AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, January 31, 2025, 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 September 27, 2024, minutes [Pages 2 to 4]

III. Announcements from the Chair

A. Reappointments to the Committee
B. Proposed rule changes approved by the supreme court [Pages 5 to 44]
C. Update on status of various subcommittees

IV. Old Business

A. County Court Rule 411—Length of briefs for county court appeals to district court (Judge Jones) [Pages 45 to 59]

V. New Business

A. Rule 30(b)—remote depositions (Judge Jones) [Pages 60 to 71]

B. Rules 11 and 311—Do we need to make changes to account for the rise of generative AI? (Judge Jones) [Pages 72 to 76]

C. Rule 56(h)—Time for filing motions for determination of a question of law (conflict with Rule 16(c) and difference from 56(c)) (Brad Levine) [Pages 77 to 91]

VI. Adjourn—Next meeting is April 4, 2025, 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
September 27, 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	
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

- September 27, 2024, agenda packet and supplement.

II. Announcements from the Chair

The June 28, 2024, minutes were approved as submitted. Judge Jones noted that the Colorado Supreme Court approved some rule changes proposed by this Committee. Additionally, the Court held a public hearing on the proposed changes to the magistrate rules. At this point, the Court would like this Committee to look at the comments received to see if improvements can be made. The biggest issue is probably whether having a single track where appeals go through the district court will likely place an untenable burden on district court judges, particularly with respect to domestic relations cases. Judge Jones will reassemble the Magistrate Subcommittee to see how the proposal might be amended to address these concerns. The Subcommittee will need some new members, and individuals who have experience in the domestic relations realm should join the work. Finally, Judge Jones noted that many members' terms will be expiring at the end of the year, so members should watch for an email querying whether they would like to remain on the Committee.

III. Old Business

A. Rules 4 and 304—Proposed changes to comport with form changes—(Judge Jones)

Judge Jones stated that this proposal from Sean Slagle at SCAO makes changes to the rules to comport with recent changes to forms and statutes. A member noted that the proposals do not allow for commercial instances, so Judge Jones will perform some wordsmithing to solve this. With that addition, this proposal passed unanimously.

B. County Court Rule 411—Length of briefs for county court appeals to district court—(Judge Jones)

This issue came up because the rules do not impose any page or word limits on appeals from county court to district court, and consequently, judges can receive quite long briefs. Judge Jones brought proposed language to the Committee based on the appellate rules. The Committee discussed page limits versus word limits. Judge Jones will consider the comments and bring back a new draft at the next meeting.

C. Rule 11(b) and 311(b)—Proposed changes to comport with recent changes to C.A.R. 5—(Judge Jones)

This proposal is an effort to remain consistent with the appellate rules. Committee members like that the proposal gives guidance and provides clarification to litigants. With a change added to Rule 121 Section 1-1(5), this proposal passed unanimously.

D. Elimination of gendered language in the Civil Rules—(Judge Jones)

The Court recently approved an approach to gendered language in rules. At this point, the Subcommittee will need to go through the civil and county court rules to find gendered language and change any such instances to comport with the Court's approach. Given the enormity of this task, the Subcommittee members were given the option to take on this task or to excuse themselves. Current Subcommittee members should let Judge Jones know what they decide.

IV. New Business

A. Rule 100—New legislation regarding election contests for presidential electors (Justice Gabriel)

Justice Gabriel brought this issue to the Committee because a new statute went into effect in Colorado regarding election contests for presidential electors. The statute created a conflict with C.R.C.P. 100, the rule governing election contests, and the rule needs to be amended immediately given the upcoming elections. Essentially, the rule changes break out presidential electors and what procedures should apply. The proposal passed unanimously.

B. Rules 63 and 363—Whether the rules should mirror the federal rule—(Judge Jones)

The Colorado rules differ from the federal rule in that the federal rule language appears broader in allowing what to do when a judge becomes unable to proceed. Members noted that the federal and state rules are quite different and function differently. Judge Jones formed a subcommittee to explore this issue; interested members should contact Judge Jones to join.

Future Meetings

November 1; January 31; April 4; June 27; September 26; November 7

The Committee adjourned at 3:03 p.m.

RULE CHANGE 2024(17)

COLORADO RULES OF CIVIL PROCEDURE

Rule 100. Contested Elections

(a) Statement of Contest; Presidential Electors; Where Filed. Any qualified elector wishing to contest the election of any person to the office of presidential elector shall within 24 days after the general election, notwithstanding the fact that a recount may be ongoing, file in the office of the secretary of state a written statement of the contestor's intention to contest, which statement shall set forth: (1) The name of the contestor; (2) the name of the contestee; (3) the office; (4) the time of the election; and (5) the particular cause of contest. The statement shall be verified by the affidavit or declaration of the contesting party. In addition, by the same deadline, the contestor, or someone in behalf of the person for whose benefit the contest is made, shall also file a Petition Pursuant to C.R.C.P. 100 in the office of the clerk of the supreme court. The supreme court shall prioritize such a contest over all regular business of the court so that election results are determined as soon as practicable and will rule on the contest before the deadline to issue and submit the certificate of ascertainment pursuant to the requirements of the federal Electoral Count Reform and Presidential Transition Improvement Act of 2022, 3 U.S.C. § 5.

(b~~a~~) Statement of Contest; Other Offices; Where Filed. Any qualified elector wishing to contest the retention~~election~~ of any person to the office of ~~presidential elector,~~ supreme court justice, court of appeals judge, district, or county judge, shall within 35 days after the canvass of the secretary of state, in the case of a ~~presidential elector,~~ supreme court justice, court of appeals judge, or district judge, file in the office of the secretary of state a written statement of the contestor's~~his~~ intention to contest,~~;~~ and where the contest is for the office of county judge, such statement shall be filed in the office of the county clerk of the proper county within 35 days after the canvass by the county board of canvassers. The written ~~, which~~ statement shall set forth: (1) The name of the contestor; (2) the name of the contestee; (3) the office; (4) the time of the election; and (5) the particular cause of contest. The statement shall be verified by the affidavit or declaration of the contesting party. The contestor, or someone in behalf of the person for whose benefit the contest is made, shall, within 35 days after the filing of the statement of contest, file a Petition Pursuant to C.R.C.P. 100 in the office of the clerk of the supreme court when the contest relates to a supreme court justice; in the office of the clerk of the court of appeals when the contest relates to a court of appeals judge; or in the office of the clerk of the district court in the proper county when the contest relates to a district or county judge.

(c~~b~~) Determination~~Trial~~. ~~The contestor, or some one in behalf of the person for whose benefit the contest is made, shall, within 35 days after the filing of the statement of contest, file a complaint in the office of the clerk of the supreme court, if the contest relates to a presidential elector or supreme court justice, or in the office of the clerk of the court of appeals, if the contest relates to a court of appeals judge, or in the office of the clerk of the district court in the proper county, if the contest relates to a district or county judge. Upon the filing of such complaint the clerk shall issue summons.~~ When the case is at issue, the court shall hear and determine the same in a summary manner, without the intervention of a jury.

Rule 100. Contested Elections

(a) Statement of Contest; Presidential Electors; Where Filed. Any qualified elector wishing to contest the election of any person to the office of presidential elector shall within 24 days after the general election, notwithstanding the fact that a recount may be ongoing, file in the office of the secretary of state a written statement of the contestor's intention to contest, which statement shall set forth: (1) The name of the contestor; (2) the name of the contestee; (3) the office; (4) the time of the election; and (5) the particular cause of contest. The statement shall be verified by the affidavit or declaration of the contesting party. In addition, by the same deadline, the contestor, or someone in behalf of the person for whose benefit the contest is made, shall also file a Petition Pursuant to C.R.C.P. 100 in the office of the clerk of the supreme court. The supreme court shall prioritize such a contest over all regular business of the court so that election results are determined as soon as practicable and will rule on the contest before the deadline to issue and submit the certificate of ascertainment pursuant to the requirements of the federal Electoral Count Reform and Presidential Transition Improvement Act of 2022, 3 U.S.C. § 5.

(b) Statement of Contest; Other Offices; Where Filed. Any qualified elector wishing to contest the retention of any person to the office of supreme court justice, court of appeals judge, district, or county judge, shall within 35 days after the canvass of the secretary of state, in the case of a supreme court justice, court of appeals judge, or district judge, file in the office of the secretary of state a written statement of the contestor's intention to contest, and where the contest is for the office of county judge, such statement shall be filed in the office of the county clerk of the proper county within 35 days after the canvass by the county board of canvassers. The written statement shall set forth: (1) The name of the contestor; (2) the name of the contestee; (3) the office; (4) the time of the election; and (5) the particular cause of contest. The statement shall be verified by the affidavit or declaration of the contesting party. The contestor, or someone in behalf of the person for whose benefit the contest is made, shall, within 35 days after the filing of the statement of contest, file a Petition Pursuant to C.R.C.P. 100 in the office of the clerk of the supreme court when the contest relates to a supreme court justice; in the office of the clerk of the court of appeals when the contest relates to a court of appeals judge; or in the office of the clerk of the district court in the proper county when the contest relates to a district or county judge.

(c) Determination. When the case is at issue, the court shall hear and determine the same in a summary manner, without the intervention of a jury.

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

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

RULE CHANGE 2024(20)

COLORADO RULES OF CIVIL PROCEDURE

Rules 4, 11, 121 §1-1

Rule 4. Process

(a) [NO CHANGE]

(b) – (c)(1) [NO CHANGE]

(2) In forcible entry and detainer cases, the summons shall also contain all language and information required by statute, and in addition to ~~the~~ completed Form JDF 101: Eviction ~~complaint~~Complaint, be accompanied by a blank copy of Form JDF 103: Eviction Answer, ~~Form JDF 186 Information for Eviction Cases,~~ and a blank copy of 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]

COMMENTS [NO CHANGE]

Rule 11. Signing of Pleadings

(a) [NO CHANGE]

(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).~~

Limited Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil 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 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 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 Colorado Bar 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 the sanctions provided for in C.R.C.P. 11(a). 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 proceeding without satisfying the requirements of subsections (b)(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 (b)(3) does not authorize or require the service of papers upon the attorney.

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1

1. – 4. [NO CHANGE]

5. Notice of Limited Representation Entry of Appearance and Withdrawal. In accordance with C.R.C.P. 11(b)(1) and C.R.C.P. Rule 311(b)(1), an attorney may undertake to provide limited representation to a self-represented~~pro se~~ party involved in a court proceeding. Upon the request and with the consent of a self-represented~~pro se~~ party, an attorney may make a limited appearance for the self-represented~~pro se~~ party in one or more specified proceedings, 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. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

Committee Comment
The purpose of section 1-1(5) is to implement Colorado Rules of Civil Procedure 11(b)(1) and 311(b)(1), which authorize limited representation of a self-represented~~pro se~~ party either on a pro bono or fee basis, in accordance with Colorado Rule of Professional Conduct 1.2. This provision provides assurance that an attorney who makes a limited appearance for a self-represented~~pro se~~ party in a specified ~~case~~ proceeding(s), at the request of and with the consent of the self-represented~~pro se~~ party, can withdraw from the proceeding(s)~~case~~ upon filing a notice of completion of the limited appearance, without leave of court.
An "active case" is any case other than a "completed case" as described in subsection 3 of the Practice Standard.

Section 1– 2 to Section 1 – 26 [NO CHANGE]

Rule 4. Process

(a) [NO CHANGE]

(b) – (c)(1) [NO CHANGE]

(2) In forcible entry and detainer cases, the summons shall also contain all language and information required by statute, and in addition to completed Form JDF 101: Eviction Complaint, be accompanied by a blank copy of Form JDF 103: Eviction Answer, and a blank copy of Form JDF 108: Request for Documents in Eviction Cases.

(d) – (m) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 11. Signing of Pleadings

(a) [NO CHANGE]

(b) Limited Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil 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 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 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 Colorado Bar 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 the sanctions provided for in C.R.C.P. 11(a). 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 proceeding without satisfying the requirements of subsections (b)(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 (b)(3) does not authorize or require the service of papers upon the attorney.

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1

1. – 4. [NO CHANGE]

5. Notice of Limited Representation Entry of Appearance and Withdrawal. In accordance with C.R.C.P. 11(b)(1) and C.R.C.P. Rule 311(b)(1), an attorney may undertake to provide limited representation to a self-represented party involved in a court proceeding. Upon the request and with the consent of a self-represented party, an attorney may make a limited appearance for the self-represented party in one or more specified proceedings, 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. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

Committee Comment
The purpose of section 1-1(5) is to implement Colorado Rules of Civil Procedure 11(b)(1) and 311(b)(1), which authorize limited representation of a self-represented party either on a pro bono or fee basis, in accordance with Colorado Rule of Professional Conduct 1.2. This provision provides assurance that an attorney who makes a limited appearance for a self-represented party in a specified proceeding(s), at the request of and with the consent of the self-represented party, can withdraw from the proceeding(s) upon filing a notice of completion of the limited appearance, without leave of court.
An “active case” is any case other than a “completed case” as described in subsection 3 of the Practice Standard.

Section 1– 2 to Section 1 – 26 [NO CHANGE]

Amended and Adopted by the Court, En Banc, December 19, 2024, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

RULE CHANGE 2024(21)

COLORADO RULES OF CIVIL PROCEDURE
Chapter 25 Colorado Rules of County Court Civil Procedure

Rules 304 and 311

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~~completed Form JDF 102: Eviction Summons; (2) ~~complaint~~completed Form JDF 101: Eviction Complaint (for residential tenancies) or Form JDF 141: Eviction Complaint (for mobile home tenancies); (3) a blank copy of ~~the answer form~~Form JDF 103: Eviction Answer (for residential tenancies), Form JDF 143: Eviction Answer (for mobile home tenancies), or CRCCP Form 3 (for all other FED cases); and (4) a blank copy of ~~(4) Form JDF 186 SC: Information for Eviction Cases; (5)~~ Form JDF 1~~85 SC~~08: Request for Documents in Eviction Cases~~; and (6) blank copies of Forms JDF 205 and 206 (fee waiver forms)~~.

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 311. Signing of Pleadings

(a) [NO CHANGE]

(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 311(b).~~

~~Limited representation of a pro se party under this Rule 311(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. 305, 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 311(b) may subject the attorney to the sanctions provided in C.R.C.P. 311(a).~~

Limited Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil 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 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 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 Colorado Bar 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 the sanctions provided for in C.R.C.P. 11(a). 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 proceeding without satisfying the requirements of subsections (b)(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 (b)(3) does not authorize or require the service of papers upon the attorney.

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) completed Form JDF 102: Eviction Summons; (2) completed Form JDF 101: Eviction Complaint (for residential tenancies) or Form JDF 141: Eviction Complaint (for mobile home tenancies); (3) a blank copy of Form JDF 103: Eviction Answer (for residential tenancies), Form JDF 143: Eviction Answer (for mobile home tenancies), or CRCCP Form 3 (for all other FED cases); and (4) a blank copy of Form JDF 108: Request for Documents in Eviction Cases.

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 311. Signing of Pleadings

(a) [NO CHANGE]

(b) Limited Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil 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 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 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 Colorado Bar 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 the sanctions provided for in C.R.C.P. 11(a). 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 proceeding without satisfying the requirements of subsections (b)(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 (b)(3) does not authorize or require the service of papers upon the attorney.

Amended and Adopted by the Court, En Banc, December 19, 2024, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

RULE CHANGE 2025(01)

COLORADO RULES OF CIVIL PROCEDURE
Chapter 25 Colorado Rules of County Court Civil Procedure

Rule 304

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) completed Form JDF 102: Eviction Summons; (2) completed Form JDF 101: Eviction Complaint (for residential tenancies) or Form JDF 141: Eviction Complaint (for mobile home tenancies); (3) a blank copy of Form JDF 103: Eviction Answer (for residential tenancies), Form JDF 143: Eviction Answer (for mobile home tenancies), or CRCCP Form 3 (for all other FED cases); and (4) a blank copy of Form JDF 108: Request for Documents in Eviction Cases. Plaintiff may use, and the court shall accept, documents filed or served on different forms if those forms meet all of the requirements of section 13-40-110, C.R.S.

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

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) completed Form JDF 102: Eviction Summons; (2) completed Form JDF 101: Eviction Complaint (for residential tenancies) or Form JDF 141: Eviction Complaint (for mobile home tenancies); (3) a blank copy of Form JDF 103: Eviction Answer (for residential tenancies), Form JDF 143: Eviction Answer (for mobile home tenancies), or CRCCP Form 3 (for all other FED cases); and (4) a blank copy of Form JDF 108: Request for Documents in Eviction Cases. Plaintiff may use, and the court shall accept, documents filed or served on different forms if those forms meet all of the requirements of section 13-40-110, C.R.S.

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

Amended and Adopted by the Court, En Banc, January 9, 2025, effective immediately.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

RULE CHANGE 2025(03)

COLORADO RULES OF CIVIL PROCEDURE
Chapter 25 Colorado Rules of County Court Civil Procedure

Rule 304 and 311

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) completed Form JDF 102: Eviction Summons; (2) completed Form JDF 101: Eviction Complaint (for residential tenancies) or Form JDF 141: Eviction Complaint (for mobile home tenancies); (3) a blank copy of Form JDF 103: Eviction Answer (for residential tenancies), Form JDF 143: Eviction Answer (for mobile home tenancies), or CRCCP Form 3 (for all other FED cases); and (4) a blank copy of Form JDF 108: Request for Documents in Eviction Cases. Plaintiff may use, and the court shall accept, documents filed or served on different forms if those forms meet all of the requirements of section 13-40-110, C.R.S., section 13-40-111, C.R.S., and any other applicable statutes.

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 311. Signing of Pleadings

(a) [NO CHANGE]

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

(1) [NO CHANGE]

(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 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 Colorado Bar 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 (b~~e~~)(2) may subject the attorney to the sanctions provided for in C.R.C.P. 11(a). Providing limited legal services to a self-represented party under this subsection (b~~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) [NO CHANGE]

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) completed Form JDF 102: Eviction Summons; (2) completed Form JDF 101: Eviction Complaint (for residential tenancies) or Form JDF 141: Eviction Complaint (for mobile home tenancies); (3) a blank copy of Form JDF 103: Eviction Answer (for residential tenancies), Form JDF 143: Eviction Answer (for mobile home tenancies), or CRCCP Form 3 (for all other FED cases); and (4) a blank copy of Form JDF 108: Request for Documents in Eviction Cases. Plaintiff may use, and the court shall accept, documents filed or served on different forms if those forms meet all of the requirements of section 13-40-110, C.R.S., section 13-40-111, C.R.S., and any other applicable statutes.

(c) – (k) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 311. Signing of Pleadings

(a) [NO CHANGE]

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

(1) [NO CHANGE]

(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 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 Colorado Bar 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 (b)(2) may subject the attorney to the sanctions provided for in C.R.C.P. 11(a). Providing limited legal services to a self-represented party under this subsection (b)(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) [NO CHANGE]

Amended and Adopted by the Court, En Banc, January 16, 2025, effective immediately. Justice Boatright did not participate in the decision to amend C.R.C.P. 304.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

CORRECTION TO RULE CHANGE 2025(04)

COLORADO RULES OF CIVIL PROCEDURE

Rules 4, 11, and 122

Rule 4. Process

(a) [NO CHANGE]

(b) – (c)(1) [NO CHANGE]

(2) In forcible entry and detainer cases, the summons shall also contain all language and information required by statute, and in addition to the completed Form JDF 101: Eviction Complaint, be accompanied by a blank copy of Form JDF 103: Eviction Answer, and a blank copy of Form JDF 108: Request for Documents in Eviction Cases. Plaintiff may use, and the court shall accept, documents filed or served on different forms if those forms meet all of the requirements of section 13-40-110, C.R.S., section 13-40-111, C.R.S., and any other applicable statutes.

(d) – (m) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 11. Signing of Pleadings

(a) [NO CHANGE]

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

(1) [NO CHANGE]

(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 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 Colorado Bar 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 (b~~e~~)(2) may subject the attorney to the sanctions provided for in C.R.C.P. 11(a). Providing limited legal services to a self-represented party under this subsection (b~~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) [NO CHANGE]

Rule 122. Case Specific Appointment of Appointed Judges Pursuant to C.R.S. § 13-3-111

(a) – (b) [NO CHANGE]

(c) Motion for Appointment. A request for the appointment of an Appointed Judge shall be made by a joint motion filed by all parties to a case and shall be signed as approved by the Appointed Judge. The original of such motion shall be filed with the Supreme Court with a copy filed in the originating court--the court of record in which the case was originally filed. Such motion shall include:

(1) The name, address, and registration number of the Appointed Judge;

(2) The rate of compensation agreed to be paid to the Appointed Judge;

(3) The Appointed Judge's agreement to be bound by Section IV~~I~~ of the Colorado Code of Judicial Conduct, Applicability of Code to ~~Senior and Retired~~Appointed Judges, and the Appointed Judge's agreement that the Chief Justice may ask the Office of Attorney Regulation Counsel and the Colorado Commission on Judicial Discipline for any record of his or her imposed discipline, or pending disciplinary proceeding, if any;

(4) - (10) [NO CHANGE]

(d) - (k) [NO CHANGE]

Rule 4. Process

(a) [NO CHANGE]

(b) – (c)(1) [NO CHANGE]

(2) In forcible entry and detainer cases, the summons shall also contain all language and information required by statute, and in addition to the completed Form JDF 101: Eviction Complaint, be accompanied by a blank copy of Form JDF 103: Eviction Answer, and a blank copy of Form JDF 108: Request for Documents in Eviction Cases. Plaintiff may use, and the court shall accept, documents filed or served on different forms if those forms meet all of the requirements of section 13-40-110, C.R.S., section 13-40-111, C.R.S., and any other applicable statutes.

(d) – (m) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 11. Signing of Pleadings

(a) [NO CHANGE]

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

(1) [NO CHANGE]

(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 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 Colorado Bar 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 (b)(2) may subject the attorney to the sanctions provided for in C.R.C.P. 11(a). Providing limited legal services to a self-represented party under this subsection (b)(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) [NO CHANGE]

Rule 122. Case Specific Appointment of Appointed Judges Pursuant to C.R.S. § 13-3-111

(a) – (b) [NO CHANGE]

(c) Motion for Appointment. A request for the appointment of an Appointed Judge shall be made by a joint motion filed by all parties to a case and shall be signed as approved by the Appointed Judge. The original of such motion shall be filed with the Supreme Court with a copy filed in the originating court--the court of record in which the case was originally filed. Such motion shall include:

(1) The name, address, and registration number of the Appointed Judge;

(2) The rate of compensation agreed to be paid to the Appointed Judge;

(3) The Appointed Judge's agreement to be bound by Section IV~~I~~ of the Colorado Code of Judicial Conduct, Applicability of Code to ~~Senior and Retired~~Appointed Judges, and the Appointed Judge's agreement that the Chief Justice may ask the Office of Attorney Regulation Counsel and the Colorado Commission on Judicial Discipline for any record of his or her imposed discipline, or pending disciplinary proceeding, if any;

(4) - (10) [NO CHANGE]

(d) - (k) [NO CHANGE]

Amended and Adopted by the Court, En Banc, January 16, 2025, effective immediately. Justice Boatright did not participate in the decision to amend C.R.C.P. 4.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 2. Pleadings and Motions

C.R.C.P. Rule 10

Rule 10. Form and Quality of Pleadings, Motions and Other Documents

Effective: January 11, 2024
Currentness

(a) Caption; Names of Parties. Every pleading, motion, E-filed document under C.R.C.P. 121 (1-26), or any other document filed with the court (hereinafter "document") in both civil and criminal cases shall contain a caption setting forth the name of the court, the title of the action, the case number, if known to the person signing it, the name of the document in accordance with Rule 7(a), and the other applicable information in the format specified by paragraph (d) and the captions illustrated by paragraph (e) or (f) of this rule. In the complaint initiating a lawsuit, the title of the action shall include the names of all the parties to the action. In all other documents, it is sufficient to set forth the name of the first-named party on each side of the lawsuit with an appropriate indication that there are also other parties (such as "et al."). A party whose name is not known shall be designated by any name and the words "whose true name is unknown". In an action in rem, unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of this action".

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. A paragraph may be referred to by its paragraph number in all succeeding documents. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Incorporation by Reference; Exhibits. A statement in a document may be incorporated by reference in a different part of the same document or in another document. An exhibit to a document is a part thereof for all purposes.

(d) General Rule Regarding Paper Size, Format, and Spacing. All documents filed after the effective date of this rule, including those filed through the E-Filing System under C.R.C.P. 121(1-26), shall meet the following criteria:

(1) *Paper.* Where a document is filed on paper, it shall be on plain, white, 8 ½ by 11 inch paper (recycled paper preferred).

(2) *Format.* All documents shall be legible. They shall be printed on one side of the page only (except for E-Filed documents).

(I) Margins. All documents shall use margins of 1 ½ inches at the top of each page, and 1 inch at the left, right, and bottom of each page. Except for the caption, a left-justified margin shall be used for all material.

(II) Font. No less than twelve (12) point font shall be used for all documents, including footnotes.

(III) Case Caption Information. All documents shall contain the following information arranged in the following order, as illustrated by paragraphs (e) and (f) of this rule, except that documents issued by the court under the signature of the clerk or judge should omit the attorney section as illustrated in paragraphs (e)(2) and (f)(2). Individual boxes should separate this case caption information; however, vertical lines are not mandatory. On the left side:

Document title (the document title may instead be included as a centered line at the bottom of the caption).

Court name and mailing address.

Name of parties.

Name, address, and telephone number of the attorney or pro se party filing the document. Fax number and e-mail address are optional.

Attorney registration number.

On the right side:

An area for "Court Use Only" that is at least 2 ½ inches in width and 1 ¾ inches in length (located opposite the court and party information).

Case number, division number, and courtroom number (located opposite the attorney information above).

Centered at the bottom of the caption:

Document title (the document title may instead be included as the top line on the left side of the caption).

Orders that are submitted as proposed shall not contain the word (PROPOSED) in the caption of the order.

(3) *Spacing.* The following spacing guidelines should be followed.

(I) Single spacing for all:

Affidavits

Complaints, Answers, and Petitions

Criminal Informations and Complaints

Interrogatories and Requests for Admissions

Notices

Pleading forms (all case types)

Probation reports

All other documents not listed in subsection (II) below

(II) Double spacing for all:

Briefs and Legal Memoranda

Depositions

Documents that are complex or technical in nature

Jury Instructions

Motions

Petitions for Rehearing

Petitions for Writ of Certiorari

Petitions pursuant to C.A.R. 21

Transcripts

(4) *Signature Block.* All documents which require a signature shall be signed at the end of the document. The attorney or pro se party need not repeat his or her address, telephone number, fax number, or e-mail address at the end of the document.

(e) Illustration of Preferred Case Caption Format.

(1) *Preferred Caption for Documents Initiated by a Party.*

[Designation of Court from subsection (g) below]

Court Address: .....

COURT USE ONLY
Case Number: _____
Div: _____
Ctrm.: _____
Plaintiff(s): _____

[Substitute appropriate party designations & names]

v.

Defendant(s): _____

Attorney or Party Without Attorney: .....

Name: _____

Address: .....

Phone Number: _____

FAX Number: _____

E-mail: _____

Atty. Reg. #: _____

NAME OF DOCUMENT

(2) *Preferred Caption for Documents Issued by the Court Under the Signature of the Clerk or Judge.*

[Designation of Court from subsection (g) below]

Court Address: .....

COURT USE ONLY
Case Number: _____
Div: _____
Ctrm.: _____
Plaintiff(s): _____

[Substitute appropriate party designations & names]

v.

Defendant(s): _____

NAME OF DOCUMENT

(f) Illustration of Alternative Case Caption.

(1) *Optional Caption for Documents Initiated by a Party.*

NAME OF DOCUMENT

[Designation of Court from subsection (g) below]

Court Address: .....

COURT USE ONLY

Case Number: _____
Div: _____
Ctrm.: _____
Plaintiff(s): _____

[Substitute appropriate party designations & names]

v.

Defendant(s): _____

Attorney or Party Without Attorney: .....

Name: _____

Address: .....

Phone Number: _____

FAX Number: _____

E-mail: _____

Atty. Reg. #: _____

(2) *Optional Caption for Documents Issued by the Court Under Signature of the Clerk or Judge.*

NAME OF DOCUMENT

[Designation of Court from subsection (g) below]

Court Address: .....

COURT USE ONLY
Case Number: _____
Div: _____
Ctrm.: _____
Plaintiff(s): _____

[Substitute appropriate party designations & names]

v.

Defendant(s): _____

(g) Court Designation Examples:

APPELLATE

SUPREME COURT, STATE OF COLORADO

COURT OF APPEALS, STATE OF COLORADO

WATER

DISTRICT COURT, WATER DIVISION ___, COLORADO

DISTRICT

DISTRICT COURT, _____ COUNTY, COLORADO

COUNTY

COUNTY COURT, _____ COUNTY, COLORADO

CITY AND COUNTY

COUNTY COURT, CITY AND COUNTY OF _____, COLORADO

PROBATE COURT, CITY AND COUNTY OF _____, COLORADO

JUVENILE COURT, CITY AND COUNTY OF _____, COLORADO

DISTRICT COURT, CITY AND COUNTY OF _____, COLORADO

(h) The forms of case captions provided for in this rule replace those forms of captions otherwise provided for in other Colorado rules of procedure, including but not limited to the Colorado Rules of County Court Procedure, the Colorado Rules of Procedure for Small Claims Courts, and the Colorado Appellate Rules. These forms of case captions apply to criminal cases, as well as civil cases.

(i) State Judicial Pre-Printed or Computer-Generated Forms. Forms approved by the State Court Administrator's Office (designated "JDF" or "SCAO" on pre-printed or computer-generated forms), forms set forth in the Colorado Court Rules, volume 12, C.R.S., (including those pre-printed or computer-generated forms designated "CRCP" or "CPC" and those contained in the appendices of volume 12, C.R.S.), and forms generated by the state's judicial electronic system shall conform to criteria established by the State Court Administrator's Office with the approval of the Colorado Supreme Court. Such forms, whether preprinted or computer-generated, shall employ a form of caption similar to those contained in this rule, and 1 inch left margin, ½ inch right and bottom margins, and at least 1 inch top margin, except that for forms designated "JDF" or "SCAO" the requirement of at least 1 inch for the top margin shall apply to forms created or revised on and after April 5, 2010.

Credits

Amended effective January 1, 1984; September 6, 1990; July 1, 2000; July 1, 2001. Amended November 6, 2003, effective July 1, 2004; June 10, 2004, effective July 1, 2004. Amended effective March 30, 2006; April 5, 2010. Amended January 29, 2016, effective April 1, 2016. Amended effective November 13, 2023; January 11, 2024.

Rules Civ. Proc., Rule 10, CO ST RCP Rule 10
Current with amendments received through July 15, 2024.

End of Document

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapter 32. Appellate Rules
General Provisions

C.A.R. Rule 28

Rule 28. Briefs

Effective: July 1, 2022
Currentness

(a) Appellant's Brief. The appellant's brief must be entitled “opening brief” and must contain the following under appropriate headings and in the order indicated:

(1) a certificate of compliance as required by C.A.R. 32(h);

(2) a table of contents, with page references;

(3) a table of authorities--cases (alphabetically arranged), statutes, and other authorities--with references to the pages of the brief where they are cited;

(4) a statement of the issues presented for review;

(5) a concise statement identifying the nature of the case, the relevant facts and procedural history, and the ruling, judgment, or order presented for review, with appropriate references to the record (see C.A.R. 28 (e));

(6) a summary of the arguments, which must:

(A) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief;

(B) articulate the major points of reasoning employed as to each issue presented for review; and

(C) not merely repeat the argument headings or issues presented for review;

(7) the arguments, which must contain:

(A) under a separate heading placed before the discussion of each issue, statements of the applicable standard of review with citation to authority, whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled; and

(B) a clear and concise discussion of the grounds upon which the party relies in seeking a reversal or modification of the judgment or the correction of adverse findings, orders, or rulings of the lower court or tribunal, with citations to the authorities and parts of the record on which the appellant relies;

(8) a short conclusion stating the precise relief sought; and

(9) any request for attorney fees.

(b) Appellee's Brief. The appellee's answer brief must be entitled “answer brief” and must conform to the requirements of C.A.R. 28(a) except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the appellant's statement. For each issue, the answer brief must, under a separate heading placed before the discussion of the issue, state whether the appellee agrees with the appellant's statements concerning the standard of review with citation to authority and preservation for appeal, and if not, why not. The answer brief must also contain any request for attorney fees or state any opposition to attorney fees requested in the opening brief.

(c) Reply Brief. The appellant may file a brief, which must be entitled “reply brief” in reply to the answer brief. A reply brief must comply with C.A.R. 28(a)(1)-(3), and must state any opposition to attorney fees requested in the answer brief. No further briefs may be filed except with leave of court.

(d) References in Briefs to Parties. Parties should minimize use of the terms “appellant” and “appellee.” Parties should use the designations used in the lower court or agency proceeding, the parties' actual names or initials, or descriptive terms such as “the employee,” “the injured person,” or “the taxpayer.”

(e) References to the Record. Reference to the record and to material appearing in an addendum to the brief should generally follow the format detailed in the “Court of Appeals Policy on Citation to the Record.” Record references, including abbreviations, must be clear and readily identifiable.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of regulations, ordinances, or any statutes or rules not currently in effect or not generally available in an electronic format, the relevant parts may be reproduced in an addendum at the end of the brief.

(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.

(h) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a single brief, and any party may adopt by reference any part of another's brief, but a party may not both file a separate brief and incorporate by reference the brief of another party. Parties may also join in reply briefs. In cases involving a single appellant or appellee with multiple opposing parties, the single party must file a single brief in response to multiple opposing parties' briefs. Except by permission of the court, such a brief is restricted to the page and word limits set forth in C.A.R. 28(g), regardless of the cumulative page and word counts of the opposing parties' briefs. Multiple parties represented by the same counsel must file a joint brief.

(i) Citation of Supplemental Authorities. If pertinent and significant new authority, including legislation, comes to a party's attention after the party's brief has been filed, a party may promptly advise the court by giving notice, with a copy to all parties. The notice must set forth the citation and state, without argument, the reason for the supplemental citation, referring either to the page of the brief or to a point argued orally. The body of the notice must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(j) Notice of Settlement or Resolution. When the parties have agreed to settle or otherwise resolve a pending case, they must notify the court immediately.

Credits

Amended effective January 1, 1984; July 1, 1994. Amended December 4, 2003, effective January 1, 2004. Amended effective July 1, 2005; June 22, 2006; September 7, 2006; May 28, 2009; June 25, 2015. Amended February 24, 2022, effective July 1, 2022.

Rules App. Proc., Rule 28, CO ST A CT Rule 28
Current with amendments received through July 15, 2024.

End of Document

Rule 121. Local Rules--Statewide Practice Standards

(a) Repeal of Local Rules. All District Court local rules, including local procedures and standing orders having the effect of local rules, enacted before April 1, 1988 are hereby repealed.

(b) Authority to Enact Local Rules on Matters Which are Strictly Local. Each court by action of a majority of its judges may from time to time propose local rules and amendments of local rules not inconsistent with the Colorado Rules of Civil Procedure or Practice Standards set forth in C.R.C.P. 121(c), nor inconsistent with any directive of the Supreme Court. A proposed rule or amendment shall not be effective until approved by the Supreme Court. No local procedure shall be effective unless adopted as a local rule in accordance with this Section (b) of C.R.C.P. 121. To obtain approval, three copies of any proposed local rule or amendment of a local rule shall be submitted to the Supreme Court through the office of the State Court Administrator. Reasonable uniformity of local rules is required. Numbering and format of any proposed local rule or amendment of a local rule shall be as prescribed by the Supreme Court. The Supreme Court's approval of a local rule or local procedure shall not preclude review of that rule or procedure under the law or circumstances of a particular case.

(c) Matters of Statewide Concern. The Colorado Rules of Civil Procedure and the following rule subject areas called "Practice Standards" are declared to be of statewide concern and shall preempt and control in their form and content over any differing local rule:

DISTRICT COURT* PRACTICE STANDARDS

§§ 1-1 to End

* Includes Denver Probate Court where applicable.

Section 1-1. - Section 1-14. [NO CHANGE]

Section 1-15. DETERMINATION OF MOTIONS

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

(a) Except motions during trial or where the court orders that certain or all non-dispositive motions be made orally, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion, which shall not be filed with a separate brief. Unless the court orders otherwise, motions and responsive briefs not under C.R.C.P. 12(b)(1) or (2), or 56 are limited to 15 pages, and reply briefs to 10 pages, not including the case caption, signature block, certificate of service and attachments. Unless the court orders otherwise, motions and responsive briefs under C.R.C.P. 12(b)(1) or (2) or 56 are limited to 25 pages, and reply briefs to 15 pages, not including the case caption, signature block, certificate of service and attachments. All motions and briefs shall comply with C.R.C.P. 10(d).

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

before the trial date, the responding party shall have 14 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief.

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

(d) A motion shall not be included in a response or reply to the original motion.

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

3. Effect of Failure to File Legal Authority. If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned and may enter an order denying the motion. Other than motions seeking to resolve a claim or defense under C.R.C.P. 12 or 56, failure of a responding party to file a responsive brief may be considered a confession of the motion.

4. Motions to Be Determined on Briefs, When Oral Argument is Allowed; Motions Requiring Immediate Attention. Motions shall be determined promptly if possible. The court has discretion to order briefing or set a hearing on the motion. If possible, the court shall determine oral motions at the conclusion of the argument, but may take the motion under advisement or require briefing before ruling. Any motion requiring immediate disposition shall be called to the attention of the courtroom clerk by the party filing such motion.

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

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

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

8. Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties shall not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, shall be stated.

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

10. Proposed Order. Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied. Orders that are submitted as proposed shall not contain the word (PROPOSED) in the caption of the order. Proposed Orders must only be designated as proposed in the e-filing transmission.

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

COMMENTS

1994 [Amendment]

[1] This Practice Standard was necessary because of lack of uniformity among the districts concerning how motions were to be made, set and determined. The Practice Standard recognizes that oral argument and hearings are not necessary in all cases, and encourages disposition of motions upon written submissions. The standard also sets forth the uniform requirements concerning filing of legal authority, filing of matters not already of record necessary to determination of motions, and the manner of setting an oral argument if argument is permitted. The practice standard is broad enough to include all motions, including venue motions. Some motions will not require extended legal analysis or affidavits. Obviously, if the basis for a motion is simple and routine, the citation of authorities can be correspondingly simple. Motions or briefs in excess of 10 pages are discouraged.

[2] This standard specifies contemporaneous recitation of legal authority either in the motion itself for all motions except those under C.R.C.P. Rule 56. Moving counsel should confer with opposing counsel before filing a motion to attempt to work out the difference prompting the motion. Every motion must, at the beginning, contain a certification that the movant, in good faith, has conferred with opposing counsel about the motion. If there has been no conference, the reason why must be stated. To assist the court, if the relief sought by the motion has been agreed to or will not be opposed, the court is to be so advised in the motion.

[3] Paragraph 4 of the standard contains an important feature. Any matter requiring immediate action should be called to the attention of the courtroom clerk by the party filing a motion for forthwith disposition. Calling the urgency of a matter to the attention of the court is a responsibility of the parties. The court should permit a forthwith determination.

2014 [Amendment]

[4] Paragraph 11 of the standard neither limits a trial court's discretion to modify an interlocutory order, on motion or sua sponte, nor affects C.R.M. 5(a).

2015 [Amendment]

[5] The sentence in the 1994 comment that “motions or briefs in excess of 10 pages are discouraged” has been superseded by the 2015 amendments to the rule on the length of motions and briefs. The sentence in the 1994 comment that “moving counsel should confer with opposing counsel before filing a motion to attempt to work out the difference prompting the motion” is corrected to change the word “should” to “shall” to be consistent with the wording of the rule.

Section 1-16. - Section 1-26. [NO CHANGE]

(d) Briefs.

(1) **Time for Filing, Oral Argument, and Limitation on De Novo Review.** 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.

(2) **Length of Briefs.** Notwithstanding anything in C.R.C.P. 121 § 1-15(1) to the contrary, the parties' briefs must contain no more than 8,000 words. Headings, footnotes, and quotations count toward the word limitation. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit. A brief of a self-represented party who does not have access to a word-processing system must be typewritten or legibly handwritten and may not exceed 25 double-spaced and single-sided pages.

(3) **Form of Briefs.** Briefs must conform to the formatting and other requirements of C.R.C.P. 10(a) and (d). In addition, every brief must include in the caption, in the part of the caption page identifying the name and mailing address of the district court in which the appeal is filed, the identity of the county court and the case number of the case from which the appeal is being taken.

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(4) **Content of Briefs.** Briefs must conform to the content requirements of C.A.R. 28(a) and (b).

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From:	jones, jerry
To:	michaels, kathryn
Subject:	FW: New Wyoming Rule for remote depositions
Attachments:	Order WRCP 30.1.pdf
Sent:	1/22/2025 1:24:04 PM

From: Owen, Brent <Brent.Owen@haynesboone.com>
Sent: Tuesday, July 9, 2024 11:56 AM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Cc: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: [External] New Wyoming Rule for remote depositions

Judge Jones,

I hope you had a good Fourth.

I am not sure if it is worth discussing at the next Rules Committee Meeting, but I wanted to share that Wyoming adopted a new Rule 30.1 to govern remote depositions. The Rule articulates many of the practical and good faith considerations that typically occur for remote depositions, including ensuring that technology works in advance (d)(2), agreeing that the deponent will have nothing else running on the computer at the time of the deposition (d)(4), and requiring certain security protocols to prohibit unauthorized people from accessing the remote deposition (d)(3).

Our Rule 30(b)(7) already allows remote or telephonic depositions by stipulation. Personally, I have conducted numerous remote depositions without problems. So I'm not sure the rule is necessary or appropriate for Colorado. But, as mentioned, I thought I should at least flag it for your consideration.

Thanks,

Brent

HAYNES BOONE

Brent Owen | Partner
brent.owen@haynesboone.com | (t) +1 303.382.6242

From: Sharon Wilkinson <swilkinson@wyomingbar.org>
Sent: Tuesday, July 9, 2024 11:43 AM

To: Sharon Wilkinson <swilkinson@wyomingbar.org>
Subject: Order Adopting Rule 30.1 of the Wyoming Rules of Civil Procedure

EXTERNAL: Sent from outside Haynes and Boone, LLP

Wyoming State Bar Members,

Please see the attached Order Adopting Rule 30.1 of the Wyoming Rules of Civil Procedure, which was filed today and is effective October 1, 2024.

Sharon Wilkinson
Executive Director
Wyoming State Bar
P.O. Box 109
Cheyenne, WY 82003
(307) 432-2102
Fax: (307) 432-2122
www.wyomingbar.org

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2024

In the Matter of Adoption of Rule 30.1 of the Wyoming Rules of Civil Procedure)

ORDER ADOPTING RULE 30.1 OF THE WYOMING RULES OF CIVIL PROCEDURE

The Permanent Rules Advisory Committee, Civil Division, has recommended the Court adopt Rule 30.1 of the Wyoming Rules of Civil Procedure. This Court finds the proposed rule should be adopted. It is, therefore,

ORDERED that Rule 30.1 of the Wyoming Rules of Civil Procedure, attached hereto, be and hereby are adopted by the Court to be effective October 1, 2024; and it is further

ORDERED that this order and the attached rule be published in the advance sheets of the Pacific Reporter; the attached rules be published in the Wyoming Court Rules Volume; and that this order and the attached rules be published online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us, on the "Rule Amendments" page. The amendments shall also be recorded in the journal of this Court.

DATED this 9th day of July, 2024.

BY THE COURT:

/s/

KATE M. FOX
Chief Justice

*****

Rule 30.1. Remote Depositions.

The following Protocols shall apply to all Remote Depositions, unless otherwise stipulated to by the parties or as otherwise ordered by the court:

(a) Remote Depositions. Depositions conducted in a manner that allows the deponent and all other persons entitled and required to attend a deposition the opportunity to participate in person without being physically present at the same location as all deposition participants ("Remote Deposition") may be conducted in any civil case.

(b) Unless specifically stated otherwise herein, any Remote Deposition taken pursuant to this Rule must comply with the requirements of W.R.C.P. 30.

(c) A Remote Deposition will be deemed to have been taken before an appropriate officer provided the court reporter attends by the same remote means as the other participants and is able to hear and communicate with all other attendees. The witness may be sworn in remotely with the same effect as an oath administered in person.

(d) At least seven (7) days prior to the Remote Deposition, the party noticing the deposition must identify the company or court reporter that will host and record the Remote Deposition (the "Remote Deposition Vendor"). The notice must also contain a general description of how those attending may access the remote connection and platform utilized.

(1) The party noticing the deposition must provide the witness and all other attendees detailed instructions that explain how to participate in the Remote Deposition. These instructions must be provided to the parties within the Remote Deposition Notice.

(2) To avoid technological issues, the parties shall meet and confer in advance of the Remote Deposition to discuss protocols applicable to the Remote Deposition, including but not limited to sign-in information, vendor identification, the identities of all individuals who are expected to attend, exhibit sharing, and audio and visual concerns, if any. Unless the parties agree otherwise, a Remote Deposition Vendor shall have adequate security measures to ensure the confidentiality of the Remote Deposition, video and audio feeds, and exhibits. These security measures shall include password protection and tools for the court reporter to admit only those individuals authorized to attend the Remote Deposition.

(3) Unless the parties agree otherwise, at least twenty-four (24) hours prior to the Remote Deposition, counsel, the witness, and the Remote Deposition Vendor shall conduct a test of the system, equipment, and internet connection that will be used to conduct the Remote Deposition (the "Remote Deposition Technology").

(4) At the commencement of the Remote Deposition, the witness must advise the court reporter of his or her physical location. If the witness appears via remote video platform, the witness should endeavor to participate in the deposition from a quiet, well-lit, indoor location, while seated in front of a neutral background, and must face the camera. Other than the application required to conduct the deposition, the witness shall not have any other applications open or running on any electronic device.

(5) If the witness intends to appear in a Remote Deposition via telephonic means

(and not by video), the party noticing the deposition shall assure that the location of the witness's appearance is covered by a reliable connection.

(6) The microphones and video feeds for a Remote Deposition examining attorney, witness and court reporter shall remain "on" while the deposition is on the record.

(7) At the request of the examining attorney or self-represented party, a split screen may be utilized to record and display an exhibit while the witness is being deposed.

(8) The Remote Deposition Technology shall show in real-time a list of all persons attending the Remote Deposition. The participating attorneys may, at their option, be visible to all other participants during the deposition.

(A) All individuals participating in or observing the Remote Deposition must announce themselves for the record.

(B) The Remote Deposition Vendor, court reporter and videographer, the witness's counsel, and any party or attorney and representatives of a party are the only individuals permitted to be in the same physical location as the witness during a Remote Deposition. Unless the notice provides otherwise, or unless the parties so stipulate, no other individuals are permitted to be in the same room as the witness during a Remote Deposition.

(C) If a party's or witness's attorney intends to attend the Remote Deposition in the same physical location as the witness, that attorney shall provide notice to all other parties at least twenty-four (24) hours in advance of the Remote Deposition.

(D) At the commencement of a Remote Deposition, the witness shall be informed by counsel or the court reporter to inform those in attendance of any person, other than the witness's counsel, that enters the room where the witness is physically located.

(9) A videographer employed by the Remote Deposition Vendor may record the witness's deposition testimony by reasonable technological means, including remote video capture/recording. The video recording of the deposition may only be suspended during the deposition upon stipulation by counsel conducting and defending the deposition.

(A) Unless the parties agree otherwise, the Remote Deposition shall only be recorded by the court reporter, videographer and/or Remote Deposition Vendor.

(B) Unless all parties agree or the court orders otherwise, during the Remote Deposition, the operator/videographer will video record the witness only.

(C) The videographer must only record:

(i) The audio and video of the witness's testimony.

(ii) The video of any documents being displayed or annotated for the witness during the deposition; and

(iii) The audio of the questioning and defending attorneys.

(e) A Remote Deposition conducted in accordance with this Rule will not be a basis for excluding the Remote Deposition at trial and shall have the same effect as a video deposition that was recorded in-person at the same physical location as the deponent.

(f) Any document that may be used as an exhibit during the Remote Deposition shall be transmitted by the examining attorney to all Remote Deposition participants:

(1) in sealed envelopes in advance of the Remote Deposition;

(2) in real time or in advance electronically through either the court reporter or the Remote Deposition Vendor's Remote Deposition platform, secure file transfer, or email, before or during the course of the Remote Deposition;

(3) a combination of subsections (1) and (2) of this paragraph; or

(4) by an alternative means agreed to in advance by the parties.

(5) If documents that may be used as exhibits are transmitted to Remote Deposition Participants in sealed envelopes pursuant to subparagraph (1), the deposition participants will not open the sealed envelopes or otherwise access such documents unless and until specifically requested by the examining attorney. All sealed envelopes must be opened only during the Remote Deposition. The witness shall not review documents during the deposition, other than those marked by the examining attorney as exhibits or otherwise used by the examining attorney, without notifying and with the consent of the examining attorney.

(g) During the Remote Deposition examination, no person is permitted to communicate with the witness by any means not recorded in the same manner as the deposition itself. All private chat features on the remote connection being utilized shall be disabled. All applications on the witnesses' device, other than the applications being utilized to conduct the deposition, shall be closed. No witness shall communicate with any person (verbally, in writing, or by conduct) while on the record at the deposition in a manner that the examining attorney cannot personally observe through the videoconference technology. However, the witness's counsel may communicate with the witness telephonically or by other electronic means (including, but not limited to, the use of the remote connection software) during Remote Deposition breaks, consistent with the Wyoming Rule of Civil Procedure and the Wyoming Rules of Evidence.

(h) During Remote Deposition breaks, the parties may use any confidential breakout room feature provided by the Remote Deposition Vendor, which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by the Remote Deposition Vendor prior to the deposition and controlled by the Remote Deposition Vendor.

(i) Any pauses, lags, and/or disruptions in technology, including but not limited to interruptions in internet connection, will not result in waiver of objections by any party. If a technical issue prevents any person from being able to see or hear one or more of the other persons clearly or to access published exhibits, the person encountering such technical issue shall promptly notify the other participants.

(j) Nothing in this Rule prevents a party from moving for a protective order under W.R.C.P. 26(c) to request a given deposition proceed in person.

(k) Nothing contained in this Rule precludes counsel for a witness from being in the same room as the witness.

(l) Any Protective Order entered in the action shall apply to any confidential testimony and/or documents used as exhibits during the taking of any Remote Deposition to the same extent it would to an in-person deposition.

(m) The parties may agree on *ad hoc* modifications to this procedure in order to accommodate the needs of a particular witness and/or to resolve any issues that may arise with respect to a particular deposition. Such modifications may be stipulated to in writing or memorialized on the record at a deposition.

(n) If there are issues with connectivity with a Deposition Participant, or if these Remote Deposition Protocols cannot be resolved consensually, subject to the court's availability, the parties may seek an expedited telephonic hearing with the court.

*****

Rule 30. Depositions Upon Oral Examination

(a) When Depositions May Be Taken.

(1) Subject to the provisions of C.R.C.P. Rules 26(b)(2)(A) and 26(d), a party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2) of this section. The attendance of witnesses may be compelled by subpoena as provided in C.R.C.P. 45.

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

(A) A proposed deposition, if taken, would result in more depositions than set forth in the Case Management Order;

(B) The person to be examined already has been deposed in the case;

(C) A party seeks to take a deposition before the time specified in C.R.C.P. 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the state and be unavailable for examination within the state if the person's deposition is not taken before the expiration of such time period; or

(D) The person to be examined is confined in prison.

(b) Notice of Examination. General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) Consistent with C.R.C.P. 121, sec. 1-12, a party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded, which, unless the court otherwise orders, may be by sound, sound-and-visual, or stenographic means. Unless the court otherwise orders, the party taking the deposition shall bear the cost of the recording.

(3) Any party may provide for a transcription to be made from the recording of a deposition taken by non-stenographic means. With reasonable prior notice to the deponent and other parties, any party may designate another method of recording the testimony of the deponent in addition to the method specified by the person taking the deposition. Unless the court otherwise orders, each party designating an additional method of recording the testimony of a deponent shall bear the cost thereof.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated pursuant to C.R.C.P. 28 and shall begin with a statement on the record by

the officer that includes (a) the officer's name and business address; (b) the date, time, and place of the deposition; (c) the name of the deponent; (d) the administration of the oath or affirmation to the deponent; and (e) an identification of all persons present. If the deposition is recorded other than stenographically, items (a) through (c) shall be repeated at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted by the use of camera or sound-recording techniques. At the conclusion of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording, the exhibits, or other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in its notice or subpoena name as the deponent a public or private corporation, partnership, association, governmental agency, or other entity and designate with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Before a notice is served, or promptly after a subpoena is served, the serving party and the organization shall confer in good faith about the matters for examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules. The duration of a deposition under this subsection (b)(6), regardless of the number of persons designated, is governed by Rule 30(d)(2)(A).

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and C.R.C.P. Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by telephone or other remote electronic means is taken at the place where the deponent is to answer questions propounded to the deponent. The stipulation or order shall include the manner of recording the proceeding.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Colorado Rules of Evidence except CRE 103. The witness shall be put under oath or affirmation and the officer before whom the deposition is to be taken shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subsection (b)(2) of this Rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or in any other respect to the proceedings shall be noted by the officer upon the record of the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the

deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

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

(1) Any objection during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. An instruction not to answer may be made during a deposition only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion pursuant to subsection (d)(3) of this Rule.

(2)(A) Unless otherwise authorized by the court or stipulated by the parties, a deposition of a person other than a retained expert disclosed pursuant to C.R.C.P. 26(a)(2)(B)(I) whose opinions may be offered at trial is limited to one day of 6 hours. Upon the motion of any party, the court may limit the time permitted for the conduct of a deposition to less than 6 hours, or may allow additional time if needed for a fair examination of the deponent and consistent with C.R.C.P. 26(b)(2), or if the deponent or another person impedes or delays the examination, or if other circumstances warrant. If the court finds such an impediment, delay, or other conduct that frustrates the fair examination of the deponent, it may impose upon the person responsible therefor an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

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

(3) At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in C.R.C.P. 26(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall be notified by the officer that the transcript or recording is available. Within 35 days of receipt of such notification the deponent shall review the transcript or recording and, if the deponent makes changes in the form or substance of the deposition, shall sign a statement reciting such changes and the deponent's reasons for making them and send such statement to the officer. The officer shall indicate in the certificate prescribed by subsection (f)(1) of this rule whether any review was requested and, if so, shall append any changes made by the deponent.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. This certificate shall be set forth in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall securely seal

the deposition in an envelope or package endorsed with the title of the action and marked "deposition of (here insert name of witness)" and shall promptly transmit it to the attorney who arranged for the transcript or recording. The receiving attorney shall store the deposition under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that: if the person producing the materials desires to retain the originals, the person may

(A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or

(B) offer the originals to be marked for identification, after giving each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

COMMENTS

1995 [Amendment]

[1] Revised C.R.C.P. 30 is patterned in part after Fed.R.Civ.P. 30 as amended in 1993 and now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

[2] A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of depositions and the basis for the necessity of such discovery with attention to the presumptive

limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

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

2015 [Amendment]

[4] Rule 30 is amended to reduce the time for ordinary depositions from 7 to 6 hours, so that they can be more easily accomplished in a normal business day.

2022 [Amendment]

Rule 30(b)(6) depositions differ from ordinary depositions and impose additional obligations on both the party taking the deposition and the organization being deposed. First, the serving party must provide advance notice of topics that are sufficiently detailed and reasonable in relation to the time for the deposition such that the organization may fairly prepare a representative(s) to testify. Second, the serving party and the organization must engage in substantive conferral on matters to be covered in the examination. Third, the organization has an obligation to identify and adequately prepare its witness(es) to testify on the specified topics.

From:	jones, jerry
To:	michaels, kathryn
Subject:	FW: Civil Rules Committee - Suggestion
Sent:	1/22/2025 1:26:40 PM

From: leith, elizabeth <elizabeth.leith@judicial.state.co.us>
Sent: Tuesday, January 7, 2025 12:42 PM
To: gabriel, richard <richard.gabriel@judicial.state.co.us>; jones, jerry <jerry.jones@judicial.state.co.us>; michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: Civil Rules Committee - Suggestion

Hello and Happy New Year!

I attended a training and was speaking with an ALJ from DC who mentioned they place language regarding Generative AI in their scheduling orders. The ALJ was kind enough to send me the language used. I have pasted that language here for you all to review, with my suggestion following. I don't know if the Civil Rules Committee has been considering something like this, but thought it might be food for thought, especially given the recent COA rulings. Of course, if there is already something in the works, please disregard.

1. **Mandatory Certification Regarding Generative AI.** By signing and presenting to the Tribunal a pleading, written motion, or other filing, an attorney or pro se litigant certifies that either: (1) no portion of the filing was drafted by generative artificial intelligence ("AI") (such as ChatGPT, Harvey.AI, or Google Bard), or (2) any language in the filing that was drafted by generative AI was checked for accuracy by human

attorneys or paralegals using printed legal reporters and/or online legal databases.

AI platforms, in their current states, are prone to "hallucinations," (i.e., fabrication of quotes or citations), lack of reliability, and bias. Attorneys and pro se litigants are bound by the law and the facts in their representations to the Tribunal, whereas generative AI is the product of programming unrestrained by truth or the law. Accordingly, absent a statement that AI has been used and verified, your presentation and signature on a filing constitutes certification that AI has **not** been used.[1]

1) The Tribunal may strike any filing from a party who fails to abide by the Tribunal's foregoing Mandatory Certification requirements. Parties will be held responsible for the contents of any filing that they sign and submit to the Tribunal, regardless of whether generative AI drafted any portion of that filing.

Perhaps an addition to Rule 11?

(c) By signing and filing any pleading, motion, document or thing with the court, the attorney, party or litigant certifies that no portion of the filing was drafted by generative artificial intelligence ("AI"). Should there be any language in the filing that was drafted by generative AI, the filing must include a certification that identifies that portion of the filing drafted by generative AI, and that the filing has been checked for accuracy by the filing attorney, party or litigant using printed legal reporters or online legal databases. Attorneys, parties and litigants are not relieved of their duty of truthfulness and candor if generative AI is used in their filings. The court may strike any filing that does

not comply with these certification requirements and impose reasonable expenses.

Thank you all for your consideration.

Judge Leith

Elizabeth Leith
Presiding Judge
Denver Probate Court
303-606-2471

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 Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil 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 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 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 Colorado Bar 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 (b)(2) may subject the attorney to the sanctions provided for in C.R.C.P. 11(a). Providing limited legal services to a self-represented party under this subsection (b)(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 proceeding without satisfying the requirements of subsections (b)(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 (b)(3) does not authorize or require the service of papers upon the attorney.

From:	jones, jerry
To:	michaels, kathryn
Subject:	FW: Rule 16(c)/Rule 56(h) Conflict
Sent:	1/22/2025 1:26:05 PM

From: Bradley A. Levin <brad@lsw-legal.com>
Sent: Tuesday, January 14, 2025 1:41 PM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Subject: [EXTERNAL] Rule 16(c)/Rule 56(h) Conflict

Judge Jones,

There appears to be a conflict between Rules 16(c) and 56(h) regarding the timing for filing a Motion for Determination of a Question of Law. Rule 16(c) states that "motions pursuant to C.R.C.P 56 . . . must be filed no later than 91 days (13 weeks) before the trial . . .." The same language appears in Rule 56(c), which states that "any motion for summary judgment shall be filed no later than 91 days (13 weeks) prior to trial." However, Rule 56(h) provides: "At any time after the last required pleading . . . a party may move for determination of a question of law." I believe the Committee should address these provisions and resolve the apparent conflict.

Thank you.

Brad

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Rule 16. Case Management and Trial Management

(a) Purpose and Scope. The purpose of this Rule 16 is to establish a uniform, court-supervised procedure involving case management which encourages professionalism and cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures. This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in Rule 16.1. The disclosures and information required to be included in both the Case Management and Trial Management Orders interrelate to discovery authorized by these rules. The right of discovery shall not constitute grounds for failing to timely disclose information required by this Rule, nor shall this Rule constitute a ground for failing to timely disclose any information sought pursuant to discovery.

(b) Case Management Order. Not later than 42 days after the case is at issue and at least 7 days before the case management conference, the parties shall file, in editable format, a proposed Case Management Order consisting of the matters set forth in subsections (1)-(17) of this section and take the necessary actions to comply with those subsections. This proposed order, when approved by the court, shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section (f) of this Rule or unless modified upon a showing of good cause. Use of the "Proposed Case Management Order" in the form and content of Appendix to Chapters 1 to 17A, form (JDF 622), shall comply with this section.

(1) *At Issue Date.* A case shall be deemed at issue when all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court may direct. The proposed order shall state the at issue date.

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

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

(A) the nature and basis of the claims and defenses;

(B) the matters to be disclosed pursuant to C.R.C.P. 26(a)(1);

(C) the Proposed Case Management Order;

(D) mutually agreeable dates for the case management conference; and

(E) based thereon shall obtain from the court a date for the case management conference.

The proposed order shall state the date of and identify the attendees at any meet and confer conferences.

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

(5) *Pending Motions.* The proposed order shall list all pending motions that have been filed and are unresolved. The court may decide any unresolved motion at the case management conference.

(6) *Evaluation of Proportionality Factors.* The proposed order shall provide a brief statement of each party's position on the application of any factors to be considered in determining proportionality, including those factors identified in C.R.C.P. 26(b)(1). Each party that filed a certification of value pursuant to C.R.C.P. 16.1(d) must include in the proposed order a description of the categories of damages sought and a computation of any category of economic damages claimed.

(7) *Initial Exploration of Prompt Settlement and Prospects for Settlement.* The proposed order shall confirm that the possibility of settlement was discussed, describe the prospects for settlement and list proposed dates for any agreed upon or court-ordered mediation or other alternative dispute resolution.

(8) *Proposed Deadlines for Amendments.* The proposed order shall provide proposed deadlines for amending or supplementing pleadings and for joinder of additional parties, which unless otherwise provided by law, shall be not later than 105 days (15 weeks) after the case is at issue, and shall provide a deadline for identification of non-parties at fault, if any, pursuant to C.R.S. § 13-21-111.5.

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

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

(11) *Discovery Limits and Schedule.* Unless otherwise ordered by the court, discovery shall be limited to that allowed by C.R.C.P. 26(b)(2). Discovery may commence as provided in C.R.C.P. 26(d) upon service of the Case Management Order. The deadline for completion of all discovery, including discovery responses, shall be not later than 49 days before the trial date. The proposed order shall state any modifications to the amounts of discovery permitted in C.R.C.P. 26(b)(2), including limitations of awardable costs, and the justification for such modifications consistent with the proportionality factors in C.R.C.P. 26(b)(1).

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

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

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

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

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

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

(18) *Notices of Related Cases.* The proposed order shall state whether any notices of related cases, pursuant to Rule 121, Section 1-9, have been filed.

(19) *Entry of Case Management Order.* The proposed order shall be signed by lead counsel for each party and by each party who is not represented by counsel. After the court's review and revision of any provision in the proposed order, it shall be entered as an order of the court and served on all parties.

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

(d) Case Management Conference.

(1) The responsible attorney shall schedule the case management conference to be held no later than 49 days after the case is at issue, and shall provide notice of the conference to all parties.

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

(3) If the case is proceeding under C.R.C.P. 16 because of a certification of value filed pursuant to C.R.C.P. 16.1(d), the court has discretion to strike the certification for good cause.

(4) If all parties are represented by counsel, counsel may timely submit a proposed order and may jointly request the court to dispense with a case management conference. In the event that there appear to be no unusual issues, that counsel appear to be working together collegially, and that the information on the proposed order appears to be consistent with the best interests of all parties and is proportionate to the needs of the case, the court may dispense with the case management conference.

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

(f) Trial Management Order. No later than 28 days before the trial date, the responsible attorney shall file a proposed Trial Management order with the court. Prior to trial, a Trial Management Order shall be entered by the Court.

(1) *Cases with Unrepresented Parties.* If any unrepresented party will be participating in the trial, the responsible attorney shall promptly file a Notice to Set Trial Management conference after all disclosures have been served and discovery has been completed and the court shall conduct a Trial Management conference on the record and issue a Trial Management Order pursuant to subsection (f)(4) of this Rule. The responsible attorney shall submit a proposed Trial Management Order prior to the conference by filing the same with the Court and serving a copy thereof on all other parties.

(2) *All Parties Represented by Counsel*.

(A) If all parties are represented by counsel, lead counsel for each party shall confer with each other to develop jointly a proposed trial management order. Plaintiff's counsel shall be responsible for scheduling conferences among counsel and preparing and filing the proposed trial management order.

(B) Not later than 42 days before the trial date, each counsel shall exchange a draft of the lists of witnesses and exhibits required in subsections (f)(3)(VI)(A) and (B) of this Rule together with a copy of each documentary exhibit to be listed pursuant to subsection (f)(3)(VI)(B) of this Rule.

(C) To the extent possible, counsel shall agree to the contents of the proposed Trial Management Order. Any matter upon which all counsel cannot agree shall be designated as “disputed” in the proposed order and the proposed trial management order shall contain specific alternative

provisions upon which agreement could not be reached. The proposed Trial Management Order shall be signed by lead counsel for each party and shall include a place for the court's approval.

(D) If there are any disputed matters or if any counsel believes that it would be helpful to conduct a Trial Management conference, the filing of the proposed Trial Management order shall be accompanied by a Notice to Set Trial Management conference, stating the reasons why such a conference is requested.

(3) *Form of Trial Management Order.* The proposed Trial Management Order shall contain the following matters under the following captions and in the following order:

I. Statement of Claims and Defenses. The parties shall set forth a brief description of the nature of the case and a summary identification of the claims and defenses remaining for trial. Any claims or defenses set forth in the pleadings which will not be at issue at trial shall be designated as "withdrawn" or "resolved."

II. Stipulated Facts. The parties shall set forth a plain, concise statement of all facts which the trier of fact shall accept as undisputed. If the matter is scheduled for a jury trial, a proposed jury instruction containing these undisputed facts shall be submitted as provided in section (g) of this Rule.

III. Pretrial Motions. The parties shall list any pending motions.

IV. Trial Briefs. The parties shall indicate whether trial briefs will be filed, including a schedule for their filing. Trial briefs shall be filed no later than 14 days before the trial date.

V. Itemization of Damages or Other Relief Sought. Each claiming party shall set forth a detailed description of the categories of damages or other relief sought and a computation of any economic damages claimed.

VI. Identification of Witnesses and Exhibits--Juror Notebooks. Each party shall provide the following information:

(A) Witnesses. Each party shall attach to the proposed trial management order separate lists containing the name, address, telephone number and the anticipated length of each witness' testimony, including cross examination, (i) of any person whom the party "will call" and (ii) of any person whom the party "may call" as a witness at trial. When a party lists a witness as a "will call" witness, the party does not have to call the witness to testify, but must ensure that the witness will be available to testify at trial if called by any party without the necessity for any other party to subpoena the witness for the trial. For each expert witness, the list shall also indicate whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness. Where appropriate, the court may order the parties to provide written notice to the other parties and to the court of the order in which the parties expect to present their witnesses.

(B) Exhibits. Each party shall attach to the proposed trial management order a list of exhibits including physical evidence which the party intends to introduce at trial. Unless stipulated by the parties, each list shall assign a number (for plaintiff or petitioner) or letter (for defendant or

respondent) designation for each exhibit. Proposed excerpted or highlighted exhibits shall be attached. If any party objects to the authenticity of any exhibit as offered, such objection shall be noted on the list, together with the ground therefor. If any party stipulates to the admissibility of any exhibit, such stipulation shall be noted on the list. Records of regularly conducted activity to be offered pursuant to CRE 902(11) and (12) may be supported by use of Forms 37 and 38 in the Appendix to Chapters 1 to 17A, Forms. On or before the trial date, a set of the documentary exhibits shall be provided to the court.

(C) Juror Notebooks. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t) and at the Trial Management conference or other date set by the Court make a joint submission to the Court of items to be included in the juror notebook. By agreement of the parties or in the discretion of the Court, important exhibits may be highlighted or excerpted and may be included in juror notebooks.

(D) Deposition and Other Preserved Testimony. If the preserved testimony of any witness is to be presented the proponent of the testimony shall provide the other parties with its designations of such testimony at least 28 days before the trial date. Any other party may provide all other parties with its designations and shall do so at least 21 days before the trial date. The proponent may provide reply designations and shall do so at least 14 days before the trial date. A copy of the preserved testimony to be presented at trial shall be submitted to the court and include the proponent's and opponent's anticipated designations of the pertinent portions of such testimony or a statement why designation is not feasible at least 7 days before the trial date. If any party wishes to object to the admissibility of the testimony or to any tendered question or answer therein, it shall be noted, setting forth the grounds therefor.

VII. Trial Efficiencies and Other Matters. If the anticipated length of the trial has changed, the parties shall so indicate. The parties shall also include any other matters which are appropriate under the circumstances of the case or directed by the court to be included in the proposed Trial Management Order. The parties shall confirm that they have considered ways in which the use of technology can simplify the case and make it more understandable. In all cases where a jury trial will be held, the parties shall confer regarding the amount of time requested for juror examination and provide their positions along with their reasons therefor.

(4) *Approval of Trial Management Order.* If a Notice to Set Trial Management Conference is filed or the Court determines that such a conference should be held, the Court shall set a trial management conference. The conference may be conducted by telephone. The court shall promptly enter the Trial Management Order.

(5) *Effect of Trial Management Order.* The Trial Management Order shall control the subsequent course of the trial. Modification to or divergence from the Trial Management Order, whether prior to or during trial, shall be permitted upon a demonstration that the modification or divergence could not with reasonable diligence have been anticipated. In the event of any ambiguity in the Trial Management Order, the Court shall interpret the Order in the manner which best advances the interests of justice.

(g) Jury Instructions and Verdict Forms. Counsel for the parties shall confer to develop jointly proposed jury instructions and verdict forms to which the parties agree. No later than 7 days prior to

the date scheduled for commencement of the trial or such other time as the court shall direct, a set of the proposed jury instructions and verdict forms shall be filed with the courtroom clerk. The first party represented by counsel to demand a jury trial pursuant to C.R.C.P. 38 and who has not withdrawn such demand shall be responsible for filing the proposed jury instructions and verdict forms. If any jury instruction or verdict form is disputed, the party propounding the instruction or verdict form shall separately file with the courtroom clerk a set of the disputed jury instructions and verdict forms. Each instruction or verdict form shall have attached a brief statement of the legal authority on which the proposed instruction or verdict form is based. Compliance with this Rule shall not deprive parties of the right to tender additional instructions or verdict forms or withdraw proposed instructions or verdict forms at trial. All jury instructions and verdict forms submitted by the parties shall be in final form and reasonably complete. The court shall permit the use of photocopied instructions and verdict forms, without citations, in its submission to the jury.

COMMENTS

1995 [Amendment]

History and Philosophy

[1] Effective differential case management has been a long-term goal of the Bench, Bar, and Public. Adoption by the Colorado Supreme Court of C.R.C.P. 121 and its practice standards in 1983; revised C.R.C.P. 16 in 1988 to require earlier disclosure of matters necessary for trial; and the Colorado Standards for Case Management--Trial Courts in 1989 were a continuing and evolving effort to achieve an orderly, fair and less expensive means of dispute resolution. Those rules and standards were an improvement over prior practice where there was no prescribed means of case management, but problems still remained. There were problems of discovery abuse, late or inadequate disclosure, lack of professionalism, slow case disposition, outrageous expense and failure to achieve an early settlement of those cases that ultimately settled.

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

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

[4] The heart of the reform is a totally rewritten Rule 16 which sets forth a new system of case management. Revisions to Rules 26, 29, 30, 31, 32, 33, 34, 36, and 37 are patterned after December 1, 1993, revisions to Federal Rules of the same number, but are not in all respects identical. Colorado Rules 16, 26, 29, 30, 31, 32, 33, 34, 36, and 37 were developed to interrelate with each other to provide a differential case management/early disclosure/limited discovery

system designed to resolve difficulties experienced with prior approaches. Changes to C.R.C.P. 121 §§ 1-11, 1-12, 1-15, and 1-19 are designed to interrelate with the case management/disclosure/discovery reform to improve motions practice. In developing these rules, the Committee paid particular attention to the 1993 revisions of the Federal Rules of Civil Procedure and the work of the Colorado Bar Association regarding professionalism.

Operation

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

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

[7] The Committee acknowledges the greater length of the Rules comprising this reformed system. However, these Rules have been developed to describe and to eliminate “hide-the-ball” and “hardball” tactics under previous Disclosure Certificate and Discovery Rules. It is expected that trial judges will assertively lead the management of cases to ensure that justice is served. In the view of the Committee, abuses of the Rules to run up fees, feed egos, bludgeon opponents into submission, force unfair settlements, build cases for sanctions, or belittle others should not be tolerated.

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

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

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

[9] Lead counsel for each of the parties are required to confer about the nature and bases of their claims and defenses, discuss the matters to be disclosed and explore the possibilities of a prompt settlement or other resolution of the case. As part of the conferring process, lead counsel for each of the parties are required to cooperate in the development of the Case Management Order, which is then submitted to the Court for approval. If there is disagreement about any aspect of the proposed Case Management Order, or if some aspect of the case requires special treatment, the parties are entitled to an expeditious Case Management Conference. If any party is appearing pro se an automatic mandatory Case Management Conference is triggered.

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

[11] Disclosure requirements of C.R.C.P. 26, including the duty to timely supplement and correct disclosures, together with sanction provisions of C.R.C.P. 37 for failure to make disclosure, are incorporated by reference. Because of mandatory disclosure, there should be substantially less need for discovery. Presumptive limitations on discovery are specified in C.R.C.P. 26(b)(2). The limitations contained in C.R.C.P. 26 and Discovery Rules 29, 30, 31, 32, 33, 34, and 36 are incorporated by reference and provision is made for discovery above presumptive limitations if, upon good cause shown (as defined in C.R.C.P. 26(b)(2)), the particular case warrants it. The system established by C.R.C.P. 16(b)(1)(IV) requires the parties to set forth and obtain Court approval of a schedule of discovery for the case, which includes the timing and number of particular forms of discovery requests. The system established by C.R.C.P. 16(b)(1)(IV) also requires lead counsel for each of the parties to set forth the basis of and necessity for all such discovery and certify that they have advised their clients of the expenses and fees involved with each such item of discovery. The purpose of such discovery schedule and expense estimate is to bring about an advanced realization on the part of the attorneys and clients of the expense and effort involved in the schedule so that decisions can be made concerning propriety, feasibility, and possible alternatives (such as settlement or other means of obtaining the information). More stringent standards concerning the necessity of discovery contained in C.R.C.P. 26(b)(2) are incorporated into C.R.C.P. 16(b)(1)(IV). A Court should not simply "rubber-stamp" a proposed discovery schedule even if agreed upon by counsel.

[12] A Court Case Management Conference will not be necessary in every case. It is anticipated that many cases will not require a Court Case Management Conference, but such conference is available should the parties or the Court find it necessary. Regardless of whether there is a Court Case Management Conference, there will always be the Case Management Order which, along with

the later Trial Management Order, should effectively govern the course of the litigation through the trial.

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

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

[14] As with the Case Management Order procedure, many cases will not require a Court Trial Management Conference, but such a conference is available upon request and encouraged if there is any problem with the case that is not resolved and managed by the Trial Management Order.

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

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

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

2015 [Amendment]

[17] The previous substantive amendment to Rule 16(b) established presumptive discovery limits and procedures which caused filing of detailed Case Management Orders and appearing before a judge to become rare. While this reduced lawyers' time in preparing detailed orders, it also resulted in judges not being involved in pretrial case management.

[18] Among the key principles adopted by the Federal Advisory Committee on Rules of Civil Procedure, as well as the Civil Access Pilot Project ("CAPP"), is that cases move more efficiently if

judges are involved directly and early in the process. (*See also,* "*Working Smarter, Not Harder: How Excellent Judges Manage Cases*," at 7-20 (2014), *available at* http://www.actl.com).

[19] Particularly in conjunction with the principle that discovery should be in proportion to the genuine needs of the case, it was deemed important for judges, in addition to litigants, to be involved early in the pretrial process in deciding how much discovery was appropriate. Both judges and lawyers have noted that some lawyers have a financial incentive not to limit discovery. Perhaps more significant was the recognition that many lawyers engage in "over discovery" because of the fear (justifiable or not) that failing to engage in every conceivable means of discovery until a judge orders one to "stop!" could expose a trial lawyer to subsequent expensive malpractice litigation. These problems are greatly alleviated with the intervention of trial judges placing reasonable limitations on discovery and potentially excessive pretrial practices at the earliest meaningful stage of the case.

[20] CAPP required in-person initial case management conferences with the judge. These conferences followed submission of a report from the parties which included information relevant to the evaluation of proportionality as well as how the case should be handled. The analysis of CAPP reflects that this practice was widely liked by both lawyers and judges. It is desirable that there be an official order arising from the case management conference reflecting the court's input and which, importantly, provides enforcement power. Thus, Rule 16(b) has completely rewritten the rule to include requiring a joint report to the court in the form of a proposed Case Management Order. It can be approved or modified by the court to become the official order. It is to be filed with the court not later than 42 days after the case is at issue, but at least 7 days before the case management conference.

[21] The new rule lists the required contents of the proposed Case Management Order and also provides a form that can be downloaded for preparation of the proposed order. Although at first glance the new rule appears somewhat onerous, most of the information sought is relatively easy to include and should be discussed by opposing counsel or parties, in any event, at the outset of the case.

[22] The joint report/proposed Case Management Order must contain the following information, which is unchanged from former Rule 16(b)(1)-(3): the "at issue" date; contact information for the "responsible attorney"; and a description of the "meet and confer" discussions. The joint report must also provide:

- a brief description of the case from each side, and of the issues to be tried (one page per side);
- a list of pending, unresolved motions;
- an evaluation of the proportionality factors from C.R.C.P. 26(b)(1);
- a confirmation that the parties discussed settlement and description of prospects for settlement;
- proposed deadlines for amending the pleadings;
- the dates when disclosures were made and any objections to those disclosures;

• an explanation of why, if applicable, full disclosure of damages has not been completed and when it will be;

• subjects for expert testimony with a limit of only one expert per side per subject unless good cause is established consistent with proportionality;

• acknowledgement that oral discovery motions may be required by the court;

• provision for electronic discovery when significant electronic discovery is anticipated;

• estimated time to complete discovery and length of trial so the court can set trial at the case management conference; and

• a catchall for other appropriate matters.

[23] The former provisions in Rule 16(c) related to Modified Case Management Orders are repealed as moot but are replaced with the deadlines for pretrial motions presently contained in Rule 16(b)(9).

[24] Rule 16(d) is rewritten to require personal or telephonic attendance at the case management conference by lead counsel. In anticipation that judges will not want (or need) to hold in person case management conferences in all cases, Rule 16(d)(3) allows the court to dispense with a case management conference if it is satisfied that the lawyers are working together well and the joint report contemplates appropriate and proportionate pretrial activity. However, the rule recommends that case management conferences always be held if one or more of the parties is self-represented. This gives the court the opportunity to try to keep the case and self-represented party focused and on track from the beginning.

Rule 56. Summary Judgment and Rulings on Questions of Law

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 21 days from the commencement of the action or after filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the claiming party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, move with or without supporting affidavits for a summary judgment in the defending party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. Unless otherwise ordered by the court, any motion for summary judgment shall be filed no later than 91 days (13 weeks) prior to trial. A cross-motion for summary judgment shall be filed no later than 70 days (10 weeks) prior to trial. The motion may be determined without oral argument. The opposing party may file and serve opposing affidavits within the time allowed for the responsive brief, unless the court orders some lesser or greater time. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the opposing party's pleadings, but the opposing party's response by affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If there is no response, summary judgment, if appropriate, shall be entered.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify its opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Determination of a Question of Law. At any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question.