AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, June 28, 2024, 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to order

II. Approval of January 26, 2024, minutes [Pages 2 to 4]

III. Announcements from the Chair

A. Rule Changes 2024(05), (08), and (09) [Pages 5 to 24]

B. Status of proposed changes to Magistrate Rules

IV. Present Business

A. Rule 103—Proposal from member of the public—(Aaron Boschee) [Pages 25 to 40]

B. Rule 304—Proposed changes to comport with form changes—(Judge Jones) [Pages 41 to 42]

C. County Court Rule 411—Length of briefs for county court appeals to district court—(Judge Jones) [Pages 43 to 48]

D. Rule 11(b)—Proposed changes to comport with recent changes to C.A.R. 5—(Judge Jones) [Pages 49 to 57]

V. Adjourn—Next meeting is September 27, 2024, at 1:30 pm.

Jerry N. Jones, Chair
jerry.jones@judicial.state.co.us
720-625-5335

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 26, 2024, Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Chair Judge Jerry N. Jones at 1:30 p.m. in the Supreme Court Conference Room. Members present at the meeting were:

Name	Present	Not Present
Judge Jerry N. Jones, Chair	X	
Judge Michael Berger	X	
Judge Karen Brody		X
Judge Catherine Cheroutes		X
Damon Davis	X	
David R. DeMuro	X	
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Magistrate Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller		X
Brent Owen		X
John Palmeri	X	
Alana Percy	X	
Lucas Ritchie		X
Chief Judge Gilbert M. Román		X
Judge (Ret.) Sabino Romano		X
Judge Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Andi Truett	X	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor	X	
Ben Vinci	X	
Judge Gregory R. Werner	X	
Judge (Ret.) John R. Webb		X
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Justice Richard Gabriel, Liaison (non-voting)	X	
Su Cho (non-voting)	X	

I. Attachments & Handouts

- January 26 2024, agenda packet and supplement.

II. Announcements from the Chair

The November 3, 2023, minutes were approved as submitted with the following change: Mr. Whitehair was changed to being present at the meeting. Then, Justice Gabriel and Judge Jones honored outgoing members Judge Kane and Judge Espinosa for their service.

Judge Jones provided an update on the proposed rule and form changes sent to the Colorado Supreme Court for consideration at the end of 2023. Certain changes were approved by the Court effective immediately while others were put out for a public comment period.

Judge Jones also updated the Committee on the gender neutral rules issue. At this point, the Chairs of the Supreme Court Committees have agreed on an approach and will be presenting it to the Court for consideration. If the Court approves this proposal, Judge Jones will be asking for volunteers to update the rules.

Judge Jones then moved to the topic of generative artificial intelligence. Many courts around the country are starting to adopt rules addressing generative AI. Members should begin thinking about this, as the Committee may need to tackle this topic.

III. Present Business

A. Civil and County Court Forms—(Justice Hart)

Justice Hart provided an informational update on the civil forms. She noted that sometimes forms need to change quickly and that the current process lacks nimbleness. Additionally, the Court must make the forms more publicly accessible. To improve nimbleness, many of the forms will no longer presumptively start with this Committee for edits. Justice Hart also shared that there is a website revamp coming, and one of the goals is to make the forms easier to find.

B. Form 28SC—Spelling Error in Title—(Judge Jones)

Sean Slagle brought this form issue to the attention of the Committee. Judge Jones stated that the misspelling is clearly a trivial matter and illustrates the point made above that some changes should not take up this Committee's time. Judge Jones will send this change to the Court.

C. C.R.C.C.P. 343—Conflicting Statute Related to Remote Hearings in Eviction Proceedings—(Justice Gabriel)

Justice Gabriel brought this to the Committee and noted that there is a conflict between C.R.C.C.P. 343 and a statute that went into effect January 1st. The legislative mandate requires that in eviction cases, if any party or witness wants a remote hearing, they may appear remotely. Justice Gabriel proposed a solution and members expressed approval of that language.

A motion was made to adopt Justice Gabriel's language. A friendly amendment was then taken to add the word "remote" after "concerning". The motion passed 12-2. Judge Jones then formed a subcommittee to further explore remote hearings within the civil and county rules of eviction proceedings. Those interested should email Judge Jones to join.

D. C.R.C.P. 121 § 1-14(1)(a)—Clarification—(Brad Levin)

Brad Levin brought this to the Committee and noted that this rule provides that, in order to obtain a default judgment, the movant must provide the court with "[t]he original summons showing valid service on the particular defendant in accordance with Rule 4, C.R.C.P." However, the summons does not reflect service of process on a party. Mr. Levin recommended that the phrase "and return of service" be inserted following the word "summons."

While some members noted that this change does not seem necessary, it passed unanimously.

E. C.R.C.P. 56—Conflict with Federal Rule—(Brad Levin)

Brad Levin noted that there is a conflict between the Colorado and federal rules regarding whether documents presented to support or oppose a motion for summary judgment must be attached to an affidavit. Colorado's rule indicates that, other than pleadings, depositions, and discovery responses, affidavits are required to establish the presence or absence of material facts. The federal rule does not have a similar requirement. One member researched this issue and said that the federal rule appears to be unclear, and a Colorado rule change might have long-reaching ramifications. Given the comments, Judge Jones tabled this issue.

F. C.R.C.P. 16(f)(3)(VI)(D)—Deposition Schedule—(Brad Levin)

Brad Levin said that another attorney brought to his attention that, under this rule, the designation schedule often results in the submittal of the designations on the Friday before a Monday trial. Consequently, a court is either left to rule on the designations over the weekend before trial or during the trial itself. The attorney has proposed that the Committee consider modifying the schedule so that designations must be filed further in advance of the trial.

A motion was made to change the language of the rule in terms of days. Some members preferred a longer timeline while others preferred a shorter one. The Committee voted 9-6 to approve the 28, 21, 14, and 7 timeline. Judge Jones will transmit this to the Court, noting the significant disagreement as to the exact timelines so that the Court realizes there is support for a longer timeline.

Future Meetings

April 5, June 28, September 27, and November 1

The Committee adjourned at 3:32 p.m.

RULE CHANGE 2024(05)

COLORADO RULES OF CIVIL PROCEDURE

Chapter 25 Colorado Rules of County Court Civil Procedure

Rule 343. Evidence

(a) - (g) [NO CHANGE]

(h)(1) [NO CHANGE]

(2) [NO CHANGE]

(3) Determination. Subject to the requirements of section 13-40-113.5, C.R.S., concerning remote residential eviction proceedings, tThe court shall determine whether in the interest of justice absentee testimony may be allowed. The facts to be considered by the court in determining whether to permit absentee testimony shall include but not be limited to the following:

(A) - (I) [NO CHANGE]

Rule 343. Evidence

(a) - (g) [NO CHANGE]

(h)(1) [NO CHANGE]

(2) [NO CHANGE]

(3) Determination. Subject to the requirements of section 13-40-113.5, C.R.S., concerning remote residential eviction proceedings, the court shall determine whether in the interest of justice absentee testimony may be allowed. The facts to be considered by the court in determining whether to permit absentee testimony shall include but not be limited to the following:

(A) - (I) [NO CHANGE]

Amended and Adopted by the Court, En Banc, February 1, 2024, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

RULE CHANGE 2024(08)

COLORADO RULES OF CIVIL PROCEDURE

Rules 4, 12, and 16.5

Rule 4. Process

(a) To What Applicable. This Rule applies to all process except as otherwise provided by these rules.

(b) Issuance of Summons by Attorney or Clerk. The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

(c) Contents of Summons.

(1) The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4(g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

(2) In forcible entry and detainer cases, the summons shall also contain all language and information required by statute, and in addition to the complaint, be accompanied by a blank copy of Form JDF 103 Eviction Answer, Form JDF 186 Information for Eviction Cases, Form JDF 108 Request for Documents in Eviction Cases, and blank copies of forms JDF 205 and 206 (fee waiver forms).

(d) – (m) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 12. Defenses and Objections–When and How Presented–By Pleading or Motion–Motion for Judgment on Pleadings

(a) When Presented.

(1) A defendant shall file his answer or other response within 21 days after the service of the summons and complaint, except as otherwise provided by rule or statute. The filing of a motion permitted under this Rule alters these periods of time, as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within 14 days after notice of the court's action;

(B) 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 14 days after the service of the more definite statement or amended pleading.

(2)– (6) [NO CHANGE]

(b) – (h) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 16.5. Pretrial Procedure – Forcible Entry and Detainer Proceedings for Possession – Requests for Documents and Conference

(a) Purpose and Scope. This Rule applies to Forcible Entry and Detainer proceedings for possession, unless otherwise provided by statute, by agreement of the parties, or by order of the court.

(b) Requests for Documents.
(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 187 (Request for Documents in Eviction Cases) to the opposing party.
(2) Any party failing to comply with a court order requiring such party to provide documents relevant to the current action shall be subject to imposition of appropriate sanctions.

(c) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a possession trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, or (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to such trial, the court may in its discretion, and upon reasonable notice, order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney fees and expenses incurred by the appearing party. The court may encourage the parties to engage in mediation.

(d) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request may be made only during the pretrial conference. The discovery may include depositions, requests for admissions, interrogatories, physical or mental examinations, or requests for production or inspection of documents. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall supply the missing term.

(e) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney fees and costs, against the non-complying party.

Rule 4. Process

(a) To What Applicable. This Rule applies to all process except as otherwise provided by these rules.

(b) Issuance of Summons by Attorney or Clerk. The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

(c) Contents of Summons.

(1) The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4(g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

(2) In forcible entry and detainer cases, the summons shall also contain all language and information required by statute, and in addition to the complaint, be accompanied by a blank copy of Form JDF 103 Eviction Answer, Form JDF 186 Information for Eviction Cases, Form JDF 108 Request for Documents in Eviction Cases, and blank copies of forms JDF 205 and 206 (fee waiver forms).

(d) – (m) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 12. Defenses and Objections–When and How Presented–By Pleading or Motion–Motion for Judgment on Pleadings

(a) When Presented.

(1) A defendant shall file his answer or other response within 21 days after the service of the summons and complaint, except as otherwise provided by rule or statute. The filing of a motion permitted under this Rule alters these periods of time, as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within 14 days after notice of the court's action;

(B) 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 14 days after the service of the more definite statement or amended pleading.

(2)– (6) [NO CHANGE]

(b) – (h) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 16.5. Pretrial Procedure – Forcible Entry and Detainer Proceedings for Possession – Requests for Documents and Conference

(a) Purpose and Scope. This Rule applies to Forcible Entry and Detainer proceedings for possession, unless otherwise provided by statute, by agreement of the parties, or by order of the court.

(b) Requests for Documents.
(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 187 (Request for Documents in Eviction Cases) to the opposing party.
(2) Any party failing to comply with a court order requiring such party to provide documents relevant to the current action shall be subject to imposition of appropriate sanctions.

(c) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a possession trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, or (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to such trial, the court may in its discretion, and upon reasonable notice, order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney fees and expenses incurred by the appearing party. The court may encourage the parties to engage in mediation.

(d) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request may be made only during the pretrial conference. The discovery may include depositions, requests for admissions, interrogatories, physical or mental examinations, or requests for production or inspection of documents. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall supply the missing term.

(e) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney fees and costs, against the non-complying party.

Amended and Adopted by the Court, En Banc, May 2, 2024, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

RULE CHANGE 2024(09)
COLORADO RULES OF CIVIL PROCEDURE Chapter 25
Colorado Rules of County Court Civil Procedure

Rules: 312, 312.5, and 316.5

Rule 312. Defenses and Objections in Non-Forcible Entry and Detainer Cases –When and How Presented–By Pleading or Motion–Motion for Judgment on Pleadings

(a) Responsive Pleadings; When Presented. The defendant shall file an answer including any counterclaim or cross-claim on or before the appearance date as fixed in the summons. Except as otherwise provided in this Rule and Rule 312.5, the appearance date shall not be more than 63 days from the date of the issuance of the summons and the summons must have been served at least 14 days before the appearance date. When circumstances require that the plaintiff proceed under Rule 304(e), the above limitation shall not apply and the appearance date shall not be less than 14 days after the completion of service by publication or mail.

(b) Motions. Except as otherwise provided in Rule 312.5, motions raising defenses made by the defendant on or before the appearance date shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

(c) – (d) [NO CHANGE]

Rule 312.5. Defenses, ~~and~~ Objections, and Responses in Forcible Entry and Detainer Cases–When and How. ~~Defenses and Objections in Forcible Entry and Detainer Cases –~~by Pleading or Motion.

(a) – (d) [NO CHANGE]

(e) Tender of Full Payment. A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant's full payment of all amounts due according to the notice, as well as any rent that remains due under the rental agreement, at any time until a judge issues a judgment for possession pursuant to C.R.S. § 13-40-115(1) or (2). A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall (1) vacate any judgments that have been issued; and (2) dismiss the action with prejudice.

Rule 316.5. Pretrial Procedure–Forcible Entry and Detainer Cases–Requests for Documents and Conference.

(a) Requests for Documents.
(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.
(2) Any party failing to comply with a court order requiring such party to provide ~~documentation~~ documents relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion, and upon reasonable notice, order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney~~'s~~ fees and expenses incurred by the appearing party. The c~~C~~ourt~~s~~ may encourage the parties to engage in mediation.

(c) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request ~~shall~~ may be made only during the pretrial conference. The discovery may include depositions, requests for admissions, interrogatories, requests for physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall ~~be followed as to~~supply the missing term.

(d) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

(e) Juror Notebooks. If a jury is empaneled, t~~T~~he court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

Rule 312. Defenses and Objections in Non-Forcible Entry and Detainer Cases –When and How Presented –By Pleading or Motion –Motion for Judgment on Pleadings

(a) Responsive Pleadings; When Presented. The defendant shall file an answer including any counterclaim or cross-claim on or before the appearance date as fixed in the summons. Except as otherwise provided in this Rule and Rule 312.5, the appearance date shall not be more than 63 days from the date of the issuance of the summons and the summons must have been served at least 14 days before the appearance date. When circumstances require that the plaintiff proceed under Rule 304(e), the above limitation shall not apply and the appearance date shall not be less than 14 days after the completion of service by publication or mail.

(b) Motions. Except as otherwise provided in Rule 312.5, motions raising defenses made by the defendant on or before the appearance date shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

(c) – (d) [NO CHANGE]

Rule 312.5. Defenses, Objections, and Responses in Forcible Entry and Detainer Cases– When and How. –by Pleading or Motion.

(a) – (d) [NO CHANGE]

(e) Tender of Full Payment. A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant's full payment of all amounts due according to the notice, as well as any rent that remains due under the rental agreement, at any time until a judge issues a judgment for possession pursuant to C.R.S. § 13-40-115(1) or (2). A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall (1) vacate any judgments that have been issued; and (2) dismiss the action with prejudice.

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(2) Any party failing to comply with a court order requiring such party to provide documents relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion, and upon reasonable notice, order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney fees and expenses incurred by the appearing party. The court may encourage the parties to engage in mediation.

(c) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request may be made only during the pretrial conference. The discovery may include depositions, requests for admissions, interrogatories, requests for physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall supply the missing term.

(d) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

(e) Juror Notebooks. If a jury is empaneled, the court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

Amended and Adopted by the Court, En Banc, May 2, 2024, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

From:	Owen, Brent
To:	michaels, kathryn
Subject:	[External] Fwd: Rule 103 Problem
Sent:	4/16/2024 5:45:53 PM

Hi Kathryn,

Could we get the email below added to the agenda for June? Aaron indicated he'd be happy to explain it in person at the meeting.

Thanks!

Brent

Brent Owen
Partner, Haynes Boone
(972) 762-7300

Begin forwarded message:

> **From:** Aaron Boschee <aaron@achievelawgroup.com>
> **Date:** April 16, 2024 at 5:32:01 PM MDT
> **To:** "Owen, Brent" <Brent.Owen@haynesboone.com>
> **Subject: Rule 103 Problem**
>
>
>
> Hi Brent,
>
> Thanks again for taking time to speak to me regarding a quirk in the rules that I believe could be easily remedied to provide clarity to all litigants and avoid making section 2 of Rule 103 practically useless. As we discussed, I recently encountered an issue regarding Rule 103 § 2 and its interrelationship with Rule 121 § 1-26. As context, Rule 121 § 1-26 requires all filings by attorneys to be made electronically, which filing then automatically provides notice to the other parties/counsel of each such filing. Rule 103 § 2 concerns writs of garnishment on personal property other than earnings of a natural person. As a practical matter, § 2 of Rule 103 generally applies when a judgment creditor wants to garnish a debtor's bank account.
>
> As it currently exists, Rule 103 § 2 requires a judgment creditor to request

issuance of a writ of garnishment from the Court Clerk. Because of Rule 121 § 1-26, such request must be made through e-filing. And, even if a judgment creditor tried to file the request under seal, the judgment creditor would have to state the reason for the request to file under seal, and the Court (typically a clerk) would then decide whether to actually seal the filing. The practical consequences are that, if a judgment creditor requests issuance of a writ of garnishment for a judgment debtor's bank account, the judgment debtor obtains advanced notice that the writ has been requested—providing ample time for them to withdraw all funds from their bank account before the writ is even issued, let alone served on the bank. The problems inherent in this process were confirmed today through conversations with the clerk of court for Jefferson County District Court, who acknowledged that such a writ is generally rendered useless due to the procedures necessary to obtain the writ.

Rule 103 (at least as regards § 2 of the rule) should be amended so that attorneys could issue a writ of garnishment directly, similar to the process for issuing subpoenas under Rule 45 (or a Summons under Rule 4). Filing of the writ with the Court could be required within 48 hours of service upon the garnishee, and service of the writ upon the judgment debtor under Rule 5 would still be required "as soon as practicably possible" after the garnishee is served. In almost all cases, that service would occur upon e-filing the writ after service upon the garnishee. The garnishee's answer to the writ would still be filed with the Court. In other words, the propriety of the writ and any disputes regarding the process would still be overseen by the Court. The only practical change would be that the judgment debtor would not get advance notice of the request for a writ and, thereby, be able to circumvent the very purpose of the writ in the first place.

I would be happy to discuss this further with you and, if requested, the other members of the rules committee. Thank you for considering this matter.

Aaron A. Boschee

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Rule 103. Garnishment

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment--Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1. WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) Definitions.

(1) "Continuing garnishment" means the exclusive procedure for withholding the earnings of a judgment debtor for successive pay periods for payment of a judgment debt other than a judgment for support as provided in subsection (c) of this rule.

(2) "Earnings" shall be defined in section 13-54.5-101(2), C.R.S., as applicable.

(b) Form of Writ of Continuing Garnishment and Related Forms. A writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 26, C.R.C.P. It shall also include at least one (1) "Calculation of Amount of Exempt Earnings" form to be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(c) When Writ of Continuing Garnishment Issues. After entry of judgment when a writ of execution can issue, a writ of continuing garnishment against earnings shall be issued by the clerk of the court upon request of the judgment creditor. Under a writ of continuing garnishment, a judgment creditor may garnish earnings except to the extent such earnings are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Continuing Garnishment. A judgment creditor shall serve two (2) copies of the writ of continuing garnishment, together with a blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), upon the garnishee, one copy of which the garnishee shall deliver to the judgment debtor as provided in subsection (h)(1) of this rule. Service of the writ shall be in accordance with C.R.C.P. 4, and the person who serves the writ shall note the date and time of such service on the return service. In any civil action, a judgment creditor shall serve no more than one writ of continuing garnishment upon any one garnishee for the same judgment debtor during the Effective Garnishment Period. This restriction shall not preclude the issuance of a subsequent writ within the Effective Garnishment Period.

(e) Jurisdiction. Service of a writ of continuing garnishment upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period.

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

(2) When a writ of continuing garnishment is served upon a garnishee during the Effective Garnishment Period of a prior writ, it shall be effective for the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.
(3) If a writ of garnishment for support pursuant to C.R.S. 14-14-105 is served during the effective period of a writ of continuing garnishment, the Effective Garnishment Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.
(g) Exemptions. A garnishee shall not be required to deduct, set up or plead any exemption for or on behalf of a judgment debtor excepting as set forth in the Exemption Chart contained in the writ.
(h) Delivery of Copy to Judgment Debtor.
(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings or For Reduction of Withholding Pursuant to Section 13-54-104(2)(a)(I)(D)" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), to the judgment debtor not later than 7 days after the garnishee is served with the writ of continuing garnishment.
(2) For all pay periods affected by the writ, the garnishee shall deliver a copy of the calculation of the amount of exempt earnings and the "Judgment Debtor's Objection to the Calculation of Amount of Exempt Earnings" to the judgment debtor at the time the judgment debtor receives earnings for that pay period.
(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings or object and request an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S. A judgment debtor's objection to calculation of exempt earnings or objection and request for an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., shall be in accordance with Section 6 of this rule.
(j) Suspension. A writ of continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which judgment was entered and a copy shall be delivered by the judgment creditor to the garnishee. No suspension shall extend the running of the Effective Garnishment Period nor affect priorities.
(k) Answer and Tender of Payment by Garnishee.
(1) The garnishee shall file the answer to the writ of garnishment with the clerk of the court and send a copy to the judgment creditor not later than 7 days after the garnishee is served with the writ of continuing garnishment pursuant to section 13-54.5-105(5), C.R.S. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., the garnishee shall send such response to the attorney or licensed collection agency.
(2) In the event the answer required by Section 1(k)(1) of this rule is filed and served pursuant to section 13-54.5-105(5)(b), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of continuing garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.
(3) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of

exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.
(4) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.
(*l*) Disbursement of Garnished Earnings.
(1) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., is filed by the judgment debtor within 21 days after the garnishee was served with the writ of continuing garnishment, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.
(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court and a copy is delivered to the garnishee, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.
(m) Request for Accounting of Garnished Funds by Judgment Debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2. WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) Definition. "Writ of garnishment with notice of exemption and pending levy" means the exclusive procedure through which the personal property of any kind (other than earnings of a natural person) in the possession or control of a garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held for payment of a judgment debt. For the purposes of this rule such writ is designated "writ with notice."
(b) Form of Writ With Notice and Claim of Exemption. A writ with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 29, C.R.C.P. A judgment debtor's written claim of exemption shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.
(c) When Writ With Notice Issues. After entry of a judgment when a writ of execution may issue, a writ with notice shall be issued by the clerk of the court upon request. Under such writ any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings of a natural person, owed to, or owned by, the judgment debtor, and in the possession or control of the garnishee at the time of service of such writ upon the garnishee, shall be subject to the process of garnishment. Issuance of a writ of execution shall not be required before the issuance of a writ with notice.
(d) Service of Writ With Notice.

(1) Service of a writ with notice shall be made in accordance with C.R.C.P. 4.
(2) Following service of the writ with notice on the garnishee, a copy of the writ with notice, together with a blank copy of C.R.C.P. Form 30 "Claim of Exemption to Writ of Garnishment with Notice" (Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.), shall be served upon each judgment debtor whose property is subject to garnishment by such writ as soon thereafter as practicable. Such service shall be in accordance with C.R.S. 13-54.5-107(2).
(e) Jurisdiction. Service of a writ with notice upon the garnishee shall give the court jurisdiction over the garnishee and any personal property of any description, owned by, or owed to the judgment debtor in the possession or control of the garnishee.
(f) Claim of Exemption. A judgment debtor's claim of exemption shall be in accordance with Section 6 of this rule.
(g) Court Order on Garnishment Answer.
(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.
(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed and the same was disallowed.
(3) If an answer to a writ with notice shows the garnishee to possess or control intangible personal property or personal property capable of manual delivery owned by the judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.
(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.
(h) Disbursement by Clerk of Court. The clerk of the court shall disburse funds to the judgment creditor without further application or order and enter the disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.
(i) Automatic Release of Garnishee. If a garnishee answers a writ with notice that the garnishee is indebted to the judgment debtor in an amount less than $50.00 and no traverse has been filed, the garnishee shall automatically be released from said writ if the garnishee shall not have been ordered to pay the indebtedness to the clerk of the court within 182 days from the date of service of such writ.

SECTION 3. WRIT OF GARNISHMENT FOR SUPPORT

(a) Definitions.

(1) "Writ of garnishment for support" means the exclusive procedure for withholding the earnings of a judgment debtor for payment of a judgment debt for child support arrearages, maintenance when combined with child support, or child support debts, or maintenance.
(2) "Earnings" shall be as defined in Section 13-54.5-101(2), C.R.S., as applicable.
(b) Form of Writ of Garnishment for Support. A writ of garnishment for support shall be in the form and content of Appendix to Chapters 1 to 17A, Form 31, C.R.C.P. and shall include at least four (4) "Calculation of Amount of Exempt Earnings" forms which shall be in the form and content of Appendix to Chapters 1 to 17A, Form 27, C.R.C.P.
(c) When Writ of Garnishment for Support Issues. Upon compliance with C.R.S. 14-10-122(1)(c), a writ of garnishment for support shall be issued by the clerk of the court upon request. Under such writ a judgment creditor may garnish earnings except to the extent such are exempt under law. Issuance of a writ of execution shall not be required.
(d) Service of Writ of Garnishment for Support. Service of a writ of garnishment for support shall be in accordance with C.R.C.P. 4.
(e) Jurisdiction. Service of a writ of garnishment for support upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.
(f) Effective Garnishment Period and Priority.
(1) A writ of garnishment for support shall be continuing and shall require the garnishee to withhold, pursuant to law, the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment released by the court or released in writing by the judgment creditor.
(2) A writ of garnishment for support shall have priority over any writ of continuing garnishment notwithstanding the fact such other writ may have been served upon the garnishee previously.
(g) Answer and Tender of Payment by Garnishee.
(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.
(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, as directed in the writ of garnishment for support, to the family support registry, the clerk of the court which issued such writ, or to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period of such writ.
(h) Disbursement of Garnished Earnings. The family support registry or the clerk of the court shall disburse nonexempt earnings to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 4. WRIT OF GARNISHMENT--JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) Definition. "Writ of garnishment--judgment debtor other than natural person" means the exclusive procedure through which personal property of any kind of a judgment debtor other than a natural person in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter is required to be held by a garnishee for

payment of a judgment debt. For purposes of this rule, such writ is designated "writ of garnishment--other than natural person."

(b) Form of Writ of Garnishment--Other Than Natural Person. A writ of garnishment under this Section shall be in the form and content of Appendix to Chapters 1 to 17A, Form 32, C.R.C.P.

(c) When Writ of Garnishment--Other Than Natural Person Issues. When the judgment debtor is other than a natural person, after entry of a judgment, and when a writ of execution may issue, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment, the judgment creditor may garnish personal property of any description owned by, or owed to, such judgment debtor and in the possession or control of the garnishee. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment--Other Than Natural Person. Service of the writ of garnishment--other than natural person shall be made in accordance with C.R.C.P. 4. No service of the writ or other notice of levy need be made on the judgment debtor.

(e) Jurisdiction. Service of the writ of garnishment--other than natural person shall give the court jurisdiction over the garnishee and personal property of any description, owned by, or owed to, a judgment debtor who is other than a natural person, in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness be paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 5. WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

(a) Definition. "Writ of garnishment in aid of writ of attachment" means the exclusive procedure through which personal property of any kind of a defendant in an attachment action (other than earnings of a natural person) in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held by a

garnishee. For purposes of this rule, such writ is designated "writ of garnishment in aid of attachment."

(b) Form of Writ of Garnishment in Aid of Attachment and Form of Notice of Levy. A writ of garnishment in aid of attachment shall be in the form and content of Appendix to Chapters 1 to 17A, Form 33, C.R.C.P. A Notice of Levy shall be in the form and content of Appendix to Chapters 1 to 17A, Form 34, C.R.C.P.

(c) When Writ of Garnishment in Aid of Attachment Issues. At any time after the issuance of a writ of attachment in accordance with C.R.C.P. 102, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment the plaintiff in attachment may garnish personal property of any description, except earnings of a natural person, owed to, or owned by, such defendant in attachment and in the possession or control of the garnishee.

(d) Service of Writ of Garnishment in Aid of Attachment. Service of the writ of garnishment in aid of attachment shall be made in accordance with C.R.C.P. 4. If the defendant in attachment is a natural person, service of a notice of levy shall be made as required by C.R.S. 13-55-102. If the defendant in attachment is other than a natural person, a notice of levy need not be served on the defendant in attachment.

(e) Jurisdiction. Service of the writ of garnishment in aid of attachment shall give the court jurisdiction over the garnishee and personal property of any description (except earnings of a natural person), owned by, or owed to, a defendant in attachment in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer.

(1) When the defendant in attachment is an entity other than a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, the clerk shall enter judgment in favor of such defendant in attachment and against the garnishee for the use of the plaintiff in attachment for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing nor shall such judgment enter for the benefit of a plaintiff in attachment until a judgment has been entered by the court against such defendant in attachment.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such defendant in attachment, at any time after judgment has entered against such defendant in attachment, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor/defendant in attachment.

(2) When the defendant in attachment is a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor upon a showing that such defendant in attachment has been served with a notice of levy as required by C.R.S. 13-55-102, the court shall enter judgment in favor of the defendant in attachment/judgment debtor and against the garnishee for the use of the plaintiff in attachment/judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the

garnishee be more than the amount of the judgment against the defendant in attachment/judgment debtor.
(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property owned by, or owed to, such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor and upon a showing that such defendant in attachment has been served with a notice of levy as required by C.R.S. 13-55-102, the court shall order the garnishee to deliver the property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt but any surplus of property or proceeds shall be delivered to the defendant in attachment/judgment debtor.
(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of the court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 6. JUDGMENT DEBTOR'S OBJECTION--WRITTEN CLAIM OF EXEMPTION--HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.
(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.
(2) If the judgment debtor's objection to the calculation of exempt earnings is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.
(3) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.
(4) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. The judgment debtor may object to the calculation on hardship grounds at any time during the pendency of the garnishment.
(5) The written objection made under Section 6(a)(2) or Section 6(a)(4) of this rule shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.
(6) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(7) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2(d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

(2) The claim of exemption to the writ of garnishment with notice shall be in the form and content of Appendix to Chapters 1 to 17A, Form 30, C.R.C.P.

(3) The judgment debtor shall, by certified mail, return receipt requested, deliver a copy of the claim of exemption to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor.

(4) Upon the filing of a claim of exemption to a writ with notice, all proceedings with relation to property in the possession or control of the garnishee shall be stayed until such claim is determined by the court.

(c) Hearing on Objection or Claim of Exemption.

(1) Upon the filing of an objection pursuant to Section 6(a) of this rule or the filing of a claim of exemption pursuant to Section 6(b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

(2) When an objection or claim of exemption is filed, the clerk of the court shall immediately inform the judgment creditor, the judgment debtor and the garnishee, or their attorneys of record, by telephone, by mail, or in person, of the date and time of such hearing.

(3) The clerk of the court shall document in the court record that notice of the hearing has been given in the manner required by this rule. Said documentation in the court record shall constitute a sufficient return and prima facie evidence of such notice.

(4) The court in which judgment was entered shall conduct a hearing at which all interested parties may testify, and shall determine the validity of the objection or claim of exemption filed by the judgment debtor and shall enter a judgment in favor of the judgment debtor to the extent of the validity of the objection or claim of exemption, which judgment shall be a final judgment for the purpose of appellate review.

(5) If the court shall find the amount of exempt earnings to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property to the clerk of the court for the use and benefit of the judgment debtor within three (3) business days.

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6(a)(2), Section 6(a)(4) and Section 6(b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings or property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) A hearing pursuant to this subsection shall be held only upon a verified showing, under oath, of good cause which shall include: mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow, but in no event shall a hearing be held pursuant to this subsection on grounds available to the judgment debtor as the basis of an objection or claim of exemption within the time periods provided in Section 6(a)(2) and Section 6(b)(1).
(3) At such hearing, if the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold as upon execution was exempt. If the court finds earnings to have been miscalculated or if property is found to be exempt, the court shall enter judgment in favor of the judgment debtor for the amount of the over-garnished earnings or such exempt property or the value thereof which judgment shall be satisfied by payment to the clerk of the court or the return of exempt property to the judgment debtor within three (3) business days.
(e) Reinstatement of Judgment Debt. If at any time the court orders a return of over-garnished earnings or exempt property or the value of such exempt property pursuant to Sections 6(c)(5) and 6(d)(3) of this rule, the court shall thereupon reinstate the judgment to the extent of the amount of such order.

SECTION 7. FAILURE OF GARNISHEE TO ANSWER (ALL FORMS OF GARNISHMENT)

(a) Default Entered by Clerk of Court.
(1) If a garnishee, having been served with any form of writ provided for by this rule, fails to answer or pay any nonexempt earnings as directed within the time required, the clerk of the court shall enter a default against such garnishee upon request.
(2) No default shall be entered in an attachment action against the garnishee until the expiration of 42 days after service of a writ of garnishment upon the garnishee.
(b) Procedure After Default of Garnishee Entered.
(1) After a default is entered, the judgment creditor, plaintiff in attachment or any intervenor in attachment, may proceed before the court to prove the liability of the garnishee to the judgment debtor or defendant in attachment.
(2) If a garnishee is under subpoena to appear before the court for a hearing to prove such liability and such subpoena shall have been issued and served in accordance with C.R.C.P. 45 and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.
(3) Upon hearing, if the court finds the garnishee liable to the judgment debtor or defendant in attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:
(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;
(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4(f)(2) of this rule, if the garnishee was in the

possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.
(4) At any hearing the court shall make such orders as to reasonable attorney's fees, costs and expense of the parties to such hearing, as are just.

SECTION 8. TRAVERSE OF ANSWER (ALL FORMS OF GARNISHMENT)

(a) Time for Filing of Traverse. The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

(b) Procedure.

(1) Within the time provided, the judgment creditor, plaintiff in attachment, or intervenor in attachment, shall state, in verified form, the grounds of traverse and shall mail a copy of the same to the garnishee in accordance with C.R.C.P. 5.
(2) Upon application of the judgment creditor, plaintiff in attachment, or intervenor in attachment, the traverse shall be set for hearing before the court at which hearing the statements in the traverse shall be deemed admitted or denied.
(3) Upon hearing of the traverse, if the court finds the garnishee liable to the judgment debtor or defendant in the attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:
(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;
(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4(f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.
(4) If a garnishee is under subpoena to appear for a hearing upon a traverse and such subpoena shall have been issued and served in accordance with C.R.C.P. 45, and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.
(5) At any hearing upon a traverse, the court shall make such orders as to reasonable attorney fees, costs and expense of the parties to such hearing as are just.

SECTION 9. INTERVENTION (ALL FORMS OF GARNISHMENT)

Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in C.R.C.P. 24 at any time prior to entry of judgment against the garnishee.

SECTION 10. SET-OFF BY GARNISHEE (ALL FORMS OF GARNISHMENT)

Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whether such are payable or not at the time of service of any form or writ provided for by this rule.

SECTION 11. GARNISHEE NOT REQUIRED TO DEFEND CLAIMS OF THIRD PERSONS (ALL FORMS OF GARNISHMENT)

(a) Garnishee With Notice. A garnishee with notice of the claim of a third person in any property of any description of a judgment debtor or defendant in attachment which is the subject of any answer made by the garnishee in response to any form of writ provided for by this rule shall not be required to defend on account of such claim, but shall state in such answer that the garnishee is informed of such claim of a third person.

(b) Court to Issue Summons. When such an answer has been filed, the clerk of the court, upon application, shall issue a summons requiring such third person to appear within the time specified in C.R.C.P. 12 to answer, set up, and assert a claim or be barred thereafter.

(c) Delivery of Property by Garnishee.

(1) If the answer states that the garnishee is informed of the claim of a third person, the garnishee may at any time pay to the clerk of the court any garnished amount payable at the time of the service of any writ provided for by this rule, or deliver to the sheriff any property the garnishee is required to hold pursuant to any form of writ provided for in this rule.

(2) Upon service of the summons upon such third person pursuant to C.R.C.P. 4, the garnishee shall thereupon be released and discharged of any liability to any person on account of such indebtedness to the extent of any amount paid to the clerk of the court or any property delivered to the sheriff.

SECTION 12. RELEASE AND DISCHARGE OF GARNISHEE (ALL FORMS OF GARNISHMENT)

(a) Effect of Judgment. A judgment against a garnishee shall release and discharge such garnishee from all claims or demands of the judgment debtor or defendant in attachment to the extent of all sums paid or property delivered by the garnishee pursuant to such judgment.

(b) Effect of Payment. Payment by a garnishee of any sums required to be remitted by such garnishee pursuant to Sections 1(k)(2) or 3(g)(2) of this rule shall release and discharge such garnishee from all claims or demands of the judgment debtor to the extent of all such sums paid.

(c) Release by Judgment Creditor or Plaintiff in Attachment. A judgment creditor or plaintiff in attachment may issue a written release of any writ provided by this rule. Such release shall state the effective date of the release and shall be promptly filed with the clerk of the court.

SECTION 13. GARNISHMENT OF PUBLIC BODY (ALL FORMS OF GARNISHMENT)

Any writ provided for in this rule wherein a public body is designated as the garnishee, shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or defendant in attachment, or, such officer as the public body may have designated to accept service. Such officer need not include in any answer to such writ, as money

owing, the amount of any warrant or check drawn and signed prior to the time of service of such writ.

EFFECTIVE DATE OF THIS RULE AND AMENDMENTS TO THIS RULE

[Repealed October 31, 1991, effective November 1, 1991].

COMMENTS

The Colorado Legislature amended Sections 13-54-104 and 13-54.5-101, C.R.S. (Section 7 of Chapter 65, Session Laws of Colorado 1991), which changed the definition of "earnings" applicable only to actions commenced on or after May 1, 1991. The amendment impacts the ability to garnish certain forms of income, depending upon when the original action was commenced. Sections 1 and 3 of the Rule and Forms 26 and 31 have been revised to deal with this legislative amendment.

From:	slagle, sean
To:	michaels, kathryn
Subject:	Rule 304 Suggested Update
Attachments:	Rule 304 change.docx
Sent:	6/6/2024 6:58:40 AM

Hi Kathryn,

Would you mind passing on this suggested rule change for consideration by the Civil Rules Committee?

Changes Summary:

- JDF number added for the Summons (still also Form 1A).
- Added form numbers for the answer forms.
- Updated JDF number for Request for Documents.
- Removed mention of JDF 186SC. The contents of that document were moved to the resources section of the Summons.

Please let me know if there are any questions.

Best,

Sean Slagle, J.D. (she/her)
Forms Editor
Access to Justice Unit
Court Services Division | SCAO

Empowering people to engage with the court system.

Rule 304. Service of Process

(a) [NO CHANGE]

(b)(1) [NO CHANGE]

(2) *Initial Process in Forcible Entry and Detainer Cases.* Plaintiff shall serve the following on the defendant at least seven days before the return date: (1) ~~summons containing all language and information required by statute~~Form JDF 102: Eviction Summons; (2) complaint; (3) blank copy of the answer form (Form JDF 103: Eviction Answer for residential evictions, Form JDF 143 for mobile home evictions; CRCCP Form 3 for all others); (4) ~~Form JDF 186 SC: Information for Eviction Cases; (5)~~ Form JDF 1~~85 SC~~08: Request for Documents in Eviction Cases; and (~~6~~5) blank copies of Forms JDF 205 and 206 (fee waiver forms).

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

From: gabriel, richard
Sent: Tuesday, February 27, 2024 1:52 PM
To: leutwyler, ben
Cc: jones, jerry; michaels, kathryn
Subject: RE: Civil Rules Committee

Hi, Ben –

Thanks for this! I think you may be right. County Court Rule of Civil Procedure 411(d)
deals with briefing re county court appeals, but there is no page limit there, and the
Colorado Appellate Rules say, in the “Applicability of Rules” section at the front, that
they apply to appeals in the Court of Appeals and the Supreme Court.

I am cc’ing Judge Jones, who chairs the Civil Rules Committee, and Kathryn Michaels,

who is our staff person on that committee (I am my court’s liaison to the committee). I
think this is worth looking at.

I appreciate your bringing it to our attention.

Best,

Rich

Richard L. Gabriel (he/him/his)
Justice, Colorado Supreme Court
2 East 14th Avenue
Denver, Colorado 80203
(720) 625-5440
richard.gabriel@judicial.state.co.us

From: leutwyler, ben <ben.leutwyler@judicial.state.co.us>
Sent: Tuesday, February 27, 2024 1:38 PM
To: gabriel, richard <richard.gabriel@judicial.state.co.us>
Subject: Civil Rules Committee

Justice Gabriel,

I understand that you are the head of the civil rules committee. If I should send this to someone else,
please let me know. At the risk of showing my ignorance, I have a suggestion for the civil rules
committee. I have looked for, but have not found, any rule or appellate opinion regarding the length of

briefs for county court appeals to the district court. I'm going to be very embarrassed if something exists but would be happy to know about it. I think it would be very helpful to have a rule similar to CAR 28(g) apply to these cases, with some language to accommodate pro se filings that may not be typewritten. I have not drafted any proposed language at this time but since I am making the suggestion I would be happy to take a stab at it.

From personal experience I have not had this be a frequent issue, but I have had the occasional brief that is far too long. Just yesterday a colleague told me that she received an 86 page opening brief in an appeal of a single count DUI conviction. I think it would be helpful for the bar to have a clearly stated limit to the length as opposed to potential variations dependent on the particular judge assigned to a case.

Thanks for considering this suggestion and please let me know if I should contact someone else about this.

All the best,
Ben

Ben Leutwyler
District Court Judge, 18th J.D.

C.A.R. 28(g)

(g) Length of Briefs.
(1) An opening brief and an answer brief must contain no more than 9,500 words. A reply brief must contain no more than 5,700 words. Headings, footnotes, and quotations count toward the word limitations. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit.
(2) A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten opening or answer brief of not more than 30 double-spaced and single-sided pages, or a reply brief of no more than 18 double-spaced and single-sided pages. Such a brief must otherwise comply with C.A.R. 32.
(3) A party may file a motion to exceed the word limitation explaining the reasons why additional words are necessary. The motion must be filed with the brief.

County Court Rule

411. Appeals

(a) Notice of Appeal; Time for Filing; Bond. If either party in a civil action believes that the judgment of the county court is in error, that party may appeal to the district court by filing a notice of appeal in the county court within 14 days after the date of entry of judgment. The notice shall be in the form appearing in the Appendix to Chapter 25, Form 4, C.R.C.P. If the notice of the entry of judgment is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the notice. The appealing party shall also file within the said 14 days an appeal bond with the clerk of the county court. The bond shall be furnished by a corporate surety authorized and licensed to do business in this state as a surety, or one or more sufficient private sureties, or may be a cash deposit by the appellant and, if the appeal is taken by the plaintiff, shall be conditioned to pay the costs of the appeal and the counterclaim, if any, and, if the appeal be taken by the defendant, shall be conditioned to pay the costs and judgment if the appealing party fail. The bond shall be approved by the judge or the clerk. Upon filing of the notice of appeal, the posting and approval of the bond, and the deposit by the appellant of an estimated fee in advance for preparing the record, the county court shall discontinue all further proceedings and recall any execution issued. The appellant shall also, within 35 days after the filing of the notice of appeal, docket the case in the district court and pay the docket fee.

(b) Preparation of Record on Appeal. Upon the deposit of the estimated record fee, the clerk of the court shall prepare and issue as soon as may be possible a record of the proceedings in the county court, including the summons, the complaint, proof of service, and the judgment. The record shall also include a transcription of such part of the actual evidence and other proceedings as the parties may designate or, in lieu of transcription, to which they may stipulate. If a stenographic record has been maintained or the parties agree to stipulate, the party appealing

shall lodge with the clerk of the court the reporter's transcript of the designated evidence or proceedings, or a stipulation covering such items within 42 days after the filing of the notice of appeal. If the proceedings have been electronically recorded, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the county court or under the supervision of the clerk, within 42 days after the filing of the notice of appeal. The clerk shall notify, in writing, the opposing parties of the completion of the record, and such parties shall have 14 days within which to file objections. If none are received, the record shall be certified forthwith by the clerk. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible, and the record then certified.

(c) Filing of Record. When the record has been duly certified and any additional fees therefor paid, it shall be filed with the clerk of the district court by the clerk of the county court, and the opposing parties shall be notified of such filing by the clerk of the county court.

(d) Briefs. A written brief shall contain a statement of the matters relied upon as constituting error and the arguments with respect thereto. It shall be filed in the district court by the appellant 21 days after filing of the record therein. A copy of such brief shall be served on the appellee. The appellee may file an answering brief within 21 days after such service. In the discretion of the district court, the time for filing of briefs and answers may be extended. When the briefs have been filed the matter shall stand at issue and shall be determined on the record and the briefs, with such oral argument as the court in its discretion may allow. No trial shall be held de novo in the district court unless the record of the proceedings in the county court have been lost or destroyed or for some other valid reason cannot be produced; or unless a party by proper proof to the court establishes that there is new and material evidence unknown and undiscoverable at the time of the trial in the county court which, if presented in a de novo trial in the district court, might affect the outcome.

(e) Determination of Appeal. Unless there is further review by the Supreme Court upon writ of certiorari and pursuant to the rules of such court, after final disposition of the appeal by the district court, the judgment on appeal therein shall be certified to the county court for action as directed by the district court, except upon trials de novo held in the district court or in cases in which the judgment is modified, in which cases the judgment shall be that of the district court and enforced therefrom.

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 South Tejon Street Colorado Springs, CO 80903	
Plaintiff: INEX Inc. v. **Defendant:** Krueger Brothers Construction	▲ **COURT USE ONLY** ▲ Case Number: 23CV395 23S437 Div.: 15 Ctrm: S403

ORDER REGARDING BRIEFING SCHEDULE

The record in this matter and the transcript of the proceedings below has been submitted.

Form of Briefs to be Submitted

Within 21 days from the date of this Order, the party who filed the appeal is ORDERED to submit an Opening Brief that shall contain:

(1) a table of contents, with page references, and a table of cases, statutes and other authorities cited, with references to the pages of the brief where they are cited;
(2) a statement of the issues presented for review;
(3) a statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record;
(4) an argument. The argument must be preceded by a summary. The argument shall contain the contentions of the appealing party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on;
(5) a short conclusion stating the precise relief sought.

Within 21 days after service of the appealing party's brief, the opposing party may file an Answer brief. The Opening and Answer briefs shall not exceed 30 pages. All briefs are to be double spaced with the type face not less than 12 point. The type face must be a plain, Times New Roman style, although italics may be used for emphasis. Briefs are to otherwise comply with the requirements of Rule 28 of the Colorado Appellate Rules. All briefs must be filed with the Court and served upon the opposing party.

References to Parties in Briefs

The parties will be expected in their briefs to keep to a minimum references to parties by such designation as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of the parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the People," "Defendant," etc.

Done this 9th day of February, 2024.

Gregory R. Werner
District Court Judge

From:	jones, jerry
To:	michaels, kathryn
Subject:	FW: Amendments to C.R.C.P. 11(b) to conform to the recent amendments to C.A.R. 5(e)
Attachments:	Rule 5 clean.docx;Rule 5 marked.docx;
Sent:	6/20/2024 1:14:52 PM

Here's stuff from Judge Lipinsky on Rule 11. We should also attach Rule 11.

From: lipinsky, lino <lino.lipinsky@judicial.state.co.us>
Sent: Friday, June 14, 2024 1:53 PM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Cc: gomez, christina <christina.gomez@judicial.state.co.us>; schutz, timothy <timothy.schutz@judicial.state.co.us>
Subject: Amendments to C.R.C.P. 11(b) to conform to the recent amendments to C.A.R. 5(e)

Jerry,

As we discussed this morning, I suggest that the Civil Rules Committee consider amendments to C.R.C.P. 11(b) to harmonize that rule with the recent amendments to C.A.R. 5(e), which the supreme court approved on May 16.

The C.A.R. 5(e) working group, on which Christina, Tim, and I served, anticipated that the Civil Rules Committee would add this matter to its agenda once the supreme court took action on our suggested revisions to C.A.R. 5(e). The supreme court adopted our recommendations with no changes.

Thank you for adding this matter to the agenda for an upcoming meeting of the Committee.

Lino S. Lipinsky de Orlov
Judge
Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
lino.lipinsky@judicial.state.co.us

From: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Sent: Thursday, May 16, 2024 2:16 PM
To: lipinsky, lino <lino.lipinsky@judicial.state.co.us>
Subject: RE: Rule Changes 2024(10) and (11)

Hi Judge,

Please see attached.

Thanks,
Kathryn

From: lipinsky, lino <lino.lipinsky@judicial.state.co.us>
Sent: Thursday, May 16, 2024 2:14 PM
To: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: RE: Rule Changes 2024(10) and (11)

Kathryn,

Do you have a Word version of the amendments to C.A.R. 5?

Thank you.

Lino S. Lipinsky de Orlov
Judge
Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
lino.lipinsky@judicial.state.co.us

From: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Sent: Thursday, May 16, 2024 2:08 PM
To: Supreme Court Justices <scj@judicial.state.co.us>; Supreme Court Clerks <scclerks@judicial.state.co.us>; Chief Judges <chiefjudges@judicial.state.co.us>; COA Judges <coajudges@judicial.state.co.us>; District Judges <districtjudges@judicial.state.co.us>; Court Executives <CourtExecutives@judicial.state.co.us>; County Judges <countyjudges@judicial.state.co.us>; Magistrates <magistrates@judicial.state.co.us>; Clerks of Court <clerksofcourt@judicial.state.co.us>; Chief Probation Officers <cpo@judicial.state.co.us>; mccallum, robert <robert.mccallum@judicial.state.co.us>; sarche, jon <jon.sarche@judicial.state.co.us>; vasconcellos, steven <Steven.Vasconcellos@judicial.state.co.us>; rice, brenidy <brenidy.rice@judicial.state.co.us>; COA Chamber Staff <coachamberstaff@judicial.state.co.us>; seniorjudges <seniorjudges@judicial.state.co.us>
Cc: cunningham, liz <liz.cunningham@judicial.state.co.us>; michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: Rule Changes 2024(10) and (11)

Good afternoon,

Rule Changes 2024(10) and (11) have been issued and are accessible via the hyperlinks below.

RULE CHANGE 2024(11)

THE COLORADO APPELLATE RULES

Rules 2, 3.3, 3.4, 4.1, 5, 12, 21, 29, 32, 40, 41, and JDF 1996

Amended and Adopted by the Court, En Banc, May 16, 2024, effective immediately.

RULE CHANGE 2024(10)

COLORADO RULES OF JUVENILE PROCEDURE

Rule 4.6

Amended and Adopted by the Court, En Banc, May 16, 2024, effective July 1, 2024.

Kathryn Michaels
Staff Attorney, Colorado Supreme Court
(720)-625-5105
Pronouns: she/her
*Please note I am out of the office on Wednesdays

**Judicial recognizes the need for digital document accessibility. If you experience inaccessible content and require assistance, please contact us by replying to this email.

Rule 5. Entry of Appearance and Withdrawal

(a) - (d) [NO CHANGE]

(e) Limited ~~Representation Entry of Appearance and Withdrawal.~~ Legal Services. An attorney may ~~undertake to~~ provide limited ~~representation~~legal services to a ~~pro se~~self-represented party involved in a civil appellate proceeding~~. Upon the request and with the consent of a pro se party, an~~ in accordance with Colo. R.P.C. 1.2(c) and the following provisions.

(1) Limited Legal Services Requiring Entry of Appearance and Withdrawal. An attorney may make a limited appearance for ~~the pro se party to file a notice of appeal and designation of transcripts in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari~~a self-represented party in ~~the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court,~~a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding~~(s)~~ for which the attorney appears. At the conclusion of such part(s) of the proceeding~~(s)~~, the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance~~ in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction.~~. Service on an attorney who makes a limited appearance for a party ~~shall~~will be valid only in connection with the specific part(s) of the proceeding~~s(s)~~ for which the attorney appears. ~~The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31~~

(2) Limited Legal Services Requiring Disclosure of Attorney Assistance without Entry of Appearance. An attorney may provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance. Documents filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney's name, address, telephone number, e-mail address, and registration number. The attorney must provide a signed attorney disclosure certification to the self-represented party for the self-represented party to file with the court as an attachment to the document(s). The certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections. The certification also must contain the following statement: "In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The attorney in providing such drafting assistance may rely on the self-represented party's representation of facts, unless the attorney has reason to believe that such representations

are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts. The attorney's violation of this subsection (e)(2) may subject the attorney to sanctions provided by C.A.R. 38. Providing limited legal services to a self-represented party under this subsection (e)(2) does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.

(3) Limited Legal Services Not Requiring Entry of Appearance or Disclosure of Attorney Assistance. An attorney may provide the following forms of assistance to a self-represented party in a civil appellate proceeding without satisfying the requirements of subsections (e)(1) and (2) of this rule: (A) assistance in filling out pre-printed or electronically published forms that are issued by the judicial branch; (B) oral assistance or advice given to the self-represented party regarding the self-represented party's case; and (C) short-term legal assistance offered to a self-represented party on a pro bono basis, including but not limited to assistance through a nonprofit or court-sponsored program, that does not create an expectation by either the client or the lawyer that legal assistance will continue. Providing limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e)(1), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party ~~shall~~will terminate at the conclusion of the part(s) of the proceeding~~s~~ in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

COMMENT

The purpose of C.A.R. 5(e)(1) is to establish a procedure similar to that set forth in C.R.C.P. ~~olorado Rule of Civil Procedure~~ 121, s~~S~~ection 1-1(5). ~~This procedure provides assurance that an attorney who makes a limited appearance for a pro se party in a specified appellate case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court.~~The purpose of C.A.R. 5(e)(2) and (3) is to establish a procedure similar to that set forth in C.R.C.P. 11(b). ~~The purpose of C.A.R. 5(f) is to make clear that when an attorney appears for a party, whom he or she has not previously represented, in an appellate court and the proceedings in that court have concluded, the attorney is not obligated to represent the party in any other proceeding on remand or in any review of the appellate court's decision by any other court. Nothing in this provision would prevent the attorney from entering a limited or general appearance on behalf of the party in another court (for example, on a writ of certiorari to the supreme court), if agreed to by the attorney and the party.~~

Rule 5. Entry of Appearance and Withdrawal

(a) - (d) [NO CHANGE]

(e) Limited Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil appellate proceeding in accordance with Colo. R.P.C. 1.2(c) and the following provisions.

(1) Limited Legal Services Requiring Entry of Appearance and Withdrawal. An attorney may make a limited appearance for a self-represented party in a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding for which the attorney appears. At the conclusion of such part(s) of the proceeding, the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party will be valid only in connection with the specific part(s) of the proceeding for which the attorney appears.

(2) Limited Legal Services Requiring Disclosure of Attorney Assistance without Entry of Appearance. An attorney may provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance. Documents filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney's name, address, telephone number, e-mail address, and registration number. The attorney must provide a signed attorney disclosure certification to the self-represented party for the self-represented party to file with the court as an attachment to the document(s). The certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections. The certification also must contain the following statement: "In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The attorney in providing such drafting assistance may rely on the self-represented party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts. The attorney's violation of this subsection (e)(2) may subject the attorney to sanctions provided by C.A.R. 38. Providing limited legal services to a self-represented party under this subsection (e)(2) does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.

(3) Limited Legal Services Not Requiring Entry of Appearance or Disclosure of Attorney Assistance. An attorney may provide the following forms of assistance to a self-represented party in a civil appellate proceeding without satisfying the requirements of

subsections (e)(1) and (2) of this rule: (A) assistance in filling out pre-printed or electronically published forms that are issued by the judicial branch; (B) oral assistance or advice given to the self-represented party regarding the self-represented party's case; and (C) short-term legal assistance offered to a self-represented party on a pro bono basis, including but not limited to assistance through a nonprofit or court-sponsored program, that does not create an expectation by either the client or the lawyer that legal assistance will continue. Providing limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e)(1), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party will terminate at the conclusion of the part(s) of the proceeding in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

COMMENT

The purpose of C.A.R. 5(e)(1) is to establish a procedure similar to that set forth in C.R.C.P. 121, section 1-1(5). The purpose of C.A.R. 5(e)(2) and (3) is to establish a procedure similar to that set forth in C.R.C.P. 11(b).

Rule 11. Signing of Pleadings

(a) Obligations of Parties and Attorneys. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. The initial pleading shall state the current number of his registration issued to him by the Supreme Court. The attorney's address and that of the party shall also be stated. A party who is not represented by an attorney shall sign his pleadings and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. If the current registration number of the attorney is not included with his signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the court with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall nevertheless accept the filing. If a pleading is signed in violation of this Rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee, provided, however, that failing to be registered shall be governed by Rule 227.
Reasonable expenses, including a reasonable attorney's fee, shall not be assessed if, after filing, a voluntary dismissal or withdrawal is filed as to any claim, action or defense, within a reasonable time after the attorney or party filing the pleading knew, or reasonably should have known, that he would not prevail on said claim, action, or defense.

(b) Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies

that, to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b).

Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).