

Rule Change #2003(19)

THE COLORADO RULES OF CIVIL PROCEDURE

CHAPTER 2

Rule 8. General Rules of Pleading

Rule 10 Form and Quality of Pleadings, Motions and Other Documents

Rule 16 Case Management and Trial Management

Rule 16.1 (New) Simplified Procedure for Civil Actions

THE COLORADO RULES OF CIVIL PROCEDURE

CHAPTER 4

Rule 26.3 Repealed

Amended and Adopted by the Court, En Banc, November 6, 2003, effective July 1, 2004.

Justice Rice would not adopt the rule.

BY THE COURT:

Mary J. Mullarkey

Chief Justice, Colorado Supreme Court

CHAPTER 2
PLEADINGS AND MOTIONS

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for a relief whether an original claim, counterclaim, cross-claim, or a third-party claim, shall contain: (1) If the court is of limited jurisdiction, a short and plain statement of the grounds upon which the court's jurisdiction depends; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for judgment for the relief to which the pleader claims to be entitled. No dollar amount shall be stated in the prayer or demand for relief. Relief in the alternative or of several different types may be demanded. Each claiming party shall designate in its first pleading whether the case is subject to or exempt from Simplified Procedure under C.R.C.P. 16.1 by using the caption form required by C.R.C.P. 10(d)(2)(III).

(b) – (f) NO CHANGE.

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CHAPTER 2
PLEADINGS AND MOTIONS

**Rule 10. Form and Quality of Pleadings, Motions
and Other Documents**

(a)-(d) (2) (II) NO CHANGE.

(III) Case Caption Information: All documents shall contain the following information arranged in the following order, as illustrated by paragraphs (e) and (f) of this rule, except that documents issued by the court under the signature of the clerk or judge should omit the attorney section as illustrated in paragraphs (e) (2) and (f) (2). Individual boxes should separate this case caption information; however, vertical lines are not mandatory.

On the left side:

Court name and mailing address.

Name of parties.

Name, Address, and telephone number of the attorney or pro se party filing the document.

Fax number and e-mail address are optional.

Attorney registration number.

Document title.

On the right side:

An area for "Court Use Only" that is at least 2 1/2 inches in width and 1 3/4 inches in length (located opposite the court and party information).

Case number, division number, and courtroom number (located opposite the attorney information above). Below the division or courtroom number, in a pleading containing claims against another party, the claiming party shall include the following provision:

This case is NOT subject to the simplified procedures for court actions under Rule 16.1 because:

This is a class action, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, Rule 106 and 120, or other similar expedited proceeding [see C.R.C.P. 16.1(b) (1)].

and/or

Claims against any party exceed \$100,000 [see C.R.C.P. 16.1(b) (2) and (c)]

(3) - (4) NO CHANGE.

(e) Illustration of Preferred Case Caption Format:

(1) Preferred Caption for documents initiated by a party:

[Designation of Court From subsection (g) below]	
Plaintiff(s) : <i>[Substitute appropriate party designations & names]</i> v. Defendant(s) :	▲COURT USE ONLY Case Number: _____ Div: _____ Ctrm: _____
Attorney or Party Without Attorney Name: Address Phone Number: FAX Number: E-mail: Atty. Reg. #	<u>[For a Complaint, Counterclaim or Third-Party Complaint caption, insert in the lower right portion of the caption the following:]</u> <u>This case is NOT subject to the simplified procedures for court actions under Rule 16.1 because:</u> <u> This is a class action, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, Rule 106 and 120, or other similar expedited proceeding [see C.R.C.P. 16.1(b)(1)]</u> <u>and/or</u> <u> Claims against any party exceed \$100,000 [see C.R.C.P. 16.1(b)(2) and (c)]</u>
NAME OF DOCUMENT	

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- (2) NO CHANGE.
- (f) Illustration of Optional Case Caption:
- (1) Optional Caption for documents initiated by a party:
- (2) NO CHANGE.
- (g) - (h) NO CHANGE.

CHAPTER 2
PLEADINGS AND MOTIONS

Rule 16. Case Management and Trial Management

(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. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in Rule 16.1. 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) - (g) NO CHANGE.

CHAPTER 2
PLEADINGS AND MOTIONS

Rule 16.1. (New) Simplified Procedure for Civil Actions to be adopted as follows:

(a) Purpose and Summary of Simplified Procedure.

(1) Purpose of Simplified Procedure. The purpose of this rule 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 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 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 party seeks a monetary judgment from any other party of more than \$100,000, exclusive of interest and costs.

(c) 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 for Exclusion from This Rule. This Rule shall apply unless, no later than 35 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a written statement in a pleading or otherwise, signed by the party and its counsel, if any, stating that the party elects to be excluded from the application of Simplified Procedure, set forth in this Rule 16.1. In the event such a statement is filed C.R.C.P. 16 shall govern the action.

(e) Election for Inclusion Under This Rule. In actions excluded by subsection (b)(2) of this Rule, within 45 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), (5) and (6) shall apply.

(g) Trial Setting. No later than 40 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 45 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) and (g) 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.

(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.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set 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. Simplified Procedure means that the action shall not be subject to C.R.C.P. 16, 26-33, 34(a)(1), 34(c) 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(a)(6), 26(b)(5), 26(c), 26(e) and 26(g), no later than 30 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, 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 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 efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the opposing 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;

(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 20 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) 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), 26(c), 26(e) and 26(g) shall apply to disclosure for expert witnesses. Written disclosures of experts shall be served by parties asserting claims 90 days before trial; by parties defending against claims 60 days before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 35 days before trial.

(3) 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 or hostile witnesses, written disclosure of the expected subject matters of the witness's testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 90 days before trial; by parties defending against claims 60 days before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 35 days before trial.

(4) Depositions of Witnesses in Lieu of Trial Testimony. 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), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial. Such a deposition shall be taken at least 5 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 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 30 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 10 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 30 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.

(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.

(m) Changed Circumstances. In a case governed by this Rule, 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.

CHAPTER 4
DISCLOSURE AND DISCOVERY

Rule 26.3. ~~Limited Monetary Claim Actions.~~ (REPEALED)

~~Statement of Purpose~~

~~The purpose of this Rule is to provide for disclosure, alternative dispute resolution, discovery and trial procedures for those district court civil actions in which the claimant seeks monetary damages not exceeding \$50,000, exclusive of costs and interest. These cases shall be known as limited monetary claim actions, and shall be governed by this Rule.~~

~~(a) Definition~~

~~A limited monetary claim action is a civil action in which no claimant seeks money damages of more than \$50,000, exclusive of costs and interest, from one party. In the event third party claims, cross claims or counter claims also seek money damages, the claims of each party must be \$50,000 or less for the action to be governed by this Rule. If such a certification is made, then the matter shall be governed by the provisions of this Rule.~~

~~(b) Optional Certification~~

~~At the time of the filing of the complaint, the plaintiff may certify that the money damages being sought by plaintiff are \$50,000 or less, exclusive of costs and interest, against any one party. Such certification is not required. This certification shall limit plaintiff's right to recover money damages to a maximum of \$50,000, exclusive of costs and interest. Upon the filing of this certification, the case shall be governed by this Rule unless any party filing a third party claim, cross claim or counter claim certifies that any such claim for money damages is in excess of \$50,000, exclusive of costs and interest. When such a certification is filed by a party presenting a third party claim, a cross claim, or a counter claim, the action shall not be governed by this Rule. Such certification by either party may not be used for any purpose other than to bring the civil action under this Rule. All certifications are subject to C.R.C.P. 11. Certification may only be withdrawn by order of the court upon a showing of changed circumstances.~~

~~(c) Disclosures~~

~~In a case governed by this Rule, the disclosure rules of C.R.C.P. 26(a) shall apply with the following exceptions: The parties shall make their disclosures required by C.R.C.P. 26(a) (1) and 16(b) no later than 21 days after the case is at issue. In personal injury cases, the plaintiff shall disclose all health care providers and employers for the past ten years,~~

~~and the defendant shall disclose the present claim case file, including any evidence supporting affirmative defenses and provide a copy of all insurance policies including each declaration page.~~

~~————~~ **~~(d) Discovery Scope and Limits~~**

~~————~~ **~~(1) In General.~~** ~~Discovery in a case governed by this Rule shall be pursuant to the provisions of C.R.C.P. 26(b) subject to the following additional provisions and limitations.~~

~~————~~ **~~(A)~~** ~~Prior to the ADR required by subsection (c), the only deposition a party may take is that of the adverse party.~~

~~————~~ **~~(B)~~** ~~All forms of discovery may be had immediately after the case is at issue and without completion of the case management order.~~

~~————~~ **~~(2) Post-ADR.~~** ~~If a case governed by this Rule has not settled prior to or at the time of the ADR required by subsection (c), discovery shall be as permitted by C.R.C.P. 26(b), and a case management order shall be filed 15 days following the ADR session.~~

~~————~~ **~~(e) ADR~~**

~~————~~ ~~The parties in a case governed by this Rule shall attend a non binding ADR pursuant to the Colo. Disp. Res. Act, C.R.S. section 13-22-301 et seq., within 120 days of the date the case is at issue. The parties may agree to a binding form of ADR. This time may not be extended except by order of the court, and no extension shall be granted absent extreme hardship. Each party shall bear its own costs for the ADR. The parties shall certify to the court that ADR has occurred.~~

~~————~~ **~~(f) Costs~~**

~~————~~ ~~No party in a case governed by this Rule may receive an order for costs in excess of \$5,000.~~

~~————~~ **~~(g) Trial Procedures~~**

~~————~~ ~~Use of expert depositions. A deposition of an expert may be used at the trial without a showing of unavailability.~~

~~————~~ **~~(h) Judgment~~**

~~————~~ ~~A party proceeding in an action governed by this Rule may not recover money damages in excess of \$50,000, exclusive of costs and interest, against any one party.~~

~~————~~ ~~Source: Entire rule adopted January 20, 2000, effective July 1, 2000.~~

~~Rule 27. Depositions Before Action or Pending Appeal~~

~~————~~ **~~(a) Before Action.~~**

~~————~~ **~~(1) Petition; Order; Notice.~~** ~~A person who desires to perpetuate his own testimony or that of other persons may file in a district court a petition verified by his oath (or, if there be more than one petitioner, then by the oath of at least one of them) stating either: (1) That the petitioner expects to~~

~~be a party to an action in a court in this state and, in such case, the name of the persons who he expects will be adverse parties; or (2) that the proof of some facts is necessary to perfect the title to property in which petitioner is interested or others similarly situated may be interested or to establish any other matter which it may hereafter become material to establish, including marriage, divorce, birth, death, descent or heirship, though no action may at any time be anticipated, or, if anticipated, the expected adverse parties to such action are unknown to petitioner. The petition shall also state the names of the witnesses to be examined and their places of residence and a brief outline of the facts expected to be proved, and if any person named in the petition as an expected adverse party is known to the petitioner to be an infant or incompetent person the petition shall state such fact. If the expected adverse parties are unknown, it shall be so stated. The court shall make an order allowing the examination and directing notice to be given, which notice, if the expected adverse parties are named in the petition, shall be personally served on them in the manner provided in Rule 4 (c) and, if the expected adverse parties are stated to be unknown, and if real property is to be affected by such testimony a copy of such notice shall be served on the county clerk and recorder, or his deputy, of the county where the property to be affected by such testimony or some part of such property is situated but in any event said notice shall be published for not less than two weeks in some newspaper to be designated by the court making the order in such manner as may be designated by such court. If service of said notice cannot with due diligence be made, in the manner provided in Rule 4 (c), upon any expected adverse party named in the petition, the court may make such order as is just for service upon him by publication or otherwise and shall appoint, for persons named in the petition as expected adverse parties who are not served in the manner provided in Rule 4 (c), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the witness. Such notice shall state the title of the proceeding, including the court and county in which it is pending, the time and place of the examination and either a brief outline of the facts expected to be proved or a description of the property to be affected by such testimony. Any notice heretofore given which contains the above required matters shall be deemed sufficient. Any personal service required by the provisions hereof shall be made at least ten days before the testimony is taken. If any person named in the petition as an expected adverse party is stated in any paper filed in such proceeding to be an infant or incompetent person, the provisions of Rule 17 (c) apply, but no guardian ad litem~~

need be appointed for any expected adverse party whose name is unknown.

~~(2) **Testimony Taken.** Upon proof of the service of the notice the court shall take the testimony of the witnesses named in the petition upon the facts therein set forth, and the taking of same may be continued from time to time, in the discretion of the court, without giving any further notice. The testimony shall be taken on question and answer unless the court otherwise direct, and any party to the proceeding may question witnesses either orally or upon written interrogatories. The testimony, when taken, shall be signed and sworn to in writing by each respective witness and certified by the court. If any witness is absent from the county in which the proceedings are pending, the court shall designate some person authorized to administer oaths, by name or otherwise, to take and certify his testimony and the person so designated shall take his testimony in manner aforesaid and certify and return same to the court with his certificate attached thereto showing that he has complied with the requirements of said order.~~

~~(3) **Proofs Prima Facie Evidence.** The affidavit, return, certificate and other proofs of compliance with the provisions of this section (a), or certified copies thereof, shall be prima facie evidence of the facts therein stated.~~

~~(4) **How and When Used.** If a trial be had in which the petitioner named in the petition or any successor in interest of such petitioner or any person similarly situated shall be a party, or between any parties, in which trial it may be material to establish the facts which such testimony proves or tends to prove, upon proof of the death or insanity of the witness or witnesses, or of his or their inability to attend the trial by reason of age, sickness, infirmity, absence or for any other cause, any testimony, which shall have been taken as herein provided, or certified copies thereof, may be introduced and used by either party to such trial.~~

~~(b) **After Judgment or After Appeal.** If an appeal of a judgment is pending, or, if none is pending, then at any time within thirty days from the entry of such judgment, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in such court. In such case the party who desires to perpetuate the testimony may make a motion in such court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in such court. The motion shall show: (1) The names and addresses of the persons to be examined and the substance of the testimony, so far as known, which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the~~

~~court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in trial courts.~~