

AGENDA

COLORADO SUPREME COURT COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Friday, September 27, 2019 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203

Fourth Floor, Supreme Court Conference Room

- I. Call to order
- II. Approval of June 28, 2019 minutes [Pages 1 to 6]
- III. Announcements from the Chair
- IV. Present Business
 - A. JDF 601—District Court Civil Case Cover Sheet Modification to Include Associated Cases—(Bradley Levin)
 - B. Possible Amendments to the Colorado Rules for Magistrates—(Magistrate Tims)—Status Report Only
 - C. JDF 105—Service of Pattern Interrogatories—(Judge Berger) [Pages 7 to 21]
 - D. Title 12 Citations in the Civil Rules—(Jeremy Botkins) [Pages 22 to 41]
 - E. County Court Subcommittee Proposed Rule Changes (307, 341, and 412)—(Ben Vinci) [Pages 42 to 45]
 - F. C.R.C.P. 304—Time Limit for Service from Attorney Daniel Vedra—(Ben Vinci)
 - G. C.R.C.P. 16.1—Evaluating the New Rule—(Judge Berger)
 - H. C.R.C.P. 263—Silence in the Library—(Judge Berger) [Page 46]
 - I. C.R.C.P. 103—Possible Amendments Needed in Light of House Bill 19-1189—(Judge Berger) [Pages 47 to 48]
 - J. C.R.C.P. 8(c)—Possible Amendments Needed in Light of *Orange Collar v. Mowery*—(Judge Berger) [Pages 49 to 61]
 - K. C.R.C.P. 4(m)—Possible Amendments—(Judge Jones) [Page 62]

- L. Proposal for Rule Modifications Re: Expert Disclosures, Stock Case Management Orders, and Telephone Testimony—(Damon Davis) [Pages 63 to 66]
- M. Colorado Municipal Court Rules of Procedure 204, 210, 212, 216, 223, 237, 241, 243, 248, and 254—Proposed Rule Changes—(Municipal Court Subcommittee)—Passed until November meeting
- V. Adjourn—**Next meeting is NOVEMBER 22, 2019 at 1:30 pm.**

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

Conference Call Information:

Dial (720) 625-5050 (local) or 1-888-604-0017 (toll free) and enter the access code, 551050, followed by # key.

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
June 28, 2019 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. in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present at the meeting were:

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

I. Attachments & Handouts

- June 28, 2019 agenda packet.

II. Announcements from the Chair

- The January 25, 2019 minutes were approved as presented;
- Judge Berger introduced new member Judge Karen Brody from the Denver District Court;
- The supreme court approved the committee’s proposed changes to C.R.C.P. 80 and 380; and
- After talking to subcommittee chair Brent Owen, Judge Berger disbanded the C.R.C.P. 69 subcommittee due to lack of consensus for change.

III. Present Business

A. Colorado Municipal Court Rules of Procedure 204, 210, 212, 216, 223, 237, 241, 243, 248, and 254

Judge Berger introduced Judge Frick, chair of the municipal court rules subcommittee, to discuss the proposed changes to the municipal court rules. Judge Berger thanked the subcommittee for their helpful report to the committee. Judge Frick provided a background of the municipal court rules, explained the breadth of municipal courts throughout Colorado, and noted that the rules haven’t been substantively changed since 1988.

Judge Frick introduced the subcommittee’s proposed changes to rule 204. The committee voted unanimously to approve this rule proposal assuming the service of process language is updated.

Judge Frick turned to rule 210 concerning general advisement requirements for a first appearance in court. One guest was concerned that the proposed rule does not list exact procedures. The committee discussed the possibility of combining rule 210 with rule 223. Bradley Levin pointed out some linguistic concerns.

Richard Holme asked whether the criminal rules committee is involved with these proposed rule changes. Judge Berger explained that when this subcommittee was set up by then Chief Justice Rice, it was given to this committee. Ben Vinci suggested it might be beneficial to have both the civil and criminal rule committees look at these proposed rule changes. Judge Berger asked that the committee continue the discussion in order to provide information to the subcommittee but stated that rule approval would not be helpful at this point.

Regarding rule 223, Lisa Hamilton Fieldman was concerned about written advisements in light of the fact that some pro se litigants may not be able to read.

Regarding rule 241, Judge Brody noted that the language in the rule doesn't comport with the relevant statute, C.R.S. 16-3-301.

Judge Frick then introduced the proposed changes to rule 254 and stated that the changes are designed to incorporate the idea that in the absence of the applicability of a municipal court rule, a judge can rely on other rules. John Lebsack commented that the proposed rule incorporates a reference to the civil rules, but that the civil rules do have conflicts within them. Judge Frick stated that this rule was purposely kept vague as it is solely for guidance.

Judge Berger will meet with Justice Gabriel to determine the role this committee will play in proposing changes to the municipal court rules, and he noted that he appreciates all the work done on this large project.

B. "Must" and "Shall" in the Civil Rules

Judge Webb spoke for the subcommittee. He explained that a majority of the subcommittee favors replacing *shall* with *must*. Such an undertaking is not a simple project of blindly replacing all the appearances of *shall* with *must* in the rules because there are likely some situations when the replacement is at best awkward. Judge Webb continued that *shall* is routinely condemned by authorities on legal writing, and it can have a variety of interpretations; there are good reasons to replace *shall* with *must*. The minority subcommittee's opinion is that everyone knows what *shall* means in the civil rules. The subcommittee all agreed that 1. This should be a contemplative project for each instance that the word *shall* appears in the rules; 2. If *shall* is left in the rules, then a comment should be added; and 3. If going forward, all instances of *shall* will be changed to *must*, then it should all be changed at one time.

Judge Berger noted that when the federal civil rule committee was going through the process of modernizing their rules, there was a strong consensus that this committee would not conduct a wholesale rewrite of these rules. Judge Berger suggested the possibility of adopting a standard practice of changing *shall* to *must* when other changes are made to rules so that eventually, there will be no *shall* in the rules. Judge Webb responded that the subcommittee unanimously thought doing so was ill-advised. David DeMuro noted that he was in the minority of the subcommittee. He prefers to stay with *shall* but doesn't see this is a huge deal. In his view, *shall* is archaic.

The committee explored whether a comment to the rules or a change to rule 110 could provide clarification on the *must vs. shall* issue. Mr. Vinci noted that if pro se parties' access to justice is a consideration, then perhaps the *must* and *shall* issue should be cleaned up in the rules, as comments would not provide the necessary clarification for a pro se party. Ms. Hamilton Fieldman commented that you'd have to put a comment on every rule where *shall* appears to provide the necessary clarification. Judge Berger stated that if you add a new rule or comment, you may be opening an issue that has been settled in the law for years. Judge Web responded that a comment could acknowledge this controversy, state that changing all instances of *shall* to *must* was considered and

rejected, and finally, assert that precedent concerning the usage of *shall* remains in effect. Judge Zenisek commented that the conversation exemplifies why this should be indefinitely tabled.

A motion was taken and seconded to indefinitely table this conversation. By a vote of 17-8 (2/3 majority), it passed.

C. C.R.C.P. 16.2(e)(10)

Judge Berger noted that during the March email vote on proposed changes to this rule, the *must/shall* issue came up and Judge Berger terminated the vote for the committee to further discuss this proposed rule change in person. Judge Davidson raised the issue that the supreme court recently granted certiorari on a case that deals with this rule. Judge Davidson's concern is not with the 5-year issue that is properly clarified, but that the changes to other language in the rule might be impacted; she suggested either not touching the rule because the supreme court will issue an opinion on this rule or just attack the 5-year cutoff. Judge Jones contended that the cert grant dealt only with matters omitted from the rule and he did not think anything they granted cert on is related to the changes proposed in this rule change.

The committee voted overwhelmingly to send the proposed changes to the supreme court. Judge Jones accepted a friendly amendment to replace two instances of *must* with *do* and *does*. The committee voted unanimously to approve these changes. Finally, Judge Webb reminded the committee that it had determined that the word *shall* in the rules should not be changed to *must* on a prospective basis. The committee unanimously approved to change two instances of *must* in the proposal to *shall*.

D. Colorado Rules for Magistrates

Judge Berger explained that he wanted to have a preliminary discussion as to whether the committee should take up a significant project of proposing changes to the magistrate rules. Judge Berger continued that the rules can be a nightmare for judges, magistrates, and most importantly, pro se parties. Judge Berger doesn't know if there is a good fix to improve the rules, but he wants the committee to consider trying.

Lee Sternal commented that it is becoming too easy to avoid hiring lawyers and that pro se parties should be required to be indigent. Judge Jones commented that it is not just pro se parties who have problems with the rules. He also noted that the court of appeals keeps having to issue published opinions to explain the rules.

Judge Romano shared his belief that changing rules will be very complex and time consuming. Ms. Hamilton Fieldman said that judge shopping goes on due to these rules as they currently exist.

Judge Berger will take volunteers to serve on a subcommittee.

E. C.R.C.P. 4 + 304

Mr. DeMuro reminded the committee that at the last meeting, the committee directed him to come up with proposals to highlight in the civil rules that unsworn declarations may be used in the place of a sworn declaration for affidavits. These proposed rule changes aren't a change in policy, but rather, an attempt to publicize the statutory change to the bench and bar.

Damon Davis noted that very few people in his office know about that statutory change. He stated that adding the language to rules 108 and 408 is the simplest option.

The committee discussed adding language to rule 121 1-15, #2, and John Palmeri noted that practitioners might look there more often. Ms. Hamilton Fieldman mentioned the existence of affidavit requirements in rules 241 and 245, and that if the committee is trying to apply the language across the rules, then those rules would need to be changed as well. Mr. DeMuro stated that the purpose of the rule change would be to give publicity to the statute.

The committee unanimously voted to propose Mr. DeMuro's suggested changes to C.R.C.P. 108 and 408 to the supreme court.

F. JDF 601

This issue was raised by Judge Weishaupl from the 18th Judicial District Court. Judge Weishaupl shared via email to Judge Berger that her court is receiving more and more cases filed that are associated with other cases, but people are not required to list them as such. Judge Weishaupl suggested modifying the civil cover sheet so that civil lawyers must list associated cases. Judge Berger noted that there is such a requirement in federal court.

Bradley Levin stated that having a good definition of what constitutes a related case is important. He told the committee that in federal courts, this definition has changed over time. Ms. Hamilton Fieldman advised that sanctions be considered for failing to list related cases.

Judge Berger will form a subcommittee to deal with this issue.

G. JDF 105

This question was received from the SCAO support desk. JDF 105 indicates that a clerk can serve documents by regular mail, but the SCAO better business practice and training materials say that people shall be served by certified mail or personal service. Court services will return with a proposal for the committee to consider.

H. Title 12 Citations in the Civil Rules

The governor recently signed HB 19-1172, which completes the reorganization of Title 12 of the Colorado Revised Statutes. The civil rules contain several references to statutes in Title 12. Kathryn Michaels will draft the proposed changes using Jeremy Botkins' guidelines for the committee to consider at the next meeting.

I. County Court Rules 307, 341, and 412

Tabled until September.

IV. Future Meetings

September 27, 2019

November 22, 2019

The Committee adjourned at 4:04 p.m.

MEMORANDUM

TO: Civil Rules Committee

FROM: Kayla Lipscomb, Court Services, SCAO

RE: Proposed change to JDF 105SC to include affidavit of service

The changes to this form were briefly discussed at the meeting held on June 28, 2019. Based on those discussions, and working with our legal team at SCAO, I have put together a draft with proposed changes to JDF105.

The changes to the form all deal with clarifying how service can be completed. Pursuant to Rule 369(g), service can be performed by either judgment creditor or court staff. A brief instructional statement was added as well as an affidavit of service for the judgment creditor. Previously there was only a certificate of mailing for court staff.

The hope is that this change will help to alleviate future confusion regarding service of these interrogatories.

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

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. 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, phone number, amount of income, and dates of payment of the person or business paying you the income.**
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): _____

7. If you own or 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, name of owner if only used by 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: _____

8. If you own or 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 or owned during the last four years, or regularly use any personal property NOT DESCRIBED ABOVE for which the purchase prices was \$500.00 or more, describe each item by make, model, date of purchase, purchase price, name of owner if only used by 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 not, 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 for the last four years:

- a. Your federal and state tax returns with all attachments.
- 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: _____ Phone Number: _____
Address: _____

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, 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 or 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 only used by you. 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

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INSTRUCTIONS REGARDING SERVICE OF THIS FORM

If the judgment creditor chooses to serve this Form ~~completes service~~ pursuant to rule 304, the 'Affidavit of Service' section below should be completed and filed with the Court.

If the judgment creditor is requesting service be completed by the court, the 'Affidavit of Service' section ~~is not required to~~ should not be filled out, and the Clerk ~~should~~ will complete the 'Certificate of Service by Mailing' below.

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AFFIDAVIT OF SERVICE
(Must be returned to Court)

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I swear/affirm under oath that I am 18 years or older and not a party to the action, and that I served the **PATTERN INTERROGATORIES UNDER C.R.C.P. 369(g) - INDIVIDUAL** on the following:

Name of Person Served	Date and Time of Service	Address of Service (Street, County, City, State)
_____	_____	_____

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Check type of Service:

- By handing the documents to a person identified to me as the Defendant.
- By identifying the documents, offering to deliver them to a person identified to me as the Defendant who refused service, and then leaving the documents in a conspicuous place.
- By leaving the documents at the Defendant's usual place of abode with _____ (Name of Person) who is a member of the Defendant's family and whose age is 18 years or older. (Identify family relationship) _____.
- By leaving the documents at the Defendant's usual workplace with _____ (Name of Person) who is the Defendant's secretary, administrative assistant, bookkeeper, or managing agent. (Circle title of person served.)
- By leaving the documents with _____ (Name of Person), who as _____ (title) is authorized by appointment or by law to receive service of process for the Defendant.
- By leaving the documents with an officer, partner, manager, stockholder, elected official or functional equivalent pursuant to C.R.C.P. 304 _____ (please identify) of the corporation or non-corporate entity which was to be served. (Circle title of person who was served.)
- By serving the documents as follows (other service under C.R.C.P. 304): _____

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I have charged the following fees for my services in this matter:

<input type="checkbox"/> Private process server	_____	_____
<input type="checkbox"/> Sheriff,	_____	County
Fee \$	Mileage \$	_____

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Signature of Process Server

Name (Print or type)

CERTIFICATE OF SERVICE BY MAILING
(To be performed by Clerk within three days of filing)

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

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. 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, phone number, amount of income, and dates of payment of the person or business paying you the income.

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): _____

7. If you own or 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, name of owner if only used by 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: _____

8. If you own or 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 or owned during the last four years, or regularly use any personal property NOT DESCRIBED ABOVE for which the purchase prices was \$500.00 or more, describe each item by make, model, date of purchase, purchase price, name of owner if only used by 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 not, 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 for the last four years:

- a. Your federal and state tax returns with all attachments.
- 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: _____ Phone Number: _____

Address: _____

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, 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 or 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 only used by you. 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

INSTRUCTIONS REGARDING SERVICE OF THIS FORM

If the judgment creditor chooses to serve this Form pursuant to rule 304, the 'Affidavit of Service' section below should be completed and filed with the Court.

If the judgment creditor is requesting service be completed by the court, the 'Affidavit of Service' section should not be filled out, and the Clerk will complete the 'Certificate of Service by Mailing' below.

AFFIDAVIT OF SERVICE (Must be returned to Court)

I swear/affirm under oath that I am 18 years or older and not a party to the action, and that I served the **PATTERN INTERROGATORIES UNDER C.R.C.P. 369(g) - INDIVIDUAL** on the following:

Name of Person Served	Date and Time of Service	Address of Service (Street, County, City, State)
-----------------------	--------------------------	---

Check type of Service:

- By handing the documents to a person identified to me as the Defendant.
- By identifying the documents, offering to deliver them to a person identified to me as the Defendant who refused service, and then leaving the documents in a conspicuous place.
- By leaving the documents at the Defendant's usual place of abode with _____ (Name of Person) who is a member of the Defendant's family and whose age is 18 years or older. (Identify family relationship) _____.
- By leaving the documents at the Defendant's usual workplace with _____ (Name of Person) who is the Defendant's secretary, administrative assistant, bookkeeper, or managing agent. (Circle title of person served.)
- By leaving the documents with _____ (Name of Person), who as _____ (title) is authorized by appointment or by law to receive service of process for the Defendant.
- By leaving the documents with an officer, partner, manager, stockholder, elected official or functional equivalent pursuant to C.R.C.P. 304 _____ (please identify) of the corporation or non-corporate entity which was to be served. (Circle title of person who was served.)
- By serving the documents as follows (other service under C.R.C.P. 304): _____
_____.

I have charged the following fees for my services in this matter:

- Private process server
- Sheriff, _____ County
Fee \$ _____ Mileage \$ _____

Signature of Process Server

Name (Print or type)

CERTIFICATE OF SERVICE BY MAILING
(To be performed by Clerk within three days of filing)

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 at the address listed below.

To: _____

Clerk of Court/Deputy Clerk

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

Rule 103. Garnishment

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

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

(a) – (j) [NO CHANGES]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section ~~12-14-101~~5-16-101, et seq., C.R.S., the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

(k)(2) – (k)(3) [NO CHANGES]

(l) Disbursement of Garnished Earnings.

(1) If no objection is filed by the judgment debtor within 7 days after the judgment debtor received earnings for a pay period, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section ~~12-14-101~~5-16-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(l)(2) - (m) [NO CHANGES]

SECTION 2. WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) - (f) [NO CHANGES]

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection

agency licensed pursuant to ~~12-14-101~~5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(g)(2) - (i) [NO CHANGES]

SECTION 3 [NO CHANGES]

SECTION 4. WRIT OF GARNISHMENT--JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) -(e) [NO CHANGES]

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness be paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to section ~~12-14-101~~5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(f)(2) - (g) [NO CHANGES]

SECTION 5 [NO CHANGES]

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

(a) – (a)(3) [NO CHANGES]

(4) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section ~~12-14-101~~5-16-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(a)(5) -(e) [NO CHANGES]

SECTION 7 – END [NO CHANGES]

Rule 103. Garnishment

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

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

(a) – (j) [NO CHANGES]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

(k)(2) – (k)(3) [NO CHANGES]

(l) Disbursement of Garnished Earnings.

(1) If no objection is filed by the judgment debtor within 7 days after the judgment debtor received earnings for a pay period, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(l)(2) - (m) [NO CHANGES]

SECTION 2. WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) - (f) [NO CHANGES]

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection

agency licensed pursuant to 5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(g)(2) - (i) [NO CHANGES]

SECTION 3 [NO CHANGES]

SECTION 4. WRIT OF GARNISHMENT--JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) -(e) [NO CHANGES]

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness be paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(f)(2) - (g) [NO CHANGES]

SECTION 5 [NO CHANGES]

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

(a) – (a)(3) [NO CHANGES]

(4) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(a)(5) -(e) [NO CHANGES]

SECTION 7 – END [NO CHANGES]

Rule 403. Garnishment

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

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

(a) - (j) [NO CHANGES]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section [5-16-101+2-14-101](#), et seq., C.R.S., the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

(k)(2) - (3) [NO CHANGES]

(l) Disbursement of Garnished Earnings.

(1) If no objection is filed by the judgment debtor within 7 days after the judgment debtor received earnings for a pay period, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section [5-16-101+2-14-101](#), et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(l)(2) - (m) [NO CHANGES]

SECTION 2. WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) - (f) [NO CHANGES]

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness be paid to the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection

agency licensed pursuant to [5-16-101](#)~~12-14-101~~, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(g)(2) - (i) [NO CHANGES]

SECTION 3 [NO CHANGES]

SECTION 4. WRIT OF GARNISHMENT--JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) - (e) [NO CHANGES]

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to [5-16-101](#)~~12-14-101~~, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(f)(2) - (g) [NO CHANGES]

SECTION 5 [NO CHANGES]

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

(a) – (a)(3) [NO CHANGES]

(4) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section [5-16-101](#)~~12-14-101~~, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(a)(5) -(e) [NO CHANGES]

SECTION 7 – END [NO CHANGES]

Rule 403. Garnishment

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

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

(a) - (j) [NO CHANGES]

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for each pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., the garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

(k)(2) - (3) [NO CHANGES]

(l) Disbursement of Garnished Earnings.

(1) If no objection is filed by the judgment debtor within 7 days after the judgment debtor received earnings for a pay period, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(l)(2) - (m) [NO CHANGES]

SECTION 2. WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) - (f) [NO CHANGES]

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness be paid to the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection

agency licensed pursuant to 5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(g)(2) - (i) [NO CHANGES]

SECTION 3 [NO CHANGES]

SECTION 4. WRIT OF GARNISHMENT--JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) - (e) [NO CHANGES]

(f) Court Order on Garnishment Answer. When the judgment debtor is other than a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 5-16-101, et seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(f)(2) - (g) [NO CHANGES]

SECTION 5 [NO CHANGES]

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

(a) – (a)(3) [NO CHANGES]

(4) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 5-16-101, et seq., C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(a)(5) -(e) [NO CHANGES]

SECTION 7 – END [NO CHANGES]

Rule 509. Parties, Representation and Intervention

(a) [NO CHANGES]

(b) Representation.

(1) Partnerships and Associations. Notwithstanding the provisions of article ~~593~~ of title ~~12~~13, C.R.S., in the small claims court, an individual shall represent himself or herself; a partnership shall be represented by an active general partner or an authorized full-time employee; a union shall be represented by an authorized active union member or full-time employee; a for-profit corporation shall be represented by one of its full-time officers or full-time employees; an association shall be represented by one of its active members or by a full-time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(b)(2) – (c) [NO CHANGES]

Rule 509. Parties, Representation and Intervention

(a) [NO CHANGES]

(b) Representation.

(1) Partnerships and Associations. Notwithstanding the provisions of article 93 of title 13, C.R.S., in the small claims court, an individual shall represent himself or herself; a partnership shall be represented by an active general partner or an authorized full-time employee; a union shall be represented by an authorized active union member or full-time employee; a for-profit corporation shall be represented by one of its full-time officers or full-time employees; an association shall be represented by one of its active members or by a full-time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(b)(2) – (c) [NO CHANGES]

RULES OF PROCEDURE FOR JUDICIAL BYPASS OF PARENTAL NOTIFICATION REQUIREMENTS

Rule 1. Applicability

This rule applies to proceedings instituted pursuant to Section ~~123-37.522-1707~~(12)(g), C.R.S. which allows for judicial bypass of the parental notification requirements set forth in the Colorado Parental Notification Act, Sections ~~1312-2237.5-1701~~, *et seq.* concerning abortions to be performed on unemancipated minors.

Rule 2. Petition for Waiver of Parental Notification Requirements

(a) [NO CHANGES]

(b) Expedited Proceedings. Court proceedings under this rule shall be given preference over other pending matters and shall be heard and decided as soon as practicable but in no event later than four calendar days after the petition was filed. If the court fails to act within four calendar days, the court in which the proceeding is pending shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section ~~123-37.522-1707~~(~~12~~)(f), C.R.S.

(c) – (e) [NO CHANGES]

(f) Grounds for waiver. In review of the petition, the court shall enter an order dispensing with the notice requirements of Section ~~1213-37.522-1704~~, C.R.S. if:

- (1) the court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion; or
- (2) the court determines, by a preponderance of the evidence, that the giving of parental notice would not be in the best interest of the minor.

(g) – (h) [NO CHANGES]

Rule 3. Appeal to The Court of Appeals

(a) - (b) [NO CHANGES]

(c) Decision. A decision shall issue no later than five calendar days after the notice of appeal was filed. If no decision is rendered within five days, the court shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section ~~123-37.522-1707~~(12)(f), C.R.S. A certified copy of any order issued shall be provided to the minor by the method requested in the petition, the minor's attorney, if represented, and the guardian ad litem, if one has been appointed. A certified copy of the order also shall be provided to the attending physician of the minor, as set forth in the petition.

RULES OF PROCEDURE FOR JUDICIAL BYPASS OF PARENTAL NOTIFICATION REQUIREMENTS

Rule 1. Applicability

This rule applies to proceedings instituted pursuant to Section 13-22-707(1)(g), C.R.S. which allows for judicial bypass of the parental notification requirements set forth in the Colorado Parental Notification Act, Sections 13-22-701, *et seq.* concerning abortions to be performed on unemancipated minors.

Rule 2. Petition for Waiver of Parental Notification Requirements

(a) [NO CHANGES]

(b) Expedited Proceedings. Court proceedings under this rule shall be given preference over other pending matters and shall be heard and decided as soon as practicable but in no event later than four calendar days after the petition was filed. If the court fails to act within four calendar days, the court in which the proceeding is pending shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section 13-22-707(1)(f), C.R.S.

(c) – (e) [NO CHANGES]

(f) Grounds for waiver. In review of the petition, the court shall enter an order dispensing with the notice requirements of Section 13-22-704, C.R.S. if:

- (1) the court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion; or
- (2) the court determines, by a preponderance of the evidence, that the giving of parental notice would not be in the best interest of the minor.

(g) – (h) [NO CHANGES]

Rule 3. Appeal to The Court of Appeals

(a) - (b) [NO CHANGES]

(c) Decision. A decision shall issue no later than five calendar days after the notice of appeal was filed. If no decision is rendered within five days, the court shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section 13-22-707(1)(f), C.R.S. A certified copy of any order issued shall be provided to the minor by the method requested in the petition, the minor's attorney, if represented, and the guardian ad litem, if one has been appointed. A certified copy of the order also shall be provided to the attending physician of the minor, as set forth in the petition.

I have a lawyer and ask the Court to appoint that person to continue to represent me. My lawyer's name, business address, telephone and fax numbers are: _____

I do not want to be represented by a lawyer.

11. I understand that the court proceedings and my court file are confidential and cannot be disclosed to anyone, including my parent(s), guardian or foster parent.

12. The Court can let me know of any Court proceedings or decisions in the following way:

Via Fax: # _____; Attn: _____

Via Telephone: # _____; Attn: _____

Via E-mail: _____

Via Beeper or Pager # _____

Via First Class Mail: _____

Via My Attorney

13. I ask that the Court provide me with a certified copy of the court's order in the following way (check one):

Via First Class Mail: _____

Via My Attorney

Via the Court File for pickup by me or _____ who has my permission to pick up the certified copy on my behalf from the court file at the courthouse

14. The best days and times for me to come to court are:

WHEREFORE, I request to the Court enter an order allowing me to have the abortion without telling my parent(s), guardian or foster parent.

Respectfully submitted this ____ day of _____, 20__.

Signature of Minor

Signature of Attorney, if Petitioner is represented

I have a lawyer and ask the Court to appoint that person to continue to represent me. My lawyer's name, business address, telephone and fax numbers are: _____

I do not want to be represented by a lawyer.

11. I understand that the court proceedings and my court file are confidential and cannot be disclosed to anyone, including my parent(s), guardian or foster parent.

12. The Court can let me know of any Court proceedings or decisions in the following way:

Via Fax: # _____; Attn: _____

Via Telephone: # _____; Attn: _____

Via E-mail: _____

Via Beeper or Pager # _____

Via First Class Mail: _____

Via My Attorney

13. I ask that the Court provide me with a certified copy of the court's order in the following way (check one):

Via First Class Mail: _____

Via My Attorney

Via the Court File for pickup by me or _____ who has my permission to pick up the certified copy on my behalf from the court file at the courthouse

14. The best days and times for me to come to court are:

WHEREFORE, I request to the Court enter an order allowing me to have the abortion without telling my parent(s), guardian or foster parent.

Respectfully submitted this ____ day of _____, 20__.

Signature of Minor

Signature of Attorney, if Petitioner is represented

michaels, kathryn

From: berger, michael
Sent: Friday, June 7, 2019 3:24 PM
To: michaels, kathryn
Subject: Fw: Proposed rule changes and additions
Attachments: proposed ccrp 412.docx; Rule 307(a).rtf; proposed amendment ccrp 341.docx

From: Ben Vinci <ben@vincilaw.com>
Sent: Friday, June 7, 2019 2:21 PM
To: berger, michael
Subject: Proposed rule changes and additions

Judge Burger

Attached are Rule changes and additions that have been done by the County Court Civil Rules Committee. Please add these to the June agenda.

LICENSED IN COLORADO, NEBRASKA, WYOMING AND UTAH.

Ben Vinci
Vinci Law Office, LLC
Attorney at Law
2250 South Oneida St. Suite 303
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303 872-1898
ben@vincilaw.com
Follow us on [Facebook](#), [LinkedIn](#), and [Twitter](#)!



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Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(9), effective April 11, 2019

Rule 307. Pleadings and Motions

(a)

Pleadings. There shall be a complaint and an answer which may or may not include a counterclaim. No other pleadings shall be allowed except by order of court [or as permitted by these Rules](#).

(b)

Motions. Repealed.

(c)

Demurrers, Pleas, etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(d)

Agreed Case, Procedure. Parties to a dispute which might be the subject of a civil action may, without pleadings, file, in the court which would have had jurisdiction if an action had been brought, an agreed statement of facts. The same shall be supported by an affidavit that the controversy is real and that it is filed in good faith to determine the rights of the parties. The matters shall then be deemed an action at issue and all proceedings thereafter shall be as provided by these rules.

Cite as C.R.C.P. 307

History. (b) repealed, effective April 5, 2010.

Rule 341. Dismissal of Actions.

(a)(1) Subject to the provisions of these rules, an action may be dismissed by the plaintiff upon payment of costs without order of court (i) by filing notice of dismissal at any time before filing or service by the adverse party of an answer, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action based on or including the same claim.

(2) By Order of Court. Except as provided in subsection (a)(1) of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal.

(1) By Defendant. For failure of the plaintiff to prosecute or bring the matter to trial with due diligence, or to comply with these rules or any order of court, a defendant may move for dismissal of an action or any claim. After the completion of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event that the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render a judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction or failure to file a complaint under Rule 303, operates as an adjudication upon the merits.

(2) By the Court. Actions not prosecuted or brought to trial with due diligence may, upon notice, be dismissed without prejudice unless otherwise specified by the court upon 28 days' notice in writing to all appearing parties or their counsel of record, unless a party shows cause in writing within said 28 days why the case should not be dismissed. If the case has not been set for trial, no activity of record in excess of 6 continuous months shall be deemed prima facie failure to prosecute. Failure to show cause on or before the date set forth in the court's notice shall justify dismissal without prejudice without further proceedings

(c) Dismissal of Counterclaim or Cross Claim. The provisions of this Rule apply to the dismissal of a counterclaim or cross claim, except as provided in Rule 313(e).

Rule 412. Limitation of Access to Court Files.

(a) Nature of Order. Upon motion by any party named in any civil action, the court may limit access to court cases. The order of limitation shall specify the nature of limitation, the duration of the limitation, and the reason for limitation.

(b) When Order Granted. An order limiting access shall not be granted except upon a finding that the harm to the privacy of a person in interest outweighs the public interest.

(c) Application for Order. A motion for limitation of access may be granted, ex parte, upon motion filed with the complaint, accompanied by supporting affidavit or at a hearing concerning the motion.

(d) Review by Order. Upon notice to all parties of record, and after hearing, an order limiting access may be reviewed by the court at any time on its own motion or upon the motion of any person.

michaels, kathryn

From: meirink, melissa
Sent: Tuesday, February 26, 2019 1:20 PM
To: michaels, kathryn
Subject: FW: Colorado Judicial Ethics Advisory Board Request for Opinion

Hi, Kathryn,

I told Judge Moss I'd forward your request on to the Civil Rules Committee because the rule to which he refers below is C.R.C.P. 263.

RULE 263. SILENCE IN LIBRARY

Silence is required in the Library. Employees shall observe and enforce this Rule.

Rules Civ. Proc., Rule 263, CO ST RCP Rule 263

Current with amendments received through December 1, 2018.

I think his question is whether the Rule should exist if no one observes it, and it's not enforced.

Thanks,

Melissa

From: moss, edward
Sent: Tuesday, February 26, 2019 9:47 AM
To: meirink, melissa <melissa.meirink@judicial.state.co.us>
Subject: Colorado Judicial Ethics Advisory Board Request for Opinion

Dear Ms. Meirink,

1. If a judge or justice walked into the Supreme Court Library and asked a research librarian a question, would the judge or justice be required to self-report this violation of Colorado Supreme Court Library 263?
2. If the research librarian was an attorney and verbally answered the question, would the judge or justice be required to report the violation of Colorado Supreme Court Library Rule 263 to the Supreme Court Office of Regulatory Counsel?
3. Would any duty to report be different if the issue involved squeaky shoes?

Sincerely,



Edward C. Moss
District Court Judge
1100 Judicial Center Dr.
Brighton, CO 80601-8872
Direct: 303-654-3248

Robert L. Connelly, Jr.
8040 E. Dartmouth Ave., Unit 6
Denver, CO 80231
303-947-9475 (Cell)
rlconn2@gmail.com (Email)

TRANSMITTED VIA EMAIL

August 3, 2019

The Honorable Richard L. Gabriel
Justice, Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203
Email Address: richard.gabriel@judicial.state.co.us

The Honorable Michael Berger
Judge, Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
Email Address: michael.berger@judicial.state.co.us

Re: House Bill 19-1189, Passed During the 2019 Session of the Colorado General Assembly and Signed by Governor Jared Polis ("HB-1189")

Dear Justice Gabriel and Judge Berger:

My name is Bob Connelly. I am a retired Colorado attorney but am still licensed to practice law in Colorado. I have done volunteer work for the Colorado Center on Law and Policy ("CCLP") for several years. I know Justice Gabriel from our service on the board of the Colorado Judicial Institute many years ago. I have not met Judge Berger.

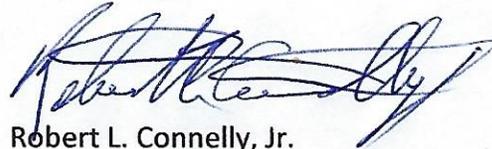
During the 2019 session of the Colorado General Assembly, CCLP was one of the main proponents of HB-1189. This legislation made changes to the Colorado laws governing wage garnishment. Some of these changes will require amendments to Rule 103, Colorado Rules of Civil Procedure, and associated forms that are utilized to implement wage garnishment in the courts of Colorado.

I am writing to Justice Gabriel, as Liaison, and Judge Berger, as Chair, of the Civil Rules Committee. I assume, but do not know with certainty, that your committee will be charged with developing the rule and form amendments flowing from the enactment of HB-1189. There

would appear to be ample time to do this as HB-1189 will apply only to writs of issued on or after October 1, 2020.

CCLP and I stand ready to aid the committee in the development of the necessary amendments and wanted to alert both of you to our availability and willingness to assist. Please let me know what, if anything, we can do in the short and intermediate terms.

Respectfully,

A handwritten signature in blue ink, appearing to read "Robert L. Connelly, Jr.", written in a cursive style.

Robert L. Connelly, Jr.

18CA1233 Orange Collar v Mowery 08-01-2019

COLORADO COURT OF APPEALS

Court of Appeals No. 18CA1233
City and County of Denver District Court No. 16CV34085
Honorable Ross B. Buchanan, Judge

Orange Collar, Inc.,

Plaintiff-Appellee,

v.

Andrew Mowery,

Defendant-Appellant.

JUDGMENT AFFIRMED AND CASE
REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE BERGER
Navarro and Miller*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 1, 2019

Westerfield & Martin, LLC, Zachary S. Westerfield, Logan R. Martin, Denver,
Colorado, for Plaintiff-Appellee

Daniel W. Alexander, PLLC, Daniel W. Alexander, Fort Collins, Colorado, for
Defendant-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art.
VI, § 5(3), and § 24-51-1105, C.R.S. 2018.

¶ 1 A contractual dispute over services provided by plaintiff-appellee Orange Collar, Inc., to an entity affiliated with defendant-appellant Andrew Mowery resulted in a jury verdict that Mowery committed civil theft.

¶ 2 The district court entered a money judgment on the verdict and then denied Mowery's C.R.C.P. 59 post-trial motion. On appeal, Mowery contends that the district court acted without subject matter jurisdiction when it entered the civil theft judgment. Mowery also accuses the district court of ignoring his affirmative defense of bankruptcy discharge in instructing the jury, even though Mowery never requested any jury instructions regarding his bankruptcy discharge defense and specifically agreed to jury instructions that made no mention of a bankruptcy discharge.

¶ 3 We conclude that the district court had jurisdiction to enter the judgment against Mowery. We further conclude that the reason the district court did not adjudicate Mowery's affirmative defense of bankruptcy discharge was because Mowery waived that defense. Accordingly, we affirm the judgment and remand for an award of appellate attorney fees against Mowery under section 18-4-401, C.R.S. 2018.

I. Facts and Procedural History

¶ 4 Orange Collar and an entity affiliated with Mowery, DebnRoo, Inc., entered into a contract whereby Orange Collar would develop internet software that DebnRoo could use in its business. The contract price was payable in five installments. DebnRoo made some of the payments through an American Express credit card issued to Mowery.

¶ 5 After initially confirming that Orange Collar had been performing in accordance with the contract, Mowery initiated charge-backs with American Express as to the first two payments, claiming that no work had been performed. American Express honored at least one of the charge-backs, with the result that payments to Orange Collar were reversed, and the money representing the payments was restored to Mowery.

¶ 6 Orange Collar then sued DebnRoo and other related entities for breach of contract. None of those claims are before us on appeal. Orange Collar also sued Mowery for civil theft. Mowery answered the complaint, asserting, among other defenses, discharge in bankruptcy. He later filed an amended answer that

neither reasserted the discharge in bankruptcy defense nor incorporated by reference his original answer.

¶ 7 The jury was instructed on the elements of a claim for civil theft as well as on Mowery's statute of limitations defense. The jury was not instructed on the defense of bankruptcy discharge. Mowery made no request either before or at trial that the jury be instructed on the bankruptcy discharge defense (or that the trial judge consider the bankruptcy discharge defense). In fact, Mowery specifically approved the jury instructions that were given to the jury.

¶ 8 Both parties made motions for judgment as a matter of law under C.R.C.P. 50, which were denied by the district court. While Mowery argued a number of issues, he did not then claim that Orange Collar's civil theft claim was discharged in bankruptcy.

¶ 9 The jury found that Mowery had committed civil theft when he caused American Express to charge back the payments that had been made on DebnRoo's account to Orange Collar. The district

court trebled the jury verdict as required by section 18-4-405, C.R.S. 2018, and entered judgment on the verdict.¹

¶ 10 Mowery then retained counsel, who filed a motion for judgment notwithstanding the verdict (JNOV) under C.R.C.P. 59. Mowery attached as an exhibit to the motion a “Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines.” Mowery argued that the civil theft elemental instruction given to the jury (to which Mowery had assented) was defective because it did not include the elements of Mowery’s bankruptcy discharge defense. Mowery also contended that there was no disputed factual issue regarding Orange Collar’s knowledge of Mowery’s bankruptcy and that, therefore, the civil theft judgment was entered without subject matter jurisdiction.

¶ 11 The district court denied Mowery’s JNOV motion, concluding that Mowery’s bankruptcy did not create a jurisdictional obstacle to the entry of judgment in favor of Orange Collar, but instead was an

¹ Mowery does not challenge on appeal the sufficiency of the evidence supporting the jury’s verdict or the district court’s trebling of the damages found by the jury.

affirmative defense. The court further concluded that because the defense was not submitted to the jury, it was waived.

¶ 12 This appeal followed.

II. The District Court Had Subject Matter Jurisdiction to Enter a Money Judgment Against Mowery

¶ 13 Mowery's overarching argument, obviously crafted to avoid the fact he never requested, either before or at trial, that the district judge or the jury adjudicate his affirmative defense of bankruptcy discharge, goes something like this: because 11 U.S.C. § 523 (2018) provides that certain debts are non-dischargeable, the bankruptcy court usually has exclusive jurisdiction to determine whether the debt is non-dischargeable under federal bankruptcy law. But, under limited circumstances, federal law confers concurrent jurisdiction to state courts to determine questions of non-dischargeability. Those circumstances are not present here, according to Mowery, leading to the conclusion that the district court acted without subject matter jurisdiction when it determined that the debt was non-dischargeable under section 523.

¶ 14 But this entire argument is premised on a factual fallacy. The factual fallacy is that the district court actually made a

determination of the dischargeability (or non-dischargeability) of the debt. The district court did nothing of the kind. The judgment entered by the court says nothing about dischargeability or non-dischargeability, and the record is crystal clear that, at least before Mowery's post-trial motion, no party ever requested the district court to make such determinations.

¶ 15 While the law regarding the allocation of jurisdiction between federal and state courts to determine dischargeability or non-dischargeability of debts under section 523 is complex, those complexities are irrelevant to the determination of this appeal because the district court never made such determinations. See *Fidelity Nat'l Title Ins. Co. v. Franklin (In re Franklin)*, 179 B.R. 913 (Bankr. E.D. Cal. 1995); *In re Massa*, 217 B.R. 412 (Bankr. W.D. N.Y. 1998) *aff'd*, 187 F.3d 292 (2d Cir. 1999).

¶ 16 Regarding subject matter jurisdiction to adjudicate the civil theft claim, Colorado's district courts are constitutionally vested with broad authority to adjudicate civil actions that arise under Colorado law. Colo. Const. art. VI, § 9; *In re Matter of A.W.*, 637 P.2d 366, 375 (Colo. 1981). The civil theft claim, authorized by

section 18-4-401, falls easily within the district court’s broad grant of subject matter jurisdiction.

¶ 17 Accordingly, we reject Mowery’s argument that the civil theft judgment was entered without subject matter jurisdiction.

III. Under the Procedural History Here, the District Court Is Not the Appropriate Forum to Determine the Dischargeability of the Debt

¶ 18 Among the pot shots taken at the district court’s order denying his post-trial motion, Mowery claims that the court acted “recklessly” when it determined that he had not pleaded the affirmative defense of bankruptcy discharge. While it is true that Mowery’s initial answer did plead that affirmative defense, it is also true that his amended answer did not.²

² In the district court, though not on appeal, Mowery appeared pro se. We need not determine whether Mowery’s pro se status required the district court (or us) to construe his amended answer as incorporating by reference his prior answer, which did plead the defense of bankruptcy discharge. See *People v. Bergerud*, 223 P.3d 686, 696-97 (Colo. 2010) (pro se defendant’s “allegations underlying the request will be broadly construed”); *Cornelius v. River Ridge Ranch Landowners Ass’n*, 202 P.3d 564, 572 (Colo. 2009) (“[P]ro se parties are bound by the same rules of civil procedure as attorneys licensed to practice law.”) (citation omitted); *Minshall v. Johnston*, 2018 COA 44, ¶ 21 (“[L]iberal construction does not include inventing arguments not made by the pro se party.”); see also *People v. Romero*, 694 P.2d 1256, 1265 (Colo. 1985) (although a

¶ 19 Regardless, this makes no difference because the record is undisputed that even if Mowery properly pleaded that affirmative defense, he never requested a ruling on the defense. A party pleading an affirmative defense has an obligation to bring the defense to the attention of the court in a timely manner. If the party fails to do so, the defense is waived. *Crocker v. Colo. Dep't of Revenue*, 652 P.2d 1067, 1070-71 (Colo. 1982); *Blood v. Qwest Servs. Corp.*, 224 P.3d 301, 328-29 (Colo. App. 2009), *aff'd*, 252 P.3d 1071 (Colo. 2011).

¶ 20 Here, it is undisputed that Mowery did not timely bring his bankruptcy discharge defense to the court's attention. Raising such a defense for the first time in a post-trial motion is not sufficient to avoid waiver of the defense. *Blood*, 224 P.3d at 328-29.

¶ 21 Not only did Mowery consent to the jury instructions that said not a word about the defense of bankruptcy discharge, he also did not timely request the court (assuming that the defense of

defendant's choice to represent himself may be to his detriment, that choice must be honored). As discussed in the text, even if we were to construe Mowery's amended answer to incorporate his original answer, thus preserving the bankruptcy discharge defense, it makes no difference to the outcome of this case.

bankruptcy discharge is for the court, not a jury) to adjudicate that defense.³ *Id.*; *McWherter v. Fischer*, 126 P.3d 330 (Colo. App. 2005).

¶ 22 We acknowledge that some federal courts have held that a bankruptcy discharge is not an affirmative defense under the Bankruptcy Code and that the entry of a bankruptcy discharge automatically invalidates state court judgments subject to that discharge without any necessity for the debtor to plead an affirmative defense of bankruptcy discharge. *In re Hamilton*, 540 F.3d 367, 375 (6th Cir. 2008). Indeed Rule 8(c) of the Federal Rules of Civil Procedure has been amended to delete discharge in bankruptcy as an affirmative defense.

¶ 23 But bankruptcy discharge remains an affirmative defense under C.R.C.P. 8(c), and we are bound to apply the rules promulgated by the Colorado Supreme Court unless and until those rules are amended, or it becomes indisputably clear that federal law prohibits states from categorizing a discharge in bankruptcy as an affirmative defense.

³ We express no opinion whether the affirmative defense of discharge in bankruptcy is a defense that is decided by the court sitting without a jury or by a properly instructed jury.

¶ 24 Equally important is the fact that Mowery has never argued, either in the trial court or in this court, that a discharge in bankruptcy is not an affirmative defense. As previously noted, prior to or at trial, he requested neither jury instructions regarding discharge in bankruptcy nor a determination by the district court that the defense was not an affirmative defense but was automatically applicable upon the entry of his discharge by the bankruptcy court. Similarly, in his post-trial motion (when he was represented by counsel) he did not assert that C.R.C.P. 8(c) is unconstitutional under the Supremacy Clause because it includes discharge in bankruptcy as an affirmative defense. Even in this court, Mowery argues that the district court erred in not instructing the jury on his bankruptcy discharge defense. Never has he claimed that treating a discharge in bankruptcy as an affirmative defense offends the Bankruptcy Code or that C.R.C.P. 8(c) is unconstitutional to the extent it treats discharge in bankruptcy as an affirmative defense.

¶ 25 Given all this, we agree with the district court's conclusion that under state law Mowery waived his affirmative defense of bankruptcy discharge. This opinion does not preclude Mowery from

seeking a determination from the bankruptcy court that, notwithstanding Colorado law, the Bankruptcy Code invalidated the state court judgment.⁴ Because we have no jurisdiction to determine the jurisdiction or authority of a bankruptcy court, we express no opinions regarding such an application.

IV. Appellate Attorney Fees

¶ 26 Orange Collar claims appellate attorney fees under section 18-4-405. An award of attorney fees to a prevailing party under section 18-4-405 is mandatory. *Bermel v. BlueRadios, Inc.*, 2017 COA 20, ¶ 40, *aff'd on other grounds*, 2019 CO 31. Because we have affirmed the judgment in favor of Orange Collar, it is entitled to an award of attorney fees on appeal. We exercise our discretion to remand to the district court to determine the amount of appellate attorney fees.

⁴ Mowery also has not argued, either in the district court or this court, that the state court judgment violated either the automatic injunction that arose under 11 U.S.C. § 362 (2018) (temporary injunction) or under 11 U.S.C. § 524 (2018) (permanent injunction). Therefore, we express no views on that subject.

V. Conclusion

¶ 27 The judgment is affirmed, and the case is remanded to the district court for entry of an attorney fee order in favor of Orange Collar for the fees incurred on appeal.

JUDGE NAVARRO and JUDGE MILLER concur.

michaels, kathryn

From: berger, michael
Sent: Thursday, August 22, 2019 9:47 AM
To: michaels, kathryn
Subject: FW: Proposed changes to Rule 4(m)

Kathryn, please put this on the September agenda, and include Judge Jones' email to me.

From: jones, jerry <jerry.jones@judicial.state.co.us>
Sent: Wednesday, August 21, 2019 1:15 PM
To: berger, michael <michael.berger@judicial.state.co.us>
Subject: Proposed changes to Rule 4(m)

Mike, I propose two changes to Rule 4(m).

First, in the sentence beginning with "But," I would add the phrase "before expiration of the 63-day period" after "failure." This would make it clear that a party has to move for more time before the 63-day period expires.

Second, I would add the following sentence after the sentence beginning with "But": "Notice to the plaintiff may include any order issued by the court after the commencement of the action that informs the plaintiff of the 63-day requirement and that the court may dismiss the action upon expiration of that period in the event of noncompliance without further notice."

michaels, kathryn

From: Damon Davis <damon@killianlaw.com>
Sent: Wednesday, August 28, 2019 10:35 AM
To: berger, michael
Cc: michaels, kathryn
Subject: Civil Rules Committee: proposals
Attachments: Civil Rules Committee - Proposed Rule Changes.pdf

Dear Judge Berger:

I have attached a letter with some proposals I hope the committee will consider. I do not know if there is time to consider them at the next meeting, but wanted to get them sent while I had a chance.

Thanks,

Damon Davis
Killian Davis Richter & Mayle, P.C.
202 North 7th Street
Grand Junction, CO 81502
Ph. 970-241-0707
Fax. 970-242-8375

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J. Keith Killian*
Damon J. Davis
Christopher H. Richter*
Nicholas W. Mayle
Andrew S. Petroski*

KILLIAN, DAVIS,
RICHTER & MAYLE, PC

James P. Guthro
Joseph H. Azbell¹
Drew R. Kraniak
Benjamin P. Meade

◆ Also admitted in Navajo Nation ◆ Also admitted in New Mexico
All attorneys admitted in Colorado



◆ Also admitted in Wyoming

www.killianlaw.com

August 28, 2019

Judge Michael Berger
Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

Via Email

RE: Proposal for Rule Modifications Re: Expert Disclosures, Stock Case
Management Orders, and Telephone Testimony

Dear Judge Berger:

In talking to other attorneys in my office and on the local access to justice committee, I have developed some ideas for tweaks to the rules of procedure on certain issues. I have finally found some time to put them to paper and wanted to send them to you for the committee's consideration.

First, I wanted proposal an addition to the list of considered amendments when the committee revisits Rules 16 and 26. The proposal is to tweak Rule 26(a)(2)(B)(1)(h) regarding the list of an expert's prior testimony. The amendment would be to add a requirement that the expert list the attorney and law firm that retained him or her to provide the testimony.

The amendment would accomplish two things. First, if the opposing party wants a copy of the witness's trial or deposition testimony, they are more likely to get it from the opposing attorney than the attorney who previously retained the expert; if you know who retained the expert, you know to call the other attorney. Second, the list of prior testimony is useful in deposing the expert on bias. If the expert routinely testifies for an attorney or law firm, this would be shown on the list. Likewise, if the expert routinely testifies for one side or the other, this could be determined from the attorneys/firms who retained the expert. Our office has run into experts who claim they do not know who retained them in prior cases and also claim they do not know whether they testify for plaintiffs or defendants more, even though it is well known who they testify for. This amendment would help resolve that issue.

Second, I propose an amendment to Rule 121(a) to not only prohibit local rules and standing orders, but stock orders issued in every (or nearly every) case. There are judges on the western slope and elsewhere that have stock case management orders that modifies the deadlines in Rule 16 (and sometimes modify other rules as well), which they enter in virtually every case. And each of the judges has different procedures from the other judges who do this. Such a stock order is no different than a standing order. The modifications to the deadlines are not based on the needs of the individual case, but on the district court judge not liking the some of the rules, including the deadlines, so changing them for every case.

This creates an issue for case management. It is harder to manage cases and keep track of deadlines when they differ depending on the judge. Stock modifications also defeat the purpose of uniformity in the rules and standardized deadlines. And it defeats the purpose of prohibiting standing orders under Rule 121. Further, the statewide access to justice committee has identified uniformity in procedures as desirable to promote access to justice. Uniformity makes access by pro se parties easier. And it streamlines proceedings for attorneys, decreasing time spent on matters like tickling deadlines for each case, decreasing legal costs. It also makes limited representation easier, because you can anticipate what needs done and when based on the rule.

I have no objection to judges modifying the deadlines in Rule 16 based on an individualized assessment of the case. But the judges should not be using the equivalent of a standing order to change the deadlines in every case. I propose Rule 121 be amended to make clear that stock case management orders that seek to get around the prohibition on standing orders are also prohibited.

Third, I would propose to modify Rule 43(i) to increase the availability of remote testimony. In more rural districts, there can be a substantial distance and travel time to the courthouse. In Mesa County, De Beque is 33 miles and 37 minutes from Grand Junction where the courthouse is. And Collbran is 40 miles and 50 minutes away. In urban areas the distances may be smaller, but travel time may still be high due to traffic and the need to find parking.

Witnesses and parties may be called upon to testify or appear for a short period. Their travel time to and from court may be greater than the time they spend in court. These individuals may be missing work or paying for child care during these periods. From an efficiency and access to justice perspective, it would make sense to increase the availability of remote testimony, at least in some circumstances.

I would propose making remote testimony presumptively available if a hearing or trial is to the Court; the proceeding is expected to take two hours or less *or* the expected testimony is 1 hour or less; the witness is a lay witness; and the expected travel time from the party/witness's job or home is 30 minutes or more. This is just an initial thought, and there may be other factors to consider.

I just do not think it makes sense to require someone to have an hour of travel time to appear at a short hearing or to provide testimony for a short time. With jurors it may be a different matter, but I think judges can assess credibility through remote testimony.

I hope the committee will consider these proposals.

Civil Rules Committee
Re: Proposed Amendments to the Rules
August 28, 2019
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Yours truly,

KILLIAN, DAVIS, Richter & Mayle, PC

/s/Damon Davis

Damon Davis

/DJD
cc. Kathryn Michaels