AGENDA

COLORADO SUPREME COURT
COMMITTEE ON
RULES OF CIVIL PROCEDURE

Friday, June 26, 2015, 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 April 24, 2015 Meeting Minutes [Page 3 to 7]

III. Announcements from the Chair

A. New Members—Judge Janice Davidson, Institute for the Advancement of the American Legal System; Brent Owen, Lewis Roca Rothgerber; Damon Davis, Killian, Davis, Richter & Mayle, PC, Grand Junction; Skip Netzorg, Sherman & Howard; and Stephanie Scoville, Colorado Attorney General's Office —Updated roster attached [Page 8 to 11]

B. Resignation of Chuck Kall

C. Approval of most of Committee's IAJ recommendations—final rule amendments attached [Page 12 to 59]

D. Education of Lawyers and Judges on amended rules—CLE Colorado program on June 25, 2015; program at State Judicial Conference, September 2015

E. Request by Supreme Court that Committee study increasing statutory jurisdiction of small claims court and county court; making CRCP 16.1 mandatory—establishment of subcommittee

IV. Existing Business

A. Colorado Rules of Probate Procedure—(Fred Skillern and Teresa Tate) [Page 60 to 81]

B. Rule 120 Subcommittee—(Fred Skillern) [Page 82 to 93]

C. Rule 121 §1-15 Subcommittee—(David DeMuro) (Authority of court to require oral motions; page limits) [Page 94 to 103]

D. New Form for admission of business records under hearsay exception rule—(coordinated with Supreme Court Committee on Rules of Evidence) [Page 104 to 105]

E. Rule 122(c)(7)—(Case Specific Appointment of Appointed Judges Pursuant to C.R.S. §13-3-111) [Page 106]

F. Rule 53 Masters—(general update and rewrite of rule; need additional subcommittee members and subcommittee chair) [Page 107 to 108]

G. Rule 23—(Proposal to remit unpaid class settlement amounts to COLTAF) [Page 109 to 117]

H. Antero v. Strudley, 2015 CO 26—(Judge Frick)(consideration of rule amendment to permit *Lone Pine* orders) [Page 118 to 133]

I. Rule 84—(Dick Holme)(Forms) [Page 134 to 169]

V. New Business

VI. Adjourn—Next meeting is September 25, 2015 at 1:30pm

Michael H. Berger, Chair
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720 625-5231

Jenny Moore, Esq.
Rules Research Attorney
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720-625-5105

Conference Call Information:

Dial (720) 625-5050 and enter the access code, 00566396, followed by # key.

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
Minutes of April 24, 2015 Meeting

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Civil Procedure was called to order by Judge Michael Berger 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
David R. DeMuro	X	
Judge Ann Frick		X
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Charles Kall		X
Thomas K. Kane	X	
Debra Knapp	X	
Richard Laugesen	X	
Cheryl Layne		X
Judge Cathy Lemon	X	
David C. Little	X	
Chief Judge Alan Loeb	X	
Professor Christopher B. Mueller	X	
Gordon “Skip” Netzorg	X	
Brent Owen		X
Judge Ann Rotolo		X
Stephanie Scoville	X	
Frederick B. Skillern	X	
Lee N. Sternal		X
Magistrate Marianne Tims		X
Ben Vinci	X	
Judge John R. Webb	X	
J. Gregory Whitehair		X
Christopher Zenisek	X	
Non-voting Participants		
Justice Allison Eid, Liaison	X	
Teresa Tate	X	

I. Attachments & Handouts

A. April 24, 2015 agenda packet

B. Digest of public comment

C. Amended Improving Access to Justice rules, in response to public comment

D. Amended Improving Access to Justice rule comments, in response to public comment

II. Announcements from the Chair

The February 27, 2015 minutes were adopted with no corrections.

Judge Berger welcomed new members Chief Judge (Ret.) Janice Davison, Gordon Netzorg, Brent Owens, and Stephanie Scoville.

The committee comment amendments were submitted to the supreme court with Judge Berger's letter recommending that the comments be approved by the committee, and not the court, much like the comments to the federal rules. The supreme court rejected this proposal. Rule and comment amendments are submitted as a package and the court will continue to oversee the comments. Therefore, "committee comments" will now be called "comments" and all comments will be dated by the effective year. The amended comments were revised accordingly and resubmitted to the supreme court.

III. Business

A. IAJ Proposal – Public Comment

Judge Berger said that the committee would spend the entire meeting discussing public comment received in response to the Improving Access to Justice Proposal. Judge Berger, Mr. Holme, Mr. Netzorg, (Mr. Netzorg commented only on the comment amendments), and Judge Webb went over all public comment, and new amendments were marked on the two documents emailed before the meeting: the Amended Improving Access to Justice rules, in response to public comment and the Amended Improving Access to Justice rule comments, in response to public comment.

Judge Berger explained that the rules would be discussed sequentially, the proposed amendments in response to public comment would be considered, and then other comments, questions, and amendments by the committee would be addressed. Discussion began and the amendments are as follows:

- Rule 1, no additional amendments;

- Rule 12
  - (a)(1) was amended to exclude qualified or absolute immunity defenses from the requirement of filing an answer;
  - in (a)(2) "subsection" was pluralized and a cross-reference to subsection (e) was added;
  - cross references to (a)(1) and (2) were added in subsection (e);
  - a new comment was added;
  - a motion to adopt Rule 12 as amended passed unanimously;

- Rule 16
  - qualified or absolute immunity language was added in (b)(1);
  - (b)(3) added video conferencing;
  - (b) (7) clarified that settlement discussions do not actually have to be held;
  - language was added in (b)(8) to accommodate statutory deadlines; later there was a motion to strike the added language, but with four yes votes the motion failed;
  - (b)(12) added the standard "good cause";
  - (b)(18) expressly states that the case management order can be amended by the judge;
  - "Upon a showing of good cause, and in the absence of material prejudice the court should permit the requested amendment" was added in (e); however, later there was a motion to strike the statement, and striking the language passed with one dissenting vote;
  - a motion to adopt Rule 16 as amended passed unanimously.

- Rule 16.1; no additional amendments;

- Rule 26(a)-(d)
  - The phrase "14 days prior to the" was added to (a)(2)(B)(I)(h) so fee information does not have to be generated on the eve of trial passed with one dissenting vote;
  - the committee tried to make it clear in (a)(2)(B)(II) that there are retained experts and non-retained experts, but no "hybrid" expert by adding "expressing an expert opinion" which is aimed at limiting what a non-retained expert can testify to; a motion to add this language passed unopposed;
  - there was a motion to strike 26(b)(4)(D) that was seconded, but failed;
  - a motion to adopt Rule 26(a)-(d) as amended passed unanimously;

- Rule 26(e)
  - language was added so parties do not have to disclose information that will be used for impeachment only passed with a vote of 10 to 6;
  - an amendment making an expert's opinions, bases, and reasons, when disclosed during the expert's deposition by the adverse party, admissible by the court unless the court finds that the opposing party has been unfairly prejudiced passed with one dissenting vote;
  - a motion to adopt Rule 26(e) as amended passed unanimously;

- Three additional comments were added to Rule 26
  - *Pleading of affirmative defenses* passed with no opposition;

- *Depositions of retained experts* passed 10 to 5;
- *Sufficiency of disclosure of expert opinions and the bases therefor* passed 10 to 5;

- Rule 30
  - subsections "(a)" and "(b)" were changed to "(A)" and "(B)" for formatting consistency;
  - a motion to adopt Rule 30 as amended passed unanimously;

- Rule 31, no additional amendments;

- Rule 33
- this rule was not in the original proposal;
- the amendment added that interrogatory objections must state with specificity the grounds for the objection, a timely objection stays the obligation to answer, and no separate protective order pursuant to CRCP 26(c) is required;
- a motion to adopt Rule 33 as amended passed unanimously;

- Rule 34, no additional amendments;

- Rule 37
  - the amendment clarified that a hearing will not be held automatically;
  - a motion to adopt Rule 37 as amended passed unanimously;

- Rule 121
  - "in support of the Bill of Costs" was added;
  - a motion to adopt Rule 37 as amended passed unanimously;

- Case Management Order Form, no additional amendment; and

- Rule 54.
  Public comment from plaintiffs groups generally opposed the proposed amendment to Rule 54. In response to public comment, some members thought the word "reasonable" should be kept in subsection (d), line 2, but that all other amendments should be struck. However, other members thought public comment was primarily received from certain plaintiffs groups, specifically the construction defect group, and that the committee should proceed with Rule 54 as amended. A motion was made to adopt Rule 54 as amended and the motion passed by a vote of 10 to 6.

  Judge Berger will draft a letter describing the committee's final recommendations. He thanked the committee for their time and effort on this proposal and reminded the committee that the public hearing is Thursday, April 30 at 1:30.

B. Colorado Rules of Probate Procedure

Tabled to the June 26, 2015 meeting.

C. Rule 120 Subcommittee
Tabled to the June 26, 2015 meeting.

D. Rule 121, §1-15 Subcommittee
Tabled to the June 26, 2015 meeting.

E. Rule 84 Forms
Tabled to the June 26, 2015 meeting.

F. Rule 53 Masters
Tabled to the June 26, 2015 meeting.

G. New Disclosure Form
Tabled to the June 26, 2015 meeting.

H. Rule 122(c)(7) Case Specific Appointment of Appointed Judges Pursuant to C.R.S. §13-3-111
Tabled to the June 26, 2015 meeting.

IV. Future Meetings

June 26, 2015
September 25, 2015
November 20, 2015

The Committee adjourned at 4:45 p.m.

Respectfully submitted,
Jenny A. Moore

Name and Address	Contact	Term
1. Justice Allison Eid, Liaison CO Supreme Court 2 East 14th Avenue Denver, CO 80203	allison.eid@judicial.state.co.us 720-625-5150	N/A
2. Judge Michael Berger, Chair CO Court of Appeals 2 East 14th Avenue Denver, CO 80203	michael.berger@judicial.state.co.us 720-625-5150	1/1/2014 – 12/31/2017
3. The Honorable Janice B. Davidson Institute for the Advancement of the American Legal System 2060 S. Gaylord Way Denver, CO 80208	janice.davidson@du.edu 303-871-6611	4/1/2015 – 3/31/2018
4. Damon Davis Killian Davis Richter & Mayle, P.C. 202 North 7th Street Grand Junction, CO 81502	damon@killianlaw.com 970-241-0707	5/15/2015-5/14/2018
5. David R. DeMuro, Esq. Vaughan & DeMuro 3900 E. Mexico Ave., Suite 620 Denver, Colorado 80210	ddemuro@vaughandemuro.com 303-837-9200 303-837-9400 Fax	1986-12/31/2017
6. Judge Ann Frick Lindsey-Flanigan Courthouse 520 West Colfax Room 135 Denver, Colorado 80204	ann.frick@judicial.state.co.us 720-865-8301	2010-12/31/2017
7. Peter A. Goldstein, Esq. 217 E. Fillmore St. Colorado Springs, CO 80907	pagpc@prodigy.net 719-473-3040 719-473-0138 Fax	2001-12/31/2017
8. Lisa Hamilton-Fieldman, Esq. 7125 W 32nd Ave Wheat Ridge CO 80033	artldf@yahoo.com 720-318-5637	2004-12/31/2017
9. Richard P. Holme, Esq. Davis Graham & Stubbs 1550 17th St., Ste. 500 Denver, CO 80202	richard.holme@dgslaw.com 303-892-9400 x7340 303-893-1379 Fax	1994-12/31/2017

Name and Address	Contact	Term
10. Judge Jerry N. Jones CO Court of Appeals 2 East 14th Avenue Denver, CO 80203	jerry.jones@judicial.state.co.us 720-625-5150 720-625-5148 Fax	8/1/2013- 12/31/2015
11. Judge Thomas K. Kane El Paso County Judicial Building 270 S. Tejon St. P.O. Box 2980 Colorado Springs, CO 80903	thomas.kane@judicial.state.co.us 719-452-5000 719-452-5006 Fax	2000- 12/31/2017
12. Debra R. Knapp, Esq. Denver City Attorney's Office 201 W Colfax Avenue, # 1207 Denver, CO 80202	Debra.knapp@denvergov.org 720-913-8408	8/1/2013- 12/31/2015
13. Richard W. Laugesen, Esq. 1830 S. Monroe St. Denver, CO 80210	Laugesen@indra.com 303-300-1006 303-300-1008 Fax	1978- 12/31/2017
14. Cheryl Layne, Clerk of Court Eighteenth Judicial District 4000 Justice Way #2009 Castle Rock CO 80109	cheryl.layne@judicial.state.co.us 720-437-6200	2010- 12/31/2015
15. Judge Cathy Lemon Denver City & County Building 1437 Bannock Street Denver, CO 80202	cathy.lemon@judicial.state.co.us 720-865-8301	9/1/2014- 8/31/17
16. David C. Little, Esq. Montgomery, Little, & Soran 5445 DTC Pkwy., Ste. 800 Englewood, CO 8011	dlittle@montgomerylittle.com 303-779-2720 303-220-0412 Fax	1987- 12/31/2015

Name and Address	Contact	Term
17. Chief Judge Alan Loeb CO Court of Appeals 2 East 14th Avenue Denver, CO 80203	alan.loeb@judicial.state.co.us 720-625-5150 720-625-5148 Fax	8/1/2013- 12/31/2015
18. Professor Christopher B. Mueller University of CO School of Law Campus Box 401 Boulder, CO 80309	muellerc@spot.colorado.edu 303-492-6973 303-492-1200 Fax	1996- 12/31/2015
19. Gordon "Skip" Netzorg Sherman & Howard, LLC 633 17th Street Ste. 3000 Denver, CO 80202	gnetzorg@shermanhoward.com 303-299-8381	4/1/2015 – 3/31/2018
20. Brent Owen Lewis Roca Rothgerber 1200 17th Street, Suite 3000 Denver, CO 80202	Bowen@LRRLaw.com 303-628-9575	4/1/2015 – 3/31/2018
21. Judge Ann Rotolo El Paso County Judicial Building 270 S. Tejon St. Colorado Springs, CO 80903	ann.rotolo@judicial.state.co.us 719-452-5000 719-329-5006 Fax	2006- 12/31/2015
22. Stephanie Scoville Office of the Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203	stephanie.scoville@state.co.us 720-508-6573	4/15/2015 – 3/15/2018
23. Frederick B. Skillern, Esq. Montgomery, Little, & Soran 5445 DTC Pkwy., Ste. 800 Englewood, CO 80111	fskillern@montgomerylittle.com 303-773-8100 303-220-0412 Fax	1987- 12/31/2015
24. Lee N. Sternal, Esq. 414 W. 9th St. Pueblo, CO 81003-4718	lnslaw@msn.com 719-545-9746 719-545-1122 Fax	1984- 12/31/2015

Name and Address	Contact	Term
25. Magistrate Marianne Tims Jefferson Combined Court 100 Jefferson County Parkway Golden, CO 80401	marianne.tims@judicial.state.co.us 303-271-6145	9/1/2014- 8/31/2017
26. Ben Vinci, Esq. Vinci Law Office 2250 S Oneida St, Suite 303 Denver, CO 80224-2559	ben@vincilaw.com 303-512-0340 303- 872-1898	2011- 12/31/2015
27. Judge John R. Webb CO Court of Appeals 2 East 14th Avenue Denver, CO 80203	john.webb@judicial.state.co.us 720-625-5150 720-625-5148 Fax	2003 - 12/31/2015
28. J. Gregory Whitehair, Esq. The Whitehair Law Firm, LLC 12364 W. Nevada Pl., Ste. 305 Lakewood, CO 80228	jgw@whitehairlaw.com 303-908-5762	8/1/2013- 12/31/2015
29. Judge Christopher Zenisek Jefferson County District Court 100 Jefferson County Parkway Golden, CO 80401	Christopher.zenisek@judicial.state.co.us 303-271-6145	8/1/2013 – 12/31/2015
30. Teresa Tate Assistant Legal Counsel State Court Administrator's Office Ralph L. Carr Judicial Center 2 East 14 Avenue Denver, CO 80203	teresa.tate@judicial.state.co.us 720-625-5000	N/A
31. Jenny Moore Rules Research Attorney Colorado Supreme Court Ralph L. Carr Judicial Center 2 East 14 Avenue Denver, CO 80203	jenny.moore@judicial.state.co.us 720-625-5105	N/A

RULE CHANGE 2015(05)

COLORADO RULES OF CIVIL PROCEDURE

Chapters 1 and 2
Rules 1, 12, 16, and 16.1

Chapter 4
Rules 26, 30, 31, 33, 34, and 37

Chapter 6
Rule 54

Chapter 17A
Rule 121, Section 1-22

New Form
JDF 622 – Proposed Case Management Order

Rule 1. Scope of Rules

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

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

(b)–(c) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015 .

COMMENTS

2015

[1] The 2015 amendments are the next step in a wave of reform literally sweeping the nation. This reform movement aims to create a significant change in the existing culture of pretrial

discovery with the goal of emphasizing and enforcing Rule 1's mandate that discovery be administered to make litigation just, speedy, and inexpensive. One of the primary movers of this reform effort is a realization that the cost and delays of the existing litigation process is denying meaningful access to the judicial system for many people.

[2] The changes here are based on identical wording changes proposed for the Federal Rules of Civil Procedure. They are designed to place still greater emphasis on the concept that litigation is to be treated at all times, by all parties and the courts, to make it just, speedy, and inexpensive, and, thereby, noticeably to increase citizens' access to justice.

Rule 12. Defenses and Objections—When and How Presented—by Pleading or Motion—Motion for Judgment on Pleadings

(a) When Presented.

(1) A defendant shall file his answer or other response within 21 days after the service of the summons and complaint ~~on him~~. The filing of a motion permitted under this Rule alters these periods of time, as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within 14 days after notice of the court's action;

(B) if the court grants a motion for a more definite statement, or for a statement in separate counts or defenses, the responsive pleadings shall be filed within 14 days after the service of the more definite statement or amended pleading.

(2) If, pursuant to special order, a copy of the complaint is not served with the summons, or if the summons is served ~~with~~outside of Colorado~~the state,~~ or by publication, ~~a defendant shall file his answer or other response~~ the time limit for filings under subsections (a)(1) and (e) of this Rule shall be within 35 days after the service thereof ~~on him~~.

(3) A party served with a pleading stating a cross-claim against ~~him~~ that party shall file an answer ~~or other response~~ thereto within 21 days after the service thereof ~~upon him~~.

(4)The plaintiff shall file a~~his~~ reply to a counterclaim in the answer within 21 days after the service of the answer.

(5) If a reply is made to any affirmative defense, such reply shall be filed within 21 days after service of the pleading containing such affirmative defense.

(6) If a pleading is ordered by the court, it shall be filed within 21 days after the entry of the order, unless the order otherwise directs. ~~The filing of a motion permitted under this Rule alters these periods of time, as follows: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, or for a statement in separate counts or defenses, the responsive pleadings shall be filed within 14 days after the service of the more definite statement or amended pleading.~~

(b) How Presented. Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by separate motion filed on or before the date the answer or reply to a pleading under C.R.C.P. 12(a) is due:

(1) l~~L~~ack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) insufficiency of process;

(4) insufficiency of service of process;

(5) failure to state a claim upon which relief can be granted; or

(6) failure to join a party under C.R.C.P. ~~ule~~ 19. ~~A motion making any of these defenses shall be made before pleading if a further pleading is permitted.~~

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under this Rule ~~12~~ or C.R.C.P. ~~Rule~~ 98. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in C.R.C.P. ~~ule~~ 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by C.R.C.P. ~~Rule~~ 56.

(c) – (d) [NO CHANGE]

(e) Motion for Separate Statement~~,~~ or for More Definite Statement. ~~Before responding to a pleading or, if no responsive pleading is permitted by these rules, w~~Within the time limits for filings under subsections (a)(1) and (a)(2) of this Rule, ~~21 days after the service of the pleading upon him, a~~ the party may file a motion for a statement in separate counts or defenses~~,~~ or for a more definite statement of any matter ~~which~~ that is not averred with sufficient definiteness or particularity to enable the party~~him~~ properly to prepare a~~his~~ responsive pleading. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion filed by a party ~~before~~ within the time for responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion filed by a party within 21 days after the service of any pleading, motion, or other paper, or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f).

(g) Consolidation of Defenses in Motion. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to that party~~him~~. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to that party~~him~~ which this Rule permits to be raised by motion, that party~~he~~ shall not thereafter

make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) of this Rule on any of the grounds there stated.

(h) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

COMMENTS

2015

[1] The practice of pleading every affirmative defense listed in C.R.C.P. 8(c), irrespective of a factual basis for the defense, is improper under C.R.C.P. 11(a). The pleading of affirmative defenses is subject not only to C.R.C.P. 8(b), which requires a party to "state in short and plain terms his defense to each claim asserted," but also to C.R.C.P. 11(a): "The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Some affirmative defenses are also subject to the special pleading requirements of C.R.C.P. 9. To the extent a defendant does not have sufficient information under Rule 11(a) to plead a particular affirmative defense when the answer must be filed but later discovers an adequate basis to do so, the defendant should move to amend the answer to add the affirmative defense.

Rule 16. Case Management and Trial Management

(a) [NO CHANGE]

(b) ~~Presumptive~~ Case Management Order. Not later than 42 days after the case is at issue and at least 7 days before the case management conference, the parties shall file, in editable format, a proposed Case Management Order consisting of the matters set forth in subsections (1)–(17) of this section and take the necessary actions to comply with those subsections. This proposed order, when approved by the court, shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section (f) of this Rule or unless modified upon a showing of good cause. Use of the "Proposed Case Management Order" in the form and content of Appendix to Chapters 1 to 17A, form (JDF 622), shall comply with this section. ~~Except as provided in sections (c)–(e) of this Rule, the parties shall not file a Case Management Order and subsections (1)–(10) of this section shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section (f) of this Rule.~~

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

(2) ~~The~~ Responsible Attorney. ~~For purposes of this Rule, "T~~the responsible attorney~~"~~ shall mean plaintiff's counsel, if the plaintiff is represented by counsel, or if not, the defense counsel who first enters an appearance in the case. The responsible attorney shall schedule conferences among the parties, and prepare and ~~file the certificates of compliance, prepare and~~ submit the P~~p~~roposed ~~Modified~~ Case Management Order~~, if applicable,~~ and ~~prepare and submit the proposed~~ Trial Management Order. The proposed order shall identify the responsible attorney and provide that attorney's contact information.

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

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

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

(C) the Proposed ~~and whether a Modified~~ Case Management Order;

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

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

The proposed order shall state the date of and identify the attendees at any meet and confer conferences ~~is necessary pursuant to subsection (c) of this Rule~~.

(4) ~~Trial Setting~~Description of the Case. The proposed order shall provide a brief description of the case and identification of the issues to be tried. The description of the case and identification of the issues to be tried shall consist of not more than one page, double-spaced, per side. ~~No later than 42 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121 § 1-6, unless otherwise ordered by the Court.~~

(5) Pending Motions~~Disclosures~~. The proposed order shall list all pending motions that have been filed and are unresolved. The court may decide any unresolved motion at the case management conference. ~~No later than 35 days after the case is at issue, the parties shall serve their C.R.C.P. 26(a)(1) disclosures. The parties shall disclose expert testimony in accordance with C.R.C.P. 26(a)(2).~~

(6) Evaluation of Proportionality Factors~~Settlement Discussions~~. The proposed order shall provide a brief assessment of each party's position on the application of any factors to be considered in determining proportionality, including those factors identified in C.R.C.P. 26(b)(1). ~~No later than 35 days after the case is at issue, the parties shall explore the possibilities of a prompt settlement or resolution of the case.~~

(7) Initial Exploration of Prompt Settlement and Prospects for Settlement ~~Certificate of Compliance~~. The proposed order shall confirm that the possibility of settlement was discussed, describe the prospects for settlement and list proposed dates for any agreed upon or court-ordered mediation or other alternative dispute resolution. ~~No later than 49 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance. The Certificate of Compliance shall state that the parties have complied with all requirements of subsections (b)(3)-(6), inclusive, of this Rule or, if they have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.~~

(8) Proposed Deadlines for Amendments~~Time to Join Additional Parties and Amend Pleadings~~. The proposed order shall provide proposed deadlines for amending or supplementing pleadings and for joinder of additional parties, which unless otherwise provided by law, shall be not later than 105 days (15 weeks) after the case is at issue, and shall provide a deadline for identification of non-parties at fault, if any, pursuant to C.R.S. §13-21-111.5. ~~No later than 119 days (17 weeks) after the case is at issue, all motions to amend pleadings and add additional parties to the case shall be filed.~~

(9) Disclosures ~~Pretrial Motions~~. The proposed order shall state the dates when disclosures under C.R.C.P. 26(a)(1) were made and exchanged and describe any objections to the adequacy of the initial disclosures. ~~No later than 35 days before the trial date, pretrial motions shall be filed, except for motions pursuant to C.R.C.P. 56, which must be filed no later than 91 days (13 weeks) before the trial and except for motions challenging expert testimony pursuant to C.R.E. 702, which must be filed no later than 70 days (10 weeks) before the trial.~~

(10) Computation and Discovery Relating to Damages~~Discovery Schedule~~. If any party asserts an inability to disclose fully the information on damages required by C.R.C.P. 26(a)(1)(C), the proposed order shall include a brief statement of the reasons for that party's

inability as well as the expected timing of full disclosure and completion of discovery on damages. ~~Discovery shall be limited to that allowed by C.R.C.P. 26(b) (2). Except as provided in C.R.C.P. 26(d), discovery may commence 42 days after the case is at issue. The date for completion of all discovery shall be 49 days before the trial date.~~

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

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

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

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

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

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

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

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

(c) Pretrial Motions ~~Modified Case Management Order~~. Unless otherwise ordered by the court, pretrial motions, including motions in limine, shall be filed no later than 35 days before the trial date, except for motions pursuant to C.R.C.P. 56, which must be filed no later than 91 days (13 weeks) before the trial and except for motions challenging the admissibility of expert testimony pursuant to C.R.E. 702, which must be filed no later than 70 days (10 weeks) before the trial. ~~Any of the provisions of section (b) of this Rule may be modified by the entry of a Modified Case Management Order pursuant to this section and section (d) of this Rule. If a trial is set to commence less than 182 days (26 weeks) after the at-issue date as defined in C.R.C.P. 16(b)(1), and if a timely request for a modified case management order is made by any party, the case management order shall be modified to allow the parties an appropriate amount of time to meet case management deadlines, including discovery, expert disclosures, and the filing of summary judgment motions. The amounts of time allowed shall be within the discretion of the court on a case-by-case basis.~~

~~**(1) Stipulated Modified Case Management Order.** No later than 42 days after the case is at issue, the parties may file a Stipulated proposed Modified Case Management Order, supported by a specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such proposed order only needs to set forth the proposed provisions which would be changed from the presumptive Case Management Order set forth in section (b) of this Rule. The Court may approve and enter the Stipulated Modified Case Management Order, or may set a case management conference.~~

~~**(2) Disputed Motions for Modified Case Management Orders.** If any party wishes to move for a Modified Case Management Order, lead counsel and any unrepresented parties shall confer and cooperate in the development of a proposed Modified Case Management Order. A motion for a Modified Case Management Order and one form of the proposed Order shall be filed no later than 42 days after the case is at issue. To the extent possible, counsel and any unrepresented parties shall agree to the contents of the proposed Modified Case Management Order but any matter upon which all parties cannot agree shall be designated as "disputed" in the proposed Modified Case Management Order. The proposed Order shall contain specific alternate provisions upon which agreement could not be reached and shall be supported by specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such motion only needs to set forth the proposed provisions which would be changed from the presumptive case management Order set forth in section (b) of this Rule. The motion for a modified case management order shall be signed by lead counsel and any unrepresented parties, or shall contain a statement as to why it is not so signed.~~

(d) Case Management Conference.

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

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

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

~~If there is a disputed modified case management order or if any counsel or unrepresented party believes that it would be helpful to conduct a case management conference, a notice to set case management conference shall be filed stating the reasons why such a conference is requested. If a Notice to Set Case Management conference is filed concerning a disputed Modified Case Management Order, or if the Court determines that such a conference should be held, the Court shall set a Case Management Conference. The conference may be conducted by telephone. The court shall promptly enter a Modified Case Management Order containing such modifications as are approved by the Court.~~

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

(f) - (g) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1995

History and Philosophy

[1] Effective differential case management has been a long-term goal of the Bench, Bar, and Public. Adoption by the Colorado Supreme Court of C.R.C.P. 121 and its practice standards in 1983; revised C.R.C.P. 16 in 1988 to require earlier disclosure of matters necessary for trial; and

the Colorado Standards for Case Management--Trial Courts in 1989 were a continuing and evolving effort to achieve an orderly, fair and less expensive means of dispute resolution. Those rules and standards were an improvement over prior practice where there was no prescribed means of case management, but problems still remained. There were problems of discovery abuse, late or inadequate disclosure, lack of professionalism, slow case disposition, outrageous expense and failure to achieve an early settlement of those cases that ultimately settled.

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

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

[4] The heart of the reform is a totally rewritten Rule 16 which sets forth a new system of case management. Revisions to Rules 26, 29, 30, 31, 32, 33, 34, 36, and 37 are patterned after December 1, 1993, revisions to Federal Rules of the same number, but are not in all respects identical. Colorado Rules 16, 26, 29, 30, 31, 32, 33, 34, 36, and 37 were developed to interrelate with each other to provide a differential case management/early disclosure/limited discovery system designed to resolve difficulties experienced with prior approaches. Changes to C.R.C.P. 121 §§ 1-11, 1-12, 1-15, and 1-19 are designed to interrelate with the case management/disclosure/discovery reform to improve motions practice. In developing these rules, the Committee paid particular attention to the 1993 revisions of the Federal Rules of Civil Procedure and the work of the Colorado Bar Association regarding professionalism.

Operation

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

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

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

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

(a)

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

(b)

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

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

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

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

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

(c)

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

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

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

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

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

(d)

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

2015

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

[18] Among the key principles adopted by the Federal Advisory Committee on Rules of Civil Procedure, as well as the Civil Access Pilot Project ("CAPP"), is that cases move more efficiently if judges are involved directly and early in the process. (*See also*, "*Working Smarter, Not Harder: How Excellent Judges Manage Cases*," at 7-20 (2014), *available at* http://www.actl.com).

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

trial judges placing reasonable limitations on discovery and potentially excessive pretrial practices at the earliest meaningful stage of the case.

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

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

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

- a brief description of the case from each side, and of the issues to be tried (one page per side);
- a list of pending, unresolved motions;
- an evaluation of the proportionality factors from C.R.C.P. 26(b)(1);
- a confirmation that the parties discussed settlement and description of prospects for settlement;
- proposed deadlines for amending the pleadings;
- the dates when disclosures were made and any objections to those disclosures;
- an explanation of why, if applicable, full disclosure of damages has not been completed and when it will be;
- subjects for expert testimony with a limit of only one expert per side per subject unless good cause is established consistent with proportionality;
- acknowledgement that oral discovery motions may be required by the court;
- provision for electronic discovery when significant electronic discovery is anticipated;
- estimated time to complete discovery and length of trial so the court can set trial at the case management conference; and
- a catchall for other appropriate matters.

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

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

Rule 16.1 Simplified Procedure for Civil Actions

(a) – (e) [NO CHANGE]

(f) Case Management Orders. In actions subject to Simplified Procedure pursuant to this Rule, the ~~presumptive~~ case management order requirements of C.R.C.P. 16(b)(1), (2), (3) ~~(5)~~ and (7~~6~~) shall apply even though a proposed Case Management Order is not required to be prepared or filed.

(g) [NO CHANGE]

(h) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall also file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f), ~~and~~ (g) and (k)(1) of this Rule or, if they have not complied with each requirement, shall identify the requirements that~~which~~ have not been fulfilled and set forth any reasons for the failure to comply.

(i) – (l) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures~~; Methods to Discover Additional Matter~~.

Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

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

(A) t~~T~~he name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the claims and defenses of any party ~~disputed facts alleged with particularity in the pleadings, identifying who the person is and the subjects~~ and a brief description of the specific information that each such individual is known or believed to possess;

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

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

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

Disclosures shall be served within 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). A party shall make the required disclosures based on the information then known and reasonably available to the party and is not excused from making such disclosures because the party has not completed investigation of the case or because the party challenges the sufficiency of another party's disclosure or because another party has not made the required disclosures. Parties shall make these disclosures in good faith and may not object to the adequacy of the disclosures until the case management conference pursuant to C.R.C.P. 16(d).

~~The timing of disclosures shall be within 35 days after the case is at issue as defined in C.R.C.P. 16(b). A party shall make the required disclosures based on the information then known and reasonably available to the party and is not excused from making such disclosures because the~~

~~party has not completed investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures.~~

(2) Disclosure of Expert Testimony.

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

(B) Except as otherwise stipulated or directed by the court~~, this disclosure shall~~:

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

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

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

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

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

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

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

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

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

The witness's direct testimony shall be limited to matters disclosed in detail in the report.~~In addition, if a report is issued by the expert it shall be provided.~~

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

(a)~~the qualifications of the witness and~~ a complete description ~~statement describing the substance~~ of all opinions to be expressed and the basis and reasons therefor;

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

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

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

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

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

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

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

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

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

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

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

(1) In General. Subject to the limitations and considerations contained in subsection (b)(2) of this Rule, parties may obtain discovery regarding any matter, not privileged, that is relevant to

the claim or defense of any party~~,~~ and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. ~~including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant i~~Information within the scope of discovery need not be admissible in evidence to be discoverable.~~at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.~~

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

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

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

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

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

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

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

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

(II~~ii~~) w~~W~~hether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;

(III~~iii~~) w~~W~~hether the ~~burden or expense of the~~ proposed discovery is outside the scope permitted by C.R.C.P. 26(b)(1) ~~outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues~~; and

(IV~~iv~~) w~~W~~hether because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.

~~[Subsections (E)(i) - (iv) are moved to new paragraph (F).]~~

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

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

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

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

(4) Trial Preparation: Experts.

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

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of

litigation or preparation for trial, and who is not expected to be called as a witness at trial only as provided by C.R.C.P. 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

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

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

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

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

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

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

~~[This subsection has been moved from section (a)(6) and amended.]~~

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

information until the claim is resolved, and bears the burden of proving the basis of the claim and that the claim was not waived. All notices under this Rule shall be in writing.

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

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

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

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

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

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

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

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

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

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

(e) Supplementation of Disclosures, and Responses, and Expert Reports and Statements. A party is under a duty to supplement its disclosures under section (a) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect in some material respect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process, including information

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

(f) - (g) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1995

SCOPE

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

COLORADO DIFFERENCES

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

[3] The Colorado differences from the Fed.R.Civ.P. are: (1) timing and scope of mandatory automatic disclosures is different (C.R.C.P. 16(b)); (2) the two types of experts in the Federal Rule are clarified by the State Rule (C.R.C.P. 26(a)(2)(B)), and disclosure of expert opinions is

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

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

FEDERAL COMMITTEE NOTES

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

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

[7] Subparagraphs (a)(1)(A) and (a)(1)(B) of C.R.C.P. 26 require disclosure of persons, documents and things likely to provide discoverable information relative to disputed facts alleged with particularity in the pleadings. Disclosure relates to disputed facts, not admitted facts. The reference to particularity in the pleadings (coupled with the requirement that lead counsel confer) responds to the concern that notice pleading suggests a scope of disclosure out of proportion to any real need or use. To the contrary, the greater the specificity and clarity of the pleadings facilitated by communication through the C.R.C.P. 16(b) conference, the more complete and focused should be the listing of witnesses, documents, and things so that the parties can tailor the scope of disclosure to the actual needs of the case.

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

2002

2001 COLORADO CHANGES

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

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

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

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

2015

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

[14] Scope of discovery.

Perhaps the most significant 2015 amendments are in Rule 26(b)(1). This language is taken directly from the proposed Fed. R. Civ. P. 26(b)(1). (For a more complete statement of the changes and their rationales, one can read the extensive commentary proposed for the Federal Rule.) First, the slightly reworded concept of proportionality is moved from its former hiding place in C.R.C.P. 26(b)(2)(F)(iii) into the very definition of what information is discoverable.

Second, discovery is limited to matters relevant to the specific claims or defenses of any party and is no longer permitted simply because it is relevant to the "subject matter involved in the action." Third, it is made clear that while evidence need not be admissible to be discoverable, this does not permit broadening the basic scope of discovery. In short, the concept is to allow discovery of what a party/lawyer *needs* to prove its case, but not what a party/lawyer *wants* to know about the subject of a case.

[15] Proportionality analysis.

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

[16] Limitations on discovery.

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

[17] Initial disclosures.

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

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

[18] Expert disclosures.

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

"Other" (non-retained) experts must make disclosures that are less detailed. Many times a lawyer has no control over a non-retained expert, such as a treating physician or police officer, and thus the option of a "statement" must be preserved with respect to this type of expert, which, if necessary, may be prepared by the lawyers. In either event, the expert testimony is to be limited to what is disclosed in detail in the disclosure. Rule 26(a)(2)(B)(II).

[19] Retained or non-retained experts.

Non-retained experts are persons whose opinions are formed or reasonably derived from or based on their occupational duties.

[20] Expert discovery.

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

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

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

[21] Sufficiency of disclosure of expert opinions and the bases therefor.

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

Rule 30. Depositions Upon Oral Examination

(a) – (c) [NO CHANGE]

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

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

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

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

(e) – (g) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1995

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

[2] A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of depositions and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

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

2015

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

Rule 31. Depositions Upon Written Questions

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2) of this section. The attendance of witnesses may be compelled by the use of subpoena as provided in C.R.C.P. 45.

(2) A party must obtain leave of court, and the court must grant leave to the extent consistent with C.R.C.P. 26(b)(2) ~~Leave of court must be obtained pursuant to C.R.C.P. Rules 16(B)(1) and 26(B),~~ if:

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

(B) t~~T~~he person to be examined already has been deposed in the case;

(C) a~~A~~ party seeks to take a deposition before the time specified in C.R.C.P. 26(d); or

(D) t~~T~~he person to be examined is confined in prison.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(A~~1~~) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(B~~2~~) the name or descriptive title and address of the officer before whom the deposition is to be taken.

A deposition upon written questions may be taken of a public or private corporation, or a partnership, or association, or governmental agency in accordance with the provision of C.R.C.P. 30(b)(6).

(4) Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 14 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) – (c) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1995

[1] Revised C.R.C.P. 31 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

[2] A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of depositions and the basis for the necessity of such discovery with attention to the presumptive limitations and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

Rule 33. Interrogatories to Parties

(a) [NO CHANGE]

(b) Answers and Objections.

(1) 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. ~~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.~~

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

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

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

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

(c) – (e) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1995

[1] Revised C.R.C.P. 33 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

[2] A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of interrogatories and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the

requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) [NO CHANGE]

(b) Procedure. The request shall set forth the items to be inspected either by individual item or by category, and describe each item ~~and~~ or category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 35 days after the service of the request. A shorter or longer time may be directed by the court or agreed to in writing by the parties pursuant to C.R.C.P. 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, or state with specificity the grounds for objecting to the request~~unless the request is objected to, in which event the reasons for objection shall be stated~~. The responding party may state that it will produce copies of information instead of permitting inspection. The production must then be completed no later than the time for inspection stated in the request or another reasonable time stated in the response. An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to part of an item or category, the part shall be specified. A timely objection to a request for production stays the obligation to produce which is the subject of the objection until the court resolves the objection. No separate motion for protective order pursuant to C.R.C.P. 26(c) is required. The party submitting the request may move for an order pursuant to C.R.C.P. 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. As provided in C.R.C.P. 45, t~~T~~his R~~r~~ule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1995

[1] Revised C.R.C.P. 34 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

[2] A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of requests for production and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

2015

[3] Rule 34 is changed to adopt similar revisions as those proposed to Fed. R. Civ. P. 34, which are designed to make responses to requests for documents more meaningful and transparent. The first amendment is to avoid the practice of repeating numerous boilerplate objections to each request which do not identify specifically what is objectionable about each specific request. The second amendment is to allow production of documents in place of permitting inspection but to require that the production be scheduled to occur when the response to the document request is due, or some other specific and reasonable date. The third amendment is to require that when an objection to a document request is made, the response must also state whether, in fact, any responsive materials are being withheld due to that objection. The fourth and final amendment is simply to clarify that a written objection to production under this Rule is adequate to stop production without also filing a motion for a protective order.

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

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

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

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

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

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

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

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

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

(b) Failure to Comply with Order.

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

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

~~**COMMITTEE COMMENT**~~

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

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

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

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

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

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party~~him~~ to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of

this subsection (2), unless the party failing to comply shows that he is unable to produce such person for examination.

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

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit. (1) A party that without substantial justification fails to disclose information required by C.R.C.P. ~~Rules~~ 26(a) or 26(e) shall not~~, unless such failure is harmless,~~ be permitted to present any evidence not so disclosed at trial or on a motion made pursuant to C.R.C.P. 56, unless such failure has not caused and will not cause significant harm, or such preclusion is disproportionate to that harm. ~~In addition to or in lieu of this sanction, the court, on motion after affording an opportunity to be heard, may impose other appropriate sanctions, which, in addition to requiring payment of reasonable expenses including attorney fees caused by the failure, may include any of the actions authorized pursuant to subsections (b)(2)(A), (b)(2)(B), and (b)(2)(C) of this Rule.~~ The court, after holding a hearing if requested, may impose any other sanction proportionate to the harm, including any of the sanctions authorized in subsections (b)(2)(A), (b)(2)(B) and (b)(2)(C) of this Rule, and the payment of reasonable expenses including attorney fees caused by the failure.

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

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

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

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

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

(d) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1990

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

1995

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

2015

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

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

Rule 54. Judgments; Costs

(a) – (c) [NO CHANGE]

~~**COMMITTEE COMMENT**~~

~~The amendment to C.R.C.P. 54(c) is to eliminate what has been perceived as a possible conflict between that section and the recent change to C.R.C.P. 8(a) which prohibits statement of amount in that ad damnum. The amendment simply strikes the words "or exceed in amount" to make the section consistent with C.R.C.P. 8(a). Relief sought in the prayer is now described rather than stated as an amount. It is, therefore, not necessary to have an amount limitation in C.R.C.P. 54(c).~~

(d) Costs. Except when express provision therefor is made either in a statute of this state or in these rules, reasonable costs shall be allowed as of course to the prevailing party considering any relevant factors which may include the needs and complexity of the case and the amount in controversy. ~~unless the court otherwise directs;~~ B~~b~~ut costs against the state of Colorado, its officers or agencies, shall be imposed only to the extent permitted by law.

(e) – (h) [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

COMMENTS

1989

[1] The amendment to C.R.C.P. 54(c) is to eliminate what has been perceived as a possible conflict between that section and the recent change to C.R.C.P. 8(a) which prohibits statement of amount in that ad damnum. The amendment simply strikes the words "or exceed in amount" to make the section consistent with C.R.C.P. 8(a). Relief sought in the prayer is now described rather than stated as an amount. It is, therefore, not necessary to have an amount limitation in C.R.C.P. 54(c).

2015

[2] Rule 54(d) is amended to require that cost awards be "reasonable" by directing courts to consider any relevant factors, which may include the needs and complexity of the case, and the amount in controversy.

[3] The reasonableness requirement is consistent with §13-16-122, C.R.S., which lists matters included in cost awards, because it can hardly have been the intent of the legislature to authorize unreasonable awards.

[4] Cost shifting must be addressed in the Case Management Order required by C.R.C.P. 16.

Rule 121. Local Rules – Statewide Practice Standards
Section 1-1 through 1-21 [NO CHANGE]

Section 1-22
COSTS AND ATTORNEY FEES

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

2. [NO CHANGE]

Amendments effective July 1, 2015 for cases filed on or after July 1, 2015.

~~COMMITTEE~~ COMMENTS

1992

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

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

2015

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

Section 1-23 through 1-26 [NO CHANGE]

District Court _____ County, Colorado Court Address: _____ Plaintiff(s): _____, v. Defendant(s): _____,	▲ **COURT USE ONLY** ▲
Responsible attorney or if no responsible attorney pursuant to C.R.C.P. 16(b)(2), Plaintiff's name and address: Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
PROPOSED CASE MANAGEMENT ORDER	

Pursuant to C.R.C.P. 16(b), the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should state its position briefly. If an item does not apply, it should be identified as not applicable.

This form shall be submitted to the court in editable format. When approved by the court, it shall constitute the Case Management Order for this case unless modified by the court upon a showing of good cause.

This form must be filed with the court no later than 42 days after the case is at issue and at least 7 days before the date of the case management conference.

The case management conference is set for _____ ___, 20_____ at __:__ _.m.

1. The "at issue date" is: _____.

2. Responsible attorney's name, address, phone number and email address:
_____

3. The lead counsel for each party, _____, and any party not represented by counsel, _____, met and conferred in person or by telephone concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E) on _____ __, 20 ____.

4. Brief description of the case and identification of the issues to be tried (not more than one page, double-spaced, for each side): _____

5. The following motions have been filed and are unresolved:
_____

6. Brief assessment of each party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1): _____

7. The lead counsel for each party, _____, and any party not represented by counsel, _____, met and conferred concerning possible settlement. The prospects for settlement are:
_____

8. Deadlines for:

a. Amending or supplementing pleadings: (Not more than 105 days (15 weeks) from at issue date.)
_____

b. Joinder of additional parties: (Not more than 105 days (15) weeks from at issue date.)
_____

c. Identifying non-parties at fault:_____

9. Dates of initial disclosures: _____
Objections, if any, about their adequacy: _____

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosures _____, and completion of discovery on damages: _____

11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):_____

Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): _____

Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): _____

Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20):
_____

Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): _____

Any physical or mental examination per C.R.C.P. 35: _____

Any limitations on awardable costs: _____

State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: _____

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II):

_____

If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side:

_____

13. Proposed deadlines for expert witness disclosure if other than those in C.R.C.P. 26(a)(2):

a. production of expert reports:

i. Plaintiff/claimant: _____

ii. Defendant/opposing party: _____

b. production of rebuttal expert reports: _____

c. production of expert witness files: _____

State the reasons for any different dates from those in C.R.C.P. 26(a)(2)(C): _____

_____

14. Oral Discovery Motions. The court (does)(does not) require discovery motions to be presented orally, without written motions or briefs.

_____

15. Electronically Stored Information. The parties (do)(do not) anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

_____

16. Parties' best estimate as to when discovery can be completed: _____

Parties' best estimate of the length of the trial: _____

Trial will commence on (or will be set by the court later): _____

17. Other appropriate matters for consideration:
_____

DATED this ____ day of _____, 20____.

_____	_____
Signature	Signature
_____	_____
Attorney for Plaintiff	Attorney for Defendant

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

Dated this ___ day of _____, 20__.

BY THE COURT:

_____
District Court Judge

Amended and Adopted by the Court, En Banc, May 28, 2015, effective July 1, 2015 for cases filed on or after July 1, 2015.

By the Court:

Allison H. Eid
Justice, Colorado Supreme Court

All:

I have been asked to forward the final renumbered version of the Colorado Rules of Probate Procedure approved by the PAC and T&E section of the CBA. Please find them attached. I believe that the CRPP are ready for final consideration and vote at the next Civil Rules Committee Meeting.

When I reviewed the Rules, I noticed theses very minor issues:

Rule 23 has a subsection (a), but no subsection (b). The Civil Rules Committee may want to consider renumbering.

Rule 50 the period at the end of the sentence should be moved inside of the quotation marks to read "Lodged Will File."

Rule 56 and 63 both have time requirements that read "not more than sixty days prior to filing." Sixty days does not conform to the new rule of 7 days, however, I don't think this is really an issue since it is a "not more than sixty days prior to" requirement. I just wanted to call it to your attention in the event this comes up later so you all will have thought of it and made an affirmative decision to leave it as is.

Best regards,
Teresa

Teresa Taylor Tate
Assistant Legal Counsel
Colorado Judicial Branch
State Court Administrator's Office
1300 Broadway, Suite 1200
Denver, CO 80203
(720)625-5825

COLORADO RULES OF PROBATE PROCEDURE

GENERAL:

PLEADINGS:

NOTICE:

FIDUCIARIES:

Rule 34 – RESERVED
Rule 35 – RESERVED
Rule 36 – RESERVED
Rule 37 – RESERVED
Rule 38 – RESERVED
Rule 39 – RESERVED

CONTESTED PROCEEDINGS:

Rule 40 – Discovery
Rule 41 – Jury Trial – Demand and Waiver (25)
Rule 42 – Objections to Accounting, Final Settlement, Distribution or Discharge (33)
Rule 43 – RESERVED
Rule 44 – RESERVED
Rule 45 – RESERVED
Rule 46 – RESERVED
Rule 47 – RESERVED
Rule 48 – RESERVED
Rule 49 – RESERVED

DECEDENT'S ESTATES:

Rule 50 – Wills – Deposit for Safekeeping and Withdrawals (22)
Rule 51 – Transfer of Lodged Wills (23)
Rule 52 – Informal Probate – Separate Writings (25.1)
Rule 53 – Heirs and Devisees – Unknown, Missing or Nonexistent – Notice to Attorney General (17)
Rule 54 – Supervised Administration – Scope of Supervision – Inventory and Accounting (30)
Rule 55 – Court Order Supporting Deed of Distribution (33.3)
Rule 56 – Foreign Personal Representatives (18)
Rule 57 – RESERVED
Rule 58 – RESERVED
Rule 59 – RESERVED

PROTECTIVE PROCEEDINGS:

Rule 60 – Physicians' Letters or Professional Evaluation (27.1)
Rule 61 – Inventory with Financial Plan – Conservatorships (28)
Rule 62 – Court Approval of Settlement of Claims of Persons Under Disability (16)
Rule 63 – Foreign Conservators (18)
Rule 64 – RESERVED
Rule 65 – RESERVED
Rule 66 – RESERVED
Rule 67 – RESERVED
Rule 68 – RESERVED
Rule 69 – RESERVED

TRUSTS:

Rule 70 – Trust Registration – Amendment, Release and Transfer (8.6)
Rule 71 – RESERVED
Rule 72 – RESERVED
Rule 73 – RESERVED
Rule 74 – RESERVED
Rule 75 – RESERVED
Rule 76 – RESERVED
Rule 77 – RESERVED
Rule 78 – RESERVED
Rule 79 – RESERVED

GENERAL:

Rule 1. Scope of Rules - How Known and Cited

(a) Procedure Governed. These rules shall govern the procedure in the probate court for the city and county of Denver and district courts when sitting in probate. In case of conflict between these rules and the Colorado Rules of Civil Procedure set forth in Chapter 1, or between these rules and any local rules of probate procedure, these rules shall control.

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

Rule 2. Definitions.

(a) As used in these rules, unless the context otherwise requires:

(1) "Document or Documents" means any petition, or application, inventory, claim, accounting, notice or demand for notice, motion, and any other writing which is filed with the Court.

(2) "Accounting" means any written statement that substantially conforms to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards.

(3) "Colorado Probate Code" means Articles 10 to 17 of Title 15 of the Colorado Revised Statutes.

(b) Except as otherwise provided in this rule, terms used in these rules shall be as defined in the applicable sections of Title 15, C.R.S., as amended.

Rule 3. Registry of Court -- Payments and Withdrawals.

Payment into and withdrawals from the registry of the court shall be made only upon order of court.

Rule 4. Security of Court Records.

For good cause shown, the court may order all or any part of a court record to be placed under security as outlined below:

The court may seal a court record. A sealed court record is only accessible to judges and court staff. Parties, attorneys, other people affiliated with the case, and the public shall not obtain a sealed court record without a court order.

The court may suppress a court record. A suppressed court record is any court record within a suppressed case or a court record that has been assigned a security level of suppressed by the court. Except as otherwise provided in Chief Justice Directive 05-01, only judges, court staff, and parties to the case (and, if represented, their attorneys) may access a suppressed court record without a court order.

A suppressed register of actions is accessible without a court order only to judges, court staff, parties to the case, (and, if represented, their attorneys) and persons or agencies who have been granted view access to the electronic record.

A protected court record is only accessible to the public after redaction in accordance with applicable law and Chief Justice Directive 05-01.

Rule 5. Delegation of Powers to Clerk and Deputy Clerk.

(a) In addition to duties and powers exercised as registrar in informal proceedings, the court by written order may delegate to the clerk or deputy clerk any one or more of the following duties, powers and authorities to be exercised under the supervision of the court:

(1) To appoint fiduciaries and to issue letters, if there is no written objection to the appointment or issuance on file;

(2) To set a date for hearing on any matter and to vacate any such setting;

(3) To issue dedimus to take testimony of a witness to a will;

(4) To approve the bond of a fiduciary;

(5) To appoint a guardian ad litem, subject to the provisions of law;

(6) To certify copies of documents filed in the court;

(7) To order a deposited will lodged in the records and to notify the named personal representative;

(8) To enter an order for service by mailing or by publication where such order is authorized by law or by the Colorado Rules of Civil Procedure;

(9) To correct any clerical error in documents filed in the court;

(10) To appoint a special administrator in connection with the claim of a fiduciary;

(11) To order a will transferred to another jurisdiction pursuant to Rule 51 herein;

(12) To admit wills to formal probate and to determine heirship, if there is no objection to such admission or determination by any interested person;

(13) To enter estate closing orders in formal proceedings, if there is no objection to entry of such order by any interested person;

(14) To issue a citation to appear to be examined regarding assets alleged to be concealed, etc., pursuant to §15-12-723, C.R.S.;

(15) To order an estate reopened for subsequent administration pursuant to §15-12-1008, C.R.S.;

(16) To enter similar orders upon the stipulation of all interested persons.

(b) All orders made and proceedings had by the clerk or deputy clerk under this rule shall be made of permanent record as provided for acts of the court done by the judge.

(c) Any person in interest affected by an order entered or action taken under the authority of this rule may have the matter heard by the judge by filing a motion for such hearing within fourteen days after the entering of the order or the taking of the action. Upon the filing of such a motion, the order or action in question shall be vacated and the motion placed on the calendar of the court for as early a hearing as possible, and the matter shall then be heard by the judge. The judge may, within the same fourteen day period referred to above, vacate the order or action on the court's own motion. If a motion for hearing by the judge is not filed within the fourteen day period, or the order or action is not vacated by the judge on the court's own motion within such period, the order or action of the clerk or deputy clerk shall be final as of its date subject to normal rights of appeal. The acts, records, orders, and judgments of the clerk or deputy clerk not vacated pursuant to the foregoing provision shall have the same force, validity, and effect as if made by the judge.

Rule 6. Rules of Court.

(a) Local rules. Courts may make rules for the conduct of probate proceedings consistent with these rules. Copies of all such rules shall be submitted to the Supreme Court for its approval before adoption, and, upon their promulgation, a copy shall be furnished to the office of the state court administrator to the end that all rules made as provided herein may be published promptly and that copies may be available to the public.

(b) Procedure not otherwise specified. If no procedure is specifically prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules of probate procedure and the Colorado Probate Code and shall look to the Colorado Rules of Civil Procedure and to the applicable law if no rule of probate procedure exists.

Rule 7. RESERVED
Rule 8. RESERVED
Rule 9. RESERVED

PLEADINGS:

Rule 10. Judicial Department Forms.

The Judicial Department Forms (JDF) approved by the Supreme Court should be used where applicable. Any form filed in a probate proceeding should, insofar as possible, substantially follow the format and content of the approved form, not include language which otherwise would be stricken, emphasize all alternative clauses or choices which have been selected, emphasize all filled-in blanks, and contain a statement that the pleading conforms in substance to the current version of the approved form, citing the JDF number and effective date. Unless the context otherwise requires, terms used in JDFs shall be as defined as provided in Rule 2.

Rule 11. Identification of Party and Attorney.

All documents presented or filed shall bear the name, address, e-mail address and telephone number of the appearing party, and of the attorney, if any.

Rule 12. Correction of Clerical Errors

(a) Clerical errors in documents filed with the court may be made the subject of a written request for correction only by filing JDF 740 or a document that is in substantial conformance with the JDF 740, together with corrected documents as necessary. "Clerical errors" include, but are not limited to, the following:

(1) Errors in captions (i.e. aka names, etc.);

(2) Misspellings;

(3) Errors in dates, other than dates for settings, hearings, and limitations periods;

(4) Transposition errors.

(b) If the court is not satisfied that a written request for correction is a "clerical error," the request may be denied. A clerical error does not include the addition of an argument, allegation, or fact that has legal significance.

Rule 13. Petitions Must Indicate Persons Under Legal Disability.

If any person who has any interest in the subject matter of a petition is under the age of eighteen years, or otherwise under legal disability, or incapable of adequately representing his or her own interests, each petition, the hearing of which requires the issuance of notice, shall state such fact and the name, age, and residence of such minor or other person when known and the name of the guardian, conservator, or personal representative, if any has been appointed.

Rule 14. RESERVED
Rule 15. RESERVED
Rule 16. RESERVED
Rule 17. RESERVED
Rule 18. RESERVED
Rule 19. RESERVED

NOTICE:

Rule 20. Process and Notice.

The issuance, service, and proof of service of any process, notice, or order of court under the Colorado Probate Code shall be governed by the provisions of the Colorado Probate Code and these rules. When no provision of the Colorado Probate Code or these rules is applicable, the Colorado Rules of Civil Procedure shall govern. Except when otherwise ordered by the court in any specific case or when service is by publication, if notice of a hearing on any petition or other pleading is required, the petition or other pleading, unless previously served, shall be served with the notice. When served by publication, the notice shall briefly state the nature of the relief requested. The petition or other pleading need not be attached to or filed with the proof of service, waiver of notice, or waiver of service.

Rule 21. Constitutional Adequacy of Notice.

When statutory notice is deemed by the court to be constitutionally inadequate, the court shall provide by local rule or on a case-by-case basis for such notice as will meet constitutional requirements.

Rule 22. Waiver of Notice.

Unless otherwise approved by the court, a waiver of notice shall identify the nature of the hearings or other matters, notice of which is waived.

Rule 23. Non-Appearance Hearings.

(a) Unless otherwise required by statute, these Rules or order of court, any matter may be set for a non-appearance hearing. The procedure governing non-appearance hearings is as follows:

(1) Attendance at the non-appearance hearing is not required or expected.

(2) Any interested person wishing to object to the requested action set forth in the court filing attached to the notice must file a specific written objection with the Court at or before the hearing, and shall furnish a copy of the objection to the person requesting the court order. Form JDF 722, or a form that substantially conforms to JDF 722, may be used and shall be sufficient.

(3) If no objection is filed, the Court may take action on the matter without further notice or hearing.

(4) If any objection is filed, the objecting party shall, within 14 days after filing the objection, set the objection for an appearance hearing. Failure to timely set the

objection for an appearance hearing as required by section (4) of this rule shall result in the dismissal of the objection with prejudice without further hearing.

(5) If an objection is filed, the Court may, in its discretion:

(i) Rule upon the written filings and briefs submitted;

(ii) Require oral argument;

(iii) Require an evidentiary hearing;

(iv) Order the movant, objector and any other interested person who has entered an appearance to participate in alternative dispute resolution; or

(v) Enter any other orders the Court deems appropriate.

(6) The Notice of a Non-Appearance Hearing, together with copies of the court filing and proposed order must be served on all interested persons no less than 14 days prior to the setting of the hearing and shall include a clear statement of the rules governing such hearings. Form JDF 712 or JDF 963, or a form that substantially conforms to such JDF forms, may be used and shall be sufficient.

Rule 24. Notice of Formal Proceedings Terminating Estates.

The notice of hearing on a petition under §15-12-1001 or §15-12-1002, C.R.S., shall include statements: (1) that interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person; and (2) that if any interested person desires to object to any matter such person shall file specific written objections at or before the hearing and shall furnish the personal representative with a copy pursuant to C.R.C.P. 5.

Rule 25. Conservatorship – Closing

Notice of the hearing on a petition for termination of conservatorship shall be given to the protected person, if then living, and all other interested persons, as defined by law or by the Court pursuant to §15-10-201(27), C.R.S., if any. Such hearing may be held pursuant to Rule 23.

Rule 26. RESERVED
Rule 27. RESERVED
Rule 28. RESERVED
Rule 29. RESERVED

FIDUCIARIES:

Rule 30. Change of Contact Information.

Every fiduciary shall promptly notify the court of any change in the fiduciary's name, address, e-mail address or telephone number by filing JDF 725 or a form that substantially conforms to JDF 725.

Rule 31. Accountings and Reports.

An accounting or report prepared by a personal representative, conservator, trustee or other fiduciary shall show with reasonable detail the receipts and disbursements for the period covered by the accounting or report, shall list the assets remaining at the end of the period, and shall describe all other transactions affecting administration during the accounting or report period. The court may require the fiduciary to produce supporting evidence for any and all transactions.

Accountings and reports that substantially conform to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards shall be considered acceptable as to both content and format for purposes of this rule.

Rule 32. Appointment of Nonresident – Power of Attorney.

Any person, resident or nonresident of this state, who is qualified to act under the Colorado Probate Code may be appointed as a fiduciary. When appointment is made of a nonresident, the person appointed shall file an irrevocable power of attorney designating the clerk of the court and the clerk's successors in office, as the person upon whom all notices and process issued by a court or tribunal in the state of Colorado may be served, with like effect as personal service on such fiduciary, in relation to any suit, matter, cause, hearing, or thing, affecting or pertaining to the proceeding in regard to which the fiduciary was appointed. The power of attorney required by the provisions of this Rule shall set forth the address of the nonresident fiduciary. The clerk shall promptly forward, by any method that provides delivery confirmation, any notice or process served upon him or her, to the fiduciary at the address last provided in writing to the clerk. The clerk shall file a certificate of service. Such service shall be deemed complete fourteen days after mailing. The clerk may require the person issuing or serving such notice or process to furnish sufficient copies, and the person desiring service shall advance the costs and mailing expenses of the clerk.

Rule 33. Bond and Surety.

A fiduciary shall file any required bond, or complete other arrangements for security before letters are issued. Thereafter, the fiduciary shall increase the amount of bond or other security when the fiduciary receives property not previously covered by any bond or other security.

Rule 34. RESERVED
Rule 35. RESERVED
Rule 36. RESERVED
Rule 37. RESERVED
Rule 38. RESERVED
Rule 39. RESERVED

CONTESTED PROCEEDINGS:

Rule 40. Discovery.

(a) This Rule establishes the provisions and structure for discovery in all proceedings seeking relief under Title 15, C.R.S. Nothing in this Rule shall alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate motion or *sua sponte*, the court may apply the Rules of Civil Procedure in whole or in part, may fashion discovery rules applicable to specific proceedings and may apply different discovery rules to different parts of the proceeding.

(b) Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 37. Any discovery conducted in Title 15 proceedings prior to the issuance of a case management or other discovery order shall be subject to C.R.C.P. 26(a)(2)(A), 26(a)(2)(B), 26(a)(4) and (5), and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in which probate proceedings take place, C.R.C.P. 16, 16.1, 16.2, and 26(a)(1) do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.

(c) C.R.C.P. 45 and 121 §1-12 are applicable to proceedings under Title 15.

(d) Notwithstanding subsections (a) through (c) of this Rule 40, subpoenas and discovery directed to a respondent in proceedings under Part 3 of Article 14 of Title 15, shall not be permitted without leave of court, or until a petition for appointment of a guardian has been granted under §15-14-311, C.R.S.

Rule 41. Jury Trial -- Demand and Waiver.

If a jury trial is permitted by law, any jury demand therefor shall be filed with the court, and the requisite fee paid, before the matter is first set for trial. Failure of a party to file and serve a demand for jury trial and pay the requisite fee shall constitute a waiver of trial by jury as provided in C.R.C.P. 38(c).

Rule 42. Objections to Accounting, Final Settlement, Distribution or Discharge.

If any interested person desires to object to any accounting, the final settlement or distribution of an estate, the discharge of a fiduciary, or any other related matter, the interested person shall file specific written objections at or before the hearing thereon, and shall furnish all interested persons with a copy of the objections.

(a) If the matter is uncontested and set for a non-appearance hearing, any interested person wishing to object must file specific written objections with the court at or before the hearing, and shall provide copies of the specific written objections to all interested persons. An objector must set an appearance hearing in accordance with Rule 23.

(b) If the matter is set for an appearance hearing, the objector must file specific written objections ten (10) or more days before the scheduled hearing. If the objector fails to provide copies of the specific written objections within the required time frame, the Petitioner is entitled to a continuance of the hearing.

Rule 43. RESERVED
Rule 44. RESERVED
Rule 45. RESERVED
Rule 46. RESERVED
Rule 47. RESERVED
Rule 48. RESERVED
Rule 49. RESERVED

DECEDENT'S ESTATES:

Rule 50. Wills -- Deposit for Safekeeping and Withdrawals.

A will of a living person tendered to the court for safekeeping in accordance with §15-11-515, C.R.S. shall be placed in a "Deposited Will File" and a certificate of deposit issued. In the testator's lifetime, the deposited will may be withdrawn only in strict accordance with the statute. After the testator's death, a deposited will shall be transferred to the "Lodged Will File".

Rule 51. Transfer of Lodged Wills.

If a petition under §15-11-516, C.R.S. to transfer a will is filed and if the requested transfer is to a court within this state, no notice need be given; if the requested transfer is to a court without this state, notice shall be given to the person nominated as personal representative and such other persons as the court may direct. No filing fee shall be charged for this petition, but the petitioner shall pay any other costs of transferring the original will to the proper court.

Rule 52. Informal Probate -- Separate Writings.

The existence of one or more separate written statements disposing of tangible personal property under the provisions of §15-11-513, C.R.S. shall not cause informal probate to be declined under the provisions of §15-12-304, C.R.S.

Rule 53. Heirs and Devisees – Unknown, Missing or Nonexistent – Notice to Attorney General.

In a decedent's estate, whenever it appears that there is an unknown heir or devisee, or that the address of any heir or devisee is unknown, or that there is no person qualified to receive a devise or distributive share from the estate, the personal representative shall promptly notify the attorney general. Thereafter, the attorney general shall be given the same information and notice required to be given to persons qualified to receive a devise or distributive share. When making any payment to the state treasurer of any devise or distributive share, the personal representative shall include a copy of the court order obtained under §15-12-914, C.R.S.

Rule 54. Supervised Administration – Scope of Supervision – Inventory and Accounting.

In directing the activities of a supervised personal representative of a decedent's estate, the court shall order only as much supervision as in its judgment is necessary, after considering the reasons for the request for supervised administration, or circumstances thereafter arising. If supervised administration is ordered, the personal representative shall file with the court an inventory, annual interim accountings, and a final accounting, unless otherwise ordered by the court.

Rule 55. Court Order Supporting Deed of Distribution.

When a court order is requested to vest title in a distributee free from the rights of other persons interested in the estate, such order shall not be granted ex parte, but shall require either the stipulation of all interested persons or notice and hearing.

Committee Comment:

*Note that Colorado Bar Association Real Estate Title Standard 11.1.7 discusses certain requirements for the vesting of marketable title in a distributee. A court order is necessary to vest marketable title in a distributee, free from the rights of all persons interested in the estate to recover the property in case of an improper distribution. This rule requires a notice and hearing procedure as a condition of issuance of such order. A certified copy of the court's order should be recorded with the deed of distribution. Under the title standard, an order is not required to vest marketable title in a purchaser for value from or a lender to such distributee. See §*38-35-109*, C.R.S.*

Rule 56. Foreign Personal Representatives

(a) After the death of a nonresident decedent, copies of the documents evidencing appointment of a domiciliary foreign personal representative may be filed as provided in §15-13-204, C.R.S. Such documents must have been certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following that may have been issued by the foreign court:

(1) The order appointing the domiciliary foreign personal representative, and

(2) The letters or other documents evidencing or affecting the domiciliary foreign personal representative's authority to act.

(b) Upon filing such documents and a sworn statement by the domiciliary foreign personal representative stating that no administration, or application or petition for administration, is pending in Colorado, the court shall issue its Certificate of Ancillary Filing, substantially conforming to JDF 930.

Rule 57. RESERVED
Rule 58. RESERVED
Rule 59. RESERVED

PROTECTIVE PROCEEDINGS:

Rule 60. Physicians' Letters or Professional Evaluation.

Any physician's letter or professional evaluation utilized as the evidentiary basis to support a petition for the appointment of a guardian, conservator or other protective order under Article 14 of the Colorado Probate Code, unless otherwise directed by the court, should contain: (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; (2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.

Rule 61. ~~Inventory with Financial Plan~~ Financial Plan with Inventory and Motion for Approval -- Conservatorships.

A~~n~~ Conservator's Financial Plan with Inventory and Motion for Approval ~~with Financial Plan~~ shall be filed with the court and served on all interested persons. ~~Any Inventory with Financial Plan or Amended Inventory with Financial Plan (the "Plan") filed with the court shall be deemed to include a motion or petition for approval of the Plan.~~ The request for approval of the Plan may be set on the nonappearance docket, the appearance docket, or not set for hearing and treated as a motion under C.R.C.P. 121.

Rule 62. Court Approval of Settlement of Claims of Persons Under Disability.

(a) This rule sets forth procedures by which a court considers requests for approval of the proposed settlement of claims on behalf of a minor or an adult in need of protection pursuant to §15-14-401, et seq., C.R.S. ("respondent"). In connection with a proceeding brought under this rule, the court shall:

(1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interests of the respondent;
(2) Ensure that the petitioner and respondent and/or his/her legal guardian/fiduciary understands the finality of the proposed settlement;
(3) Adjudicate the allowance or disallowance, in whole or in part, of any outstanding liens and claims against settlement funds, including attorney fees; and
(4) Make protective arrangements for the conservation and use of the net settlement funds, in the best interests of the respondent, taking into account the nature and scope of the proposed settlement, the anticipated duration and nature of the respondent's disability, the cost of any future medical treatment and care required to treat respondent's disability, and any other relevant factors, all pursuant to §15-14-101, et seq., C.R.S.

(b) Venue for a petition brought under this rule shall be in accordance with §15-14-108(3), C.R.S.

(c) A petition for approval of a proposed settlement of a claim on behalf of a respondent may be filed by respondent's conservator or guardian, or if there is no conservator or guardian, by an interested person, and shall be presented in accordance with the procedures set forth in this rule.

(d) A petition for approval of settlement shall include the following information:

(1) Facts.

A. The respondent's name and address;
B. The respondent's date of birth;
C. If the respondent is a minor, the name and contact information of each legal guardian. If the identity or contact information of any legal guardian is unknown, or if any parental rights have been terminated, the petition shall so state;
D. The name and contact information of the respondent's spouse, partner in a civil union, or if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition;
E. The name and contact information of any guardian, conservator, custodian, trustee, agent under a power of attorney, or any other court appointed fiduciary for the respondent. A description of the purpose of any court appointed fiduciary shall be included; and
F. The date and a brief description of the event or transaction giving rise to the claim.

(2) Claims and Liabilities.

A. The contact information of each party against whom the respondent may have a claim;
B. The basis for each of the respondent's claims;
C. The defenses and/or counterclaims if any, to the respondent's claims; and
D. The name and contact information of each insurance company involved in the claim, the type of policy, the policy limits, and the identity of the insured.

(3) Damages.

A. A description of the respondent's injuries;
B. The amount of time missed by the respondent from school or employment and a summary of lost income resulting from the respondent's injuries;
C. A summary of any damage to respondent's property;
D. A summary of any expenses incurred for medical or other care provider services as a result of the respondent's injuries; and
E. The identification of any person, organization, institution, or state or federal agency that paid any of the respondent's expenses and a summary of expenses that have been or will be paid by each particular source.

(4) Medical Status.

A. A description of respondent’s current condition including but not limited to the nature and extent of any disability, disfigurement, or physical or psychological impairments and any current treatments and/or therapies; and
B. An explanation of respondent’s prognosis and any anticipated treatments and/or therapies.

(5) Status of Claims.

A. For this claim and any other related claim, the status of the claim and if any civil action has been filed, the court, case number, and parties; and
B. For this claim and any other related claim, identify the amount of the claim and contact information of any party having a subrogation right including any state or federal agency paying or planning to pay benefits to or for the respondent. A list of all subrogation claims and/or liens against the settlement proceeds shall be included as well as a summary of efforts to negotiate them.

(6) Proposed Settlement and Proposed Disposition of Settlement Proceeds.

A. The name and contact information of any party/entity making and receiving payment under the proposed settlement;
B. The proposed settlement amount, payment terms, and proposed disposition, including any restrictions on the accessibility of the funds and whether any proceeds will be deposited into a restricted account;
C. The details of any structured settlement, annuity, insurance policy or trust instrument, including the terms, present value, discount rate, payment structure and the identity of the trustee or entity administering such arrangements;
D. Legal fees and costs being requested to be paid from the settlement proceeds; and
E. Whether there is a need for continuing court supervision, the appointment of a fiduciary or the continuation of an existing fiduciary appointment. The court may appoint a conservator, trustee, or other fiduciary to manage the settlement proceeds or make other protective arrangements in the best interests of the respondent.

(7) Exhibits.

A. The petition shall list each exhibit filed with the petition.
B. The following exhibits shall be attached to the petition:
   (i) A written statement by the respondent's physician or other health care provider. The statement shall set forth the information required by subparagraph 4, A and B of this rule and comply with C.R.P.P. 27.1 unless otherwise ordered by the court;
   (ii) Relevant legal fee agreements, statement of costs and billing records and/or billing summary; and
   (iii) Any proposed settlement agreements and proposed releases.
C. The court may continue, vacate, or place conditions on approval of the proposed settlement in response to petitioner’s failure to include such exhibits.

(e) Notice of a hearing and a copy of the petition (except as otherwise ordered by the court in any specific case), shall be given in accordance with §15-14-404(1) and (2), C.R.S. and C.R.P.P. 8.

(f) An appearance hearing is required for petitions brought under this rule.

(g) The petitioner, respondent, and any proposed fiduciary shall attend the hearing, unless excused by the court prior to the hearing for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate, report to the court, or represent the respondent.

Rule 63. Foreign Conservators

(a) After the appointment of a conservator for a person who is not a resident of this state, copies of documents evidencing the appointment of such foreign conservator may be filed as provided in §15-14-433, C.R.S. Such documents must have been certified, exemplified or authenticated by the appointing foreign court not more than sixty days prior to filing with a Colorado court, and shall include copies of all of the following:

(1) The order appointing the foreign conservator,

(2) The letters or other documents evidencing or affecting the foreign conservator's authority to act, and

(3) Any bond of foreign conservator.

(b) Upon filing such documents and a sworn statement by the foreign conservator stating that a conservator has not been appointed in this state and that no petition in a protective proceeding is pending in this state concerning the person for whom the foreign conservator was appointed, the court shall issue its Certificate of Ancillary Filing, substantially conforming to JDF 892.

Rule 64. RESERVED
Rule 65. RESERVED
Rule 66. RESERVED
Rule 67. RESERVED
Rule 68. RESERVED
Rule 69. RESERVED

TRUSTS:

Rule 70. Trust Registration – Amendment, Release and Transfer.

(a) A trustee shall file with the court of current registration an amended trust registration statement to advise the court of any change in the trusteeship, of any change in the principal place of administration, or of termination of the trust.

(b) If the principal place of administration of a trust has been removed from this state, the court may release a trust from registration in this state upon request and after notice to interested parties.

(c) If the principal place of administration of a trust has changed within this state, the trustee may transfer the registration from one court to another within this state by filing in the court to which the registration is transferred an amended trust registration statement with attached thereto a copy of the original trust registration statement and of any amended trust registration statement prior to the current amendment, and by filing in the court from which the registration is being transferred a copy of the amended trust registration statement. The amended statement shall indicate that the trust was registered previously in another court of this state and that the registration is being transferred.

Rule 71. RESERVED
Rule 72. RESERVED
Rule 73. RESERVED
Rule 74. RESERVED
Rule 75. RESERVED
Rule 76. RESERVED
Rule 77. RESERVED
Rule 78. RESERVED
Rule 79. RESERVED

06-06-2015 Chair Draft – This is my sense of our final work product. Please advise if you approve submission to the Civil Rules Committee with the recommendation that these changes be adopted. This has my draft of April 14, circulated again in Word Track changes to show changes from the original rule. This version contains edits from several sources, including Judge Hannen, Chuck Calvin, and Rich Krohn, counsel for the Public Trustees association, which whom I shared our last draft. I have heard no further responses in several weeks. As a matter of form, I have highlighted in yellow a few of the most recent edits of interest. I have continued use of a few footnotes for subcommittee convenience only. These will be deleted in the version that I send to the Civil Rules Committee. fbs

C.R.C.P. Rule 120

RULE 120. ORDER~~S~~ AUTHORIZING FORECLOSURE SALE~~S~~ UNDER POWER~~S~~ IN A DEED OF TRUST TO THE PUBLIC TRUSTEE.

(a) ~~**(a)**~~ **Motion for Order Authorizing Sale.**~~**; Contents.**~~ ~~Whenever~~ When an order of court is desired authorizing a foreclosure sale under a power of sale contained in a deed of trust to a public trustee, ~~contained in an instrument,~~ any ~~interested~~ person entitled to enforce the deed of trust ~~or someone on such person's behalf~~ may file a verified motion in a district court seeking such order. The motion shall be captioned: "Verified Motion for Order Authorizing a Foreclosure Sale under C.R.C.P. 120," and shall be verified by a person with knowledge who is competent to testify regarding the facts ~~giving rise to the default~~stated in the motion.~~, or 2. a compententcompetent witness with personal knowledge of facts that can be supported by admissible evidence.]~~

(1) Contents of Motion. The motion shall include a copy of the evidence of debt, the deed of trust containing the power of sale, and any subsequent modifications of these documents. The motion ~~accompanied by a copy of the instrument containing the power of sale,~~ shall describe the property to be sold, ~~and~~ shall specify the ~~default or other~~ facts giving rise to the default, and may include documentation relevant to the claim of a default. The Motion shall include all contact information for the moving party consistent with the requirements for a pleading filed under C.R.C.P. 10. ~~claimed by the moving party to justify invocation of the power of sale.~~

(A) When the property to be sold is personal property, the motion shall state the names and last known addresses, as shown by the records of the moving party, of all persons known or believed by the moving party to have an interest in such property which may be materially affected or extinguished [1] by such sale.

[1] The term "extinguished" follows the pertinent statutory language.

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(B) When the property to be sold is real property and the power of sale is contained in a deed of trust to a public trustee, the motion shall state the name and last known address, as shown by the real property records of the clerk and recorder and the records of the moving party, of (i) the grantor of ~~such~~ the deed of trust, ~~of~~ (ii) the current record owner of the property to be sold, ~~and of~~(iii) any person known or believed by the moving party to be personally liable ~~upon the indebtedness~~for the debt secured by the deed of trust, and (iv) ~~as well as the names and addresses of~~ those persons who appear to have ~~acquired a record~~an interest in such real property that is evidenced by a document recorded after ~~, subsequent to~~ the recording of ~~such~~ the deed of trust and ~~prior to~~before the recording of the notice of election and demand for sale, ~~whether by deed, mortgage, judgment or any other instrument of record~~or is otherwise subordinate to the lien of the deed of trust.

(C) In describing and giving notice to persons who appear to have acquired a record interest in real property, the address of each such person shall be the address which is given in the recorded instrument evidencing such person's interest. ~~, except that if~~If such recorded instrument does not give an address or if only the county and state are given as the address of such person, no address need be stated for such person in the motion.

~~(1)~~(2) Setting of Response Deadline; Hearing Date. ~~The clerk shall~~ Upon receipt of the motion, the clerk shall set a deadline by which any response to the motion must be filed. The deadline shall be ~~fix a time~~ not less than 21 nor more than 35 days after the filing of the motion. ~~and a place for the hearing of such motion.~~ For purposes of any statutory reference to the date of a hearing under C.R.C.P. 120, the response deadline set by the clerk shall be regarded as the scheduled hearing date unless a later hearing date is set by the court pursuant to section (c) (3) below.

(b) ~~(b)~~ Notice of Response Deadline~~; Contents; Service~~ Service of Notice. The moving party shall issue a notice stating:

(1) ~~describing the instrument~~a description of the deed of trust containing the power of sale, the property sought to be sold ~~thereunder~~at foreclosure, and the ~~default or other~~ facts asserted in the motion to support the claim of default;

(2) ~~upon which the power of sale is invoked. The notice shall also state the time and place set for the hearing and shall refer to~~ the right of any interested person to file and serve a response~~s~~ as provided in section (c), including ~~a reference to the last day for filing such responses and~~ the addresses at which such response~~s~~ must be filed and served and the deadline set by the clerk for filing a response;~~.~~

(3) ~~The notice shall contain~~ the following advisement: "If this case is not filed in the county where your property or a substantial part of your property[2] is located, you have the right to ask the court to move the case to that county. If you file a response and the court sets a hearing date, your request to move the case must be filed ~~Your request may be made as a part of your response or any paper you file~~ with the court at least 7 days before the date of the hearing unless the request was included in your response.";; and

(4) ~~The notice shall contain~~ the ~~return~~ mailing address of the moving party and, if different,[3] the name and

[2] "Substantial part" added to correspond to subsection (f).

[3] Changing separate (in a previous draft) to different.

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address of any authorized servicer for the loan secured by the deed of trust. If the moving party is not the owner of the evidence of debt, the notice shall state in addition the name and address of the owner of the evidence of debt.

~~(1)~~ ~~Such~~ The notice shall be served by the moving party not less than 14 days prior to the ~~date set for the hearing~~response deadline set by the clerk, by: (~~1~~A) mailing a true copy ~~thereof~~ of the notice to each person named in the motion (other than any person~~s~~ for whom no address is stated) at ~~the~~ that person's address or addresses stated in the motion; (~~2~~B) ~~and by~~ filing a copy with the clerk ~~and by delivering a second copy to the clerk~~ for posting by the clerk in the courthouse in which the motion is pending; and (~~3~~C) if the property to be sold is a residential property as defined by statute, by posting a true copy of the notice in a conspicuous place on the subject property as required by statute. ~~Such~~ Proof of mailing and delivery of the notice to the clerk for posting in the courthouse, and proof of posting of the notice on the residential property, ~~property posting~~ shall be evidenced by the certificate of the moving party or moving party's agent. For the purpose of this section, posting by the clerk may be electronic on the court's public website so long as the electronic address for the posting is displayed conspicuously at the courthouse.

(c) ~~(c)~~ Response stating objection to motion for order authorizing sale; ~~Contents;~~ Filing and Service.

(1) Any interested person who disputes, on grounds within the scope of the hearing provided for in section (d), the moving party's ~~entitlement~~ right to an order authorizing sale may file and serve a response to the motion. ~~, verified by the oath of such person, setting forth~~ The response must ~~state~~describe the facts the respondent relies upon in objecting to the issuance of an order authorizing sale, and may include ~~which he relies and attaching~~ copies of ~~all~~ documents which support ~~his~~ the respondent's position. The response shall be filed and served not ~~less~~ later than ~~7 days prior to the date set for the hearing~~the response deadline set by the clerk. The response shall include contact information for the respondent including name, mailing address, telephone number, and, if available, an e-mail address. ~~said interval including intermediate Saturdays, Sundays, and legal holidays, C.R.C.P. 6(a) notwithstanding, unless the last day of the period so computed is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next succeeding day which is not a Saturday, Sunday or a legal holiday.~~ Service of ~~such~~ the response upon the moving party shall be made in accordance with C.R.C.P. 5(b).

(2) [Deleted.][4]

~~(1)~~(3) ~~C.R.C.P. 6(e) shall not apply to computation of time periods under this section (c).~~If a response is filed under this section (c), the court shall set the matter for hearing at a later date. The clerk shall ~~give notice of the~~ clear available hearing dates with the parties and counsel, if practical, and ~~hearing date, by telephone, by e-mail or fax, and by mail if necessary~~shall give notice to counsel and any pro se parties who have appeared in the matter, in accordance with the rules applicable to E-filing, no less than ~~fourteen~~14 days prior to the hearing date. ~~, to counsel for the moving party and the respondent and to any unrepresented party who has appeared in the matter.~~

(d) ~~Hearing;~~ Scope of Issues at the Hearing; Order Authorizing Foreclosure Sale; Effect of Order ~~Authorizing~~ Sale. ~~At the time and place set for the hearing or to which the hearing may have been continued, the~~The court shall examine the motion and ~~the~~ any response~~s, if any~~.

[4] CRCP 6 (e) is history.

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(1) If the matter is set for hearing, ~~The~~ the scope of inquiry at ~~such~~ the hearing shall not extend beyond (A) the existence of a default ~~or other circumstances~~ authorizing exercise of a power of sale~~,~~ under the terms of the ~~instrument~~ deed of trust described in the motion, (B) consideration by the court of the requirements of ~~exercise of a power of sale contained therein, and such other issues required by~~ the Servicemembers Civil Relief Act ~~(SCRA)~~, 50 U.S.C. App. § 501, as amended, (C) ~~.~~ whether the moving party is the real party in interest, and (D) whether the status of any request for a loan modification or any loan modification agreement bars a foreclosure sale as a matter of law.[5] The court shall determine whether there is a reasonable probability that ~~such~~ a default ~~or other circumstance has~~justifying the sale has occurred, ~~and~~ whether an order authorizing sale is otherwise proper under ~~said~~ the Service~~-m~~Members Civil Relief Act, whether the moving party is the real party in interest, and, if each of those matters is determined in favor of the moving party, whether evidence presented in support of defenses raised by the respondent and within the scope of this rule prevents the court from finding that there is a reasonable probability that the moving party is entitled to an order authorizing a foreclosure sale. The court shall ~~and shall summarily~~ grant or deny the motion in accordance with such determination. Nothing in this rule shall preclude the court from continuing a hearing for good cause shown.

(2) If no response has been filed by the response deadline set by the clerk, and if the court is satisfied that venue is proper and the moving party is entitled to an order authorizing sale, the court shall forthwith enter an order authorizing sale.

(3) Any order authorizing sale shall recite the date the hearing was completed, if a hearing was held, or, if no response was filed and no hearing was held, shall recite the response deadline set by the clerk as the date a hearing was scheduled.[6]

(4) ~~Neither the granting nor the denial of a motion~~ An order granting or denying a motion filed under this Rule shall not constitute an appealable order or judgment. The granting of ~~any such~~a motion authorizing a foreclosure sale shall be without prejudice to the right of any person aggrieved to seek injunctive or other relief in any court of competent jurisdiction, and the denial of any such motion shall be without prejudice to any right or remedy of the moving party.

(e) The court shall not require the appointment of an attorney to represent any interested person as a condition of granting such motion, unless it appears from the motion or other papers filed with the court that there is a reasonable probability that the interested person is in the military service.[7]

~~**(e) Hearing Dispensed with if no Response Filed.** If no response has been filed within the time permitted by section (c), the court shall examine the motion and, if satisfied that venue is proper and the moving party is entitled to an order authorizing sale upon the facts stated therein, the court shall dispense with the hearing and forthwith enter an order authorizing sale.~~

[5] The phrasing of subpart (D) was discussed at length, and was approved by a straw vote of 7-1.

[6] C.R.S. §38-38-105(2)(a) ("the order shall recite the date the hearing was scheduled . . . ."). Rich Krohn thought this "deeming" procedure might "invite litigation" over conflict with this statute. Any concern from the subcommittee?

[7] This subsection was assigned to subsection (e) so that the lettering of subsequent subsections remains the same. We can undo the movement of the former (e) if this is a problem.

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(f) Venue. For the purposes of this section, a consumer obligation is any obligation (i) as to which the obligor is a natural person, and (ii) that is incurred primarily for a personal, family, or household purpose. Any proceeding under this Rule involving a consumer obligation shall be brought in and heard in the county in which such consumer signed the obligation or in which the property or a substantial part ~~thereof~~ of the property is located. Any proceeding under this Rule which does not involve a consumer obligation or an instrument securing a consumer obligation may be brought and heard in any county. However, in any proceeding under this Rule, if a response is filed, and if in the response or in any other writing filed with the court, the responding party requests a change of venue to the county in which the encumbered property or a substantial part thereof is situated, the court shall order transfer of the proceeding to such county.

(g) Return of Sale. The court shall require a return of ~~such~~ sale to be made to the court. ~~, and if~~If it appears ~~therefrom~~ from the return that ~~such~~ the sale was conducted in conformity with the order authorizing the sale, the court shall ~~thereupon~~ enter an order approving the sale. This order shall not have preclusive effect on the parties in any action for a deficiency judgment or in an action challenging the right of the moving party to foreclose on the property or to set aside the foreclosure sale.

(h) Docket Fee. A docket fee in the amount specified by law shall be paid by the person filing ~~such~~ the motion. Unless the court shall otherwise order, any person filing a response to the motion shall pay, at the time of ~~the~~ filing ~~of such response,~~ a docket fee in the amount specified by law for a defendant or respondent in a civil action under section 13-32-101(1)(d), C.R.S.

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Prior history - Amended eff. July 1, 1984; Jan. 1, 1987; Jan. 1, 1989; June 1, 1991; April 1, 1993; Nov. 16, 1995; June 28, 2007. Corrected eff. Nov. 5, 2007. Amended eff. Jan. 7, 2010; Oct. 14, 2010; Jan. 1, 2012.

COMMITTEE COMMENT (SUBCOMMITTEE, 2015).

[Insert]

COMMITTEE COMMENT (from 1989)

The 1989 amendment to C.R.C.P. 120 (Sales Under Powers) is a composite of changes necessary to update the Rule and make it more workable. The amendment was developed by a special committee made up of practitioners and judges having expertise in that area of practice, with both creditor and debtor interests represented.

The changes are in three categories. There are changes that permit court clerks to perform many of the tasks that were previously required to be accomplished by the Court and thus save valuable Court time. There are changes to venue provisions of the Rule for compliance with the Federal Fair Debt Collection Practices Act. There are also a number of editorial changes to improve the language of the Rule.

There was considerable debate concerning whether the Federal "Fair Debt Collection Practices Act" is applicable to a C.R.C.P. 120 proceeding. Rather than attempting to mandate compliance with that federal statute by specific rule provision, the Committee recommends that a person acting as a debt collector in a matter covered by the provisions of the Federal "Fair Debt Collection Practices Act" be aware of the potential applicability of the Act and comply with it, notwithstanding any provision of this Rule.

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06-06-2015 Chair Draft – This is my sense of our final work product. Please advise if you approve submission to the Civil Rules Committee with the recommendation that these changes be adopted. This has my draft of April 14, circulated again in Word Track changes to show changes from the original rule. This version contains proposed edits from several sources, including Judge Hannen, Chuck Calvin, and Rich Krohn, counsel for the Public Trustees association, which whom I shared our last draft. I have heard no further responses in several weeks. I have continued use of a few footnotes, which may be helpful to the Civil Rules Committee. fbs

C.R.C.P. Rule 120

RULE 120. ORDER AUTHORIZING FORECLOSURE SALE UNDER POWER IN A DEED OF TRUST TO THE PUBLIC TRUSTEE.

(a) Motion for Order Authorizing Sale. When an order of court is desired authorizing a foreclosure sale under a power of sale contained in a deed of trust to a public trustee, any person entitled to enforce the deed of trust may file a verified motion in a district court seeking such order. The motion shall be captioned: "Verified Motion for Order Authorizing a Foreclosure Sale under C.R.C.P. 120," and shall be verified by a person with knowledge who is competent to testify regarding the facts stated in the motion.

(1) Contents of Motion. The motion shall include a copy of the evidence of debt, the deed of trust containing the power of sale, and any subsequent modifications of these documents. The motion shall describe the property to be sold, shall specify the facts giving rise to the default, and may include documentation relevant to the claim of a default. The Motion shall include all contact information for the moving party consistent with the requirements for a pleading filed under C.R.C.P. 10.

(A) When the property to be sold is personal property, the motion shall state the names and last known addresses, as shown by the records of the moving party, of all persons known or believed by the moving party to have an interest in such property which may be materially affected or extinguished [1]by such sale.

(B) When the property to be sold is real property and the power of sale is contained in a deed of

[1] The term "extinguished" follows the pertinent statutory language.

trust to a public trustee, the motion shall state the name and last known address, as shown by the real property records of the clerk and recorder and the records of the moving party, of (i) the grantor of the deed of trust, (ii) the current record owner of the property to be sold, (iii) any person known or believed by the moving party to be personally liable for the debt secured by the deed of trust, and (iv) those persons who appear to have an interest in such real property that is evidenced by a document recorded after the recording of the deed of trust and before the recording of the notice of election and demand for sale, or is otherwise subordinate to the lien of the deed of trust.

(C) In describing and giving notice to persons who appear to have acquired a record interest in real property, the address of each such person shall be the address which is given in the recorded instrument evidencing such person's interest. If such recorded instrument does not give an address or if only the county and state are given as the address of such person, no address need be stated for such person in the motion.

(2) Setting of Response Deadline; Hearing Date. Upon receipt of the motion, the clerk shall set a deadline by which any response to the motion must be filed. The deadline shall be not less than 21 nor more than 35 days after the filing of the motion. For purposes of any statutory reference to the date of a hearing under C.R.C.P. 120, the response deadline set by the clerk shall be regarded as the scheduled hearing date unless a later hearing date is set by the court pursuant to section (c) (3) below.

(b) Notice of Response Deadline Service of Notice. The moving party shall issue a notice stating:

(1) a description of the deed of trust containing the power of sale, the property sought to be sold at foreclosure, and the facts asserted in the motion to support the claim of default;

(2) the right of any interested person to file and serve a response as provided in section (c), including the addresses at which such response must be filed and served and the deadline set by the clerk for filing a response;

(3) the following advisement: "If this case is not filed in the county where your property or a substantial part of your property is located, you have the right to ask the court to move the case to that county. If you file a response and the court sets a hearing date, your request to move the case must be filed with the court at least 7 days before the date of the hearing unless the request was included in your response."; and

(4) the mailing address of the moving party and, if different, the name and address of any authorized servicer for the loan secured by the deed of trust. If the moving party is not the owner of the evidence of debt, the notice shall state in addition the name and address of the owner of the evidence of debt.

The notice shall be served by the moving party not less than 14 days prior to the response deadline set by the clerk, by: (A) mailing a true copy of the notice to each person named in the motion (other than any

person for whom no address is stated) at that person's address or addresses stated in the motion; (B) filing a copy with the clerk for posting by the clerk in the courthouse in which the motion is pending; and (C) if the property to be sold is a residential property as defined by statute, by posting a true copy of the notice in a conspicuous place on the subject property as required by statute. Proof of mailing and delivery of the notice to the clerk for posting in the courthouse, and proof of posting of the notice on the residential property, shall be evidenced by the certificate of the moving party or moving party's agent. For the purpose of this section, posting by the clerk may be electronic on the court's public website so long as the electronic address for the posting is displayed conspicuously at the courthouse.

(c) Response stating objection to motion for order authorizing sale; Filing and Service.

(1) Any interested person who disputes, on grounds within the scope of the hearing provided for in section (d), the moving party's right to an order authorizing sale may file and serve a response to the motion. The response must describe the facts the respondent relies upon in objecting to the issuance of an order authorizing sale, and may include copies of documents which support the respondent's position. The response shall be filed and served not later than the response deadline set by the clerk. The response shall include contact information for the respondent including name, mailing address, telephone number, and, if available, an e-mail address. Service of the response upon the moving party shall be made in accordance with C.R.C.P. 5(b).

(2) [Deleted.][2]

(3) If a response is filed under this section (c), the court shall set the matter for hearing at a later date. The clerk shall clear available hearing dates with the parties and counsel, if practical, and shall give notice to counsel and any pro se parties who have appeared in the matter, in accordance with the rules applicable to E-filing, no less than 14 days prior to the hearing date.

(d) Scope of Issues at the Hearing; Order Authorizing Foreclosure Sale; Effect of Order. The court shall examine the motion and any responses.

(1) If the matter is set for hearing, the scope of inquiry at the hearing shall not extend beyond (A) the existence of a default authorizing exercise of a power of sale under the terms of the deed of trust described in the motion, (B) consideration by the court of the requirements of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, as amended, (C) whether the moving party is the real party in interest, and (D) whether the status of any request for a loan modification or any loan modification agreement bars a foreclosure sale as a matter of law. The court shall determine whether there is a reasonable probability that a default justifying the sale has occurred, whether an order authorizing sale is otherwise proper under the Servicemembers Civil Relief Act, whether the moving party is the real party in interest, and, if each of those matters is determined in favor of the moving party, whether evidence presented in support of defenses raised by the

[2] CRCP 6 (e) is "history."

respondent and within the scope of this rule prevents the court from finding that there is a reasonable probability that the moving party is entitled to an order authorizing a foreclosure sale. The court shall grant or deny the motion in accordance with such determination. Nothing in this rule shall preclude the court from continuing a hearing for good cause shown. (2) If no response has been filed by the response deadline set by the clerk, and if the court is satisfied that venue is proper and the moving party is entitled to an order authorizing sale, the court shall forthwith enter an order authorizing sale.

(3) Any order authorizing sale shall recite the date the hearing was completed, if a hearing was held, or, if no response was filed and no hearing was held, shall recite the response deadline set by the clerk as the date a hearing was scheduled.[3]

(4) An order granting or denying a motion filed under this Rule shall not constitute an appealable order or judgment. The granting of a motion authorizing a foreclosure sale shall be without prejudice to the right of any person aggrieved to seek injunctive or other relief in any court of competent jurisdiction, and the denial of any such motion shall be without prejudice to any right or remedy of the moving party.

(e) The court shall not require the appointment of an attorney to represent any interested person as a condition of granting such motion, unless it appears from the motion or other papers filed with the court that there is a reasonable probability that the interested person is in the military service. [4]

(f) Venue. For the purposes of this section, a consumer obligation is any obligation (i) as to which the obligor is a natural person, and (ii) that is incurred primarily for a personal, family, or household purpose. Any proceeding under this Rule involving a consumer obligation shall be brought in and heard in the county in which such consumer signed the obligation or in which the property or a substantial part of the property is located. Any proceeding under this Rule which does not involve a consumer obligation or an instrument securing a consumer obligation may be brought and heard in any county. However, in any proceeding under this Rule, if a response is filed, and if in the response or in any other writing filed with the court, the responding party requests a change of venue to the county in which the encumbered property or a substantial part thereof is situated, the court shall order transfer of the proceeding to such county.

(g) Return of Sale. The court shall require a return of sale to be made to the court. If it appears from the return that the sale was conducted in conformity with the order authorizing the sale, the court shall enter an order approving the sale. This order shall not have preclusive effect on the parties in any action for a deficiency judgment or in an action challenging the right of the moving party to foreclose on the property or to set aside the foreclosure sale.

(h) Docket Fee. A docket fee in the amount specified by law shall be paid by the person filing the motion. Unless the court shall otherwise order, any person filing a response to the motion shall pay, at the time of filing, a docket fee in the amount specified by law for a defendant or respondent in a civil action under

[3] See C.R.S. §38-38-105(2)(a) ("the order shall recite the date the hearing was scheduled . . . .").

[4] This subsection was assigned to subsection (e) so that the lettering of subsequent subsections remains the same.

section 13-32-101(1)(d), C.R.S.

Prior history - Amended eff. July 1, 1984; Jan. 1, 1987; Jan. 1, 1989; June 1, 1991; April 1, 1993; Nov. 16, 1995; June 28, 2007. Corrected eff. Nov. 5, 2007. Amended eff. Jan. 7, 2010; Oct. 14, 2010; Jan. 1, 2012.

COMMITTEE COMMENT (SUBCOMMITTEE, 2015).

[Insert]

COMMITTEE COMMENT (from 1989)

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The changes are in three categories. There are changes that permit court clerks to perform many of the tasks that were previously required to be accomplished by the Court and thus save valuable Court time. There are changes to venue provisions of the Rule for compliance with the Federal Fair Debt Collection Practices Act. There are also a number of editorial changes to improve the language of the Rule.

There was considerable debate concerning whether the Federal "Fair Debt Collection Practices Act" is applicable to a C.R.C.P. 120 proceeding. Rather than attempting to mandate compliance with that federal statute by specific rule provision, the Committee recommends that a person acting as a debt collector in a matter covered by the provisions of the Federal "Fair Debt Collection Practices Act" be aware of the potential applicability of the Act and comply with it, notwithstanding any provision of this Rule.

Judge Berger: This subcommittee is back again with proposed revisions to CRCP 121, sec. 1-15, and two related rules, CRCP 10(c) and 121, sec. 1-12, which are attached.

On 121, sec. 1-15, we have been discussing page and word limitations for motions and briefs in paragraph 1(a). Since our last meeting, you provided additional information about how to calculate how many words match up with how many pages. What we learned was that 12 point arial is 270 words per page, while 12 point new times Roman is 244. There was some discussion of following the Colorado Appellate Rules on this but they require 14 point and I have not heard a big push to go to 14 point in the district court (if we did the words per page are only 217 and 192). The result of this info was to cut the number of words suggested in our prior proposals by trying to get between the 244 – 270 words per page numbers above. Therefore, the 10-page brief is now also limited to 2,500 words, the 15-page brief to 4,000 words and the 25-page brief to 6,500. I kept the same number of pages as before, but the briefs will be shorter because of the reduction in word limits. Under this proposal, the writer must come within both limits, although I prefer the appellate approach of satisfying the word limit only.

There are a number of other small changes to paragraph 1(a) that the full committee suggested last time, and I tried to include those. We also discussed paragraph 4 on deciding motions last time but the only things I took away were to keep the concept of encouraging "prompt" decisions, revise the language to simplify, and keep the last sentence about requiring parties to advise the court clerk of motions that require immediate attention.

The committee also wanted to address the spacing requirements in CRCP 10 (c) so that motions and briefs would be double spaced. In examining that rule later, however, I think the categories set out there are not consistent, so I arbitrarily suggested in this proposal to move to double spacing on everything except things that were two pages or less (such as notices, entries of appearances, motions for extensions of time to file a brief, etc.). No one suggested this, but I thought we needed something on the table.

Finally, I have again attached 121, sec, 1-12, which is part of this, but which we have not yet been able to address.

Please let me know if you have questions about this.

Dave

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strictly prohibited. If you have received this e-mail transmission in error, please call us collect at 303-837-9200 to arrange for the return of this complete transmission to us at our expense and then delete this message from your computer and network system. Thank you.

Section 1-15
DETERMINATION OF MOTIONS

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

(a) Except motions during trial or where the court ORDERS THAT CERTAIN OR ALL NON-DISPOSITIVE MOTIONS BE MADE ORALLY ~~deems an oral motion to be appropriate~~, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion, WHICH SHALL NOT BE FILED WITH A SEPARATE BRIEF. ~~except for a motion pursuant to C.R.C.P. 56. Motions or briefs in excess of 10 pages in length, exclusive of tables and appendices, are discouraged. Except for electronic filings made pursuant to Section 1-26 of this Rule, the original and one copy of all motions and briefs shall be filed with the court, and a copy served as required by law.~~ UNLESS THE COURT ORDERS OTHERWISE, MOTIONS AND RESPONSIVE BRIEFS NOT UNDER C.R.C.P. 12(b)(1) or (2), 12(c) OR 56 ARE LIMITED TO 15 PAGES (BUT NOT MORE THAN 4,000 WORDS), AND REPLY BRIEFS TO 10 PAGES (BUT NOT MORE THAN 2,500 WORDS), NOT INCLUDING THE CASE CAPTION, CERTIFICATE OF SERVICE AND ATTACHMENTS. UNLESS THE COURT ORDERS OTHERWISE, MOTIONS AND RESPONSIVE BRIEFS UNDER C.R.C.P. 12(b)(1) or (2), 12(c) or 56 ARE LIMITED TO 25 PAGES (BUT NOT MORE THAN 6,500 WORDS), AND REPLY BRIEFS TO 15 PAGES (BUT NOT MORE THAN 4,000 WORDS), NOT INCLUDING THE CASE CAPTION, CERTIFICATE OF SERVICE AND ATTACHMENTS.

(b) The responding party shall have 21 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief. If a motion is filed 42 days or less before the trial date, the responding party shall have 14 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief.

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

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

3. Effect of Failure to File Legal Authority. If the moving party fails to incorporate legal authority into ~~the motion or fails to file a brief with~~ a C.R.C.P. 56 motion, the court may deem the motion abandoned and may enter an order denying the motion. Failure of a responding party to file a responsive brief may be considered a confession of the motion.

4. Motions to Be Determined on Briefs, When Oral Argument Is Allowed; Motions Requiring Immediate Attention. [NEW ALTERNATIVE:] MOTIONS SHALL BE DETERMINED PROMPTLY IF POSSIBLE. THE COURT HAS DISCRETION TO ORDER BRIEFING OR SET A HEARING ON THE MOTION. **[PRIOR PROPOSAL:]** If possible, WRITTEN motions shall be determined promptly

upon the written motion and briefs submitted. However, the court may order oral argument or an evidentiary hearing, or if the request for oral argument or an evidentiary hearing is requested in a motion, or any brief, oral argument may be allowed by the court at its discretion. IF POSSIBLE, THE COURT SHALL DETERMINE ORAL MOTIONS AT THE CONCLUSION OF ARGUMENT, BUT MAY TAKE THE MOTION UNDER ADVISEMENT OR REQUIRE BRIEFING BEFORE RULING. **[RETAIN THIS SENTENCE:]** Any motion requiring immediate disposition shall be called to the attention of the courtroom clerk by the party filing such motion.

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

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

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

8. Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated.

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

10. Proposed Order. Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied.

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

COMMITTEE COMMENT

This Practice Standard was necessary because of lack of uniformity among the districts concerning how motions were to be made, set and determined. The Practice Standard recognizes that oral argument and hearings are not necessary in all cases, and encourages disposition of motions upon written submissions. The standard also sets forth the uniform requirements concerning filing of legal authority, filing of matters not already of record necessary to determination of motions, and the manner of setting an oral argument if argument is permitted. The practice standard is broad enough to include all motions, including venue motions. Some motions will not require extended legal analysis or affidavits. Obviously, if the basis for a motion is simple and routine, the citation of authorities can be correspondingly simple. Motions or briefs in excess of 10 pages are discouraged. This standard specifies contemporaneous recitation of legal authority either in the motion itself for all motions except those under C.R.C.P. Rule 56. Moving counsel should confer with opposing counsel before filing a motion to attempt to work out the difference prompting the motion. Every motion must, at the beginning, contain a certification that the movant, in good faith, has conferred with opposing counsel about the motion. If there has been no conference, the reason why must be stated. To assist the court, if the relief sought by the motion has been agreed to or will not be opposed, the court is to be so advised in the motion.

Paragraph 4 of the standard contains an important feature. Any matter requiring immediate action should be called to the attention of the courtroom clerk by the party filing a motion for forthwith disposition. Calling the urgency of a matter to the attention of the court is a responsibility of the parties. The court should permit a forthwith determination. Paragraph 11 of the standard neither limits a trial court's discretion to modify an interlocutory order, on motion or sua sponte, nor affects C.R.M. 5(a).

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

C.R.C.P. Rule 10

RULE 10. FORM AND QUALITY OF PLEADINGS, MOTIONS AND OTHER DOCUMENTS

Currentness

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

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

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

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

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

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

(I) **Margins:** All documents shall use margins of 1 1/2 inches at the top of each page, and 1 inch at the left, right, and bottom of each page. Except for the caption, a left-justified margin shall be used for all material.

(II) **Font:** No less than twelve (12) point font shall be used for all documents.

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

On the left side:

Court name and mailing address.

Name of parties.

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

Attorney registration number.

Document title.

On the right side:

An area for "Court Use Only" that is at least 2 1/2 inches in width and 1 3/4 inches in length (located opposite the court and party information).

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

(3) **Spacing:** ~~The following spacing guidelines should be followed~~. ALL PLEADINGS, MOTIONS, BRIEFS AND OTHER DOCUMENTS FILED AND SERVED UNDER THESE RULES WHICH ARE MORE THAN TWO PAGES IN LENGTH SHALL BE DOUBLE SPACED.

~~**(I) Single spacing for all:**~~

~~Affidavits~~

~~Complaints, Answers, and Petitions~~

~~Criminal Informations and Complaints~~

~~Interrogatories and Requests for Admissions~~

~~Motions~~

~~Notices~~

~~Pleading forms (all case types)~~

~~Probation reports~~

~~All other documents not listed in subsection (II) below~~

~~(II) Double spacing for all:~~

~~Briefs and Legal Memoranda~~

~~Depositions~~

~~Documents that are complex or technical in nature~~

~~Jury Instructions~~

~~Petitions for Rehearing~~

~~Petitions for Writ of Certiorari~~

~~Petitions pursuant to C.A.R. 21~~

~~Transcripts~~

Section 1-12

MATTERS RELATED TO DISCOVERY

1. Unless otherwise ordered by the court, reasonable notice for the taking of depositions pursuant to C.R.C.P. 30(b)(1) shall not be less than 7 days. Before serving a notice to take a deposition, counsel seeking the deposition shall make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent and counsel for all parties. Prior to scheduling or noticing any deposition, all counsel shall confer in a good faith effort to agree on a reasonable means of limiting the time and expense of that deposition. Pending resolution of any motion pursuant to C.R.C.P. 26(c), the filing of the motion shall stay the discovery at which the motion is directed. IF THE COURT REQUIRES THAT ANY DISCOVERY MOTION UNDER RULE 26(C) BE MADE ORALLY, THEN MOVANT'S NOTICE OF THE MOTION TO ALL PARTIES SHALL ALSO STAY THE DISCOVERY TO WHICH THE MOTION IS DIRECTED.

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

3. Interrogatories and requests under Rules 33, 34, and 36, C.R.C.P., and the responses thereto shall be served upon other counsel or parties, but shall not be filed with the court. If relief is sought under Rule 26(c), C.R.C.P., or Rule 37(a), C.R.C.P., copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with the motion. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be made available and placed, but not filed, with the trial judge at the outset of the trial insofar as their use reasonably can be anticipated. IF THE COURT REQUIRES THAT ANY DISCOVERY MOTION UNDER RULES 26(C) OR 37 (A) BE MADE ORALLY, THEN, UNLESS THE COURT ORDERS OTHERWISE, MOVANT SHALL PRIOR TO THE HEARING PROVIDE EACH PARTY WITH A COPY OF THE PORTIONS OF THE WRITTEN DISCOVERY AT ISSUE AND SHALL PROVIDE THE SAME TO THE COURT AT THE HEARING.

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

5. Unless otherwise ordered, the court will not entertain any motion under Rule 37(a), C.R.C.P., unless counsel for the moving party has conferred or made reasonable effort to confer with opposing counsel concerning the matter in dispute before the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule at the time the motion under Rule 37(a), C.R.C.P., is filed. IF THE COURT REQUIRES THAT ANY DISCOVERY MOTION BE MADE ORALLY,THEN MOVANT MUST MAKE A REASONABLE EFFORT TO CONFER WITH OPPOSING COUNSEL BEFORE REQUESTING A HEARING FROM THE COURT.

COMMITTEE COMMENT

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

problems and resolve various general problems related to discovery. THIS RULE WAS AMENDED TO ADDRESS SITUATIONS ARISING IN COURTS THAT REQUIRE ORAL DISCOVERY MOTIONS.

J. Keith Killian◆
Damon J. Davis
Christopher H. Richter●
Nicholas W. Mayle

KILLIAN, DAVIS,
RICHTER & MAYLE, PC

Daniel R. Robinson ▬
Erin Burke ▲
Andrew Petroski ▼●
James P. Guthro
Matt Parmenter ■
Joseph H. Azbell ▮

◆Also admitted in Navajo Nation ● Attorneys admitted in New Mexico
All Attorneys admitted in Colorado ▮Also admitted in Wyoming

▲Also admitted in California ▼Also admitted in North Dakota and Minnesota
▬Also admitted in Massachusetts ■Also admitted in Indiana and Illinois

www.killianlaw.com

March 24, 2015

Colorado Civil Rules Commmittee
Colorado Rules of Evidence Committee
c/o Jenny Moore
jenny.moore@judicial.state.co.us

RE: Form to ease use of C.R.E. 803(6), 902(11), and 902(12), including disclosure of intent to use said rules

Dear Committee Members:

I am writing to encourage you to consider collaborating to draft a form for use with C.R.E. 803(6), 902(11), and 902(12), including disclosure of the intent to use these rules for the admission of documents. These rules allow a party to admit business records under the hearsay exception if the records are accompanied by an affidavit of a records custodian certifying the records fall within the hearsay exception. The rules also require disclosure of the intent to admit the records through an affidavit. A form easing the use of these rules would benefit both the bar and pro se parties, who often have difficulty admitting records.

My thought is a form would consist of three parts. First, there would be instructions on completion and use of the form. Second, would be an affidavit with blanks for the company name, description of the documents, and the like, which if completed and notarized would comply with C.R.E. 902(11) and (12). Third, would be a form disclosure that would indicate the intent to submit the records by affidavit, to which the affidavits would be attached. The disclosure could be a standalone document, part of the trial management order, or both. The form would apply in both district and county court. My thought is that the form would not be the exclusive means of complying with C.R.E. 902(11) and (12), but simply a way of complying.

Such a form would be of benefit to the bar. In my experience, some attorneys are still unaware of C.R.E. 902(11) and (12), and even if aware are resistant to the rules' use. A form would help publicize the rule to the bar and streamline its use. A form would be especially useful to pro se parties. Many pro se parties face difficulty in getting records admitted. Having a form will ease the process for them. It will also allow them to receive help from the self-represented litigant coordinators.

I am writing to both committees because this does not seem to be strictly an evidentiary issue. The rule has a disclosure component, which implicates the civil rules. Additionally, an records custodian affidavit is the type of document that is often obtained during the disclosure and discovery period. Lastly, for pro se parties, they often do not think about evidence

presentation until trial, if they think about it at all. Having a form within the civil rules, will hopefully prompt pro se parties to obtain the affidavit and disclose it in advance.

Thank you for taking the time to consider my letter. I am sure you have many other issues on your respective agendas. I hope you will consider the potential of the suggested form for use in Colorado.

Yours truly,

KILLIAN, DAVIS, Richter & Mayle, PC

Damon Davis

/DJD

cc: Hon. Michael Berger, Chair Civil Rules Committee: michael.berger@judicial.state.co.us
Hon. Gale Miller, Chair Rules of Evidence Committee: gale.miller@judicial.sate.co.us

From: eid, allison
Sent: Sunday, April 19, 2015 3:32 PM
To: berger, michael
Subject: FW: Please forward this to the civil rules committee

From: moss, edward
Sent: Thursday, April 16, 2015 12:22 PM
To: eid, allison
Subject: Please forward this to the civil rules committee

Justice Eid,
Please forward this to the Civil Rules Committee. Thanks!
- Ed Moss

Regarding, Colorado Rules, Chapter 17B, Appointed Judges, Rule 122(c)(7).

Rule 122(c)(7) requires the motion for appointment of a judge to include the proposed judge's oath, as follows: "I, _____ do solemnly swear or affirm by the ever living God. . . ."

Those of us who believe in a supreme being may easily swear an oath "by the ever living God." Atheists and others of similar persuasion use an affirmation. It's pretty difficult for someone who uses an affirmation to do so "by the ever living God."

Of course, in Colorado, it may be entirely appropriate to require an atheist to swear "by the ever living God." The Colorado supreme court repealed CRCP 43(b), which was likely similar to the federal rule (although I'm not sure and haven't taken the time to research it). The Federal Rule of Civil Procedure 43(b) allows someone to take an affirmation instead of an oath.

Not sure why our supreme court justices would want to repeal such a provision (if they did), especially since we are supposed to follow Code of Judicial Conduct Rule 2.3 (religious bias or prejudice) - - but that's way above my pay grade.
Anyway, when the civil rules committee has a slow month, maybe someone could look into this. ☺

Best,
Ed

Edward C. Moss
District Court Judge
Adams - Broomfield Counties
1100 Judicial Center Drive
Brighton, Colorado 80601-8872

Absolutely. It would be my pleasure to participate. Thanks for the offer. Hopefully some district court judges will be interested. They're the ones who take the brunt of the current Rule.

I'll wait to hear from you and/or Jenny.

David

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From: berger, michael [mailto:michael.berger@judicial.state.co.us]
Sent: Monday, February 09, 2015 2:36 PM
To: David Tenner
Cc: moore, jenny
Subject: RE: Civil Rules Committee - Amending Rule 53 (Masters)

Dave, I share your view that CRCP 53 is in need of a major redo. When I was in practice I often wondered what some of its provisions meant and since being on the court I already have had to address in an opinion one ambiguity contained in the rule.

So, the bottom line is that I am confident that the Civil Rules Committee will be interested in taking this up. The normal procedure is for me to appoint a subcommittee after consultation with the committee, comprised of members of the Committee, and such outside persons as I choose to appoint. I would very much like you to participate on the subcommittee. Please let me know if you are willing to do so.

The next meeting of the full Committee will be held on February 27, 2015. At that meeting, I will raise this matter with the committee and, in all likelihood, appoint a subcommittee. I will let you know the result.

Thank you very much for your interest in this rule.

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

From: David Tenner [mailto:tenner@ridleylaw.com]
Sent: Monday, February 09, 2015 2:27 PM
To: berger, michael
Subject: Civil Rules Committee - Amending Rule 53 (Masters)

Judge-

I do a lot of special master work and I would like to see the current Rule 53 amended to more resemble FRCP 53. The current Rule is unnecessarily difficult for courts, counsel and special masters to work with because it was drafted at a time when special master appointments were much more limited than current practice. The Federal rule was amended in 2003 to reflect changes in the use of special masters, but the Colorado rule has not been similarly revised.

For example, if I am appointed as a discovery master in a civil case, under the current Rule, if the case is a non-jury case, the parties have 14 days to file an objection to my order, my findings of fact must be accepted unless clearly erroneous, and the judge may adopt, modify or reject my ruling. However, if an identical motion to compel is filed in a jury case, there is no deadline for objections to my ruling, my findings of fact can be reviewed de novo (unless the parties have agreed otherwise) and my ruling is admissible as evidence and can be read to the jury. All of which makes no sense when I'm ruling on a discovery motion.

The Federal rule was modified to deal with these and other issues and I believe it's time for the Colorado Rule to follow suit. I have no idea how someone goes about trying to get a Colorado rule changed, but since you are the Chair of Civil Rules Committee, I thought I would start with an email to you. If this is something the Committee would be interested in pursuing, I would be happy to volunteer my time to participate in the process of evaluating and recommending changes to the Rule. In addition to the work I do as a special master for district court cases, I am a fellow of the Academy of Court Appointed Masters and I currently serve on the Academy's Board of Directors. As such, I have access to numerous special masters across the country who participated in the amendment of the Federal Rule and the subsequent amendment of numerous state rules.

If there is anything further or more formal I should do to request a review of Rule 53, please let me know.

Thank you.
David Tenner

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From: Baumann, Fred [mailto:FBaumann@lrrlaw.com]
Sent: Tuesday, June 09, 2015 1:10 PM
To: berger, michael
Cc: Poole, Diana; Asher, Jon; hood, william
Subject: Rule 23

Judge:

Following up on our conversation this afternoon, attached is a draft amendment to Rule 23 dealing with the disbursement of a portion of any residual funds on the resolution of a class action to COLTAF. Also enclosed are copies of the CBA resolution supporting this change, as well the letter sent jointly to the Supreme Court on behalf of the CBA and the Access to Justice Commission. As I mentioned, you can ignore all the other portions of the resolution and letter that deal with funding issues other than the proposed change to Rule 23.

We appreciate your reviewing these materials and considering them at the Civil Rule Committee's upcoming meeting. Please let me, Diana Poole or Jon Asher know if there is anything else you need from this end to commence the review process.

Thanks for your attention to this issue.

Regards,

Fred

Draft Amendment to Rule 23 of the Colorado Rules of Civil Procedure

Following current paragraph (f) (re "Appeals"), add a new paragraph (g) as follows:

(g) Disposition of Residual Funds

(1)"Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order, judgment, or approved settlement in a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to the Colorado Lawyer Trust Account Foundation (COLTAF) to support activities and programs that promote access to the civil justice system for low income residents of Colorado. The court my disburse the balance of any residual funds beyond the minimum percentage to COLTAF or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

RESOLUTION

Approved by the Colorado Bar Association Board of Governors 11/9/13

WHEREAS, the Colorado Bar Association Board of Governors recognizes the significant contributions to the goal of ensuring equal access to the courts in the State of Colorado made by Colorado Legal Services ("CLS") and its predecessors for many years in providing representation to Colorado's indigent citizens in a wide variety of civil matters;

WHEREAS, over the past five years, CLS has experienced significant decreases in funding that have greatly limited its ability to carry out its mission;

WHEREAS, the Colorado Bar Association Board of Governors determines that the continued funding, operation and support of CLS is necessary to protect Colorado's indigent population, further the interests of Colorado attorneys and Colorado Bar Association members in just and efficient courts, and ensure access to equal justice within the Colorado legal system; and

WHEREAS, Colorado Supreme Court recently raised the attorney registration fees, a portion of which, if permanently dedicated to funding CLS, will help alleviate the short- and long-term financial crisis at CLS;

WHEREAS, Colorado Supreme Court has the authority to dedicate a portion of *pro hac vice* fees to funding CLS, thereby helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, Colorado Supreme Court has the authority to amend C.R.Civ.P. Rule 23 to require that at least 50% of class action residual funds be disbursed to COLTAF; thereby helping to fund CLS and helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, Colorado Supreme Court has the authority to amend Rule 1.15 of the Colorado Rules of Professional Conduct to require attorneys to maintain their COLTAF accounts in financial institutions that pay interest rates on COLTAF accounts that are comparable to other similarly-sized accounts; thereby helping to fund CLS and helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, an amendment to Colorado's Unclaimed Property Act requiring that lawyer trust account funds presumed abandoned and subject to custody as unclaimed property under the Act be delivered to COLTAF to support Colorado's civil legal aid delivery system; thereby helping to fund CLS and helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, the addition of a small surcharge to the various statutory filing fees for various civil actions will provide the permanent funding necessary to alleviate the short- and long-term financial crisis at CLS;

NOW THEREFORE, the Colorado Bar Association Board of Governors resolves that the Colorado Bar Association President provide a written request on behalf of the Colorado Bar Association that the Colorado Supreme Court:

1. Direct that $20 of the attorney registration fees for attorneys active over three years in practice be dedicated to support access to justice, the proceeds of which are to be delivered to CLS;
2. Direct that $10 of the attorney registration fees for inactive attorneys under age 65 be dedicated to support access to justice, the proceeds of which are to be delivered to CLS;
3. Authorize a $150 surcharge on *pro hac vice* fees, the proceeds of which are to be delivered to CLS;
4. Approve and adopt an amendment to Rule 23 of the Colorado Rules of Civil Procedure to require that at least 50% of class action "residual funds" be disbursed to COLTAF; and
5. Approve and adopt an amendment to Rule 1.15 of the Colorado Rules of Professional Conduct to require attorneys to maintain their COLTAF accounts in financial institutions that pay interest rates on COLTAF accounts that are comparable to other similarly-sized accounts.

BE IT FURTHER RESOLVED, that the Colorado Bar Association President instruct the legislative affairs director of the Colorado Bar Association to lobby the Colorado State Legislature for the enactment of an amendment to Colorado's Unclaimed Property Act requiring that lawyer trust account funds presumed abandoned and subject to custody as unclaimed property under the Act be delivered to COLTAF to support Colorado's civil legal aid delivery system.

BE IT FURTHER RESOLVED, that the Colorado Bar Association leadership shall open a dialogue with the Colorado State Judicial Branch concerning:

1. Enactment of legislation providing for the addition of a surcharge providing permanent funding to CLS as follows:
   a. County Court civil case filings - $10;
   b. County Court answers - $10;
   c. District Court complaints (excluding foreclosures and tax liens) - $20;
   d. District Court answers - $15;
   e. Domestic Relations case filings - $20;
   f. Probate case filings - $20;
   g. Court of Appeals – Appellant/Petitioner - $3;
   h. Supreme Court Petitions in Certiorari and Original Proceedings - $5.
2. The creation of a $75 filing fee for post-decree motions for contempt in domestic relations cases, the proceeds of which are to be delivered to CLS.

CBA
COLORADO BAR ASSOCIATION
Established in 1897

December 16 2013

The Honorable Michael L. Bender
Chief Justice
Colorado Supreme Court
Ralph Carr Justice Center
2 East 14th Avenue
Denver, CO 80203

James C. Coyle, Esq.
Regulation Counsel
Office of Attorney Regulation
Ralph Carr Justice Center
1300 Broadway, 5th floor
Denver, CO 80203

Dear Chief Justice Bender and Mr. Coyle:

Pursuant to the Court's Order of May 17, 2012, approving two emergency distributions to Colorado Legal Services (CLS) from attorney regulation funds, the Colorado Access to Justice Commission (ATJ Commission) and the Colorado Bar Association (CBA) have developed a plan to address CLS's long-term funding needs. This Plan and a proposed Resolution were presented to the CBA Executive Council on September 26, 2013. Following an extended discussion and several amendments to the Resolution, the Executive Council approved the Resolution, with one member abstaining. The CBA Board of Governors considered the Plan and the amended Resolution at its November 9, 2013 meeting. There, as you know, the Resolution passed unanimously after surviving two motions to amend, one related to the proposed comparability amendments to Rule 1.15 of the Colorado Rules of Professional Conduct and one related to the scope of the proposed discussion with the Court regarding a possible filing fee for contempt actions.

In accordance with the Resolution, which is attached, the CBA and the ATJ Commission respectfully forward the following recommendations to the Court for its consideration:

1. The CBA and the ATJ Commission recommend that $20 of the attorney registration fees for attorneys active over three years in practice and $10 of the registration fees for inactive attorneys under age 65 be dedicated to support access to civil justice in Colorado. It is further recommended that those funds be delivered to CLS on an annual basis to be used by CLS to provide legal assistance to low-income Coloradans in civil matters consistent with its purpose and mission.

2. The CBA and the ATJ Commission recommend the amendment of Section (1)(a)(iv) of Rule 221 of the Colorado Rules of Civil Procedure (re "Out-of-State Attorney – Pro Hac Vice Admission") to require payment of a fee of $450 (rather than the $300 currently required). It is further recommended that the additional $150 be dedicated to support access to civil justice in Colorado, and that those funds be delivered to CLS on an annual basis to be used by CLS to provide legal assistance to low-income Coloradans in civil matters consistent with its purpose and mission.

1900 Grant Street • Ninth Floor • Denver • Colorado 80203-4336
303-860-1115 800-322-6736 fax 303-894-0821
www.cobar.org

3. The CBA and the ATJ Commission recommend the amendment of Rule 23 of the Colorado Rules of Civil Procedure (re "Class Actions") to require that at least 50% of class action "residual funds" be disbursed to the Colorado Lawyer Trust Account Foundation (COLTAF) to be used by COLTAF to support the civil legal aid delivery system consistent with its purpose and mission. An initial draft of an amendment to Rule 23 is attached. The CBA and ATJ Commission are available and most willing to work with the Court, and/or whomever the Court might direct, to finalize an acceptable amendment to the current Rule.

4. The CBA and the ATJ Commission recommend the approval and adoption of the proposed amendments to Rule 1.15 of the Colorado Rules of Professional Conduct that would accomplish "interest rate comparability" for the COLTAF program. The amendments were approved by the Supreme Court's Standing Committee on the Rules of Professional Conduct on October 11, 2013, and as we understand it, were mailed to the Court on November 25th for its consideration.

We would like to thank the Court for its interest in long-term funding solutions for CLS and, toward that end and in advance, for its consideration of these recommendations. We will be pleased to respond to any questions or requests for clarification or more information, and/or to assist the Court in any way moving forward.

We would also like to thank the Court for the steps it has taken already, and those it continues to take, to improve access to civil justice in Colorado, including (but certainly not limited to) the emergency distributions to CLS. The people of Colorado are fortunate to have a Supreme Court that is available, active, responsive, flexible and creative in expanding access to and enhancing the quality of justice in our state.

Thank you for your attention to these important initiatives.

Respectfully,

W. Terry Ruckriegle, President
Colorado Bar Association

Frederick J. Baumann, Chair
Colorado Access to Justice Commission

Enclosures

RESOLUTION

Approved by the Colorado Bar Association Board of Governors 11/9/13

WHEREAS, the Colorado Bar Association Board of Governors recognizes the significant contributions to the goal of ensuring equal access to the courts in the State of Colorado made by Colorado Legal Services ("CLS") and its predecessors for many years in providing representation to Colorado's indigent citizens in a wide variety of civil matters;

WHEREAS, over the past five years, CLS has experienced significant decreases in funding that have greatly limited its ability to carry out its mission;

WHEREAS, the Colorado Bar Association Board of Governors determines that the continued funding, operation and support of CLS is necessary to protect Colorado's indigent population, further the interests of Colorado attorneys and Colorado Bar Association members in just and efficient courts, and ensure access to equal justice within the Colorado legal system; and

WHEREAS, Colorado Supreme Court recently raised the attorney registration fees, a portion of which, if permanently dedicated to funding CLS, will help alleviate the short- and long-term financial crisis at CLS;

WHEREAS, Colorado Supreme Court has the authority to dedicate a portion of *pro hac vice* fees to funding CLS, thereby helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, Colorado Supreme Court has the authority to amend C.R.Civ.P. Rule 23 to require that at least 50% of class action residual funds be disbursed to COLTAF; thereby helping to fund CLS and helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, Colorado Supreme Court has the authority to amend Rule 1.15 of the Colorado Rules of Professional Conduct to require attorneys to maintain their COLTAF accounts in financial institutions that pay interest rates on COLTAF accounts that are comparable to other similarly-sized accounts; thereby helping to fund CLS and helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, an amendment to Colorado's Unclaimed Property Act requiring that lawyer trust account funds presumed abandoned and subject to custody as unclaimed property under the Act be delivered to COLTAF to support Colorado's civil legal aid delivery system; thereby helping to fund CLS and helping to alleviate the short- and long-term financial crisis at CLS;

WHEREAS, the addition of a small surcharge to the various statutory filing fees for various civil actions will provide the permanent funding necessary to alleviate the short- and long-term financial crisis at CLS;

NOW THEREFORE, the Colorado Bar Association Board of Governors resolves that the Colorado Bar Association President provide a written request on behalf of the Colorado Bar Association that the Colorado Supreme Court:

1. Direct that $20 of the attorney registration fees for attorneys active over three years in practice be dedicated to support access to justice, the proceeds of which are to be delivered to CLS;
2. Direct that $10 of the attorney registration fees for inactive attorneys under age 65 be dedicated to support access to justice, the proceeds of which are to be delivered to CLS;
3. Authorize a $150 surcharge on *pro hac vice* fees, the proceeds of which are to be delivered to CLS;
4. Approve and adopt an amendment to Rule 23 of the Colorado Rules of Civil Procedure to require that at least 50% of class action "residual funds" be disbursed to COLTAF; and
5. Approve and adopt an amendment to Rule 1.15 of the Colorado Rules of Professional Conduct to require attorneys to maintain their COLTAF accounts in financial institutions that pay interest rates on COLTAF accounts that are comparable to other similarly-sized accounts.

BE IT FURTHER RESOLVED, that the Colorado Bar Association President instruct the legislative affairs director of the Colorado Bar Association to lobby the Colorado State Legislature for the enactment of an amendment to Colorado's Unclaimed Property Act requiring that lawyer trust account funds presumed abandoned and subject to custody as unclaimed property under the Act be delivered to COLTAF to support Colorado's civil legal aid delivery system.

BE IT FURTHER RESOLVED, that the Colorado Bar Association leadership shall open a dialogue with the Colorado State Judicial Branch concerning:

1. Enactment of legislation providing for the addition of a surcharge providing permanent funding to CLS as follows:
   a. County Court civil case filings - $10;
   b. County Court answers - $10;
   c. District Court complaints (excluding foreclosures and tax liens) - $20;
   d. District Court answers - $15;
   e. Domestic Relations case filings - $20;
   f. Probate case filings - $20;
   g. Court of Appeals – Appellant/Petitioner - $3;
   h. Supreme Court Petitions in Certiorari and Original Proceedings - $5.
2. The creation of a $75 filing fee for post-decree motions for contempt in domestic relations cases, the proceeds of which are to be delivered to CLS.

Draft Amendment to Rule 23 of the Colorado Rules of Civil Procedure

Following current paragraph (f) (re "Appeals"), add a new paragraph (g) as follows:

(g) Disposition of Residual Funds

(1)"Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order, judgment, or approved settlement in a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to the Colorado Lawyer Trust Account Foundation (COLTAF) to support activities and programs that promote access to the civil justice system for low income residents of Colorado. The court my disburse the balance of any residual funds beyond the minimum percentage to COLTAF or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

H

Supreme Court of Colorado.
ANTERO RESOURCES CORPORATION, **Antero** Resources Piceance Corporation, Calfrac Well Services Corporation, and Frontier Drilling LLC, Petitioners
v.
William G. STRUDLEY and Beth E. Strudley, individually, and as the parents and natural guardians of William Strudley, a minor, and Charles Strudley, a minor, Respondents

Supreme Court Case No. 13SC576
April 20, 2015

Background: Homeowners, individually and as parents of minor children, brought action against gas drilling companies to recover on claim that pollutants from dilling site contaminated air, water, and ground near their home, causing them to suffer burning eyes and throats, rashes, headaches, nausea, coughing, and bloody noses. Companies moved for modified case management order requiring homeowners to provide prima facie evidence to support their allegations of exposure, injury, and causation before the court would allow full discovery. The District Court, City and County of Denver, Ann B. Frick, J., granted motion and later dismissed case for failure to present prima facie case. Homeowners appealed. The Court of Appeals, Taubman, J., ---P.3d----, 2013 WL 3427901, reversed and remanded. Certiorari was granted.

Holding: The Supreme Court, Hobbs, J., held as a matter of first impression that Colorado's Rules of Civil Procedure do not allow a trial court to issue a modified case management order, such as a *Lone Pine* order, that requires prima facie evidence in support of a claim before a plaintiff can exercise full rights of discovery.

Affirmed.

Boatright, J., dissented and filed opinion.

West Headnotes

[1] Pretrial Procedure 307A 747.1

307A Pretrial Procedure
307AV Pretrial Conference
307Ak747 Order and Record or Report
307Ak747.1 k. In general. Most Cited Cases

Colorado's Rules of Civil Procedure do not allow a trial court to issue a modified case management order, such as a *Lone Pine* order, that requires a plaintiff to present prima facie evidence in support of a claim before a plaintiff can exercise its full rights of discovery under the Colorado Rules. Colo. R. Civ. P. 16.

[2] Courts 106 1

106 Courts
106I Nature, Extent, and Exercise of Jurisdiction in General
106I(A) In General
106k1 k. In general; nature and source of judicial authority. Most Cited Cases

A court's authority to act derives from rule, statute, case law, or the inherent authority of courts.

[3] Appeal And Error 30 893(1)

30 Appeal and Error

30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

Whether the Colorado Rules of Civil Procedure allow trial courts to enter modified case management orders requiring plaintiffs to produce evidence essential to their claims, after initial disclosures but before fully exercising their discovery rights under the rules, is a question of law reviewed de novo.

[4] Courts 106 26(3)

106 Courts
106I Nature, Extent, and Exercise of Jurisdiction in General
106I(A) In General
106k26 Scope and Extent of Jurisdiction in General
106k26(3) k. Abuse of discretion in general. Most Cited Cases

A misapplication of the law constitutes an abuse of discretion.

[5] Courts 106 85(3)

106 Courts
106II Establishment, Organization, and Procedure
106II(F) Rules of Court and Conduct of Business
106k85 Operation and Effect of Rules
106k85(3) k. Construction and application of particular rules. Most Cited Cases

Courts construe the Colorado Rules of Civil Procedure liberally to effectuate their objective to secure the just, speedy, and inexpensive determination of every case and their truth-seeking purpose.

[6] Courts 106 85(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(F) Rules of Court and Conduct of Business
106k85 Operation and Effect of Rules
106k85(2) k. Construction and application of rules in general. Most Cited Cases

Courts must interpret a rule of procedure according to its commonly understood and accepted meaning.

[7] Courts 106 85(2)

106 Courts
106II Establishment, Organization, and Procedure
106II(F) Rules of Court and Conduct of Business
106k85 Operation and Effect of Rules
106k85(2) k. Construction and application of rules in general. Most Cited Cases

Words and provisions should not be added to a rule of procedure, and the inclusion of certain terms in a rule implies the exclusion of others.

[8] Courts 106 97(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k97 Decisions of United States Courts as Authority in State Courts
106k97(1) k. In general. Most Cited Cases

When a Colorado Rule is modeled on a Federal Rule of Civil Procedure, courts look to federal authority for guidance in construing the Colorado rule.

[9] Pretrial Procedure 307A 17.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak17 Right to Discovery and Grounds for Allowance or Refusal
307Ak17.1 k. In general. Most Cited Cases

Rule governing case management orders does not authorize a trial court to condition discovery upon the plaintiff establishing a prima facie case. Colo. R. Civ. P. 16.

[10] Pretrial Procedure 307A 17.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak17 Right to Discovery and Grounds for Allowance or Refusal
307Ak17.1 k. In general. Most Cited Cases

Pretrial Procedure 307A 747.1

307A Pretrial Procedure
307AV Pretrial Conference
307Ak747 Order and Record or Report
307Ak747.1 k. In general. Most Cited Cases

Trial court lacked authority to enter a *Lone Pine* modified case management order requiring homeowners to present prima facie evidence that they suffered injuries attributable to natural gas drilling operations before proceeding with discovery in suit claiming that pollutants from dilling site contaminated air, water, and ground near their home, causing homeowners and their two children to suffer burning eyes and throats, rashes, headaches, nausea, coughing, and bloody noses. Colo. R. Civ. P. 16.

[11] Pretrial Procedure 307A 747.1

307A Pretrial Procedure
307AV Pretrial Conference
307Ak747 Order and Record or Report
307Ak747.1 k. In general. Most Cited Cases

Whether presumptive or modified, case management orders are instruments courts employ to streamline litigation and ensure the just progression of a case, not to eliminate claims or dismiss a case independent of mechanisms for eliminating claims and dismissing cases under the rules. Colo. R. Civ. P. 16.

[12] Pretrial Procedure 307A 17.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak17 Right to Discovery and Grounds for Allowance or Refusal
307Ak17.1 k. In general. Most Cited Cases

Colorado Rules of Civil Procedure grant courts flexibility and discretion to address discovery disputes as they arise, but this judicial authority is limited and does not allow a court to require a plaintiff to establish a prima facie case in the early stages of litigation while simultaneously barring discovery that might expose the very support sought to prove a claim. Colo. R. Civ. P. 16.

***150** Certiorari to the Colorado Court of Appeals, Court of Appeals Case No. 12CA1251Hogan Lovells

US LLP, Daniel J. Dunn, Andrew C. Lillie, David A. DeMarco, Denver, Colorado, Hogan Lovells US LLP, Catherine E. Stetson, Washington, DC, Vinson & Elkins LLP, James D. Thompson III, Marie R. Yeates, Sandra G. Rodriguez, Houston, Texas, Attorneys for Petitioners Antero Resources Corporation and Antero Resources Piceance Corporation.

Burns Figa & Will, P.C., Matthew B. Dillman, Sarah M. Shechter, Greenwood Village, Colorado, Attorneys for Petitioner Frontier Drilling LLC.

Davis Graham & Stubbs, LLP, Gail L. Wurtzler, Shannon Wells Stevenson, Denver, Colorado, Attorneys for Petitioner Calfrac Well Services Corp.

Thomas Genshaft LLP, Peter W. Thomas, Aspen, Colorado, Frascona, Joiner, Goodman and Greenstein P.C., Corey T. Zurbuch, Boulder, Colorado, Napoli Bern Ripka Shkolnik & Assoc. LLP, Marc Jay Bern, New York, New York, Attorneys for Respondents.

Fennemore Craig, P.C., Terry Cipoletti, Denver, Colorado, Hollingsworth LLP, Richard O. Faulk, Washington, D.C., Attorneys for Amici Curiae National Association of Manufacturers, American Fuel and Petrochemical Manufacturers, American Chemistry Council, American Coatings Association, Independent Petroleum Association of America, and Metals Service Center Institute.

Snell & Wilmer L.L.P., Lee Mickus, Jessica E. Yates, Denver, Colorado, Attorneys for Amici Curiae Colorado Civil Justice League, Denver Metro Chamber of Commerce, Chamber of Commerce of the United States of America, Coalition for Litigation Justice, Inc., and American Tort Reform Association.

Steptoe & Johnson LLP, Mark P. Fitzsimmons, Jared R. Butcher, Washington, D.C., Steptoe & Johnson LLP, Bennett Evan Cooper, Phoenix, Arizona, Attorneys for Amicus Curiae American Petroleum Institute.

Greenberg Traurig, LLP, Christopher J. Neumann, Gregory R. Tan, Harriet A. McConnell, Denver, Colorado, Attorneys for Amicus Curiae Colorado Petroleum Association.

Ruebel & Quillen, LLC, Casey A. Quillen, Jeffrey C. Ruebel, Westminster, Colorado, Attorneys for Amicus Curiae Colorado Trial Lawyers Association.

Klibaner Law Firm P.C., David A. Klibaner, Denver, Colorado, Attorneys for Amicus Curiae Colorado Defense Lawyers Association.

En Banc

***151** JUSTICE HOBBS delivered the Opinion of the Court.

¶ 1 We granted certiorari to consider whether a specialized type of modified case management order known as a " *Lone Pine* order" is authorized under the Colorado Rules of Civil Procedure and, if so, to assess whether the trial court abused its discretion by entering such an order in this case. [FN1] *Lone Pine* orders developed from an unpublished opinion of the Superior Court of New Jersey, *Lore v. Lone Pine Corp.*, No. L–33606–85, 1986 WL 637507 (N.J.Super. Ct. Law Div. Nov. 18, 1986). Entered after initial disclosures but before discovery, *Lone Pine* orders require plaintiffs in toxic tort cases to provide evidence sufficient to establish a prima facie case of injury, exposure, and causation, or else face dismissal of their claims. Federal Rule of Civil Procedure 16(c) authorizes their use in complex federal cases to reduce potential burdens on defendants, particularly in mass tort litigation. *See, e.g.*, *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir.2000).

FN1. We granted certiorari on the following issues in this case:

1. Whether a district court is barred as a matter of law from entering a modified case management order requiring plaintiffs to produce evidence essential to their claims after initial disclosures but before further discovery.

2. Whether, if such modified case management orders are not prohibited as a matter of law, the district court in this case acted within its discretion in entering and enforcing such an order.

¶ 2 After the initial exchange of Rule 26 disclosures, Antero Resources Corporation, Antero Resources Piceance Corporation, Calfrac Well Services Corporation, and Frontier Drilling LLC (collectively "Antero Resources") asked the trial court to enter a modified case management order requiring the plaintiffs ("the Strudleys") to present prima facie evidence that they suffered injuries attributable to the natural gas drilling operations of Antero Resources. The trial court granted the motion and issued a *Lone Pine* order that directed the Strudleys to provide prima facie evidence to support their allegations of exposure, injury, and causation before the court would allow full discovery. The trial court determined that the Strudleys failed to present sufficient evidence and dismissed their case with prejudice. The court of appeals reversed, concluding that, as a matter of first impression, *Lone Pine* orders "are not permitted as a matter of Colorado law." We agree with the court of appeals.

[1]¶ 3 We hold that Colorado's Rules of Civil Procedure do not allow a trial court to issue a modified case management order, such as a *Lone Pine* order, that requires a plaintiff to present prima facie evidence in support of a claim before a plaintiff can exercise its full rights of discovery under the Colorado Rules. Although the comments to C.R.C.P. 16 promote active judicial case management, the rule does not provide a trial court with authority to fashion its own summary judgment-like filter and dismiss claims during the early stages of litigation.

I.

¶ 4 William G. Strudley and Beth E. Strudley, individually, and as the parents of two minor children, sued Antero Resources, claiming they suffered physical injuries and property damage due to Antero Resources' natural gas drilling operations near their home. Specifically, the Strudleys allege that pollutants from the drilling site contaminated the air, water, and ground near their home, causing them to suffer burning eyes and throats, rashes, headaches, nausea, coughing, and bloody noses. Initial construction of the drilling operations began in August 2010, and the Strudleys assert that the pollution forced the family to move shortly thereafter, in January 2011. While the complaint identified several chemicals that allegedly polluted the property, it did not causally connect specific chemicals to actual injuries.

¶ 5 Both parties exchanged initial disclosures as required by the presumptive case management order in place under C.R.C.P. 16(b) and C.R.C.P. 26. Antero Resources then moved for a modified case management order under C.R.C.P. 16(c), requesting that the trial court issue a *Lone Pine* order requiring***152** the Strudleys to present prima facie evidence to support their claims before discovery could continue. In support of its argument that there was substantial doubt as to whether the Strudleys could make a prima facie showing of exposure, injury, and causation, Antero Resources submitted a Colorado Oil and Gas Conservation Commission report finding no "oil & gas related impacts to [the Strudleys'] well." Additionally, Antero Resources submitted sworn testimony that it operated the wells in compliance with all applicable laws. Antero Resources expressed concern that discovery would be costly and burdensome for the defendant companies. The Strudleys objected contesting that under Colorado law and existing statutory procedures they had a right to engage in discovery central to their claims before the court could test the merits of their case.

¶ 6 Seeking to promote efficiency in what it determined to be a "complex toxic tort action involving numerous claims," the trial court issued a modified case management order. The order provided for evaluating the merits of the case at an early stage, requiring a prima facie showing—through expert opinions in the form of affidavits, studies and reports, and medical records—of each plaintiff's exposure to toxic chemicals as a result of Antero Resources' activities, as well as evidence of causation specific to those toxins for each plaintiff. It also required identification and quantification of the contamination of the Strudleys' real property attributable to the companies' operations. The order prohibited the Strudleys from conducting discovery until they made this prima facie showing of exposure and medical causation for each plaintiff.

¶ 7 Specifically, the modified case management order required the Strudleys to provide, within 105 days:

> i. Expert opinion[s] provided by way of sworn affidavit[s], with supporting data and facts in the form required by [C.R.C.P.] 26(a)(2)(B)(I), that establish *for each Plaintiff* (a) the identity of each hazardous substance from Defendants' activities to which he or she was exposed and which Plaintiff claims caused him or her injury; (b) whether any and each of these substances can cause the type(s) of disease or illness that Plaintiffs claim (general causation); (c) the dose or other quantitative measurement of the concentration, timing and duration of his/her exposure to each substance; (d) if other than the Plaintiffs' residence, the precise location of any exposure; (e) an identification, by way of reference to a medically recognized diagnosis, of the specific disease or illness from which each Plaintiff allegedly suffers or for which medical monitoring is purportedly necessary; and (f) a conclusion that such illness was in fact caused by such exposure (specific causation).
>
> ii. Each and every study, report and analysis that contains any finding of contamination on Plaintiffs' property or at the point of each Plaintiffs' claimed exposure.
>
> iii. A list of the name and last known address and phone number of each health care provider who provided each Plaintiff with health services along with a release authorizing the health care providers to provide Plaintiffs' and Defendants' counsel with all of each Plaintiff's medical records, in the form of Exhibit A hereto, within twenty-one days of the date of this Court's entry of this Modified Case Management Order.
>
> iv. Identification and quantification of contamination of the Plaintiffs' real property attributable to Defendants' operations.

The trial court noted that its requirement did not prejudice the Strudleys "because ultimately they will need to come forward with this data and expert opinions in order to establish their claims."

¶ 8 In response to the modified case management order, the Strudleys provided a variety of maps, photos, medical records, and air and water sample analysis reports. Additionally, the Strudleys submitted a letter from John G. Huntington, Ph.D. ("Dr. Huntington"), about the results of a water sample test conducted on December 7, 2011—nearly ***153** a year after the Strudleys had moved. Dr. Huntington stated that the water contained chemicals in amounts above the recommended concentrations but did not make conclusions as to the danger of the amounts or whether the chemicals caused the alleged injuries. The Strudleys also submitted an affidavit from Thomas L. Kurt, MD, MPH ("Dr. Kurt"), who, based on a description of the family's symptoms and color photographs of rashes and bloody noses,[FN2] concluded that sufficient evidence existed to warrant further investigation. Dr.

Kurt did not render an opinion as to whether chemical exposure caused the alleged injuries. The Strudleys did not provide an expert opinion concluding that they had been exposed to dangerous chemicals or that Antero Resources' conduct caused the alleged injuries and harm to the property.

> FN2. The Strudleys did not present any medical documentation of their physical injuries because no doctor had examined them at the time of their injuries. Dr. Kurt's affidavit also lacked such documentation because he did not physically examine the Strudleys.

¶ 9 Subsequently, Antero Resources filed a motion to dismiss, or in the alternative, for summary judgment, asserting that the Strudleys failed to comply with the modified case management order. The trial court granted the motion, rejecting the Strudleys' showing as insufficient and dismissing the action with prejudice—presumably under C.R.C.P. 37, although the trial court did not cite any rule of civil procedure. In its analysis, the trial court relied heavily on *Lore v. Lone Pine Corp.*, the namesake unpublished opinion that created this type of modified case management order.

¶ 10 The Strudleys appealed. The court of appeals concluded that the trial court had exceeded its authority as a matter of law by issuing the *Lone Pine* order and that in the alternative the trial court erred by entering the *Lone Pine* order under the circumstances of this case. The court of appeals reversed the trial court's *Lone Pine* order along with the order of dismissal and reinstated the Strudleys' claims. *Strudley v. Antero Res. Corp.*, 2013 COA 106, ¶ 42, —— P.3d ——. We granted certiorari to resolve whether our Rules of Civil Procedure authorize the use of *Lone Pine* orders and, if so, whether the trial court in this case acted within its discretion in entering and enforcing such an order.

[2]¶ 11 "A court's authority to act derives from rule, statute, case law, or the inherent authority of courts." *See Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 23, 340 P.3d 1126, 1133. Our task in this case is to examine these sources to evaluate whether a trial court has authority to issue a modified case management order requiring a plaintiff to establish a prima facie case before discovery has taken place.

¶ 12 We begin with the history of *Lone Pine* orders and explain that the federal courts that impose this type of order acquire their authority to do so from the express language of Federal Rule of Civil Procedure 16(c). We then make clear that authority interpreting a federal rule is persuasive only when the Colorado rule is similar. Through a comparison of C.R.C.P. 16 and Fed.R.Civ.P. 16, we highlight the differences in the provisions. We also consider C.R.C.P. 16 within the context of our other rules of civil procedure and then examine our prior case law interpreting the relevant Colorado rules. We conclude that C.R.C.P. 16(c) does not currently authorize a trial court to impose a *Lone Pine* order.

II.

¶ 13 We hold that Colorado's Rules of Civil Procedure do not allow a trial court to issue a modified case management order, such as a *Lone Pine* order, that requires a plaintiff to present prima facie evidence in support of a claim before a plaintiff can exercise its full rights of discovery under the Colorado Rules. Although the comments to C.R.C.P. 16 promote active judicial case management, the rule does not provide a trial court with authority to fashion its own summary judgment-like filter and dismiss claims during the early stages of litigation.

A. Standard of Review

[3][4]¶ 14 Whether the Colorado Rules of Civil Procedure allow trial courts to enter ***154** modified case management orders requiring plaintiffs to produce evidence essential to their claims—after initial disclosures but before fully exercising their discovery

rights under the rules—is a question of law we review de novo. *See City & Cnty. of Broomfield v. Farmers Reservoir & Irrigation Co.*, 239 P.3d 1270, 1275 (Colo.2010) ("We review the trial court's interpretation of a rule of civil procedure de novo because it presents a question of law."). A misapplication of the law constitutes an abuse of discretion. *Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff's Dep't*, 196 P.3d 892, 899 (Colo.2008).

[5][6][7]¶ 15 We construe the Colorado Rules of Civil Procedure "liberally to effectuate their objective to secure the just, speedy, and inexpensive determination of every case and their truth-seeking purpose." *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, ¶ 24, 303 P.3d 1187, 1193. At the same time, we must interpret a rule of procedure according to its commonly understood and accepted meaning. *Leaffer v. Zarlengo*, 44 P.3d 1072, 1078 (Colo.2002). Words and provisions should not be added to a rule, and the inclusion of certain terms in a rule implies the exclusion of others. *People v. Shell*, 148 P.3d 162, 178 (Colo.2006).

B. *Lone Pine* Orders

¶ 16 *Lone Pine* orders evolved from an unpublished order of the Superior Court of New Jersey. *See Lone Pine*, 1986 WL 637507. Under the Federal Rules, such orders are designed to manage complex issues and mitigate potential burdens on defendants and the court during the course of litigation. *Acuna*, 200 F.3d at 340. Colorado appellate courts have never authorized their use. In contrast, federal courts rely on Fed.R.Civ.P. 16(c)(2)(L) as authority to "adopt[ ] special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems." *See, e.g., In re Digitek Prod. Liab. Litig.*, 264 F.R.D. 249, 255 (S.D.W.Va.2010); *In re Vioxx Prods. Liab. Litig.*, 388 Fed.Appx. 391, 397 (5th Cir.2010); *McMunn v. Babcock & Wilcox Generation Grp., Inc.*, 896 F.Supp.2d 347, 351 (W.D.Pa.2012); *McManaway v. KBR, Inc.*, 265 F.R.D. 384, 385 (S.D.Ind.2009). The federal courts have discretion to use such orders in complex cases when discovery would likely be challenging, protracted, and expensive. *See Roth v. Cabot Oil & Gas Corp.*, 287 F.R.D. 293, 297 n. 3 (M.D.Pa.2012); *see, e.g., Acuna*, 200 F.3d at 340 (authorizing Lone Pine orders in a case involving 1600 plaintiffs suing over 100 defendants for a range of injuries occurring over a forty-year period).

¶ 17 Federal courts considering whether to issue *Lone Pine* orders seek to balance efficiency and equity. A court may decline to issue a *Lone Pine* order even in a complex case when other procedural devices can accommodate the unique issues of the litigation. *See, e.g., Digitek*, 264 F.R.D. at 259 ("Given a choice between a '*Lone Pine* order' created under the court's inherent case management authority and available procedural devices such as summary judgment, motions to dismiss, motions for sanctions and similar rules, [we find] it more prudent to yield to the consistency and safeguards of the mandated rules...."). Or it may decide to issue a *Lone Pine* order after extensive discovery. *See Vioxx*, 388 Fed.Appx. at 397 (noting that after ten years and millions of pages of discovery, "it is not too much to ask a plaintiff to provide some kind of evidence to support [his or her] claim").

¶ 18 Only a handful of state courts have issued *Lone Pine* or similar orders, citing to various sources of authority.[FN3] Even in jurisdictions***155** where state courts have authority to issue *Lone Pine* orders, their use at an early stage of discovery may constitute an abuse of discretion. *Simeone v. Girard City Bd. of Educ.*, 171 Ohio App.3d 633, 872 N.E.2d 344, 351–52 (2007) (holding that the trial court abused its discretion by entering a *Lone Pine* order before giving plaintiffs "the full range and benefit of discovery").

FN3. *See, e.g., Cottle v. Superior Court*, 3 Cal.App.4th 1367, 5 Cal.Rptr.2d 882 (1992) (holding that, under the California Constitu-

tion, a trial court may use its inherent powers to manage complex tort litigation by ordering the exclusion of expert evidence if the plaintiff is unable to establish a prima facie case after complete discovery but before trial); *Atwood v. Warner Elec. Brake & Clutch Co.*, 239 Ill.App.3d 81, 179 Ill.Dec. 18, 605 N.E.2d 1032 (1992) (holding that both the order requiring plaintiffs to identify their claims and causally relate them to the cause of action and the subsequent summary judgment were appropriate after five years of discovery); *In re Love Canal Actions*, 145 Misc.2d 1076, 547 N.Y.S.2d 174 (Sup.Ct.1989) (upholding a *Lone Pine* order based on the court's inherent power granted in N.Y.Code Civil Practice Law and Rule 3101(a), as well as *Lone Pine*, explaining that exposure, injury, and causation are "material and necessary" in these actions, and affirming dismissal for failure to comply with the order); *Adjemian v. Am. Smelting & Ref. Co.*, No. 08–00– 00336–CV, 2002 WL 358829 (Tex.Ct.App. Mar. 7, 2002) (holding that a trial court has authority to make and enforce *Lone Pine* orders in handling all pretrial matters under Tex.R. Civ. P. 166, as well as to impose sanctions for parties that fail to comply).

C. Comparison of C.R.C.P. 16 and Fed.R.Civ.P. 16

[8]¶ 19 While many revised Colorado Rules are patterned from Federal Rules, revised C.R.C.P. 16 contains critical differences from Fed.R.Civ.P. 16. *See* C.R.C.P. 16, Comm. Cmt., History and Philosophy ("Revisions to Rules 26, 29, 30, 31, 32, 33, 34, 36, and 37 are patterned after December 1, 1993, revisions to Federal Rules of the same number, but are not in all respects identical."). When a Colorado Rule is modeled on a Federal Rule of Civil Procedure, we look to federal authority for guidance in construing the Colorado rule. *Benton v. Adams*, 56 P.3d 81, 86 (Colo.2002); *see, e.g., United Bank of Denver Nat'l Ass'n v. Shavlik*, 189 Colo. 280, 541 P.2d 317, 318 (1975) (deeming the authority and commentators on Fed.R.Civ.P. 14 to be persuasive because C.R.C.P. 14 is virtually identical).

¶ 20 Fed.R.Civ.P. 16(c)(2) states, in relevant part:

> Matters for Consideration. *At any pretrial conference, the court may consider and take appropriate action on the following matters:*
>
> (A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;
>
> ....
>
> (L) *adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;*
>
> ....
>
> (P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.
>
> (Emphasis added.)

¶ 21 By comparison, C.R.C.P. 16 does not include the Federal Rule provisions:

> (c) Modified Case Management Order. Any of the provisions of section (b) of this Rule may be modified by the entry of a Modified Case Management Order pursuant to this section and section (d) of this Rule. If a trial is set to commence less than 182 days (26 weeks) after the at-issue date as defined in C.R.C.P. 16(b)(1), and if a timely request for a modified case management order is made by any party, the case management order shall be modified to allow the parties an appropriate amount of time to

meet case management deadlines, including discovery, expert disclosures, and the filing of summary judgment motions. The amounts of time allowed shall be within the discretion of the court on a case-by-case basis.

....

(2) Disputed Motions for Modified Case Management Orders. If any party wishes to move for a Modified Case Management Order, lead counsel and any unrepresented parties shall confer and cooperate in the development of a proposed Modified Case Management Order. A motion for a Modified Case Management Order and one form of the proposed Order shall be filed no later than 42 days after the case is at issue. To the extent possible, counsel and any unrepresented parties shall agree to the contents of the proposed Modified Case Management Order but any matter upon which all parties cannot agree shall be designated as "disputed" in the proposed Modified Case Management Order. The proposed Order shall contain specific alternate provisions upon which agreement could not be reached and shall be supported by specific showing of good cause for each modification sought including, ***156** where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such motion only needs to set forth the proposed provisions which would be changed from the presumptive case management Order set forth in section (b) of this Rule. The motion for a modified case management order shall be signed by lead counsel and any unrepresented parties, or shall contain a statement as to why it is not so signed.

¶ 22 Thus, in revising C.R.C.P. 16 in 2002, we did not adopt a counterpart to Fed. R. Civ. P. 16(c), which explicitly grants trial courts substantial discretion to adopt procedures to streamline complex litigation in its early stages, "[a]t any pretrial conference." Of importance here, Fed.R.Civ.P. 16(c)(2)(L) authorizes trial courts to "consider and take appropriate action" by "adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems." In addition, Fed.R.Civ.P. 16(c)(2)(A) grants trial courts authority to "formulat[e] and simplify[ ] the issues, and eliminat[e] frivolous claims or defenses." More generally, Fed.R.Civ.P. 16(c)(2)(P) authorizes trial courts to "facilitat[e] in other ways the just, speedy, and inexpensive disposition of the action."

¶ 23 The language of C.R.C.P. 16 is markedly different from the language of Fed.R.Civ.P. 16. On its face, C.R.C.P. 16 does not contain a grant of authority for complex cases or otherwise afford trial courts the authority to require a plaintiff to make a prima facie showing before the plaintiff fully exercises discovery rights under the Colorado Rules. Instead, C.R.C.P. 16 primarily addresses basic scheduling matters. For instance, C.R.C.P. 16(b) creates a timeline of key trial-related events applicable to presumptive case management orders, including the "at issue date" for purposes of calculating deadlines; "meet and confer" date for counsel; trial setting; service of C.R.C.P. 26(a)(1) initial disclosures; disclosure of expert testimony in accordance with C.R.C.P. 26(a)(2); timing of initial settlement discussions; deadlines for joining additional parties, amending pleadings, and filing pretrial motions; and discovery schedule. C.R.C.P. 16(c) accords the parties and the trial court flexibility to modify the presumptive order upon a showing of good cause "to allow the parties an appropriate amount of time to meet case management deadlines, including discovery, expert disclosures, and the filing of summary judgment motions." Rule 16(c) concludes by stating that "*[t]he amounts of time allowed shall be within the discretion of the court* on a case-by-case basis"—indicating that any modifications would relate to time and schedule. *See* C.R.C.P. 16(c) (emphasis added).

¶ 24 Neither subsection 16(b) nor 16(c) of our rules addresses a party's disclosure or discovery ob-

ligations beyond establishing deadlines and referencing C.R.C.P. 26, which contains general provisions governing discovery and disclosure. Comments to the revised Rule 16 explain that its purpose is "to accomplish early purposeful and reasonably economical management of cases by the parties with court supervision," as well as "to insure that only appropriate discovery is conducted and to carefully plan for and conduct an efficient and expeditious trial." C.R.C.P. 16, Comm. Cmt., Operation; *see also id.* (explaining that Rule 16 was amended to "emphasize and foster professionalism and to de-emphasize sanctions for non-compliance"). In the context of explaining Rule 16's goal of eliminating " 'hide-the-ball' and 'hardball' tactics" and to curtail abuses of the rules, the comments emphasize that trial judges are expected to "assertively lead the management of cases to ensure that justice is served." *Id.*

¶ 25 Despite our exclusion of Fed.R.Civ.P. 16(c) language that provides authority for *Lone Pine* orders, Antero Resources argues that revised C.R.C.P. 16 allows a Colorado court to weed out and dismiss claims at an early stage of litigation under its case management authority before full discovery. It bases this contention not on the language of our rule but on a portion of the comment reciting that a purpose of the revised rule is to accomplish "early purposeful and reasonably economical management of cases." However, this goal in no way substitutes for the kind of explicit authorization the federal rules provide for issuance of *Lone Pine* orders.***157** In Colorado, case management orders under our Rule 16, whether presumptive or modified, are instruments courts employ to streamline litigation and ensure a just progression of a case. We amended the rule to "emphasize and foster professionalism and to de-emphasize sanctions for non-compliance," purposefully leaving adequate enforcement provisions in place. C.R.C.P. 16, Comm. Cmt., Operation. Indeed, an additional stated purpose of C.R.C.P. 16 is "to ... encourage[ ] ... cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures." C.R.C.P. 16(a).

[9]¶ 26 Together with amended Rule 26, our amended Rule 16 provides a tool for the court to manage discovery while efficiently advancing the litigation toward resolution, reflecting the development away from the seemingly unrestricted discovery that courts often endorsed in the past. Rule 16 does not, however, authorize a trial court to condition discovery upon the plaintiff establishing a prima facie case. In sum, when revising Rule 16 in 2002, we did not pattern our rule on Fed.R.Civ.P. 16(c), and we decline to invoke a rule comment as authority for issuance of *Lone Pine* orders.[FN4]

FN4. Even in federal jurisdictions that have approved the imposition of a *Lone Pine* order, poorly pled and facially weak complaints do not always necessitate a *Lone Pine* order. *See Roth,* 287 F.R.D. at 299 (holding a *Lone Pine* order was not appropriate before the initiation of discovery, despite defendant's contention that the claims were inadequately pled and would ultimately fail).

D. Other Colorado Rules of Civil Procedure

¶ 27 Colorado Rules of Civil Procedure other than Rule 16 allow trial courts to dispose of non-meritorious claims and issue sanctions for abuses. For example, C.R.C.P. 11 allows a trial court to sanction attorneys and their clients for filing pleadings that are not "well grounded in fact" or "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law," or pleadings that are "interposed for any improper purpose." C.R.C.P. 12(b)(5) allows a court to dismiss a claim for "failure to state a claim upon which relief can be granted." C.R.C.P. 56 allows defendants to challenge the sufficiency of a claim before trial through a motion for summary judgment. Additionally, expert disclosures required under Rule 26(a)(2) and all of the discovery-related rules, especially Rules 30, 33, 34, and 36, ensure that the discovery process operates within

clearly defined limits. Likewise, Rule 37 allows a trial court to sanction a party for failure to make a disclosure or cooperate in discovery.

¶ 28 Comments to Rule 16 expressly state that some of these rules—"Colorado Rules 16, 26, 29, 30, 31, 32, 33, 34, 36, and 37"—"were developed to interrelate with each other to provide a differential case management/early disclosure/limited discovery system designed to resolve difficulties experienced with prior approaches." C.R.C.P. 16, Comm. Cmt., History and Philosophy. Thus, Colorado trial courts have a range of tools other than *Lone Pine* orders by which to actively manage cases.

E. Colorado Case Law

¶ 29 Recently, we reviewed Colorado's amended rule of civil procedure, C.R.C.P. 26(b), in *DCP Midstream*, 2013 CO 36, 303 P.3d 1187. There, we analyzed the scope of a party's right to discovery, explaining that the changes to the rules, including to C.R.C.P. 16, "reflect a growing effort to require active judicial management of pretrial matters" to reduce the cost of litigation. *Id.* at ¶ 27, 303 P.3d at 1194. We construed the amended rules as narrowing the scope of discovery that parties are entitled to conduct. *Id.* at ¶¶ 28, 32, 303 P.3d at 1194, 1196. We held that C.R.C.P. 16 and 26 require a court to exercise control over discovery to prevent unnecessary or abusive discovery. *Id.* at ¶¶ 27, 32, 34, 303 P.3d at 1194, 1196.

¶ 30 Although we referenced Rule 16 as illustrative of this principle, the clear focus of *DCP Midstream* was amended C.R.C.P. 26(b) and the scope of discovery. We characterized discovery as falling within two tiers (attorney-managed and court-managed), and we emphasized that per the 2002 amendments, active judicial management of discovery***158** is vital to prevent inappropriately broad discovery. *Id.* at ¶¶ 28–29, 303 P.3d at 1196; *see also id.* at ¶ 6, 303 P.3d at 1190 ("[T]he [2002] amendments are intended to narrow the scope of permissible discovery available to parties as a matter of right and to require active judicial management when a party objects that the discovery sought exceeds that scope."). We spoke in terms of "tailoring" discovery. *See, e.g., id.* at ¶¶ 9, 35, 37, 303 P.3d at 1191, 1197. Nowhere did we identify–or authorize–an additional obligation for plaintiffs to establish a prima facie case before exercising rights to discovery under the rules.

¶ 31 *DCP Midstream* is consistent with our previous acknowledgment that the rules vest trial courts with discretion to manage discovery in a way that balances competing goals: endeavoring to reduce discovery costs, simplify the issues, and promote expeditious settlement of cases, while also promoting the discovery of relevant evidence. *See Cardenas v. Jerath*, 180 P.3d 415, 420–21 (Colo.2008); C.R.C.P. 26.

¶ 32 We examined Rule 16 closely in *Curtis, Inc. v. District Court*, 186 Colo. 226, 526 P.2d 1335 (1974) and *Direct Sales Tire Co. v. District Court*, 686 P.2d 1316 (Colo.1984). We addressed—and limited—a trial court's ability to require the plaintiff to present prima facie evidence of a claim prior to compelling a defendant to engage in discovery. In *Curtis*, we considered whether a plaintiff was entitled to inspect various documents related to the defendant's business. 526 P.2d at 1335. There, we concluded that the Rules of Civil Procedure did not require the plaintiff to produce prima facie evidence before discovery and that such a requirement undermined the general policy that discovery disputes should be resolved in favor of disclosure. *Id.* at 1339. Similarly, in *Direct Sales*, we looked at whether the plaintiff was entitled to certain financial information upon the mere filing of an unfair competition complaint. 686 P.2d at 1319. We held that, except where privilege applies, a plaintiff is entitled to the information, and it would be an abuse of discretion to require the plaintiff to establish a prima facie case of liability. *Id.* at 1320–21. Further, we emphasized that "the adoption of a prima facie case requirement would be contrary to the basic principles governing discovery," namely that "[d]iscovery rules

should be construed liberally to effectuate the full extent of their truth-seeking purpose" and "[i]n close cases, the balance must be struck in favor of allowing discovery." *Id.* at 1321.

¶ 33 In light of these cases, had we intended revised Rule 16 to institute a prima facie case showing akin to a *Lone Pine* order, we would have explicitly patterned our revised rule after Fed.R.Civ.P. 16(c).

F. Application to This Case

[10]¶ 34 This case involves only four family members, four defendants, and one parcel of land, yet the trial court labeled it a "complex toxic tort action." We agree with the court of appeals that "this case is not as complex as cases in other jurisdictions in which *Lone Pine* orders were issued." *See Strudley*, ¶¶ 36, 37. Nevertheless, the trial court deemed a *Lone Pine* order necessary and appropriate "to streamline discovery and make the pre-trial efforts of the parties and the [c]ourt more efficient." Also, in its modified case management order, the trial court made clear that focusing on the Strudleys' "admissible evidence concerning exposure and causation" might "*eliminate* or sharply curtail this case" (emphasis added). With this threat looming, and without the benefit of fully exercising their right to discovery under the rules, the Strudleys submitted evidence to the trial court in an attempt to comply with the order. The trial court compared that evidence with the evidence submitted in *Lone Pine* and concluded that the same "adequacy issues" plagued both cases.

[11]¶ 35 But because no statute, rule, or past Colorado case recognizes authority for trial courts to enter *Lone Pine* orders, we conclude that the trial court lacked authority to enter a *Lone Pine* order in this case. Whether presumptive or modified, case management orders under Rule 16 are instruments courts employ to streamline litigation and ensure the just progression of a case–not to eliminate claims or dismiss a case independent of mechanisms for eliminating claims and dismissing cases under the rules. We ***159** share the concerns of other courts that have found *Lone Pine* orders unauthorized by their existing rules. *See, e.g.*, *Simeone*, 872 N.E.2d at 350 (recognizing that the *Lone Pine* order "has faced harsh criticism because it gives courts the means to ignore existing procedural rules and safeguards"). Indeed, if a *Lone Pine* order cuts off or severely limits the litigant's right to discovery, the order closely resembles summary judgment, albeit without the safeguards supplied by the Rules of Civil Procedure. *Id.* In Colorado, existing rules and procedural safeguards provide sufficient protection against frivolous or unsupported claims and burdensome discovery. Like the court in *Roth*, "we find it preferable to yield to the consistency and safeguards of the [rules of civil procedure], as well as the [c]ourt's own flexibility and discretion to address discovery disputes as they arise, as opposed to entering [a] rigid and exacting *Lone Pine* order." 287 F.R.D. at 299–300 (internal quotation marks and citations omitted); *accord Digitek*, 264 F.R.D. at 259.

[12]¶ 36 The Colorado Rules of Civil Procedure grant courts flexibility and discretion to address discovery disputes as they arise. But this judicial authority is limited; it does not allow a court to require a plaintiff to establish a prima facie case in the early stages of litigation while simultaneously barring discovery that might expose the very support sought to prove a claim. C.R.C.P. 16 does not currently authorize *Lone Pine* orders.[FN5] Interpreting Rule 16 to allow *Lone Pine* orders would interfere with the rights provided to litigants and produce consequences unintended by our rules by forcing dismissal before affording plaintiffs the opportunity to establish the merits of their cases.

FN5. Our regular procedure for amending the civil rules to make amendments patterned on a federal rule is for the Civil Rules Committee to first examine the issue and make a recommendation to the court. We consider it inadvisable to import *Lone Pine* orders into our rules absent such consideration.

III.

¶ 37 Accordingly, we affirm the judgment of the court of appeals.

JUSTICE BOATRIGHT dissents.

JUSTICE BOATRIGHT, dissenting.

¶ 38 Active case management by the judge is essential to running an efficient docket and administering justice. The rules encourage it, and caselaw, at times, demands it. Yet, today the majority taps the brakes on active case management and sends the message that unless the rules specifically authorize a docket management technique, judges lack the authority to use it in handling their cases. In my view, the modified case management order (MCMO) at issue in this case was expressly authorized by the plain language of Colorado Rule of Civil Procedure 16, which allows trial courts to adjust the timelines for disclosures and discovery. Because Rule 16 allows for these modifications, I do not believe that it is necessary for the rule to expressly state that trial courts have the authority to issue *Lone Pine* orders. Accordingly, I would hold that Rule 16 provided the trial court with the authority to issue the MCMO in this case, and I respectfully dissent.

¶ 39 The trial court's MCMO required the Strudleys to provide contamination reports from their property, medical records, and expert affidavits establishing exposure and causation before they could engage in discovery. As the trial court noted, the information required by the MCMO composed the basic foundation of the Strudleys' case against Antero Resources, and they would have had to produce it in order to make their case at trial. Because the Strudleys would have had to furnish these pieces of information even if the trial court had never issued the MCMO, in my view, the MCMO simply accelerated the timeline for the Strudleys to disclose records and expert testimony and delayed the timeline for when the Strudleys could engage in full discovery.

¶ 40 Rule 16 expressly authorizes the trial court to make these modifications to the timelines for disclosures and discovery. Rule 16(c) states that "any of the provisions of section (b) ... may be modified by the entry ***160** of a Modified Case Management Order." C.R.C.P. 16(c). And among the modifiable rules in 16(b) are provisions governing disclosures and discovery. Specifically, Rule 16(b)(5) states the presumptive rule that "[t]he parties shall disclose expert testimony in accordance with C.R.C.P. 26(a)(2)," which defines the form, content, and timing of expert testimony disclosures. C.R.C.P. 16(b)(5). Rule 16(c) thus authorizes the trial court, in its discretion, to enter an MCMO that changes the substance of what must be included in expert disclosures and the timing of when they must be provided to the other side. This provides ample justification for the trial court's requirement that the Strudleys disclose records and expert testimony at an earlier time in the case. Rule 16(b)(10) also states the presumptive rule that "discovery may commence 42 days after the case is at issue." C.R.C.P. 16(b)(10). Thus, Rule 16(c) empowers the trial court to modify the timeline for when discovery commences. In my view, the trial court's MCMO in this case was simply the trial court exercising its discretionary authority to modify these Rule 16(b) provisions, thus moving up the time for disclosures and moving back the time for the commencement of discovery.

¶ 41 The cases cited by the majority do not compel a different result. While it is true that this court in *Curtis, Inc. v. District Court*, 186 Colo. 226, 526 P.2d 1335 (1974), and *Direct Sales Tire Co. v. District Court*, 686 P.2d 1316 (Colo.1984), reversed the trial court for issuing *Lone Pine* orders, these cases were decided under antiquated versions of Rule 16 and Rule 26, and they are factually distinguishable from the present case.

¶ 42 At the time that *Curtis* and *Direct Sales* were decided, this court had not yet amended Rule 16 to

give trial courts the authority to issue MCMOs. *Compare* C.R.C.P. 16 (1973) (lacking a section authorizing trial courts to issue MCMOs), *and* C.R.C.P. 16 (1984) (same), *with* C.R.C.P. 16 (2002) (including a section authorizing trial courts to issue MCMOs). As such, when the court rendered those decisions, there was no language in Rule 16 giving trial courts the ability to change the timeline for disclosures and discovery. The 2002 amendments to Rule 16, however, expressly authorized trial courts to make these changes. C.R.C.P. 16(c) (2002).

¶ 43 The facts of *Curtis* and *Direct Sales* are also distinguishable from this case. The information that the MCMO required the Strudleys to produce was entirely within their possession or control; they had to demonstrate that their own land had been contaminated, that they had been exposed to chemicals, and that they currently suffered from an illness. This is markedly different from the situation this court confronted in *Curtis* and *Direct Sales.* In those cases, the plaintiffs were unable to make the required prima facie showing because they needed information from the defendants in order to do so. *Curtis,* 526 P.2d at 1336 (plaintiffs alleged that defendants copied their record-keeping methods, and they needed the defendants' records to establish a prima facie case); *Direct Sales,* 686 P.2d at 1317, 1320 (plaintiffs alleged that defendants were selling gasoline at prices below cost, and they needed the defendants' cost of doing business in order to make their prima facie case).

¶ 44 Understandably, this court was sympathetic to those plaintiffs, who were asked to do the impossible and make a prima facie case when they could do so only with information that was exclusively in the defendants' control. This was not the situation in the Strudleys' case for two reasons: first, the information they had to produce was within their possession or control, and second, the Strudleys benefitted from the 1994 amendments to Rule 26, pursuant to which Antero Resources provided roughly 50,000 pages of initial disclosures at the outset of this case. C.R.C.P. 26, Comm. Cmt., Federal Committee Notes (stating that the most dramatic change of the 1994 amendments was the addition of a disclosure system whereby parties must disclose information without receiving a discovery demand). For the foregoing reasons, it is my view that *Curtis* and *Direct Sales* are distinguishable from the case at hand, and this court should use the current text of Rule 16 to hold that trial courts are authorized to modify the timelines for disclosures and discovery.

***161 *3** The Committee Comments to Rule 16 demonstrate the soundness of this reading. The Committee emphasized that it intended Rule 16 to be flexible by stating that: "Rule[ ] 16 ... should work well in most cases filed in Colorado District Courts. However, where a case is complex or requires special treatment, the Rules provide flexibility so that the parties and Court can alter the procedure." C.R.C.P. 16, Comm. Cmt., Operation. Thus, the Committee expressed its intent that trial courts have the flexibility to modify the provisions of Rule 16 when issues are complex and when the standard rules do not fit the needs of the case. The Committee also stated its desire to have trial courts take an active role in the discovery process, providing that "[i]t is expected that trial judges will assertively lead the management of cases to ensure that justice is served." *Id.*

¶ 46 Cases from this court have echoed the same principles. In *DCP Midstream, LP v. Anadarko Petroleum Corp.,* for example, this court analyzed the Committee's 2002 changes to Rules 16 and 26, noting that these two rules had evolved to encourage active judicial management in pre-trial matters. 2013 CO 36, ¶ 27, 303 P.3d 1187, 1194. And in *Burchett v. South Denver Windustrial Co.,* we instructed trial courts to treat cases according to their specific needs and not feel obligated to impose caseflow management plans that treat all cases the same. 42 P.3d 19, 21 (Colo.2002). The majority today, however, sends a different message to trial courts, telling them that if a specific case management technique is not explicitly

provided for in the text of Rule 16, then it is outside the scope of their authority to manage the cases in their dockets. I disagree because I believe the plain language of Rule 16 authorizes trial courts to issue these orders and that this reading best comports with our obligation to liberally construe the rules in order to achieve their objectives. *DCP Midstream*, ¶ 24, 303 P.3d at 1193.

¶ 47 I am sympathetic to the majority's concerns that, in certain situations, *Lone Pine* orders could create a catch—22 whereby the order would prevent a plaintiff from acquiring the very information he needs to establish a prima facie case. But this is simply not the situation in this case. The only information the MCMO required the Strudleys to produce was proof that their own land had been contaminated, that they had been exposed to chemicals, and that these chemicals caused them to suffer injuries. This information was so central to their claims against Antero Resources that the Strudleys should have had it before even filing their case. Accordingly, there is nothing inequitable about adhering to the plain language of Rule 16 and holding that the trial court was authorized to enter the MCMO in this case.

¶ 48 I would also uphold the trial court's dismissal of the Strudleys' case for their failure to comply with the MCMO. Although this sanction was severe, Rule 37(b)(2) authorizes trial courts to enter "such orders ... as are just" when a party fails to obey a discovery order, and this includes "dismissing the action or proceeding or any part therefore," C.R.C.P. 37(b)(2)(C). As we have previously noted, Rule 37 was written broadly to give trial courts the discretion to choose what sanctions to threaten in order to ensure compliance with discovery orders. *Kwik Way Stores, Inc. v. Caldwell*, 745 P.2d 672, 677 (Colo.1987) ("Requiring a finding of willfulness as a condition precedent to default would vitiate much of the discretion which C.R.C.P. 37(d) intended to repose in the trial court for abuse or disregard of the discovery process."). We have instructed trial courts that in selecting sanctions, they should exercise their discretion to "impos[e] a sanction which is commensurate with the seriousness of the disobedient party's conduct." *Id.*

¶ 49 The trial court acted within its discretion when it dismissed the Strudleys' case. The Strudleys failed to establish a prima facie case of exposure, injury, and causation as was required by the trial court's MCMO. Their failure came despite the fact that the Strudleys had all of the required information in their possession or control. In the face of this failure of proof, I believe that the trial court acted within its discretion in dismissing ***162** the case and not forcing Antero Resources to go forward defending claims that the Strudleys were unable to even minimally substantiate.

¶ 50 For the foregoing reasons, I would uphold the trial court's entry of the MCMO and its subsequent order dismissing the Strudleys' case. I respectfully dissent.

Colo., 2015
Antero Resources Corporation v. Strudley
347 P.3d 149, 2015 CO 26

END OF DOCUMENT

June 16, 2015

Mike: At the last Civil Rules Committee meeting we briefly discussed my concept that a number of the Forms contained in the Appendix to Chapters 1-17A should be repealed, although not as much as was done by the Federal Civil Rules Committee. You asked that I submit a specific proposal. The following is my proposal. I have attached copies of the affected Forms for your and the Committee's information:

First, my thoughts on this were triggered by the complete repeal of Fed. R. Civ. P. 84 and its Forms. The federal advisory committee recommended abrogating Rule 84 after it had engaged in "significant efforts to gather information about how often the forms are used and whether they provide meaningful help to litigants."

When I looked over Colorado's Forms, a number of which were based on the federal Forms, it seemed to me that we had a number of forms which are rarely, if ever, used – although I could stand corrected if the judges on the Committee tell us that they regularly see pleadings that use the Colorado Forms. However, there are several unique Colorado Forms that do get regular usage. Thus, I do not propose abrogating our Rule 84, but rather I propose doing what has been done previously in some instances, which is to delete the language of the Form and replace it with the word "[REPEALED]". (*See, e.g.,* Forms 20.2 and 21.)

I think my proposal is most easily considered in three parts: CAPP Rules and Forms; other Forms; and Form 20, Pattern Interrogatories.

1) CAPP – I recommend replacing the CAPP Rules and Forms with the word [REPEALED]. These are CAPP Rules with Appendices A, B and C, together with JDF Forms 600.5, 601, 603, 604, 634 and 635.

Given the Supreme Court's determination that CAPP will end as of June 30, 2015, I think this needs no further discussion.

2) Forms contained in the Appendix to Chapters 1-17A –

I have enclosed a list of all the forms indicating which ones I urge be repealed. I am ***not*** suggesting repeal of Forms 1, 1.1, 1.3, and 24-40. The Forms I suggest we repeal are:

1.2 – this is actually a CAPP impacted form (see first box under ¶ 2);

2-14 – these are all forms of complaints;

15 – Form of Rule 12 motions;

15A – certification of conferring;

16-17 – forms of answers;

18-19 – obscure motions;

21A-21B – Discovery forms;

22 – even more obscure allegation for complaint.

3) Form 20 – Pattern Interrogatories

More complex is the issue of Form 20, Pattern Interrogatories. Repealing this Form will also require repealing Rule 33(e).

Rule 33(e) provides as follows:

> C.R.C.P. 33(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 subpart to a non-pattern interrogatory shall be considered as a separate interrogatory.

My major problems with this Form are (1) that it was prepared for use under the existing culture, of parties getting everything they *want*, and is inappropriate under the new culture of robust disclosure and then parties getting what else they *need*; (2) authorizing "cut and paste" interrogatories enables lawyers to ask questions without thinking about either the questions or the necessity of the subparts; (3) it encourages overbroad discovery; (4) it ignores the reality that interrogatories are a notoriously ineffective way to get meaningful material factual discovery; (5) answering overly broad interrogatories is time consuming and quite expensive; (6) at the very least, these kinds of questions are likely to raise numerous objections and disputes that may have to be resolved by the trial court; and (7) perhaps most problematic is how one is supposed to count these interrogatories to determine whether the propounded interrogatories are within or exceed the limits on interrogatories set out in Rule 26(b)(2)(B).

Without belaboring these concerns, take the following example:

> 18 year old son is driving Dad, Mom and his 13 year-old sister home from a dinner party; runs a stop sign and injures plaintiff. Dad and Mom in backseat and sister in front passenger seat suffer cuts and bruises. Son had nothing to drink and used no drugs or prescriptions in prior 24 hours. Dad had three whiskies, and uses Viagra as needed; Mom had a class of wine, takes Lipitor and uses a prescription estrogen replacement; sister had nothing to drink but is taking drugs to treat her schizophrenia.
>
> Plaintiff propounds Pattern Interrogatory 2.13.
>
> > 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.

At our last meeting we touched on the single most egregious Pattern Interrogatory – No. 15.1. In any kind of a reasonably complex business dispute with a relatively detailed complaint, of the kind we like to encourage, this request that defending parties state "all" facts, identify all knowledgeable persons, and identify all documents supporting the denial of any allegation including the identity of those possessing the documents, can and will never be fully answered.

The counting issue arises due to the unresolved issue (as far as I know) of whether Interrogatory 2.0 is one interrogatory with 2.1-2.13 as subparts (along with their own 36 individual sub-subparts), and thus all counted as part of one interrogatory? Or is each of Interrogatories 2.1-2.13 separate interrogatories to be counted separately if their boxes are checked? I have seen lawyers take both of those positions, and have heard of judges going both ways.

Dick

may thereafter accept a document in paper form and the court shall scan the document and upload it to the E–Service Provider. After notice to an attorney that all future documents are to be E–Filed, the court may charge a fee of $50 per document for the service of scanning and uploading a document filed in paper form. Where E–Filing and E–Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E–Filing requirements.

14. Relief in the Event of Technical Difficulties:

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

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

15. Form of Electronic Documents

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

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

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

Committee Comment

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

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

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

Delete/repeal

CIVIL ACCESS PILOT PROJECT

Editorial Note

The Civil Access Pilot Project was scheduled to be a two year pilot and applied to all applicable cases filed in the pilot district up to December 31, 2013 or until further order of the court. The Supreme Court extended the effective date of these rules until December 31, 2014, or until further order of the court, by order dated June 26, 2013; and until June 30, 2015, or until further order of the court, by order dated July 11, 2014. The Court adopted these rules effective January 1, 2012 for use in the First (Jefferson and Gilpin Counties), Second, Seventeenth (Adams County), and Eighteenth (Arapahoe County) Judicial Districts. These rules apply to the cases described in Amended Appendix A.

PILOT PROJECT RULE 1. SCOPE

1.1. These Rules ("PPR") govern all pretrial process in all actions filed after January 1, 2012 that are part of the pilot project. They will be applied only to business actions as defined in Appendix A. Inclusion in the pilot project will be determined based on the contents of the complaint at the commencement of the action.

1.2. The PPR are not meant to be a complete set of rules. The Colorado Rules of Civil Procedure ("CRCP") will govern except to the extent that there is an inconsistency, in which case the PPR will take precedence.

1.3. At all times, the court and the parties shall address the action in ways designed to assure that the process and the costs are proportionate to the needs of the case. The proportionality factors include, for example and without limitation: amount in controversy, and complexity and importance of the issues at stake in the litigation. This proportionality rule is fully applicable to all discovery, including the discovery of electronically stored information. This proportionality rule shall shape the process of the case in order to achieve a just, timely, efficient and cost effective determination of all actions.

1.4. Continuances and extensions are strongly disfavored. Absent extraordinary circumstances, motions for continuances or extensions will be denied by the court upon receipt and without waiting for a response. Stipulated motions by the parties to continue or extend are not binding on the court and parties should assume the motion will be denied.

Adopted eff. Jan. 1, 2012.

PILOT PROJECT RULE 2. PLEADINGS—FORM AND CONTENT

2.1. The intent of PPR 2 is to utilize the pleadings to identify and narrow the disputed issues at the earliest stages of litigation and thereby focus the discovery.

2.2. The party that bears the burden of proof with respect to any claim or affirmative defense should plead all material facts that are known to that party that support that claim or affirmative defense and each remedy sought, including any known monetary damages.

2.3. Any statement of fact that is not denied with specificity in any responsive pleading is deemed admitted. General denials of any statement of fact are not permitted and a denial that is based on the lack of knowledge or information shall be so pleaded.

Adopted eff. Jan. 1, 2012.

PILOT PROJECT RULE 3. PLEADINGS AND INITIAL DISCLOSURES

3.1. No later than 21 days after service of a pleading making a claim for relief, the pleading party shall file with the court a statement listing all persons with information related to the claims and a brief description of the information each such individual is believed to possess, whether the information is supportive or harmful. The statement shall also include a certification that the party has available for inspection and

APPENDIX TO CHAPTERS 1 to 17A. FORMS

Table of Forms

Introductory Statement.

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except w
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4. Each for
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6. Forms of

Repeal

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

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

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

1. **This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading.** It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. **Check one of the following:**

☐ This case is governed by Chief Justice Directive ("CJD") 11-02 and the "Colorado Civil Access Pilot Project Rules Applicable to Business Actions in District Court" because:

- The case is filed within the period of January 1, 2012 through June 30, 2015; *AND*
- The case is filed in a Pilot Project participating jurisdiction (Adams County, Arapahoe County, Denver County, Gilpin County, or Jefferson County); *AND*
- The case is a "Business Action" as defined in CJD 11-02, Amended Appendix A for inclusion in the Pilot Project.

☐ This case is not governed by the Colorado Civil Access Pilot Project Rules.

*NOTE: **Cases subject to the Colorado Civil Access Pilot Project must be governed by the Rules in CJD 11-02** (available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm). The presiding judge will review Item 2 for accuracy. The designation on this initial Cover Sheet will control unless the Court orders otherwise.*

3. **If this case is not governed by the Colorado Civil Access Pilot Project Rules as indicated in Item 2, check the following:**

☐ This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; *AND*

- A monetary judgment over $100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

☐ This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

☐ The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

☐ A monetary judgment over $100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).

☐ A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

☐ C.R.C.P. 16.1 applies to this case.

☐ C.R.C.P. 16.1 does not apply to this case.

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

Date: _____ _____
Signature of Party or Attorney for Party

Adopted June 10, 2004, eff. July 1, 2004. Revised Dec. 2011; Oct. 2013; Dec. 2013; Aug. 2014.

FORM 2. ALLEGATION OF JURISDICTION (for cases in the County Court)

1. That the amount (or value of the property) involved herein does not exceed _____ dollars.

FORM 3. COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about (date), executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant promised to pay to plaintiff or order on (date), the sum of _____ dollars with interest thereon at the rate of _____ percent per annum).

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the amount of the note, interest, and costs.

Signed: _____
Attorney for Plaintiff.

Address of Plaintiff: _____

Amended eff. Jan. 1, 1988; July 10, 2000.

NOTES

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See Rules 8(e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

3. On complaint and answer, address of parties must be furnished. See Rule 11, C.R.C.P. and C.A.R. 3(d).

FORM 4. COMPLAINT ON AN ACCOUNT

Defendant owes plaintiff _____ dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

FORM 5. COMPLAINT FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between (date) and (date).

Wherefore (etc. as in Form 3).

Amended eff. July 10, 2000.

NOTE

This form may be used either where the action is for an agreed price or where it is for the reasonable value of the goods.

FORM 6. COMPLAINT FOR MONEY LENT

Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on (date).

Wherefore (etc. as in Form 3).

Amended eff. July 10, 2000.

FORM 7. COMPLAINT FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on (date), under the following circumstances: (here state the circumstances with particularity—see Rule 9(b)).

Wherefore (etc. as in Form 3).

Amended eff. July 10, 2000.

FORM 8. COMPLAINT FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff _____ dollars for money had and received from one G. H. on (date), to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

Amended eff. July 10, 2000.

FORM 9. COMPLAINT FOR NEGLIGENCE

Repeal

1. On (date), in a public highway called Broadway Street in Denver, Colorado, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of _____ dollars.

Wherefore plaintiff demands judgment against defendant in the amount established by the evidence, interest and costs.

Amended eff. Jan. 1, 1988; July 10, 2000.

NOTE

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

FORM 10. COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

Repeal

☐ County Court ☐ District Court
_____ County, Colorado

Court Address:

A.B.,
Plaintiff:
v.
C.D. and E.F.,
Defendant:

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Case Number:

Phone Number:
FAX Number:

E-mail:
Atty. Reg. #:

Division: Courtroom:

COMPLAINT

1. On (date), in a public highway called Broadway Street, in Denver, Colorado, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of _____ dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the amount established by the evidence, interest and costs.

Amended eff. Jan. 1, 1988; July 1, 2000; July 10, 2000.

Publishers Note: Please see introductory statement preceding Form 1.

FORM 11. COMPLAINT FOR CONVERSION

1. On or about (date), defendant converted to his own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of _____ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the amount established by the evidence, interest, and costs.

Amended eff. Jan. 1, 1988; July 10, 2000.

Repeal

FORM 12. COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about (date), plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accordance with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands: (1) That defendant be required specifically to perform said agreement; (2) damages as established by the evidence; and (3) that if specific performance is not granted plaintiff have judgment against defendant for the value of the property, interest and costs.

Amended eff. Jan. 1, 1988; July 10, 2000.

NOTE

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect.

FORM 13. COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

☐ County Court ☐ District Court
_____ County, Colorado

Court Address:

A.B.,
Plaintiff:
v.
C.D. and E.F.,
Defendants:

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Case Number:

Phone Number:
FAX Number:
E-mail:
Atty. Reg. #:
Division:
Courtroom:

COMPLAINT

1. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note (in the following words and figures: [here set out the note verbatim]); (a copy of which is hereto annexed as Exhibit A); (whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of _____ dollars with interest thereon at the rate of _____ percent per annum).

2. Defendant C. D. owes to plaintiff the amount of said note and interest.

3. Defendant C. D. on or about _____ conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands: (1) That plaintiff have judgment against defendant C. D. for the amount established by the evidence; (2) that the conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; and (3) that plaintiff have judgment against the defendants for interest and costs.

Amended eff. Jan. 1, 1988; July 1, 2000.

Publishers Note: Please see introductory statement preceding Form 1.

FORM 14. COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about (date), plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of _____ dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on (date), and annually thereafter as a condition precedent to its continuance in force.

Repeal

2. No part of the premium due (date), was ever paid and the policy ceased to have any force or effect on (date).

3. Thereafter, on (date), G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claimed to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

1. That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

2. That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

3. That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

4. That plaintiff recover its costs.

Amended eff. July 10, 2000.

FORM 15. MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE TO STATE A CLAIM, AND OF LACK OF SERVICE OF PROCESS

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

Repeal

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the ground: (here state reasons, such as, (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Colorado; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively; (c) etc.).

3. To dismiss the action on the ground: (here state the same.)

Signed: _____
Attorney for Defendant

Notice of Motion

To: _____

Attorney for Plaintiff.

Please take notice that on the _____ day of _____, 20__, the undersigned will apply to the court to set the attached motion for hearing (or to hear the attached motion forthwith).

Signed: _____
Attorney for Defendant

Received a copy of the within notice and motion at the City and County of Denver, Colorado, this _____ day of _____, 20__, at the hour of __.M.

_____
Attorney for Plaintiff

Amended eff. July 10, 2000.

FORM 15A. CERTIFICATION OF CONFERRING [as required by C.R.C.P. 121 § 1–15 ¶ 8]

Repeat

* C.R.C.P. 121 § 1–15 ¶ 8 Certification: Plaintiff's counsel has conferred in good faith with Defendant's counsel about this Motion. Defendant's counsel [opposes] [does not oppose] the relief requested in this motion.

Adopted eff. July 10, 2000.

FORM 16. ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

Repeal

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen and resident of this state, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

Cross Claim Against Defendant M. N.

(Here set forth the claim constituting a cross claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.)

Signed: _____
Attorney for Defendant

Defendant's Address: _____

FORM 17. ANSWER TO COMPLAINT SET FORTH IN FORM 8, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant denies the allegations stated to the extent set forth in the counterclaim herein.

Repeal

Counterclaim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

1. That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.

2. That the court order the plaintiff and E. F. to interplead their respective claims.

3. That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

4. That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

5. That the court award to the defendant its costs and attorney's fees.

FORM 18. MOTION TO BRING IN THIRD–PARTY DEFENDANT

Repeal

Defendant moves for leave to make E. F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed: _____
Attorney for Defendant C. D.

Notice of Motion

(Contents the same as in Form 15. No notice is necessary if the motion is made before the moving defendant has served his answer.)

☐ County Court ☐ District Court
_____ County, Colorado

Court Address:

A.B.,
Plaintiff:

v.
C.D.,
Defendant and
Third-party Plaintiff:

v.
E.F.,
Third-party Defendant:

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Case Number:

Phone Number:
FAX Number:

E-mail:
Atty. Reg. #:

Division: Courtroom:

SUMMONS

THE PEOPLE OF THE STATE OF COLORADO:

TO the above-named third-party defendant, GREETINGS:

You are hereby summoned and required to file with the clerk an answer to the third-party complaint, a copy of which is herewith served upon you, within 20 days after service of this summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in the third-party complaint.

If service upon you is made outside the State of Colorado, you are required to file your answer to said third-party complaint within 30 days after service of this summons upon you.*

There is also served upon you herewith a copy of the complaint of the plaintiff which you may answer.

Dated _____, 20__

_____
Clerk of the ____ Court

_____
Attorney for Third-party Plaintiff

* If body execution is sought the summons must state the claim set out in said third-party complaint is "founded upon tort."

THIRD PARTY COMPLAINT

☐ County Court ☐ District Court
_____ County, Colorado

Court Address:

A.B.,
Plaintiff:

v.
C.D.,

Defendant and
Third-party Plaintiff:

v.
E.F.,
Third-party Defendant:

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Case Number:

Phone Number:
FAX Number:

E-mail:
Atty. Reg. #:

Division:

Courtroom:

THIRD–PARTY COMPLAINT

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as Exhibit C.

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C. D.,
Third-party Plaintiff
Address of Third-party Plaintiff:

Amended eff. July 1, 2000.

Publishers Note: Please see introductory statement preceding Form 1.

FORM 19. MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

☐ County Court ☐ District Court
_____ County, Colorado

Court Address:

A.B.,
Plaintiff:

v.
C.D.,
Defendant:

v.
E.F.,
Applicant for intervention

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Case Number:

Phone Number:
FAX Number:

E-mail:
Atty. Reg. #:

Division: Courtroom:

MOTION TO INTERVENE AS A DEFENDANT

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds (here state them) and as such has a defense to plaintiff's claim presenting (both questions of law and of fact) which are common to the main action.

Signed: _____
Attorney for E. F.,
Applicant for Intervention

Notice of Motion

(Contents the same as in Form 15.)

INTERVENER'S ANSWER

☐ County Court ☐ District Court
_____ County, Colorado

Court Address:

A.B.,
Plaintiff:

v.
C.D.,
Defendant:

v.
E.F.,
Intervener:

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Case Number:

Phone Number:
FAX Number:

E-mail:
Atty. Reg. #:

Division: Courtroom:

INTERVENER'S ANSWER

First Defense

Intervener admits the allegations stated in paragraphs _____ and _____ of the complaint; denies the allegations in paragraphs _____ and _____.

Second Defense

(Set forth any defenses.)

Signed: _____
Attorney for E. F.,
Intervener

Amended eff. July 1, 2000.

Publishers Note: Please see introductory statement preceding Form 1.

FORM 20. PATTERN INTERROGATORIES UNDER RULE 33

☐ County Court ☐ District Court
_____ 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:

_____ pursuant to C.R.C.P. 16(a)(1)(IV), 26, and 33(e).

Section 1. Instructions to All Parties

(a) 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.

(b) 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.

Section 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in district courts only.

(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.

(c) 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.

(d) Subject to the limitations in C.R.C.P. 16(b)(1)(IV) and 33, additional interrogatories may be 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 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.

(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.

(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."

(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** includes a natural person, firm, association, organization, 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, photostating, photographing, 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 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):

CONTENTS

16.0 Defendant's Contentions—Personal Injury
17.0 Responses to Request for Admissions
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 Persons 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 the date and place of your birth.

☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license?
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.

☐ 2.5 State:
(a) your present residence **ADDRESS**;
(b) your residence **ADDRESSES** for the last five years;
(c) the dates you lived at each **ADDRESS**.

☐ 2.6 State:
(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.

☐ 2.7 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.

☐ 2.8 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.

☐ 2.9 Can you speak English with ease?
If 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?

☐ 2.11 At the time of the **INCIDENT**, were you acting as an agent or employee for any **PERSON**?
If so, state:

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

☐ 2.12 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 a corporation?
If so, 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 so, 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 so, 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;
(c) 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 so, 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;
(c) the **ADDRESS** of the association's principal place of business.

☐ 3.5 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.

☐ 3.6 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.

26(a)(1)(iv)

4.0 **Insurance**

☐ 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:
(a) the kind of coverage;
(b) the name and **ADDRESS** of the insurance company;
(c) the name, **ADDRESS**, and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company;
(g) 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** 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** who prepared it and the date prepared;
(b) the name, **ADDRESS**, and telephone number of each **PERSON** 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** who repaired it;
(e) the name, **ADDRESS**, and telephone number of the **PERSON** 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.

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

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

☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

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

☐ 8.6 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.

☐ 8.8 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.

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** 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** 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**?
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 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?
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 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

☐ 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 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 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 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 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 who has it.

☐ 12.6 Was a report made by any PERSON concerning the INCIDENT?
If so, state:
(a) the name, title, identification number, and employer of the PERSON who made the report;
(b) the date and type of report made;
(c) the name, ADDRESS, and telephone number of the PERSON 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 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 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 and the statute, ordinance, or regulation.

☐ 14.2 Was any PERSON cited or charged with a violation of any statute, ordinance, or regulation as a result of this INCIDENT?
If so, for each PERSON state:
(a) the name, ADDRESS, and telephone number of the PERSON;
(b) the statute, ordinance, or regulation allegedly violated;
(c) whether the PERSON 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 your pleadings and for each:
(a) state all facts upon which you base the denial or affirmative defense;
(b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those 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 who has each DOCUMENT.

16.0 **Defendant's Contentions—Personal Injury**
[See Instructions Section 2(c)]

☐ 16.1 Do you contend that any PERSON, 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:

(a) state the name, **ADDRESS**, and telephone number of the **PERSON**;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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 upon which you base your contention;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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 **PERSON** 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 upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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 upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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 upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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 upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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 upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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 upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** 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** 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** 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** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions

☐ 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** 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** 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 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** who is a witness to or has information about each malfunction or defect;
(d) state the name, **ADDRESS,** and telephone number of each **PERSON** 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** who is a witness to or has information about each malfunction or defect;
(d) state the name, **ADDRESS,** and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.11 State the name, **ADDRESS,** and telephone number of each owner and each **PERSON** 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 for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**
(b) state each part of the agreement not in writing, the name, **ADDRESS,** and telephone number of each **PERSON** 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 for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**
(d) identify all **DOCUMENTS** that are part of each modification to the agreement, and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**
(e) state each modification not in writing, the date, and the name, **ADDRESS,** and telephone number of each **PERSON** 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 for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT.**

☐ 50.2 Was there a breach of any agreement alleged in the pleadings?
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 Was performance of any agreement alleged in the pleadings excused?
If so, identify each agreement excused and state why performance was excused.

☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation?
If so, identify each agreement terminated and state why it was terminated including dates.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable?
If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous?
If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 (Reserved)

Repealed and Adopted eff. Jan. 1, 1995. Amended eff. Nov. 9, 1995; July 1, 2000; Feb. 21, 2013.

Former Form 20, Motion for Production of Documents, etc., Under Rule 34, was repealed, effective January 1, 1995. See, now, Form 21A.

Publishers Note: Please see introductory statement preceding Form 1.

FORM 20.2. PATTERN INTERROGATORIES (DOMESTIC RELATIONS) [REPEALED]

Repealed eff. Jan. 1, 2005

[Publisher's Note: See, now, Form 35.3 et seq.]

FORM 21. REQUESTS FOR ADMISSION UNDER RULE 36 [REPEALED]

Repealed eff. Jan. 1, 1995.

See, now, Form 21B.

FORM 21A. MOTION FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

Repeal

Plaintiff A.B. requests pursuant to C.R.C.P. 34 that defendant C.D:

1. Produce and permit plaintiff to inspect and to copy each of the following document:

(Here list the documents individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

2. Produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

3. Permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected.)

Defendant C.D. has the possession, custody, or control of each of the foregoing documents and objects and of the above-mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

Signed: _____

Attorney for Plaintiff

Adopted eff. Jan. 1, 1995. Amended eff. July 12, 1995; July 10, 2000.

FORM 21B. REQUEST FOR ADMISSION UNDER RULE 36

Repeal

Plaintiff A.B. requests pursuant to C.R.C.P. 36 that defendant C.D. admit:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.

(Here list the statements.)

Signed: _____

Attorney for Plaintiff.

Adopted eff. Jan. 1, 1995. Amended eff. July 10, 2000.

FORM 21.2. PATTERN REQUESTS FOR PRODUCTION OF DOCUMENTS (DOMESTIC RELATIONS) [REPEALED]

Repealed eff. Jan. 1, 2005

[Publisher's Note: See, now, Form 21.2 et seq.]

See, now, Form 35.2 et seq.

FORM 22. ALLEGATION OF REASON FOR OMITTING PARTY

Repeal

When it is necessary, under Rule 19(c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action (because he is not subject to the jurisdiction of this court) or (for reasons stated).

FORM 23. AFFIDAVIT, WRIT OF GARNISHMENT AND INTERROGATORIES (RULE 103) [REPEALED]

Repealed eff. Jan. 1, 1985.

See, now, C.R.C.P. Form 29.