

AGENDA

COLORADO SUPREME COURT COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Friday, September 25, 2020 1:30 p.m.

VIRTUAL MEETING VIA WEBEX—PLEASE SEE EMAIL FOR THE LINK

- I. Call to order
- II. Approval of June 26, 2020 minutes [Pages 1 to 4]
- III. Announcements from the Chair
 - A. Supreme Court adopts revised garnishment rules and forms [Pages 5 to 63]
 - B. Reappointment to Committee—If your term ends on December 31, 2020, please advise me and Kathryn Michaels by email if you wish to be reappointed
 - C. 2021 Meetings: January 29, March 26, June 25, September 24, November 12
- IV. Present Business
 - A. Redaction of Court Filings by Parties/Counsel Final Vote—5(g) + 305—(David DeMuro) [Pages 64 to 67]
 - B. C.R.C.P. 16, 121 1-8, and 121 1-9 Final Vote—District Court Civil Case Cover Sheet Modification to Include Associated Cases—(Bradley Levin) [Pages 68 to 71]
 - C. Form CRCCP 1A—FED Suppression Legislation HB 20-1009, 12/1/20 Effective Date—(Judge Berger) [Pages 72 to 81]
 - D. C.R.C.P. 16, 16.1, and 26—Water Rules Committee Request—(Judge Berger) [Pages 82 to 98]
 - E. C.R.C.P. 16 and 26—Proposed Corrections and Tweaks—(Judge Elliff)
 - F. C.R.C.P. 4(m)—(Judge Jones)
 - G. Local Rules—(Richard Holme) [Pages 99 to 101]
 - H. C.R.C.P. 15(a)—Possible Amendments in view of DIA Brewing Co., LLC v. MCE-DIA, LLC, cert. granted, 2020 COA 21—(Judge Berger) [Pages 102 to 123]
 - I. C.R.C.P. 30(b)(7)—Virtual Oaths—(Lee Sternal) [Page 124]

- J. Letter to the Committee from Kevin Conner regarding sealing of county court criminal records—(Judge Berger) [Pages 125 to 129]
- K. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims)—Status report
- L. JDF 105—Service of Pattern Interrogatories—(Mike Hofmann)
- M. County Court Subcommittee Proposed Rule Changes (307 and 341)—(Ben Vinci)
- N. C.R.C.P. 304—Time Limit for Service from Attorney Daniel Vedra—(Ben Vinci)
- O. Crim. P. 55.1—Public Access to Court Records—(Judge Berger)—Status report only
- V. Adjourn—**Next meeting is November 13, 2020 at 1:30 pm.**

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

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
June 26, 2020 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Michael Berger at 1:30 p.m. via videoconferencing software WebEx. Members present at the meeting were:

Name	Present	Not Present
Judge Michael Berger, Chair	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa		X
Peter Goldstein	X	
Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
Richard P. Holme	X	
Judge Jerry N. Jones	X	
Judge Thomas K. Kane	X	
Cheryl Layne	X	
John Lebsack	X	
Bradley A. Levin	X	
David C. Little		X
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Judge Sabino Romano	X	
Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Jose L. Vasquez	X	
Judge Juan G. Villaseñor	X	
Ben Vinci	X	
Judge (Ret). John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins		X

I. Attachments & Handouts

- June 26, 2020 agenda packet and supplements.

II. Announcements from the Chair

- The January 31, 2020 minutes were approved as presented.
- Chair Judge Berger announced that the supreme court approved two emergency rule proposals since January.
- Finally, Judge Berger stated that he hopes in-person meetings can resume in September, but that remains to be seen.

III. Present Business

A. C.R.C.P. 103/403/forms

Subcommittee Chair Jose Vasquez explained that the subcommittee presents two alternate proposals. In version 1, a debtor may be able to object to subsequent calculations on their pay; version 2 does not include this language. Version 1 also contains much more language from the statute than does version 2.

Judge Jones suggested doing as little as is required. He explained that holding remote meetings increases the opportunity for mistakes, for overlooking issues, and for missing problems. Judge Jones suggested doing the minimum required to avoid those issues. Several other members concurred with Judge Jones' sentiments. Chief Judge Bernard stated that although necessary for the circumstances we face, WebEx is not an ideal forum for a committee to make significant changes to court rules, and he fears unintended consequences.

Ben Vinci shared that he has expressed concerns in the subcommittee with version 1. He does not want to see judicial officers having to hold repeated hearings when debtors continually ask for adjustments every pay period. Mr. Vasquez does not think those requests would be supported by the rule. He also stated that legislators intended people to have the ability to bring up these types of exigent circumstances.

After a motion was made and seconded, the committee approved the following proposal with 4 no votes and 1 voter abstaining: amend paragraph (4); keep first sentence, delete second sentence, add in "Such objection may be made at any time during the pendency of the garnishment." Mr. Vasquez will implement this in a new version and the committee will hold a final email vote on the finalized written proposal.

The committee then turned to the forms. Judge Berger directed that any typographical edits should be emailed to Mr. Vasquez for correction by next Tuesday at noon. The committee will take a final vote via email.

B. Redaction of Court Filings by Parties/Counsel

David DeMuro explained that he agreed to take a look at this rule proposal after the last meeting when Judge Jones had proposed a Colorado version of Federal Civil Rule 5.2. The federal rule was adopted in 2007 to comply with a federal statute requiring the

Supreme Court to adopt rules to protect privacy and security concerns that increased with the electronic filing of court documents. Colorado does not currently have a rule like 5.2, but it does have Chief Justice Directive (CJD) 05-01 that addresses public access to court filings. The proposal brought today closely follows Judge Jones' January proposal. The proposal requires people filing documents with courts in Colorado to redact certain numbers such as social security numbers, birthdates, and other private numbers. The subcommittee thinks this rule is overdue in Colorado.

Judge Berger suggested making the text of the rule easier to read by structuring it like the federal rule. Mr. DeMuro liked that suggestion. Judge Berger also queried why the court shouldn't have the discretion to order sanctions. Judge Jones stated that he does not have a strong feeling on the sanctions issue. His sense is that it can be easy to miss some of these numbers that should be redacted when filing with the court.

Mr. Vinci highlighted that the last four digits of a social security number will be needed for garnishments. He also stated that many people have the same name and there will be a need for some way to differentiate these people. He also mentioned that sanctions don't need to be broadened further. Judge Jones responded that the complete redaction of these types of numbers is already required by the existing CJD.

A motion and second were made to adopt Rule 5(g) with the following exceptions: add subsection lettering, correct a typo on part 2, and say you can file unredacted copies without a need of a motion. It passed 18-9. The committee will vote via email on the text of the final proposal.

Regarding sanctions, which were considered separately: a motion has made and seconded to remove the only if qualification. It passed. Mr. DeMuro will finalize the language of the proposed rule change.

C. Colorado Rules for Magistrates

Judge Berger shared that subcommittee chair Magistrate Tims has not had much time to deal with this, given what is going on in the trial courts. He further stated that the project will not be completed in 2020 as initially anticipated.

D. JDF 601/Related Case Doctrine

Subcommittee chair Bradley Levin shared the current iteration of the proposal and stated that they followed the committee's advice in preparing it.

Judge Berger commented that the word "aware" is not usually a word used in court rules and suggested "actual knowledge" as a possibility. Mr. Levin accepted that suggestion. Judge Berger also asked whether a comment making it clear that nothing in this rule directs a court to do anything and that the related case information is merely an information-providing function. Mr. Levin agreed with the idea and suggested making the last sentence in the memo into a comment.

A motion was made and seconded to adopt the proposal as is with the following changes:

the word “aware” will be changed to “actual knowledge” and a comment will be added. It passed. Mr. Levin will put the proposal together, and the committee will vote by email.

A motion was also made and seconded to put the proposed related case language in the Case Management Order and referenced in Rule 16 into a new subsection 18. It passed unanimously and will be voted on for final approval later.

E. JDF 105

Passed over.

F. C.R.C.P. 16 and 26

Judge Berger will appoint a subcommittee to evaluate how all the rules are working. Mr. Holme will serve but not as chair. Interested parties should email Kathryn or Judge Berger to volunteer.

G. County Court Rules 307 and 341

Passed over.

H. C.R.C.P. 4(m)

Passed over.

I. Local Rules

Passed over.

J. C.R.C.P. 304

Passed over.

K. Crim. P. 55.1

Passed over.

L. C.R.C.P. 15(a)

Passed over.

M. C.R.C.P. 30(b)(7)

Passed over.

IV. Future Meetings

September 25, 2020

November 13, 2020

The Committee adjourned at 4:04 p.m.

RULE CHANGE 2020(28)
COLORADO RULES OF CIVIL PROCEDURE

Rules 103 and 403; Forms 26, 27, 28, 29, 32, 33, and New Form Notice to Judgment Debtor

Rule 103. Garnishment

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) - (g) [NO CHANGE]

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings or For Reduction of Withholding Pursuant to Section 13-54-104(2)(a)(I)(D)" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), to the judgment debtor not later than 7 days after the garnishee is served with the writ of continuing garnishment ~~at the time the judgment debtor receives earnings for the first pay period affected by such writ.~~

(2) [NO CHANGE]

(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings or object and request an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S. A judgment debtor's objection to calculation of exempt earnings or objection and request for an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., shall be in accordance with Section 6 of this rule.

(j) [NO CHANGE]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file ~~the answer to the writ of continuing garnishment~~ the answer to the writ of garnishment with the clerk of the court and send a copy to the judgment creditor not later less than 7 nor more than 14 days after the garnishee is served with the writ of continuing garnishment pursuant to section 13-54.5-105(5), C.R.S. following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall send such response to the attorney or licensed collection agency ~~pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.~~

(2) In the event the answer required by Section 1(k)(1) of this rule is filed and served pursuant to section 13-54.5-105(5)(b), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of continuing garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.

(32) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(43) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection [to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#), is filed by the judgment debtor within ~~21~~7 days after the ~~garnishee was served with the writ of continuing garnishment~~~~judgment debtor received earnings for a pay period~~, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) [NO CHANGE]

(m) **Request for accounting of garnished funds by judgment debtor.** Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 – SECTION 5 [NO CHANGE]

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings [or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S.](#) Under Writ of Continuing Garnishment.

(1) [NO CHANGE]

(2) If the judgment debtor's objection [to the calculation of exempt earnings](#) is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

[\(3\) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.](#)

[\(4\) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. The judgment](#)

debtor may object to the calculation on hardship grounds at any time during the pendency of the garnishment.

(53) The written objection made under Section 6(a)(2) or Section 6(a)(4) of this rule shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(64) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(75) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) - (c) [NO CHANGE]

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6 (a)(2), Section 6(a)(4) -and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings of property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) – (3) [NO CHANGE]

(e) [NO CHANGE]

SECTION 7 - SECTION 13 [NO CHANGE]

Rule 403. Garnishment

NOTE: County Court Rule 403 is identical to *C.R.C.P. 103* except for cross references within the County Court Rule to other County Court Rules. Forms used with the County Court are identical to those used with *C.R.C.P. 103*, and because County Court Rule 403 cites to and incorporates C.R.C.P. Forms 26 through 34, they need not be duplicated in the County Court Forms Section.

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) - (g) [NO CHANGE]

(h) **Delivery of Copy to Judgment Debtor.**

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings or For Reduction of Withholding Pursuant to Section 13-54-(2)(a)(I)(D)" (Appendix to Chapters 1 to 17AA, Form 28, C.R.C.P.), to the judgment debtor not later than 7 days after the garnishee is served with the writ of continuing garnishment ~~at the time the judgment debtor receives earnings for the first pay period affected by such writ.~~

(2) [NO CHANGE]

(i) **Objection to Calculation of Amount of Exempt Earnings.** A judgment debtor may object to the calculation of exempt earnings or object and request an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S. A judgment debtor's objection to calculation of exempt earnings or objection and request for an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., shall be in accordance with Section 6 of this rule.

(j) [NO CHANGE]

(k) **Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall file ~~the answer to the writ of continuing garnishment~~ the answer to the writ of garnishment with the clerk of the court and send a copy to the judgment creditor not later less than 7 nor more than 14 days after the garnishee is served with the writ of continuing garnishment pursuant to section 13-54.5-105(5), C.R.S. ~~following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less.~~ However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall send such response to the attorney or licensed collection agency ~~pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.~~

(2) In the event the answer required by Section 1(k)(1) of this rule is filed and served pursuant to section 13-54.5-105(5)(b), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that

occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.

(32) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(43) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., is filed by the judgment debtor within 21 days~~7 days~~ after the garnishee was served with the writ of continuing garnishment~~judgment debtor received earnings for a pay period~~, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court and a copy is delivered to the garnishee, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 – SECTION 5 [NO CHANGE]

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection [to the calculation of exempt earnings](#) is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

[\(3\) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.](#)

[\(4\) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104\(2\)\(a\)\(I\)\(D\), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. The judgment debtor may object to the calculation on hardship grounds at any time during the pendency of the garnishment.](#)

~~(5)~~ (3) The written objection [made under Section 6\(a\)\(2\) or Section 6\(a\)\(4\) of this rule](#) shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(64) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq, C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

~~(75)~~ Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) - (c) [NO CHANGE]

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6 (a)(2), [Section 6\(a\)\(4\)](#) and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings or property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) – (3) [NO CHANGE]

(e) [NO CHANGE]

SECTION 7 – SECTION 13 [NO CHANGE]

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: _____ <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s): _____		▲ COURT USE ONLY ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____		
		Case Number: _____ Division Courtroom
WRIT OF CONTINUING GARNISHMENT		

READ THIS WHOLE DOCUMENT

[This writ is in compliance with the requirements of 24-33.5-704.3 and 13-54-102, C.R.S. to initiate or maintain a new extraordinary collection action. Certain provisions of these statutes expire on November 1, 2020 unless extended by the Administrator of the Uniform Consumer Credit Code to a date not later than February 1, 2021.](#)

Judgment Debtor's name, last known [physical and mailing addresses](#) or a statement that Judgment Debtor's [physical and mailing addresses are not known](#), and other identifying information: _____

1. Original or Revived Amount of Judgment Entered on _____ (date) for \$ _____
 - a. Effective Garnishment Period
 - 91 days (Judgment entered prior to August 8, 2001)
 - 182 days (Judgment entered on or after August 8, 2001)
2. Plus any Interest Due on Judgment (currently _____% per annum) \$ _____
3. Taxable Costs (including estimated cost of service of this Writ) \$ _____
4. Less any Amount Paid \$ _____
5. Principal Balance/Total Amount Due and Owing \$ _____

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Print Judgment Creditor's Name

Address: _____

By: _____
Signature (Type Name, Title, Address and Phone)

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:
You are directed to serve **TWO COPIES** of this Writ of Continuing Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE: YOU ARE SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of Court AND mail a completed copy with your answers to the Judgment Creditor or attorney no ~~later less than 7 days after you have been served with this writ, nor more than 14 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 42 days following service of this Writ upon you, whichever is less.~~ **YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To pay any nonexempt earnings to the party designated in "e" below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).
- c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, and a blank Objection to Calculation of the Amount of Exempt Earnings form, and an Explanation Of Wage Garnishment In Colorado to Judgment Debtor on the same day the copy of this Writ and Calculation of the Amount of Exempt Earnings are sent to Judgment Creditor, the first time you pay the Judgment Debtor.
- d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.
- e. **MAKE CHECKS PAYABLE AND MAIL TO:** Judgment Creditor named above (only if the Judgment Creditor is a licensed collection agency pursuant to ~~12-14-1015-16-101~~, et. seq., C.R.S.); Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to ~~12-14-1015-16-101~~, et. seq., C.R.S.)

Name: _____
Address: _____

PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

NOTICE TO GARNISHEE

- a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**
- b. **"Earnings" includes all forms of compensation for Personal Services.** Also read "Notice to Judgment Debtor" below.

c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.

d. If you determine that the judgment debtor is your employee and the Writ of Continuing Garnishment contains all required information, you are required to send the judgment debtor this Writ of Continuing Garnishment and the document attached to it titled "EXPLANATION OF WAGE GARNISHMENT IN COLORADO" on the same day that you send your answer to this Writ of Continuing Garnishment to the judgment creditor.

e.

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QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ Case Number: _____

The following questions MUST be answered by you under oath:

a. Is the Judgment Debtor your employee?

- 1. Yes
2. No

a. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):

- 1. WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES (Earnings)
2. Health, Accident or Disability Insurance Funds or Payments
3. Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)

If you marked any box above, indicate how the Judgment debtor is paid: weekly bi-weekly semi-monthly monthly
 Other The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ):

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b. Does the Writ of Continuing Garnishment contain: the name of the Judgment Debtor, the last-known physical and mailing addresses of the Judgment Debtor or a statement that the information is not known, the amount of the Judgment, information sufficient to identify the judgment on which the continuing garnishment is based, an Explanation of Wage Garnishment in Colorado?

- 1. Yes
2. No

b. Are you under one or more of the following writs of garnishment? (Mark appropriate box(es)):

- 4. Writ of Continuing Garnishment (Expected Termination Date:)
5. Writ of Garnishment for Support (Expected Termination Date:)

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c. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):

- 1. WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES NOT INCLUDING TIPS (Earnings)

- 2. Health, Accident or Disability Insurance Funds or Payments
3. Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)
4. Health insurance coverage provided by you and withheld from the individual's earnings

If you marked any box above, indicate how the Judgment debtor is paid: weekly bi-weekly semi-monthly monthly
 other

The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ), starting at least twenty-one days after you were served with this Writ of Garnishment:

e. If you marked Box 1 and you did NOT mark either Box 4 or 5, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

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d. If you marked Box 2 or 3 and you did NOT mark either Box 4 or 5, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s). However, there are a number of total exemptions, and you should seek legal advice about such exemptions. If the earnings are totally exempt, please mark box 6 below:

- 6. The earnings are totally exempt because: _____

d. Are the Judgment Debtor's earnings subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended? If so mark the appropriate boxes and list the nature, number, and amounts of these deductions and the relative priority of this Writ of Garnishment (Mark appropriate box(es)):

- 5. Writ of Garnishment for Support (Expected Termination Date: _____)

6. Writ of Continuing Garnishment (Expected Termination Date: _____)

7. Any additional deductions (Expected Termination Date: _____)

e. If in paragraph c. above you marked Box 1 and you did NOT mark either Box 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

f. If in paragraph c. above you marked Box 2, 3, or 4 and you did NOT mark either Box 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 5, 6, or 7, you must complete Calculations beginning with the first pay period following termination of the prior writ(s) that is at least twenty-one days after service of this writ on you. However, there are a number of total exemptions, and you should seek legal advice about such exemptions. If the earnings are totally exempt, please mark box 8 below:

8. The earnings are totally exempt because: _____

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CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (Each Pay Period)

Gross Earnings for the pay period from _____ thru _____ \$ _____

Less Deductions Required by Law (For Example, Withholding Taxes, FICA, [Costs for Employer-Provided Health Insurance Withheld From Earnings](#)) - \$ _____

Disposable Earnings (Gross Earnings less Deductions) = \$ _____

Less Statutory Exemption (Use Exemption Chart Below) - \$ _____

Net Amount Subject to Garnishment = \$ _____

Less Wage/Income Assignment(s) During Pay Period (If Any) - \$ _____

Amount to be withheld and paid = \$ _____

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EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 30 x Minimum Hourly Wage or 80 75 % of Disposable Earnings
	Bi-weekly	80 60 x Minimum Hourly Wage or 80 75 % of Disposable Earnings
	Semi-monthly	86.67 65 x Minimum Hourly Wage or 80 75 % of Disposable Earnings
	Monthly	173.34 40 x Minimum Hourly Wage or 80 75 % of Disposable Earnings

I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, and a blank Objection to Calculation of the Amount of Exempt Earnings form, and an [EXPLANATION OF WAGE GARNISHMENT IN COLORADO form](#) to the Judgment Debtor, at the time earnings were paid for each pay period (if earnings were paid).

Name of Garnishee (Print) _____
Address _____
Phone Number _____

Name of Person Answering (Print)

Signature of Person Answering

NOTICE TO JUDGMENT DEBTOR

a. The Garnishee may only withhold nonexempt earnings from the amount due you, but in no event more than the amount on Line 5 on the front of this Writ, UNLESS YOUR EARNINGS ARE TOTALLY EXEMPT, in which case NO EARNINGS CAN BE WITHHELD. You may wish to contact a lawyer who can explain your rights.

- b. If you disagree with the amount withheld, you must talk with the Garnishee within 7 days after being paid.
- c. If you cannot settle the disagreement with the Garnishee, you may complete and file the attached Objection with the Clerk of the Court issuing this Writ within 14 days after being paid. YOU MUST USE THE FORM ATTACHED or a copy of it.
- d. You are entitled to a court hearing on your written objection.
- e. Your employer cannot fire you because your earnings have been garnished. If your employer discharges you in violation of your legal rights, you may, within 91 days, bring a civil action for the recovery of wages lost because you were fired and for an order requiring that you be reinstated. Damages will not exceed 6 weeks' wages and attorney fees.

EXPLANATION OF WAGE GARNISHMENT IN COLORADO

NOTICE OF GARNISHMENT TO JUDGMENT DEBTOR

MONEY WILL BE TAKEN FROM YOUR PAY IF YOU FAIL TO ACT

1. Why am I getting this notice?

You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money.

Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

2. How much do I owe?

The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the Writ of Garnishment. The amount could also go down if you make payments to Creditor.

3. How will the amount I owe be paid?

The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment.

The rules about how much of your pay can be taken are explained in the notice of Colorado Rules About Garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

4. Do I have options?

Yes, you have several options, here are three of them:

- A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.
- B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.

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C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

5. What if I don't do anything?

If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

6. How does garnishment work in Colorado?

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are.

The amount of your disposable earnings that can be garnished is determined by comparing two numbers: (1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under 4. Do I have options?

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that \$ _____ will be withheld from each paycheck that is subject to garnishment.

COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ DIV./CT. RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S): _____

DEFENDANT(S): _____

Gross Pay for _____ thru _____ \$ _____
Less Deductions Required by Law ([For Example, Withholding Taxes, FICA, Costs for Employer-Provided Health Insurance Withheld From Earnings](#)) - \$ _____
Disposable Earnings ([gross earnings less deductions](#)) = \$ _____
Less Statutory Exemption ([Use Exemption Chart Below](#)) - \$ _____
Net Amount Subject to Garnishment = \$ _____
Less Wage/Income Assignment (If Any) - \$ _____
AMOUNT PAID = \$ _____

EXEMPTION CHART	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ DIV./CT. RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S): _____

DEFENDANT(S): _____

This form is effective until November 1, 2020 unless extended by the Administrator of the Uniform Consumer Credit Code to a date not later than February 1, 2021.

Gross Pay for _____ thru _____ \$ _____
Less Deductions Required by Law ([For Example, Withholding Taxes, FICA, Costs for Employer-Provided Health Insurance Withheld From Earnings](#)) - \$ _____
Disposable Earnings ([gross earnings less deductions](#)) = \$ _____
Less Statutory Exemption ([Use Exemption Chart Below](#)) - \$ _____
Net Amount Subject to Garnishment = \$ _____
Less Wage/Income Assignment (If Any) - \$ _____
AMOUNT PAID = \$ _____

EXEMPTION CHART	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

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CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court address: _____ Plaintiff(s): _____ v. Defendant(s): _____	
Judgment Debtor's Attorney or Judgment Debtor (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty.Reg. #: _____	▲ COURT USE ONLY ▲ Case Number: _____ Division _____ Courtroom _____
OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS OR FOR REDUCTION OF WITHHOLDING PURSUANT TO SUBSECTION 13-54-104(2)(a)(I)(D)	

Instructions to Judgment Debtor: Use this form to object to the calculations of your exempt earnings.

Name: _____ Phone Number: _____

Street Address: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	30-40 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings
	Bi-Weekly	60-80 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings
	Semi-monthly	65-86.67 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings
	Monthly	130-173.3 x Minimum Hourly Wage or 75 <u>80</u> % of Disposable Earnings

1. Judgment Debtor's objection to the Garnishee's Calculation of the Amount of Exempt Earnings because I believe that the correct calculation is:

Gross Earnings for My Pay Period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA, Costs for Employer-Provided Health Insurance Withheld From Earnings)	- \$ _____
Disposable Earnings (Gross Earnings Less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart on Writ)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
Amount which should be withheld	= \$ _____

OR

2. The earnings garnished are pension or retirement benefits/deferred compensation/health, accident or disability insurance and they are totally exempt because:

FORM 28SC R10/20^{3/48} OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS

I understand that I must make a good faith effort to resolve my dispute with the Garnishee.

I have have not attempted to resolve this dispute with the Garnishee.

Name of Person I Talked to: _____

Position: _____ Phone Number: _____

OR

3. A greater portion of my disposable earnings should be exempt from garnishment for the support of me or my family that is supported in whole or in part by me. I request a court hearing to determine whether my earnings subject to garnishment, together with any other income received by my family, are insufficient to pay the actual and necessary living expenses of me and/or my family based upon proof of such expenses incurred during the 60 days prior to the hearing. In support of this I state the following:*

<u>Gross Monthly Income</u>		<u>Monthly Expenses</u>	
<u>Self (wages, salary, commission)</u>	\$	<u>Rent or Mortgage</u>	/\$
<u>Spouse/Partner, Other Household Members</u>	\$	<u>Groceries</u>	/\$
<u>Parents (if same household)</u>	\$	<u>Utilities</u>	/\$
<u>Unemployment Benefits</u>	\$	<u>Clothing</u>	/\$
<u>Social Security/Retirement Funds</u>	\$	<u>Maintenance/Alimony and/or Child Support</u>	/\$
<u>Maintenance/Alimony</u>	\$	<u>Medical/Dental</u>	/\$
<u>Other Income (identify)</u>	\$	<u>Other Expenses (identify)</u>	/\$
<u>Other Income (identify)</u>	\$	<u>Other Expenses (identify)</u>	/\$
<u>Total Income</u>	\$	<u>Total Expenses</u>	/\$

*You are not required to use this form but will have to prove to the court that you are entitled to claim this exemption.

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Debtor's Notice to Garnishee: Even though I am filing this Objection, you are directed to send my nonexempt earnings to the Court at the address noted instead of to the party designated in paragraph "e" on the front of the Writ of Continuing Garnishment. The Court will hold my nonexempt earnings in its registry until my Objection is resolved.

I certify that the above is correct to the best of my knowledge and belief and that I sent a copy of this document by certified mail (return receipt requested) to both the Garnishee and to the Judgment Creditor, or if the Judgment Creditor is represented by Counsel, certified mail (return receipt requested) to the Judgment Creditor's Attorney or E-Service to the Judgment Creditor's Attorney.

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Garnishee

Address: _____

Judgment Creditor or Attorney

Address: _____

Signature of Judgment Debtor or
Judgment Debtor's Counsel and Reg. Number

WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:

You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:

YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To hold pending court order the personal property of any kind (other than earnings of a natural person) in your possession or control, including the debts, credits, choses in action or money owed to the Judgment Debtor whether they are due at the time of the service of the writ or are to become due thereafter.

YOU ARE NOTIFIED:

- a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.
- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. After you file your answers to the following questions, **and after receiving a separate notice or order from the court, MAKE CHECKS PAYABLE AND MAIL TO:** the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to [12-14-1015-16-101](#), et. seq., C.R.S.); the Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to [12-14-1015-16-101](#), et. seq., C.R.S.) at the address below:

Name: _____

Address: _____

PLEASE PUT THE CASE NUMBER (above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Judgment Debtor?

YES NO

b. If YES, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

c. Do you claim any setoff against any property, debt or obligation listed above? YES NO

d. If you answered YES to question c, describe the nature and amount of the setoff claimed: (Attach additional pages if necessary): _____

VERIFICATION

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the foregoing is true and correct.

Name of Garnishee (Print) _____

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country)

(Printed name of Person Answering)

Signature of Person Answering

NOTICE TO JUDGMENT DEBTOR OF EXEMPTION AND PENDING LEVY

This Writ with Notice is a Court order which may cause your property or money to be held and taken to pay a judgment entered against you. You have legal rights which may prevent all or part of your money or property from being taken. That part of the money or property which may not be taken is called "exempt property". A partial list of "exempt property" is shown below, along with the law which may make all or part of your money or property exempt. The purpose of this notice is to tell you about these rights.

PARTIAL LIST OF EXEMPT PROPERTY

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing, jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade and certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, attributed to an earned income tax credit or child tax credit, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.
3. Worker's compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.
8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §231m.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Police Officer's and Firefighter's pension fund payments under Sections 31-30-1117 & 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service retirement benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(1)(s), C.R.S.
21. A Court-ordered child support or maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.
22. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.
- 22-23. Through February 1, 2021, and as further extended by the Administrator of the "Uniform Consumer Credit Code," up to four thousand dollars cumulative in a depository account or accounts in the name of the debtor under Section 13-54-102, C.R.S.

If the money or property which is being withheld from you includes any "exempt property," you must file within 14 days of receiving this notice a written Claim of Exemption with the Clerk of the Court describing what money or property you think is "exempt property" and the reason that it is exempt. YOU MUST USE THE APPROVED FORM attached to this Writ or a copy of it. When you file the claim, you must immediately deliver, by certified mail, return receipt requested, a copy of your claim to the Garnishee (person/place that was garnished) and to the Judgment Creditor's attorney, or if none, to the Judgment Creditor at the address shown on this Writ with Notice. Notwithstanding your right to claim the property as "exempt," no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt.

Once you have properly filed your claim, the court will schedule a hearing within 14 days. The Clerk of the Court will notify you and the Judgment Creditor or attorney of the date and time of the hearing, by telephone, by mail or in person.

When you come to your hearing, you should be ready to explain why you believe your money or property is "exempt property". If you do not appear at the scheduled time, your money or property may be taken by the Court to pay the judgment entered against you.

REMEMBER THAT THIS IS ONLY A PARTIAL LIST OF "EXEMPT PROPERTY"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

You must act quickly to protect your rights. Remember, you only have 14 days after receiving this notice to file your claim of exemption with the Clerk of the Court.

service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

- b. To hold pending court order any personal property owed to or owned by the Judgment Debtor and in your possession or control on the date and time this Writ was served upon you.

YOU ARE NOTIFIED:

- a. This Writ of Garnishment applies to all personal property owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.
- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. After you file your answers to the following questions, **and after receiving a separate notice or order from the court,**

MAKE CHECKS PAYABLE AND MAIL TO: the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to [5-16-101](#)~~42-44-404~~, et. seq., C.R.S.); the Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to ~~42-44-404~~[5-16-101](#), et. seq., C.R.S.) at the address below:

Name: _____
Address: _____

PLEASE PUT THE CASE NUMBER (above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____
Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you:

- a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys to the Judgment Debtor?
 YES NO
- b. If YES, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages is necessary): _____

- c. Do you claim any setoff against any property, debt or obligation listed above?
 YES NO
- d. If you answered YES to question c, describe the nature and amount of the setoff claimed:
(Attach additional pages if necessary): _____

VERIFICATION

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the above answers are true and correct.

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country)

Printed name of Garnishee

Address of Garnishee: _____
City State Zip Code Phone

By: _____
Printed name of Person Answering

Signature of Person Answering

City

State

Zip Code

Phone

By: _____
Printed name of Person Answering

Signature of Person Answering

<input type="checkbox"/> District Court <input type="checkbox"/> County Court _____ County, Colorado Court Address: _____ _____ <hr/> Plaintiff(s)/Petitioner(s): _____ _____ v. Defendant(s)/Respondent(s): _____	<p style="text-align: center;">▲ <u>COURT USE ONLY</u> ▲</p> <hr/> Case Number: _____ <hr/> Division: _____ Courtroom: _____
<u>NOTICE TO JUDGMENT DEBTOR PURSUANT TO §24-33.5-704.3, C.R.S.</u>	

This form is applicable until November 1, 2020, unless extended by the Administrator to a date not later than February 1, 2021.

TO THE JUDGMENT DEBTOR(S):

YOU HAVE THE RIGHT TO TEMPORARILY SUSPEND THIS COLLECTION ACTION IF YOU ARE FACING FINANCIAL HARDSHIP DUE TO THE COVID-19 EMERGENCY.

Judgment Creditor Name: _____

Judgment Creditor Address: _____

Case Number: _____

Phone: _____

The above judgment creditor intends on executing a collection action against you. If you have experienced financial hardship due to the COVID-19 emergency, directly or indirectly, you have the right to suspend temporarily this extraordinary collection action. The suspension is effective until November 1, 2020, or February 1, 2021, if the State of Colorado extends the period of suspension.

To exercise this right, you must notify the judgment creditor that you are experiencing financial hardship due to the COVID-19 emergency. You can provide this notice by phone call or by writing to the creditor at the address shown in this notice. Your notification to the judgment creditor must include your full name (first and last), the case number

identified above and at least one (1) additional piece of the following information: your date of birth, social security number, physical and mailing addresses, or the judgment creditor's internal account number or identifier, if different from the case number designated above. You are not required to provide documentation to support your request.

Note: Requesting the temporary suspension of this extraordinary debt collection action is not a waiver to the obligation to pay or debt forgiveness, Interest may continue to accrue on the judgment debt even while the extraordinary collection actions are suspended.

You may enter into a voluntary repayment plan with the judgment creditor, but you are not required to do so.

CERTIFICATE OF MAILING

I certify that on _____ (date), I mailed, faxed, or hand-delivered a copy of this NOTICE TO JUDGMENT DEBTOR PURSUANT TO §24-33.5-704.3, C.R.S. to the following:

Judgment Debtor

Judgment Debtor's Address: _____

Judgment Debtor's Attorney

Other: _____

Signature of Judgment Creditor

Rule 103. Garnishment

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) - (g) [NO CHANGE]

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings or For Reduction of Withholding Pursuant to Section 13-54-104(2)(a)(I)(D)" (Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.), to the judgment debtor not later than 7 days after the garnishee is served with the writ of continuing garnishment.

(2) [NO CHANGE]

(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings or object and request an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S. A judgment debtor's objection to calculation of exempt earnings or objection and request for an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., shall be in accordance with Section 6 of this rule.

(j) [NO CHANGE]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of garnishment with the clerk of the court and send a copy to the judgment creditor not later than 7 days after the garnishee is served with the writ of continuing garnishment pursuant to section 13-54.5-105(5), C.R.S. . However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall send such response to the attorney or licensed collection agency.

(2) In the event the answer required by Section 1(k)(1) of this rule is filed and served pursuant to section 13-54.5-105(5)(b), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of continuing garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.

(3) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an

attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(4) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., is filed by the judgment debtor within 21 days after the garnishee was served with the writ of continuing garnishment, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) [NO CHANGE]

(m) **Request for accounting of garnished funds by judgment debtor.** Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 – SECTION 5 [NO CHANGE]

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.

(1) [NO CHANGE]

(2) If the judgment debtor's objection to the calculation of exempt earnings is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

(3) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.

(4) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. The judgment debtor may object to the calculation on hardship grounds at any time during the pendency of the garnishment.

(5) The written objection made under Section 6(a)(2) or Section 6(a)(4) of this rule shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(6) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(7) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) - (c) [NO CHANGE]

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6 (a)(2), Section 6(a)(4) and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings of property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) – (3) [NO CHANGE]

(e) [NO CHANGE]

SECTION 7 - SECTION 13 [NO CHANGE]

Rule 403. Garnishment

NOTE: County Court Rule 403 is identical to *C.R.C.P. 103* except for cross references within the County Court Rule to other County Court Rules. Forms used with the County Court are identical to those used with *C.R.C.P. 103*, and because County Court Rule 403 cites to and incorporates C.R.C.P. Forms 26 through 34, they need not be duplicated in the County Court Forms Section.

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1 WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) - (g) [NO CHANGE]

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings that is based on the judgment debtor's last paycheck prior to delivery of the writ of continuing garnishment to the judgment debtor and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings or For Reduction of Withholding Pursuant to Section 13-54-(2)(a)(I)(D)" (Appendix to Chapters 1 to 17AA, Form 28, C.R.C.P.), to the judgment debtor not later than 7 days after the garnishee is served with the writ of continuing garnishment.

(2) [NO CHANGE]

(i) **Objection to Calculation of Amount of Exempt Earnings.** A judgment debtor may object to the calculation of exempt earnings or object and request an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S. A judgment debtor's objection to calculation of exempt earnings or objection and request for an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., shall be in accordance with Section 6 of this rule.

(j) [NO CHANGE]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of garnishment with the clerk of the court and send a copy to the judgment creditor not later than 7 days after the garnishee is served with the writ of continuing garnishment pursuant to section 13-54.5-105(5), C.R.S. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee shall send such response to the attorney or licensed collection agency.

(2) In the event the answer required by Section 1(k)(1) of this rule is filed and served pursuant to section 13-54.5-105(5)(b), C.R.S., the garnishee shall begin garnishment of the disposable earnings of the judgment debtor on the first payday of the judgment debtor that occurs at least 21 days after the garnishee was served with the writ of continuing garnishment or the first payday after the expiration date of any prior effective writ of garnishment that is at least 21 days after the garnishee was served with the writ of continuing garnishment.

(3) Unless payment is made to an attorney or licensed collection agency as provided in paragraph (k)(1), the garnishee shall pay any nonexempt earnings and deliver a calculation

of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(4) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection to the calculation of exempt earnings or objection and request for exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., is filed by the judgment debtor within 21 days after the garnishee was served with the writ of continuing garnishment, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court and a copy is delivered to the garnishee, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 – SECTION 5 [NO CHANGE]

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings or Objection and Request for Exemption of Earnings Pursuant to Section 13-54-104(2)(a)(I)(D), C.R.S., Under Writ of Continuing Garnishment.

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection to the calculation of exempt earnings is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

(3) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall have no obligation to attempt to resolve the issue with the garnishee.

(4) If the judgment debtor objects and requests an exemption of earnings pursuant to section 13-54-104(2)(a)(I)(D), C.R.S., the judgment debtor shall file such objection and request in writing, setting out the grounds for such exemption and request. The judgment debtor may object to the calculation on hardship grounds at any time during the pendency of the garnishment.

(5) The written objection made under Section 6(a)(2) or Section 6(a)(4) of this rule shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17A, Form 28, C.R.C.P.

(6) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq, C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(7) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) - (c) [NO CHANGE]

(d) Objection or Claim of Exemption Within 182 days.

(1) Notwithstanding the provisions of Section 6 (a)(2), Section 6(a)(4) and Section 6 (b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within 182 days from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings or property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) – (3) [NO CHANGE]

(e) [NO CHANGE]

SECTION 7 – SECTION 13 [NO CHANGE]

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ COURT USE ONLY ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
WRIT OF CONTINUING GARNISHMENT	

READ THIS WHOLE DOCUMENT

This writ is in compliance with the requirements of 24-33.5-704.3 and 13-54-102, C.R.S. to initiate or maintain a new extraordinary collection action. Certain provisions of these statutes expire on November 1, 2020 unless extended by the Administrator of the Uniform Consumer Credit Code to a date not later than February 1, 2021.

Judgment Debtor's name, last known physical and mailing addresses or a statement that Judgment Debtor's physical and mailing addresses are not known, and other identifying information: _____

1. Original or Revived Amount of Judgment Entered on _____ (date) for \$ _____
 - a. Effective Garnishment Period
 - 91 days (Judgment entered prior to August 8, 2001)
 - 182 days (Judgment entered on or after August 8, 2001)
2. Plus any Interest Due on Judgment (currently _____ % per annum) \$ _____
3. Taxable Costs (including estimated cost of service of this Writ) \$ _____
4. Less any Amount Paid \$ _____
5. Principal Balance/Total Amount Due and Owing \$ _____

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Print Judgment Creditor's Name

Address: _____

By: _____

Signature (Type Name, Title, Address and Phone)

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:

You are directed to serve **TWO COPIES** of this Writ of Continuing Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE: YOU ARE SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of Court AND mail a completed copy with your answers to the Judgment Creditor or attorney no later than 7 days after you have been served with this writ. **YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To pay any nonexempt earnings to the party designated in "e" below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).
- c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, and a blank Objection to Calculation of the Amount of Exempt Earnings form, and an Explanation Of Wage Garnishment In Colorado to Judgment Debtor on the same day the copy of this Writ and Calculation of the Amount of Exempt Earnings are sent to Judgment Creditor.
- d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.
- e. **MAKE CHECKS PAYABLE AND MAIL TO:** Judgment Creditor named above (only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.)

Name: _____

Address: _____

PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

NOTICE TO GARNISHEE

- a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**
- b. **"Earnings" includes all forms of compensation for Personal Services.** Also read "Notice to Judgment Debtor" below.
- c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.
- d. **If you determine that the judgment debtor is your employee and the Writ of Continuing Garnishment contains all required information, you are required to send the judgment debtor this Writ of Continuing Garnishment and the document attached to it titled "EXPLANATION OF WAGE GARNISHMENT IN COLORADO" on the same day that you send your answer to this Writ of Continuing Garnishment to the judgment creditor.**

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ Case Number: _____

The following questions MUST be answered by you under oath:

- a. Is the Judgment Debtor your employee?

- 1. Yes
- 2. No

- b. Does the Writ of Continuing Garnishment contain: the name of the Judgment Debtor, the last-known physical and mailing addresses of the Judgment Debtor or a statement that the information is not known, the amount of the Judgment, information sufficient to identify the judgment on which the continuing garnishment is based, an Explanation of Wage Garnishment in Colorado?
- 1. Yes
 - 2. No

- c. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):
- 1. WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES NOT INCLUDING TIPS (Earnings)
 - 2. Health, Accident or Disability Insurance Funds or Payments
 - 3. Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)
 - 4. Health insurance coverage provided by you and withheld from the individual's earnings

If you marked any box above, indicate how the Judgment debtor is paid: weekly bi-weekly semi-monthly monthly other

The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ), starting at least twenty-one days after you were served with this Writ of Garnishment: _____

- d. Are the Judgment Debtor's earnings subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended? If so mark the appropriate boxes and list the nature, number, and amounts of these deductions and the relative priority of this Writ of Garnishment (Mark appropriate box(es)):
- 5. Writ of Garnishment for Support (Expected Termination Date: _____)
 - 6. Writ of Continuing Garnishment (Expected Termination Date: _____)
 - 7. Any additional deductions (Expected Termination Date: _____)

e. If in paragraph c. above you marked Box 1 and you did NOT mark either Box 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

f. If in paragraph c. above you marked Box 2, 3, or 4 and you did NOT mark either Box 5, 6, or 7, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 5, 6, or 7, you must complete Calculations beginning with the first pay period following termination of the prior writ(s) that is at least twenty-one days after service of this writ on you. However, there are a number of total exemptions, and you should seek legal advice about such exemptions. **If the earnings are totally exempt, please mark box 8 below:**

8. The earnings are totally exempt because: _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (Each Pay Period)

Gross Earnings for the pay period from _____ thru _____ \$ _____

Less Deductions Required by Law (For Example, Withholding Taxes, FICA, Costs for FORM 26SC R10-20 WRIT OF CONTINUING GARNISHMENT 129

Employer-Provided Health Insurance Withheld From Earnings) - \$ _____

Disposable Earnings (Gross Earnings less Deductions) = \$ _____

Less Statutory Exemption (Use Exemption Chart Below) - \$ _____

Net Amount Subject to Garnishment = \$ _____

Less Wage/Income Assignment(s) During Pay Period (If Any) - \$ _____

Amount to be withheld and paid = \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD Weekly Bi-weekly Semi-monthly Monthly	AMOUNT EXEMPT IS THE GREATER OF: 40 x Minimum Hourly Wage or 80% of Disposable Earnings 80 x Minimum Hourly Wage or 80% of Disposable Earnings 86.67 x Minimum Hourly Wage or 80% of Disposable Earnings 173.3 x Minimum Hourly Wage or 80% of Disposable Earnings
---	--	--

I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings, a blank Objection to Calculation of the Amount of Exempt Earnings form, and an EXPLANATION OF WAGE GARNISHMENT IN COLORADO form to the Judgment Debtor.

Name of Garnishee (Print) _____
 Address _____
 Phone Number _____

 Name of Person Answering (Print)

 Signature of Person Answering

**EXPLANATION OF WAGE GARNISHMENT IN COLORADO
 NOTICE OF GARNISHMENT TO JUDGMENT DEBTOR
 MONEY WILL BE TAKEN FROM YOUR PAY IF YOU FAIL TO ACT**

1. Why am I getting this notice?

You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money.

Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

2. How much do I owe?

The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the Writ of Garnishment. The amount could also go down if you make payments to Creditor.

3. How will the amount I owe be paid?

The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment.

The rules about how much of your pay can be taken are explained in the notice of Colorado Rules About Garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

4. Do I have options?

Yes, you have several options, here are three of them:

- A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.
- B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.
- C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

5. What if I don't do anything?

If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

6. How does garnishment work in Colorado?

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are.

The amount of your disposable earnings that can be garnished is determined by comparing two numbers: (1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under **4. Do I have options?**

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that \$ _____ will be withheld from each paycheck that is subject to garnishment.

COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ DIV./CT. RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S): _____

DEFENDANT(S): _____

Gross Pay for _____ thru _____ \$ _____
Less Deductions Required by Law (For Example, Withholding Taxes ,FICA,
Costs for Employer-Provided Health Insurance Withheld From Earnings) - \$ _____
Disposable Earnings (gross earnings less deductions) = \$ _____
Less Statutory Exemption (Use Exemption Chart Below) - \$ _____
Net Amount Subject to Garnishment = \$ _____
Less Wage/Income Assignment (If Any) - \$ _____
AMOUNT PAID = \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ DIV./CT. RM. _____ JUDGMENT DEBTOR'S NAME _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS WORKSHEET

PLAINTIFF(S): _____

DEFENDANT(S): _____

This form is effective until November 1, 2020 unless extended by the Administrator of the Uniform Consumer Credit Code to a date not later than February 1, 2021.

Gross Pay for _____ thru _____ \$ _____
Less Deductions Required by Law (For Example, Withholding Taxes ,FICA,
Costs for Employer-Provided Health Insurance Withheld From Earnings) - \$ _____
Disposable Earnings (gross earnings less deductions) = \$ _____
Less Statutory Exemption (Use Exemption Chart Below) - \$ _____
Net Amount Subject to Garnishment = \$ _____
Less Wage/Income Assignment (If Any) - \$ _____
AMOUNT PAID = \$ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ Signature: _____

CUT ALONG THE DOTTED LINE AND MAIL WITH EACH CHECK TO THE PARTY DESIGNATED IN PARAGRPH "e" ON FRONT OF WRIT OF CONTINUING GARNISHMENT.

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court address: _____ Plaintiff(s): _____ v. Defendant(s): _____	
Judgment Debtor's Attorney or Judgment Debtor (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty.Reg. #: _____	▲ COURT USE ONLY ▲ Case Number: _____ Division _____ Courtroom _____
OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS OR FOR REDUCTION OF WITHOLDING PURSUANT TO SUBSECTION 13-54-104(2)(a)(I)(D)	

Instructions to Judgment Debtor: Use this form to object to the calculations of your exempt earnings.

Name: _____ Phone Number: _____
 Street Address: _____
 Mailing Address, if different: _____
 City: _____ State: _____ Zip Code: _____

EXEMPTION CHART (“Minimum Hourly Wage” means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	40 x Minimum Hourly Wage or 80% of Disposable Earnings
	Bi-Weekly	80 x Minimum Hourly Wage or 80% of Disposable Earnings
	Semi-monthly	86.67 x Minimum Hourly Wage or 80% of Disposable Earnings
	Monthly	173.3 x Minimum Hourly Wage or 80% of Disposable Earnings

1. Judgment Debtor's objection to the Garnishee's Calculation of the Amount of Exempt Earnings because I believe that the correct calculation is:

Gross Earnings for My Pay Period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA, Costs for Employer-Provided Health Insurance Withheld From Earnings)	
	- \$ _____
Disposable Earnings (Gross Earnings Less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart on Writ)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
Amount which should be withheld	= \$ _____

OR

2. The earnings garnished are pension or retirement benefits/deferred compensation/health, accident or disability insurance and they are totally exempt because:

I understand that I must make a good faith effort to resolve my dispute with the Garnishee.

I have have not attempted to resolve this dispute with the Garnishee.

Name of Person I Talked to: _____

Position: _____ Phone Number: _____

OR

3. A greater portion of my disposable earnings should be exempt from garnishment for the support of me or my family that is supported in whole or in part by me. I request a court hearing to determine whether my earnings subject to garnishment, together with any other income received by my family, are insufficient to pay the actual and necessary living expenses of me and/or my family based upon proof of such expenses incurred during the 60 days prior to the hearing. In support of this I state the following:*

Gross Monthly Income		Monthly Expenses	
Self (wages, salary, commission)	\$	Rent or Mortgage	\$
Spouse/Partner, Other Household Members	\$	Groceries	\$
Parents (if same household)	\$	Utilities	\$
Unemployment Benefits	\$	Clothing	\$
Social Security/Retirement Funds	\$	Maintenance/Alimony and/or Child Support	\$
Maintenance/Alimony	\$	Medical/Dental	\$
Other Income (identify)	\$	Other Expenses (identify)	\$
Other Income (identify)	\$	Other Expenses (identify)	\$
Total Income	\$	Total Expenses	\$

*You are not required to use this form but will have to prove to the court that you are entitled to claim this exemption.

Debtor's Notice to Garnishee: Even though I am filing this Objection, you are directed to send my nonexempt earnings to the Court at the address noted instead of to the party designated in paragraph "e" on the front of the Writ of Continuing Garnishment. The Court will hold my nonexempt earnings in its registry until my Objection is resolved.

I certify that the above is correct to the best of my knowledge and belief and that I sent a copy of this document by certified mail (return receipt requested) to both the Garnishee and to the Judgment Creditor, or if the Judgment Creditor is represented by Counsel, certified mail (return receipt requested) to the Judgment Creditor's Attorney or E-Service to the Judgment Creditor's Attorney.

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Garnishee

Address: _____

Judgment Creditor or Attorney

Address: _____

Signature of Judgment Debtor or
Judgment Debtor's Counsel and Reg. Number

WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:

You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:

YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To hold pending court order the personal property of any kind (other than earnings of a natural person) in your possession or control, including the debts, credits, choses in action or money owed to the Judgment Debtor whether they are due at the time of the service of the writ or are to become due thereafter.

YOU ARE NOTIFIED:

- a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.
- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. After you file your answers to the following questions, **and after receiving a separate notice or order from the court, MAKE CHECKS PAYABLE AND MAIL TO:** the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); the Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.) at the address below:

Name: _____

Address: _____

PLEASE PUT THE CASE NUMBER (above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Judgment Debtor?

YES NO

b. If YES, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

c. Do you claim any setoff against any property, debt or obligation listed above? YES NO

d. If you answered YES to question c, describe the nature and amount of the setoff claimed: (Attach additional pages if necessary): _____

VERIFICATION

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the foregoing is true and correct.

Name of Garnishee (Print) _____

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country)

(Printed name of Person Answering)

Signature of Person Answering

NOTICE TO JUDGMENT DEBTOR OF EXEMPTION AND PENDING LEVY

This Writ with Notice is a Court order which may cause your property or money to be held and taken to pay a judgment entered against you. You have legal rights which may prevent all or part of your money or property from being taken. That part of the money or property which may not be taken is called "exempt property". A partial list of "exempt property" is shown below, along with the law which may make all or part of your money or property exempt. The purpose of this notice is to tell you about these rights.

PARTIAL LIST OF EXEMPT PROPERTY

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing, jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade and certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, attributed to an earned income tax credit or child tax credit, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.
3. Worker's compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.
8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §231m.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Police Officer's and Firefighter's pension fund payments under Sections 31-30-1117 & 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service retirement benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(1)(s), C.R.S.
21. A Court-ordered child support or maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.
22. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.
23. Through February 1, 2021, , " up to four thousand dollars cumulative in a depository account or accounts in the name of the debtor under Section 13-54-102, C.R.S.

If the money or property which is being withheld from you includes any "exempt property," you must file within 14 days of receiving this notice a written Claim of Exemption with the Clerk of the Court describing what money or property you think is "exempt property" and the reason that it is exempt. YOU MUST USE THE APPROVED FORM attached to this Writ or a copy of it. When you file the claim, you must immediately deliver, by certified mail, return receipt requested, a copy of your claim to the Garnishee (person/place that was garnished) and to the Judgment Creditor's attorney, or if none, to the Judgment Creditor at the address shown on this Writ with Notice. Notwithstanding your right to claim the property as "exempt," no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt.

Once you have properly filed your claim, the court will schedule a hearing within 14 days. The Clerk of the Court will notify you and the Judgment Creditor or attorney of the date and time of the hearing, by telephone, by mail or in person.

When you come to your hearing, you should be ready to explain why you believe your money or property is "exempt property". If you do not appear at the scheduled time, your money or property may be taken by the Court to pay the judgment entered against you.

REMEMBER THAT THIS IS ONLY A PARTIAL LIST OF "EXEMPT PROPERTY"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

You must act quickly to protect your rights. Remember, you only have 14 days after receiving this notice to file your claim of exemption with the Clerk of the Court.

service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

- b. To hold pending court order any personal property owed to or owned by the Judgment Debtor and in your possession or control on the date and time this Writ was served upon you.

YOU ARE NOTIFIED:

- a. This Writ of Garnishment applies to all personal property owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.
- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. After you file your answers to the following questions, **and after receiving a separate notice or order from the court,**

MAKE CHECKS PAYABLE AND MAIL TO: the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); the Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.) at the address below:

Name: _____
Address: _____

PLEASE PUT THE CASE NUMBER (above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: _____
Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you:

- a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys to the Judgment Debtor?
 YES NO
- b. If YES, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages is necessary): _____

- c. Do you claim any setoff against any property, debt or obligation listed above?
 YES NO
- d. If you answered YES to question c, describe the nature and amount of the setoff claimed:
(Attach additional pages if necessary): _____

VERIFICATION

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the above answers are true and correct.

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country)

Printed name of Garnishee

Address of Garnishee: _____
City State Zip Code Phone

By: _____
Printed name of Person Answering

Signature of Person Answering

- a. To answer the following questions under oath and file your answers with the Clerk of the Court (**AND** to mail a completed copy with your answer to the Plaintiff in Attachment or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To hold pending court order any personal property (other than earnings of a natural person) owed to or owned by the Defendant in Attachment and in your possession or control on the date and time this Writ was served upon you.

YOU ARE NOTIFIED:

- a. This Writ applies to all personal property (other than earnings of a natural person) owed to or owned by the Defendant in Attachment and in your possession or control as of the date and time this Writ was served upon you.
- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. If you are ordered to pay funds to the Court, tender your check for the amount ordered **PAYABLE TO THE CLERK OF THE**
 _____ **COURT AT** _____, **CO** _____

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Defendant in Attachment's Name: _____ **Case Number:** _____

The following questions **MUST** be answered by you:

- a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Defendant in Attachment or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Defendant in Attachment? **YES** **NO**
- b. If **YES to question a**, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

- c. Do you claim any setoff against any property, debt or obligation listed above? **YES** **NO**
- d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed:
 (Attach additional pages if necessary): _____

VERIFICATION

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the above answers are true and correct.

Executed on the _____ day of _____, _____, at _____
 (date) (month) (year) (city or other location, and state OR country)

 Printed name of Garnishee

Address of Garnishee: _____

City

State

Zip Code

Phone

By: _____
Printed name of Person Answering

Signature of Person Answering

<input type="checkbox"/> District Court <input type="checkbox"/> County Court _____ County, Colorado Court Address: <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	 ▲ COURT USE ONLY ▲ <hr/> Case Number: Division: Courtroom:
NOTICE TO JUDGMENT DEBTOR PURSUANT TO §24-33.5-704.3, C.R.S.	

This form is applicable until November 1, 2020, unless extended by the Administrator to a date not later than February 1, 2021.

TO THE JUDGMENT DEBTOR(S):

**YOU HAVE THE RIGHT TO TEMPORARILY SUSPEND THIS
COLLECTION ACTION IF YOU ARE FACING FINANCIAL
HARDSHIP DUE TO THE COVID-19 EMERGENCY.**

Judgment Creditor Name: _____
Judgment Creditor Address: _____
Case Number: _____
Phone: _____

The above judgment creditor intends on executing a collection action against you. If you have experienced financial hardship due to the COVID-19 emergency, directly or indirectly, you have the right to suspend temporarily this extraordinary collection action. The suspension is effective until November 1, 2020, or February 1, 2021, if the State of Colorado extends the period of suspension.

To exercise this right, you must notify the judgment creditor that you are experiencing financial hardship due to the COVID-19 emergency. You can provide this notice by phone call or by writing to the creditor at the address shown in this notice. Your notification to the judgment creditor must include your full name (first and last), the case number

identified above and at least one (1) additional piece of the following information: your date of birth, social security number, physical and mailing addresses, or the judgment creditor's internal account number or identifier, if different from the case number designated above. You are not required to provide documentation to support your request.

Note: Requesting the temporary suspension of this extraordinary debt collection action is not a waiver to the obligation to pay or debt forgiveness, Interest may continue to accrue on the judgment debt even while the extraordinary collection actions are suspended.

You may enter into a voluntary repayment plan with the judgment creditor, but you are not required to do so.

CERTIFICATE OF MAILING

I certify that on _____ (date), I mailed, faxed, or hand-delivered a copy of this NOTICE TO JUDGMENT DEBTOR PURSUANT TO §24-33.5-704.3, C.R.S. to the following:

Judgment Debtor

Judgment Debtor's Address:

 Judgment Debtor's Attorney

Other: _____

Signature of Judgment Creditor

Amended and Adopted by the Court, En Banc, September 10, 2020, effective October 1, 2020.

By the Court:

**Richard L. Gabriel
Justice, Colorado Supreme Court**

Rule 5. Service and Filing of Pleadings and Other Papers

(a)-(f) [NO CHANGE]

(g) Privacy Protection for Filings

- (1) Redacted Filings. Unless otherwise required by statute or court order, a party or nonparty filing an electronic or paper document with the court shall redact an individual's (A) social security number; (B) taxpayer identification number; (C) financial-account number; (D) driver's license number; and (E) other personal identification number, including but not limited to, passport number, student identification number, or state identification number. In addition, a party or nonparty filing an electronic or paper document with the court that includes a person's date of birth may only include the year of the person's birth, and if the document includes the name of a person known to be a minor shall identify the minor only by the minor's initials.
- (2) Filings Made Under Seal. The court may order that a filing made under seal be made without redaction. The court may later unseal the filing or order the party or nonparty who made the filing to file a redacted version for the public record.
- (3) Option for Additional Unredacted Filing Under Seal. A party or nonparty making a redacted filing may also file, without seeking leave of court, an unredacted copy under seal. The court shall retain the unredacted copy as part of the record.
- (4) Sanctions. A court may impose sanctions for a violation of this rule.

Rule 5. Service and Filing of Pleadings and Other Papers

(a)-(f) [NO CHANGE]

(g) Privacy Protection for Filings

- (1) Redacted Filings. Unless otherwise required by statute or court order, a party or nonparty filing an electronic or paper document with the court shall redact an individual's (A) social security number; (B) taxpayer identification number; (C) financial-account number; (D) driver's license number; and (E) other personal identification number, including but not limited to, passport number, student identification number, or state identification number. In addition, a party or nonparty filing an electronic or paper document with the court that includes a person's date of birth may only include the year of the person's birth, and if the document includes the name of a person known to be a minor shall identify the minor only by the minor's initials.
- (2) Filings Made Under Seal. The court may order that a filing made under seal be made without redaction. The court may later unseal the filing or order the party or nonparty who made the filing to file a redacted version for the public record.
- (3) Option for Additional Unredacted Filing Under Seal. A party or nonparty making a redacted filing may also file, without seeking leave of court, an unredacted copy under seal. The court shall retain the unredacted copy as part of the record.
- (4) Sanctions. A court may impose sanctions for a violation of this rule.

Rule 305. Service and Filing of Pleadings and Other Papers

(a)-(f) [NO CHANGE]

(g) Privacy Protections for Filings

- (1) Redacted Filings. Unless otherwise required by statute or court order, a party or nonparty filing an electronic or paper document with the court shall redact an individual's (A) social security number; (B) taxpayer identification number; (C) financial-account number; (D) driver's license number; and (E) other personal identification number, including but not limited to, passport number, student identification number, or state identification number. In addition, a party or nonparty filing an electronic or paper document with the court that includes a person's date of birth may only include the year of the person's birth, and if the document includes the name of a person known to be a minor shall identify the minor only by the minor's initials.
- (2) Filings Made Under Seal. The court may order that a filing made under seal be made without redaction. The court may later unseal the filing or order the party or nonparty who made the filing to file a redacted version for the public record.
- (3) Option for Additional Unredacted Filing Under Seal. A party or nonparty making a redacted filing may also file a motion for leave to file an unredacted copy of the filing under seal. If the motion is granted, the court shall retain the unredacted copy as part of the record.
- (4) Sanctions. A court may impose sanctions for a violation of this rule.

Rule 305. Service and Filing of Pleadings and Other Papers

(a)-(f) [NO CHANGE]

(g) Privacy Protections for Filings

- (1) Redacted Filings. Unless otherwise required by statute or court order, a party or nonparty filing an electronic or paper document with the court shall redact an individual's (A) social security number; (B) taxpayer identification number; (C) financial-account number; (D) driver's license number; and (E) other personal identification number, including but not limited to, passport number, student identification number, or state identification number. In addition, a party or nonparty filing an electronic or paper document with the court that includes a person's date of birth may only include the year of the person's birth, and if the document includes the name of a person known to be a minor shall identify the minor only by the minor's initials.
- (2) Filings Made Under Seal. The court may order that a filing made under seal be made without redaction. The court may later unseal the filing or order the party or nonparty who made the filing to file a redacted version for the public record.
- (3) Option for Additional Unredacted Filing Under Seal. A party or nonparty making a redacted filing may also file a motion for leave to file an unredacted copy of the filing under seal. If the motion is granted, the court shall retain the unredacted copy as part of the record.
- (4) Sanctions. A court may impose sanctions for a violation of this rule.

Rule 16. Case Management and Trial Management

(a) – (b)(17) [NO CHANGE]

(18) Notices of Related Cases. The proposed order shall state whether any notices of related cases, pursuant to Rule 121, Section 1-9, have been filed.

(198) 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) – end [NO CHANGE]

Rule 16. Case Management and Trial Management

(a) – (b)(17) [NO CHANGE]

(18) Notices of Related Cases. The proposed order shall state whether any notices of related cases, pursuant to Rule 121, Section 1-9, have been filed.

(19) 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) – end [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1 to 1 – 7 [NO CHANGE]

Section 1 – 8 CONSOLIDATION

A party seeking consolidation shall file a motion to consolidate in each case sought to be consolidated. The motion shall be determined by the court in the case first filed in accordance with Practice Standard § 1-15. If consolidation is ordered, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases placed together under that case number, unless otherwise ordered by the court. Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.

Section 1 – 9. ~~MULTI-DISTRICT LITIGATION~~ RELATED CASES

~~Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.~~

1. A party to a civil case shall file a notice identifying all related cases of which the party has actual knowledge.
2. Related cases are civil, criminal, or other proceedings that: a) involve one or more of the same parties and common questions of fact; and b) are pending in any state or federal court or were terminated within the previous 12 months.
3. A party shall file the required notice at the time of its first pleading under Rule 7(a) or its first motion under Rule 12(b).
4. A party shall promptly file a supplemental notice of any change in the information required under this rule.

COMMITTEE COMMENT

The purpose of this Practice Standard is to afford notice of related state or federal cases that are pending or were recently terminated. Any actions to be taken following such notice are left to the parties and the court.

Section 1 – 10 to 1 – 26 [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a) – (c) [NO CHANGE]

Section 1 – 1 to 1 – 7 [NO CHANGE]

Section 1 – 8 CONSOLIDATION

A party seeking consolidation shall file a motion to consolidate in each case sought to be consolidated. The motion shall be determined by the court in the case first filed in accordance with Practice Standard § 1-15. If consolidation is ordered, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases placed together under that case number, unless otherwise ordered by the court. Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.

Section 1 – 9. RELATED CASES

1. A party to a civil case shall file a notice identifying all related cases of which the party has actual knowledge.
2. Related cases are civil, criminal, or other proceedings that: a) involve one or more of the same parties and common questions of fact; and b) are pending in any state or federal court or were terminated within the previous 12 months.
3. A party shall file the required notice at the time of its first pleading under Rule 7(a) or its first motion under Rule 12(b).
4. A party shall promptly file a supplemental notice of any change in the information required under this rule.

COMMITTEE COMMENT

The purpose of this Practice Standard is to afford notice of related state or federal cases that are pending or were recently terminated. Any actions to be taken following such notice are left to the parties and the court.

Section 1 – 10 to 1 – 26 [NO CHANGE]

An Act

HOUSE BILL 20-1009

BY REPRESENTATIVE(S) Jackson, Arndt, Benavidez, Bird, Buckner, Coleman, Exum, Froelich, Gonzales-Gutierrez, Gray, Herod, Hooton, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, Lontine, McCluskie, Melton, Michaelson Jenet, Roberts, Singer, Sirota, Sullivan, Titone, Weissman; also SENATOR(S) Winter, Bridges, Fenberg, Fields, Foote, Gonzales, Hansen, Lee, Moreno, Pettersen, Rodriguez, Story, Todd, Williams A., Garcia.

CONCERNING SUPPRESSING COURT RECORDS OF EVICTION PROCEEDINGS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 13-40-110.5 as follows:

13-40-110.5. Automatic suppression of court records - definition.

(1) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "SUPPRESSED COURT RECORD" MEANS A COURT RECORD THAT IS ACCESSIBLE ONLY TO JUDGES; COURT STAFF; A PARTY TO THE CASE AND, IF REPRESENTED, THE PARTY'S ATTORNEYS; AUTHORIZED JUDICIAL DEPARTMENT STAFF; AND A PERSON WITH A VALID COURT ORDER AUTHORIZING ACCESS TO THE COURT RECORD.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(2) UPON THE COMMENCEMENT OF AN ACTION PURSUANT TO THIS ARTICLE 40, ANY COURT RECORD OF THE ACTION IS A SUPPRESSED COURT RECORD.

(3) WHEN AN ORDER GRANTING THE PLAINTIFF POSSESSION OF THE PREMISES IS ENTERED IN AN ACTION TO WHICH THIS SECTION APPLIES, THE RECORD IS NO LONGER A SUPPRESSED COURT RECORD AND THE COURT SHALL MAKE THE RECORD AVAILABLE TO THE PUBLIC UNLESS THE PARTIES TO THE ACTION AGREE THAT THE RECORD SHOULD REMAIN SUPPRESSED. IF THE PARTIES AGREE THAT THE RECORD SHOULD REMAIN SUPPRESSED, THE RECORD REMAINS A SUPPRESSED COURT RECORD.

(4) THE NAMES OF THE PARTIES INCLUDED IN A COURT RECORD THAT IS SUPPRESSED PURSUANT TO THIS SECTION MAY BE USED BY THE COURT FOR ADMINISTRATIVE PURPOSES, BUT THE COURT SHALL NOT, FOR ANY REASON, PUBLISH THE NAMES OF THE PARTIES ONLINE.

SECTION 2. In Colorado Revised Statutes, 13-40-111, **add** (4) as follows:

13-40-111. Issuance and return of summons. (4) A SUMMONS ISSUED PURSUANT TO THIS SECTION MUST CONTAIN A STATEMENT IN BOLD-FACED TYPE NOTIFYING THE DEFENDANT THAT:

(a) ANY RECORDS ASSOCIATED WITH THE ACTION ARE SUPPRESSED AND NOT ACCESSIBLE TO THE PUBLIC UNTIL AN ORDER IS ENTERED GRANTING THE PLAINTIFF POSSESSION OF THE PREMISES; AND

(b) IF THE PLAINTIFF IS GRANTED POSSESSION OF THE PREMISES, THE COURT RECORDS MAY REMAIN PRIVATE IF BOTH PARTIES AGREE TO SUPPRESS THE RECORDS.

SECTION 3. In Colorado Revised Statutes, 38-12-202.5, **add** (5) as follows:

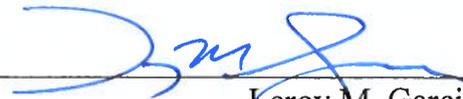
38-12-202.5. Action for termination. (5) THE PROVISIONS OF SECTION 13-40-110.5 CONCERNING SUPPRESSION OF COURT RECORDS APPLY TO AN ACTION FOR TERMINATION.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect December 1, 2020; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect December 1, 2020, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

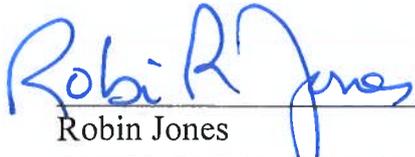
(2) This act applies to actions commenced on or after the applicable effective date of this act.



KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Leroy M. Garcia
PRESIDENT OF
THE SENATE

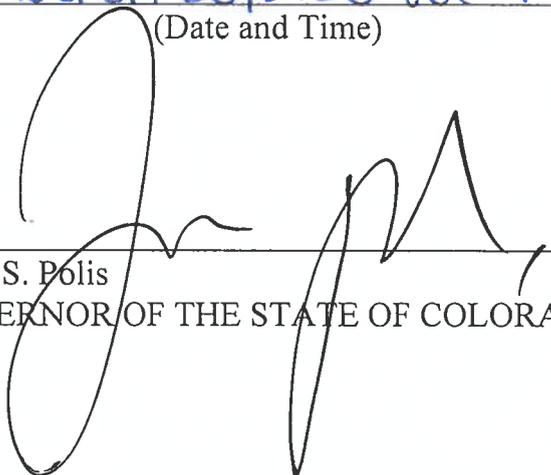


Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED March 20, 2020 at 12:48 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

County Court _____ County, Colorado Court Address: 		▲ COURT USE ONLY ▲
Plaintiff(s): v. Defendant(s): <input type="checkbox"/> Any and all other occupants:		
Attorney or Party Without Attorney (Name and Address): 		Case Number:
Phone Number: FAX Number:	E-mail: Atty. Reg. #:	Division Courtroom
SUMMONS IN FORCIBLE ENTRY AND UNLAWFUL DETAINER		

To the above-named Defendant(s), take notice that:

1. On _____, 20____, at _____ o'clock __M. in the _____ County Court, _____, Colorado, the Court may be asked to enter judgment against you as set forth in the complaint.
2. A copy of the complaint against you and an answer form that you must use if you file an answer are attached.
3. If you do not agree with the complaint, then you must either:
 - a. Go to the Court, located at: _____, Colorado, at the above date and time and file an answer stating any legal reason you have why judgment should not be entered against you, **OR**
 - b. File the answer with the Court before that date and time.
4. When you file your answer, you must pay a filing fee to the Clerk of the Court.
5. If you file an answer, you must personally serve or mail a copy to the Plaintiff(s) or the attorney who signed the complaint.
6. If you do not file with the Court, at or before the time for appearance specified in this summons, an answer to the complaint setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff(s) is (are) entitled.
7. If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises. In addition to filing an answer, you are required to complete an Affidavit (JDF 109) to support the amount you will need to pay into the registry of the Court.
8. If you want a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee.
9. If you want to file an answer or request a jury trial and you are indigent, you must appear at the above date and time, fill out a financial affidavit, and ask the Court to waive the fee.
10. Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the plaintiff possession of the premises.
- 9.11. If the plaintiff is granted possession of the premises, the court records may remain private if both parties agree to suppress the records.

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Dated at _____, Colorado, this _____ day of _____ 20 ____.

Clerk of the Court

By: _____
Deputy Clerk

Attorney for Plaintiff(s) (if applicable)

Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s)

This Summons is issued pursuant to §13-40-111, C.R.S. A copy of the Complaint together with a blank answer form must be served with this Summons. This form should be used only for actions filed under Colorado's Forcible Entry and Detainer Act.

To the clerk: If this Summons is issued by the Clerk of the Court, the signature block for the clerk, deputy and the seal of the Court should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

- By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
- By checking this box, I am acknowledging that I have made a change to the original content of this form.

CERTIFICATE OF MAILING

I/we, the undersigned Plaintiff(s) (or agent for Plaintiff(s)), certify that on _____ (date), the date on which the Summons, Complaint, and Answer were filed, I/we mailed a copy of the Summons/Alias Summons, a copy of the Complaint, and Answer form by postage prepaid, first class mail, to _____, the Defendant(s) at the following address(es): _____.

Plaintiff(s)/Agent for Plaintiff(s)

Section 13-40-111 Colorado Revised Statutes, as amended.

13-40-111. Issuance and return of summons.

(1) Upon filing the complaint as provided in §13-40-110, C.R.S., the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons shall command the Defendant to appear before the Court at a place named in such summons and at a time and on a day which shall be not less than seven days nor more than fourteen days from the day of issuing the same to answer the complaint of Plaintiff. The summons shall also contain a statement addressed to the Defendant stating: "If you fail to file with the Court, at or before the time for appearance specified in the summons, an answer to the complaint setting forth the grounds upon which you base your claim or possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff is entitled". If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises.

13-40-112. Service.

- (1) Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons.
- (2) If personal service cannot be had upon the Defendant by a person qualified under the Colorado Rules of Civil Procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition thereto, the Plaintiff shall mail, no later than the next day following the day on which he/she files the

complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the Defendant at the premises by postage prepaid, first class mail.

(3) Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

County Court _____ County, Colorado Court Address:	▲ COURT USE ONLY ▲
Plaintiff(s): v. Defendant(s): <input type="checkbox"/> Any and all other occupants:	
Attorney or Party Without Attorney (Name and Address):	Case Number:
Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Division _____ Courtroom _____
SUMMONS IN FORCIBLE ENTRY AND UNLAWFUL DETAINER	

To the above-named Defendant(s), take notice that:

1. On _____, 20____, at _____ o'clock__M. in the _____ County Court, _____, Colorado, the Court may be asked to enter judgment against you as set forth in the complaint.
2. A copy of the complaint against you and an answer form that you must use if you file an answer are attached.
3. If you do not agree with the complaint, then you must either:
 - a. Go to the Court, located at: _____, Colorado, at the above date and time and file an answer stating any legal reason you have why judgment should not be entered against you, **OR**
 - b. File the answer with the Court before that date and time.
4. When you file your answer, you must pay a filing fee to the Clerk of the Court.
5. If you file an answer, you must personally serve or mail a copy to the Plaintiff(s) or the attorney who signed the complaint.
6. If you do not file with the Court, at or before the time for appearance specified in this summons, an answer to the complaint setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff(s) is (are) entitled.
7. If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises. In addition to filing an answer, you are required to complete an Affidavit (JDF 109) to support the amount you will need to pay into the registry of the Court.
8. If you want a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee.
9. If you want to file an answer or request a jury trial and you are indigent, you must appear at the above date and time, fill out a financial affidavit, and ask the Court to waive the fee.
10. **Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the plaintiff possession of the premises.**
11. **If the plaintiff is granted possession of the premises, the court records may remain private if both parties agree to suppress the records.**

Dated at _____, Colorado, this _____ day of _____ 20 ____.

Clerk of the Court

By: _____
Deputy Clerk

Attorney for Plaintiff(s) (if applicable)

Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s)

This Summons is issued pursuant to §13-40-111, C.R.S. A copy of the Complaint together with a blank answer form must be served with this Summons. This form should be used only for actions filed under Colorado's Forcible Entry and Detainer Act.

To the clerk: If this Summons is issued by the Clerk of the Court, the signature block for the clerk, deputy and the seal of the Court should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

- By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
- By checking this box, I am acknowledging that I have made a change to the original content of this form.

CERTIFICATE OF MAILING

I/we, the undersigned Plaintiff(s) (or agent for Plaintiff(s)), certify that on _____(date), the date on which the Summons, Complaint, and Answer were filed, I/we mailed a copy of the Summons/Alias Summons, a copy of the Complaint, and Answer form by postage prepaid, first class mail, to _____, the Defendant(s) at the following address(es):
_____.

Plaintiff/(s)Agent for Plaintiff(s)

Section 13-40-111 Colorado Revised Statutes, as amended.

13-40-111. Issuance and return of summons.

(1) Upon filing the complaint as provided in §13-40-110, C.R.S., the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons shall command the Defendant to appear before the Court at a place named in such summons and at a time and on a day which shall be not less than seven days nor more than fourteen days from the day of issuing the same to answer the complaint of Plaintiff. The summons shall also contain a statement addressed to the Defendant stating: "If you fail to file with the Court, at or before the time for appearance specified in the summons, an answer to the complaint setting forth the grounds upon which you base your claim or possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the Plaintiff is entitled". If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises.

13-40-112. Service.

(1) Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons.

(2) If personal service cannot be had upon the Defendant by a person qualified under the Colorado Rules of Civil Procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition thereto, the Plaintiff shall mail, no later than the next day following the day on which he/she files the

complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the Defendant at the premises by postage prepaid, first class mail.

(3) Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

FW Water Court Committee - proposed changes to the Civil Rules.txt
From: gabriel, richard
Sent: Saturday, July 25, 2020 1:47 PM
To: berger, michael; michaels, kathryn
Subject: FW: Water Court Committee - proposed changes to the Civil Rules
Attachments: Memo -Water Committee proposal to Civil Rules Committee re CRCP 16 and 26.pdf;
2020.05.01 Water Court Committee Memo to CBA Water Law Section.pdf

Dear Mike and Kathryn-

It seems like all of the other committees are anxious to send the Civil Rules Committee some work. See the email below and the attachments from Justice Márquez with proposed changes to C.R.C.P. 16, 16.1, and 26 that the Water Rules Committee is asking the Civil Rules Committee to consider. I do not see these as urgent rules, and I believe that they can be taken up in the ordinary course.

Thanks!

Rich

Richard L. Gabriel
Justice, Colorado Supreme Court
2 East 14th Avenue
Denver, Colorado 80203
(720) 625-5440
richard.gabriel@judicial.state.co.us

From: márquez, monica <monica.marquez@judicial.state.co.us>
Sent: Friday, July 24, 2020 4:30 PM
To: gabriel, richard <richard.gabriel@judicial.state.co.us>
Subject: Water Court Committee - proposed changes to the Civil Rules

Rich,
As I mentioned a while back, the Water Court Committee has been discussing proposed changes to C.R.C.P. 16, 16.1, and 26 to create presumptive case management rules for a small class of "water law" proceedings that are not initiated under section 37-92-302, C.R.S. The absence of presumptive case management rules for such proceedings has caused some confusion for courts and parties. I'm attaching a cover memo and a May 2020 memo that was sent to the Water Law Section of the CBA explaining the proposed changes. These proposals have been vetted by the Water Court Committee, the water judges, and the water bar. On behalf of the Water Court Committee, I am now

Page 1

FW Water Court Committee - proposed changes to the Civil Rules.txt
passing
them along to the Civil Rules Committee for consideration. Please let me know if
you
have any questions.

Thanks,
Monica

Justice Monica M. Márquez
Colorado Supreme Court
2 East 14th Ave.
Denver, CO 80203
(720) 625-5450
monica.marquez@judicial.state.co.us

MEMORANDUM

TO: The Civil Rules Committee

FROM: Justice Márquez

RE: Proposed revisions to C.R.C.P. 16(a), 16.1(b)(1), and 26(a) for “water law” cases

DATE: July 24, 2020

Civil Rules Committee members,

Over the past year, the Water Court Committee of the supreme court has discussed the language of C.R.C.P. 16 and 26 and how that language impacts certain water law cases before our courts. In late June of this year, the Water Court Committee voted to recommend changes to these rules as well as Rule 11 of the Uniform Local Rules for All State Water Court Divisions (“U.L.R.”). We ask that the Civil Rules Committee review the proposal and make a recommendation to our court.

The Water Court Committee’s proposal amends the language in C.R.C.P. 16(a), 16.1(b)(1), and 26(a). Each of those sections specifically excludes application of the rule to “water law” proceedings, a term that is not defined. The current U.L.R. apply to specific statutory proceedings and do not apply to all water law proceedings. Thus, for water proceedings initiated outside of those statutory provisions, there are no presumptive case management rules, which has caused confusion for courts and parties. The Water Court Committee’s proposal amends language in the U.L.R. as well as the civil rules to clarify which actions are covered by the civil rules and which are covered by the U.L.R.

This proposal has been vetted with the water bar and water judges. The Committee discussed at length whether C.R.C.P. 16.1 is the appropriate default rule for these cases, and ultimately decided, through a vote, that it is.

The members of the water court committee who worked on this proposal will be available to make a presentation or to answer questions. Thank you in advance for your consideration of this matter.

May 1, 2020

MEMORANDUM

TO: Water Law Section
Colorado Bar Association

FROM: Water Court Committee
Colorado Supreme Court

RE: Request for any comments on proposed changes to C.R.C.P. 16, 16.1, and 26, U.L.R. 11, and U.L.R. Note

Need for Proposed Changes and Request for Comments

After review and discussion by the Water Court Committee, and review and conferral with the water judges and referees of the seven Water Divisions, the Committee is considering changes to the above-referenced rules to address the lack of presumptive case management rules for a certain small class of “water law” proceedings *not* initiated under section 37-92-302, C.R.S. Any proposed changes to the Colorado Rules of Civil Procedure will also require subsequent review and approval of the Supreme Court’s Civil Rules Committee as well as the Supreme Court.

The proposed changes under consideration are shown through strikethrough and new language in italics at the end of this memorandum. The Water Court Committee is requesting any comments members of the Water Law Section may have on the proposed changes on or before May 15, 2020. Comments should be sent to Andrew Rottman, Counsel to Chief Justice Nathan B. Coats at andrew.rottman@judicial.state.co.us.

The current Uniform Local Rules of All State Water Court Divisions (“U.L.R.”) focus on water court applications under section 37-92-302 and do not appear designed for a small class of proceedings identified in this memorandum. Meanwhile, the current wording in C.R.C.P. 16(a), 16.1(b)(1), and 26(a) excludes all “water law” proceedings, except as either approved by the court or stipulated by the parties. Thus, the current rules do not provide clear presumptive case management rules for the smaller class of cases, which may cause unnecessary communications among the parties and the judges as well as needless costs, delays, and case management proceedings. The proposed changes do not affect a judge’s discretion to approve departures from presumptive case management rules on a case-by-case basis.

Because the vast majority of water law proceedings are initiated under section 37-92-302, C.R.S., the issue to be addressed by the proposed rule changes is limited in scope and may not be encountered often by attorneys, parties, or the courts. However, it is regularly encountered by those judges, water attorneys, or parties participating in this smaller class of water law proceedings.

Background on Relevant Rules and Statutes

“Water law” under Rules 16, 16.1, and 26(a)

C.R.C.P. 16 (Case Management and Trial Management) C.R.C.P. 16.1 (Simplified Procedure for Civil Actions) and C.R.C.P. 26(a) (Required Disclosures) do not currently apply to “water law” proceedings, unless otherwise ordered by the court under Rules 16(a) or 26(a) or stipulated by the parties under Rules 16(a), 16.1(b)(1), or 26(a). Rule 16(a) provides, in relevant part, as follows:

This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, *water law*, forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in 16.1.

(Emphasis added.) In turn, Rule 16.1(b) provides, in relevant part, as follows:

This Rule applies to all civil actions other than: (1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, *water law*, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; ...

(Emphasis added.)¹ Similarly, Rule 26(a) provides:

Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile,

¹ C.R.C.P. 16.1(b)(3) also requires that “[e]ach pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, *water*, juvenile, or mental health action, shall be accompanied by a completed Civil Cover Sheet” (Emphasis added). As discussed below, the changes proposed by this memorandum may also necessitate a change in the current Civil Cover Sheet.

mental health, probate, *water law*, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

(Emphasis added.)

The term “water law” is not defined by statute or rule, and only appears nine times in the constitutional and statutory scheme,² including in the heading of section 37-92-102, C.R.S. (“Legislative declaration – basic tenets of Colorado water law.”), which declares Colorado’s policy of prior appropriation in accordance with the Colorado constitution’s prior appropriation doctrine. Under section 37-90-102(1), C.R.S., the same prior appropriation doctrine is also affirmed and recognized with respect to the designated ground waters of Colorado as modified to permit the full economic development of designated ground water resources. Thus, “water law” appears broad enough to cover both “water matters” before the water judges and cases relating to designated groundwater assigned to the designated groundwater judges. See § 37-92-203(1), C.R.S. (water judges) and § 37-90-115(1)(b)(III)(V), C.R.S. (designated groundwater judges).

Types of “water matters” to be heard by the Water Courts

“Water matters” are those matters that the Water Right Determination and Administration Act of 1969, §§ 37-92-101 to -602, C.R.S. (“1969 Act”), and any other law, specify to be heard by the water judge of the district courts, including determinations of rights to nontributary groundwater outside of the designated groundwater basins. § 37-92-203(1), C.R.S. Water matters obviously include water court applications as contemplated by section 37-92-302, C.R.S., including the numerous types of applications for the determination of a water right or conditional water right and the amount and priority thereof, as identified in section 37-92-302(1), C.R.S. Such applications are subject to the special statutory proceedings of the 1969 Act, including its resume notice procedures that establish water court

² In addition to section 37-92-102, C.R.S., the term “water law” appears in section 1(1)(b)(IV) of Article XXVII of the Colorado Constitution (Great Outdoors Colorado Program) and in sections 34-33-136 (Colorado Surface Coal Mining Reclamation Act – Water rights.); 37-90.5-104(3) (Geothermal Resources – Ownership declaration.); 37-95-121 (Colorado Water Resources and Power Development Authority Act – Effect on inconsistent acts and rules and regulations adopted hereunder.); 37-60-104(3) (Colorado Water Conservation Board – Personnel.); 37-80.5-104.5(1)(a)(III) (Arkansas River Water Bank Pilot Program – Water banks within each water division – duties of state engineer – rules.); 37-92-310(b)(I) (Colorado water rights protection act –short title-legislative declaration-limitation on actions.); and 37-95-104(2)(b) (Colorado Water Resources and Power Development Authority Act – Establishment of authority – board of directors – removal – organization – compensation – dissolution.), C.R.S.

jurisdiction, referrals to the water referees, and orders of re-referral or protests to the water judges for pre-trial and trial proceedings. *See* §§ 37-92-302 to -305, C.R.S.

These typical water court applications comprise the largest subset of water matters involving the adjudication of water rights and their priorities as contemplated by Rules 87 to 92 of the C.R.C.P.³ and the current U.L.R. *See, e.g.*, U.L.R. 3 (Applications for Water Rights). The U.L.R. applicable to water court practice and procedure⁴ currently govern the filing of water court applications, resume publication, statements of opposition, referee rulings, orders of rereferral, the filing of protests to rulings of the referee, and trial proceedings before the water judge, all as contemplated only for applications under section 37-92-302, C.R.S. The new U.L.R. 12, applicable to the decennial abandonment proceedings, also contemplates the initiation of proceedings through filings, notices, or protests published in the water court resume pursuant to provisions of section 37-92-302, C.R.S.⁵ However, these cases are not referred to the referees for any determinations, though referees may act as case managers for the water court in such cases.

In addition to the foregoing types of water matters, the 1969 Act and other laws specify other water matters to be heard by the water judges that:

- (1) are not initiated as water court applications under section 37-92-302, C.R.S.;
- (2) cannot be published in the water court resume to establish water court jurisdiction;
- (3) remain subject to the service, joinder, and intervention rules of C.R.C.P. 4, 19, and 24; and
- (4) are not currently addressed by the U.L.R.

³ *See* C.R.C.P. 87 (Application of Following Water Rules), 88 (Judgment and Decrees), 89 (Notice When Priority Antedating an Adjudication is Sought), 90 (Dispositions of Water Court Applications), 91 (Entry of Decree When No Protest Has Been Filed), 92 (Conditional Water Rights – Extension of Time for Entry of Findings of Reasonable Diligence).

⁴ *See* U.L.R. NOTE: “Except as expressly provided in these rules, the Colorado Rules of Civil Procedure, including the state-wide practice standards as set out in C.R.C.P. 121, shall apply to water court practice and procedure. All prior water court local rules are repealed.”

⁵ Whether the U.L.R. should be the default case management rules for the decennial abandonment proceedings may be an issue requiring further consideration and discussion.

Examples of such other water matters include:

- (a) certain complaints for declaratory or injunctive relief not seeking the determination of a right to use water (including claims of abandonment unrelated to the decennial abandonment proceedings or any defense in opposition to a water court application)⁶;
- (b) appeals of certain agency actions under the State Administrative Procedure Act, §§ 24-4-101 to -204, C.R.S.;⁷
- (c) the State Engineer’s rulemakings under section 37-92-501, C.R.S.; and
- (d) enforcement proceedings initiated by the State and Division Engineers under sections 37-92-503, 37-92-602(1)(g)(V), or section 37-90-110(1), C.R.S.

The U.L.R. are also inapplicable to any of the proceedings before the designated groundwater judges.

Under U.L.R. 11, “[t]he provisions of C.R.C.P. 16 and 26 through 37 shall apply except that they shall be modified as follows: (a) C.R.C.P. 16(b)-(e), C.R.C.P. 16(f)(3)(VI)(C), C.R.C.P. 16(g), and C.R.C.P. 26(a)(2)(B)(I)(g) shall not apply to water

⁶ See *Gardner v. State*, 614 P.2d 357, 362 (Colo. 1980) (“Our construction of the Water Right Act as excluding applications for determination of abandonment under section 37-92-302(1)(a) does not mean that the water judge is without authority to make determinations and enter decrees of abandonment. To the contrary, abandonment of a water right is a water matter within the jurisdiction of the water court. See section 37-92-203(1), C.R.S.1973; *Perdue v. Fort Lyon Canal*, 184 Colo. 219, 519 P.2d 954 (1974). When an application for a determination of abandonment is filed, the water judge, as here, may require the applicant to make reasonable efforts to determine the identity and location of the owner or the successor in interest, and, if those efforts are successful, to proceed under the pertinent provisions of C.R.C.P. 4 and 19.”)

⁷ Examples of such appeals include: (1) appeals of the State Engineer’s approval of temporary substitute water supply plans under section 37-92-308(5)(c), C.R.S.; (2) judicial review of the State Engineer’s rules under sections 37-80.5-105, 37-90-137(7)(c), (9)(a), 9(d), C.R.S.; (3) appeals of certain well-permitting decisions of the State Engineer under sections 37-90-105, 37-90-137 and 37-92-602(3)(f), C.R.S.; and (4) appeals under section 37-90-115(1)(a), C.R.S., of actions of the State Engineer and Ground Water Commission under 37-90-110, C.R.S.

court proceedings.”⁸ The reference to “water court proceedings” also appears overly-broad because U.L.R. 11 appears to only contemplate water court application proceedings under section 37-92-302, C.R.S., as best illustrated by the at-issue date provision in U.L.R. 11(b)(1):

Water matters shall be considered to be at issue for the purposes of this Rule and C.R.C.P. 26 49 days (7 weeks) after the earlier of either of the following: entry of an order of re-referral or the filing of a protest to the ruling of the referee, unless the water court directs otherwise.

Here, too, “water matters” is overly broad. Only water court applications under section 37-92-302, C.R.S., are referred to the water referee. *See* §§ 37-92-203(7), C.R.S. (“The water judge of each division by order shall refer promptly to a referee of that division all applications filed pursuant to section 37-92-302”) and 37-92-301(2), C.R.S. (referee’s authority and duty to rule upon determinations of water rights and conditional rights and the amount and priority thereof). As a result, the U.L.R. cause confusion when dealing with the class of water matters not initiated by applications under section 37-92-302, C.R.S.

Proposed Changes to C.R.C.P. 16, 16.1, and 26(a), U.L.R. 11, and U.L.R. Note

Proposed change to C.R.C.P. 16(a):

This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, ~~water law~~, *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.*, forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in 16.1.

Proposed change to C.R.C.P. 16.1(b)(1) and (3):

⁸ Rules 16(b)-(e) govern the Case Management Order, Pretrial Motions, Case Management Conference, and Amendment to Case Management Order. Rule 16(f)(3)(VI)(C) governs Identification of Witnesses and Exhibits - Juror Notebooks. Rule 16(g) governs Jury Instructions and Verdict Forms. And C.R.C.P. 26(a)(2)(B)(I)(g) requires a retained expert’s report to include “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.”

This Rule applies to all civil actions other than: (1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, ~~water law~~, *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.*, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; ...

(3) Each pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, ~~water law~~, juvenile, or mental health action, *or a water court proceeding subject to sections 37-92-302 to 37-92-305, C.R.S.*, shall be accompanied by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601).⁹

Proposed change to C.R.C.P. 26(a):

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~~, *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.*, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

Proposed change to U.L.R. 11:

The provisions of C.R.C.P. 16 and 26 through 37 shall apply except that they shall be modified as follows: (a) C.R.C.P. 16(b)-(e), C.R.C.P. 16(f)(3)(VI)(C), C.R.C.P. 16(g), and C.R.C.P. 26(a)(2)(B)(I)(g) shall not apply to ~~water court~~ *water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.*

(b)(1) **At Issue Date.** ~~Water matters~~ *Water court applications subject to 37-92-302 to 37-92-305, C.R.S.*, shall be considered to be at issue for the purposes of this Rule and C.R.C.P. 26 49 days (7 weeks) after the earlier of either of the following: entry of an order of re-referral or the filing of a protest to the ruling of the referee, unless the water court directs otherwise.

Proposed Change to Note preceding the U.L.R.:

These rules apply to water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., including final decennial abandonment lists, which are published in the water court resume under section 37-92-

⁹ The Civil Cover Sheet form would likely need to be updated if the proposed changes to Rule 16.1 are made.

302(3), C.R.S., and considered water court applications under these rules. Except as expressly provided in these rules, the Colorado Rules of Civil Procedure, including the state-wide practice standards set out in C.R.C.P. 121, shall apply to water court practice and procedure. All prior water court local rules are repealed.

cc: Water Court Committee Members
Andrew Rottman, Esq., Counsel to Chief Justice Nathan B. Coats

Rule 16. Case Management and Trial Management

(a) Purpose and Scope. The purpose of this Rule 16 is to establish a uniform, court-supervised procedure involving case management which encourages professionalism and cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures. This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, ~~water law,~~ [water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.](#), forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in Rule 16.1. The disclosures and information required to be included in both the Case Management and Trial Management Orders interrelate to discovery authorized by these rules. The right of discovery shall not constitute grounds for failing to timely disclose information required by this Rule, nor shall this Rule constitute a ground for failing to timely disclose any information sought pursuant to discovery.

(b) – end [NO CHANGE]

Rule 16. Case Management and Trial Management

(a) Purpose and Scope. The purpose of this Rule 16 is to establish a uniform, court-supervised procedure involving case management which encourages professionalism and cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures. This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in Rule 16.1. The disclosures and information required to be included in both the Case Management and Trial Management Orders interrelate to discovery authorized by these rules. The right of discovery shall not constitute grounds for failing to timely disclose information required by this Rule, nor shall this Rule constitute a ground for failing to timely disclose any information sought pursuant to discovery.

(b) – end [NO CHANGE]

Rule 16.1. Simplified Procedure for Civil Actions

(a) [NO CHANGE]

(b) **Actions Subject to Simplified Procedure.** Simplified Procedure applies to all civil actions other than:

(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, ~~water law~~[water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.](#), forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or

(2) [NO CHANGE]

(c) **Civil Cover Sheet.** Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, ~~water law~~[water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.](#), forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) – end [NO CHANGE]

Rule 16.1. Simplified Procedure for Civil Actions

(a) [NO CHANGE]

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:

(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or

(2) [NO CHANGE]

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) – end [NO CHANGE]

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures. 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~~ [water court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S.](#), forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

(a)(1) – end [NO CHANGE]

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures. 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 court proceedings subject to sections 37-92-302 to 37-92-305, C.R.S., forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

(a)(1) – end [NO CHANGE]

FW Rul121(c) Local Rules Amendment report.txt

From: berger, michael
Sent: Thursday, March 12, 2020 8:10 AM
To: michaels, kathryn
Subject: FW: Rul121(c) "Local Rules" Amendment report

Kathryn, please include this email as part of the meeting materials.
Michael H. Berger

From: Dick Holme <rpholme@live.com>
Sent: Wednesday, March 11, 2020 5:05 PM
To: berger, michael <michael.berger@judicial.state.co.us>
Cc: Dick Holme <rpholme@live.com>
Subject: Rul121(c) "Local Rules" Amendment report

Judge Berger:

Report of Abolition of Local Civil Rules Subcommittee

In 1988, the Colorado Supreme Court adopted a new Civil Rule 121 which abolished all existing Local Rules and provided a very detailed procedure allowing local courts to adopt new rules as long as they were not inconsistent with the existing Civil Rules and following review and approval of any new local rules. One of the basic purposes of this was to reduce variations of individual practices so that lawyers in differing parts of the state to be comfortable that they could practice in various judicial districts and courts without having to learn or relearn a large number of separate practice requirements. During the following years, numerous individual judges articulated a variety of "practice standards" applying only to their individual courts. In their early days these tended to be framed as "delay reduction" orders to insist on prompt service of process and expediting completion of pleading and motions practice. As time has passed, more and more practice standards have been adopted and have set up requirements for more and more pre-trial and trial standards. This appears to be a more consistent problem in smaller and more widely located judicial districts. As far as we know, no districts or judges have asked the Supreme Court to approve any of the practice standards in use around the state. A couple Civil Rules Committee meetings ago some members of the Committee asked that it see

whether this is a problem that needs to be revisited. You appointed a small subcommittee comprised of Judge Elliff (Denver), Peter Goldstein (Colorado Springs), Damon Davis (Grand Junction) and yours truly (Denver) to examine this issue. Although we did not undertake a genuine search of the various forms of individual practice standards, we did receive copies of several forms of orders used by different judges. We had a couple phone conferences and concluded that we had enough samples to provide this report. Some examples we received were noteworthy for containing similar language on various subjects - e.g., Civility and Professionalism, rejecting initial written discovery motions alternative dispute resolution. This suggested sharing of these orders and some lack of widely differing rules. With some frequency the practice standards appeared to be efforts to articulate the judges' views of matters that have historically been within the court's discretion, and are not required in any of the Civil Rules. Furthermore, most of them appear to have been provided to counsel very early in the case, most commonly before the Case Management Conference. It was suggested that lawyers may feel it is inappropriate to start the CMO process by questioning the court's first order, but at least one of the lawyers and the judge in our subcommittee felt a primary reason for CMOs was to address as many things misconceptions and obstructions as possible that might interfere with the efficient handling of the case. We did find a few examples of standards that contain provisions relating to deadlines for actions that were different than those adopted by this Committee - for example, requiring filing of all motions, particularly Shreck motions a month before required under the Civil Rules. We discussed this and concluded that this might well be curable at the CMO, but was potentially problematic. Yes, the judges still have the authority on a case by case basis to amend deadlines, but it should not be done as a matter of course and without hearing enough to know whether it is necessary. Given the foregoing, the Subcomm has offered a proposed very brief amendment to Rule 121 as

a new subsection 121(c):

C.R.C.P. 121(c). No rule or order adopted in any judicial district or by an individual judge which is not approved as provided in section (b) of this Rule, shall alter the time or deadlines contained in these Civil Rules unless, at the Case

Management Conference or following a hearing, the court finds that there is a specific need for such an alteration in a pending case

(Existing subsection (c) would be renumbered to 121(d).)

However, the subcommittee feels the desirability or necessity of such an amendment should be considered by the Committee as a whole before we expend any more time on this issue.

Dick Holme

2020 WL 579382

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. A PETITION FOR REHEARING IN THE COURT OF APPEALS OR A PETITION FOR CERTIORARI IN THE SUPREME COURT MAY BE PENDING.

Colorado Court of Appeals, Division VII.

DIA BREWING CO., LLC, a Colorado limited liability company, Plaintiff-Appellant,

v.

MCE-DIA, LLC, a Michigan limited liability company; **Midfield Concessions Enterprises, Inc.** a Michigan limited liability company; **Andrea Hachem**; **Noureddine "Dean" Hachem**; **Samir Mashni**; **Simrae Solutions, LLC**, a Colorado limited liability company; **Sudan I. Muhammad**; **Pangea Concessions Group, LLC**, a Florida limited liability company; **Niven Patel**; **Rohit Patel**; and **Richard E. Schaden**, Defendants-Appellees.

Court of Appeals No. 18CA2136

Announced February 6, 2020

Synopsis

Background: Brewing company that was unsuccessful in its bid for contract to establish restaurants and related businesses at airport sued successful bidder and related entities, alleging bid-rigging conspiracy. The District Court, Denver County, Brian R. Whitney, J., granted defendants' motions to dismiss the original complaint, and to strike brewing company's amended complaint. Brewing company appealed.

Holdings: The Court of Appeals, Lipinsky, J., held that:

[1] district court's dismissal of plaintiff's original complaint for failure to state a claim upon which relief could be granted, and for lack of subject-matter jurisdiction, did not make order granting dismissal a final judgment for purposes of extinguishing plaintiff's right to file an amended complaint;

[2] district court order dismissing brewing company's complaint was not a final order; and

[3] district court improperly struck brewing company's

amended complaint.

Reversed and remanded.

Fox, J., filed dissenting opinion.

West Headnotes (15)

^[1] **Pleading**

↔Condition of Cause and Time for Amendment

For purposes of rule permitting a party to amend a complaint once, as a matter of course, before a responsive pleading is filed, a motion to dismiss does not constitute a responsive pleading. Colo. R. Civ. P. 15(a).

^[2] **Appeal and Error**

↔Amended and Supplemental Pleadings

Whether a plaintiff has waived its absolute right to amend a complaint once, as a matter of course, before a responsive pleading is filed, is a question of law that the Court of Appeals review de novo. Colo. R. Civ. P. 15(a).

^[3] **Pleading**

↔After judgment or motion therefor

Pleading

↔After verdict or judgment or motion therefor

The entry of a final, appealable judgment cuts off the right to amend a pleading, despite the language of the rule permitting a party to amend a complaint once, as a matter of course, before a responsive pleading is filed. Colo. R. Civ. P. 15(a).

¹⁴¹ **Pleading**

↔Amendment as of course

In the absence of a final judgment, the right to amend a complaint once as a matter of course before a responsive pleading is filed survives dismissal of the complaint. Colo. R. Civ. P. 15(a).

¹⁵¹ **Pleading**

↔After judgment or motion therefor

Pretrial Procedure

↔Amendment or pleading over

District court's dismissal of plaintiff's original complaint for failure to state a claim upon which relief could be granted, and for lack of subject-matter jurisdiction, did not make order granting dismissal a final judgment for purposes of extinguishing plaintiff's right to file an amended complaint; plaintiff sought but was not granted a pre-dismissal hearing on its request to amend to establish standing, and following dismissal, plaintiff could elect either to appeal dismissal or file an amended complaint under rule allowing amendment once, as matter of course, before responsive pleading was filed. Colo. R. Civ. P. 12(b)(1), 12(b)(5), 15(a).

¹⁶¹ **Pleading**

↔Affected by time of application in general

District courts should not impose arbitrary restrictions on making timely amendments to the pleadings, and procedural rules should focus upon resolution of actions on their merits. Colo. R. Civ. P. 12(b)(1), 12(b)(5), 15(a).

¹⁷¹ **Action**

↔Persons entitled to sue

Standing is a jurisdictional prerequisite.

¹⁸¹ **Appeal and Error**

↔Rulings on demurrer or motion relating to pleadings

A dismissal without prejudice is not a final judgment if the plaintiff can cure deficiencies through an amended complaint.

¹⁹¹ **Pretrial Procedure**

↔Amendment or pleading over

District court order dismissing **brewing** company's complaint was not a final order, in action brought by **brewing** company alleging bid-rigging conspiracy for contract to establish restaurants at airport against successful bidder and related entities, and thus **brewing** company could file amended complaint as matter of course; although court held **brewing** company had not established actual injury to create standing, **brewing** company could have cured this defect by pleading additional facts to discredit summary ranking of bidders relied upon by district court. Colo. R. Civ. P. 12(b)(1), 12(b)(5), 15(a).

¹¹⁰¹ **Appeal and Error**

↔Scope and extent of subsequent review in general

Decision by motions division of appellate court holding that plaintiff's appeal of order dismissing complaint was untimely, but

allowing appeal of order striking amended complaint, did not preclude Court of Appeals' finding that order dismissing complaint was not a final judgment for purposes of plaintiff's right to amend complaint as a matter of course following entry of order, where motions division neither considered nor determined this issue. Colo. R. Civ. P. 12(b)(1), 12(b)(5), 15(a).

[11]

Courts

☞Number of judges concurring in opinion, and opinion by divided court

A decision of a motions division regarding jurisdiction is not always binding on Court of Appeals.

[12]

Pleading

☞Form and sufficiency of amended pleading in general

Futility of amendment is a basis to deny a motion for leave to amend a pleading; a district court may deny a motion for leave to amend on grounds of futility if the proposed pleading could not survive a motion to dismiss.

[13]

Pleading

☞Form and sufficiency of amended pleading in general

For purposes of a motion for leave to amend a pleading, a proposed amendment would clearly be futile if, among other things, it failed to state a legal theory or was incapable of withstanding a motion to dismiss.

[14]

Pleading

☞Amendment as of course

A party amending a pleading as a matter of course does not need the court's leave to submit its amended pleading, and the court lacks the discretion to reject an amended complaint based on its alleged futility. Colo. R. Civ. P. 15(a).

[15]

Pleading

☞Sufficiency of amendment

Pretrial Procedure

☞Amendment or pleading over

District court improperly struck **brewing company's** amended complaint under futility of amendment doctrine, in action brought by **brewing company** alleging bid-rigging conspiracy for contract to establish restaurants at airport against successful bidder and related entities; following dismissal of original complaint, **brewing company** had right to file amended complaint under rule permitting a party to amend a complaint once, as a matter of course, before a responsive pleading was filed, and was not seeking leave of court to do so. Colo. R. Civ. P. 12(a)(1), 15(a).

City and County of Denver District Court No. 18CV30611, Honorable Brian R. Whitney, Judge

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Opinion

Opinion by JUDGE LIPINSKY

¶ 1 Plaintiff, **DIA Brewing Co., LLC (Brewing)**, had several options after the district court dismissed its claims without prejudice, if it wished to continue litigating against the defendants:

- move for leave to file an amended complaint that emedied the defects in its original pleading;
- file an amended complaint with the defendants' written consent; or
- commence a new case, with a new complaint.

¶ 2 But **Brewing** chose a different strategy that raises novel issues under Colorado law: it filed an amended complaint, purportedly as a matter of course under C.R.C.P. 15(a), despite the dismissal of its claims.

¶ 3 We decide three questions of law. First, we hold that, under the facts of this case, the orders dismissing **Brewing's** claims without prejudice were not final judgments. Second, because the dismissal orders were not final judgments, we hold that **Brewing** retained the right to amend its complaint as a matter of course under C.R.C.P. 15(a). Third, we hold that the district court erred by deciding that **Brewing's** amended complaint failed under the futility of amendment doctrine. Thus, we reverse the order striking **Brewing's** amended complaint and remand for further proceedings.

I. Relevant Facts and Procedural History

¶ 4 **Brewing** unsuccessfully bid for a contract to establish restaurants and related businesses at Denver International Airport (**DIA**). The businesses included a Colorado-themed microbrewery, two burger restaurants,

and a coffee bar. **DIA** issued publicly available rankings of the five qualified bidders, which ranked **Brewing** fourth.

¶ 5 **Brewing** then sued several public and private defendants, alleging a bid-rigging conspiracy between defendants MCE-DIA, LLC, the winner of the contract; Midfield Concessions Enterprises, Inc., Andrea Hachem, Noureddine "Dean" Hachem, Samir Mashni, Simrae Solutions, LLC, Sudan I. Muhammad, Pangea Concessions Group, LLC, Niven Patel, and Rohit Patel, who are affiliates of MCE-DIA, LLC; Richard E. Schaden, the CEO of the hamburger chain Smashburger; and **DIA** officials (who are no longer parties to the case).

*2 ¶ 6 More specifically, **Brewing** alleged that the owners of MCE-DIA offered partial ownership of the company to affiliates of one of the **DIA** officials in exchange for the official's help in awarding the contract to MCE-DIA. **Brewing** asserted that **DIA's** ranking of the bidders was tainted and invalid based on defendants' alleged wrongful conduct.

¶ 7 **Brewing** pleaded claims for bid-rigging in violation of section 6-4-106, C.R.S. 2019; bribery and other predicate acts in violation of the Colorado Organized Crime Control Act, § 18-17-104, C.R.S.2019; tortious interference with prospective business opportunity; and civil conspiracy.

¶ 8 The nongovernmental defendants moved to dismiss for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1), failure to plead fraud with particularity under C.R.C.P. 9(b), and failure to state claims on which relief could be granted under C.R.C.P. 12(b)(5). **Brewing** did not amend its complaint before the district court ruled on the dismissal motions. But, in its briefs opposing the motions to dismiss, **Brewing** requested leave to amend its complaint if the court determined that "additional averments are required," as well as a hearing on the dismissal motions.

¶ 9 After considering the materials filed by the defendants in support of their motions to dismiss, including the list ranking the bidders (which was not incorporated into the complaint), but without conducting a hearing, the district court concluded that **Brewing** lacked standing to assert any of its claims and had failed to plead fraud with particularity. In a series of orders (the June orders), the court dismissed the complaint in its entirety. The dismissal orders did not indicate whether the case was dismissed with or without prejudice.

¶ 10 **Brewing** did not move under C.R.C.P. 59 or 60 to vacate or set aside the June orders. Instead, the day before

the time to appeal the June orders expired, **Brewing** filed an amended complaint, contending that it had a right to amend as a matter of course under C.R.C.P. 15(a). The defendants moved to strike and dismiss the amended complaint, both on the grounds articulated in their original dismissal motions and based on the June orders.

¶ 11 The district court entered an order (the November order) ruling that the amended complaint was “denied for filing.” The court said that **Brewing** had not “preserved amendment as a matter of course” when it included an amendment request in its responses to the dismissal motions and had not sought relief from the June orders under C.R.C.P. 59. Under the court’s reasoning, **Brewing** could no longer amend as a matter of course after entry of the June orders because “whether with or without prejudice, the dismissal of all claims by the Court would be considered an ‘order to or from which an appeal lies’ ” and thus were final judgments. In the alternative, the court ruled that the amended complaint failed under the futility of amendment doctrine because, like **Brewing**’s original complaint, it neither established standing nor pleaded fraud with particularity.

¶ 12 Following entry of the November order, **Brewing** appealed the June and November orders. The defendants moved to dismiss the appeal. A motions division of this court dismissed the appeal of the June orders as untimely but allowed the appeal to proceed with respect to the November order. **Brewing** does not challenge the motions division’s partial dismissal. Defendants do not challenge our jurisdiction over the November order.

II. Analysis

A. Right to Amend Versus Leave to Amend

*3 ¶ 13 C.R.C.P. 15(a) allows for three types of amendment: amendment as a matter of course, amendment by leave of court, and amendment with the adverse party’s written consent. “A party may amend his pleading once as a matter of course at any time before a responsive pleading is filed Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” C.R.C.P. 15(a). A motion to dismiss is not a responsive pleading. *Davis v. Paolino*,

21 P.3d 870, 873 (Colo. App. 2001).

¶ 14 **Brewing** contends that it had the right to amend its complaint as a matter of course, even after dismissal of its original claims, because the defendants never filed a responsive pleading and the court dismissed its original claims without prejudice. **Brewing** takes the position that it filed the amended complaint as a matter of course. Thus, whether the district court abused its discretion in denying **Brewing** leave to amend its complaint is not before us.

¶ 15 Defendants contend that we should review the November order for an abuse of discretion. They argue that **Brewing**’s delay in attempting to amend, as well as other factors, gave the district court discretion to dismiss the amended complaint. But we agree with **Brewing** that whether it had the right to amend as a matter of course under C.R.C.P. 15(a) and whether the June orders cut off that right are questions of law that we review de novo. So we review de novo whether the district court committed legal error when it concluded that **Brewing** had lost its absolute right to amend as a matter of course. See *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, ¶ 24, 303 P.3d 1187, 1193.

B. The Entry of a Final Judgment Cuts off a Plaintiff’s Right to Amend as a Matter of Course Under C.R.C.P. 15(a)

¶ 16 The entry of a final, appealable judgment cuts off the right to amend, despite the language of C.R.C.P. 15(a). *Harris v. Reg’l Transp. Dist.*, 155 P.3d 583, 587 (Colo. App. 2006); *Estate of Hays v. Mid-Century Ins. Co.*, 902 P.2d 956, 959 (Colo. App. 1995); *Wilcox v. Reconditioned Office Sys.*, 881 P.2d 398, 400 (Colo. App. 1994). The version of Fed. R. Civ. P. 15(a) in effect before the 2009 amendments was identical to the current version of C.R.C.P. 15(a). Thus, cases interpreting the older version of the federal rule are persuasive. *Harris*, 155 P.3d at 588. Federal courts construing the earlier version of Fed. R. Civ. P. 15(a) uniformly reached the same conclusion: the right to amend is cut off on entry of a final judgment. *Tool Box v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005) (listing cases applying this rule); accord 3 James Wm. Moore et al., *Moore’s Federal Practice* § 15.97[2] (2d ed. 1980) (noting that the absolute right to amend is lost after final judgment is entered). (Under the current version of the federal rule, a party may amend as a matter of course within twenty-one days after service of either a responsive pleading or a Fed. R. Civ. P.

12(b) motion. Fed. R. Civ. P. 15(a). The Colorado version of Rule 15(a) does not refer to Rule 12(b).)

¶ 17 The *Wilcox* division reasoned that “when final judgment is entered before a responsive pleading is filed, the liberal approach of C.R.C.P. 15 must be balanced against the value of preserving the integrity of final judgments.” 881 P.2d at 400. The division, and later divisions addressing the issue, held that the right to amend is lost after entry of a final judgment because “the concerns of finality in litigation become even more compelling and the litigant has had the benefit of a day in court, in some fashion, on the merits of his claim.” *Id.* (quoting *Union Planters Nat’l Leasing, Inc. v. Woods*, 687 F.2d 117, 121 (5th Cir. 1982)).

*4 ¶ 18 But, in the absence of a final judgment, our supreme court has said that the right to amend a complaint as a matter of course under Rule 15(a) survives dismissal. *Passe v. Mitchell*, 161 Colo. 501, 502, 423 P.2d 17, 17-18 (1967) (holding that in the absence of a responsive pleading, “no final judgment should have been entered in the absence of a showing of record that plaintiff waived the right to file an amended complaint”); *Wistrand v. Leach Realty Co.*, 147 Colo. 573, 576, 364 P.2d 396, 397 (1961) (After the district court entered a dismissal order without prejudice, “[t]o now urge that the dismissal prejudiced Leach’s right to have his claim adjudicated does violence to [Rule 15(a)] and the court’s order.”); *Renner v. Chilton*, 142 Colo. 454, 456, 351 P.2d 277, 278 (1960) (“The language of [Rule 15(a)] is, however, clear and unequivocal. It expressly allows one amendment as a matter of right before the answer or reply is filed”).

¶ 19 We perceive no conflict between the *Wilcox* and *Renner* lines of cases. *Renner* and its progeny allow a plaintiff to amend its complaint as a matter of course consistent with Rule 15(a); *Wilcox*, *Estate of Hays*, and *Harris* extinguish that right once the district court enters a final judgment. (We need not address whether *Brewing* unreasonably delayed in exercising its right to amend as a matter of course. *Brewing* filed its amended complaint forty-eight days after the district court dismissed its original complaint, and the defendants do not argue that *Brewing*’s amended complaint was untimely. See 6 Arthur R. Miller, Mary Kay Kane & A. Benjamin Spencer, *Federal Practice and Procedure* § 1483, Westlaw (3d ed. database updated Aug. 2019) (“In general ... a party could amend as of course within a reasonable time after an order dismissing the complaint had been entered, inasmuch as no responsive pleading had been served.”) (emphasis added).)

¶ 20 This reconciliation strikes an appropriate balance

between the liberal thrust of modern pleading standards, see C.R.C.P. 1(a) (“These 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.”), and the policy concern, identified in *Wilcox*, to preserve finality once “the litigant has had the benefit of a day in court ... on the merits of his claim,” *Wilcox*, 881 P.2d at 400.

C. Whether the District Court Dismissed *Brewing*’s Claims Under C.R.C.P. 12(b)(1) or 12(b)(5) Is Inconsequential to the Finality Analysis

¶ 21 The cases addressing a party’s right to amend following dismissal of its claims did not limit their analysis to Rule 12(b)(5) dismissals. See *Passe*, 161 Colo. at 502, 423 P.2d at 17-18 (unless the plaintiff waives its right to file an amended complaint, the district court cannot dismiss an action with prejudice); *Wistrand*, 147 Colo. at 576, 364 P.2d at 397 (holding, without qualification, that the plaintiff could amend its complaint following a dismissal without prejudice); *Renner*, 142 Colo. at 456, 351 P.2d at 278 (noting that there are no exceptions to Rule 15(a)’s right to file an amended complaint before the filing of a responsive pleading).

¶ 22 Likewise, federal courts, which have more fully developed case law in this area, do not distinguish between Rule 12(b)(1) and 12(b)(5) dismissals for purposes of determining whether a party may file a post-dismissal amended pleading. See, e.g., *Northlake Cmty. Hosp. v. United States*, 654 F.2d 1234, 1240 (7th Cir. 1981) (“The Federal Rules of Civil Procedure ... allow for the liberal amendment of pleadings, particularly to cure jurisdictional defects.”); *Lone Star Motor Imp., Inc. v. Citroen Cars Corp.*, 288 F.2d 69, 75-77 (5th Cir. 1961) (holding that the district court erred in refusing to allow plaintiff to cure subject matter jurisdiction defect by amended complaint); *Keene Lumber Co. v. Leventhal*, 165 F.2d 815, 823 (1st Cir. 1948) (stating, in dicta, that the plaintiff could amend its complaint to establish diversity of citizenship “as a matter of right”).

*5 ¶ 23 Further, two Colorado cases say that a plaintiff whose complaint is dismissed may elect either to stand by the dismissed complaint and appeal, or to file an amended complaint. *Passe*, 161 Colo. at 502, 423 P.2d at 17-18; *Wistrand*, 147 Colo. at 576, 364 P.2d at 397.

¶ 24 Lastly, our case law reflects the tension regarding

whether a district court can consider only evidence “supportive of standing,” *Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 516 (Colo. 1985), or if it can consider “any ... evidence submitted on the issue of standing,” *Bd. of Cty. Comm’rs v. Bowen/Edwards Assocs.*, 830 P.2d 1045, 1053 (Colo. 1992). This uncertainty disfavors crediting the evidence proffered by the party that seeks to defeat standing as a basis to deny the party that seeks to establish standing the right to amend under Rule 15(a), particularly where, as here, **Brewing** sought, but was not granted, a hearing.

¹⁶¶ 25 Of course, judicial economy always deserves consideration. Allowing a plaintiff to amend a complaint after a Rule 12(b)(1) dismissal — as opposed to taking an immediate appeal — will result in further proceedings before the district court. Yet the same would be true of an amendment after a Rule 12(b)(5) dismissal. And our supreme court has instructed district courts “not [to] impose arbitrary restrictions on making timely amendments,” and that our procedural rules should “[f]ocus ... upon resolution of actions on their merits” *Benton v. Adams*, 56 P.3d 81, 85 (Colo. 2002). We must heed both admonitions.

¶ 26 We next consider whether the June orders constituted final judgments and conclude that they did not.

D. The June Orders Were Not Final Judgments

1. The District Court Dismissed **Brewing’s** Initial Claims Without Prejudice

¶ 27 Because the June orders did not specify whether the district court was dismissing **Brewing’s** initial claims with or without prejudice, we must determine whether the dismissals were with or without prejudice. The registry of actions said that the dismissals were without prejudice. But the content of an order, not its title, determines whether it is a final judgment. *Cyr v. Dist. Court*, 685 P.2d 769, 770 (Colo. 1984). A “[j]udgment” is “a decree and order to or from which an appeal lies.” C.R.C.P. 54(a).

¶ 28 C.R.C.P. 41(b)(3) presumes that dismissal orders that do not specify with or without prejudice must be construed as effecting a dismissal without prejudice. *See*

Graham v. Maketa, 227 P.3d 516, 517 (Colo. App. 2010) (“The dismissal order did not specify whether the action was being dismissed ‘with’ or ‘without’ prejudice, and so it is presumed to be without prejudice.”).

¶ 29 Still, this conclusion does not end our analysis of whether the June orders were final judgments because, as we explain in the next section, dismissals without prejudice may be final judgments.

2. The June Orders Were Not Final Judgments Because **Brewing** Could Have Cured the Defects in Its Claims Through Amendment

¹⁷¶ 30 The district court’s June orders dismissed **Brewing’s** claims because **Brewing** lacked standing and because **Brewing** failed to plead fraud with particularity. This first basis was a dismissal for lack of jurisdiction under C.R.C.P. 12(b)(1) because standing is a jurisdictional prerequisite. *C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶ 16, 410 P.3d 438, 442; *City of Greenwood Vill. v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 436 (Colo. 2000). So, the question is whether the C.R.C.P. 12(b)(1) dismissals were final judgments.

*6 ¶ 31 A long line of Colorado cases holds that a dismissal without prejudice constitutes a final judgment only if the action “cannot be saved” by an amended complaint. *See, e.g., Schoenewald v. Schoen*, 132 Colo. 142, 143-44, 286 P.2d 341, 341 (1955) (dismissal without prejudice was not a final judgment); *Avicanna Inc. v. Mewhinney*, 2019 COA 129, ¶ 1 n.1, — P.3d —, — n.1 (noting that, “[w]here ... the circumstances of the case indicate that the action cannot be saved ..., dismissal without prejudice qualifies as a final judgment”); *Harris*, 155 P.3d at 585 (same); *Burden v. Greeven*, 953 P.2d 205, 207 (Colo. App. 1998) (same); *Carter v. Small Bus. Admin.*, 40 Colo. App. 271, 272-73, 573 P.2d 564, 566 (1977) (same).

¶ 32 The most common situation where a complaint “cannot be saved” occurs when further proceedings would be barred by a statute of limitations. *E.g., Harris*, 155 P.3d at 585; *B.C. Inv. Co. v. Thom*, 650 P.2d 1333, 1335 (Colo. App. 1982). Other cases involve clear preemption, *e.g., Richardson v. United States*, 336 F.2d 265, 266 n.1 (9th Cir. 1964); claims that are “so patently frivolous that they cannot be saved,” *Rubins v. Plummer*, 813 P.2d 778, 779 (Colo. App. 1990); and other “special circumstance[s],” *In re Custody of Nugent*, 955 P.2d 584,

587 (Colo. App. 1997).

¹⁸¹¶ 33 This approach to determining the finality of dismissal orders comports with the federal courts' treatment of the issue. While federal courts articulate the test in different ways, the gist of the rule remains constant: a dismissal without prejudice is not a final judgment if the plaintiff can cure deficiencies through an amended complaint. *See, e.g., Goode v. Cent. Va. Legal Aid Soc'y*, 807 F.3d 619, 623 (4th Cir. 2015) ("An order dismissing a complaint without prejudice is not an appealable final order ... if 'the plaintiff could save his action by merely amending his complaint.' " (quoting *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1066-67 (4th Cir. 1993)); *Moya v. Schollenbarger*, 465 F.3d 444, 448-49 (10th Cir. 2006) ("[I]n this circuit, 'whether an order of dismissal is appealable' generally depends on 'whether the district court dismissed the *complaint* or the *action*. A dismissal of the complaint is ordinarily a non-final, nonappealable order (since amendment would generally be available), while a dismissal of the entire action is ordinarily final.' " (quoting *Mobley v. McCormick*, 40 F.3d 337, 339 (10th Cir. 1994)); *Ordower v. Feldman*, 826 F.2d 1569, 1572 (7th Cir. 1987) ("If a district court's dismissal leaves a plaintiff free to file an amended complaint, the dismissal is not considered a final appealable order."); *Borelli v. City of Reading*, 532 F.2d 950, 951 (3d Cir. 1976) (holding that "an implicit invitation to amplify the complaint is found in the phrase 'without prejudice' ")).

¹⁹¹¶ 34 Viewing the June orders through this lens, **Brewing** could have saved its allegations related to standing in the original complaint, which the district court deemed insufficient, through an amended complaint. The court held that **Brewing** had not "sufficiently established actual injury to create standing" because it offered no evidence to support its allegation — i.e., it pleaded "[u]pon information and belief" — that it "was actually the highest scoring entity bidding" on the request for proposals. The court relied entirely on a summary ranking provided by MCE-DIA in support of its motion to dismiss, which showed that **Brewing** finished fourth of five bidders. So, in the court's view, **Brewing** had not sufficiently shown injury in fact.

*7 ¶ 35 **Brewing** could have cured this defect by pleading additional facts to discredit the *entire* summary ranking, as it does in its amended complaint. Specifically, the amended complaint alleges in detail how Bhavesh Patel, the alleged insider at DIA, manipulated the voting process to ensure that MCE-DIA won the contract. (The amended complaint alleges how Bhavesh Patel designed the judges' scorecards and manipulated DIA's scoring

tabulation matrix to ensure that MCE-DIA would prevail, and how he sought to improperly influence the judging through another alleged co-conspirator. These allegations are supported by an affidavit from an investigator who interviewed an official at DIA involved with the request-for-proposals process.)

¹¹⁰¹ ¹¹¹¹¶ 36 Lastly, the motions division's conclusion that the June orders constituted appealable final judgments, and that **Brewing** had missed the deadline to appeal those orders, do not preclude us from holding that the June orders were not final judgments for purposes of amendment as a matter of course. The motions division neither considered nor determined whether **Brewing** had the right to amend as a matter of course following the entry. And "[a] decision of a motions division is not always binding." *Cordova v. Indus. Claim Appeals Office*, 55 P.3d 186, 189 (Colo. App. 2002); *see Allison v. Engel*, 2017 COA 43, ¶ 22, 395 P.3d 1217, 1222 (deciding that the court is not bound by a motions division's determination of jurisdiction).

¶ 37 In sum, based on consistent precedent from divisions of this court and the federal courts, we conclude that the June orders were not final judgments barring amendment as a matter of course under Rule 15(a) because **Brewing** could have amended its complaint to cure the deficiencies noted in the June orders.

III. The District Court Erred by Rejecting **Brewing's** Amended Complaint Under the Futility of Amendment Doctrine

¶ 38 As explained above, in the November order, the district court held that **Brewing** could not amend its complaint as a matter of course and, moreover, if **Brewing** had moved for leave to amend under C.R.C.P. 15(a), its motion would fail under the futility of amendment doctrine.

¹¹²¹ ¹¹³¹¶ 39 Futility of amendment is a basis to deny a motion for leave to amend a pleading. *Benton*, 56 P.3d at 85-86. A district court may deny a motion for leave to amend on grounds of futility if the proposed pleading could not survive a motion to dismiss. *See id.* at 85. "A proposed amendment would clearly be futile if, among other things, it failed to state a legal theory or was incapable of withstanding a motion to dismiss." *Vinton v. Virzi*, 2012 CO 10, ¶ 13, 269 P.3d 1242, 1246.

¹⁴⁴¶ 40 Futility of amendment does not apply to amended pleadings filed as a matter of course, however. By definition, a party amending as a matter of course does not need the court's leave to submit its amended pleading. "When the plaintiff has the right to file an amended complaint *as a matter of course*, ... the plain language of Rule 15(a) shows that the court lacks the discretion to reject the amended complaint based on its alleged futility." *Williams v. Bd. of Regents*, 477 F.3d 1282, 1292 (11th Cir. 2007) (interpreting the federal analogue to C.R.C.P. 15(a)). Of course, an opposing party could move for dismissal of the amended pleading under C.R.C.P. 12(b), which identifies the grounds for dismissal of a pleading.

¹⁵¶ 41 Here, the district court improperly analyzed **Brewing's** amended complaint under the futility of amendment doctrine because **Brewing** filed the amended complaint as a matter of course and was not seeking leave of court to do so. For this reason, we reverse the district court's decision to disallow **Brewing's** amended complaint under the futility of amendment doctrine. Because **Brewing** had the right to file its amended complaint as a matter of course, the next procedural step following remand will be defendants' submission of an "answer or other response" pursuant to C.R.C.P. 12(a)(1).

IV. Conclusion

*8 ¶ 42 The judgment is reversed. The case is remanded for further proceedings consistent with this opinion.

JUDGE WEBB concurs.

JUDGE FOX dissents.

JUDGE FOX, dissenting.

¶ 43 I agree that two questions of law are dispositive of this appeal. The first is whether a district court's order dismissing all claims under C.R.C.P. 12(b)(1) on the basis that the plaintiff lacks standing is a final judgment. The second is whether a plaintiff retains an absolute right to amend its complaint under C.R.C.P. 15(a) after final judgment is entered. I disagree with the majority that the

June orders were nonfinal judgments and also disagree that, once final judgments were entered, **Brewing** retained an absolute right to amend. I would, therefore, affirm the district court's order dismissing plaintiff's amended complaint.

¶ 44 Because the majority fairly sets out the procedural history and the operative facts, I will not repeat them here.

I. Analysis

A. Right to Amend Versus Leave to Amend

¶ 45 "A party may amend his pleading once as a matter of course at any time before a responsive pleading is filed." C.R.C.P. 15(a). "Otherwise, a party may amend his pleading only by leave of court," which "shall be freely given when justice so requires." *Id.*

¶ 46 **Brewing** contends that it had an absolute right to amend its complaint even after it was dismissed for lack of standing because the defendants never filed a responsive pleading.¹ **Brewing** does not ask this court to construe its filing of the amended complaint as asking for leave.

¶ 47 Thus, I agree with the majority that we are not reviewing whether the district court abused its discretion by denying **Brewing** leave to amend its complaint. Rather, we are to review de novo whether the district court committed legal error when it concluded that **Brewing** had lost its absolute right to amend.² See *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, ¶ 24, 303 P.3d 1187.

B. The Entry of a Final, Appealable Judgment Cuts Off a Plaintiff's Right to Amend Under C.R.C.P. 15(a)

¶ 48 For twenty-five years, divisions of this court have uniformly held that the entry of a final, appealable judgment cuts off the right to amend, notwithstanding the

language of C.R.C.P. 15(a). *Gandy v. Williams*, 2019 COA 118, ¶ 10, — P.3d —; *Harris v. Reg'l Transp. Dist.*, 155 P.3d 583, 587 (Colo. App. 2006); *Estate of Hays v. Mid-Century Ins. Co.*, 902 P.2d 956, 959 (Colo. App. 1995); *Wilcox v. Reconditioned Office Sys.*, 881 P.2d 398, 400 (Colo. App. 1994).

*9 ¶ 49 Before Fed. R. Civ. P. 15(a) was amended in 2009, it was identical to the Colorado rule, and federal courts construing that version of the rule uniformly reached the same conclusion: the right to amend is cut off when a final judgment is entered.³ *Tool Box v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005) (listing cases applying this rule); *Cooper v. Shumway*, 780 F.2d 27, 29 (10th Cir. 1985); accord 3 James Wm. Moore et al., *Moore's Federal Practice* § 15.97[2] (2d ed. 1980) (noting that the absolute right to amend is lost after final judgment is entered).

¶ 50 These opinions are sound. The *Wilcox* division reasoned that “when final judgment is entered before a responsive pleading is filed, the liberal approach of C.R.C.P. 15 must be balanced against the value of preserving the integrity of final judgments.” 881 P.2d at 400. The division, and later divisions addressing the issue, struck that balance by holding that the right to amend is lost after a final judgment is entered because “the concerns of finality in litigation become even more compelling and the litigant has had the benefit of a day in court, in some fashion, on the merits of his claim.” *Id.* (quoting *Union Planters Nat'l Leasing v. Woods*, 687 F.2d 117, 121 (5th Cir. 1982)). Instead, before amending, a plaintiff must move to set aside the dismissal judgment under C.R.C.P. 59 or 60(b). *See id.*

¶ 51 So, it should have been no surprise to **Brewing** that under these precedents, it had the following choices when the district court dismissed its complaint for lack of standing under C.R.C.P. 12(b)(1):

- timely move to amend the judgment of dismissal under C.R.C.P. 59 or to vacate the judgment under C.R.C.P. 60;
- timely appeal the June 2018 dismissal to this court; or
- file a new action, taking the risk that the June 2018 dismissal would be preclusive of the new action.

¶ 52 **Brewing** did none of these things. Instead, without properly seeking leave of court, **Brewing** filed an amended complaint forty-eight days after the June 2018 dismissal order, contending that it had an absolute right to do so, and it allowed the forty-nine-day appeal period for

the June orders to expire without filing a notice of appeal. *See* C.A.R. 4(b).

¶ 53 Given these court of appeals cases and **Brewing's** course of action, it can succeed in this appeal only if the June orders did not constitute final judgments, or if all of the court of appeals' decisions were contrary to Colorado Supreme Court precedent.

C. The District Court's June Orders Were Final Judgments

¶ 54 The court's June orders dismissed **Brewing's** complaint because **Brewing** lacked standing and because **Brewing** failed to plead fraud with particularity. This first basis was a dismissal for lack of jurisdiction under C.R.C.P. 12(b)(1) because standing is a jurisdictional prerequisite. *C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶ 16, 410 P.3d 438; *City of Greenwood Village v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 436 (Colo. 2000). So, the question is whether the C.R.C.P. 12(b)(1) dismissals were final judgments.

¶ 55 I recognize that the district court initially characterized its dismissals as “without prejudice.” Later, in response to an order to show cause from this court, the district court stated that the “without prejudice” designation was a “clerical error.” This confusion does not affect my analysis. Usually, “a trial court's dismissal of a claim without prejudice does not constitute a final judgment,” but this designation is not dispositive. *Brody v. Bock*, 897 P.2d 769, 777 (Colo. 1995).

*10 ¶ 56 The characterization of a dismissal order as either with or without prejudice may, as this case illustrates, lend uncertainty to the process. The principal effect of a dismissal without prejudice is that the dismissal does not preclude filing a new action. *Grynberg v. Phillips*, 148 P.3d 446, 450 (Colo. App. 2006). That characterization may also affect whether the order is a final, appealable judgment. *See id.* Generally, though not always, a dismissal without prejudice is not a final, appealable order, and this court usually will dismiss an appeal of an order dismissing a case without prejudice. *Avicanna Inc. v. Mewhinney*, 2019 COA 129, ¶ 1 n.1, — P.3d —.

¶ 57 The content of an order, not its title, determines whether it is a final judgment. *Cyr v. Dist. Court*, 685

P.2d 769, 770 (Colo. 1984). A “[j]udgment” is “a decree and order to or from which an appeal lies.” C.R.C.P. 54(a). The controlling question is whether the order “constitutes a final determination of the rights of the parties in the action.” *Cyr*, 685 P.2d at 770. “[A]n order of dismissal is to be treated as a judgment for the purposes of taking an appeal when it finally disposes of the particular action and prevents any further proceedings as effectually as would any formal judgment.” *Levine v. Empire Sav. & Loan Ass’n*, 192 Colo. 188, 190, 557 P.2d 386, 387 (1976) (quoting *Herrscher v. Herrscher*, 41 Cal.2d 300, 259 P.2d 901, 903 (1953)).

¶ 58 Here, the district court’s June orders disposed of all claims against all parties. The court adjudicated the critical question of whether **Brewing** had standing and concluded that it did not. There were no remaining issues, legal or factual, for the court to resolve after it granted the motions to dismiss. Under the Colorado Rules of Civil Procedure and supreme court precedent, the orders constituted final judgments. There was simply nothing left for the district court to do at that point, except to address issues of fees and costs. And a request for fees or costs does not generally affect the judgment’s finality. See C.R.C.P. 58(a) (providing that entry of the judgment shall not be delayed for the taxing of costs); *Moya v. Schollenbarger*, 465 F.3d 444, 450 (10th Cir. 2006) (reasoning that dismissal of the entire action is ordinarily a final judgment); *Driscoll v. Dist. Court*, 870 P.2d 1250, 1252 (Colo. 1994) (fees and costs request does not affect finality of a judgment); see also *Baldwin v. Bright Mortg. Co.*, 757 P.2d 1072, 1074 (Colo. 1988). In asking the court to determine what fees and costs were due, the parties recognized as much.

¶ 59 The motions division of this court agreed. In the defendants’ motion to dismiss the appeal, they argued that the June orders constituted appealable final judgments, but that the time for appeal had expired. The motions division agreed and dismissed the portion of the appeal relating to the June orders because they “dispos[ed] of this case on the merits.”

¶ 60 While the district court never adjudicated the underlying merits of the plaintiff’s various claims, it did adjudicate the question of whether the plaintiffs have standing to bring those claims. “Although dismissal for lack of subject matter jurisdiction does not adjudicate the merits of the claims asserted, it does adjudicate the court’s jurisdiction.” *W. Colo. Motors, LLC v. Gen. Motors, LLC*, 2019 COA 77, ¶ 19, 444 P.3d 847 (quoting *Sandy Lake Band of Mississippi Chippewa v. United States*, 714 F.3d 1098, 1103 (8th Cir. 2013)). As to that limited question — standing and, thus, jurisdiction — the dismissal order

was an adjudication constituting a final judgment.

*11 ¶ 61 Because the June orders constituted final judgments, **Brewing** lost the absolute right to amend under C.R.C.P. 15(a).⁴

D. Colorado Supreme Court Precedent Does Not Dictate a Different Result

¶ 62 In addressing the final question, I cannot disregard twenty-five years of court of appeals authority holding that entry of final judgment cuts off a plaintiff’s right to amend under C.R.C.P. 15(a).

¶ 63 **Brewing** essentially argues that the prior court of appeals cases are contrary to earlier holdings of the Colorado Supreme Court, which have never been overruled by the supreme court in its adjudicatory or rulemaking capacities. As an intermediate appellate court, we are bound by supreme court authority. See *Silver v. Colo. Cas. Ins. Co.*, 219 P.3d 324, 330 (Colo. App. 2009). It matters not that the supreme court authority is old or that we purportedly discern a better rule of law. It is the prerogative of the supreme court alone to overrule its cases. See *id.*

¶ 64 **Brewing** relies on three supreme court cases: *Renner v. Chilton*, 142 Colo. 454, 351 P.2d 277 (1960); *Passe v. Mitchell*, 161 Colo. 501, 423 P.2d 17 (1967); and *Wistrand v. Leach Realty Co.*, 147 Colo. 573, 364 P.2d 396 (1961). According to **Brewing**, each of these cases holds that a plaintiff’s right to amend is *not* cut off when a court grants a motion to dismiss so long as no responsive pleading has been filed.⁵

¶ 65 *Passe* and *Renner* involved a plaintiff’s attempt to amend his complaint after the court had granted the defendant’s C.R.C.P. 12(b)(5) motion to dismiss for failure to state a claim, and, in both cases, the supreme court held that the plaintiffs had a right to amend. *Passe*, 161 Colo. at 502, 423 P.2d at 17-18; *Renner*, 142 Colo. at 455-56, 351 P.2d at 277-78. In *Passe*, the court reasoned that “no final judgment should have been entered in the absence of a showing of record that plaintiff waived the right to file an amended complaint, and elected to stand upon the allegations of the complaint to which the motion to dismiss was addressed.” *Passe*, 161 Colo. at 502, 423 P.2d at 17-18.

¶ 66 In *Wistrand*, the case most heavily relied on by **Brewing**, the plaintiff's contract claim was dismissed without prejudice under C.R.C.P. 12(b)(5) because the defendant was not a party to the contract. *Wistrand*, 147 Colo. at 574-75, 364 P.2d at 397. The plaintiff then filed a new suit against the same defendant on the theory of unjust enrichment. *Id.* at 575, 364 P.2d at 397. On appeal, the supreme court held that the legal theory of res judicata (now, claim preclusion) was inapplicable because the dismissal was without prejudice. *Id.* at 575-76, 364 P.2d at 397.

*12 ¶ 67 In a discussion that does not appear to be necessary to the court's holding on res judicata, the court noted that "[o]n dismissal of the original action [plaintiff] could have (1) amended its complaint, (2) stood on its complaint and appealed, (3) accepted a dismissal without prejudice or (4) had its rights finally adjudicated by a dismissal with prejudice and failure to appeal." *Id.* at 575, 364 P.2d at 397. **Brewing** relies on this language, and the language in *Passe* and *Renner*, to contend that it had an absolute right to amend its complaint even after dismissal.

¶ 68 I reject this argument because in all three cases the dismissals were under C.R.C.P. 12(b)(5) — not, as was the case here, under C.R.C.P. 12(b)(1).

¶ 69 A dismissal under Rule 12(b)(5) for failure to state a claim is fundamentally different from a dismissal under Rule 12(b)(1) for lack of jurisdiction.⁶ On a Rule 12(b)(5) motion, a court must take the facts pleaded as true and may only consider the four corners of the complaint (together with documents appended to or referred to in the complaint). *Norton v. Rocky Mountain Planned Parenthood, Inc.*, 2018 CO 3, ¶ 7, 409 P.3d 331. In contrast, under Rule 12(b)(1), a court must make findings and conclusions necessary to adjudicate the jurisdictional question. A court may, and often must, look beyond the pleadings and consider relevant evidence to assure itself that it has the power to hear the case. *See Barry v. Bally Gaming*, 2013 COA 176, ¶ 8, 320 P.3d 387. And a court may (and in certain contexts, must) hold an evidentiary hearing and make factual findings related to its jurisdiction. *See, e.g., Trinity Broad. of Denver v. City of Westminster*, 848 P.2d 916, 926 (Colo. 1993).

¶ 70 In this case, defendants' challenge to the court's subject matter jurisdiction required the court to address whether **Brewing** had standing and thus whether the court

had jurisdiction to adjudicate the pleaded claims. On a Rule 12(b)(1) motion, in contrast to a Rule 12(b)(5) motion, a court may look outside of the complaint to resolve a jurisdictional issue. *See Barry*, ¶ 8. Here, the court relied on the published list of bidders to conclude that **Brewing** did not have standing.⁷

¶ 71 Because the merits of the standing determination of the June orders are not before us, I do not address to what extent the allegations of a complaint regarding standing must be accepted as true by a district court. *See, e.g., Ainscough v. Owens*, 90 P.3d 851, 857 (Colo. 2004). I also need not decide whether the court may or must, as in certain other cases implicating the court's subject matter jurisdiction, conduct evidentiary proceedings to enable the court to make findings of fact and conclusions of law on the jurisdictional questions. *See, e.g., Trinity Broad.*, 848 P.2d at 926.

¶ 72 Because none of the supreme court decisions **Brewing** relied on addressed a dismissal under Rule 12(b)(1) for lack of jurisdiction, those holdings do not control here. And because a Rule 12(b)(1) dismissal order is at issue, this case does not require deciding whether *Harris*, a 2006 court of appeals case regarding a Rule 12(b)(5) dismissal, was inconsistent with *Renner*, *Passe*, or *Wistrand*.⁸

*13 ¶ 73 In conclusion, the district court did not err by dismissing the amended complaint because its June orders constituted final judgments that cut off **Brewing's** right to amend. Because I would affirm on that ground, I would not address whether the court erred when it concluded, in the alternative, that the amended complaint was futile. To the extent that **Brewing's** briefs invite us to give an advisory opinion on whether a new action would be barred by claim preclusion, I would decline the invitation because that question is not properly before us. During oral argument, however, the parties conceded that **Brewing** is free to initiate a new action regardless of the outcome of the amendment question at issue.

All Citations

--- P.3d ----, 2020 WL 579382, 2020 COA 21

Footnotes

¹ The majority correctly recognizes that a motion to dismiss is not a responsive pleading. *Davis v. Paolino*, 21 P.3d 870, 873 (Colo. App. 2001).

- 2 Defendants contend that we should review the trial court's order dismissing the amended complaint for an abuse of discretion, and argue that **Brewing's** delay in attempting to amend, as well as other factors, gave the trial court discretion to dismiss the amended complaint (or more accurately, to deny leave to amend). I agree with **Brewing** that the questions of whether it had an *absolute right* to amend under C.R.C.P. 15(a), and whether the June orders cut off that right, are questions of law that warrant de novo review.
- 3 Under the current federal rule, the absolute right to amend is cut off twenty-one days after service of a C.R.C.P. 12(b) motion.
- 4 I do not exclude the possibility that a dismissal based on lack of standing predicated solely on the four corners of a complaint may not be a final, appealable judgment. But in this case, the trial court considered information outside of the complaint to inform its standing ruling. Under these circumstances, a Rule 12(b)(1) dismissal is a final order or judgment.
- 5 These cases address a version of C.R.C.P. 15(a) that is substantively identical to the current version of the rule.
- 6 Because the district court in this case dismissed the complaint for lack of standing, the court noted that it was not reaching the defendants' C.R.C.P. 12(b)(5) grounds for dismissal.
- 7 Because, in my view, the June orders are not before us, I do not determine whether the trial court correctly relied on the published bidding list to conclude that **Brewing** lacked standing.
- 8 The *Harris* opinion took note of only *Renner*, distinguishing it on the ground that the motion to amend in *Renner* was "made before judgment was entered on the docket," whereas in *Harris*, judgment was entered on the docket before amendment. *Harris v. Reg'l Transp. Dist.*, 155 P.3d 583, 587 (Colo. App. 2006). The *Harris* division found this distinction sufficient to conclude that it was not bound by *Renner*.

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 15

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

Effective: January 1, 2018

Currentness

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is filed or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 21 days after it is filed. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: (1) Has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS, CO ST RCP Rule 15

Credits

Amended eff. Jan. 1, 2012; Sept. 5, 2013.

Notes of Decisions (544)

Rules Civ. Proc., Rule 15, CO ST RCP Rule 15
Current with amendments received through December 1, 2019.

End of Document

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United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)

Title III. Pleadings and Motions

Federal Rules of Civil Procedure Rule 15
Rule 15. Amended and Supplemental Pleadings

Currentness

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move--at any time, even after judgment--to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

CREDIT(S)

Rule 15. Amended and Supplemental Pleadings, FRCP Rule 15

(Amended January 21, 1963, effective July 1, 1963; February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 30, 1991, effective December 1, 1991; amended by Pub.L. 102-198, § 11, December 9, 1991, 105 Stat. 1626; amended April 22, 1993, effective December 1, 1993; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009.)

ADVISORY COMMITTEE NOTES

1937 Adoption

See generally for the present federal practice, [former] Equity Rules 19 (Amendments Generally), 28 (Amendment of Bill as of Course), 32 (Answer to Amended Bill), 34 (Supplemental Pleading), and 35 (Bills of Revivor and Supplemental Bills--Form); U.S.C. Title 28, § 399 [now 1653] (Amendments to show diverse citizenship) and [former] 777 (Defects of form; amendments). See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r. r. 1-13; O. 20, r. 4; O. 24, r. r. 1-3.

Note to Subdivision (a). The right to serve an amended pleading once as of course is common. 4 Mont.Rev.Codes Ann. (1935) § 9186; 1 Ore.Code Ann. (1930) § 1-904; 1 S.C.Code (Michie, 1932) § 493; *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 28, r. 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code. If there is no statute the power of the court to grant leave is said to be inherent. Clark, *Code Pleading* (1928), pp. 498, 509.

Note to Subdivision (b). Compare [former] Equity Rule 19 (Amendments Generally) and code provisions which allow an amendment "at any time in furtherance of justice," (e.g., Ark.Civ.Code (Crawford, 1934) § 155) and which allow an amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced (e.g., N.M.Stat. Ann. (Courtright, 1929) §§ 105-601, 105-602).

Note to Subdivision (c). "Relation back" is a well recognized doctrine of recent and now more frequent application. Compare Ala.Code Ann. (Michie, 1928) § 9513; Smith-Hurd Ill.Stats. ch. 110, § 170(2); 2 Wash.Rev.Stat. Ann. (Remington, 1932) § 308-3(4). See U.S.C., Title 28, § 399 [now 1653] (Amendments to show diverse citizenship) for a provision for "relation back."

Note to Subdivision (d). This is an adaptation of former Equity Rule 34 (Supplemental Pleading).

1963 Amendment

Rule 15(d) is intended to give the court broad discretion in allowing a supplemental pleading. However, some cases, opposed by other cases and criticized by the commentators, have taken the rigid and formalistic view that where the original complaint fails to state a claim upon which relief can be granted, leave to serve a supplemental complaint must be denied. See *Bonner v. Elizabeth Arden, Inc.*, 177 F.2d 703 (2d Cir. 1949); *Bowles v. Senderowitz*, 65 F.Supp. 548 (E.D.Pa.), rev'd on other grounds, 158 F.2d 435 (3d Cir. 1946), cert. denied, *Senderowitz v. Fleming*, 330 U.S. 848, 67 S.Ct. 1091, 91 L.Ed. 1292 (1947); cf. *LaSalle Nat. Bank v. 222 East Chestnut St. Corp.*, 267 F.2d 247 (7th Cir.), cert. denied, 361 U.S. 836, 80 S.Ct. 88, 4 L.Ed.2d 77 (1959). But see *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons*, 257 F.2d 162 (5th Cir. 1958); *Genuth v. National Biscuit Co.*, 81 F.Supp. 213 (S.D.N.Y.1948), app. dismissed, 177 F.2d 962 (2d Cir. 1949); 3 Moore's *Federal Practice* ¶15.01[5] (Supp.1960); 1A Barron & Holtzoff, *Federal Practice & Procedure* 820-21 (Wright ed. 1960). Thus plaintiffs have sometimes been needlessly remitted to the difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief.

Under the amendment the court has discretion to permit a supplemental pleading despite the fact that the original pleading is defective. As in other situations where a supplemental pleading is offered, the court is to determine in the light of the particular circumstances whether filing should be permitted, and if so, upon what terms. The amendment does not attempt to deal with such questions as the relation of the statute of limitations to supplemental pleadings, the operation of the doctrine of laches, or the availability of other defenses. All these questions are for decision in accordance with the principles applicable to supplemental pleadings generally. Cf. *Blau v. Lamb*, 191 F.Supp. 906 (S.D.N.Y.1961); *Lendonsol Amusement Corp. v. B. & Q. Assoc., Inc.*, 23 F.R.Serv. 15d.3, Case 1 (D.Mass.1957).

1966 Amendment

Rule 15(c) is amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall "relate back" to the date of the original pleading.

The problem has arisen most acutely in certain actions by private parties against officers or agencies of the United States. Thus an individual denied social security benefits by the Secretary of Health, Education, and Welfare may secure review of the decision by bringing a civil action against that officer within sixty days. 42 U.S.C. § 405(g) (Supp. III, 1962). In several recent cases the claimants instituted timely action but mistakenly named as defendant the United States, the Department of HEW, the "Federal Security Administration" (a nonexistent agency), and a Secretary who had retired from the office nineteen days before. Discovering their mistakes, the claimants moved to amend their complaints to name the proper defendant; by this time the statutory sixty-day period had expired. The motions were denied on the ground that the amendment "would amount to the commencement of a new proceeding and would not relate back in time so as to avoid the statutory provision * * * that suit be brought within sixty days * * *" *Cohn v. Federal Security Adm.*, 199 F.Supp. 884, 885 (W.D.N.Y.1961); see also *Cunningham v. United States*, 199 F.Supp. 541 (W.D.Mo.1958); *Hall v. Department of HEW*, 199 F.Supp. 833 (S.D.Tex.1960); *Sandridge v. Folsom, Secretary of HEW*, 200 F.Supp. 25 (M.D.Tenn.1959). [The Secretary of Health, Education, and Welfare has approved certain ameliorative regulations under 42 U.S.C. § 405(g). See 29 Fed.Reg. 8209 (June 30, 1964); Jacoby, *The Effect of Recent Changes in the Law of "Nonstatutory" Judicial Review*, 53 Geo.L.J. 19, 42-43 (1964); see also *Simmons v. United States Dept. HEW*, 328 F.2d 86 (3d Cir. 1964).]

Analysis in terms of "new proceeding" is traceable to *Davis v. L. L. Cohen & Co.*, 268 U.S. 638 (1925), and *Mellon v. Arkansas Land & Lumber Co.*, 275 U.S. 460 (1928), but those cases antedate the adoption of the Rules which import different criteria for determining when an amendment is to "relate back". As lower courts have continued to rely on the *Davis* and *Mellon* cases despite the contrary intent of the Rules, clarification of Rule 15(c) is considered advisable.

Relation back is intimately connected with the policy of the statute of limitations. The policy of the statute limiting the time for suit against the Secretary of HEW would not have been offended by allowing relation back in the situations described above. For the government was put on notice of the claim within the stated period--in the particular instances, by means of the initial delivery of process to a responsible government official (see Rule 4(d)(4) and (5)). In these circumstances, characterization of the amendment as a new proceeding is not responsive to the reality [sic], but is merely question-begging; and to deny relation back is to defeat unjustly the claimant's opportunity to prove his case. See the full discussion by Byse, *Suing the "Wrong" Defendant in Judicial Review of Federal Administrative Action: Proposals for Reform*, 77 Harv.L.Rev. 40 (1963); see also Ill.Civ.P. Act § 46(4).

Much the same question arises in other types of actions against the government (see Byse, *supra*, at 45 n. 15). In actions between private parties, the problem of relation back of amendments changing defendants has generally been better handled by the courts, but incorrect criteria have sometimes been applied, leading sporadically to doubtful results. See 1A Barron & Holtzoff, *Federal Practice & Procedure* § 451 (Wright ed. 1960); 1 id. § 186 (1960); 2 id. § 543 (1961); 3 *Moore's Federal*

Rule 15. Amended and Supplemental Pleadings, FRCP Rule 15

Practice, par. 15.15 (Cum.Supp.1962); Annot., *Change in Party After Statute of Limitations Has Run*, 8 A.L.R.2d 6 (1949). Rule 15(c) has been amplified to provide a general solution. An amendment changing the party against whom a claim is asserted relates back if the amendment satisfies the usual condition of Rule 15(c) of "arising out of the conduct * * * set forth * * * in the original pleading," and if, within the applicable limitations period, the party brought in by amendment, first, received such notice of the institution of the action--the notice need not be formal--that he would not be prejudiced in defending the action, and, second, knew or should have known that the action would have been brought against him initially had there not been a mistake concerning the identity of the proper party. Revised Rule 15(c) goes on to provide specifically in the government cases that the first and second requirements are satisfied when the government has been notified in the manner there described (see Rule 4(d)(4) and (5)). As applied to the government cases, revised Rule 15(c) further advances the objectives of the 1961 amendment of Rule 25(d) (substitution of public officers).

The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs. Also relevant is the amendment of Rule 17(a) (real party in interest). To avoid forfeitures of just claims, revised Rule 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for correction of the defect in the manner there stated.

1987 Amendment

The amendments are technical. No substantive change is intended.

1991 Amendment

The rule has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.

Paragraph (c)(1). This provision is new. It is intended to make it clear that the rule does not apply to preclude any relation back that may be permitted under the applicable limitations law. Generally, the applicable limitations law will be state law. If federal jurisdiction is based on the citizenship of the parties, the primary reference is the law of the state in which the district court sits. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980). If federal jurisdiction is based on a federal question, the reference may be to the law of the state governing relations between the parties. *E.g.*, *Board of Regents v. Tomanio*, 446 U.S. 478 (1980). In some circumstances, the controlling limitations law may be federal law. *E.g.*, *West v. Conrail, Inc.*, 107 S.Ct. 1538 (1987). Cf. *Burlington Northern R. Co. v. Woods*, 480 U.S. 1 (1987); *Stewart Organization v. Ricoh*, 108 S.Ct. 2239 (1988). Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this rule, it should be available to save the claim. Accord, *Marshall v. Mulrenin*, 508 F.2d 39 (1st Cir.1974). If *Schiavone v. Fortune*, 106 S.Ct. 2379 (1986) implies the contrary, this paragraph is intended to make a material change in the rule.

Paragraph (c)(3). This paragraph has been revised to change the result in *Schiavone v. Fortune*, *supra*, with respect to the problem of a misnamed defendant. An intended defendant who is notified of an action within the period allowed by Rule 4(m) [subdivision (m) in Rule 4 was a proposed subdivision which was withdrawn by the Supreme Court] for service of a summons and complaint may not under the revised rule defeat the action on account of a defect in the pleading with respect to the defendant's name, provided that the requirements of clauses (A) and (B) have been met. If the notice requirement is met within the Rule 4(m) [subdivision (m) in Rule 4 was a proposed subdivision which was withdrawn by the Supreme Court] period, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentification. On the basis of the text of the former rule, the Court reached a result in *Schiavone v. Fortune* that was inconsistent with the

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liberal pleading practices secured by Rule 8. See Bauer, Schiavone: *An Un-Fortunate Illustration of the Supreme Court's Role as Interpreter of the Federal Rules of Civil Procedure*, 63 Notre Dame L.Rev. 720 (1988); Brussack, *Outrageous Fortune: The Case for Amending Rule 15(c) Again*, 61 S.Cal.L.Rev. 671 (1988); Lewis, *The Excessive History of Federal Rule 15(c) and Its Lessons for Civil Rules Revision*, 86 Mich.L.Rev. 1507 (1987).

In allowing a name-correcting amendment within the time allowed by Rule 4(m), this rule allows not only the 120 days specified in that rule, but also any additional time resulting from any extension ordered by the court pursuant to that rule, as may be granted, for example, if the defendant is a fugitive from service of the summons.

This revision, together with the revision of Rule 4(i) with respect to the failure of a plaintiff in an action against the United States to effect timely service on all the appropriate officials, is intended to produce results contrary to those reached in *Gardner v. Gartman*, 880 F.2d 797 (4th Cir. 1989), *Rys v. U.S. Postal Service*, 886 F.2d 443 (1st Cir. 1989), *Martin's Food & Liquor, Inc. v. U.S. Dept. of Agriculture*, 14 F.R.D.3d 86 (N.D.Ill.1988). *But cf. Montgomery v. United States Postal Service*, 867 F.2d 900 (5th Cir. 1989), *Warren v. Department of the Army*, 867 F.2d 1156 (8th Cir. 1989); *Miles v. Department of the Army*, 881 F.2d 777 (9th Cir. 1989), *Barsten v. Department of the Interior*, 896 F.2d 422 (9th Cir. 1990); *Brown v. Georgia Dept. of Revenue*, 881 F.2d 1018 (11th Cir. 1989).

1993 Amendment

The amendment conforms the cross reference to Rule 4 to the revision of that rule.

2007 Amendment

The language of Rule 15 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 15(c)(3)(A) called for notice of the "institution" of the action. Rule 15(c)(1)(C)(i) omits the reference to "institution" as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its "institution."

2009 Amendment

Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a "pleading" as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid

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the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).¹

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

Notes of Decisions (5286)

Footnotes

1

If the proposed amendment to Rule 15(a)(3) ... changing the time period is approved by the Judicial Conference, the following additional sentence will be added to the Committee Note: "Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading."

Fed. Rules Civ. Proc. Rule 15, 28 U.S.C.A., FRCP Rule 15
Including Amendments Received Through 3-1-20

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Re Virtual Oaths.txt

From: berger, michael
Sent: Monday, March 23, 2020 7:57 AM
To: lee lnslaw.net; michaels, kathryn
Subject: Re: Virtual Oaths

Lee, I'm not aware of a Colorado statute that addresses this. As you know, CRCP 30 (b)(7) expressly authorizes the taking of depositions by telephone or other remote electronic device and subsection (c) of that rule requires that the witness shall be put under oath or affirmation, but doesn't address the precise question you raise. If and when we ever have another civil rules committee meeting, I will put this on the discussion agenda. Thanks for your inquiry. Stay well.

Michael H. Berger

From: lee lnslaw.net <lee@lnslaw.net>
Sent: Saturday, March 21, 2020 12:01 PM
To: berger, michael <michael.berger@judicial.state.co.us>
Subject: Virtual Oaths

Michael,
Apparently the Fla. Supreme Court has just issued a rule which allows oaths, such as what is typically required from a witness prior to deposition or testimony to be accomplished "over the phone" so the person who administers it is not personally present with the witness / deponent. Since I have seen some comments that "we should do the same thing" my assumption is that perhaps "we" haven't. If so, perhaps we should be suggesting it as 'our' way of fostering "social disengagement"(?).

June 19, 2020

Colorado Supreme Court
2 East 14th Avenue
Denver, Colorado 80203
ATTN: Justice Richard Gabriel

Re: **Addendum** ~ Rules for Suppression of Information in County Court Records

Dear Committee Members:

I sent you a letter pleading for a swift and effective action in March in regards to allowing people to seal and expunge false accusations made in County Court. I have since discovered a number of disturbing issues that I feel should be brought to your attention. In addition, I believe there are some very simple fixes for all civil courts.

After discovering numerous issues with the County Court system, I am imploring you to make the following simple changes.

These changes merely bridge the gap between the current laws/mechanisms in the criminal and civil court systems. This gap is the source of all conflicts between the public's right to know, and the state's recognition of an individual's privacy in situations which constitutionally override a public's right to know (false criminal accusations; baseless filings; medical privacy; etc.)

Following the proposed changes, I will describe the problems and issues which will be resolved, including all concerns the committee has voiced in the last year, without creating complex changes in the law by simply saying "You may now use these mechanisms in additional proceedings."

New Civil Court Rules:

- County Courts have the authority to employ District Court Rule 121 paragraphs 1-5.
- All Civil Courts have the authority to employ all laws and procedures specifying the sealing and expungement of criminal records to civil cases, whose foundations are a criminal accusation (such as CRS 24-72-300et seq and CRS 24-72-700et seq).
- All Civil Court records pertaining to civil court cases whose foundations are a criminal accusation must be sealed and/or expunged based on the status of the criminal accusation in question.
Example: if an accuser makes the false accusation that the accused committed a criminal act, and the investigation determined no such criminal act was committed, and sealed or expunged the criminal accusation in question, then the records of the civil case must be sealed/expunged in the same manner.

In accordance with HIPAA regulations, the following is enacted for all civil courts, District and County:

- All civil courts, District and County, must adhere to HIPAA regulations and hold medical privacy above the public right to know, and only in a court petition shall it be determined if that medical information should be made public.
- Medical accusations of one party onto another must be verified as factual before being accepted into the public record. This may be done with either a court order, or presentation of medical information to the judge by the accused party. When determining what may be shared with the accuser, the court shall adhere to all medical privacy restrictions. If the accusation is determined to be false, it shall be stricken from the record. If the accusation is verified, the court proceedings are all immediately sealed, unless the public's need to know has been successfully established in a petition to the court.
- All other HIPAA laws not mentioned here, must also be observed.
- All additional medical privacy laws, both federal and state, must be observed.
- This is reaffirming the federal restrictions and guidelines that many county courts have been ignoring such as

Mesa County. These laws are already in place. It is not new law. This is reaffirming that all privileged medical information starts out as being suppressed, rather than forcing people to go back to suppress information that has already been wrongfully released to the public.

All Civil Courts, District and County, must adhere to CORA:

- In adherence with the U.S. Supreme Court decision of 1958 (U.S. vs Procter & Gamble), any Civil Court case whose foundation is based on a false criminal premise, such as an accusation of a criminal event which investigators determined had no merit or good cause, shall be expunged. This recognizes that such civil cases lack the foundation necessary to initiate a court action and have willfully violated the rights of the accused.

A very important note is the opinion of Justice Douglas:

“The fact that a criminal case failed does not mean that the evidence obtained could not be used in a civil case. It is only when the criminal procedure is subverted that 'good cause' for wholesale discovery and production of a grand jury transcript would be warranted. No such showing was made here...”

The following are reasons for the above changes:

1. The first issue that I found is that District Court judges using 121 p 1-5 are hesitant to seal any civil record that carries the weight of a criminal accusation.
2. As I said in my previous letter, anyone can make a criminal accusation in Civil Court even when it is false, such as “he/she was arrested for doing this...” when no such arrest and no such event occurred, but that criminal code offense/accusation remains on their civil check.
3. Because of the repeal and replace of the laws **CRS 24-72-300et seq.** with **CRS 24-72-700et seq.**, people are now able to circumvent the normal laws governing the sealing and expungement of criminal accusations by giving truthful or even false claims about those criminal events in civil court. The **300 series et seq.** applies to those who were not arrested and could also be used to argue that certain civil records **should be sealed as well** if they were based on a sealed accusation. With their replacement (the **700 series**), it could only be applied to people who were arrested, and to records in the CBI. This means that someone who had enough evidence of guilt to be arrested has more right to privacy than someone who was so innocent that law enforcement determined there was no chance they were guilty. And yet, the criminal accusation will stay with them forever. In addition, civil cases that are based on a dismissed and sealed criminal investigation can be made public through a false filing in Civil Court, causing the false filing and accusation of the criminal event to be public, yet the actual criminal investigation and conclusions by the investigators remain sealed and not public.

Personal Story Proving the Problem Exists: My uncle claimed that I attacked him and sent him to the hospital, and there was a police report of my guilt. In addition, he made a similar accusation in my grandma's name against me. I was investigated thoroughly by the police and Adult Protective Services (APS). They determined that not only was there no injury to my uncle, but that he attacked me. In addition, there was no police report, as it was an Incident Report/Call Log, which are two very different things. APS also determined there was no cause for any investigation, there was never any harm or threat, and that the incidents as described never took place. However, the APS report is completely sealed and I was unable to present the incident report into court before my uncle dropped it. So the false claim of elder abuse where I sent my uncle to the hospital went public, but the actual law enforcement investigations that cleared me are private. In fact, the sealed investigations also contain notes by the investigators with the instructions to arrest my uncle if he made one more false accusation.

As you can see, this act by my uncle was fully subverting and circumventing criminal rules and procedure to make a false claim of guilt in Civil Court.

- False claim of guilt public.
- Two criminal investigations clearing me, sealed and private.
- I'm not the only one whose rights have been violated like this and it seems that this specific process violates the U.S. Supreme Court Ruling of 1958 (mentioned above), because the civil action was filed without enough standing to have legally brought this criminal claim into civil court.

- Many County Courts (such as Mesa County) apparently don't feel the need to recognize HIPAA or CORA laws regarding privacy.
- For instance, anyone can make any unverified medical claim in Civil Court that could cause severe public and personal problems whether or not the claim is true. As County Clerk Charlene Benton of Mesa County confirmed, "We don't pay attention to HIPAA or CORA" (we assume she meant "County Court", but we're not sure).

In my particular case, one other false claim my uncle made was that I am a "violent autistic". I have been tested more than once in my life (young age testing; IQ placement testing for accelerated course placement; obtaining evidence to counter my uncle's false claims), and it was determined that I am more than **99% unlikely** to have any sort of autistic or mental condition. CORA and HIPAA laws require such medical accusations to be verified first before being placed on public record. No such process was implemented. Even then, only if it is a danger or concern to the public should such medical information be released to the public, whether or not it is a false claim.

I have been informed by my employers and employment attorneys that Colorado law prohibits me from being employed in a public position if there's even an accusation of a violent mental disorder. This is also true for certain criminal code violations such as elder abuse.

Background check companies also search transcripts for red flags, such as violent mental disorders and criminal codes. These operations are far more sophisticated now than they were 20 years ago.

In reading the minutes of the meetings, I know you are struggling with the right solution to resolve all the problems. The solutions are already there in law. These solutions have worked for years! These solutions have resolved problems with false criminal accusations, vindictive abuse of medical records/accusations, and where does the public right to know end, and a person's right to privacy begin. All of these legal problems have been answered with the examples I have given, along with others I haven't. The laws are there. They have been tested, and proven to have worked, and they continue to work. All you need to do is bridge the gaps.

Thank you.

Sincerely,

Kevin Conner

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**Laws in the Discussion
incomplete list**

Regarding Health Information and Privacy

<http://www.healthinfolaw.org/state-law/records-colo-rev-stat-%C2%A7-27-65-121>

Records: Colo. Rev. Stat. 27-65-121

<http://www.lpdirect.net/casb/crs/27-65-121.html>

Mental health records are confidential and privileged to the patient, and may only be disclosed according to the statute, or the accompanying regulation which can be found at Colo. Code Regs. §§ 502-1:21.170.2; 502-1:21.170.3. This statute does not compel a provider to disclose confidential information obtained from a patient's family member.

Disclosure With Consent:

A patient may consent to the disclosure of information relating to their mental health treatment. A guardian or conservator may consent on behalf of a ward or conservatee in writing.

Disclosure Without Consent:

Mental health information may be disclosed without a patient's consent under the following circumstances:

- Between providers for purposes of providing services
- As necessary to submit a claim for benefits or insurance
- For research purposes, provided that the researchers sign an oath of confidentiality
- To a patient's adult family member both fact and location of admission with regard to a patient admitted into inpatient or residential care.

Disclosure Pursuant to Court Order:

Mental health treatment information may be disclosed "[t]o the courts, as necessary to the administration of the provisions of this article."

etc.

Current as of June 2015

http://www.healthinfolaw.org/state-topics/6,63/f_topics

Records - Colo. Rev. Stat. § 27-65-121

6 CCR 1011-1:II-6.100

C.R.S.A. § 12-36-117

C.R.S.A. § 12-36-140

Colo. Rev. Stat. § 27-82-109

Confidentiality; Release of Records - Colo. Code Regs. §§ 502-1:21.170.2; 502-1:21.170.3

Both mental health and substance abuse treatment records are confidential and privileged to the patient, and may only be disclosed according to...

[NOTE: It appears Mesa County doesn't adhere to this]

2 CCR 502-1:21.170.3, Release of information

C.R.S.A. § 27-81-113, Records of alcoholics and intoxicated persons

C.R.S.A. § 27-82-106, Voluntary treatment for persons incapacitated or under the influence of drugs

Clinical Records, Colo. Code Regs. § 10-2505-10 (§ 8.408.5)
Genetic information, Colo. Rev. Stat. § 10-3-1104.6
HIVtesting, Colo. Rev. Stat. § 10-3-1104.5
Powers and duties of executive director, Colo. Rev. Stat. § 25-4-1003
Privacy of health information, Colo. Rev. Stat. § 10-16-1003
Confidentiality - exceptions, Colo. Rev. Stat. § 12-33-126
Confidentiality of health information, Colo. Rev. Stat. § 10-16-423
Rev. Stat. § 25-32-106
Reports of electroconvulsive treatment, Colo. Rev. Stat. § 25-2-120
Sexually Transmitted Infections, Colo. Code Regs. § 6-1009-1 (Regulation 11)
Confidentiality of information collected, Colo. Rev. Stat. § 25-4-1905
Department of public health and environment, Colo. Rev. Stat. § 25-4-2403
Medical record documentation requirements, Colo. Rev. Stat. § 25-48-111
Named reporting of certain diseases and conditions, Colo. Rev. Stat. § 25-1-122
No public funds for abortion, Colo. Rev. Stat. § 25.5-3-106
No public funds for abortion, Colo. Rev. Stat. § 25.5-4-415
Perinatal Services, Colo. Code Regs. § 6-1011-1 (Chap 04 Part 20)
Powers and duties of executive director, Colo. Rev. Stat. § 25-4-1003
Registry for the medical use of marijuana Colo. Code Regs. § 5-1006-2 (Regulation 1)
Reports - confidentiality, Colo. Rev. Stat. § 25-4-406
Statewide emergency medical and trauma care system, Colo. Rev. Stat. § 25-3.5-704
The Colorado Central Cancer Registry, Colo. Code Regs. § 6-1009-3
The Trauma Registry, Colo. Code Regs. § 6-1015-4 (Chap 1)
Trauma Facility Designation Criteria, Colo. Code Regs. § 6-1015-4 (Chap 3 § 303)
Disciplinary proceedings Colo. Rev. Stat. § 12-35-129.2
Hospital professional review committees, Colo. Rev. Stat. § 12-36.5-104.4

REMINDER: this is a partial list. When you start looking, you will find more that need to be looked at again.