

Rule 16.1. Simplified Procedure for Civil Actions

(a) Purpose and Summary of Simplified Procedure.

~~(1) Purpose of Simplified Procedure.~~ The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to ~~provide the earliest practical~~ allow earlier trials; and to limit discovery and its attendant expense.

~~(2) Summary of Simplified Procedure. Under this Rule, Simplified Procedure generally applies to all civil actions, whether for monetary damages or any other form of relief unless expressly excluded by this Rule or the pleadings, or unless a party timely and properly elects to be excluded from its provisions. This Rule normally limits the maximum allowable monetary judgment to \$100,000 against any one party. This Rule requires early, full disclosure of persons, documents, damages, insurance and experts, and early, detailed disclosure of witnesses' testimony, whose direct trial testimony is then generally limited to that which has been disclosed. Normally, no depositions, interrogatories, document requests or requests for admission are allowed, although examination under C.R.C.P. 34(a)(2) and 35 is permitted.~~

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

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

(2) civil actions in which any one party seeks ~~a~~ monetary judgment from any other party of more than \$100,000, exclusive of reasonable allowable attorney fees, interest and costs, as shown by a statement on the Civil Cover Sheet by the party's attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000."

~~(3)~~ **(c) Civil Cover Sheet.** Each pleading containing an initial claim for relief in a civil action, other than ~~a~~ class actions, domestic relations, ~~probate, water, juvenile, or mental health action,~~ probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601), ~~at the time of filing~~. Failure to file the ~~cover sheet~~ Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a ~~clerk's~~ clerk's show cause order requiring its filing.

~~(e) Limitations on Damages. In cases subject to this Rule, a claimant's right to a monetary judgment against any one party shall be limited to a maximum of \$100,000, including any attorney fees, penalties or punitive damages, but excluding interest and costs. The \$100,000 limitation shall not restrict an award of non-monetary relief. The jury shall not be informed of~~

~~the \$100,000 limitation. If the jury returns a verdict for damages in excess of \$100,000, the trial court shall reduce the verdict to \$100,000.~~

(d) Election Motion for Exclusion from This Rule Simplified Procedure. Simplified Procedure shall apply unless, no later than ~~35~~42 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a ~~written notice~~motion, signed by both the party and its counsel, if any, ~~stating that the party elects to be excluded~~establishing good cause to exclude the case from the application of Simplified Procedure, ~~set forth in this rule 16.~~

~~(1). The use of a “Notice to Elect Exclusion From~~ Good cause shall be established and the motion shall be granted if a defending party files a statement by its attorney or, if unrepresented, by the party, that “In compliance with C.R.C.P. 16.1 Simplified Procedure” in the form and content of Appendix to Chapters 1 to 17, Form 1.3 (JDF 602), shall comply with this section. In the event a notice¹¹, based upon information reasonably available to me at this time, I certify that the value of this party’s claims against one of the other parties is filed, C.R.C.P. 16 shall govern reasonably believed to exceed \$100,000” or

(2) The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the ~~action~~ importance of the issues at stake, the parties’ relative access to relevant information, the parties’ resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) Election for Inclusion Under This~~this~~ Rule. In actions excluded from Simplified Procedure by subsection (b)(2) ~~of this Rule,~~ within ~~49~~42 days after the case is at issue, as defined in C.R.C.P. 16(b)(1), the parties may file a stipulation to be governed by this Rule. ~~In such event, they will not be bound by the \$100,000 limitation on judgments contained in section (c) of this Rule.~~

(f) Case Management Orders. In actions subject to Simplified Procedure pursuant to this Rule, the presumptive case management order requirements of C.R.C.P. 16(b)(~~1~~), (~~2~~), (~~3~~), and (7) shall apply, except that preparing and filing a Proposed Case Management Order is not required.

(g) Trial Setting. No later than 42 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the court.

(h) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall ~~also~~ file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f), (g) and (k)(1) of this Rule or, if ~~they~~the parties have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.

(i) Expedited Trials. Trial settings, motions and trials in actions subject to Simplified Procedure ~~under this Rule~~ should be given early trial settings, hearings on motions and trials, if possible.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set a case management conference shall be filed stating the reasons why such a conference is requested. If any party is unrepresented or if the court determines that such a conference should be held, the court shall set a case management conference. The conference may be conducted by telephone.

(k) Simplified Procedure. Cases subject to Simplified Procedure means that the action shall not be subject to C.R.C.P. 16, 26-27, 31, 33, 34(a)(1), 34(e) and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(1) Required Disclosures.

(A) Disclosures in All Cases. Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g), no later than 3528 days after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.

(B) Additional Disclosures in Certain Actions. Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include, but are not limited to, the following:

(i) Personal Injury Actions. In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within five years prior to the date of injury who or which provided services which are related to the injuries and damages claimed, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records, subject to appropriate protective provisions authorized by obtained pursuant to C.R.C.P. 26(c). The claimant shall also produce transcripts or tapes of recorded statements, documents, photographs, and video and other recorded images that address the facts of the case or the injuries sustained. The defending party shall disclose transcripts or tapes of recorded statements, any insurance company claims memos or documents, photographs, and video and other recorded images that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those specific records for which the party, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court.

(ii) Employment Actions. In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure, and shall produce all documents which reflect or reference claimant's the claimant's efforts to find employment since the claimant's claimant's departure from the defending party, and written waivers allowing the opposing defending party to obtain the claimant's claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court. The

defending party shall produce the ~~claimant's~~claimant's personnel file and applicable personnel policies and employee handbooks;

~~(iii) Requested Disclosures. Before or after the initial disclosures, any party may make a written designation of specific information and documentation that party believes should be disclosed pursuant to C.R.C.P. 26(a)(1). The other party shall provide a response and any agreed upon disclosures within 21 days of the request or at the time of initial disclosures, whichever is later. If any party believes the responses or disclosures are inadequate, it may seek relief pursuant to C.R.C.P. 37.~~

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P. ~~26(a)(1) and~~ 16.1(k)(1)(B) and 26(a)(1) shall be made immediately available for inspection and copying to the extent not privileged or protected from disclosure.

(2) Disclosure of Expert Witnesses. The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), ~~26(a)(6)(4), 26(b)(5),~~ 26(c), 26(e) and 26(g) shall apply to disclosure ~~for~~of expert witnesses. Written disclosures of experts shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims ~~56~~63 days (~~8~~9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts ~~35 days before trial~~49 days before trial. The parties shall be limited to one expert witness per side retained pursuant to C.R.C.P. 26(a)(2)(B)(I), unless the trial court authorizes more for good cause shown.

(3) Mandatory Disclosure of Non-expert Trial Testimony. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken, and for whom expert reports pursuant to subparagraph (k)(2) of this Rule have not been provided. For adverse ~~party~~parties or hostile witnesses a party intends to call at trial, written disclosure of the expected subject matters of the ~~witness's~~witness' testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims ~~56~~63 days (~~8~~9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses ~~35~~49 days before trial.

(4) Permitted Discovery. The following discovery is permitted, to the extent allowed by C.R.C.P. 26(b)(1):

(A) Each party may take a combined total of not more than six hours of depositions noticed by the party;

(B) Not more than five requests for production of documents may be served by each party; and

(C) The parties may request discovery pursuant to C.R.C.P. 34(a)(2) (inspection of property) and C.R.C.P. 35 (medical examinations).

(5) Depositions of Witnesses in Lieu of for Obtaining Documents and for Trial Testimony. In addition to depositions allowed under subsection (k)(4)(A) of this Rule:

(A) Depositions may be taken for the sole purpose of obtaining and authenticating documents from a non-party; and

(B) A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4) and (7), take the deposition of that witness for the purpose of preserving the ~~witness~~'witness' testimony for use at trial. ~~Such~~ without being subject to the six-hour limit on depositions in subsection (k)(4)(A) of this Rule. Unless authorized by the court or stipulated to by the parties, such a deposition shall be taken at least ~~7~~21 days before trial. In that event, any party may offer admissible portions of the ~~witness~~'witness' deposition, including any cross-examination during the deposition, without a showing of the ~~witness~~'witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial by the party taking the preservation deposition.

~~(5) Depositions for Obtaining Documents. Depositions also may be taken for the sole purpose of obtaining and authenticating documents from a non-party.~~

(6) Trial Exhibits. All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties at least 35 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 14 days after receipt of the exhibits. Documents in the possession, custody and control of third persons that have not been obtained by the identifying party pursuant to document deposition or otherwise, to the extent possible, shall be identified 35 days before trial and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) Limitations on Witnesses and Exhibits at Trial. In addition to the sanctions under C.R.C.P. 37(c), witnesses and expert witnesses whose depositions have not been taken shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures, provided, however, that adverse parties and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (k)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously made for the purpose of authenticating exhibits if the opposing party made a timely objection to the authenticity of such exhibits: specifying the factual issues concerning the authenticity of the exhibits.

(8) Juror Notebooks and Jury Instructions. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of

trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(g).

~~(9) **Voluntary Discovery.** In addition to the disclosures required by this Rule, voluntary discovery may be conducted as agreed to by all the parties. However, the scheduling of such voluntary discovery may not serve as the basis for a continuance of the trial, and the costs of such discovery shall not be deemed to be actual costs recoverable at the conclusion of the action. Disputes relating to such agreed discovery may not be the subject of motions to the court. If a voluntary deposition is taken, such deposition shall not preclude the calling of the deponent as a witness at trial.~~

(I) Changed Circumstances. In a case ~~governed by this Rule~~under Simplified Procedure, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure ~~under this Rule~~unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of ~~this Rule and enter such orders as are appropriate under the circumstances~~Simplified Procedure and enter such orders as are appropriate under the circumstances. Except in cases under subsection (e) of this Rule, if, more than 42 days after the case is at issue, any party discloses damages against another party in excess of \$100,000 – including actual damages, penalties and punitive damages, but excluding allowable attorney fees, interest and costs – that defending party may move to have the case removed from Simplified Procedure and the motion shall be granted unless the claiming party stipulates to a limitation of damages against the defending party, excluding allowable attorney fees, interest and costs, of \$100,000. The stipulation must be signed by the claiming party and, if the claiming party is represented, by the claiming party’s attorney.

COMMENTS

2017

- [1] Rule 16.1, which established Simplified Procedure, took effect in 2004 to enhance the application of Rule 1’s admonition that the civil rules be interpreted to provide just, speedy, and inexpensive determination of cases and to increase access to the courts and justice system, particularly for cases seeking damages of less than \$100,000. As originally established, the application of Simplified Procedure was completely voluntary and parties could opt out without stating any reason or justification. A substantial majority of cases opted out of Simplified Procedure, minimizing its ability to advance its important justification and goals. However, lawyers and judges who have used Simplified Procedure strongly approve of it. See Gerety, “Simplified Pretrial Procedure in the Real World Under C.R.C.P. 16.1”, 40 *The Colorado Lawyer* 23, 25 (April 2011).
- [2] As a result, several significant revisions have been made to Rule 16.1. First, with the exception of several unique forms of civil actions, Simplified Procedure applies presumptively to all civil lawsuits.

- [3] Excluded from Simplified Procedure are cases seeking damages from any single defending party of at least \$100,000 (not including reasonable allowable attorney fees, interest and costs). This exclusion can be met in the mandated Civil Cover Sheet to be filed in all applicable civil cases if the attorney or unrepresented party executes a certification in the Cover Sheet as set forth in Rule 16.1(b)(2). This certification allows a party or the party's attorney to reasonably estimate the value of the case, but always subject to the requirements of Rule 11.
- [4] Cases can also be exempted after the case is in progress if one of the parties discovers that the claimant's damages may exceed \$100,000 and requests transfer of the case out of Simplified Procedure.
- [5] Trial courts may exclude cases from Rule 16.1 even though the claims do not seek money damages reaching the \$100,000 threshold after consideration of the factors contained in Rule 16.1(d)(2). Thus, cases with small or even no monetary damages that challenge the constitutionality of laws or procedures, seek declaratory judgments or injunctions, or raise other important and complex legal issues may be excluded from Simplified Procedure.
- [6] Another important change in Simplified Procedure is that the previous cap on damage awards of \$100,000 in Simplified Procedure cases has been removed.
- [7] Simplified Procedure now requires disclosures of persons, documents, damages and insurance under Rule 26 and disclosure of proposed testimony from witnesses and experts. It also allows up to 6 hours of depositions per party and, if needed, additional preservation depositions; up to five requests for production of documents; inspection of property and things; and relevant medical examinations.
- [8] Because of the limited discovery, it is particularly important to the just resolution of cases under Simplified Procedure, that parties honor the requirements and spirit of full disclosure. Parties should expect courts to enforce disclosure requirements and impose sanctions for the failure to comply with the mandate to provide full disclosures.

Rule 16.1. Simplified Procedure for Civil Actions

(a) Purpose of Simplified Procedure. The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to allow earlier trials; and to limit discovery and its attendant expense.

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

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

(2) civil actions in which any one party seeks monetary judgment from any other party of more than \$100,000, exclusive of reasonable allowable attorney fees, interest and costs, as shown by a statement on the Civil Cover Sheet by the party's attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000."

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

(d) Motion for Exclusion from Simplified Procedure. Simplified Procedure shall apply unless, no later than 42 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a motion, signed by both the party and its counsel, if any, establishing good cause to exclude the case from the application of Simplified Procedure.

(1) Good cause shall be established and the motion shall be granted if a defending party files a statement by its attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000" or

(2) The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) Election for Inclusion Under this Rule. In actions excluded from Simplified Procedure by subsection (b)(2), within 42 days after the case is at issue, as defined in C.R.C.P. 16(b)(1), the parties may file a stipulation to be governed by this Rule.

(f) Case Management Orders. In actions subject to Simplified Procedure, the case management order requirements of C.R.C.P. 16(b)(2), (3) and (7) shall apply, except that preparing and filing a Proposed Case Management Order is not required.

(g) Trial Setting. No later than 42 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the court.

(h) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f), (g) and (k)(1) of this Rule or, if the parties have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.

(i) Expedited Trials. Trial settings, motions and trials in actions subject to Simplified Procedure should be given early trial settings, hearings on motions and trials, if possible.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set a case management conference shall be filed stating the reasons why such a conference is requested. If any party is unrepresented or if the court determines that such a conference should be held, the court shall set a case management conference. The conference may be conducted by telephone.

(k) Simplified Procedure. Cases subject to Simplified Procedure shall not be subject to C.R.C.P. 16, 26-27, 31, 33 and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(1) Required Disclosures.

(A) Disclosures in All Cases. Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g) no later than 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.

(B) Additional Disclosures in Certain Actions. Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include, but are not limited to, the following:

(i) Personal Injury Actions. In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within five years prior to the date of injury who or which provided services which are related to the injuries and damages claimed, and shall produce all records from those

providers or written waivers allowing the opposing party to obtain those records, subject to appropriate protective provisions obtained pursuant to C.R.C.P. 26(c). The claimant shall also produce transcripts or tapes of recorded statements, documents, photographs, and video and other recorded images that address the facts of the case or the injuries sustained. The defending party shall disclose transcripts or tapes of recorded statements, any insurance company claims memos or documents, photographs, and video and other recorded images that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those specific records for which the party, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court.

(ii) **Employment Actions.** In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure, and shall produce all documents which reflect or reference the claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the defending party to obtain the claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court. The defending party shall produce the claimant's personnel file and applicable personnel policies and employee handbooks.

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P. 16.1(k)(1)(B) and 26(a)(1) shall be made immediately available for inspection and copying to the extent not privileged or protected from disclosure.

(2) Disclosure of Expert Witnesses. The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), 26(b)(4), 26(b)(5), 26(c), 26(e) and 26(g) shall apply to disclosure of expert witnesses. Written disclosures of experts shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 49 days before trial. The parties shall be limited to one expert witness per side retained pursuant to C.R.C.P. 26(a)(2)(B)(I), unless the trial court authorizes more for good cause shown.

(3) Mandatory Disclosure of Trial Testimony. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken, and for whom expert reports pursuant to subparagraph (k)(2) of this Rule have not been provided. For adverse parties or hostile witnesses a party intends to call at trial, written disclosure of the expected subject matters of the witness' testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 49 days before trial.

(4) Permitted Discovery. The following discovery is permitted, to the extent allowed by C.R.C.P. 26(b)(1):

(A) Each party may take a combined total of not more than six hours of depositions noticed by the party;

(B) Not more than five requests for production of documents may be served by each party; and

(C) The parties may request discovery pursuant to C.R.C.P. 34(a)(2) (inspection of property) and C.R.C.P. 35 (medical examinations).

(5) Depositions for Obtaining Documents and for Trial. In addition to depositions allowed under subsection (k)(4)(A) of this Rule:

(A) Depositions may be taken for the sole purpose of obtaining and authenticating documents from a non-party; and

(B) A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4) and (7), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial without being subject to the six-hour limit on depositions in subsection (k)(4)(A) of this Rule. Unless authorized by the court or stipulated to by the parties, such a deposition shall be taken at least 21 days before trial. In that event, any party may offer admissible portions of the witness' deposition, including any cross-examination during the deposition, without a showing of the witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial by the party taking the preservation deposition.

(6) Trial Exhibits. All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties at least 35 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 14 days after receipt of the exhibits. Documents in the possession, custody and control of third persons that have not been obtained by the identifying party pursuant to document deposition or otherwise, to the extent possible, shall be identified 35 days before trial and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) Limitations on Witnesses and Exhibits at Trial. In addition to the sanctions under C.R.C.P. 37(c), witnesses and expert witnesses whose depositions have not been taken shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures, provided, however, that adverse parties and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (k)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously made for the purpose of authenticating exhibits if the opposing party made a timely objection to the authenticity of such exhibits specifying the factual issues concerning the authenticity of the exhibits.

(8) Juror Notebooks and Jury Instructions. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(g).

(l) Changed Circumstances. In a case under Simplified Procedure, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of Simplified Procedure and enter such orders as are appropriate under the circumstances. Except in cases under subsection (e) of this Rule, if, more than 42 days after the case is at issue, any party discloses damages against another party in excess of \$100,000 – including actual damages, penalties and punitive damages, but excluding allowable attorney fees, interest and costs – that defending party may move to have the case removed from Simplified Procedure and the motion shall be granted unless the claiming party stipulates to a limitation of damages against the defending party, excluding allowable attorney fees, interest and costs, of \$100,000. The stipulation must be signed by the claiming party and, if the claiming party is represented, by the claiming party’s attorney.

COMMENTS

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- [1] Rule 16.1, which established Simplified Procedure, took effect in 2004 to enhance the application of Rule 1’s admonition that the civil rules be interpreted to provide just, speedy, and inexpensive determination of cases and to increase access to the courts and justice system, particularly for cases seeking damages of less than \$100,000. As originally established, the application of Simplified Procedure was completely voluntary and parties could opt out without stating any reason or justification. A substantial majority of cases opted out of Simplified Procedure, minimizing its ability to advance its important justification and goals. However, lawyers and judges who have used Simplified Procedure strongly approve of it. *See Gerety, “Simplified Pretrial Procedure in the Real World Under C.R.C.P. 16.1”, 40 The Colorado Lawyer 23, 25 (April 2011).*
- [2] As a result, several significant revisions have been made to Rule 16.1. First, with the exception of several unique forms of civil actions, Simplified Procedure applies presumptively to all civil lawsuits.
- [3] Excluded from Simplified Procedure are cases seeking damages from any single defending party of at least \$100,000 (not including reasonable allowable attorney fees, interest and costs). This exclusion can be met in the mandated Civil Cover Sheet to be filed in all applicable civil cases if the attorney or unrepresented party executes a

certification in the Cover Sheet as set forth in Rule 16.1(b)(2). This certification allows a party or the party's attorney to reasonably estimate the value of the case, but always subject to the requirements of Rule 11.

- [4] Cases can also be exempted after the case is in progress if one of the parties discovers that the claimant's damages may exceed \$100,000 and requests transfer of the case out of Simplified Procedure.
- [5] Trial courts may exclude cases from Rule 16.1 even though the claims do not seek money damages reaching the \$100,000 threshold after consideration of the factors contained in Rule 16.1(d)(2). Thus, cases with small or even no monetary damages that challenge the constitutionality of laws or procedures, seek declaratory judgments or injunctions, or raise other important and complex legal issues may be excluded from Simplified Procedure.
- [6] Another important change in Simplified Procedure is that the previous cap on damage awards of \$100,000 in Simplified Procedure cases has been removed.
- [7] Simplified Procedure now requires disclosures of persons, documents, damages and insurance under Rule 26 and disclosure of proposed testimony from witnesses and experts. It also allows up to 6 hours of depositions per party and, if needed, additional preservation depositions; up to five requests for production of documents; inspection of property and things; and relevant medical examinations.
- [8] Because of the limited discovery, it is particularly important to the just resolution of cases under Simplified Procedure, that parties honor the requirements and spirit of full disclosure. Parties should expect courts to enforce disclosure requirements and impose sanctions for the failure to comply with the mandate to provide full disclosures.

FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

District Court _____ County, Colorado Court Address:	▲ COURT USE ONLY ▲
Plaintiff(s): v. Defendant(s):	
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number:
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT <u>AND JURY DEMAND</u>	

1. This cover sheet shall be filed with ~~each~~ the initial pleading containing an initial claim for relief of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. ~~and shall be served on all parties along with the pleading~~ It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading by may result in a clerk’s show cause order requiring its filing.
2. Simplified Procedure under C.R.C.P. 16.1 applies to this case unless (check one box below if this party asserts that C.R.C.P. 16.1 does not apply):
 - This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, or
 - This party is seeking a monetary judgment against another party for more than \$100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party’s claims against one of the other parties is reasonably believed to exceed \$100,000.”

Or

Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

Check one of the following:

This case is governed by C.R.C.P. 16.1 because:

- ~~—The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; AND~~
- ~~—A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.~~

This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

~~The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.~~

~~A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.~~

~~Another party has previously indicated in a Case Cover Sheet that the simplified procedure under C.R.C.P. 16.1 does not apply to the case.~~

~~NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).~~

~~A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:~~

~~C.R.C.P. 16.1 applies to this case.~~

~~C.R.C.P. 16.1 does not apply to this case.~~

3. This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____

Signature of Party or Attorney for Party

NOTICE

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____

Signature of Party or Attorney for Party

NOTICE

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.