

## AGENDA

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

Friday, January 27, 2023, 1:30 p.m.  
Ralph L. Carr Colorado Judicial Center  
2 E.14<sup>th</sup> Ave., Denver, CO 80203

**Fourth Floor, Supreme Court Conference Room**

- I. Call to order
- II. Approval of November 4, 2022, minutes [Pages 1 to 2]
- III. Announcements from the Chair
  - A. General
- IV. Present Business
  - A. C.R.C.P. 107(c)—Amendment Request from a Member of the Public—(Judge Jones) [Pages 3 to 11]
  - B. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims) [Pages 12 to 42]
  - C. Proposed Amendments in FED Actions—(Judge Espinosa) [Pages 43 to end]
- V. Adjourn—**Next meeting is April 7, 2022, at 1:30 pm.**

Jerry N. Jones, Chair  
[jerry.jones@judicial.state.co.us](mailto:jerry.jones@judicial.state.co.us)  
720-625-5335

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure  
November 4, 2022, Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Jerry N. Jones at 1:30 p.m. in the Supreme Court Conference Room. Members present at the meeting were:

<b>Name</b>	<b>Present</b>	<b>Not Present</b>
Judge Jerry N. Jones, Chair	X	
Judge Michael Berger		X
Judge Karen Brody	X	
Miko Ando Brown		X
Judge Catherine Cheroutes	X	
Damon Davis		X
David R. DeMuro	X	
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa		X
Peter Goldstein		X
Magistrate Lisa Hamilton-Fieldman	X	
Michael J. Hofmann		X
Judge Thomas K. Kane	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller		X
Brent Owen	X	
John Palmeri	X	
Alana Percy		X
Lucas Ritchie	X	
Chief Judge Gilbert M. Román		X
Judge (Ret.) Sabino Romano	X	
Judge Stephanie Scoville		X
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Andi Truett		X
Jose L. Vasquez	X	
Judge Juan G. Villaseñor		X
Ben Vinci		X
Judge (Ret.) John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
<b>Non-voting Participants</b>		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins	X	

**I. Attachments & Handouts**

- November 4, 2022, agenda packet.

**II. Announcements from the Chair**

- The September 23, 2022, minutes were approved as submitted.
- Chair Judge Jones made no announcements.

**III. Present Business**

**A. C.R.C.C.P. Forms 4 and 5**

Jennifer Burns spoke on behalf of the Subcommittee. After recommending a few additional improvements, the Committee unanimously approved the proposed changes.

**B. C.R.C.P. 16.2**

Speaking for the Subcommittee, attorney Kristi Wells noted that several changes were made following the feedback provided at the last meeting. Since then, the Subcommittee ran the proposed changes by different stakeholders and received minimal feedback. Justice Gabriel noted that he welcomes any input on whether this proposal should be opened for public comment when the court considers it. Judge Brody believes a public comment period could be beneficial. For easier editing, the Committee prefers to designate the new forms SCAO forms rather than supreme court forms.

The Committee suggested several friendly amendments, including updating both forms to track the language of the rule where appropriate, correcting typographical errors, and including oxford commas. The Committee voted unanimously to approve these proposed changes.

A member noted that Rule 16.2 in general may require improvements. Judge Jones will form a subcommittee to consider possible changes to it. Interested members should email Judge Jones.

**Future Meetings**

January 27; April 7; June 23; September 22; November 3

The Committee adjourned at 2:20 p.m.

**michaels, kathryn**

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**From:** gabriel, richard  
**Sent:** Tuesday, December 20, 2022 3:23 PM  
**To:** jones, jerry; michaels, kathryn  
**Subject:** Civil Rules Committee: Proposed Amendment to CRCP 107

Hi Jerry and Kathryn –

I received a phone call from a Colorado Springs resident, Ms. Lisa Czelatdko, regarding a proposed amendment to CRCP 107. I had a pleasant conversation with her and asked her to put in writing what she is seeking, with my commitment to forward it to the Civil Rules Committee. Her email is below.

Lest her email is not completely clear, she is asking the Civil Rules Committee to consider amending CRCP 107(c) (the civil contempt rule). That rule provides, in part, “The citation and a copy of the motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear. Ms.Czelatdko believes that courts in El Paso County are reading this provision strictly to require personal service, and therefore, in her view, many parties accused of contempt find it easy to evade service. Ms. Czelatdko would like the Civil Rules Committee to amend CRCP 107(c) to allow for the same sort of substituted service that is permitted under CRCP 4(f). I assured her that I would pass this along to the Committee.

I think she raises an interesting issue, and I would request that we put it on the agenda for our next meeting. I have no dog in this hunt, and whatever the Committee decides will be fine by me. I just think it warrants discussion, particularly given that a concerned citizen took the time to reach out to us.

Thanks!

Rich



Richard L. Gabriel (he/him/his)  
Justice, Colorado Supreme Court  
2 East 14<sup>th</sup> Avenue  
Denver, Colorado 80203  
(720) 625-5440  
[richard.gabriel@judicial.state.co.us](mailto:richard.gabriel@judicial.state.co.us)

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**From:** lisa czelatdko <lisaczel@gmail.com>  
**Sent:** Tuesday, December 20, 2022 3:07 PM

**To:** gabriel, richard <richard.gabriel@judicial.state.co.us>

**Cc:** lisa czelatdko <lisaczel@gmail.com>

**Subject:** [External] discussion on civil procedure committee possibly amending or revising CRCP Rule 107

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Justice Gabriel,

Thank you, sincerely, sir for returning my call personally. As a former Legislator for the City of Colorado Springs and citizen who has served on over fifty (50) State, County and City boards, I recognize the demands from the constituency and I am so appreciative of the work you do.

Your offering to take C.R.C.P Rule 107 to the Civil Rules Committee-Supreme Court for possible revision and/or amendment could make such a difference in the lives of Colorado citizens who, unfortunately, are involved in the contempt citation process. It also can help alleviate an already burdened court system dealing with contempt citations and perhaps the job of the judiciary a little easier.

As I mentioned, not case specific, that the local judiciary here in El Paso County references C.R.C.P 107 **only** in regards to service on a contempt citation. Amended Colo. R. Civ. P. 5 Service and Filings of Pleadings and Other Papers and Colo. R. Civ. P.4 Process is often argued in support of service of a contempt citation but is being rejected by members of the judiciary. Currently, C.R.C.P 107 only allows service of the individual in contempt to be made directly and within twenty-one (21) days of the scheduled hearing. In addition to Colo. R. Civ. P.4 and Colo. R. Civ. P. 5, 586 P.2d 18, 196 Colo.308 (Colo. 1978) has never been overturned and recognizes service had on an individual's attorney sufficient under service for a contempt citation. The way CRCP 107 is written and being interpreted by members of the judiciary allows an individual to evade service indefinitely.

Justice, as I have great admiration for honorable members of the judiciary, I respectfully defer to your legal wisdom and the wisdom of your colleagues and look if CRCP RULE 107 can be revised or amended to help Colorado citizens. Thank you for your time Richard and Merry Christmas, Lisa.

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Lisa Czelatdko (sa-lot-ko)

## **Rule 107. Remedial and Punitive Sanctions for Contempt**

### **(a) Definitions.**

(1) *Contempt*. Disorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbance toward the court, or conduct that unreasonably interrupts the due course of judicial proceedings; behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court; or any other act or omission designated as contempt by the statutes or these rules.

(2) *Direct Contempt*. Contempt that the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court's warning to desist.

(3) *Indirect Contempt*. Contempt that occurs out of the direct sight or hearing of the court.

(4) *Punitive Sanctions for Contempt*. Punishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court.

(5) *Remedial Sanctions for Contempt*. Sanctions imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform.

(6) *Court*. For purposes of this rule, "court" means any judge, magistrate, commissioner, referee, or a master while performing official duties.

**(b) Direct Contempt Proceedings.** When a direct contempt is committed, it may be punished summarily. In such case an order shall be made on the record or in writing reciting the facts constituting the contempt, including a description of the person's conduct, a finding that the conduct was so extreme that no warning was necessary or the person's conduct was repeated after the court's warning to desist, and a finding that the conduct is offensive to the authority and dignity of the court. Prior to the imposition of sanctions, the person shall have the right to make a statement in mitigation.

**(c) Indirect Contempt Proceedings.** When it appears to the court by motion supported by affidavit that indirect contempt has been committed, the court may ex parte order a citation to issue to the person so charged to appear and show cause at a date, time and place designated why the person should not be punished. The citation and a copy of the motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear. If such person fails to appear at the time so designated, and it is evident to the court that the person was properly served with copies of the motion, affidavit, order, and citation, a warrant for the person's arrest may issue to the sheriff. The warrant shall fix the date, time and place for the production of the person in court. The court shall state on the warrant the amount and kind of bond required. The person shall be discharged upon delivery to and approval by the sheriff or clerk of the bond directing the person to appear at the date, time and place designated in the warrant, and at any time to which the hearing may be continued, or pay the sum specified. If the person fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the bond may be forfeited upon proper notice of hearing to the surety,

if any, and to the extent of the damages suffered because of the contempt, the bond may be paid to the aggrieved party. If the person fails to make bond, the sheriff shall keep the person in custody subject to the order of the court.

**(d) Trial and Punishment.**

(1) *Punitive Sanctions.* In an indirect contempt proceeding where punitive sanctions may be imposed, the court may appoint special counsel to prosecute the contempt action. If the judge initiates the contempt proceedings, the person shall be advised of the right to have the action heard by another judge. At the first appearance, the person shall be advised of the right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, the court will appoint counsel. The maximum jail sentence shall not exceed six months unless the person has been advised of the right to a jury trial. The person shall also be advised of the right to plead either guilty or not guilty to the charges, the presumption of innocence, the right to require proof of the charge beyond a reasonable doubt, the right to present witnesses and evidence, the right to cross-examine all adverse witnesses, the right to have subpoenas issued to compel attendance of witnesses at trial, the right to remain silent, the right to testify at trial, and the right to appeal any adverse decision. The court may impose a fine or imprisonment or both if the court expressly finds that the person's conduct was offensive to the authority and dignity of the court. The person shall have the right to make a statement in mitigation prior to the imposition of sentence.

(2) *Remedial Sanctions.* In a contempt proceeding where remedial sanctions may be imposed, the court shall hear and consider the evidence for and against the person charged and it may find the person in contempt and order sanctions. The court shall enter an order in writing or on the record describing the means by which the person may purge the contempt and the sanctions that will be in effect until the contempt is purged. In all cases of indirect contempt where remedial sanctions are sought, the nature of the sanctions and remedies that may be imposed shall be described in the motion or citation. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed in the discretion of the court. If the contempt consists of the failure to perform an act in the power of the person to perform and the court finds the person has the present ability to perform the act so ordered, the person may be fined or imprisoned until its performance.

**(e) Limitations.** The court shall not suspend any part of a punitive sanction based upon the performance or non-performance of any future acts. The court may reconsider any punitive sanction. Probation shall not be permitted as a condition of any punitive sanction. Remedial and punitive sanctions may be combined by the court, provided appropriate procedures are followed relative to each type of sanction and findings are made to support the adjudication of both types of sanctions.

**(f) Appeal.** For the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final.

## **Rule 4. Process**

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

**(b) Issuance of Summons by Attorney or Clerk.** The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

**(c) Contents of Summons.** The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4 (g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) [Repealed eff. March 23, 2006.]

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

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

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

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

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

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

(C) For all purposes the date of service upon the officer, agent, employee, department, or agency shall control, except that failure to serve copies upon the attorney general within **7** days of service upon the officer, agent, employee, department, or agency shall extend the time within which the officer, agent, employee, department, or agency must file a responsive pleading for 63 days (9 weeks) beyond the time otherwise provided by these Rules.

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

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

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

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

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

**(g) Other Service.** Except as otherwise provided by law, service by mail or publication shall be allowed only in actions affecting specific property or status or other proceedings in rem. When service is by publication, the complaint need not be published with the summons. The party desiring service of process by mail or publication under this section (g) shall file a motion

verified by the oath of such party or of someone in the party's behalf for an order of service by mail or publication. It shall state the facts authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service and shall give the address, or last known address, of each person to be served or shall state that the address and last known address are unknown. The court, if satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, shall:

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

(2) Order publication of the process in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within 14 days after the order the party shall mail a copy of the process to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be complete on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

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

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

(2) [Repealed eff. March 23, 2006.]

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

(4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the process where required;

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

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

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

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

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

**(l) No Colorado Rule.**

**(m) Time Limit for Service.** If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

## Rule 1. Scope and Purpose.

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These rules are designed to govern the selection, assignment and conduct of magistrates in civil and criminal proceedings in the Colorado court system. Although magistrates may perform functions which judges also perform, a magistrate at all times is subject to the direction and supervision of the chief judge or presiding judge.

We do not propose any change to Rule 1 C.R.M.

## Rule 2. Application.

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These rules apply to all proceedings conducted by magistrates in district courts, county courts, small claims courts, Denver Juvenile Court and Denver Probate Court, as authorized by law, except for proceedings conducted by water referees, as defined in Title 37, Article 92, C.R.S., and proceedings conducted by masters governed by C.R.C.P. 53.

We do not propose any change to Rule 2 C.R.M.

## Rule 3. Definitions.

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The following definitions shall apply:

- (a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.
- (b) Chief Judge: The chief judge of a judicial district.
- (c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.
- (d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.
- (e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.
- (f) Consent:

One of the subcommittee's primary tasks was to simplify these Rules so that they can be more easily understood by everyone from court of appeals judges, to district court and county court judges, magistrates, lawyers, and self-represented litigants. Our initial thought was to cut out the with and without consent difference, leaving only a list of functions for magistrates. Instead, we have preserved the consent / nonconsent distinction.

The preliminary proposal of having only a single list of functions for a magistrate garnered immediate push-back because each judicial district uses its magistrates differently. These rules are best used when each chief judge has the flexibility needed to assign tasks to his or her magistrates to efficiently conduct the court's business.

Each jurisdiction uses the resource of its magistrate(s) according to its own business model and need. It is rare that a magistrate hears only one type of case and so the differences between a county court magistrate and a district court magistrate becomes non-existent because a single magistrate fulfills both roles.

To that end, we have opted to retain certain functions as possible magistrate functions so long as the parties consent. We believe this approach gives flexibility for the chief judges, lawyers and self-represented parties, conceding that some degree of "judge shopping" may result. We agree it is worth the predictability of how these Rules will impact practice in a magistrate's division.

However, a hearing is conducted by a magistrate because no consent was required OR because parties have consented to the magistrate's jurisdiction, with the concerns raised by the Committee, we find ourselves making two alternative proposals regarding appeal:

- to require ALL magistrate orders and judgments to be subject to a petition for review as a prerequisite to appealing to the court of appeals
    - this encompasses the current version of the Rules in cases where consent was not required for the magistrate to hear a case
    - a petition for judicial review continues to be required by statute for all juvenile cases
    - we believe this makes the Rules as clear as possible that when an order or judgment is made by a magistrate, the next step is ALWAYS a petition for review
- OR
- to allow a petition for review, but not require it as a prerequisite to an appeal to the court of appeals, and then mirroring language similar to that of C.A.R. 4(a): that the running of the time for filing a notice of appeal is terminated as to all parties when any party timely files a petition for judicial review pursuant to C.R.M. 7(e), and the time for an appeal under section C.A.R. 4(a)(1) or 4(b)(1) runs for all parties from the timely entry of any order disposing of such timely filed petition for review or the expiration of the time for ruling on such petition for review pursuant to C.R.M. 7(k).

Our worry is that the second proposal does not fulfill our charge of making these Rules easy to understand and easy to navigate.

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if **he or she is advised of the right to have the proceeding before a district court judge and, after entering an appearance or filing a responsive pleading:**

- (i) The party has affirmatively consented in writing or on the record; or
- (ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or
- (iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

## (2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

## (3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

## Rule 4. Qualifications, Appointment, Evaluation and Discipline.

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The following rules shall apply to all magistrates and proceedings before magistrates:

(a) To be appointed, a magistrate must be a licensed Colorado attorney with at least five years of experience, except in Class "C" or "D" counties the chief judge shall have the discretion to appoint a qualified licensed attorney with less than 5 years experience to perform all magistrate functions.

(b) All magistrates shall be attorneys-at-law licensed to practice law in the State of Colorado, except that in the following circumstances a magistrate need not be an attorney:

(1) A magistrate appointed to hear only Class A and Class B traffic infractions in a county court;

(2) A county court judge authorized to act as a magistrate in a small claims court;

(3) A county court judge authorized to act as a county court magistrate.

(c) All magistrates shall be appointed, evaluated, retained, discharged, and disciplined, if necessary, by the chief or presiding judge of the district, with the concurrence of the chief justice.

(d) Any person appointed pursuant to these rules as a district court, county court, probate court, juvenile court, or small claims court magistrate may, if qualified, and in the discretion of the chief or presiding judge, exercise any of the magistrate functions authorized by these rules.

Qualification of magistrates is statutory:

- County court magistrates: C.R.S. section 13-6-501
- District court magistrates: C.R.S. section 13-5-201
- Juvenile magistrates: C.R.S. sections 19-1-108, and 13-8-109 for Denver Juvenile Court
- Small claims magistrates: C.R.S. sections 13-6-405

Magistrates serve at the pleasure of, and re supervised by, the chief judge of the judicial district, to whom complaints are directly made. Additionally, all magistrates are evaluated on essential functions developed by SCAO on a scale of 1 (unacceptable) to 6 (meritorious) and these annual evaluations become part of the magistrate's personnel file. All judges in a district have an opportunity to provide input to the chief judge. Many jurisdictions complete a 360-degree review where persons who regularly appear before the magistrate can provide input confidentially. Most responders are attorneys, but 360-degree reviews often also include probation officers, social workers, and CASA volunteers. Internal users (court clerks and fellow magistrates) are also asked for input. We are not aware of input being sought from or provided by litigants themselves.

We do not propose any change to Rule 4 C.R.M.

## Rule 5. General Provisions.

(a) An order or judgment of a magistrate in any ~~judicial~~ proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. ~~Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing.~~ **An order or judgment becomes final for purposes of appeal or judicial review as stated in C.R.M. 7.**

The proposal above is to allow *limited* reconsideration by the magistrate, which, under the current rules, a magistrate has no ability to entertain.

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.

(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review **or appeal** of the magistrate's order or judgment.

~~(g) For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be written except to the extent given orally to parties who~~

~~are present in court — shall state that all parties must consent to the function being performed by the magistrate.~~

~~(1) If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.~~

~~(2) Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.~~

Rule 5(g) is removed and is instead is dealt with in Rule 3(f). As the Rules exist today, they are internally inconsistent; removing the current Rule 5(g) resolves the conflict. Rule 5(h) is renumbered below.

~~(h)~~ All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

## Rule 6. Functions of District Court Magistrates.

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By allowing parties the ability to consent to certain functions being heard or conducted by a magistrate, Rule 6 remains the same. The areas giving rise to the most concern – Rules 16 and 16.1, problem solving court authority, and probate practice – are resolved by leaving this Rule

(a) **Functions in Criminal Cases:** A district court magistrate may perform any or all of the following functions in criminal proceedings:

(1) No consent necessary:

(A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

(B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(C) Conduct bond review hearings.

(D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).

(E) Schedule and conduct arraignments on indictments, informations, or complaints.

(F) Order presentence investigations.

(G) Set cases for disposition, trial, or sentencing before a district court judge.

(H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) Any other function authorized by statute or rule.

(2) Consent necessary:

(A) Enter pleas of guilty.

(B) Enter deferred prosecution and deferred sentence pleas.

(C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.

(D) Impose stipulated sentences to probation in cases assigned to problem solving courts.

(b) **Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:**

(1) No Consent Necessary

(A) A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.

(B) A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions for review as defined in C.R.M. 7.

(C) A district court magistrate shall have the power to determine an order concerning child support filed pursuant to Section 26-13-101 et seq.

(D) Any other function authorized by statute or rule.

(2) Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.

(c) **Functions in Civil Cases:** A district court magistrate may perform any or all of the following functions in civil proceedings:

(1) No consent necessary

(A) Conduct settlement conferences.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.

(C) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.

(D) Conduct hearings as a master pursuant to C.R.C.P. 53.

(E) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.

This is the current version of Rule 6(c)(1)(E). If the consensus is that all things pertaining to Rules 16 and 16.1 should require consent, this provision can become incorporated into Rule 6(c)(2).

(F) Conduct proceedings involving protection orders pursuant to C.R.S. section 13-14-101 et seq.

(G) Any other function authorized by statute or rule.

(2) Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.

After debate about whether this Rule should also prohibit a magistrate hearing a civil trial or whether parties ought to be able to consent, we propose to leave the Rule as written to allow more discretion for chief judges to utilize their magistrates to fit the districts' business models. A vote to make it discretionary and allow parties and counsel to consent OR to remove the ability to hear civil trials is easy enough to fix.

(d) **Functions in Juvenile Cases:** A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).

(e) **Functions in Probate and Mental Health Cases:**

(1) No consent necessary:

(A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.

(B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

(C) Any other function authorized by statute **or rule**.

(2) Consent Necessary

(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule ~~5-(g)~~ **3 (f)**.

## Rule 7. Review of District Court Magistrate Orders or Judgments.

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Rule 7 represents the most sweeping departure from the current C.R.M.

We ask the committee to remember that we were charged with making these Rules clear, internally consistent, and easier to navigate. We continue to propose that the answers to these tasks are simple: directions on how to get into a magistrate's division (functions that *are* assigned to magistrates, and functions which *can be* assigned to magistrates with consent of the litigants) and a single path to appeal from any order or judgment issued by a magistrate regardless of consent.

That being said, we have also listened closely to feedback from the full committee and thus make alternative proposals. The first represents our consensus after quite literally years of debate and input from magistrates and judges: That ALL orders issued by a magistrate must be first reviewed by a district court judge by way of a petition for review as a prerequisite to an appeal to the court of appeals. We rely on the simplicity and have reviewed the recent case People in the Interest of A.S.M., 2022 COA 48, 517 P.3d 675 and the treatment of magistrate's ruling in a juvenile case where a petition for judicial review is required before an appeal can be filed. It is worth noting that the juvenile statute is silent as to requiring a petition for judicial review only for a magistrate's "final order or judgment" and allows for any ruling to be reviewed. It is our hope that using this language may alleviate some concerns and still leave parties and counsel with clear, uniform direction that a petition for judicial review must be filed for any ruling coming from a magistrate, regardless of whether the hearing required consent of the parties to be heard by a magistrate.

Our alternate proposal is more in line with the feedback from the full committee and allows *but does not require* a petition for judicial review. Language would be similar to that found in C.A.R. 4(a)(1) and (3). Should this be the alternative proposal made to the Supreme Court, it should be noted that it will not encompass juvenile cases as review and appeal of those cases is mandated by statute. It is the position of the subcommittee that this alternative does not simplify these rules and will make them neither easier to understand or to navigate.

The subcommittee discussed extensively that litigants before a magistrate may have difficulty understanding their right to seek review during the same timeframe that the right to appeal is running. A party who decides to forego a petition for review may be left without redress if the court of appeals determines that the issue appealed does not meet the requirement of finality.

With either of the alternatives, there may be no way to save a litigant from him or herself if the litigant does not diligently pursue appeal.

~~(a) Orders or judgments entered when consent not necessary.~~ Magistrates shall include in **every** any order or judgment **the following language: except as otherwise provided by statute, no appeal may be filed with the court of appeals unless a petition for review has been filed with the district court within 28 days of the date after of this order or judgment as provided by C.R.M. 7 (d).**

**(b) A petition for review is a prerequisite before an appeal may be filed with the Colorado court of appeals. [this language comes from C.R.S. section 19-1-108(5.5) for juvenile cases].** ~~entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7(a).~~

~~(1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.~~

ALTERNATE (a): Magistrates shall include in every order or judgment the following language: except as otherwise provided by statute, this order or judgment shall be appealed pursuant to the Colorado Appellate Rules in the same manner as an order of judgment of a district court. If any party files a timely petition for judicial review pursuant to C.R.M. 7 (d), the time for appeal to the court of appeals runs from the entry of an order disposing of the last timely filed petition for review or the expiration of the time for ruling on such petition pursuant to C.R.M. 7 (j). [This language comes from current C.R.M. 7(b) and C.A.R. 4(a)(3). \*\*Adopting the ALTERNATIVE would result in renumbering of the rest of C.R.M. 7\*\*]

~~(c)(2) The~~ Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered ~~when consent is not necessary.~~

~~(d)(3) Only a final~~ An order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment under this Rule. A final order or judgment is that which fully resolves an issue or claim. is written, dated, and signed by a magistrate. A minute order that is dated and signed by a magistrate shall constitute a written order or judgment.

~~(4) A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.~~

~~(e)(5) A party may obtain review of a magistrate's final order or judgment by filing a petition to~~ for review such final order or judgment with the district court reviewing judge no later than 28 ~~± 14~~ days subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days from the date the final order or judgment is mailed or otherwise transmitted to the parties from the date the order or judgment becomes reviewable pursuant to C.R.M 7 (d).

Because many of the functions a magistrate hears involve pro se litigants (more than 75% of a magistrate's caseload are cases that have fewer than two attorneys involved), we wanted to give parties and counsel seven more days to seek review while also building in a limited ability for the magistrate to reconsider his or her order.

(f) Within seven days of the date the order or judgment became reviewable pursuant to C.R.M. 7 (d), any party may file with the magistrate either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

(g) If the magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors, a petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable pursuant to C.R.M. 7 (d).

~~(6) A request for extension of time to file a petition for review must be made to the reviewing judge within the 21-day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.~~

~~(h)(7) Any~~ petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief statement of discussing the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not

available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting brief statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file a memorandum-brief in opposition an opposition, which shall state whether a transcript has been requested by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

~~(i)(8)~~ Judicial review shall be limited to consideration of the petition for review, any oppositions and the record of the proceedings before the magistrate as is available. The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. If a transcript of the proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under 6(c)(1) which effectively ends a case shall be subject to de novo review.

~~(j)(9)~~ Findings of fact made by the magistrate may not be altered shall be accepted by the reviewing judge unless they are clearly erroneous. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order. Conclusions of law made by a magistrate and any order entered in a civil case under C.R.M. 6 (c) which effectively ends a case shall be subject to de novo review.

Based on the discussion regarding civil cases and magistrates entering initial orders that impact the rest of the case (i.e. limiting discovery, experts, etc.), we propose such orders are subject to de novo review by the district court.

~~(k)(10)~~ The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition for review that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and the time for appeal shall commence on that date.

There has been considerable concern that petitions for judicial review can languish with the district court for months or even years. District court judges have a variety of priorities – especially in light of the COVID backlog – that can put reviews at the bottom of their pile. We propose language similar to C.R.C.P. 59(j) so that there can be a deemed denied date if no written order has been issued. While it negates a level of review by the district court, it also allows litigants to seek redress with the Court of Appeals. Based on the subcommittee's discussions, we believe a party's right to appeal is more important than avoiding any potential abuse by a district court judge who refuses to act.

~~(l)(11)~~ Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a reviewing district court in accordance with these Rules. [this would be deleted in ALTERNATIVE is adopted.]

In our November submission, we had proposed the language: only issues addressed in a magistrate's reviewable order or judgment that were raised in a timely petition for review can be appealed to the court of appeals. Given the discussion that ensued, we propose to keep the same language that already exists in C.R.M. 7(a)(11).

~~(m)(12)~~ If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. ~~Appeal of such district court order or judgment to the appellate court is barred.~~ [this would be deleted in ALTERNATIVE is adopted.]

Rule 7(b) is stricken in its entirety as unnecessary with the proposed changes, even if the ALTERNATIVE is adopted.

~~(b) Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).\*\*~~

## Rule 8. Functions of County Court Magistrates.

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Because there is statutory authority that a county court magistrate's order is reviewable only in the same manner as a county court judge's, this section is far less cumbersome than for district court magistrates in Rules 6 and 7.

Lee Sternal is dissatisfied with the process for county court judge (and therefore county court magistrate) appeals that go only to the district court judge. However, because it is statutory (C.R.S. section 13-6-310) any modification is beyond the scope of this subcommittee.

Additionally, a civil infractions practice now exists. By statute magistrates have authority to hear these proceedings; we have added it as 8(a)(1)(e).

**(a) Functions in Criminal Cases:** A county court magistrate may perform any or all of the following functions in a criminal proceeding:

**(1)** No consent necessary:

**(A)** Appoint attorneys for indigent defendants and approve attorney expense vouchers.

**(B)** Conduct proceedings in traffic infraction matters.

**(C)** Conduct advisements and set bail in criminal and traffic cases.

**(D)** Issue mandatory protection orders pursuant to C.R.S. section 18-1-1001.

**(E)** Conduct all proceedings regarding civil infractions pursuant to C.R.S. section 16-2.3-101.

**(EF)** Any other function authorized by statute or rule.

**(2)** Consent necessary:

**(A)** Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.

**(B)** Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.

**(C)** Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.

**(D)** Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

**(b) Functions in Civil Cases:** A county court magistrate may perform any or all of the following functions in a civil proceeding:

**(1)** No consent necessary:

**(A)** Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.

**(B)** Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.

**(C)** Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.

**(D)** Conduct proceedings involving protection orders, pursuant to C.R.S. sections 13-14-101 et seq. and conduct proceedings pursuant to C.R.C.P. 365.

**(E)** Any other function authorized by statute.

**(2)** Consent necessary:

**(A)** Conduct civil trials to court and hearings on motions.

**(B)** Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.

## Rule 9. Review of County Court and Small Claims Court Magistrate Orders or Judgments.

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**(a)** An order or judgment of a county or small claims court magistrate shall be the order or judgment of the county or small claims court.

**(b)** Any party to a proceeding before a county court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the county court.

**(c)** Any party to a proceeding before a small claims court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the small claims court.

We do not propose any change to Rule 9 C.R.M.
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## Rule 10. Preparation, Use, and Retention of Record.

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(a) Record of Proceedings: Except as provided in C.R.C.P. 16.2 (c)(2)(e), a verbatim record of all proceedings and trials conducted by magistrates shall be maintained by either electronic devices or by stenographic means. The magistrate shall be responsible for maintaining such record and, in the event of subsequent review, for certifying its authenticity.

(b) Use of the Record: If otherwise admissible, a certified transcript of the testimony of a witness at a trial or other proceeding before a magistrate may be admitted as evidence in a later trial or proceeding.

(c) Custody and Retention of Record: A reporter's notes or the electronic recordings of trial or other proceedings conducted by a magistrate shall be the property of the state, and shall be retained by the appropriate court for a period prescribed in the Colorado Judicial Department Records Management manual. During the period of retention, notes and recordings shall be made available to the reporter of record, or to any other reporter or person the court may designate. During the trial or the taking of other matters on the record, the notes and recordings shall be considered the property of the state, even though in custody of the reporter, judge, or clerk. After the trial and review or appeal period, the reporter shall list, date and index all notes and recordings and shall properly pack them for storage. Where no reporter is used, the clerk of the court shall perform this function. The court shall provide storage containers and space.

We do not propose any change to Rule 10 C.R.M.

## Rule 11. Title of Rules and Abbreviation.

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The title to these rules shall be Colorado Rules for Magistrates and may be abbreviated as C.R.M.

We do not propose any change to Rule 11 C.R.M.

### **Rule 3. Definitions.**

The following definitions shall apply:

(a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

(b) Chief Judge: The chief judge of a judicial district.

(c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.

(d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.

(e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

(f) Consent:

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if [he or she is advised of the right to have the proceeding before a district court judge and, after entering an appearance or filing a responsive pleading](#):

(i) The party has affirmatively consented in writing or on the record; or

(ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or

(iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

### **Rule 5. General Provisions.**

(a) An order or judgment of a magistrate in any [judicial](#) proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. [Except for correction of clerical errors](#)

~~pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing. An order of judgment becomes final for purposes of appeal or judicial review as stated in C.R.M. 7.~~

**(b)** A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

**(c)** A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

**(d)** A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

**(e)** A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in C.R.S. section 13-1-115; C.R.S.

**(f)** No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied.

Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on appeal or review of the magistrate's order or judgment.

~~**(g)** For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice—which must be written except to the extent given orally to parties who are present in court—shall state that all parties must consent to the function being performed by the magistrate.~~

~~**(1)** If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.~~

~~**(2)** Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.~~

~~**(g)(h)**~~ All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

## **Rule 6. Functions of District Court Magistrates.**

**(a)** Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

**(1)** No consent necessary:

**(A)** Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

**(B)** Appoint attorneys for indigent defendants and approve attorney expense vouchers.

- (C) Conduct bond review hearings.
  - (D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).
  - (E) Schedule and conduct arraignments on indictments, informations, or complaints.
  - (F) Order presentence investigations.
  - (G) Set cases for disposition, trial, or sentencing before a district court judge.
  - (H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.
  - (I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.
  - (J) Any other function authorized by statute or rule.
- (2) Consent necessary:
- (A) Enter pleas of guilty.
  - (B) Enter deferred prosecution and deferred sentence pleas.
  - (C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.
  - (D) Impose stipulated sentences to probation in cases assigned to problem solving courts.
- (b) Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:
- (1) No Consent Necessary:
- (A) A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.
  - (B) A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions ~~for~~ review as defined in C.R.M. 7.
  - (C) A district court magistrate shall have the power to determine an order concerning child support filed pursuant to [C.R.S. s](#)Section 26-13-101 et seq.
  - (D) Any other function authorized by statute [or rule](#).
- (2) Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.
- (c) Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:
- (1) No consent necessary:
- (A) Conduct settlement conferences.
  - (B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.
  - (C) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.
  - (D) Conduct hearings as a master pursuant to C.R.C.P. 53.
  - (E) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.
  - (F) Conduct proceedings involving protection orders pursuant to C.R.S. [s](#)Section 13-14-101 et seq.
  - (G) Any other function authorized by statute [or rule](#).
- (2) Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.
- (d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19,

Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).

(e) Functions in Probate and Mental Health Cases:

(1) No consent necessary:

(A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.

(B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

(C) Any other function authorized by statute or rule.

(2) Consent Necessary:

(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 3 (f)5-(g).

### **Rule 7. Review of District Court Magistrate Orders or Judgments.**

~~(a) Orders or judgments entered when consent not necessary.~~ Magistrates shall include in any every order or judgment the following: except as otherwise provided by statute, no appeal may be filed with the court of appeals unless a petition for review has been filed with the district court within 28 days of the date of this order or judgment as provided by C.R.M. 7 (d). ~~entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7 (a).~~

~~(1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.~~

~~(b) A petition for review is a prerequisite before an appeal may be filed with the Colorado court of appeals.~~

~~(c)(2) The Each~~ chief judge shall designate one or more district judges to review orders or judgments of district court magistrates ~~entered when consent is not necessary.~~

~~(d)(3) Only a final~~ An order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment is written, dated, and signed by a magistrate. A minute order that is dated and signed by a magistrate shall constitute a written order or judgment under this Rule. A final order or judgment is that which fully resolves an issue or claim.

~~(4) A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.~~

~~(e)(5) A party may obtain review of a magistrate's final~~ order or judgment by filing a petition ~~to~~ for review ~~such final order or judgment~~ with the reviewing judge district court no later than 14 28 days ~~subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days from the date the final order or judgment is mailed or otherwise transmitted to the parties from the date the order or judgment becomes reviewable pursuant to C.R.M. 7 (d).~~

~~(6)~~ A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.

(f) Within seven days of the date the order or judgment became reviewable pursuant to C.R.M. 7 (d), any party may file with the magistrate either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

(g) If a magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors, a petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable pursuant to C.R.M. 7 (d).

(h)~~(7)~~ Any petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum-brief statement of discussing the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed the petition shall state whether a transcript has been requested. Copies of the petition and any supporting statement brief shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file a memorandum-brief in an opposition which shall state whether a transcript has been requested by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

(i)~~(8)~~ Judicial review shall be limited to consideration of the petition for review, any oppositions and the record of the proceedings before the magistrate as is available. If a transcript of the proceedings before a magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact.~~The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary.~~ The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. ~~An order entered under 6 (e)(1) which effectively ends a case shall be subject to de novo review.~~

(j)~~(9)~~ Findings of fact made by the magistrate shall be accepted by the reviewing judge ~~may not be altered unless they are~~ clearly erroneous. ~~The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order.~~ Conclusions of law made by a magistrate and any order entered in a civil case under C.R.M. 6 (c) which effectively ends a case shall be subject to de novo review.

(k)~~(10)~~ The reviewing judge shall adopt, reject, or modify the ~~initial~~ order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition for review that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript, if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes include Rule 4 (a) of the Colorado Appellate Rules and the time for appeal shall commence on that date.

~~(l)(11)~~ Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a [reviewing district court](#) in accordance with these Rules.

~~(m)(12)~~ If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. ~~Appeal of such district court order or judgment to the appellate court is barred.~~

~~(b) Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).~~

### **Rule 8. Functions of County Court Magistrates.**

(a) Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:

(1) No consent necessary:

(A) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(B) Conduct proceedings in traffic infraction matters.

(C) Conduct advisements and set bail in criminal and traffic cases.

(D) Issue mandatory protection orders pursuant to C.R.S. section 18-1-1001.

~~(E) Conduct all proceedings regarding civil infractions pursuant to C.R.S. section 16-2.3-101 et seq.~~

~~(F)(E)~~ Any other function authorized by statute [or rule](#).

(2) Consent necessary:

(A) Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.

(B) Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.

(C) Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.

(D) Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

(b) Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:

(1) No consent necessary:

(A) Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.

(B) Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.

(C) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.

(D) Conduct proceedings involving protection orders, pursuant to C.R.S. sections 13-14-101 et seq. and conduct proceedings pursuant to C.R.C.P. 365.

(E) Any other function authorized by statute.

(2) Consent necessary:

(A) Conduct civil trials to court and hearings on motions.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.

### **Rule 3. Definitions.**

The following definitions shall apply:

**(a) Magistrate:** Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

**(b) Chief Judge:** The chief judge of a judicial district.

**(c) Presiding Judge:** The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.

**(d) Reviewing Judge:** A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.

**(e) Order or Judgment:** All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

**(f) Consent:**

**(1) Consent in District Court:**

**(A)** For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if he or she is advised of the right to have the proceeding before a district court judge and, after entering an appearance or filing a responsive pleading:

**(i)** The party has affirmatively consented in writing or on the record; or

**(ii)** The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or

**(iii)** The party failed to appear at a proceeding after having been provided notice of that proceeding.

**(B)** Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

**(2) Consent in County Court:**

**(A)** When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

**(B)** Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

**(3) Consent in Small Claims Court:**

**(A)** A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

**(B)** Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

### **Rule 5. General Provisions.**

**(a)** An order or judgment of a magistrate in any proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed

by the magistrate or by the reviewing judge. An order of judgment becomes final for purposes of appeal or judicial review as stated in C.R.M. 7.

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in C.R.S. section 13-1-115.

(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied.

Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on appeal or review of the magistrate's order or judgment.

(g) All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

### **Rule 6. Functions of District Court Magistrates.**

(a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

(1) No consent necessary:

(A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

(B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(C) Conduct bond review hearings.

(D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).

(E) Schedule and conduct arraignments on indictments, informations, or complaints.

(F) Order presentence investigations.

(G) Set cases for disposition, trial, or sentencing before a district court judge.

(H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) Any other function authorized by statute or rule.

- (2)** Consent necessary:
  - (A)** Enter pleas of guilty.
  - (B)** Enter deferred prosecution and deferred sentence pleas.
  - (C)** Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.
  - (D)** Impose stipulated sentences to probation in cases assigned to problem solving courts.
- (b)** Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:
  - (1)** No Consent Necessary:
    - (A)** A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.
    - (B)** A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions for review as defined in C.R.M. 7.
    - (C)** A district court magistrate shall have the power to determine an order concerning child support filed pursuant to C.R.S. section 26-13-101 et seq.
    - (D)** Any other function authorized by statute or rule.
  - (2)** Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.
- (c)** Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:
  - (1)** No consent necessary:
    - (A)** Conduct settlement conferences.
    - (B)** Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.
    - (C)** Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.
    - (D)** Conduct hearings as a master pursuant to C.R.C.P. 53.
    - (E)** Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.
    - (F)** Conduct proceedings involving protection orders pursuant to C.R.S. section 13-14-101 et seq.
    - (G)** Any other function authorized by statute or rule.
  - (2)** Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.
- (d)** Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).
- (e)** Functions in Probate and Mental Health Cases:
  - (1)** No consent necessary:
    - (A)** Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.
    - (B)** Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.
    - (C)** Any other function authorized by statute or rule.
  - (2)** Consent Necessary:

- (A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.
- (B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.
- (f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 3 (f).

### **Rule 7. Review of District Court Magistrate Orders or Judgments.**

- (a) Magistrates shall include in every order or judgment the following: except as otherwise provided by statute, no appeal may be filed with the court of appeals unless a petition for review has been filed with the district court within 28 days of the date of this order or judgment as provided by C.R.M. 7 (d).
- (b) A petition for review is a prerequisite before an appeal may be filed with the Colorado court of appeals.
- (c) Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates.
- (d) An order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment is written, dated, and signed by a magistrate. A minute order that is dated and signed by a magistrate shall constitute a written order or judgment.
- (e) A party may obtain review of a magistrate's order or judgment by filing a petition for review with the district court no later than 28 days from the date the order or judgment becomes reviewable pursuant to C.R.M. 7 (d).
- (f) Within seven days of the date the order or judgment became reviewable pursuant to C.R.M. 7 (d), any party may file with the magistrate either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.
- (g) If a magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors, a petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable pursuant to C.R.M. 7 (d).
- (h) Any petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a brief statement of authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed the petition shall state whether a transcript has been requested. Copies of the petition and any supporting statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file an opposition which shall state whether a transcript has been requested by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.
- (i) Judicial review shall be limited to consideration of the petition for review, any oppositions and the record of the proceedings before the magistrate as is available. If a transcript of the proceedings before a magistrate was not requested, the reviewing judge shall presume that the

record would support the magistrate's findings of fact. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court.

**(j)** Findings of fact made by the magistrate shall be accepted by the reviewing judge unless they are clearly erroneous. Conclusions of law made by a magistrate and any order entered in a civil case under C.R.M. 6 (c) which effectively ends a case shall be subject to de novo review.

**(k)** The reviewing judge shall adopt, reject, or modify the order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition for review that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript, if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes include Rule 4 (a) of the Colorado Appellate Rules and the time for appeal shall commence on that date.

**(l)** Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a district court in accordance with these Rules.

**(m)** If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court.

### **Rule 8. Functions of County Court Magistrates.**

**(a)** Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:

**(1)** No consent necessary:

**(A)** Appoint attorneys for indigent defendants and approve attorney expense vouchers.

**(B)** Conduct proceedings in traffic infraction matters.

**(C)** Conduct advisements and set bail in criminal and traffic cases.

**(D)** Issue mandatory protection orders pursuant to C.R.S. section 18-1-1001.

**(E)** Conduct all proceedings regarding civil infractions pursuant to C.R.S. section 16-2.3-101 et seq.

**(F)** Any other function authorized by statute or rule.

**(2)** Consent necessary:

**(A)** Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.

**(B)** Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.

**(C)** Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.

**(D)** Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

**(b)** Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:

**(1)** No consent necessary:

**(A)** Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.

**(B)** Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.

- (C) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.
  - (D) Conduct proceedings involving protection orders, pursuant to C.R.S. sections 13-14-101 et seq. and conduct proceedings pursuant to C.R.C.P. 365.
  - (E) Any other function authorized by statute.
- (2) Consent necessary:
- (A) Conduct civil trials to court and hearings on motions.
  - (B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.

Rule 7. Review of District Court Magistrate Orders or Judgments.

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~~(a) Orders or judgments entered when consent not necessary.~~ Magistrates shall include in ~~any every~~ order or judgment ~~the following language: except as otherwise provided by statute, this order or judgment shall be appeals pursuant to the Colorado Appellate Rules in the same manner as an order or judgment of the district court.~~ If any party files a timely petition for judicial review pursuant to C.R.M. 7 (d), the time for appeal to the court of appeals runs from the entry of an order disposing of the last timely filed petition for review or the expiration of the time for ruling on such petition pursuant to C.R.M. 7 (j). ~~entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7 (a).~~

~~(1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.~~

~~(b)(2) The~~Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates ~~entered when consent is not necessary.~~

~~(c)(3) Only a final~~An order or judgment of a magistrate is reviewable ~~only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment is written, dated, and signed by a magistrate. A minute order that is dated and signed by a magistrate shall constitute a written order or judgment under this Rule. A final order or judgment is that which fully resolves an issue or claim.~~

~~(4) A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.~~

~~(d)(5) A party may obtain review of a magistrate's final order or judgment by filing a petition to for review such final order or judgment with the reviewing judge district court no later than 44 28 days subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days from the date the final order or judgment is mailed or otherwise transmitted to the parties from the date the order or judgment becomes reviewable pursuant to C.R.M. 7 (c).~~

~~(6) A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.~~

~~(e) Within seven days of the date the order or judgment became reviewable pursuant to C.R.M. 7 (c), any party may file with the magistrate either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended.~~

The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

(f) If a magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors, any petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable pursuant to C.R.M. 7 (c).

(g)(7) Any petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief statement of discussing the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting brief statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file an memorandum brief in opposition which shall state whether a transcript has been requested by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

(h)(8) The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. Judicial review shall be limited to consideration of the petition for review, any oppositions and the record of the proceedings before the magistrate as is available. If a transcript of proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under 6 (c)(1) which effectively ends a case shall be subject to de novo review.

(i)(9) Findings of fact made by the magistrate may not be altered shall be accepted by the reviewing judge unless they are clearly erroneous. Conclusions of law made by a magistrate and any order entered in a civil case under C.R.M. 6 (c) which effectively ends a case shall be subject to de novo review. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order.

(j)(10) The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition for review that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4 (a) of the Colorado Appellate Rules and the time for appeal shall commence on that date.

(11) Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a reviewing court in accordance with these Rules.

(12) If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the appellate court is barred.

~~(b) Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).~~

## Rule 7. Review of District Court Magistrate Orders or Judgments.

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- (a)** Magistrates shall include in every order or judgment the following language: except as otherwise provided by statute, this order or judgment shall be appeals pursuant to the Colorado Appellate Rules in the same manner as an order or judgment of the district court. If any party files a timely petition for judicial review pursuant to C.R.M. 7 (d), the time for appeal to the court of appeals runs from the entry of an order disposing of the last timely filed petition for review or the expiration of the time for ruling on such petition pursuant to C.R.M. 7 (j).
- (b)** Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates.
- (c)** An order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment is written, dated, and signed by a magistrate. A minute order that is dated and signed by a magistrate shall constitute a written order or judgment.
- (d)** A party may obtain review of a magistrate's order or judgment by filing a petition for review with the district court no later than 28 days from the date the order or judgment becomes reviewable pursuant to C.R.M. 7 (c).
- (e)** Within seven days of the date the order or judgment became reviewable pursuant to C.R.M. 7 (c), any party may file with the magistrate either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.
- (f)** If a magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15 (11) motion to reconsider or a C.R.C.P. 60 (a) motion to correct clerical errors, any petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment because reviewable pursuant to C.R.M. 7 (c).
- (g)** Any petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a brief statement of authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file an opposition which shall state whether a transcript has been requested by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.
- (h)** Judicial review shall be limited to consideration of the petition for review, any oppositions and the record of the proceedings before the magistrate as is available. If a

transcript of proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court..

**(i)** Findings of fact made by the magistrate shall be accepted by the reviewing judge unless they are clearly erroneous. Conclusions of law made by a magistrate and any order entered in a civil case under C.R.M. 6 (c) which effectively ends a case shall be subject to de novo review.

**(j)** The reviewing judge shall adopt, reject, or modify the order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition for review that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4 (a) of the Colorado Appellate Rules and the time for appeal shall commence on that date.

# Memo

**To:** Standing Committee on the Rules of Civil Procedure  
**From:** Adam J. Espinosa, Chair of the Eviction Subcommittee  
**Date:** January 17, 2023  
**Re:** Eviction Subcommittee Responses and Recommendations

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At the September 23, 2022 meeting of the Civil Rules Committee, the Eviction Subcommittee proposed edits to Rule 4, 12, 312, 312.5, 316.5, and proposed the creation of Rule 16.5.<sup>1</sup> After the meeting, the Civil Rules Committee asked the Eviction Subcommittee to reconvene to consider and address feedback from the larger committee. This memo will address the primary concerns from the Civil Rules Committee and make recommendations to adopt edits to Rule 4, 12, 312, 312.5, 316.5, and adopt the creation of Rule 16.5.

## Background

The Eviction Subcommittee was formed in early 2021 to address recommendations made by the Access to Justice Commission regarding eviction rules and to address legislation related to eviction cases that was passed in 2021. The Subcommittee focused its efforts on rules and forms related to County Court evictions. Ultimately, the Subcommittee recommended amendments to Rule 304, the creation of Rules 312.5 and 316.5, the creation of a *Request for Documents in*

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<sup>1</sup> The Subcommittee initially proposed the creation of Rule 16.5 and edits to Rule 316.5 at the June 24, 2022 Civil Rules Committee meeting. The Subcommittee proposed edits to Rule 4, 12, 312, and 312.5 at the September 23, 2022 meeting.

*Eviction Cases* form in County Court cases, and an amended *Summons* in County Court eviction cases. The recommendations of the Subcommittee were adopted by the Civil Rules Committee and later adopted by the Supreme Court on October 13, 2021. After the adoption, the Court asked the Subcommittee to reconvene to consider further revisions to the new eviction *Summons* and to consider any necessary changes to District Court rules and forms related to evictions.

The Eviction Subcommittee is comprised of Civil Rules Committee members the Hon. Adam J. Espinosa, Chair, Hon. Christopher Zenisek, Hon. Sabino Romano (ret.), Lisa Hamilton-Fieldman, Esq., Jose Vasquez, Esq., and Greg Whitehair, Esq., as well as Hon. Beth Faragher, Hon. Andrea Paprzycki, Reenie Terjak, Esq., Victor Sulzer, Esq., Mark Tschetter, Esq., Deborah Wilson, Esq., and Mandy Allen.

#### **Feedback from the September 23, 2022 Meeting**

At the September 23, 2022 meeting of the Civil Rules Committee, the Eviction Subcommittee proposed edits to Rule 4, 12, 312, 312.5, 316.5, and proposed the creation of Rule 16.5. In that meeting, the Eviction Subcommittee was asked to reconvene to consider and address feedback from the larger committee. Primary concerns included the length of the proposed Rule 4, whether Rules 16.5 and 316.5 tracked C.R.S. 13-40-113(4)(b), how the District Court *Request for Documents in Eviction Cases* form would operate, and what “confirmation” of payment meant under amended Rule 312.5(e) and how it would work in practice.

The Subcommittee reconvened on November 15, 2022 to discuss these concerns and held additional discussion and voting by email. The results of our meetings and votes follow:

1. **Length of Rule 4:** Civil Rules Committee concerns over the length of proposed Rule 4 prompted a recommendation to break the rule out into additional subsections. This recommendation passed the Subcommittee by a 7-0 vote.

a. Subcommittee Proposed Rule 4(c)(1) now reads: “**(c)(1) Contents of Summons.** *The summons shall contain the name of the court, the county in which the action is brought. . .*”

b. Proposed Rule 4(c)(2) now reads: “**(c)(2) Additional Contents of FED Summons.** *In forcible entry and detainer cases, the summons shall contain all language and information required by statute, and in addition to the complaint, be accompanied by a blank copy of an answer form, Form JDF 186 SC Information for Eviction Cases, Form JDF 185 SC Request for Documents in Eviction Cases, and blank copies of forms JDF 205 and 206 (fee waiver forms).*”

2. **Rules 16.5 and 316.5 and whether they tracked C.R.S. 13-40-113(4)(b)**: The Subcommittee determined that the proposed Rule 16.5 and the amended Rule 316.5 do conform to the legislative directives:

a. C.R.S. 13-40-113(4)(b) states, “*In the time after an answer is filed and before a trial occurs, the court shall order that the landlord or tenant provide any documentation relevant to the current action that either party requests pursuant to section 13-40-111(6)(b).*”

b. C.R.S. 13-40-111(6)(b) states, “*A summons issued pursuant to this section must also contain. . . (b) A form that allows either party to request all documents in the landlord’s and tenant’s possession relevant to the current action.*”

c. In conformity with these statutes, proposed Rule 16.5(b)(1) states, “*Either party may request all documents in the other party’s possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 187 SC (Request for Documents in Eviction Cases) to the opposing party.*”

d. Recall that Rule 316.5 states, “*Either party may request all documents in the other party’s possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.*”

e. Regarding the statutory “shall order ... [upon] request[.]” language, the Subcommittee presumed that both forms 185 and 187 were effective binding discovery demands upon filing and sending by the requestor, and that the trial court need only sign

the form in the event of a non-response followed by a request to the court or a motion to compel, rather than needing execution in advance of sending it by the requesting party.

3. **Subcommittee Request for Documents in Eviction Cases:** Along these same lines, concerns were raised about how the District Court *Request for Documents in Eviction Cases* form (JDF 187 SC, approved 6/2022) operates under statutorily abbreviated timelines more normal in the County Court setting. (Note that the District Court *Request for Documents in Eviction Cases* form is substantively the same as the County Court *Request for Documents in Eviction Cases* form (JDF 185 SC, approved as revised 6/2022)).

a. The Subcommittee discussed this concern at length and recognized the challenge of compressing the normal District Court 21-day answer period, the 35-day written discovery response period, and other lengthier disclosure schedules into the statutorily required 7-10 day trial setting.

b. Some members of the Subcommittee noted that the same concerns arise in County Court evictions because of the same quick timelines.

c. Other members of the Subcommittee described how they very promptly simply send all relevant documents to the opposing party after an answer to the complaint is filed regardless of whether a *Request for Documents* form is filed with the court.

d. Despite the timing considerations, the Subcommittee voted 6-2 to continue the use of the District Court *Request for Documents in Eviction Cases* form (JDF 187 SC) because this type of form is required to be served with an eviction *Summons* under C.R.S. 13-40-111(6)(b). The Subcommittee assumed that District Courts will make *ad hoc* decisions that balance their case calendars with these legislative directives, presumably by securing party consent to waiving the speedy trial provision.

4. **Confirmation of Full Payments in amended Rule 312.5(e):** Civil Rules Committee concern was expressed about the meaning of “confirmation” of payment under amended Rule 312.5(e) and how it would work in practice.

a. The Subcommittee had created new Rule 312.5(e) for the purpose of providing actual notice in the Rules (already provided in the *Summons*) of the legislative cure option found at C.R.S. 13-40-115(4).

b. The proposed amendment to Rule 312.5(e) states, “*Tender of Full Payment. A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant’s full payment of all amounts due according to the notice, as well as any rent that remains due under the rental agreement, at any time until a judge issues a judgment for possession. A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall: (1) vacate any judgments that have been issued; and (2) dismiss the action with prejudice.*”

c. Several Subcommittee members recommended no changes to the above proposed new Rule 312.5(e) and thought the best course of action was to allow the trial courts to handle these factual issues as they arose rather than dictate a process for “confirming” payment in full.

d. For the record, some Subcommittee members proposed leaving out of both the *Summons* and the Rules any reference to the cure statute, given that no legislation directed disclosure of the option in any form (unlike, for instance, the required document request form).

e. Other Subcommittee members recommended modifying the current *Notice of Deposited Funds* form (SCAO JDF 244, approved 10/1/2021) as well as amending and replacing Rule 312.5(e) with this generalized language,

“(e) *Tender of Full Payment. A defendant may, in accordance with law and prior to entry of judgment for possession, advise the court of the tender to plaintiff or deposit in court of all noticed amounts due.*”

f. In the end, the Subcommittee voted 6-4 to keep its proposed Rule 312.5(e) in the form previously submitted and restated above, leaving the confirmation protocol to each court. Of note, JDF 244, Notice of Deposited Funds, is a SCAO form that would need to be modified by SCAO rather than by the Civil Rules Committee.

### **Recommendations**

The Subcommittee continues to recommend the attached redline edits to Rules 4, 12, 312, 312.5, 316.5, and the creation of Rule 16.5, as summarized below.

a. **Rule 4:** Prior to the September 2022 Civil Rules Committee meeting, the Subcommittee had voted 5 to 3 to edit Rule 4 on Service of Process. The proposed edits were intended to include the statutorily required language and reference the required forms from C.R.S. 13-40-111(5) and (6). The Subcommittee also recommended that blank copies of forms JDF 205 and 206 (fee waiver forms) be included. Together, these edits create consistency with revised Rule 304. On November 15, 2022, the Subcommittee voted 7-0 to break the rule out into subsections 4(c)(1) and 4(c)(2) as set forth above.

2. **Rule 12:** Also prior to the September 2022 Civil Rules Committee meeting, the Subcommittee had voted 5 to 2 to edit Rule 12. The intent was to include language in Rule 12(a)(1) that indirectly addressed speeded-up answers required in eviction cases – “*except as otherwise provided by Rule or statute*” – without overhauling the current rule or adding a Rule 12.5 parallel to what was done in County Court Rules 312 and 312.5. The idea was to implicitly point to C.R.S. 13-40-113(1) requiring a defendant to file an answer to a complaint at or before the day specified for the defendant’s appearance on the summons, not in the 21 days provided generally by Rule 12.

3. **Rule 312:** Again prior to the September meeting, the Subcommittee had voted unanimously to amend Rule 312 to clarify language in the title of the rule to make clear that Rule 312 applied to non-eviction cases while Rule 312.5 applied to eviction cases.

4. **Rule 312.5:** Last summer, the Subcommittee also voted unanimously to amend Rule 312.5 to clean up drafting errors in the title of the rule and to include, as noted above, a subsection (e) that set forth the right to cure provided in C.R.S. 13-40-115(4).

5. **Rule 316.5:** The Subcommittee voted to amend Rule 316.5 to include the language, “If applicable” in subsection (e) of Rule 316.5. This amendment came about after concern that the current recommended language of Rule 316.5(e) might imply a right to a jury trial in an eviction case, which some members of our Subcommittee considered to be an unresolved legal issue.

6. **Rule 16.5:** The Subcommittee voted to recommend the creation of a Rule 16.5 to address the statutory requirements in eviction cases unique to evictions, including the document request provision and foreshortened trial scheduling. Proposed Rule 16.5 mirrors the language and content of template Rule 316.5, which we recommended last year and which was adopted by the Court.

a. Subsection (a) of proposed Rule 16.5 sets forth the purpose and scope of the rule and allows for flexibility by agreement of the parties or by order of the court.

b. Subsection (b) sets forth the request for documents provisions outlined in C.R.S. 13-40-113(4)(b) and C.R.S. 13-40-111(6)(b).

c. Subsection (c) sets forth the unique trial scheduling provisions set forth by C.R.S. 13-40-113(4)(a) that requires eviction jury trials to be set within 7-10 days after the filing of an answer absent a waiver by the defendant or good cause shown.

d. Subsections (d) and (e) address pre-trial discovery and resolution of disputes, respectively. These sections were modeled after Rule 316.5 and are consistent with that rule.

### **Attachments**

- Rule 4, clean and redline
- Rule 12, clean and redline
- Rule 312, clean and redline
- Rule 312.5, clean and redline
- Rule 16.5, clean and redline
- Rule 316.5, clean and redline
- A copy of the District Court *Request for Documents in Eviction Cases* form (JDF 187 SC) that has been previously approved by the Supreme Court.

West's Colorado Revised Statutes Annotated  
Colorado Court Rules  
Chapters 1--24. Rules of Civil Procedure  
Chapter 1. Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings,  
Motions and Orders

C.R.C.P. Rule 4

Rule 4. Process

Effective: April 17, 2020

Currentness

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

**(b) Issuance of Summons by Attorney or Clerk.** The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

**(c) (1) Contents of Summons.** The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4(g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

**(c) (2) Additional Contents of FED Summons.** In forcible entry and detainer cases, the summons shall contain all language and information required by statute, and in addition to the complaint, be accompanied by a blank copy of an answer form, Form JDF 186 SC Information for Eviction Cases, Form JDF 185 SC Request for Documents in Eviction Cases, and blank copies of forms JDF 205 and 206 (fee waiver forms).

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

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

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

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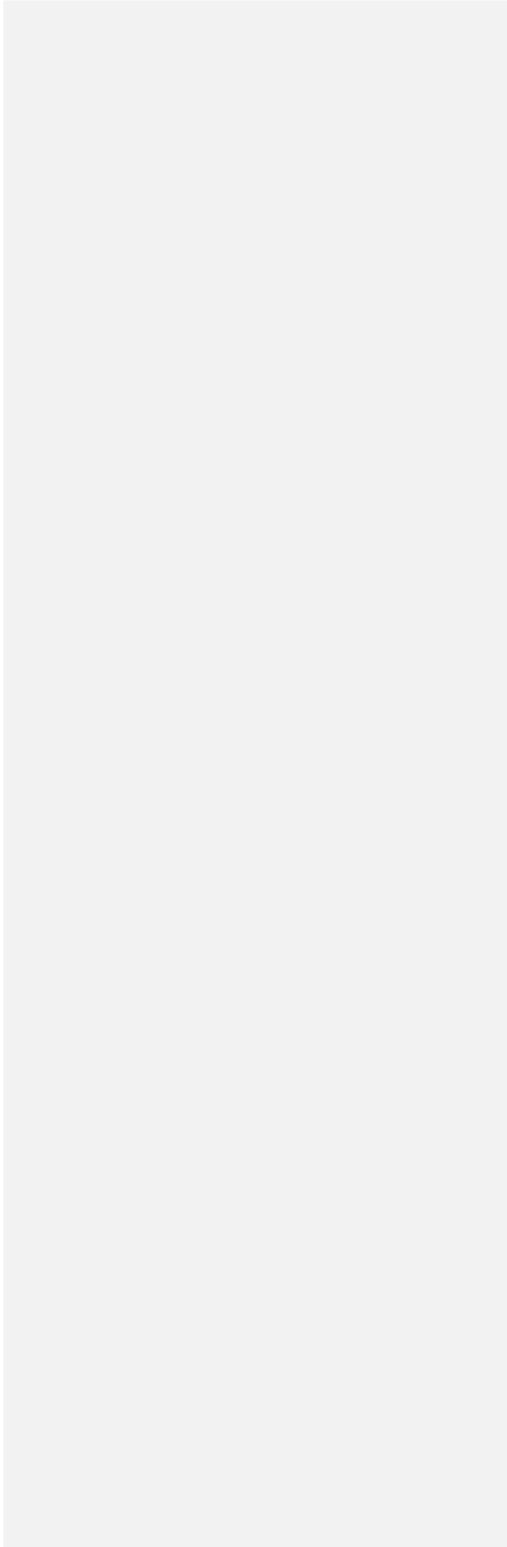
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to receive service of process.



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

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

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

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

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

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

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

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

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

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

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

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

(5) [Repealed eff. March 23, 2006.]

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

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

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

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

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

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

(C) For all purposes the date of service upon the officer, agent, employee, department, or agency shall control, except that failure to serve copies upon the attorney general within 7 days of service upon the officer, agent, employee, department, or agency shall extend the time within which the officer, agent, employee, department, or agency must file a responsive pleading for 63 days (9 weeks) beyond the time otherwise provided by these Rules.

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

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

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

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

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

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

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

(2) Order publication of the process in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within 14 days after the order the party shall mail a copy of the process to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be complete on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

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

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

(2) [Repealed eff. March 23, 2006.]

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

(4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the process where required;

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

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

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

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

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

**(l) No Colorado Rule.**

**(m) Time Limit for Service.** If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

#### Credits

Amended effective July 1, 1997; March 23, 2006; February 7, 2008; January 1, 2012; June 21, 2012; September 5, 2013; April 17, 2020.

#### Editors' Notes

#### COMMENTS

2020 [Amendment]

Rule 4(h) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. [C.R.S. § 13-27-101 et seq.](#) This Act defines a “sworn declaration,” which includes an affidavit, and an “unsworn declaration,” which “means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” [§ 13-27-102\(6\)](#) and [\(7\)](#). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 4(h).

#### [Notes of Decisions \(302\)](#)

Rules Civ. Proc., Rule 4, CO ST RCP Rule 4

Current with amendments received through July 1, 2022.

West's Colorado Revised Statutes Annotated  
Colorado Court Rules  
Chapters 1--24. Rules of Civil Procedure  
Chapter 1. Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings,  
Motions and Orders

C.R.C.P. Rule 4

Rule 4. Process

Effective: April 17, 2020

[Currentness](#)

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

**(b) Issuance of Summons by Attorney or Clerk.** The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

**(c) (1) Contents of Summons.** The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4(g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

**(2) Additional Contents of FED Summons.** In forcible entry and detainer cases, the summons shall contain all language and information required by statute, and in addition to the complaint, be accompanied by a blank copy of an answer form, Form JDF 186 SC Information for Eviction Cases, Form JDF 185 SC Request for Documents in Eviction Cases, and blank copies of forms JDF 205 and 206 (fee waiver forms).

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

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

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

to receive service of process.

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

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

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

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

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

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

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

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

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

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

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

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

(5) [Repealed eff. March 23, 2006.]

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

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

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

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

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

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

(C) For all purposes the date of service upon the officer, agent, employee, department, or agency shall control, except that failure to serve copies upon the attorney general within 7 days of service upon the officer, agent, employee, department, or agency shall extend the time within which the officer, agent, employee, department, or agency must file a responsive pleading for 63 days (9 weeks) beyond the time otherwise provided by these Rules.

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

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

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

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

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

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

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

(2) Order publication of the process in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within 14 days after the order the party shall mail a copy of the process to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be complete on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

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

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

(2) [Repealed eff. March 23, 2006.]

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

(4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the process where required;

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

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

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

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

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

**(l) No Colorado Rule.**

**(m) Time Limit for Service.** If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

#### Credits

Amended effective July 1, 1997; March 23, 2006; February 7, 2008; January 1, 2012; June 21, 2012; September 5, 2013; April 17, 2020.

#### Editors' Notes

#### COMMENTS

2020 [Amendment]

Rule 4(h) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. [C.R.S. § 13-27-101 et seq.](#) This Act defines a “sworn declaration,” which includes an affidavit, and an “unsworn declaration,” which “means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” [§ 13-27-102\(6\)](#) and [\(7\)](#). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 4(h).

#### [Notes of Decisions \(302\)](#)

Rules Civ. Proc., Rule 4, CO ST RCP Rule 4  
Current with amendments received through July 1, 2022.

West's Colorado Revised Statutes Annotated  
Colorado Court Rules  
Chapters 1--24. Rules of Civil Procedure  
Chapter 2. Pleadings and Motions

C.R.C.P. Rule 12

Rule 12. Defenses and Objections--When and How Presented--  
By Pleading or Motion--Motion for Judgment on Pleadings

Currentness

**(a) When Presented.**

(1) A defendant shall file his answer or other response within 21 days after the service of the summons and complaint, [except as otherwise provided by rule or statute](#). The filing of a motion permitted under this Rule alters these periods of time, as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within 14 days after notice of the court's action;

(B) if the court grants a motion for a more definite statement, or for a statement in separate counts or defenses, the responsive pleadings shall be filed within 14 days after the service of the more definite statement or amended pleading.

(2) If, pursuant to special order, a copy of the complaint is not served with the summons, or if the summons is served outside of Colorado or by publication, the time limit for filings under subsections (a)(1) and (e) of this Rule shall be within 35 days after the service thereof.

(3) A party served with a pleading stating a cross-claim against that party shall file an answer thereto within 21 days after the service thereof.

(4) The plaintiff shall file a reply to a counterclaim in the answer within 21 days after the service of the answer.

(5) If a reply is made to any affirmative defense, such reply shall be filed within 21 days after service of the pleading containing such affirmative defense.

(6) If a pleading is ordered by the court, it shall be filed within 21 days after the entry of the order, unless the order otherwise directs.

**(b) How Presented.** Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following

defenses may at the option of the pleader be made by separate motion filed on or before the date the answer or reply to a pleading under C.R.C.P. 12(a) is due:

- (1) lack of jurisdiction over the subject matter;
- (2) lack of jurisdiction over the person;
- (3) insufficiency of process;
- (4) insufficiency of service of process;
- (5) failure to state a claim upon which relief can be granted; or
- (6) failure to join a party under [C.R.C.P. 19](#).

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under this Rule or [C.R.C.P. 98](#). If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [C.R.C.P. 56](#), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [C.R.C.P. 56](#).

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [Rule 56](#), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [Rule 56](#).

**(d) Preliminary Hearings.** The defenses specifically enumerated in subsections (1)-(6) of section (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this Rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

**(e) Motion for Separate Statement or for More Definite Statement.** Within the time limits for filings under subsections (a) (1) and (a)(2) of this Rule, the party may file a motion for a statement in separate counts or defenses or for a more definite statement of any matter that is not averred with sufficient definiteness or particularity to enable the party properly to prepare a responsive pleading. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

**(f) Motion to Strike.** Upon motion filed by a party within the time for responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion filed by a party within 21 days after the service of any pleading, motion, or other paper, or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f).

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to that party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to that party which this Rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) of this Rule on any of the grounds there stated.

**(h) Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived: (A) If omitted from a motion in the circumstances described in section (g); or (B) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by [Rule 15\(a\)](#) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party under [Rule 19](#), and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under [Rule 7\(a\)](#), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

**Credits**

Amended effective January 1, 2012; July 1, 2015.

**Editors' Notes**

**COMMENTS**

**2015 [Amendment]**

[1] The practice of pleading every affirmative defense listed in [C.R.C.P. 8\(c\)](#), irrespective of a factual basis for the defense, is improper under [C.R.C.P. 11\(a\)](#). The pleading of affirmative defenses is subject not only to [C.R.C.P. 8\(b\)](#), which requires a party to “state in short and plain terms his defense to each claim asserted,” but also to [C.R.C.P. 11\(a\)](#): “The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Some affirmative defenses are also subject to the special pleading requirements of [C.R.C.P. 9](#). To the extent a defendant does not have sufficient information under [Rule 11\(a\)](#) to plead a particular affirmative defense when the answer must be filed but later discovers an adequate basis to do so, the defendant should move to amend the answer to add the affirmative defense.

Notes of Decisions (936)

Rules Civ. Proc., Rule 12, CO ST RCP Rule 12  
Current with amendments received through July 1, 2022.

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West's Colorado Revised Statutes Annotated  
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Chapters 1--24. Rules of Civil Procedure  
Chapter 2. Pleadings and Motions

C.R.C.P. Rule 12

Rule 12. Defenses and Objections--When and How Presented--  
By Pleading or Motion--Motion for Judgment on Pleadings

Currentness

**(a) When Presented.**

(1) A defendant shall file his answer or other response within 21 days after the service of the summons and complaint, except as otherwise provided by rule or statute. The filing of a motion permitted under this Rule alters these periods of time, as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be filed within 14 days after notice of the court's action;

(B) if the court grants a motion for a more definite statement, or for a statement in separate counts or defenses, the responsive pleadings shall be filed within 14 days after the service of the more definite statement or amended pleading.

(2) If, pursuant to special order, a copy of the complaint is not served with the summons, or if the summons is served outside of Colorado or by publication, the time limit for filings under subsections (a)(1) and (e) of this Rule shall be within 35 days after the service thereof.

(3) A party served with a pleading stating a cross-claim against that party shall file an answer thereto within 21 days after the service thereof.

(4) The plaintiff shall file a reply to a counterclaim in the answer within 21 days after the service of the answer.

(5) If a reply is made to any affirmative defense, such reply shall be filed within 21 days after service of the pleading containing such affirmative defense.

(6) If a pleading is ordered by the court, it shall be filed within 21 days after the entry of the order, unless the order otherwise directs.

**(b) How Presented.** Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following

defenses may at the option of the pleader be made by separate motion filed on or before the date the answer or reply to a pleading under C.R.C.P. 12(a) is due:

- (1) lack of jurisdiction over the subject matter;
- (2) lack of jurisdiction over the person;
- (3) insufficiency of process;
- (4) insufficiency of service of process;
- (5) failure to state a claim upon which relief can be granted; or
- (6) failure to join a party under [C.R.C.P. 19](#).

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under this Rule or [C.R.C.P. 98](#). If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [C.R.C.P. 56](#), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [C.R.C.P. 56](#).

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [Rule 56](#), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [Rule 56](#).

**(d) Preliminary Hearings.** The defenses specifically enumerated in subsections (1)-(6) of section (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this Rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

**(e) Motion for Separate Statement or for More Definite Statement.** Within the time limits for filings under subsections (a) (1) and (a)(2) of this Rule, the party may file a motion for a statement in separate counts or defenses or for a more definite statement of any matter that is not averred with sufficient definiteness or particularity to enable the party properly to prepare a responsive pleading. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

**(f) Motion to Strike.** Upon motion filed by a party within the time for responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion filed by a party within 21 days after the service of any pleading, motion, or other paper, or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f).

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to that party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to that party which this Rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) of this Rule on any of the grounds there stated.

**(h) Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived: (A) If omitted from a motion in the circumstances described in section (g); or (B) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by [Rule 15\(a\)](#) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party under [Rule 19](#), and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under [Rule 7\(a\)](#), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

**Credits**

Amended effective January 1, 2012; July 1, 2015.

**Editors' Notes**

**COMMENTS**

**2015 [Amendment]**

[1] The practice of pleading every affirmative defense listed in [C.R.C.P. 8\(c\)](#), irrespective of a factual basis for the defense, is improper under [C.R.C.P. 11\(a\)](#). The pleading of affirmative defenses is subject not only to [C.R.C.P. 8\(b\)](#), which requires a party to “state in short and plain terms his defense to each claim asserted,” but also to [C.R.C.P. 11\(a\)](#): “The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Some affirmative defenses are also subject to the special pleading requirements of [C.R.C.P. 9](#). To the extent a defendant does not have sufficient information under [Rule 11\(a\)](#) to plead a particular affirmative defense when the answer must be filed but later discovers an adequate basis to do so, the defendant should move to amend the answer to add the affirmative defense.

Notes of Decisions (936)

Rules Civ. Proc., Rule 12, CO ST RCP Rule 12  
Current with amendments received through July 1, 2022.

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**Rule 16.5. Pretrial Procedure – Forcible Entry and Detainer Proceedings for Possession -- Requests for Documents and Conference.**

(a) Purpose and Scope. This rule applies to Forcible Entry and Detainer proceedings for possession, unless otherwise provided by statute, by agreement of the parties, or by order of the court.

(b) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 187 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(c) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a possession trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to such trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

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

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

**Rule 16.5. Pretrial Procedure – Forcible Entry and Detainer Proceedings for Possession -- Requests for Documents and Conference.**

(a) Purpose and Scope. This rule applies to Forcible Entry and Detainer proceedings for possession, unless otherwise provided by statute, by agreement of the parties, or by order of the court.

(b) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 187 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(c) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a possession trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to such trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

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

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

West's Colorado Revised Statutes Annotated  
Colorado Court Rules  
Chapter 25. Rules of County Court Civil Procedure

C.R.C.P. Rule 312

Rule 312. Defenses and Objections [in non-Forcible Entry and  
Detainer Cases](#) --When and How Presented-- By Pleading or  
Motion--Motion for Judgment on Pleadings

Effective: January 6, 2022  
Currentness

**(a) Responsive Pleadings; When Presented.** The defendant shall file an answer including any counterclaim or cross-claim on or before the appearance date as fixed in the summons. Except as otherwise provided in this rule [and Rule 312.5](#), the appearance date shall not be more than 63 days from the date of the issuance of the summons and the summons must have been served at least 14 days before the appearance date. When circumstances require that the plaintiff proceed under Rule 304(e), the above limitation shall not apply and the appearance date shall not be less than 14 days after the completion of service by publication or mail.

**(b) Motions.** [Except as otherwise provided in Rule 312.5](#), motions raising defenses made by the defendant on or before the appearance date shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

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

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

**Credits**

Amended effective January 1, 1984; January 1, 1994; April 23, 1998; June 28, 2007; January 1, 2012; January 6, 2022.

Rules Civ. Proc., County Court Rule 312, CO ST CTY CT RCP Rule 312  
Current with amendments received through July 1, 2022.



West's Colorado Revised Statutes Annotated  
Colorado Court Rules  
Chapter 25. Rules of County Court Civil Procedure

C.R.C.P. Rule 312

Rule 312. Defenses and Objections in non-Forcible Entry and  
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**(b) Motions.** Except as otherwise provided in Rule 312.5, motions raising defenses made by the defendant on or before the appearance date shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

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

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

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Amended effective January 1, 1984; January 1, 1994; April 23, 1998; June 28, 2007; January 1, 2012; January 6, 2022.

Rules Civ. Proc., County Court Rule 312, CO ST CTY CT RCP Rule 312  
Current with amendments received through July 1, 2022.



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

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

(b) Motions. A defendant may file a motion setting forth defenses simultaneously with the defendant's answer. All other motions, except for motions arising at trial, must be filed at least three days before the earlier of the date of any pretrial conference or the trial date.

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

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

(e) Tender of Full Payment. A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant's full payment of all amounts due according to the notice, as well as any rent that remains due under the rental agreement, at any time until a judge issues a judgment for possession. A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall: (1) vacate any judgments that have been issued; and (2) dismiss the action with prejudice.

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

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

(b) Motions. A defendant may file a motion setting forth defenses simultaneously with the defendant's answer. All other motions, except for motions arising at trial, must be filed at least three days before the earlier of the date of any pretrial conference or the trial date.

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

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

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**Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Cases -- Requests for Documents and Conference.**

(a) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

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

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

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

**Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Cases -- Requests for Documents and Conference.**

(a) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

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

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

I, \_\_\_\_\_, am the  Plaintiff  Defendant in this case.

I ask that the court order the other party in this case to give me all documents that the party has that are relevant to this case including: \_\_\_\_\_.  
 (Relevant documents may include: A lease, the rent ledger or payment history, the eviction notice, and any other documents that you believe are necessary to be presented at trial.)

Please send documents to me at the following location and manner: \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Printed name of  Plaintiff/Petitioner  Defendant/Respondent

\_\_\_\_\_  
 Signature of  Plaintiff/Petitioner  Defendant/Respondent

### CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_ (date) a true and accurate copy of this *REQUEST FOR DOCUMENTS IN EVICTION CASES* was served on the other party by:

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

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

\_\_\_\_\_  
 Signature

**FOR COURT USE ONLY BELOW THIS LINE:**

## ORDER

The Court orders that the party who was asked to provide documents in the above Request for Documents in Eviction Case must provide all documents related to this case to the party that made the request before trial occurs.

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Judge  Magistrate