

Rule Change 2007 (09)

CHAPTER 1

SCOPE OF RULES
ONE FORM OF ACTION
COMMENCEMENT OF ACTION,
SERVICE OF PROCESS,
PLEADINGS,
MOTIONS AND ORDERS

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The term "calendar days" shall mean consecutive days including holidays, Saturdays or Sundays. Unless otherwise specifically ordered, when the period of time prescribed or allowed is less than eleven days, and not specified as "calendar days", intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "Legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the Court Is Closed.

(b) through (d) [No Change]

(e) Additional Time After Service Under C.R.C.P.

5(b)(2)(B), (C), or (D). Unless otherwise specifically ordered, whenever a party must or may act within a prescribed period after service is made under C.R.C.P. 5(b)(2)(B), (C), or (D), three calendar days shall be added after the prescribed period would expire under the rule that defines the length of the prescribed period.

COMMITTEE COMMENT to Rule 6(e).

The three extra days for service under rule 5(b)(2)(B), (C), and (D) are calendar days and do not exclude weekends and holidays. Of course, if the newly-calculated date, after adding including the three additional days under Rule 6(e) following service other than personal service, ends on a weekend or holiday, the deadline will be extended to the next business day. The phrase "the applicable rule" refers to the rule that defines the length of the prescribed period.

When a deadline for action calculated under Rule 6(a) lands on a Saturday, Sunday or holiday, the three days under Rule 6(e) are to be added from that day, not from the first business day following the originally-determined date. Thus, for example, if a motion is e-filed on a Friday so that the 15-day deadline for filing an answer brief falls on a Saturday, the addition of the three days for service by e-filing would extend the actual filing deadline to the following Tuesday (Saturday deadline, plus Sunday, Monday and Tuesday).

CHAPTER 2

COLORADO COURT RULES PLEADINGS AND MOTIONS

Rule 16. Case Management and Trial Management

(a) through (b) [No Change].

(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 180 days 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) through (5) [No Change].

(g) [No Change].

CHAPTER 6

JUDGMENT

Rule 56. Summary Judgment and Rulings on Questions of Law

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of ~~twenty~~20 days from the commencement of the action or after filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary Judgment In The Claiming Party's Favor Upon All Or Any Part Thereof.

(b) [No Change].

(c) **Motion and Proceedings Thereon.** Unless otherwise ordered by the court, any motion for summary judgment shall be filed no later than ~~seventy-five~~ 85 days prior to trial. A cross-motion for summary judgment shall be filed no later than ~~sixty~~ 70 days prior to trial. The motion may be determined without oral argument. The opposing party may file and serve opposing affidavits within the time allowed for the responsive brief, unless the court orders some lesser or greater time. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **through (h)** [No Change].

CHAPTER 7

INJUNCTIONS, RECEIVERS, DEPOSITS IN COURT, OFFER OF JUDGMENT

Rule 65. Injunction

(a) [No Change]

(b) **Temporary Restraining Order; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to

the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry not to exceed ten calendar days, as the court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) through (i) [No Change]

CHAPTER 14

REAL ESTATE

Rule 105.1. Spurious Lien or Document

(a) [No Change]

(b) Notice; Service. The petitioner shall issue a notice to respondent setting forth the time and place for the hearing on the show cause order, which hearing shall be set not less than ten calendar days nor more than twenty days from service of the show cause order, and shall advise respondent of the right to file and serve a response as provided in section (c),

including a reference to the last day for filing a response and the addresses at which such response must be filed and served. The notice shall contain the return address of the petitioner or the petitioner's attorney. The notice and a copy of the petition and order to show cause shall be served by the petitioner on the respondent not less than ten days prior to the date set for the hearing, by (1) mailing a true copy thereof by first class mail to each respondent at the address or addresses stated in the lien or document and (2) filing a copy with the clerk of the district court and delivering a second copy to the clerk of the district court for posting in the clerk's office, which shall be evidenced by the certificate of the petitioner or petitioner's agent or attorney. Alternatively, the petitioner may serve the petition, notice, and show cause order upon each respondent in accordance with Rule 4, or, in the event the claim is brought as a counterclaim or cross-claim in a pending action in which the parties have appeared, in accordance with Rule 5.

(c) through (e) [No Change]

CHAPTER 17

COURT PROCEEDINGS: SALES UNDER POWERS

Rule 120. Orders Authorizing Sales Under Powers

(a) through (b) [No Change]

(c) Response; Contents; Filing and Service. ~~Not less than 5 days prior to the date set for the hearing, said interval including intermediate Saturdays, Sundays, and legal holidays, C.R.C.P. 6(a) notwithstanding a~~ Any interested person who disputes, on grounds within the scope of the hearing provided for in section (d), the moving party's entitlement to an order authorizing sale may file and serve a response to the motion, verified by the oath of such person, setting forth the facts upon which he relies and attaching copies of all documents which support his position. The response shall be filed and served not less than five days prior to the date set for the hearing, 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 response upon the moving party shall be made in accordance with C.R.C.P. 5(b). C.R.C.P. 6(e) shall not apply to computation of time periods under this section (c).

(d) **Hearing; Scope of Issues; Order; Effect.** At the time and place set for the hearing or to which the hearing may have been continued, the court shall examine the motion and the responses, if any. The scope of inquiry at such hearing shall not extend beyond the existence of a default or other circumstances authorizing, under the terms of the instrument described in the motion, exercise of a power of sale contained therein, and such other issues required by the ~~Soldiers' and Sailors' Service Member~~ Civil Relief Act ~~of 1940~~ (SCRA), 50 U.S.C. § 520, as amended. The court shall determine whether there is a reasonable probability that such default or other circumstance has occurred, and whether an order authorizing sale is otherwise proper under said ~~Soldiers' and Sailors' Service Member~~ Civil Relief Act, ~~as amended~~, and shall summarily grant or deny the motion in accordance with such determination. Neither the granting nor the denial of a motion under this Rule shall constitute an appealable order or judgment. The granting of any such motion 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 of remedy of the moving party. 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.

(e) through (h) [NO CHANGE]

CHAPTER 17A
PRACTICE STANDARDS AND LOCAL COURT RULES

Rule 121. Local Rules - Statewide Practice Standards

Section 1-15

DETERMINATION OF MOTIONS

1. Briefs; When Required; Time for Serving and Filing--Length. Except motions during trial or where the court 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 except for a motion pursuant to C.R.C.P. 56. The original and one copy of all motions and briefs shall be filed with the court; a copy shall be supplied to the courtroom clerk (to be brought to the

attention of the court) and a copy shall be served on all other parties. The responding party shall have 15 days or such lesser or greater time as the court may allow in which to file and supply the courtroom clerk with a responsive brief. The moving party shall have ~~10~~7 days or such greater or lesser time as the court may allow to file and supply the courtroom clerk with a reply brief. Motions or briefs in excess of 10 pages in length, exclusive of tables and appendices, are discouraged.

2. through 8 [No Change].

CHAPTER 20

COLORADO RULES OF PROCEDURE REGARDING ATTORNEY DISCIPLINE AND DISABILITY PROCEEDINGS, COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION, AND MANDATORY CONTINUING LEGAL EDUCATION AND JUDICIAL EDUCATION

Rule 251.8. Immediate Suspension

(a) [No Change]

(b) Petition for Immediate Suspension.

(1) [No Change]

(2) The Presiding Disciplinary Judge, or the Supreme Court, by any justice thereof, may order the issuance of an order to show cause directing the attorney to show cause why the attorney should not be immediately suspended, which order shall be returnable within ten calendar days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and recommendation and file the report with the Supreme Court. After receipt of the report the Supreme Court may enter an order immediately suspending the attorney from the practice of law, or dissolve the order to show cause.

(3) through (4) [No Change]

**Amended and adopted by the Court, En Banc June 28, 2007,
effective immediately.**

BY THE COURT:

**Nancy E. Rice
Justice, Colorado Supreme Court**