

## AGENDA

### COLORADO SUPREME COURT COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Friday, March 26, 2021 1:30 p.m.

VIRTUAL MEETING VIA WEBEX—PLEASE SEE EMAIL FOR THE LINK

- I. Call to order
- II. Approval of January 29, 2021 minutes [Pages 1 to 4]
- III. Announcements from the Chair
- IV. Present Business
  - A. Proposed Amendments or New Rules Regarding Uniform Procedures in FED Actions—(Judge Lino Lipinsky de Orlov) [Pages 5 to 33]
  - B. JDF 105—Service of Pattern Interrogatories—(Mike Hofmann) [Pages 34 to 52]
  - C. C.R.C.P. 15(a)—Possible Amendments in view of DIA Brewing Co., LLC v. MCE-DIA, LLC, 2021 COA 4—(John Lebsack) [Pages 53 to 76]
  - D. JDF 1111—Citizen Complaint—(Judge Berger) [Pages 77 to 88]
  - E. County Court Subcommittee Proposed Rule Changes (304, 307 and 341)—(Ben Vinci) [Pages 89 to 96]
  - F. C.R.C.P. 16.2—Simplified Process for Dissolution of Marriage in Low-Income/Low-Conflict Situations—(Judge Brody)
  - G. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims)
  - H. Crim. P. 55.1—Public Access to Court Records—(Judge Jones)
  - I. C.R.C.P. 30(b)(6)—Possible Amendments in Light of Federal Rule Change—(Stephanie Scoville)
  - J. C.R.C.P. 4(m)—(Judge Jones)
  - K. C.R.C.P. 30(b)(7)—Virtual Oaths—(Lee Sternal) [Page 97]
- V. Adjourn—**Next meeting is June 25, 2021 at 1:30 pm.**

Michael H. Berger, Chair  
[michael.berger@judicial.state.co.us](mailto:michael.berger@judicial.state.co.us)  
720-625-5231

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure  
January 29, 2021 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:

<b>Name</b>	<b>Present</b>	<b>Not Present</b>
Judge Michael Berger, Chair	X	
Chief Judge Steven Bernard	X	
Judge Karen Brody	X	
Miko Ando Brown	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	
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	
<b>Non-voting Participants</b>		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins	X	

**I. Attachments & Handouts**

- January 29, 2021 agenda packet.

**II. Announcements from the Chair**

- The September 25, 2020 minutes were approved as presented.
- Chair Judge Berger noted the unfortunate passing of member David Little, a longtime significant contributor to the committee, and introduced new member Miko Brown.

**III. Present Business**

**A. C.R.C.P. 16.2**

Justice Hart brought this proposal from the Standing Committee on Family Issues. Their goal was to put together a simplified process for dissolution of marriage in certain situations.

Members discussed the concept and agreed that a streamlined process is desirable when there is a low-asset and low-conflict divorce. One member cautioned that a lack of disclosures could be problematic. Judge Berger decided to form a subcommittee to explore these changes. Members wanting to join should email Judge Berger and Kathryn.

**B. C.R.C.P. 16, 16.1 and JDF 601**

Subcommittee Chair Judge Elliff reminded the committee that this subcommittee was tasked with considering how the revised rules were functioning. The subcommittee's proposal relates to comments regarding lawyers going above the \$100,000 damages limit and removes a reference to attorneys' fees. Judge Elliff noted that the changes are modest but are intended to encourage practitioners to make sure they determine the proper rule they fall under. The idea is to force litigants to come forward sooner with the best damages calculation they can.

One member suggested that computing an estimation of damages may be difficult in some cases; and the proposed rule might be a bit inflexible. Another member mentioned that the committee has really been tinkering with this rule and that perhaps once it is settled, it should be left alone.

A motion was made to approve the proposal of the subcommittee, along with the following edits: *against* should be changed to *from* on the coversheet and the inclusion of the party's signature requirement will be removed. It passed 21-1.

**C. Colorado Rules for Magistrates**

Magistrate Tims reported that the subcommittee has met a half-dozen times and is aiming to simplify the rules. The committee agreed that the subcommittee is on the right track, and the subcommittee will continue with their work.

**D. JDF 601 and 603—Water Rules Committee Request**

The Water Court Committee has asked this committee to consider some proposed minor changes to civil forms that mention water rules. A motion was made, seconded, and passed unanimously to approve the proposals.

**E. Crim. P. 55.1—Public Access to Court Records**

Judge Jones has been appointed chair of this subcommittee. Anyone interested in joining should email Judge Berger and Kathryn.

**F. Letter to the Committee from Kevin Conner regarding Sealing of County Court Criminal Records**

Judge Berger asked the committee whether this item of business should be referred to the Public Access to Court Records subcommittee to avoid subcommittees at cross-purposes. The committee agreed, and this business will be assigned to the Public Access to Court Records subcommittee chaired by Judge Jones.

**G. Proposed Amendments or New Rules Regarding Uniform Procedures in Fed Actions**

Judge Burger noted that Judge Lipinski will have a proposal for the committee ahead of the March meeting.

**H. C.R.C.P. 15(a)**

Subcommittee chair John Lebsack noted that the subcommittee has proposed changes to the rule that allow the ability to amend by right. The proposal tracks with the federal rule. Some members noted that this proposal goes too far and that any change should solely encapsulate the recent supreme court case covering it.

A motion and second were made to adopt the proposal. The motion failed with a vote of 8-10. The proposal was sent back to the subcommittee to have the proposal comport with the new supreme court case.

**I. C.R.C.P. 30(b)(6)**

John Lebsack brought this to the attention of the committee and noted that 30(b)(6) is an important tool that is fraught with problems. Other members noted this same experience. Judge Berger asked members to volunteer for a subcommittee by emailing Judge Berger and Kathryn.

**J. C.R.C.P. 4(m)**

Tabled until next meeting.

**K. C.R.C.P. 30(b)(7)—Virtual Oaths**

Tabled until next meeting.

**L. Local Rules**

The committee has completed their consideration of this.

**M. JDF 105**

Subcommittee Chair Mike Hofmann has submitted a proposal for the committee to consider at the next meeting.

**N. County Court Rules 304, 307 and 341**

Subcommittee Chair Ben Vinci reported that the subcommittee has a meeting scheduled for March 9th.

**Future Meetings**

March 26, 2021

June 25, 2021

September 24, 2021

November 12, 2021

The Committee adjourned at 3:09 p.m.

## **MEMORANDUM**

**TO:** The Civil Rules Committee

**FROM:** Judge Lino Lipinsky on behalf of  
the FED Task Force of  
the Access to Justice Commission

**SUBJECT:** Proposed amendment to C.R.C.P. 304, proposed new  
C.R.C.P. 312.5 and 316.5, and proposed new County  
Court forms for forcible entry and detainer cases

**DATE:** March 16, 2021

### **Introduction**

The FED Task Force of the Access to Justice Commission respectfully requests that the Civil Rules Committee approve the Task Force's proposed amendment to C.R.C.P. 304, proposed new C.R.C.P. 312.5 and 316.5, and proposed new County Court forms (the "Proposals"). The Proposals are attached and described further below.

The Commission's Delivery Committee approved the Proposals, with non-substantive revisions, on March 9 and the Commission approved them, also with non-substantive revisions, on March 12.

In her capacity as a member of the Commission, Justice Hart voted in favor of the Proposals.

As noted below, the Task Force believes that the Proposals would reduce the number of default judgments entered in forcible entry and detainer cases (FED cases) where the self-represented defendant had a meritorious defense, but lacked sufficient knowledge of the legal system to comply with the applicable procedures. The Proposals would also increase the uniformity of FED procedures across the state.

The Task Force found particularly troubling two practices followed in FED cases in certain counties: (1) the entry of default judgments against defendants who appear in court at the date and time specified in the summons, but who don't know they must file an answer at that time; and (2) requiring self-represented defendants to proceed to trial on the return date. The Proposals seek to preclude these practices to the extent they can be addressed through rules, rather than legislation.

### **The History of the Proposals**

During the summer of 2020, the Delivery Committee began exploring changes to the Rules of Civil Procedure and the adoption

of new forms that could reduce the number of FED cases in which a defendant has a meritorious defense but nonetheless loses the case by default because he or she lacks sufficient knowledge of the legal system to present that defense to the court. As part of those discussions, the Delivery Committee formed the Task Force, comprised of Judge Lino Lipinsky, Chair; Judge Adam Espinosa of the Denver County Court; Colorado Legal Services (CLS) attorneys Jon Asher, Reenie Terjak, and A.J. Esser; Jacqueline Marro, the state's Access to Justice Coordinator; and Carolyn Powell, an attorney in private practice with substantial experience in representing low-income clients in FED cases. The Delivery Committee charged the Task Force with making recommendations for new rules and forms to increase access to justice for self-represented defendants in FED cases and greater uniformity in FED procedures across the state, without imposing new undue burdens on plaintiffs or County Courts. Primarily because five members of the Task Force are judges and CLS lawyers, who are precluded from lobbying the General Assembly, the Task Force did not propose amendments to the state's FED statutes.

The Committee, which met frequently between October 2020 and March 2021, followed five guiding principles in drafting the Proposals:

1. Retain the language in the analogous rules wherever possible to avoid inconsistencies between similar rules;
2. Avoid redundant language;
3. Ensure that the proposed new rules are consistent with the FED statutes;
4. Use the proper style and formatting; and
5. Don't reduce defendants' current deadlines.

The Task Force also looked for guidance to initiatives that certain County Courts adopted in FED cases, such as providing self-represented tenants with advisement sheets.

### **The Proposals**

The Proposals would make two principal changes to procedures in FED cases.

First, they would require the plaintiff to provide the defendant with an advisement sheet, which would be a new County Court form, at the time the plaintiff serves the defendant with the

summons and complaint. The Task Force patterned the advisement sheet on the Denver County Court's FED advisement form.

The Task Force decided that the form should be limited to one page and be written in plain English. (The Task Force hopes that, if approved, the form will be translated into Spanish. Utah recently approved a similar advisement form, which is bilingual.) The form provides basic information about FED procedures and identifies resources for self-represented defendants and those who qualify for a CLS lawyer.

Second, the Proposals would provide for mandatory disclosures in FED cases. The County Court Rules currently only allow for disclosures if requested by a party. The Task Force concluded that all parties in an FED case would benefit if the plaintiff was required to disclose the information and documents relevant in the vast majority of FED cases and the defendant was required to provide the information and documents supporting his or her defenses.

The Task Force considered whether a mandatory disclosure requirement would increase plaintiffs' attorney fees and costs. We concluded that a disclosure requirement would not increase the

cost of litigating an FED case for at least three reasons: (1) in most cases, plaintiffs already attach the most relevant documents to their complaint as exhibits; (2) under the current County Court Rules, much time is spent on requests for production of leases, proof of nonpayment of rent, and similar documents, as well as continuances of trial necessitated by a party's failure to bring key documents to court; and (3) the exchange of information and documents would help the parties understand each other's positions and increase the likelihood of settlement.

The Proposals are summarized below:

#### **Amended C.R.C.P. 304**

The Task Force proposes a new section (b)(2) to C.R.C.P. 304 to specify the documents that a plaintiff must serve on the defendant in an FED case. The current version of C.R.C.P. 304(b) requires the plaintiff to serve a summons, the complaint, and a blank copy of the answer form. This section would be renumbered C.R.C.P. 304(b)(1) and would continue to apply to all non-FED cases filed in a County Court.

The new C.R.C.P. 304(b)(2), which would only apply to FED cases, would require the plaintiff to serve, in addition to the

summons, complaint, and blank copy of the answer form, the following documents:

- The new advisement form,
- A completed mandatory disclosure form,
- A blank copy of the mandatory disclosure form for the defendant to complete, and
- Blank copies of the fee waiver forms.

In addition, new C.R.C.P. 304(b)(2) would require the plaintiff to certify in the return of service that the plaintiff complied with the disclosure requirement.

### **New C.R.C.P. 312.5**

New C.R.C.P. 312.5, which would govern defenses, answers, and motions in FED cases, is modeled on current C.R.C.P. 312. It contains a deadline for answers in FED cases consistent with the FED statutes and current practice. The deadlines in C.R.C.P. 312(a), which currently apply to all County Court cases, including FED cases, are not consistent with the FED statutes or practice. For example, the deadlines provide for an appearance date no more than “63 days from the date of the issuance of the summons . . . .” Most FED cases have been resolved long before that time.

C.R.C.P. 312.5(a) states that “[t]he defendant shall file an answer including any counterclaim or cross-claim on or before, and shall appear in court at, the date and time as fixed in the summons, or such other date as fixed by statute or by the court.”

In addition, C.R.C.P. 312.5(b) provides that “[a] party may make a motion raising defenses.” (The reference to motions in C.R.C.P. 312(b) — “[m]otions raising defenses shall be made in accordance with Rule 307” — is problematic because C.R.C.P. 307(b), which at one time addressed motions, has been repealed. An attorney or litigant who turns to C.R.C.P. 307 for guidance regarding motion practice in the County Courts will be confused. The Task Force recommends that the Rules Committee consider removing the reference to C.R.C.P. 307 from C.R.C.P. 312(b).)

### **New C.R.C.P. 316.5**

New C.R.C.P. 316.5, which would govern pretrial procedures in FED cases, is modeled on C.R.C.P. 316. The new rule specifically addresses the mandatory disclosures in FED cases.

The Task Force spent a significant amount of time discussing the possible sanctions if a party fails to comply with its disclosure obligation. The disclosure requirement would be toothless if

C.R.C.P. 316.5 did not refer to possible sanctions. The Task Force, however, was also concerned about the imposition of harsh sanctions on self-represented defendants who failed to provide their disclosures through lack of knowledge of the rules.

The Task Force decided that such defendants should be subject to sanctions, as the sanction language in C.R.C.P. 316.5(a)(2) needed to apply equally to all parties. But we agreed not to specify particular sanctions in C.R.C.P. 316.5(a)(2) and to give the County Courts the discretion to impose “appropriate sanctions.”

In addition, C.R.C.P. 316.5(b) provides for trial settings consistent with the expedited nature of FED cases. C.R.C.P. 316.5(b) states, in relevant part, that “[i]f the defendant files a timely answer, the court shall schedule a trial no earlier than forty-eight hours after the return date, and in accordance with C.R.S. § 13-40-114.” This language would end the practice of forcing defendants to proceed to trial on the return date, which does not allow defendants sufficient preparation time and does not provide the parties with adequate time to negotiate and memorialize a settlement.

Further, C.R.C.P. 316.5(b) includes language that does not appear in C.R.C.P. 316(b): “Courts may encourage the parties to engage in mediation.” This sentence does not reduce the County Courts’ discretion to order mediation, although it would remind the Courts and the parties that mediation is an option.

Following lengthy discussions, the Task Force decided to incorporate in C.R.C.P. 316.5(c) the language addressing discovery that appears in C.R.C.P. 316(c) and not allow parties to propound discovery requests in FED cases absent leave of court. We concluded that discovery would be unnecessary in most FED cases in light of the proposed new mandatory disclosure rule, but that courts could still order discovery in appropriate proceedings (such as FED cases involving commercial properties).

Lastly, the Task Force discussed whether the benefits of a pretrial conference warranted making them mandatory in FED cases. At pretrial conferences, courts can provide self-represented defendants with important information about the Rules of Civil Procedure, preparation for trial, and resources. We concluded, however, that requiring a pretrial conference in every FED case would place an unreasonable burden on plaintiffs and the judiciary.

Further, the proposed new advisement sheet would provide self-represented defendants with much of the information they could obtain at a pretrial conference.

### **The New Advisement Sheet**

As explained above, the proposed form of advisement sheet would provide defendants in FED cases with basic information about the legal process and resources for self-represented tenants and those who qualify for a CLS attorney.

### **The New Form of Disclosure Statement**

The new disclosure statement is based on the current County Court disclosure form, with two significant changes:

- It notes the mandatory nature of disclosures in FED cases; and
- The form requires the plaintiff to disclose specific documents that are relevant in nearly all FED cases, such as the lease, documents establishing the non-payment of rent, the demand for compliance, and the notice to quit.

The disclosure requirement would not increase the cost of litigating an FED case, particularly as most plaintiffs already attach

these types of documents to their complaints as exhibits, the parties would need to bring the specified documents to court if the case proceeds to trial, and the provision of the required information and documents to the defendant may increase the likelihood that a defendant lacking a meritorious defense will settle.

\* \* \* \*

Attached are:

- Clean and redlined documents reflecting the proposed revisions to C.R.C.P. 304;
- A clean version of proposed new C.R.C.P. 312.5 and a redlined document reflecting the differences between C.R.C.P. 312.5 and C.R.C.P. 312;
- A clean version of proposed new C.R.C.P. 316.5 and a redlined document reflecting the differences between C.R.C.P. 316.5 and C.R.C.P. 316;
- The proposed new form of advisement sheet for FED cases; and
- A clean version of the proposed new disclosure statement for FED cases and a redlined document reflecting the differences between the proposed

disclosure statement and the current County Court  
disclosure statement.

The Task Force respectfully requests that the Rules Committee  
approve the Proposals.

## Rule 304. Service of Process.

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**(a) To What Applicable.** This rule applies to all process except as otherwise provided by these rules.

**(b) Initial Process.** Initial process shall be as follows:

**(1) Initial Process in cases other than forcible entry and detainer cases.** Except in cases of service by publication under Rule 304 (f), the complaint and a blank copy of the answer form shall be served with the summons.

**(2) Initial Process in forcible entry and detainer cases.** Plaintiff shall serve the following on the defendant at least seven days before the return date: (1) summons; (2) complaint; (3) blank copy of the answer form; (4) Form \_\_\_\_: Information for Eviction Cases; (5) plaintiff's completed Form 9A: Mandatory Disclosure Statement in Eviction Cases; (6) a blank copy of Form 9A: Mandatory Disclosure Statement in Eviction Cases; and (7) blank copies of Forms JDF 205 and 206 (fee waiver forms). Plaintiff shall certify in plaintiff's "return of service" that plaintiff served all required documents on defendant.

**(c) By Whom Served.** Process may be served within the United States or its Territories by any person whose age is eighteen years or older, not a party to the action. Process served in a foreign country shall be according to any internationally agreed means reasonably calculated to give notice, the law of the foreign country, or as directed by the foreign authority or the court if not otherwise prohibited by international agreement.

**(d) Personal Service.** Personal service shall be as follows:

**(1)** Upon a natural person whose age is eighteen years or older by delivering a copy thereof to the person, or by leaving a copy thereof at the person's usual place of abode, with any person whose age is eighteen years or older and who is a member of the person's family, or at the person's usual workplace, with the person's supervisor, secretary, administrative assistant, bookkeeper, human resources representative or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process.

**(2)** Upon a natural person whose age is at least thirteen years and less than eighteen years, by delivering a copy thereof to the person and another copy thereof to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to any person in whose care or control the person may be, or with whom the person resides, or in whose service the person is employed, and upon a natural person under the age of thirteen years by delivering a copy to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to the person in whose care or control the person may be.

**(3)** Upon a person for whom a conservator has been appointed, by delivering a copy thereof to such conservator.

**(4)** Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized under the laws of this state or of any other jurisdiction, (including any such organization, association or entity serving as an agent for service of process for itself or for another entity) by delivering a copy thereof to the registered agent for service as set forth in the most recently filed document in the records of the secretary of state of this state or of any other jurisdiction, or that agent's secretary or assistant, or one of the following:

**(A)** An officer of any form of entity having officers, or that officer's secretary or assistant;

**(B)** A general partner of any form of partnership, or that general partner's secretary or assistant;

**(C)** A manager of a limited liability company or limited partnership association in which management is vested in managers rather than members, or that manager's secretary or assistant;

**(D)** A member of a limited liability company or limited partnership association in which management is vested in the members or in which management is vested in managers and there are no managers, or that member's secretary or assistant;

**(E)** A trustee of a trust, or that trustee's secretary or assistant;

**(F)** The functional equivalent of any person described in paragraphs (A) through (E) of this subsection (4), regardless of such person's title, under:

- (I) the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other documents of similar import duly filed or recorded by which the entity or any or all of its owners obtains status as an entity or the attribute of limited liability, or
- (II) the law pursuant to which the entity is formed or which governs the operation of the entity;
- (G) If no person listed in subsection (4) of this rule can be found in this state, upon any person serving as a shareholder, member, partner, or other person having an ownership or similar interest in, or any director, agent, or principal employee of such entity, who can be found in this state, or service as otherwise provided by law.
- (5) Repealed.
- (6) Upon a municipal corporation, by delivering a copy thereof to the mayor, the city manager, the clerk, or deputy clerk.
- (7) Upon a county, by delivering a copy thereof to the county clerk, chief deputy, or county commissioner.
- (8) Upon a school district, by delivering a copy thereof to the superintendent.
- (9) Upon the state by delivering a copy thereof to the attorney general.
- (10)
- (A) Upon an officer, agent, or employee of the state, acting in an official capacity, by delivering a copy thereof to the officer, agent, or employee, and by delivering a copy to the attorney general.
- (B) Upon a department or agency of the state, subject to suit, by delivering a copy thereof to the principal officer, chief clerk, or other executive employee thereof, and by delivering a copy to the attorney general.
- (C) For purposes of service of an initial summons and complaint, the copies shall be delivered to both the party and the attorney general within the times as set forth in rule 312 (a). For all other purposes, the effective date of service shall be the latter date of delivery.
- (11) Upon other political subdivisions of the State of Colorado, special districts, or quasi-municipal entities, by delivering a copy thereof to any officer or general manager, unless otherwise provided by law.
- (12) Upon any of the entities or persons listed in subsections (4) through (11) of this section (d) by delivering a copy to any designee authorized to accept service of process for such entity or person, or by delivery to a person authorized by appointment or law to receive service of process for such entity or person. The delivery shall be made in any manner permitted by such appointment or law.
- (e) Substitute Service.** In the event that a party attempting service of process by personal service under section (d) is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (f), the party may file a motion, supported by an affidavit of the person attempting service, for an order for substituted service. The motion shall state (1) the efforts made to obtain personal service and the reason that personal service could not be obtained, (2) the identity of the person to whom the party wishes to deliver the process, and (3) the address, or last known address of the workplace and residence, if known, of the party upon whom service is to be effected. If the court is satisfied that due diligence has been used to attempt personal service under section (d), that further attempts to obtain service under section (d) would be to no avail, and that the person to whom delivery of the process is appropriate under the circumstances and reasonably calculated to give actual notice to the party upon whom service is to be effective, it shall:
- (1) Authorize delivery to be made to the person deemed appropriate for service, and
- (2) Order the process to be mailed to the address(es) of the party to be served by substituted service, as set forth in the motion, on or before the date of delivery. Service shall be complete on the date of delivery to the person deemed appropriate for service.
- (f) Other Service.** Except as otherwise provided by law, service by mail or publication shall be allowed only in actions affecting specific property or status or other proceedings in rem. When service is by publication, the complaint need not be published with the summons. The party desiring service of process by mail or publication under this section (f) shall file a motion verified by the oath of such party or of someone in the party's behalf for an order of service by mail or publication. It shall state the facts

authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service and shall give the address, or last known address, of each person to be served or shall state that this address and last known address are unknown. The court, if satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, shall:

**(1)** Order the party to send by registered or certified mail a copy of the summons and a copy of the complaint, addressed to such person at such address, requesting a return receipt signed by addressee only. Such service shall be complete on the date of the filing of proof thereof, together with such return receipt attached thereto signed by such addressee, or

**(2)** Order publication of the summons in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within fifteen days after the order the party shall mail a copy of the summons and complaint to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be completed on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

**(g) Manner of Proof.** Proof of service shall be made as follows:

**(1)** If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service.

**(2)** Repealed.

**(3)** If served by mail, a sworn or unsworn declaration showing the date of the mailing, with the return receipt attached, where applicable.

**(4)** If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the summons, complaint and answer form where required.

**(5)** If served by waiver, by a sworn or unsworn declaration admitting or waiving service by the person or persons served, or by their attorney.

**(6)** If served by substituted service, by a sworn or unsworn declaration as to the date, place, and manner of service, and that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

**(h) Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons issued.

**(i) Waiver of Service of Summons.** A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the defendant.

**(j) Refusal of Copy.** If a person to be served refuses to accept a copy of the summons and complaint, service shall be sufficient if the person serving the documents knows or has reason to identify the person who refuses to be served, identifies the documents being served as a summons and complaint, offers to deliver a copy of the documents to the person who refuses to be served, and thereafter leaves a copy in a conspicuous place.

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**(c) By Whom Served.** Process may be served within the United States or its Territories by any person whose age is eighteen years or older, not a party to the action. Process served in a foreign country shall be according to any internationally agreed means reasonably calculated to give notice, the law of the foreign country, or as directed by the foreign authority or the court if not otherwise prohibited by international agreement.

**(d) Personal Service.** Personal service shall be as follows:

**(1)** Upon a natural person whose age is eighteen years or older by delivering a copy thereof to the person, or by leaving a copy thereof at the person's usual place of abode, with any person whose age is eighteen years or older and who is a member of the person's family, or at the person's usual workplace, with the person's supervisor, secretary, administrative assistant, bookkeeper, human resources representative or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process.

**(2)** Upon a natural person whose age is at least thirteen years and less than eighteen years, by delivering a copy thereof to the person and another copy thereof to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to any person in whose care or control the person may be, or with whom the person resides, or in whose service the person is employed, and upon a natural person under the age of thirteen years by delivering a copy to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to the person in whose care or control the person may be.

**(3)** Upon a person for whom a conservator has been appointed, by delivering a copy thereof to such conservator.

**(4)** Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized under the laws of this state or of any other jurisdiction, (including any such organization, association or entity serving as an agent for service of process for itself or for another entity) by delivering a copy thereof to the registered agent for service as set forth in the most recently filed document in the records of the secretary of state of this state or of any other jurisdiction, or that agent's secretary or assistant, or one of the following:

**(A)** An officer of any form of entity having officers, or that officer's secretary or assistant;

**(B)** A general partner of any form of partnership, or that general partner's secretary or assistant;

**(C)** A manager of a limited liability company or limited partnership association in which management is vested in managers rather than members, or that manager's secretary or assistant;

**(D)** A member of a limited liability company or limited partnership association in which management is vested in the members or in which management is vested in managers and there are no managers, or that member's secretary or assistant;

**(E)** A trustee of a trust, or that trustee's secretary or assistant;

**(F)** The functional equivalent of any person described in paragraphs (A) through (E) of this subsection (4), regardless of such person's title, under:

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(I) the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other documents of similar import duly filed or recorded by which the entity or any or all of its owners obtains status as an entity or the attribute of limited liability, or

(II) the law pursuant to which the entity is formed or which governs the operation of the entity;

(G) If no person listed in subsection (4) of this rule can be found in this state, upon any person serving as a shareholder, member, partner, or other person having an ownership or similar interest in, or any director, agent, or principal employee of such entity, who can be found in this state, or service as otherwise provided by law.

(5) Repealed.

(6) Upon a municipal corporation, by delivering a copy thereof to the mayor, the city manager, the clerk, or deputy clerk.

(7) Upon a county, by delivering a copy thereof to the county clerk, chief deputy, or county commissioner.

(8) Upon a school district, by delivering a copy thereof to the superintendent.

(9) Upon the state by delivering a copy thereof to the attorney general.

(10)

(A) Upon an officer, agent, or employee of the state, acting in an official capacity, by delivering a copy thereof to the officer, agent, or employee, and by delivering a copy to the attorney general.

(B) Upon a department or agency of the state, subject to suit, by delivering a copy thereof to the principal officer, chief clerk, or other executive employee thereof, and by delivering a copy to the attorney general.

(C) For purposes of service of an initial summons and complaint, the copies shall be delivered to both the party and the attorney general within the times as set forth in rule 312 (a). For all other purposes, the effective date of service shall be the latter date of delivery.

(11) Upon other political subdivisions of the State of Colorado, special districts, or quasi-municipal entities, by delivering a copy thereof to any officer or general manager, unless otherwise provided by law.

(12) Upon any of the entities or persons listed in subsections (4) through (11) of this section (d) by delivering a copy to any designee authorized to accept service of process for such entity or person, or by delivery to a person authorized by appointment or law to receive service of process for such entity or person. The delivery shall be made in any manner permitted by such appointment or law.

**(e) Substitute Service.** In the event that a party attempting service of process by personal service under section (d) is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (f), the party may file a motion, supported by an affidavit of the person attempting service, for an order for substituted service. The motion shall state (1) the efforts made to obtain personal service and the reason that personal service could not be obtained, (2) the identity of the person to whom the party wishes to deliver the process, and (3) the address, or last known address of the workplace and residence, if known, of the party upon whom service is to be effected. If the court is satisfied that due diligence has been used to attempt personal service under section (d), that further attempts to obtain service under section (d) would be to no avail, and that the person to whom delivery of the process is appropriate under the circumstances and reasonably calculated to give actual notice to the party upon whom service is to be effective, it shall:

(1) Authorize delivery to be made to the person deemed appropriate for service, and

(2) Order the process to be mailed to the address(es) of the party to be served by substituted service, as set forth in the motion, on or before the date of delivery. Service shall be complete on the date of delivery to the person deemed appropriate for service.

**(f) Other Service.** Except as otherwise provided by law, service by mail or publication shall be allowed only in actions affecting specific property or status or other proceedings in rem. When service is by publication, the complaint need not be published with the summons. The party desiring service of process by mail or publication under this section (f) shall file a motion verified by the oath of such party or of someone in the party's behalf for an order of service by mail or publication. It shall state the facts

authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service and shall give the address, or last known address, of each person to be served or shall state that this address and last known address are unknown. The court, if satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, shall:

**(1)** Order the party to send by registered or certified mail a copy of the summons and a copy of the complaint, addressed to such person at such address, requesting a return receipt signed by addressee only. Such service shall be complete on the date of the filing of proof thereof, together with such return receipt attached thereto signed by such addressee, or

**(2)** Order publication of the summons in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within fifteen days after the order the party shall mail a copy of the summons and complaint to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be completed on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

**(g) Manner of Proof.** Proof of service shall be made as follows:

**(1)** If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service.

**(2)** Repealed.

**(3)** If served by mail, a sworn or unsworn declaration showing the date of the mailing, with the return receipt attached, where applicable.

**(4)** If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the summons, complaint and answer form where required.

**(5)** If served by waiver, by a sworn or unsworn declaration admitting or waiving service by the person or persons served, or by their attorney.

**(6)** If served by substituted service, by a sworn or unsworn declaration as to the date, place, and manner of service, and that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

**(h) Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons issued.

**(i) Waiver of Service of Summons.** A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the defendant.

**(j) Refusal of Copy.** If a person to be served refuses to accept a copy of the summons and complaint, service shall be sufficient if the person serving the documents knows or has reason to identify the person who refuses to be served, identifies the documents being served as a summons and complaint, offers to deliver a copy of the documents to the person who refuses to be served, and thereafter leaves a copy in a conspicuous place.

## Rule 312.5. Defenses and Objections in Forcible Entry and Detainer Cases -- When and How. Defenses and Objections in Forcible Entry and Detainer Cases -- by Pleading or Motion.

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**(a) Responsive Pleadings; When Presented.** The defendant shall file an answer including any counterclaim or cross-claim on or before, and shall appear in court at, the date and time as fixed in the summons, or such other date as fixed by statute or by the court.

**(b) Motions.** A party may make a motion raising defenses. If made by the defendant on or before the appearance date the motions shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order or such other time as fixed by the court. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

**(c) Waiver of Defenses.** A party waives all defenses and objections which are not raised either by motion or in his answer except that the defense of lack of jurisdiction of the subject matter may be made at any time.

**(d) Motion for Judgment on the Pleadings.** At any time after the last pleading is filed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. A party shall not submit matters outside the pleadings in support of the motion.

Rule 312.5. Defenses and Objections in Forcible Entry and Detainer Cases -- When and How. Defenses and Objections in Forcible Entry and Detainer Cases -- by Pleading or Motion.

---

**(a) Responsive Pleadings; When Presented.** The defendant shall file an answer including any counterclaim or cross-claim on or before, and shall appear in court at the date and time the appearance date as fixed in the summons, or such other date as fixed by statute or by the court. ~~Except as otherwise provided in this rule, the appearance date shall not be more than 63 days from the date of the issuance of the summons and the summons must have been served at least 14 days before the appearance date. When circumstances require that the plaintiff proceed under Rule 304 (e), the above limitation shall not apply and the appearance date shall not be less than 14 days after the completion of service by publication or mail.~~

**(b) Motions.** ~~A party may make a motion raising defenses. Motions raising defenses shall be made in accordance with Rule 307.~~ If made by the defendant on or before the appearance date the motions shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order or such other time as fixed by the court. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

**(c) Waiver of Defenses.** A party waives all defenses and objections which are not raised either by motion or in his answer except that the defense of lack of jurisdiction of the subject matter may be made at any time.

**(d) Motion for Judgment on the Pleadings.** At any time after the last pleading is filed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. A party shall not submit matters outside the pleadings in support of the motion.

## Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Cases -- Disclosure and Conference.

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### **(a) Disclosure Statement.**

**(1)** The plaintiff shall serve pursuant to C.R.C.P. 305 a completed Form 9A with attachments and a blank Form 9A on the defendant together with the summons and complaint, or such other time as fixed by court order. The defendant shall serve pursuant to C.R.C.P. 305 a completed Form 9A with attachments on the plaintiff together with the answer no later than the date and time provided in C.R.C.P. 312.5(a), or such other time as fixed by court order. A party may not supplement the disclosure statement except for good cause.

**(2)** Any party failing to provide a completed Form 9A in good faith under this subsection (a) shall be subject to imposition of appropriate sanctions.

**(b) Trial Scheduling and Pretrial Conferences.** If the defendant files a timely answer, the court shall schedule a trial no earlier than forty-eight hours after the return date, and in accordance with C.R.S. § 13-40-114. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

**(c) Pretrial Discovery.** Any party may request that discovery be permitted to assist in the preparation for trial. The request shall be made only during the pretrial conference. The discovery may include depositions, requests for admission, interrogatories, physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall be followed as to the missing term.

**(d) Resolution of Disputes.** All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

**(e) Juror Notebooks.** The court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

## Rule 316.5. Pretrial Procedure - - Forcible Entry and Detainer Cases -- Disclosure and Conference.

### **(a) Disclosure Statement.**

~~(1) The plaintiff shall serve pursuant to C.R.C.P. 305 a completed Form 9A with attachments and a blank Form 9A on the defendant together with the summons and complaint, or such other time as fixed by court order. The defendant shall serve pursuant to C.R.C.P. 305 a completed Form 9A with attachments on the plaintiff together with the answer no later than the date and time provided in C.R.C.P. 312.5(a), or such other time as fixed by court order. At any time after the answer is filed but no later than 21 days before trial, a party may request from an opposing party a list of witnesses who may be called at trial, and copies of documents and pictures, and a description of physical evidence which may be used at trial. Such request shall be made by serving pursuant to C.R.C.P. 305 a blank disclosure statement, which shall be in the form and content of Appendix to Chapter 25, Form 9, on the opposing party and shall be accompanied by the requesting party's properly completed Form 9 and its attachments. The opposing party shall serve pursuant to C.R.C.P. 305 a completed Form 9 with attachments on the requesting party within 21 days after service but not less than 7 days before trial. The court may shorten or extend that time. A party may not supplement the disclosure statement except for good cause.~~

~~(2) The court may order the parties to exchange and file Form 9 disclosure statements at any time before trial.~~

~~(3) Any party failing to provide a completed Form 9A respond in good faith to a Form 9 request or court order under this subsection (a) shall be subject to imposition of appropriate sanctions at the time of trial.~~

**(b) Trial Scheduling and Pretrial Conferences.** If the defendant files a timely answer, the court shall schedule a trial no earlier than forty-eight hours after the return date, and in accordance with C.R.S. § 13-40-114. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

**(c) Pretrial Discovery.** ~~If a pretrial conference is held, a~~Any party may request that discovery be permitted to assist in the preparation for trial. The request shall be made only during the pretrial conference. The discovery may include depositions, requests for admission, interrogatories, physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall be followed as to the missing term.

**(d) Resolution of Disputes.** All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings during the conference. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

**(e) Juror Notebooks.** The court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

# INFORMATION FOR EVICTION CASES

A forcible entry and detainer case, sometimes called an “FED” or “eviction” case, has been filed against you. This sheet explains some of your rights.

## **1. What to Do**

If you disagree with the claim against you, you must:

- Complete the blank Answer form. An Answer should say why you believe you should not be evicted and/or do not owe the money claimed. You can also list any claims you may have against the plaintiff/landlord. These are called “counterclaims.” If you have a counterclaim, you must list the facts that support your counterclaim.
- File your completed Answer with the court and provide a copy to the plaintiff/landlord or the plaintiff/landlord’s attorney.
- Pay the filing fee *or*, if you cannot afford the filing fee, complete and file fee waiver forms JDF 205 and 206. You can find the forms and instructions at:  
[https://www.courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=176](https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=176)
- Complete the blank Disclosure Form you received with the Summons and Complaint, and provide it to the plaintiff/landlord at the same time you provide your Answer. Do not file the Disclosure Form with the court unless told by the court to do so.
- Appear in court at the date and time listed in your Summons or in any court order.

If you are missing any forms, you can find them at:

[https://www.courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=28](https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28)

The following website has information about the procedures in the county in which your case was filed: <https://www.courts.state.co.us/Courts/District/Choose.cfm>

**If you do not file a timely Answer or appear in court, the court may issue a default judgment and/or money judgment against you.** If the court enters a default judgment, it may also issue a Writ of Restitution against you. The Writ of Restitution would allow the landlord to have you and your belongings removed from your home.

## **2. Resources**

- Self Help Center
  - For information on evictions:  
[https://www.courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=28](https://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28)
  - To locate your local self help center:  
[https://www.courts.state.co.us/Self\\_Help/center.cfm](https://www.courts.state.co.us/Self_Help/center.cfm)
- Colorado Legal Services
  - Free legal services to low-income tenants facing evictions
  - Call (303) 837-1313 ext. 444 or visit [www.coloradolegalservices.org](http://www.coloradolegalservices.org)

County Court _____ County, Colorado Court Address:	
Plaintiff(s): v. Defendant(s):	<b>▲ COURT USE ONLY ▲</b>
Attorney or Party Without Attorney (Name and Address):	Case Number:
Phone Number:                      E-mail: FAX Number:                         Atty. Reg. #:	Division                      Courtroom
<b>MANDATORY DISCLOSURE STATEMENT IN EVICTION CASES</b>	

**PLAINTIFFS/LANDLORDS:** You must serve your completed form on each defendant/tenant, together with your documents and pictures, and a blank copy of this form, at the time you serve the Summons and the Complaint or such other time as fixed by court order.

**DEFENDANTS/TENANTS:** If you disagree with the claim against you, you must provide your completed form to the plaintiff/landlord, together with your documents and pictures, at the time you provide your Answer or such other time fixed by court order.

Do **not** file your Disclosure Statement with the court unless the court tells you to do so.

**WARNING:** You must complete this part, sign it, and provide a copy with copies of the documents, pictures, and items to the opposing party no later than the time specified above. If you do not provide it, you may not be allowed to call witnesses or use exhibits at trial.

**A.** Give the name, address and telephone number and a brief description of the testimony of each witness you intend to call at the trial. (Use additional pages if you intend to call more than three witnesses.)

1. \_\_\_\_\_

Brief Description of Testimony:

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2. \_\_\_\_\_

Brief Description of Testimony:

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3. \_\_\_\_\_

Brief Description of Testimony:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. List every document, picture or item you may use at the trial. Describe and attach a photocopy of each document or picture listed to the copy sent to the opposing party. The documents listed below must be disclosed if they exist and are in your possession. (Use additional pages if necessary):

- 1. Written lease or contract
- 2. In nonpayment of rent cases: all documents (ledger, billing statement, etc.) establishing nonpayment or payment of rent
- 3. In breach of lease cases: all documents establishing that the lease was or was not breached
- 4. Demand for compliance
- 5. Notice to quit
- 6. \_\_\_\_\_
- 7. \_\_\_\_\_
- 8. \_\_\_\_\_
- 9. \_\_\_\_\_

I certify I served (mailed or delivered) a copy of this Statement with attached photocopies of documents/pictures on \_\_\_\_\_ (date) to:

Name of opposing party or attorney: \_\_\_\_\_

Address: \_\_\_\_\_

- 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.

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title (if applicable): \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

\*Keep a copy of your completed Disclosure Statement and its attachments for yourself, and bring a copy of the completed Disclosure Statement and its attachments with you when you go to court.

\*Do **not** file your Disclosure Statement with the court unless the court tells you to do so.

County Court _____ County, Colorado Court Address:		<b>▲ COURT USE ONLY ▲</b>
Plaintiff(s): v. Defendant(s):		
Attorney or Party Without Attorney (Name and Address):		Case Number:
Phone Number:	E-mail:	Division      Courtroom
FAX Number:	Atty. Reg. #:	
<b>MANDATORY DISCLOSURE STATEMENT IN EVICTION CASES</b>		

**IF YOU ARE SENDING THIS FORM TO AN OPPOSING PARTY, IT MUST BE ACCOMPANIED BY YOUR OWN COMPLETED FORM LISTING YOUR WITNESSES AND EXHIBITS AND ATTACHING COPIES OF YOUR DOCUMENTS AND PICTURES**

**PLAINTIFFS/LANDLORDS:** You must serve your completed form on each defendant/tenant, together with your documents and pictures, and a blank copy of this form, at the time you serve the Summons and the Complaint or such other time as fixed by court order.

**DEFENDANTS/TENANTS:** If you disagree with the claim against you, you must provide your completed form to the plaintiff/landlord, together with your documents and pictures, at the time you provide your Answer or such other time fixed by court order.

**DO NOT FILE YOUR DISCLOSURE STATEMENT WITH THE COURT UNLESS TOLD BY THE COURT TO DO SO.**

Do not file your Disclosure Statement with the court unless the court tells you to do so.

**PART 1. THIS PART TO BE COMPLETED BY THE PARTY WHO SENDS THIS FORM. PRINT OR TYPE THIS INFORMATION:**

**This form is sent to you by:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Address of Clerk of the Court:  
\_\_\_\_\_  
\_\_\_\_\_

**PART 2. THIS PART TO BE COMPLETED BY THE PARTY WHO RECEIVES THIS FORM. PRINT OR TYPE YOUR ANSWERS.**

**WARNING:** You must complete this part, sign it, and provide a copy with copies of the documents, pictures and items to the opposing party no later than the time specified above. If you do not provide it, you may not be allowed to call witnesses or use exhibits at trial. **YOU MUST COMPLETE THIS PART, SIGN IT AND SEND A COPY WITH COPIES OF THE DOCUMENTS AND PICTURES TO THE PERSON SHOWN IN PART 1 WITHIN 21 DAYS BUT NO LESS THAN 7 DAYS BEFORE THE TRIAL DATE. IF YOU DO NOT SEND IT, YOU MAY NOT BE ALLOWED TO CALL WITNESSES OR USE EXHIBITS AT TRIAL.**

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A. Give the name, address and telephone number and a brief description of the testimony of each witness you intend to call at the trial. (Use additional pages if you intend to call more than three witnesses.)

1. \_\_\_\_\_

Brief Description of Testimony:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_

Brief Description of Testimony:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_

Brief Description of Testimony:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. List every document, picture or item you may use at the trial. Describe and attach a photocopy of each document or picture listed to the copy sent to the opposing party ~~person shown in Part 4~~. The documents listed below must be disclosed if they exist and are in your possession (Use additional pages ~~the back of this form~~ if necessary):

1. Written lease or contract

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2. In nonpayment of rent cases: all documents (ledger, billing statement, etc.) establishing nonpayment of rent

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3. In breach of lease cases: all documents establishing that the lease was or wasn't breached

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4. Demand for compliance

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5. Notice to quit

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6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

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9. \_\_\_\_\_

I certify I served (mailed or delivered) a copy of this Statement with attached photocopies of documents/pictures on \_\_\_\_\_ (date) to:

Name of opposing party or attorney: \_\_\_\_\_

Address: \_\_\_\_\_

- 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.

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

~~\*KEEP A COPY OF YOUR COMPLETED DISCLOSURE STATEMENT AND ITS ATTACHMENTS FOR YOURSELF. Keep a copy of your completed Disclosure Statement and its attachments for yourself, and bring a copy of the completed Disclosure Statement and its attachments with you when you go to court.~~

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~~\*DO NOT FILE YOUR DISCLOSURE STATEMENT WITH THE COURT UNLESS TOLD BY THE COURT TO DO SO. Do not file your Disclosure Statement with the court unless the court tells you to do so.~~

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MEMORANDUM



Date: January 29, 2021  
To: Judge Michael Berger  
Kathryn Michaels  
From: Michael J. Hofmann  
Email: michael.hofmann@bclplaw.com  
Direct: 303 866 0257  
Re: Civil Rules Forms Subcommittee: Pattern Interrogatories under C.R.C.P. 369(g)  
and Objection to Calculation under C.R.S. § 26-2-128(1)(A)

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On behalf of the Forms Subcommittee, I'm transmitting our proposed revisions to *Pattern Interrogatories Under C.R.C.P. 369(g) – Individual* and a new proposed form for *Objection to Calculation under C.R.S. § 26-2-128(1)(A)*. I've attached clean and red-lined versions of both documents. A brief explanation of both forms follows.

Pattern Interrogatories Under C.R.C.P. 369(g)

The prior version of this form (Form 7 of the County Court forms) implied that the Clerk of Court had to mail these interrogatories for the judgment creditor. We were asked to revise the form to clarify that the Clerk may, but is not required to, mail the interrogatories. We drafted language that we hope makes that clear (page [xx] of the clean version and [xxx] of the red-line.)

We also took the opportunity to clarify some other language in the interrogatories and correct grammatical errors. Those changes are also shown in the red-line.

Objection to Calculation Under C.R.S. § 26-2-128(1)(A)

The exemption amounts for debts under C.R.S. § 26-2-128(1)(A) – which covers garnishments for judgments for public assistance fraud – is different from the standard exemption amounts. *See* C.R.S. § 13-54-104(2)(a)(II)(A)-(C). Currently,

To: Judge Michael Berger, Kathryn Michaels  
Date: January 29, 2021  
Page: 2



no form covers these debts. Accordingly, we modified Form 28 to conform to the exemptions amounts in § 13-54-104(2)(a)(II)(A)-(C). Those changes are shown in the red-line. We propose that this form be adopted as Form 28(a).

County Court	County, Colorado	
Court Address:		
Plaintiff(s)/Petitioner(s):		<b>COURT USE ONLY</b>
v.		
Defendant(s)/Respondent(s):		
Attorney or Party Without Attorney (Name and Address):		Case Number:
Phone Number:	E-mail:	Division          Courtroom
FAX Number:	Atty. Reg. #:	
<b>PATTERN INTERROGATORIES UNDER C.R.C.P. 369(g) - INDIVIDUAL</b>		

The following Pattern Interrogatories are propounded to \_\_\_\_\_ (name of Judgment Debtor) pursuant to C.R.C.P. 369(g).

**Answer all of the questions and each and every part thereof fully and completely. Your answers must be filed with the Court and a copy mailed to the sender no later than 14 days after you receive these Pattern Interrogatories. Use a separate sheet of paper, if necessary. Do not use Post Office boxes for any address provided in your answers unless you request and receive permission from the Court.**

**1. State your home address, business address, home phone, business phone, and date of birth:**

Home address: \_\_\_\_\_  
 Business address: \_\_\_\_\_  
 Home phone: \_\_\_\_\_ Business phone: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_

**2. If you are employed, state the name, address, and phone number of your employer(s). If more than one employer, show additional employers on a separate sheet of paper.**

Name of Employer: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_

**3. If you have any income from any source other than your employer (for example, rental income, commissions, stock dividends, interest), state the name, address, and phone number of the person or business paying you the income, the amount of income, and the dates of payment.**

Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Amount of Payments: \_\_\_\_\_ Dates of Payments: \_\_\_\_\_  
 Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Amount of Payments: \_\_\_\_\_ Dates of Payments: \_\_\_\_\_

4. If you are not employed or have other sources of income, state all sources of money you use to pay your living expenses, including the name, address, telephone number, and amounts. Show additional sources on a separate sheet of paper, if necessary:

Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Amount of Payments: \_\_\_\_\_ Dates of Payments: \_\_\_\_\_

Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Amount of Payments: \_\_\_\_\_ Dates of Payments: \_\_\_\_\_

5. State whether you own or rent the home you live in, including the amount of rent or house payments you make:

Rent \_\_\_\_\_ (monthly rent payment)

Own \_\_\_\_\_ (monthly house payment)

Name(s) of Owner(s): \_\_\_\_\_

6. State the name, address, account number and type of account for every financial institution (bank, savings and loan, credit union, brokerage house) where you have an account or where you have signature authority on the account. Provide additional information on a separate sheet of paper, if necessary.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Account: \_\_\_\_\_ Account Number (last 4-digits): \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Account: \_\_\_\_\_ Account Number (last 4-digits): \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of Account: \_\_\_\_\_ Account Number (last 4-digits): \_\_\_\_\_

If you own, owned during the last four years, or regularly use any automobiles, motorcycles, trucks, RV's, ATV's, jet skis, boats, or trailers, list the make, model, year, VIN, date of purchase, purchase price, and the name of the owner if the owner is not you. If you no longer own the vehicle, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_ VIN: \_\_\_\_\_

Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_ VIN: \_\_\_\_\_

Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

If you own, owned during the last four years, or use any firearms, list the make, model, serial number, date of purchase, purchase price. If you no longer own the firearm, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Serial Number: \_\_\_\_\_

Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Serial Number: \_\_\_\_\_

Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

9. If you own, owned during the last four years, or regularly use any personal property NOT DESCRIBED ABOVE for which the purchase price was \$500.00 or more, describe each item by make, model, date of purchase, purchase price, and name of owner if not you. If you no longer own the item, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

10. State the name, address, and telephone number of your spouse, if you are married. If not married, list a close relative not living with you, indicating their relationship to you.

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

11. Produce and attach to your answers copies of the following documents:

- a. Your federal and state tax returns with all attachments for the last four years.
- b. The deed to or the lease for your home.
- c. Your driver's license.
- d. Your last pay stub from your employer(s).
- e. Your last bank statement(s).

12. If you wish to propose an arrangement to pay the judgment, state the proposed terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If you are self-employed, you must also answer the following questions.**

13. What is the full name, address, and phone number of the business?

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

14. What does your business do?

15. On a separate sheet of paper, list the name, address and phone number of each business customer during the past three months, including the amount and reason for any money owed by the customer, if any.

16. State the name, address, account number, and type of account for every financial institution (bank, savings and loan, credit union, brokerage house) where the business has an account. Provide additional information on a separate sheet of paper, if necessary.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Type of Account: \_\_\_\_\_ Account Number (last 4-digits): \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Type of Account: \_\_\_\_\_ Account Number (last 4-digits): \_\_\_\_\_

17. If the business owns, owned during the last four years, or regularly uses any personal property for which it paid \$500.00 or more, describe each item by make, model, date of purchase, purchase price, name of owner if not the business. If the business no longer owns the item, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_  
Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_  
Address of Purchaser: \_\_\_\_\_  
Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_  
Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_  
Address of Purchaser: \_\_\_\_\_  
Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_  
Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_  
Address of Purchaser: \_\_\_\_\_  
Owner if not you: \_\_\_\_\_

**18. Produce and attach to your answers copies of the following documents for the business:**

- a. All bank records for the past three months.
- b. All payroll records for the past three months.
- c. Current list of the accounts receivable.
- d. Profit and Loss Statements for the current and prior year.
- e. Current asset list, including the inventory.

**Failure to respond fully, accurately, and timely to these interrogatories could result in a citation for contempt of court.**

- 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.

**VERIFICATION**

**I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.**

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

\_\_\_\_\_  
(Printed name of Judgment Debtor)

\_\_\_\_\_  
Signature of Judgment Debtor

HOW TO SERVE THESE PATTERN INTERROGATORIES ON THE JUDGMENT DEBTOR

The Judgment Creditor may ask the Clerk or Deputy Clerk of Court to serve these Pattern Interrogatories by mailing them to the Judgment Debtor. The Clerk is not required to mail them, and the Clerk will use only regular mail for service. If the Clerk agrees to serve these Pattern Interrogatories, the Clerk will complete the "Certificate of Service by Mailing" below.

If the Judgment Creditor prefers, or if the Clerk declines to mail the Pattern Interrogatories, the Judgment Creditor may serve these Pattern Interrogatories in accordance with C.R.C.P. 304 ("Service of Process"). If C.R.C.P. 304 service is used, the Judgment Creditor must file proof of service as required by C.R.C.P. 304(g). A proof of service form – JDF 98 – is available on the Colorado Judicial Branch's website, <https://www.courts.state.co.us/>

**CERTIFICATE OF SERVICE BY MAILING**

I hereby certify that on \_\_\_\_\_ (date), I mailed a true and complete copy of the *PATTERN INTERROGATORIES UNDER C.R.C.P. 369(g) - INDIVIDUAL* by placing them in the United States Mail, postage pre-paid to the Judgment Debtor at the address listed below.

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Clerk of Court/Deputy Clerk

(If applicable) Plaintiff notified of non-service on \_\_\_\_\_ (date). Clerk's Initials

County Court Court Address:	County, Colorado	<b>COURT USE ONLY</b>
Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):		
Attorney or Party Without Attorney (Name and Address):		Case Number:
Phone Number: FAX Number:	E-mail: Atty. Reg. #:	Division                  Courtroom
<b>PATTERN INTERROGATORIES UNDER C.R.C.P. 369(g) - INDIVIDUAL</b>		

The following Pattern Interrogatories are propounded to \_\_\_\_\_ (name of Judgment Debtor) pursuant to C.R.C.P. 369(g).

**Answer all of the questions and each and every part thereof fully and completely. Your answers must be filed with the Court and a copy mailed to the sender no later than 14 days after you receive ~~them~~<sup>1</sup> [these Pattern Interrogatories](#)<sup>2</sup>. Use a separate sheet of paper, if necessary. Do not use Post Office boxes for any address provided in your answers unless you request and receive permission from the Court.**

**1. State your home address, business address, home phone, business phone, and date of birth:**

Home address: \_\_\_\_\_  
 Business address: \_\_\_\_\_  
 Home phone: \_\_\_\_\_ Business phone: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_

**2. If you are employed, state the name, address, and phone number of your employer(s). If more than one employer,<sup>3</sup> show additional employers on a separate sheet of paper.**

Name of Employer: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_

**3. If you have any income from any source other than your employer (for example, rental income, commissions, stock dividends, interest), state the name, address, and<sup>4</sup> phone number, ~~amount of income, and dates of payment~~<sup>5</sup> of the person or business paying you the income, the amount of income, and the dates of payment<sup>6</sup>.**

Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Amount of Payments: \_\_\_\_\_ Dates of Payments: \_\_\_\_\_  
 Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Amount of Payments: \_\_\_\_\_ Dates of Payments: \_\_\_\_\_

**4. If you are not employed or have other sources of income, state all sources of money you use to pay**

**your living expenses, including the name, address,<sup>4</sup> telephone number, and amounts. Show additional**

**sources on a separate sheet of paper, if necessary:**

Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Amount of Payments: ~~-\$~~<sup>7</sup> \_\_\_\_\_ Dates of Payments: \_\_\_\_\_

Name of Payor: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Amount of Payments: ~~-\$~~<sup>8</sup> \_\_\_\_\_ Dates of Payments: \_\_\_\_\_

**5. State whether you own or rent the home you live in, including the amount of rent or house payments you make:**

<sup>9</sup>Rent \_\_\_\_\_ (monthly rent payment)

<sup>10</sup>Own \_\_\_\_\_ (monthly house payment)

Name(s) of Owner(s): \_\_\_\_\_

**6. State the name, address, account number and type of account for every financial institution (bank, savings and loan, credit union, brokerage house) where you have an account or where you have signature authority on the account. Provide additional information on a separate sheet of paper, if necessary.**

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

**7.** <sup>11</sup> If you own ~~or~~ <sup>12 13</sup> owned during the last four years, or regularly use any automobiles, motorcycles, trucks, RV's, ATV's, ~~Jet~~ <sup>14</sup> ~~jet~~ <sup>15</sup> skis, boats, or trailers, list the make, model, year, VIN, date of purchase, purchase price, and the <sup>16</sup> name of the <sup>17</sup> owner if ~~only used by~~ <sup>18</sup> the owner is not <sup>19</sup> you. If you no longer own the vehicle, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_ VIN:   <sup>20</sup> \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_ VIN:   <sup>21</sup> \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

**8.** <sup>22</sup> If you own ~~or~~ <sup>23 24</sup> owned during the last four years, or use any firearms, list the make, model, serial number, date of purchase, purchase price. If you no longer own the firearm, identify date of

**sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.**

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Serial Number: \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Serial Number: \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

9. If you own <sup>25</sup> ~~or~~ <sup>26</sup> owned during the last four years, or regularly use any personal property NOT DESCRIBED ABOVE for which the purchase ~~prices~~ <sup>27</sup> price <sup>28</sup> was \$500.00 or more, describe each item by make, model, date of purchase, purchase price, and <sup>29</sup> name of owner if ~~only used by~~ <sup>30</sup> not <sup>31</sup> you. If you no longer own the item, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Price: \_\_\_\_\_ Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_

Purchaser: \_\_\_\_\_ Address of Purchaser: \_\_\_\_\_

\_\_\_\_\_ Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_

Price: \_\_\_\_\_ Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_

Purchaser: \_\_\_\_\_ Address of Purchaser: \_\_\_\_\_

\_\_\_\_\_ Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

10. State the name, address, and telephone number of your spouse, if you are married ~~and if~~ <sup>32</sup> if <sup>33</sup> not, <sup>34</sup> married, list <sup>35</sup> a close relative not living with you, indicating their relationship to you.

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_ Address: \_\_\_\_\_

11. Produce and attach to your answers, <sup>36</sup> copies of the following documents ~~for the last four years~~ <sup>37</sup>:

- a. Your federal and state tax returns with all attachments for the last four years <sup>38</sup>.
- b. The deed to or the lease for your home.
- c. Your driver's license.
- d. Your last pay stub from your employer(s).
- e. Your last bank statement(s).

12. If you wish to propose an arrangement to pay the judgment, state the proposed terms:

---

If ~~your~~<sup>39</sup> you<sup>40</sup> are self-employed, you must also answer the following questions.

---

**13. What is the full name, address, and phone number of the business?**

Name: \_\_\_\_\_ ~~Phone Number:~~<sup>41</sup> \_\_\_\_\_

Address: Phone:<sup>42</sup> \_\_\_\_\_

**14. What does your business do?**

**15. On a separate sheet of paper, list the name, address and phone number of each business customer during the past three months, including the amount and reason for any money owed by the customer<sup>43</sup>, if any.**

**16. State the name, address, account number<sup>44</sup> and type of account for every financial institution (bank, savings and loan, credit union, brokerage house) where the business has an account. Provide additional information on a separate sheet of paper, if necessary.**

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

**17. If the business owns ~~or~~<sup>45</sup> is<sup>46</sup> owned during the last four years, or regularly uses<sup>47</sup> any personal property for which it paid \$500.00 or more, describe each item by make, model, date of purchase, purchase price, name of owner if ~~only used by you~~<sup>48</sup> not the business<sup>49</sup>. If the business no longer owns the item, identify date of sale, sale price, and name and address of purchaser. Provide additional information on a separate sheet of paper, if necessary.**

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Purchase Date: \_\_\_\_\_ Price: \_\_\_\_\_

Sale Date: \_\_\_\_\_ Price: \_\_\_\_\_ Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Owner if not you: \_\_\_\_\_

**18. Produce and attach to your answers<sup>50</sup> copies of the following documents for the business:**

- a. All bank records for the past three months.
- b. All payroll records for the past three months.
- c. Current list of the accounts receivable.
- d. Profit and Loss Statements for the current and prior year.
- e. Current asset list, including the inventory.

**Failure to respond fully, accurately<sup>51</sup> and timely to these interrogatories could result in a citation for contempt of court.**

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.<sup>52</sup>

<sup>53</sup>By checking this box, I am acknowledging that I have made a change to the original content of this form.

**VERIFICATION<sup>54</sup>**

**I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.**

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  
(date) (month) (year) (city or other location, and state OR country)<sup>55</sup>

\_\_\_\_\_  
(Printed name of Judgment Debtor)

\_\_\_\_\_  
Signature of Judgment Debtor

[HOW TO SERVE THESE PATTERN INTERROGATORIES ON THE JUDGMENT DEBTOR<sup>56</sup>](#)

[The Judgment Creditor may ask the Clerk or Deputy Clerk of Court to serve these Pattern Interrogatories by mailing them to the Judgment Debtor. The Clerk is not required to mail them, and the Clerk will use only regular mail for service. If the Clerk agrees to serve these Pattern Interrogatories, the Clerk will complete the "Certificate of Service by Mailing" below.<sup>57</sup>](#)

[If the Judgment Creditor prefers, or if the Clerk declines to mail the Pattern Interrogatories, the Judgment Creditor may serve these Pattern Interrogatories in accordance with C.R.C.P. 304 \("Service of Process"\). If C.R.C.P. 304 service is used, the Judgment Creditor must file proof of service as required by C.R.C.P. 304\(g\). A proof of service form – JDF 98 – is available on the Colorado Judicial Branch's website, <https://www.courts.state.co.us/><sup>58</sup>](#)

**CERTIFICATE OF SERVICE BY MAILING**

**(To be performed by Clerk within three days of filing)<sup>59</sup>**

I hereby certify that on \_\_\_\_\_ (date), I mailed a true and complete copy of the *PATTERN INTERROGATORIES UNDER C.R.C.P. 369(g) - INDIVIDUAL* by placing them in the United States Mail, postage pre-paid to the **Defendant**<sup>60</sup> Judgment Debtor<sup>61</sup> at the address listed below.

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Clerk of Court/Deputy Clerk

<sup>62</sup> (If applicable) Plaintiff notified of non-service on \_\_\_\_\_ (date). Clerk's Initials <sup>63</sup>

<input type="checkbox"/> County Court <input type="checkbox"/> District Court County, Colorado	<b>COURT USE ONLY</b>
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. #: _____	Case Number: _____  Division                      Courtroom
<b>OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS – FOR JUDGMENTS UNDER C.R.S. § 26-2-128(1)(A) ONLY</b>	

**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: \_\_\_\_\_

<b>EXEMPTION CHART</b> ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	<b>PAY PERIOD</b> Weekly Bi-Weekly Semi-monthly Monthly	<b>AMOUNT EXEMPT IS THE GREATER OF:</b> 30 x Minimum Hourly Wage or 65% of Disposable Earnings 60 x Minimum Hourly Wage or 65% of Disposable Earnings 65 x Minimum Hourly Wage or 65% of Disposable Earnings 130 x Minimum Hourly Wage or 65% of Disposable Earnings
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**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)		- \$ _____
<b>Amount which should be withheld</b>		<b>= \$ _____</b>

**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: \_\_\_\_\_

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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



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: \_\_\_\_\_

**FORM 28SC R3/18 OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS**<sup>13</sup>

**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  
<sup>14</sup>Judgment Debtor's Counsel and Reg. Number

| FORM 28SC R3/18 OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS<sup>15</sup>

## Memorandum

To: The Honorable Michael Berger, Chair of the Civil Rules Committee

From: John Lebsack for the Subcommittee on Revisions to C.R.C.P 15(a)

(Brad Levin, John Palmeri, Stephanie Scoville, Judge Webb)

Re: Whether to Add Language from Federal Rule 15(a)

Date: March 5, 2021

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The subcommittee took another look at its proposed changes to C.R.C.P. 15(a) and conducted additional research. We continue to recommend the changes previously proposed, which would align the state rule with the federal rule. The proposal: 1) encourages parties to promptly amend their pleadings in order to keep cases moving efficiently and 2) permits an additional window for parties to amend as a matter of course. Alternatively, the proposal clarifies the rule to account for recent direction from the Supreme Court. These proposals cover only initial amendments made to pleadings as a matter of course and do not prevent any party from further amending pleadings with leave of court, which trial courts generally permit.

### 1. Background of the Issue

The discussion arose from the unusual situation in *DIA Brewing, LLC v. MCE-DIA, LLC*, 2020COA21. After the district court dismissed the case, the plaintiff filed an amended complaint, arguing that it had the right to do so because the defendant never filed an answer. A divided panel of the Court of Appeals held the amendment was proper. The supreme court rejected the COA's rationale, but then affirmed on different grounds, holding that Rule 15(a) must be construed along with Rules 59 and 60; thus the right to amend as a matter of course ends when the trial court enters a final judgment.

For purposes of whether to change Rule 15(a), the issue is narrow. Currently a party's right to amend a pleading without leave of court has a 21-day time limit starting from the filing of that pleading or from the adverse party's filing of a responsive *pleading*. Motions to dismiss do not start the clock. Should the rule be changed so the deadline runs from the adverse party's filing of *either* a responsive pleading *or* a motion to dismiss?<sup>1</sup>

A separate issue discussed in the last section is whether the holding of *DIA Brewing* should be codified in the rule, regardless of whether the federal language is adopted.

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<sup>1</sup> A motion to dismiss is the most common Rule 12 motion, but the amended rule would also apply when there is a motion for more definite statement or motion to strike. A motion for judgment on the pleadings would not start the clock, for reasons discussed below.

## 2. Recommended Changes

The subcommittee recommends changing C.R.C.P. 15(a) as follows to track the federal rule:

(a) Amendments. A party may amend his a pleading once as a matter of course at any time within: (1) 21 days after serving it; or (2) 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 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 a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Any required response to an amended pleading must be made ~~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.

The substantive changes are taken from the 2009 amendments to Federal Rule 15(a), as discussed below. We propose keeping the format of the current Colorado rule rather than adopting the numbered-subpart format of the federal rule in order to maintain consistency with the formatting of other state rules. We also recommend replacing the gender-specific pronouns.

The list of Rule 12 motions that start the clock does not include motions for judgment on the pleadings under C.R.C.P 12(c). Those motions are permitted “[a]fter the pleadings are closed...” Therefore a Rule 12(c) motion does not need to be included in the list of motions that start the clock, since the clock will already be started by the filing of the responsive pleading.

## 3. Current Colorado Rule

C.R.C.P. 15(a) states:

(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....

Rule 7(a) lists the “pleadings” that are allowed:

(a) Pleadings. There shall be a complaint and answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; a third-party answer, if a third-party complaint is served; and there may be a reply to an affirmative defense. No other pleading shall be allowed, except upon order of court.

Motions to dismiss are not on that list. Therefore, if a party responds to a complaint, counterclaim, cross claim, or third-party complaint by moving to dismiss under Rule 12, and does not file a responsive pleading, the adverse party continues to have the right to amend as a matter of course—until a responsive pleading is filed or, under *DIA Brewing*, until a final judgment is entered.

*DIA Brewing* does not address what happens to the right to amend after the filing of a motion to dismiss but before entry of final judgment. Presumably that right would still exist prior to the entry of judgment, because Rules 59 and 60 apply only after judgment. That would mean, for example, that the plaintiff has the right to file an amended complaint at any time during this sequence:

- Plaintiff files a complaint;
- Defendant moves to dismiss under Rule 12 but does not file an answer;
- Plaintiff has 21 days to oppose the motion to dismiss;
- Defendant has 14 days to file a reply;
- Court considers the motion for some period of time, then denies the motion;
- Defendant has 14 days under Rule 12(a)(1)(A) to file an answer.

That sequence can last several months, during which the case is not at issue and the plaintiff still has the right to file an amended complaint.

That sequence could also involve the court’s granting the motion to dismiss. In a multi-defendant case, that order may not be a final judgment. We discuss that below.

We should also note the provision in Rule 16 for amended pleadings, which similarly encourages parties to promptly amend their pleadings (albeit with leave of court) in order to efficiently advance a case. Under Rule 16(b)(1), the case is not at issue until all pleadings are filed, i.e., a case is not at issue while a motion to dismiss is pending. After the case is at issue, Rule 16(b)(8) requires the Case Management Order to include “deadlines for amending or supplementing pleadings and for joinder of additional parties, which unless otherwise provided by law, shall be not later than 105 days (15 weeks) after the case is at issue....”

#### 4. Federal Rule

The language in the Colorado rule tracks the former Federal Rule 15(a). That language was in the first version of those rules adopted in 1938, and remained substantially intact until 2009:

(a) AMENDMENTS. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served 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 at any time within 20 days after it is served. 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....

In 2009, the Federal Rule 15(a) was changed to the following:

(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.

The 2009 committee comments explain the reasons for the federal change. The underlined portions below provide the rationale for the change:

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 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.

## **5. Rule in the Other States**

During the 70 years when the former federal rule was in effect, most states adopted it. Attached is a compilation of the amendment rules in the 50 states. Since the federal rule change in 2009, eight states have adopted it: Arizona, Idaho, Kansas, Montana, Nevada, Ohio, Utah, Wyoming.

29 states still use the old federal rule: Alaska, Colorado, Delaware, Florida, Hawaii, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington, West Virginia.

Five states always require leave of court (some allow amendment if the other party does not object): California, Illinois, New Hampshire, Pennsylvania, and Virginia.

Eight states use other approaches:

Alabama – amendment by right anytime up to 42 days before trial;

Arkansas – amendment by right anytime, but other party can object if the amendment would cause undue delay;

Connecticut – only during first 30 days after the return day;

Georgia – anytime before entry of pretrial order;

Louisiana -anytime before answer is filed;

Maryland – anytime up to 30 days before trial;

Texas – anytime up to 7 days before trial;

Wisconsin – anytime within 6 months after summons and complaint are filed.

After further discussion, the subcommittee continues to believe that the federal rule provides the greatest efficiencies for parties and courts. The federal rule encourages parties to promptly amend so that the amendments as a matter of course are made before additional resources are wasted on needless motion to dismiss briefing and orders. The federal rule also permits parties an additional window of time to amend as a matter of course. Rather than seeking leave, parties may adjust their pleadings when valid concerns are raised in a responsive pleading such as an answer. The federal approach also comports with Colorado’s Rule 16.

#### **6. Should the *DIA Brewing* Be Codified into the Rule?**

The issue is whether an order of dismissal ends the right to amend without leave of court. In *DIA Brewing*, the ruling was that a “final judgment” ends that right. Some orders to dismiss are final judgments, some are not. *DIA Brewing* held that the right to amend ends with a “final judgment.” If there are multiple defendants, and only one is dismissed, the dismissal is not a final judgment unless certified as such. In a multi-defendant case, that raises some question: Does the plaintiff still have the right to amend the claim against a dismissed defendant? If so, would that allow amending the claims against the other defendants who filed answers and were not dismissed? To eliminate that uncertainty, even if the federal rule is not adopted, we propose codifying *DIA Brewing* but with the elimination of the requirements for a “final” judgment. In other words, any order of dismissal would terminate the right to amend the claim against the dismissed party, regardless of whether there are other parties remaining in the case.

If the committee decides not to adopt the language from the federal rule, we recommend codifying *DIA Brewing* into the rule. Massachusetts is currently the only state with a rule that the right to amend without leave of court ends when a dismissal order is entered:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served **and prior to entry of an order of dismissal** 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 at any time within 20 days after it is served. 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.

Mass. R. Civ. P. 15(a) (emphasis added).

If the committee decides not to adopt the federal rule, we recommend changing the current Colorado Rule 15(a) to add the words in bold:

(a) Amendments. A party may amend ~~his a~~ **a** pleading once as a matter of course at any time before a responsive pleading is filed **and prior to entry of an order dismissing the claims of the party** 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~~ **the party** may so amend it any time within 21 days after it is filed. Otherwise, a party may amend ~~his a~~ **a** pleading only by leave of court....

If the federal language is adopted, the proposed amendments to codify *DIA Brewing* are not necessary. There is only a remote possibility that an amendment could be attempted before an order for dismissal. That is because of the timing of motions and responses. If a motion to dismiss is filed, the opposing party has 21 days to respond, and the movant has 14 days to reply. The court could modify those times, but the subcommittee believes that would be rare. If the normal briefing schedule in C.R.C.P. 121 is followed, an order to dismiss will not be entered earlier than 21 days after the Rule 12 motion is filed. Except in the rare situation when the court enters a dismissal order before the normal briefing process plays out, an order for dismissal would not be entered earlier than “21 days after service of a motion under Rule 12(b), (e), or (f).” If the federal language is adopted, there is no strong reason to codify *DIA Brewing* into the rule, but it is an option to address the rare situation of an early order of dismissal.

### **7. Effective Date and Public Hearing**

The subcommittee recommends that the changes should go into effect July 1, 2021. No public hearing is necessary.

## State Rules and Statues on Amending Pleadings Without Leave of Court

Compiled Feb 1, 2021, by John Lebsack

### Alabama

(a) Amendments. Unless a court has ordered otherwise, a party may amend a pleading without leave of court, but subject to disallowance on the court's own motion or a motion to strike of an adverse party, **at any time more than forty-two (42) days before the first setting of the case for trial**, and such amendment shall be freely allowed when justice so requires. Thereafter, a party may amend a pleading only by leave of court, and leave shall be given only upon a showing of good cause. A party shall plead in response to an amended pleading within the time remaining for a response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be longer, unless the court orders otherwise.

### Alaska

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court...

### Arizona

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

(A) no later than 21 days after serving it if the pleading is one to which no responsive pleading is permitted; or

(B) no later than 21 days after a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier.

(2) Other Amendments. In all other instances, a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires.

### Arkansas

(a) Amendments. With the exception of pleading the defenses mentioned in Rule 12(h)(1), a party may amend his pleadings at any time without leave of the court. Where,

however, upon motion of an opposing party, the court determines that prejudice would result or the disposition of the cause would be unduly delayed because of the filing of an amendment, the court may strike such amended pleading or grant a continuance of the proceeding. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

## **California**

### **Rule 3.1324. Amended pleadings and amendments to pleadings**

#### **(a) Contents of motion**

A motion to amend a pleading before trial must:

- (1) Include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments;
- (2) State what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located; and
- (3) State what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located.

*(Subd (a) amended effective January 1, 2002.)*

#### **(b) Supporting declaration**

A separate declaration must accompany the motion and must specify:

- (1) The effect of the amendment;
- (2) Why the amendment is necessary and proper;
- (3) When the facts giving rise to the amended allegations were discovered; and
- (4) The reasons why the request for amendment was not made earlier.

## **Colorado**

(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.

## Connecticut

Sec. 10-59. Amendments; Amendment as of Right by Plaintiff The plaintiff may amend any defect, mistake or informality in the writ, complaint or petition and insert new counts in the complaint, which might have been originally inserted therein, without costs, during the first thirty days after the return day. (

## Delaware

(a) Amendments. -- A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court...

## Florida

### RULE 1.190. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, may so amend it at any time within 20 days after it is served. Otherwise a party may amend a pleading only by leave of court

## Georgia (statutory)

O.C.G.A. 9-11-15 (2010)

9-11-15. Amended and supplemental pleadings

(a) Amendments. A party may amend his pleading as a matter of course and without leave of court **at any time before the entry of a pretrial order**. Thereafter the party may amend his pleading only by leave of court or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party may plead or move in response to an amended pleading and, when required by an order of the court, shall plead within 15 days after service of the amended pleading, unless the court otherwise orders.

## Hawaii

(1) Amending as a matter of course. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

(2) Other amendments. In all other cases, a party may amend the party's pleading only by leave of court or by written consent of the adverse party.

## **Idaho**

(1) Amending as a Matter of Right. A party may amend its pleading once as a matter of right 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.

## **Illinois**

(735 ILCS 5/2-616) (from Ch. 110, par. 2-616)

Sec. 2-616. Amendments.

(a) At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.

## **Indiana**

(A) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served 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 at any time within thirty [30] days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires.

## **Iowa**

1.402(4) Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party

## **Kansas**

60-215. Amended and supplemental pleadings. (a) Amendments before trial. (1) Amending as a matter of course. A party may amend its pleading once as a matter of course within:

t (e) or (f) of K.S.A. 60-212, and amendments thereto, 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.

## **Kentucky**

CR 15.01 Amendments

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served 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 at any time within 20 days after it is served. 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.

## **Louisiana**

Art. 1151. Amendment of petition and answer; answer to amended petition

A plaintiff may amend his petition without leave of court at any time before the answer thereto is served. He may be ordered to amend his petition under Articles 932 through 934. A defendant may amend his answer once without leave of court at any time within ten days after it has been served. Otherwise, the petition and answer may be amended only by leave of court or by written consent of the adverse party.

## **Maine**

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires

## **Maryland**

### Rule 2-341 - Amendment of Pleadings

(a) Without Leave of Court. A party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date. Within 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment. If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment, whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

(b) With Leave of Court. A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court.

## **Massachusetts**

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served and prior to entry of an order of dismissal 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 at any time within 20 days after it is served. 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.

## **Michigan**

### Rule 2.118 Amended and Supplemental Pleadings

(A) Amendments.

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

(3) On a finding that inexcusable delay in requesting an amendment has caused or will cause the adverse party additional expense that would have been unnecessary had the request for amendment been filed earlier, the court may condition the order allowing amendment on the offending party's reimbursing the adverse party for the additional expense, including reasonable attorney fees.

(4) Amendments must be filed in writing, dated, and numbered consecutively, and must comply with MCR 2.113. Unless otherwise indicated, an amended pleading supersedes the former pleading.

## **Minnesota**

### 15.01 Amendments

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 21 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

## **Mississippi**

(a) Amendments. A party may amend a pleading as a matter of course at any time before a responsive pleading is served, or, if a pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within thirty days after it is served. On sustaining a motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), or for judgment on the pleadings, pursuant to Rule 12(c), leave to amend shall be granted when justice so requires upon conditions and within time as determined by the court, provided matters outside the pleadings are not presented at the hearing on the motion. Otherwise a party may amend a pleading only by leave of court or upon written consent of the adverse party; 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 ten days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

## **Missouri**

### 55.33. Amended and Supplemental Pleadings

(a) A pleading may be amended once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the pleading may be amended at any time within thirty days after it is served. Otherwise, the pleading may be amended 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 ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

## **Montana**

### Rule 15. Amended and Supplemental Pleadings.

(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.

## **Nebraska**

§ 6-1115. Amended and supplemental pleadings.

(a) Amendments. A party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may amend it within 30 days after it is served. Otherwise a party may amend the party's 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 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

**Nevada**

Rule 15. Amended and Supplemental Pleadings

(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.

**New Hampshire**

Rule 12. Motions -- Specific

(a) Motions to Amend.

(1) No plaintiff shall have leave to amend a pleading, unless in matters of form, after a default until the defendant has been provided with notice and an opportunity to be heard, to show cause why the amendment should not be allowed.

(2) Amendments in matters of form will be allowed or ordered, as of course, on motion; but, if the defect or want of form be shown by the adverse party, the order to amend will be made on such terms as justice may require.

(3) Amendments in matters of substance may be made on such terms as justice may require.

(4) Amendments may be made to the Complaint or Answer **upon the order of the court, at any time and on such terms as may be imposed.**

## **New Jersey**

### 4:9-1. Amendments

A party may amend any pleading as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, **at any time within 90 days after it is served.** Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice. A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

## **New Mexico**

### Rule 1-015 - Amended and supplemental pleadings

A. Amendments. A party may amend its pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may amend it at any time within twenty (20) days after it is served. Otherwise a party may amend its pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

## **New York**

### CVP Rule 3025. Amended and supplemental pleadings

(a) Amendments without leave. A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.

## **North Carolina**

Rule 15. Amended and supplemental pleadings.

(a) Amendments. – A party may amend his pleading once as a matter of course at any time before a responsive pleading is served 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 at any time within 30 days after it is served. 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 30 days after service of the amended pleading, unless the court otherwise orders.

## **North Dakota**

(a) Amendments Before Trial.

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

(A) before being served with a responsive pleading; or,

(B) within 21 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

(2) Other Amendments. Except as allowed by Rule 15(a)(1), a party may amend its pleading only with the opposing party's written consent or the court's leave. Leave shall be freely given 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.

## **Ohio**

(A) Amendments. A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. 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 shall freely give leave when justice so requires. 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 fourteen days after service of the amended pleading, whichever is later.

## **Oklahoma**

### §12-2015. Amended and supplemental pleadings

- A. AMENDMENTS. A party may amend his or her pleading once as a matter of course at any time before a responsive pleading is served 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 or she may so amend it at any time within twenty (20) days after it is served. Amendments to add omitted counterclaims or to add or drop parties may be made as a matter of course within the time specified above. Otherwise a party may amend the 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 respond to an amended pleading within the time remaining for response to the original pleading or within twenty (20) days after the service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

## **Oregon**

### Rule 23

A. Amendments. A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Whenever an amended pleading is filed, it shall be served upon all parties who are not in default, but as to all parties who are in default or against whom a default previously has been entered, judgment may be rendered in accordance with the prayer of the original pleading served upon them; and neither the amended pleading nor the process thereon need be served upon such parties in default unless the amended pleading asks for additional relief against the parties in default.

## **Pennsylvania**

### Rule 1033 - Amendment

(a) A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or

otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

(b) An amendment correcting the name of a party against whom a claim has been asserted in the original pleading relates back to the date of the commencement of the action if, within 90 days after the period provided by law for commencing the action, the party received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

(c) An amendment substituting the actual name of a defendant for a Doe designation as provided in Rule 2005 relates back to the date of the commencement of the action if, within the time provided by Rule 401 for service, the defendant named by the amendment has received actual or constructive notice of the commencement of the action such that it will not be prejudiced in maintaining a defense on the merits and the defendant knew or should have known that the action would have been brought against it but for lack of knowledge of the defendant's actual name.

231 Pa. Code § 1033

### **Rhode Island**

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it the pleading at any time within twenty (20) days after it the pleading is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. When filing a motion to amend in the EFS, the amended pleading shall be attached as an exhibit to the motion and filed in accordance with Rule 1(b)(3). Amendments shall be embodied in a fair copy of the whole paper as amended. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading, or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

### **South Carolina**

(a) Amendments. A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is

one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. 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 and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

### **South Dakota**

15-6-15(a). Amendments to pleadings.

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has neither been placed upon the trial calendar, nor an order made setting a date for trial, he may so amend it at any time within twenty days after it is served. 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 ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

### **Tennessee**

RULE 15.01: AMENDMENTS.

A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, the party may so amend it at any time within fifteen (15) days after it is served. Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires. For amendments adding defendants pursuant to Tenn. Code Ann. §20-1-119, however, written consent of the adverse party or leave of court is not required. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen (15) days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

### **Texas**

RULE 63. AMENDMENTS AND RESPONSIVE PLEADINGS

Parties may amend their pleadings, respond to pleadings on file of other parties, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any pleadings, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party.

## **Utah**

(a) Amendments before trial.

(a)(1) A party may amend its pleading once as a matter of course within:

(a)(1)(A) 21 days after serving it; or

(a)(1)(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.

(a)(2) In all other cases, a party may amend its pleading only with the court's permission or the opposing party's written consent. The party must attach its proposed amended pleading to the motion to permit an amended pleading. The court should freely give permission when justice requires.

## **Vermont**

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 21 days after it is served. Otherwise a party may amend the party's 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.

## **Virginia**

Rule 1:8. Amendments.

No amendments shall be made to any pleading after it is filed save by leave of court. Leave to amend shall be liberally granted in furtherance of the ends of justice. Unless otherwise provided by order of the court in a particular case, any written motion for leave to file an amended pleading shall be accompanied by a properly executed proposed amended pleading, in a form suitable for filing. If the motion is granted, the amended pleading accompanying the motion shall be deemed filed in the clerk's office as of the date of the court's order permitting such amendment. If the motion is granted in part, the court may provide for filing an amended pleading as the court may deem reasonable and proper. Where leave to amend is granted other than upon a written motion, whether on demurrer or oral motion or otherwise, the amended pleading shall be filed within 21 days after leave to amend is granted or in such time as the court may prescribe. In granting leave to amend the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

### **Washington**

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

### **West Virginia**

Amendments. — A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's 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 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

## **Wisconsin**

802.09 Amended and supplemental pleadings.

(1) Amendments. A party may amend the party's pleading **once as a matter of course at any time within 6 months after the summons and complaint are filed** or within the time set in a scheduling order under s. 802.10. Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given at any stage of the action when justice so requires. A party shall plead in response to an amended pleading within 20 days after service of the amended pleading unless: a) the court otherwise orders; or b) no responsive pleading is required or permitted under s. 802.01 (1). If a defendant in the action is an insurance company, if any cause of action raised in the original pleading, cross-claim, or counterclaim is founded in tort, or if the party pleading in response is the state or an officer, agent, employee, or agency of the state, the 20-day time period under this subsection is increased to 45 days.

## **Wyoming**

(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.

FW Citizen complaint about a Supreme Court form.txt

From: berger, michael  
Sent: Wednesday, March 10, 2021 12:31 PM  
To: michaels, kathryn  
Cc: morrison, terri; berger, michael  
Subject: FW: Citizen complaint about a Supreme Court form  
Attachments: JDF 1111 Sworn Financial Statement.pdf

Kathryn, please put this on the agenda for the March meeting.

Michael H. Berger

From: morrison, terri <terri.morrison@judicial.state.co.us>  
Sent: Wednesday, March 10, 2021 10:52 AM  
To: berger, michael <michael.berger@judicial.state.co.us>  
Subject: Citizen complaint about a Supreme Court form

Good morning Judge Berger,

I was contacted by a citizen who has a complaint about the attached Supreme Court form, JDF 1111SC. The short back story is that she was involved in a child support case wherein she had to list, under her monthly income pursuant to Section 1, her child's SSDI benefits as part of "Miscellaneous Income, Dependent Children's monthly

gross income. Source of income\_\_\_." Her complaint is that having the SSDI benefits of

her child count toward her income put her at a disadvantage in her income reporting when she is prohibited by federal law and IRS tax regulations from using the benefits for

other than the care of the child. She started her complaints with the General Assembly

and was referred to our office by someone who thought the form was created by SCAO. I explained to the citizen, Ms. Nancy Fingerhood, that while I understood her

concerns, the Sworn Financial Statement form is used for more than just child support

cases and is a form approved by the Supreme Court.

I'm writing to you to see if there is a way for a citizen to express such concerns to the

Civil Rules Committee in order to determine if a change to the form is warranted.

Any

guidance you can offer and information I can pass along to Ms. Fingerhood will be greatly appreciated. If you would like to discuss or, if you need more information,

I'm

working at my desk.

Best Regards,

Page 1

FW Citizen complaint about a Supreme Court form.txt

Terri

Terri S. Morrison (she,her,hers)  
Legal Counsel, Colorado Judicial Department  
1300 Broadway Suite 1200 | Denver, CO 80203

(o) (720) 625-5817

(c) (303) 522-7425

FW Citizen complaint about Supreme Court form (JDF 1111).txt  
From: berger, michael  
Sent: Thursday, March 11, 2021 7:51 AM  
To: michaels, kathryn  
Subject: FW: Citizen complaint about Supreme Court form (JDF 1111)

Kathryn, please include this email in the meeting packet.

Michael H. Berger

From: borgman, joel <joel.borgman@judicial.state.co.us>  
Sent: Wednesday, March 10, 2021 6:25 PM  
To: berger, michael <michael.berger@judicial.state.co.us>  
Cc: morrison, terri <terri.morrison@judicial.state.co.us>  
Subject: Citizen complaint about Supreme Court form (JDF 1111)

Good evening, Judge Berger,

Ms. Morrison and I discussed a citizen concern with the Sworn Financial Statement and I'm following up with additional details regarding my understanding of her concerns.

The child support guidelines statute explicitly excludes "social security benefits received by a child" as a source of parental income, for the purposes of calculating the basic child support obligation. See CRS 14-10-115(5)(a)(I)(P). However, once the basic child support obligation is calculated, the court may consider any additional factors that actually diminish the basic needs of the child and adjust the basic child support obligation. See CRS 14-10-115(11)(b). In practice, this would mean the court would run a child support worksheet inputting only the parental income to arrive at a recommended child support obligation and then consider whether to reduce that amount because the child is receiving social security benefits.

The Sworn Financial Statement contains a section for a dependent child's monthly gross income in paragraph 1 under "miscellaneous income" and an amount entered here will add to the "total income" that is automatically calculated in this paragraph. I believe Ms. Fingerhood's concern is that a Judge/Magistrate will use the amount that appears in the total income box to calculate the basic child support obligation, even if a portion of that total income is not parental income. (My understanding is that Ms. Fingerhood does not

FW Citizen complaint about Supreme Court form (JDF 1111).txt  
believe a child's social security disability benefit should be listed anywhere on  
the Sworn  
Financial Statement because she believes a child's social security disability  
benefit  
should be irrelevant to the child support obligation).

I do understand Ms. Fingerhood's concern that the total income box could include  
income that should not be used to calculate the basic child support obligation.  
However,  
that possibility is not limited to a dependent child's income but would also include  
public assistance (TANF), child support a parent receives for other children, and  
social  
security benefits a parent receives on behalf of a child due to the death of a  
stepparent. I  
think her concern is based on an assumption that the court is not analyzing each  
separate source of income to determine whether it should be included in the child  
support calculation.

I hope this information is helpful. If there's anything else I can do to assist  
please let me  
know.

Take care,  
Joel

FW Referred by Terri Morrison re SFS form.txt

From: berger, michael  
Sent: Thursday, March 11, 2021 7:52 AM  
To: michaels, kathryn  
Subject: FW: Referred by Terri Morrison re: SFS form

This as well.

From: Nancy Fingerhood <nancyfingerhood07@gmail.com>  
Sent: Wednesday, March 10, 2021 6:03 PM  
To: berger, michael <michael.berger@judicial.state.co.us>  
Subject: Referred by Terri Morrison re: SFS form

Dear Judge Berger,

Terri Morrison recommended I email you about the sworn financial statement form. On page one under miscellaneous income one must include a child's SSDI, which will be used to calculate a parent's gross income. However, a child's SSDI is NOT a parent's income. This can cause a parent to have to pay child support based on a false income. According to the IRS, this is not a parent's income and is not taxed as such.

In my experience, I was threatened by opposing counsel to pay child support to a millionaire because they were calculating my child's SSDI as my income. I believe the remedy is to have a separate SFS for child support purposes in which a child's money is not lumped with a parents gross income as this is a flaw in the form.

Thank you for your attention to this matter.

Sincerely,  
Nancy Fingerhood

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Juvenile Court _____ County, Colorado Court Address: _____ <hr/> In re: <input type="checkbox"/> The Marriage of: <input type="checkbox"/> The Civil Union of: <input type="checkbox"/> Parental Responsibilities concerning: _____ Petitioner: and Co-Petitioner/Respondent: _____	<b>▲ COURT USE ONLY ▲</b>
Attorney or Party Without Attorney (Name and Address): _____  Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____  Division _____ Courtroom _____
<b>SWORN FINANCIAL STATEMENT</b>	

I, \_\_\_\_\_ (full name)  am  am not currently employed.

I am employed \_\_\_\_\_ hours per week. I am paid  weekly  bi-weekly  twice a month  monthly.

My pay is based on a  Monthly Salary  Hourly rate of \$ \_\_\_\_\_  Other: \_\_\_\_\_

Date employment began \_\_\_\_\_.

My occupation is: \_\_\_\_\_ Name of employer: \_\_\_\_\_

Address of employer: \_\_\_\_\_

If unemployed, what date did you last work? \_\_\_\_\_

I am unemployed due to  disability  involuntary layoff at work  other: \_\_\_\_\_

This household consists of \_\_\_\_\_ adult(s), and \_\_\_\_\_ minor child(ren).

I believe the monthly gross income of the other party is \$ \_\_\_\_\_.

Annual gross income (last tax year 20\_\_) for Petitioner \$ \_\_\_\_\_,  Co-Petitioner/Respondent \$ \_\_\_\_\_

**1. Monthly Income (Convert annual, bi-monthly, and weekly amounts to monthly amounts.)**

Gross Monthly Income (before taxes and deductions) from salary and wages, including commissions, bonuses, overtime, self-employment, business income, other jobs, and monthly reimbursed expenses.	\$	Social Security Benefits (SSA) <input type="checkbox"/> SSDI (Disability insurance – entitlement program) <input type="checkbox"/> SSI (supplemental income – need based)	\$
Unemployment & Veterans' Benefits		Disability, Workers' Compensation	
Pension & Retirement Benefits		Interest & Dividends	
Public Assistance (TANF)		Other - _____	
<b>Total Monthly Income</b>			<b>\$</b>
<b>Miscellaneous Income</b>			
Royalties, Trusts, and Other Investments	\$	Contributions from Others	\$
Dependent Children's monthly gross income. Source of Income: _____		All other sources, i.e. personal injury settlement, non-reported income, etc.	
Rental Net Income		Expense Accounts	
Child Support from Others		Other - _____	
Spousal/Partner Support from Others		Other - _____	
<b>Total Monthly Miscellaneous Income</b>			<b>\$</b>
<b>Total Income</b>			<b>\$</b>

## 2. Monthly Deductions (Mandatory and Voluntary)

Mandatory Deductions		Cost Per Month		Cost Per Month
Federal Income Tax		\$	State/Local Income Tax	\$
PERA/Civil Service			Social Security Tax	
Medicare Tax			Other - _____	
<b>Total Mandatory Deductions</b>				\$
Voluntary Deductions		Cost Per Month		Cost Per Month
Life and Disability Insurance		\$	Stocks/Bonds	\$
Health, Dental, Vision Insurance Premium			Retirement & Deferred Compensation	
Total number of people covered on Plan →				
Child Care (deducted from salary)			Other - _____	
Flex Benefit Cafeteria Plan			Other - _____	
<b>Total Voluntary Deductions</b>				\$
<b>Total Monthly Deductions</b>				\$

## 3. Monthly Expenses

**Note:** List regular monthly expenses below that you pay on an on-going basis and that are not identified in the deductions above.

### A. Housing

	Cost Per Month		Cost Per Month
1 <sup>st</sup> Mortgage	\$	2 <sup>nd</sup> Mortgage	\$
Insurance (Home/Rental) & Property Taxes (not included in mortgage payment)		Condo/Homeowner's/Maintenance Fees	
Rent		Other - _____	
<b>Total Housing</b>			\$

### B. Utilities and Miscellaneous Housing Services

	Cost Per Month		Cost Per Month
Gas & Electricity	\$	Water, Sewer, Trash Removal	\$
Telephone (local, long distance, cellular & pager)		Property Care (Lawn, snow removal, cleaning, security system, etc.)	
Internet Provider, Cable & Satellite TV		Other - _____	
<b>Total Utilities and Miscellaneous Housing Services</b>			\$

### C. Food & Supplies

	Cost Per Month		Cost Per Month
Groceries & Supplies	\$	Dining Out	\$
<b>Total Food &amp; Supplies</b>			\$

### D. Health Care Costs (Co-pays, Premiums, etc.)

	Cost Per Month		Cost Per Month
Doctor & Vision Care	\$	Dentist and Orthodontist	\$
Medicine & RX Drugs		Therapist	
Premiums (if not paid by employer)		Other - _____	
<b>Total Health Care</b>			\$

**E. Transportation & Recreation Vehicles (Motorcycles, Motor Homes, Boats, ATV, Snowmobiles, etc.)**

	Cost Per Month		Cost Per Month
Primary Vehicle Payment	\$	Other Vehicle Payments	\$
Fuel, Parking, and Maintenance		Insurance & Registration/Tax Payments (yearly amount(s) ÷12)	
Bus & Commuter Fees		Other - _____	
<b>Total Transportation</b>			<b>\$</b>

**F. Children's Expenses and Activities**

	Cost Per Month		Cost Per Month
Clothing & Shoes	\$	Child Care	\$
Extraordinary Expenses i.e. Special Needs, etc.		Misc. Expenses, i.e. Tutor, Books, Activities, Fees, Lunch, etc.	
Tuition		Other - _____	
<b>Total Children's Expenses and Activities</b>			<b>\$</b>

**G. Education for you - Please identify status:  Full-time student  Part-time student**

	Cost Per Month		Cost Per Month
Tuition, Books, Supplies, Fees, etc.		Other - _____	
<b>Total Education</b>			<b>\$</b>

**H. Maintenance (Spousal/Partner Support) & Child Support (that you pay)**

	Cost Per Month		Cost Per Month
Maintenance		Child Support	
<input type="checkbox"/> This family	\$	<input type="checkbox"/> This family	\$
<input type="checkbox"/> Other family		<input type="checkbox"/> Other family	
<b>Total Maintenance and Child Support</b>			<b>\$</b>

**I. Miscellaneous (Please list on-going expenses not covered in the sections above)**

	Cost Per Month		Cost Per Month
Recreation/Entertainment	\$	Personal Care (Hair, Nail, Clothing, etc.)	\$
Legal/Accounting Fees		Subscriptions (Newspapers, Magazines, etc.)	
Charity/Worship		Movie & Video Rentals	
Vacation/Travel/Hobbies		Investments (Not part of payroll deductions)	
Membership/Clubs		Home Furnishings	
Pets/Pet Care		Sports Events/Participation	
Other - _____		Other - _____	
Other - _____		Other - _____	
Other - _____		Other - _____	
Other - _____		Other - _____	
<b>Total Miscellaneous</b>			<b>\$</b>

<b>Total Monthly Expenses (Totals from A – I)</b>	<b>\$</b>
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#### 4. Debts (unsecured)

List unsecured debts such as credit cards, store charge accounts, loans from family members, back taxes owed to the I.R.S., etc. **Do not** list debts that are liens against your property, such as mortgages and car loans, because that payment is already listed as an expense above, and the total of the debt is shown elsewhere as a deduction from value where that asset is listed, such as under Real Estate or Motor Vehicles.

**For name on account, "P" = Petitioner, "C/R" = Co-Petitioner or Respondent, "J" = Joint.**

Name of Creditor	Account Number (last 4-digits only)	P	C/R	J	Date of Balance	Balance	Minimum Monthly Payment Required	Reason for Which Debt was Incurred
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		\$	\$	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
<b>Unsecured Debt Balance</b>						\$	\$	→Total Minimum Monthly Payment

### SWORN FINANCIAL STATEMENT SUMMARY (INCOME/EXPENSES)

**Total Income** (from Page 1) \$ \_\_\_\_\_ **A**

**Total Monthly Deductions** (from Page 2) \$ \_\_\_\_\_ **B**

**Total Monthly Net Income (A minus B)** \$ \_\_\_\_\_

**Total Monthly Expenses** (from Page 3) \$ \_\_\_\_\_ **C**

**Total Minimum Monthly Payment Required - Debts Unsecured** (from Page 4) \$ \_\_\_\_\_ **D**

**Total Monthly Expenses and Payments (C plus D)** \$ \_\_\_\_\_

<b>Net Excess or Shortfall</b> (Monthly Net Income less Monthly Expenses and Payments)	<b>(+/-)</b>	<b>\$</b> _____
--	--------------	-----------------

**5. Assets**

You **MUST** disclose all assets correctly. By indicating "None", you are stating affirmatively that you or the other party, do not have assets in that category. Please attach additional copies of pages 5 & 6 to identify your assets, if necessary.

*If the parties are married or partners in a civil union*, check under the heading Joint (J) all assets acquired during the marriage/civil union but not by gift or inheritance. Under the headings of Petitioner (P) or Co-Petitioner/Respondent (C/R), check assets owned before this marriage/civil union and assets acquired by gift or inheritance.

*If the parties were NEVER married to each other or are using this form to modify child support*, list all of each party's assets under the headings of Petitioner (P) or Co-Petitioner/Respondent (C/R).

**"P" = Petitioner, "C/R" = Co-Petitioner or Respondent, "J" = Joint.**

A. Real Estate (Address or Property Description and Name of Creditor/ Lender) <input type="checkbox"/> None	P	C/R	J	Estimated Value as of Today Value = what you could sell it for in its current condition.	Amount Owed	Net Value/Equity (Value minus amount owed)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$	\$	\$
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<b>Total</b>				\$	\$	\$

B. Motor Vehicles & Recreation Vehicles Including Motorcycles, ATV's, Boats, etc.) (Year, Make, Model) (Name of Creditor/Lender) <input type="checkbox"/> None	P	C/R	J	Estimated Value as of Today Value = what you could sell it for in its current condition.	Amount Owed	Net Value/Equity (Value minus amount owed)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<b>Total</b>				\$	\$	\$

C. Cash on Hand, Bank, Checking, Savings, or Health Accounts (Name of Bank or Financial Institution) <input type="checkbox"/> None	P	C/R	J	Type of Account	Account # (last 4-digits only)	Balance as of Today
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			\$
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<b>Total</b>						\$

D. Life Insurance (Name of Company/Beneficiary) <input type="checkbox"/> None	P	C/R	J	Type of Policy	Face Amount of Policy	Cash Value today
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		\$	\$
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<b>Total</b>				\$	\$

E. Furniture, Household Goods, and Other Personal Property, i.e. Jewelry, Antiques, Collectibles, Artwork, Power Tools, etc. Identify Items and report in total. <input type="checkbox"/> None	P	C/R	J	Current Possession Held by			Estimated Value as of Today Value = what you could sell it for in its current condition.
				P	C/R	J	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Total</b>							\$

<b>F. Stocks, Bonds, Mutual Funds, Securities &amp; Investment Accounts</b> <input type="checkbox"/> None <input type="checkbox"/> If owned please attach JDF 1111-SS.	<b>Total</b>	\$
<b>G. Pension, Profit Sharing, or Retirement Funds</b> <input type="checkbox"/> None <input type="checkbox"/> If owned please attach JDF 1111-SS.	<b>Total</b>	\$

<b>H. Miscellaneous Assets</b> <input type="checkbox"/> None If you own any of the assets identified below, please check the appropriate box and attach JDF 1111-SS to report the value.			
<input type="checkbox"/> Business Interests	<input type="checkbox"/> Stock Options	<input type="checkbox"/> Money/Loans owed to you	<input type="checkbox"/> IRS Refunds due to you
<input type="checkbox"/> Country Club & Other Memberships	<input type="checkbox"/> Livestock, Crops, Farm Equipment	<input type="checkbox"/> Pending lawsuit or claim by you	<input type="checkbox"/> Accrued Paid Leave (sick, vacation, personal)
<input type="checkbox"/> Oil and Gas Rights	<input type="checkbox"/> Vacation Club Points	<input type="checkbox"/> Safety Deposit Box/Vault	<input type="checkbox"/> Trust Beneficiary
<input type="checkbox"/> Frequent Flyer Miles	<input type="checkbox"/> Education Accounts	<input type="checkbox"/> Health Savings Accounts	<input type="checkbox"/> Mineral and Water Rights
<input type="checkbox"/> Other - _____	<input type="checkbox"/> Other - _____	<input type="checkbox"/> Other - _____	<input type="checkbox"/> Other - _____
<b>Total</b>			\$

<b>I. Separate Property</b> <input type="checkbox"/> None <input type="checkbox"/> If owned please attach JDF 1111-SS to identify the property and to report the value.	<b>Total</b>	\$
--	--------------	----

<b>Total Value/Balance of All Assets (A – I)</b>	\$
--	----

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.

I understand that if the information I have provided changes or needs to be updated before a final decree or order is issued by the Court, that I have a duty to provide the correct or updated information.

I understand that if I have omitted or misstated any material information, intentionally or not, the Court will have the power to enter orders to address those matters, including the power to punish me for any statements made with the intent to defraud or mislead the Court or the other party.

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**VERIFICATION**

**I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.**

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

\_\_\_\_\_  
(printed name of Petitioner or Co-Petitioner/Respondent)

\_\_\_\_\_  
Signature of Petitioner or Co-Petitioner/Respondent

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**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_ (date) a true and accurate copy of the **SWORN FINANCIAL STATEMENT** was served on the other party by:

- Hand Delivery,  E-filed,  Faxed to this number: \_\_\_\_\_, **or**  
 By placing it in the United States mail, postage pre-paid, and addressed to the following:

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Your signature

RE Civil Rules Subcommittees.txt

From: Ben Vinci <ben@vincilaw.com>  
Sent: Thursday, March 11, 2021 3:17 PM  
To: michaels, kathryn  
Cc: berger, michael  
Subject: RE: Civil Rules Subcommittees  
Attachments: Rule 304.docx; Rule 312.docx

Kathryn

Attached you will find the proposed Rule changes that have been approved by the County Court Committee. I just realized that the meeting falls during spring break for my son. This seems to be an annual occurrence. I'm trying to see what I can do with my schedule so that I can attend the meeting, but as of now I am not certain if I will be available.

Here is an update with regard to Rule 341. The committee considered changes to Rule 341 (b)(1) and (b)(2) per the request of Dan Vedra. The Supreme Court Committee had rejected the previous proposals because of the language "due diligence" that was inserted by the County Court Committee. I believe the reasoning was that "due diligence" was too vague. The County Court Committee was unmoved by this recommendation because "due diligence appears" throughout the rules including Rule 41 and the criminal rules as pointed out by Judge Lafave. The committee spent considerable time discussing some proposed language that was drafted by several members of the committee. After discussion it was decided that no changes would be proposed to Rule 341. In part, the discussion centered around two points. First, the request to change this rule was made pre-pandemic and with the pandemic it could place some burdens on the courts and litigants to force cases forward when the parties are not wanting to do them virtually and do not feel comfortable going to court. Most if not all of the counties are already issuing Delay Reduction Orders (DRO's) and so it is rare that a case would sit without any action taken. Second, there was discussion that the defendant can always file a motion to dismiss pursuant to 341(b)(1) if the Plaintiff is not prosecuting the case. The committee did not see any compelling issues that required a change of the rule at this time and felt that cases are being handle timely. The committee

Page 1

RE Civil Rules Subcommittees.txt

decided to pass the matter  
but agreed that it could be brought up again in the future after the pandemic has  
resolved to see if  
opinions have changed.

Let me know if there are any questions.

LICENSED IN COLORADO, NEBRASKA, WYOMING AND UTAH.

Ben Vinci  
Vinci Law Office, LLC  
Attorney at Law  
2250 South Oneida St. Suite 303  
Denver, Co 80224  
303 872-1898  
ben@vincilaw.com

If this communication was sent in an attempt to collect a debt, then any information  
will be used for  
that purpose.

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not read, copy,  
or disclose the contents. The information contained in these documents is highly  
confidential and  
may be subject to legally enforceable privileges. If you have received these  
documents in error,  
please call us immediately at the number listed above and return these documents to  
us at once.  
Thank you.

From: michaels, kathryn <kathryn.michaels@judicial.state.co.us>  
Sent: Friday, March 5, 2021 1:09 PM  
To: jones, jerry <jerry.jones@judicial.state.co.us>; brody, karen  
<karen.brody@judicial.state.co.us>;  
tims, marianne <marianne.tims@judicial.state.co.us>; jlebsack@wsteele.com; Stephanie  
Scoville  
<Stephanie.Scoville@coag.gov>; Ben Vinci <ben@vincilaw.com>  
Cc: berger, michael <michael.berger@judicial.state.co.us>  
Subject: Civil Rules Subcommittees

Dear Civil Rules Subcommittee Chairs,

Please let me know if your group will be prepared to make a presentation to the  
committee at the  
March meeting, and if so, written materials need to be provided to me by March 16.

RE Civil Rules Subcommittees.txt

Thanks,  
Kathryn

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Kathryn Michaels (she, her, hers)  
Staff Attorney | Colorado Supreme Court | (720) 625-5105 |  
kathryn.michaels@judicial.state.co.us  
\*Please note I am out of the office on Wednesdays

Rule 304. Service of Process.

(a) To What Applicable. This rule applies to all process except as otherwise provided by these rules.

(b) Initial Process. Except in cases of service by publication under Rule 304 (f), the complaint and a blank copy of the answer form shall be served with the summons.

(c) By Whom Served. Process may be served within the United States or its Territories by any person whose age is eighteen years or older, not a party to the action. Process served in a foreign country shall be according to any internationally agreed means reasonably calculated to give notice, the law of the foreign country, or as directed by the foreign authority or the court if not otherwise prohibited by international agreement.

(d) Personal Service. Personal service shall be as follows:

(1) Upon a natural person whose age is eighteen years or older by delivering a copy thereof to the person, or by leaving a copy thereof at the person's usual place of abode, with any person whose age is eighteen years or older and who is a member of the person's family, or at the person's usual workplace, with the person's supervisor, secretary, administrative assistant, bookkeeper, human resources representative or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process.

(2) Upon a natural person whose age is at least thirteen years and less than eighteen years, by delivering a copy thereof to the person and another copy thereof to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to any person in whose care or control the person may be, or with whom the person resides, or in whose service the person is employed, and upon a natural person under the age of thirteen years by delivering a copy to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to the person in whose care or control the person may be.

(3) Upon a person for whom a conservator has been appointed, by delivering a copy thereof to such conservator.

(4) Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized under the laws of this state or of any other jurisdiction, (including any such organization, association or entity serving as an agent for service of process for itself or for another entity) by delivering a copy thereof to the registered agent for service as set forth in the most recently filed document in the records of the secretary of state of this state or of any other jurisdiction, or that agent's secretary or assistant, or one of the following:

(A) An officer of any form of entity having officers, or that officer's secretary or assistant;

(B) A general partner of any form of partnership, or that general partner's secretary or assistant;

(C) A manager of a limited liability company or limited partnership association in which management is vested in managers rather than members, or that manager's secretary or assistant;

(D) A member of a limited liability company or limited partnership association in which management is vested in the members or in which management is vested in managers and there are no managers, or that member's secretary or assistant;

(E) A trustee of a trust, or that trustee's secretary or assistant;

(F) The functional equivalent of any person described in paragraphs (A) through (E) of this subsection (4), regardless of such person's title, under:

(I) the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other documents of similar import duly filed or recorded by which the entity or any or all of its owners obtains status as an entity or the attribute of limited liability, or

(II) the law pursuant to which the entity is formed or which governs the operation of the entity;

(G) If no person listed in subsection (4) of this rule can be found in this state, upon any person serving as a shareholder, member, partner, or other person having an ownership or similar interest in, or any director, agent, or principal employee of such entity, who can be found in this state, or service as otherwise provided by law.

(5) Repealed.

(6) Upon a municipal corporation, by delivering a copy thereof to the mayor, the city manager, the clerk, or deputy clerk.

(7) Upon a county, by delivering a copy thereof to the county clerk, chief deputy, or county commissioner.

(8) Upon a school district, by delivering a copy thereof to the superintendent.

(9) Upon the state by delivering a copy thereof to the attorney general.

(10)

(A) Upon an officer, agent, or employee of the state, acting in an official capacity, by delivering a copy thereof to the officer, agent, or employee, and by delivering a copy to the attorney general.

(B) Upon a department or agency of the state, subject to suit, by delivering a copy thereof to the principal officer, chief clerk, or other executive employee thereof, and by delivering a copy to the attorney general.

(C) For purposes of service of an initial summons and complaint, the copies shall be delivered to both the party and the attorney general within the times as set forth in rule 312 (a). For all other purposes, the effective date of service shall be the latter date of delivery.

(11) Upon other political subdivisions of the State of Colorado, special districts, or quasi-municipal entities, by delivering a copy thereof to any officer or general manager, unless otherwise provided by law.

(12) Upon any of the entities or persons listed in subsections (4) through (11) of this section (d) by delivering a copy to any designee authorized to accept service of process for such entity or person, or by delivery to a person authorized by appointment or law to receive service of process for such entity or person. The delivery shall be made in any manner permitted by such appointment or law.

(e) Substitute Service. In the event that a party attempting service of process by personal service under section (d) is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (f), the party may file a motion, supported by an affidavit of the person attempting service, for an order for substituted service. The motion shall state (1) the efforts made to obtain personal service and the reason that personal service could not be obtained, (2) the identity of the person to whom the party wishes to deliver the process, and (3) the address, or last known address of the workplace and residence, if known, of the party upon whom service is to be effected. If the court is satisfied that due diligence has been used to attempt personal service under section (d), that further attempts to obtain service under section (d) would be to no avail, and that the person to whom delivery of the process is appropriate under the circumstances and reasonably calculated to give actual notice to the party upon whom service is to be effective, it shall:

(1) Authorize delivery to be made to the person deemed appropriate for service, and

(2) Order the process to be mailed to the address(es) of the party to be served by substituted service, as set forth in the motion, on or before the date of delivery. Service shall be complete on the date of delivery to the person deemed appropriate for service.

(f) Other Service. Except as otherwise provided by law, service by mail or publication shall be allowed only in actions affecting specific property or status or other proceedings in rem. When service is by publication, the complaint need not be published with the summons. The party desiring service of process by mail or publication under this section (f) shall file a motion verified by the oath of such party or of someone in the party's behalf for an order of service by mail or publication. It shall state the facts authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service and shall give the address, or last known address, of each person to be served or shall state that this address and last known address are unknown. The court, if satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, shall:

(1) Order the party to send by registered or certified mail a copy of the summons and a copy of the complaint, addressed to such person at such address, requesting a return receipt signed by addressee only. Such service shall be complete on the date of the filing of proof thereof, together with such return receipt attached thereto signed by such addressee, or

(2) Order publication of the summons in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within fifteen days after the order the party shall mail a copy of the summons and complaint to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be completed on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

(g) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service.

(2) Repealed.

(3) If served by mail, a sworn or unsworn declaration showing the date of the mailing, with the return receipt attached, where applicable.

(4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the summons, complaint and answer form where required.

(5) If served by waiver, by a sworn or unsworn declaration admitting or waiving service by the person or persons served, or by their attorney.

(6) If served by substituted service, by a sworn or unsworn declaration as to the date, place, and manner of service, and that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons issued.

(i) Waiver of Service of Summons. A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the defendant.

(j) Refusal of Copy. If a person to be served refuses to accept a copy of the summons and complaint, service shall be sufficient if the person serving the documents knows or has reason to identify the person who refuses to be served, identifies the documents being served as a summons and complaint, offers to deliver a copy of the documents to the person who refuses to be served, and thereafter leaves a copy in a conspicuous place.

(k) Time Limit for Service. If a defendant is not served within 6 months after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision (k) does not apply to service in a foreign country under rule 304(d).

Vote was passed 10-2 on March 10, 2021

Proposed effective date: Immediately

Rule 312. Defenses and Objections -- When and How. Defenses and Objections -- by Pleading or Motion.

(a) Responsive Pleadings; When Presented. The defendant shall file an answer including any counterclaim or cross-claim on or before the appearance date as fixed in the summons. Except as otherwise provided in this rule, the appearance date shall not be more than 63 days from the date of the issuance of the summons and the summons must have been served at least 14 days before the appearance date. When circumstances require that the plaintiff proceed under Rule 304 (e), the above limitation shall not apply and the appearance date shall not be less than 14 days after the completion of service by publication or mail.

(b) Motions. ~~Motions raising defenses shall be made in accordance with Rule 307. If made by the defendant on or before the appearance date the motions shall be ruled upon before an answer is required to be filed.~~ Motions raising defenses made by the defendant on or before the appearance date shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

(c) Waiver of Defenses. A party waives all defenses and objections which are not raised either by motion or in his answer except that the defense of lack of jurisdiction of the subject matter may be made at any time.

(d) Motion for Judgment on the Pleadings. At any time after the last pleading is filed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. A party shall not submit matters outside the pleadings in support of the motion.

Vote was passed unanimously, 12-0, on March 10, 2021

Proposed effective date: Immediately

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"(?).