AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, January 29, 2021 1:30 p.m.

VIRTUAL MEETING VIA WEBEX—PLEASE SEE EMAIL FOR THE LINK

I. Call to order

II. Approval of September 25, 2020 minutes [Pages 1 to 4]

III. Announcements from the Chair

A. 2020 Year End Submission and Report [Pages 5 to 35]
B. Rule Change 2021(01) [Pages 36 to 49]
C. 2021 Remaining Meeting Schedule (March 26; June 25; September 24; November 12)

IV. Present Business

A. C.R.C.P. 16.2—Proposed Changes from the Standing Committee on Family Issues—(Justice Hart) [Pages 50 to 65]

B. C.R.C.P. 16 and 26—Proposed Corrections and Tweaks—(Judge Elliff) [Pages 66 to 79]

C. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims)—Status report

D. JDF 601 and 603—Water Rules Committee Request—(Judge Berger) [Pg 80 to 86]

E. Crim. P. 55.1—Public Access to Court Records—(Judge Jones) [Pages 87 to 94]

F. Letter to the Committee from Kevin Conner regarding sealing of county court criminal records—(Judge Berger) [Pages 95 to 99]

G. Proposed Amendments or New Rules Regarding Uniform Procedures in FED Actions—(Judge Berger)

H. C.R.C.P. 15(a)—Possible Amendments in view of DIA Brewing Co., LLC v. MCE-DIA, LLC, 2021 COA 4—(John Lebsack) [Pages 100 to 134]

I. C.R.C.P. 30(b)(6)—Possible Amendments in Light of Federal Rule Change—(John Lebsack) [Pages 135 to 153]

J. C.R.C.P. 4(m)—(Judge Jones)

K. C.R.C.P. 30(b)(7)—Virtual Oaths—(Lee Sternal) [Page 154]

L. Local Rules—(Richard Holme)

M. JDF 105—Service of Pattern Interrogatories—(Mike Hofmann)

N. County Court Subcommittee Proposed Rule Changes (307 and 341)—(Ben Vinci)

O. C.R.C.P. 304—Time Limit for Service from Attorney Daniel Vedra—(Ben Vinci)

V. Adjourn—**Next meeting is March 26, 2021 at 1:30 pm.**

Michael H. Berger, Chair
michael.berger@judicial.state.co.us
720-625-5231

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 25, 2020 Minutes

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m. via videoconferencing software WebEx. Members present at the meeting were:

Name	**Present**	**Not Present**
Judge Michael Berger, Chair	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Cheryl Layne	X	
John Lebsack	X	
Bradley A. Levin	X	
David C. Little		X
Professor Christopher B. Mueller		X
Brent Owen		X
John Palmeri	X	
Judge Sabino Romano	X	
Stephanie Scoville	X	
Lee N. Sternal		X
Magistrate Marianne Tims	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	
Jeremy Botkins		X

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I. Attachments & Handouts

- September 25, 2020 agenda packet.

II. Announcements from the Chair

- The June 26, 2020 minutes were approved as presented.
- Chair Judge Berger announced that the supreme court approved the garnishment rules and forms that this committee submitted, and he thanked the subcommittee for all their work.
- Judge Berger asked members whose terms are expiring to let him know if they would like to return.
- Judge Berger stated that the committee will hold five meetings in 2021. The 2021 meeting dates are listed on the agenda.
- Finally, Judge Berger stated that Colorado no longer recognizes Columbus Day on the second Monday in October and instead celebrates Frances Cabrini Day on the first Monday in October. The committee voted unanimously to update C.R.C.P. 6(a)(2), which discusses state holidays.

III. Present Business

A. Redaction of Court Filings by Parties/Counsel

Subcommittee chair David DeMuro stated that this rule was approved at the last meeting but was brought back for the group to see its final form. Since the last meeting, Mr. DeMuro made changes to the corresponding county court rule to make it the same as rule 5. A motion was made and seconded to adopt rule 5 as it appears in the materials and rule 305 as it appears with one change: conform subsection (3) of Rule 305 to subsection (3) of Rule 5. The motion overwhelmingly passed.

Mr. DeMuro also mentioned that the court IT department brought to his attention that the federal filing system prompts people to acknowledge that they are performing their duties with a checkbox. After discussion, a motion and second was made to have the IT department investigate adding a checkbox asking if people understood and made the redactions as required, similar to the federal requirement. This passed overwhelmingly.

B. JDF 601/Related Case Doctrine

Subcommittee chair Bradley Levin noted that after the last meeting, the subcommittee added a comment as suggested by the committee. A motion was made and seconded to approve the rules as they appear in the agenda packet. This passed unanimously.

C. Form CRCCP 1A—Fed Suppression Litigation

Judge Berger stated that a recent statute signed into law necessitated a change to this form. The Office of the State Court Administrator suggested these edits to this form to the committee. Judge Berger queried whether the committee wanted to send this to a subcommittee or was ready to vote now. A motion was made and seconded to approve the form with the new statutory language. Judge Elliff suggested one minor edit in the

proposed paragraph 11 to change the word *private* to *suppressed*. The motion passed unanimously with the suggested edit.

D. C.R.C.P. 16, 16.1, and 26—Water Court Committee Request

The Water Court Committee has asked this committee to consider some proposed changes to civil rules that mention water rules. A motion was made, seconded, and passed unanimously to adopt the proposals.

Lisa Hamilton-Fieldman mentioned that the language on any relevant forms will also need to be changed. Justice Gabriel mentioned that this could be sent back to the Water Court Committee for any suggestions to change civil forms.

E. C.R.C.P. 16 and 26

Judge Elliff reported that the subcommittee has met twice and will have proposals for the committee within the next few meetings.

F. C.R.C.P. 4(m)

Passed over.

G. Local Rules

Judge Elliff reported for the subcommittee. He stated that he was not in favor of changing local rules but others in the subcommittee were. He then stated that the subcommittee did not find many local orders that substantively changed the rules; the one exception is that there were some orders out there that adjusted deadlines outside of the rules prior to trial. Those struck the subcommittee as fair. The subcommittee determined that they did not want to propose a rule regarding local rules without further direction as to whether it made sense to pursue a rule change given the subcommittee's initial findings. The subcommittee is asking today if the committee believes this is worth pursuing or not. Judge Elliff continued that, essentially, a proposal would say that a judicial officer cannot adopt a standard rule that alters the timelines that are already provided for in the civil rules unless it is discussed at the case management conference. In other words, you can't have a standing rule that changes a deadline. The committee's feedback was that the subcommittee should pursue drafting a proposed rule.

H. C.R.C.P. 15(a)

Judge Berger put this on the agenda even though the DIA Brewing case is now before the supreme court on cert. The committee discussed whether it should address this before the supreme court considers it. Based on that discussion, Judge Berger determined that a subcommittee should be formed to determine whether C.R.C.P. 15(a) should conform to the Federal 15(a). Interested members should email Kathryn.

I. C.R.C.P. 30(b)(7)—Virtual Oaths

Passed over.

J. Letter to the Committee from Kevin Conner regarding Sealing of County Court Criminal Records

Judge Berger shared that this letter comes from Mr. Kevin Conner, who has views about when and how records in county courts should be sealed. In a sense, this dovetails with a new rule currently being considered by the court, Crim. P. 55.1, as it raises some of the same issues.

Justice Gabriel mentioned that it may make sense to wait on this until after the hearing in October. Mr. Vinci reminded the committee that his county court subcommittee brought this up to the group last year. He recalled that this got tabled because of the criminal rule that was being developed. Judge Jones echoed this thought.

The committee will revisit after the criminal rule is considered by the supreme court.

K. Colorado Rules for Magistrates

Magistrate Tims shared that the subcommittee met a few weeks ago and will meet again soon. The subcommittee is considering the issue of appellate review and whether everything should just go to the district court.

L. JDF 105

Passed over.

M. County Court Rules 307 and 341

Subcommittee Chair Ben Vinci reported that the subcommittee has not been able to meet.

N. C.R.C.P. 304

Passed over.

O. Crim. P. 55.1

Passed over.

IV. Future Meetings

November 13, 2020
January 29, 2021
March 26, 2021
June 25, 2021
September 24, 2021
November 12, 2021

The Committee adjourned at 3:00 p.m.

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Dear Justice Gabriel:

I write to you in your capacity as the Liaison Justice to the Supreme Court Civil Rules Committee.

The Civil Rules Committee respectfully submits the following recommendations for amendments to the Colorado Rules of Civil Procedure.

1. Related Cases—C.R.C. P. 16, 121 1-8, and 121 1-9
    a. Background and Summary

    b. District Judge Elizabeth Weishaupl (and other judges) raised the question of whether civil litigants should be required to state early on in a case whether there are related cases filed in other Colorado courts. Notifying a judicial officer of such a circumstance may lead to economies for the courts. A judicial officer may consolidate cases or treat related cases in a coordinated matter, potentially saving a considerable amount of court time and resources. Armed with such knowledge, a judicial officer may cause a referral under C.R.C.P. 42.1. Although the scope of such an obligation was heavily debated within the Committee, there was no opposition to the fundamental proposition that parties should, at an appropriate time, disclose known related cases to the court

    c. Effective date and public hearing

        i. Because this amendment imposes new requirements on litigants, the Committee recommends that the amendment become effective on the first day of the third month following adoption by the court. The Committee does not believe that a public hearing is necessary.

    d. Supporting documents

Appendix A contains redlined and clean versions of the proposed rule in the format prescribed by the court. The subcommittee report, authored by Bradley Levin, Esq., is attached as Appendix B.

2. C.R.C.P. 6.

a. Background and Summary

By statute, Colorado no longer recognizes Columbus Day as a state holiday. Instead, Colorado now recognizes Cabrini Day. C.R.C.P. 6 identifies Columbus Day as a state holiday, which is no longer accurate. The Committee unanimously recommends that the rule be amended to conform with statutory changes to the holidays recommended.

b. Effective date and public hearing

Because of the nature of this proposed amendment, the amendment should become effective immediately on the court's approval, and no public hearing is necessary.

c. Supporting documents

Appendix C contains redlined and clean versions of the proposed amendment in the form prescribed by the court.

3. C.R.C.P. 16, 16. 1 and 26—Applicability to Certain Water Law Cases

a. Background and Summary

The Supreme Court Water Law Committee, as to which Justice Márquez serves as liaison, approached the Civil Rules Committee regarding proposed amendments to C.R.C.P. 15, 16.1 and 26 regarding certain types of water law cases. At present, all water law cases are expressly exempted from the operation of those rules. But there are certain types of water law cases as to which the Water Law Committee believes that compliance with those general rules of

civil procedure would be beneficial to the parties and the water courts. The Civil Rules Committee unanimously agreed and recommends the adoption of all of the changes recommended by the Water Law Committee.

b. Effective Date and Public Hearing

The Water Law Committee did not address the effective date of the amendments. Consistent with its regular practice on amendments of this type, the Committee recommends that the amendments be effective for all covered water law cases filed on the first day of the third month following adoption of the amendments by the court. The Committee does not believe that a public hearing is necessary because this proposal appears to have been vetted by the relevant constituent groups (as stated in Justice Márquez's memo to this committee.) (Appendix E).

c. Supporting Documents

The rules proposals, in redlined and clean formats, are attached as Appendix D. The Memoranda from Justice Márquez and the report of the Water Law Committee are attached as Appendix E.

Respectfully submitted,

Michael H. Berger, Chair

Supreme Court Civil Rules Committee

APPENDIX A

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]

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.

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

(c) – end [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1 to 1 – 7 [NO CHANGE]

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. ~~MULTI-DISTRICT LITIGATION~~RELATED CASES

~~Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.~~

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.

COMMITTEE COMMENT

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 to 1 – 26 [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1 to 1 – 7 [NO CHANGE]

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.

COMMITTEE COMMENT

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 to 1 – 26 [NO CHANGE]

APPENDIX B

LEVIN | SITCOFF
ATTORNEYS AT LAW
PROFESSIONAL CORPORATION

1512 Larimer Street, Suite 650
Denver, CO 80202
www.levinsitcoff.com

T (303) 575-9390 F (303) 575-9385

TO: Civil Rules Committee

FROM: Bradley A. Levin

DATE: June 16, 2020

RE: Notice of Related Cases

At the January 31, 2020 meeting, the Committee considered the subcommittee's[1] recommendation concerning adoption of a related case doctrine as part of the statewide rules. The Committee provided input as to various aspects of the recommendation, and the subcommittee was asked to make a further recommendation based on that input. The subcommittee subsequently met and after further consideration, submits the following revised recommendation:

A. The subcommittee recommends that Rule 121, Section 1-8 be amended by adding to the end of the section the sentence that presently appears in Section 1-9, as follows:

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*

B. The subcommittee further recommends that Section 1-9 be changed to read:

SECTION 1-9. ~~MULTI-DISTRICT LITIGATION~~ RELATED CASES

~~Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.~~

1. A party to a civil case shall file a notice identifying all related cases of which the party is aware.

[1] The subcommittee includes, in addition to myself, David DeMuro, Lisa Hamilton-Feldman, and John Lebsack. Also, Stephanie Scoville attended the most recent subcommittee meeting.

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.

C. The subcommittee also recommends that language regarding a notice of related cases be included in the proposed Case Management Order, and referenced in Rule 16. One possibility is to amend subsection (b)(5) as follows:

> **(5) Pending Motions *and Notices*.** The proposed order shall list all pending motions that have been filed and are unresolved. The court may decide any unresolved motion at the case management conference. *The proposed order shall also state whether any notices of related cases, pursuant to Rule 121, Section 1-9, have been filed.*

Alternatively, a new subsection could be added following subsection (b)(17):

> **(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.*

The subcommittee believes that these rule changes and additions are for notice purposes only, and that any actions to be taken following such notice should be left to the parties and the court.

APPENDIX C

Rule 6. Time

(a)(1) [NO CHANGE]

(2) As used in this Rule, “Legal holiday” includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the ~~second~~ first Monday in October, observed as ~~Columbus~~ Frances Cabrini Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) – (e) [NO CHANGE]

Comments [NO CHANGE]

Rule 6. Time

(a)(1) [NO CHANGE]

(2) As used in this Rule, “Legal holiday” includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the first Monday in October, observed as Frances Cabrini Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) – (e) [NO CHANGE]

COMMENTS [NO CHANGE]

APPENDIX D

Rule 16. Case Management and Trial Management

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

(b) – end [NO CHANGE]

Rule 16. Case Management and Trial Management

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

(b) – end [NO CHANGE]

Rule 16.1. Simplified Procedure for Civil Actions

(a) [NO CHANGE]

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:
(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, ~~water law~~water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
(2) [NO CHANGE]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, ~~water law~~ water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) – end [NO CHANGE]

Rule 16.1. Simplified Procedure for Civil Actions

(a) [NO CHANGE]

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:
(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
(2) [NO CHANGE]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) – end [NO CHANGE]

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(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 law~~ 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.

(a)(1) – end [NO CHANGE]

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(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.

(a)(1) – end [NO CHANGE]

APPENDIX E

MEMORANDUM

TO: The Civil Rules Committee

FROM: Justice Márquez

RE: Proposed revisions to C.R.C.P. 16(a), 16.1(b)(1), and 26(a) for "water law" cases

DATE: July 24, 2020

Civil Rules Committee members,

Over the past year, the Water Court Committee of the supreme court has discussed the language of C.R.C.P. 16 and 26 and how that language impacts certain water law cases before our courts. In late June of this year, the Water Court Committee voted to recommend changes to these rules as well as Rule 11 of the Uniform Local Rules for All State Water Court Divisions ("U.L.R."). We ask that the Civil Rules Committee review the proposal and make a recommendation to our court.

The Water Court Committee's proposal amends the language in C.R.C.P. 16(a), 16.1(b)(1), and 26(a). Each of those sections specifically excludes application of the rule to "water law" proceedings, a term that is not defined. The current U.L.R. apply to specific statutory proceedings and do not apply to all water law proceedings. Thus, for water proceedings initiated outside of those statutory provisions, there are no presumptive case management rules, which has caused confusion for courts and parties. The Water Court Committee's proposal amends language in the U.L.R. as well as the civil rules to clarify which actions are covered by the civil rules and which are covered by the U.L.R.

This proposal has been vetted with the water bar and water judges. The Committee discussed at length whether C.R.C.P. 16.1 is the appropriate default rule for these cases, and ultimately decided, through a vote, that it is.

The members of the water court committee who worked on this proposal will be available to make a presentation or to answer questions. Thank you in advance for your consideration of this matter.

May 1, 2020

M E M O R A N D U M

TO: Water Law Section
Colorado Bar Association

FROM: Water Court Committee
Colorado Supreme Court

RE: Request for any comments on proposed changes to C.R.C.P. 16, 16.1, and 26, U.L.R. 11, and U.L.R. Note

Need for Proposed Changes and Request for Comments

After review and discussion by the Water Court Committee, and review and conferral with the water judges and referees of the seven Water Divisions, the Committee is considering changes to the above-referenced rules to address the lack of presumptive case management rules for a certain small class of "water law" proceedings *not* initiated under section 37-92-302, C.R.S. Any proposed changes to the Colorado Rules of Civil Procedure will also require subsequent review and approval of the Supreme Court's Civil Rules Committee as well as the Supreme Court.

The proposed changes under consideration are shown through strikethrough and new language in italics at the end of this memorandum. The Water Court Committee is requesting any comments members of the Water Law Section may have on the proposed changes on or before May 15, 2020. Comments should be sent to Andrew Rottman, Counsel to Chief Justice Nathan B. Coats at andrew.rottman@judicial.state.co.us.

The current Uniform Local Rules of All State Water Court Divisions ("U.L.R.") focus on water court applications under section 37-92-302 and do not appear designed for a small class of proceedings identified in this memorandum. Meanwhile, the current wording in C.R.C.P. 16(a), 16.1(b)(1), and 26(a) excludes all "water law" proceedings, except as either approved by the court or stipulated by the parties. Thus, the current rules do not provide clear presumptive case management rules for the smaller class of cases, which may cause unnecessary communications among the parties and the judges as well as needless costs, delays, and case management proceedings. The proposed changes do not affect a judge's discretion to approve departures from presumptive case management rules on a case-by-case basis.

Because the vast majority of water law proceedings are initiated under section 37-92-302, C.R.S., the issue to be addressed by the proposed rule changes is limited in scope and may not be encountered often by attorneys, parties, or the courts. However, it is regularly encountered by those judges, water attorneys, or parties participating in this smaller class of water law proceedings.

Background on Relevant Rules and Statutes

"Water law" under Rules 16,16.1, and 26(a)

C.R.C.P. 16 (Case Management and Trial Management) C.R.C.P 16.1 (Simplified Procedure for Civil Actions) and C.R.C.P. 26(a) (Required Disclosures) do not currently apply to "water law" proceedings, unless otherwise ordered by the court under Rules 16(a) or 26(a) or stipulated by the parties under Rules 16(a), 16.1(b)(1), or 26(a). Rule 16(a) provides, in relevant part, as follows:

> This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, *water law*, forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in 16.1.

(Emphasis added.) In turn, Rule 16.1(b) provides, in relevant part, as follows:

> This Rule applies to all civil actions other than: (1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, *water law*, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; …

(Emphasis added.)[1] Similarly, Rule 26(a) provides:

> Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile,

[1] C.R.C.P. 16.1(b)(3) also requires that "[e]ach pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, *water*, juvenile, or mental health action, shall be accompanied by a completed Civil Cover Sheet … ." (Emphasis added). As discussed below, the changes proposed by this memorandum may also necessitate a change in the current Civil Cover Sheet.

> mental health, probate, *water law*, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

(Emphasis added.)

The term "water law" is not defined by statute or rule, and only appears nine times in the constitutional and statutory scheme,[2] including in the heading of section 37-92-102, C.R.S. ("Legislative declaration – basic tenets of Colorado water law."), which declares Colorado's policy of prior appropriation in accordance with the Colorado constitution's prior appropriation doctrine. Under section 37-90-102(1), C.R.S., the same prior appropriation doctrine is also affirmed and recognized with respect to the designated ground waters of Colorado as modified to permit the full economic development of designated ground water resources. Thus, "water law" appears broad enough to cover both "water matters" before the water judges and cases relating to designated groundwater assigned to the designated groundwater judges. *See* § 37-92-203(1), C.R.S. (water judges) and § 37-90-115(1)(b)(III)(V), C.R.S. (designated groundwater judges).

Types of "water matters" to be heard by the Water Courts

"Water matters" are those matters that the Water Right Determination and Administration Act of 1969, §§ 37-92-101 to -602, C.R.S. ("1969 Act"), and any other law, specify to be heard by the water judge of the district courts, including determinations of rights to nontributary groundwater outside of the designated groundwater basins. § 37-92-203(1), C.R.S. Water matters obviously include water court applications as contemplated by section 37-92-302, C.R.S., including the numerous types of applications for the determination of a water right or conditional water right and the amount and priority thereof, as identified in section 37-92-302(1), C.R.S. Such applications are subject to the special statutory proceedings of the 1969 Act, including its resume notice procedures that establish water court

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[2] In addition to section 37-92-102, C.R.S., the term "water law" appears in section 1(1)(b)(IV) of Article XXVII of the Colorado Constitution (Great Outdoors Colorado Program) and in sections 34-33-136 (Colorado Surface Coal Mining Reclamation Act – Water rights.); 37-90.5-104(3) (Geothermal Resources – Ownership declaration.); 37-95-121 (Colorado Water Resources and Power Development Authority Act – Effect on inconsistent acts and rules and regulations adopted hereunder.); 37-60-104(3) (Colorado Water Conservation Board – Personnel.); 37-80.5-104.5(1)(a)(III) (Arkansas River Water Bank Pilot Program – Water banks within each water division – duties of state engineer – rules.); 37-92-310(b)(I) (Colorado water rights protection act –short title-legislative declaration-limitation on actions.); and 37-95-104(2)(b) (Colorado Water Resources and Power Development Authority Act – Establishment of authority – board of directors – removal – organization – compensation – dissolution.), C.R.S.

jurisdiction, referrals to the water referees, and orders of re-referral or protests to the water judges for pre-trial and trial proceedings. *See* §§ 37-92-302 to -305, C.R.S.

These typical water court applications comprise the largest subset of water matters involving the adjudication of water rights and their priorities as contemplated by Rules 87 to 92 of the C.R.C.P.[3] and the current U.L.R. *See, e.g.,* U.L.R. 3 (Applications for Water Rights). The U.L.R. applicable to water court practice and procedure[4] currently govern the filing of water court applications, resume publication, statements of opposition, referee rulings, orders of rereferral, the filing of protests to rulings of the referee, and trial proceedings before the water judge, all as contemplated only for applications under section 37-92-302, C.R.S. The new U.L.R. 12, applicable to the decennial abandonment proceedings, also contemplates the initiation of proceedings through filings, notices, or protests published in the water court resume pursuant to provisions of section 37-92-302, C.R.S.[5] However, these cases are not referred to the referees for any determinations, though referees may act as case managers for the water court in such cases.

In addition to the foregoing types of water matters, the 1969 Act and other laws specify other water matters to be heard by the water judges that:

(1) are not initiated as water court applications under section 37-92-302, C.R.S.;

(2) cannot be published in the water court resume to establish water court jurisdiction;

(3) remain subject to the service, joinder, and intervention rules of C.R.C.P. 4, 19, and 24; and

(4) are not currently addressed by the U.L.R.

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[3] *See* C.R.C.P 87 (Application of Following Water Rules), 88 (Judgment and Decrees), 89 (Notice When Priority Antedating an Adjudication is Sought), 90 (Dispositions of Water Court Applications), 91 (Entry of Decree When No Protest Has Been Filed), 92 (Conditional Water Rights – Extension of Time for Entry of Findings of Reasonable Diligence).

[4] *See* U.L.R. NOTE: "Except as expressly provided in these rules, the Colorado Rules of Civil Procedure, including the state-wide practice standards as set out in C.R.C.P. 121, shall apply to water court practice and procedure. All prior water court local rules are repealed."

[5] Whether the U.L.R. should be the default case management rules for the decennial abandonment proceedings may be an issue requiring further consideration and discussion.

Examples of such other water matters include:

(a) certain complaints for declaratory or injunctive relief not seeking the determination of a right to use water (including claims of abandonment unrelated to the decennial abandonment proceedings or any defense in opposition to a water court application)[6];

(b) appeals of certain agency actions under the State Administrative Procedure Act, §§ 24-4-101 to -204, C.R.S.;[7]

(c) the State Engineer's rulemakings under section 37-92-501, C.R.S.; and

(d) enforcement proceedings initiated by the State and Division Engineers under sections 37-92-503, 37-92-602(1)(g)(V), or section 37-90-110(1), C.R.S.

The U.L.R. are also inapplicable to any of the proceedings before the designated groundwater judges.

Under U.L.R. 11, "[t]he provisions of C.R.C.P. 16 and 26 through 37 shall apply except that they shall be modified as follows: (a) C.R.C.P. 16(b)-(e), C.R.C.P. 16(f)(3)(VI)(C), C.R.C.P. 16(g), and C.R.C.P. 26(a)(2)(B)(I)(g) shall not apply to water

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[6] *See Gardner v. State*, 614 P.2d 357, 362 (Colo. 1980) ("Our construction of the Water Right Act as excluding applications for determination of abandonment under section 37-92-302(1)(a) does not mean that the water judge is without authority to make determinations and enter decrees of abandonment. To the contrary, abandonment of a water right is a water matter within the jurisdiction of the water court. *See* section 37-92-203(1), C.R.S.1973; *Perdue v. Fort Lyon Canal*, 184 Colo. 219, 519 P.2d 954 (1974). When an application for a determination of abandonment is filed, the water judge, as here, may require the applicant to make reasonable efforts to determine the identity and location of the owner or the successor in interest, and, if those efforts are successful, to proceed under the pertinent provisions of C.R.C.P. 4 and 19.")

[7] Examples of such appeals include: (1) appeals of the State Engineer's approval of temporary substitute water supply plans under section 37-92-308(5)(c), C.R.S.; (2) judicial review of the State Engineer's rules under sections 37-80.5-105, 37-90-137(7)(c), (9)(a), 9(d), C.R.S.; (3) appeals of certain well-permitting decisions of the State Engineer under sections 37-90-105, 37-90-137 and 37-92-602(3)(f), C.R.S.; and (4) appeals under section 37-90-115(1)(a), C.R.S., of actions of the State Engineer and Ground Water Commission under 37-90-110, C.R.S.

court proceedings."[8] The reference to "water court proceedings" also appears overly-broad because U.L.R. 11 appears to only contemplate water court application proceedings under section 37-92-302, C.R.S., as best illustrated by the at-issue date provision in U.L.R. 11(b)(1):

> Water matters shall be considered to be at issue for the purposes of this Rule and C.R.C.P. 26 49 days (7 weeks) after the earlier of either of the following: entry of an order of re-referral or the filing of a protest to the ruling of the referee, unless the water court directs otherwise.

Here, too, "water matters" is overly broad. Only water court applications under section 37-92-302, C.R.S., are referred to the water referee. *See* §§ 37-92-203(7), C.R.S. ("The water judge of each division by order shall refer promptly to a referee of that division all applications filed pursuant to section 37-92-302 . . . .") and 37-92-301(2), C.R.S. (referee's authority and duty to rule upon determinations of water rights and conditional rights and the amount and priority thereof). As a result, the U.L.R. cause confusion when dealing with the class of water matters not initiated by applications under section 37-92-302, C.R.S.

Proposed Changes to C.R.C.P. 16, 16.1, and 26(a), U.L.R. 11, and U.L.R. Note

Proposed change to C.R.C.P. 16(a):

> This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, ~~water law,~~ *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.,* forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in 16.1.

Proposed change to C.R.C.P. 16.1(b)(1) and (3):

[8] Rules 16(b)-(e) govern the Case Management Order, Pretrial Motions, Case Management Conference, and Amendment to Case Management Order. Rule 16(f)(3)(VI)(C) governs Identification of Witnesses and Exhibits - Juror Notebooks. Rule 16(g) governs Jury Instructions and Verdict Forms. And C.R.C.P. 26(a)(2)(B)(I)(g) requires a retained expert's report to include "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."

> This Rule applies to all civil actions other than: (1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, ~~water law,~~ *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.,* forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; …
>
> (3) Each pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, ~~water law,~~ juvenile, or mental health action, *or a water court proceeding subject to sections 37-92-302 to 37-92-305, C.R.S.,*, shall be accompanied by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601).[9]

Proposed change to C.R.C.P. 26(a):

> Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, ~~water law,~~ *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.

Proposed change to U.L.R. 11:

> The provisions of C.R.C.P. 16 and 26 through 37 shall apply except that they shall be modified as follows: (a) C.R.C.P. 16(b)-(e), C.R.C.P. 16(f)(3)(VI)(C), C.R.C.P. 16(g), and C.R.C.P. 26(a)(2)(B)(I)(g) shall not apply to ~~water court~~ *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.*
>
> (b)(1) **At Issue Date.** ~~Water matters~~ *Water court applications subject to 37-92-302 to 37-92-305, C.R.S.,* shall be considered to be at issue for the purposes of this Rule and C.R.C.P. 26 49 days (7 weeks) after the earlier of either of the following: entry of an order of re-referral or the filing of a protest to the ruling of the referee, unless the water court directs otherwise.

Proposed Change to Note preceding the U.L.R.:

> *These rules apply to water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., including final decennial abandonment lists, which are published in the water court resume under section 37-92-*

[9] The Civil Cover Sheet form would likely need to be updated if the proposed changes to Rule 16.1 are made.

302(3), C.R.S., and considered water court applications under these rules. Except as expressly provided in these rules, the Colorado Rules of Civil Procedure, including the state-wide practice standards set out in C.R.C.P. 121, shall apply to water court practice and procedure. All prior water court local rules are repealed.

cc: Water Court Committee Members
Andrew Rottman, Esq., Counsel to Chief Justice Nathan B. Coats

RULE CHANGE 2021(01)
COLORADO RULES OF CIVIL PROCEDURE

Rules 6, 16, 16.1, 26, and 121 § 1-8 and § 1-9

Rule 6. Time

(a)(1) [NO CHANGE]

(2) As used in this Rule, “Legal holiday” includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the ~~second~~ first Monday in October, observed as ~~Columbus~~ Frances Cabrini Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) – (e) [NO CHANGE]

Comments [NO CHANGE]

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]

Rule 16. Case Management and Trial Management

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

(b) – end [NO CHANGE]

Rule 16.1. Simplified Procedure for Civil Actions

(a) [NO CHANGE]

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:
(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, ~~water law~~water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
(2) [NO CHANGE]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, ~~water law~~ water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) – end [NO CHANGE]

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(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 law~~ 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.

(a)(1) – end [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1 to 1 – 7 [NO CHANGE]

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. ~~MULTI-DISTRICT LITIGATION~~RELATED CASES

~~Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.~~

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.

COMMITTEE COMMENT

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 to 1 – 26 [NO CHANGE]

Rule 6. Time

(a)(1) [NO CHANGE]

(2) As used in this Rule, “Legal holiday” includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the first Monday in October, observed as Frances Cabrini Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) – (e) [NO CHANGE]

COMMENTS [NO CHANGE]

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.

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

(c) – end [NO CHANGE]

Rule 16. Case Management and Trial Management

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

(b) – end [NO CHANGE]

Rule 16.1. Simplified Procedure for Civil Actions

(a) [NO CHANGE]

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:
(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
(2) [NO CHANGE]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) – end [NO CHANGE]

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(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.

(a)(1) – end [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1 to 1 – 7 [NO CHANGE]

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.

COMMITTEE COMMENT

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 to 1 – 26 [NO CHANGE]

Amended and Adopted by the Court, En Banc, January 7, 2021, effective April 1, 2021.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

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

(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 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, 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 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 to attend the initial conference and any subsequent conferences by telephone.

(C) If both parties are represented by counsel, counsel may submit a Stipulated Case Management Plan signed by counsel and the parties. Counsel 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 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.

(E) 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.*

(A) 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.

(C) 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.

(E) 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 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.
(C) 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.*
(A) 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, 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.
(B) 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 (c) or will be handled on the pleadings or otherwise.

(e) 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(e).
(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 (c)(1)(C), 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.

(11) A marriage may be dissolved with limited or no exchange of financial information as agreed to by the parties in writing so long as all of the following conditions exist at the time the proceeding is commenced:

i) The jurisdictional requirements for dissolution of marriage have been met as outlined in C.R.S. §14-10-106;

ii) There are no minor children born to the parties or adopted by the parties during the marriage;

iii) Neither spouse is pregnant;

iv) Excluding one single-family residential real property, neither party has any interest in real property, wherever located, or the court has ordered that this case may proceed notwithstanding the interest in real property;

v) There is no debt in excess of $100,000 total incurred by either party since the date of the marriage and there are no disputes as to amount or allocation of such debt;

vi) Excluding one single-family residential real property, the parties have not acquired in excess of $100,000 in assets since the date of marriage, including appreciated value of existing assets owned by either party on the date of marriage, and there are no disputes regarding value or allocation of property at issue in the case; and

vii) Both parties agree to waive spousal maintenance.

(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 (c)(1)(E), 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 (c)(1)(C). 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(c).

(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:
(A) Compensation for any expert shall be governed by the provisions of CRE 706.
(B) 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.
(C) 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, 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, 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 respondent's counsel if petitioner is pro se) shall be responsible for scheduling meetings among counsel 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 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.

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

(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 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, 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 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 to attend the initial conference and any subsequent conferences by telephone.

(C) If both parties are represented by counsel, counsel may submit a Stipulated Case Management Plan signed by counsel and the parties. Counsel 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 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.

(E) 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.*

(A) 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.

(C) 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.

(E) 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 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.
(C) 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.*
(A) 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, 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.
(B) 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 (c) or will be handled on the pleadings or otherwise.

(e) 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(e).
(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 (c)(1)(C), 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.

(11) A marriage may be dissolved with limited or no exchange of financial information as agreed to by the parties in writing so long as all of the following conditions exist at the time the proceeding is commenced:

i) The jurisdictional requirements for dissolution of marriage have been met as outlined in C.R.S. §14-10-106;

ii) There are no minor children born to the parties or adopted by the parties during the marriage;

iii) Neither spouse is pregnant;

iv) Excluding one single-family residential real property, neither party has any interest in real property, wherever located, or the court has ordered that this case may proceed notwithstanding the interest in real property;

v) There is no debt in excess of $100,000 total incurred by either party since the date of the marriage and there are no disputes as to amount or allocation of such debt;

vi) Excluding one single-family residential real property, the parties have not acquired in excess of $100,000 in assets since the date of marriage, including appreciated value of existing assets owned by either party on the date of marriage, and there are no disputes regarding value or allocation of property at issue in the case; and

vii) Both parties agree to waive spousal maintenance.

(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 (c)(1)(E), 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 (c)(1)(C). 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(c).

(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:
(A) Compensation for any expert shall be governed by the provisions of CRE 706.
(B) 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.
(C) 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, 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, 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 respondent's counsel if petitioner is pro se) shall be responsible for scheduling meetings among counsel 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 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.

MEMORANDUM

TO: MICHAEL BERGER

FROM: J. ERIC ELLIFF

SUBJECT: SUGGESTED REVISIONS TO RULES 16 AND 16.1

DATE: JANUARY 14, 2021

CC: KATHRYN MICHAELS

A subcommittee consisting of Damon Davis, Dave DeMuro, Dick Holme, John Lebsack, Brad Levin, John Palmeri, Chris Zenisek, and myself met to consider a number of changes to Rules 16, 16.1 and 26 proposed primarily by Dick Holme. These proposals were made after Dick and a small group of attorneys met with judges in several districts to gauge the reaction to the 2015 amendments to the Rules of Civil Procedure. While I will not repeat all of the proposals that were made, they are extensively detailed starting at p. 109 of the June 26, 2020 Civil Rules Committee materials. Our subcommittee carefully considered all of them, but in the end we suggest only modest changes to Rules 16.1 and 16.

Rule 16.1

Our proposed changes to Rule 16.1 are attached as Exhibit A (red-line and clean versions). The intent of these changes is to force practitioners to fully consider whether potential damages truly exceed the Rule 16.1 threshold. One of the primary observations collected by Dick from the judges he talked to was that lawyers were claiming in excess of $100,000 in damages without much analysis and in an attempt to avoid Rule 16.1. Our proposed changes force a more in-depth analysis before it becomes possible to avoid Rule 16.1, and, as will be seen, also allows a judge to put the case back under the rule in certain circumstances.

The changes essentially delete the "good cause" exception from Rule 16.1. Further, the damages calculation no longer excludes attorney fees. The purpose of this change is to avoid ambiguity when part of the damages claim itself includes attorney fees. *See e.g. Double Oak Const., LLC v. Cornerstone Development Intern., LLC*, 97 P.3d 140 (Colo. App. 2003). The balance of the rule is amended to allow removal from Rule 16.1 only in situations where plaintiff (or any other party) certifies that damages exceed $100,000.

Rule 16

Consistent with the proposed changes to Rule 16.1, we propose amending Rule 16 to require the parities to more fully describe their damages as part of the Case Management Order. The rule is also amended to provide that the court may strike any damages certification for good cause, which would return the case to Rule 16.1 The proposed Rule 16 changes are attached as Exhibit B (red-line and clean versions).

Civil Cover Sheet

Consistent with our proposed changes, we also suggest that the Form 1.2 Civil Cover Sheet be amended as shown in Exhibit C (red-line and clean versions).

Effective Date and Hearing

We recommend that these rules become effective on August 1, 2021. We do not believe that a public hearing is necessary on these changes but will defer to the views of the full committee.

Exhibit A

Proposed Changes to Rule 16.1

(a) Purpose of Simplified Procedure. The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to allow earlier trials; and to limit discovery and its attendant expense.

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:

> **(1)** civil actions that are class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
>
> **(2)** civil actions in which any one party seeks monetary judgment from any other party of more than $100,000, exclusive of ~~reasonable allowable attorney fees,~~ interest and costs.~~,~~ ~~as shown by a statement on the Civil Cover Sheet by the party's attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."~~

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) ~~Motion for~~ Exclusion from Simplified Procedure. Simplified Procedure shall apply unless:~~,~~ ~~no later than 42 days after the case is at issue as defined in C.R.C.P. 16 (b)(1), any party files a motion, signed by both the party and its counsel, if any, establishing good cause to exclude the case from the application of Simplified Procedure.~~

> **(1)** The Civil Cover Sheet includes a certification, signed by both the plaintiff and its counsel, if any, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."; or
>
> (2) No later than 42 days after the case is at issue as defined in C.R.C.P. 16 (b)(1), any other party files a certification, signed by both the party and its counsel, if any, ~~Good cause shall be established and the motion shall be granted if a defending party files a statement by its attorney or, if unrepresented, by the party,~~ that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000"; or

(3~~2~~) The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) through (l) no changes

Proposed Changes to Rule 16.1

(a) Purpose of Simplified Procedure. The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to allow earlier trials; and to limit discovery and its attendant expense.

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:

> **(1)** civil actions that are class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
>
> **(2)** civil actions in which any one party seeks monetary judgment from any other party of more than $100,000, exclusive of interest and costs.

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) Exclusion from Simplified Procedure. Simplified Procedure shall apply unless:

> **(1)** The Civil Cover Sheet includes a certification, signed by both the plaintiff and its counsel, if any, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."; or
>
> (2) No later than 42 days after the case is at issue as defined in C.R.C.P. 16 (b)(1), any other party files a certification, signed by both the party and its counsel, if any, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000"; or
>
> **(3)** The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) through (l) no changes

Exhibit B

Proposed Changes to Rule 16

Rule 16(b) - Case Management Order.

(1) through (5) no changes

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

(7) through (18) no changes

Rule 16(d) - Case Management Conference.

(1) and (2) no changes

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

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

Proposed Changes to Rule 16

Rule 16(b) - Case Management Order.

(1) through (5) no changes

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

(7) through (18) no changes

Rule 16(d) - Case Management Conference.

(1) and (2) no changes

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

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

Exhibit C

☐ **FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND**

District Court _____ County, Colorado Court Address: _____ Plaintiff(s): v. Defendant(s):	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number:

DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ☐ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

   ☐ This party is seeking a monetary judgment ~~against~~ from another party ~~for~~ of more than $100,000.00, ~~including any penalties or punitive damages, but excluding attorney fees,~~ exclusive of interest and costs, as supported by the following certification:

   By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

   Or

☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☐ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____ _____

Signature of Party ~~**or Attorney for Party**~~

Date: _____

_____

Signature of Attorney for Party (if any)

NOTICE

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

☐ **FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND**

District Court _____ County, Colorado Court Address: _____	
Plaintiff(s): v. Defendant(s):	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number:
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND	

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ☐ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

   ☐ This party is seeking a monetary judgment from another party of more than $100,000.00, exclusive of interest and costs, as supported by the following certification:

   By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

   Or

   ☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☐ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____ _____

Signature of Party

Date: _____ _____

Signature of Attorney for Party (if any)

NOTICE

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

Fw FYI re Water Rules Committee's Proposed Amendments to Civil Rules.txt
From: berger, michael
Sent: Tuesday, November 17, 2020 9:22 AM
To: michaels, kathryn
Subject: Fw: FYI re Water Rules Committee's Proposed Amendments to Civil Rules

fyi..

In addition, please put a place holder on the January agenda for discussion of proposed
amendments or new rules regarding uniform procedures in FED actions. I will have more
information on this as we approach the January meeting.

Michael H. Berger

From: gabriel, richard <richard.gabriel@judicial.state.co.us>
Sent: Monday, November 16, 2020 5:23 PM
To: márquez, monica <monica.marquez@judicial.state.co.us>
Cc: berger, michael <michael.berger@judicial.state.co.us>; rottman, andrew <andrew.rottman@judicial.state.co.us>
Subject: RE: FYI re Water Rules Committee's Proposed Amendments to Civil Rules

Thank you! I leave it in Judge Berger’s good hands!

Rich

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

From: márquez, monica <monica.marquez@judicial.state.co.us>
Sent: Monday, November 16, 2020 5:21 PM
To: gabriel, richard <richard.gabriel@judicial.state.co.us>
Cc: berger, michael <michael.berger@judicial.state.co.us>; rottman, andrew <andrew.rottman@judicial.state.co.us>
Subject: RE: FYI re Water Rules Committee's Proposed Amendments to Civil Rules

Rich,
I am following up on the thread below. As you know, the Water Rules Committee offered some proposed changes to C.R.C.P. 16, 16.1, and 26 to the Civil Rules Committee, which were adopted. You asked our committee to look into whether any

conforming changes to forms might be required. At the last Water Rules Committee meeting, we reviewed and agreed to forward proposed changes to two forms to track the changes to the Civil Rules. Before doing so, however, we asked Paul Benington to
conduct one final review to make sure that these are only two forms that would need to
be changed. We also asked Water Referee Susan Ryan to check with her water clerk regarding the specific language, as modified at the committee meeting. Paul had a paralegal check all of the forms, and he's confident that only the attached two forms
(JDF 601 and JDF 603) require conforming changes. Referee Ryan checked with her water clerk, who had no problem with the proposed changes.

With that, I pass the baton back to you.

Please let me know if you have any questions.

Regards,
Monica

Justice Monica M. Márquez
Colorado Supreme Court
2 East 14th Ave.
Denver, CO 80203
(720) 625-5450
monica.marquez@judicial.state.co.us

From: márquez, monica
Sent: Friday, September 25, 2020 5:27 PM
To: gabriel, richard <richard.gabriel@judicial.state.co.us>
Cc: berger, michael <michael.berger@judicial.state.co.us>; rottman, andrew <andrew.rottman@judicial.state.co.us>
Subject: RE: FYI re Water Rules Committee's Proposed Amendments to Civil Rules

Hi Rich,
That is great news. I'm copying Andy. The Water Rules Committee has a meeting coming up in a few weeks. I'll have Andy check with Paul Bennington and the subcommittee to review the forms in advance so we can have an answer for you soon.
Thanks,
Monica

Fw FYI re Water Rules Committee's Proposed Amendments to Civil Rules.txt
From: gabriel, richard <richard.gabriel@judicial.state.co.us>
Sent: Friday, September 25, 2020 2:40 PM
To: márquez, monica <monica.marquez@judicial.state.co.us>
Cc: berger, michael <michael.berger@judicial.state.co.us>
Subject: FYI re Water Rules Committee's Proposed Amendments to Civil Rules

Hi Monica –

The Civil Rules Committee has approved the Water Rules Committee's proposed amendments to C.R.C.P. 16, 16.1, and 26. The Civil Rules Committee has asked me to ask the Water Rules Committee to review the associated forms in the civil rules to let us
know whether any corresponding amendments to the forms are necessary.

Thanks!

Rich

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

☐FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

District Court _____ County, Colorado Court Address: _____ Plaintiff(s): v. Defendant(s):	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number:
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND	

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), ~~Water (CW),~~ Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases or in Water (CW) proceedings subject to sections 37-92-302 to 37-92-305, C.R.S. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ☐ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

   ☐ This party is seeking a monetary judgment against another party for more than $100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

   By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

   Or

☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☐ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____ **_____**

Signature of Party or Attorney for Party

NOTICE

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

INSTRUCTIONS TO COMPLETE DISTRICT CIVIL (CV) CASE COVER SHEET JDF 601 FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM, OR THIRD PARTY COMPLAINT, RULE 16.1 SIMPLIFIED PROCEDURE

These standard instructions are for informational purposes only and do not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as an attorney.

GENERAL INFORMATION

- As of July 1, 2004, the JDF 601 case cover sheet is required by C.R.C.P. 16.1 Simplified Procedure for all District Civil (CV) actions filed on or after that date. This cover sheet must be filed with the complaint and any counterclaim, cross-claim, or third party complaint.
- If you fail to file a Case Cover Sheet with such a pleading, you will be notified by the Court that you need to file a Case Cover Sheet and must then do so within the time stated by the Court, or the Court may impose sanctions, including striking this pleading.
- If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website: **http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm**

STEPS TO COMPLETE CIVIL CASE COVER SHEET

Step 1: Complete Caption.

- ❑ Identify the name of the county and court address where you plan to file your papers.
- ❑ Identify the name of the Plaintiff(s) and Defendant(s). If you have multiple Plaintiffs or Defendants, list only the first Plaintiff or Defendant.
- ❑ Complete the identifying information for the party or attorney completing the Case Cover Sheet.
- ❑ Once you file your papers, the Court will assign a case number and division and will indicate such on the Case Cover Sheet.
- ❑ If a case number has already been assigned, you must still complete the Case Cover Sheet and insert the case number.

Step 2: Complete Item 2.

- ❑ Check the applicable box if the Simplified Procedure **applies** to your case.

  or

- ❑ Check the applicable box if the Simplified Procedure **does not apply** to your case. If you have checked this box, **you must also check one of the three boxes** within this section to identify why the Simplified Procedure does not apply. The three options are identified below:

  - ❑ Some civil actions are automatically excluded and are not subject to C.R.C.P. 16.1. If you are filing a class action, domestic relations case, juvenile case, mental health case, probate case, ~~water law case~~a water law proceeding subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, Rule 106 or 120, petition to seal criminal record, distraint warrant, county court or municipal appeal, or a writ of habeas corpus civil action your case is not subject to the simplified procedure.

    or

  - ❑ Simplified Procedures does not apply if you are seeking a monetary judgment for more than $100,000.00 against any other party, including attorney fees, penalties or punitive damages, but excluding interest and costs, as well as the value of any equitable relief sought.

    or

- ❑ Simplified Procedures does not apply if another party has previously indicated in a Civil Case Cover Sheet that the Simplified Procedure under C.R.C.P 16.1 does not apply to your case.

Step 3: Complete Item 3. (Optional)

- ❑ You can request a jury trial and pay the requisite fee at this time. If you check this box, your filing fee must include the jury demand fee. Please refer to C.R.C.P. 38 for your right to request a jury trial and waiving the right to a jury trial.
- ❑ If you are making a jury demand pursuant to §38-1-106, C.R.S., a jury demand fee is not required for a jury of six freeholders. However, if you are requesting a jury of freeholders in excess of six (including alternates) an advance deposit of $50.00 per extra juror for one day of service is required. For example, if you demand a jury of 12, an advance deposit of $300.00 ($50.00 x 6) is required.

Step 4: Sign and Date Civil Case Cover Sheet.

- ❑ The party or the Attorney, if applicable, must date and sign the Civil Case Cover Sheet.

RULE CHANGE 2020(34)
COLORADO RULES OF CRIMINAL PROCEDURE

Rule 55.1. Public Access to Court Records in Criminal Cases

(a) Court records in criminal cases are presumed to be accessible to the public. Unless a court record or any part of a court record is inaccessible to the public pursuant to statute, rule, regulation, or Chief Justice Directive, the court may deny the public access to a court record or to any part of a court record only in compliance with this rule.

(1) Motion Requesting to Limit Public Access to Court Record Not Previously Filed. A party may file a motion requesting that the court limit public access to a court record not previously filed or to any part of such a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public. The motion must be accompanied by the court record the moving party seeks to make inaccessible or partially inaccessible to the public, must be served on any opposing party, and must be identified on the publicly available Register of Actions as a motion to limit public access. An opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court. Upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must also submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may order that the motion and the response, or redacted versions of the motion and the response, be accessible to the public during that timeframe.

(2) Motion Requesting to Limit Public Access to Court Record Previously Filed. A party may file a motion requesting that the court limit public access to a court record previously filed (including one not yet made accessible to the public) or to any part of such a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public. The motion must identify by title and date of filing the court record the moving party seeks to make inaccessible or partially inaccessible to the public, must be served on any opposing party, and must be identified on the publicly available Register of Actions as a motion to limit public access. An opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court. Upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may order that the motion and

the response, or redacted versions of the motion and the response, be accessible to the public during that timeframe.

(3) Title and Contents of Motion and Response. A motion to limit public access shall identify the court record or any part of the court record the moving party wishes to make inaccessible to the public, state the reasons for the request, and specify how long the information identified should remain inaccessible to the public. A response to a motion to limit public access shall state the reasons why the motion should be denied in whole or in part. The motion shall be titled, "Motion to Limit Public Access"; the response shall be titled, "Response to Motion to Limit Public Access."

(4) Orders Entered on Court's Own Motion. The court may, on its own motion, make a court record or other filing inaccessible to the public or order that only a redacted copy of it be accessible to the public. If the court does so, it must provide notice to the parties and the public via the publicly available Register of Actions and must also comply with paragraphs (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) of this rule. The clerk shall make the subject court record or filing inaccessible to the public pending the court's final decision, except that, in its discretion, the court may order a redacted version of the court record or filing accessible to the public during that timeframe. In its discretion, the court may hold a hearing in accordance with paragraph (a)(5) of this rule before ordering on its own motion a court record or any part of a court record inaccessible to the public.

(5) Hearing. The court may conduct a hearing on a motion to limit public access to a court record or to any part of a court record. Notice of the hearing shall be provided to the parties and the public via the publicly available Register of Actions. The court may close the hearing or part of the hearing if it finds that doing so is necessary to prevent the public from accessing the information that is the subject of the motion under consideration. If the court closes the hearing or part of the hearing, it shall enter appropriate protective orders regarding the transcript or recording of the proceeding and any evidence introduced during the hearing. Any such orders shall be modified or vacated if the court ultimately denies, in whole or in part, the request to limit public access.

(6) When Request Granted. The court shall not grant any request to limit public access to a court record or to any part of a court record, or enter an order on its own motion limiting such public access, unless it issues a written order in which it:

(I) specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;
(II) finds that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and

(III) concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.

(7) Duration of Order Granting Request. Any order limiting public access to a court record or to any part of a court record shall indicate a date or event certain by which the order will expire. That date or event shall be considered the order's expiration date or event.

(8) Public Access to Order Granting Request. The order limiting public access to a court record or to any part of a court record pursuant to this rule shall be accessible to the public, except that any information deemed inaccessible to the public under this rule shall be redacted from the order.

(9) Review of Order Granting Request. The court shall review any order limiting public access to a court record or to any part of a court record pursuant to this rule at the time of the expiration of the order or earlier upon motion of one of the parties. The court may postpone the expiration of such an order if, in a written order, it either determines that the findings previously made under paragraph (a)(6) of this rule continue to apply or makes new findings pursuant to paragraph (a)(6) of this rule justifying postponement of the expiration date or event. If the court postpones the expiration of the order, it must set a new expiration date or event.

(10) Limited Access to Original Court Record When Request Granted. If a court limits public access to a court record or to any part of a court record pursuant to this rule, only judges, court staff, parties to the case (and, if represented, their attorneys in that case), and other authorized Judicial Department staff shall have access to the original court record.

(11) When Request Denied. When denying a motion to limit public access to a court record or to any part of a court record under this rule, the court must ensure, without undue delay, that the public is given access to: the subject court record or the parts of that court record previously made temporarily inaccessible to the public pending resolution of the motion; the motion; any response; and, as to any hearing held, the transcript or recording of the proceeding and any evidence introduced during that proceeding.

Rule 55.1. Public Access to Court Records in Criminal Cases

(a) Court records in criminal cases are presumed to be accessible to the public. Unless a court record or any part of a court record is inaccessible to the public pursuant to statute, rule, regulation, or Chief Justice Directive, the court may deny the public access to a court record or to any part of a court record only in compliance with this rule.

(1) Motion Requesting to Limit Public Access to Court Record Not Previously Filed. A party may file a motion requesting that the court limit public access to a court record not previously filed or to any part of such a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public. The motion must be accompanied by the court record the moving party seeks to make inaccessible or partially inaccessible to the public, must be served on any opposing party, and must be identified on the publicly available Register of Actions as a motion to limit public access. An opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court. Upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must also submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may order that the motion and the response, or redacted versions of the motion and the response, be accessible to the public during that timeframe.

(2) Motion Requesting to Limit Public Access to Court Record Previously Filed. A party may file a motion requesting that the court limit public access to a court record previously filed (including one not yet made accessible to the public) or to any part of such a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public. The motion must identify by title and date of filing the court record the moving party seeks to make inaccessible or partially inaccessible to the public, must be served on any opposing party, and must be identified on the publicly available Register of Actions as a motion to limit public access. An opposing party wishing to object to the motion must file a response within 14 days after service of the motion unless otherwise directed by the court. Upon receiving the motion, the clerk shall make the subject court record inaccessible to the public pending the court's resolution of the motion, except that if a party seeks to make inaccessible to the public only parts of the subject court record, then the party must submit a redacted version of the court record with the motion and the clerk shall make the redacted version of the court record accessible to the public without undue delay. The clerk shall also make the motion and the response inaccessible to the public pending the court's resolution of the motion, except that, in its discretion, the court may order that the motion and

the response, or redacted versions of the motion and the response, be accessible to the public during that timeframe.

(3) Title and Contents of Motion and Response. A motion to limit public access shall identify the court record or any part of the court record the moving party wishes to make inaccessible to the public, state the reasons for the request, and specify how long the information identified should remain inaccessible to the public. A response to a motion to limit public access shall state the reasons why the motion should be denied in whole or in part. The motion shall be titled, "Motion to Limit Public Access"; the response shall be titled, "Response to Motion to Limit Public Access."

(4) Orders Entered on Court's Own Motion. The court may, on its own motion, make a court record or other filing inaccessible to the public or order that only a redacted copy of it be accessible to the public. If the court does so, it must provide notice to the parties and the public via the publicly available Register of Actions and must also comply with paragraphs (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10) of this rule. The clerk shall make the subject court record or filing inaccessible to the public pending the court's final decision, except that, in its discretion, the court may order a redacted version of the court record or filing accessible to the public during that timeframe. In its discretion, the court may hold a hearing in accordance with paragraph (a)(5) of this rule before ordering on its own motion a court record or any part of a court record inaccessible to the public.

(5) Hearing. The court may conduct a hearing on a motion to limit public access to a court record or to any part of a court record. Notice of the hearing shall be provided to the parties and the public via the publicly available Register of Actions. The court may close the hearing or part of the hearing if it finds that doing so is necessary to prevent the public from accessing the information that is the subject of the motion under consideration. If the court closes the hearing or part of the hearing, it shall enter appropriate protective orders regarding the transcript or recording of the proceeding and any evidence introduced during the hearing. Any such orders shall be modified or vacated if the court ultimately denies, in whole or in part, the request to limit public access.

(6) When Request Granted. The court shall not grant any request to limit public access to a court record or to any part of a court record, or enter an order on its own motion limiting such public access, unless it issues a written order in which it:

(I) specifically identifies one or more substantial interests served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;
(II) finds that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect any substantial interests identified; and

(III) concludes that any substantial interests identified override the presumptive public access to the court record or to an unredacted copy of it.

(7) Duration of Order Granting Request. Any order limiting public access to a court record or to any part of a court record shall indicate a date or event certain by which the order will expire. That date or event shall be considered the order's expiration date or event.

(8) Public Access to Order Granting Request. The order limiting public access to a court record or to any part of a court record pursuant to this rule shall be accessible to the public, except that any information deemed inaccessible to the public under this rule shall be redacted from the order.

(9) Review of Order Granting Request. The court shall review any order limiting public access to a court record or to any part of a court record pursuant to this rule at the time of the expiration of the order or earlier upon motion of one of the parties. The court may postpone the expiration of such an order if, in a written order, it either determines that the findings previously made under paragraph (a)(6) of this rule continue to apply or makes new findings pursuant to paragraph (a)(6) of this rule justifying postponement of the expiration date or event. If the court postpones the expiration of the order, it must set a new expiration date or event.

(10) Limited Access to Original Court Record When Request Granted. If a court limits public access to a court record or to any part of a court record pursuant to this rule, only judges, court staff, parties to the case (and, if represented, their attorneys in that case), and other authorized Judicial Department staff shall have access to the original court record.

(11) When Request Denied. When denying a motion to limit public access to a court record or to any part of a court record under this rule, the court must ensure, without undue delay, that the public is given access to: the subject court record or the parts of that court record previously made temporarily inaccessible to the public pending resolution of the motion; the motion; any response; and, as to any hearing held, the transcript or recording of the proceeding and any evidence introduced during that proceeding.

Amended and Adopted by the Court, En Banc, December 17, 2020, effective May 10, 2021.

By the Court:

Carlos A. Samour, Jr.
Justice, Colorado Supreme Court

Kevin Conner

CONFIDENTIAL

June 19, 2020

Colorado Supreme Court
2 East 14th Avenue
Denver, Colorado 80203
ATTN: Justice Richard Gabriel

Re: **Addendum** ~ Rules for Suppression of Information in County Court Records

Dear Committee Members:

I sent you a letter pleading for a swift and effective action in March in regards to allowing people to seal and expunge false accusations made in County Court. I have since discovered a number of disturbing issues that I feel should be brought to your attention. In addition, I believe there are some very simple fixes for all civil courts.

After discovering numerous issues with the County Court system, I am imploring you to make the following simple changes.

These changes merely bridge the gap between the current laws/mechanisms in the criminal and civil court systems. This gap is the source of all conflicts between the public's right to know, and the state's recognition of an individual's privacy in situations which constitutionally override a public's right to know (false criminal accusations; baseless filings; medical privacy; etc.)

Following the proposed changes, I will describe the problems and issues which will be resolved, including all concerns the committee has voiced in the last year, without creating complex changes in the law by simply saying "You may now use these mechanisms in additional proceedings."

New Civil Court Rules:

- County Courts have the authority to employ District Court Rule 121 paragraphs 1-5.
- All Civil Courts have the authority to employ all laws and procedures specifying the sealing and expungement of criminal records to civil cases, whose foundations are a criminal accusation (such as CRS 24-72-300et seq and CRS 24-72-700et seq).
- All Civil Court records pertaining to civil court cases whose foundations are a criminal accusation must be sealed and/or expunged based on the status of the criminal accusation in question.
  Example: if an accuser makes the false accusation that the accused committed a criminal act, and the investigation determined no such criminal act was committed, and sealed or expunged the criminal accusation in question, then the records of the civil case must be sealed/expunged in the same manner.

In accordance with HIPAA regulations, the following is enacted for all civil courts, District and County:

- All civil courts, District and County, must adhere to HIPAA regulations and hold medical privacy above the public right to know, and only in a court petition shall it be determined if that medical information should be made public.
- Medical accusations of one party onto another must be verified as factual before being accepted into the public record. This may be done with either a court order, or presentation of medical information to the judge by the accused party. When determining what may be shared with the accuser, the court shall adhere to to all medical privacy restrictions. If the accusation is determined to be false, it shall be stricken from the record. If the accusation is verified, the court proceedings are all immediately sealed, unless the public's need to know has been successfully established in a petition to the court.
- All other HIPAA laws not mentioned here, must also be observed.
- All additional medical privacy laws, both federal and state, must be observed.
- This is reaffirming the federal restrictions and guidelines that many county courts have been ignoring such as

Mesa County. These laws are already in place. It is not new law. This is reaffirming that all privileged medical information starts out as being suppressed, rather than forcing people to go back to suppress information that has already been wrongfully released to the public.

All Civil Courts, District and County, must adhere to CORA:

- In adherence with the U.S. Supreme Court decision of 1958 (U.S. vs Procter & Gamble), any Civil Court case whose foundation is based on a false criminal premise, such as an accusation of a criminal event which investigators determined had no merit or good cause, shall be expunged. This recognizes that such civil cases lack the foundation necessary to initiate a court action and have willfully violated the rights of the accused.

A very important note is the opinion of Justice Douglas:

"The fact that a criminal case failed does not mean that the evidence obtained could not be used in a civil case. It is only when the criminal procedure is subverted that 'good cause' for wholesale discovery and production of a grand jury transcript would be warranted. No such showing was made here..."

The following are reasons for the above changes:

1. The first issue that I found is that District Court judges using 121 p 1-5 are hesitant to seal any civil record that carries the weight of a criminal accusation.

2. As I said in my previous letter, anyone can make a criminal accusation in Civil Court even when it is false, such as "he/she was arrested for doing this..." when no such arrest and no such event occurred, but that criminal code offense/accusation remains on their civil check.

3. Because of the repeal and replace of the laws **CRS 24-72-300et seq**. with **CRS 24-72-700et seq.**, people are now able to circumvent the normal laws governing the sealing and expungement of criminal accusations by giving truthful or even false claims about those criminal events in civil court. The **300 series et seq**, applies to those who were not arrested and could also be used to argue that certain civil records **should be sealed as well** if they were based on a sealed accusation. With their replacement (the **700 series**), it could only be applied to people who were arrested, and to records in the CBI. This means that someone who had enough evidence of guilt to be arrested has more right to privacy than someone who was so innocent that law enforcement determined there was no chance they were guilty. And yet, the criminal accusation will stay with them forever. In addition, civil cases that are based on a dismissed and sealed criminal investigation can be made public through a false filing in Civil Court, causing the false filing and accusation of the criminal event to be public, yet the actual criminal investigation and conclusions by the investigators remain sealed and not public.

Personal Story Proving the Problem Exists: My uncle claimed that I attacked him and sent him to the hospital, and there was a police report of my guilt. In addition, he made a similar accusation in my grandma's name against me. I was investigated thoroughly by the police and Adult Protective Services (APS). They determined that not only was there no injury to my uncle, but that he attacked me. In addition, there was no police report, as it was an Incident Report/Call Log, which are two very different things. APS also determined there was no cause for any investigation, there was never any harm or threat, and that the incidents as described never took place. However, the APS report is completely sealed and I was unable to present the incident report into court before my uncle dropped it. So the false claim of elder abuse where I sent my uncle to the hospital went public, but the actual law enforcement investigations that cleared me are private. In fact, the sealed investigations also contain notes by the investigators with the instructions to arrest my uncle if he made one more false accusation.

As you can see, this act by my uncle was fully subverting and circumventing criminal rules and procedure to make a false claim of guilt in Civil Court.

- False claim of guilt public.
- Two criminal investigations clearing me, sealed and private.
- I'm not the only one whose rights have been violated like this and it seems that this specific process violates the U.S. Supreme Court Ruling of 1958 (mentioned above), because the civil action was filed without enough standing to have legally brought this criminal claim into civil court.

- Many County Courts (such as Mesa County) apparently don't feel the need to recognize HIPAA or CORA laws regarding privacy.
- For instance, anyone can make any unverified medical claim in Civil Court that could cause severe public and personal problems whether or not the claim is true. As County Clerk Charlene Benton of Mesa County confirmed, “We don't pay attention to HIPAA or CORA” (we assume she meant “County Court”, but we're not sure).

In my particular case, one other false claim my uncle made was that I am a “violent autistic”. I have been tested more than once in my life (young age testing; IQ placement testing for accelerated course placement; obtaining evidence to counter my uncle's false claims), and it was determined that I am more than **99% unlikely** to have any sort of autistic or mental condition. CORA and HIPAA laws require such medical accusations to be verified first before being placed on public record. No such process was implemented. Even then, only if it is a danger or concern to the public should such medical information be released to the public, whether or not it is a false claim.

I have been informed by my employers and employment attorneys that Colorado law prohibits me from being employed in a public position if there's even an accusation of a violent mental disorder. This is also true for certain criminal code violations such as elder abuse.

Background check companies also search transcripts for red flags, such as violent mental disorders and criminal codes. These operations are far more sophisticated now than they were 20 years ago.

In reading the minutes of the meetings, I know you are struggling with the right solution to resolve all the problems. The solutions are already there in law. These solutions have worked for years! These solutions have resolved problems with false criminal accusations, vindictive abuse of medical records/accusations, and where does the public right to know end, and a person's right to privacy begin. All of these legal problems have been answered with the examples I have given, along with others I haven't. The laws are there. They have been tested, and proven to have worked, and they continue to work. All you need to do is bridge the gaps.

Thank you.

Sincerely,

Kevin Conner

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Laws in the Discussion
incomplete list

Regarding Health Information and Privacy
http://www.healthinfolaw.org/state-law/records-colo-rev-stat-%C2%A7-27-65-121

Records: Colo. Rev. Stat. 27-65-121
http://www.lpdirect.net/casb/crs/27-65-121.html

Mental health records are confidential and privileged to the patient, and may only be disclosed according to the statute, or the accompanying regulation which can be found at Colo. Code Regs. §§ 502-1:21.170.2; 502-1:21.170.3. This statute does not compel a provider to disclose confidential information obtained from a patient's family member.

Disclosure With Consent:
A patient may consent to the disclosure of information relating to their mental health treatment. A guardian or conservator may consent on behalf of a ward or conservatee in writing.

Disclosure Without Consent:
Mental health information may be disclosed without a patient's consent under the following circumstances:
· Between providers for purposes of providing services
·As necessary to submit a claim for benefits or insurance
·For research purposes, provided that the researchers sign an oath of confidentiality
·To a patient's adult family member both fact and location of admission with regard to a patient admitted into inpatient or residential care.

Disclosure Pursuant to Court Order:
Mental health treatment information may be disclosed "[t]o the courts, as necessary to the administration of the provisions of this article."

etc.

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Current as of June 2015

http://www.healthinfolaw.org/state-topics/6,63/f_topics

Records - Colo. Rev. Stat. § 27-65-121

6 CCR 1011-1:II-6.100

C.R.S.A. § 12-36-117

C.R.S.A. § 12-36-140

Colo. Rev. Stat. § 27-82-109

Confidentiality; Release of Records - Colo. Code Regs. §§ 502-1:21.170.2; 502-1:21.170.3
Both mental health and substance abuse treatment records are confidential and privileged to the patient, and may only be disclosed according to...
[NOTE: It appears Mesa County doesn't adhere to this]

2 CCR 502-1:21.170.3, Release of information

C.R.S.A. § 27-81-113, Records of alcoholics and intoxicated persons

C.R.S.A. § 27-82-106, Voluntary treatment for persons incapacitated or under the influence of drugs

Clinical Records, Colo. Code Regs. § 10-2505-10 (§ 8.408.5)

Genetic information, Colo. Rev. Stat. § 10-3-1104.6

HIVtesting, Colo. Rev. Stat. § 10-3-1104.5

Powers and duties of executive director, Colo. Rev. Stat. § 25-4-1003

Privacy of health information, Colo. Rev. Stat. § 10-16-1003

Confidentiality - exceptions, Colo. Rev. Stat. § 12-33-126

Confidentiality of health information, Colo. Rev. Stat. § 10-16-423

Rev. Stat. § 25-32-106

Reports of electroconvulsive treatment, Colo. Rev. Stat. § 25-2-120

Sexually Transmitted Infections, Colo. Code Regs. § 6-1009-1 (Regulation 11)

Confidentiality of information collected, Colo. Rev. Stat. § 25-4-1905

Department of public health and environment, Colo. Rev. Stat. § 25-4-2403

Medical record documentation requirements, Colo. Rev. Stat. § 25-48-111

Named reporting of certain diseases and conditions, Colo. Rev. Stat. § 25-1-122

No public funds for abortion, Colo. Rev. Stat. § 25.5-3-106

No public funds for abortion, Colo. Rev. Stat. § 25.5-4-415

Perinatal Services, Colo. Code Regs. § 6-1011-1 (Chap 04 Part 20)

Powers and duties of executive director, Colo. Rev. Stat. § 25-4-1003

Registry for the medical use of marijuana Colo. Code Regs. § 5-1006-2 (Regulation 1)

Reports - confidentiality, Colo. Rev. Stat. § 25-4-406

Statewide emergency medical and trauma care system, Colo. Rev. Stat. § 25-3.5-704

The Colorado Central Cancer Registry, Colo. Code Regs. § 6-1009-3

The Trauma Registry, Colo. Code Regs. § 6-1015-4 (Chap 1)

Trauma Facility Designation Criteria, Colo. Code Regs. § 6-1015-4 (Chap 3 § 303)

Disciplinary proceedings Colo. Rev. Stat. § 12-35-129.2

Hospital professional review committees, Colo. Rev. Stat. § 12-36.5-104.4

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REMINDER: this is a partial list. When you start looking, you will find more that need to be looked at again.

ADVANCE SHEET HEADNOTE
January 11, 2021

2021 CO 4

No. 20SC225, *Schaden v. DIA Brewing Co., LLC*—C.R.C.P. 15(a)—C.R.C.P. 59—C.R.C.P. 60—Amendments—Finality—Futility.

This case requires the supreme court to determine whether, after a district court enters an order dismissing an action pursuant to C.R.C.P. 12(b)(1), C.R.C.P. 15(a) gives the plaintiff the right to amend its complaint as a matter of course and without leave of the court or the consent of the defendant, or whether such a dismissal results in a final judgment that cuts off the plaintiff's right to amend as a matter of course.

Reading C.R.C.P. 15(a) harmoniously with C.R.C.P. 59 and C.R.C.P. 60, the court now concludes that a final judgment cuts off a plaintiff's right to file an amended complaint as a matter of course under C.R.C.P. 15(a). Accordingly, because the dismissal order at issue constituted a final judgment, Plaintiff here did not have the right to amend its complaint as a matter of course but rather was obligated, if it wished to amend, to seek relief from the judgment and to file a

motion requesting leave to amend or indicating that Defendants had consented in writing to the filing of an amended complaint.

Nonetheless, in the circumstances presented, the court deems it appropriate to consider the viability of the amended complaint and now concludes, contrary to the district court, that that amended pleading is not futile but rather states viable claims for relief.

Accordingly, the supreme court affirms the judgment of the division below, albeit on different grounds, and remands this case with directions that the case be returned to the district court with instructions that the court accept Plaintiff's amended complaint for filing, after which Defendants may respond in the ordinary course.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 4

Supreme Court Case No. 20SC225
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 18CA2136

Petitioners:

Richard Schaden; MCE-DIA, LLC, a Michigan limited liability company; Midfield Concessions Enterprises, Inc. a Michigan limited liability company; Andrea Hachem; Noureddine "Dean" Hachem; Samir Mashni; Simrae Solutions LLC, a Colorado limited liability company; Sudan I. Muhammad; Pangea Concessions Group LLC, a Florida limited liability company; Niven Patel; and Rohit Patel,

v.

Respondent:

DIA Brewing Co., LLC, a Colorado limited liability company.

Judgment Affirmed
en banc
January 11, 2021

Attorneys for Petitioner Richard Schaden:
Haddon, Morgan and Foreman, P.C.
Saskia A. Jordan
Adam Mueller
Denver, Colorado

Attorneys for Petitioner MCE-DIA, LLC:
Merchant & Gould P.C.
Peter A. Gergely
Denver, Colorado

Woodrow & Peluso, LLC
Steven L. Woodrow
Denver, Colorado

Attorneys for Respondent:
Law Office of G. Stephen Long
G. Stephen Long
Denver, Colorado

Jones & Keller, P.C.
Christopher S. Mills
Denver, Colorado

Connelly Law, LLC
Sean Connelly
Denver, Colorado

No appearance on behalf of: Midfield Concessions Enterprises, Inc.; Andrea Hachem; Noureddine "Dean" Hachem; Samir Mashni; Simrae Solutions LLC; Sudan I. Muhammad; Pangea Concessions Group LLC; Niven Patel; and Rohit Patel

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 This case requires us to interpret Rule 15(a) of the Colorado Rules of Civil Procedure. Plaintiff below, DIA Brewing Co., LLC, contends that after the district court entered an order dismissing this action pursuant to C.R.C.P. 12(b)(1), C.R.C.P. 15(a) gave DIA Brewing the right to amend its complaint as a matter of course and without leave of the court or the consent of defendants because no responsive pleading had been filed. Defendants below, MCE-DIA, LLC and Richard Schaden (collectively, "MCE-DIA"), in contrast, contend that the C.R.C.P. 12(b)(1) dismissal resulted in a final judgment that cut off DIA Brewing's right to amend as a matter of course under C.R.C.P. 15(a). Thus, MCE-DIA contends that if DIA Brewing wanted to amend, it was required to seek leave of the court or to obtain MCE-DIA's written consent. We granted certiorari to resolve this dispute.[1]

¶2 Reading C.R.C.P. 15(a) harmoniously with C.R.C.P. 59 and C.R.C.P. 60, as we must, we now conclude that a final judgment cuts off a plaintiff's right to file an amended complaint as a matter of course under C.R.C.P. 15(a). We further

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[1] Specifically, we granted certiorari to review the following issue:

> Whether an order dismissing all of a plaintiff's claims without prejudice for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1) constituted an appealable final judgment that cut off the plaintiff's right to amend as a matter of course under C.R.C.P. 15(a).

conclude that the dismissal order here constituted a final judgment and that therefore DIA Brewing did not have the right to amend its complaint as a matter of course but rather was obligated, if it wished to amend, to seek relief from the judgment and to file a motion requesting leave to amend or indicating that MCE-DIA had consented in writing to the filing of an amended complaint.

¶3 Having reached that conclusion, we must consider the proper remedy. Although MCE-DIA would have us conclude that DIA Brewing failed to proceed properly in attempting to amend its complaint and therefore this case should be closed, we cannot ignore the facts that (1) our opinion today clarifies the scope of C.R.C.P. 15(a); (2) in its response to MCE-DIA's motion to dismiss, DIA Brewing noted its desire to seek to amend its complaint if the court found the complaint deficient; (3) although DIA Brewing did not formally seek relief from the judgment or leave to amend its complaint, it filed an amended complaint in the district court; and (4) we are in the same position as the district court in terms of our ability to assess the viability of that amended complaint.

¶4 In these circumstances, we deem it appropriate to consider the viability of the amended complaint, and we now conclude, contrary to the district court, that that amended pleading is not futile but rather states viable claims for relief.

¶5 Accordingly, we affirm the judgment of the division below, albeit on different grounds, and we remand this case with directions that the case be

returned to the district court with instructions that the court accept DIA Brewing's amended complaint for filing, after which MCE-DIA may respond in the ordinary course.

I. Facts and Procedural History

¶6 Because this case arises from an order dismissing DIA Brewing's claims, for present purposes, we take the facts principally from the allegations of DIA Brewing's complaint and, where appropriate, from its proffered amended complaint.

¶7 This case involves a dispute over the award of a concessions contract at Denver International Airport ("DIA"). The contract resulted from a Request for Proposals ("RFP") issued by the City and County of Denver Department of Aviation. The RFP specified that the winning bidder would receive a contract to develop, operate, and manage three restaurants and one branded gourmet coffee bar at DIA. The city received five proposals, including one from DIA Brewing and one from MCE-DIA. Following the recommendation of certain DIA officials, the Denver City Council awarded the contract to MCE-DIA. According to a publicly available document, DIA Brewing's bid was ranked fourth out of the five bids.

¶8 DIA Brewing subsequently filed suit, alleging claims of bid-rigging, tortious interference with a prospective business opportunity, civil conspiracy, and violations of the Colorado Organized Crime Control Act. As pertinent here, DIA

Brewing alleged that MCE-DIA had conspired with two DIA officials involved in the RFP process, Bhavesh Patel and Mukesh "Mookie" Patel, to ensure that MCE-DIA would be awarded the concessions contract notwithstanding MCE-DIA's failure to meet the minimum requirements for all bidders. (The district court dismissed the claims against both Bhavesh Patel and Mookie Patel on governmental immunity grounds, and those claims are not before us.) DIA Brewing asserted that, as part of this conspiracy, a number of individuals associated with MCE-DIA's bid had bribed Bhavesh Patel to ensure that MCE-DIA would be awarded the contract and that Bhavesh Patel and Mookie Patel had then steered the contract award to MCE-DIA by, among other things, rigging the bids, changing the RFP screening process, and changing or shredding the bid scoresheets. DIA Brewing contended, on information and belief, that it was, in fact, the highest scoring bidder and, thus, it should have been awarded the contract.

¶9 MCE-DIA moved to dismiss the complaint on several different grounds. Pertinent here, MCE-DIA argued that DIA Brewing lacked standing to sue because it had "finished in fourth place" and thus had not suffered any cognizable injury. MCE-DIA further argued that DIA Brewing's claims sounded in fraud but that DIA Brewing had failed to plead fraud with the particularity required by C.R.C.P. 9(b).

¶10 DIA Brewing responded that it had adequately pled all of its claims but that, should the district court dismiss any part of its complaint, it should be granted leave to amend pursuant to C.R.C.P. 15(a).

¶11 The district court agreed with MCE-DIA's arguments and granted the motions to dismiss without reference to the request from DIA Brewing for leave to amend. Notably, although the district court's minute orders indicated that the court had dismissed the action without prejudice, they also indicated that the court had closed the case.

¶12 Approximately one-and-a-half months later, and after MCE-DIA had filed a bill of costs and a motion for attorney fees, DIA Brewing filed a First Amended Complaint and Demand for Jury Trial. In doing so, DIA Brewing did not seek relief from the court's dismissal order. Nor did it move for leave to file an amended complaint or file a pleading indicating that MCE-DIA had consented in writing to the filing of an amended complaint.

¶13 DIA Brewing's proffered first amended complaint comprised 28 pages and 176 paragraphs of detailed allegations regarding the purported bid-rigging scheme. Among other things, the amended complaint made the following allegations, which we detail at some length given the questions presented here as to the viability of such allegations:

¶14 Bhavesh Patel had informed the people who would ultimately form MCE-DIA that he was designing and would have DIA issue what ultimately became the RFP at issue. Based on this inside information, MCE-DIA was formed.

¶15 To ensure that MCE-DIA would be awarded the contract, people associated with MCE-DIA bribed Patel to steer the contract to MCE-DIA in return for their agreement to include Patel's designees as part owners of MCE-DIA. Patel accepted this bribe.

¶16 Thereafter, Patel met with Schaden and other representatives of a restaurant that would ultimately become part of MCE-DIA's bid. At this meeting, Patel discussed the scheme by which MCE-DIA would obtain the contract, and after the meeting, Schaden joined in the alleged conspiracy.

¶17 In furtherance of this conspiracy, MCE-DIA did, in fact, include Patel's designees as owners of MCE-DIA, in exchange for his assurance that MCE-DIA would get the contract. Patel then completed his work in designing the RFP.

¶18 Notwithstanding Patel's efforts to help build MCE-DIA into a viable bidder, MCE-DIA submitted the weakest of the bids received because, in multiple respects described in detail in the amended complaint, its bid did not comply with the terms of the RFP.

¶19 After the bids had been submitted, Patel asked to see them, which DIA's lead administrator for the RFP found unusual. With access to the bids, Patel was

able to assess the strengths and weaknesses of the bidders before designing the scorecards and scoring matrix that the judges would use, and he designed the scorecards and scoring matrix with this information in mind. Specifically, although the RFP detailed the weight to be assigned to each of a number of identified criteria on which the judges were to base their evaluations, Patel designed scorecards with sixty line-item categories, each of which required the judges to assign a score. As Patel designed it, each of these line items had its own weight, separate and apart from the weights identified in the RFP itself. In this way, Patel was able to manipulate the scoring matrix to ensure that MCE-DIA would be ranked first, regardless of the judges' scores.

¶20 Thereafter, each of the bidders appeared for a presentation and an interview. Although generally only the lead administrator would speak during such meetings, Bhavesh Patel, who was seated in the room, controlled much of the questioning by sending texts to Mookie Patel with instructions that he attack DIA Brewing. In addition, through a subordinate, Bhavesh Patel also asked the lead administrator to ask questions highlighting the bidders' minority participation, which was an area that Patel viewed as favorable for MCE-DIA.

¶21 Although the lead administrator and others felt that MCE-DIA lacked the experience and qualifications to receive the contract, the judges were ultimately informed that MCE-DIA somehow had received the highest score. Four of the

seven judges were outraged to learn this, and several objected and sought to change their scoring. Notwithstanding the foregoing, MCE-DIA was subsequently awarded the contract.

¶22 Thereafter, questions were raised as to whether MCE-DIA's bid matched the RFP and as to the scoring of the bids. Those raising such questions, however, were advised that the scoresheets had been shredded. And although it was represented that this was done according to policy, in fact, it was done at Bhavesh Patel's direction and contrary to the lead administrator's statement to the judges that the scoresheets would remain in the possession of airport staff after the conclusion of the interviews.

¶23 At the conclusion of the RFP process, several participants in and witnesses to the process, all of whom were specifically named in the complaint, stated in words or substance that it was not possible that MCE-DIA could have been awarded the contract and that DIA Brewing should have been the winning bidder. Consistent with such sentiments, in a meeting between Bhavesh Patel and a prominent member of the concessions industry with whom Patel was speaking about securing a job at another airport, Patel boasted that he could rig RFP processes to determine the winner and that he, in fact, had steered the concessions contract at issue "away from the Wynkoop people" (referring to DIA Brewing) and to MCE-DIA.

¶24 Lastly, the amended complaint alleged that the FBI had begun an investigation into the purported bid-rigging scheme and that, in the course of this investigation, and after the original complaint had been filed, a recording had been made of a conversation between Bhavesh Patel and a representative of MCE-DIA in which the two discussed the lawsuit. In the course of this conversation, Patel stated, "[T]hey know what we did."

¶25 Upon being served with DIA Brewing's lengthy amended complaint, MCE-DIA moved to strike that pleading on the grounds that it was untimely, that it had been filed without any motions for leave or to vacate the district court's judgment, and that DIA Brewing still had not properly pleaded fraud with the requisite particularity or facts to establish its standing to sue.

¶26 The district court ultimately agreed with MCE-DIA. In particular, the court found that its prior ruling was a final judgment and thus cut off DIA Brewing's right to file an amended complaint. As a result, DIA Brewing's filing was "contrary to procedure" and "improper." Even were the court to ignore the finality of its own judgment, however, the court concluded that the proposed amendment was futile because the amended complaint, like the original complaint before it, still failed to establish DIA Brewing's standing to sue (based on the published ranking of the bids) and again did not plead fraud with the requisite particularity (but rather merely listed more "accusations," "suppositions," and

"perceived improprieties"). The district court thus refused to accept for filing DIA Brewing's amended complaint and reaffirmed its prior dismissal as a final appealable order.

¶27 DIA Brewing then appealed. A motions division of the court of appeals dismissed as untimely the portion of the appeal addressing the dismissal of the original complaint but permitted the appeal to proceed as to the district court's order striking the amended complaint. *DIA Brewing Co. v. MCE-DIA, LLC*, 2020 COA 21, ¶ 12, __ P.3d __.

¶28 Thereafter, in a published decision, a divided merits division reversed the district court's order. *Id.* at ¶ 3. As pertinent to the issues before us, the majority concluded that the order dismissing DIA Brewing's original complaint without prejudice was not final and, as a result, DIA Brewing retained the right to amend the complaint once as a matter of course pursuant to C.R.C.P. 15(a). *DIA Brewing Co.*, ¶¶ 3, 13–37. The majority further concluded that because DIA Brewing had a right to file an amended complaint, the district court erred when it applied the futility doctrine to that amended complaint. *Id.* at ¶¶ 3, 38–41. As a result, the majority reversed the order striking the amended complaint and remanded the case for further proceedings. *Id.* at ¶ 42.

¶29 Judge Fox dissented. *DIA Brewing Co. v. MCE-DIA, LLC*, 2020 COA 21, ¶¶ 43–73, __ P.3d __ (Fox, J., dissenting). In her view, the order dismissing DIA

Brewing's original complaint was final. *Id.* at ¶¶ 43, 54–73. She further concluded that once the district court entered its final judgment, DIA Brewing lost its right to amend as a matter of course. *Id.* at ¶¶ 43, 48–53. And because she concluded that the district court had properly struck the amended complaint, she did not address the district court's alternative conclusion that the amended complaint was futile. *Id.* at ¶ 73.

¶30 MCE-DIA petitioned this court for a writ of certiorari, and we granted that petition.

II. Analysis

¶31 We begin by addressing the applicable standard of review and the principles governing the interpretation of our procedural rules. Next, we address the proper interpretation of C.R.C.P. 15(a). Considering that rule in the context of the civil rules as a whole, we conclude, consistent with other courts that have considered the issue, that a final judgment cuts off the right to amend a complaint as a matter of course. Turning then to the facts before us, we conclude that the dismissal order at issue was a final judgment and thus cut off DIA Brewing's right to amend its complaint as a matter of course and required DIA Brewing to obtain either leave of the court or MCE-DIA's written consent to file an amended complaint. Finally, we address the appropriate remedy in this case.

A. Standard of Review and Principles of Rule Interpretation

¶32 We review a district court's interpretation of the Colorado Rules of Civil Procedure de novo. *See Mason v. Farm Credit of S. Colo.*, 2018 CO 46, ¶ 7, 419 P.3d 975, 979. We interpret the rules by applying settled principles of statutory construction. *Willhite v. Rodriguez-Cera*, 2012 CO 29, ¶ 9, 274 P.3d 1233, 1236. Thus, we interpret the rules according to their commonly understood and accepted meanings. *Mason*, ¶ 7, 419 P.3d at 979. In addition, we read the rules as a whole, "giving consistent, harmonious, and sensible effect to all of [their] parts and avoiding constructions that would render any words or phrases superfluous or lead to illogical or absurd results." *Pineda-Liberato v. People*, 2017 CO 95, ¶ 22, 403 P.3d 160, 164 (discussing statutory interpretation); *accord Willhite*, ¶ 9, 274 P.3d at 1236.

¶33 We construe the rules "liberally to effectuate their objective to secure the just, speedy, and inexpensive determination of every case and their truth-seeking purpose." *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, ¶ 24, 303 P.3d 1187, 1193; *accord* C.R.C.P. 1(a). In addition, "[b]ecause the Colorado Rules of Civil Procedure are patterned on the federal rules, we may also look to the federal rules and decisions for guidance." *Garrigan v. Bowen*, 243 P.3d 231, 235 (Colo. 2010).

¶34 Appellate courts generally review a district court's denial of a motion seeking leave to amend a complaint for an abuse of discretion. *Benton v. Adams*, 56 P.3d 81, 85 (Colo. 2002). When, however, a trial court denies leave to amend on the ground that the amendment would be futile, we review that question de novo. *Id.* Likewise, "[b]ecause standing is a question of law, we review the issue de novo." *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). And we review de novo a district court's order dismissing a complaint for failure to plead fraud with particularity. *See Baker v. Wood, Ris & Hames, Pro. Corp.*, 2016 CO 5, ¶¶ 58–66, 364 P.3d 872, 883–84 (reviewing de novo a trial court's dismissal of a claim for failing to plead fraudulent concealment with sufficient particularity pursuant to C.R.C.P. 9(b)).

B. Proper Interpretation of C.R.C.P. 15(a)

¶35 C.R.C.P. 15(a) provides, in pertinent part:

> A party may amend his pleading once as a matter of course at any time before a responsive pleading is filed . . . . Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

¶36 Because it is undisputed that a motion to dismiss is not a responsive pleading, *see Fladung v. City of Boulder*, 438 P.2d 688, 690 (Colo. 1968), DIA Brewing contends that C.R.C.P. 15(a)'s plain language afforded it the right to file an amended complaint as a matter of course. As noted above, however, we cannot read C.R.C.P. 15(a) in isolation. *See Pineda-Liberato*, ¶ 22, 403 P.3d at 164; *Willhite*,

¶ 9, 274 P.3d at 1236. Rather, we must consider it in the context of the rules as a whole, construing it so as not to render any other rules superfluous. *See Pineda-Liberato*, ¶ 22, 403 P.3d at 164; *Willhite*, ¶ 9, 274 P.3d at 1236.

¶37 In particular, we must consider DIA Brewing's proposed construction in light of C.R.C.P. 59 and C.R.C.P. 60. C.R.C.P. 59(a) affords a party the right to seek post-trial relief from a judgment, including by requesting the amendment of findings or of a judgment. C.R.C.P. 60(b), in turn, allows for relief from a final judgment or order, including for "[m]istake, inadvertence, surprise, or excusable neglect" or for "any other reason justifying relief from the operation of the judgment."

¶38 Under DIA Brewing's interpretation of C.R.C.P. 15(a), a plaintiff may file an amended complaint as a matter of course after judgment enters following the granting of a motion to dismiss an action, including, for example, for lack of standing, which is what occurred here. Such an interpretation, however, does not give effect to C.R.C.P. 59 and C.R.C.P. 60. Rather, it essentially gives a plaintiff in DIA Brewing's position a right to afford itself relief from a judgment at any time, without needing to request such relief from the court as contemplated by C.R.C.P. 59 and C.R.C.P. 60. We, however, cannot interpret one rule so as to render any other rule meaningless. *See Pineda-Liberato,* ¶ 22, 403 P.3d at 164; *Willhite*, ¶ 9, 274 P.3d at 1236.

¶39 Accordingly, we conclude that once a judgment enters and becomes final, a plaintiff no longer has the right to file an amended complaint as a matter of course under C.R.C.P. 15(a). Rather, such a plaintiff must seek relief from the judgment under C.R.C.P. 59 or C.R.C.P. 60 and must obtain either leave to amend from the court or written consent to amend from the defendant.

¶40 Indeed, although we have not previously addressed this issue, a number of other courts, including divisions of our court of appeals, have done so and have reached the same conclusion. *See, e.g.*, *Gandy v. Williams*, 2019 COA 118, ¶ 10, 461 P.3d 575, 581 (noting that although the filing of the defendant's motion to dismiss did not terminate the plaintiff's right to amend as a matter of course, the court's granting of that motion and entry of a judgment of dismissal did so); *Harris v. Reg'l Transp. Dist.*, 155 P.3d 583, 587 (Colo. App. 2006) (concluding that because the plaintiff did not file his motion for leave to amend until after the district court had entered its judgment, the plaintiff lost the right to amend as a matter of course); *Est. of Hays v. Mid-Century Ins. Co.*, 902 P.2d 956, 959 (Colo. App. 1995) ("Once final judgment has entered, an amendment to a pleading under C.R.C.P. 15(a) should not be allowed unless the judgment is set aside or vacated."); *Wilcox v. Reconditioned Off. Sys. of Colo., Inc.*, 881 P.2d 398, 400 (Colo. App. 1994) ("[W]hen final judgment is entered before a responsive pleading is filed, the liberal approach of C.R.C.P. 15 must be balanced against the value of preserving the

integrity of final judgments. Therefore, if final judgment is entered before a responsive pleading has been served, the absolute right to amend the complaint as a matter of course is lost[,] . . . [and] an amendment should not be allowed unless the original judgment is set aside or vacated under [Rule] 59 or 60(b)."); *see also JBJ Inv. of S. Fla., Inc. v. S. Title Grp.*, 251 So.3d 173, 180 (Fla. Dist. Ct. App. 2018) (noting that, with leave of the court, a party may amend its complaint even after summary judgment has been entered against it); *Lathan v. Hosp. Auth.*, 805 S.E.2d 450, 457 (Ga. Ct. App. 2017) (noting that although the right to amend is broad, it cannot be exercised after judgment has been entered and not set aside).

¶41 In our view, such an interpretation of C.R.C.P. 15(a) reads that rule harmoniously with C.R.C.P. 59 and C.R.C.P. 60. This reading also avoids absurd results. For example, under DIA Brewing's interpretation of C.R.C.P. 15(a), a plaintiff in DIA Brewing's position would have no deadline to file an amended complaint—C.R.C.P. 15(a) states that a party may amend as a matter of course "at any time before a responsive pleading is filed," and on the facts presented here, no responsive pleading will ever be filed.

¶42 Recognizing this issue, at oral argument, counsel for DIA Brewing argued that the court can simply read in a "reasonable time" limitation. But we are not persuaded that DIA Brewing's solution, which would require us to add words to C.R.C.P. 15(a), is preferable to our approach, which gives meaning to

C.R.C.P. 15(a), C.R.C.P. 59, and C.R.C.P. 60 without altering the language of any of those rules.

¶43 In so concluding, we are not persuaded by DIA Brewing's reliance on *Passe v. Mitchell*, 423 P.2d 17 (Colo. 1967). As an initial matter, we note that the *Passe* court did not address the issue presently before us. *Id.* at 17–18. Rather, in a two-page opinion, the court ruled, without discussion or analysis, that the district court should not have entered its order dismissing the plaintiff's claims with prejudice before giving the plaintiff an opportunity to amend the complaint. *Id.* The *Passe* court did not hold that a plaintiff can file an amended complaint in spite of the entry of a final judgment. *See id.* at 18. Nor did the court consider the applicability of C.R.C.P. 59 or C.R.C.P. 60 or whether any attempt to amend the complaint would have been futile. *Id.* In these circumstances, we are unwilling to give *Passe* the dispositive weight that DIA Brewing ascribes to it.

¶44 We likewise are unpersuaded by DIA Brewing's reliance on *Wistrand v. Leach Realty Co.*, 364 P.2d 396 (Colo. 1961). The question before us in *Wistrand* was whether a dismissal without prejudice for failure to state a claim on which relief could be granted constituted a final adjudication for claim preclusion purposes. *Id.* at 397. We rejected the defendant's plea of claim preclusion, noting that the district court's designation of its dismissal order as without prejudice signaled the court's intention to allow the plaintiff to return to court to have his claim

adjudicated on the merits. *Id.* It is in this context that we stated, albeit without analysis or citation to authority, "On dismissal of the original action [the plaintiff] could have (1) amended its complaint, (2) stood on its complaint and appealed, (3) accepted a dismissal without prejudice or (4) had its rights finally adjudicated by a dismissal with prejudice and failure to appeal." *Id.* We did not, however, opine on the question before us today. *See id.* Nor did we suggest that a plaintiff could amend a complaint as a matter of course after entry of a final judgment. *See id.*

¶45 Having thus concluded that a final judgment cuts off a plaintiff's right to file an amended complaint as a matter of course, we must decide whether the dismissal order at issue was a final judgment. We turn next to that issue.

C. Finality of Dismissal Order

¶46 "A final judgment is 'one which ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding.'" *In re Water Rts. of Elk Dance Colo., LLC*, 139 P.3d 660, 668 (Colo. 2006) (quoting *E.O. v. People in Int. of C.O.A.*, 854 P.2d 797, 800 (Colo. 1993)).

¶47 A court's decision to designate a judgment as with or without prejudice is, to be sure, relevant to the determination of finality. *See Schoenewald v. Schoen*, 286 P.2d 341, 341 (Colo. 1955) (concluding that an order dismissing a complaint

"without prejudice to the bringing of a separate action for the determination of issues tendered" was not a final judgment). But such a designation is not alone dispositive for purposes of determining finality and a party's right to appeal. *See United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 794 n.1 (1949) ("That the dismissal was without prejudice to filing another suit does not make the cause unappealable, for denial of relief and dismissal of the case ended this suit so far as the District Court was concerned."); *Moya v. Schollenbarger*, 465 F.3d 444, 448 (10th Cir. 2006) (concluding that, because "the district court in this case intended to dismiss [the plaintiff's] entire cause of action," the dismissal without prejudice was final and the appellate court had jurisdiction). Rather, we must look to the substance of the judgment at issue. *Brody v. Bock*, 897 P.2d 769, 777 (Colo. 1995) ("[A] trial court's characterization of an order to dismiss a claim without prejudice is not dispositive. If a judgment in fact completely resolves the rights of the parties before the court with respect to a claim and no factual or legal issues remain for judicial resolution, the judgment is final as to that claim.") (citation omitted); *see also Moya*, 465 F.3d at 449 ("In evaluating finality, . . . we look to the *substance* and *objective intent* of the district court's order, not just its terminology.").

¶48 In our view, the judgment at issue was final, regardless of whether it was designated as without prejudice. In the district court's order dismissing DIA Brewing's case, it concluded that DIA Brewing had not suffered an injury as the

result of the alleged scheme and therefore lacked standing to bring such a suit. "Standing is a jurisdictional prerequisite that can be raised at any time during the proceedings; if there is no standing, the court must dismiss the case." *People v. Shank*, 2018 CO 51, ¶ 9, 420 P.3d 240, 243. Therefore, after finding that DIA Brewing lacked standing, the district court was compelled to dismiss the case as it lacked jurisdiction to hear it. At that point, there remained nothing for the court to decide and nothing further for the court to pronounce.

¶49 Accordingly, we conclude that the judgment in this case was final and therefore cut off DIA Brewing's right to amend as a matter of course under C.R.C.P. 15(a).

¶50 In so concluding, we decline to define a final judgment in terms of whether a complaint can be cured or not, as DIA Brewing contends and the majority below concluded. *DIA Brewing*, ¶¶ 30–37. In our view, such a rule does not provide a workable or consistent standard. Moreover, such a rule would effectively allow a party like DIA Brewing to decide unilaterally whether the judgment was final. Such a determination, however, is one for the court, not for either of the parties.

¶51 For these reasons, we conclude that the dismissal order at issue was a final judgment, that DIA Brewing therefore did not have the right to file its amended complaint as a matter of course, and that the majority below erred in determining

otherwise. Our analysis, however, cannot end there. Rather, we must address the appropriate remedy.

D. Remedy

¶52 MCE-DIA asserts that because DIA Brewing failed to proceed properly in attempting to amend its complaint, this case should be closed. We, however, cannot ignore the fact that our opinion today clarifies the proper scope and interpretation of C.R.C.P. 15(a), which, as the reasoning of the majority below indicates, appears to have been unsettled. Accordingly, at a minimum, we believe that DIA Brewing should be provided an opportunity to seek relief from the judgment and leave to file its amended complaint. Given that the district court has already determined that its judgment was final and that any amendment would be futile, however, we perceive that no good purpose would be served by remanding for the district court simply to re-enter its previous findings, only to have DIA Brewing appeal again. This is particularly true given that questions as to the viability of DIA Brewing's amended complaint raise solely questions of law and that "[w]hen reviewing a district court's ruling on a motion to dismiss, we are in the same position as the district court." *Baker*, ¶ 62, 364 P.3d at 884. Accordingly, rather than further delay an appellate ruling as to the viability of DIA Brewing's amended complaint, we proceed to consider that question. *See C.S. v. People*, 83 P.3d 627, 630 (Colo. 2004) (reversing the court of appeals division's

determination that it lacked jurisdiction to review an appeal but proceeding to address the merits of the appeal, rather than remanding to the court of appeals, in the interest of judicial economy).

¶53 As noted above, the district court concluded that DIA Brewing's effort to amend its complaint was futile because the proffered amended complaint still (1) failed to demonstrate that DIA Brewing had suffered an injury in fact and therefore had standing to sue MCE-DIA and (2) did not plead fraud with the requisite particularity. We respectfully disagree with both of these conclusions, and we address them in turn.

¶54 In order to establish standing, a plaintiff must demonstrate that (1) he or she has suffered an injury in fact and (2) the injury was to a legally protected interest. *Reeves-Toney v. Sch. Dist. No. 1*, 2019 CO 40, ¶ 22, 442 P.3d 81, 86. "[T]he injury-in-fact requirement ensures that an actual controversy exists so that the matter is a proper one for judicial resolution." *Hickenlooper v. Freedom from Religion Found.*, 2014 CO 77, ¶ 9, 338 P.3d 1002, 1006. This requirement further "ensures a 'concrete adverseness' that sharpens the presentation of issues to the court." *Id.* (quoting *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000)). The legally-protected-interest prong, in turn, promotes judicial self-restraint and is satisfied when a party asserts claims for relief under

the constitution, the common law, a statute, or a rule or regulation. *Id.* at ¶ 10, 338 P.3d at 1007.

¶55 With respect to any injury in fact, DIA Brewing's amended complaint alleged that (1) DIA Brewing had spent approximately $250,000 in preparing a bid to participate in what it alleges was a rigged process in which it was denied a fair opportunity to compete; (2) Bhavesh Patel deliberately steered the contract away from the "Wynkoop people" (i.e., DIA Brewing); (3) based on the assessments of several participants in the process, had the process been fair and a winner been chosen objectively, DIA Brewing would have been awarded the contract; and (4) as a result of the loss of this contract, DIA Brewing suffered direct economic harm in the form of millions of dollars of lost profits. In our view, these allegations are sufficient to demonstrate an injury in fact and thus support DIA Brewing's standing to bring this suit.

¶56 In so concluding, we are unpersuaded by MCE-DIA's assertion and the district court's conclusion that DIA Brewing lacks standing because its bid was ranked fourth out of the five bids. DIA Brewing has alleged that the ranking was the product of a corrupt process and that in a fair process, its bid would have been ranked first. Such allegations, if ultimately proved, would establish the requisite injury in fact to support DIA Brewing's standing to bring suit. *See Free Air Corp. v. FCC*, 130 F.3d 447, 450 (D.C. Cir. 1997) ("[S]ufficiently viable runners-up in a

procurement process have standing to allege that an illegality in the process caused the contract to go to someone else and not to them."); *Nat'l Mar. Union of Am. v. Commander, Mil. Sealift Command*, 824 F.2d 1228, 1237–38 (D.C. Cir. 1987) ("[I]njury to a bidder's right to a fair procurement is obviously an injury both traceable to the alleged illegality in a procurement and redressable by any remedy that eliminates the alleged illegality."); *Cheeks of N. Am., Inc. v. Fort Myer Constr. Corp.*, 807 F. Supp. 2d 77, 94 (D.D.C. 2011) (noting that a disappointed bidder may have standing to bring a bid-rigging conspiracy claim if it can demonstrate that it may have been awarded the contract in the absence of the conspiracy), *aff'd*, No. 11-7117, 2012 WL 3068449 (D.C. Cir. July 26, 2012).

¶57 Turning then to the question of whether DIA Brewing pleaded fraud with sufficient particularity, we note that C.R.C.P. 9(b) provides, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Thus, a complaint alleging fraud must specify the statements that the plaintiff claims were false or misleading, provide particulars regarding the respect in which the statements were fraudulent, allege when and where the statements were made, and identify who made such statements. *State Farm Mut. Auto. Ins. Co. v. Parrish*, 899 P.2d 285, 288 (Colo. App. 1994); *see also United States ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726–27 (10th Cir. 2006) (noting that, at a minimum, Federal Rule of Civil Procedure 9(b), which is

substantively identical to the Colorado Rule, requires a plaintiff to allege the who, what, when, where, and how of the alleged fraud), *abrogated on other grounds by Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 139 S. Ct. 1507, 1511–12 (2019).

¶58 Although a plaintiff need not plead all of the evidence that it might present to prove its fraud claim, "the complaint must at least state the main facts or incidents which constitute the fraud so that the defendant is provided with sufficient information to frame a responsive pleading and defend against the claim." *Parrish*, 899 P.2d at 289. In addition, "an allegation 'on information and belief' may be sufficient, if accompanied by a statement on which the belief is founded, when the facts in question are peculiarly within the opposing party's knowledge and the complaint sets forth the factual basis for the plaintiff's belief." *Id.* at 288.

¶59 Here, we have little difficulty concluding that DIA Brewing's amended complaint pleaded fraud with the requisite particularity. As described at length above, the amended complaint detailed every aspect of the alleged bid-rigging conspiracy—from its inception, to the creation of MCE-DIA, to the bribery of Bhavesh Patel, to Patel's manipulation of the scoresheets to ensure that MCE-DIA would be awarded the contract (notwithstanding the fact that its bid did not meet the requirements of the RFP), to the actual contract award, to Patel's directing the destruction of the scoresheets to avoid detection of the bid-rigging scheme, to the

current criminal investigation, to Patel's admission that "they know what we did." Moreover, in making these allegations, DIA Brewing provided detailed information as to who spoke with whom, when, and what was said and done. And DIA Brewing specifically alleged facts, attributed to people involved in the RFP process, to support its contention that had the process been fair, MCE-DIA would not have been awarded the contract and DIA Brewing would have been the successful bidder.

¶60 In our view, these allegations are more than sufficient to satisfy C.R.C.P. 9(b)'s requirement that a plaintiff plead fraud with particularity because they set forth the who, what, when, where, and how of the alleged fraud. Indeed, it is difficult to perceive what else DIA Brewing could have alleged here, particularly given that many of the facts at issue are in the exclusive possession of MCE-DIA and people associated with it. As noted above, C.R.C.P 9(b) does not require that a plaintiff set forth all of its evidence in its complaint. Nor does C.R.C.P. 9(b) require a plaintiff to prove its entire case in its complaint.

¶61 Accordingly, we conclude that DIA Brewing's proffered amended complaint is not futile and properly alleges both standing and the claims set forth in that complaint. We therefore further conclude that the proper remedy here is to remand this case with directions that the case be returned to the district court with instructions that the court accept DIA Brewing's amended complaint for

filing, after which MCE-DIA may proceed to respond in the ordinary course. We, of course, express no opinion on the merits of any of DIA Brewing's allegations.

III. Conclusion

¶62 For the foregoing reasons, we conclude that a final judgment cuts off a plaintiff's right to amend a complaint as a matter of course under C.R.C.P. 15(a). Accordingly, upon entry of a final judgment, in order to amend its complaint, a plaintiff must seek relief from the judgment under C.R.C.P. 59 or C.R.C.P. 60 and may amend its complaint only with leave of the court or with the written consent of the defendant.

¶63 Applying those principles here, we further conclude that the district court's order dismissing DIA Brewing's complaint for lack of standing constituted a final judgment and that therefore DIA Brewing did not have the right to file its amended complaint as a matter of course. Nevertheless, because (1) our opinion today clarifies the proper scope and interpretation of C.R.C.P. 15(a), (2) DIA Brewing filed an amended complaint below, and (3) we are in the same position as the district court in terms of our ability to assess the viability of that amended complaint, we have reviewed the amended complaint and conclude that its filing would not be futile, either for lack of standing or for a failure to plead fraud with particularity under C.R.C.P. 9(b).

¶64 Accordingly, we affirm the judgment of the division below, albeit on different grounds, and we remand this case for further proceedings consistent with this opinion.

michaels, kathryn

From: berger, michael
Sent: Thursday, November 5, 2020 12:27 PM
To: michaels, kathryn
Cc: berger, michael
Subject: Fw: Civil Rules Committee - Rule 15(a) subcommittee
Attachments: Revised CRCP 15(a) - clean.pdf; Revised CRCP 15(a) - redline.pdf

Kathryn, please put this on the January agenda.

Michael H. Berger

From: John Lebsack <JLebsack@wsteele.com>
Sent: Thursday, November 5, 2020 10:05 AM
To: berger, michael <michael.berger@judicial.state.co.us>
Cc: John Webb <John.Webb@coag.gov>; John Palmeri <jpalmeri@grsm.com>; Brad Levin <bal@levinsitcoff.com>; Stephanie Scoville <Stephanie.Scoville@coag.gov>
Subject: Civil Rules Committee - Rule 15(a) subcommittee

Judge Berger-
The Rule 15(a) subcommittee submits these proposed changes to the rule. The changes address problems in the current rule discussed in *DIA Brewing, LLC v. MCE-DIA, LLC*, 2020COA21. Because our proposed changes largely borrow from the Federal rule, the Federal rule is also shown.

We also suggest changing the gender-specific "his" in the rule.

John Lebsack | attorney
WHITE AND STEELE
600 17th Street, Suite 600N
Denver, Colorado 80202
Cell 303-378-3063
Main 303-296-2828
Email jlebsack@wsteele.com

Proposed Revisions to C.R.C.P. 15(a) - Amended and Supplemental Pleadings

(a) **Amendments**. A party may amend ~~his~~ a pleading once as a matter of course ~~at any time~~within: (1) 21 days after serving it; or (2) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier~~before a responsive pleading is filed or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 21 days after it is filed~~. Otherwise, a party may amend ~~his~~ a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Any required response to an amended pleading must be made~~A party shall plead in response to an amended pleading~~ within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Federal Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course*. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond*. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

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From: berger, michael
Sent: Sunday, December 20, 2020 11:32 AM
To: John Lebsack
Cc: michaels, kathryn
Subject: Re: Civil rules committee

Thanks John. Kathryn, please put this on the January agenda.

Michael H. Berger

From: John Lebsack <JLebsack@wsteele.com>
Sent: Sunday, December 20, 2020 11:27 AM
To: berger, michael <michael.berger@judicial.state.co.us>
Cc: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: Civil rules committee

Judge Berger-
Depositions under Rule 30(b)(6) are widely used but often lead to disagreements over the topics. The Federal rules were recently changed to require the parties to confer about the matters for examination before the notice is issued. The redline changes are on pages 7-8 of this PDF. I think making the same changes to the Colorado rule would avoid many of the 30(b)(6) problems that I've encountered and heard about from other lawyers.

John Lebsack | attorney
WHITE AND STEELE
600 17th Street, Suite 600N
Denver, Colorado 80202
Cell 303-378-3063
Main 303-296-2828
Email jlebsack@wsteele.com

116th Congress, 2d Session – – – – – – – – – – – – House Document 116–145

AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE THAT HAS BEEN ADOPTED BY THE SUPREME COURT, PURSUANT TO 28 U.S.C. 2072

AUGUST 7, 2020.—Referred to the Committee on the Judiciary and ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

99–011 WASHINGTON : 2020

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 27, 2020.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: I have the honor to submit to the Congress an amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying the amended rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 23, 2019; a redline version of the rule with committee note; an excerpt from the September 2019 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the June 2019 report of the Advisory Committee on Civil Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 27, 2020

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure are amended to include an amendment to Rule 30.

[*See infra* pp. ___ ___ ___.]

2. That the foregoing amendment to the Federal Rules of Civil Procedure shall take effect on December 1, 2020, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 30. Depositions by Oral Examination

* * * * *

(b) Notice of the Deposition; Other Formal Requirements.

* * * * *

(6) ***Notice or Subpoena Directed to an Organization.*** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will

testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

* * * * *

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

October 23, 2019

MEMORANDUM

To: Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court a proposed amendment to Rule 30(b)(6) of the Federal Rules of Civil Procedure, which was approved by the Judicial Conference at its September 2019 session. The Judicial Conference recommends that the amendment be adopted by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a copy of the affected rule incorporating the proposed amendment and accompanying committee note; (ii) a redline version of the same; (iii) an excerpt from the September 2019 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the [June] 2019 Report of the Advisory Committee on Civil Rules.

Attachments

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE[1]

Rule 30. Depositions by Oral Examination

* * * * *

(b) Notice of the Deposition; Other Formal Requirements.

* * * * *

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[1] New material is underlined; matter to be omitted is lined through.

consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty ~~to make this designation.~~ to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

* * * * *

Committee Note

Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns raised have

included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).

Candid exchanges about the purposes of the deposition and the organization's information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.

The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The process of conferring may be iterative. Consistent with Rule 1, the obligation is to confer in good faith about the matters for examination, but the amendment does not require the parties to reach agreement. In some circumstances, it may be desirable to seek guidance from the court.

When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.

Because a Rule 31 deposition relies on written questions rather than a description with reasonable particularity of the matters for examination, the duty to confer about the matters for examination does not apply when an organization is deposed under Rule 31(a)(4).

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed amendment to Rule 30(b)(6), with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was published for public comment in August 2018.

Rule 30(b)(6), the rule that addresses deposition notices or subpoenas directed to an organization, appears regularly on the Advisory Committee's agenda. Counsel for both plaintiffs and defendants complain about problematic practices of opposing counsel under the current rule, but judges report that they are rarely asked to intervene in these disputes. In the past, the Advisory Committee studied the issue extensively but identified no rule amendment that would effectively address the identified problems. The Advisory Committee added the issue to its agenda once again in 2016 and has concluded, through the exhaustive efforts of its Rule 30(b)(6) Subcommittee, that discrete rule changes could address certain of the problems identified by practitioners.

In assessing the utility of rule amendments, the subcommittee began its work by drafting more than a dozen possible amendments and then narrowing down that list. In the summer of 2017, the subcommittee invited comment about practitioners' general experience under the rule as well as the following six potential amendment ideas:

1. Including a specific reference to Rule 30(b)(6) among the topics for discussion by the parties at the Rule 26(f) conference and between the parties and the court at the Rule 16 conference;

2. Clarifying that statements of the Rule 30(b)(6) deponent are not judicial admissions;

3. Requiring and permitting supplementation of Rule 30(b)(6) testimony;

4. Forbidding contention questions in Rule 30(b)(6) depositions;

5. Adding a provision to Rule 30(b)(6) for objections; and

6. Addressing the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions.

More than 100 comments were received. The focus eventually narrowed to imposing a duty on the parties to confer. The Advisory Committee agreed that such a requirement was the most promising way to improve practice under the rule.

The proposed amendment that was published for public comment required that the parties confer about the number and description of matters for examination and the identity of each witness the organization will designate to testify. As published, the duty to confer requirement was meant to be iterative and included language that the conferral must "continu[e] as necessary."

During the comment period, the Advisory Committee received approximately 1,780 written comments and heard testimony from 80 witnesses at two public hearings. There was strong opposition to the proposed requirement that the parties confer about the identity of each witness, as well as to the directive that the parties confer about the "number and description of" the matters for examination. However, many commenters supported a requirement that the parties confer about the matters for examination.

After carefully reviewing the comments and testimony, as well as the subcommittee's report, the Advisory Committee modified the proposed amendment by: (1) deleting the requirement to confer about the identity of the witness; (2) deleting the "continuing as necessary" language; (3) deleting the "number and description of" language; and (4) adding to the committee note a paragraph explaining that the duty to confer does not apply to a deposition under Rule 31(a)(4) (Questions Directed to an Organization). The proposed amendment approved by the Advisory Committee therefore retains a requirement that the parties confer about the matters for examination. The duty adds to the rule what is considered a best practice – conferring about the matters for examination will certainly improve the focus of the examination and preparation of the witness.

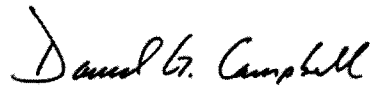
The Standing Committee voted unanimously to adopt the recommendation of the Advisory Committee.

* * * * *

Recommendation: That the Judicial Conference approve the proposed amendment to Civil Rule 30(b)(6) * * * and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Peter D. Keisler
Daniel C. Girard	William K. Kelley
Robert J. Giuffra Jr.	Carolyn B. Kuhl
Susan P. Graber	Jeffrey A. Rosen
Frank M. Hull	Srikanth Srinivasan
William J. Kayatta Jr.	Amy J. St. Eve

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. John D. Bates, Chair
Advisory Committee on Civil Rules

RE: Report of the Advisory Committee on Civil Rules

DATE: June 4, 2019

Introduction

The Civil Rules Advisory Committee met in San Antonio, Texas, on April 2-3, 2019.

* * * * *

The Committee has two action items to report. The first is a recommendation for adoption of an amendment of Civil Rule 30(b)(6) that simplifies the proposal published for comment in August 2018.

* * * * *

A. For Final Approval: Rule 30(b)(6)

The Rule 30(b)(6) amendment proposal published for public comment drew much attention. Twenty-five witnesses appeared at the hearing in Phoenix and 55 at the hearing in Washington, DC. Some 1780 written comments were submitted, about 1500 of them during the last week of public comment. Summaries of the testimony and those written comments are included at Appendix A.

Having reviewed the public commentary and received the Subcommittee's report and recommendation, the Advisory Committee is bringing forward a modified version of the preliminary draft amendments with the recommendation that it be forwarded to the Judicial Conference for adoption. The Committee has concluded that an amendment requiring in all cases what many commenters affirmed was best practice – conferring about the matters for examination in order to improve the focus of the examination and preparation of the witness – would improve the rule.

The Advisory Committee also considered an alternative of proposing publication for public comment of a revised amendment that would require the organization to identify the designated witness or witnesses a specified time before the deposition, and also add a 30-day notice requirement for 30(b)(6) depositions. It was agreed that any such revised proposal would require re-publication and public comment. The importance of such additional disclosure and the risks that the information might be misused were addressed. It was noted that good lawyers who testified during the hearings said that they often would agree to identify their witness or witnesses in advance when confident that this information would not be misused, but that several emphasized also that there were cases in which they would not provide advance identification. Advisory Committee members expressed uneasiness about overriding those decisions not to identify witnesses in advance. After extensive discussion described in the minutes of its meeting, the Committee decided not to propose that the Standing Committee direct publication of this alternative.

At the end of this section of the report are a version of the published preliminary draft showing the changes made after public comment as well as a "clean" version of the amended rule and Committee Note. This report explains the changes made to the proposal after the public comment period.

Deleting the requirement to confer about witness identity: Very strong opposition to this directive was expressed by many witnesses and in many comments. Witnesses emphasized that the case law strongly supports the unilateral right of the organization to choose its witness, and asserted that the requirement that the organization confer in "good faith" would undercut that case law. Although the Committee Note said that the choice of the witness remained the sole prerogative of the organization, that raised the question how it could then be the subject of a mandatory requirement to confer in good faith.

It bears mention that there was limited public comment in favor of requiring the organization to confer about witness identity from those who regularly use this rule to obtain information from organizations. Some candidly acknowledged that they had no say in the organization's choice of a

witness so long as the person selected was properly prepared to address the matters for examination on the 30(b)(6) list.

Deleting "continue as necessary": The preliminary draft directed that the conference not only be in good faith but also that it "continue as necessary." To a large extent, that provision was included because the draft directed the parties to confer about the identity of the witness. Very often the organization could not be expected to settle on a specific person to testify without first having obtained a clear understanding of what matters were to be addressed. So there was a need for a rule provision emphasizing that the amendment requires an iterative interaction in most instances. But that need has lessened with deletion of the requirement to confer on witness identity.

Removal of this provision is not meant to say that the parties need never engage in an iterative exchange about the matters for examination. Indeed, even though the conference is now limited to the matters for examination it will often be fruitful for the parties to touch base more than once with regard to the kinds of information available and the burdens of obtaining it. The revised Committee Note makes this point.

Deleting the directive to confer about the "number and description of" the matters for examination: The Advisory Committee did not propose adding to the rule a numerical limitation on matters for examination, though it was urged to do so. But the preliminary draft did direct the parties to discuss "the number" of matters.

The directive to discuss the number of matters in addition to conferring about the matters themselves drew strong objections during the public comment period. The right focus, many said, was on the matters themselves. Discussing an abstract number did not serve a productive purpose. To the extent it might result in some sort of numerical limit, it might also encourage broader descriptions so that the list of matters would be shorter. That seems out of step with both the particularity direction in the rule and with a requirement to confer that is designed in significant part to improve the focus of the listed matters and ensure that the organization understands exactly what the noticing party is trying to find out. The Committee recommends removing "number of" from the conference requirement.

The addition of the words "description of" seemed unnecessary; the basic objective ought to be to confer about and refine the matters for examination.

Adding a reference to Rule 31(a)(4) depositions to the Committee Note. Rule 31(a)(4) authorizes a deposition by written questions of an organization "in accordance with Rule 30(b)(6)." It also requires that the noticing party's questions and any questions any other parties wish the officer to pose to the witness be served in advance. Although it has repeatedly been told about problems with Rule 30(b)(6) depositions, the Advisory Committee has not been advised that there have been any problems with this mode of obtaining testimony from organizations. And the advance exchange of all questions to be asked would make a conference about the matters for examination superfluous.

Accordingly, a paragraph has been added at the end of the Committee Note to explain that the conference requirement does not apply to a deposition under Rule 31(a)(4).

GAP Report: Having received public comment, the Advisory Committee recommends that the proposed requirement to confer about witness identity be removed, that the direction that the parties' conference "continue as necessary" be deleted, and that the directive that the parties confer about the "number and description of" the matters for examination be deleted, with the amendment requiring only that the parties confer about the matters for examination.

* * * * *

From: berger, michael
Sent: Monday, March 23, 2020 7:57 AM
To: lee lnslaw.net; michaels, kathryn
Subject: Re: Virtual Oaths

Lee, I'm not aware of a Colorado statute that addresses this. As you know, CRCP 30 (b)(7)
expressly authorizes the taking of depositions by telephone or other remote electronic device
and subsection (c) of that rule requires that the witness shall be put under oath or affirmation,
but doesn't address the precise question you raise. If and when we ever have another civil
rules committee meeting, I will put this on the discussion agenda. Thanks for your inquiry. Stay
well.

Michael H. Berger

From: lee lnslaw.net <lee@lnslaw.net>
Sent: Saturday, March 21, 2020 12:01 PM
To: berger, michael <michael.berger@judicial.state.co.us>
Subject: Virtual Oaths

Michael,
Apparently the Fla. Supreme Court has just issued a rule which allows oaths, such as what is typically
required from a witness prior to deposition or testimony to be accomplished “over the phone” so the
person who administers it is not personally present with the witness / deponent. Since I have seen
some comments that “we should do the same thing” my assumption is that perhaps “we” haven’t. If so,
perhaps we should be suggesting it as ‘our” way of fostering “social disengagement”(?).