

Rule Change #1997(24)

The Colorado Rules of Civil Procedure

Chapter 4. Disclosure and Discovery

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

Rule 36. Requests for Admission

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

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) through (f) * * * [NO CHANGE] * * *

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

(1) * * * [NO CHANGE] * * *

(2) Every discovery request, OR RESPONSE, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the request, RESPONSE or objection is:

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

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

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

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

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

Rule 36. Requests for Admission

- (a) * * * [NO CHANGE IN FIRST TWO PARAGRAPHS OF THIS SUBSECTION
(a)] * * *

The party who has requested the admissions may move to determine the sufficiency of the answer or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of C.R.C.P. 37(a)(4)(3) apply to the award of expenses incurred in relation to the motion.

- (b) * * * [NO CHANGE] * * *

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

- (a) through (a)(3) * * * [NO CHANGE] * * *

(4) **Expenses and Sanctions.** (A) If a motion ~~filed pursuant to subsections (a)(2)(A) or (a)(2)(B) of this rule~~ is granted or if the disclosure or requested discovery is provided after the motion was filed, the court may, after affording an opportunity to be heard, 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 unjust.

(B) If a motion ~~filed pursuant to subsections (a)(2)(A) or (a)(2)(B) of this rule~~ 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, 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 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) through (d) * * * [NO CHANGE] * * *

Amended and Adopted by the Court, En Banc, October 30, 1997, effective January 1, 1998.

BY THE COURT:

Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court