AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, June 27, 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 January 31, 2025, minutes [Pages 3 to 5]

III. Announcements from the Chair

IV. Old Business

A. Magistrate Rules—Request for guidance from the Committee (Magistrate Tims) [Pages 6 to 23]

B. Rule 63—Whether the rule should be revised to mirror changes to counterpart federal rule (Retired Judge Webb) [Pages 24 to 28]

C. County Court Rule 411—Length of briefs for county court appeals to district court (Judge Jones) [Pages 29 to 30]

D. Rules 43 and 343—Proposed amendments in reaction to statutory changes regarding FED proceedings (Judge Zenisek) [Pages 31 to 34]

V. New Business

A. Rule 303—Pathways to Access Committee amendment request (Justice Gabriel) [Page 35]

B. Rule 121(c), Sections 1-1 and 1-15—Proposed amendments to clarify procedural requirements from a local attorney (Judge Jones) [Pages 36 to 43]

C. Rule 121 section 1-26(7)—Requirement of at least one "live" signature on each side (Judge Jones, Heidi Whitaker) [Pages 44 to 49]

VI. Adjourn—Next meeting is September 26, 2025, at 1:30 pm.

Jerry N. Jones, Chair
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720-625-5335

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 31, 2025, 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	
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	
Judge (Ret.) Sabino Romano	X	
Judge Stephanie Scoville	X	
Magistrate Marianne Tims		X
Andi Truett	X	
Jose L. Vasquez	X	
Ben Vinci	X	
Judge Gregory R. Werner	X	
Judge (Ret.) John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Justice Richard Gabriel, Liaison (non-voting)	X	
Su Cho (non-voting)	X	

I. Attachments & Handouts

- January 31, 2025, agenda packet.

II. Announcements from the Chair

The September 27, 2024, minutes were approved as submitted. Chair Judge Jones discussed the Committee's membership and the fact that four members, all of whom were judges, chose not to continue their service on the Committee. Members should contact Judge Jones with recommendations of judges to join the Committee, specifically County

Court judges and judges outside the Denver metro area who might be underrepresented on this Committee. Also, Judge Jones noted that the Colorado Supreme Court approved several rule changes proposed by this Committee.

Judge Jones then provided updates on behalf of several subcommittees.

Magistrate Rules Subcommittee. This Subcommittee may have a proposal ready for the April meeting.

Gender Neutral Language in the Civil Rules. This Subcommittee may have a proposal ready for the April meeting. Judge Jones is also working on other sets of rules.

Rules 43 and 343--Remote Hearings in FED Cases. This Subcommittee is currently working on this issue.

Rules 63 and 363. This Subcommittee just began tackling this project.

Rule 103. This Subcommittee is considering the issue of whether attorneys should be allowed to serve writs of garnishments and will possibly have a proposal for the next meeting.

III. Old Business

A. 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 often receive quite long briefs. Judge Jones asked for guidance from the Committee on whether to use a page limit or a word limit in the rule. Members spoke in favor of both options and Judge Jones took a straw vote for three options. The votes are as follows:

Straight page limit. 6 votes
Straight word limit. 1 vote
Combination. 8 votes

Members indicated that if a page limit is used, then 25 pages is adequate. Judge Jones will draft a proposal for the Committee's consideration.

IV. New Business

A. Rule 30(b)—Remote depositions (Judge Jones)

Wyoming adopted a new rule that governs remote depositions. The rule articulates many of the considerations that occur in remote depositions. The Committee explored whether a problem exists in Colorado and most members concluded that Colorado's rule is good as it is. One member noted that Rule 30(f) covering exhibits may require updates. Judge Jones will consider Rule 30(f) and will bring any necessary changes back to the

Committee.

B. Rules 11 and 311—Do we need to make changes to account for the rise of generative AI? (Judge Jones)
Judge Lipinsky, Chair of the Rules of Professional Conduct Committee, visited the Committee to share his expertise on generative AI issues. After providing a history on the topic, Judge Lipinsky shared that the Rules of Professional Conduct Committee will be recommending to the Court that it form a new technology committee to issue guidance documents on the topic. Judge Jones noted that generative AI will broadly impact not just civil cases and rules, but likely other cases and rules as well. For now, the Civil Rules Committee will wait before acting.

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)
Member Brad Levine brought this conflict to the attention of the Committee. Members were in favor of adding a time limit to 56(h) and discussed whether the deadline should be 35 days or 91 days. A motion was taken and seconded to amend 56(h) and remove "at any time" and to add a 91-day requirement. The motion passed 10-3. Judge Jones will draft language and forward the proposal to the Court.

Future Meetings
April 4; June 27; September 26; November 7

The Committee adjourned at 3:37 p.m.

TO: Judge Jones and the Civil Rules Committee
FROM: The new CRM Subcommittee
DATE: March 30, 2025

In response to the public comment and public hearing on the proposed changes to the Colorado Rules for Magistrates (CRM) a new subcommittee was formed. All who previously served on the subcommittee, submitted written comments, or participated in the public hearing (except Judge Jones) were invited to join the reformed subcommittee.

We had participation from across the State, which included: Judge Michael Angel (previously from the 17th now in the 2nd), Magistrate Linda Connors from the 8th, Judge Eric Elliff from the 2nd, Judge Elizabeth Leith from the Denver Probate Court, Legal Research Attorney Brian Lewis from the 18th, Magistrate Randall Lococo from the 19th, retired Judge Sabino Romano from the Adams County Court, Judge Kelley Southerland from the 17th, Attorney John Tatlock, Judge Kaitlin Turner from the 11th, retired Judge John Webb from the Colorado Court of Appeals, and Judge Chris Zenisek and Magistrate Marianne Tims both from the 1st.

Four meetings were held to discuss not only those issues raised in the letter from Justice Gabriel, but a few other issues that we believe are important to address following the public comments and hearing.

The biggest hurdle, as always, is the dilemma of keeping two avenues of appeal from a magistrate's ruling – to the district court (DCt) if consent was not required pursuant to CRM 6 **OR** straight to the COA if consent was required. Years of debate have transpired about this issue. You may recall that there was a very narrow vote (10 to 11, I believe) before the current proposed amendments were approved and forwarded to the Supreme Court.

The pending proposal directs every appeal from a magistrate to go to the DCt for review regardless of how that proceeding came to be heard in the magistrate's division. We came to this recommendation after weighing and trying to balance the competing priorities of the CRM: simplicity and ease of understanding for self-represented litigants (and lawyers and judges at every level), quick determination for and lower costs to parties, workload for the DCt, and making sure parties do not needlessly lose their appellate rights based on confusion. We are further hampered because no data is collected that can tell us how many appeals go straight from a magistrate's division to the COA.

Lively debate continued in this group about whether there should be a single exit from the magistrate division or if we should keep the consent/no consent

distinction that has always been a part of the CRM. The initial vote between these options was 4 for keeping the two avenues of appeal that currently exists under today's CRM, and 3 for keeping the proposed change that all magistrate appeals would go to the DCt as a prerequisite before appealing to the COA.

This group, however, thought of a third possible solution: That every appeal/review from a magistrate's division DOES go to the DCt, but if consent was necessary for the hearing to have been heard in the magistrate's division pursuant to CRM 6, the DCt would conduct only a cursory examination to confirm that (a) consent was properly given, and if so (b) direct the parties to file their appeal with the COA within 49 days, or, if not (c) remand to the magistrate's division with directions.

If no consent was necessary, the DCt would instead complete the full judicial review contemplated in CRM 7.

This approach would make the magistrate's instructions to parties simple: you have 14 days to move to reconsider the order or 28 days to seek DCt review.

Before we work on drafting language to give this option life, we thought it prudent to determine if the Civil Rules Committee would be interested in this departure from the CRM last forwarded to the COA. Within the new subcommittee, it was a unanimous vote that this was a solution to all concerns raised.

Since the April Civil Rules meeting was canceled, we now make proposals for this and other changes, below.

1. **Rule 7(f), (g):** Reconsideration

    - The timing in the new proposed Rule is inconsistent with C.R.C.P. 121 §1-15(11) – which is 14 days
    - Many comments made about the turnaround time being too short to be effective
        - 7 to file, 7 to respond, 7 for magistrate to resolve during which time the 28 days to seek judicial review does not toll
    - Magistrates are divided about wanting or needing this authority

PROPOSAL:

CRM 7(f): Within 14 days of the date the order or judgment became reviewable pursuant to C.R.M. 7(d), any party may file with the magistrate either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving

party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. Upon the timely filing of a motion, the time within which a petition for review must be filed with the district court pursuant to C.R.M. 7(e) is tolled until an order on the motion is issued. If no order has been issued within 21 days of the date the response was due, the motion to reconsider or motion to correct clerical errors shall be deemed denied for all purposes and the time to file a petition for review pursuant to C.R.M. 7(d) shall commence as of that date.

2. **CRM 7(d)**: do we add the word "final" back in where we took it out? There is a lot of consternation about its re-placement

   People v. Maes, 545 P.3d 487 (Colo. 2024) now clarifies that issues that are dispositive in some manner can be the basis of a motion for judicial review.

   We voted on whether to leave the language that exists today, minus the second sentence (Option A):

   - Only a final order or judgment of a magistrate is reviewable under this Rule. ~~A final order or judgment is that which fully resolves an issue or claim.~~

OR leave the language as currently proposed (Option B):

   - An order or judgment of a magistrate is reviewable only if (1) the order or judgment dispositively or fully resolves the issue or claim at issue in the case before the magistrate and (2) the order or judgment is written, dated, and signed by a magistrate. A minute order that is dated and signed by a magistrate shall constitute a written order or judgment.

   The vote was 6 for Option A and 3 for Option B.

We **PROSPOSE** also that if there is to be two avenues for appeal (consent/no consent) the CRM should repeat similar language to Justice Hood's in *Maes* @ 491. It makes the different appellate procedures seem so simple:

> When a magistrate hears a matter in the place of a judge with the consent of the parties, a magistrate's decision is treated like district court decision and may be appealed in the same manner under the Colorado Rules of Appellate Procedure.

When a magistrate hears a matter without the parties' consent, the CRM permits district courts to review a district court magistrate's final order or judgment.

3. **CRM 7(k):** Should/when should a petition for judicial review be "deemed denied" for all purposes so that the parties can appeal to the COA?

   The current proposal is 63 days – the same as C.R.C.P. 59(j). Judges believe this was too short of a time with all of the other deadlines a DCt faces.

   We also discussed the difficulty for litigants to determine the "deemed denied" date (how to advise that "deemed denied" would be 28 days to seek review, unless extended, plus X number of days for the DCt to act, and if they do or if they don't, from whatever that date is you can appeal within 49 days thereafter). Although no separate vote was taken on this concern, we saw that it could weigh against any "deemed denied" date.

- We agreed that the measure of time until the judicial review was deemed denied would begin upon the timely filing of the petition for judicial review
- We agreed 63 days is too few ~ if the measure is from the date of filing, 63 days would not take into account the time for response or preparation of a transcript, if any
- As Judge Webb pointed out, whatever date we choose will be completely arbitrary

The vote 2/24/25 was 0 for 63 days (9 weeks)
4 for 91 days (13 weeks)
2 for 126 days (18 weeks)

PROPOSAL: leave the deemed denied in, 91 days from the date the timely petition for review was filed.

4. **CRM 7(i) and 7(k)** to address *IRM Matheny*, 558 P.3d 666 (Colo. App. 2024) which was decided after the proposed CRM amendments were circulated:

   The CRM has never allowed for a case to be remanded to a magistrate, yet it has been the regular practice of the DCt practice for more than 20 years. *IRM Matheny* addresses this practice for the first time. We voted unanimously that it must be addressed. The ability to return a matter to the magistrate is necessary to address workload, cost, and expense to parties. It is reasonable, practical and allows for an expeditious remedy.

The current proposed amendment to CRM 5(a) already allows for a limited reconsideration:

CRM 5(a) An order or judgment of a magistrate in any ~~judicial~~ proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. ~~Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing~~. [already proposed addition:] An order or judgment is final for purposes of appeal or judicial review as stated in C.R.M. 7.

PROPOSAL: to further modify CRM 7(i) and 7(k):

CRM 7(i) Judicial review shall be limited to consideration of the petition for review, any oppositions, and the record of the proceedings before the magistrate as is available. If a transcript of the proceedings before a magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact. ~~The reviewing judge shall consider the petition for review on a basis of the petitioner and briefs filed, together with such review of the record as is necessary~~. The reviewing judge also may **REMAND THE ISSUE TO THE MAGISTRATE WITH INSTRUCTIONS,** OR ~~also may~~ conduct further proceedings, take additional evidence, or order a trial de novo in the district court. ~~An order entered until 6(c)(1) which effectively ends a case shall be subject to de novo review.~~

CRM 7(k) The reviewing judge **MAY REMAND THE ISSUE TO THE MAGISTRATE WITH INSTRUCTIONS, OR shall** adopt, reject, or modify …

5. **CRM 6(b):** One of the questions in Justice Gabriel's letter asked whether there should be a carve-out in Rule 6(b) for permanent orders in a domestic relations case. Upon unanimous vote, we agree this notion would be a very slippery slope and do not support it. Although we were told that this subject might be addressed in the new rules for family cases, it was not.

6. **CRM 7(h):** comments surround whether a transcript has been "ordered" (requested AND paid for) rather than just "requested." No one was overly concerned with keeping or changing the word. The vote was 5 to leave "requested" and 2 to change it to "ordered."

7. It turns out that there is nothing in the CRM that gives magistrates authority in truancy cases (Title 22). Given that these cases are predominantly to exclusively heard by magistrates, we believe it prudent to repeat the juvenile court authority found at C.R.S. §19-1-104(k) to make it clear that a truancy case is a without consent necessary endeavor:

PROPOSAL: Add to CRM 6(d) functions in Juvenile cases

(1) No consent necessary:
   (A) Conduct all proceedings including making determinations concerning a petition filed pursuant to the "School Attendance Law of 1963," article 33 of title 22, C.R.S., and to enforce any lawful order of court made thereunder.

Rule 3. Definitions.

The following definitions shall apply:

(a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

(b) Chief Judge: The chief judge of a judicial district.

(c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.

(d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.

(e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

(f) Consent:

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary, a party is deemed to have consented to a proceeding before a magistrate if he or she is advised of the right to have the proceeding before a district court judge and, after entering an appearance or filing a responsive pleading, ~~:~~

(i) The party has affirmatively consented in writing or on the record; or

(ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or

(iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

Rule 5. General Provisions.

(a) An order or judgment of a magistrate in any ~~judicial~~ proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. ~~Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing.~~ An order or judgment is final for purposes of appeal or judicial review as stated in C.R.M. 7.

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in C.R.S. section 13-1-115.~~, C.R.S.~~

(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on appeal or review of the magistrate's order or judgment.

~~**(g)** For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be written except to the extent given orally to parties who are present in court — shall state that all parties must consent to the function being performed by the magistrate.~~

~~**(1)** If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.~~

~~**(2)** Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.~~

(g)~~**(h)**~~ All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial

Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates.

(a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

(1) No consent necessary:

(A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

(B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(C) Conduct bond review hearings.

(D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).

(E) Schedule and conduct arraignments on indictments, informations, or complaints.

(F) Order presentence investigations.

(G) Set cases for disposition, trial, or sentencing before a district court judge.

(H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) Any other function authorized by statute or rule.

(2) Consent necessary:

(A) Enter pleas of guilty.

(B) Enter deferred prosecution and deferred sentence pleas.

(C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.

(D) Impose stipulated sentences to probation in cases assigned to problem solving courts.

(b) Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:

(1) No Consent Necessary:

(A) A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.

(B) A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions ~~to~~ for review as defined in C.R.M. 7.

(C) A district court magistrate shall have the power to determine an order concerning child support filed pursuant to C.R.S. ~~S~~section 26-13-101 et seq.

(D) Any other function authorized by statute or rule.

(2) Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.

(c) Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:

(1) No consent necessary:

(A) Conduct settlement conferences.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.

(C) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.

(D) Conduct hearings as a master pursuant to C.R.C.P. 53.

(E) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.

(F) Conduct proceedings involving protection orders pursuant to C.R.S. s~~S~~ection 13-14-101 et seq.

(G) Any other function authorized by statute or rule.

(2) Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.

(d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).

(1) No consent necessary:

(A) Conduct all proceedings including making determinations concerning a petition pursuant to the "School Attendance Law of 1963," article 33 of title 22, C.R.S., and to enforce any lawful order of the court made thereunder.

(e) Functions in Probate and Mental Health Cases:

(1) No consent necessary:

(A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.

(B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

(C) Any other function authorized by statute or rule.

(2) Consent Necessary:

(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice ~~complies~~d ~~with~~ Rule 3(f)~~5 (g)~~.

Rule 7. Review of District Court Magistrate Orders or Judgments.

(a) ~~Orders or judgments entered when consent not necessary.~~ Magistrates shall include in ~~any~~ every order or judgment the following statement: Except as otherwise provided by statute, no appeal may be filed with the Colorado Court of Appeals unless a petition for review has been filed with the district court within 28 days from the date of this order or judgment as provided by C.R.M. 7(c) and the district court has ruled on that petition.~~entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7 (a).~~

~~(1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.~~

~~(~~**b**~~2)~~ ~~The~~Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates~~ entered when consent is not necessary~~.

~~(~~**c**~~3)~~ Only a final order or judgment of a magistrate is reviewable under this Rule.~~ A final order or judgment is that which fully resolves an issue or claim.~~

~~(4)~~ A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.

~~(~~**d**~~5)~~ A party may obtain review of a magistrate's ~~final~~ order or judgment by filing a petition ~~to~~ for review ~~such final order or judgment~~ with the ~~reviewing judge~~district court no later than ~~14~~28 days ~~subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days~~ from the date the ~~final~~ order ~~or judgment is mailed or otherwise transmitted to the parties.~~becomes reviewable pursuant to C.R.M. 7(c).

~~(6) A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.~~

(e)~~(7)~~ Within 14 days from the date the order or judgment became reviewable pursuant to C.R.M. 7(c), any party may file with the magistrate a motion to reconsider pursuant to C.R.C.P. 121, section 1-15(11) or a motion to correct clerical errors pursuant to C.R.C.P. 60(a). Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. Upon the timely filing of a motion, the time within which a petition for review must be filed with the district court pursuant to C.R.M. 7 (d) is tolled until an order on the motion is issued. If no order has been issued

within 21 days of the date the response was due, the motion shall be deemed denied for all purposes and the time to file a petition for review pursuant to C.R.M. 7 (d) shall commence as of the time the motion was deemed denied.

(f) If a magistrate grants, in whole or in part, either a motion to reconsider pursuatnt to C.R.C.P. 121, section 1-15(11) or a motion to correct clerical errors pursuant to C.R.C.P. 60(a), a petition for review of the amended order or judgment must be filed within 28 days from the date of the amended order or judgment became reviewable pursuant to C.R.M. 7 (d).

(g) When a magistrate hears a matter in the place of a judge with the consent of the parties, a magistrate's decision is treated like a district court decision. In those petitions for review, the district court shall examine the record to confirm that (1) consent was properly given and if so (2) direct the parties to file their appeal with the Colorado Court of Appeals within 49 days. If consent was not properly given, the district court shall remand the matter to the magistrate with instructions.

(h) Any petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a ~~memorandum~~ brief statement of ~~discussing~~ the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting ~~brief~~ statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file ~~a memorandum brief~~ an ~~in~~ opposition which shall state whether a transcript has been requested by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances or for extension of time to receive the transcript. The moving party may not file a reply.

(i)~~**(8)**~~ Judicial review shall be limited to consideration of the petition for review, any oppositions, and the record of the proceedings before the magistrate as is available. If a transcript of the proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact. ~~The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary.~~ The reviewing judge may remand the issue to the magistrate with instructions, or ~~also~~ may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. ~~An order entered under 6 (c)(1) which effectively ends a case shall be subject to de novo review.~~

(j)~~**(9)**~~ Findings of fact made by the magistrate shall be accepted by the reviewing judge ~~may not be altered~~ unless they are clearly erroneous. ~~The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order~~ Conclusions of law made by a magistrate and any order entered in a civil case under C.R.M. 6 (c) which effectively ends a case shall be subject to de novo review.

(k)~~**(10)**~~ The reviewing judge may remand the issue to the magistrate with instructions or may ~~shall~~ adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition for review that has not been decided within 91 days from the timely filing of the petition for review shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules, and the time for appeal shall commence on that date.

(l)~~**(11)**~~ Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a ~~reviewing~~ district court in accordance with these Rules.

(m)~~**(12)**~~ If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. ~~Appeal of such district court order or judgment to the appellate court is barred.~~

~~**(b)** Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).~~

Rule 8. Functions of County Court Magistrates.

(a) Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:

(1) No consent necessary:

(A) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(B) Conduct proceedings in traffic infraction matters.

(C) Conduct advisements and set bail in criminal and traffic cases.

(D) Issue mandatory protection orders pursuant to C.R.S. section 18-1-1001.

(E) Conduct all proceedings regarding civil infractions pursuant to C.R.S. section 16-2.3-101 et seq.

(F) Any other function authorized by statute or rule.

(2) Consent necessary:

(A) Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.

(B) Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.

(C) Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.

(D) Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

(b) Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:

(1) No consent necessary:

(A) Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.

(B) Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.

(C) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.

(D) Conduct proceedings involving protection orders, pursuant to C.R.S. sections 13-14-101 et seq. and conduct proceedings pursuant to C.R.C.P. 365.

(E) Any other function authorized by statute.

(2) Consent necessary:

(A) Conduct civil trials to court and hearings on motions.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-

TO: STANDING COMMITTEE ON THE RULES OF CIVIL PROCEURE

FROM: JOHN R.WEBB

RE: REPORT OF CRCP 63 SUBCOMMITTE

DATE: JUNE 5, 2025

EXECUTIVE SUMMARY

The subcommittee[1] was tasked with considering whether CRCP 63 should be revised based on changes to the counterpart federal rule. We concluded that the current F,R,Civ.P. 63 addresses subjects beyond the Colorado rule. Instead of significantly broadening the Colorado rule, we recommend modest tweaks to clarify its language.

DISCUSSION

The Federal Rule

As recently amended, F.R.Civ.P. provides:

> If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify

[1] The subcommittee consists of Juge Stephanie Scoville, Juge Gregory Werner, Gregory Whitehair, and David DeMuro.

> again without undue burden. The successor judge may also recall any other witness.

The subcommittee discerned no strong reason to adopt a rule that addresses broader subjects than the current Colorado rule.[2]

The Current Colorado Rule

CRCP 63 provides:

> If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Propose Changes to the Colorado Rule

The subcommittee proposes that our Supreme Court be asked to consider adopting the following revised version of this rule:

> If for any reason, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict has been returned or findings of fact and conclusions of law have been filed, a successor judge shall be appointed to perform those duties. The successor judge may determine that it is not possible to perform some or all of those

[2] The supreme court library reviewed other states' rules. No useful pattern appeared.

> duties because the successor judge did not preside over the trial and may grant a new trial on some or all issues. Before the successor judge orders a new trial, the parties shall be provided with notice and an opportunity to be heard and the successor judge must set forth the grounds for a new trial on the record.

In getting to this language, most of our discussion centered on two questions. First, should the successor judge have absolute power to order a new trial, even if neither party desires one? Second, should the successor judge be required to provide the parties with notice and an opportunity to be heard before ordering a new trial?[3]

As background for these discussions, we recognized that scenarios in which the assigned judge recuses after trial but before post-trial motions (if any) have been decided are rare. Even rarer are cases in which the successor judge concludes that a new trial must be ordered solely because without having presided over the trial, the successor judge is not comfortable ruling on such motions.[4]

Starting with the successor judge's power to order a new trial, the majority believes that respect for trial court judges necessarily includes not putting them in the position of ruling without a sufficient basis for doing so. One member believes

[3] In our view, an order that the case be retried would not be appealable, although a C.A.R. 21 petition might be filed. *See Bowman v. Songer*, 820 P.2d 1110, 1112 (Colo. 1991).

[4] True, the successor judge could allow the motions to be denied by operation of law under CRCP 59(j). However, we believe that this course is a de facto ruling

that two supreme court cases suggest substantial discretion: *Craig v. Carlson*, 161 P.3d 648 (Colo. 2007), and *Faris v. Rothenberg*, 648 P.2d 1089 (Colo. 1982) . Perhaps in some cases the parties may prefer a potentially flawed ruling and an immediate appeal to the delay, expense, and uncertainty of a retrial. But parties who hold that view could avoid those consequences by settling.

Turning to notice and an opportunity to be heard, we saw that as a closer question. But because no such procedure exists, must the rule provide one? For example, would seven days' notice of the contemplated ruling be sufficient? Also, notice and an opportunity to be heard could be problematic given the 63 day deadline in CRCP 59(j). Ultimately, the majority concluded timing should not be a problem because successor judges are likely to ascertain quickly whether they can rule on pending motions.

Finally, we considered whether the revised rule warranted a comment addressing, among other things, what happens if a successor judge is appointed pre-verdict. The majority concluded that because the proposed language excludes this scenario and avoids other murky areas, as noted above, a comment would not be necessary.

Respectfully submitted,

_____/s/_____

John R. Webb

Rule 411 - Appeals

(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, t~~The parties' briefs are limited to 25 pages~~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 page~~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.

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

(d) Briefs.

(1) **Time for Filing, Oral Argument, and Limitation on De Novo Review.** A written brief 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.** The parties' briefs are limited to 25 pages. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the page 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.

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

To: Judge Jerry N. Jones, Colorado Court of Appeals and Kathryn Michaels

From: Judge Chris Zenisek, First Judicial District Judge and Rachel Heumann, Law Clerk

Re: C.R.C.P. 343(h) and 43(i) Subcommittee Meeting 4.02.2025

The subcommittee for Colorado Rules of Civil Procedure 343(h) and 43(i) met virtually on April 2, 2025. In attendance at the meeting were Judge Keith Goman, Jose Vasquez, Alana Percy, and Pete Muccio. Judge Christopher Zenisek and Rachel Heumann attended as non-voting members. Brent Owen and Lisa Hamilton-Fieldman were unable to attend.

The subcommittee met to discuss a small amendment to Rules 343(h) and 43(i), which govern absentee testimony, following the promulgation of C.R.S. § 13-40-113.5, which allows remote appearance at FED proceedings. By a vote of 4-0, the subcommittee unanimously agreed that a simple carve-out approach would be the best alternative to allow the statute's application while leaving the remainder of the rule unchanged. Following the meeting, Judge Zenisek and Ms. Heumann drafted and circulated specific language, and the subcommittee identified no concerns with the proposal.

Redline copies of the proposed amended rules follow on the next pages.

1. **CRCP 43(i), (i.5)**

(i) *Absentee Testimony in Residential Eviction Proceedings.* Remote appearances in residential eviction proceedings are governed by C.R.S. § 13-40-113.5.

(i.5) *All Other Civil Proceedings – Request for Absentee Testimony*

(1) *Request for Absentee Testimony.* A party may request that testimony be presented at a trial or hearing by a person absent from the courtroom by means of telephone or some other suitable and equivalent medium of communication. A request for absentee testimony shall be made by written motion or stipulation filed as soon as practicable after the need for absentee testimony becomes known. The motion shall include:

(A) The reason(s) for allowing such testimony.

(B) A detailed description of all testimony which is proposed to be taken by telephone or other medium of communication.

(C) Copies of all documents or reports which will be used or referred to in such testimony.

(2) *Response*. If any party objects to absentee testimony, said party shall file a written response within 3 days following service of the motion unless the opening of the proceeding occurs first, in which case the objection shall be made orally in open court at the commencement of the proceeding or as soon as practicable thereafter. If no response is filed or objection is made, the motion may be deemed confessed.

(3) *Determination.* The court shall determine whether in the interest of justice absentee testimony may be allowed. The facts to be considered by the court in determining whether to permit absentee testimony shall include but not be limited to the following:

(A) Whether there is a statutory right to absentee testimony.

(B) The cost savings to the parties of having absentee testimony versus the cost of the witness appearing in person.

(C) The availability of appropriate equipment at the court to permit the presentation of absentee testimony.

(D) The availability of the witness to appear personally in court.

(E) The relative importance of the issue or issues for which the witness is offered to testify.

(F) If credibility of the witness is an issue.

(G) Whether the case is to be tried to the court or to a jury.

(H) Whether the presentation of absentee testimony would inhibit the ability to cross examine the witness.

(I) The efforts of the requesting parties to obtain the presence of the witness.

If the court orders absentee testimony to be taken, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.

2. CRCP 343(h), (h.5)

(h) *Absentee Testimony in Residential Eviction Proceedings.* Remote appearances in residential eviction proceedings are governed by C.R.S. § 13-40-113.5.

(h.5) *All Other Civil Proceedings – Request for Absentee Testimony*

(1) *Request for Absentee Testimony*. A party may request that testimony be presented at a trial or hearing by a person absent from the courtroom by means of telephone or some other suitable and equivalent medium of communication. A request for absentee testimony shall be made by written motion or stipulation filed as soon as practicable after the need for absentee testimony becomes known. The motion shall include:

(A) The reason(s) for allowing such testimony.

(B) A detailed description of all testimony which is proposed to be taken by telephone or other medium of communication.

(C) Copies of all documents or reports which will be used or referred to in such testimony.

(2) *Response.* If any party objects to absentee testimony, said party shall file a written response within 7 days following service of the motion unless the opening of the proceeding occurs first, in which case the objection shall be made orally in open court at the commencement of the proceeding or as soon as practicable thereafter. If no response is filed or objection is made, the motion may be deemed confessed.

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

(A) Whether there is a statutory right to absentee testimony.

(B) The cost savings to the parties of having absentee testimony versus the cost of the witness appearing in person.

(C) The availability of appropriate equipment at the court to permit the presentation of absentee testimony.

(D) The availability of the witness to appear personally in court.

(E) The relative importance of the issue or issues for which the witness is offered to testify.

(F) If credibility of the witness is an issue.

(G) Whether the case is to be tried to the court or to a jury.

(H) Whether the presentation of absentee testimony would inhibit the ability to cross examine the witness.

(I) The efforts of the requesting parties to obtain the presence of the witness.

If the court orders absentee testimony to be taken, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.

PAC’s Recommendation for Rule Change to Rule 303

The PAC voted unanimously on Monday, March 17, 2025, to propose a recommendation to the Supreme Court on a rule change to Rule 303.

The recommended rule change was brought to the PAC by the Housing Subcommittee which also voted unanimously that Rule 303 be revised.

The recommendation is that Rule 303 be revised, via a section applicable only to FEDs, similar to Rule 304, to comport with CRS 13-40-110, which states that an FED is commenced upon filing with the court a complaint. The change would require that no FED Summons may be served until a Complaint is first filed with the Court. This would therefore result in and ensure a case number being included on every Complaint and Summons served on a tenant.

HACKSTAFF | SNOW
ATKINSON | GRIESS
ATTORNEYS AT LAW

June 5, 2025

J. Aaron Atkinson, Esq.
aa@hsaglaw.com
(303) 534 -4317

VIA Electronic Mail
The Civil Rules Committee
Attention: Kathryn Michaels
Colorado Judicial Branch
Kathryn.michaels@judicial.state.co.us

Re: Proposed Rule Change
Subject: Colorado Rule of Civil Procedure 121(c), sections 1-1 and 1-15

Dear Ms. Michaels,

We are writing to the Civil Rules Committee to propose two changes to the Colorado Rules of Civil Procedure, specifically to Rule 121(c), sections 1–1 and 1–15. Attached to this letter in support is a draft of our proposed changes. Our analysis for these recommended amendments is set forth below.

Section 1-1. Entry of Appearance and Withdrawal

Our first proposed change aims to clarify the procedural requirements that a moving party must follow when requesting attorney fees as a sanction against withdrawn counsel. Colorado Rule of Civil Procedure 121(c), which addresses standard practice for both motions and attorney fees, does not currently specify the procedures for a motion for attorney fees against counsel after the Court has granted the attorney leave to withdraw.

The lack of specificity in the Rules can result in a lack of proper notice and prevent withdrawn counsel from adequate participation in the proceedings against them.

This revision to the Practice Standard is necessary to cure the lack of guidance in these situations, thereby ensuring that withdrawn attorneys receive notice and opportunity to rebut the claims against them. Withdrawn attorneys occupy a unique position in the context of the case, as they were never parties to the case. However, they maintain a certain relationship to the case by virtue of

their licensure and appearance on behalf of a party. It is because of this that withdrawn attorneys may still be subject to court-ordered sanctions for their pre-withdrawal conduct in the case.

In these circumstances, the lack of guidance is found in the manner of notice that is necessary for this unique situation, i.e., service of the motion for attorney fees pursuant to Rule 4 or Rule 5. Further, there is no consistency as to the level of conferral that is necessary with the attorney who is no longer officially affiliated with a case following withdrawal because the Court has not formally joined the withdrawn attorney under these Rules. The amendment also reinforces the concepts of conferral prior to filing a motion and certification in the motion regarding the same.

The Committee should amend Section 1-1 in accordance with this proposal in order to establish the minimal level of compliance necessary to ensure due process to justice.

Section 1-15. Determination of Motions

Our second proposed revision addresses the proper mechanism for requesting attorney fees generally as pretrial sanctions. We recommend amending Rule 121(c), section 1-15(7), to include language clarifying that requests for attorney fees based on pretrial conduct must not be embedded within motions, response briefs, or reply briefs. Instead, parties must present such requests in a separate motion that complies with the procedural requirements set forth in section 1-15.

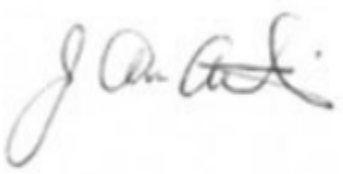
This clarification addresses the gross abuse and frequency of claims for attorney fees in the context of civil litigation in Colorado. The lack of guidance in the Rules regarding requests for sanctions under paragraph 7 leads to repetitive and often unfounded allegations of misconduct geared solely towards shifting risk or unfounded coercion in the case. By extension, this results in parties litigating threats of sanctions as opposed to the merits of a party's case. The current state of the Rules risks incentivizing the improper pursuit of attorney fees. Mandating that such requests be made independently serves to extricate threats from the process and thereby to foster a merit-based analysis of the relief requested.

This revision fits well within the current structure of section 1-15. For example, section 1-15(d) specifically provides that "[a] motion shall not be included in a response or reply to the original motion." And it has become more common in Colorado for district courts to issue pretrial orders *sua sponte* forbidding the inclusion of multiple requests for relief within a single motion.

Our proposed amendment does not curtail a party's right to seek attorney fees. Rather, it reinforces procedural integrity by requiring that such requests be made in a dedicated motion, allowing the opposing party a fair opportunity to respond. It also encourages moving parties to present well-supported and specific grounds for fee requests—rather than weaponizing them for intimidation. Ultimately, this revision promotes a more transparent and just system, discouraging the misuse of attorney fee claims and supporting the core adversarial principle that courts should decide motions on their merits.

We appreciate the Committee's consideration of our proposed revisions and welcome the opportunity to provide additional information or clarification that may assist in your review. We would be glad to discuss these recommendations further or offer supporting materials upon request. Thank you for your time and attention to these important issues.

Sincerely,



J. Aaron Atkinson
Kaylee A. Sims

JAA/kas

Rule 121. Local Rules—Statewide Practice Standards

(a)-(c) [NO CHANGE]

Section 1 – 1 ENTRY OF APPEARANCE WITH WITHDRAWAL

1. Entry of Appearance. No attorney shall appear in any matter before the court unless that attorney has entered an appearance by filing an Entry of Appearance or signing a pleading. An entry of appearance shall state (a) the identity of the party for whom the appearance is made; (b) the attorney's office address; (c) the attorney's telephone number; (d) the attorney's E-Mail address; and (e) the attorney's registration number.

2. Withdrawal From an Active Case.

(a) An attorney may withdraw from a case, without leave of court where the withdrawing attorney has complied with all outstanding orders of the court and either files a notice of withdrawal where there is active co-counsel for the party represented by the withdrawing attorney, or files a substitution of counsel, signed by both the withdrawing and replacement attorney, containing the information required for an Entry of Appearance under subsection 1 of this Practice Standard as to the replacement attorney.

(b) Otherwise an attorney may withdraw from a case only upon approval of the court. Such approval shall rest in the discretion of the court, but shall not be granted until a motion to withdraw has been filed and served on the client and the other parties of record or their attorneys and either both the client and all counsel for the other parties consent in writing at or after the time of the service of said motion, or at least 14 days have expired after service of said motion. Every motion to withdraw shall contain the following advisements:

(I) the client has the burden of keeping the court and the other parties informed where notices, pleadings or other papers may be served;

(II) if the client fails or refuses to comply with all court rules and orders, the client may suffer possible dismissal, default or other sanctions;

(III) the dates of any proceedings, including trial, which dates will not be delayed nor proceedings affected by the withdrawal of counsel;

(IV) the client's and the other parties' right to object to the motion to withdraw within 14 days after service of the motion;

(V) if the client is not a natural person, that it must be represented by counsel in any court proceedings unless it is a closely held entity and first complies with section 13-1-127, C.R.S.; and

(VI) the client's last known address and telephone number.

(c) The client and the opposing parties shall have 14 days after service of a motion to withdraw within which to file objections to the withdrawal.

(d) If the motion to withdraw is granted, the withdrawing attorney shall promptly notify the client and the other parties of the effective date of the withdrawal.

3. Withdrawal From Completed Cases. In any civil case which is concluded and in which all related orders have been submitted and entered by the court and complied with by the withdrawing attorney, an attorney may withdraw from the case without leave of court by filing a notice in the form and content of Appendix to Chapters 1 to 17A, Form 36, C.R.C.P. [JDF Form 83], which shall be served upon the client and all other parties of record or their attorneys, pursuant to C.R.C.P. 5. The withdrawal shall automatically become effective 14 days after service upon the client and all other parties of record or their attorneys unless there is an objection filed, in which event the matter shall be assigned to an appropriate judicial officer for determination.

In any civil case which is concluded and in which all related orders have been submitted and entered by the court and complied with by the withdrawing attorney, an attorney may withdraw from the case without leave of court by filing a notice in the form and content of Appendix to Chapters 1 to 17A, Form 36, C.R.C.P. [JDF Form 83], which shall be served upon the client and all other parties of record or their attorneys, pursuant to C.R.C.P. 5. The withdrawal shall automatically become effective 14 days after service upon the client and all other parties of record or their attorneys unless there is an objection filed, in which event the matter shall be assigned to an appropriate judicial officer for determination.

4. Entries of Appearance and Withdrawals by Members or Employees of Law Firms, Professional Corporations or Clinics. The entry of an appearance or withdrawal by an attorney who is a member or an employee of a law firm, professional corporation or clinic shall relieve other members or employees of the same law firm, professional corporation or clinic from the necessity of filing additional entries of appearance or withdrawal in the same litigation unless otherwise indicated.

5. Notice of Limited Representation Entry of Appearance and Withdrawal. In accordance with C.R.C.P. 11(b) and C.R.C.P. Rule 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the 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 proceeding(s) for which the attorney appears. At the conclusion of such 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.

6. Requests for Attorney Fees Against Withdrawn Counsel. Any party requesting attorney fees as a pre-trial sanction against counsel who has withdrawn from the case shall confer with the withdrawn attorney before filing a motion in accordance with Practice Standard § 1-15(8). Upon filing, the moving party shall serve the motion for attorney fees, along with written notice that the moving party intends to seek attorney fees from the withdrawn attorney, upon withdrawn counsel pursuant to C.R.C.P. 5(b). In addition to meeting the other requirements of these Rules, the motion shall, at the beginning, contain a certification that the movant in good faith has conferred with withdrawn counsel and served a notice and copy of the motion in accordance with this standard.

COMMENTS [NO CHANGE]

Section 1 – 2 to 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. Requests for attorney fees related to pre-trial sanctions shall not be combined with any other motion, response brief, or reply brief. Such requests must be made in a separate motion in compliance with this section 1-15.

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.

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 [NO CHANGE]

Section 1 – 16 to 1 – 26 [NO CHANGE]

From: Heidi Whitaker <heidi.whitaker@johnsonlgroup.com>
Sent: Monday, June 2, 2025 11:25 AM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Subject: [EXTERNAL] Request Revision to CRCP 121 1-26 (8)

Honorable Judge Jones,

I was provided your name as chair of the Civil Rules Committee. I have run into an intermittent issue regarding CRCP 121 section 1-26 (8) requiring at least one “live”

signature on each side for domestic relations decrees, parenting plans, and separation
agreements.

From a time prior to Covid, when the JDFs were updated to no longer require an actual
notary, only a sworn statement from the parties, it has been routine for family law practitioners to route agreements by docusign (hellosign, adobe, or similar tools). These
signatures are verified or authenticated by the signing software.

I practice in multiple jurisdictions in Colorado (and have for nearly 12 years). When I file an
electronically and docusigned Separation Agreement or Parenting Plan, only Larimer County rejects the document for being docusigned. And then, the rejection is intermittent. I have had documents filed in the same case where they are sometimes accepted and sometimes rejected. Most recently, a Memorandum of Understanding, which is explicitly NOT the Separation Agreement but a precursor to the Separation Agreement, has been rejected based on this rule.

For convenience, here are the subsection of the Rule:
8. Documents Requiring E-Filed Signatures: For domestic relations decrees, separation
agreements and parenting plans, original signature pages bearing the attorneys’, parties’,
and notaries’ signatures must be scanned and E-Filed. For all other E-Filed and E-Served
documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may
be in S/ Name typed form to satisfy signature requirements, once the necessary signatures
have been obtained on a paper form of the document. For probate of a will, the original
must be lodged with the court.

It seems pretty clear that the subsection of the Rule was intended to ensure that the
documents were properly notarized, even though the notary requirement was removed somewhere around 2018 or 2019. See “and notaries’ signatures”.

In addition, where the only county actually rejecting under this rule is inconsistent in applying the rule, it seems like we need to update this rule to reflect actual good practices. Even verified pleadings are allowed to contain either a /s/ electronic signature or docusign signature. It would appear that this rule has outlived its purpose and only creates delay in the domestic relations arena.

I would suggest that the wording on this Rule subsection be revised to something along the lines of: “For domestic relations affidavits for decree without appearance, separation agreements and parenting plans, signature pages containing either scanned original signatures or self-authenticating docusigned signatures for signatures of attorneys and parties must be E-filed.”

Thank you for your attention to this matter, which has become quite a thorn in my side.

Please be sure to include my Paralegal Lizbeth Guerra, lizbeth.guerra@JohnsonLGroup.com, on all divorce or custody correspondence.

Rule 121. Local Rules--Statewide Practice Standards

Section 1-26. ELECTRONIC FILING AND SERVICE SYSTEM

1. Definitions:

(a) *Document.* A pleading, motion, writing or other paper filed or served under the E-System.

(b) *E-Filing/Service System.* The E-Filing/Service System ("E-System") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(c) *Electronic Filing.* Electronic filing ("E-Filing") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(d) *Electronic Service.* Electronic service ("E-Service") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service, other than service of a summons, via the E-System.

(e) *E-System Provider.* The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(f) *Signatures.*

(I) Electronic Signature. an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by the person with the intent to sign the E-Filed or E-Served document.

(II) Scanned Signature. A graphic image of a handwritten signature.

2. Types of Cases Applicable. E-Filing and E-Service may be used for certain cases filed in the courts of Colorado as the service becomes available. The availability of the E-System will be determined by the Colorado Supreme Court and announced through its website http://www.courts.state.co.us/supct/supct.htm and through published directives to the clerks of the affected court systems. E-Filing and E-Service may be mandated pursuant to Subsection 13 of this Practice Standard 1-26.

3. To Whom Applicable.

(a) Attorneys licensed or certified to practice law in Colorado, or admitted pro hac vice under C.R.C.P. 205.3 or 205.5, may register to use the E-System. The E-System provider will provide an attorney permitted to appear pursuant to C.R.C.P. 205.3 or 205.5 with a special user account for purposes of E-Filing and E-Serving only in the case identified by a court order approving pro hac vice admission. The E-System provider will provide an attorney certified as pro bono counsel pursuant to C.R.C.P. 204.6 with a special user account for purposes of E-Filing and E-Serving in pro bono cases as contemplated by that rule. An attorney may enter an appearance pursuant to Rule 121, Section 1-1, through E-Filing. In districts where E-Filing is

mandated pursuant to Subsection 13 of this Practice Standard 1-26, attorneys must register and use the E-System.

(b) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

4. Commencement of Action--Service of Summons. Cases may be commenced under C.R.C.P. 3 by E-Filing the initial pleading. Service of a summons shall be made in accordance with C.R.C.P. 4.

5. E-Filing--Date and Time of Filing. Documents filed in cases on the E-System may be filed under C.R.C.P. 5 through an E-Filing. A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

6. E-Service--When Required--Date and Time of Service. Documents submitted to the court through E-Filing shall be served under C.R.C.P. 5 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

7. Filing Party to Maintain the Signed Copy--Paper Document Not to Be Filed-Duration of Maintaining of Document. A printed or printable copy of an E-Filed or E-Served document with original, electronic, or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals. For domestic relations decrees, separation agreements and parenting plans, original signature pages bearing the attorneys, parties', and notaries' signatures must be scanned and E-Filed. For probate of a will, the original must be lodged with the court.

8. Documents Requiring E-Filed Signatures. For E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be affixed electronically or documents with signatures obtained on a paper form scanned.

9. C.R.C.P. 11 Compliance. An e-signature is a signature for the purposes of C.R.C.P. 11.

10. Documents under Seal. A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

11. Transmitting of Orders, Notices and Other Court Entries. Beginning January 1, 2006, courts shall distribute orders, notices, and other court entries using the E-System in cases where E-Filings were received from any party.

12. Form of E-Filed Documents. C.R.C.P. 10 shall apply to E-Filed documents. A document shall not be transmitted to the clerk of the court by any other means unless the court at any later time requests a printed copy.

13. E-Filing May be Mandated. With the permission of the Chief Justice, a chief judge may mandate E-Filing within a county or judicial district for specific case classes or types of cases. A judicial officer may mandate E-Filing and E-Service in that judicial officer's division for specific cases, for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of $50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

14. Relief in the Event of Technical Difficulties.

(a) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (1) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (2) a failure of the E-System Provider to process the E-Filing when received, or (3) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(b) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

15. Form of Electronic Documents.

(a) *Electronic Document Format, Size and Density.* Electronic document format, size, and density shall be as specified by Chief Justice Directive # 11-01.

(b) *Multiple Documents.* Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

(c) *Proposed Orders.* Proposed orders shall be E-Filed in editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the Court Clerk's office and must be resubmitted. 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.

COMMENTS

2000 [Amendment]

[1] C.R.C.P. 77 provides that courts are always open for business. This Practice Standard is intended to comport with that rule.

2013 [Amendment]

[2] The Court authorized service provider for the program is the Integrated Colorado Courts E-Filing System (www.jbits.courts.state.co.us/icces/). “Editable Format” is one which is subject to modification by the court using standard means such as Word or WordPerfect format.

2017 [Amendment]

[3] Effective November 1, 2016, the name of the court authorized service provider changed from the “Integrated Colorado Courts E-Filing System” to “Colorado Courts E-Filing” (www.jbits.courts.state.co.us/efiling/).