AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, November 3, 2023, 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 22, 2023, minutes [Pages 1 to 3]

III. Announcements from the Chair

IV. Present Business

A. C.R.C.P. 10—Proposed Changes from the Pathways to Access Standing Committee (PAC)—(Justice Hart) [Pages 4 to 11]

B. C.R.C.P. 26—Proposed Cross-Reference Correction—(Judge Jones) [Pages 12 to 13]

C. C.R.C.P. 58—Proposal from Judge Leith Regarding Written Court Orders—(Judge Jones) [Page 14]

D. Licensed Legal Paraprofessional Program—Proposed Civil Rule Changes—(Judge Espinosa & Magistrate Tims) [Pages 15 to 95]

E. Gender Neutral Language in Civil Rules—(Judge Jones & Luke Ritchie) [Pages 96 to 101]

F. C.R.C.C.P. 310—Proposed Changes in Light of Legislative Changes—(Judge Espinosa)

V. Adjourn—**Next meeting is January 26, 2023, 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 22, 2023, 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
Miko Ando Brown	X	
Judge Catherine Cheroutes		X
Damon Davis		X
David R. DeMuro	X	
Judge Stephanie Dunn		X
Judge J. Eric Elliff		X
Judge Adam Espinosa	X	
Peter Goldstein		X
Magistrate Lisa Hamilton-Fieldman		X
Michael J. Hofmann		X
Judge Thomas K. Kane		X
John Lebsack	X	
Bradley A. Levin		X
Professor Christopher B. Mueller		X
Brent Owen	X	
John Palmeri	X	
Alana Percy	X	
Lucas Ritchie	X	
Chief Judge Gilbert M. Román		X
Judge (Ret.) Sabino Romano	X	
Judge Stephanie Scoville		X
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Andi Truett	X	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor	X	
Ben Vinci	X	
Judge (Ret.) John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Su Cho	X	

I. Attachments & Handouts

- September 22, 2023, agenda packet.

II. Announcements from the Chair

The June 23, 2023, minutes were approved as submitted. Judge Jones then announced that Judge Thomas Kane will retire from the bench and from this Committee, effective at the end of this year. Judge Jones then updated the Committee on a few outstanding items of business. At the last meeting, a Subcommittee was formed regarding Out of State Subpoenas; however, Subcommittee Chair Judge Elliff determined upon further review that no action is needed, so Judge Jones disbanded the Subcommittee. Judge Jones then shared that the Gendered Pronouns Subcommittee will be taking up the issue of Rule 10 and will be conferring with other committees to jointly establish a consistent approach on this issue. Finally, Judge Jones announced that next year's meeting dates have been set and are listed on the agenda.

III. Present Business

A. SCAO Proposal to JDF 250 SC

This SCAO proposal suggests language changes that will conform to recent statutory changes. The Committee voted unanimously to approve the proposed change.

B. Judge Leith's Proposed Changes to Captions of Proposed Orders

This proposal comes from Judge Leith and is aimed at removing the word *proposed* from signed orders via Rule 10 and Rule 121 § 1-26. While some members noted that they do not think the change is necessary, others stated that it would streamline processes. The Committee voted 16-2 in favor of accepting Judge Leith's proposal with the addition of a similar change to Rule 121 § 1-15.

Separately, the proposal mentions a reference in Rule 10(i) to ICON, a now defunct name of the electronic filing system. The Committee voted unanimously to remove this reference.

C. Proposed Changes to C.R.C.C.P. 310 in Light of Legislative Changes

Alana Percy and Andi Truett spoke on this proposal, which suggests adding new section (e) to Rule 310 to state that in eviction matters, all Judicial Department Forms shall be used where applicable. Judge Jones sent the proposal to the FED Subcommittee for consideration.

D. Colorado Small Claims Rules—Concerned Citizen Email

This proposal comes from a concerned citizen who believes that small claims actions do not possess adequate enforcement options. Judge Jones will further consider the proposal after speaking to others who practice small claims actions. For now, it will be tabled.

E. Magistrate Rules Cleanup

Damon Davis has withdrawn this proposal because he does not want to delay potential approval by the Supreme Court.

F. C.R.C.P. 121 § 1-21(1)—Remove Old Designation of Record Process

This proposal from Paul Bennington suggests altering a civil rule to comport with a newly changed appellate rule for the sake of consistency. Brent Owen will consider how to change C.R.C.P. 121 § 1-21(1) and whether to change the corollary county court rule.

Future Meetings

November 3, January 26, April 5, June 28, September 27, and November 1

The Committee adjourned at 2:46 p.m.

From: gabriel, richard
Sent: Tuesday, May 30, 2023 9:23 AM
To: jones, jerry; berger, michael; michaels, kathryn
Subject: FW: Rule 10 propose changes
Attachments: Rule 10 proposal to send to Civil Rules Committee.docx

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Please see below and attached. Justice Hart asks that we add this to the agenda for our June Civil Rules Committee meeting.

Thanks!

Rich

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

From: hart, melissa <melissa.hart@judicial.state.co.us>
Sent: Sunday, May 28, 2023 2:03 PM
To: gabriel, richard <richard.gabriel@judicial.state.co.us>
Subject: Rule 10 propose changes

Rich – Attached are some changes that the PAC has approved and would like to ask the Civil Rules Committee to consider (and approve). The reason for these changes is that the new plain language forms for DR cases are inconsistent with current Rule 10 in that they have the title of the document at the top of the page instead of below the caption. This change would allow either one. There are a few other changes – perhaps most significant the pronoun language – that the PAC recommends the Civil Rules Committee consider. Please let me know if you have any questions.

Thanks!
Melissa

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

(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, and if desired by the party, pronouns of the parties.

Name, pronouns if desired, 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.

~~Document title.~~

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).

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

Commented [mh1]: The PAC thinks the Civil Rules Committee should consider whether to eliminate the spacing rules because many of them are not actually followed – eg Motions are generally single-spaced. Another possibility would be to simply move Motions into the single-spaced section.

(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:	
Plaintiff(s) and pronouns, if desired by the parties: *[Substitute appropriate party designations & names]* v. **Defendant(s) and pronouns, if desired by the parties:**	**▲ COURT USE ONLY ▲** Case Number: Div: Ctrm.:
Attorney or Party Without Attorney: Name and pronouns, if desired: Address: Phone Number: FAX Number: E-mail: Atty. Reg. #:	Case Number:

NAME OF DOCUMENT

Formatted: Centered

(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:	
Plaintiff(s): *[Substitute appropriate party designations & names]* v. **Defendant(s):**	**▲ COURT USE ONLY ▲** Case Number: Div.: Ctrm.:

NAME OF DOCUMENT

Formatted: Centered

(f) Illustration of Alternative~~Optional~~ Case Caption.

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

NAME OF DOCUMENT

[Designation of Court from subsection (g) below] Court Address:	
Plaintiff(s) and pronouns, if desired by the parties: v. *[Substitute appropriate party designations & names]* **Defendant(s) and pronouns, if desired by the parties:**	**▲ COURT USE ONLY ▲**
Attorney or Party Without Attorney: Name and pronouns, if desired: Address: Phone Number: FAX Number: E-mail: Atty. Reg. #:	Case Number: Div.: Ctrm.:

~~**NAME OF DOCUMENT**~~

Formatted: Centered

(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:	
Plaintiff(s): *[Substitute appropriate party designations & names]* v.	**▲ COURT USE ONLY ▲**
Defendant(s):	Case Number: Div.: Ctrm.:

~~NAME OF DOCUMENT~~

Formatted: Centered

(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, "ICON," 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, ~~contain check-off boxes for the court designation, have at least a 9-point font~~, 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.

COMMENTS

2001 [Amendment]

[1] This rule sets forth forms of case captions for all documents that are filed in Colorado courts, including both criminal and civil cases. The purpose of the form captions is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently. Judges are encouraged in their orders to employ a caption similar to one of the options ~~that~~ found in paragraphs (e) and (f)~~(2)~~.

~~[2] The preferred case caption formats for documents initiated by a party is found in paragraph (e)(1). The preferred captions for documents issued by the court under the signature of a clerk or judge is found in paragraph (e)(2). Because some parties may have difficulty formatting their documents to include vertical lines and boxes, alternate case caption formats are found in paragraphs (f)(1) and (f)(2). However, the box format is the preferred and recommended format.~~

Commented [mh2]: This is not currently true. PAC thus suggests using (e) and (f) to show two different permissible captions.

[2~~3~~] The boxes may be vertically elongated to accommodate additional party and attorney information if necessary. The "court use" and "case number" boxes, however, shall always be located in the upper right side of the caption.

[4] Forms approved by the State Court Administrator's Office (designated "JDF" or "SCAO"), forms set forth in the Colorado Court Rules, volume 12, C.R.S. (including those 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, "ICON," shall conform to criteria established by the State Court Administrator's Office as approved by the Colorado Supreme Court. This includes pre-printed and computer-generated forms. JDF and SCAO forms and a flexible form of caption which allows the entry of additional party and attorney information are available and can be downloaded from the Colorado courts web page at http://www.courts.state.co.us/scao/Forms.htm.

From: Michael Hofmann
Sent: Monday, October 23, 2023 10:56 AM
To: jones, jerry
Cc: michaels, kathryn
Subject: [External] Possible correction to C.R.C.P. 26(d) (Timing and Sequence of Discovery)

Dear Judge Jones and Kathryn,

I hope all is well for you. I recently noticed that Rule 26(d) (Timing and Sequence of Discovery) refers to discovery commencing upon service of the case management order "pursuant to C.R.C.P. 16(b)(18)." That reference was correct when first made, but in 2020 the Committee proposed (and the Supreme Court agreed) to add a new Rule 16(b)(18) to deal with related cases. See the change below (from our 9-25-20 agenda packet). That made the old Rule 16(b)(18) into new Rule 16(b)(19), which now provides for service of the case management order. So I think the reference in Rule 26(d) to (b)(18) should be corrected to (b)(19). I doubt this matters much in practice, but it would be good for the cross-reference to be correct, and it seems like an easy fix.

Please let me know if you have any questions or would like to discuss. Thank you!

Rule 16. Case Management and Trial Management

(a) – (b)(17) [NO CHANGE]

(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.

(198) 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) – end [NO CHANGE]

Mike

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Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) – (c) [NO CHANGE]

(d) Timing and Sequence of Discovery. Except when authorized by these Rules, by order, or by agreement of the parties, a party may not seek discovery from any source before service of the Case Management Order pursuant to C.R.C.P. 16(b)(19~~8~~). Any discovery conducted prior to issuance of the Case Management Order shall not exceed the limitations established by C.R.C.P. 26(b)(2). Unless the parties stipulate or the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) – (g) [NO CHANGE]

COMMENTS [NO CHANGE]

From: leith, elizabeth
Sent: Thursday, September 28, 2023 11:38 AM
To: gabriel, richard; boatright, brian; jones, jerry
Cc: michaels, kathryn
Subject: Civil Rule or CJD suggestion

Good Morning –

I would like to propose a change to the CRCP 58 regarding what constitutes a written court order. The suggestion is below, which would be a new sentence added to CRCP 58(a).

It is my belief that judicial officers are moving away from preparing written orders themselves or directing counsel or parties to prepare written orders in favor of ordering a hearing transcript or minute order, and using those as the court order. I believe this practice is inappropriate and a disservice to the public which we serve. This practice, used especially in domestic relations and juvenile cases, requires parties, law enforcement officers, and other judicial officers to name a few, to read through pages of transcript to attempt to ascertain the court order. If a minute order is used, there are no factual determinations or support for the orders. This practice also negatively impacts court staff, who must read through transcripts to try and determine orders related to fee waivers or other matters that must be entered into the jPOD system.

I believe this issue has been brewing for quite some time, and should be addressed. I would not be in favor of this practice being explicitly authorized for the reasons I have stated above.

Thank you for your consideration of my request.

CRCP 58(a) …A transcript created from a hearing or trial, or a minute order entered into the register of actions, even if printed and signed by a judicial officer, shall not constitute a final, written order signed by the court.

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

Memorandum

To: Civil Rules Committee

From: Adam J. Espinosa and Marianne Tims

Date: October 22, 2023

Re: Potential Changes to Colorado Rules of Civil Procedure based on the Licensed Legal Paraprofessional (LLP) Program

Summary

The LLP Subcommittee of the Civil Rules Committee was tasked with reviewing proposed Civil Rules set forth by the Supreme Court's LLP Committee to effectuate the implementation of the LLP program adopted by the Supreme Court. Our subcommittee included Judge Adam J. Espinosa, Magistrate Marianne Tims, and Jessica Yates. We met virtually and by email. This memo describes our recommendations based on our review of the proposed rule changes set forth by the Supreme Court's LLP Committee.

As you will see below, we have taken two approaches to these proposed rule changes. First, we have taken a summary approach to the rule changes by adding an additional provision to C.R.C.P. 1.0 indicating that C.R.C.P. 2 through 121 apply to licensed legal paraprofessionals when consistent with the LLPs' scope of practice. Our second approach, a rule specific approach, was to review each of the recommended rule changes provided by Judge Berger in our Civil Rules Committee packet from our June 23, 2023 meeting, pages 26-96.

At the conclusion of this memorandum, you will find links to the LLP rules adopted by the Court. Also, I have included an attachment to this memorandum that includes a redline copy of the proposed amended civil rules; both the summary approach and the more specific approach. Our ask of the Civil Rules Committee is to vote to approve our recommendation to follow the summary approach for the amendments to the Rules of Civil Procedure to effectuate and implement the LLP program.

Summary Approach

C.R.C.P. 1.0 Scope of Rules

We recommend adding subsection (d) to C.R.C.P. 1.0 stating that C.R.C.P. 2 through 121 apply to licensed legal paraprofessionals when consistent with the LLPs' scope of practice. Our specific recommendation is as follows:

(d) Licensed Legal Paraprofessionals ("LLPs"). C.R.C.P. 2 though C.R.C.P. 121 shall apply to licensed legal paraprofessionals when consistent with the scope of practice authorized by C.R.C.P. 207.1.

The addition of this subparagraph (d) would sufficiently incorporate the LLP program into the Rules of Civil Procedure subject to the LLP scope of practice. This summary approach would require the least amounts of edits to the Rules of Civil Procedure and would ensure we did not miss a rule that needed amendment to incorporate the LLP program. Additionally, this summary rule change would prevent unnecessary and lengthy edits to the rules as the LLP program develops over the years.

Specific Approach

If the Committee prefers the specific approach, we recommend adopting the proposed Civil Rules changes set forth by the Supreme Court's LLP Committee. The proposed rule changes relate to C.R.C.P. 11, 16.2, 26, 33, 36, 37, 45, 53, and 121. A review of the proposed edits reveals that many of the edits include the addition of "LLP" into the rule.

If the Committee prefers the specific approach, we recommend adding a reference to the relevant LLP Rule of Professional Conduct that corresponds with the Rule of Professional Conduct when cited in the Civil Rules of Procedure. An example of this can be seen in C.R.C.P. 11(b). This rule would then read, "An attorney or LLP may undertake to provide limited representation in accordance with Colo. RPC 1.2 or Colo. LLP RPC 1.2 to a pro se party involved in a court proceeding."

Links to LLP Rules Adopted by the Court

1. Rule 207 series defining LLPs, their scope of practice, and admission requirements:

   https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2023/Rule%20Change%202023(06).pdf

2. LLP Rules of Professional Conduct:

   https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2023/Rule%20Change%202023(08).pdf

3. Rules of Attorney Discipline amended to bring LLPs within those rules and changes to CLE rules to impose CLE requirements on LLPs:

   https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2023/Rule%20Change%202023(09).pdf

Rule 1. Scope of Rules

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

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

(b) Effective Date. Amendments of these rules shall be effective on the date established by the Supreme Court at the time of their adoption, and thereafter all laws in conflict therewith shall be of no further force or effect. Unless otherwise stated by the Supreme Court as being applicable only to actions brought after the effective date of an amendment, they govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) How Known and Cited. These rules shall be known and cited as the Colorado Rules of Civil Procedure, or C.R.C.P.

(d) Licensed Legal Paraprofessionals ("LLPs"). C.R.C.P. 2 though C.R.C.P. 121 shall apply to licensed legal paraprofessionals when consistent with the scope of practice authorized by C.R.C.P. 207.1.

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 11

Rule 11. Signing of Pleadings

Currentness

(a) Obligations of Parties, ~~and~~ Attorneys or Licensed Legal Paraprofessionals ("LLP"). Every pleading of a party represented by an attorney or LLP shall be signed by at least one attorney or LLP of record in his or her individual name. The initial pleading shall state the current number of his or her registration issued to him or her by the Supreme Court. The attorney's or LLP's address and that of the party shall also be stated. A party who is not represented by an attorney or LLP 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 or LLP 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 or LLP is not included with his signature, the clerk of the court shall request from the attorney or LLP the registration number. If the attorney or LLP 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 or LLP's fee, provided, however, that failing to be registered shall be governed by Rule 227.

Reasonable expenses, including a reasonable attorney's or LLP'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, LLP or party filing the pleading knew, or reasonably should have known, that he would not prevail on said claim, action, or defense.

(b) Limited Representation. An attorney or LLP 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 or LLP shall include the attorney's or LLP's name, address, telephone number and registration number. The attorney or LLP 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 or LLP certifies that, to the best of the attorney's or LLP'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 or LLP in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney or LLP has reason to believe that such representations are false or materially insufficient, in which instance the attorney or LLP shall make an independent reasonable inquiry into the facts. Assistance by an attorney or LLP 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 or LLP 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 or LLP 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 or LLP. Representation of the pro se party by the attorney or LLP 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 or LLP's violation of this Rule 11(b) may subject the attorney or LLP to the sanctions provided in C.R.C.P. 11(a).

Credits

Amended effective January 1, 1987; July 1, 1999.

Editors' Notes

Relevant Additional Resources
Additional Resources listed below contain your search terms.

LAW REVIEW AND JOURNAL COMMENTARIES
Rule 11 as a Litigation Tool. Phillip S. Figa, 12 Colo.Law. 1242 (1983).

RESEARCH REFERENCES

Treatises and Practice Aids
11 Colorado Practice Series § 7:5, Rule 11.
11 Colorado Practice Series § 11:7, Federal Rule 11.
11 Colorado Practice Series § 11:18, Motion for Rule 11 Sanctions and Request for Hearing.

Relevant Notes of Decisions (23)
View all 115
Notes of Decisions listed below contain your search terms.

Construction and application

Rule 11 imposes the following independent duties on an attorney or a litigant who signs a pleading: (1) before a pleading is filed, there must be a reasonable inquiry into the facts and the law; (2) based on this investigation, the signer must reasonably believe that the pleading is well grounded in fact; (3) the legal theory asserted in the pleading must be based on existing legal principles or a good faith argument for the modification of existing law; and (4) the pleading must not be filed for the purpose of causing delay, harassment, or an increase in the cost of litigation. Stearns Management Co. v. Missouri River Services, Inc., App.2003, 70 P.3d 629. Pleading 287; Pleading 288

Standard established by Rule 11 focuses on what should have been done before pleading was filed. Switzer v. Giron, App.1993, 852 P.2d 1320. Costs 2

Jurisdiction

To the extent fees incurred by defendant landowners with regard to counterclaims against county were awarded as a Rule 11 sanction in state court, for actions taken while case had been pending in federal court, such award was beyond the jurisdiction of the state trial court; whether to impose sanctions under rule was necessarily a matter within the jurisdiction of the court in which the conduct occurred. Board of County Com'rs of County of Boulder v. Kraft Bldg. Contractors, App.2005, 122 P.3d 1019, rehearing denied, certiorari denied 2005 WL 3733066. Costs 2

Court of Appeals lacked jurisdiction to decide whether trial court abused its discretion in imposing Rule 11 sanctions against attorney where attorney had not filed a separate notice of appeal and plaintiffs' notice of appeal did not name the attorney as an appellant. Maul v. Shaw, App.1992, 843 P.2d 139. Appeal And Error 422

Verified pleadings--In general

Rule 11 imposes duties on an attorney or his litigant who signs a pleading to make a reasonable inquiry into the facts and law before pleading is filed, to have a reasonable belief, based on that investigation, that the pleading is "well grounded in fact," that the legal theory asserted in the pleading is based on existing legal principles or a good faith argument for modification of existing law, and that the pleading is not filed for the purpose of causing delay, or harassment, or to increase the cost of litigation. Maul v. Shaw, App.1992, 843 P.2d 139. Attorneys And Legal Services 1238; Costs 2

Purchasers did not violate Rule 11 by filing action against developer's sons based on their negligent construction of rock wall; purchasers did not verify original or amended complaints, and there was no indication that plaintiffs individually conducted any investigation of the issue or that they prevailed upon counsel to name the parties for the purpose of harassment, delay or cost of litigation. Maul v. Shaw, App.1992, 843 P.2d 139. Costs 2

Motions and briefs

Rule 11 applies to motions and briefs. Jensen v. Matthews-Price, App.1992, 845 P.2d 542. Costs 2

Sanctions--In general

Imposing sanctions for Rule 11 violation does not necessitate showing of bad faith on part of attorney who certifies the pleading; instead, sanctions are appropriate where attorney's signed pleading fails to meet test of objective reasonableness. Stepanek v. Delta County, 1997, 940 P.2d 364. Costs 2

In considering whether to levy Rule 11 sanctions against attorney who certifies pleading in court of law, court must evaluate whether attorney read the pleading, undertook reasonable inquiry into pleading's factual and legal assertions, and possessed proper purpose in filing the pleading. Stepanek v. Delta County, 1997, 940 P.2d 364. Attorneys And Legal Services 1238

Order setting aside, on equitable grounds, settlement judgment based on erroneous offer of settlement for $25,000 instead of $2,500 could be sustained based on rule providing for relief from judgment on grounds of mistake of counsel, notwithstanding trial court's unwarranted rejection of mistake as grounds for relief based on misapplication of Rule 11 sanctions against client. Domenico v. Southwest Properties Venture, App.1995, 914 P.2d 390, rehearing denied, certiorari denied. Judgment 90

Rule 11 contemplates sanctions against offending party for violations of its provisions, not preclusion of relief from judgment on grounds of mistake. Domenico v. Southwest Properties Venture, App.1995, 914 P.2d 390, rehearing denied, certiorari

denied. Costs 2

Rule 11 sanctions could not be imposed for allegations in plaintiffs' response brief that physician was under influence of cocaine at time of treatment and had used it in hospital and enroute to another hospital to perform surgery and that cocaine made physician feel "invincible, omniscient, and euphoric"; receptionist testified in deposition that physician was using cocaine on daily basis and had white substance on nose immediately before she began treating patient, and characterization of effects of cocaine use could not be deemed entirely unfounded or improper. Jensen v. Matthews-Price, App.1992, 845 P.2d 542. Costs 2

Increase in architectural engineer's professional liability insurance premiums that resulted from construction contractor's filing of complaint could be included as Rule 11 sanction; increased premium resulted directly from commencement of action. Schmidt Const. Co. v. Becker-Johnson Corp., App.1991, 817 P.2d 625. Costs 2

Rule 11 sanctions are not limited to attorney fees and litigation expenses, but may include other reasonable expenses incurred as result of sanctionable conduct. Schmidt Const. Co. v. Becker-Johnson Corp., App.1991, 817 P.2d 625. Costs 2

Trial court did not abuse its discretion in finding that construction contractor's action against architectural engineer lacked substantial justification, warranting imposition of statutory and Rule 11 sanctions; contractor failed at every appropriate opportunity to justify its actions, it filed its own motion to dismiss in response to engineer's motions to dismiss, it did not respond to sanctions motion, and its attorney's response lacked substance. Schmidt Const. Co. v. Becker-Johnson Corp., App.1991, 817 P.2d 625. Costs 2

---- Party or client, sanctions

Trial court's exercise of discretion in imposing Rule 11 sanctions against client for attorney's violation of rule must be warranted by confirmation in record of court's finding some nexus between proscribed conduct and a specific undertaking by or knowledge of client that rule is being violated. Domenico v. Southwest Properties Venture, App.1995, 914 P.2d 390, rehearing denied, certiorari denied. Attorneys And Legal Services 1238

To warrant trial court's exercise of discretion in ordering Rule 11 sanctions against a client, the trial court must find and the record must confirm some nexus between the proscribed conduct and a specific undertaking by or knowledge of the client that the rule is being violated. Maul v. Shaw, App.1992, 843 P.2d 139. Costs 2

---- Government entities and attorneys, sanctions

Grant of absolute immunity did not immunize county attorney, who brought petition for temporary guardianship following incapacitated adult's alleged communication that he had been sexually abused by his father, but later withdrew petition upon discovering that incapacitated adult's communications were unreliable, from imposition of sanctions pursuant to Rule 11. Stepanek v. Delta County, 1997, 940 P.2d 364. District And Prosecuting Attorneys 10

Attorney fees--In general

Trial court could award attorney fees under Rule 11 to person wrongfully sued by driver injured in collision and her husband, despite voluntary dismissal of claim, where, even though driver could not visually confirm whether defendant was other driver, plaintiffs decided to sue and take defendant's deposition to determine whether he was involved, plaintiffs were informed prior to initiation of discovery that the wrong party had been named, and plaintiffs were not prevented from conducting additional investigation, including inquiry of defendant, to establish whether they were suing correct party.

Switzer v. Giron, App.1993, 852 P.2d 1320. Costs 2

Award of attorney fees against plaintiffs under Rule 11 for frivolous, groundless, or vexatious actions had to be supported by statutorily required findings, particularly as hearing was not conducted despite plaintiffs' objection to award of fees. Maul v. Shaw, App.1992, 843 P.2d 139. Costs 2

---- Amount, attorney fees

Trial court has discretion in deciding whether to award attorney fees as Rule 11 sanctions and in setting amount of sanction. Schmidt Const. Co. v. Becker-Johnson Corp., App.1991, 817 P.2d 625. Costs 2

---- Review, attorney fees

Whether to award attorney fees for asserting claim or defense that lacks substantial justification or as a sanction under Rule 11 is a decision committed to the discretion of the trial court, whose ruling will not be disturbed on appeal absent an abuse of discretion. E-470 Public Highway Authority v. Jagow, App.2001, 30 P.3d 798, certiorari granted, affirmed 49 P.3d 1151, on subsequent appeal 91 P.3d 1038, on subsequent appeal 140 P.3d 227. Appeal And Error 3260; Costs 2; Costs 194.44

Remand

Remand was required to determine whether county attorney, who brought petition for temporary guardianship following incapacitated adult's alleged communication that he had been sexually abused by his father, but later withdrew petition upon discovering that incapacitated adult's communications were unreliable, violated Rule 11; since trial court granted county attorney absolute immunity, it did not consider Rule 11 issue. Stepanek v. Delta County, 1997, 940 P.2d 364. Appeal And Error 4751(1)

Rules Civ. Proc., Rule 11, CO ST RCP Rule 11
Current with amendments received through October 15, 2021.

End of Document

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 16.2**

Rule 16.2. Court Facilitated Management of Domestic Relations Cases and General Provisions Governing Duty of Disclosure

Effective: March 5, 2020

Currentness

(a) Purpose and Scope. Family members stand in a special relationship to one another and to the court system. It is the purpose of **Rule 16.2** to provide a uniform procedure for resolution of all issues in domestic relations cases that reduces the negative impact of adversarial litigation wherever possible. To that end, this Rule contemplates management and facilitation of the case by the court, with the disclosure requirements, discovery and hearings tailored to the needs of the case. This Rule shall govern case management in all district court actions under Articles 10, 11 and 13 of Title 14 of the Colorado Revised Statutes, including post decree matters. The Child Support Enforcement Unit (CSEU) shall be exempted under this Rule unless the CSEU enters an appearance in an ongoing case. Upon the motion of any party or the court's own motion, the court may order that this Rule shall govern juvenile, paternity or probate cases involving allocation of parental responsibilities (decision-making and parenting time), child support and related matters. Any notice or service of process referenced in this Rule shall be governed by the Colorado Rules of Civil Procedure.

(b) Active Case Management. The court shall provide active case management from filing to resolution or hearing on all pending issues. The parties, counsel or LLP and the court shall evaluate each case at all stages to determine the scheduling of that individual case, as well as the resources, disclosures/discovery, and experts necessary to prepare the case for resolution or hearing. The intent of this Rule is to provide the parties with a just, timely and cost effective process. The court shall consider the needs of each case and may modify its Standard Case Management Order accordingly. Each judicial district may adopt a Standard Case Management Order that is consistent with this Rule and takes into account the specific needs and resources of the judicial district.

(c) Scheduling and Case Management for New Filings.

(1) *Initial Status Conferences/Stipulated Case Management Plans.*

(A) Petitioner shall be responsible for scheduling the initial status conference and shall provide notice of the conference to all parties. Each judicial district shall establish a procedure for setting the initial status conference. Scheduling of the initial status conference shall not be delayed in order to accomplish service.

(B) All parties and counsel or LLP, if any, shall attend the initial status conference, except as provided in subsection (c)(1)(C) or (c)(1)(D). At that conference, the parties and counsel or LLP shall be prepared to discuss the issues requiring resolution and any special circumstances of the case. The court may permit the parties, ~~and/or~~ counsel or LLP to attend the initial conference and any subsequent conferences by telephone.

(C) If both parties are represented by counsel or LLP, counsel or LLP may submit a Stipulated Case Management Plan signed by counsel or LLP and the parties. Counsel or LLP shall also exchange Mandatory Disclosures and file a Certificate of Compliance. The filing of such a plan, the Mandatory Disclosures and Certificate of Compliance shall exempt the parties and counsel or LLP from attendance at the initial status conference. The court shall retain discretion to require a status conference after review of the Stipulated Case Management Plan.

(D) Parties who file an affidavit for entry of decree without appearance with all required documents before the initial status conference shall be excused from that conference.

€ The initial status conference shall take place, or the Stipulated Case Management Plan shall be filed with the court, as soon as practicable but no later than 42 days from the filing of the petition.

(F) At the initial status conference, the court shall set the date for the next court appearance. The court may direct one of the parties to send written notice for the next court appearance or may dispense with written notice.

(2) *Status Conference Procedures.*

(F) At each conference the parties shall be prepared to discuss what needs to be done and determine a timeline for completion. The parties shall confer in advance on any unresolved issues.

(B) The conferences shall be informal.

€ Family Court Facilitators may conduct conferences. Family Court Facilitators shall not enter orders but may confirm the agreements of the parties in writing. Agreements which the parties wish to have entered as orders shall be submitted to the judge or magistrate for approval.

(D) The judge or magistrate may enter interim orders at any status conference either upon the stipulation of the parties or to address emergency circumstances.

€ A record of any part of the proceedings set forth in this section shall be made if requested by a party or by order of the court.

(F) The court shall either enter minute orders, direct counsel or LLP to prepare a written order, or place any agreements or orders on the record.

(3) *Emergency Matters/Evidentiary Hearings/Temporary Orders.*

(A) Emergency matters may be brought to the attention of the clerk or the Family Court Facilitator for presentation to the court. Issues related to children shall be given priority on the court's calendar.

(B) At the request of either party or on its own motion, the court shall conduct an evidentiary hearing, subject to the Colorado Rules of Evidence, to resolve disputed questions of fact or law. The parties shall be given notice of any evidentiary hearing. Only a judge or magistrate may determine disputed questions of fact or law or enter orders.

© Hearings on temporary orders shall be held as soon as possible. The parties shall certify on the record at the time of the temporary orders hearing that they have conferred and attempted in good faith to resolve temporary orders issues. If the parties do not comply with this requirement, the court may vacate the hearing unless an emergency exists that requires immediate court attention.

(4) *Motions.*

(1) Motions related to the jurisdiction of the court, change of venue, service and consolidation, protection orders, contempt, motions to amend the petition or response, withdrawal or substitution of counsel or LLP, motions to seal the court file or limit access to the court file, motions in limine related to evidentiary hearings, motions for review of an order by a magistrate, and post decree motions may be filed with the court at any time.

(1) All other motions shall only be filed and scheduled as determined at a status conference or in an emergency upon order of court.

(d) Scheduling and Case Management for Post-Decree/Modification Matters. Within 49 days of the date a post decree motion or motion to modify is filed, the court shall review the matter and determine whether the case will be scheduled and resolved under the provisions of © or will be handled on the pleadings or otherwise.

© Disclosure.

(1) Parties to domestic relations cases owe each other and the court a duty of full and honest disclosure of all facts that materially affect their rights and interests and those of the children involved in the case. The court requires that, in the discharge of this duty, a party must affirmatively disclose all information that is material to the resolution of the case without awaiting inquiry from the other party. This disclosure shall be conducted in accord with the duty of candor owing among those whose domestic issues are to be resolved under this **Rule 16.2**.

(2) A party shall, without a formal discovery request, provide the Mandatory Disclosures, as set forth in the form and content of Appendix to Chapters 1 to 17A, Form 35.1, C.R.C.P., and shall provide a completed Sworn Financial Statement and (if applicable) Supporting Schedules as set forth in the form and content of Appendix to Chapters 1 to 17A, Form 35.2 and Form 35.3, C.R.C.P., to the other party within 42 days after service of a petition or a post decree motion involving financial issues. The parties shall exchange the required Mandatory Disclosures, the Sworn Financial Statement and (if applicable) Supporting Schedules by the time of the initial status conference to the extent reasonably possible.

(3) A party shall, without a formal discovery request, also provide a list of expert and lay witnesses whom the party intends to call at a contested hearing or final orders. This disclosure shall include the address, phone number and a brief description of the testimony of each witness. This disclosure shall be made no later than 63 days (9 weeks) prior to the date of the contested hearing or final orders, unless the time for such disclosure is modified by the court.

Unless otherwise stipulated or ordered by the court and subject to the provisions of subsection (g) of this Rule, the disclosure of expert testimony shall be governed by the provisions of C.R.C.P. 26(a)(2)(B). The time for the disclosure of expert or lay witnesses whom a party intends to call at a temporary orders hearing or other emergency hearing shall be determined by the court.

(4) A party is under a continuing duty to supplement or amend any disclosure in a timely manner. This duty shall be governed by the provisions of C.R.C.P. 26©.

(5) If a party does not timely provide the Mandatory Disclosure, the court may impose sanctions pursuant to subsection (j) of this Rule.

(6) The Sworn Financial Statement, Supporting Schedules (if applicable) and child support worksheets shall be filed with the court. Other mandatory disclosure documents shall not be filed with the court.

(7) A Certificate of Compliance shall accompany the Mandatory Disclosures and shall be filed with the court. A party's signature on the Certificate constitutes certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the Mandatory Disclosure is complete and correct as of the time it is made, except as noted with particularity in the Certificate of Compliance.

(8) Signing of all disclosures, discovery requests, responses and objections shall be governed by C.R.C.P. 26(g).

(9) A Court Authorization For Financial Disclosure shall be issued at the initial status conference if requested, or may be executed by those parties who submit a Stipulated Case Management Plan pursuant to ©(1)©, identifying the persons authorized to receive such information.

(10) As set forth in this section, it is the duty of parties to an action for decree of dissolution of marriage, legal separation, or invalidity of marriage, to provide full disclosure of all material assets and liabilities. If a disclosure contains a misstatement or omission materially affecting the division of assets or liabilities, any party may file and the court shall consider and rule on a motion seeking to reallocate assets and liabilities based on such a misstatement or omission, provided that the motion is filed within 5 years of the final decree or judgment. The court shall deny any such motion that is filed under this paragraph more than 5 years after the final decree or judgment. The provisions of C.R.C.P. 60 do not bar a motion by either party to allocate such assets or liabilities pursuant to this paragraph. This paragraph does not limit other remedies that may be available to a party by law.

(f) Discovery. Discovery shall be subject to active case management by the court consistent with this Rule.

(1) Depositions of parties are permitted.

(2) Depositions of non-parties upon oral or written examination for the purpose of obtaining or authenticating documents not accessible to a party are permitted.

(3) After an initial status conference or as agreed to in a Stipulated Case Management Plan filed pursuant to ©(1)©, a party may serve on each adverse party any of the pattern interrogatories and requests for production of documents contained in the Appendix to Chapters 1 to 17A Form 35.4 and Form 35.5, C.R.C.P. A party may also serve on each adverse party 10 additional written interrogatories and 10 additional requests for production of documents, each of which shall consist of a single question or request.

(4) The parties shall not undertake additional formal discovery except as authorized by the court or as agreed in a Stipulated Case Management Plan filed pursuant to ©(1)©. The court shall grant all reasonable requests for additional discovery for good cause as defined in C.R.C.P. 26(b)(2)(F). Unless otherwise governed by the provisions of this Rule additional discovery shall be governed by C.R.C.P. Rules 26 through 37 and C.R.C.P. 121 section 1-12. Methods to discover additional matters shall be governed by C.R.C.P. 26(a)(5). Additional discovery for trial preparation relating to documents and tangible things shall be governed by C.R.C.P. 26(b)(3).

(5) All discovery shall be initiated so as to be completed not later than 28 days before hearing, except that the court shall extend the time upon good cause shown or to prevent manifest injustice.

(6) Claims of privilege or protection of trial preparation materials shall be governed by C.R.C.P. 26(b)(5).

(7) Protective orders sought by a party relating to discovery shall be governed by C.R.C.P. 26©.

(g) Use of Experts. If the matter before the court requires the use of an expert or more than one expert, the parties shall attempt to select one expert per issue. If they are unable to agree, the court shall act in accordance with CRE 706, or other applicable rule or statute.

(1) Expert reports shall be filed with the court only if required by the applicable rule or statute.

(2) If the court appoints or the parties jointly select an expert, then the following shall apply:

(1) Compensation for any expert shall be governed by the provisions of CRE 706.

(1) The expert shall communicate with and submit a draft report to each party in a timely manner or within the period of time set by the court. The parties may confer with the expert to comment on and make objections to the draft report before a final report is submitted.

(1) ©The court shall receive the expert reports into evidence without further foundation, unless a party notes an objection in the Trial Management Certificate. However, this shall not preclude either side from calling an expert for cross-examination, and voir dire on qualifications. Unless otherwise ordered by the court, a reasonable witness fee associated with the expert's court appearance shall be tendered before the hearing by the party disputing the expert's findings.

(3) Nothing in this rule limits the right of a party to retain a qualified expert at that party's expense, subject to judicial allocation if appropriate. The expert shall consider the report and documents or information used by the court appointed or jointly selected expert and any other documents provided by a party, and may testify at a hearing. Any additional documents or information provided to the expert shall be provided to the court appointed or jointly selected expert by the time the expert's report is submitted.

(4) The parties have a duty to cooperate with and supply documents and other information requested by any expert. The parties also have a duty to supplement or correct information in the expert's report or summary.

(5) Unless otherwise ordered by the court, expert reports shall be provided to the parties 56 days (8 weeks) prior to hearing. Rebuttal reports shall be provided 21 days thereafter. If an initial report is served early, the rebuttal report shall not be required sooner than 35 days (5 weeks) before the hearing.

(6) Unless otherwise ordered by the court, parental responsibility evaluations and special advocate reports shall be provided

to the parties pursuant to the applicable statute.

(7) The court shall not give presumptive weight to the report of a court appointed or jointly selected expert when such report is disputed by one or both parties.

(8) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Such trial preparation relating to experts shall be governed by C.R.C.P. 26(b)(4).

(h) Trial Management Certificates.

(1) If both parties are not represented by counsel or LLP, then each party shall file with the court a brief statement identifying the disputed issues and that party's witnesses and exhibits including updated Sworn Financial Statements and (if applicable) Supporting Schedules, together with copies thereof, mailed to the opposing party at least **7** days prior to the hearing date or at such other time as ordered by the court.

(2) If at least one party is represented by counsel or LLP, the parties shall file a joint Trial Management Certificate **7** days prior to the hearing date or at such other time as ordered by the court. Petitioner's counsel or LLP (or respondent's counsel or LLP if petitioner is pro se) shall be responsible for scheduling meetings among counsel or LLP and parties and preparing and filing the Trial Management Certificate. The joint Trial Management Certificate shall set forth stipulations and undisputed facts, any requests for attorney or LLP fees, disputed issues and specific points of law, lists of lay witnesses and expert witnesses the parties intend to call at hearing, and a list of exhibits, including updated Sworn Financial Statement, Supporting Schedules (if applicable) and proposed child support work sheets. The parties shall exchange copies of exhibits at least **7** days prior to hearing.

(i) Alternative Dispute Resolution.

(1) Nothing in this Rule shall preclude, upon request of both parties, a judge or magistrate from conducting the conferences as a form of alternative dispute resolution pursuant to section 13-22-301, C.R.S. (2002), provided that both parties consent in writing to this process. Consent may only be withdrawn jointly.

(2) The provisions of this Rule shall not preclude the parties from jointly consenting to the use of dispute resolution services by third parties, or the court from referring the parties to mediation or other forms of alternative dispute resolution by third parties pursuant to sections 13-22-311 and 313, C.R.S. (2002).

(j) Sanctions. If a party fails to comply with any of the provisions of this rule, the court may impose appropriate sanctions, which shall not prejudice the party who did comply. If a party attempts to call a witness or introduce an exhibit that the party has not disclosed under subsection (h) of this Rule, the court may exclude that witness or exhibit absent good cause for the omission.

Credits

Adopted effective July 1, 1995. Repealed and replaced September 30, 2004, effective January 1, 2005. Amended effective March 1, 2006; January 1, 2012; February 8, 2013; March 5, 2020.

Editors' Notes

COMMENT

DISCLOSURES

This Rule is premised upon an expectation that regular status conferences will be conducted informally, that the parties will provide all necessary disclosures and that formal discovery, if authorized, will be tailored to the specific issues of the case. Disclosure of expert testimony and the signing of disclosures and discovery responses will be governed by C.R.C.P. 26 as specifically incorporated into section (e) of new **Rule 16.2**.

RULE 26.2

The current Rule 26.2 will be repealed. Disclosure of expert testimony and the signing of disclosures and discovery responses will be governed by C.R.C.P. 26 as specifically incorporated into section (e) of new **Rule 16.2**. Relevant provisions of C.R.C.P. 26 that relate to any additional discovery authorized by the court or stipulated to by the parties under sections (f) and (g) of the new Rule have been incorporated into new **Rule 16.2**. It is the intent of the committee that relevant caselaw under Rule 26.2 or Rule 26 will have precedential value. The pattern interrogatories and pattern requests for production of documents will also be modified to be consistent with new **Rule 16.2**.

APPENDICES AND FORMS

The Supreme Court approved the mandatory disclosures, sworn financial statement and supporting schedules forms referenced in 16.2(e)(2), and inclusion of these forms in the Appendix to Chapters 1 to 17A of the Colorado Rules of Civil Procedure. **Rule 16.2** requires compliance with the mandatory disclosures, and completion of the sworn financial statement form and supplemental schedule (if applicable) submitted with this Rule to achieve the disclosure intended by the Rule. The court also approved the amended pattern interrogatories (Form 35.4) and pattern requests for production (Form 35.5). The court further approved the form of the Stipulated Case Management Plan, an associated Order referenced in 16.2(c)(1)(C), and the Court Authorization for Financial Disclosure, referenced in 16.2(e)(9), which forms now have JDF numbers.

SETTLEMENT CONFERENCES

Rule 121, Section 1-17 has been amended to permit a judge or magistrate to conduct a settlement conference or utilize other alternative dispute resolution techniques under **Rule 16.2**(i).

Relevant Additional Resources
Additional Resources listed below contain your search terms.

LAW REVIEW AND JOURNAL COMMENTARIES

New **Rule 16.2**: A Brave New World. David M. Johnson, Pamela A. Gagel, and Simon Mole, 34 Colo.Law. 101 (Jan. 2005).

RESEARCH REFERENCES

Treatises and Practice Aids

20 Colorado Practice Series § 30:15, Proceedings Under **Rule 16.2**(E)(10).

Notes of Decisions containing your search terms (0)

View all 45

Rules Civ. Proc., **Rule 16.2**, CO ST RCP **Rule 16.2**

Current with amendments received through October 15, 2021.

End of Document

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 4. Disclosure and Discovery

C.R.C.P. Rule 26

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

Effective: April 1, 2021

Currentness

(a) Required Disclosures. Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

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

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

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

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

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

Disclosures shall be served within 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). A party shall make the

required disclosures based on the information then known and reasonably available to the party and is not excused from making such disclosures because the party has not completed investigation of the case or because the party challenges the sufficiency of another party's disclosure or because another party has not made the required disclosures. Parties shall make these disclosures in good faith and may not object to the adequacy of the disclosures until the case management conference pursuant to C.R.C.P. 16(d).

(2) *Disclosure of Expert Testimony.*

(A) In addition to the disclosures required by subsection (a)(1) of this Rule, a party shall disclose to other parties the identity of any person who may present evidence at trial, pursuant to Rules 702, 703, or 705 of the Colorado Rules of Evidence together with an identification of the person's fields of expertise.

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

(I) Retained Experts. With respect to a witness who is retained or specially employed to provide expert testimony, or whose duties as an employee of the party regularly involve giving expert testimony, the disclosure shall be made by a written report signed by the witness. The report shall include:

(a) a complete statement of all opinions to be expressed and the basis and reasons therefor;

(b) a list of the data or other information considered by the witness in forming the opinions;

(c) references to literature that may be used during the witness's testimony;

(d) copies of any exhibits to be used as a summary of or support for the opinions;

(e) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;

(f) the fee agreement or schedule for the study, preparation and testimony;

(g) an itemization of the fees incurred and the time spent on the case, which shall be supplemented 14 days prior to the first day of trial; and

(h) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

The witness's direct testimony shall be limited to matters disclosed in detail in the report.

(II) Other Experts. With respect to a party or witness who may be called to provide expert testimony but is not retained or specially employed within the description contained in subsection (a)(2)(B)(I) above, the disclosure shall be made by a written report or statement that shall include:

(a) a complete description of all opinions to be expressed and the basis and reasons therefor;

(b) a list of the qualifications of the witness; and

(c) copies of any exhibits to be used as a summary of or support for the opinions. If the report has been prepared by the witness, it shall be signed by the witness.

If the witness does not prepare a written report, the party's lawyer or the party, if self-represented, may prepare a statement and shall sign it. The witness's direct testimony expressing an expert opinion shall be limited to matters disclosed in detail in the report or statement.

(C) Unless otherwise provided in the Case Management Order, the timing of the disclosures shall be as follows:

(I) The disclosure by a claiming party under a complaint, counterclaim, cross-claim, or third-party claim shall be made at least 126 days (18 weeks) before the trial date.

(II) The disclosure by a defending party shall be made within 28 days after service of the claiming party's disclosure, provided, however, that if the claiming party serves its disclosure earlier than required under subparagraph 26(a)(2)(C)(I), the defending party is not required to serve its disclosures until 98 days (14 weeks) before the trial date.

(III) If the evidence is intended to contradict or rebut evidence on the same subject matter identified by another party under subparagraph (a)(2)(C)(II) of this Rule, such disclosure shall be made no later than 77 days (11 weeks) before the trial date.

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

(4) *Form of Disclosures; Filing.* All disclosures pursuant to subparagraphs (a)(1) and (a)(2) of this Rule shall be made in writing, in a form pursuant to C.R.C.P. 10, signed pursuant to C.R.C.P. 26(g)(1), and served upon all other parties. Disclosures shall not be filed with the court unless requested by the court or necessary for consideration of a particular issue.

(5) *Methods to Discover Additional Matters.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, pursuant to C.R.C.P. 34; physical and mental examinations; and requests for admission. Discovery at a place within a country having a treaty with the United States applicable to the discovery must be conducted by methods authorized by the treaty except that, if the court determines that those methods are inadequate or inequitable, it may authorize other discovery methods not prohibited by the treaty.

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

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

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

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

(B) A party may serve on each adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. 26 and 33.

(C) A party may obtain a physical or mental examination (including blood group) of a party or of a person in the custody or under the legal control of a party pursuant to C.R.C.P. 35.

(D) A party may serve each adverse party requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number,

each of which shall consist of a single request.

(E) A party may serve on each adverse party 20 requests for admission, each of which shall consist of a single request. A party may also serve requests for admission of the genuineness of up to 50 separate documents that the party intends to offer into evidence at trial. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.

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

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

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

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

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

(3) *Trial Preparation: Materials.* Subject to the provisions of subsection (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney or LLP, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or LLP or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it, or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.*

(A) A party may depose any person who has been identified as an expert disclosed pursuant to subsection 26(a)(2) of this Rule whose opinions may be presented at trial. Each deposition shall not exceed 6 hours. On the application of any party, the court may decrease or increase the time permitted after considering the proportionality criteria in subsection (b)(1) of this Rule. Except to the extent otherwise stipulated by the parties or ordered by the court, no discovery, including depositions, concerning either the identity or the opinion of experts shall be conducted until after the disclosures required by subsection (a)(2) of this Rule.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial, and who is not expected to be called as a witness at trial only as provided by C.R.C.P. 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subsection (b)(4); and (ii) with respect to discovery obtained pursuant to subsection (b)(4)(B) of this Rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

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

(II) ~~(I)~~ relate to the compensation for the expert's study, preparation, or testimony;

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

(1) identify the assumptions that the party's attorney or LLP provided and that the expert relied on in forming opinions to be expressed.

(5)(A) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information required to be disclosed or provided in discovery by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) If information produced in disclosures or discovery is subject to a claim of privilege or of protection as trial-preparation material the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must not review, use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and shall give notice to the party making the claim within 14 days if it contests the claim. If the claim is not contested within the 14-day period, or is timely contested but resolved in favor of the party claiming privilege or protection of trial-preparation material, then the receiving party must also promptly return, sequester, or destroy the specified information and any copies that the receiving party has. If the claim is contested, the party making the claim shall present the information to the court under seal for a determination of the claim within 14 days after receiving such notice, or the claim is waived. The producing party must preserve the information until the claim is resolved, and bears the burden of proving the basis of the claim and that the claim was not waived. All notices under this Rule shall be in writing.

€ Protective Orders. Upon motion by a party or by the person from whom disclosure is due or discovery is sought, accompanied by a certificate that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

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

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed

only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

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

€ Supplementation of Disclosures, Responses, and Expert Reports and Statements. A party is under a duty to supplement its disclosures under section (a) of this Rule when the party learns that the information disclosed is incomplete or incorrect in some material respect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process, including information relating to anticipated rebuttal but not including information to be used solely for impeachment of a witness. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is incomplete or incorrect in some material respect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or statement disclosed pursuant to section (a)(2)(B) of this Rule and to information provided through any deposition of the expert. If a party intends to offer expert testimony on direct examination that has not been disclosed pursuant to section (a)(2)(B) of this Rule on the basis that the expert provided the information through a deposition, the report or statement previously provided shall be supplemented to include a specific description of the deposition testimony relied on. Nothing in this section requires the court to permit an expert to testify as to opinions other than those disclosed in detail in the initial expert report or statement except that if the opinions and bases and reasons therefor are disclosed during the deposition of the expert by the adverse party, the court must permit the testimony at trial unless the court finds that the opposing party has been unfairly prejudiced by the failure to make disclosure in the initial expert report. Supplementation shall be performed in a timely manner.

(f) [No Colorado Rule—See C.R.C.P. 16].

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(2) Every disclosure made pursuant to subsections (a)(1) or (a)(2) of this Rule shall be signed by at least one attorney or LLP of record in the attorney's or LLP's individual name. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or LLP or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, or response, or objection made by a party represented by an attorney or LLP shall be signed by

at least one attorney or LLP of record in the attorney's or LLP's individual name. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or LLP or party constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the request, response or objection is:

(A) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the disclosure, request, response or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney or LLP fees.

Credits

Repealed and readopted effective January 1, 1995. Amended effective January 9, 1995; January 1, 1998; July 1, 2001; January 1, 2002. Amended October 20, 2005, effective January 1, 2006. Amended effective January 1, 2012; September 18, 2014; July 1, 2015; August 17, 2020. Amended January 7, 2021, effective April 1, 2021.

Editors' Notes

COMMENTS

1995

SCOPE

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

2002

COLORADO DIFFERENCES

[2] Revised C.R.C.P. 26 is patterned largely after Fed.R.Civ.P. 26 as amended in 1993 and 2000 and uses substantially the same numbering. There are differences, however. The differences are to fit disclosure/discovery requirements of Colorado's case/trial management system set forth in C.R.C.P. 16, which is very different from its Federal Rule counterpart. The interrelationship between C.R.C.P. 26 and C.R.C.P. 16 is described in the Committee Comment to C.R.C.P. 16.

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

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

FEDERAL COMMITTEE NOTES

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

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

[7] Subparagraphs (a)(1)(A) and (a)(1)(B) of C.R.C.P. 26 require disclosure of persons, documents and things likely to provide discoverable information relative to disputed facts alleged with particularity in the pleadings. Disclosure relates to disputed facts, not admitted facts. The reference to particularity in the pleadings (coupled with the requirement that lead counsel confer) responds to the concern that notice pleading suggests a scope of disclosure out of proportion to any real need

or use. To the contrary, the greater the specificity and clarity of the pleadings facilitated by communication through the C.R.C.P. 16(b) conference, the more complete and focused should be the listing of witnesses, documents, and things so that the parties can tailor the scope of disclosure to the actual needs of the case.

[8] It should also be noted that two types of experts are contemplated by Fed.R.Civ.P. and C.R.C.P. 26(a)(2). The experts contemplated in subsection (a)(2)(B)(II) are persons such as treating physicians, police officers, or others who may testify as expert witnesses and whose opinions are formed as a part of their occupational duties (except when the person is an employee of the party calling the witness). This more limited disclosure has been incorporated into the State Rule because it was deemed inappropriate and unduly burdensome to require all of the information required by C.R.C.P. 26(a)(2)(B)(I) for C.R.C.P. 26(a)(2)(B)(II) type experts.

2001 COLORADO CHANGES

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

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

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

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

2015

[13] Rule 26 sets the basis for discovery of information by: (1) defining the scope of discovery (26(b)(1)); (2) requiring certain initial disclosures prior to discovery (26(a)(1)); (3) placing presumptive limits on the types of permitted discovery (26(b)(2)); and (4) describing expert disclosure and discovery (26(a)(2) and 26(b)(4)).

[14] Scope of discovery. Perhaps the most significant 2015 amendments are in Rule 26(b)(1). This language is taken directly from the proposed Fed. R. Civ. P. 26(b)(1). (For a more complete statement of the changes and their rationales, one can read the extensive commentary proposed for the Federal Rule.) First, the slightly reworded concept of proportionality is moved from its former hiding place in C.R.C.P. 26(b)(2)(F)(iii) into the very definition of what information is discoverable. Second, discovery is limited to matters relevant to the specific claims or defenses of any party and is no longer permitted simply because it is relevant to the "subject matter involved in the action." Third, it is made clear that while evidence need not be admissible to be discoverable, this does not permit broadening the basic scope of discovery. In short, the concept is to allow discovery of what a party/lawyer *needs* to prove its case, but not what a party/lawyer *wants* to know about the subject of a case.

[15] Proportionality analysis. C.R.C.P. 26(b)(1) requires courts to apply the principle of proportionality in determining the extent of discovery that will be permitted. The Rule lists a number of non-exclusive factors that should be considered. Not every factor will apply in every case. The nature of the particular case may make some factors predominant and other factors insignificant. For example, the amount in controversy may not be an important consideration when fundamental or constitutional rights are implicated, or where the public interest demands a resolution of the issue, irrespective of the economic consequences. In certain types of litigation, such as employment or professional liability cases, the parties' relative access to relevant information may be the most important factor. These examples show that the factors cannot be applied as a mathematical formula. Rather, trial judges have and must exercise discretion, on a case-by-case basis, to effectuate the purposes of these rules, and, in particular, abide by the overarching command that the rules "shall be liberally construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action." C.R.C.P. 1.

[16] Limitations on discovery. The presumptive limitations on discovery in Rule 26(b)(2)-- *e.g.*, a deposition of an adverse party and two other persons, only 30 interrogatories, etc.--have not been changed from the prior rule. They may, however, be reduced or increased by stipulation of the parties with court approval, consistent with the requirement of proportionality.

[17] Initial disclosures. Amendments to Rule 26(a)(1) concerning initial disclosures are not as significant as those to Rule 26(b)(1). Nonetheless, it is intended that disclosures should be quite complete and that, therefore, further discovery should not be as necessary as it has been historically. In this regard, the amendment to section (a)(1) adds to the requirement of disclosing four categories of information and that the disclosure include information "whether or not supportive" of the disclosing party's case. This should not be a significant change from prior practice. In 2000, Fed. R. Civ. P. 26(a)(1) was changed to narrow the initial disclosure requirements to information a party might use to support its position. The Colorado Supreme Court has not adopted that limitation, and continues to require identification of persons and documents that are relevant to disputed facts alleged with particularity in the pleadings. Thus, it was intended that disclosures were to include matter that might be harmful as well as supportive. (Limiting disclosure to supportive information likely would only encourage initial interrogatories and document requests that would require disclosure of harmful information.)

Changes to subsections (A) (persons with information) and (B) (documents) of Rule 26(a)(1) require information related to claims for relief and defenses (consistent with the scope of discovery in Rule 26(b)(1)). Also the identification of persons with relevant information calls for a "brief *description* of the *specific* information that each individual is known or believed to possess." Under the prior rule, disclosures of persons with discoverable information identifying "the subjects of information" tended to identify numerous persons with the identification of "X is expected to have information about and may testify relating to the facts of this case." The change is designed to avoid that practice and obtain some better idea of which witnesses might actually have genuinely significant information.

[18] Expert disclosures. Retained experts must sign written reports much as before except with more disclosure of their fees. The option of submitting a "summary" of expert opinions is eliminated. Their testimony is limited to what is disclosed in detail in their report. Rule 26(a)(2)(B)(I).

"Other" (non-retained) experts must make disclosures that are less detailed. Many times, a lawyer has no control over a non-retained expert, such as a treating physician or police officer, and thus the option of a "statement" must be preserved with respect to this type of expert, which, if necessary, may be prepared by the lawyers. For example, in addition to the opinions and diagnoses reflected in a plaintiff's medical records, a treating physician may have reached an opinion as to the cause of those injuries based upon treating the patient. Those opinions may not have been noted in the medical records but if sufficiently disclosed in a written report or statement as described in Comment [21], below, such opinions may be offered at trial without the witness having first prepared a full, retained expert report. In any event, the expert testimony is to be limited to what is disclosed in detail in the disclosure. Rule 26(a)(2)(B)(II).

[19] Retained or non-retained experts. Non-retained experts are persons whose opinions are formed or reasonably derived from or based on their occupational duties.

[20] Expert discovery. The prohibition of depositions of experts was perhaps the most controversial aspect of CAPP. Many lawyers, particularly those involved in professional liability cases, argued that a blanket prohibition of depositions of experts would impair lawyers' ability to evaluate cases and thus frustrate settlement of cases. The 2015 amendment permits limited depositions of experts. Retained experts may be deposed for up to 6 hours, unless changed by the court, which must consider proportionality. Rule 26(b)(4)(A).

The 2015 amendment also requires that, if a deposition reveals additional opinions, previous expert disclosures must be supplemented before trial if the witness is to be allowed to express these new opinions at trial. Rule 26(e). This change addresses, and prohibits, the fairly frequent and abusive practice of lawyers simply saying that the expert report is supplemented by the "deposition." However, even with the required supplementation, the trial court is not required to allow the new opinions in evidence. *Id.*

The 2015 amendments to Rule 26, like the current and proposed version of Fed. R. Civ. P. 26, emphasize the application of the concept of proportionality to disclosure and discovery, with robust disclosure followed by limited discovery.

[21] Sufficiency of disclosure of expert opinions and the bases therefor. This rule requires detailed disclosures of "all opinions to be expressed [by the expert] and the basis and reasons therefor." Such disclosures ensure that the parties know, well in advance of trial, the substance of all expert opinions that may be offered at trial. Detailed disclosures facilitate the trial, avoid delays, and enhance the prospect for settlement. At the same time, courts and parties must "liberally construe, administer and employ" these rules "to secure the just, speedy, and inexpensive determination of every action." C.R.C.P. 1. Rule 26(a)(2) does not prohibit disclosures that incorporate by specific page reference previously disclosed records of the designated expert (including non-retained experts), provided that the designated pages set forth the opinions to be expressed, along with the reasons and basis therefor. This Rule does not require that disclosures match, verbatim, the testimony at trial. Reasonableness and the overarching goal of a fair resolution of disputes are the touchstones. If an expert's opinions and facts supporting the opinions are disclosed in a manner that gives the opposing party reasonable notice of the specific opinions and supporting facts, the purpose of the rule is accomplished. In the absence of substantial prejudice to the opposing party, this rule does not require exclusion of testimony merely because of technical defects in disclosure.

Relevant Additional Resources
Additional Resources listed below contain your search terms.

RESEARCH REFERENCES

Treatises and Practice Aids
12 Colorado Practice Series § 26:2, Rule 26(A)(1) Required Disclosures.
12 Colorado Practice Series § 26:3, Rule 26(A)(2) Disclosure of Expert Testimony.
12 Colorado Practice Series § 26:4, Rule 26(A)(4) Form of Disclosures; Filing.
12 Colorado Practice Series § 26:5,Rule 26(A)(5) and 26(D) Methods to Discover Additional Matters.
12 Colorado Practice Series § 26:6, Rule 26(B) Discovery Scope and Limits: Generally.
12 Colorado Practice Series § 26:7, Rule 26(B)(3) Trial Preparation: Materials.
12 Colorado Practice Series § 26:8, Rule 26(B)(4) Trial Preparation: Experts.
12 Colorado Practice Series § 26:9, Rule 26(B)(5) Claims of Privilege or Protection of Trial Preparation Materials.
12 Colorado Practice Series § 26:11, Rule 26(E) Supplementation of Disclosures and Responses.

12 Colorado Practice Series § 26:12, Rule 26(G) Signing of Disclosures, Discovery Requests, Responses, and Objections.
12 Colorado Practice Series § 26:31, Supplementation of Rule 26(A) Disclosures and Discovery Responses.
12 Colorado Practice Series § 30:35, Notice of Deposition Before Time Specified in Rule 26(D).

Relevant Notes of Decisions (5)
View all 414
Notes of Decisions listed below contain your search terms.

Purpose

Court rules governing discovery authorize comprehensive pretrial discovery and are intended to facilitate and simplify the issues and avoid surprises at trial. Rules Civ.Proc., Rules26-37. Middleton v. Beckett, App.1998, 960 P.2d 1213. Pretrial Procedure 15

Scope of discovery--In general

Only requirement for discovery of evidence is that matter to be discovered is reasonably calculated to lead to discovery of admissible evidence, where evidence does not fall within meaning of Rule 26(b)(3), which precludes disclosure of mental impressions, conclusions, opinions, or legal theories. Leland v. Travelers Indem. Co. of Illinois, App.1985, 712 P.2d 1060. Pretrial Procedure 32

Trial preparation materials--In general

Test for whether material fell within Rule 26(b)(3), which precludes disclosure of mental impressions, conclusions, opinions, or legal theories, is whether in light of nature of evidence sought to be discovered and factual situation of particular case, party resisting discovery demonstrates that evidence was prepared, uttered, or obtained in contemplation of specific litigation. Leland v. Travelers Indem. Co. of Illinois, App.1985, 712 P.2d 1060. Pretrial Procedure 35

---- Substantial need, trial preparation materials

Even if insurer demonstrates that requested materials or statements relating to communications between insurer's employees and insurer's employees and broker fall within purview of Rule 26(b)(3), which precludes disclosure of mental impressions, conclusions, opinions, or legal theories, alleged insureds may nevertheless obtain discovery upon showing of substantial need. Leland v. Travelers Indem. Co. of Illinois, App.1985, 712 P.2d 1060. Pretrial Procedure 35

---- Work product, hearing and evidence

In absence of showing that evidence was prepared, uttered, or obtained in contemplation of specific litigation, trial court must presume that any documents were prepared or statements were made in ordinary course of business and, therefore, that they are not subject to special discovery requirements of Rule 26(b)(3), which precludes disclosure of mental impressions, conclusions, opinions, or legal theories. Leland v. Travelers Indem. Co. of Illinois, App.1985, 712 P.2d 1060. Pretrial Procedure 35

Rules Civ. Proc., Rule 26, CO ST RCP Rule 26
Current with amendments received through October 15, 2021.

End of Document

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 4. Disclosure and Discovery

C.R.C.P. Rule 33

Rule 33. Interrogatories to Parties

Currentness

(a) Availability. Any party may serve upon any other party written interrogatories, not exceeding the number, including all discrete subparts, set forth in the Case Management Order, to be answered by the party served or, if the party served is a public or private corporation, or a partnership, or association, or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave of court must be obtained, consistent with the principles stated in C.R.C.P. Rules 16(b)(1) and 26(b) and subsection (e) of this Rule, to serve more interrogatories than the number set forth in the Case Management Order. Without leave of court or written stipulation, interrogatories may not be served before the time specified in C.R.C.P. 26(d).

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer under oath to the extent the interrogatory is not objectionable. An objection must state with specificity the grounds for objection to the interrogatory and must also state whether any responsive information is being withheld on the basis of that objection. A timely objection to an interrogatory stays the obligation to answer those portions of the interrogatory objected to until the court resolves the objection. No separate motion for protective order under C.R.C.P. 26(c) is required.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney or LLP making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 35 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties pursuant to C.R.C.P. 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection will be deemed to be waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order pursuant to C.R.C.P. 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into pursuant to C.R.C.P. 26(b), and the answers may be used to the extent permitted by the Colorado Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

(e) Pattern and Non-Pattern Interrogatories; Limitations. The pattern interrogatories set forth in the Appendix to Chapters 1 to 17A, Form 20, are approved. Any pattern interrogatory and its subparts shall be counted as one interrogatory. Any discrete subparts in a non-pattern interrogatory shall be considered as a separate interrogatory.

Credits

Amended April 14, 1994, effective January 1, 1995. Amended effective January 1, 2012; July 1, 2015. Amended January 12, 2017, effective March 1, 2017.

Editors' Notes

COMMENTS

1995

[1] Revised C.R.C.P. 33 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 interrogatories 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.

2017

[1] Pattern interrogatories [Form 20, pursuant to C.R.C.P. 33(e)] have been modified to more appropriately conform to the 2015 amendments to C.R.C.P. 16, 26, and 33. A change to or deletion of a pre-2017 pattern interrogatory should not be construed as making that former interrogatory improper, but instead, only that the particular interrogatory is, as of the effective date of the 2017 rule change, modified as stated or no longer a "pattern interrogatory."

[2] The change to C.R.C.P. 33(e) is made to conform to the holding of *Leaffer v. Zarlengo,* 44 P.3d 1072 (Colo. 2002).

Notes of Decisions (36)

Rules Civ. Proc., Rule 33, CO ST RCP Rule 33
Current with amendments received through October 15, 2021.

End of Document

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 4. Disclosure and Discovery

C.R.C.P. Rule 36

Rule 36. Requests for Admission

Currentness

(a) Request for Admission. Subject to the limitations contained in the Case Management Order, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of C.R.C.P. 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Leave of court must be obtained, consistent with the principles stated in C.R.C.P. Rules 16(b)(1) and 26(b), to serve more requests for admission than the number set forth in the Case Management Order. Without leave of court or written stipulation, requests for admission may not be served before the time specified in C.R.C.P. 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 35 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing pursuant to C.R.C.P. 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney or LLP. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of C.R.C.P. 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answer or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order,

the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Credits

Amended April 14, 1994, effective January 1, 1995; October 30, 1997, effective January 1, 1998. Amended effective January 1, 2012.

Editors' Notes

COMMENTS

Revised C.R.C.P. 36 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of requests for admission 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.

Notes of Decisions (27)

Rules Civ. Proc., Rule 36, CO ST RCP Rule 36
Current with amendments received through October 15, 2021.

End of Document

C.R.C.P. Rule 37

Rule 37. Failure to Make Disclosure or Cooperate in Discovery: Sanctions

Currentness

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery and imposing sanctions as follows:

(1) *Appropriate Court.* An application for an order to a party or to a person who is not a party shall be made to the court in which the action is pending.

(2) *Motion.*

(A) If a party fails to make a disclosure required by C.R.C.P. 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion shall be accompanied by a certification that the movant in good faith has conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted pursuant to C.R.C.P. Rules 30 or 31, or a corporation or other entity fails to make a designation pursuant to C.R.C.P. Rules 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted pursuant to C.R.C.P. 33, or if a party, in response to a request for inspection submitted pursuant to C.R.C.P. 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion shall be accompanied by a certification that the moving party in good faith has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subsection an evasive or incomplete disclosure, answer, or response shall be deemed a failure to disclose, answer, or respond.

(4) *Expenses and Sanctions.*

(A) If a motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court may, after reasonable notice and an opportunity to be heard, if requested, require the party or deponent whose conduct necessitated the motion or the party or attorney or LLP advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney or LLP fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses manifestly unjust.

(B) If a motion is denied, the court may make such protective order as it could have made on a motion filed pursuant to C.R.C.P. 26(c) and may, after affording an opportunity to be heard if requested, require the moving party, ~~or~~ the attorney or LLP filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's or LLP's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses manifestly unjust.

(C) If the motion is granted in part and denied in part, the court may make such protective order as it could have made on a motion filed pursuant to C.R.C.P. 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) *Non-Party Deponents-Sanctions by Court.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in which the action is pending or from which the subpoena is issued, the failure may be considered a contempt of court.

(2) *Party Deponents-Sanctions by Court.* If a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this Rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing

the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this subsection (2), unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order, or the attorney or LLP advising the party, or both, to pay the reasonable expenses, including attorney's or LLP's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

© Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by C.R.C.P. 26(a) or 26© shall not be permitted to present any evidence not so disclosed at trial or on a motion made pursuant to C.R.C.P. 56, unless such failure has not caused and will not cause significant harm, or such preclusion is disproportionate to that harm. The court, after holding a hearing if requested, may impose any other sanction proportionate to the harm, including any of the sanctions authorized in subsections (b)(2)(A), (b)(2)(B) and (b)(2)(C) of this Rule, and the payment of reasonable expenses including attorney or LLP fees caused by the failure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested pursuant to C.R.C.P. 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney or LLP fees. The court shall make the order unless it finds that

(A) the request was held objectionable pursuant to C.R.C.P. 36(a), or

(B) the admission sought was of no substantial importance, or

(C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or

(D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated pursuant to C.R.C.P. Rules 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice; or (2) to serve answers or objections to interrogatories submitted pursuant to C.R.C.P. 33, after proper service of the interrogatories; or (3) to serve a written response to a request for inspection submitted pursuant to C.R.C.P. 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized by subparagraphs (A), (B), and (C) of subsection (b)(2) of this Rule. Any motion specifying a failure under clauses (2) or (3) of this subsection shall be accompanied by a certification that the movant in good faith has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney or LLP advising that party or both to pay the reasonable expenses, including attorney or LLP fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has previously filed a motion for a protective order as provided by C.R.C.P. 26(c).

Credits

Amended effective July 1, 1990. Amended April 14, 1994, effective January 1, 1995. Amended effective January 9, 1995. Amended October 30, 1997, effective January Jan. 1, 1998. Amended effective July 1, 2015.

Editors' Notes

COMMENTS

1990

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

1995

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

2015

[3] The threat and, when required, application, of sanctions is necessary to convince litigants of the importance of full disclosure. Because the 2015 amendments also require more complete disclosures, Rule 37(a)(4) now authorizes, for motions to compel disclosures or discovery, imposition of sanctions against the losing party unless its actions "were substantially justified or that other circumstances make an award of expenses *manifestly* unjust." This change is intended to make it easier for judges to impose sanctions.

[4] On the other hand, consistent with recent supreme court cases such as *Pinkstaff v. Black & Decker (U.S.), Inc.,* 211 P.3d 698 (Colo. 2009), Rule 37(c) is amended to reduce the likelihood of preclusion of previously undisclosed evidence "unless such failure has not caused or will not cause significant harm, or such preclusion is disproportionate to that harm." When preclusion applied "unless the failure is harmless," it has been too easy for the objecting party to show *some* "harm," and thereby cause preclusion of otherwise important evidence, which, in some circumstances, conflicts with the court's decisions.

Notes of Decisions (230)

Rules Civ. Proc., Rule 37, CO ST RCP Rule 37
Current with amendments received through October 15, 2021.

End of Document

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 5. Trials

C.R.C.P. Rule 45

Rule 45. Subpoena

Currentness

(a) In General.

(1) *Form and Contents.*

(A) Requirements--In General. Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action, the court in which it is pending and its case number;

(iii) command each person to whom it is directed to do one or both of the following at a specified time and place: attend and testify at a deposition, hearing or trial; or produce designated books, papers and documents, whether in physical or electronic form ("records"), or tangible things, in that person's possession, custody, or control;

(iv) identify the party and the party's attorney or LLP, if any, who is serving the subpoena;

(v) identify the names, addresses and phone numbers and email addresses where known, of the attorney or LLP for each of the parties and of each party who has appeared in the action without an attorney or LLP;

(vi) state the method for recording the testimony if the subpoena commands attendance at a deposition; and

(vii) if production of records or a tangible thing is sought, set out the text of sections (c) and (d) of this Rule verbatim on or as an attachment to the subpoena.

(B) Combining or Separating a Command to Produce. A command to produce records or tangible things may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be contained in a separate subpoena that does not require attendance.

(C) Deposition Subpoena Must Comply With Discovery Rules. A deposition subpoena may require the production of records or tangible things which are within the scope of discovery permitted by C.R.C.P. 26. A subpoena must not be used to avoid the limits on discovery imposed by C.R.C.P. 16.1, 16.2 or 26 or by the Case Management Order applicable to that case.

(D) Subpoenas to Named Parties. A subpoena issued under this Rule may not be utilized to obtain discovery from named parties to the action unless the court orders otherwise for good cause.

(2) *Issued by Whom.* The clerk of the court in which the case is docketed must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney or LLP who has entered an appearance in the case also may issue, complete and sign a subpoena as an officer of the court.

(b) Service.

(1) *Time for Service.* Unless otherwise ordered by the court for good cause:

(A) Subpoena for Trial or Hearing Testimony. Service of a subpoena only for testimony in a trial or hearing shall be made no later than 48 hours before the time for appearance set out in the subpoena.

(B) Subpoena for Deposition Testimony. Service of a subpoena only for testimony in a deposition shall be made not later than 7 days before compliance is required.

(C) Subpoena for Production of Documents. Service of any subpoena commanding a person to produce records or tangible things in that person's possession, custody, or control shall be made not later than 14 days before compliance is required. In the case of an expedited hearing pursuant to these rules or any statute, service shall be made as soon as possible before compliance is required.

(2) *By Whom Served; How Served.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person or service as otherwise ordered by the court consistent with due

process. Service is also valid if the person named in the subpoena has signed a written acknowledgement or waiver of service. Service may be made anywhere within the state of Colorado.

(3) *Tender of Payment for Mileage.* If the subpoena requires a person's attendance, the payment for 1 day's mileage allowed by law must be tendered to the subpoenaed person at the time of service of the subpoena or within a reasonable time after service of the subpoena, but in any event prior to the appearance date. Payment for mileage need not be tendered when the subpoena issues on behalf of the state of Colorado or any of its officers or agencies.

(4) *Proof of Service.* Proof of service shall be made as provided in C.R.C.P. 4(h). Original subpoenas and returns of service of such subpoenas need not be filed with the court.

(5) *Notice to Other Parties.*

(A) Service on the Parties. Immediately following service of a subpoena, the party, ~~or~~ attorney or LLP who issues the subpoena, shall serve a copy of the subpoena on all parties pursuant to C.R.C.P. 5; provided that such service is not required for a subpoena issued pursuant to C.R.C.P. 69.

(B) Notice of Changes. The party, ~~or~~ attorney or LLP who issues the subpoena must give the other parties reasonable notice of any written modification of the subpoena or any new date and time for the deposition, or production of records and tangible things.

(C) Availability of Produced Records or Tangible Things. The party, ~~or~~ attorney or LLP who issues the subpoena for production of records or tangible things must make available in a timely fashion for inspection and copying to all other parties the records or tangible things produced by the responding party.

(c) Protecting a Person Subject to a Subpoena.

(f) *Avoiding Undue Burden or Expense; Sanctions.* A party, ~~or~~ attorney or LLP responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's or LLP's fees, on a party, ~~or~~ attorney or LLP who fails to comply.

(2) *Command to Produce Records or Tangible Things.*

(f) Attendance Not Required. A person commanded to produce records or tangible things need not attend in person at the place of production unless also commanded to attend for a deposition, hearing, or trial.

(B) For Production of Privileged Records.

(f) If a subpoena commands production of records from a person who provides services subject to one of the privileges established by C.R.S. § 13-90-107, or from the records custodian for that person, which records pertain to services performed by or at the direction of that person ("privileged records"), such a subpoena must be accompanied by an authorization signed by the privilege holder or holders or by a court order authorizing production of such records.

(ii) Prior to the entry of an order for a subpoena to obtain the privileged records, the court shall consider the rights of the privilege holder or holders in such privileged records, including an appropriate means of notice to the privilege holder or holders or whether any objection to production may be resolved by redaction.

(iii) If a subpoena for privileged records does not include a signed authorization or court order permitting the privileged records to be produced by means of subpoena, the subpoenaed person shall not appear to testify and shall not disclose any of the privileged records to the party who issued the subpoena.

© Objections. Any party or the person subpoenaed to produce records or tangible things may submit to the party issuing the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials. The objection must be submitted before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the party issuing the subpoena shall promptly serve a copy of the objection on all other parties. If an objection is made, the party issuing the subpoena is not entitled to inspect, copy, test or sample the materials except pursuant to an order of the court from which the subpoena was issued. If an objection is made, at any time on notice to the subpoenaed person and the other parties, the party issuing the subpoena may move the issuing court for an order compelling production.

(3) *Quashing or Modifying a Subpoena.*

(f) When Required. On motion made promptly and in any event at or before the time specified in the subpoena for compliance, the issuing court must quash or modify a subpoena that:

(f) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to attend a deposition in any county other than where the person resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion made promptly and in any event at or before the time specified in the subpoena for compliance, quash or modify the subpoena if it requires:

(f) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific matters in dispute and results from the expert's study that was not requested by a party.

© Specifying Conditions as an Alternative. In the circumstances described in Rule 45©(3)(B), the court may, instead of quashing or modifying a subpoena, order attendance or production under specified conditions if the issuing party:

(f) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to Subpoena.

(f) *Producing Records or Tangible Things.*

(f) Unless agreed in writing by all parties, the privilege holder or holders and the person subpoenaed, production shall not be made until at least 14 days after service of the subpoena, except that, in the case of an expedited hearing pursuant to these rules or any statute, in the absence of such agreement, production shall be made only at the place, date and time for compliance set forth in the subpoena; and

(B) If not objected to, a person responding to a subpoena to produce records or tangible things must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand and must permit inspection, copying, testing, or sampling of the materials.

(2) *Claiming Privilege or Protection.*

(f) Information Withheld. Unless the subpoena is subject to subsection (c)(2)(B) of this Rule relating to production of privileged records, a person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(f) make the claim expressly; and

(ii) describe the nature of the withheld records or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

© Subpoena for Deposition; Place of Examination.

(f) *Residents of This State.* A resident of this state may be required by subpoena to attend an examination upon deposition only in the county wherein the witness resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

(2) *Nonresidents of This State.* A nonresident of this state may be required by subpoena to attend only within forty miles from the place of service of the subpoena in the state of Colorado or in the county wherein the nonresident resides or is employed or transacts business in person or at such other convenient place as is fixed by an order of court.

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45©.

Credits

Amended effective September 1, 1984; January 1, 1988; January 1, 1998; Jan. 1 2012. Repealed and readopted effective January 1, 2013.

Editors' Notes

COMMENTS

If a subpoena to attend a deposition is sought pursuant to Rule 45©(2)(A) in order to produce and authenticate documents, the issuing party should consider establishing admissibility under C.R.E. 902(11) as a means of reducing undue burden and expense upon the subpoenaed person.

For scope of provision contained in Rule 45©(3)(B)(ii) relating to "unretained experts", *see* Official Comments to Federal Rules of Civil Procedure, 1991 Amendment, Clause (c)(3)(B)(ii).

Relevant Additional Resources
Additional Resources listed below contain your search terms.

LAW REVIEW AND JOURNAL COMMENTARIES
The Changes to Colorado and Federal Civil Rule 45. William C. Groh, III, 42 Colo.Law. 57 (Dec. 2013).

Relevant Notes of Decisions (7)
View all 33
Notes of Decisions listed below contain your search terms.

Attorney witnesses

Gasoline station proprietor could be allowed to subpoena and call motor home owner's attorneys as defense witnesses in owner's action against proprietor arising from fire at motor home after filling of propane tank, in light of proprietor's limitations defense based on failure of attorneys to exercise reasonable diligence in investigating and filing action; attorneys' testimony was potentially adverse to owner's interest, evidence sought from attorneys was highly relevant and likely to be admissible, and defense showed compelling need for such evidence. Grogan v. Taylor, App.1993, 877 P.2d 1374, certiorari granted, reversed 900 P.2d 60, rehearing denied, certiorari denied 116 S.Ct. 816, 516 U.S. 1094, 133 L.Ed.2d 761. Witnesses 67

Trial court should not have quashed plaintiff's subpoena of defendant's attorney, on basis of attorney-client privilege and attorney work product doctrine in action brought by plaintiff insurer against defendant concerning an alleged settlement between the parties, as those protections were not proper grounds for quashing the subpoena properly issued. South Carolina Ins. Co. v. Fisher, App.1984, 698 P.2d 1369. Witnesses 9

Production of documentary evidence

If an attorney desires to receive subpoenaed documents from a subpoenaed witness in advance of the time and place specified in the subpoena, or if the subpoenaed witness offers to produce the documents ahead of time, then the attorney must confer with and obtain consent from all other parties to the case as well as the subpoenaed witness. In re Marriage of Wiggins, 2012, 279 P.3d 1. Pretrial Procedure 130

Service of father's subpoena to obtain mother's employment records on employer's office manager, instead of employer's business manager, who produced mother's file to father's attorney, did not render moot issue whether father violated rule

governing subpoenas for production of documents by obtaining mother's entire employment file without having given mother opportunity to object; subpoena was intended to secure documents possessed by school, and after informing father's attorney that office manager, upon whom subpoena was served, had no access to mother's personnel file, business manager turned over entire file upon belief that it was acting under subpoena. In re Marriage of Wiggins, 2012, 279 P.3d 1. Child Support 546

Attorney was a "party" to Attorney Regulation Counsel's (ARC) investigative proceedings for alleged misconduct and, thus, was entitled to notice of its subpoenas and the subpoena documents themselves. In re Attorney E, 2003, 73 P.3d 648, withdrawn from bound volume, modified on denial of rehearing, withdrawn and superseded 78 P.3d 300, certiorari denied 124 S.Ct. 1042, 540 U.S. 1104, 157 L.Ed.2d 888.

Depositions

District court could not compel attorney general of sister state to appear in Colorado for purpose of taking a deposition even though the sister state had brought the action in which defendants sought such relief. State of Minn. ex rel. Minnesota Atty. Gen. v. District Court In and For El Paso County, 1964, 395 P.2d 601, 155 Colo. 521. Courts 29; Pretrial Procedure 102

Notice

Attorney was a "party" to Attorney Regulation Counsel's (ARC) investigative proceedings for alleged misconduct and, thus, was entitled to notice of its subpoenas and the subpoena documents themselves. In re Attorney E, 2003, 73 P.3d 648, withdrawn from bound volume, modified on denial of rehearing, withdrawn and superseded 78 P.3d 300, certiorari denied 124 S.Ct. 1042, 540 U.S. 1104, 157 L.Ed.2d 888.

Rules Civ. Proc., Rule 45, CO ST RCP Rule 45
Current with amendments received through October 15, 2021.

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 5. Trials

C.R.C.P. Rule 53

Rule 53. Masters

Currentness

(a) Appointment.

(1) *Scope.* A reference to a master shall be the exception and not the rule. Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by the appointed district judge.

(2) *Disqualification.* A master must not have a relationship to the parties, attorneys or LLPs , action, or court that would require disqualification of a judge under the Colorado Code of Judicial Conduct, Rule 2.11, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) *Possible Expense or Delay.* In appointing a master, the court must consider the proportionality of the appointment to the issues and needs of the case, consider the fairness of imposing the likely expenses on the parties, and protect against unreasonable expense or delay.

(b) Order Appointing a Master.

(1) *Notice.* Before appointing a master, the court must give the parties notice and an opportunity to be heard. If requested by the Court, any party may suggest candidates for appointment.

(2) *Contents.* The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) *Issuing.* The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under the Colorado Code of Judicial Conduct, Rule 2.11; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) *Amending.* The order may be amended at any time after notice to the parties and an opportunity to be heard.

(5) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference.

Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys or LLPs to be held within 14 days after the date of the order of reference and shall notify the parties or their attorneys or LLPs.

(c) Master's Authority.

(1) *In General.* Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions.* The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Master's Orders. A master who issues a written order must file it and promptly serve a copy on each party. The clerk must enter the written order on the docket. A master's order shall be effective upon issuance subject to the provisions of section (f) of this Rule.

(e) Master's Reports. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise. A report is final upon issuance. A master's report shall be effective upon issuance subject to the provisions of section (f) of this Rule.

(f) Action on the Master's Order, Report, or Recommendations.

(1) *Opportunity for a Hearing; Action in General.* In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) *Time to Object or Move to Modify.* A party may file objections to or a motion to modify the master's proposed rulings, order, report or recommendations no later than 7 days after service of any of those matters, except when the master held a hearing and took sworn evidence, in which case objections or a motion to modify shall be filed no later than 14 days after

service of any of those matters.

(3) *Reviewing Factual Findings.* The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

(4) *Reviewing Legal Conclusions.* The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) *Reviewing Procedural Matters.* Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) Compensation.

(1) *Fixing Compensation.* Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) *Payment.* The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) *Allocating Payment.* The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

Credits

Amended effective January 1, 1993. Amended July 1, 1993, effective nunc pro tunc January 1, 1993. Amended effective April 14, 2005; January 1, 2012. Amended December 7, 2017, effective January 1, 2018.

Editors' Notes

COMMENT

2018

See also C.R.C.P. 122 Case Specific Appointment of Appointed Judges pursuant to C.R.S. § 13-3-111.

Relevant Notes of Decisions (1)
View all 92
Notes of Decisions listed below contain your search terms.

Evidentiary hearings

Though master, who was appointed to determine monthly income of divorced husband and amount necessary for monthly support and maintenance of divorced wife and children, had not held evidentiary hearing, consideration of master's report by trial court was not reversible error on theory that husband should have had right to cross-examine wife as to her expenses where evidence before master merely corroborated evidence at hearings before court and where master's report was presented at court hearing which was attended by counsel for both parties and at which no objections to report were made. McKittrick v. McKittrick, App.1974, 520 P.2d 1058. Divorce 1305

Rules Civ. Proc., Rule 53, CO ST RCP Rule 53
Current with amendments received through October 15, 2021.

End of Document

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapters 1--24. Rules of Civil Procedure
Chapter 17A. Practice Standards and Local Court Rules

C.R.C.P. Rule 121

Rule 121. Local Rules--Statewide Practice Standards

Effective: April 1, 2021

Currentness

(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. ENTRY OF APPEARANCE AND WITHDRAWAL

1. Entry of Appearance. No attorney or Licensed Legal Paraprofessional ("LLP") shall appear in any matter before the court unless that attorney or LLP 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 or LLP's office address; (c) the attorney's or LLP's telephone number; (d) the attorney's or LLP's E-Mail address; and (e) the attorney's or

LLP's registration number.

COMMITTEE COMMENT

Licensed legal paraprofessionals ("LLPs") are individuals licensed by the Supreme Court pursuant to C.R.C.P. _____ to perform certain types of legal services only under the conditions set forth by the Court. They do not include individuals with a general license to practice law in Colorado.

2. Withdrawal From an Active Case.

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

(b) Otherwise an attorney or LLP 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 or LLPs and either both the client and all ~~counsel~~ attorneys or LLPs 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 or LLP;

(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 or LLP 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 or LLP, an attorney or LLP 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 or LLPs, 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 or LLPs 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 or LLP 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 or LLP 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 or LLP may make a limited appearance for the pro se party in one or more specified proceedings, if the attorney or LLP files and serves with the court and the other parties and attorneys or LLPs (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney or LLP appears. At the conclusion of such proceeding(s), the attorney's or LLP's appearance terminates without the necessity of leave of court, upon the attorney or LLP filing a notice of completion of limited appearance. Service on an attorney or LLP who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney or LLP appears.

COMMENTS

An "active case" is any case other than a "completed case" as described in subsection 3 of the Practice Standard.

The purpose of section 1-1(5) is to implement Colorado Rules of Civil Procedure 11(b) and 311(b), which authorize limited representation of a 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 or LLP who makes a limited appearance for a pro se party in a specified case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court.

Section 1-2. SPECIAL ADMISSION OF OUT-OF-STATE AND FOREIGN ATTORNEYS

Special admission of an out-of-state or foreign attorney shall be in accordance with C.R.C.P. Chapter 18, Rules Governing Admission to the Bar 205.3 and 205.5.

Section 1-3. JURY FEES

Each party exercising the right to trial by jury shall file and serve a demand therefor and simultaneously pay the requisite jury fee. The demand and payment of the jury fee shall be in accordance with Rule 38. The jury fee shall not be returned under any circumstances. Failure of a party to timely file and serve a demand for trial by jury and pay the jury fee shall constitute a waiver of that party's right to trial by jury. When any party exercises the right to trial by jury, every other party to the action must pay the requisite jury fee unless such other party files a notice of waiver of the right to trial by jury pursuant to Rule 38(a)(2). Any party who has demanded a trial by jury and has paid the requisite jury fee and any party who has not waived the right to trial by jury and has paid the requisite jury fee is entitled to trial by jury of all issues properly designated for trial by jury unless that party waives such right pursuant to Rule 38(e).

COMMENTS

Amendment of this practice standard is to conform it to the requirements of C.R.S. 13-71-144 (1989) and amended C.R.C.P. 38. Under that statutory requirement, each party who wishes to be assured of having a jury trial, must demand a jury trial and pay a jury fee within the time specified. The case will be tried to a jury if the party demanding a jury trial makes a timely demand, pays the jury fee at the time of the demand and does not later waive a jury trial. If a demand is timely made and the jury fee timely paid, the right to jury trial cannot be withdrawn as against a party who has demanded a jury trial and timely paid a jury fee. For a party to be certain of having a jury trial, that party must demand it and timely pay a jury fee.

Section 1-4. SUPPRESSION FOR SERVICE OF PROCESS

In any civil action, upon written request of the claiming party, the fact of the filing of a case shall be suppressed by the clerk only upon order of the court to secure service of summons or other process and such order shall expire upon service of such summons or other process.

COMMENTS

This Practice Standard was a local rule found in most districts. It provides the machinery for the clerk to temporarily suppress the fact of filing of a case temporarily to avoid publicity that may affect ability to serve process. Such temporary suppression in aid of service of process, is different from the Practice Standard pertaining to limitation of access to court files.

Section 1-5. LIMITATION OF ACCESS TO COURT FILES

1. Nature of Order. Upon motion by any party named in any civil action, the court may limit access to court files. The order of limitation shall specify the nature of limitation, the duration of the limitation, and the reason for limitation.

2. When Order Granted. An order limiting access shall not be granted except upon a finding that the harm to the privacy of a person in interest outweighs the public interest.

3. Application for Order. A motion for limitation of access may be granted, **ex parte**, upon motion filed with the complaint, accompanied by supporting affidavit or at a hearing concerning the motion.

4. Review by Order. Upon notice to all parties of record, and after hearing, an order limiting access may be reviewed by the court at any time on its own motion or upon the motion of any person.

COMMENTS

This Practice Standard was made necessary by lack of uniformity throughout the districts concerning access to court files. Some districts permitted free access after service of process was obtained. Others, particularly in malpractice or domestic relations cases, almost routinely prohibited access to court file information. The committee deemed it preferable to have machinery available for limitation in an appropriate case, but also a means for other entities having interest in the litigation, including the media, to have access.

Section 1-6. SETTINGS FOR TRIALS OR HEARINGS/SETTINGS BY TELEPHONE

1. All settings of trials and hearings, other than those set on the initiative of the court, shall be by the courtroom clerk upon notice to all other parties. Settings by telephone are encouraged. The original or a copy of the notice shall be on file with the courtroom clerk before the setting and shall contain the following:

(a) The caption of the case with designation “Notice to Set” or “Notice to Set by Telephone.”

(b) The nature of the matter being set.

(c) The date and time at which the setting will occur.

(d) The courtroom clerk’s address, by division or courtroom number if applicable and telephone number.

(e) A statement that the party, ~~or~~ attorney or LLP being notified may appear or if not present, will be called at or about the time specified.

(f) A statement if the setting is to be by telephone.

2. The party issuing the notice to set shall be responsible for contacting all other counsel or LLPs and clearing available dates with them.

3. Any attorney or LLP receiving the notice to set who does not personally appear at the setting shall have personnel at his or her office, supplied with a current appointment calendar and authorized to make settings for that attorney or LLP, at the date and time in the notice.

4. The party requesting the setting shall immediately confirm in writing the date and time of the matter that has been set with all other parties or their attorneys or LLPs and shall file that confirmation with the court.

COMMENTS

The change in Standard 1-6 is to allow for settings on initiative of the Court. This change is to resolve the question raised by several districts as to whether the Court had the power to initiate its own settings. There has also been a slight tidying-up of language of the first sentence.

Section 1-7. AUDIO-VISUAL DEVICES

The photographing, broadcasting, televising or recording of court proceedings in any courtroom shall be governed in accordance with Canon 3 of the Code of Judicial Conduct of the State of Colorado.

COMMENTS

This Practice Standard was deemed necessary because it was apparent from local rules of a number of counties that there was a general lack of awareness of Canon 3 of the Code of Judicial Conduct pertaining to photographing, broadcasting, televising or recording court proceedings. This Practice Standard draws attention to Canon 3 and incorporates its provisions by reference.

Section 1-8. CONSOLIDATION

A party seeking consolidation shall file a motion to consolidate in each case sought to be consolidated. The motion shall be determined by the court in the case first filed in accordance with Practice Standard § 1-15. If consolidation is ordered, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases placed together under that case number, unless otherwise ordered by the court. Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.

Section 1-9. RELATED CASES

1. A party to a civil case shall file a notice identifying all related cases of which the party has actual knowledge.

2. Related cases are civil, criminal, or other proceedings that: a) involve one or more of the same parties and common questions of fact; and b) are pending in any state or federal court or were terminated within the previous 12 months.

3. A party shall file the required notice at the time of its first pleading under Rule 7(a) or its first motion under Rule 12(b).

4. A party shall promptly file a supplemental notice of any change in the information required under this rule.

COMMENTS

2021 [Amendment]

The purpose of this Practice Standard is to afford notice of related state or federal cases that are pending or were recently terminated. Any actions to be taken following such notice are left to the parties and the court.

Section 1-10. DISMISSAL FOR FAILURE TO PROSECUTE

1. Upon due notice to the opposite party, any party to a civil action may apply to have any action dismissed when such action has not been prosecuted or brought to trial with due diligence.

2. The court, on its own motion, may dismiss any action not prosecuted with due diligence, upon 35 days' notice in writing to each attorney or LLP of record and each appearing party not represented by counsel or LLP, or require the parties to show cause in writing why the case should not be dismissed. Showing of cause and objections thereto shall be determined in accordance with Practice Standard § 1-15 (Determination of Motions).

3. If the case has not been set for trial, no activity of record in excess of 12 continuous months shall be deemed prima facie failure to prosecute.

4. Failure to show cause on or before the date set forth in the court's notice shall justify dismissal without further proceedings.

5. Any dismissal under this rule shall be without prejudice unless otherwise specified by the court.

COMMENT

The purpose of this Practice Standard is to encourage prosecution of pending cases and permit machinery to dispose of matters which are not being prosecuted. Dismissal is without prejudice, and there are sufficient safeguards incorporated into the Practice Standard to permit retention on the docket if cause for the delay and interest in the case is shown. The Practice Standard does not mandate that the court search its files and send out notices, but permits such action if the court wishes. The Practice Standard also permits initiation of the procedure by motion.

Section 1-11. CONTINUANCES

Motions for continuances of hearings or trials shall be determined in accordance with Practice Standard 1-15 and shall be granted only for good cause. Stipulations for continuance shall not be effective unless and until approved by the court. A motion for continuance or request for extension of time will not be considered without a certificate that a copy of the motion has also been served upon the moving attorney's or LLP's client.

Section 1-12. MATTERS RELATED TO DISCOVERY

1. Unless otherwise ordered by the court, reasonable notice for the taking of depositions pursuant to C.R.C.P. 30(b)(1) shall not be less than 7 days. Before serving a notice to take a deposition, ~~counsel~~ the attorney or LLP seeking the deposition shall make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent and ~~counsel~~ attorneys or LLPs for all parties. Prior to scheduling or noticing any deposition, all ~~counsel~~ attorneys or LLPs shall confer in a good faith effort to agree on a reasonable means of limiting the time and expense of that deposition. Pending resolution of any motion pursuant to C.R.C.P. 26(c), the filing of the motion shall stay the discovery at which the motion is directed. If the court directs that any discovery motion under Rule 26(c) be made orally, then movant's written notice to the other parties that a hearing has been requested on the motion shall stay the discovery to which the motion is directed. This rule shall not be read to expand an LLP's scope of permitted activities pursuant to C.R.C.P. XXX.

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

3. Interrogatories and requests under Rules 33, 34, and 36, C.R.C.P., and the responses thereto shall be served upon other counsel, LLPs, or parties, but shall not be filed with the court. If relief is sought under Rule 26(c), C.R.C.P., or Rule 37(a), C.R.C.P., copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with the motion. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be made available and placed, but not filed, with the trial judge at the outset of the trial insofar as their use reasonably can be anticipated.

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

5. Unless otherwise ordered, the court will not entertain any motion under Rule 37(a), C.R.C.P., unless counsel or LLP for the moving party has conferred or made reasonable effort to confer with opposing counsel or opposing LLP concerning the matter in dispute before the filing of the motion. Counsel or LLP for the moving party shall file a certificate of compliance with this rule at the time the motion under Rule 37(a), C.R.C.P., is filed. If the court requires that any discovery motion be made orally, then movant must make a reasonable effort to confer with opposing counsel or opposing LLP before requesting a hearing from the court.

COMMENTS

1994 [Amendment]

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

2015 [Amendment]

[2] This rule was amended to address situations arising in courts that require oral discovery motions.

Section 1-13. DEPOSITION BY AUDIO TAPE RECORDING

When a deposition is taken by audio tape recording under C.R.C.P. 30(b)(4), the following procedures shall be followed:

(a) An oath or affirmation shall be administered to the witness by a notary public or other officer authorized to administer oaths.

(b) Two tape recorders with separate microphones shall be used.

(c) Speakers shall identify themselves before each statement except during extended colloquy between examiner and deponent.

(d) The recording shall be transcribed at the expense of the party taking the deposition.

(e) The transcribed testimony shall be made available for correction and signature by the deponent in accordance with Rule 30(e), C.R.C.P.

(f) The tape from which the transcription is made shall be retained by the party taking the deposition. The second tape shall be retained by the adverse party. Both tapes shall be preserved until the litigation is concluded.

(g) The party responsible for the transcription shall make available to the other parties upon request copies of the transcription at a reasonable charge and shall also submit to the other parties copies of changes, if any, which are made by the deponent and shall also inform the other parties of the date when the deposition is available for signature and whether signature is obtained.

(h) The transcription shall be retained by the party taking the deposition and made available in accordance with Paragraph 4 Practice Standard § 1-12 (Matters Related To Discovery).

COMMENTS

This Practice Standard sets forth detailed procedural safeguards for taking of depositions by tape recording as set out in Sanchez v. District Court, 200 Colo. 33, 624 P.2d 1314 (1981).

Section 1-14. DEFAULT JUDGMENTS

1. To enter a default judgment under C.R.C.P. 55(b) of the Colorado Rules of Civil Procedure, the following documents in addition to the motion for default judgment are necessary:

(a) The original summons showing valid service on the particular defendant in accordance with Rule 4, C.R.C.P.

(b) An affidavit stating facts showing that venue of the action is proper. The affidavit may be executed by the attorney or LLP for the moving party.

(c) An affidavit or affidavits establishing that the particular defendant is not a minor, an incapacitated person, an officer or agency of the State of Colorado, or in the military service. The affidavit must be executed by the attorney or LLP for the moving party on the basis of reasonable inquiry.

(d) An affidavit or affidavits or exhibits establishing the amount of damages and interest, if any, for which judgment is being sought. The affidavit may not be executed by the attorney or LLP for the moving party. The affidavit must be executed by a person with knowledge of the damages and the basis therefor.

(e) If attorney or LLP fees are requested, an affidavit that the defendant agreed to pay attorney or LLP fees or that they are provided by statute; that they have been paid or incurred; and that they are reasonable. The attorney or LLP for the moving party may execute the affidavit setting forth those matters listed in or required by Colorado Rule of Professional Conduct 1.5.

(f) If the action is on a promissory note, and the original note is paper based, the original note shall be presented to the court in order that the court may make a notation of the judgment on the face of the note.

(g) A proposed form of judgment which shall recite in the body of the judgment:

(1) The name of the party or parties to whom the judgment is to be granted;

(2) The name of the party or the parties against whom judgment is being taken;

(3) Venue has been considered and is proper;

(4) When there are multiple parties against whom judgment is taken, whether the relief is intended to be a joint and several obligation;

(5) Where multiple parties are involved, language to comply with C.R.C.P. 54(b), if final judgment is sought against less than all the defendants;

(6) The principal amount, interest and attorney's or LLP's fees, if applicable, and costs which shall be separately stated.

2. If further documentation, proof or hearing is required, the court shall so notify the moving party.

3. If the party against whom default judgment is sought is in the military service, or his status cannot be shown, the court shall require such additional evidence or proceeding as will protect the interests of such party in accordance with the Service members Civil Relief Act (SCRA), 50 U.S.C. § 3931, including the appointment of an attorney when necessary. The appointment of an attorney shall be made upon application of the moving party, and expense of such appointment shall be borne by the moving party, but taxable as costs awarded to the moving party as part of the judgment except as prohibited by law.

4. In proceedings which come within the provisions of Rules 55 or 120, C.R.C.P., attendance by the moving party or his attorney or LLP shall not be necessary in any instance in which all necessary elements for entry of default under those rules are self-evident from verified motion in the court file. When such matter comes up on the docket with no party, ~~or~~ attorney or LLP appearing and the court is of the opinion that necessary elements are not so established, the court shall continue or vacate the hearing and advise the moving party or attorney or LLP accordingly.

COMMENTS

2006 [Amendment]

This Practice Standard was needed because neither C.R.C.P. 55, nor any local rule specified the elements necessary to obtain a default judgment and each court was left to determine what was necessary. One faced with the task of attempting to obtain a default judgment usually found themselves making several trips to the courthouse, numerous phone calls and redoing needed documents several times. The Practice Standard is designed to minimize both court and attorney time. The Practice Standard sets forth a standardized check list which designates particular items needed for obtaining a default judgment. For guidance on affidavits, see C.R.C.P. 108. See also Section 13-63-101, C.R.S., concerning affidavits and requirements by the court.

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 or LLP's fees against the party, ~~or~~ attorney or LLP 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 or LLP and any self-represented party shall confer with opposing counsel or opposing LLP 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 or opposing LLP 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 or LLPs 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

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. PREPARATION OF ORDERS AND OBJECTIONS AS TO FORM

1. When directed by the court, the attorney or LLP for the prevailing party or such attorney or LLP as the court directs shall file and serve a proposed order within 14 days of such direction or such other time as the court directs. Prior to filing the proposed order, the attorney or LLP shall submit it to all other parties for approval as to form. The proposed order shall be timely filed even if all parties have not approved it as to form. A party objecting to the form of the proposed order as filed with court shall have 7 days after service of the proposed order to file and serve objections and suggested modifications to the form of the proposed order.

2. Alternatively, when directed by the court, the attorney or LLP for the prevailing party or such attorney or LLP as the court directs shall file and serve a stipulated order within 14 days after the ruling, or such other time as the court directs. Any matter upon which the parties cannot agree as to form shall be designated in the proposed order as "disputed." The proposed order shall set forth each party's specific alternative proposal for each disputed matter.

3. Objecting, proposing modification or agreeing to the form of a proposed order or stipulated order, shall not affect a party's rights to appeal the substance of the order.

Section 1-17. COURT SETTLEMENT CONFERENCES

1. At any time after the filing of Disclosure Certificates as required by C.R.C.P. 16, any party may file with the courtroom clerk and serve a request for a court settlement conference, together with a notice for setting of such request. The court settlement conference shall, if the request is granted, be conducted by any available judge other than the assigned judge. In all instances, the assigned judge shall arrange for the availability of a different judge to conduct the court settlement conference.

2. All discussions at the settlement conference shall remain confidential and shall not be disclosed to the judge who presides at trial. Statements at the settlement conference shall not be admissible evidence for any purpose in any other proceeding.

3. This Rule shall not apply to proceedings conducted pursuant to Rule 16.2(i).

COMMENTS

This Practice Standard provides machinery for settlement conference upon request of the parties. The Practice Standard was deemed necessary because it was previously not possible to have a settlement conference in some districts. The committee recognized that there may be practical difficulties in a particular district because of nonavailability of a separate judge. It was

felt that this problem could perhaps be largely overcome by cooperation between several districts or by use of a retired judge to make the service available.

Part 2 of the Practice Standard was deemed necessary to encourage settlement conference participation by litigants. Confidentiality and nonadmissibility of statements or communications made at settlement conference should override and prevail as a matter of policy over any asserted right or interest to the contrary.

Section 1-18. PRETRIAL PROCEDURE, CASE MANAGEMENT,DISCLOSURE AND SIMPLIFICATION OF ISSUES

Pretrial procedure, case management, disclosure and simplification of issues shall be in accordance with C.R.C.P. 16.

Section 1-19. JURY INSTRUCTIONS

Jury instructions shall be prepared and tendered to the court pursuant to C.R.C.P. 16(g).

COMMENTS

1983 [Amendment]

This Standard makes preparation and timing of submission of jury instructions uniform throughout the state. It reasonably assures preparation of instructions and verdict forms before commencement of trial, but retains some needed flexibility in their final form. To permit use of pre-prepared forms, save time and expense, and to facilitate last-moment revision, the Standard mandates use of photocopies rather than typed originals for submission to the jury.

Section 1-20. SIZE, AND FORMAT OF DOCUMENTS

All court documents shall be prepared in 8-1/2″ x 11″ format with black type or print and conform to the format, and spacing requirements specified in C.R.C.P. 10(d). Except documents filed by E-Filing or facsimile copy, all court documents shall be on recycled white paper. Any form required by these rules may be reproduced by word processor or other means, provided that the reproduction substantially follows the format of the form and indicates the effective date of the form which it reproduces.

COMMENTS

This standard draws attention to the requirements of C.R.C.P. 10(d) pertaining to paper size, paper quality, format and spacing of court documents. Color of paper and print requirements for documents not filed by E-Filing or facsimile copy were made necessary because colors other than black and white create photocopying and microfilming difficulties. Provision is also made to clarify that forms reproduced by word processor are acceptable if they follow the format of the form and state the effective date of the form which it reproduces.

Section 1-21. COURT TRANSCRIPTS

1. A party requesting a transcript shall arrange for preparation of the transcript directly with the reporter, or if the session or proceeding was recorded by mechanical or electronic means, the courtroom clerk. Where a transcript is to be made a part of the record on appeal, a party shall request preparation of the transcript by reference in the Designation of Record and by direct arrangement with the court reporter or courtroom clerk as provided herein.

2. Unless otherwise ordered by the court, a court reporter may require a deposit of sufficient money to cover the estimated cost of preparation before preparing the transcript.

3. The transcript shall be signed and certified by the person preparing the transcript. A transcript lodged with the court shall not be removed from the court without court order except when transmitted to the appellate court.

COMMENTS

This Practice Standard sets forth uniform requirements for obtaining, paying for, certification and removal of court reporter transcripts.

Section 1-22. COSTS AND ATTORNEY OR LLP FEES

1. Costs. A party claiming costs shall file a Bill of Costs within 21 days of the entry of order or judgment or within such greater time as the court may allow. The Bill of Costs shall itemize and provide a total of costs being claimed. Taxing and determination of costs shall be in accordance with C.R.C.P. 54(d) and Practice Standard § 1-15. Any party that may be affected by the Bill of Costs may request a hearing within the time permitted to file a reply in support of the Bill of Costs. Any request shall identify those issues that the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion.

2. Attorney Fees.

(a) *Scope.* This practice standard applies to requests for attorney or LLP fees made at the conclusion of the action, including attorney or LLP fee awards requested pursuant to Section 13-17-102, C.R.S. It also includes awards of fees made to the prevailing party pursuant to a contract or statute where the award is dependent upon the achievement of a successful result in the litigation in which fees are to be awarded and the fees are for services rendered in connection with that litigation. This practice standard does not apply to attorney or LLP fees which are part of a judgment for damages and incurred as a result of other proceedings, or for services rendered other than in connection with the proceeding in which judgment is entered. This practice standard also does not apply to requests for attorney or LLP fees on matters relating to pre-trial sanctions and motions for default judgment unless otherwise ordered by the court.

(b) *Motion and Response.* Any party seeking attorney or LLP fees under this practice standard shall file and serve a motion for attorney or LLP fees within 21 days of entry of judgment or such greater time as the court may allow. The motion shall explain the basis upon which fees are sought, the amount of fees sought, and the method by which those fees were calculated. The motion shall be accompanied by any supporting documentation, including materials evidencing the attorney's or LLP's time spent, the fee agreement between the attorney or LLP and client, and the reasonableness of the fees. Any response and reply, including any supporting documentation, shall be filed within the time allowed in practice standard § 1-15. The court may permit discovery on the issue of attorney or LLP fees only upon good cause shown when requested by any party.

(c) *Hearing; Determination of Motion.* Any party which may be affected by the motion for attorney or LLP fees may request a hearing within the time permitted to file a reply. Any request shall identify those issues which the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion. In exercising its discretion as to whether to hold a hearing in these cases, the court shall consider the amount of fees sought, the sufficiency of the disclosures made by the moving party in its motion and supporting documentation, and the extent and nature of the objections made in response to the motion. The court shall make findings of fact to support its determination of the motion. Attorney or LLP fees awarded under this practice standard shall be taxed as costs.

COMMENTS

1992 [Amendment]

[1] Costs. This Standard establishes a uniform, optimum time within which to claim costs. The 15 day requirement encourages prompt filings so that disputes on costs can be determined with other post-trial motions. This Standard also requires itemization and totaling of cost items and reminds practitioners of the means of determining disputes on costs. C.R.S. 13-16-122 (1981) sets forth those items generally awardable as costs.

[2] Attorney Fees. Subject to certain exceptions, this Standard establishes a uniform procedure for resolving attorney fee disputes in matters where the request for attorney fees is made at the conclusion of an action or where attorney fees are awarded to the prevailing party (see "Scope"). Unless otherwise ordered by the court, attorney fees under C.R.S. 14-10-119 should be heard at the time of the hearing on the motion or proceeding for which they are requested.

2015 [Amendment]

[3] The prior version of Rule 121, Section 1-22(2) addressed when and under what circumstances a party is entitled to a hearing regarding an award of attorney fees, but no rule addressed the circumstances regarding a hearing on costs. The procedural mechanisms regarding awards of attorney fees and awards of costs should be the same, and thus the rule change adds the existing language regarding hearings on attorney fees to awards of costs.

Section 1-23. BONDS IN CIVIL ACTIONS

1. Bonds Which Are Automatically Effective Upon Filing With The Court. The following bonds are automatically effective upon filing with the clerk of the court:

(a) Cash bonds in the amount set by court order, subsection 3 of this rule, or any applicable statute.

(b) Certificates of deposit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The certificate of deposit shall be issued in the name of the clerk of the court and payable to the clerk of the court, and the original of the certificate of deposit must be deposited with the clerk of the court.

(c) Corporate surety bonds issued by corporate sureties presently authorized to do business in the State of Colorado in the amount set by court order, subsection 3 of this rule, or any applicable statute. A power of attorney showing the present or current authority of the agent for the surety signing the bond shall be filed with the bond.

2. Bonds Which Are Effective Only Upon Entry of an Order Approving the Bond.

(a) Letters of credit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The beneficiary of the letter of credit shall be the clerk of the district court. The original of the letter of credit shall be deposited with the clerk of the court.

(b) Any Other Proposed Bond.

3. Amounts of Bond.

(a) *Supersedeas Bonds.* Unless the court otherwise orders, or any applicable statute directs a higher amount, the amount of a supersedeas bond to stay execution of a money judgment shall be 125% of the total amount of the judgment entered by the court (including any prejudgment interest, costs and attorneys fees awarded by the court). The amount of a supersedeas bond to stay execution of a non-money judgment shall be determined by the court. Nothing in this rule is intended to limit the court's discretion to deny a stay with respect to non-money judgments. Any interested party may move the trial court (which shall have jurisdiction not withstanding the pendency of an appeal) for an increase in the amount of the bond to reflect the anticipated time for completion of appellate proceedings or any increase in the amount of judgment.

(b) *Other Bonds.* The amounts of all other bonds shall be determined by the court or by any applicable statute.

4. Service of Bonds Upon All Parties of Record. A copy of all bonds or proposed bonds filed with the court shall be served on all parties of record in accordance with C.R.C.P. 5(b).

5. No Unsecured Bonds. Except as expressly provided by statute, and except with respect to appearance bonds, no unsecured bond shall be accepted by the court.

6. Objections to Bonds. Any party in interest may file an objection to any bond which is automatically effective under subsection 1 of this rule or to any proposed bond subject to subsection 2 of this rule. A bond, which is automatically effective under subsection 1 remains in effect unless the court orders otherwise. Any objections shall be filed not later than 14 days after service of the bond or proposed bond except that objections based upon the entry of any amended or additional judgment shall be made not later than 14 days after entry of any such amended or additional judgment.

7. Bonding Over a Lien. If a money judgment has been made a lien upon real estate by the filing of a transcript of the judgment record by the judgment creditor, the lien shall be released upon the motion of the judgment debtor or other interested party if a bond for the money judgment has been approved and filed as provided in this section 1-23. The order of the court releasing the lien may be recorded with the clerk and recorder of the county where the property is located. Once the order is recorded, all proceedings by the judgment creditor to enforce the judgment lien shall be discontinued, unless a court orders otherwise.

8. Proceedings against Surety or other Security Provider. When these rules require or permit the giving of a bond or other type of security, the surety or other security provider submits to the jurisdiction of the court. The liability of the surety or other security provider may be enforced on motion without the necessity of an independent action. At the time any party seeks to enforce such liability, it shall provide notice of its motion or other form of request to all parties of record and the surety or other security provider in accordance with C.R.C.P. 5(b).

9. Definition. The term "bond" as used in this rule includes any type of security provided to stay enforcement of a money judgment or any other obligation including providing security under C.R.C.P. 65.

COMMENTS

2006 [Amendment]

[1] The Committee is aware that issues have arisen regarding the effective date of a bond, and thus the effectiveness of injunction orders and other orders which are conditioned upon the filing of an acceptable bond. Certain types of bonds are almost always acceptable and thus, under this rule, are automatically effective upon filing with the Court subject to the consideration of timely filed objections. Other types of bonds may or may not be acceptable and should not be effective until the Court determines the sufficiency of the bond. The court may permit property bonds upon such conditions as are appropriate to protect the judgment creditor (or other party sought to be protected). Such conditions may include an appraisal by a qualified appraiser, information regarding liens and encumbrances against the property, and title insurance.

[2] This rule also sets the presumptive amount of a supersedeas bond for a money judgment. The amount of a supersedeas bond for a non-money judgment must be determined in the particular case by the court and this rule is not intended to affect the court's discretion to deny a supersedeas bond in the case of a non-money judgment.

Section 1-24. [RESERVED EFFECTIVE MARCH 5, 2020]

Section 1-25. FACSIMILE COPIES

1. Facsimile Copy, Defined. A facsimile copy is a copy generated by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone/data line, then reconstructs the signals to print an exact duplicate of the original document at the receiving end.

2. Facsimile copies which conform with the quality requirements specified in C.R.C.P. 10(d)(1) may be filed with the court in lieu of the original document. Once filed with the court, the facsimile copy shall be treated as an original for all court purposes. If a facsimile copy is filed in lieu of the original document, the attorney, LLP or party filing the facsimile shall retain the original document for production to the court, if requested to do so.

3. The court is not required to provide confirmation that it has received a facsimile transmission.

4. Any facsimile copy transmitted directly to the court shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of transmitter and any instructions.

5. Payment of any required filing fees shall not be deferred for documents filed with the court by facsimile transmission.

6. This rule shall not require courts to have a facsimile machine nor shall the court be required to transmit orders or other material to attorneys, LLPs or parties via facsimile transmission.

COMMENTS

Facsimile transmissions are becoming commonplace in the business world. It was therefore deemed reasonable that the court system adapt to accommodate the use of this technology. Use of the technology, however, should not create more work for court staff. In order not to add to the duties of overburdened court personnel, provision is made that court personnel need not provide confirmation that a facsimile transmission has been received. This should not create difficulty for attorneys because almost all equipment manufactured today provides confirmation that a document has been received. This confirmation should be attached to the document sent and retained with the original document in the party's file.

The committee envisioned at least two ways in which facsimile filings could be accomplished. The first would be an arrangement where the facsimile machine would be located in a court clerk's office. The other would be where transmissions would be made to a machine outside the courthouse and then delivered to the clerk for filing. These rules were designed to accommodate both kinds of filings.

Ordinary thermofax paper fades in sunlight, deteriorates with handling and has a short shelf life. Therefore, only permanent plain paper which is not subject to these infirmities is acceptable for court purposes.

The committee also recognized that a requirement for filing of the original after filing of a facsimile copy would create more work for court staff. The committee therefore decided to accept facsimile copies in lieu of the original with the provision that the original would be maintained if it were ever needed for any purpose.

The requirement under C.R.C.P. 121, Sec. 1-15 for filing of a copy of any motions or briefs has been modified so that a copy is also filed with the clerk of the court. The clerk of the court is then responsible for distributing the copy to the courtroom clerk. This change is necessary because the courtroom clerk will ordinarily not have a separate facsimile machine.

Some judicial districts have or are acquiring the ability to accept credit cards or bank cards for payment of fees and fines. In the judicial districts where bank cards can be used for payment, parties may file complaints, answers and other pleadings which require a filing fee by faxing an appropriate bank card authorization along with the pleadings. If a judicial district does not accept payment by bank card, those types of pleadings cannot be filed by facsimile transmission because payment of filing fees will not be deferred.

The committee believes that reasonable fees can be charged for the costs associated with facsimile filings. However, the setting of such fees is not within the scope of the Rules of Civil Procedure.

The adoption of this rule does not require an attorney to have a designated facsimile telephone number.

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 and LLPs 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 or LLP 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 or LLP 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 or LLP 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 and LLPs 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', LLPs', 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, LLPs, 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 or LLP 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.

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/).

Credits

Rule 121(a) and (b) amended and renumbered as (b) and (c) and new (a) adopted eff. as to cases filed on and after April 1, 1988. Secs. 1-8, 1-9, 1-11, 1-16, 1-22 adopted eff. July 1, 1983; Secs. 1-15, 1-18 amended eff. July 1, 1983; Sec. 1-6 amended eff. Aug. 1, 1983; Sec. 1-19 adopted eff. Aug. 1, 1983; Sec. 1-21 adopted eff. Jan. 1, 1984; Sec. 1-20 adopted eff. April 1, 1984; Sec. 1-23 adopted eff. Sept. 1, 1984; Secs. 1-17, 1-18 amended eff. as to cases filed on and after April 1, 1988; Sec. 1-3 amended eff. Sept. 1, 1990; Secs. 1-15, 1-20 amended eff. Sept. 6, 1990; Sec. 1-25 adopted eff. Sept. 6, 1990; Secs. 1-15, 1-20, 1-22 amended eff. Oct. 1, 1992; Sec. 1-20 amended eff. July 1, 1994; Secs. 1-11, 1-12, 1-15, 1-19 amended April 14, 1994, eff. Jan. 1, 1995, for all cases on or after that date; Sec. 1-1 Comment amended eff. July 1, 1999; Sec. 1-26 adopted eff. March 7, 2000; Sec. 1-26 amended eff. April 17, 2003; Sec. 1-17 amended Sept. 30, 2004, eff. for Domestic Relations Cases as defined in 16.2(a) filed on or after Jan. 1, 2005, and for post-decree motions filed on or after Jan. 1, 2005; Secs. 1-1, 1-2, 1-13, 1-14, 1-15, 1-16, 1-20, 1-21, 1-23, 1-26 amended and adopted Oct. 20, 2005, eff. Jan. 1, 2006. Sec. 1-15 amended eff. June 28, 2007. Sec. 1-15 corrected eff. Nov. 5, 2007. Sec. 1-15 amended eff. Oct. 12, 2009. Sec. 1-1 amended eff. Jan. 7, 2010. Sec. 1-1 amended eff. Oct. 20, 2011. Secs. 1-1, 1-10, 1-12, 1-15, 1-16, 1-22, 1-23, 1-26 amended eff. Jan. 1, 2012. Sec. 1-15 amended eff. Feb. 29, 2012. Sec. 1-26 amended eff. June 21, 2012; Sec. 1-26 amended eff. May 9, 2013; Sec. 1-15 amended eff. June 7, 2013; Secs. 1-15, 1-26 amended eff. Dec. 31, 2013; Sec. 1-15 amended eff. Sept. 18, 2014; Sec. 1-22 amended eff. July 1, 2015, effective for cases filed on or after July 1, 2015; Secs. 1-2, 1-26 amended eff. Sept. 9, 2015; Secs. 1-12, 1-15 amended Jan. 29, 2016, eff. for motions filed on or after April 1, 2016; Secs. 1-14, 1-19, 1-23, and 1-26 amended eff. Jan. 12, 2017; Sec. 1-15 amended Dec. 7, 2017, effective Jan. 1, 2018; Sec. 1-15 corrected eff. April 5, 2018; Sec. 1-23 amended eff. March 5, 2020 & Sec. 1-24 reserved eff. March 5, 2020. Sec. 1-14 amended eff. Aug. 17, 2020. Sec. 1-8 & 1-9 amended January 7, 2021, effective April 1, 2021.

Notes of Decisions (199)

Rules Civ. Proc., Rule 121, CO ST RCP Rule 121
Current with amendments received through May 1, 2022.

End of Document

MEMORANDUM

TO: Judge Jerry N. Jones, Chair of the Colorado Civil Rules Committee

FROM: Subcommittee Re Gendered Pronouns

DATE: July 31, 2023

RE: Request for Guidance on Next Steps Re Gendered Pronouns

The Colorado Civil Rules Committee's Subcommittee Re Gendered Pronouns is at a point in our work where we would like to obtain your guidance on how best to proceed. The Subcommittee has arrived at the following two "best fix" approaches to accomplish the universal revision of all gendered pronouns currently set forth in the Colorado Rules of Civil Procedure:

FIRST APPROACH: FEDERAL RULES COMMITTEE APPROACH

The first approach generally tracks the fix adopted by the Federal Civil Rules Committee. Specifically, in referring to the generic term "party" they appear to default to "it." For example:

> Fed. R. Civ. P. 4(i)(4) *Extending Time.*
>
> The court must allow a *party* a reasonable time to cure *its* failure to:….
>
> Fed. R. Civ. P. 8(b)(1) *In General.*
>
> In responding to a pleading, a *party* must: (A) state in short and and plain terms *its* defenses to each claim asserted against *it*; and (B) admit or deny the allegation asserted against *it* by an opposing *party*.

When referring to less generic terms like "plaintiff" or "third-party plaintiff" they appear to use either "it" or to repeat the same less generic terms "plaintiff" and "third-party plaintiff," depending on which is most clear for the particular provision. For example:

> Fed. R. Civ. P. 4(a)(1)(E) *Contents.*
>
> A summons must…notify the *defendant* that a failure to appear and defend will result in a default judgment against the *defendant* for the relief demanded in the complaint;

Fed. R. Civ. P. 14(a)(1) *Timing of the Summons and Complaint.*

> A defending party may, as a *third-party plaintiff*, serve a summons and complaint on a nonparty who is or may be liable to *it* for all or part of the claim against *it*. But the *third-party plaintiff* must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving *its* original answer.

This first approach would afford the subcommittee some flexibility in revising the gendered pronouns rather than universally adopt the non-gendered catch all "it," for purposes of clarity. Here are a couple examples of how this first fix would apply to the Colorado Rules of Civil Procedure, showing the revision in redline format:

C.R.C.P. 14(a) *When Defendant May Bring in Third Party.*

> At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~it for all or part of the plaintiff's claim against ~~him~~it. The third-party plaintiff need not obtain leave to make the service if ~~he~~ it files the third-party complaint not later than 14 days after ~~he~~it serves his original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make ~~his~~its defenses to the third party plaintiff's claim as provided in Rule 12 and ~~his~~ its counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert ~~his~~ its defenses as provided in Rule 12 and its~~his~~ counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to it~~him~~ for all or part of the claim made in the action against the third-party defendant.

C.R.C.P. 14(b) *When Plaintiff May Bring in Third Party.*

> When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

C.R.C.P. 8(b) *Defenses; Forms of Denials*.

A party shall state in short and plain terms ~~his~~its defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~it shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may make ~~his~~its denials as specific denials of designated averments or paragraphs, or ~~he~~the pleader may generally deny all the averments except such designated averments or paragraphs as ~~he~~it expressly admits; but, when ~~he~~the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, it~~he~~ may do so by general denial subject to the obligations set forth in Rule 11.

SECOND APPROACH: WA/MN RULES COMMITTEE APPROACH

The second approach generally tracks what the Civil Rules Committees of states like Washington and Minnesota have adopted. Generally, they do not use "it" or "its." Rather, when referring to less generic terms like "plaintiff" or "third-party plaintiff" they appear to repeat the same less generic terms "plaintiff" and "third-party plaintiff." For example:

Wash. CR 8(b). *Defenses; form of denials.*

A *party* shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the averments upon which the *adverse party* relies. If a *party* is without knowledge or information sufficient to form a belief as to the truth of an averment, the *party* shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a *pleader* intends in good faith to deny only a part or a qualification of an averment, the *pleader* shall specify so much of it as is true and material and shall deny only the remainder. Unless the *pleader* intends in good faith to controvert all the averments of the preceding pleading, the *pleader* may make denials as specific denials of designated averments or paragraphs, or the *pleader* may generally deny all the averments except such designated averments or paragraphs as the *pleader* expressly admits; but, when the *pleader* does so intend to controvert all its averments, the *pleader* may do so by general denial subject to the obligations set forth in rule 11.

Wash. CR 14(a)[1] *When defendant may bring in third party.*

At any time after commencement of the action a *defending party*, as a *third party plaintiff*, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the *defending party* for all or part of the *plaintiff 's* claim against the *defending party*. The *third party plaintiff* need not obtain leave to make the service if the *third party plaintiff* files the third party complaint not later than 10 days after the *third party plaintiff* serves an original answer. Otherwise the *third party plaintiff* must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third party complaint, hereinafter called the *third party defendant*, shall make defenses to the *third party plaintiff 's* claim as provided in rule 12 and ***his*** counterclaims against the *third party plaintiff* and cross claims against other *third party defendants* as provided in rule 13. The *third party defendant* may assert against the *plaintiff* any defenses which the *third party plaintiff* has to the *plaintiff 's* claim. The *third party defendant* may also assert any claim against the *plaintiff* arising out of the transaction or occurrence that is the subject matter of the *plaintiff 's* claim against the *third party plaintiff*. The *plaintiff* may assert any claim against the *third party defendant* arising out of the transaction or occurrence that is the subject matter of the *plaintiff 's* claim against the *third party plaintiff*, and the *third party defendant* thereupon shall assert defenses as provided in rule 12 and counterclaims and cross claims as provided in rule 13. Any party may move to strike the third party claim, or for its severance or separate trial. A *third party defendant* may proceed under this rule against any person not a party to the action who is or may be liable to the *third party defendant* for all or part of the claim made in the action against the *third party defendant*.

Minn. R. Civ. P. 8.02 *Defenses; Form of Denials.*

A *party* shall state in short and plain terms any defenses to each claim asserted and shall admit or deny the averments upon which the *adverse party* relies. If a *party* is without knowledge or information sufficient to form a belief as to the truth of an averment, the *party* shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A *pleader* who intends in good faith to deny only a part or to qualify an averment shall specify so much of it as is true and material and shall deny only the remainder. Unless the *pleader* intends in good faith to controvert all the averments of the preceding pleading, the *pleader* may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the *pleader* expressly admits. However, a *pleader* who intends to

[1] The Subcommittee's assessment is that Rules such as 14 and 19 will be among the most challenging to revise. While this second approach results in some considerable verbosity in Rule 14, the approach is unlikely have the same result in the majority of the rules.

controvert all its averments may do so by general denial subject to the obligations set forth in Rule 11.

This second approach avoids the awkward, if not insensitive, use of "it" to refer back to people, but may perhaps be less clear and wordy. Here are a couple examples of how this second fix would apply to the Colorado Rules of Civil Procedure, showing the revision in redline format:

C.R.C.P. 14(a) *When Defendant May Bring in Third Party.*

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~the defending party for all or part of the plaintiff's claim against ~~him~~the defending party. The third-party plaintiff need not obtain leave to make the service if ~~he~~the third-party plaintiff ~~-~~ files the third-party complaint not later than 14 days after ~~he~~the third-party plaintiff serves ~~his~~the third-party plaintiff's original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall *make* ~~his~~ the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12 and ~~his~~ the third-party defendant's counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall *assert* ~~his~~ the third-party defendant's defenses as provided in Rule 12 and ~~his~~the third-party defendant's counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to ~~him~~the third-party defendant for all or part of the claim made in the action against the third-party defendant.

C.R.C.P. 14(b) *When Plaintiff May Bring in Third Party.*

When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

C.R.C.P. 8(b) *Defenses; Forms of Denials*.

> A party shall state in short and plain terms ~~his~~the party's defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~a party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may make ~~his~~the pleader's denials as specific denials of designated averments or paragraphs, or ~~he~~the pleader may generally deny all the averments except such designated averments or paragraphs as ~~he~~the pleader expressly admits; but, when ~~he~~the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, ~~he~~the pleader may do so by general denial subject to the obligations set forth in Rule 11.

GUIDANCE REQUESTED

As between these two "best fix" options and the process moving forward, the Subcommittee would appreciate your direction as to the following:

1. Would you like the Subcommittee to first present these two "best fix" approaches through the foregoing summary examples to the broader Committee for their consideration and vote? After which vote, the Subcommittee would proceed to revise the entirety of the C.R.C.P. per the selected approach, and ultimately present to the Committee the fully revised set of the C.R.C.P. for their review and approval. This would essentially be a two vote / two meeting process.

2. Or, would you like the Subcommittee to select from the two "best fix" approaches (with input from you and others, if any, you deem important to include in that initial selection), and proceed to revise the entirety of the C.R.C.P., after which the Subcommittee would present to the Committee the fully revised set of the C.R.C.P. for their review and approval. This would essentially be a one vote / one meeting process.

3. Also, are other Committees considering similar revisions to other sets of Colorado rules or forms, in addition to the C.R.C.P.? If so, are other Committees following one of these approaches or a different approach? And before the Committee invests substantial effort in these revisions, should the Committee seek guidance as to whether any uniform standards will be articulated for revisions to court rules generally?