

Rule Change #2002(3)
COLORADO RULES OF CIVIL PROCEDURE
CHAPTER 2. PLEADINGS AND MOTIONS
Rule 16. Case Management and Trial Management

Rule 16. Case Management and Trial Management

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

~~—(b)~~ **(b) Presumptive Case Management Order.** ~~After the case is at issue,~~ Except as provided in sections (c) - (e) of this Rule, the parties shall not file a Case Management Order and subsections (1) - (10) of this section shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section (f) of this Rule.

~~shall be entered by the court.~~ **(1) At Issue Date.** For the purposes of this ~~section (b),~~ Rule, a case shall be deemed at issue at such time as all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court ~~shall~~ may direct.

~~—Pro Se Parties. If any party appears pro se, the court shall conduct a Case Management Conference on the record and issue a Case Management Order as provided by subsection (b)(1) of this Rule. Plaintiff's~~

~~counsel, if~~ **(2) The Responsible Attorney.** For purposes of this Rule, "the responsible attorney" shall mean plaintiff's counsel, if the plaintiff is represented by counsel, or if not, the defense counsel who first enters an appearance in the ~~case shall promptly file a Notice to Set Case Management Conference~~

~~after the case is at issue. Any~~case. The responsible attorney shall schedule conferences among the parties, prepare and file the certificates of compliance, prepare and submit the proposed Modified Case Management Order, if ~~party may submit a proposed Case Management Order prior to the conference by filing the same with the court and serving a copy thereof on all other parties.~~applicable, and prepare and submit the proposed Trial Management Order.

(3) Meet and Confer. No later than 15 days after the case is at ~~Parties Represented by Counsel. If all parties are represented by counsel,~~issue, lead counsel for each party and any party who is not represented by counsel shall confer with each other about the nature and basis of the claims and ~~defenses and discuss~~26(a)(1), no later than 15 days after the case is at ~~defenses;~~ the matters to be disclosed pursuant to C.R.C.P. 26(a)(1); and whether a Modified Case Management Order is necessary pursuant to subsection (c) of this Rule.

(4) Trial Setting. No later than 30 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121 §1-6, unless otherwise ordered by the Court.

~~issue.~~**(5) Disclosures.** No later than 30 days after the case is at issue, the parties shall ~~accomplish the~~serve their C.R.C.P. 26(a)(1) disclosures. ~~No later than 35 days after the case is at issue, lead counsel shall explore the possibilities of a prompt settlement or resolution of the case and begin to confer and cooperate in the development of a proposed Case Management Order. The proposed Case Management Order shall be filed no later than 45 days after the case is at issue. The C.R.C.P. 26(a)(1) disclosures, without attached documents, shall be filed as an appendix to the proposed Case Management Order. Plaintiff's counsel shall be responsible for scheduling conferences among counsel and preparing and filing the proposed Case Management Order with the attached disclosures. To the extent possible, counsel shall agree to the contents of the proposed Case Management Order; any matter upon which all counsel cannot agree shall be designated as "Disputed" in the proposed Order. The proposed Case Management Order shall be signed by lead counsel and shall include a place for the court's approval. If there are any disputed matters or if either counsel believes that it would be helpful to conduct a Case Management Conference, the filing of the proposed Order shall be accompanied by a Notice to Set Case Management Conference, stating the reasons why such a conference is requested.~~

~~—— (1) Form of Case Management Order. The proposed Case Management Order shall contain the following matters under the captions and in the order shown below:——~~

~~—— I. TRIAL SETTING. The parties shall set forth the length of the trial and trial date or the date by which a trial will be set. This section shall end with a statement that the parties acknowledge a duty to promptly notify the court in writing if the anticipated length of the trial changes.——~~

~~—— II. DISCLOSURE.——~~

~~—— A. Pursuant to C.R.C.P. 26(a)(1). Each party shall set forth a description, by category or other appropriate designation, of the information disclosed to the other parties, or if none, the reasons therefor and a schedule of dates when such disclosures will be made.——~~

~~—— B. Pursuant to C.R.C.P. 26(a)(2). The parties shall indicate the need for expert witnesses, and, if so, a schedule for disclosure of all information required by~~The parties shall disclose expert testimony in accordance with C.R.C.P. 26(a)(2).

~~—— C. Continuing Duty to Disclose. This section shall end with a statement that the parties, pursuant to C.R.C.P. 26(e), acknowledge a continuing duty to timely supplement or correct the information provided pursuant to C.R.C.P. 26(a)(1) and C.R.C.P. 26(a)(2).——~~

~~—— III. IDENTIFICATION OF PERSONS, DOCUMENTS AND TANGIBLE THINGS. The parties shall set forth a date by which each party will identify all persons who might be called as witnesses, as well as documents and tangible things which might be introduced at trial, not otherwise disclosed pursuant to C.R.C.P. 26(a)(1). The identification shall be in accordance with the provisions of C.R.C.P. 26(a)(4) and shall be accomplished no later than the date established for the completion of discovery.——~~

~~—— IV. DISCOVERY SCHEDULE. The parties shall set forth a discovery schedule as required by C.R.C.P. 26, including the timing and number of patterned and non patterned interrogatories, requests for production,——~~

(6) Settlement Discussions. No later than 35 days after the case is at issue, the parties shall explore the possibilities of a prompt settlement or resolution of the case.

(7) Certificate of Compliance. No later than 45 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance. The Certificate of Compliance shall state that the parties have complied with all requirements of subsections (b)(3)-(6), inclusive, of this Rule or, if they 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.

(8) Time to Join Additional Parties and Amend Pleadings.

No later than 120 days after the case is at issue, all motions to amend pleadings and add additional parties to the case shall be filed.

(9) Pretrial Motions. No later than 35 days before the trial date, pretrial motions shall be filed, except for motions pursuant to C.R.C.P. 56, which must be filed no later than 75 days before the trial date.

~~requests for admission, and depositions. No discovery schedule which exceeds the limitations of C.R.C.P. 26(b) shall be approved by the court unless good cause is shown pursuant to~~

(10) Discovery Schedule. Discovery shall be limited to that allowed by C.R.C.P. 26(b)(2). Except as provided in C.R.C.P. 26(d), discovery may commence 45 days after the case is at issue. The date for completion of all discovery shall be 50 days before the trial date.

~~no later than 10 days prior to the date for filing the Trial~~
(c) Modified Case Management Order. Any of the provisions of section (b) of this Rule may be modified by the entry of a Modified Case Management Order pursuant to subsection (c) of this Rule. Counsel shall certify that they have advised their clients of this section and section (d) of this Rule. the estimated costs and fees involved in conducting such discovery.

~~V. TIME TO JOIN ADDITIONAL PARTIES AND AMEND PLEADINGS. The parties shall indicate whether they anticipate the need for joining additional parties or amending the pleadings and a schedule, if applicable, for the filing of appropriate motions.~~

~~VI. PRETRIAL MOTIONS. The parties shall set forth a statement of pending motions and a schedule for the filing of anticipated pretrial motions other than motions relating to discovery.~~

~~VII. SETTLEMENT. The parties shall affirm expressly that they have discussed settlement and shall set forth their plans for future efforts to settle the case.~~

~~VIII. OTHER MATTERS. The parties shall also include any other matters which are appropriate under the circumstances of the case or as directed by the court to be included in the proposed Case Management Order.~~

(1) Stipulated Modified Case Management Order. No later than 45 days after the case is at issue, the parties may file a Stipulated proposed Modified Case Management Order, supported by

a specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such proposed order only needs to set forth the proposed provisions which would be changed from the presumptive Case Management Order set forth in section (b) of this Rule. The Court may approve and enter the Stipulated Modified Case Management Order, or may set a case management conference.

(2) Disputed Motions for Modified Case Management Orders.

If any party wishes to move for a Modified Case Management Order, lead counsel and any unrepresented parties shall confer and cooperate in the development of a proposed Modified Case Management Order. A motion for a Modified Case Management Order and one form of the proposed Order shall be filed no later than 45 days after the case is at issue. To the extent possible, counsel and any unrepresented parties shall agree to the contents of the proposed Modified Case Management Order but any matter upon which all parties cannot agree shall be designated as "disputed" in the proposed Modified Case Management Order. The proposed Order shall contain specific alternate provisions upon which agreement could not be reached and shall be supported by specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such motion only needs to set forth the proposed provisions which would be changed from the presumptive case management Order set forth in section (b) of this Rule. The motion for a modified case management order shall be signed by lead counsel and any unrepresented parties, or shall contain a statement as to why it is not so signed.

(d) Case Management Conference. If there is a disputed modified case management order or if any counsel or unrepresented party believes that it would be helpful to conduct a case management conference, a notice ~~-(2) Approval of the Case Management Order.-~~ to set case management conference shall be filed stating the reasons why such a conference is requested. If a Notice to Set Case Management conference is filed concerning a disputed Modified Case Management Order, or if ~~Conference is filed or if the court~~ the Court determines that such a conference should be held, the ~~court~~ Court shall set a Case Management Conference. The conference may be conducted by telephone. The court shall promptly ~~date and sign the Case Management Order. If a party is not physically present when the Case Management Order is signed by the court,~~ enter a Modified Case Management Order ~~a copy of the Order shall be immediately mailed to that party by the court.~~

~~—— (3) Effect and Modification of Case Management Order. The Case Management Order shall control the subsequent course of the action prior to the submission of the proposed Trial Management Order pursuant to subsection (c) of this Rule and may not be amended except by consent of the parties and approval of the court or by order of the court. A party wishing to modify the Case Management Order shall file a motion indicating the intended modification and the necessity therefor. The court shall not entertain such motion unless counsel for the moving party has conferred or made reasonable effort to confer with opposing counsel concerning the matter in dispute before the filing of the motion. Counsel for the moving party shall include a certificate of compliance with this Rule in the motion. In the event of ambiguity in the Case Management Order, the court shall interpret the order in the manner which best advances the interests of justice.~~

~~—— (c) Trial Management Order. Prior to trial, a Trial Management Order shall be entered by the court.~~

~~—— Pro Se Parties. If any party will be participating in the trial pro se, the court shall conduct a trial management conference on the record and issue a Trial Management Order pursuant to subsection (c)(1) of this Rule. Plaintiff's counsel, if plaintiff is represented by counsel, or if not, the defense counsel who first enters an appearance in the case shall promptly file a Notice to Set Trial Management Conference after all disclosures have been served and discovery has been completed. Any party may submit a proposed Trial Management Order prior to the conference by filing the same with the court and serving a copy thereof on all other parties.~~

~~—— Parties Represented by Counsel. If all parties are represented by counsel, lead counsel for each party shall confer with each other to jointly develop a proposed Trial Management Order. The proposed order shall be filed no later than 30 days prior to the date scheduled for trial or such time as the court shall direct. Plaintiff's counsel shall be responsible for scheduling conferences among counsel and preparing and filing the proposed Trial Management Order. Each counsel shall, prior to the submission of the proposed Trial Management Order, exchange a draft of the lists required in subsection (c)(1)(VI) of this Rule. To the extent possible, counsel shall agree to the contents of the proposed Trial Management Order; any matter upon which all counsel cannot agree shall be designated as "Disputed" in the proposed order. The proposed Trial Management Order shall be signed by lead counsel for each party and shall include a place for the court's approval. If there are any disputed matters or if any counsel believes that it would be helpful to conduct a trial management conference, the filing of~~

~~the proposed Trial Management Order shall be accompanied by a Notice to Set Trial Management Conference, stating the reasons why such a conference is requested.~~ containing such modifications as are approved by the Court.

(e) Amendment of the Case Management Order. At any time later than 45 days after the case is at issue, a party wishing to amend the presumptive Case Management Order or a Modified Case Management Order shall file a motion stating each proposed amendment and a specific showing of good cause for the timing and necessity for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2).

(f) Trial Management Order. No later than 30 days before the trial date, the responsible attorney shall file a proposed Trial Management order with the court. Prior to trial, a Trial Management Order shall be entered by the Court.

(1) Cases with Unrepresented Parties. If any unrepresented party will be participating in the trial, the responsible attorney shall promptly file a Notice to Set Trial Management conference after all disclosures have been served and discovery has been completed and the court shall conduct a Trial Management conference on the record and issue a Trial Management Order pursuant to subsection (f)(4) of this Rule. The responsible attorney shall submit a proposed Trial Management Order prior to the conference by filing the same with the Court and serving a copy thereof on all other parties.

(2) All Parties Represented by Counsel.

(A) If all parties are represented by counsel, lead counsel for each party shall confer with each other to develop jointly a proposed trial management order. Plaintiff's counsel shall be responsible for scheduling conferences among counsel and preparing and filing the proposed trial management order.

(B) Not later than 40 days before the trial date, each counsel shall exchange a draft of the lists of witnesses and exhibits required in subsections (f)(3)(VI)(A) and (B) of this Rule together with a copy of each documentary exhibit to be listed pursuant to subsection (f)(3)(VI)(B) of this Rule.

(C) To the extent possible, counsel shall agree to the contents of the proposed Trial Management Order. Any matter upon which all counsel cannot agree shall be designated as

"disputed" in the proposed order and the proposed trial management order shall contain specific alternative provisions upon which agreement could not be reached. The proposed Trial Management Order shall be signed by lead counsel for each party and shall include a place for the court's approval.

(D) If there are any disputed matters or if any counsel believes that it would be helpful to conduct a Trial Management conference, the filing of the proposed Trial Management order shall be accompanied by a Notice to Set Trial Management conference, stating the reasons why such a conference is requested.

~~—(1) Form~~ (3) Form of Trial Management Order. The proposed Trial Management Order shall contain the following matters under the following captions and in the following order:

~~—I. STATEMENT~~ I. STATEMENT OF CLAIMS AND DEFENSES
~~TO BE PURSUED OR WITHDRAWN.~~ The parties shall set forth a ~~listing~~ brief description of the nature of the case and a summary identification of the claims and defenses remaining for trial. Any claims or defenses set forth in the pleadings which will not be at issue at trial shall be designated as "withdrawn" or "resolved."

~~—II. STIPULATED~~ II. STIPULATED FACTS. The parties shall set forth a plain, concise statement of all facts which the trier of fact shall accept as undisputed. If the matter is scheduled for a jury trial, a proposed jury instruction containing these undisputed facts shall be submitted as ~~an attachment.~~ provided in section (g) of this Rule.

~~—III. PRETRIAL~~ III. PRETRIAL MOTIONS. The parties shall list any pending motions.

~~motions, if any, which are anticipated to be filed before trial as well as motions, if any, which are pending before the court.~~
IV. TRIAL BRIEFS. The parties shall indicate ~~a deadline for the filing of such motions, which shall be no later than 14 days prior to the date set for trial.~~

~~—IV. LEGAL ISSUES.~~ ~~The parties shall set forth a list of legal issues that are controverted, including appropriate citation of statutory, case or other authority. In addition, the parties shall indicate whether trial briefs will be filed, including a schedule for their filing. Trial briefs shall be filed no later than 710 days before the commencement of the trial.~~ trial date.

~~—— V. —~~ ~~ITEMIZATION~~ V. ITEMIZATION OF DAMAGES OR OTHER RELIEF SOUGHT. Each claiming party shall set forth a detailed ~~and itemized calculation of damages or~~ description of the categories of damages or other relief sought and ~~the basis therefor,~~ a computation of any economic damages claimed.

~~—— VI. —~~ ~~IDENTIFICATION~~ VI. IDENTIFICATION OF WITNESSES AND EXHIBITS--JUROR NOTEBOOKS. Each party shall provide the following information:

~~—— Lay Witnesses. From the disclosure and identification of persons pursuant to section (b) of this Rule, each~~ (A)

Witnesses. Each party shall attach to the proposed ~~Trial Management Order a list~~ trial management order separate lists containing the name, address, ~~and~~ telephone number and the anticipated length of each witness' testimony, including cross ~~telephone number of any person whom the party will call and of any person whom the party may call as a witness at trial.~~ examination, (i) of any person whom the party "will call" and (ii) of any person whom the party "may call" as a witness at trial. When a party lists a witness as a "will call" witness, the party does not have to call the witness to testify, but must ensure that the witness will be available to testify at trial if called by any party without the necessity for any other party to subpoena the witness for the trial. For each expert witness, the list shall also indicate whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness. Where appropriate, the court may order the parties to provide written notice to the other parties and to the court of the order in which the parties expect to present their witnesses.

~~—— Exhibits. From the disclosure and identification of documents and tangible things pursuant to the Case Management Order, each~~ (B) Exhibits. Each party shall attach to the proposed ~~Trial Management Order a list describing any physical or documentary~~ trial management order a list of exhibits including physical evidence which the party intends to introduce at trial. Unless stipulated by the parties, each list shall assign a number (for plaintiff or petitioner) or letter (for defendant or respondent) designation for each exhibit. Proposed excerpted or highlighted exhibits shall be attached. If any party wishes to object objects to the authenticity or admissibility of any exhibit as offered, such objection shall be noted on the list, together

with the ground therefor. ~~In the discretion of the Court, important exhibits may be~~ If any party stipulates to the admissibility of any exhibit, such stipulation shall be noted on the highlighted or excerpted. Those exhibits may, in the discretion of the Court, be included in juror notebooks. list. On or before the trial date, a set of the documentary exhibits shall be provided to the court.

(C) Juror Notebooks. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t) and at the ~~trial management~~ Trial Management conference or other date set by the Court make a joint submission to the Court of items to be included in the juror ~~notebook.~~

notebook. By agreement of the parties or in the discretion of the Court, important exhibits may be highlighted or excerpted and may be included in ~~Expert Witnesses. From the disclosure of expert witnesses pursuant to the Case Management Order, each party shall attach to the proposed Trial Management Order a list of the name, address, and telephone number of each person whom the party will call and any person whom the party may call as an expert witness at trial, indicating the anticipated length of testimony, including cross examination. The list shall indicate whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness.~~ juror notebooks.

~~Presentation of Testimony. If the~~ **(D) Deposition and other preserved testimony.** If the preserved testimony of any witness is to be presented the proponent of the testimony shall provide the other parties with its designations of such testimony at least 25 days before the trial date. Any other party may provide all other parties with its designations and shall do so at least 10 days before the trial date. The proponent may provide reply designations and shall ~~by deposition or through any other acceptable means in lieu of live testimony, a copy~~ do so at least 5 days before the trial date. A copy of the preserved testimony to be presented at trial shall be submitted to the court and include the proponent's and opponent's anticipated designations of the pertinent portions of such testimony or a statement why designation is not feasible prior to trial. at least three days before the trial date. If any party wishes to object to the admissibility of the testimony or to any tendered question or answer therein, it shall be noted, setting forth the grounds therefor.

~~_____VII. TRIAL EFFICIENCIES.~~**VII. TRIAL EFFICIENCIES AND OTHER MATTERS.** If the anticipated length of the trial has changed, the parties shall ~~so indicate and state whether it is feasible or appropriate to try any issues separately.~~

~~_____VIII. OTHER MATTERS.~~indicate. The parties shall also include any other matters which are appropriate under the circumstances of the case or directed by the court to be included in the proposed Trial Management Order. The parties shall confirm that they have considered ways in which the use of technology can simplify the case and make it more understandable.

~~_____ (2) Approval~~**(4) Approval of Trial Management Order.** If a Notice to Set Trial Management Conference is filed or the ~~court~~Court determines that such a conference should be held, the ~~court~~Court shall set a trial management conference. The conference may be conducted by telephone. The court shall promptly ~~date and sign~~enter the Trial Management Order. ~~If a party is not physically present when the Trial Management Order is signed by the court, a copy of the order shall be immediately mailed to that party by the court.~~

~~_____ (3) Effect and Modification of or Divergence from~~**(5) Effect of Trial Management Order.** The Trial Management Order shall control the subsequent course of the trial. Modification to or divergence from the Trial Management Order, whether prior to or during trial, shall be permitted upon a demonstration that the modification or divergence could not with reasonable diligence have been anticipated. In the event of any ambiguity in the Trial Management Order, the ~~court~~Court shall interpret the ~~order~~Order in the manner which best advances the interests of justice.

~~_____ (4) Designation of Order of Proof. No less than 7 days prior to trial, each party, from the lists required by subsection (c)(1)(VI) of this Rule, shall, by written notice to the other parties, specifically identify those witnesses it anticipates calling, in the order to be called, indicating the anticipated length of testimony, including cross examination.~~

~~_____ (d)~~**(g) Jury Instructions and Verdict Forms.** Counsel for the parties shall confer to develop jointly proposed jury instructions and verdict forms to which the parties agree. No later than 3 days prior to the date scheduled for commencement of the trial or such other time as the court shall direct, a set of the proposed jury instructions and verdict forms shall be filed with the courtroom clerk. The first party represented by counsel to demand a jury trial pursuant to C.R.C.P. 38 and who has not withdrawn such demand shall be responsible for filing

the proposed jury instructions and verdict forms. If any jury instruction or verdict form is disputed, the party propounding the instruction or verdict form shall separately file with the courtroom clerk a set of the disputed jury instructions and verdict forms. Each instruction or verdict form shall have attached a brief statement of the legal authority on which the proposed instruction or verdict form is ~~based.~~

~~—Compliance~~based. Compliance with this Rule shall not deprive parties of the right to tender additional instructions or verdict forms or withdraw proposed instructions or verdict forms at trial. All jury instructions and verdict forms submitted by the parties shall be in final form and reasonably complete. The court shall permit the use of photocopied instructions and verdict forms, without citations, in its submission to the jury.

Amended and Adopted by the Court, En Banc, February 13, 2002, effective July 1, 2002.

BY THE COURT:

**Nancy E. Rice
Justice, Colorado Supreme Court**