

AGENDA

COLORADO SUPREME COURT COMMITTEE ON RULES OF CIVIL PROCEDURE

Friday, May 20, 2016, 1:30p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

- I. Call to order
- II. Approval of March 18, 2016 minutes [Page 1 to 4]
- III. Announcements from the Chair
 - A. CRCP 120
 - B. County Court Jurisdictional Increase [Page 5 to 9]
 - C. CRCP 47 [Page 10 to 20]
- IV. Business
 - A. County Court Rules Subcommittee—(Ben Vinci)
 - B. CRCP 53—(Judge Zenisek) [Page 21 to 31]
 - C. Form 20—(Skip Netzorg) [Page 32 to 52]
 - D. New Form for admission of business records under hearsay exception rule—(Damon Davis and David Little) [Page 53 to 62]
 - E. Nits: CRCP 121 § 1-14, CRCP 121 § 1-19, CRCP 103, CRCP 41(b), and CRCP 17(b)—(Judge Berger) [Page 63 to 67]
 - F. CRCP 60(b) —(Brad Levin) [Page 68]
 - G. CRCP 52—(Lee Sternal) [Page 69]
 - H. CRCP 57(j) —(Judge Berger) [Page 70 to 72]
 - I. County and municipal appeals to district court—(Judge Espinosa) (Passed to June 24, 2016 meeting)

V. New Business

VI. Adjourn—Next meeting is June 24, 2016 at 1:30pm

The Honorable Michael H. Berger, Chair
Colorado Court of Appeals
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720 625-5231

Jenny Moore
Rules Attorney
Colorado Supreme Court
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Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 14641438, followed by # key.

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
March 18, 2016 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge John Webb at 1:30 p.m., in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge Michael Berger, Chair		X
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Adam Espinosa	X	
Judge Ann Frick		X
Judge Fred Gannett	X	
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme		X
Judge Jerry N. Jones		X
Judge Thomas K. Kane	X	
Debra Knapp	X	
Richard Laugesen	X	
Cheryl Layne	X	
Judge Cathy Lemon	X	
Bradley A. Levin	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller		X
Gordon "Skip" Netzorg	X	
Brent Owen	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Jose L. Vasquez	X	
Ben Vinci	X	
Judge John R. Webb	X	
J. Gregory Whitehair		X
Judge Christopher Zenisek		X
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Jeannette Kornreich	X	

I. Attachments & Handouts

- A. March 18, 2016 agenda packet
- B. Supplemental Material—CTLA’s position on CRCP 47

II. Announcements from the Chair

- The January 29, 2016 minutes were approved as submitted.
- Judge Berger is absent, so Judge Webb will be chairing today’s meeting.

III. Business

A. CRCP 16.1 & Raising County Court Jurisdiction Subcommittee

Judge Davidson began and reminded the committee that the subcommittee was charged with amending CRCP 16.1 and recommending a county court jurisdictional increase. Judge Davidson has received new direction to proceed with the county court jurisdictional increase separately from CRCP 16.1; the subcommittee will come back to CRCP 16.1 after the Chief Justices Report is released this summer. The memo in the agenda packet summarizes the pros and cons and the recommended increase is between \$25,000-35,000. The subcommittee discussed higher numbers, like \$50,000, but if the number is too high there will be a push for more discovery and higher filing fees in county court. Representatives from Denver County Court and the State Court Administrator’s Office said that an increase of \$35,000 could be absorbed with no additional resources. A motion was made and seconded to recommend a county court jurisdictional increase of \$35,000; the motion passed 18:2.

B. C.R.M. 5 & 6

Magistrate Tims stated that the subcommittee had revised the proposals to C.R.M. 5 and 6 to ensure that parties know they have the right to be heard by a judge and that waiver of the right to be heard requires consent. After discussion a motion was made to adopt the amendments as submitted by the subcommittee; the motion passed 20:1.

C. C.A.R. 8(d)

David DeMuro began and the amendment relates to issues around releasing a lien or bonding over a lien. If there is a judgment lien and bond is posted, a party can move to have the judgment lien removed. Currently there are procedures in C.A.R. 8(d), but there are no procedures in the civil rules. Language from C.A.R. 8(d) was modified and moved to CRCP 121, into new section 1-23. There was a question about whether or not section (d) in C.A.R. 8 would be struck from the appellate rules. Chief Judge Loeb stated that is a separate issue that will be considered by the Appellate Rules Committee. A motion was made to adopt the amendments as submitted by the subcommittee; the motion passed 18:2.

D. CRCP 47

Brad Levin began and stated that initially this seemed like a simple issue that came out of the court of appeals case, 2051COA179. However, potential conflicts between § 13-71-103 and § 13-71-142 and CRCP 47 and 48 were discussed extensively by the subcommittee. The subcommittee struggled with whether or not the discrepancies between the rule and the statutes are procedural or substantive. If they are procedural,

then amending the rule is appropriate, but if it's substantive then the statute controls. The subcommittee wasn't unanimous and there are three versions of possible changes to CRCP 47 in the agenda packet. The Colorado Trial Lawyers Association submitted a memo in response to the subcommittee's activity that was distributed before the meeting.

Some members thought that the problem here is the rights of the parties versus the need to accommodate jury service. The rights of the litigants must trump the feelings of alternate jurors, and the trial court shouldn't be able to overrule either or both parties if the parties have come to an agreement. Other members thought that trial judges should have the discretion to permit alternates to deliberate. Most district or county court judges on the committee had consulted with their colleagues, and almost all of those consulted want this discretion. It's not about the discomfort of releasing alternates, but the bigger issue is alternate jurors have engaged in pre-deliberations. If the alternate jurors can't deliberate, then they shouldn't be allowed to pre-deliberate or ask questions. A final group of members thought that this is a substantive issue and CRCP 47 must track the statute.

After discussion, a motion was made and seconded, to preserve the status quo, or in other words, to not amend CRCP 47. The vote was tied 11:11, and Judge Webb voted yes, to break the tie. The motion to maintain the status quo passed 12:11.

E. County Court Rules Subcommittee

Subcommittee chair Ben Vinci began and announced that a County Court Rules Subcommittee had been formed and it is a new standing subcommittee of the Civil Rules Committee. The new subcommittee will meet soon and the goal is to keep simplified procedure intact, so access to county courts is quick, cheap, and helpful to self-represented parties. Mr. Vinci thinks some of the ideas about sorting cases by characteristic and other reforms should be tested in county courts.

F. New Form for admission of business records under hearsay exception rule

David Little began and asked that this be laid over to the May meeting. Specifically he asked the committee to consider: 1) if this procedure would enable the admission of voluminous documents; and 2) whether the trial process for voluminous documents is assisted by this process. A motion to table this to the May meeting passed 16:1.

G. Form 20

Skip Netzorg reported that the final draft of Form 20 was sent to Judge Berger for submission to the supreme court.

H. CRCP 121 section 1-14, CRCP 41(b), and CRCP 17(b)

Passed to May 20, 2016 meeting.

I. County and municipal appeals to district court

Passed to May 20, 2016 meeting.

J. CRCP 53

Passed to the May 20, 2016 meeting.

IV. New Business

K. CRCP 52

Lee Sternal said he'd chair a subcommittee on whether or not the last sentence of CRCP 52 should be amended. This item will appear on the May agenda.

L. CRCP 60

Brad Levin noted that the deadline in CRCP 60(b) is 6 months, and it would be better if the reference was changed to days. He'll work on an amendment for the May meeting.

V. Future Meetings

May 20, 2016

The Committee adjourned at 3:30 p.m.

*Respectfully submitted,
Jenny A. Moore*

Court of Appeals

STATE OF COLORADO
2 EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
720-625-5000

Michael H. Berger
Judge

March 28, 2016

Honorable Allison Eid

Justice, Colorado Supreme Court

Re: Colorado Supreme Court Committee on Rules of Civil
Procedure—Increasing the jurisdiction of the county courts

Dear Justice Eid:

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

The Civil Rules Committee recommends that the Supreme Court support legislation to increase the jurisdiction of the county courts from the present \$15,000 to \$35,000.

I appointed a subcommittee to study this issue, chaired by former Chief Judge Janice Davidson. The other members of the Subcommittee are Judge Cathy Lemon, Judge Chris Zenisek, Richard Laugesen, Jeannette Kornreich, Richard Holme, Peter Goldstein, Debra Knapp, Cheryl Lane, Ben Vinci and Stephanie Scoville.

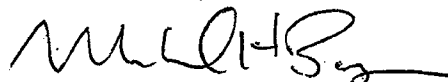
The Subcommittee's report dated March 11, 2016, is attached to this letter. I am also sending this letter, together with the

Subcommittee's report, to you electronically for the Court's convenience.

The Subcommittee's recommendations were addressed at the March 18, 2016 meeting of the full Committee. After discussion, the Committee voted 18-2 to recommend that the Supreme Court support legislation increasing the county court jurisdictional limits to \$35,000.

In addition to the matters addressed in the Subcommittee's report, I note that this recommendation is consistent with the amendments (and the purpose of those amendments) made by the Supreme Court to the Colorado Rules of Civil Procedure in 2015. To meet the overarching objectives of C.R.C.P. 1—"the just, speedy, and inexpensive determination of every action" — it is essential that the procedures required by the Rules be tailored to the needs of the cases before the courts. Increasing the jurisdictional limits of the county courts will take relatively low dollar value cases outside of the more complex, expensive, and usually unnecessary procedures that govern district court actions.

Respectfully submitted,



Michael H. Berger, Chair

Civil Rules Committee

Cc: Hon. Janice Davidson

Hon. John R. Webb

Jenny Moore, Esq.

MEMORANDUM

**TO: Judge Michael Berger, Chair
Supreme Court Civil Rules Committee**

**FROM: Subcommittee on Increasing County Court
Jurisdictional Levels –
Senior Judge Janice Davidson, Chair; Judge Chris
Zenisek; Jeannette Kornreich; Richard Laugesen;
Richard Holme; Peter Goldstein; Debra Knapp; Judge
Cathy Lemon; Cheryl Layne; Ben Vinci; Stephanie
Scoville**

DATE: March 11, 2016

**RE: Recommendations Concerning County Court
Jurisdictional Levels**

The Subcommittee unanimously recommends that the Civil Rules Committee send to the Supreme Court a recommendation in favor of the Court's support for legislation increasing county court jurisdictional limits. The Subcommittee voted for an increase of \$25,000-\$35,000 as most appropriate. The reasons for this recommendation, as expressed by subcommittee members, include:

a. An increase would encourage the filing of currently unfiled cases by providing greater access to county court -- district court is far too technical for the average person.

b. It would increase the average person's access to justice because costs would be decreased. People are not going to court now because it is too expensive and complicated.

d. The county courts are more accessible and better designed to serve pro se litigants.

e. Data from other states supports an increase to at least \$25,000. Most other states have jurisdictional limits higher than \$15,000. (A table of Civil Jurisdiction Thresholds, compiled by the NCSC, is included with this Memorandum.).

Although a more significant increase – e.g., to \$50,000 – was seriously considered, it was rejected on the grounds that such an increase could jeopardize county court simplified procedure by increasing requests for depositions/discovery and/or trigger a push to increase filing fees. It was agreed, therefore, that an increase that substantial would need to be further considered before implementation, to ensure it did not result in an increase in expenses to litigants and decrease access to justice. It was also suggested that an increase that high would simply be too great a shock.

The Subcommittee also seriously considered the concerns voiced by Jonathan Asher, Executive Director of the Colorado Legal Aid Society, who was invited to the November 24, 2015 meeting to share a legal services perspective. Mr. Asher thought that increasing the jurisdictional limit would simply increase default judgments, pointing out that it is collection agencies, not pro se litigants, who are filing the majority of cases in county court. He was concerned that a jurisdictional increase, rather than improving access to justice, could result in more judgments against indigent persons without counsel.

However, it was the consensus of the Subcommittee, in response to these concerns, that this was not a zero-sum, that is, an increase in collection cases does not impact an increased ability of a plaintiff (pro se or not) to afford to file his/her claim. Moreover, any increase in collection filings in county court would not be additional or “new” cases, but more likely, would come from a shift to the county court those cases seeking recovery over \$15,000, but less than \$25,000-\$35,000, that would have been filed regardless in the district court. Furthermore, any decrease in litigation costs necessarily benefits both parties, not just the collection agencies.

Please note that, while the Subcommittee was not charged with determining resource impacts, if any, of a jurisdictional increase, its discussions were informed by data presented from the SCAO Division of Court Services and the Presiding Judge and County Court Administrator of Denver County Court. For informational

purposes, included is additional information presented at the November 24, 2015 meeting:

The Division of Court Services, Jessica Brill, reported that the county courts should be able to absorb an increase under the current and forecasted workload studies at a level of \$15,000, a middle value of national jurisdictional limits. At this level, the courts would lose only about 2.67 FTE but that amount should be easily absorbed by shifting work from the district courts to the county courts without much of an impact on staffing levels. There is some anticipation of increased filings because of the lower court fees charged in county court.

Presiding Judge Marcucci and County Court Administrator Langham appeared on behalf of the Denver County Court and reported that Denver has had a drop in caseload the last couple of years, so the county court could handle an increase in the jurisdictional limit. Denver is in good shape based on time to disposition and the civil satisfaction survey. An increase to \$25,000 would be okay for now and they would perhaps consider \$35,000 down the road. PJ Marcucci expressed strong concern that \$50,000 would be too big of a jump without further analysis. County Court Administrator Langham was supportive of starting at \$25,000 but expressed concern with \$35,000 as too high a limit to begin with. In Denver district court, less than 1% of cases go to trial and Denver's docket is down 30% in the last five years. Denver currently has three county court judges, but might move around one or half of one of the county court judges elsewhere.

Court of Appeals

STATE OF COLORADO
2 EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
720-625-5000

Michael H. Berger
Judge

April 1, 2016

Honorable Allison Eid, Justice
Colorado Supreme Court

Re: Supreme Court Civil Rules Committee—C.R.C.P. 47(b)—
Alternate Jurors

Dear Justice Eid:

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

At its March 18, 2016 meeting, the Committee discussed whether C.R.C.P. 47 (b), the rule governing alternate jurors in civil cases, should be amended to authorize district judges to permit alternate jurors to deliberate, despite the objection of one party. As written, C.R.C.P. 47 (b) authorizes a judge to allow an alternate to deliberate, but only when all parties agree.

This Committee discussion was engendered by *Johnson v. VCG Restaurants Denver, Inc.*, 2015 COA 179, *cert. pending*, in which a division of the court of appeals reversed a civil judgment because the trial judge had permitted an alternative juror to deliberate, over one party's objection, in violation of C.R.C.P. 47 (b).

The subcommittee's report, which is attached, noted that the existing rule may be inconsistent with authority granted to judges by section 13-71-142, C.R.S. 2015. That section provides: "An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict, unless otherwise provided by law, by agreement of the parties, *or by order of the court.*" [Emphasis added.]

While this inconsistency was noted in presenting the report, it did not appear to play a major role in the Committee's vote. The *Johnson* court also noted the existence of section 13-71-142, but rejected the argument that the trial judge had discretion to permit an alternate to deliberate, stating: "Mr. Johnson does not explain why we should look to Rule 48 or sections 13-71-103 and 13-71-142 when Rule 47 (b) directly addresses this issue. *Johnson* at ¶15.

While no formal survey was performed, the trial judges who spoke were strongly in favor of such a rule change because it is difficult to tell alternate jurors, after having devoted the same time and effort to the case as regular jurors, that they may not participate in the decision of the case. Also, at least one member pointed out the tension between Rule 47(a)(5), which allows pre-deliberation discussion with alternates present, and frequent exclusion of alternates from deliberation under Rule 47(b). However, both the Colorado Trial Lawyers Association and the Civil Litigation Section of the Colorado Bar Association vociferously opposed such an amendment.

A motion to maintain the status quo regarding C.R.C.P. 47 (b) was made and seconded. The vote on the motion was 11 in favor and 11 opposed. Judge John Webb, acting chair of the Committee, broke the tie and voted in favor of the motion.

Although the Committee has voted not to make any recommendations to the Court in this respect, I think it is necessary to advise the Court of the likely inconsistency between

C.R.C.P. 47 (b) and section 13-71-142, as well as the pre-deliberation anomaly involving Rule 47(a)(5).¹

Respectfully submitted,


Michael H. Berger, Chair

Civil Rules Committee

Cc: Hon. John R. Webb

Jenny Moore, Esq.

¹ I also note that in federal civil cases, all jurors deliberate. The concept of alternate jurors has been abolished in the federal civil system. See Fed.R.Civ.P. 48 (a), which states: “(a) **Number of Jurors.** A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict, unless excused under Rule 47 (c).”

TO: JUDGE BERGER

FROM: JUDGE WEBB

RE: C.R.C.P.47(b) SUBCOMMITTEE

DATE: MARCH 2, 2016

The C.R.C.P. subcommittee submits the following preliminary report.¹

I. SUMMARY

A majority of the subcommittee favored revising C.R.C.P. 47(b) to afford trial courts greater discretion in allowing alternate jurors to deliberate.² However, the majority was divided on how to do so, especially given statutes addressing both the composition of civil juries and the role of alternates. One member suggested that a recommendation would be premature without input from stakeholders such as the CTLA, the CDLA, and other district court judges. We were informed, however, that the CBA Civil Litigation Section opposes any change, and that CTLA may take a position by mid-March.

¹ The subcommittee consisted of Damon Davis, David DeMuro, Adam Espinosa, Peter Goldstein, Judge Kane, Bradley Levin, Brent Owen, and Judge Webb.

² C.R.C.P. 347(b) does not permit alternate jurors.

II. BACKGROUND

C.R.C.P. 48 provides that “[t]he jury shall consist of six persons, unless the parties agree to a smaller number, not less than three.” Identical language appears in section 13-71-103, C.R.S. 2015.

As relevant here, C.R.C.P. 47(b) provides, “If the court *and* the parties agree, alternate jurors may deliberate and participate fully with the principal jurors in considering and returning a verdict.” (emphasis added) But according to section 13-71-142, C.R.S. 2015, “An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict, unless otherwise provided by law, by agreement of the parties, *or* by order of the court.” (Emphasis added.) Thus, the statute could be read as empowering a trial court to allow an alternate to deliberate, regardless of the parties’ contrary position.

Although no Colorado court has expressly addressed the potential conflict between and among these rules and statutes, presumably a civil jury may consist of more than six persons because C.R.C.P. 47(b) trumps C.R.C.P. 48 and section 13-71-142 trumps section 13-71-103. This conclusion would be supported by

the canon that a specific provision controls over a more general one. *Beren v. Beren*, 2015 CO 29, ¶ 21.

In *Johnson v. VCG Restaurants Denver, Inc.*, 2015 COA 179, ¶ 1, the division concluded, “As a matter of first impression in Colorado, we hold that C.R.C.P. 47(b) does not grant a trial court the discretion to permit an alternate juror to deliberate and participate fully with the principal jurors in considering and returning a verdict when one party objects.” The division added, “Mr. Johnson does not explain why we should look to Rule 48 or sections 13–71–103 and 13–71–142 when Rule 47(b) directly addresses this issue.” *Id.* at ¶ 15. This issue was also noted by the dissent in *Haralampopoulos v. Kelly*, 361 P.3d 978 (Colo. App. 2011), *rev’d*, 2014 CO 46, but the supreme court did not reverse on this basis.

Where a court rule and a statute conflict, the outcome depends on whether the subject is procedural or substantive. *See, e.g., People v. Hollis*, 670 P.2d 441, 442 (Colo. App. 1983) (“[A] statute governing procedural matters . . . which conflicts with a rule promulgated by the Supreme Court would be a legislative invasion

of the court's rule-making powers."); *see also People v. Prophet*, 42 P.3d 61, 62 (Colo. App. 2001). The test has been framed as:

To distinguish procedural from substantive matters we must examine the purpose of the statute. If the purpose is to permit the court to function and function efficiently, the matter is procedural and the conflicting statute must yield to a court rule. Conversely, if the statute embodies a matter of public policy, it is substantive, and the statute controls.

People v. Montoya, 942 P.2d 1287, 1295-96 (Colo. App. 1996).

In *Montoya*, the conflict between a court rule and a statute pertained to the timing of replacing a regular juror with an alternate during deliberations. *Id.* at 1294. The court deemed the issue substantive:

[A]lthough the timing of the replacement of a regular juror indirectly affects court procedure, the overriding purpose of § 15-10-105 is to ensure that a party receives a fair trial by jury. . . . Such a determination necessarily involves important policy considerations and thus is a matter appropriate for legislative determination.

Id. at 1296. *See also Carrillo v. People*, 974 P.2d 478, 488 (Colo. 1999) (Because the timing and discharge of alternate jurors "is a matter of substance and not merely a matter of court procedure[,]")

the statute — not the conflicting rule of criminal procedure — controls.).

The federal rules of civil procedure no longer afford special status to alternate jurors.

III. PROCESS

The subcommittee considered leaving the status quo in place and three alternatives: (1) an alternate can never deliberate; (2) an alternate can always deliberate; and (3) the trial court should have greater discretion to allow deliberation by alternates.

A. Status Quo

Under current C.R.C.P. 47(b), the parties control the issue. One member strongly favored no change. He explained that because counsel owe their clients the duty to take all reasonable steps which favor a successful outcome, if counsel's observations during trial lead to the conclusion that the alternate may not favor the client's position, counsel should have an absolute veto on the alternate deliberating. Another member has warmed to this view.

B. Never

No member favored a complete prohibition on alternates deliberating.

C. Always

Two members favored always allowing alternates to deliberate, although one member doubted that such a court rule would survive challenge under section 13-17-142. His default choice was to allow trial courts greater discretion, as discussed in the next paragraph. Informal inquiries of trial judges discloses a strong preference for allowing alternates to deliberate, in recognition of their investment up to that point in the process.

D. Discretion

The remaining members favored allowing trial courts to permit deliberation by alternates, but disagreed on how much discretion the trial court should have. Some members in this group favored giving the court unfettered discretion, which would be consistent with section 13-17-142. Others favored discretion to override the objection of one or more, but not of all parties.

The majority shared the rationale that allowing deliberation acknowledges the alternate's contribution to the process until the case goes to the jury, which in a complex case such as *Haralampopoulos* can be several weeks. Some members in the majority noted that because C.R.C.P. 47(a)(5) now allows

predeliberation discussion among jurors, an alternate may have had some influence on his or her fellow jurors, even if the alternate does not deliberate. Other members pointed out that a trial court's discretionary decision to allow or not allow an alternate to deliberate would be very difficult to overturn on appeal, especially if the court made findings such as the alternate was or was not an attentive juror.

Finally, all members recognized that if section 13-17-142 controls C.R.C.P. 47(b), the practical choices may be limited to leaving the rule as is, unless and until it is challenged on the basis of conflict with the statute — an argument apparently not raised in *Johnson* — or amending the rule to conform to the statute. The potential for uncertainty in leaving the rule unchanged was the primary reason for placing this issue before the committee. Now, however, unless the supreme court overrules *Johnson*, it will be binding on the trial courts. Conforming the rule to the statute would allow trial court to override good faith decisions of counsel made to further their clients' interests.

IV. CONCLUSION

A majority of the subcommittee believes that the entire committee should now take up this issue, although at least one member favors deferring any decision until more stakeholders have weighed in. If a majority of the committee favors increasing trial court discretion, then C.R.C.P. 47(b) could be rewritten in two ways. Compare (new language in bold):

- Current: “If the court and the parties agree, alternate jurors may deliberate and participate fully with the principal jurors in considering and returning a verdict.
- Limited discretion: “If the court **orders and one or more but not all of the parties objects, or if all of the parties agree,** alternate jurors...”
- Unlimited discretion: “If the court **orders,** alternate jurors...”

Respectfully submitted,

_____ /s _____

John R. Webb

SUPPLEMENTAL REPORT

The Civil Rules' Committee, Subcommittee regarding Special Masters, met on January 29, 2016. The Subcommittee met to consider and address concerns raised at the full committee meeting in November, 2015. The following individuals were present at the January, 2016 meeting:

Judge Christopher Zenisek, (Chair)

Chief Judge Janice Davidson (Ret.)

Richard Holme, Esq.

Brent Owen, Esq.

The Subcommittee also received input from subcommittee members David Tenner, Esq. and Greg Whitehair, Esq., who were unable to attend.

The concerns raised at the full committee meeting were:

1. Concerns over the authority upon which courts may order appointment of a special master.
2. Concerns over the standard of review expressed in the proposed rule, and whether it effectively delegates too much authority from the court to a private individual.
3. Concern over whether the proposed rule changed the appointment standards such that it encourages special master appointments more than is desirable.

The Subcommittee appreciates the work of staff attorney Jenny Moore, who researched authority for rules over special masters. Such report is included in these materials.

The Subcommittee added further revisions to address concerns 2 and 3 above. First, the Subcommittee included language from the current rule to ensure that judges and parties do not over-utilize special master appointment. Specifically, the Subcommittee added to the "scope" section (a)(1): "A reference to a master shall be the exception and not the rule."

The Subcommittee also struck the word "trial" in section (a)(1)(B), believing the word to be extraneous and unnecessary.

The Subcommittee also voted to adopt the federal provisions regarding "reviewing factual findings," in Section (f)(3) in lieu of its prior suggestion to review for clear error. Although "clear error" is articulated in the present Colorado rule, the Subcommittee agreed that judges should retain full authority over proceedings when special masters are appointed.

A modified, red-lined rule is attached to this report. The red-line indicates differences between the Subcommittee's current proposed rule and the **Federal rule**. The research prepared by Staff Attorney Moore is likewise attached to this report.

Please Note Additional Subcommittee Comments

Some subcommittee members (one attending and two who were unable to attend) have additional comments:

A. One attending subcommittee member requested full committee discussion of the following:

i. Although the Colorado Supreme Court has constitutional/statutory authority to promulgate court rules, does it matter that Congress must approve every iteration of the federal rules but we have no equivalent executive branch oversight in Colorado?

ii. Have we sufficiently demonstrated a need? The feds took years to study the question and generated a great deal of data before deciding to expand the use of special masters.

iii. Could this be perceived as further "privatization" of the judicial system?

iv. Does the cost requirement for the use of a special master exacerbate already existing access to justice issues, by appearance or in fact?

v. I strongly agree with the provision of our proposed rule that the court should have de novo review over all determinations by a special master, including findings of fact. I note that although "clearly erroneous" used to be the standard of review for fact-finding in the pre-amended federal rule, that was changed to a "de novo" standard in the current federal rule. Especially since we have divergent points of view within the subcommittee, it would be useful to know the reasoning/basis for that important change in the federal rule.

B. One non-attending subcommittee member opposes de-novo review, and suggests the following language as a compromise between de-novo and clear error. The member proposes the following for subsection (f)(3):

(3) Reviewing Factual Findings. *When reviewing a master's finding of fact, the court must review all objections to findings of fact made or recommended by a master for clear error, unless the parties, with the court's approval, stipulate that:*

(A) the findings will be reviewed de novo; or

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

C. A third subcommittee member moved to forego approval, and to re-submit this matter to the subcommittee for further discussion. The motion did not carry. This member suggests review of the following:

- Rule 53(a)(2) and (b)(1) additions, with Rule 53(b)(3) deletion/move to above: *Clarification of the need of DQ affidavit review BEFORE the order of appointment issues. This mismatch in timing has resulted in a number of amended appointment orders (the first order “appoints” but then later must be amended to reflect the (b)(3) “only after” Court DQ review); I will be bringing this to the Federal Rules folks as well.*
- Rule 53(f)(2): *Changing the word “matters” (which connotes the core case in my view) to master “decisions”*
- Very last comment line: *And being more anodyne in the last-line suggestion of master appointment – I am presently serving as SM in a trade secrets case and feel the final comment would have barred this useful appointment; I have also served as an e-discovery master, which is a special expertise not covered by the present parenthetical.*

To: Judge Zenisek

From: Jenny Moore

RE: The 2003 Amendments to F.R.C.P. 53

I. Introduction

At the September 26, 2015 Civil Rules Committee meeting a proposal to amend C.R.C.P. 53, conforming the rule, in significant part, to F.R.C.P. 53 was considered. The proposal used F.R.C.P. 53 as a template and added several Colorado specific provisions. Colorado didn't adopt the 2003 federal amendments, and due to the topic of the rule, referral of judicial function to non-Article III adjuncts, concern was expressed about amending the rule to mimic the breadth of the federal rule. This memo will address the history and substance of F.R.C.P. 53's 2003 amendments and information related to masters' appointments in Colorado.

II. F.R.C.P. 53: 2003 Amendments

The proposal to amend F.R.C.P. 53 in its entirety was first brought to the Federal Civil Rules Advisory Committee in 1994. In 1994 a full-scale revision was considered, but the committee decided that although the rule didn't represent every way masters were used, there were no immediate problems with leaving the rule as is. However, in 1998, the committee decided to study the issue of whether or not a comprehensive revision of F.R.C.P. 53 was necessary. The committee conceded that the use of masters had changed dramatically from the Supreme Court's decision in *La Buy*¹ and there was concern that masters were discharging their duties without much guidance from the federal rules. A subcommittee was appointed and the Federal Judicial Center (FJC) began a study of masters activity.²

The FJC devised a method to study the use of masters. First, docket searches would identify cases in which master referral was considered or where a master was appointed. From there a sample of cases would be selected and studied. Second, interviews with parties, masters, and judges would be conducted to gather information about the process. The study was completed in April of 2000. The study revealed that appointments are infrequent occurring less

¹ *La Buy v. Howes Leather Co.*, 352 U.S. 249, 77 S. Ct. 309, 1 L. Ed. 2d 290 (1957).

² *Special Masters' Incidence and Activity: Report to the Judicial Conference's Advisory Committee on Civil Rules and Its Subcommittee on Special Masters*, Federal Judicial Center Report, 1-131, 68-71 (2000), [http://www.fjc.gov/public/pdf.nsf/lookup/specmast.pdf/\\$file/specmast.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/specmast.pdf/$file/specmast.pdf) (last visited December 3, 2015).

than twice in 1,000 cases.³ Reasons for pretrial appointments included insurmountable discovery disputes, hostility between counsel in discovery, to help the court understand complex technical issues, and to accommodate the limitations of judicial resources. Post-trial masters provided efficiency in post-judgment administration that the court, with its limited resources, was unable to supply. The study also revealed that the appointment process, ex parte communication, and standard of review were often problematic.

As a result of the FJC's study, the committee moved forward with revising F.R.C.P. 53.⁴ A draft of F.R.C.P. 53 was approved by the Advisory Committee in May of 2002 and sent to the Standing Committee. The Standing Committee approved the rule, and after review by the Supreme Court and Congress the amendments became effective December 1, 2003.

The FJC's study and the Advisory and Standing Committees work over many years contributed to numerous, substantive revisions. For the first time pretrial and post-trial master appointments were expressly added to the rule, conforming the rule to existing practice. Trial masters were appointed only if the exceptional circumstances test was met, but were eliminated for jury trials, except with the consent of the parties. Consent masters could be appointed to perform any task approved by the parties; however, the court retained authority to refuse consensual appointments. Additional amendments clarified other issues: the Code of Judicial Conduct was applicable to masters; there must be notice and an opportunity to be heard before a master was appointed; the parties can suggest a candidate to be appointed master; disqualification of a prospective master must be addressed; and the specific contents that an appointment order must contain.

Standards of review were clarified in the 2003 amendments: the court will decide de novo objections to findings of fact, unless, with court approval, the parties stipulate findings will be reviewed for clear error or that the findings will be final; objections to conclusions of law are reviewed de novo; and procedural rules are set aside for abuse of discretion, unless a different standard is established in the order.

³ *Id* at 3.

⁴ While master appointments were only considered in approximately 1,500 filings in two years, the committee thought the activity was sufficient to warrant revising F.R.C.P 53. *Id*.

Questions as to why a master was necessary if all findings could be reviewed de novo were raised. In response, members reasoned that many pretrial and post-trial activities conducted by a master won't lead to review. And if review is sought, parties can stipulate the standard of review or finality. While the court does not have to review items not objected to, the court has the authority to review in absence of objection, thereby retaining its Article III authority.

III. C.R.C.P. 53

The FJC's study provided empirical evidence that the Advisory Committee used in amending the rule. While the state court system does not have the data to comment on the range of issues identified in the FJC's report, the timeliness of cases in Colorado's civil court system can be discussed.

Timeliness is monitored based on organizational goals outlined in Chief Justice Directive (CJD) 08-05.⁵ An age of pending caseload report is run quarterly to assess how the districts are performing. Overall, district and county civil case types are not meeting the standards outlined in CJD 08-05; however, there is variation from district to district. While it's difficult to speak with the specificity of the FJC's report, it is true that there is civil backlog in about half of the judicial districts. Since masters have historically been appointed to help a litigation progress more rapidly and efficiently, the fact that civil backlog exists is evidence that at least one of the many issues studied by the FJC is present in the Colorado state court system. But, unfortunately there is no other state court data to reference. The State Court Administrator's Office does not keep statistics or information on master appointments under C.R.C.P. 53 or retired judge appointments under section 13-3-111, C.R.S., so the regularity of masters or retired judge appointments cannot be discussed.

As another source of information, other states' masters rules were surveyed to determine how many states had adopted amendments similar to F.R.C.P. 53. After review, Arizona, Minnesota, North Dakota, and the District of Columbia either have court rules substantially similar to F.R.C.P. 53.

⁵ *Directive Concerning Colorado Standards for Case Management in the Trial Courts*, (2005), https://www.courts.state.co.us/Courts/Supreme_Court/Directives/08-05.pdf (last visited December 3, 2015).

IV. Conclusion

The federal rule received substantive amendments after significant data was compiled. While data similar to that in the FJC's report is not available at the state level, absent a similar study, organizations like the Academy of Court Appointed Masters, or other interested stakeholders could be contacted to try to get a clearer picture of masters activity in Colorado and the implications of a revised masters rule similar to the federal rule. The Civil Rules Committee, through the supreme court, has constitutional⁶ and statutory⁷ authority to amend C.R.C.P. 53. While the committee has authority to amend C.R.C.P. 53, whether or not this is an amendment that committee wishes to adopt requires further discussion.

⁶ Colo. Const. art. VI, § 21.

⁷ Colo. Rev. Stat. Ann. § 13-2-108 (West).

C.R.C.P. 53 (PROPOSED)

(a) Appointment.

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

(A) perform duties consented to by the parties;

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

(i) some exceptional condition; or

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

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by ~~an available~~the appointed district judge ~~or magistrate judge of the district.~~

(2) *Disqualification.* A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under ~~28 U.S.C. § 455,~~ the Colorado Code of Judicial Conduct, Rule 2.11, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

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

(b) Order Appointing a Master.

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

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

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

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

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

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

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

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

(A) the master files an affidavit disclosing whether there is any ground for disqualification under [the Colorado Code of Judicial Conduct, Rule 2.11](#), [28 U.S.C. § 455](#); and

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

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

(5) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 14 days after the date of the order of reference and shall notify the parties or their attorneys.

(c) Master's Authority.

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

(A) regulate all proceedings;

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

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

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

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

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

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

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

~~(2) *Time to Object or Move to Adopt or Modify.* A party may file objections to or a motion to adopt or modify the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.~~ *Time to Object or Move to Modify.* A party may file objections to or a motion to modify the Master's proposed rulings, order, report or recommendations no later than 7 days after service of any of those matters, except when the Master held a hearing and took sworn evidence, in which case objections or a motion to modify shall be filed no later than 14 days after service of any of those matters.

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

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

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

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

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

(g) Compensation.

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

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

(A) by a party or parties; or

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

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

~~(h) ***Appointing a Magistrate Judge.*** A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.~~

Comment In appointing special masters, judges should be mindful of C.R.C.P. 122 regarding appointed judges. In this regard, Section (a)(1)(B) of this Rule should be utilized only when the appointment requires special expertise not likely held by a former judge, such as that of an accountant, engineer or doctor.

Chief Judge Davidson's February 9, 2016 email

As a very recent member of your subcommittee, however, please allow me to preserve a few lingering concerns/comments for discussion by the full rules committee. I know I will certainly feel more confident about the subcommittee's recommendation, one way or the other, having had the benefit of the full committee's reactions:

1. Although the Colorado Supreme Court has constitutional/statutory authority to promulgate court rules, does it matter that Congress must approve every iteration of the federal rules but we have no equivalent executive branch oversight in Colorado?
2. Have we sufficiently demonstrated a need? The feds took years to study the question and generated a great deal of data before deciding to expand the use of special masters.
3. Could this be perceived as further "privatization" of the judicial system?
4. Does the cost requirement for the use of a special master exacerbate already existing access to justice issues, by appearance or in fact?
5. I strongly agree with the provision of our proposed rule that the court should have de novo review over all determinations by a special master, including findings of fact. I note that although "clearly erroneous" used to be the standard of review for fact-finding in the pre-amended federal rule, that was changed to a "de novo" standard in the current federal rule. Especially since we have divergent points of view within the subcommittee, it would be useful to know the reasoning/basis for that important change in the federal rule.

Thanks very much,

Janice

PROPOSED CHANGES TO C.R.C.P. 33 SUBMITTED BY THE CIVIL RULES COMMITTEE

C.R.C.P. 33

Rule 33. Interrogatories to Parties

(a) [NO CHANGE]

(b) **Answers and Objections.**

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

(2) – (5) [NO CHANGE]

(c) – (d) [NO CHANGE]

(e) **Pattern and Non-Pattern Interrogatories; Limitations.** The pattern interrogatories set forth in the Appendix to Chapter 4, Form 20, are approved. Any pattern interrogatory and its subparts shall be counted as one interrogatory. Any discrete subparts ~~to~~in a non-pattern interrogatory shall be considered as a separate interrogatory.

COMMENTS

1995 [NO CHANGE]

2016

Pattern interrogatories [Form 20, pursuant to C.R.C.P. 33(e)] have been modified to more appropriately fit the 2015 amendments to C.R.C.P. 16, 26 and 33. A change to or deletion of a pre-2016 pattern interrogatory should not be construed as making that former interrogatory improper, but instead, only that the particular interrogatory is, as of the effective date of the 2016 rule change, modified as stated or no longer a “pattern interrogatory.”

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

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PROPOSED CHANGES TO FORM 20 SUBMITTED BY THE CIVIL RULES COMMITTEE

FORM 20. PATTERN INTERROGATORIES UNDER RULE 33

<input type="checkbox"/> County Court <input type="checkbox"/> District Court [see §2.a.]	
_____ County, Colorado	
Court Address:	
Plaintiff(s):	
v.	
Defendant(s):	
COURT USE ONLY	
Attorney or Party Without Attorney (Name and Address):	Case Number:
Phone Number: E-mail:	
FAX Number: Atty. Reg. #:	Division: Courtroom:
PATTERN INTERROGATORIES UNDER RULE 33	

The following Pattern Interrogatories are propounded to:

[insert name of party] pursuant to C.R.C.P. 16(b)(11)(a)(1)(IV), 26, and 33(e).

Section 1. General Instructions ~~to All Parties~~

(a) These pattern interrogatories and instructions do not change existing Rules or other law relating to interrogatories. ~~These are general instructions.~~ For time limitations, requirements for service on other parties, and other details, *see* C.R.C.P. 16(b)(1)(~~IV~~), 26, 33, 121 § 1-12, and the cases construing those Rules.

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(b) These pattern interrogatories and instructions do not ~~These interrogatories do not change existing law relating to interrogatories nor do they~~ affect an answering party's right to assert any privilege or objection. Parties may object to these pattern interrogatories, including but not limited to, on grounds that the interrogatories exceed the scope of permissible discovery as defined in Rule 26(b)(1) because the inquiry is not relevant to the claims and defenses of any party or is not proportional to the needs to the case.

Section 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in district courts only. These pattern interrogatories are intended as approved sample discovery requests; they are not intended to be served in every case.

(b) Parties should carefully consider the claims and defenses at issue to determine whether these pattern interrogatories are applicable to their particular action. Parties also should carefully consider whether these pattern interrogatories are proportional to the discovery needs of their particular case.

(c) Parties are strongly encouraged to consider whether the information sought through these pattern interrogatories would be better obtained through a request for the production of documents containing the information sought. As one example, an interrogatory asking for information relating to a party's medical treatment might more efficiently ask for the party's medical records in a request for production.

(d) Rule 26(a)(1)(C) requires production of specific information relating to the categories and amounts of a party's claimed damages. As a result, interrogatories requesting information relating to claimed damages may not be necessary, or may be tailored to particular topics relating to a party's claimed damages.

(~~e~~b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case. ~~Each checked box counts as one interrogatory for purposes of C.R.C.P. 26(b)(2)(B) and case management orders.~~

(~~f~~e) The interrogatories in section 16.0, Defendant's Contentions--Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(~~g~~d) Subject to the limitations in C.R.C.P. 16(b)(1)(~~IV~~) and 33, additional, non-pattern interrogatories may be included ~~attached.~~

Section 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within ~~30~~35 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. *See C.R.C.P. 33 for details.*

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(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found. In addition, Rule 33(d) permits an answering party to identify and make available business records in lieu of responding to a particular interrogatory.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers: "I declare under penalty of perjury under the laws of the State of Colorado that the foregoing answers are true and correct to the best of my knowledge, information and belief."

(DATE) _____ (SIGNATURE) _____

Section 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON OR ENTITY** includes a natural person, ~~firm, association, or any~~ organization ~~other than a natural person, partnership, business, trust, corporation, or public entity.~~

(d) **DOCUMENT** means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, ~~Photostatting~~photocopying, photographing, ~~electronically stored information, including emails,~~ and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON OR ENTITY** or entity referred to as a “Health Care Professional” or “Health Care Institution” in C.R.S. § 13-64-202(3) and (4).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Section 5. Interrogatories

The following interrogatories have been approved by the Colorado Supreme Court under C.R.C.P. 16(b)(1)(~~IV~~), 26, and 33(e). The Pattern interrogatories have been modified to more appropriately fit the 2015 amendments to C.R.C.P. 16, 26 and 33. A change to or deletion of a pre-2016 pattern interrogatory should not be construed as making that former interrogatory improper, but instead, only that the particular interrogatory is, as of the effective date of the 2016 rule change, modified as stated or is no longer a “pattern interrogatory.”

CONTENTS

- 1.0 Identity of Persons Answering These Interrogatories
- 2.0 General Background Information--Individual
- 3.0 General Background Information--Business Entity
- 4.0 Insurance (*Withdrawn. See C.R.C.P. 26(a)(1)(D), and 2016 Comment to C.R.C.P. 33.*)
- 5.0 (*Reserved*)
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages
- 10.0 Medical History
- 11.0 Other Claims and Previous Claims (*Withdrawn. See C.R.C.P. 26(b)(1), and 2016 Comment to C.R.C.P. 33.*)
- 12.0 Investigation--General
- 13.0 Investigation--Surveillance
- 14.0 Statutory or Regulatory Violations
- 15.0 ~~Affirmative~~ Defenses
- 16.0 Defendant's Contentions--Personal Injury
- 17.0 Responses to Request for Admissions (*Withdrawn. See C.R.C.P. 36(a), and 2016*

Comment to C.R.C.P. 33.)

- 18.0 (Reserved)
- 19.0 (Reserved)
- 20.0 How the Incident Occurred--Motor Vehicle
- 25.0 (Reserved)
- 30.0 (Reserved)
- 40.0 (Reserved)
- 50.0 Contract
- 60.0 (Reserved)

1.0 Identity of Person Answering These Interrogatories

- 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each person who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

2.0 General Background Information--Individual

- 2.1 State:
 - (a) your name;
 - (b) every name you have used in the past;
 - (c) the dates you used each name.
- ~~2.2~~ State ~~(d)~~ the date and place of your birth.
- 2.23 At the time of the **INCIDENT**, did you have a driver's license or any other permit or license for the operation of a motor vehicle?
If so, state:
 - (a) the state or other issuing entity;
 - (b) the license number and type;
 - (c) the date of issuance;
 - (d) all restrictions.
- ~~2.4~~ At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle?
If so, state:
 - ~~(a) the state or other issuing entity;~~
 - ~~(b) the license number and type;~~
 - ~~(c) the date of issuance;~~
 - ~~(d) all restrictions.~~
- 2.35 State:
 - (a) your present residence **ADDRESS**;
 - (b) your residence **ADDRESSES** for the last five years;
 - (c) the dates you lived at each **ADDRESS**.
- 2.46 State:

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- (a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment;
- (b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.

2.57 State:

- (a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended beginning with high school;
- (b) the dates you attended;
- (c) the highest grade level you have completed;
- (d) the degrees received.

2.68 Have you ever been convicted of a felony?

If so, for each conviction state:

- (a) the city and state where you were convicted;
- (b) the date of conviction;
- (c) the offense;
- (d) the court and case number.

2.79 Can you

- (a) speak ~~or~~ English with ease?
- (b) read English with ease? ~~and~~
- (c) write English with ease?

If the answer to any of sub-interrogatories of 2.7 (a), (b) or (c) is "no" ~~not~~, what language and dialect do you normally use?

~~++~~ 2.10 Can you read and write English with ease?

If ~~not~~, what language and dialect do you normally use?

2.8++ At the time of the **INCIDENT**, were you acting as an agent or employee for any **PERSON OR ENTITY**?

If so, state:

- (a) the name, **ADDRESS**, and telephone number of that **PERSON OR ENTITY**;
- (b) a description of your duties.

2.9++ At the time of the **INCIDENT**, did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**?

If so, for each person state:

- (a) the name, **ADDRESS**, and telephone number;
- (b) the nature of the disability or condition;
- (c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.

~~++~~ 2.13 Within 24 hours before the **INCIDENT**, did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)?

If so, for each person state:

- (a) the name, **ADDRESS**, and telephone number;
- (b) the nature or description of each substance;
- (c) the quantity of each substance used or taken;
- (d) the date and time of day when each substance was used or taken;
- (e) the **ADDRESS** where each substance was used or taken;
- (f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken;
- (g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** that prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information--~~Business~~ Entity

3.1

Are you an entity? If so, state:

- (a) the type of entity you are;
- (b) the date and place where you were formed;
- (c) your current name;
- (d) all names under which you have operated within the last ten years, and the dates each name was used;
- (e) the address of your principal place of business.

Are you a corporation?

If you are a corporation, state:

- (a) the name stated in the current articles of incorporation;
- (b) all other names used by the corporation during the past ten years and the dates each was used;
- (c) the date and place of incorporation;
- (d) the **ADDRESS** of the corporation's principal place of business;
- (e) whether you are qualified to do business in Colorado.

3.2

Are you a partnership?

If you are a partnership, state:

- (a) the current partnership name;
- (b) all other names used by the partnership during the past ten years and the dates each was used;
- (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
- (d) the name and **ADDRESS** of each general partner;
- (e) the **ADDRESS** of the partnership's principal place of business.

3.3

Are you a joint venture?

If you are a joint venture, state:

- (a) the current joint venture name;
- (b) all other names used by the joint venture during the past ten years and the dates

- ~~each was used;~~
- ~~(e) the name and ADDRESS of each joint venturer;~~
- ~~(d) the ADDRESS of the joint venturer's principal place of business.~~

~~3.4 Are you an unincorporated association?~~

~~If you are an unincorporated association, state:~~

- ~~(a) the current unincorporated association's name;~~
- ~~(b) all other names used by the unincorporated association during the past ten years and the dates each was used;~~
- ~~(e) the ADDRESS of the association's principal place of business.~~

3.25 Have you done business under a fictitious name during the past ten years?

If so, for each fictitious name state:

- (a) the name;
- (b) the dates the name was used;
- (c) the state and county of each fictitious name filing;
- (d) the ADDRESS of your principal place of business.

3.36 Within the past five years, has any public entity registered or licensed your businesses?

If so, for each license or registration:

- (a) identify the license or registration;
- (b) state the name of the public entity;
- (c) state the dates of issuance and expiration.

3.4 State the name, ADDRESS, and the job title of the manager or managers most responsible for overseeing the INCIDENT or events leading to the INCIDENT.

4.0 Insurance *(Withdrawn. See C.R.C.P. 26(a)(1)(D), and 2016 Comment to C.R.C.P. 33.)*

~~4.1 At the time of the INCIDENT, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the INCIDENT?~~

~~If so, for each policy state:~~

- ~~the kind of coverage;~~
- ~~the name and ADDRESS of the insurance company;~~
- ~~the name, ADDRESS, and telephone number of each named insured;~~
- ~~the policy number;~~
- ~~the limits of coverage for each type of coverage contained in the policy;~~
- ~~whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company;~~
- ~~the name, ADDRESS, and telephone number of the custodian of the policy.~~

~~4.2 Are you self-insured under any statute for the damages, claims, or actions that have~~

arisen out of the **INCIDENT**?

If so, specify the statute.

5.0 (Reserved)

6.0 Physical, Mental, or Emotional Injuries

6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**?

If your answer is “no,” do not answer interrogatories 6.2 through 6.7.

6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

6.3 Do you still have any complaints that you attribute to the **INCIDENT**?

If so, for each complaint state:

- (a) a description;
- (b) whether the complaint is subsiding, remaining the same, or becoming worse;
- (c) the frequency and duration.

6.4 Did you receive any consultation or examination (except from expert witnesses covered by C.R.C.P. 35 or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**?

If so, for each **HEALTH CARE PROVIDER** state:

- (a) the name, **ADDRESS**, and telephone number;
- (b) the type of consultation, examination, or treatment provided;
- (c) the dates you received consultation, examination, or treatment;
- (d) the charges to date.

6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**?

If so, for each medication state:

- (a) the name;
- (b) the **PERSON OR ENTITY** who prescribed or furnished it;
- (c) the date prescribed or furnished;
- (d) the dates you began and stopped taking it;
- (e) the cost to date.

6.6 Are there any other medical services not previously listed (for example, ambulance, nursing, prosthetics)?

If so, for each service state:

- (a) the nature;
- (b) the date;
- (c) the cost;
- (d) the name, **ADDRESS**, and telephone number of each provider.

6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**?

If so, for each injury state:

- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
- (b) the complaints for which the treatment was advised;
- (c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**?

If so, for each item of property:

- (a) describe the property;
- (b) describe the nature and location of the damage to the property;
- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated;
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to interrogatory 7.1?

If so, for each estimate or evaluation state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who prepared it and the date prepared;
- (b) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has a copy;
- (c) the amount of damage stated.

7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired?

If so, for each item state:

- (a) the date repaired;
- (b) a description of the repair;
- (c) the repair cost;
- (d) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who repaired it;
- (e) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who paid for the repair.

8.0 Loss of Income or Earning Capacity

~~8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? If your answer is "no," do not answer interrogatories 8.2 through 8.8.~~

8.12 State:

- (a) the nature of your work;
- (b) your job title at the time of the **INCIDENT**;
- (c) the date your employment began.

8.23 State the last date before the **INCIDENT** that you worked for compensation.

8.34 State your monthly income at the time of the **INCIDENT** and how the amount was

calculated.

8.45 State the date you returned to work at each place of employment following the **INCIDENT**.

8.56 State the dates you did not work and for which you lost income.

~~8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.~~

8.68 Will you lose income in the future as a result of the **INCIDENT**?

If so, state:

- (a) the facts upon which you base this contention;
- (b) an estimate of the amount;
- (c) an estimate of how long you will be unable to work;
- (d) how the claim for future income is calculated.

~~8.7 *(Pattern interrogatory 8.7 was withdrawn. See C.R.C.P. 26(a)(1)(C), and 2016 comment to C.R.C.P. 33.)*~~

9.0 Other Damages

9.1 Are there any other damages that you attribute to the **INCIDENT**?

If so, for each item of damage state:

- (a) the nature;
- (b) the date it occurred;
- (c) the amount;
- (d) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** to whom an obligation was incurred.

9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1?

If so, state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT**.

10.0 Medical History

10.1 At any time before the **INCIDENT**, did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? ~~Fee broad~~

If so, for each state:

- (a) a description;
- (b) the dates it began and ended;
- (c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

~~-10.2 *(Pattern interrogatory 10.2 is withdrawn. See 2016 Comment to C.R.C.P. 33.)* List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. (You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)~~

10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages?

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If so, for each incident state:

- (a) the date and the place it occurred;
- (b) the name, **ADDRESS**, and telephone number of any other **PERSON OR ENTITY** involved;
- (c) the nature of any injuries you sustained;
- (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** that you consulted or who examined or treated you;
- (e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims *(Withdrawn. See C.R.C.P. 26(b)(1), and 2016 Comment to C.R.C.P. 33.)*

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~~11.1~~ Except for this action, in the last ten years have you filed an action or made a written claim or demand for compensation for personal injuries?

If so, for each action, claim, or demand state:

- ~~(a) the date, time, and place and location of the **INCIDENT** (closest street **ADDRESS** or intersection);~~
- ~~(b) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** against whom the claim was made or action filed;~~
- ~~(c) the court, names of the parties, and case number of any action filed;~~
- ~~(d) the name, **ADDRESS**, and telephone number of any attorney representing you;~~
- ~~(e) whether the claim or action has been resolved or is pending.~~

~~11.2~~ In the last ten years have you made a written claim or demand for workers' compensation benefits?

If so, for each claim or demand state:

- ~~(a) the date, time, and place of the **INCIDENT** giving rise to the claim;~~
- ~~(b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;~~
- ~~(c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;~~
- ~~(d) the period of time during which you received workers' compensation benefits;~~
- ~~(e) a description of the injury;~~
- ~~(f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** that provided services;~~
- ~~(g) the case number of the workers' compensation claim.~~

12.0 Investigation--General

12.1 State the name, **ADDRESS**, and telephone number of each individual:

- (a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
- (b) who made any statement at the scene of the **INCIDENT**;
- (c) who heard any statements made about the **INCIDENT** by any individual at the scene;

(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claims to have knowledge of the **INCIDENT** (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)).

12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**?

If so, for each individual state:

- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
- (b) the date of the interview;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who conducted the interview.

12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**?

If so, for each statement state:

- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
- (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
- (c) the date the statement was obtained;
- (d) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the original statement or a copy.

12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries?

If so, state:

- (a) the number of photographs or feet of film or videotape;
- (b) the places, objects, or persons photographed, filmed, or videotaped;
- (c) the date the photographs, films, or videotapes were taken;
- (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes;
- (e) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the original or a copy.

12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)) concerning the **INCIDENT**?

If so, for each item state:

- (a) the type (i.e., diagram, reproduction, or model);
- (b) the subject matter;
- (c) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has it.

12.6 Was a report made by any **PERSON OR ENTITY** concerning the **INCIDENT**?

If so, state:

- (a) the name, title, identification number, and employer of the **PERSON OR ENTITY** who made the report;
- (b) the date and type of report made;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** for whom the report was made.

12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**?

If so, for each inspection state:

- (a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4));
- (b) the date of the inspection.

13.0 Investigation--Surveillance

13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action?

If so, for each surveillance state:

- (a) the name, **ADDRESS**, and telephone number of the individual or party;
- (b) the time, date, and place of the surveillance;
- (c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance.

13.2 Has a written report been prepared on the surveillance?

If so, for each written report state:

- (a) the time;
- (b) the date;
- (c) the name, **ADDRESS**, and telephone number of the individual who prepared the report;
- (d) the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the original or a copy.

14.0 Statutory or Regulatory Violations

14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON OR ENTITY** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**?

If so, identify each **PERSON OR ENTITY** and the statute, ordinance, or regulation.

14.2 Was any **PERSON OR ENTITY** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**?

If so, for each **PERSON OR ENTITY** state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY**;
- (b) the statute, ordinance, or regulation allegedly violated;
- (c) whether the **PERSON OR ENTITY** entered a plea in response to the citation or charge and, if so, the plea entered;
- (d) the name and **ADDRESS** of the court or administrative agency, names of the

parties, and case number.

15.0 Affirmative Defenses

- 15.1 Identify each denial of a material allegation ~~and each affirmative defense~~ in paragraph (insert paragraph number) of your defensive pleadings and for each:
 - (a) state the facts ~~all facts~~ upon which you base the denial ~~or affirmative defense~~;
 - (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of ~~those facts~~ the facts;
 - (c) identify all **DOCUMENTS** and other tangible things which support your denial ~~or affirmative defense~~, and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT**.

[Note: This interrogatory may be repeated as additional interrogatories for any paragraphs of the pleading which the responding party has denied.]

- 15.2 ~~For your~~ Identify each denial of a material allegation and each affirmative defense of in your pleadings (insert name of affirmative defense) and for each:
 - (a) state the facts ~~all facts~~ upon which you base the ~~denial or~~ affirmative defense;
 - (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of ~~those facts~~ the facts;
 - (c) identify all **DOCUMENTS** and other tangible things which support your ~~denial or~~ affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT**.

[Note: This interrogatory may be repeated as additional interrogatories for any affirmative defenses which the responding party has pleaded.]

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16.0 Defendant's Contentions--Personal Injury

[See Instructions Section 2(c)]

- 16.1 Do you contend that any **PERSON OR ENTITY**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff?
If so, for each **PERSON OR ENTITY**:
 - (a) state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY**;
 - (b) state ~~all facts~~ the facts upon which you base your contention;
 - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
 - (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

- 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**?
If so:

- (a) state ~~all facts~~ the facts upon which you base your contention;
- (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSONS OR ENTITY** who has each **DOCUMENT** or thing.

16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**?

If so, for each injury:

- (a) identify it;
- (b) state ~~all facts~~ the facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**?

If so:

- (a) identify each service;
- (b) state ~~all facts~~ the facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were unreasonable?

If so:

- (a) identify each cost;
- (b) state ~~all facts~~ the facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**?

If so:

- (a) identify each part of the loss;
- (b) state ~~all facts~~ the facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

- 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery proceedings thus far in this case was not caused by the **INCIDENT**?

If so:

- (a) identify each item of property damage;
- (b) state ~~all facts~~ the facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

- 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable?

If so:

- (a) identify each cost item;
- (b) state ~~all facts~~ the facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.

- 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case?

If so, for each plaintiff state:

- (a) the source of each **DOCUMENT**;
- (b) the date each claim arose;
- (c) the nature of each claim;
- (d) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT**.

- 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4))?

If so, for each plaintiff state:

- (a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
- (b) a description of each **DOCUMENT**;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions *(Withdrawn. See C.R.C.P. 36(a), and 2016 Comment to C.R.C.P. 33.)*

~~17.1 Is your response to each request for admission served with these interrogatories an unqualified admission?~~

~~If not, for each response that is not an unqualified admission:~~

- ~~(a) state the number of the request;~~
- ~~(b) state all facts upon which you base your response;~~
- ~~(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS OR ENTITIES** who have knowledge of those facts;~~
- ~~(d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON OR ENTITY** who has each **DOCUMENT** or thing.~~

18.0 (Reserved)

19.0 (Reserved)

20.0 How the Incident Occurred--Motor Vehicle

20.1 State the date, time, and place (closest street address, intersection, or highway) of the **INCIDENT**.

20.2 For each vehicle involved in the **INCIDENT**, state:

- (a) the year, make, model, and license number;
- (b) the name, **ADDRESS**, and telephone number of the driver;
- (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
- (d) the name, **ADDRESS**, and telephone number of each registered owner;
- (e) the name, **ADDRESS**, and telephone number of each lessee;
- (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder;
- (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

20.3 State the **ADDRESS** and location where your trip began, and the **ADDRESS** and location of your destination.

20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.

20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the

INCIDENT.

- 20.6 Did the **INCIDENT** occur at an intersection?
If so, describe all traffic control devices, signals, or signs at the intersection.
- 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**?
If so, state:
- (a) your location when you first saw it;
 - (b) the color;
 - (c) the ~~number of seconds~~ approximate length of time it had been that color;
 - (d) whether the color changed between the time you first saw it and the **INCIDENT**.
- 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
- (a) just before the **INCIDENT**;
 - (b) at the time of the **INCIDENT**;
 - (c) just after the **INCIDENT**.
- 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**?
If so:
- (a) identify the vehicle;
 - (b) identify each malfunction or defect;
 - (c) state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who is a witness to or has information about each malfunction or defect;
 - (d) state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has custody of each defective part.
- 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**?
If so:
- (a) identify the vehicle;
 - (b) identify each malfunction or defect;
 - (c) state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who is a witness to or has information about each malfunction or defect;
 - (d) state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has custody of each defective part.
- 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON OR ENTITY** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

25.0 (Reserved)

30.0 (Reserved)

40.0 (Reserved)

50.0 Contract

- 50.1 For each agreement alleged in the pleadings:
 - (a) identify all **DOCUMENTS** that are part of the agreement and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**;
 - (b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** agreeing to that provision, and the date that part of the agreement was made;
 - (c) identify all **DOCUMENTS** that evidence each part of the agreement not in writing and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**;
 - (d) identify all **DOCUMENTS** that are part of each modification to the agreement, and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**;
 - (e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** agreeing to the modification, and the date the modification was made;
 - (f) identify all **DOCUMENTS** that evidence each modification of the agreement not in writing and, if you do not have a copy of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**.
- 50.2 ~~If Was~~ there was a breach of any agreement alleged in the pleadings?²
~~If so,~~ for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.
- 50.3 ~~If Was~~ performance of any agreement alleged in the pleadings was excused?²
~~If so,~~ identify each agreement excused and state why performance was excused.
- 50.4 ~~If Was~~ any agreement alleged in the pleadings was terminated by mutual agreement, release, accord and satisfaction, or novation?²
~~If so,~~ identify each agreement terminated and state why it was terminated including dates.
- 50.5 ~~If Is~~ any agreement alleged in the pleadings is unenforceable?²
~~If so,~~ identify each unenforceable agreement and state why it is unenforceable.
- 50.6 ~~If Is~~ any agreement alleged in the pleadings is ambiguous?²
~~If so,~~ identify each ambiguous agreement and state why it is ambiguous.

60.0 (Reserved)

Form 10. CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

City/State/Zip Code: _____

Telephone Number: _____

I swear or affirm that to the best of my knowledge and belief the following is true for the attached documents, which are _____ (*describe documents*), consisting of _____ number of pages, dated from _____ to _____.

- 1) I am the custodian of these records, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities;
- 2) The records were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
- 3) Were kept in the course of the regularly conducted activity;
- 4) Were made by the regularly conducted activity as a regular practice.

Name: _____

Signature: _____

Subscribed and sworn to before me this ____ day of _____, 20____,

By _____

Witness my hand and official seal.

My commission expires _____.

Notary Public

FORM 11. DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

COUNTY COURT, _____ COUNTY, COLORADO Address: <hr/> Plaintiff(s): v. Defendant(s): <hr/> Attorney or Party Without Attorney (Name and Address): Telephone Number: E-Mail: FAX Number: Atty. Reg. #:	<div style="text-align: center; border: 1px solid black; padding: 2px; margin-bottom: 10px;"> <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> </div> Case No. Div.
<p><u>[NAME OF PARTY]</u> DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS</p>	

 [Name of Party] Hereby submits this Disclosure of Records to be Offered Through A Certification of Records.

 [Name of Party] provides notice to all adverse parties of the intent to offer the following records through a certification of records pursuant to C.R.E. 902(11) and 902(12):

[List all records to be offered through a certification of records. If you intend to offer all records through a certification, you may state “all records.” Use additional Pages if necessary]

These records with the accompanying certification (*check applicable line*):

_____ Have already been provided to all adverse parties.

_____ Are being provided to all adverse parties with this Disclosure.

_____ Have been provided to all adverse parties in part, with the remainder being provided with this Disclosure

_____ Are available for inspection and copying on reasonable notice at this location:

Date: _____

(*Signature of Party or Attorney*)

CERTIFICATE OF SERVICE

I certify that on _____ (*date*) a copy of this **DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS** was served on the following parties (*list all parties served by name and address, use extra pages if necessary*):

_____	_____
_____	_____
_____	_____

(*Signature of Party or Attorney*)

Form 41. CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

Name of Organization or Business: _____

Address: _____

City/State/Zip Code: _____

Telephone Number: _____

I swear or affirm that to the best of my knowledge and belief the following is true for the attached documents, which are _____ (*describe documents*), consisting of _____ number of pages, dated from _____ to _____.

- 1) I am the custodian of these records, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities;
- 2) The records were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
- 3) Were kept in the course of the regularly conducted activity;
- 4) Were made by the regularly conducted activity as a regular practice.

Name: _____

Signature: _____

Subscribed and sworn to before me this ____ day of _____, 20____,

By _____

Witness my hand and official seal.

My commission expires _____.

Notary Public

FORM 42. DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS PURSUANT TO C.R.E. 902(11) AND 902(12)

DISTRICT COURT, _____ COUNTY, COLORADO Address: <hr/> Plaintiff(s): v. Defendant(s): <hr/> Attorney or Party Without Attorney (Name and Address): Telephone Number: E-Mail: FAX Number: Atty. Reg. #:	<div style="text-align: center; border: 1px solid black; padding: 2px; margin-bottom: 10px;"> <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> </div> Case No. Div.
<p><u>[NAME OF PARTY]</u> DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS</p>	

 [Name of Party] Hereby submits this Disclosure of Records to be Offered Through A Certification of Records.

 [Name of Party] provides notice to all adverse parties of the intent to offer the following records through a certification of records pursuant to C.R.E. 902(11) and 902(12):

[List all records to be offered through a certification of records. If you intend to offer all records through a certification, you may state “all records.” Use additional Pages if necessary]

These records with the accompanying certification (*check applicable line*):

_____ Have already been provided to all adverse parties.

_____ Are being provided to all adverse parties with this Disclosure.

_____ Have been provided to all adverse parties in part, with the remainder being provided with this Disclosure

_____ Are available for inspection and copying on reasonable notice at this location:

Date: _____

(*Signature of Party or Attorney*)

CERTIFICATE OF SERVICE

I certify that on _____ (*date*) a copy of this **DISCLOSURE OF RECORDS TO BE OFFERED THROUGH A CERTIFICATION OF RECORDS** was served on the following parties (*list all parties served by name and address, use extra pages if necessary*):

_____	_____
_____	_____
_____	_____

(*Signature of Party or Attorney*)

INSTRUCTIONS FOR FORMS 10 AND 11

Forms 10 and 11 provide a means to comply with the requirements of C.R.E. 902(11) and 902(12) to allow the admission of the records of a regularly conducted activity. These forms are not the exclusive means of complying with the rules and parties may use their own forms so long as they comply with the requirements of the rules.

Form 10

Form 10 should be completed by the person in charge of the records at the business or organization, or by another person who is familiar with how the records are kept. It must be notarized. If the business or organization does not have a notary, it may be necessary to find a notary willing to go to the business.

Form 10 may be provided to the business or organization at the time records are requested, either by letter or by subpoena. The form may then be completed at the time the records are provided. However, completion of the form is voluntary and the business or organization may refuse.

If a party desires a business or organization to complete Form 10 after the documents have been provided, it may be necessary to give the business a copy of the documents, so it can verify exactly what was earlier provided.

Form 10 calls for a description of the documents being certified. This description may be brief, such as: “medical records;” “architects notes and blue prints;” or “repair estimates.”

Form 10 calls for a date range for the documents. This is to assist in determining what specific documents have been certified. If the documents are undated, and the date range cannot be ascertained, then this may be left blank.

The completed Form 10 must accompany the documents when they are offered at trial or a hearing.

Form 11

C.R.E. 902(11) and 902(12) require advance notice if documents will be offered into evidence through a certification of the records. Form 11 provides a means to provide this notice.

Form 11 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 11 may state “all records.” By way of example, the records may be listed by name or description, Bate’s number, or trial exhibit number.

Both the records to be offered and the certifications must be provided to all adverse parties, or at least made available for inspection and copying. If the records or certifications have not already

been provided, they should be attached to Form 11 or be made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 11 must be served on all adverse parties before of the use of the records at a trial or hearing. For the sake of simplicity, it may be desirable to serve all parties, and not just all adverse parties. The service must be sufficiently in advance of the trial or hearing that the adverse parties may prepare to address the documents.

What constitutes sufficient advance notice is decided on a case-by-case basis. But Form 11 should be served sufficiently in advance of the trial or hearing that the adverse parties may subpoena witnesses to testify about the documents if they so desire.

INSTRUCTIONS FOR FORMS 41 AND 42

Forms 41 and 42 provide a means to comply with the requirements of C.R.E. 902(11) and 902(12) to allow the admission of the records of a regularly conducted activity. These forms are not the exclusive means of complying with the rules and parties may use their own forms so long as they comply with the requirements of the rules.

Form 41

Form 41 should be completed by the person in charge of the records at the business or organization, or by another person who is familiar with how the records are kept. It must be notarized. If the business or organization does not have a notary, it may be necessary to find a notary willing to go to the business.

Form 41 may be provided to the business or organization at the time records are requested, either by letter or by subpoena. The form may then be completed at the time the records are provided. However, completion of the form is voluntary and the business or organization may refuse.

If a party desires a business or organization to complete Form 41 after the documents have been provided, it may be necessary to give the business a copy of the documents, so it can verify exactly what was earlier provided.

Form 41 calls for a description of the documents being certified. This description may be brief, such as: “medical records;” “architects notes and blue prints;” or “repair estimates.”

Form 41 calls for a date range for the documents. This is to assist in determining what specific documents have been certified. If the documents are undated, and the date range cannot be ascertained, then this may be left blank.

The completed Form 41 must accompany the documents when they are offered at trial or a hearing.

Form 42

C.R.E. 902(11) and 902(12) require advance notice if documents will be offered into evidence through a certification of the records. Form 42 provides a means to provide this notice.

Form 42 should list each record that may be offered through a certification, unless all records may be offered in this manner, in which case Form 42 may state “all records.” By way of example, the records may be listed by name or description, Bate’s number, or trial exhibit number.

Both the records to be offered and the certifications must be provided to all adverse parties, or at least made available for inspection and copying. If the records or certifications have not already

been provided, they should be attached to Form 42 or made available for inspection and copying. The serving party need only attach those records and certifications that have not already been provided.

Form 42 must be served on all adverse parties before of the use of the records at a trial or hearing. For the sake of simplicity, it may be desirable to serve all parties, and not just all adverse parties. The service must be sufficiently in advance of the trial or hearing that the adverse parties may prepare to address the documents.

What constitutes sufficient advance notice is decided on a case-by-case basis. But Form 42 should be served sufficiently in advance of trial or hearing that the adverse parties may subpoena witnesses to testify about the documents if they so desire.

Rule 121. Local rules – Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1-14

DEFAULT JUDGMENTS

1. – 2. [NO CHANGE]

3. If the party against whom default judgment is sought is in the military service, or his status cannot be shown, the court shall require such additional evidence or proceeding as will protect the interests of such party in accordance with the Service ~~M~~members Civil Relief Act (SCRA), 50 USC § ~~3931~~520, including the appointment of an attorney when necessary. The appointment of an attorney shall be made upon application of the moving party, and expense of such appointment shall be borne by the moving party, but taxable as costs awarded to the moving party as part of the judgment except as prohibited by law.

4. [NO CHANGE]

~~COMMITTEE COMMENT~~

2006

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

Rule 121. Local rules – Statewide Practice Standards

(a) – (c) [NO CHANGE]

**Section 1-19
JURY INSTRUCTIONS**

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

RULE 103. GARNISHMENT

SECTION 1 - SECTION 3 [NO CHANGE]

SECTION 4

**WRIT OF GARNISHMENT – JUDGMENT
DEBTOR OTHER THAN NATURAL PERSON**

(a) – (e) [NO CHANGE]

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

(1) – (2) [NO CHANGE]

(g) [NO CHANGE]

Section 5 – 13 [NO CHANGE]

RULE 41. DISMISSAL OF ACTIONS

(a) [NO CHANGE]

(b) Involuntary Dismissal: Effect Thereof.

(1) By Defendant. For failure of a plaintiff to prosecute or to comply with these Rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this section (b) and any dismissal not provided for in this Rule, other than a dismissal for failure to prosecute, for lack of jurisdiction, for failure to file a complaint under Rule 3, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) – (d) [NO CHANGE]

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) [NO CHANGE]

(b) **Capacity to Sue or Be Sued.** ~~A married woman may sue and be sued in all matters the same as though she were sole.~~ A partnership or other unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right. A father and mother or the sole surviving parent may maintain an action for the injury or death of a child; where both maintain the action, each shall have an equal interest in the judgment; where one has deserted or refuses to sue, the other may maintain the action. A guardian may maintain an action for the injury or death of his ward.

(c) [NO CHANGE]

[West's Colorado Revised Statutes Annotated](#)

[West's Colorado Court Rules Annotated](#)

[Colorado Rules of Civil Procedure](#)

[Chapter 6. Judgment](#)

C.R.C.P. Rule 60

RULE 60. RELIEF FROM JUDGMENT OR ORDER

[Currentness](#)

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the case is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Surprise; Excusable Neglect; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than six months after the judgment, order, or proceeding was entered or taken. A motion under this section (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court: (1) To entertain an independent action to relieve a party from a judgment, order, or proceeding, or (2) to set aside a judgment for fraud upon the court; or (3) when, for any cause, the summons in an action has not been personally served within or without the state on the defendant, to allow, on such terms as may be just, such defendant, or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action. Writs of coram nobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

[Notes of Decisions \(628\)](#)

Rules Civ. Proc., Rule 60, CO ST RCP Rule 60
Current with amendments received through May 1, 2016

End of Document

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[West's Colorado Revised Statutes Annotated](#)

[West's Colorado Court Rules Annotated](#)

[Colorado Rules of Civil Procedure](#)

[Chapter 5. Trials](#)

C.R.C.P. Rule 52

RULE 52. FINDINGS BY THE COURT

[Currentness](#)

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to [Rule 58](#); and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Neither requests for findings nor objections to findings rendered are necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under [Rule 12](#) or [56](#) or any other motion except as provided in [Rule 41\(b\)](#).

Credits

Amended eff. Jan. 1, 1985.

[Notes of Decisions \(155\)](#)

Rules Civ. Proc., Rule 52, CO ST RCP Rule 52
Current with amendments received through May 1, 2016

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[West's Colorado Revised Statutes Annotated](#)

[West's Colorado Court Rules Annotated](#)

[Colorado Rules of Civil Procedure](#)

[Chapter 6. Judgment](#)

C.R.C.P. Rule 57

RULE 57. DECLARATORY JUDGMENTS

Currentness

(a) Power to Declare Rights, etc.; Force of Declaration. District and superior courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceedings shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

(b) Who May Obtain Declaration of Rights. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(c) Contract Construed Before Breach. A contract may be construed either before or after there has been a breach thereof.

(d) For What Purposes Interested Person May Have Rights Declared. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other; or

(2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(e) Not a Limitation. The enumeration in sections (b), (c), and (d) of this Rule does not limit or restrict the exercise of the general powers conferred in section (a) of this Rule, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

(f) When Court May Refuse to Declare Right. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(g) Review. All orders, judgments, and decrees under this Rule may be reviewed as other orders, judgments, and decrees.

(h) Further Relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

(i) Issues of Fact. When a proceeding under this Rule involves the determination of an issue of fact, such issues may be tried and determined in the same manner as issues of facts are tried and determined in other actions in the court in which the proceeding is pending.

(j) Parties; Municipal Ordinances. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and is entitled to be heard.

(k) Rule is Remedial; Purpose. This Rule is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

(l) Interpretation and Construction. This Rule shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgment and decrees.

(m) Trial by Jury; Remedies; Speedy Hearing. Trial by jury may be demanded under the circumstances and in the manner provided in [Rules 38](#) and [39](#). The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

[Notes of Decisions \(259\)](#)

Rules Civ. Proc., Rule 57, CO ST RCP Rule 57
Current with amendments received through May 1, 2016

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