

Rule Change #1998(7)

The Colorado Rules of Civil Procedure
Chapter 2. Rules Governing Pleadings and Motions
Rule 16. Case Management
Chapter 4. Rules Governing Disclosure and Discovery
Rule 32. Use of Depositions in Court Proceedings
Chapter 5. Rules Governing Trials
Rule 47. Jurors

RULE 16. CASE MANAGEMENT

(a) through (c)(V) * * * * [NO CHANGE]

VI. IDENTIFICATION OF WITNESSES AND EXHIBITS--JUROR NOTEBOOKS.
Each party shall provide the following information:

Lay Witnesses. From the disclosure and identification of persons pursuant to section (b) of this Rule, each party shall attach to the proposed Trial Management Order a list containing the name, address, and telephone number of any person whom the party will call and of any person whom the party may call as a witness at trial.

Exhibits. From the disclosure and identification of documents and tangible things pursuant to the Case Management Order, each party shall attach to the proposed Trial Management Order a list describing any physical or documentary evidence which the party intends to introduce at trial. Each list shall assign a number or letter designation for each exhibit. PROPOSED EXCERPTED OR HIGHLIGHTED EXHIBITS SHALL BE ATTACHED. If any party wishes to object to the authenticity or admissibility of any exhibit as offered, such objection shall be noted, together with the ground therefor. IN THE DISCRETION OF THE COURT, IMPORTANT EXHIBITS MAY BE HIGHLIGHTED OR EXCERPTED. THOSE EXHIBITS MAY, IN THE DISCRETION OF THE COURT, BE INCLUDED IN JUROR NOTEBOOKS.

JUROR NOTEBOOKS. COUNSEL FOR EACH PARTY SHALL CONFER ABOUT ITEMS TO BE INCLUDED IN JUROR NOTEBOOKS AS SET FORTH IN C.R.C.P. 47(T) AND AT THE TRIAL MANAGEMENT CONFERENCE OR OTHER DATE SET BY THE COURT MAKE A JOINT SUBMISSION TO THE COURT OF ITEMS TO BE INCLUDED IN THE JUROR NOTEBOOK.

Remainder of VI. is unchanged.

VII * * * * [NO CHANGE]

VIII. Other Matters. The parties shall also include any other matters which are appropriate under the circumstances of the case or directed by the court to be included in the proposed Trial Management Order. THE PARTIES SHALL CONFIRM THAT THEY HAVE CONSIDERED WAYS IN WHICH THE USE OF TECHNOLOGY CAN SIMPLIFY THE CASE AND MAKE IT MORE UNDERSTANDABLE.

Remainder unchanged.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) through (a)(4) * * * * [NO CHANGE]

(5) IN LIEU OF READING TEXT FROM A DEPOSITION, PARTIES ARE ENCOURAGED TO USE STIPULATED WRITTEN SUMMARIES OF DEPOSITION TESTIMONY AT ANY HEARING OR TRIAL, AND TO PRESENT THE TESTIMONY AT ANY HEARING OR TRIAL IN A LOGICAL ORDER.

(b) through (d) * * * * [NO CHANGE]

C.R.C.P. 47(a) is Repealed and Readopted with Amendments as follows:

RULE 47. JURORS

(a) Orientation and Examination of Jurors. An orientation and examination shall be conducted to inform prospective jurors about their duties and service and to obtain information about prospective jurors to facilitate an intelligent exercise of challenges for cause and peremptory challenges.

(1) The jury commissioner is authorized to examine and, when appropriate, excuse prospective jurors who do not satisfy the statutory qualifications for jury service, or who are entitled to a postponement, or as otherwise authorized by appropriate court order.

(2) When prospective jurors have reported to the courtroom, the judge shall explain to them in plain and clear language:

(I) The grounds for challenge for cause;

(II) Each juror's duty to volunteer information that would constitute a disqualification or give rise to a challenge for cause;

(III) The identities of the parties and their counsel;

(IV) The nature of the case, utilizing the parties' CJI(3d) Instruction 2:1 or, alternatively, a joint statement of factual information intended to provide a relevant context for the prospective jurors to respond to questions asked of them. Alternatively, at the request of counsel and in the discretion of the judge, counsel may present such information through brief non-argumentative statements.

(V) General legal principles applicable to the case, including burdens of proof, definitions of preponderance and other pertinent evidentiary standards and other matters that jurors will be required to consider and apply in deciding the issues.

(3) The judge shall ask prospective jurors questions concerning their qualifications to serve as jurors. The parties or their counsel shall be permitted to ask the prospective jurors additional questions. In the discretion of the judge, juror questionnaires, posterboards and other methods may be used. In order to minimize delay, the judge may reasonably limit the time available to the parties or their counsel for juror examination. The court may limit or terminate repetitious, irrelevant, unreasonably lengthy, abusive, or otherwise improper examination.

(4) Jurors shall not be required to disclose personal locating information, such as address or place of business in open court and such information shall not be maintained in files open to the public. The trial judge shall assure that parties and counsel have access to appropriate and necessary locating information.

(5) Once the jury is impaneled, the judge shall again explain in more detail the general principles of law applicable to civil cases, the procedural guidelines regarding conduct by jurors during the trial, case specific legal principles and definitions of technical or special terms expected to be used during the presentation of the case.

(b) through (l) * * * * [NO CHANGE]

~~(m) **Papers Taken by Jury.** Upon retiring for deliberation, the jury may take all papers, except pleadings, depositions, accounts, or account books, which have been received in the case, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession, and any juror may take with him any notes of testimony, or other proceedings, which he has made but none made by any other person.~~ **ITEMS TAKEN TO DELIBERATION.** UPON RETIRING, THE JURORS SHALL TAKE THE JURY INSTRUCTIONS, THEIR JUROR NOTEBOOKS AND NOTES THEY PERSONALLY MADE, IF ANY, AND TO THE EXTENT FEASIBLE, THOSE EXHIBITS THAT HAVE BEEN ADMITTED AS EVIDENCE.

(n) through (s) * * * * [NO CHANGE]

(t) JUROR NOTEBOOKS. JUROR NOTEBOOKS SHALL BE AVAILABLE DURING TRIAL AND DELIBERATION TO AID JURORS IN THE PERFORMANCE OF THEIR DUTIES.

COMMENT

THE AMENDMENTS TO THIS RULE ADD LANGUAGE TO REQUIRE ORIENTATION OF THE PROSPECTIVE JURORS. THIS CASE-SPECIFIC ORIENTATION WOULD BE IN ADDITION TO ANY GENERAL ORIENTATION THE PROSPECTIVE JURORS MAY HAVE RECEIVED. AS SET FORTH IN THE STANDARDIZED OUTLINE THAT HAS BEEN DEVELOPED FOR USE IN THE ORIENTATION, EXAMINATION AND SELECTION PROCESSES, THE IMPARTED INFORMATION AND INSTRUCTIONS SHOULD BE CLEAR AND AS NEUTRAL AS POSSIBLE.

THE CONTENTS OF ANY FACTUAL ORIENTATION INFORMATION SHOULD BE REVIEWED BY THE JUDGE WITH COUNSEL AT A PRE-TRIAL CONFERENCE TO ENABLE CONSENSUS CONCERNING THE INFORMATION TO BE PROVIDED. IT IS RECOMMENDED THAT THE JUDGE READ A STIPULATED STATEMENT OF WHAT THE CASE IS ABOUT. IF COUNSEL CANNOT AGREE ABOUT

THE CONTENT OF SUCH A STATEMENT, THE JUDGE MAY DEVELOP A PRELIMINARY STATEMENT OF THE CASE IN THE JUDGE'S OWN DISCRETION. ALTERNATIVELY, IF BOTH COUNSEL DESIRE TO MAKE BRIEF, NON-ARGUMENTATIVE STATEMENTS TO THE PROSPECTIVE JURORS ON WHAT THE CASE IS ABOUT, THE COURT SHOULD HAVE DISCRETION TO PERMIT SUCH STATEMENTS.

AS PART OF THE CASE-SPECIFIC ORIENTATION, CERTAIN PRELIMINARY INSTRUCTIONS SHOULD BE USED TO HELP PROSPECTIVE JURORS TO UNDERSTAND THE CLAIMS AND DEFENSES OF THE PARTIES IN THE CIVIL CASE. AT A MINIMUM, THESE INSTRUCTIONS SHOULD ADDRESS BURDEN OF PROOF, CREDIBILITY, OBJECTIONS BY COUNSEL, BENCH CONFERENCES AND WHETHER JURORS WILL BE PERMITTED TO TAKE NOTES AND ASK QUESTIONS. IN COMPLEX OR TECHNICAL CASES, DEFINITIONS OF TERMS AND OTHER INFORMATION THAT WOULD HELP ORIENT THE JURY TO THE CASE SHOULD BE GIVEN. THE TRIAL JUDGE, RATHER THAN COUNSEL, SHOULD GIVE THESE INSTRUCTIONS AS PART OF THE BEFORE-EXAMINATION ORIENTATION.

PROVISIONS OF THE RULES PERTAINING TO EXAMINATION OF PROSPECTIVE JURORS HAVE BEEN REORGANIZED AND CLARIFIED TO EMPHASIZE CERTAIN OBJECTIVES. SPECIFIC AUTHORITY IS CONFERRED ON THE JURY COMMISSIONER TO ALLOW SERVICE "POSTPONEMENTS" AS CONTEMPLATED BY C.R.S. § 13-71-116 AND TO EXAMINE AND EXCUSE PROSPECTIVE JURORS WHO DO NOT SATISFY STATUTORY QUALIFICATION REQUIREMENTS OF C.R.S. § 13-71-105.

THE COURT'S ROLE HAS BEEN BETTER DEFINED. BECAUSE OF THE COURT'S NEUTRAL ROLE IN THE CASE, THE TRIAL JUDGE SHOULD CONDUCT THE INITIAL JUROR EXAMINATION BY ASKING STANDARD QUESTIONS AND ALSO THOSE WHICH RELATE TO THE SPECIFIC CASE, BUT MAY BE OF A SENSITIVE NATURE. A UNIFORM OUTLINE OF ORIENTATION, JUROR EXAMINATION AND JUROR SELECTION PROCEDURES HAS BEEN DEVELOPED BY THE COMMITTEE FOR BOTH

CIVIL AND CRIMINAL CASES. USE OF SUCH OUTLINE WOULD ASSURE THAT ALL IMPORTANT INFORMATION IS COVERED, TIME IS SAVED AND THAT CASES ARE HANDLED UNIFORMLY THROUGHOUT THE STATE.

COUNSEL AND PRO SE LITIGANTS WOULD CONTINUE TO HAVE A PART IN THE JUROR EXAMINATION PROCESS BY BEING ALLOWED TO QUESTION PROSPECTIVE JURORS ON RELEVANT MATTERS NOT COVERED BY THE TRIAL JUDGE. THE JUDGE, HOWEVER, WOULD CONTINUE TO HAVE AUTHORITY TO LIMIT SUCH EXAMINATIONS TO AVOID REPETITION, IRRELEVANT OR IMPROPER INQUIRIES AND WASTING OF TIME.

IN ADDITION TO THE STANDARDIZED OUTLINE OF ORIENTATION, JURY EXAMINATION AND JURY SELECTION, POSTERBOARDS AND QUESTIONNAIRES HAVE BEEN DEVELOPED TO ENHANCE THE PROCESS OF ACQUIRING INFORMATION FROM PROSPECTIVE JURORS. WHEN AND HOW POSTERBOARDS AND QUESTIONNAIRES ARE USED IS DISCRETIONARY WITH THE TRIAL JUDGE. POSTERBOARD QUESTIONS PROVIDE A METHOD TO OBTAIN INFORMATION FROM PROSPECTIVE JURORS IN A FAST, NEUTRAL AND FLEXIBLE WAY. SUCH METHOD GIVES COUNSEL TIME TO OBSERVE PANELISTS AND MAKE NOTES, WHICH IS NOT ALWAYS POSSIBLE WHEN THE ATTORNEY IS ENGROSSED IN ASKING QUESTIONS DIRECTLY. QUESTIONNAIRES, WHILE NOT NORMALLY USED IN ROUTINE CASES, CAN BE VALUABLE IN THOSE CASES INVOLVING HIGH PUBLICITY AND/OR COMPLEX ISSUES. WHERE USED, QUESTIONNAIRES NOT ONLY CAN OBTAIN AUTOBIOGRAPHICAL INFORMATION, BUT CAN ALSO SEEK CASE-SPECIFIC INFORMATION TO IDENTIFY POTENTIAL PREJUDICE ON SENSITIVE ISSUES.

JUROR NOTEBOOKS SHOULD BE USED IN TRIALS AS AN AID TO JURORS IN THE PERFORMANCE OF THEIR DUTIES. THE COURT SHOULD SUPPLY THREE-RING BINDERS WHICH CAN BE RETRIEVED AND REPEATEDLY REUSED. THE COURT AND COUNSEL SHOULD PROVIDE THE MATERIALS TO BE PLACED IN THE JUROR NOTEBOOKS. THE TIMING AND PLACEMENT OF PARTICULAR MATERIALS IN THE NOTEBOOKS WILL BE

AT THE COURT'S DISCRETION. JUROR NOTEBOOKS SHOULD NOT BE TAKEN FROM THE COURTROOM OR JURY ROOM. THEY SHOULD BE RETURNED AT THE END OF THE TRIAL SO THAT NOTES CAN BE DESTROYED AND OTHER MATERIALS REPLACED, RECYCLED AND/OR REUSED. SECTIONS SHOULD BE TABBED WITH PARTICULAR SECTIONS DELETED OR LEFT EMPTY AS APPROPRIATE.

JUROR NOTEBOOKS SHOULD CONTAIN THE FOLLOWING:

- (1) ORIENTATION MATERIALS;
- (2) PRELIMINARY JURY INSTRUCTIONS;
- (3) A COPY OF THE FINAL INSTRUCTIONS GIVEN BY THE COURT;
- (4) ITEMS ORDERED BY THE COURT; AND
- (5) BLANK PAPER FOR JUROR NOTES (TOGETHER WITH A COPY OF CJI(3D) 1:7).

Amended and Adopted by the Court, En Banc, June 25, 1998, effective January 1, 1999.

BY THE COURT:

**Rebecca Love Kourlis
Justice, Colorado Supreme Court**