, C.R.S., the court must state on the record its reasons for the appointment. In cases of uncontested probate of wills, no guardian ad litem shall be appointed for a minor, incapacitated or protected person who takes as much or more under the will than by intestacy.~~

### **Rule 16. Guardians or Conservators — Settlement of Personal Injury Claims**

~~Entire rule repealed effective November 16, 1995.~~

### **Rule 16. Court Approval of Settlement of Claims of Persons Under Disability**

~~(a) This rule sets forth procedures by which a court considers requests a petition for Where a guardian, conservator, or next friend seeks court approval of the proposed settlement of a ward's claims on behalf, such approval shall be sought by way of a minor or an adult in need of protection pursuant to §15-14-401, et seq., C.R.S. ("respondent") petition for approval of proposed settlement. For purposes of this In connection with a proceeding brought under this rRule, the court shall: term "ward" includes a protected person, an incapacitated person, or a person under disability.~~

~~(1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interests of the respondent;~~

~~(2) Ensure that the petitioner and respondent and/or his/her legal guardian/fiduciary understands the finality of the proposed settlement;~~

~~(3) Adjudicate the allowance or disallowance, in whole or in part, of any outstanding liens and claims against settlement funds, including attorney fees; and~~

~~(4) Make protective arrangements for the conservation and use of the net settlement funds, in the best interests of the respondent, taking into account the nature and scope of the proposed settlement, the anticipated duration and nature of the respondent's disability, the cost of any future medical treatment and care required to treat respondent's disability, and any other relevant factors, all pursuant to §15-14-101, et seq., C.R.S.~~

~~(b) Venue for a The petition brought filed under this rule shall be in the county provided request the approval of the proposed settlement as being in accordance with section §15-14-108(3),~~

C.R.S. ~~the ward's best interests and shall include the following information or an explanation of why the information is not applicable:~~

(c) An interested person seeking a court order approving the proposed settlement of a claim on behalf of a respondent shall petition for approval of any proposed settlement in accordance with the procedures set forth in this rule.

(d) The petition for approval of settlement shall include the following information:

(1) Facts.

A. The respondent's~~ward's~~ name and address;

B. The respondent's~~ward's~~ date of birth;

C. If the respondent is a minor, the name(s) and contact information address(es) of the ward's parent(s) each legal guardian. If the identity or contact information of any legal guardian ward is unknown, or if any parental rights have been terminated, the petition shall so state a minor;

D. The name(s), and contact information of the respondent's spouse, partner in a civil union, or if the respondent has none, an adult with whom address(es) and description(s) of type of the respondent has resided for more than six months within one year before the filing of the petition; ward's custodian or court appointed fiduciary, if any; and

E. The name and contact information of any guardian, conservator, custodian, trustee, agent under a power of attorney, or any other court appointed fiduciary for the respondent. A description of the purpose of any court appointed fiduciary shall be included; and

F. The date and a brief description of the nature of the event or transaction giving rise to the claim.

(2) Claims and Liabilities.

A. The contact information name and address of each party against whom the respondent is or may be liable for the ward's have a claim;

B. The basis for each of for the ward's~~respondent's~~ claims of liability;

C. The defenses, and/or counterclaims if any, to the respondent's~~ward's~~ claims; and

D. The name and contact information~~address~~ of each insurance company involved in the claim, the type of policy, the policy limits, and the identity of the who was insured under the policy, and its limits.

(3) Damages.

- A. A description of the respondent's injuries~~The nature of the ward's claim;~~
- B. The amount ~~nature~~ of time missed by the respondent from school or employment and a summary of lost income resulting from the respondent's injuries, if any, sustained by the ward;
- C. A summary~~The amount~~ of time, if any damage to respondent's property, missed by the ward from school or employment;
- D. A summary of any~~the~~ expenses, if any, incurred for medical or other care provider services as a result of the respondent's~~ward's~~ injuries; and
- E. The identification ~~A summary~~ of any person, organization, institution, or state or federal agency that paid income from work lost by the ward, if any, of the respondent's expenses and as a summary result of expenses that have been or will be paid by each particular source. ~~the ward's injuries;~~
- F. ~~The nature of the damage, if any, to the ward's property;~~
- G. ~~A summary of the expenses, if any, incurred as a result of any property damage to the ward's property; and~~
- H. ~~The identification of the source of funds for payment of any of the ward's expenses and a summary of what expenses have been paid and will be paid by each particular source.~~

(4) Medical Status.

- A. A description of respondent's current condition including but not limited to ~~The nature and extent of~~ any disability, disfigurement, or physical or psychological impairments ~~the ward's injuries and~~ any current treatments and/or therapies~~the ward's present condition;~~ and
- B. An explanation of respondent's prognosis and any anticipated treatments and/or therapies. ~~The nature, extent, and duration of the treatment required or anticipated as a result of the ward's injuries;~~
- C. ~~The prognosis of the ward's condition, including, when applicable, the nature and extent of any disability, disfigurement, or impairment; and~~
- D. ~~A written statement by the ward's physician or other health care provider shall be attached setting forth the information requested by A, B, and C above.~~

(5) Status of Claims.

- A. For this claim and any other related claim ~~that is relevant to the event or transaction giving rise to the claim,~~ the status of the claim and, if any civil action(s) has~~ve~~ been filed, the court, case number, and parties; and

B. For this claim and any other related claim, that is relevant to the event or transaction giving rise to identify the amount of the claim, and contact information ~~the name and address~~ of any party having a subrogation right including and any governmental state or federal agency paying or planning to pay benefits to or for the ward respondent. A list of all subrogation claims and/or liens against the settlement proceeds shall be included as well as a summary of efforts to negotiate them.

(6) Proposed Settlement and Proposed Disposition of Settlement Proceeds.

A. The name and ~~address- contact information~~ of any party/entity ~~person or entity~~ the person(s) making and receiving payment under the proposed settlement;

B. The proposed settlement amount, of the settlement, terms of payment terms, and proposed disposition, including any restrictions on the accessibility of the funds and whether any proceeds will be deposited into a restricted account;

C. The details of any structured settlement, in whole or in part, the type of arrangement (e.g., annuity or insurance policy), the name of the annuity, or insurance policy company, or trust instrument, including the terms, present value, discount rate, payment structure and the identity rating of the trustee annuity or entity administering such arrangements insurance company, and the present cash value and cost of the annuity or insurance;

D. The amount of court costs, legal expenses, and attorneys' fees and costs being requested to be paid from (attach a copy of attorney fee agreement and billings) incurred as a result of the settlement proceeds transaction or event giving rise to the ward's claim; and

E. Whether there is a need for continuing court supervision, the appointment of a fiduciary, or the continuation of an existing fiduciary appointment. The court may appoint a conservator, trustee, or other fiduciary to manage the settlement proceeds or make other protective arrangements in the best interests of the respondent.

(7) ~~Exhibits~~ Attachments.

A. The petition shall list each ~~of the attachments to exhibit filed with~~ the petition, ~~and~~

B. ~~A copy of the proposed settlement agreement and proposed release~~ The following exhibits shall be attached to the petition:-

(i) A written statement by the respondent's physician or other health care provider. The statement shall set forth the information required by subparagraph 4, A and B of this rule and comply with C.R.P.P. 27.1 unless otherwise ordered by the court;

(ii) Relevant legal fee agreements, statement of costs and billing records and/or billing summary; and

(iii) Any proposed settlement agreements and proposed releases.

C. The court may continue, vacate, or place conditions on approval of the proposed settlement in response to petitioner's failure to include such exhibits.

(ee) Notice. Notice of ~~at~~the hearing and a copy of the on a petition (except as otherwise ordered by the court in any specific case), to settle a claim on behalf of persons under disability shall be given in accordance with ~~C.R.S. § 15-14-404~~5(1) and (2), C.R.S. See also ~~C.R.S. § 15-14-406~~ and C.R.P.P. 8.1.

(f) An appearance hearing is required for petitions brought under this rule.

(g) The petitioner, respondent, and any proposed fiduciary shall attend the hearing, unless excused by the court prior to the hearing for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate, report to the court, or represent the respondent.

### **Rule 17. Heirs and Devisees – Unknown, Missing, or Nonexistent – Notice to Attorney General**

In a decedent's estate, whenever it appears that there is an unknown heir or devisee, or that the address of any heir or devisee is unknown, or that there is no person qualified to receive a devise or distributive share from the estate, the personal representative shall promptly notify the attorney general. Thereafter, the attorney general shall be given the same information and notice required to be given to persons qualified to receive a devise or distributive share. When making any payment to the state treasurer of any devise or distributive share, the personal representative shall include a ~~certified~~ copy of the court order obtained under ~~section~~§15-12-914, C.R.S.

### **RULE 18. Foreign Personal Representatives ~~and Conservatives and Conservators~~**

#### ~~(a) Estates of Decedents~~

~~(a)~~ After the death of a nonresident decedent, copies of the documents evidencing appointment of a domiciliary foreign personal representative may be filed as provided in ~~Section~~§15-13-204, C.R.S. Such documents ~~must~~ ~~must have been~~ certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following that may have been issued by the foreign court:

~~(1)A.~~ The order appointing the domiciliary foreign personal representative, and

~~(2)B.~~ The letters or other documents evidencing or affecting the domiciliary foreign personal representative's authority to act.

~~(b2)~~ Upon filing such documents and a sworn statement by the domiciliary foreign personal representative stating that no administration, or application or petition for administration, is pending in Colorado, the court shall issue its Certificate of Ancillary Filing, ~~substantially conforming in form and content to~~ JDF 930.

### **Rule 18.1. Foreign Conservators**

#### **~~(b) Conservatorships~~**

~~(a1)~~ After the appointment of a conservator for a person who is not a resident of this state, copies of documents evidencing the appointment of such foreign conservator may be filed as provided in ~~Section~~ §15-14-433 C.R.S. Such documents must ~~have been~~ certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following:

~~(1)A.~~ The order appointing the foreign conservator,

~~(2)B.~~ The letters or other documents evidencing or affecting the foreign conservator's authority to act, and

~~(3)C.~~ Any bond of foreign conservator.

~~(b2)~~ Upon filing such documents and a sworn statement by the foreign conservator stating that a conservator has not been appointed in this state and that no petition in a protective proceeding is pending in this state concerning the person for whom the foreign conservator was appointed, the court shall issue its Certificate of Ancillary Filing, substantially conforming in form and content to JDF 892.

### **Rule 19. [NO CHANGE]**

#### **Rule 20. Security of Files ~~Under~~ Seal**

For good cause shown, the court may order ~~all or any part of~~ a file to be placed under ~~seal~~ security, in which event the clerk of the court shall maintain it in an appropriate security file. Files kept under ~~seal~~ security may be examined only ~~when approved and by counsel of record~~

~~unless otherwise ordered by the court. [note – inaccurate, new Chief Justice directive being circulated. A newer version is extant. No changes if not incorporating now. fbs].~~

### **Rule 21. Withdrawal of Documents and Exhibits**

~~Except as provided in Rule 22 of these rules for deposited wills, the documents and exhibits filed with the court shall not be withdrawn without order of the court. As a condition of withdrawal, the court may require a true copy of the withdrawn document to be retained in the court file.~~

### **Rule 22. Wills – Deposit for Safekeeping and Withdrawals**

A will of a living person tendered to the court for safekeeping in accordance with ~~Section~~ §15-11-515, C.R.S., shall be placed in a “Deposited Will File”; and a certificate of deposit issued. In the testator's lifetime, the deposited will may be withdrawn only in strict accordance with the statute. After the testator's death, a deposited will shall be transferred to the “Lodged Will File”.

### **Rule 23. ~~Wills—Venue—Transfer~~ of Lodged Wills to Other Jurisdiction**

~~Upon a showing by petition that proper venue is in a county other than that of the court in which a will of a decedent is lodged, the court may order the will transferred to the proper district or probate court within this state, or to the proper court of probate without this state. If a petition under §15-11-516, C.R.S. to transfer a will is filed and if the requested transfer is to a court within this state, no notice need be given; if the requested transfer is to a court without this state, notice shall be given to the person nominated as personal representative and such other persons as the court may direct. No filing fee shall be charged for this petition action, but the petitioner shall pay advance the cost any other costs of photocopying the will for the court file, and the cost of sending transferring the original will by certified mail, or its equivalent, to the proper court.~~

### **Rule 24. Oral Agreements (Deleted)**

~~No oral agreements of counsel of parties concerning the progress, management, or disposition of any matter pending in the court shall be enforced unless made in open court and approved by the court.~~

### **Rule 25. Jury Trial — Demand and Waiver**

If a jury trial is ~~permitted~~ authorized by law, any jury demand therefor shall be filed with the court, and the ~~appropriate requisite~~ fee paid, before the matter is first set for trial. ~~Failure to make such a demand and/or pay fee shall constitutes a waiver of trial by jury. Failure of a party to file and serve a demand for jury trial and pay the requisite fee shall constitute a waiver of trial by jury as provided in C.R.C.P. 38 (c).~~

### Rule 25.1. Informal Probate Separate — Writings

The existence of one or more separate written statements disposing of tangible personal property under the provisions of [Section §15-11-513, C.R.S.](#), shall not cause informal probate to be declined under the provisions of [Section §15-12-304, C.R.S.](#)

### ~~Rule 25.2. Proof of Will in Formal Testacy—Uncontested Case~~

~~If a petition in a formal testacy proceeding is unopposed and the conditions of Section 15-12-409, C.R.S., have been met, the court may order probate or intestacy on the basis of the pleadings. If the court requires additional proof of the matters necessary to support the order sought, it shall state on the record its reasons therefor.~~

### Rule 26. ~~Fiduciaries~~—Appointment of Nonresident — Power of Attorney

~~The court or registrar may appoint as fiduciary~~ Any person, resident or nonresident of this state, who is qualified to act under the [Colorado Probate Code](#) may be appointed as a fiduciary. When appointment is made of a nonresident, the person appointed shall file an irrevocable power of attorney designating the clerk of the court, and the clerk's ~~his~~ successors in office, as the person upon whom all notices and process issued by a court or tribunal in the state of Colorado may be served, with like effect as personal service on such fiduciary, in relation to any suit, matter, cause, hearing, or thing, affecting or pertaining to the ~~estate, trust, or guardianship~~ proceeding, in regard to which the fiduciary was appointed. The power of attorney required by the provisions of this rule shall set forth the address of the nonresident fiduciary, ~~and such fiduciary shall promptly notify the court in writing of any change of such address. It shall be the duty of the clerk to~~ shall promptly forward ~~forthwith, by registered or certified mail,~~ any method that provides delivery confirmation, any notice or process served upon him or her ~~by reason thereof,~~ to the fiduciary ~~named therein~~ at the address mentioned in such power of attorney or subsequently furnished last provided in writing to the clerk ~~in writing~~. The clerk shall ~~make and~~ file a certificate of service that he has performed the acts required by this Rule and he shall include the dates of his compliance. Such sService on a nonresident fiduciary, under this Rule, shall be deemed complete fourteen ~~ten~~ days after ~~the~~ mailing thereof. The clerk may require the person issuing or serving such notice or process to furnish sufficient copies, ~~thereof to have available one copy for the fiduciary and one to be retained by the clerk,~~ and the person desiring service shall advance the costs and mailing expenses of the clerk.

### Rule 27. [RESERVED] ~~Appointment of Special Administrator or Special or Temporary Conservator~~

~~Repealed effective November 16, 1995.~~

### **Rule 27.1. Physicians' Letters or Professional Evaluation**

Any physician's letter or professional evaluation utilized as the evidentiary basis to support a petition for the appointment of a guardian, conservator or other protective order under ~~Section~~Title 15, Article 14 of the Probate Code, 15-14-401 et seq., C.R.S., unless otherwise directed by the court, should contain: (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; (2) an evaluation of the respondent's mental and ~~physial~~ physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.

### **Rule 28. Inventory with Financial Plan — ~~Conservatorships — Date Due — Contents — Oath or Affirmation~~**

~~Unless the deadline for filing is extended in a written order for good cause shown, within 60 days after the Order Appointing Conservator is entered by the Court, each Conservator shall file with the Court and serve on every interested person an Inventory with Financial Plan. Each Inventory with Financial Plan shall include a list and value of all assets in which the protected person has an interest and shall identify all projected income and expenses of the protected person. Inventories with Financial Plans prepared by Conservators shall include their oath or affirmation that it is complete and accurate so far as they are informed on the date of filing. In the event that the assets, their value, the income or the expenses change in any material way, an Amended An iInventory with Financial Plan shall must be promptly filed with the cCourt and served on all interested persons. Any Inventory with Financial Plan and any or Amended Inventory with Financial Plan (the "Plan") filed with the cCourt shall be deemed to include a motion or pPetition for aApproval of the plan. The request for approval of the plan may be set on the nonappearance docket, the appearance docket or not set for hearing and treated as a motion under C.R.C.P. 121 thereof and may be acted on by the Court with or without the filing of a separate Petition requesting that the Court review and accept or approve the Inventory with Financial Plan.~~

### **Rule 29. Bond and Surety**

~~(a) No bond shall be required of a fiduciary unless the statute or the court requires the filing of a secured bond. If a secured bond is required by statute, but the court waives surety or the registrar excuses bond, no bond shall be required.~~

~~(b) A fiduciary shall file aAny required bond shall be filed, or complete other arrangements for security under the statute completed, before letters are issued. Thereafter, the fiduciary shall increase the amount of bond or other security when the fiduciary receives personal property not previously covered by any bond or other security.~~

**Rule 30. ~~Decedents' Estates~~—Supervised Administration -- Scope of Supervision –  
Inventory and Accounting**

In directing the activities of a supervised personal representative of a decedent's estate, the court shall order only as much supervision as in its judgment is necessary, after considering the reasons for the request for supervised administration, or circumstances thereafter arising. If supervised administration is ordered, the personal representative shall file with the court an inventory, annual interim accountings, and a final accounting, unless otherwise ordered by the court.

**Rule 30.1. Conservatorship — Closing**

~~Unless otherwise ordered by the Court, a Petition to Terminate Conservatorship and Schedule of Distribution (JDF 888) shall be accompanied by a final Conservator's Report (JDF 885). Notice of the hearing on a petition for termination of conservatorship shall be given to~~ The protected person ~~or minor~~, if then living, and all other interested persons, as defined by law or by the ~~c~~Court pursuant to § 15-10-201(27), C.R.S. if any, ~~shall be given notice of the hearing on the petition, which such hearing~~ may be held pursuant to Rule 8.8.

**Rule 31. Accountings and Reports**

~~An fiduciary accounting~~ or report prepared by a personal representative, conservator, trustee or other fiduciary shall ~~contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period.~~

~~(a) All required accountings shall~~ show with reasonable detail the receipts and disbursements for the period covered by the accounting or report, shall list the assets remaining at the end of the period, and shall describe all other ~~significant~~ transactions affecting administration during the accounting or report period. ~~Accountings shall be typed or prepared by automated data processing. In any specific case, for good cause shown, T~~ the ~~c~~Court may require the fiduciary to produce ~~such vouchers or other supporting evidence of payment as the court may deem sufficient~~ for any and all transactions.

~~(b)~~ Accountings and reports that substantially conform to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards shall be considered acceptable as to both content and format for purposes of this rule.

### **Rule 31.1. Conservator's Report (Minors and Adults)**

A Conservator's Report shall contain sufficient information to put the interested persons on notice as to all significant transactions affecting administration during the accounting/reporting period. Conservator's Reports that substantially conform to JDF 885 shall be considered acceptable as to both content and format for purposes of this Rule.

(a) A Conservator's Report filed shall show with reasonable detail the receipts and disbursements for the period covered in the report, shall list the assets remaining at the end of the period, and shall describe all other significant transactions affecting administration during the reporting period. In any specific case, for good cause shown, the court may require the fiduciary to produce such invoices, billing statements, or other supporting evidence as the Court requires.

(b) A Conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person.

(c) If the Court appoints a suitable person pursuant to § 15-14-420(3), C.R.S. to investigate, review, and audit such accountings/reports, such costs may be the responsibility of the estate, or as ordered by the Court.

(d) Interested persons may file a pleading objecting to the appropriateness of disbursements, the compensation of fiduciaries, attorneys, and others and the distribution of estate assets.

### **Rule 31.2. Guardian's Report (Minors and Adults)**

A Guardian's Report (JDF 834 or JDF 850) shall contain sufficient information to put the interested persons on notice as to all significant information regarding the welfare and care of the protected person during the reporting period.

### **Rule 32. Reports -- Multiple Minors or Beneficiaries**

When the same person is conservator or guardian of two or more related minors he/she shall file a separate report for each minor or, with court approval, he/she may file a combined report which shows the interest of each minor in the receipts, disbursements, and other transactions reported therein and the amount of money or other property held for each. This Rule shall also apply to a trustee of a court supervised trust for two or more beneficiaries unless the trust provides otherwise.

### **Rule 33. Objections to Accounting, Final Settlement, Distribution or Discharge -- Scope of Court Review in Absence of Objection**

If any interested person desires to object to any accounting, to the final settlement or distribution of an estate, or to the discharge of a fiduciary, or to any other related matter, the interested person he shall file his specific written objections at or before the hearing thereon, and shall furnish all interested persons ~~the fiduciary~~ with a copy of the objections.

(a) If the matter is uncontested and set for a non-appearance hearing, any interested person wishing to object must file specific written objections with the court at or before the hearing, and shall provide copies of the specific written objections to all interested persons. An objector must set an appearance hearing in accordance with Rule 8.8.

(b) If the matter is set for an appearance hearing, the objector must file specific written objections ten (10) or more days before the scheduled hearing. If the objector fails to provide copies of the specific written objections within the required time frame, the petitioner is entitled to a continuance of the hearing.

~~In formal proceedings to terminate decedents' estates, the court shall not inquire into the appropriateness of payments of claims against the estate or expenses of administration, provided notice has been given in accordance with Rule 8.3 and absent timely objection filed by an interested person. The court may review such matters as it determines necessary, on a case-by-case basis and for good cause shown.~~

#### **Rule 33.1. Compensation of Personal Representatives and Attorneys**

~~Personal representatives and attorneys representing an estate are entitled to reasonable compensation. In setting attorneys' fees, the time expended by personnel performing paralegal functions under the direction and supervision of the attorney may be considered as an item separate from and in addition to the time spent by the attorney. In setting other fees, the time expended by personnel performing paraprofessional functions may be considered as a separate item.~~

~~In the absence of unusual circumstances, the court may review such fees in decedents' estates only (1) upon petition or motion of an interested person or (2), in the case of formal proceedings terminating estates, if notice has not been given in accordance with Rule 8.3. If the court on its own motion in a decedent's estate orders a review of personal representatives' fees or attorneys' fees, such order shall state the unusual circumstances which make such a review advisable.~~

#### **Rule 33.2. Informal Closings**

~~In unsupervised administration proceedings, a personal representative may close an estate by verified statement. In any specific case, the court may prohibit such a closing only for good cause shown.~~

#### **Rule 33.3. Court Order Supporting Deed of Distribution**

When a court order is requested to vest title in a distributee free from the rights of other persons interested in the estate, such order shall not be granted ex parte, but shall require either the stipulation of all interested persons or notice and hearing.

**Note on Use Committee Comment.:**

Note that Colorado Bar Association Real Estate Title Standard 11.1.7 discusses certain requirements for the vesting of marketable title in a distributee. A court order is necessary to vest marketable title in a distributee, free from the rights of all persons interested in the estate to recover the property in case of an improper distribution. This rule requires a notice and hearing procedure as a condition of issuance of such order. A certified copy of the court's order should be recorded with the deed of distribution. Under the title standard, an order is not required to vest marketable title in a purchaser for value from or a lender to such distributee. See section 38-35-109, C.R.S.

~~Note that Colorado Bar Association Real Estate Title Standard 11.1.7 requires a court order only in the narrow case of vesting title in a distributee free from the rights of all other persons interested in the estate to recover the property in case of any improper distribution. Such a court order is not required to vest merchantable title in a purchaser for value from or a lender to such a distributee nor is the order required to vest merchantable title in a purchaser for value from or a lender to a transferee from such distributee.~~

**Rule 34. Delegation of Powers to Clerk and Deputy Clerk**

(a) In addition to duties and powers exercised as registrar in informal proceedings, the court by written order may delegate to the clerk or deputy clerk any one or more of the following duties, powers and authorities to be exercised under the supervision of the court:

- (1) To appoint fiduciaries and to issue letters, if there is no written objection to the appointment or issuance on file;
- (2) To set a date for hearing on any matter and to vacate any such setting;
- (3) To issue dedimus to take testimony of a witness to a will;
- (4) To approve the bond of a fiduciary;
- (5) To appoint a guardian ad litem, subject to the provisions of law ~~and Rule 15 herein~~;
- (6) To certify copies of documents filed in the court;
- (7) To order a deposited will lodged in the records and to notify the named personal representative;
- (8) To enter an order for service by mailing or by publication where such order is authorized by law or by the Colorado Rules of Civil Procedure;
- (9) To correct any clerical error in documents filed in the court;

- (10) To appoint a special administrator in connection with the claim of a fiduciary;
- (11) To order a will transferred to another jurisdiction pursuant to Rule 23 herein;
- (12) To admit wills to formal probate and to determine heirship, if there is no objection to such admission or determination by any interested person;
- (13) To enter estate closing orders in formal proceedings, if there is no objection to entry of such order by any interested person;
- (14) To issue a citation to appear to be examined regarding assets alleged to be concealed, etc., pursuant to [Section §15-12-723](#), C.R.S.;
- (15) To order an estate reopened for subsequent administration pursuant to [Section §15-12-1008](#), C.R.S.;
- (16) To enter similar orders upon the stipulation of all interested persons.

(b) All orders made and proceedings had by the clerk or deputy clerk under this rule shall be made of permanent record as provided for acts of the court done by the judge.

(c) Any person in interest affected by an order entered or action taken under the authority of this rule may have the matter heard by the judge by filing a motion for such hearing within ~~fourteen~~ [fifteen](#) days after the entering of the order or the taking of the action. Upon the filing of such a motion, the order or action in question shall be vacated and the motion placed on the calendar of the court for as early a hearing as possible, and the matter shall then be heard by the judge. The judge may, within the same ~~fourteen~~ [fifteen](#) -day period referred to above, vacate the order or action on the court's own motion. If a motion for hearing by the judge is not filed within the ~~fourteen~~ [fifteen](#) -day period, or the order or action is not vacated by the judge on the court's own motion within such period, the order or action of the clerk or deputy clerk shall be final as of its date subject to normal rights of appeal. The acts, records, orders, and judgments of the clerk or deputy clerk not vacated pursuant to the foregoing provision shall have the same force, validity, and effect as if made by the judge.

### Rule 35. Rules of Court

(a) **Local rules.** Courts may make rules for the conduct of probate proceedings ~~not~~ inconsistent with these rules. Copies of all such rules shall be submitted to the [Colorado](#) Supreme Court for its approval before adoption, and, upon their promulgation, a copy shall be furnished to the office of the state court administrator to the end that all rules made as provided herein may be published promptly and that copies may be available to the public.

(b) **Procedure not otherwise specified.** If no procedure is specifically prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules of probate

procedure and the Colorado Probate Code and shall look to the Colorado Rules of Civil Procedure and to the applicable law if no rule of probate procedure exists.

**Rule 36. ~~Reserved~~ Title and Citation**

~~Repealed December 5, 1996, effective January 1, 1997.~~

**Rule 37. Discovery**

(a) This rule establishes the provisions and structure for discovery in all proceedings seeking relief under Title 15, C.R.S. Nothing in this rule shall alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate ~~m~~Motion or *sua sponte*, the court may apply the Colorado Rules of Civil Procedure in whole or in part, may fashion discovery rules applicable to specific proceedings and may apply different discovery rules to different parts of the proceeding.

(b) Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 37. Any discovery conducted ~~under~~in Title 15 proceedings prior to the issuance of a case management or other discovery order shall be subject to C.R.C.P. 26(a)(2)(A); 26(a)(2)(B); 26(a)(4) and (5); and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in which probate proceedings take place, C.R.C.P.

16, 16.1, 16.2 and 26(a)(1); do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.

(c) C.R.C.P. 45 and 121, ~~Section~~§1-12, are applicable to proceedings under Title 15.

(d) Notwithstanding subsections (a) through (c) of this ~~r~~Rule 37, subpoenas and discovery directed to a respondent in proceedings under Part 3 of Article 14 of Title 15, shall not be permitted without leave of court, or until a petition for appointment of a guardian has been granted under ~~Section~~§15-14-311, C.R.S.

**Rule 1. [NO CHANGE]**

**Rule 2. Definitions**

(a) As used in these rules, unless the context otherwise requires:

(1) "Document or Documents" means any petition, or application, inventory, claim, accounting, notice or demand for notice, motion, and any other writing which is filed with the court.

(2) Deleted.

(3) "Accounting" means any written statement that substantially conforms to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards.

(4) "Colorado Probate Code" means §§ Articles 10 to 17 of Title 15 of the Colorado Revised Statutes.

(b) Except as otherwise provided in this rule, terms used in these rules shall be as defined in the applicable sections of Title 15, C.R.S., as amended.

Rule 3  
(Deleted)

Rule 4  
(Deleted)

**Rule 5. Judicial Department Forms**

The Judicial Department Forms (JDF) approved by the Colorado Supreme Court should be used where applicable. Any form filed in a probate proceeding should, insofar as possible, substantially follow the format and content of the approved form, should not include language which otherwise would be stricken, emphasize all alternative clauses or choices which have been selected, emphasize all filled-in blanks, and contain a statement that the pleading conforms in substance to the current version of the approved form, citing the JDF number and effective date.

Unless the context otherwise requires, terms used in JDFs shall be as defined as provided in Rule 2.

**Rule 7. [NO CHANGE]**

**Rule 8. Process and Notice**

The issuance, service, and proof of service of any process, notice, or order of court under the Colorado Probate Code shall be governed by the provisions of the Colorado Probate Code and these rules. When no provision of the Colorado Probate Code or these rules is applicable, the Colorado Rules of Civil Procedure shall govern. Except when otherwise ordered by the court in any specific case or when service is by publication, if notice of a hearing on any petition or other pleading is required, the petition or other pleading, unless previously served, shall be served with the notice. When served by publication, the notice shall briefly state the nature of the relief requested. The petition or other pleading need not be attached to or filed with the proof of service, waiver of notice, or waiver of service.

**Rule 8.1. [NO CHANGE]**

**Rule 8.2. [NO CHANGE]**

**Rule 8.3. Notice of Formal Proceedings Terminating Estates**

The notice of hearing on a petition under § 15-12-1001 or § 15-12-1002, C.R.S., shall include statements: (1) that interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person; and (2) that if any interested person desires to object to any matter such person shall file specific written objections at or before the hearing and shall serve the personal representative with a copy pursuant to C.R.C.P. 5.

### **Rule 8.6. Trust Registration – Amendment, Release and Transfer**

- (a) A trustee shall file with the court of current registration an amended trust registration statement to advise the court of any change in the trusteeship, any change in the principal place of administration, or termination of the trust.
- (b) If the principal place of administration of a trust has been removed from this state, the court may release a trust from registration in this state upon request and after notice to interested parties.
- (c) If the principal place of administration of a trust has changed within this state, the trustee may transfer the registration from one court to another within this state by filing in the court to which the registration is transferred an amended trust registration statement with attached thereto a copy of the original trust registration statement and of any amended trust registration statement prior to the current amendment, and by filing in the court from which the registration is being transferred a copy of the amended trust registration statement. The amended statement shall indicate that the trust was registered previously in another court of this state and that the registration is being transferred.

### **Rule 8.8. Non-Appearance Hearings**

- (a) Unless otherwise required by statute, these rules or order of court, matters that are routine and are expected to be unopposed may be set for a Non-Appearance Hearing. Such Non-Appearance Hearings shall be conducted as follows:
  - (1) Attendance at the hearing is not required or expected.
  - (2) Any interested person wishing to object to the requested action set forth in the motion or petition attached to the notice must file a specific written objection with the court at or before the hearing, and shall furnish a copy of the objection to the person requesting the court order. JDF 722 in the Appendix to these Colorado Rules of Probate Procedure may be used and shall be sufficient notice of objection.
  - (3) If no objection is filed, the court may rule without further notice or hearing.
  - (4) If any objection is filed, the objecting party shall, within 14 days after filing the objection, set the objection for an Appearance Hearing.

(5) Failure to timely set the objection for an Appearance Hearing as required by section (4) of this rule shall result in the dismissal of the objection with prejudice without further hearing.

(6) Upon receipt of a timely request to set a hearing from the objecting party, the court clerk shall note such request in the register of actions. The court, in its discretion, may allow the scheduling of a hearing or refer the matter for alternative dispute resolution prior to a hearing. Nothing in these rules shall prohibit a court from referring any matter, in its discretion, to mediation or other ancillary form of alternative dispute resolution pursuant to section 13-22-313, C.R.S.

(b) The notice of a Non-Appearance Hearing, together with copies of the motion or petition and proposed order must be served on all interested persons no less than 14 days prior to the setting of the hearing and shall include a clear statement of the rules governing such hearings. JDF 712 or JDF 963 in the Appendix to these Colorado Rules of Probate Procedure may be used and shall be sufficient. The authorization of this Form shall not prevent use of another Form consistent with this rule.

### **Rule 9 (Deleted)**

### **Rule 10. Petitions Must Indicate Persons under Legal Disability**

If any person who has any interest in the subject matter of a petition is under the age of eighteen years, or otherwise under legal disability, or incapable of adequately representing his or her own interests, each petition, the hearing of which requires the issuance of notice, shall state such fact and the name, age, and residence of such minor or other person when known and the name of the guardian, conservator, or personal representative, if any has been appointed.

### **Rule 11. Correction of Clerical Errors**

(a) Clerical errors in documents filed with the court may be made the subject of a written request for correction only by filing JDF 740 together with corrected documents as necessary. "Clerical errors" include, but are not limited to, the following:

- (1) Errors in captions (i.e. a/k/a names, etc.);
- (2) Spelling errors;
- (3) Errors in dates, other than dates for settings, hearings, and limitations periods; and
- (4) Transposition errors.

(b) If the court is not satisfied that a written request for correction is a “clerical error”, the request may be denied. A clerical error does not include the addition of an argument, allegation, or fact that has legal significance.

### **Rule 12. Change of Contact Information**

Every fiduciary shall promptly notify the court of any change in the fiduciary’s name, address, e-mail address or telephone number by filing JDF 725.

### **Rule 16. Court Approval of Settlement of Claims of Persons under Disability**

(a) This rule sets forth procedures by which a court considers a petition for approval of the proposed settlement of claims on behalf of a minor or an adult in need of protection pursuant to §15-14-401, et seq., C.R.S. (“respondent”). In connection with a proceeding brought under this rule, the court shall:

(1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interests of the respondent;

(2) Ensure that the petitioner and respondent and/or his/her legal guardian/fiduciary understands the finality of the proposed settlement;

(3) Adjudicate the allowance or disallowance, in whole or in part, of any outstanding liens and claims against settlement funds, including attorney fees; and

(4) Make protective arrangements for the conservation and use of the net settlement funds, in the best interests of the respondent, taking into account the nature and scope of the proposed settlement, the anticipated duration and nature of the respondent’s disability, the cost of any future medical treatment and care required to treat respondent’s disability, and any other relevant factors, all pursuant to §15-14-101, et seq., C.R.S.

(b) Venue for a petition filed under this rule shall be in the county provided in section 15-14-108(3), C.R.S.

(c) An interested person seeking a court order approving the proposed settlement of a claim on behalf of a respondent shall petition for approval of any proposed settlement in accordance with the procedures set forth in this rule.

(d) The petition for approval of settlement shall include the following information:

(1) Facts.

A. The respondent's name and address;

B. The respondent's date of birth;

C. If the respondent is a minor, the name and contact information of each legal guardian. If the identity or contact information of any legal guardian is unknown, or if any parental rights have been terminated, the petition shall so state;

D. The name and contact information of the respondent's spouse, partner in a civil union, or if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition;

E. The name and contact information of any guardian, conservator, custodian, trustee, agent under a power of attorney, or any other court appointed fiduciary for the respondent. A description of the purpose of any court appointed fiduciary shall be included; and

F. The date and a brief description of the event or transaction giving rise to the claim.

(2) Claims and Liabilities.

A. The contact information of each party against whom the respondent may have a claim;

B. The basis for each of the respondent's claims;

C. The defenses and/or counterclaims if any, to the respondent's claims; and

D. The name and contact information of each insurance company involved in the claim, the type of policy, the policy limits, and the identity of the insured.

(3) Damages.

A. A description of the respondent's injuries;

B. The amount of time missed by the respondent from school or employment and a summary of lost income resulting from the respondent's injuries;

C. A summary of any damage to respondent's property;

D. A summary of any expenses incurred for medical or other care provider services as a result of the respondent's injuries; and

E. The identification of any person, organization, institution, or state or federal agency that paid

any of the respondent's expenses and a summary of expenses that have been or will be paid by each particular source.

(4) Medical Status.

A. A description of respondent's current condition including but not limited to the nature and extent of any disability, disfigurement, or physical or psychological impairments and any current treatments and/or therapies; and

B. An explanation of respondent's prognosis and any anticipated treatments and/or therapies.;

(5) Status of Claims.

A. For this claim and any other related claim, the status of the claim and if any civil action has been filed, the court, case number, and parties; and

B. For this claim and any other related claim, identify the amount of the claim and contact information of any party having a subrogation right including any state or federal agency paying or planning to pay benefits to or for the respondent. A list of all subrogation claims and/or liens against the settlement proceeds shall be included as well as a summary of efforts to negotiate them.

(6) Proposed Settlement and Proposed Disposition of Settlement Proceeds.

A. The name and contact information of any person or entity making and receiving payment under the proposed settlement;

B. The proposed settlement amount, payment terms, and proposed disposition, including any restrictions on the accessibility of the funds and whether any proceeds will be deposited into a restricted account;

C. The details of any structured settlement, annuity, insurance policy or trust instrument, including the terms, present value, discount rate, payment structure and the identity of the trustee or entity administering such arrangements;

D. Legal fees and costs being requested to be paid from the settlement proceeds; and

E. Whether there is a need for continuing court supervision, the appointment of a fiduciary or the continuation of an existing fiduciary appointment. The court may appoint a conservator, trustee, or other fiduciary to manage the settlement proceeds or make other protective arrangements in the best interests of the respondent.

(7) Exhibits.

A. The petition shall list each exhibit filed with the petition.

B. The following exhibits shall be attached to the petition:

(i) A written statement by the respondent's physician or other health care provider. The statement shall set forth the information required by subparagraph 4, A and B of this rule and comply with C.R.P.P. 27.1 unless otherwise ordered by the court;

(ii) Relevant legal fee agreements, statement of costs and billing records and/or billing summary; and

(iii) Any proposed settlement agreements and proposed releases.

C. The court may continue, vacate, or place conditions on approval of the proposed settlement in response to petitioner's failure to include such exhibits.

(e) Notice of a hearing and a copy of the petition (except as otherwise ordered by the court in any specific case), shall be given in accordance with § 15-14-404(1) and (2), C.R.S. and C.R.P.P. 8.

(f) An appearance hearing is required for petitions brought under this rule.

(g) The petitioner, respondent, and any proposed fiduciary shall attend the hearing, unless excused by the court prior to the hearing for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate, report to the court, or represent the respondent.

**Rule 17. Heirs and Devisees – Unknown, Missing, or Nonexistent – Notice to Attorney  
General**

In a decedent's estate, whenever it appears that there is an unknown heir or devisee, or that the address of any heir or devisee is unknown, or that there is no person qualified to receive a devise or distributive share from the estate, the personal representative shall promptly notify the attorney general. Thereafter, the attorney general shall be given the same information and notice required to be given to persons qualified to receive a devise or distributive share. When making any payment to the state treasurer of any devise or distributive share, the personal representative shall include a copy of the court order obtained under §15-12-914, C.R.S.

### **RULE 18. Foreign Personal Representatives**

(a) After the death of a nonresident decedent, copies of the documents evidencing appointment of a domiciliary foreign personal representative may be filed as provided in §15-13-204, C.R.S. Such documents must be certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following that may have been issued by the foreign court:

- (1) The order appointing the domiciliary foreign personal representative, and
- (2) The letters or other documents evidencing or affecting the domiciliary foreign personal representative's authority to act.

(b) Upon filing such documents and a sworn statement by the domiciliary foreign personal representative stating that no administration, or application or petition for administration, is pending in Colorado, the court shall issue its Certificate of Ancillary Filing, JDF 930.

### **Rule 18.1. Foreign Conservators**

(a) After the appointment of a conservator for a person who is not a resident of this state, copies of documents evidencing the appointment of such foreign conservator may be filed as provided in §15-14-433 C.R.S. Such documents must be certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following:

- (1) The order appointing the foreign conservator,
- (2) The letters or other documents evidencing or affecting the foreign conservator's authority to act, and
- (3) Any bond of foreign conservator.

(b) Upon filing such documents and a sworn statement by the foreign conservator stating that a conservator has not been appointed in this state and that no petition in a protective proceeding is pending in this state concerning the person for whom the foreign conservator was appointed, the court shall issue its Certificate of Ancillary Filing, substantially conforming in form and content to JDF 892.

**Rule 19. [NO CHANGE]**

**Rule 20. Files under Seal**

For good cause shown, the court may order all or any part of a file to be placed under seal. Files kept under seal may be examined only when approved and ordered by the court.

[note – Trusts and Estates believes this is now outdated, a Chief Justice directive being circulated. A newer version is extant. No changes if not incorporating now. fbs].

**Rule 22. Wills – Deposit for Safekeeping and Withdrawals**

A will of a living person tendered to the court for safekeeping in accordance with §15-11-515, C.R.S. shall be placed in a “Deposited Will File” and a certificate of deposit issued. In the testator's lifetime, the deposited will may be withdrawn only in strict accordance with the statute. After the testator's death, a deposited will shall be transferred to the “Lodged Will File”.

**Rule 23. Transfer of Lodged Wills**

If a petition under §15-11-516, C.R.S. to transfer a will is filed and if the requested transfer is to a court within this state, no notice need be given; if the requested transfer is to a court without this state, notice shall be given to the person nominated as personal representative and such other persons as the court may direct. No filing fee shall be charged for this petition, but the petitioner shall pay any other costs of transferring the original will to the proper court.

**Rule 24  
(Deleted)**

**Rule 25. Jury Trial — Demand and Waiver**

If a jury trial is permitted by law, any jury demand therefor shall be filed with the court, and the requisite fee paid, before the matter is first set for trial. Failure of a party to file and serve a demand for jury trial and pay the requisite fee shall constitute a waiver of trial by jury as provided in C.R.C.P. 38 (c).

### **Rule 25.1. Informal Probate Separate — Writings**

The existence of one or more separate written statements disposing of tangible personal property under the provisions of §15-11-513, C.R.S. shall not cause informal probate to be declined under the provisions of §15-12-304, C.R.S.

### **Rule 26. Appointment of Nonresident — Power of Attorney**

Any person, resident or nonresident of this state, who is qualified to act under the Colorado Probate Code may be appointed as a fiduciary. When appointment is made of a nonresident, the person appointed shall file an irrevocable power of attorney designating the clerk of the court and the clerk's successors in office, as the person upon whom all notices and process issued by a court or tribunal in the state of Colorado may be served, with like effect as personal service on such fiduciary, in relation to any suit, matter, cause, hearing, or thing, affecting or pertaining to the proceeding in regard to which the fiduciary was appointed. The power of attorney required by the provisions of this rule shall set forth the address of the nonresident fiduciary the clerk shall promptly forward by any method that provides delivery confirmation, any notice or process served upon him or her, to the fiduciary at the address last provided in writing to the clerk. The clerk shall file a certificate of service. Such service shall be deemed complete fourteen days after mailing. The clerk may require the person issuing or serving such notice or process to furnish sufficient copies, and the person desiring service shall advance the costs and mailing expenses of the clerk.

### **Rule 27. [RESERVED]**

#### **Rule 27.1. Physicians' Letters or Professional Evaluation**

Any physician's letter or professional evaluation utilized as the evidentiary basis to support a petition for the appointment of a guardian, conservator or other protective order under Article 14 of the Probate Code, unless otherwise directed by the court, should contain: (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; (2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.

### **Rule 28. Inventory with Financial Plan –**

An inventory with Financial Plan shall be filed with the court and served on all interested persons. Any Inventory with Financial Plan or Amended Inventory with Financial Plan (the "Plan") filed with the court shall be deemed to include a motion or petition for approval of the plan. The request for approval of the plan may be set on the nonappearance docket, the appearance docket or not set for hearing and treated as a motion under C.R.C.P. 121.

### **Rule 29. Bond and Surety**

A fiduciary shall file any required bond or complete other arrangements for security before letters are issued. Thereafter, the fiduciary shall increase the amount of bond or other security when the fiduciary receives property not previously covered by any bond or other security.

### **Rule 30. Supervised Administration -- Scope of Supervision –Inventory and Accounting**

In directing the activities of a supervised personal representative of a decedent's estate, the court shall order only as much supervision as in its judgment is necessary, after considering the reasons for the request for supervised administration, or circumstances thereafter arising. If supervised administration is ordered, the personal representative shall file with the court an inventory, annual interim accountings, and a final accounting, unless otherwise ordered by the court.

### **Rule 30.1. Conservatorship — Closing**

Notice of the hearing on a petition for termination of conservatorship shall be given to the protected person if then living, and all other interested persons, as defined by law or by the court pursuant to § 15-10-201(27), C.R.S. if any such hearing may be held pursuant to Rule 8.8.

### **Rule 31. Accountings and Reports**

An accounting or report prepared by a personal representative, conservator, trustee or other fiduciary shall show with reasonable detail the receipts and disbursements for the period covered by the accounting or report, shall list the assets remaining at the end of the period, and shall describe all other transactions affecting administration during the accounting or report period. The court may require the fiduciary to produce supporting evidence for any and all transactions.

Accountings and reports that substantially conform to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards shall be considered acceptable as to both content and format for purposes of this rule.

### **Rule 33. Objections to Accounting**

If any interested person desires to object to any accounting, the final settlement or distribution of an estate, the discharge of a fiduciary, or any other related matter, the interested person shall file specific written objections at or before the hearing thereon, and shall furnish all interested persons with a copy of the objections.

**(a)** If the matter is uncontested and set for a non-appearance hearing, any interested person wishing to object must file specific written objections with the court at or before the hearing, and shall provide copies of the specific written objections to all interested persons. An objector must set an appearance hearing in accordance with Rule 8.8.

**(b)** If the matter is set for an appearance hearing, the objector must file specific written objections ten (10) or more days before the scheduled hearing. If the objector fails to provide copies of the specific written objections within the required time frame, the petitioner is entitled to a continuance of the hearing.

### **Rule 33.3. Court Order Supporting Deed of Distribution**

When a court order is requested to vest title in a distributee free from the rights of other persons interested in the estate, such order shall not be granted *ex parte*, but shall require either the stipulation of all interested persons or notice and hearing.

**Committee Comment.:**

*Note that Colorado Bar Association Real Estate Title Standard 11.1.7 discusses certain requirements for the vesting of marketable title in a distributee. A court order is necessary to vest marketable title in a distributee, free from the rights of all persons interested in the estate to recover the property in case of an improper distribution. This rule requires a notice and hearing procedure as a condition of issuance of such order. A certified copy of the court's order should be recorded with the deed of distribution. Under the title standard, an order is not required to vest marketable title in a purchaser for value from or a lender to such distributee. See section 38-35-109, C.R.S.*

### **Rule 34. Delegation of Powers to Clerk and Deputy Clerk**

- (a) In addition to duties and powers exercised as registrar in informal proceedings, the court by written order may delegate to the clerk or deputy clerk any one or more of the following duties, powers and authorities to be exercised under the supervision of the court:
- (1) To appoint fiduciaries and to issue letters, if there is no written objection to the appointment or issuance on file;
  - (2) To set a date for hearing on any matter and to vacate any such setting;
  - (3) To issue dedimus to take testimony of a witness to a will;
  - (4) To approve the bond of a fiduciary;
  - (5) To appoint a guardian ad litem, subject to the provisions of law;
  - (6) To certify copies of documents filed in the court;
  - (7) To order a deposited will lodged in the records and to notify the named personal representative;
  - (8) To enter an order for service by mailing or by publication where such order is authorized by law or by the Colorado Rules of Civil Procedure;
  - (9) To correct any clerical error in documents filed in the court;
  - (10) To appoint a special administrator in connection with the claim of a fiduciary;
  - (11) To order a will transferred to another jurisdiction pursuant to Rule 23 herein;
  - (12) To admit wills to formal probate and to determine heirship, if there is no objection to such admission or determination by any interested person;

(13) To enter estate closing orders in formal proceedings, if there is no objection to entry of such order by any interested person;

(14) To issue a citation to appear to be examined regarding assets alleged to be concealed, etc., pursuant to §15-12-723, C.R.S.;

(15) To order an estate reopened for subsequent administration pursuant to §15-12-1008, C.R.S.;

(16) To enter similar orders upon the stipulation of all interested persons.

**(b)** All orders made and proceedings had by the clerk or deputy clerk under this rule shall be made of permanent record as provided for acts of the court done by the judge.

**(c)** Any person in interest affected by an order entered or action taken under the authority of this rule may have the matter heard by the judge by filing a motion for such hearing within fourteen days after the entering of the order or the taking of the action. Upon the filing of such a motion, the order or action in question shall be vacated and the motion placed on the calendar of the court for as early a hearing as possible, and the matter shall then be heard by the judge. The judge may, within the same fourteen -day period referred to above, vacate the order or action on the court's own motion. If a motion for hearing by the judge is not filed within the fourteen -day period, or the order or action is not vacated by the judge on the court's own motion within such period, the order or action of the clerk or deputy clerk shall be final as of its date subject to normal rights of appeal. The acts, records, orders, and judgments of the clerk or deputy clerk not vacated pursuant to the foregoing provision shall have the same force, validity, and effect as if made by the judge.

### **Rule 35. Rules of Court**

**(a) Local rules.** Courts may make rules for the conduct of probate proceedings consistent with these rules. Copies of all such rules shall be submitted to the Colorado Supreme Court for its approval before adoption, and, upon their promulgation, a copy shall be furnished to the office of the state court administrator to the end that all rules made as provided herein may be published promptly and that copies may be available to the public.

**(b) Procedure not otherwise specified.** If no procedure is specifically prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules of probate procedure and the Colorado Probate Code and shall look to the Colorado Rules of Civil Procedure and to the applicable law if no rule of probate procedure exists.

### **Rule 36. [Reserved]**

### **Rule 37. Discovery**

**(a)** This rule establishes the provisions and structure for discovery in all proceedings seeking relief under Title 15, C.R.S. Nothing in this rule shall alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate motion or *sua sponte*, the court may apply the Colorado Rules of Civil Procedure in whole or in part, may fashion discovery rules applicable to specific proceedings and may apply different discovery rules to different parts of the proceeding.

**(b)** Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 37. Any discovery conducted under Title 15 proceedings prior to the issuance of a case management or other discovery order shall be subject to C.R.C.P. 26(a)(2)(A); 26(a)(2)(B); 26(a)(4) and (5); and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in which probate proceedings take place, C.R.C.P. 16, 16.1, 16.2 and 26(a)(1) do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.

**(c)** C.R.C.P. 45 and 121§1-12 are applicable to proceedings under Title 15.

**(d)** Notwithstanding subsections (a) through (c) of this rule, subpoenas and discovery directed to a respondent in proceedings under Part 3 of Article 14 of Title 15, shall not be permitted without leave of court, or until a petition for appointment of a guardian has been granted under §15-14-311, C.R.S.

**PROPOSED AMENDMENTS TO C.R.C.P. – 11/17/14**

**RULE 1. SCOPE OF RULES**

**(a) Procedure Governed.** These rules govern the procedure in the supreme court, court of appeals, ~~AND~~ district COURTS ~~court and superior courts~~ and in the juvenile and probate courts of the City and County of Denver, in all actions, suits and proceedings of a civil nature, whether cognizable as cases at law or in equity, and in all special statutory proceedings, with the exceptions stated in Rule 81. ~~They~~ THESE RULES shall be liberally construed, ADMINISTERED, AND EMPLOYED BY THE COURT AND THE PARTIES to secure the just, speedy, and inexpensive determination of every action.

Rules of civil procedure governing county courts shall be in accordance with Chapter 25 of this volume. Rules of Procedure governing probate courts and probate proceedings in the district courts shall be in accordance with these rules and Chapter 27 of this volume. (In case of conflict between rules, those set forth in Chapter 27 shall control.) Rules of Procedure governing juvenile courts and juvenile proceedings in the district courts shall be in accordance with these rules and Chapter 28 made effective on the same date as these rules. In case of conflict between rules those set forth in Chapter 28 shall control. Rules of Procedure in Municipal Courts are in Chapter 30.

**(b) - (c). No change.**

**RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED--BY PLEADING OR MOTION--MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.**

(1) UNLESS a defendant files A MOTION UNDER SUBSECTIONS (b)(1), (b)(2), (b)(3), OR (b)(4) OF THIS RULE, THE DEFENDANT SHALL FILE his AN answer-or other response within 21 days after the service of the summons and complaint on him-THAT DEFENDANT. FILING A MOTION UNDER SUBSECTIONS (b)(5) OR (b)(6) OF THIS RULE DOES NOT AFFECT THE OBLIGATION ALSO TO FILE A TIMELY ANSWER. THE COURT SHALL GIVE PRIORITY TO ANY MOTION PRESENTED PURSUANT TO SUBSECTIONS (b)(1), (b)(2), (b)(3), OR (b)(4) OF THIS RULE. IF THE COURT DENIES ANY SUCH MOTION, THE DEFENDANT SHALL FILE AN ANSWER WITHIN 14 DAYS AFTER SERVICE OF THE ORDER.

(2) If, pursuant to special order, a copy of the complaint is not served with the summons, or if the summons is served without the state OUTSIDE OF COLORADO, or by publication, a defendant shall file his answer or other response THE TIME LIMIT FOR FILINGS UNDER SUBSECTION (a)(1) OF THIS RULE SHALL BE within 35 days after the service thereof on him.

(3) A party served with a pleading stating a cross claim against THAT PARTY him shall file an answer-or other response thereto within 21 days after the service THEREOF. upon him.

(4) IN ADDITION TO FILING ANY MOTIONS UNDER SUBSECTIONS (b)(5) AND (b)(6) OF THIS RULE, THE The plaintiff shall file his A reply to a counterclaim in the answer within 21 days after the service of the answer.

(5) If A reply is made to any affirmative defense, such reply shall be filed within 21 days after service of the pleading containing such affirmative defense. If a pleading is ordered by the court, it shall be filed within twenty days after the entry of the order, unless the order otherwise directs. The filing of a motion permitted under this Rule alters these periods of time, as follows: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within ten days after notice of the court's action; (2) if the court grants a motion for a more definite statement, or for a statement in separate counts or defenses, the responsive pleadings shall be filed within ten days after the service of the more definite statement or amended pleading.

**(b) How Presented.** Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by SEPARATE motion FILED ON OR BEFORE THE DATE THE ANSWER OR REPLY TO A PLEADING UNDER C.R.C.P. 12(a) IS DUE: (1) Lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of

process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; (6) failure to join a party under C.R.C.P. 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under C.R.C.P. 12 THIS RULE or C.R.C.P. 98. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, THE ADVERSE PARTY may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in C.R.C.P. 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by C.R.C.P. 56.

**(c)-(d).** No change.

**(e) Motion for Separate Statement, or for More Definite Statement.** Before responding to a pleading or, if no responsive pleading is permitted by these rules, wWithin 21 days after the service of the pleading upon A PARTY him, a THE party may file a motion for a statement in separate counts or defenses, or for a more definite statement of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his A responsive pleading. NOTWITHSTANDING THE FILING OF A MOTION UNDER THIS SECTION, THE MOVANT ALSO MUST FILE AN ANSWER. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. IF THE MOTION IS GRANTED, AN AMENDED RESPONSIVE PLEADING SHALL BE FILED WITHIN 14 DAYS AFTER SERVICE OF THE MORE DEFINITE STATEMENT OR AMENDED PLEADING.

**(f) Motion to Strike.** Upon motion filed by a party before WITHIN THE TIME FOR responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion filed by a party within 21 days after the service of any pleading, motion, or other paper, or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f). A MOTION FILED UNDER THIS SECTION DOES NOT AFFECT THE OBLIGATION TO FILE A TIMELY ANSWER.

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to THAT PARTY him. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to THAT PARTY him which this Rule permits to be raised by motion, THAT PARTY he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) of this Rule on any of the grounds there stated.

(h) No change.

## **RULE 16. CASE MANAGEMENT AND TRIAL MANAGEMENT**

(a) **Purpose and Scope.** No change.

**(b) Case Management Order.** [REPEALED AND REPLACED IN FULL.] NOT LATER THAN 42 DAYS AFTER THE CASE IS AT ISSUE AND AT LEAST 7 DAYS BEFORE THE CASE MANAGEMENT CONFERENCE, THE PARTIES SHALL FILE IN EDITABLE FORMAT A PROPOSED CASE MANAGEMENT ORDER CONSISTING OF THE MATTERS SET FORTH IN SUBSECTIONS (1) - (17) OF THIS SECTION AND TAKE THE NECESSARY ACTIONS TO COMPLY WITH THOSE SUBSECTIONS. THIS PROPOSED ORDER, WHEN APPROVED BY THE COURT, SHALL CONSTITUTE THE CASE MANAGEMENT ORDER AND SHALL CONTROL THE COURSE OF THE ACTION FROM THE TIME THE CASE IS AT ISSUE UNTIL OTHERWISE REQUIRED PURSUANT TO SECTION (f) OF THIS RULE. USE OF THE "PROPOSED CASE MANAGEMENT ORDER" IN THE FORM AND CONTENT OF APPENDIX TO CHAPTERS 1 TO 17, FORM (JDF \_\_\_\_\_), SHALL COMPLY WITH THIS SECTION.

**(1) AT ISSUE DATE.** A CASE SHALL BE DEEMED AT ISSUE AT SUCH TIME AS ALL PARTIES HAVE BEEN SERVED AND ALL PLEADINGS PERMITTED BY C.R.C.P. 7 HAVE BEEN FILED OR DEFAULTS OR DISMISSALS HAVE BEEN ENTERED AGAINST ALL NON-APPEARING PARTIES, OR AT SUCH OTHER TIME AS THE COURT MAY DIRECT. EXCEPT FOR A MOTION PURSUANT TO C.R.C.P. 12(b)(1) THROUGH (b)(4), THE FILING OF A MOTION TO DISMISS SHALL NOT AFFECT THE OBLIGATION ALSO TO FILE A TIMELY ANSWER. THE PROPOSED ORDER SHALL STATE THE AT ISSUE DATE.

**(2) THE RESPONSIBLE ATTORNEY.** THE RESPONSIBLE ATTORNEY SHALL MEAN PLAINTIFF'S COUNSEL, IF THE PLAINTIFF IS REPRESENTED BY COUNSEL, OR IF NOT, THE DEFENSE COUNSEL WHO FIRST ENTERS AN APPEARANCE IN THE CASE. THE RESPONSIBLE ATTORNEY SHALL SCHEDULE CONFERENCES AMONG THE PARTIES, AND PREPARE AND SUBMIT THE PROPOSED CASE MANAGEMENT ORDER AND TRIAL MANAGEMENT ORDER. THE PROPOSED ORDER SHALL IDENTIFY THE RESPONSIBLE ATTORNEY AND PROVIDE THAT ATTORNEY'S CONTACT INFORMATION.

**(3) MEET AND CONFER.** NO LATER THAN 14 DAYS AFTER THE CASE IS AT ISSUE, LEAD COUNSEL FOR EACH PARTY AND ANY PARTY WHO IS NOT REPRESENTED BY COUNSEL SHALL CONFER WITH EACH OTHER IN PERSON OR BY TELEPHONE ABOUT (A) THE NATURE AND BASIS OF THE CLAIMS AND DEFENSES; (B) THE MATTERS TO BE DISCLOSED PURSUANT TO C.R.C.P. 26(a)(1); (C) THE PROPOSED CASE MANAGEMENT ORDER; (D) MUTUALLY AGREEABLE DATES FOR THE CASE MANAGEMENT CONFERENCE AND (E) BASED THEREON SHALL OBTAIN FROM

THE COURT A DATE FOR THE CASE MANAGEMENT CONFERENCE. THE PROPOSED ORDER SHALL STATE THE DATE AND IDENTIFY THE ATTENDEES AT ANY MEET AND CONFER CONFERENCES.

(4) DESCRIPTION OF THE CASE. THE PROPOSED ORDER SHALL PROVIDE A BRIEF DESCRIPTION OF THE CASE AND IDENTIFICATION OF THE ISSUES TO BE TRIED WHICH SHALL CONSIST OF NOT MORE THAN ONE PAGE, DOUBLE-SPACED, PER SIDE.

(5) PENDING MOTIONS. THE PROPOSED ORDER SHALL LIST ALL PENDING MOTIONS THAT HAVE BEEN FILED AND ARE PRESENTLY UNRESOLVED. THE COURT MAY DECIDE ANY UNRESOLVED MOTION AT THE CASE MANAGEMENT CONFERENCE.

(6) EVALUATION OF PROPORTIONALITY FACTORS. THE PROPOSED ORDER SHALL PROVIDE A BRIEF ASSESSMENT OF EACH PARTY'S POSITION ON THE APPLICATION OF THE FACTORS TO BE CONSIDERED IN DETERMINING PROPORTIONALITY, INCLUDING THOSE FACTORS IDENTIFIED IN C.R.C.P. 26(B)(1).

(7) INITIAL EXPLORATION OF PROMPT SETTLEMENT AND PROSPECTS FOR SETTLEMENT. THE PROPOSED ORDER SHALL CONFIRM THAT SETTLEMENT DISCUSSIONS WERE HELD AND DESCRIBE THE PROSPECTS FOR SETTLEMENT AND POSSIBLE FUTURE DATES FOR MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION.

(8) PROPOSED DEADLINES FOR AMENDMENTS. THE PROPOSED ORDER SHALL PROVIDE PROPOSED DEADLINES FOR AMENDING OR SUPPLEMENTING PLEADINGS AND FOR JOINDER OF ADDITIONAL PARTIES, WHICH SHALL BE NOT LATER THAN 105 DAYS (15 WEEKS) AFTER THE CASE IS AT ISSUE, AND SHALL PROVIDE A DEADLINE FOR IDENTIFICATION OF NON-PARTIES AT FAULT, IF ANY.

(9) DISCLOSURES. THE PROPOSED ORDER SHALL STATE THE DATES WHEN DISCLOSURES UNDER C.R.C.P. 26(a)(1) WERE MADE AND EXCHANGED AND IDENTIFY ANY OBJECTIONS TO THE ADEQUACY OF THE INITIAL DISCLOSURES.

(10) COMPUTATION AND DISCOVERY RELATING TO DAMAGES. IF ANY PARTY ASSERTS AN INABILITY TO DISCLOSE FULLY THE INFORMATION ON DAMAGES UNDER C.R.C.P. 26(a)(1)(C), THE PROPOSED ORDER SHALL INCLUDE A BRIEF STATEMENT OF THE REASONS FOR THAT PARTY'S INABILITY AS WELL AS THE EXPECTED TIMING OF (A) FULL DISCLOSURE AND (B) COMPLETION OF DISCOVERY ON DAMAGES.

(11) DISCOVERY LIMITS AND SCHEDULE. UNLESS OTHERWISE ORDERED BY THE COURT, DISCOVERY SHALL BE LIMITED TO THAT ALLOWED BY C.R.C.P.

26(b)(2). DISCOVERY MAY COMMENCE AS PROVIDED IN C.R.C.P. 26(d) UPON ISSUANCE OF THE CASE MANAGEMENT ORDER. THE DEADLINE FOR COMPLETION OF ALL DISCOVERY, INCLUDING DISCOVERY RESPONSES, SHALL BE 49 DAYS BEFORE THE TRIAL DATE. THE PROPOSED ORDER SHALL STATE ANY MODIFICATIONS TO THE AMOUNTS OF DISCOVERY PERMITTED IN C.R.C.P. 26(b)(2) AND THE JUSTIFICATION FOR SUCH MODIFICATIONS CONSISTENT WITH THE PROPORTIONALITY FACTORS IN C.R.C.P. 26(b)(1).

(12) SUBJECTS FOR EXPERT TESTIMONY. THE PROPOSED ORDER SHALL IDENTIFY THE SUBJECT AREAS ABOUT WHICH THE PARTIES ANTICIPATE OFFERING EXPERT TESTIMONY; WHETHER THAT TESTIMONY WOULD BE FROM AN EXPERT DEFINED IN C.R.C.P. 26(a)(2)(B)(I) OR IN 26(a)(2)(B)(II); AND, IF MORE THAN ONE EXPERT AS DEFINED IN C.R.C.P. 26(a)(2)(B)(I) PER SUBJECT PER SIDE IS ANTICIPATED, THE PROPOSED ORDER SHALL EXPLAIN THE REASON WHY SUCH ADDITIONAL EXPERT OR EXPERTS ARE APPROPRIATE CONSIDERING THE PROPORTIONALITY FACTORS IN C.R.C.P. 26(b)(1) AND THE DIFFERENCES AMONG THE POSITIONS OF MULTIPLE PARTIES ON THE SAME SIDE AS TO EXPERTS.

(13) PROPOSED DEADLINES FOR EXPERT DISCLOSURES. IF ANY PARTY DESIRES PROPOSED DEADLINES FOR EXPERT DISCLOSURES UNDER C.R.C.P. 26(a)(2) OTHER THAN THOSE IN C.R.C.P. 26(a)(2)(C), THE PROPOSED ORDER SHALL EXPLAIN THE JUSTIFICATION FOR SUCH MODIFICATIONS.

(14) ORAL DISCOVERY MOTIONS. THE PROPOSED ORDER SHALL STATE WHETHER THE COURT (DOES)(DOES NOT) REQUIRE DISCOVERY MOTIONS TO BE PRESENTED ORALLY, WITHOUT WRITTEN MOTIONS OR BRIEFS, AND MAY INCLUDE SUCH OTHER PROVISIONS AS THE COURT DEEMS APPROPRIATE.

(15) ELECTRONICALLY STORED INFORMATION. IF THE PARTIES ANTICIPATE NEEDING TO DISCOVER A SIGNIFICANT AMOUNT OF ELECTRONICALLY STORED INFORMATION, THE PARTIES SHALL DISCUSS AND INCLUDE IN THE PROPOSED ORDER A BRIEF STATEMENT CONCERNING THEIR AGREEMENTS OR POSITIONS RELATING TO SEARCH TERMS TO BE USED, IF ANY, AND THE PRODUCTION, CONTINUED PRESERVATION AND RESTORATION OF ELECTRONICALLY STORED INFORMATION, INCLUDING THE FORM IN WHICH IT IS TO BE PRODUCED AND AN ESTIMATE OF THE ATTENDANT COSTS. IF THE PARTIES ARE UNABLE TO AGREE, THE PROPOSED ORDER SHALL INCLUDE A BRIEF STATEMENT OF THEIR POSITIONS.

(16) TRIAL DATE AND ESTIMATED LENGTH OF TRIAL. THE PROPOSED ORDER SHALL PROVIDE THE PARTIES' BEST ESTIMATE OF THE TIME REQUIRED FOR PROBABLE COMPLETION OF DISCOVERY AND OF THE LENGTH OF THE TRIAL. THE COURT SHALL SET THE TRIAL DATE IN THE CASE MANAGEMENT ORDER, UNLESS THE COURT USES A DIFFERENT TRIAL SETTING PROCEDURE.

(17) OTHER APPROPRIATE MATTERS. THE PROPOSED ORDER SHALL DESCRIBE OTHER MATTERS ANY PARTY WISHES TO BRING TO THE COURT'S ATTENTION AT THE CASE MANAGEMENT CONFERENCE.

(18) THE PROPOSED ORDER SHALL BE SIGNED BY LEAD COUNSEL FOR EACH PARTY AND BY EACH PARTY WHO IS NOT REPRESENTED BY COUNSEL AND, AFTER THE COURT'S REVIEW, SHALL BE ENTERED AS AN ORDER OF THE COURT.

(c) ~~MODIFIED CASE MANAGEMENT ORDER~~ [Repealed and Replaced in Full.]

PRETRIAL MOTIONS. UNLESS OTHERWISE ORDERED BY THE COURT, PRETRIAL MOTIONS, INCLUDING MOTIONS IN LIMINE, SHALL BE FILED NO LATER THAN 35 DAYS BEFORE THE TRIAL DATE, EXCEPT FOR MOTIONS PURSUANT TO C.R.C.P. 56, WHICH MUST BE FILED NO LATER THAN 91 DAYS (13 WEEKS) BEFORE THE TRIAL AND EXCEPT FOR MOTIONS CHALLENGING EXPERT TESTIMONY PURSUANT TO C.R.E. 702, WHICH MUST BE FILED NO LATER THAN 70 DAYS (10 WEEKS) BEFORE THE TRIAL.

(d) CASE MANAGEMENT CONFERENCE. [Repealed and Replaced in Full.]

(1) THE RESPONSIBLE ATTORNEY SHALL SCHEDULE THE CASE MANAGEMENT CONFERENCE TO BE HELD WITHIN 49 DAYS AFTER THE CASE IS AT ISSUE, AND SHALL PROVIDE NOTICE OF THE CONFERENCE TO ALL PARTIES.

(2) LEAD COUNSEL AND UNREPRESENTED PARTIES, IF ANY, SHALL ATTEND THE CASE MANAGEMENT CONFERENCE IN PERSON, EXCEPT AS PROVIDED IN SUBSECTION (D)(3) OF THIS RULE. **THE COURT MAY PERMIT THE PARTIES AND/OR COUNSEL TO ATTEND THE CONFERENCE AND ANY SUBSEQUENT CONFERENCES BY TELEPHONE.** AT THAT CONFERENCE, THE PARTIES AND COUNSEL SHALL BE PREPARED TO DISCUSS THE PROPOSED ORDER, ISSUES REQUIRING RESOLUTION AND ANY SPECIAL CIRCUMSTANCES OF THE CASE.

(3) IF ALL PARTIES ARE REPRESENTED BY COUNSEL, COUNSEL MAY TIMELY SUBMIT A PROPOSED ORDER AND MAY REQUEST THE COURT TO DISPENSE WITH A CASE MANAGEMENT CONFERENCE. IN THE EVENT THAT THERE APPEAR TO BE NO UNUSUAL ISSUES, THAT THE LAWYERS APPEAR TO BE WORKING TOGETHER COLLEGIALLY, AND THAT THE INFORMATION ON THE FORM APPEARS TO BE CONSISTENT WITH THE BEST INTERESTS OF ALL CLIENTS AND IS PROPORTIONATE TO THE NEEDS OF THE CASE, THE COURT MAY DISPENSE WITH THE CASE MANAGEMENT CONFERENCE.

(e) Amendment of the Case Management Order. ~~At any time following the entry of the Case Management Order, a~~ A party wishing to amend ~~THE the Presumptive Case Management Order or a Modified Case Management Order~~ shall file a motion stating each proposed amendment and

a specific showing of good cause for the timing and necessity for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2)(F).

(f) through (g) No Change.

**Proposed Case Management Order**

District Court _____ County, Colorado Court Address:	<b>COURT USE ONLY</b>
Plaintiff(s): _____,  v.  Defendant(s): _____,	
Responsible Attorney:   Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: _____  Division ___ Courtroom ___
<b>PROPOSED CASE MANAGEMENT ORDER</b>	

Pursuant to C.R.C.P. 16(b), the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should state its position **briefly**. If an item does not apply, it should be identified as not applicable.

This form shall be submitted to the court in editable format. When approved by the court, this shall constitute the Case Management Order for this case unless modified by the court upon a showing of good cause.

This form must be filed with the court not later than 42 days after the case is at issue and at least 7 days before the date for the Case Management Conference.

The Case Management Conference is set for \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_:\_\_\_\_.m.

1. The "at issue date" is: \_\_\_\_\_.

2. Responsible Attorney's name, address, phone number and email address:

\_\_\_\_\_

3. The lead counsel for each party, \_\_\_\_\_  
and any party not represented by counsel \_\_\_\_\_  
met and conferred in person or by telephone concerning this Proposed Order and each  
of the issues listed in Rule 16(b)(3)(A) through (E) on \_\_\_\_\_, 20\_\_.

4. Brief description of the case and identification of the issues to be tried (not more than one  
page, double-spaced, for each side): \_\_\_\_\_

5. The following motions have been filed and are presently unresolved:

\_\_\_\_\_

6. Brief assessment of each party's position on the application of the proportionality  
factors, including those listed in C.R.C.P. 26(b)(1): \_\_\_\_\_

7. The lead counsel for the each party, \_\_\_\_\_  
and any party not represented by counsel \_\_\_\_\_  
met and conferred concerning possible settlement. The prospects for settlement  
are: \_\_\_\_\_

Possible future date(s) for mediation or other alternative dispute resolution are: \_\_\_\_\_

\_\_\_\_\_

8. Deadlines for:

a. Amending or supplementing pleadings: (Not more than 105 days (15 weeks) from at  
issue date). \_\_\_\_\_

b. Joinder of additional parties: (Not more than 105 days (15 weeks) from at issue date)

\_\_\_\_\_

c. Identifying non-parties at fault:

\_\_\_\_\_

9. Dates of initial disclosures. \_\_\_\_\_  
Objections, if any, about their adequacy: \_\_\_\_\_

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a  
party's inability to provide it, provide a brief statement of the reasons for that party's  
inability and the expected timing of full disclosures \_\_\_\_\_,  
and completion of discovery on damages: \_\_\_\_\_

**11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):**

**Number of depositions per party** (C.R.C.P. 26(b)(2)(A) limit – 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): \_\_\_\_\_

**Number of interrogatories per party** (C.R.C.P. 26(b)(2)(B) limit – 30): \_\_\_\_\_

**Number of requests for production of documents per party** (C.R.C.P. 26(b)(2)(D) limit – 20): \_\_\_\_\_

**Number of requests for admission per party** (C.R.C.P. 26(b)(2)(E) limit – 20): \_\_\_\_\_

**Any physical or mental examination per C.R.C.P. 35:** \_\_\_\_\_

**State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations:** \_\_\_\_\_

**12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under 26(b)(2)(B)(I) or (B)(II):**

\_\_\_\_\_

**If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate considering proportionality factors and any differences among the positions of multiple parties on the same side:** \_\_\_\_\_

\_\_\_\_\_

**13. Proposed deadlines for expert witness disclosures if other than those in C.R.C.P. 26(a)(2):**

**a. production of expert reports:**

**i. Plaintiff/claimant:** \_\_\_\_\_

**ii. Defendant/opposing party:** \_\_\_\_\_

**b. production of rebuttal expert reports:** \_\_\_\_\_

**c. production of expert witness files:** \_\_\_\_\_

**State the reason for any different dates from those in C.R.C.P. 26(a)(2):** \_\_\_\_\_

\_\_\_\_\_

**14. Oral Discovery Motions.** The court (does) (does not) require discovery motions to be presented orally, without written motions or briefs. \_\_\_\_\_  
\_\_\_\_\_

**15. Electronically Stored Information.** The parties anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions search terms to be used, if any, and relating to the production, continued preservation and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.  
\_\_\_\_\_

**16. Parties' best estimate as to when discovery can be completed:** \_\_\_\_\_

**Parties' best estimate of the length of the trial:** \_\_\_\_\_

**Trial will commence on (or will be set by the court later):** \_\_\_\_\_

**17. Other appropriate matters for consideration:** \_\_\_\_\_  
\_\_\_\_\_

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

**CASE MANAGEMENT ORDER**

IT IS HEREBY ORDERED that the foregoing is and shall be the Case Management Order in this case.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

BY THE COURT:

\_\_\_\_\_  
District Judge

**RULE 16.1. SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS**

(a) – (e) No change.

(f) Case Management Orders. In actions subject to Simplified Procedure pursuant to this Rule, the presumptive case management order requirements of C.R.C.P. 16(b)(1), (2), (3) AND (7), (5) and (6) shall apply ALTHOUGH A PROPOSED CASE MANAGEMENT ORDER IS NOT REQUIRED TO BE PREPARED OR FILED.

(g) No change.

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

(i) – End of Rule 16.1. No Change.

**RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE –**

**(a) Required Disclosures; Methods to Discover Additional Matter.**

Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

**(1) Disclosures.** Except to the extent otherwise directed by the court, a party shall, without awaiting a discovery request, provide to other parties THE FOLLOWING INFORMATION, WHETHER OR NOT SUPPORTIVE OF THE PARTY'S CLAIMS OR DEFENSES.

The timing of d Disclosures shall be SERVED within 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). A party shall make the required disclosures based on the information then known and reasonably available to the party and is not excused from making such disclosures because the party has not completed investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures. PARTIES SHALL MAKE THESE DISCLOSURES IN GOOD FAITH AND MAY NOT OBJECT TO THE ADEQUACY OF THE DISCLOSURES UNTIL THE CASE MANAGEMENT CONFERENCE PURSUANT TO C.R.C.P. 16(d), AT WHICH TIME THEY MAY RAISE THESE ISSUES.

**(A)** The name and, if known, the address and telephone number of each individual likely to have discoverable information RELEVANT TO THE CLAIMS AND DEFENSES OF ANY PARTY relevant to disputed facts alleged with particularity in the pleadings, identifying who the person is and the subjects AND A BRIEF DESCRIPTION of the SPECIFIC TYPES OF information THAT each such individual is KNOWN OR believed to possess;

**(B)** A listing ~~and~~ together with a copy of, or a description by category, OF THE SUBJECT MATTER and location of all documents, data compilations, and tangible things in the possession, custody or control of the party that are relevant to disputed facts alleged with particularity in the pleadings. THE CLAIMS AND DEFENSES OF ANY PARTY, making available for inspection and copying such documents and other evidentiary material, not privileged or protected from disclosure, as though a request for production of those documents had been served pursuant to C.R.C.P. 34;

**(C)** A description of the categories of damages sought and a computation of any category of economic damages claimed by the disclosing party, making available for inspection and copying pursuant to C.R.C.P. 34 the documents or other evidentiary material RELEVANT TO THE DAMAGES SOUGHT, not privileged or protected from disclosure, as though a request for production of those documents had been served pursuant to C.R.C.P. 34; and

(D) Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, making such agreement available for inspection and copying pursuant to C.R.C.P. 34.

**(2) Disclosure of Expert Testimony.**

(A) No change.

(B) Except as otherwise stipulated or directed by the court ~~this disclosure shall:~~

(I) **RETAINED EXPERTS.** With respect to a witness who is retained or specially employed to provide expert testimony, or whose duties as an employee of the party regularly involve giving expert testimony, THE DISCLOSURE SHALL BE MADE accompanied by a written report or summary SIGNED BY THE WITNESS. THE REPORT shall contain (a) a complete statement of all opinions to be expressed and the basis and reasons therefor; (b) A LIST OF the data or other information considered by the witness in forming the opinions; (c) REFERENCES TO LITERATURE THAT MAY BE USED DURING THE WITNESS'S TESTIMONY; (d) COPIES OF any exhibits to be used as a summary of or support for the opinions; (e) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (f) the ~~compensation~~ FEE SCHEDULE for the study, PREPARATION and testimony; (g) AN ITEMIZATION OF THE FEES INCURRED AND THE TIME SPENT ON THE CASE, WHICH SHALL BE SUPPLEMENTED AS OF THE FIRST DAY OF TRIAL; and (h) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. In addition, if a report is issued by the expert it shall be provided. THE WITNESS'S DIRECT TESTIMONY SHALL BE LIMITED TO MATTERS DISCLOSED IN DETAIL IN THE REPORT.

(II) **OTHER EXPERTS.** With respect to a PARTY OR witness who may be called to provide expert testimony but is not RETAINED OR SPECIALLY EMPLOYED within the description contained in subsection (a)(2)(B)(I) above, THE DISCLOSURE SHALL BE MADE BY A the WRITTEN report or STATEMENT WHICH shall contain (a) a complete DESCRIPTION OF the substance of all opinions to be expressed and the basis and reasons therefor; (b) A LIST OF the qualifications of the witness; and (c) COPIES OF ANY EXHIBITS TO BE USED AS A SUMMARY OF OR SUPPORT FOR THE OPINIONS. IF THE REPORT HAS BEEN PREPARED BY THE WITNESS, IT SHALL BE SIGNED BY THE WITNESS. IF THE PARTY IS UNABLE TO OBTAIN A REPORT FROM THE WITNESS DOES NOT PREPARE A WRITTEN REPORT, THE PARTY'S LAWYER OR THE PARTY, IF UNREPRESENTED, MAY PREPARE A STATEMENT AND SHALL SIGN IT. THE WITNESS'S DIRECT TESTIMONY SHALL BE LIMITED TO MATTERS DISCLOSED IN DETAIL IN THE REPORT OR STATEMENT.

(C) No change.

(3) [There is no Colorado Rule--see instead C.R.C.P. 16(c).]

(4) – (5) No change.

**(b) Discovery Scope and Limits.** Unless otherwise limited MODIFIED by order of the court in accordance with these rules, the scope of discovery is as follows:

**(1) In General.** Subject to the limitations and considerations contained in subsection (b)(2) of this Rule, parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party; AND PROPORTIONAL TO THE NEEDS OF THE CASE, CONSIDERING THE IMPORTANCE OF THE ISSUES AT STAKE IN THE ACTION, THE AMOUNT IN CONTROVERSY, THE PARTIES' RELATIVE ACCESS TO RELEVANT INFORMATION, THE PARTIES' RESOURCES, THE IMPORTANCE OF THE DISCOVERY IN RESOLVING THE ISSUES, AND WHETHER THE BURDEN OR EXPENSE OF THE PROPOSED DISCOVERY OUTWEIGHS ITS LIKELY BENEFIT, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant i Information WITHIN THIS SCOPE OF DISCOVERY need not be admissible IN EVIDENCE TO BE DISCOVERABLE. at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

**(2) Limitations.** Except upon order for good cause shown **AND SUBJECT TO THE PROPORTIONALITY FACTORS IN SUBSECTION (b)(1) OF THIS RULE**, discovery shall be limited as follows:

**(A)** A party may take one deposition of each adverse party and of two other persons, exclusive of persons expected to give expert testimony disclosed pursuant to subsection 26(a)(2). The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. Rules 26, 28, 29, 30, 31, 32 and 45.

**(B) – (E)** No change.

**(F)** In determining good cause to modify the limitations of this subsection (b)(2), the court shall consider the following:

**(i)** Whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

**(ii)** Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;

~~(iii) Whether the burden or expense of the proposed discovery IS OUTSIDE THE SCOPE PERMITTED BY C.R.C.P. 26(b)(1) outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues; and~~

(iv) Whether because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.

~~[Subsections (E)(i) – (iv) are moved to new paragraph (F).]~~

**(3) Trial Preparation: Materials.** No change.

**(4) Trial Preparation: Experts.**

(A) A party may depose any person who has been identified as an expert **DISCLOSED PURSUANT TO SUBSECTION 26(a)(2)(B)(I) OF THIS RULE**, whose opinions may be presented at trial. **THE DEPOSITION SHALL NOT EXCEED THREE HOURS. ON THE APPLICATION OF ANY PARTY, THE COURT MAY REDUCE OR INCREASE THE TIME PERMITTED, AFTER CONSIDERING THE PROPORTIONALITY CRITERIA IN SUBSECTION (b)(1) OF THIS RULE.** Except to the extent otherwise stipulated by the parties or ordered by the court, no discovery, including depositions, concerning either the identity or the opinion of experts shall be conducted until after the disclosures required by subsection (a)(2) of this Rule

(B) – (C) No change.

**(D) RULE 26(b)(3) PROTECTS FROM DISCLOSURE AND DISCOVERY DRAFTS OF ANY REPORT OR DISCLOSURE REQUIRED UNDER RULE 26(a)(2), REGARDLESS OF THE FORM IN WHICH THE DRAFT IS RECORDED, AND PROTECTS COMMUNICATIONS BETWEEN THE PARTY'S ATTORNEY AND ANY WITNESS DISCLOSED UNDER RULE 26(a)(2)(B), REGARDLESS OF THE FORM OF THE COMMUNICATIONS, EXCEPT TO THE EXTENT THAT THE COMMUNICATIONS:**

**(i) RELATE TO THE COMPENSATION FOR THE EXPERT'S STUDY OR TESTIMONY;**

**(ii) IDENTIFY FACTS OR DATA THAT THE PARTY'S ATTORNEY PROVIDED AND WHICH THE EXPERT CONSIDERED IN FORMING THE OPINIONS TO BE EXPRESSED; OR**

**(iii) IDENTIFY ASSUMPTIONS THAT THE PARTY'S ATTORNEY PROVIDED AND THAT THE EXPERT RELIED ON IN FORMING OPINIONS TO BE EXPRESSED.**

**(5) Claims of Privilege or Protection of Trial Preparation Materials.** No Change.

[This subsection has been moved from section (a)(6) and amended.]

**(c) Protective Orders.** No change.

(1) No change;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place OR THE ALLOCATION OF EXPENSES;

(3) – (8) No change.

**(d) Timing and Sequence of Discovery.** Except when authorized by these Rules, by order, or by agreement of the parties, a party may not seek discovery from any source before submission ISSUANCE of the proposed Case Management Order pursuant to C.R.C.P. 16(b)(18). Any discovery conducted prior to issuance of the Case Management Order shall not exceed the limitations established by C.R.C.P. 26(b)(2). Unless THE PARTIES STIPULATE OR the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

**(e) Supplementation of Disclosures, and Responses, AND EXPERT REPORTS AND SUMMARIES STATEMENTS.** A party is under a duty to supplement its disclosures under section (a) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or STATEMENT summary disclosed pursuant to section ~~(b)(a)(2)(B)~~ of this Rule and to information provided through any deposition of ~~or interrogatory responses~~ the expert. IF A PARTY INTENDS TO OFFER DIRECT EXPERT TESTIMONY THAT HAS NOT BEEN DISCLOSED PURSUANT TO SECTION (a)(2)(B) OF THIS RULE ON THE BASIS THAT THE EXPERT PROVIDED THE INFORMATION THROUGH A DEPOSITION, THE REPORT OR STATEMENT PREVIOUSLY PROVIDED SHALL BE SUPPLEMENTED TO INCLUDE A SPECIFIC DESCRIPTION OF THE DEPOSITION TESTIMONY RELIED ON. NOTHING IN THIS SECTION REQUIRES THE COURT TO PERMIT AN EXPERT TO TESTIFY AS TO OPINIONS OTHER THAN THOSE DISCLOSED IN THE INITIAL EXPERT REPORT OR STATEMENT. Supplementation shall be performed in a timely manner.

**(f) – (g)** No change.

## **RULE 30. DEPOSITIONS UPON ORAL EXAMINATION**

### **(d) Schedule and Duration; Motion to Terminate or Limit Examination.**

(2) (a) Unless otherwise authorized by the court or stipulated by the parties, a deposition OF A PERSON OTHER THAN A RETAINED EXPERT DISCLOSED PURSUANT TO C.R.C.P. 26(a)(2)(B)(I) WHOSE OPINIONS MAY BE OFFERED AT TRIAL is limited to one day of ~~seven~~ SIX hours. ~~By order~~ UPON THE MOTION OF ANY PARTY, the court may limit the time permitted for the conduct of a deposition to less than ~~seven~~ SIX hours, or may allow additional time if needed for a fair examination of the deponent and consistent with C.R.C.P. 26(b)(1), or if the deponent or another person impedes or delays the examination, or if other circumstances warrant. If the court finds such an impediment, delay, or other conduct that frustrates the fair examination of the deponent, it may impose upon the person responsible therefor an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

(b) DEPOSITIONS OF A RETAINED EXPERT DISCLOSED PURSUANT TO C.R.C.P. 26(a)(2)(B)(I) WHOSE OPINIONS MAY BE OFFERED AT TRIAL ARE GOVERNED BY C.R.C.P. 26(b)(4).

## **RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS**

### **(a) Serving Questions; Notice.**

(2) Leave of court must be obtained pursuant to C.R.C.P. 16(B)(b)(1) and 26(B)(b), if:

**OR**

(2) Leave of court must be obtained pursuant to C.R.C.P. 16(B)(b)(1) and 26(B)(b), A PARTY MUST OBTAIN LEAVE OF COURT, AND THE COURT MUST GRANT LEAVE TO THE EXTENT CONSISTENT WITH C.R.C.P. 26(b)(2) if:

**RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES**

**(a) Scope.** No change.

**(b) Procedure.** The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 35 days after the service of the request. A shorter or longer time may be directed by the court or agreed to in writing by the parties pursuant to C.R.C.P. 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, OR STATE WITH SPECIFICITY THE GROUNDS FOR OBJECTING TO THE REQUEST unless the request is objected to, in which event the reasons for objection shall be stated. THE RESPONDING PARTY MAY STATE THAT IT WILL PRODUCE COPIES OF INFORMATION INSTEAD OF PERMITTING INSPECTION. THE PRODUCTION MUST THEN BE COMPLETED NO LATER THAN THE TIME FOR INSPECTION STATED IN THE REQUEST OR ANOTHER REASONABLE TIME STATED IN THE RESPONSE.

AN OBJECTION MUST STATE WHETHER ANY RESPONSIVE MATERIALS ARE BEING WITHHELD ON THE BASIS OF THAT OBJECTION. If objection is made to part of an item or category, the part shall be specified. A TIMELY OBJECTION TO A REQUEST FOR PRODUCTION STAYS THE OBLIGATION TO PRODUCE WHICH IS THE SUBJECT OF THE OBJECTION UNTIL THE COURT RESOLVES THE OBJECTION. NO SEPARATE MOTION FOR PROTECTIVE ORDER PURSUANT TO C.R.C.P. 26(c) IS REQUIRED. The party submitting the request may move for an order pursuant to C.R.C.P. 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

**(c) Persons Not Parties.** AS PROVIDED IN C.R.C.P. 45, THIS This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

**RECOMMENDATION CONCERNING PUBLIC HEARING**

Given the significance of the foregoing proposed changes to the Colorado Rules of Civil Procedure, the Supreme Court's Standing Committee on Civil Rules believes that the Court should consider holding a public hearing and accepting written comments concerning these rules proposals.

**RECOMMENDATION CONCERNING EFFECTIVE DATE OF NEW RULES, IF ADOPTED.**

Because most of the proposed rules changes have the greatest impact on the initial stages of a lawsuit – many within the first 90 days of the commencement of the action – the Committee recommends that these rules changes, if adopted by the Court, should be effective on July 1, 2015, in order to replace the Civil Action Pilot Project Rules coincident with their expiration date, and that these changes be **effective only for new cases filed on or after July 1, 2015.**

**PROPOSED AMENDMENTS TO C.R.C.P. – 11/17/14 – CLEAN COPY**

**RULE 1. SCOPE OF RULES**

**(a) Procedure Governed.** These rules govern the procedure in the supreme court, court of appeals and district courts and in the juvenile and probate courts of the City and County of Denver, in all actions, suits and proceedings of a civil nature, whether cognizable as cases at law or in equity, and in all special statutory proceedings, with the exceptions stated in Rule 81. These rules shall be liberally construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action.

Rules of civil procedure governing county courts shall be in accordance with Chapter 25 of this volume. Rules of Procedure governing probate courts and probate proceedings in the district courts shall be in accordance with these rules and Chapter 27 of this volume. (In case of conflict between rules, those set forth in Chapter 27 shall control.) Rules of Procedure governing juvenile courts and juvenile proceedings in the district courts shall be in accordance with these rules and Chapter 28 made effective on the same date as these rules. In case of conflict between rules those set forth in Chapter 28 shall control. Rules of Procedure in Municipal Courts are in Chapter 30.

**(b) - (c). No change.**

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**RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED--BY PLEADING OR MOTION--MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.**

(1) Unless a defendant files a motion under subsections (b)(1), (b)(2), (b)(3), or (b)(4) of this Rule, the defendant shall file an answer or within 21 days after the service of the summons and complaint on that defendant. Filing a motion under subsections (b)(5) or (b)(6) of this Rule does not affect the obligation also to file a timely answer. The court shall give priority to any motion presented pursuant to subsections (b)(1), (b)(2), (b)(3), or (b)(4) of this Rule. If the court denies any such motion, the defendant shall file an answer within 14 days after service of the order.

(2) If, pursuant to special order, a copy of the complaint is not served with the summons, or if the summons is served outside of Colorado, or by publication, the time limit for filings under subsection (a)(1) of this Rule shall be within 35 days after the service thereof.

(3) A party served with a pleading stating a cross claim against that party shall file an answer thereto within 21 days after the service thereof.

(4) In addition to filing any motions under subsections (b)(5) and (b)(6) of this Rule, the plaintiff shall file a reply to a counterclaim in the answer within 21 days after the service of the answer.

(5) If a reply is made to any affirmative defense, such reply shall be filed within 21 days after service of the pleading containing such affirmative defense.

**(b) How Presented.** Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by separate motion filed on or before the date the answer or reply to a pleading under C.R.C.P. 12(a) is due: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; (6) failure to join a party under C.R.C.P. 19. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under this Rule or C.R.C.P. 98. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in C.R.C.P. 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by C.R.C.P. 56.

**(c) - (d).** No change.

**(e) Motion for Separate Statement, or for More Definite Statement.** Within 21 days after the service of the pleading upon a party, the party may file a motion for a statement in separate counts or defenses, or for a more definite statement of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare a responsive pleading. Notwithstanding the filing of a motion under this section, the movant also must file an answer. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. If the motion is granted, an amended responsive pleading shall be filed within 14 days after service of the more definite statement or amended pleading.

**(f) Motion to Strike.** Upon motion filed by a party within the time for responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion filed by a party within 21 days after the service of any pleading, motion, or other paper, or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this

section (f). A motion filed under this section does not affect the obligation to file a timely answer.

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to that party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to that party which this Rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) of this Rule on any of the grounds there stated.

**(h) No change.**

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## **RULE 16. CASE MANAGEMENT AND TRIAL MANAGEMENT**

**(a) Purpose and Scope.** No change.

**(b) Case Management Order.** [Repealed and replaced in full.] Not later than 42 days after the case is at issue and at least 7 days before the Case Management Conference, the parties shall file in editable format a Proposed Case Management Order consisting of the matters set forth in subsections (1) - (17) of this section and take the necessary actions to comply with those subsections. If the parties are unable to agree, the Proposed Order shall include a brief statement of their positions. This Proposed Order, when approved by the court, shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section (f) of this Rule. Use of the "Proposed Case Management Order" in the form and content of Appendix to chapters 1 to 17, form \_\_\_ (JDF \_\_\_), shall comply with this section.

**(1) At Issue Date.** A case shall be deemed at issue at such time as all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court may direct. Except for a motion pursuant to C.R.C.P. 12(b)(1) through (b)(4), the filing of a motion to dismiss shall not affect the obligation also to file a timely answer. The Proposed Order shall state the at issue date.

**(2) The Responsible Attorney.** The responsible attorney shall mean plaintiff's counsel, if the plaintiff is represented by counsel, or if not, the defense counsel who first enters an appearance in the case. The responsible attorney shall schedule conferences among the parties, and prepare and submit the Proposed Case Management Order and trial management order. The Proposed Order shall identify the responsible attorney and provide that attorney's contact information.

**(3) Meet And Confer.** No later than 14 days after the case is at issue, lead counsel for each party and any party who is not represented by counsel shall confer with each other in person or

by telephone about (A) the nature and basis of the claims and defenses; (B) the matters to be disclosed pursuant to C.R.C.P. 26(a)(1); (C) the Proposed Case Management Order; (D) mutually agreeable dates for the case management conference and (E) based thereon shall obtain from the court a date for the Case Management Conference. The proposed order shall state the date and identify the attendees at any meet and confer conferences.

**(4) Description of the Case.** The Proposed Order shall provide a brief description of the case and identification of the issues to be tried which shall consist of not more than one page, double-spaced, per side.

**(5) Pending Motions.** The Proposed Order shall list all pending motions that have been filed and are presently unresolved. The court may decide any unresolved motion at the Case Management Conference.

**(6) Evaluation of Proportionality Factors.** The Proposed Order shall provide a brief assessment of each party's position on the application of the factors to be considered in determining proportionality, including those factors identified in C.R.C.P. 26(b)(1).

**(7) Initial Exploration of Prompt Settlement and Prospects for Settlement.** The Proposed Order shall confirm that settlement discussions were held and describe the prospects for settlement and possible future dates for mediation or other alternative dispute resolution.

**(8) Proposed Deadlines for Amendments.** The Proposed Order shall provide proposed deadlines for amending or supplementing pleadings and for joinder of additional parties, which shall be not later than 105 days (15 weeks) after the case is at issue, and shall provide a deadline for identification of non-parties at fault, if any.

**(9) Disclosures.** The Proposed Order shall state the dates when disclosures under C.R.C.P. 26(a)(1) were made and exchanged and identify any objections to the adequacy of the initial disclosures.

**(10) Computation and Discovery Relating to Damages.** If any party asserts an inability to disclose fully the information on damages under C.R.C.P. 26(a)(1)(C), the Proposed Order shall include a brief statement of the reasons for that party's inability as well as the expected timing of (A) full disclosure and (B) completion of discovery on damages.

**(11) Discovery Limits and Schedule.** Unless otherwise ordered by the court, discovery shall be limited to that allowed by C.R.C.P. 26(b)(2). Discovery may commence as provided in C.R.C.P. 26(d) upon issuance of the Case Management Order. The deadline for completion of all discovery, including discovery responses, shall be 49 days before the trial date. The Proposed Order shall state any modifications to the amounts of discovery permitted in C.R.C.P. 26(b)(2) and the justification for such modifications consistent with the proportionality factors in C.R.C.P. 26(b)(1).

**(12) Subjects for Expert Testimony.** The Proposed Order shall identify the subject areas about which the parties anticipate offering expert testimony; whether that testimony would be from an expert defined in C.R.C.P. 26(a)(2)(B)(I) or in 26(a)(2)(B)(II); and, if more than one expert as defined in C.R.C.P. 26(a)(2)(B)(I) per subject per side is anticipated, the Proposed Order shall explain the reason why such additional expert or experts are appropriate considering the proportionality factors in C.R.C.P. 26(b)(1) and the differences among the positions of multiple parties on the same side as to experts.

**(13) Proposed Deadlines for Expert Disclosures.** If any party desires proposed deadlines for expert disclosures under C.R.C.P. 26(a)(2) other than those in C.R.C.P. 26(a)(2)(C), the Proposed Order shall explain the justification for such modifications.

**(14) Oral Discovery Motions.** The Proposed Order shall state whether the court (does)(does not) require discovery motions to be presented orally, without written motions or briefs, and may include such other provisions as the court deems appropriate.

**(15) Electronically Stored Information.** If the parties anticipate needing to discover a significant amount of electronically stored information, the parties shall discuss and include in the Proposed Order a brief statement concerning their agreements or positions relating to search terms to be used, if any, and the production, continued preservation and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

**(16) Trial Date and Estimated Length of Trial.** The Proposed Order shall provide the parties' best estimate of the time required for probable completion of discovery and of the length of the trial. The court shall set the trial date in the Case Management Order, unless the court uses a different trial setting procedure.

**(17) Other Appropriate Matters.** The Proposed Order shall describe other matters any party wishes to bring to the court's attention at the case management conference.

**(18)** The Proposed Order shall be signed by lead counsel for each party and by each party who is not represented by counsel and, after the court's review, shall be entered as an order of the court.

**(c) ~~Modified Case Management Order~~** [Repealed and replaced in full.]

**Pretrial Motions.** Unless otherwise ordered by the court, pretrial motions, including motions in limine, shall be filed no later than 35 days before the trial date, except for motions pursuant to C.R.C.P. 56, which must be filed no later than 91 days (13 weeks) before the trial and except for motions challenging expert testimony pursuant to C.R.E. 702, which must be filed no later than 70 days (10 weeks) before the trial.

**(d) Case Management Conference.** [Repealed and replaced in full.]

(1) The responsible attorney shall schedule the Case Management Conference to be held within 49 days after the case is at issue, and shall provide notice of the conference to all parties.

(2) Lead counsel and unrepresented parties, if any, shall attend the Case Management Conference in person, except as provided in subsection (d)(3) of this Rule. The court may permit the parties and/or counsel to attend the Conference and any subsequent conferences by telephone. At that Conference, the parties and counsel shall be prepared to discuss the Proposed Order, issues requiring resolution and any special circumstances of the case.

(3) If all parties are represented by counsel, counsel may timely submit a Proposed Order and may request the court to dispense with a Case Management Conference. In the event that there appear to be no unusual issues, that the lawyers appear to be working together collegially, and that the information on the form appears to be consistent with the best interests of all clients and is proportionate to the needs of the case, the court may dispense with the Case Management Conference.

**(e) Amendment of the Case Management Order.** A party wishing to amend the Case Management Order shall file a motion stating each proposed amendment and a specific showing of good cause for the timing and necessity for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2)(F).

**(f) through (g)** No Change.

**Proposed Case Management Order**

District Court _____ County, Colorado Court Address:	<b>COURT USE ONLY</b>
Plaintiff(s): _____,  v.  Defendant(s): _____,	
Responsible Attorney:  Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: _____  Division ___ Courtroom ___
<b>PROPOSED CASE MANAGEMENT ORDER</b>	

Pursuant to C.R.C.P. 16(b), the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should briefly state its position. If an item does not apply, it should be identified as not applicable.

This form shall be submitted to the court in editable format. When approved by the court, this shall constitute the Case Management Order for this case unless modified by the court upon a showing of good cause.

This form must be filed with the court not later than 42 days after the case is at issue and at least 7 days before the date for the Case Management Conference.

The Case Management Conference is set for \_\_\_\_\_, 2\_\_\_ at \_\_:\_\_.m.

1. The "at issue date" is: \_\_\_\_\_.

2. Responsible Attorney's name, address, phone number and email address:  
\_\_\_\_\_

3. The lead counsel for each party, \_\_\_\_\_  
and any party not represented by counsel \_\_\_\_\_  
met and conferred in person or by telephone concerning this Proposed Order and each  
of the issues listed in Rule 16(b)(3)(A) through (E) on \_\_\_\_\_, 20\_\_.

4. Brief description of the case and identification of the issues to be tried (not more than one  
page, double-spaced, for each side): \_\_\_\_\_

5. The following motions have been filed and are presently unresolved:  
\_\_\_\_\_

6. Brief assessment of each party's position on the application of the proportionality  
factors, including those listed in C.R.C.P. 26(b)(1): \_\_\_\_\_

7. The lead counsel for the each party, \_\_\_\_\_  
and any party not represented by counsel \_\_\_\_\_  
met and conferred concerning possible settlement. The prospects for settlement  
are: \_\_\_\_\_

Possible future date(s) for mediation or other alternative dispute resolution are: \_\_\_\_\_  
\_\_\_\_\_

8. Deadlines for:

a. Amending or supplementing pleadings: (Not more than 105 days (15 weeks) from at  
issue date). \_\_\_\_\_

b. Joinder of additional parties: (Not more than 105 days (15 weeks) from at issue date)  
\_\_\_\_\_

c. Identifying non-parties at fault:  
\_\_\_\_\_

9. Dates of initial disclosures. \_\_\_\_\_

Objections, if any, about their adequacy: \_\_\_\_\_

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a  
party's inability to provide it, provide a brief statement of the reasons for that party's

inability and the expected timing of full disclosures \_\_\_\_\_,  
and completion of discovery on damages: \_\_\_\_\_

**11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):**

**Number of depositions per party** (C.R.C.P. 26(b)(2)(A) limit – 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): \_\_\_\_\_

**Number of interrogatories per party** (C.R.C.P. 26(b)(2)(B) limit – 30): \_\_\_\_\_

**Number of requests for production of documents per party** (C.R.C.P. 26(b)(2)(D) limit – 20): \_\_\_\_\_

**Number of requests for admission per party** (C.R.C.P. 26(b)(2)(E) limit – 20): \_\_\_\_\_

**Any physical or mental examination per C.R.C.P. 35:** \_\_\_\_\_

**State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations:** \_\_\_\_\_

**12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under 26(b)(2)(B)(I) or (B)(II):** \_\_\_\_\_

**If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate considering proportionality factors and any differences among the positions of multiple parties on the same side:** \_\_\_\_\_

**13. Proposed deadlines for expert witness disclosures if other than those in C.R.C.P. 26(a)(2):**

**a. production of expert reports:**

**i. Plaintiff/claimant:** \_\_\_\_\_

**ii. Defendant/opposing party:** \_\_\_\_\_

**b. production of rebuttal expert reports:** \_\_\_\_\_

**c. production of expert witness files:** \_\_\_\_\_

**State the reason for any different dates from those in C.R.C.P. 26(a)(2):** \_\_\_\_\_

**14. Oral Discovery Motions.** The court (does) (does not) require discovery motions to be presented orally, without written motions or briefs. \_\_\_\_\_

**15. Electronically Stored Information.** The parties anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions search terms to be used, if any, and relating to the production, continued preservation and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

**16. Parties' best estimate as to when discovery can be completed:** \_\_\_\_\_

**Parties' best estimate of the length of the trial:** \_\_\_\_\_

**Trial will commence on (or will be set by the court later):** \_\_\_\_\_

**17. Other appropriate matters for consideration:** \_\_\_\_\_

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

**CASE MANAGEMENT ORDER**

IT IS HEREBY ORDERED that the foregoing is and shall be the Case Management Order in this case.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

BY THE COURT:

\_\_\_\_\_  
District Judge

## **RULE 16.1. SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS**

(a) – (e) No change.

(f) Case Management Orders. In actions subject to Simplified Procedure pursuant to this Rule, the case management order requirements of C.R.C.P. 16(b)(1), (2), (3) and (7) shall apply although a Proposed Case Management Order is not required to be prepared or filed.

(g) No change.

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

(i) – End of Rule 16.1. No Change.

## **RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE.**

### **(a) Required Disclosures; Methods to Discover Additional Matter.**

Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

**(1) Disclosures.** Except to the extent otherwise directed by the court, a party shall, without awaiting a discovery request, provide to other parties the following information, whether or not supportive of the party's claims or defenses.

Disclosures shall be served within 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). A party shall make the required disclosures based on the information then known and reasonably available to the party and is not excused from making such disclosures because the party has not completed investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures. Parties shall make these disclosures in good faith and may not object to the adequacy of the disclosures until the Case Management Conference pursuant to C.R.C.P. 16(d), at which time they may raise these issues.

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the claims and defenses of any party and a brief description of the specific types of information that each such individual is known or believed to possess;

(B) A listing together with a copy of, or a description by category, of the subject matter and location of all documents, data compilations, and tangible things in the possession, custody or control of the party that are relevant to the claims and defenses of any party, making available for inspection and copying such documents and other evidentiary material, not privileged or protected from disclosure, as though a request for production of those documents had been served pursuant to C.R.C.P. 34;

(C) A description of the categories of damages sought and a computation of any category of economic damages claimed by the disclosing party, making available for inspection and copying pursuant to C.R.C.P. 34 the documents or other evidentiary material relevant to the damages sought, not privileged or protected from disclosure, as though a request for production of those documents had been served pursuant to C.R.C.P. 34; and

(D) Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, making such agreement available for inspection and copying pursuant to C.R.C.P. 34.

**(2) Disclosure of Expert Testimony.**

(A) No change.

(B) Except as otherwise stipulated or directed by the court:

(I) **Retained Experts.** With respect to a witness who is retained or specially employed to provide expert testimony, or whose duties as an employee of the party regularly involve giving expert testimony, the disclosure shall be made by a written report signed by the witness. The report shall contain (a) a complete statement of all opinions to be expressed and the basis and reasons therefor; (b) a list of the data or other information considered by the witness in forming the opinions; (c) references to literature that may be used during the witness's testimony; (d) copies of any exhibits to be used as a summary of or support for the opinions; (e) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (f) the fee schedule for the study, preparation and testimony; (g) an itemization of the fees incurred and the time spent on the case, which shall be supplemented as of the first day of trial; and (h) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The witness's direct testimony shall be limited to matters disclosed in detail in the report.

(II) **OTHER EXPERTS.** With respect to a party or witness who may be called to provide expert testimony but is not retained or specially employed within the description contained in subsection (a)(2)(B)(I) above, the disclosure shall be made by a written report or statement which shall contain (a) a complete description of all opinions to be expressed and the basis and reasons therefor; (b) the qualifications of the witness; and (c) copies of any exhibits to be used as a summary of or support for the opinions. If the report has been prepared by the witness, it shall be signed by the witness. If the witness does not prepare a written report, the party's lawyer or the party, if unrepresented, may prepare a statement and shall sign it. The witness's direct testimony shall be limited to matters disclosed in detail in the report or statement.

(C) No change.

(3) [There is no Colorado Rule--see instead C.R.C.P. 16(c).]

(4) – (5) No change.

**(b) Discovery Scope and Limits.** Unless otherwise modified by order of the court in accordance with these rules, the scope of discovery is as follows:

**(1) In General.** Subject to the limitations and considerations contained in subsection (b)(2) of this Rule, parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

**(2) Limitations.** Except upon order for good cause shown and subject to the proportionality factors in subsection (b)(1) of this Rule, discovery shall be limited as follows:

**(A)** A party may take one deposition of each adverse party and of two other persons, exclusive of persons expected to give expert testimony disclosed pursuant to subsection 26(a)(2). The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. Rules 26, 28, 29, 30, 31, 32 and 45.

**(B) – (E)** No change.

**(F)** In determining good cause to modify the limitations of this subsection (b)(2), the court shall consider the following:

**(i)** Whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;

(iii) Whether the proposed discovery is outside the scope permitted by C.R.C.P. 26(b)(1); and

(iv) Whether because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.

**(3) Trial Preparation: Materials.** No change.

**(4) Trial Preparation: Experts.**

(A) A party may depose any person who has been identified as an expert disclosed pursuant to subsection 26(a)(2)(B)(I) of this Rule whose opinions may be presented at trial. The deposition shall not exceed three hours. On the application of any party, the court may reduce or increase the time permitted, after considering the proportionality criteria in subsection (b)(1) of this Rule. Except to the extent otherwise stipulated by the parties or ordered by the court, no discovery, including depositions, concerning either the identity or the opinion of experts shall be conducted until after the disclosures required by subsection (a)(2) of this Rule

(B) – (C) No change.

(D) Rule 26(b)(3) protects drafts of any report or disclosure required under Rule 26(a)(2) from disclosure or discovery, regardless of the form in which the draft is recorded, and protects communications between the party's attorney and any witness disclosed under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) Relate to the compensation for the expert's study or testimony;

(ii) Identify facts or data that the party's attorney provided and which the expert considered in forming the opinions to be expressed; or

(iii) Identify assumptions that the party's attorney provided and that the expert relied on in forming opinions to be expressed.

**(5) Claims of Privilege or Protection of Trial Preparation Materials.** No Change.

**(c) Protective Orders.** No change.

(1) No change;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;

(3) – (8) No change.

**(d) Timing and Sequence of Discovery.** Except when authorized by these Rules, by order, or by agreement of the parties, a party may not seek discovery from any source before issuance of the Case Management Order pursuant to C.R.C.P. 16(b)(18). Any discovery conducted prior to issuance of the Case Management Order shall not exceed the limitations established by C.R.C.P. 26(b)(2). Unless the parties stipulate or the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

**(e) Supplementation of Disclosures, Responses, and Expert Reports and Statements** A party is under a duty to supplement its disclosures under section (a) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or statement disclosed pursuant to section (a)(2)(B) of this Rule and to information provided through any deposition of the expert. If a party intends to offer direct expert testimony that has not been disclosed pursuant to section (a)(2)(B) of this Rule on the basis that the expert provided the information through a deposition, the report or statement previously provided shall be supplemented to include a specific description of the deposition testimony relied on. Nothing in this section requires the court to permit an expert to testify as to opinions other than those disclosed in the initial expert report or statement. Supplementation shall be performed in a timely manner.

(f) – (g) No change.

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## **RULE 30. DEPOSITIONS UPON ORAL EXAMINATION**

### **(d) Schedule and Duration; Motion to Terminate or Limit Examination.**

(2) (a) Unless otherwise authorized by the court or stipulated by the parties, a deposition of a person other than a retained expert disclosed pursuant to C.R.C.P. 26(a)(2)(B)(I) whose opinions

may be offered at trial is limited to one day of six hours. Upon the motion of any party, the court may limit the time permitted for the conduct of a deposition to less than six hours, or may allow additional time if needed for a fair examination of the deponent and consistent with C.R.C.P. 26(b)(1), or if the deponent or another person impedes or delays the examination, or if other circumstances warrant. If the court finds such an impediment, delay, or other conduct that frustrates the fair examination of the deponent, it may impose upon the person responsible therefor an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

(b) Depositions of a retained expert disclosed pursuant to C.R.C.P. 26(a)(2)(B)(I) whose opinions may be offered at trial are governed by C.R.C.P. 26(b)(4).

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### **RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS**

**(a) Serving Questions; Notice.**

(2) Leave of court must be obtained pursuant to C.R.C.P. 16(~~B~~)(b)(1) and 26(~~B~~)(b), if:

**OR**

### **RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS**

**(a) Serving Questions; Notice.**

(2) A party must obtain leave of court, and the court must grant leave to the extent consistent with C.R.C.P. 26(b)(2) if:

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### **RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES**

**(a) Scope.** No change.

**(b) Procedure.** The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 35 days after the service of the request. A shorter or longer time may be directed by the court or agreed to in writing by the parties pursuant to C.R.C.P. 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, or state with specificity the grounds for objecting to the request. The responding party may state that it will produce copies of information instead of permitting inspection. The production must then be completed no later than the time for inspection stated in the request or another reasonable time stated in the response.

An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to part of an item or category, the part shall be specified. A timely objection to a request for production stays the obligation to produce which is the subject of the objection until the court resolves the objection. No separate motion for protective order pursuant to C.R.C.P. 26(c) is required. The party submitting the request may move for an order pursuant to C.R.C.P. 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

**(c) Persons Not Parties.** As provided in C.R.C.P. 45, this Rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

### **RECOMMENDATION CONCERNING PUBLIC HEARING**

Given the significance of the proposed changes to the Colorado Rules of Civil Procedure, the Supreme Court's Standing Committee on Civil Rules believes that the Court should consider holding a public hearing and accepting written comments concerning these rules proposals.

### **RECOMMENDATION CONCERNING EFFECTIVE DATE OF NEW RULES, IF ADOPTED.**

Because most of the proposed rules changes have the greatest impact on the initial stages of a lawsuit – many within the first 90 days of the commencement of the action – the Committee recommends that these rules changes, if adopted by the Court, should be effective on July 1, 2015, in order to replace the Civil Action Pilot Project Rules coincident with their expiration date, and that these changes be **effective only for new cases filed on or after July 1, 2015.**